

Board of Estimates
Meeting of February 13, 2017
Agenda Item #26, Legistar #45968, Olbrich Park Biergarten

A Biergarten does not come within Ordinance Restrictions.

Proposed clause #9 provides:

"It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a grant to Permittee of the right to conduct certain activities and provide certain services on City property for the benefit and convenience of the public, pursuant to Madison General Ordinances, Section 8.17."

MGO 8.17(3) limits the use of parks vending permits:

... The Park Commission or authorized designee may grant a parks vending permit only for those transactions which:

- (a) Are customarily associated with public use and enjoyment of parks and park properties;
- (b) Are in furtherance of public use and enjoyment of the park; or
- (c) Are incidental to an appropriate recreational or cultural use of said properties."

A biergarten is not customarily associated with public use and enjoyment of parks and park properties.

A biergarten does not further use and enjoyment of the park – other than the approximate .2 acres out of a 27.5 acre park.

A biergarten is not an incidental use. The applicants have failed to explain how a biergarten is incidental to Olbrich Park's recreational or cultural uses. Even if one views drinking beer as a recreational use, since alcohol is banned at Olbrich Park, having a biergarten does not further any recreational beer drinking use.

Permitting a vendor an exclusive license to sell alcohol in city parks

The proposed use agreement provides:

WHEREAS, for many years, vendors have entered into agreements with the City allowing vendors to provide recreational, placemaking and concession services to City residents and visitors at City shelters and facilities located at numerous City parks, which agreements are in the public's interests as they facilitate greater access and enjoyment of the City's parks, lakes and recreational opportunities; and,

Such language could lead one to believe that this use agreement is an ordinary use agreement. However, concessions are vended at Marshall, Warner, James Madison and Brittingham. The agreements specify that alcoholic beverages are not permitted. (Wingra and Vilas also have a vendor for concessions, but the use agreement is not available on-line to confirm alcohol prohibition.)

Other use agreements are also unlike the proposed Olbrich use agreement in that all of these other agreements increased the use of the parks' recreational opportunities.

Marshall Park:

Boat rental, instructional, concessions (no alcohol) and other recreational activities.
Legistar 45945.

Brittingham:

Offer canoes, kayaks, rowboats, paddle boards and paddle boats. Also provide coffee, grilled cheese sandwiches, soups, salads and beverages (no alcohol). Legistar 29787.

Amended by Legistar #37198 to provide low-power motorized boats, rental of racks for private boat storage. Limited special events.

Resolution Preamble: "The Parks Division has determined that this operating agreement at this location would be beneficial to all park users and will have a positive impact on the park and neighborhood. It is determined that the grant of such an operating agreement is in the public interest as it will facilitate Madison area residents with public boating access to Monona Bay and Lake Monona." Legistar 29787

James Madison Park:

"offer canoe/kayak/windsurfing/sailing lessons, canoe/kayak/windsurf/sailboat rental service, and concessions, available to the general public. ... all items offered for sale by SWS, including but not limited to food, non-alcoholic beverages and confections, shall be approved by the Parks Superintendent or designee ..." Legistar 05542, 03011.

Warner Park:

"operate a small sailboat storage area and to provide rentals and instruction for canoe, kayaks and small non-motorized boats as well as to provide concessions. It is determined that the grant of such an operating agreement is in the public interest as it will facilitate Madison area residents with public boating access to Lake Mendota." Legistar 30755

Provide equipment for water "sports rental, instructional programs for water sports, youth camps for water sports, and beverage and snack concessions at the Premises. No alcoholic beverages may be sold at the Premises." Legistar 42219

Vilas and Wingra:

"covering boat livery and concession operations utilizing certain lands and buildings at Vilas Park and Wingra Park...utilize park areas and buildings in Vilas Park and Wingra Park, as more particularly described and depicted in the Agreement, to maintain and operate a boat livery operation and programs ..." Legistar 37032

Wingra, boat livery service, Legistar 01822.

Various parks, Madison Ultimate Frisbee Association, Inc.: priority usage of certain athletic fields (non-exclusive basis) for a non-profit association. Legistar 44910

Warner, storage of "youth football equipment and distribute equipment and uniforms at the Warner Stadium at the beginning of each season and throughout the season as needed" for a non-profit organization. Legistar 42220

Monona Golf Course, allowing a non-profit to use the course for the First Tee Program. Legistar 20672

Marshall Park, allowing for the placement and non-exclusive use by the UW Men's and Women's crew teams of a floating dock system at Marshall Park. Legistar 13710.

Public Interest

The draft use agreement claims, indirectly, that the biergarten is in the public interest. Yet, unlike the recent Marshall park use agreement, there is not an explanation of how the public interest is furthered. (The Brittingham and Warner agreements also specified the public interest.)

Public Interest was defined in the Marshall Park use agreement as:

"It is determined that the grant of such an operating agreement [boat livery] is in the public interest as it will facilitate Madison area residents with public boating access to Lake Wingra."

In fact, a whole section of the community would be banned from the biergarten – all unaccompanied persons under age 21.

Even when the biergarten is not open for business, these unaccompanied minors are not allowed upon the biergarten's premises. Wis. Stats. §125.07(3) provides:

An underage person ... may not enter, knowingly attempt to enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued, for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises.

A resolution was recently introduced to "improve upon Madison's reputation as an music and entertainment hub that offers an enjoyable and welcoming environment for all of our residents and guests of all ages, thereby providing positive social, cultural, and economic impact for Madison." This equity should also be considered when reviewing the use, or exclusion, in connection with publically owned resources.

The Board may also wish to consider exclusivity in terms of residents' financial resources. Only those who can afford \$5-6 to buy beer/wine would be able to drink in Olbrich Park.

RFP Process

The request for proposal, at a minimum, suggested that alcohol sales would not be allowed. RFP #: 8544-0-2016-BP, Services at City Parks, solicited proposals from qualified vendors for services at Olbrich Park. The Sample Agreement attached thereto specified:

3. Scope of Services. In entering into this Agreement, Permittee agrees to the following terms and conditions regarding the services being offered by Permittee at the Premises:

A. Services to be Provided. Permittee shall provide equipment for water sports rental, instructional programs for water sports, youth camps for water sports, and beverage and snack concessions at the Premises. *No alcoholic beverages* may be sold at the Premises.

...

F. Product. All items offered for sale by Permittee, including, but not limited to, food, *non-alcoholic beverages* and confections, shall be approved by the Parks Superintendent, or his/her designee. All items for sale shall be individually listed on an inventory, a copy of which shall be filed with the Parks Division.

(emphasis added)

The same RFP was issued for both Olbrich and Marshall parks, #8544-0-2016-BP. Yet the respective use agreements are quite different when describing the RFP. The Olbrich use agreement merely mentions that the Permittee was selected following a RFP process. The Marshall use agreement states that the RFP was issued to find the vendor who can best provide services consistent with City standards and interests.

WHEREAS, in order to find a vendor who can best provide these recreational and concession services at City parks consistent with City standards and interests, the City issued a Request for Proposals for the Right to Conduct Rental, Instructional Service and Concession Activities at Select City Parks, including Marshall Park;

How many other vendors might have been interested in concessions at Olbrich had they been aware that alcohol could be sold? Perhaps those other vendors may even have had experience in selling alcohol, unlike the current applicant. Has the "vendor who can best provide" alcohol sales been selected?

Further, add in the fact that one of the LLC members is the husband of Alder Eskrich, and people could be left with the perception that the process was unfair.

Only one vendor

The draft use agreement provides:

WHEREAS, it is in the City's interest to have only one vendor of these recreational and concession services at each Park to ensure that general public's use of the Park is not interfered with, and that the vendor complies with general standards of safety and care in its dealings with the public;

Yet Olbrich Park would have two vendors. Why the exception?

Respectfully Submitted,
Linda Lehnertz