

## Office of the City Attorney

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December 1, 2022

### Memorandum

To: Ordinance and License Committee  
From: Brian Running  
Re: Primetime Events Application for Class B License in Minooka Park

On November 7, 2022, the Clerk-Treasurer's Office received an application for a Class B retail license from Primetime Events, LLC, for a beer garden at the Minooka Park beach house. The application was not accompanied by a diagram showing the proposed boundaries of the licensed premises. The applicant indicated that his intent was for the entire park to be the licensed premises. The Committee held over the application until the next meeting for review and identification of issues that need to be addressed.

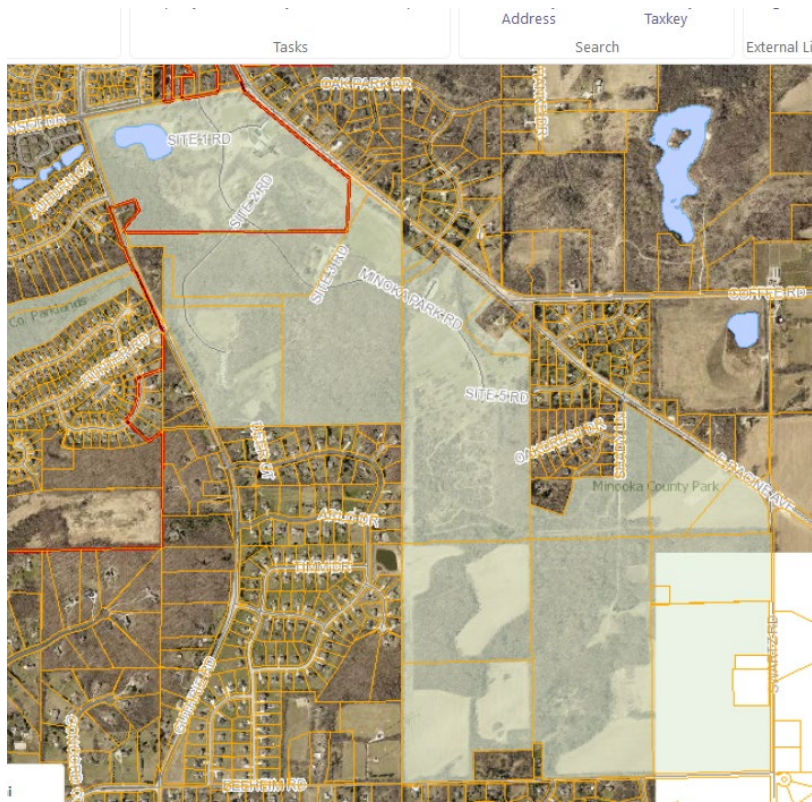
#### Issues

1. Waukesha Municipal Code §9.09(2) prohibits licenses for the sale of alcohol beverages "in public parks or other City-owned property," with exceptions only for Saratoga, Frame, Lowell, and Cutler Parks.
2. WMC §9.115(b)(5) states that licensed premises may not be on public property, except for temporary licenses under §9.09(2) in Saratoga, Frame, Lowell, and Cutler Parks; temporary extensions onto Municipal Lot 3; and Sidewalk Cafés.
3. WMC §9.115(b)(4) requires licensed premises outside of buildings to be surrounded by a substantial enclosure with definite entry and exit points monitored by staff. The application is not for a temporary Class B license, so the enclosure would have to meet building and zoning code requirements.
4. A large part of Minooka Park is outside of Waukesha's city limits, and we cannot issue a license for premises outside the city.
5. Underaged persons are not allowed within a licensed premises unless accompanied by an adult or guardian. If the licensed premises includes the entire park, or even the entire beach house and beach area, only persons 21 or older would be allowed there without a parent or guardian.

## Discussion

The language of §9.09(2) suggests that only City-owned parks fall under the prohibition, but §9.115(b)(5) clearly applies to “public property” regardless of the owner. Therefore, §9.115 prevents a retail license from being issued for Minooka Park. If the proposal for a beer garden at Minooka is to go ahead, the ordinance would have to be amended to include an exception for Minooka.

Regarding the boundaries of the licensed premises, it’s not possible for it to extend to the entire park, because only a small part of it is in the City of Waukesha, with the rest being in the Village of Waukesha and New Berlin. The red line in this map is the city limits, and the gray area is the park:



I spoke with Rebecca Mattano at the County Parks and Land Use Department, and explained our requirement for a defined premises with a substantial enclosure. I also told her that unaccompanied underage persons could not go into the licensed premises, so they would have to define the boundaries of the beer garden so as not to exclude kids from areas where they want them to be able to go. She said she would work it out with the applicant to come up with a boundary, and she said that the County would require the substantial enclosure to be something attractive and appropriate for the area. The County’s intent is for the premises to be only in the area of the beach house.

## Conclusion

It appears that we will get an attachment to the application showing boundaries of the proposed premises, and the applicant will be required to put an enclosure around it that will meet the County's standards, which will probably be fine for us.

However, if the project is to go forward, we will need to amend our code. Our recommendation is to keep the current prohibition of licensed premises on public land, but limit that only to City-owned public land and allow licenses on County land, as long as County ordinances allow it.

WMC §9.115(b)(5) could be amended as follows:

- (5) Licensed Premises may not be on City-owned ~~public~~ property, except for temporary Licensed Premises in City parks in connection with licenses issued pursuant to Municipal Code §9.09(2), temporary extensions onto Municipal Lot 3 pursuant to subsection (f)(4), or if the portion on public property is within a Sidewalk Café licensed under Municipal Code §8.116.

WMC §9.09(2) could be amended as follows:

- (2) **License for Sales on Public-City-Owned Property Prohibited; Exceptions.** No license shall be issued for the sale of intoxicating liquor or fermented malt beverages in ~~public-City~~ parks or any other City-owned property, except:

Incidentally, Primetime Events, LLC is delinquent with the Department of Financial Institutions and should get current before a license is issued.