



## Office of the City Attorney

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### MEMORANDUM

TO: Joanna Adamicki, Special Events Coordinator

FROM: Julie M. Gay, Assistant City Attorney

DATE: February 24, 2017

RE: Oktoberfest

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#### Question #1: Relating to Oktoberfest event in September:

- (a) **Can two organizations request a temporary liquor license for one event in order to be able to serve beer?**
- (b) **If one organization pulled the license for beer, can they “sublet” their beer service to another organization?**

It is possible for more than one qualifying organization to obtain a temporary license to serve beer at a single event. Assuming, however, that the “premises” described in the application and licensed is the entirety of Frame Park, then only one organization can obtain license. The law clearly allows the description of the licensed “premise” to be outside of a building and to be several acres. *Wisconsin Dolls, LLC v. Town of Dell Prairie*, 2012 WI 76. The applicable statutes do not expressly prohibit issuance of more than one license per described premise. Nonetheless, the State of Wisconsin Department of Revenue has long taken the position that there can only be one license issued per described premise. There is an exception related to county fairgrounds. Therefore, if the licensed premise is the entirety of Frame Park, only one license to a single organization may be issued for the Oktoberfest event.

One possible solution is to have each group wanting to host the event to designate and delineate areas (fenced beer tent, e.g.) within Frame Park that can then be a defined “premise”. Each area would need to be clearly delineated. Each organization could then receive a separate license.

As to your second question, if one organization obtains the license for the entire park area, presumably it could reach agreement with other similar clubs interested in hosting the event to ensure adequate manpower (volunteers). The temporary license is issued to an organization, not a person. That organization is then responsible for ensuring the legal and responsible sale of the beer. There is nothing in the statutes that prevents the licensed organization from procuring the assistance of other organizations to host an event. The City would not be involved in any agreement between organizations.

**Question #2: What is required for the city to be able to sell beer and host a beer garden from Memorial Day through Labor Day?**

No license is required when municipal employees and officers sell beer in any public park operated by the municipality pursuant to an ordinance, resolution or some other rule or regulation enacted by the governing body. Section 125.07(6), Wis. Stats. The beer must be sold by city employees.

The prohibition against permitting the consumption of alcohol on public premises without a license, sec. 125.09, Wis. Stats., does not apply to municipalities. There are also provisions in Chapter 125 that limit the city's civil liability in this area.

Section 9.09, Waukesha Municipal Code, prohibits the issuance of a license for the sale of beer in public parks and other city owned property, with some exceptions. Because the state law does not require the issuance of a license for the city to sell beer in public parks, this ordinance is not violated by the sale of beer in public parks. Nonetheless, your department ought to formulate a specific proposal for the beer garden you propose and obtain approvals from the governing boards, committees and the common council. Assuming a positive response, an ordinance or resolution ought to be passed by the council that specifically permits both the sale and consumption of beer in the public parks as our current ordinances prohibit consumption unless specifically permitted.

Please contact me if you have further questions or concerns.

