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Date: March 21, 2014

To: Members of the Committee on Parks, Energy and Environment

cc: All Other Supervisors  
Kelly Bablitch  
Alexis Gassenhuber  
John Dargle  
Amber Moreen

From: Paul Bargren *PB*  
Corporation Counsel

Re: Beer Gardens

The Committee on Parks, Energy, and Environment, at its March 11, 2014, meeting, considered File No. 14-202 (informational report on the status of a proposal from St. Francis Brewery to operate a beer garden in Humboldt Park in 2014). At the meeting, the following referral was made:

- Supervisor Haas asked Corporation Counsel if this contract, being less than \$100,000, could be issued by County administration without having any public vetting or County Board approval. Chairman Broderick requested that Corporation Counsel deliberate and provide an informal opinion in writing to guide the Committee on this question.

### **Analysis:**

The Parks Department authorizes a beer garden by issuing a request for proposals, selecting a vendor and granting a vendor permit.

Under County ordinances adopted by the Board over the years, this process is the province of the Parks Department alone. The ordinances grant the Department wide authority for operations including granting permits for sales, including alcohol sales. These ordinances do not provide for Board review.

For example, all sales permits are issued by the Director of Parks or his/her designee. MCO 47.04(2)<sup>1</sup>. All Parks permits “shall be issued by a duly authorized employee of the [Department] and subject to park rules and regulations.” MCO 47.28. The Department “is authorized to lease the use of equipment” under its control. MCO 47.241.

Possession of alcoholic beverages in the parks is subject only to Department control. Alcohol is permitted “in such areas as designated by” the Department and “at such places as beverages are sold by licensee of the department.” MCO 47.17. County ordinances do not include any general alcohol-control provisions. The only mention of licensing or permitting alcohol sales comes in these Parks ordinances.

Finally, Parks operates under a “Supplementary rules” catchall ordinance that provides wide powers. MCO 47.31 states that “[u]ntil otherwise directed by the county Board, the department of parks, recreation and culture is hereby authorized” to adopt additional parks rules, to “grant permits in conformity with the provisions of chapter 47 of the Code” and to “perform such other acts .. as are lawful and as they may deem expedient to promote the beauty and usefulness” of the parks and parkways. The ability to “grant permits” in MCO 47.31(2) would in itself be sufficient authority to grant vendor permits for beer gardens, in my view, and there is no provision for Board review.

In sum, the ability to establish beer garden operations lies with Parks, and the ordinances do not create a requirement for Parks to seek Board approval or, for that matter, even notify the Board.

I should note, however, that even though Parks is not required to do so, the Department has been forthright in bringing beer garden issues to the Board for review and comment, obviously recognizing the public interest in the topic.

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<sup>1</sup> The texts of the ordinances cited are attached.

## Cited Milwaukee County Ordinances

### **47.04. Sales and solicitation for sale prohibited without permit, distribution of advertisements; regulation of. (excerpt)**

(1) *Sales and solicitation of sales.* No person shall sell, keep or offer for sale any intangible article, merchandise or thing; nor solicit for or pursue any trade, occupation, business or profession, within any park or parkway, without the written permit of the director of parks, recreation and culture or designee, provided that any fee imposed for taking photos of persons, groups of individuals, parties or any events shall not be chargeable or collectible from individuals taking photographic pictures within the county park system, except at the Boerner Botanical Gardens in Whitnall Park and the Domes in Mitchell Park. Notwithstanding this limitation, the director is authorized to levy a charge in certain instances where a reasonable basis exists for issuance of a permit including, primarily, where county personnel or equipment is requested or where the general public will be refused or denied use of such park or park areas in order to accommodate the photo sessions.

(2) A permit to sell or solicit shall be issued by the director of parks, recreation and culture or designee . . .

### **47.17. Possession of alcoholic beverages in park areas.**

No person may possess alcoholic beverages, or bring into any park or parkway any alcoholic beverages, except in such areas as designated by the county department of parks, recreation and culture, and then only by written permission of the department, and except at such places as beverages are sold by licensee of the department.

### **47.241. Authorization for all leasing of department of parks, recreation and culture equipment for recreational purposes.**

The department of parks, recreation and culture is authorized to lease the use of equipment property suitable for recreational purposes, under its control, to private or public organizations for hire upon such terms as it may determine, provided that any such lease shall contain the provision binding the lessee to save and keep the county harmless from any and all liability whatsoever arising out of the leasing and use of such equipment, and provided further that the department may, in its discretion, in each case require lessee to provide public liability insurance covering the use of such equipment.

### **47.28. Permits; obligations of permittees.**

All permits shall be issued by a duly authorized employe of the department of parks, recreation and culture, in writing, and subject to park rules and regulations. The persons to whom such permits have been granted shall be bound by said rules and regulations as fully as though the same were inserted in said permits, and any person(s) to whom such permits have been granted shall be liable for any loss, damage or injury sustained by the department, or by any person by reason of the negligence of the person(s) to whom such permits have been granted, their servants or agents.

### **47.31. Supplementary rules.**

Until otherwise directed by the county board, the department of parks, recreation and culture is hereby authorized:

- (1) To adopt additional or revised rules and regulations for the proper conduct and administration of the parks and parkways in the county not inconsistent with [chapter 47](#) of the Code.
- (2) To grant permits in conformity with the provisions of [chapter 47](#) of the Code.
- (3) To perform such other acts with reference to the management of the said parks and parkways as are lawful and as they may deem expedient to promote the beauty and usefulness of said parks and parkways, and to increase the comfort, safety, convenience and public welfare of the citizens of the county and of visitors to said parks and parkways in their use of the same.