

AGENDA  
MONONA PARK AND RECREATION BOARD  
CITY HALL – CONFERENCE ROOM  
5211 Schluter Rd Monona WI. 53716  
May 14, 2019  
6:30 PM

1. **Roll Call**
2. **Approval of the Minutes**
  - A. April 9, 2019
  - B. April 30, 2019
3. **Appearances**
  - A. Andrea Romine – Monona Farmer’s Market
4. **Unfinished Business**
  - A. None
5. **New Business**
  - A. Monona Farmer’s Market Storage Request
  - B. Commercial Use of Park Space Policy Discussion
6. **Director’s Report & Questions to Staff from Committee**
  - A. Jake Anderson – Parks & Recreation Director
    - River Front Park Project Update
    - Parks Summer Work Plan
7. **Adjournment**

NOTE: Upon reasonable notice, the City of Monona will accommodate the needs of disabled individuals through auxiliary aids or services. For additional information or to request this service, contact Joan Andrusz at (608) 222-2525 (not a TDD telephone number, Fax: (608) 222-9225, or through the City Police Department TDD telephone number 441-0399.

The public is notified that any final action taken at a previous meeting may be reconsidered pursuant to the City of Monona ordinances. A suspension of the rules may allow for final action to be taken on an item of New Business.

It is possible that members of and a possible quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information or speak about a subject, over which they have decision-making responsibility. Any governmental body at the above stated meeting will take no action other than the governmental body specifically referred to above in this notice.

**PARK & RECREATION BOARD (Agenda Item 3A)**

Meeting Date: May 14, 2019

**AGENDA ITEM:**

Appearance by Andrea Romine – Monona Farmer’s Market Manager

**REQUESTED BY:**

Parks & Recreation Director Jake Anderson

**POLICY ANALYSIS STATEMENT:**

Ms. Romine will make an appearance and brief the board on the Monona Farmer’s Market and make a request for a storage shed closer to the market.

**FISCAL IMPACT:**

Reviewed By City Administrator  
\_\_\_\_\_ Yes      \_\_\_\_\_ No

Action Taken: \_\_\_\_\_  
Approval: \_\_\_\_\_  
Disapproval: \_\_\_\_\_  
Tabled: \_\_\_\_\_  
Committee Meeting Date: \_\_\_\_\_

**PARK & RECREATION BOARD (Agenda Item 5A)**

Meeting Date: May 14, 2019

**AGENDA ITEM:**

Monona Farmer's Market Facility Use Agreement Update Request

**REQUESTED BY:**

Parks & Recreation Director Jake Anderson

**POLICY ANALYSIS STATEMENT:**

The Monona Farmer's Market has requested to place an 8'x8' storage shed on the east end of the parking lot for storage of their equipment for the upcoming season. Below is a photo of the proposed shed.

The past two seasons, the Farmer's Market has requested additional city assistance with the setup of certain items from the storage room at the shelter. Additional requests or use of a temporary storage building will require an update to their Facility Use Agreement. Attached is a Facility Use Agreement, and it appears that it was last updated in 2009.



**FISCAL IMPACT:**

Reviewed By City Administrator  
\_\_\_\_\_ Yes \_\_\_\_\_ No

Action Taken: \_\_\_\_\_  
Approval: \_\_\_\_\_  
Disapproval: \_\_\_\_\_  
Tabled: \_\_\_\_\_  
Committee Meeting Date: \_\_\_\_\_

**CITY OF MONONA  
FACILITY USE AGREEMENT**

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**THIS AGREEMENT** is entered into effective as of the last date of signature by and between the City of Monona, a Wisconsin municipal corporation (hereinafter the "CITY") and the entity identified below (hereinafter the "LICENSEE").

LICENSEE: MONONA FARMERS MARKET Margie Welsh, REPRESENTATIVE  
ADDRESS: 5714 Tonyawatha Trail  
CITY/STATE/ZIP CODE: MONONA, WI 53716

In consideration of the mutual covenants contained in this AGREEMENT and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

1. **SCOPE OF USE.** The CITY hereby grants the LICENSEE the right to use the following facilities during the periods identified:

FACILITY: AHUSKA PARK 3 Rows of parking lot in EAST SIDE OF PARKING LOT

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PERMITTED USE: FARMERS MARKETPLACE

DAYS & TIME USE IS AUTHORIZED (hereinafter the "AUTHORIZED PERIODS"): FARMERS MARKET TO BE RUN ON SUNDAYS FROM 9:00 A.M. UNTIL 1:00 P.M. BEGINNING IN APRIL THROUGH OCTOBER EACH YEAR. THE FARMERS MARKET WILL PROVIDE THE PARKS AND RECREATION DEPARTMENT WITH THE COMPLETE SCHEDULE OF STARTING AND ENDING DATES FOR EACH SEASON. FARMERS MARKET IS RESPONSIBLE FOR ALL PERMITS OR LICENSES THAT MAY BE REQUIRED TO OPERATE THE MARKET. FARMERS MARKET WILL BE ALLOWED TO PLACE A TEMPORARY SIGN ON THE EXISTING AHUSKA PARK SIGN AT THE PARK. GROUP WILL BE RESPONSIBLE FOR CLEANING OF SITE AFTER EACH USE INCLUDING THE GARBAGE COLLECTION AND BAGGING OF GARBAGE TO BE PLACED AT DESIGNATED SITES FOR PICKUP. THE PARKS & RECREATION DEPARTMENT WILL RESERVE THE SHELTER AREA FROM 9:00 A.M. – 1:00 P.M. EACH SUNDAY FOR THE FARMERS MARKET. LICENSEE shall keep supplies necessary for the Market in an orderly space at the Ahuska Park maintenance shelter, consisting of one cabinet on the west wall of the shelter, without interfering with ingress/egress of others using this space. LICENSEE shall receive a key for the use of this location, which shall be returned when the license period ends. Onsite manager may include a designated market vendor.

2. **CONSIDERATION.** In consideration of the above identified use of the FACILITY, LICENSEE shall pay the CITY sum of \$ 1.00 AT THE BEGINNING OF THE AGREEMENT TERM. All delinquent amounts shall accrue interest at the rate of 18% per year.

3. **TERM/TERMINATION.** The term of this AGREEMENT shall commence on APRIL 1, 2009 and terminate on November 1, 2010. The CITY may, for any reason or no reason at all, terminate this AGREEMENT upon thirty days notice.

4. **PROPERTY CONDITION.** The CITY makes no representations or warranties as to the condition of the FACILITY or its adequacy for LICENSEE'S intended use. LICENSEE agrees to take the FACILITY as is and acknowledges that it shall be LICENSEE'S responsibility and obligation to assure that the FACILITY is in safe condition to be used for the purpose anticipated. LICENSEE acknowledges that it shall be obligated to regularly inspect the FACILITY and to promptly take affirmative steps where necessary to warn users or rectify hazards in order to prevent injury to property and persons.

5. **CITY ACCESS.** The CITY reserves the right to enter the FACILITY at any time during the AUTHORIZED PERIODS for any reasonable purpose. In the event the CITY enters the FACILITY during AUTHORIZED PERIODS in a manner which interferes with LICENSEE'S use, LICENSEE'S sole remedy shall be refund of the CONSIDERATION paid for the periods of interference or termination of this AGREEMENT.

6. LICENSEE RESPONSIBILITIES.

A. LICENSEE shall remove all its property and equipment from the FACILITY outside of the AUTHORIZED PERIODS. LICENSEE is solely responsible for ensuring the property and equipment used is safe and properly maintained. LICENSEE shall have sole responsibility for the protection of LICENSEE'S property and agrees that the CITY shall have no liability for injury to persons during LICENSEE'S activities or damage to, or theft of, property located therein.

B. LICENSEE shall provide, at its sole expense, an adult on-site manager during the AUTHORIZED PERIODS, who shall be responsible for supervision of all individuals participating in the activities conducted pursuant to this AGREEMENT.

C. LICENSEE shall comply with, and ensure all of its participants comply with, all rules and regulations which shall be instituted by the CITY from time to time.

D. LICENSEE shall repair all damage to the FACILITY caused by its employees, agents and participants, keep the FACILITY clean and orderly at all times, and not conduct any activity which would reasonably disturb others using the FACILITY.

7. INDEMNITY. To the fullest extent allowable by law, the LICENSEE hereby indemnifies and shall defend and hold harmless the CITY, its elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the LICENSEE or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this AGREEMENT regardless if liability without fault is sought to be imposed on the CITY. The LICENSEE'S aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the CITY, or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this AGREEMENT.

In any and all claims against the CITY, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of the LICENSEE, any sub-LICENSEE, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the LICENSEE or any sub-LICENSEE under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this AGREEMENT or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the CITY, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any contract. This clause is to be read in conjunction with all other indemnity provisions contained in this AGREEMENT. Any conflict or ambiguity arising between any indemnity provisions in this AGREEMENT shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located.

The LICENSEE shall reimburse the CITY, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The LICENSEE'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the CITY, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

8. INSURANCE. LICENSEE shall, at its sole expense, maintain in effect at all times during the term of this AGREEMENT insurance coverage acceptable to the CITY and, upon request, provide a copy of the insurance policy to the CITY.

9. MISCELLANEOUS PROVISIONS.

A. ENTIRE AGREEMENT: This AGREEMENT supersedes any and all agreements previously made between the parties relating to the subject matter of this AGREEMENT and there are no understandings or agreements other than those incorporated in this AGREEMENT. This AGREEMENT may not be modified except by an instrument in writing duly executed by all the parties.

B. PARTIES BOUND: This AGREEMENT shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns. It is expressly understood the ADVERTISOR may not assign any rights or obligations under this AGREEMENT without the prior written consent of the CITY.

C. SEVERABILITY: If any provision of this AGREEMENT shall under any circumstances be deemed invalid or inoperative, this AGREEMENT shall be construed with the valid or inoperative provision deleted and the rights and obligations construed and enforced accordingly.

D. NOTICE: Notices shall be deemed delivered as of the date of postmark if sent by certified mail, postage prepaid.

E. NEUTRAL CONSTRUCTION: The parties acknowledge that this AGREEMENT is the product of negotiations between the parties and that, prior to the execution hereof, each party has had full and adequate opportunity to have it reviewed by, and to obtain the advice of, its own legal counsel. Nothing in this AGREEMENT shall be construed more strictly for or against either party because that party's attorney drafted this AGREEMENT or any part hereof.

**IN WITNESS WHEREOF**, the parties have executed this **AGREEMENT** effective as of the last date of signature below.

**CITY OF MONONA**

By: \_\_\_\_\_  
Robb B. Kahl, Mayor

Attest: \_\_\_\_\_  
Joan Andrusz, City Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**LICENSEE**

By: \_\_\_\_\_

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
Date

**PARK & RECREATION BOARD (Agenda Item 5B)**

Meeting Date: May 14, 2019

**AGENDA ITEM:**

Commercial Use of Public Space Policy

**REQUESTED BY:**

Parks & Recreation Director Jake Anderson

**POLICY ANALYSIS STATEMENT:**

Across the country, Parks & Recreation Departments have been facing a trend of private, commercial, or non-profit groups utilizing public space not necessarily part of a reserve able facility. This includes fitness programs, nature based programs, theatre groups, private lessons, etc that utilize park space. This can potentially lead to user conflicts in parks for informal park use, and also for groups that are reserving facilities near the open space that the commercial use is happening.

Attached is a DRAFT Policy for discussion about adopting and incorporating into city ordinance for allowing the Parks & Recreation Department to permit these events with fees and included the city as an additional insured.

Examples of other policies for review include

**Wisconsin State Parks** - <https://dnr.wi.gov/topic/parks/rules/commercialuse.html>

**City of Boulder, CO** - <https://bouldercolorado.gov/parks-rec/commercial-use-of-park-land>

**City of Raleigh, NC** - <https://www.raleighnc.gov/parks/content/ParksRec/Articles/ParkCommercialUse.html>

**Naperville Parks, IL** - <https://www.napervilleparks.org/files/Photography-and-Commerical-Use-of-Parks.pdf>

Director Anderson is recommending adopting a policy which would require a permit for commercial use of any park space. Enclosed is a DRAFT policy for discussion/consideration.

**FISCAL IMPACT:**

Reviewed By City Administrator  
\_\_\_\_\_ Yes \_\_\_\_\_ No

Action Taken: \_\_\_\_\_  
Approval: \_\_\_\_\_  
Disapproval: \_\_\_\_\_  
Tabled: \_\_\_\_\_  
Committee Meeting Date: \_\_\_\_\_



## COMMERCIAL USE OF PARK LAND

Commercial use is described as anyone who offers instruction, education, care or supervision and charges a fee. Examples of commercial use: outdoor fitness or yoga class in a park, junior program, summer camps or nature program. Groups must be 50 people or less to not over impact the area for general visitors. Fees are due within 30 days of starting the program.

***Disclaimer:*** *Having a commercial permit will not exclude any general public visitors or restrict any general public visitors from the area. Example: A visitor in the park noticing a fitness group; the visitor may join the group without permission and follow along.*

- Parks and Recreation Department maintenance, programs and special events will have priority for use of park areas.
- Park use is conditional based on weather conditions and maintenance practices.

### Prohibited

- Commercial use at any neighborhood park area on any weekend day (Saturday, Sunday) and national holidays.
- Commercial use in "pocket parks"
- More than two commercial use groups at any neighborhood park area at the same time.
- Use of any playground area or equipment
- The sale of any products on city park lands

### Commercial Use Fee

The fee charged to user groups in the program are based on the number of user visits and includes the following elements:

1. Park sites/times/days to be used would be identified
2. Refundable security/damage deposit of \$100
3. Reporting and payment (if any) due within 30 days of program start
4. Required reporting includes location, attendance per day/time and programs/class types
5. Voluntary reporting of pricing and revenues earned

***\*\*Your request is reviewed by Parks & Recreation Director. A new request is needed each year and Liability Insurance proof is required.***