



AGENDA ITEM MEMORANDUM

DATE: April 7, 2025

TO: Public Works Committee

FROM: Travis Peterson / Joe Kerlin

SUBJECT: Power Pubs LLC operation of the Sheboygan Biergarten

ISSUE

Non-renewal of current Biergarten vendor contract.

STAFF RECOMMENDATION

Staff recommends issuing an RFP for a licensed vendor to provide Biergarten services.

BACKGROUND/DISCUSSION

Requested changes by Mr. John Powers to the contract:

TERM AND EFFECTIVE DATE:

Power's Request

Would like to extend the current contract through December 31, 2026 and include the right, but not the obligation, for Power Pubs LLC to renew the contract for an additional 3 years thereafter (through December 31, 2029) by alerting the City of Sheboygan on or before October 31, 2026 of our decision to renew the contract or to end the contract.

City's Response

- a. Effective Date. This Agreement shall be effective as the date of final party execution and shall expire on December 31, 2026
- b. Renewal and Expiration. Effective January 1, 2027, this Agreement shall automatically renew for three, one-year terms, each expiring December 31, unless either Party provides written notice to the other no later than November 1 of such year of the Party's intent to not renew.

PAYMENT/UTILITIES:

Power's Request

The current City Fee is 12.5% of Net Revenues and the current Utilities Fee is \$25.00/day up to a max of \$300 per month. Using a % of Net Revenues City Fee has kept me from introducing low margin products like pizza since the cost of the pizza and the 12.5% City Fee would be about the same as what I could charge for the pizza. Instead, he would like to combine the City Fee and Utilities Fee into a single fee of \$150/day when he was open (\$0/day when I am closed) so long as Net Revenues are over \$500. If Net Revenues are less than \$500, the combined City Fee and Utilities Fee for that day would be \$50/day. (See attached section from 2022 Elm Grove Beer Garden Contract.)

City's Response

The City first responded to a payment of \$150 for each day open but agreed to the following: For the use of the premises and the right to provide the services set forth above therein, and utility costs imposed under Subsection 3(c)below, as well as the security deposit under

DEPARTMENT OF
PUBLIC WORKS

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AGENDA ITEM MEMORANDUM (CONT.)

Subsection 3(a) above, Vendor agrees to pay the City \$125 for each full or partial day that the Biergarten is operated.

BLACKOUT DATES:

Power's Request

Given the very brief season to generate profits and the contractual forced closings during key weekends at the height of the summer selling season, it was requested the following changes be made to the contract:

- A. That the City of Sheboygan ensure off-street parking availability for Biergarten patrons during the Juneteenth celebration and during the Vollrath picnic.
- B. That the City of Sheboygan relocate Brat Days to another park, so the Biergarten can remain open to the public that weekend. Alternatively, the City of Sheboygan can provide "fair" compensation for lost profits during the Brat Days event. Estimated "fair" compensation to be US \$700 for each of the 2 lost days of income (see attached). This amount can be deducted from the City Fee owed each month.
- C. "Fair" compensation for the lost profits from being closed during the Hmong Fest event. Estimated "fair" compensation to be US \$700 for each of the 2 lost days of income. This amount can be deducted from the City Fee owed each month.

City's Response

Blackout Dates was removed from the agreement

INSURANCE:

Power's Request

Insurance costs are rising faster than any other cost and are now one of my most costly expenses. Had reviewed other beer garden contracts and noticed that his contract requires much higher coverage than other beer gardens (see attached). Therefore, was requesting that the insurance requirements be revised as follows:

- A. Revise Commercial General Liability insurance to be "not less than \$1M per occurrence and \$1M in the aggregate" rather than "\$1M per occurrence and \$2M in the aggregate".
- B. Eliminate the Umbrella Liability requirement.
- C. Eliminate the Liquor Liability Insurance.

City's Response – Insurance remains the same

Vendor shall, at its sole expense, obtain and maintain in effect at all times during this Agreement, and naming the City as additional insured, the following insurance from an insurance carrier with an A.M. Best rating of at least A- and a Financial Category rating of at least VII, and with minimum limits as set forth:

1. Commercial General Liability. Vendor shall maintain commercial general liability insurance, including, but not limited to, bodily injury, property damage, personal injury, products and completed operations, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Such insurance shall provide contractual liability in the same amount. Vendor's coverages shall be primary and list the City of Sheboygan as additional insured. Vendor shall require all subcontractors under this Agreement, if any, to procure and maintain insurance meeting the above criteria.
2. Worker's Compensation. Vendor shall maintain worker's compensation insurance as required by Wisconsin Law and shall require all subcontractors, if any, to maintain such insurance for each subcontractor.



AGENDA ITEM MEMORANDUM (CONT.)

3. Liquor Liability. Vendor shall maintain liquor liability coverage with a minimum limit of \$1,000,000.

4. Umbrella Liability. Vendor shall maintain umbrella liability coverage at least as broad as the underlying commercial general liability and business automobile liability with minimum limits of \$2,000,000 per occurrence and aggregate.

Vendor shall provide the City with a certificate of insurance evidencing the above-required insurance coverage upon Agreement execution and annually thereafter. Vendor shall provide the City with thirty days written notice of insurance cancellation, non-renewal, or material change to any of the above-required policies during the term of this Agreement. In the event of expiration, material change, or cancellation of the required insurance, Vendor shall immediately cease operations and use of the Premises until such time as proof of the required insurance is provided to the Parks Superintendent consistent with this Section.

FENCING:

Power's Request

After 6 years in business and no issues, it would seem that adding additional fencing to separate the beer garden from surrounding areas of the park is not necessary. Therefore, requested that this section should be deleted from the renewed contract.

City's Response

Should the parties mutually agree additional temporary or permanent fencing is required to support Vendor's operations, Vendor agrees to reimburse the City for 10% of fencing acquisition and installation costs.

MARKETING:

Power's Request

Would like to promote the beer garden on the Park District website and any other City websites that believed would effectively reach potential new patrons.

City's Response

Promotion of the Biergarten or a beer garden will not be allowed City/Public Works website.

City Added the Following:

BOAT DOCK

Power's Request

Power Pubs LLC requested the City be responsible for attaining approval of and all necessary permits for, and the installation of a boat dock.

City's Response

If Power Pubs LLC and Mr. Powers would want a boat dock, Mr. Powers would be responsible for the permitting and installation of a dock.

The agreement was initially approved by both parties at this point.

After going through the final process of the writing of the new proposal, there were concerns with how some items were written. The biggest concern being the City removed the following:

Item 30 in old agreement



AGENDA ITEM MEMORANDUM (CONT.)

Other Biergartens: During the term of this Agreement and any renewal or replacement thereof, the City shall not permit, directly or indirectly, any other Biergartens to open or operate within any public parks in the City of Sheboygan.

Mr. Powers stated over the phone the City would not be able to support two Biergartens and it would greatly hurt his business. It was verified he meant any kind of beer garden type service in any park, and he said yes. Mr. Powers was notified the City would not be in the position to do that, especially with a new park master plan for Deland Park. He asked "Why would he not have first rights to that? It's the park that he originally asked for." Mr. Powers was notified the City would not commit to the request and Item 30 would be removed.

At this point Mr. Powers had decided not to renew the contract.

NEXT STEPS:

The Department of Public Works believes the Biergarten was a valuable gathering place for the community and are working with Bernie Rammer, Sheboygan County Purchasing Agent, to advertise an RFP for a new agreement for use the Kiwanis Park Area 8, for a beer garden.