CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

DATE: July 19, 2006

OPINION #06-002

TO: **Mayor Dave Cieslewicz**

FROM: Michael P. May, City Attorney

SUBJECT: **Halloween Party Issues: Cost Assessments, Street Closure, Legal Liability Issues, and Bar Closings**

You have asked for my legal opinion on three matters related to the unsponsored Halloween party that occurs annually in Madison.

The first question is whether the City has the legal authority to impose on downtown property owners some of the public safety costs associated with protection of persons and property in the State Street area on or around Halloween.

The second question is whether the City has authority for, and would be taking on additional legal liabilities if it were to assume, a greater role in crowd control at the event by organizing a gated, ticketed event on State Street for Halloween.

The third question is whether the City has the authority to extend the closing times of bars and taverns, as established by state statute.

Short Answers

1. The City could use the authority set forth in Sec. 66.0627, Wis. Stats., to charge some or all of the Halloween-related costs to properties in the State Street area. A methodology to determine the manner in which those costs would be imposed on the property owners will require significant analysis.

2. Given the nature of the Halloween party as a large, unsponsored gathering, the City has the authority to attempt crowd control measures through gating the event and charging an access fee. Although it would be preferable to have some other entity organize the Halloween event, the City does not expose itself to significantly greater potential legal liabilities by itself establishing a gated, ticketed Halloween event. The City's purpose in any such organizational effort should be to have better crowd control and cost recovery, and should avoid any claim of sponsorship. The mere charging of the fee does move the City closer to a claim of sponsorship, and if such a practice were to continue, it would be more likely that the City would be considered a sponsor and would have increased potential legal liabilities.

3. Wis. Stat. Sec. 125.32(3) regulates hours of operations for taverns and eliminates the City's ability to extend those hours.

Discussion

A. History of the Halloween Party in Madison.

Beginning in the 1970's, downtown Madison has often been the site of outdoor street parties on or around Halloween. The parties tend to center on State Street, particularly a portion of State Street near the University of Wisconsin - Madison (UW) campus. The event usually reaches its peak on the Saturday before Halloween. For a number of years, organizations associated with the UW were the sponsors of the party. They organized it, brought in bands, and publicized the event. Although the size of the crowd varied, it often brought tens of thousands of individuals to the State Street area. Although the crowds were large, the costumed partiers generally were reasonably well behaved. In some years, property damage and some personal injuries did occur. Beginning in 1988, no organization associated with the UW was willing to sponsor the party. The Halloween party then died out for a number of years, but began to resurrect itself in the late 1990's and 2000's. At this time, the party was impromptu, unsponsored, and growing each year.

In the last four years, the event has become very large, usually consisting of approximately 70,000 people on State Street on the Saturday prior to Halloween. The existence of these large numbers of people has taxed the public safety resources of the City, including the Police and Fire Departments, and public safety agencies for the UW, Dane County, and other municipalities. In addition, in each of the last several years, there have been property damages or personal injuries, near riots, and the need for the police departments to clear the streets through the use of pepper spray or some other crowd dispersal agent.

For the 2005 event, an extensive planning effort was made by the City, involving UW student groups, downtown bars and businesses, relevant police departments, and the University of Wisconsin. Although extra efforts were made to discourage out-of-towners from attending the event, there were still large numbers of persons present from outside the Madison area. The event again ended with a belligerent crowd attacking police officers, requiring the use of pepper spray to disperse the final few thousand who refused to leave State Street around 2 - 3 a.m.

It is estimated that the costs to the City of Madison of providing this additional public safety (some 400 police officers were present for the event in 2005) exceeds $350,000 - $400,000. It likely costs other public safety departments, such as the Dane County

Sheriff's Department, and the UW Police and Security Department, around another $150,000 - $200,000.

The prospect of actually canceling or banning the event is a difficult one to carry out, with tens of thousands of people descending on the City. You asked whether there was any legal method of assessing some of these costs on the downtown property owners. A number of downtown owners have resisted attempts to cancel or ban the event, asserting that Halloween weekend is one of their biggest money-making events of the year. In addition, downtown taverns resisted any effort to close early to limit the amount of sales of alcohol on the Halloween weekend.

A second issue is whether the City should take a greater role in organizing the event. The City is considering gating some or all of State Street and charging an access fee. You asked if the City could undertake such steps and if the City faced any additional legal liabilities if it were to take control of the event, gate off portions of State Street, and only allow those who had purchased tickets or wristbands to enter the area.

Finally, you asked if the City had authority to extend the hours of operations for bars.

B. Imposing Special Charges for Current Services Rendered to Downtown Property.

1. Sec. 66.0627, Stats.

Sec. 66.0627(2), Wis. Stats., allows municipalities to impose "a special charge against real property for current services rendered." Although often referred to as an "assessment," the procedure for imposing a charge for current services is very different than a special assessment, is subject to different standards, and gives municipalities greater freedom in developing and imposing a charge.

This statute provides in part as follows:

> (2) Except as provided in sub. (5), the governing body of a city, village or town may impose a special charge against real property for current services rendered by allocating all or part of the cost of the service to the property served. The authority under this section is in addition to any other method provided by law.

Sub. (1) of the statute includes a long list of the types of services for which special charges may be rendered. The legislative history indicates that this list is not exhaustive, so long as the type of service is provided to the property. See L.1999, Act 150, Prefatory Note and Sec. 170.

Sub. (4) of the statute provides that the special charge is not payable in installments and, if it is not paid, becomes a lien on the property.

Sub. (5) states that arrearages in municipal public utility payments may not be imposed under this statute, except for storm water management costs. A copy of Sec. 66.0627, Stats., is attached to this opinion.

2. Cases Interpreting Sec. 66.0627.

The breadth of this section of the statutes has been addressed in several cases.[1] In *Grace Episcopal Church v. City of Madison*, 129 Wis. 2d 331, 385 N.W.2d 200 (1986), the church challenged special charges imposed by Madison related to the maintenance of the State Street Mall / Capitol Concourse. The Court of Appeals rejected all of the challenges and upheld the charges. In particular, the court held that, with respect to the special charges imposed under this statute:

A. Imposition of special charges is not a hidden general property tax;

B. Special charges may be imposed on a district basis;

C. Unlike special assessments, the special charge need not show that the property obtain a special benefit from the assessment. Rather, ". . . the municipality must establish that current services of the type described in the statute are rendered to the property or properties sought to be charged." 129 Wis. 2d at 338.

The dissent in this case would have found that the special charges are in fact the equivalent of a tax and beyond the City's authority.

In *Laskaris v. City of Wisconsin Dells*, 131 Wis. 2d 525, 389 N.W.2d 67 (Ct. App. 1986), the property owner challenged a city ordinance which utilized this statute to impose special charges for delinquent electric services provided by the municipal electric utility. In its holding, the court held that the list of services in the statute is not meant to be limited to the class, type, or nature of the services enumerated in the statute. The court also rejected constitutional claims and found that the ordinance did not conflict with Public Service Commission rules.

In the *Laskaris* case, the court explicitly relied upon language in the definitions which stated that the services for which charges could be rendered "included, without limitation because of enumeration" the list of services provided. This language was changed in Act 150, Laws of 1999, to simply state that the word service "includes" the

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1 The statute was formerly numbered 66.60(16). It was renumbered to 66.0627 by Sec. 170, Act 150, Laws of 1999

listed services. However, the Prefatory Note to the 1999 Act indicates that it is not intended to change the meaning of the prior statute.[2] In fact, the Legislative Reference Bureau Bill Drafting Manual indicates that the word "includes" is meant for a partial list. LRB Bill Drafting Manual, Sec. 2.01(1)(i).

In *Town of Janesville v. Rock County*, 153 Wis. 2d 538, 451 N.W.2d 436, (Ct. App. 1989), the question was whether the town could charge the county for certain fire protection services. The court held that the town had explicit authority under Sec. 60.55, Wis. Stats., to provide charges for services actually provided on a per call basis. The town, however, wanted to charge generally for the cost of being available to provide fire protection services. The court held that the town could not do so under its authority in Ch. 60.

The town then argued that it could assess the charges under the predecessor to Sec. 66.0627 as a special charge for current services. The court rejected this argument, saying that the services must actually be provided to be available for charge under Sec. 66.0627.

A portion of the court's decision in this case is worth quoting at length (153 Wis. at 546-47):

> Generally, we have interpreted sec. 66.60(16)(a) [now, sec. 66.0627] quite broadly. In allowing a city to charge for electrical service under the statute, this court stated, " 'current services rendered' cannot reasonably be read as limited to the class, type or nature of the services enumerated in subsec. (a)." *Laskaris v. City of Wisconsin Dells*, 131 Wis.2d 525, 532, 389 N.W.2d 67, 70 (Ct. App. 1986). We have approved levying charges on a district basis, even when a property is not specially benefited by the service. *Grace Episcopal Church v. City of Madison*, 129 Wis.2d 331, 336-37, 385 N.W.2d 200, 203 (Ct. App. 1986). Also, we have allowed special charges under sec. 66.60(16)(a) when other property owners pay their share of the costs of the service in a different manner. *Rubin v. City of Wauwatosa*, 116 Wis.2d 305, 316, 342 N.W.2d 451, 456 (Ct. App. 1983). However, we distinguish the case before us, not on the basis of the type of

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2 1999 Wis. Act 150 was the result of a Legislative Council committee to recodify Ch. 66 of Wisconsin Municipal Law. The Prefatory Note states in part:

> "The special committee explicitly intends that, unless expressly noted, this bill makes no substantive change in the statutory provisions treated by the bill. Substantive changes in the bill are identified in notes to the provisions substantively affected. If a question arises about the effect of any modification made by this bill, the special committee intends that the revisions in this bill be construed to have the same effect as the prior statutes."

> service or the payment scheme, but because the statute allows a special charge only for services which are actually performed.
>
> Section 66.60(16)(a) contemplates charges for services rendered, that is services actually done or performed. This language limits the town to charging only for services actually provided and not for services that may be available but not utilized. Section 66.60(16)(a) is not intended to provide a municipality-wide funding mechanism for items such as public school, libraries and other municipality-wide services that are not necessarily utilized by every property owner. Those items are of equal benefit to the entire community and should be paid out of general property tax funds.
>
> The town may argue that they did, in fact, provide the service to the county, as evidenced by the number of fire calls made to county properties. However, the town's method of computing the charges goes to the cost of the availability of the service and not the cost of performing it, i.e., making fire calls to the county's properties.

Finally, in *State ex rel. Robinson v. Town of Bristol*, 2003 WI APP. 97, 264 Wis. 2d 318, 667 N.W.2d 14 (Ct. App. 2002), the question was whether this statute could be used to charge legal costs against a property related to a challenge to the very charge attempted to be imposed on the property. The court rejected this argument, stating as follows:

> We conclude it cannot reasonably be construed to include the legal fees the town incurred in defending against the Gullicksons' challenges to the removal of the materials and the assessments of those costs. The legal services those fees paid for did not "serve" the property, since they did not facilitate carrying out the view and the removal of materials from the ditch. 2003 WI APP. 97 at ¶24, 264 Wis. 2d 340.

3. Application of Statute and Cases to Halloween Costs.

The broad language in Sec. 66.0627, Stats., would apply to many of the public safety services provided to downtown property for the Halloween event. It is clear from the *Town of Janesville* case, supra, that the court considers public safety services, such as fire protection, as being within the types of services covered by the statute. The court in that case noted that the services must actually be performed, not merely be available for performance. This would seem to apply to the actual costs for the Madison Police and Fire Departments to have persons on duty for the Halloween event.

There is no court case involving the application of this statute to extraordinary police services, such as Halloween requires, and such a use of the statute might be challenged. Some part of this challenge might allege that police services are the type

of core services paid by taxes, and are not appropriate for a special charge or fee. See, for example, the issue in *City of River Falls v. St. Bridget's Catholic Church,* 182 Wis. 2d 436, 513 N.W. 2d 673 (Ct. App. 1994); see also, *Town of Janesville*, supra. However, the extraordinary nature of the public safety services required for Halloween, combined with the other precedents cited, lead me to conclude that the more likely result is that the statute could be used to charge some or all of these costs to the properties served.

The more difficult issue with respect to the services is determining how to parcel out the costs. It is likely that almost all of the property within the glass free zone established by the Common Council every year could be considered to have "services rendered" from the increased police presence for Halloween. However, it is equally clear that those businesses that are open later and that have large numbers of customers in the evening receive greater services and impose greater costs on the City in providing public safety services. Given this, it is reasonable to apportion the costs on a variety of factors. These factors could include whether the property is residential or commercial, whether the property is open at all during Halloween, whether the property is open later, and how much later, on Halloween, and the number of patrons of the property. It is likely that a rather complex matrix to apportion these costs will be necessary.

If the City wishes to pursue this, I recommend that our office work with the Madison Police Department, Madison Fire Department, and the City Engineer to attempt to create a reasonable method of allocating these costs. The final cost allocation will require Common Council approval.

In doing this examination, we may discover that certain of the costs will not fall within the definition of current services rendered under the statutes, or that the costs may have been recovered by some other means (such as an event charge), which would make it inappropriate to charge the properties located in the area served. All of these are issues that will have to be discussed in implementing any special charge.

I conclude that the Wisconsin Statutes authorize the City to impose some or all of the additional costs of public safety protection on the downtown property that is served with that protection for the Halloween event.

C. Legal Liability Issues Raised by City as Event Organizer.

The second question you asked is whether the City had authority to and might face increased potential legal liability if the City were to pursue limited access to State Street for the Halloween event. Under this scenario, the City would limit access to State Street for the Halloween event by making it a gated event and charging an admission price. Some or all of the State Street area would be closed off, and only those who had obtained a ticket or wristband, or otherwise purchase a ticket at the door, would be allowed into the area of the Halloween party. You asked whether the City could do this and if it would incur greater potential legal liability by doing so.

1. Authority to Gate State Street and Charge an Access Fee.

As an initial matter, it is important to note the nature of the gathering on State Street. There is no sponsor for the event. Nobody obtains a street use permit. Public roads and sidewalks are to remain open unless such a permit is obtained, and the City ordinances have strict guidelines for such permits, sec. 10.056, MGO. As such, the Halloween party constitutes the classic definition of an unlawful assembly under Wisconsin law. *Koss v. State,* 217 Wis. 325, 258 N.W. 860 (1935); *Cassidy v. Ceci,* 320 F. Supp. 223 (E.D. Wis., 1970). The presence of thousands of persons in the area effectively shuts down vehicular traffic and impedes, if it does not eliminate, normal pedestrian traffic.

In response to this situation, it is my opinion that the City's police power authority, together with the obligations of the chief of police to maintain order, clearly are broad enough to allow the City to close off streets and assess a fee to enter streets as crowd control efforts, and to defray the cost of policing the Halloween event. Secs. 62.09(13), 62.11(5), Wis. Stats. I find no limitation elsewhere on the broad powers of sec. 62.11(5) to act "for the health, safety and welfare of the public" and to carry out this power by a wide variety of means, including " ... regulation, suppression ... and other necessary or convenient means." The City is not limited to standing by and watching on the one extreme, or arresting every person who steps onto State Street on the other extreme. Steps reasonably calculated to control the crowd, to protect property and persons, and, as I understand part of the policy behind this idea, to change the nature of the Halloween party so that it may be attractive for a private sponsor, all seem within the City's broad police power reflected in sec. 62.11(5), Wis. Stats.

While the assessment of a fee is not normally associated with such street closures, it is not unheard of to allow private parties to obtain permits for public spaces and charge entrance fees. The Bluesfest in Olin Park is one example. I do not find anything in the ordinances that would prohibit such a fee in the private permit situation. In the Halloween situation, with no sponsor of the event, the City's powers under sec. 62.11(5) appear broad enough to exact such a fee as part of its police power. I note several concerns about such a fee later in this opinion.

Nor do such attempts at public safety and crowd control implicate Constitutional rights of assembly. Such rights are not absolute, and I am aware of no law finding a First Amendment right to conduct a permit-less, alcohol-fueled party on public streets. Rather than a violation of the First Amendment, such actions to control a large, sometimes riotous crowd are more likely to be found to "ensure the safety and convenience of the people ... ." *Thomas v. Chicago Park District,* 534 U.S. 316, 323 (2002) (upholding Chicago's permit requirements for gatherings of more than 50 people against First Amendment challenge).

In addition to some of the cautions I note below, I also would caution the City against adopting the gated, access fee event on a continuing basis. If such a plan continues for several years, it is likely to be perceived not as a method of crowd control, or an attempt to modify the nature of the Halloween party, but as the City assuming sponsorship of the event. Sponsorship does change the nature of the potential legal liabilities the City faces. Any fee-based event may raise the argument of sponsorship, but if it is designed for the purposes specified and has a short life, I conclude that it does not amount to sponsorship.

2. Additional Legal Liability Issues.

As will be noted below, I conclude that there is not a significantly different potential legal liability for the City by assuming such an organization of the event, rather than the current situation in which the City must police the event with no formal sponsor. The City should tailor its actions, however, to meet the dual needs of crowd control and cost recovery, and not in any way formally sponsor the event. Moreover, certain practical aspects of charging a fee to enter a gated area may militate against using this device.

a. Potential Liability Under Federal Law.

i. Liability for actions of police.

In controlling crowds and dealing with persons who are consuming alcohol, police may be required to exercise reasonable force and to make arrests. In my opinion, this unavoidably is the area of greatest possible City liability in connection with the Halloween party.

Persons who would sue the City based on a claim of excessive force or false arrest would sue under Sec. 1983, 42 U.S.C., because a suit under this federal statute is not subject to state law limitations on the amount of damages that can be awarded, and persons who successfully sue the City under this statute can collect actual reasonable attorneys fees pursuant to federal law.

In my opinion, designating an area of State Street for the party and charging an admission fee does not increase City liability exposure for this kind of case. The City faces exactly the same potential for liability under this legal theory under current circumstances as it would by taking greater control of the crowd control efforts on State Street.

ii. Liability for failure to protect persons from harm caused by third parties.

Under federal law, a case against the City based upon an alleged failure to protect a person from the action of third persons would be founded on Sec. 1983, 42 U.S.C. and the substantive due process clause of the Constitution. Under applicable federal case law, it is very difficult for a person to establish such a case against a unit of government or a government employee.

The law in this area centers on the concept of "special" relationship", "special circumstance" or "special duty". Absent such a relationship, circumstances or duty there is no legal basis for a suit based upon an alleged failure to protect a person from harm inflicted by others. It is very difficult to conceive, in the circumstances of the Halloween event, how the special relationship demanded under federal law would exist. See *Losinski v. County of Trempealeau,* 946 F.2d 544 (7th Circuit 1992).

In particular, the mere fact that a portion of State Street is cordoned off and a fee charged to attempt to have some control of the crowd and to reduce the City costs does not qualify as the sort of "special relationship" as defined in the case law.

b. Potential Liability Under State Law.

i. Liability for Mob Damage.

Sec. 893.81, Wis. Stats., provides that municipalities may be liable for damage caused by a mob or riot. The statute provides that persons claiming under the statute may not recover if their actions contributed to the injury.

We are not aware of anyone attempting to utilize this statute for a claim against the City based on the Halloween party, and believe such a claim is unlikely. More importantly, the likelihood of such a claim is not in any way modified by the City determining to take greater crowd control efforts by cordoning off State Street and charging a fee for access to the street.

ii. Liability for Actions of Police.

Wisconsin case law provides a basis for suits against the police for alleged excessive force and false arrest, much like federal case law. Many of the same rules apply.

Taking crowd control activities by cordoning off a portion of State Street and charging admission has no effect on the City's potential liability under this legal theory.

iii. Liquor Law Liability.

The City would not be serving alcohol. Any alcohol would be served by businesses with liquor licenses. The City is exempt from civil liability for its activities relating to licensing of liquor establishments. Sec. 125.037, Wis. Stats.

The City's potential liability under such a theory does not change by making crowd control activities and cordoning off State Street and charging an admission price.

iv. Liability for Failure to Protect Persons from Harm Caused by Third Parties.

Under some circumstances, state law imposes liability for a failure to protect persons from harm caused by third parties. However, such a relationship would not appear to be created by exerting the additional crowd control measures anticipated under the gated, ticketed event arrangement. See, for example, *Barillari v. Milwaukee*, 194 Wis. 2d. 247, 533 N.W.2d. 759 (1995).

In utilizing these crowd control techniques, however, the City must make it clear that it is not assuming sponsorship of the event. The Halloween event remains an unplanned and unsponsored occurrence. The City is not presenting itself as the prom chaperones for those who determine to come to the State Street area. This is the one area where the gating and charging of a fee might of itself be read to amount to sponsorship, regardless of the City's intent. A person might file a claim based on an expectation that there would not be any crush of a crowd. Nonetheless, I cannot conclude that gating and charging a fee significantly changes the City's liability, because the City is by default the only entity available to attempt to control the crowd. Indeed, one might argue that the City would face the same potential liability if it failed to take steps such as gating State Street in an effort to control the crowd.

Based upon our analysis of the various potential legal theories, I conclude that the City does not significantly increase its potential legal liability by assuming greater crowd control measures on State Street, including the options of cordoning off some or all of State Street, and requiring a ticket to enter the area.

I would point out, however, some practical aspects of charging a fee for the event First, no matter how structured, charging a fee will cause the event to be perceived differently by the public. Controlling a crowd through gates and blocking streets is much more closely related to traditional police actions than is charging a fee. Second, in the event of an injury or lawsuit, the fact that a fee was charged may cause a jury to perceive the event differently. Third, the police or other resources necessary to collect and monitor the payment of fees may detract from other duties. For all of these reasons, any proposal to charge a fee should be closely examined for the policy side, even if the legal effect on potential liability is negligible.

Moreover, as I noted above, any such plan should be short-term. Any fee raises the argument that the City has crossed the line from exercising its police power and trying to protect property and safety, to actually sponsoring the event. To the extent such a charge by the City continues year after year, the City more likely will be seen as having crossed the line and sponsoring the event. Any sponsor of the event assumes the potential for legal liabilities that are different than those outlined above, when the City is acting in its police power to control the crowds.

D. Hours of Operation for Taverns.

Your third question was whether the City has the authority to extend the hours of operation for taverns. This is a straightforward issue, and the answer is "no."

Regulation of the sale of alcoholic beverages is governed by chapter 125, Wis. Stats. In sec. 125.01, the legislature declared that the chapter is "an enactment of statewide concern." While chapter 125 includes both state and municipal regulation of taverns and the sale of alcoholic beverages, the City has the authority to augment the state's rules, but may not conflict with them. Sec. 125.10(1), Wis. Stats. These policy statements, and the entire structure of chapter 125, appears to remove it from the City's constitutional home rule authority, eliminating the possibility of modifying the state's rules by a charter ordinance.

Sec. 125.32(3), Wis. Stats., is even more direct. Sub. (a) of this statute provides that taverns (Class "B" premises) are to be closed between 2 a.m. and 6 a.m., except they may be open until 2:30 a.m. on Saturdays and Sundays, and may be open all night on New Year's. The statute goes on to state (Emphasis added):

> (d) A municipality may, by ordinance, impose more restrictive hours than those provided in par. (am) or (b), *but may not impose different hours than those provided in par. (a) or (c).*

Thus, the legislature has made it clear that the City cannot extend the hours of operation of taverns.

I would note that the City likely has authority to close taverns, irrespective of these statutes, in the event it were to invoke the emergency powers set forth in sec. 166.23, Wis. Stats., which explicitly states that the authority therein is "[n]otwithstanding any other provision of law to the contrary. . . ."

Conclusion

The City has the legal authority to impose on downtown property some or all of the costs of public safety at the annual Halloween event. The exact method of determining the amount of the cost to be imposed on given types of property will take additional analysis.

The City has the authority to gate off State Street and charge an access fee as a method of crowd control. Assuming such a plan is for purposes of crowd control and does not continue for some time, the City does not significantly increase its potential legal liability by taking greater crowd control efforts by making Halloween a gated, ticketed event. While the City may incur some liability, it is not significantly different than what the City might incur under the current set of facts.

The City may not extend the hours of operation for taverns beyond that set forth in sec. 125.32(3), Wis. Stats.

Michael P. May
City Attorney

cc: Marci Paulsen, Assistant City Attorney
Common Council Members
Chief Wray, Madison Police Department
Chief Amesqua, Madison Fire Department
Larry Nelson, City Engineer

Synopsis: Halloween Issues: Sec. 66.0627, Wis. Stats., grants the City authority to impose on downtown property owners some of the public safety costs incurred in policing the Halloween event. The City may take greater crowd control measures by cordoning off portions of State Street and charging fees to access a portion of the street, and the City would not incur any significant additional potential legal liability by doing so on a short-term basis. The City may not extend the hours of taverns beyond those set forth in Sec. 125.32(3), Wis. Stats.

66.0627 Special charges for current services. (1) In this section, "service" includes snow and ice removal, weed elimination, street sprinkling, oiling and tarring, repair of sidewalks or curb and gutter, garbage and refuse disposal, recycling, storm water management, including construction of storm water management facilities, tree care, removal and disposition of dead animals under s. 60.23 (20), soil conservation work under s. 92.115, and snow removal under s. 86.105.

(2) Except as provided in sub. (5), the governing body of a city, village or town may impose a special charge against real property for current services rendered by allocating all or part of the cost of the service to the property served. The authority under this section is in addition to any other method provided by law.

(3) (a) Except as provided in par. (b), the governing body of the city, village or town may determine the manner of providing notice of a special charge.

(b) Before a special charge for street tarring or the repair of sidewalks, curbs or gutters may be imposed, a public hearing shall be held by the governing body on whether the service in question will be funded in whole or in part by a special charge. Any interested person may testify at the hearing. Notice of the hearing shall be by class 1 notice under ch. 985, published at least 20 days before the hearing. A copy of the notice shall be mailed at least 10 days before the hearing to each interested person whose address is known or can be ascertained with reasonable diligence. The notice under this paragraph shall state the date, time and location of the hearing, the subject matter of the hearing and that any interested person may testify.

(4) A special charge is not payable in installments. If a special charge is not paid within the time determined by the governing body, the special charge is delinquent. A delinquent special charge becomes a lien on the property against which it is imposed as of the date of delinquency. The delinquent special charge shall be included in the current or next tax roll for collection and settlement under ch. 74.

(5) Except with respect to storm water management, including construction of storm water management facilities, no special charge may be imposed under this section to collect arrearages owed a municipal public utility.

(6) If a special charge imposed under this section is held invalid because this section is found unconstitutional, the governing body may reassess the special charge under any applicable law.