

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

Date: January 14, 2011

**MEMORANDUM**

TO: Mayor David J. Cieslewicz and Members of the Common Council

FROM: Anne Zellhoefer, Assistant City Attorney

RE: FILE NO. 20664 (EDGEWATER HOTEL PUBLIC ACCESS  
MANAGEMENT AGREEMENT)

On Monday, January 10, 2011, the Plan Commission recommended adoption of the above-referenced resolution, with four conditions. This memo will address the first three of those conditions.

Condition Number 1

The first condition "strongly encouraged" the hotel developer, neighbors, district alders and City staff to meet to discuss the proposed Agreement and easements prior to January 18<sup>th</sup>. Such a meeting was held for ninety minutes on Wednesday, January 12<sup>th</sup> at which staff and the developer responded to questions from interested citizens and from Alders Verveer and Maniaci. It is my opinion that the January 12<sup>th</sup> meeting satisfied Condition Number 1.

Condition Number 2

The second condition is to add to the Public Access Management Agreement a provision setting forth a procedure for future amendments to the Agreement. The draft Agreement which was inserted into Legistar already contains such a provision. Section 26 of the draft Agreement provides, "Any change to or modification of this Agreement must be in writing signed by the parties hereto." This language is standard and similar to that found in all City contracts. Like all City contracts, any future amendments to the Agreement will be brought to the Council for approval, and reduced to writing and signed by the parties. Condition Number 2 is satisfied.

Condition Number 3

The third condition is to delete in its entirety Section 6(g), which provides that the Public Access Components are not to be used for public or political rallies, protests or demonstrations of any kind unless such a rally or protest is sponsored by or coordinated through the Manager or Hotel Operator as an Event. The Plan Commission member who requested the deletion of this provision mischaracterized the Public Access

January 14, 2011

Page 2

Components as being similar to public sidewalks or the Capital grounds. The Public Access Components will be accessible to and open to the general public pursuant to the terms of the Agreement, but they will not be publicly owned. The Public Access Components will be privately owned, managed and operated. As such, these areas will not be public forums subject to the constitutional requirements regarding free expression with which public property need comply.

Please let me know if you have any questions.