

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

Date: May 12, 2014

MEMORANDUM

TO: Members of the Alcohol License Review Committee

FROM: Assistant City Attorney Anne Zellhoefer *AZ*

RE: Application by Edgewater Management Company, LLC for an 18+ Entertainment License

Question

Edgewater Management Company, LLC (Edgewater) submitted applications for a Class B combination license and an 18+ entertainment license for its hotel property scheduled to open in August of this year. At its April 23rd meeting, the Alcohol License Review Committee approved the Class B combination license, and referred to its next meeting the 18+ entertainment license application. The ALRC posed the following question to the Office of the City Attorney: "How does the entertainment license interact with the expectations in the PAMA and current land use approvals?"

Answer

The Public Access Management Agreement (PAMA) and the land use approvals do not negate the need for Edgewater to apply for and receive an entertainment license prior to allowing live entertainment on the licensed premises. Neither the terms of the PAMA nor the land use conditions may be altered by the ALRC without the approval of the Common Council and the agreement of Edgewater.

Background

The Common Council conditionally approved Edgewater's application to rezone the property in May of 2010, and approved the PAMA in January of 2011. The City is a party to the PAMA and is bound by its terms. The PAMA governs certain outdoor areas of the Edgewater Hotel property, and provides for public access to those areas in accordance with the PAMA's terms. The PAMA grants the Hotel Manager the right to schedule, organize, host, and cater public and/or private Events on those outdoor terrace areas, to charge for such Events, and to construct and place audio-visual equipment in the Event areas. Events may occur between the hours of 8 a.m. and 11 p.m. During the detailed Common Council debate and discussion of the PAMA, various Council members moved to add, delete or amend terms of the PAMA (see Approved Proceedings of January 18, 2011 meeting, File No. 20664), but no one moved to amend the hours of operation or to delete the Manager's ability to construct and place audio-visual equipment in the Event areas.

The approved Zoning Text defers to the PAMA as regards hours of operations and activities on the outdoor terrace. The Zoning Text includes the following three excerpted provisions:

Permitted Uses:

The following are permitted uses within the District:

8. Outdoor Open Spaces and Terraces as shown on the approved plans. These areas shall be used in accordance with the Public Access Management Agreement.

Hours of Operation:

The hours of operation ("Hours of Operation") of the occupied spaces will be varied. It is anticipated that activity will occur within portions of the District on a twenty-four (24) hour basis. The Hours of Operation for events on the outdoor terraces will be described in the Public Access Management Agreement.

Open Areas:

The Project has approximately 75,000 square feet of open areas including walkways, green space, terraces, balconies and rooftops, as shown on the Approved Plans. The publicly accessible open areas and the rights, terms and conditions of said access are more particularly described in the Public Access Management Agreement and the related Public Access Easements as defined and referenced in the Public Access Management Agreement.

The right of Edgewater under the PAMA to have live entertainment at its Events is subject to the requirement that it procure an Entertainment License before doing so. The PAMA explicitly provides that the Hotel Manager is to comply with Legal Requirements, which is defined to mean "applicable requirements under all laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction over the Real Property." Like all ventures seeking to conduct live entertainment on a licensed premise, Edgewater is required to comply with Sec. 38.06(12)(b), MGO, which provides that "No premise shall be deemed a Center for Visual and Performing Arts without first obtaining a license as required in this Section." The ALRC may not, however, condition the Edgewater Entertainment License (if one is granted) on terms that are different from or conflict with those included in the PAMA. Under the PAMA, the City acknowledged that the Hotel Operator or Manager is permitted to hold Events and conduct daily activities and operations, which may involve the use of audio-visual equipment and the serving of food and beverages, in and around the open terrace and other public access areas consistent with the terms of the PAMA.

Conclusion

Through its approval of and execution of the PAMA, the City has agreed to the use of the open terrace areas of the Edgewater Hotel between the hours of 8 am and 11 pm for certain Events. The ALRC may not alter, condition, or further restrict any of the terms contained in the PAMA without the agreement of the Council and Edgewater. If issued, the Entertainment License should include the same hours of operation as set forth in the PAMA.

A copy of the PAMA is attached to the Legistar file for your reference.

cc: Alder Ledell Zellers
Assistant City Attorney Roger Allen