



**TO:** Madison Plan Commission

**FROM:** Bradley J. Murphy, Planning Division Director

**DATE:** January 7, 2011

**SUBJECT:** Edgewater Hotel Public Access Management Agreement

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At the meeting of December 6, 2010, the Plan Commission referred Resolution I.D. 20664 authorizing the Mayor and City Clerk to execute a Public Access Management Agreement with the Edgewater Hotel Company, LLC, to govern the use, access, maintenance, operation, and management of certain components of the proposed expansion of the Edgewater Hotel. The Commission requested that additional information be provided when this matter returns to the Plan Commission. The Planning Division has worked with the Zoning Administrator, and City Attorney's Office to prepare the responses to the following requests.

- That the conditions of pier access be provided,
- That more specifics be provided for areas to be closed under Section 2,
- That policies regarding temporary structures be provided including times for set-up and take-down,
- That the hours of operations for all events and allowable fees associated with these events be provided,
- That noise provisions be provided, and
- That the hotel operator's rules for the site and the draft Public Access Management Agreement with the City be provided for review.

The Plan Commission members also asked staff from the Planning and City Attorney's Office to include the enforcement provisions for the agreement and how the conditional use permits for the site related to enforcement.

The following sections below address each of the Plan Commission's requests.

- **Piers.** The approval of the Planned Unit Development for the Edgewater Hotel does not regulate the construction and use of a pier for the hotel in any way. The access to a pier, if one is provided, will be controlled by the Hotel. The pier will be subject to, among other laws and regulations, Section 30.13 of Wisconsin Statutes and Chapter NR 326 of the Wisconsin Administrative Code.

- **Areas to be closed under Section 2.** The Public Access Management Agreement makes it clear which areas will be subject to temporary closure for maintenance and security purposes as well as closure when general events, special events, and community events occur. Subject to the access limitations associated with these events and temporary closures due to weather, security or maintenance needs, the public access components shall be open between the hours of 7:00 a.m. and 11:00 p.m. 365 days per year.
- **Policies Regarding Temporary Structures.** The agreement will allow temporary structures to be placed within the public access components to support events provided they are removed in a timely manner as determined by the Manager in its sole and absolute discretion. The Planning Division recommended that a provision be added to require temporary structures to be erected no sooner than 24 hours in advance of the event and to be taken down no later than 24 hours after the event as a place to start discussions with the developer which to arrive at a provision that would be workable. Where the times for setup and take down overlap the temporary structure could remain. At the time of this memo, staff is not aware that the Plan Commission's request has been addressed in the agreement.
- **Hours of Operation for Events and Allowable Fees.** The agreement includes hours of operation for general events, special events, and community events. Events shall be limited to the hours between 8:00 a.m. and 11:00 p.m. The space rental fee for community events will be waived for not less than eight (8) community events per year. The Hotel Manager/Operator will have the ability to charge for all food and beverages and services provided and all costs incurred by or on behalf of the Manager/Hotel Operator. The Hotel Manager/Operator will also establish fees for general events and special events.
- **Noise Provisions.** The Agreement indicates that noise related to the project will be subject to, among other laws and regulations, Chapter 24 of the Madison General Ordinances and more specifically Section 24.08 thereof. The Noise Control Regulation, described in MGO 24.08, as administered by the Building Inspection Division, is generally designed to control "stationary equipment" or point source noise. This is further described as noise emanating from a stationary object such as car wash drying fans, A/C compressors, backup generators or similar pieces of stationary mechanical equipment. The ordinance is not designed to regulate limited construction noise or noise emissions with varying intonations, volume patterns, and crescendos, such as outdoor amplified music. Typically, the Police Department will handle "disturbing the peace" aspects of outdoor amplified music or other noise generation other than mechanical equipment, with a few limited exceptions. In addition, the Plan Commission will retain continuing jurisdiction over the project under the conditional use permits that were approved as part of the Planned Unit Development.
- **Hotel Operator's Rules and Draft Agreement.** As with any Hotel property there will be operating policies. The Agreement indicates that the operating policies and rules cannot change the terms of the public access management agreement.

The Plan Commission also asked to review the enforcement provisions within the Agreement. These provisions are provided for in Section 21 entitled "Disputes and Default; Dispute Resolution". This section outlines the responsibilities of the City and the Hotel Manager and provides a mediation process in the event that problems are not cured by either party. In the event that mediation does not result in resolution, the remedy is to file an action in Dane County Circuit Court.

In addition to the enforcement provisions within the Agreement, the Plan Commission's continuing jurisdiction provisions for conditional use permits also apply to the project. The entire development was

approved as a waterfront development and obtained a conditional use permit for the development on the waterfront. The permit applies to the entire development and as such, the Plan Commission's continuing jurisdiction over conditional use permits applies to the entire development. However, it should be noted that this jurisdiction must take into consideration the "use" rights granted by the Common Council through the rezoning to PUD and, it is our opinion, that these basic rights cannot be removed by the Plan Commission under continuing jurisdiction over waterfront development. In addition, the Planned Unit Development was approved by the Common Council with a condition that required the Zoning Text for the PUD to be revised prior to recording per Planning Division approval to include, among other things, the following:

"That the list of underlying conditional uses for the development be included as follows as finalized and approved by staff prior to recording of the PUD:

- Outdoor eating areas as shown on the approved plans. (Note: The outdoor eating areas for the two restaurants, café, club level, and ballroom shown on the March 10, 2010 plans will be deemed approved conditional uses if the project is approved as presented.)
- Use of the Hotel Tower Roof for hotel/guest functions including outdoor eating and recreation."

The staff report to the Plan Commission and Common Council noted that the "continuing jurisdiction" provisions of the Zoning Code would apply to the project by virtue of its status as a waterfront development conditional use and because of the approval of the outdoor eating areas as conditional uses. The staff report noted that "continuing jurisdiction provides the Plan Commission with the ability to address any potential issues that might arise related to the operation of the greater development." Staff noted that "it may be appropriate in this case to segregate those uses that may have the potential to create concerns and future complaints in the surrounding neighborhood in a fashion similar to the way those uses would be governed under a conventional zoning district. Such a specific treatment for the hotel will allow the Plan Commission to tailor specific operating provisions such as hours of operation and use of outdoor amplified sound as conditions warrant and specifically address any future complaints directly using continuing jurisdiction. This would also be possible under the waterfront development conditional use."

In addition to the approval of the outdoor eating areas associated the restaurants, etc. the PUD also included, as a permitted use, the following uses:

- Outdoor open spaces and terraces which may be used for public and/or private events.
- A seasonal ice skating rink.

The Planned Unit Development included a condition that the developer enter into a use and maintenance agreement (the Public Access Management Agreement) with the City to address the use, operation and maintenance of the public and semi-public spaces. In addition, the Zoning Text states that the hours of operation for events on the outdoor terraces will be described in the Management Agreement to be executed between the City and the Hotel owner. This agreement will address issues related to the management and use of the terraces for public and private events which are permitted uses in the zoning text for the PUD.

The conditional use permits for the development are those as described above. Because of presence of approved conditional use permits which cover the project, there will be some overlap in the jurisdiction

over the public access components in that both the Public Access Management Agreement and the Plan Commission's continuing jurisdiction over conditional uses will apply to the public access components with the exception of the Wisconsin Avenue right of way which is not part of the PUD. As is the case for the interplay between the rights under the PUD and the continuing jurisdiction under the Conditional Use Permits, the continuing jurisdiction of the Plan Commission will be affected by the rights and responsibilities as set forth in the Public Access Management Agreement as approved by the Common Council.

If Commission members have other questions which have not been addressed by this memo, please let us know.

cc. Anne Zellhoeffer, Assistant City Attorney  
Katherine Noonan, Assistant City Attorney  
Michael May, City Attorney  
Matt Tucker, Zoning Administrator  
Mario Mendoza, Assistant to the Mayor  
Tim Parks, Planning Division