



City of Madison

City of Madison
Madison, WI 53703
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Master

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Reference:

Controlling Body: PLAN
COMMISSION

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File Created Date : 11/22/2010

File Name: Maintenance Agreement reso

Final Action: 01/18/2011

Title: SUBSTITUTE - Authorizing the Mayor and City Clerk to execute a Public Access Management Agreement with Edgewater Hotel Company LLC to govern the use, access, maintenance, operation and management of certain components of the proposed expansion of the Edgewater Hotel

Notes:

CC Agenda Date: 01/18/2011

Agenda Number:

Sponsors: Bridget R. Maniaci

Enactment Date:

Attachments: Exhibit A to PAMA p1.pdf, Exhibit B to PAMA.pdf, Exhibit C to PAMA.pdf, File ID 20664 version 1.pdf, Revised Exhibit B to PAMA.pdf, Comments to Plan Commission_12-06-10.pdf, Public Access Management Agreement_01-06-11.pdf, Memo to PC-Public Access Mgmt Agmt_01-07-11.pdf, Brown comments_01-08-11.pdf, Lauber correspondence_01-08-11.pdf, Culver correspondence_01-10-11.pdf, Mohs comments_01-10-11.pdf, Zellers comments_01-10-11.pdf, Mohs Message_01-11-11.pdf, OCA Memo on Plan Commission conditions_01-14-11.pdf, Public Access Management Agreement - 11411.pdf, Ingebritson-Parks Messages_01-14-11.pdf, Donovan Comment_01-17-11.pdf

Enactment Number: RES-11-00089

Author: Anne Zellhoefer, Assistant City Attorney

Hearing Date:

Entered by: sobrien@cityofmadison.com

Published Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Attorney's Office	11/22/2010	Referred for Introduction				
	Action Text:	This Resolution was Referred for Introduction					
	Notes:	Plan Commission					

1	COMMON COUNCIL	11/30/2010	Referred	PLAN COMMISSION	01/10/2011		
	Action Text: This Resolution was Referred to the PLAN COMMISSION						
	Notes:						
1	PLAN COMMISSION	12/06/2010	Re-refer	PLAN COMMISSION	01/10/2011	01/10/2011	Pass
	Action Text: A motion was made by Cnare, seconded by Kerr, to Re-refer to the PLAN COMMISSION, due back on 1/10/2011. The motion passed by voice vote/other.						
	Notes: Referral unanimously recommended. As part of the motion to refer, the Commission also recommended the following revisions and requested additional information be included when this item is returned to the Plan Commission:						
	<ul style="list-style-type: none"> -That the conditions of pier access be provided; -That specificity of areas to be closed under section 2 be provided; -That policies regarding temporary structures be provided including times for setup and take-down; -That the hours of operation 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 attached. 						
	<p>The above amendment was added to the main motion after being moved by Ald. Kerr, second by Ald. Cnare, and approved unanimously. During discussion, Commission members and staff from Planning and the City Attorney's office discussed the enforceability of the agreement and how the conditional uses for the outdoor eating areas related to enforcement.</p>						
2	PLAN COMMISSION	01/10/2011	RECOMMEND TO COUNCIL TO ADOPT WITH CONDITIONS - REPORT OF OFFICER				Pass
	Action Text: A motion was made by Gruber, seconded by Sundquist, to RECOMMEND TO COUNCIL TO ADOPT WITH THE FOLLOWING CONDITION(S) . The motion passed by voice vote/other.						
	Notes: The Plan Commission recommended approval of the resolution with the following revisions and/ or conditions:						
	<ul style="list-style-type: none"> - That the hotel developer, neighbors, district alders and City staff are strongly encouraged to meet to discuss the proposed Public Access Management Agreement and easements prior to the January 18, 2011 Common Council hearing on these items. - That an amendment procedure be added to the Public Access Management Agreement. - That section 6(g) on page 8 of the Public Access Management Agreement entitled "Demonstrations Prohibited" be deleted. - That section 9(b) on page 11 be revised to read as follows: "<u>Special Events</u>. The Manager, the Hotel Operator, or their respective assigns shall have the right to close and/or secure all or any portion of the <u>upper terrace as shown on Exhibit B-1</u> Public Access Components <u>excluding the main stairway [to the lake] and ADA access routes</u> for Special Events which may occur from time to time in the Public Access Components and which require the Manager or the Hotel Operator to monitor the occupancy and/or provide additional services and/or management of the Public Access Components while said event is occurring. <u>During said event, the Manager may restrict the shoreline public access area as shown on Exhibit B-2 to 200 people</u>. The Manager may close, secure, restrict access and prohibit the general public from occupying and accessing the Public Access Components during Special Events (and during the preparation or set-up and removal or tear-down thereof)." 						
	<p>The revised language related to section 9(b) was added to the main motion to recommend approval on a motion by Sundquist, seconded by Olson and passed on the following vote: AYE: Ald. Kerr, Basford, Gruber, Olson, Sundquist, Andrejewski; NAY: Heifetz; NON-VOTING: Fey; EXCUSED: Bowser, Ald. Schumacher.</p> <p>The main motion to recommend approval passed by voice vote/ other.</p>						
2	COMMON COUNCIL	01/18/2011	Adopt With Amendment(s)				Fail

Action Text: A motion was made by Ald. Maniaci, seconded by Ald. Sanborn, to Adopt With Amendment(s): Delete the words "as determined by the Manager in its sole, reasonable discretion" and replace it with: "provided, however, the temporary structure shall be constructed no sooner than 36 hours in advance of an Event and removed no later than 36 hour after the Event, unless the Manager or Hotel Operator obtains written permission from the City's Planning Division Director for extension of the time limits." And add the following as a final sentence to each subdivision: "Where the time for construction and removal of a temporary structure overlap, the temporary structure may remain standing during such overlap." The motion failed by the following vote:

Notes:

Excused: 2 Lauren Cnare and Thuy Pham-Remmele
 Ayes: 5 Bridget R. Maniaci; Michael E. Verveer; Shiva Bidar-Sielaff; Marsha A. Rummel and Satya V. Rhodes-Conway
 Noes: 13 Steve King; Bryon A. Eagon; Paul E. Skidmore; Brian L. Solomon; Chris Schmidt; Julia S. Kerr; Tim Bruer; Larry Palm; Judy Compton; Joseph R. Clausius; Michael Schumacher; Mark Clear and Jed Sanborn
 Non Voting: 1 David J. Cieslewicz

2 COMMON COUNCIL 01/18/2011 Adopt With Amendment(s) Fail

Action Text: A motion was made by Ald. Verveer, seconded by Ald. Rummel, to Adopt With Amendment(s): Delete the words "as determined by the Manager in its sole, reasonable discretion" and replace it with: "provided, however, the temporary structure shall be constructed no sooner than 24 hours in advance of an Event and removed no later than 24 hour after the Event, unless the Manager or Hotel Operator obtains written permission from the City's Planning Division Director for extension of the time limits." And add the following as a final sentence to each subdivision: "Where the time for construction and removal of a temporary structure overlap, the temporary structure may remain standing during such overlap." failed by voice vote/other.

Notes:

Excused: 2 Lauren Cnare and Thuy Pham-Remmele
 Noes: 18 Michael E. Verveer; Shiva Bidar-Sielaff; Marsha A. Rummel; Steve King; Bryon A. Eagon; Paul E. Skidmore; Brian L. Solomon; Chris Schmidt; Satya V. Rhodes-Conway; Julia S. Kerr; Tim Bruer; Larry Palm; Judy Compton; Joseph R. Clausius; Michael Schumacher; Mark Clear; Jed Sanborn and Bridget R. Maniaci
 Non Voting: 1 David J. Cieslewicz

2 COMMON COUNCIL 01/18/2011 Adopt the Following Amendment(s)

Action Text: A motion was made by Ald. Clear, seconded by Ald. Sanborn, to Adopt the Following Amendment(s): To delete conditions one, two and three of the Plan Commissions conditions.

Notes:

2 COMMON COUNCIL 01/18/2011 Separate Amendment Pass

Action Text: A motion was made by Ald. Kerr, seconded by Ald. Rhodes-Conway, to Separate Amendment: Separating Condition four(4) regarding section 9-9(b) on page 11. The motion passed by voice vote/other.

Notes:

2 COMMON COUNCIL 01/18/2011 Adopt the Following Amendment(s)

Action Text: A motion was made by Ald. Kerr, seconded by Ald. Verveer, to Adopt the Following Amendment(s): In condition four(4) the sentance beginning, " During said event...", delete the words, "to 200 people," and replace it with the workds, "to a number of people approved by the City of Madison Fire Marshall and Building Inspection."

Notes:

2 COMMON COUNCIL 01/18/2011 Withdraw

Action Text: Ald Kerr withdraws her previous motion.

Notes:

2 COMMON COUNCIL 01/18/2011 Withdraw

Action Text: Ald Clear withdraws his original motion.

Notes:

- 2 COMMON COUNCIL 01/18/2011 Adopt the Following Amendment(s) Pass
- Action Text:** A motion was made by Ald. Clear, seconded by Ald. Sanborn, to Adopt the Following Amendment(s): To delete condition two of the Plan Commission's recommendations which states, "That an amendment procedure be added to the Public Access Management Agreement." The motion passed by the following vote:
- Notes:**
- Excused: 2 Lauren Cnare and Thuy Pham-Remmele
 - Ayes: 16 Michael E. Verveer; Shiva Bidar-Sielaff; Bryon A. Eagon; Paul E. Skidmore; Brian L. Solomon; Chris Schmidt; Satya V. Rhodes-Conway; Julia S. Kerr; Tim Bruer; Larry Palm; Judy Compton; Joseph R. Clausius; Michael Schumacher; Mark Clear; Jed Sanborn and Bridget R. Maniaci
 - Noes: 2 Marsha A. Rummel and Steve King
 - Non Voting: 1 David J. Cieslewicz
- 2 COMMON COUNCIL 01/18/2011 Adopt the Following Amendment(s) Pass
- Action Text:** A motion was made by Ald. Clear, seconded by Ald. Verveer, to Adopt the Following Amendment(s): To delete condition three (3) of the Plan Commission's recommendations, which states, "That section 6(g) on page 8 of the Public Management Agreement entitled "Demonstrations Prohibited." The motion passed by the following vote:
- Notes:**
- Excused: 2 Lauren Cnare and Thuy Pham-Remmele
 - Ayes: 14 Shiva Bidar-Sielaff; Bryon A. Eagon; Paul E. Skidmore; Brian L. Solomon; Chris Schmidt; Julia S. Kerr; Tim Bruer; Larry Palm; Judy Compton; Joseph R. Clausius; Michael Schumacher; Mark Clear; Jed Sanborn and Bridget R. Maniaci
 - Noes: 4 Michael E. Verveer; Marsha A. Rummel; Steve King and Satya V. Rhodes-Conway
 - Non Voting: 1 David J. Cieslewicz
- 2 COMMON COUNCIL 01/18/2011 Adopt the Following Amendment(s)
- Action Text:** A motion was made by Ald. Kerr, seconded by Ald. Verveer, to Adopt the Following Amendment(s): That the wording in condition four of the Plan Commission recommendations, beginning with the words "that section 9(b) on page 11..." be changed as follows: Remove the words, "200 people," and replace them with the following, "a number of people approved by the City of Madison Fire Marshall and Building Inspection."
- Notes:**
- 2 COMMON COUNCIL 01/18/2011 Withdraw
- Action Text:** Ald Kerr withdraws her previous motion.
- Notes:**
- 2 COMMON COUNCIL 01/18/2011 Adopt the Following Amendment(s) Pass
- Action Text:** A motion was made by Ald. Kerr, seconded by Ald. Verveer, to Adopt the Following Amendment(s): That the wording in condition four of the Plan Commission recommendations, beginning with the words "that section 9(b) on page 11..." be changed as follows: Remove the words, "200 people," and replace them with the following, "a capacity no less and no greater than the capacity established by the Building Inspection Division and the Fire Marshall." The motion passed by the following vote:
- Notes:**
- Excused: 2 Thuy Pham-Remmele and Lauren Cnare
 - Ayes: 17 Michael E. Verveer; Shiva Bidar-Sielaff; Marsha A. Rummel; Steve King; Bryon A. Eagon; Paul E. Skidmore; Brian L. Solomon; Chris Schmidt; Satya V. Rhodes-Conway; Julia S. Kerr; Tim Bruer; Larry Palm; Joseph R. Clausius; Michael Schumacher; Mark Clear; Jed Sanborn and Bridget R. Maniaci
 - Noes: 1 Judy Compton
 - Non Voting: 1 David J. Cieslewicz

2	COMMON COUNCIL	01/18/2011	Adopt the Following Amendment(s)	Pass
	Action Text:	A motion was made by Ald. Rummel, seconded by Ald. Bidar-Sielaff, to Adopt the Following Amendment(s): To amend condition four (4) of the Plan Commission's recommendations, starting with the words, "That section 9(b) on page 11..." by inserting the words, "other than those located on the City Site." The motion passed by voice vote/other.		
	Notes:			
2	COMMON COUNCIL	01/18/2011	Adopt With Amendment(s)	Pass
	Action Text:	A motion was made by Ald. Clear, seconded by Ald. Verveer, to Adopt With Amendment(s) . The motion passed by voice vote/other.		
	Notes:			

Text of Legislative File 20664

Fiscal Note

Adoption of this resolution has no direct budgetary impact.

Title

SUBSTITUTE - Authorizing the Mayor and City Clerk to execute a Public Access Management Agreement with Edgewater Hotel Company LLC to govern the use, access, maintenance, operation and management of certain components of the proposed expansion of the Edgewater Hotel

Body

Preamble

In 1965, the Common Council vacated a portion of Wisconsin Avenue north of Langdon Street, and reserved an easement over that vacated portion for the permanent benefit of the general public. The vacation and the reserved easement rights were provided for in an uncodified ordinance (as amended, the "1965 Ordinance"). In the 1965 Ordinance the City reserved an easement over the vacated portion "to the extent reasonably necessary and appropriate to assure for the benefit of the public" certain objectives, including public pedestrian access to and along the lakeshore, public pedestrian access to the top of any structure placed in the vacated street, and the preservation of the view over Lake Mendota.

Upon vacation in 1965, ownership of the vacated portion of the former street reverted to the owners of the Edgewater Hotel, and in the early 1970's the owners constructed an addition to the hotel in the vacated lands. To comply with the 1965 Ordinance, the Edgewater owners provided access to the lakeshore, access along the lakeshore, and access to the roof of the 1970's addition. These access points and the rooftop viewing location, although approved by the Common Council in 1974, lack amenities and accessibility and are in need of reconstruction.

At its May 18, 2010 meeting, the Common Council conditionally approved a request to rezone the existing Edgewater Hotel property and adjacent property to allow redevelopment and expansion of the Hotel and the construction of a parking garage. The Common Council also approved a TIF Loan to Landmark X, LLC ("Developer") to fund the construction of certain public access components. The proposed redevelopment plans submitted by Developer as part of its applications for rezoning and tax incremental financing include the provision of an enhanced view corridor and new publicly accessible improvements and spaces leading towards and along the Lake Mendota waterfront, on property to be owned by Developer. The proposed redevelopment plan must meet the objectives of the 1965 Ordinance, as amended, by assuring that the project provides public access to the lakeshore at no cost to the public for use and maintenance of such access. The 1965 Ordinance provides that liability for and continuing maintenance of the appearance, condition and usability of the vacated portion of Wisconsin Avenue and improvements placed thereon are to be the responsibility of the owner.

Developer and the City have negotiated the material terms of a Public Access

Management Agreement (the "Agreement") that will meet the conditions of the 1965 Ordinance, the conditional zoning and TIF approvals. The area subject to the Agreement will be owned by Edgewater Hotel Company LLC, a Wisconsin limited liability company, whose controlling member is Developer.

Now therefore, be it resolved, that the Mayor and City Clerk are hereby authorized to execute a Public Access Management Agreement with Edgewater Hotel Company LLC ("Manager") to contain the following terms and conditions regarding the operation and maintenance of the public access components of the Edgewater Hotel redevelopment:

1. Public Access Components. On the property described on Exhibit A attached hereto, Manager shall construct, maintain, operate and manage certain improvements as approved by the City, including but not limited to: outdoor terraces, public restrooms off the terrace and at the waterfront, a stairway to the waterfront, improvements along the pathway adjacent to the lakeshore, including green space in front of the new podium building, and an ADA compliant access route through the building to the improvements on the terraces and the waterfront (collectively, the "Public Access Components"). The locations of the Public Access Components are further depicted on Exhibits B-1 and B-2, attached hereto, and described in the approved PUD-GDP-SIP for the project. A series of easements shall be granted to the City for the benefit of the public, including easements concerning: ADA access; public pedestrian shoreline walkway; public pedestrian pathway to shoreline; public parking; and public access areas. Outdoor areas which are not a part of the Public Access Components include those spaces dedicated to the exclusive use and operation of the hotel, restaurants and other private improvements of the redevelopment, including the dining terraces serving the restaurants, the outdoor balconies and terraces adjacent to or attached to hotel rooms, guest suites and condominium units, and the roof terraces serving the hotel.

2. Public Access and Use. Manager shall maintain continuous public access to the Public Access Components from 7:00 am to 11:00 pm, 365 days of the year, subject to the occurrence of certain General Events, Special Events and Community Events.

- a) General Events. Manager shall have the right to organize, host and cater public or private General Events in the General Events Area designated on the attached Exhibit C. During such General Events, Manager shall maintain access to all other Public Access Components for the use of the public subject to the Special Events provision outlined below.
- b) Community Events. Manager shall reserve space within the General Events Area for no fewer than eight (8) events per calendar year for the benefit of, or to be booked by non-profit and/or community-based organizations ("Community Events"). At least five (5) of these days shall be during the months of May through September. All dates shall be on a schedule as determined by Manager. Manager will provide the space free of rental charge for such Community Events, but may charge for all food and beverage and other services.
- c) Special Events. Manager, shall also have the right to close and/or secure the Public Access Components for Special Events which require Manager to monitor the occupancy of the site, and/or to provide additional services or management. Special Events may not occur more than fifteen (15) days per calendar year. Of these fifteen (15) days, no more than ten (10) days shall be on weekend days between May 1st and September 30th.

The Public Access Components shall be designated as non-smoking. The public may bring food and non-alcoholic beverages to the Public Access Components for reasonable individual personal use. Manager shall have the exclusive right to sell goods and/or services and to cater events on the Public Access Components. Manager shall provide seating in the Public Access Components, including chairs, tables and benches.

3. Maintenance. Manager shall be solely responsible for ensuring the Public Access Components are maintained on a continuous basis. Such maintenance shall include, but not be

limited to: snow and ice removal; irrigating, weeding and trimming all plantings; debris, litter and graffiti removal; repair and replacement of any damaged or missing property; hardscape maintenance; and drainage clean up, repair and maintenance.

4. Security. Manager shall have the right to close and secure the Public Access Components between the hours of 11 pm and 7 am daily, but shall maintain a reasonable pathway for persons to enter and exit the hotel components at all times, either through the hotel or the Public Access Components. Manager shall have the right to ask any person to leave who is: negatively impacting the health, safety, use or enjoyment of visitors to the Public Access Components; violating local ordinances or state law; or violating the hotel operator's rules for use of the site.

5. Insurance and Liability. Manager shall be solely responsible for procuring appropriate general commercial liability insurance coverage for the site, and upon request will provide evidence of such insurance for the site to the City. The City shall have no liability or responsibility for the use, access, maintenance, operation and management of the Public Access Components. The sole cost and expense of maintaining, operating and managing the Public Access Component shall be the responsibility of Manager.

6. Ordinance Requirements. Manager shall comply with the City's affirmative action and nondiscrimination ordinances.

7. Term. Unless terminated due to an uncured material default, the Agreement shall remain in effect unless terminated by mutual agreement of the parties.