

From: Zellers, Ledell
Sent: Monday, October 02, 2017 1:34 PM
To: All Alders
Cc: May, Michael; Zilavy, Jennifer; Soglin, Paul; Amy Supple
Subject: Edgewater Entertainment License Agenda item 7 -- Oct 3, 2017 Common Council Meeting
Attachments: EW Entertainment License Application Q&A3.docx

Do Not Reply All

Dear Colleagues,

In reviewing testimony and letters and reflecting on what I have heard from constituents about the noise related to the Edgewater Hotel's bands and outdoor entertainment events, I have decided to recommend an amendment to the ALRC proposed conditions on the Edgewater's Entertainment License. I have listened to alternate proposals from the Edgewater but unfortunately, to date, have not succeeded in reaching an agreed upon approach with them. Because there are a number of issues and complexities related to this situation I also decided the best way for me to provide the background and context for my recommendation is through a question and answer format to try to address some of the questions that have come up/been discussed.

I respectfully request that you read the attached Q&As to help understand the many issues that have been swirling around this Entertainment License application and the reasons behind the conditions.

Conditions

The conditions that are before you from the ALRC are:

1. Maintain decibel level of 70 decibels or under at the street level, the measurement of which shall be taken at the mid-point of the intersection of Langdon Street and Wisconsin Avenue.
2. The band shell shall be utilized during all amplified live music events, unless a large tent is in place for said event.
3. This license will be separated for 2018 renewal.
4. Limit the number of outdoor public events that would fall under the entertainment license to 35 per license year.
5. Must adhere to all aspects of the Public Access Management Agreement.

I concur with all conditions the ALRC is recommending except number 4, dealing with the number of outdoor events. I recommend that condition number 4 instead read:

4. Limit the number of outdoor events (both public and private) that would fall under the entertainment license to 35 per license year. Of these 35 outdoor live music events, 20 outdoor live music events may occur between Memorial Day and Labor Day of each calendar year. Acoustic (non-amplified) events are not covered by this restriction.

I ask you to support this change to the conditions since, as described in the Q&As attached, the number of outdoor events, as well as the sound level, are significant problems in the Noise Impact Zone (NIZ). In addition, given the fact that only about three Entertainment Licenses have been granted to venues in *residential* neighborhoods which also have outdoor events, (and these venues have about 1-2 events; 5-6 events and about a dozen outdoor events per year), the residents in the NIZ of the Edgewater deserve similar consideration to protect their health and welfare.

The condition I am recommending includes all outdoor Entertainment License events, not just public events since the amplified bands at private events can be as disruptive as those for public events. I'm also requesting that the outdoor Entertainment License events be limited to 20 between Memorial Day and Labor Day. The time between Memorial Day and Labor Day are the days most likely to require open windows in homes with no air conditioning and be the time

of year when people want to have windows open to enjoy the summer breezes or to be environmentally conscious or to save money.

I am also specifically *excluding* acoustic (non amplified) events from the limitation since these events are not the primary source of the noise problems.

I am not seeking equivalency with other venues in terms of numbers of outdoor Entertainment License events...if I did, I would limit the number of outdoor Entertainment License events to a dozen or less. I am requesting 3 times that number...but having this limit is extremely important to the lives of people in the NIZ.

Please note that I keep referring to outdoor Entertainment License events...not just events because, under this condition, the Edgewater would still be able to have an unlimited number of outdoor events that do not require an Entertainment License. Such outdoor events could include movie nights (which includes amplified sound), weddings, art fairs, ice skating, outdoor games, etc. And the Edgewater still would be able to have an unlimited number of indoor Entertainment License events and an unlimited number of outdoor acoustic (non-amplified) events.

The ALRC wisely put an upper limit on the noise. The upper limit is a reasonable starting point for assessing impact. The Edgewater has indicated they have been measuring the decibel levels at various locations and have promised to share that information, although to date, they have not provided it other than in a very general way. Having an upper limit on the sound and separating the license in 2018 will provide some data that will help determine whether this decibel limit contributes to resolving the problem. I hope the Edgewater will cooperate on sharing the data they obtain and will obtain readings in the apartments of those residents who have noted they are particularly impacted by the noise. Several of those living in these apartment homes have made it clear they are willing to participate in this problem solving effort. This pinpoint measurement was used in the case of Plan B (located on Williamson St).

This is a balanced and reasonable approach. I ask that my colleagues vote to support my recommended amendment to condition number 4 of the ALRC listed conditions.

Thank you.

Sincerely,

Alder Ledell Zellers
608 417 9521

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Edgewater Entertainment License Application Q&A
License to be Heard at the Oct 3, 2017 Common Council Meeting

1. What type of venues require an Entertainment License?

Entities that have applied for and been granted a “Class B: or Class “B” alcohol beverage license are required to obtain an Entertainment License if they want to have “Live Entertainment”.

“Live Entertainment Defined. A licensed establishment shall be deemed to offer or allow live entertainment if any of the following activities are offered, permitted or allowed:

1. live music performances;
2. disc jockeys;
3. the establishment has a designated dance floor area.

Live entertainment does not include non amplified or acoustic music performed by a single artist, or performances where an uncompensated patron sings along with a machine that plays pre recorded music, commonly known as “karaoke”. [38.06(11)(c)]

2. Some people seem to think that the Public Access Management Agreement (PAMA) entered into by the Edgewater means they do not have to get an Entertainment License or that the ALRC or CC are constrained from placing conditions on the license as it is able to do for any other entity in similar circumstance. Is that true?

According to the Madison City Attorney, that is inaccurate.

The City has the right and responsibility to determine whether it is appropriate to issue an Entertainment License (and/or an Alcohol License) and what conditions may be applied. The PAMA¹ says on page 13 in Section 12: “Permits and Compliance with Legal Requirements” that “During the Term of this Agreement, the Manager shall obtain and keep in full force and effect all necessary registrations, licenses and permits...”

The definition on page 3 of the PAMA says ““Legal Requirements” shall mean applicable requirements under all laws, ordinances orders, rules and regulations of governmental authorities having jurisdiction over the Real Property.” [See also Memorandum from Assistant City Attorneys Jennifer Zilavy and John Strange dated August 11, 2017]

¹ The PAMA is an agreement entered into by the City and the Edgewater Hotel Company intended to clarify the right of the public to access certain parts of the area comprising the property owned and/or utilized by the Edgewater Hotel. This area is essentially the outdoor area between the Edgewater Tower and the Edgewater historic building. Part of this area utilized by the hotel is a public street easement. Part (the lakefront part and the area where the plaza is located) was formerly public street easement but was sold to the neighboring landowners (NGL and the Edgewater) for \$1.00. There was an agreement associated with that sale to retain the view of the lake and to provide public access.

The plaza, where most of the outdoor events are held and which is the primary source of noise complaints, is identified as being part of the “Public Access Components”. However, the Edgewater management can prohibit public access to the plaza at any time. Prohibiting such public access to the majority of the “Public Access Components” does not count against the 15 annual events the Edgewater is allowed under the “Special Events” provision in the PAMA. That provision is triggered only when the entire open area between the Edgewater Tower and the Edgewater historic building is closed “excluding the stairway or path to the Lake Mendota shoreline and the accessible path to the Lake Mendota shoreline for purposes of the Americans with Disability Act”.

3. How many outdoor events has the Edgewater been having?

Most of the outdoor events held by the Edgewater have been in the summer months. In 2016, the last year when there was a full schedule of events, in June, July and August there were approximately 38 entertainment license events which were open to the public. This does not include indoor events for which an Entertainment License is required or private outdoor events for which an Entertainment License is required nor does it include things like the weekly outdoor movie night which does not require an entertainment license.

4. Why is it a problem to have this number of outdoor Entertainment License events?

This hotel is in a densely populated area. There are residents in the Noise Impact Zone (NIZ) who have lived there for years...many for decades. They are people who have lived in harmony with Fraternity parties and student exuberance. But the number of loud bands each week, week after week all summer has significantly affected their quality of life and their ability to engage in normal home activities. These are not people who are thinking or speculating that there may be a problem. These are people who have experienced this situation week after week and know it is a problem. Following are just a sample of a few of quotes from seven different people in the NIZ:

- "...for health reasons, I moved. The stress living with that much noise was too much."
- Another: "We treasure the vitality, energy and diversity of our neighborhood—and have been able to react with understanding and humor when our student neighbors and fraternities partied long into the night. However, that youthful intrusion has been nothing like the myriad of amplified music events at the Edgewater over the past two summers that blast continuously over some 4 or 5 hours. Never mind that they end at 9:00—by that time, the lovely summer evenings that we all want to enjoy have been repeatedly pummeled with uber amplified "entertainment" interrupting the flow of conversation, the ability to listen to our own music or just to read."
- "I can't afford a/c ... I do not have sound proof windows... The volume the amplified music is turned up to, still can be heard in my home, with the windows closed, music on, or wearing earplugs! And WI does not offer 12 months of open windows, so I want to keep them open every day that the weather permits. I do not want the Edgewater to choose when I can enjoy fresh air!"
- "The entertainment events are loud, disturbing and can be heard across the street throughout my home, even when the windows and storm windows are closed and, in summer, the air conditioning is on."
- "The noise generated from an evening musical event at the Edgewater inside our living room on the fifth floor of the Kennedy Manor has been measure at a sustained level of 80 decibels with a peak of 86. ...and renders having a conversation (50-60 decibels) in our own home impossible."
- "...they are making life miserable for their neighbors in this largely residential area with their loud amplified music events."
- "I live at 2 Langdon and it's been a constant battle with noise coming from the Edgewater."

5. Are there any neighbors who support allowing the Edgewater to have unlimited Entertainment License outdoor events?

There are some. They predominately live outside the NIZ. In the interests of full disclosure, I live within a block and a half of the Edgewater. I can hear the bands but the noise is primarily blocked by the buildings between my home and the source of the sound. So as is the case with many supporters of the Edgewater's numerous music events, I can go listen when I want, and leave when I want.

6. Has the Edgewater done some good things?

Yes. They have supported good causes and non-profits. Under the PAMA the Edgewater is required to allow eight community events annually.

And as I noted there are many people who have enjoyed the public music events. They are wonderful events for a number of people...if you can choose when to come and when to leave...if you don't have to have nearly all of your weekend evenings and many of your weekday evenings living/existing with other people's choice of very loud music.

7. The argument has been used that the hotel guests or the 5 condo owners at the top of the Edgewater Tower would be the first to be impacted by the noise. Wouldn't that be the case?

Noise can be hard to predict in terms of where it travels, how it is funneled or how it bounces off buildings. In addition, the Edgewater is well insulated against noise. The other homes in the NIZ are less so. Plus, many of those living in the NIZ do not have air conditioning, or they prefer not to use it either to get the fresh air or to be environmentally conscious or to save money.

In terms of how noise travels, an example some people may be familiar with/may recall is the situation of Plan B. This is an *inside* Entertainment License venue. However neighbors...up the hill were greatly impacted by the vibrations/noise of the base level of sound while other nearby neighbors were not significantly impacted.

8. Why don't neighbors just call the police to have events shut down if they are so bad?

Some neighbors contact me about the problem. Some have called the police. Some have never called. Some used to call but have given up. The police can only do so much. There is no specific standard for how much noise is too much and there is no standard for how often is too often. The police use their judgement about whether the music is too loud. One police officer may judge it too loud and tell the Edgewater to turn it down. Another may judge it ok and not do anything. A number of neighbors have noted that they recognize that the police, in this time of increasing calls for shots fired, are pulled in many directions with significant immediate violence related issues. Many simply do not call or have stopped calling and close their window, put in earplugs, go out for the evening or do something else to try to deal with the impact of the noise.

9. Some people have noted that the majority of surrounding residents are renters and they could just move if the noise is a problem. Others have said that if you live "downtown" you have to put up with whatever noise comes your way. Others have said "since the neighbors lost in the

controversy about the development” of the Edgewater Tower they should not now have a voice. Aren’t those fair observations?

I find it disturbing that some people believe that since people are renters, they have to put up with a living environment that is less protected from negative impacts than do home owners.

In regard to downtown living, there is more noise than in the edges of the city. And as some residents have noted, they value the energy of the neighborhood. They experience and live with more noise than those living in the suburbs/city edges. Many have lived in the NIZ for years if not decades. That does not mean they can endure the kind of noise repeatedly generated by the Edgewater over the course of the summer.

While I realize there is some bitterness over the protracted Edgewater development controversy, of course that is not a reason to punish people...many of whom were not involved in that controversy. This is a significant quality of life issue and neighbors should not have their voice silenced because some fought against the development proposal.

10. The term decibel (db) is frequently used in discussing noise. What is that?

Decibel measurement is on a log rhythmic scale, not a straight line scale. Sixty db is about the level at which conversation occurs. Seventy db is twice as loud as 60 db but has ten times the power of 60 db. A noise at eighty db is two times as loud as 70 db but 4 times as loud as a sound at 60 db AND has 100 times the power. Eighty db is the sound of a freight train at 25 meters (around 80 feet). As the intensity of the sound (db) increases the potential risk of health effect also increases but is dependent upon length of exposure. (Information from Jeffery Lafferty, Environmental Epidemiologist with PHMDC.)

11. Has the Edgewater done anything to be a good neighbor?

One thing which has been very much appreciated by neighbors in the NIZ is their promise to end events by 9:00 pm. The Edgewater has, except for a handful of events, adhered to this self-imposed cut off time. Of course, as noted by neighbors (some of whom are quoted above), this, while appreciated, is insufficient for living in a healthy environment.

The Edgewater on their own initiative has also purchased a “band shell”. This has only been used 2-3 times since it was only recently purchased/delivered. As a result its impact on noise levels is unknown...particularly as it relates to base levels.

12. The Edgewater paid a lot of money to build their hotel and the plaza. Some people think that should give them some rights in relation to an Entertainment License beyond consideration given to other venues. Do they have a point?

Investing a lot of money in a building does not exempt the owner from compliance with the City’s laws. It does not trump the quality of life of residents...many of whom have lived in what is now the NIZ for many years or decades. Having spent a lot for the building and plaza does not mean their business should be allowed to so negatively impact surrounding residents.

13. How many Entertainment Licenses has the city issued and are such licenses a problem elsewhere?

According to Jim Verbick (Clerk's Office), 112 Entertainment Licenses have been issued. It appears from reviewing the list that about 10 of these have outdoor Entertainment License events with none having more than about 12 events/year. In addition only 3 of these appear to be in an area with a significant number of residences and none with as many as the Edgewater. I expect to obtain more definitive information in this regard from ACA Jennifer Zilavy.

14. What are the criteria on which a decision is to be made on whether to grant an 18+ Entertainment License?

The two which are significant in this situation and can be found under 38.06(12)(d)2 are:

- "The appropriateness of the location and premises where the [licensed establishment] is to be located and whether the location will create undesirable neighborhood problems."
- "Any other factors which reasonably relate to the public health, safety and welfare."

15. Are people who live in the NIZ asking that the Entertainment License not be granted?

In general, no they are not. They want the Edgewater to be successful and do believe there is a place for events requiring an Entertainment License. However, their health and welfare is being significantly negatively impacted because of the number of events and the volume of noise.

For conditions recommended by the ALRC and my recommended amendment please see my cover letter.

Ledell Zellers
Alder District 2

September 27, 2017