



## Legislation Text

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### 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 1<sup>st</sup> and September 30<sup>th</sup>.

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.

