



## Legislation Text

File #: 56289, Version: 1

### Fiscal Note

The proposed resolution authorizes the execution of a maintenance agreement with Lanes, LLC for the ongoing maintenance of a patio and associated improvements to support an outdoor cafe and the City's acceptance of ownership of the patio improvements. An administrative fee of \$500 will be paid to the City and deposited in General Fund Revenues. No appropriation is required.

### Title

Authorizing the City's execution of a Maintenance Agreement with Lanes, LLC for the use of a portion of the Drake Street right-of-way for the ongoing maintenance of a patio and associated patio improvements to support an outdoor cafe adjacent to the property located at 444 S. Park Street, as well as the City's acceptance of ownership of said patio improvements. (13th AD)

### Body

WHEREAS, Lanes, LLC ("Owner") is the owner of the property located at 444 S. Park Street, in the City of Madison, Dane County, Wisconsin ("Property"); and

WHEREAS, the Owner desires to construct improvements to support an outdoor cafe ("Improvements") in the Drake Street right-of-way, adjacent to the Property, as illustrated on attached Exhibit A ("Maintenance Area"); and

WHEREAS, various City of Madison ("City") agencies have reviewed the Owner's request and support the installation of Improvements to support an outdoor cafe if ownership of the Improvements is transferred to the City after installation, in exchange for maintenance of the Improvements by the Owner, as approved by the City's Common Council, and memorialized in a Maintenance Agreement ("Agreement").

NOW, THEREFORE, City and the Owner enter into this Agreement, subject to the following obligations, which are assumed by the Owner, its heirs, successors and assigns:

1. To comply with all applicable Madison General Ordinances ("MGO").
2. **Removal.** Within the first ten (10) years of this Agreement, if the City needs the right-of-way for a public purpose, or if the Improvements are no longer being used for cafe, the Owner agrees to remove said Improvements upon ten (10) days written notice by City. The Owner, its successors and assigns shall be entitled to no damages for removal of the Improvements, and if the Owner does not remove the same upon due notice, it shall be removed at the Owner's expense and the cost therefore levied against the Property as a special charge for current service rendered.
3. **Construction.** The initial construction of the Improvements within the Maintenance Area shall be constructed in accordance with the approved design, as shown on attached Exhibit A.
4. **Required Permits.**
  - a. Sidewalk Cafe License. The application for this license can be completed on the City of Madison Licenses & Permits portal.
  - b. Permit to Excavate in Public Right-of-Way. Prior to construction, application must be made to obtain this permit. Applications can be obtained online or from City Engineering Division

located at 1600 Emil Street, Madison, WI 53713.

- 5. No Grade Change.** Following the initial construction of the Improvements within the Maintenance Area, no change in the grade within the Maintenance Area shall be made without the prior written approval of the City of Madison Engineering Division ("City Engineer").
- 6. Maintenance.** Upon completion of the initial construction of the Improvements within the Maintenance Area, the Owner agrees to complete the following maintenance, as needed, or as may be reasonably required by the City, within the Maintenance Area:
- a. Snow and ice removal;
  - b. Cleaning of dirt and debris;
  - c. Graffiti removal or the correction of other vandalism;
  - d. Repair and maintenance of pavement and any pavement markings;

Nothing in this Agreement shall prohibit the Owner from contracting with third parties to comply with its responsibilities under this Agreement.

- 7. Revisions by Owner.** The Owner may request the City allow changes to the Improvements within the Maintenance Area following completion of the initial construction and shall be permitted to make such changes if the changes are approved in writing by the City Engineer. The Owner shall obtain all necessary permits and approvals prior to constructing or reconstructing the Improvements within the Maintenance Area.
- 8. Revisions by City:** The City has the right to construct or reconstruct the Improvements in the Maintenance Area and to construct in such a way that differs from the initial construction. In such event, the City has the right to levy special assessments on the Property for the Improvements inside the Maintenance Area to the extent not covered (and paid for by the Owner) under this Agreement and all Improvements maintained by the City in accordance with City Policy and State Statutes.
- 9. Public Safety.** The City shall have the right to require the Owner to promptly construct or reconstruct any of the Improvements in the Maintenance Area that are or become a safety problem, as reasonably determined by the City Engineer, when ordered in writing by the City Engineer to do so. Following receipt of the City Engineer's written order, the Owner shall effect the construction or reconstruction at the Owner's expense, even if the change results in modification of the Improvements previously approved by the City.
- 10. Adjacent City Projects.** The City has the right to construct and reconstruct streets, sidewalks, utilities, or other infrastructure, as well as maintain city-owned terrace trees adjacent to the Maintenance Area, which may impact the Improvements that the Owner is responsible for maintaining under this Agreement.
- a. In the event of such construction or reconstruction impacting the Improvements, the Owner shall be obligated to restore, replace or reconstruct the damaged or altered Improvements at its sole cost and expense to the extent the costs and expenses to accomplish the same shall not be collectible by the City from adjacent property owners through special assessments, agreements between the City and the adjacent owners or otherwise.
  - b. The Maintenance Area shall be cleared by the Owner in advance of such City construction or reconstruction projects that may occur in the area adjacent to the Improvements.
- 11. Damage.** The City shall not be responsible for the repair of any damage to the Improvements, regardless of who or what caused said damage.

**12. Improvement Distances.** No solid structure or improvements higher than 24 inches within a minimum of 24 inches from the back of curb.

**13. Plantings.** The Owner shall maintain any plants in the Maintenance Area in accordance with MGO 10.25 and the Terrace Treatment Policy approved by the Madison Board of Public Works on April 23, 2014, or a subsequent version if revised by the Board of Public Works. The Improvements in the Maintenance Area shall not obstruct the following:

- a. Street
- b. Mainline sidewalk
- c. Madison Metro bus stop
- d. Required intersection sight lines
- e. Required driveway sight lines
- f. Access to utility covers

**14. Indemnification.** The Owner shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City, or its agents or employees, for damages because of bodily injury, including death at any time resulting therefrom, or sustained by any person or persons or on account of damage to property, including loss of use thereof, arising from, in connection with, caused by or resulting from: acts or omissions of the Owner or their contractors and subcontractors in the performance of the Owner's obligations under this Agreement, whether caused by or contributed to by the negligent acts of the City, its agents or employees; provided, however, that to the extent that any such negligent or willful acts of the City are attributable to third-party contractors of the City, nothing shall prevent Owner from asserting claims against such third-party contractors.

**15. Insurance.** The Owner agrees to carry or cause to be carried the following insurance coverages with respect to the Maintenance Area and Improvements located therein:

- a. Commercial general liability insurance covering as named insured, the owner, and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence. This policy shall also be endorsed for contractual liability in the same amount, and apply on a primary and noncontributory basis. Any subcontractor of Owner engaged in providing labor and materials in relation to this Agreement shall be required to maintain a similar commercial general liability policy.
- b. Statutory workers' compensation insurance as required by the State of Wisconsin. Any subcontractor of Owner engaged in providing labor and materials in relation to this Agreement shall also be required to maintain workers' compensation insurance for all of the latter's employees. The Owner, and any subcontractor(s), shall also carry minimum Employers Liability limits of \$100,000 Each Accident, \$100,000 Disease - Each Employee, and \$500,000 Disease - Policy Limit.

As evidence of the above required coverages, the Owner shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, owner shall also provide copies of additional insured endorsements or policy. Such certificate shall list the following as Certificate Holder:

City of Madison  
ATTN: Risk Management, Rm 406

210 Martin Luther King Jr. Blvd.  
Madison, WI 53703

The amounts listed above reflect the standard coverages and limits required today by the City. The required coverages are expected to change over time and the Owner shall increase the above required insurance limits and coverages when required by the City provided that the proposed increases or coverage changes are consistent with City policy for similar applications. All policies shall provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Agreement.

- 16. Termination:** The City and the Owner agree that this Agreement may be terminated at any time upon written notice from the Owner to the City, following removal of the Improvements.
- 17. Severability.** If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
- 18. Binding Effect.** The covenants and conditions contained in this Agreement shall apply to and bind the City and the Owner and their heirs, legal representatives, successors and assigns. Nothing herein shall prevent the Owner from transferring their interests in the Property and, upon such transfer, the obligations of such Owner under this Agreement shall become the obligation of the transferee.
- 19. Entire Agreement.** This Agreement constitutes the entire agreement between the City and the Owner with respect to the subject matter hereof and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only in writing and must be signed by the Owner and the City.
- 20. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.
- 21. Waiver.** The failure of either the City or the Owner to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of said party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- 22. Run with the Land.** All the terms, conditions, covenants and other provisions contained in this Agreement, including the benefits and burdens, shall run with the Property and shall be binding upon and inure to the benefit of and be enforceable by the Owner and the City and their respective successors and assigns. This Agreement shall be recorded in the office of the Dane County Register of Deeds. In the event of the sale of the Property, the City shall be given notice of the change of ownership in accordance with the provisions of Paragraph 25.
- 23. Default/Remedies.** If the Owner fails to complete any maintenance of the Improvements as required by this Agreement within a reasonable time period, the City has the right to complete the maintenance and charge the costs of such maintenance either as a direct charge to the Owner or a special assessment levied upon the Property.
- 24. Nondiscrimination.** In the performance of the services under this Agreement the Owner agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or

student status. The Owner further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

**25. Notices.** All notices to be given under the terms of this Agreement shall be signed by the person sending the same, and shall be sent to the address of the parties specified below:

For the City:	Economic Development Division Manager, Office of Real Estate Services P. O. Box 2983 Madison, WI 53701-2983
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For the Owner:	Lanes, LLC Attn: Joe McCormick 411 W. Main Street Madison, WI 53703
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Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute any and all additional documents that may be required to complete this transaction.