



## Legislation Text

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**File #:** 061417, **Version:** 1

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061417  
SUBSTITUTE 1  
981694  
920655  
881166  
THE CHAIR

Substitute resolution amending a special privilege for change of ownership to Downer Delaware, LLC for moveable planters, benches and a covered walk in the public right-of-way and for addition of several additional moveable planters, a backup driveway and a step for the premises at 2551-97 North Downer Avenue, in the 3<sup>rd</sup> Aldermanic District.

Substitute resolution amending a special privilege for change of ownership to Downer Delaware LLC for moveable planters, benches and a covered walk in the public right-of-way and for addition of several additional moveable planters, a backup driveway and a step for the premises at 2551-97 North Downer Avenue.

Whereas, Downer Investments Partnership requested permission to install and maintain a covered walk within the public right-of-way; and

Whereas, Permission for said covered walk was granted in 1999 under Common Council File Number 981694; and

Whereas, Lixx Frozen Custard, Inc. requested permission to keep and maintain four benches in the public right-of-way; and

Whereas, Permission for said benches was granted in 1992 under Common Council Resolution File Number 920655; and

Whereas, Chancery Restaurant of Downer-DeRosa requested permission to keep and maintain three moveable planters in the public right-of-way; and

Whereas, Permission for said planters was granted in 1988 under Common Council Resolution File Number 881166; and

Whereas, A site visit revealed the presence of additional moveable planters, a backup driveway and a step in the public right-of-way; and

Whereas, Downer Delaware, LLC now owns the property; and

Whereas, Said additional moveable planters, backup driveway and step may only legally encroach into the public right-of-way by granting of a special privilege resolution adopted by the Common Council; and

Whereas, For the liability for previously permitted items to be formally transferred to the current property owner, the Common Council needs to adopt an amending resolution; and

Whereas, Combining separate special privileges into one will allow for easier management of special privileges; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that Common Council Resolution File Numbers 981694, 920655 and 881166 are hereby rescinded; and, be it

Further Resolved, That Downer Delaware, LLC, c/o Van Buren Management, Inc., 788 North Jefferson Street, Suite 800,

Milwaukee, WI 53202, is hereby granted the following special privileges:

1. To keep and maintain a backup driveway in the north, 19-foot 3-inch wide sidewalk area of East Webster Place centered approximately 115 feet west of the westline of North Downer Avenue. Said driveway serves an 8-foot 8-inch wide dock door. Vehicles shall be parked in such a manner so as not to project more than 8 feet beyond the north curb face of East Webster Place. Grantee is to provide sufficient traffic control to allow for continued two-way traffic while the backup driveway is in use.
2. To keep and maintain six rectangular, wooden moveable planters in the west sidewalk area of North Downer Avenue. Said 2-foot wide planters are centered approximately 2 feet east of the westline of North Downer Avenue and 24, 39, 51, 73, 91 and 96 feet north of the northline of East Webster Place.
3. To keep and maintain an 8-foot 3-inch wide covered walk projecting 12 feet into the south, 14-foot wide sidewalk area of East Bellevue Place. Said covered walk is centered approximately 70 feet west of the westline of North Downer Avenue.

The covered walk shall be supported by the building and two vertical supports near each corner closest to the curb along each side of the covered walk. Each vertical support nearest the curb is centered approximately 2 feet from the present curbline. There is an opening 8 feet 3 inches wide between the vertical supports, which parallels the curb. The minimum vertical clearance between the skirt of the covered walk and the sidewalk below is 8 feet.

Said covered walk shall generally be constructed in accordance with the policies set forth in Common Council Resolution File Number 62-1211-a, adopted July 24, 1962. The covered walk frame shall be designed and supported to withstand snow and other loads of not less than 25 pounds per square foot applied in any direction. No guy wires, brackets or diagonal braces shall be permitted lower than 8 feet above the sidewalk level. The covering shall be of approved material.

All fixtures and materials for illumination of the covered walk shall be indicated on the construction plans and approved prior to installation. No sign or advertising device shall be hung from, attached to, printed or painted on any part of the covered walk. The name, street number, or character of the business may be indicated only on the vertical portion of the covering and shall not exceed 8 inches in height.

The grantee is required to keep a "Loading Zone" or "No Parking" status adjacent to the covered walk as long as the covered walk occupies the public right-of-way.

4. To keep and maintain four 5-foot long benches in the public right-of-way abutting the shop at 2597 North Downer Avenue. Three of the benches are located approximately 10, 20 and 32 feet west of the westline of North Downer Avenue in the south sidewalk area of East Bellevue Place. One bench is in the west sidewalk area of North Downer Avenue located approximately 13 feet south of the southline of East Bellevue Place. Said benches will be placed against the building and will project 1 foot 6 inches into the public right-of-way.
5. To keep and maintain three moveable planters in the west, 15-foot wide, fully paved sidewalk area of North Downer Avenue. The 2-foot diameter clay planters are centered approximately 2 feet east of the westline of North Downer Avenue and 163, 172 and 185 feet north of the northline of East Webster Place.
6. To keep and maintain a 4-foot long concrete step in 19-foot 3-inch wide north sidewalk area of East Webster Place. Said step, centered approximately 101 feet west of the westline of North Downer Avenue, projects 1 foot 2 inches into the public way.

Said above-mentioned items shall be used, kept and maintained to the satisfaction of the Commissioners of Public Works and Department of Neighborhood Services.

Said items shall be maintained or removed from the public right-of-way, at such future time as they are no longer needed, to the satisfaction of the Commissioners of Public Works and Department of Neighborhood Services.

; and, be it

Further Resolved, That this special privilege is granted only on condition that by acceptance of this special privilege the grantee, Downer Delaware, LLC, shall:

1. Become primarily liable for damages to persons or property by reason of the granting of this special privilege.
2. File with the City Clerk a bond of a surety company duly incorporated in the State of Wisconsin, or duly licensed to do business in this State, in the sum of \$1,000 such bond to be approved by the City Attorney. This applicant shall also file with the City Clerk a certificate of insurance indicating applicant holds a public liability policy in the sum of at least \$50,000 covering bodily injury to any one person and \$100,000 covering bodily injury to more than one person in any one accident and \$20,000 covering property damage to any own owner on the area or areas included within the special privilege and naming the City of Milwaukee as an insured. Both bond and insurance policy shall provide that they shall not be cancelled until after at least thirty days' notice in writing to the City Clerk.
3. Pay to the City Treasurer an annual fee, which has an initial amount of \$1,146.45. The subsequent annual fee is subject to change pursuant to the annual fee schedule in effect at the time of annual billing.
4. Whenever this special privilege is discontinued for any reason whatsoever, including public necessity whenever so ordered by resolution adopted by the Common Council not only remove all construction work executed pursuant to this special privilege, but shall also restore to its former condition and to the approval of the Commissioner of Public Works and curb, pavement or other public improvement which was removed, changed or disturbed by reason of the granting of this special privilege. Such grantee shall be entitled to no damages due to the alteration and/or removal for such purposes.
5. Waive the right to contest in any manner the validity of Section 66.0425 of the Wisconsin Statutes (1999), or the amount of the annual fixed fee, payable on or before July 1<sup>st</sup> of each year.
6. Put this special privilege into use within one year after approval by the Common Council of the City of Milwaukee; failing to do so in the time specified, the Commissioner of Neighborhood Services shall have the authority to seek, by resolution, revocation of said special privilege.
7. Owner must ensure sufficient traffic control while using the back up driveway to allow continued, safe traffic flow on East Webster Place. Traffic control measures may include, but are not limited to flag persons and traffic cones.

Department of Public Works  
Infrastructure Services Division  
MDL:lja  
March 30, 2007  
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