



## Legislation Text

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**File #:** 40840, **Version:** 1

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### **Fiscal Note**

\$500 administrative will be deposited into charge code 63029.

### **Title**

Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of NADD 1, LLC to permit a private monument sign within a public sanitary sewer easement at 7202 Mineral Point Road.

### **Body**

WHEREAS, the City is the holder of a public sanitary sewer easement (the "City Easement") over the southerly 15 feet of property located at 7202 Mineral Point Road and legally described as Lot 1, Certified Survey Map No. 4263; and

WHEREAS, the owner of said property located at 7202 Mineral Point Road is NADD 1, LLC, (the "Owner"); and

WHEREAS, during City staff review of a conditional use and demolition permit for the Owner's property, it was discovered that an existing private monument sign (the "Sign") is located within the City Easement; and

WHEREAS, the Owner has requested a Consent to Occupy Easement to allow the Sign to remain within that area of the City Easement legally described on attached Exhibit A and depicted on the attached Exhibit B (the "Occupancy Area"); and

WHEREAS, City Engineering Division staff have reviewed the Owner's plans and are willing to permit the existence and maintenance of the Sign by the Owner within the Occupancy Area, under the terms and conditions specified herein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to execute a Consent to Occupy Easement for the benefit of the Owner, subject to the following terms and conditions:

1. Grant of Permission. The City will grant the Owner, its successors and assigns, permission to occupy the Occupancy Area for the limited purpose of allowing the Owner's existence and maintenance of the Sign as legally described on attached Exhibit A and depicted on the attached Exhibit B, all in accordance with the site plan (LNDS-2015-00141) which has been approved by the City Engineering Division.
2. Construction and Maintenance.
  - a. The Owner shall be responsible for all costs of the maintenance, repair and replacement of the Sign. All such work shall be performed in compliance with applicable codes and ordinances.
  - b. With the exception of routine maintenance and repairs and normal utilization of the monument sign, no changes to, additions to or alterations of the Sign shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.
3. Use. The Owner shall use and occupy the Occupancy Area in a manner consistent with the rights conveyed in the Consent, and shall ensure that such use and occupancy shall not interfere with or disturb the City's rights under the City Easement.

4. Type of Grant. The granting of the Consent shall not transfer, release, or convey any of the rights the City may have in the Occupancy Area by virtue of the City Easement. The granting of the Consent shall be deemed to be permissive and shall preclude the Owner from any claim of adverse possession against the City by virtue of any encroachment on or into the City Easement and by virtue of the granting of the Consent.
5. Compensation for Damages. The Sign may be disturbed or removed by the City without replacement or compensation to the Owner.
6. Indemnification. The Owner shall be liable to and agree 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 officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Owner and/or its agents, employees, assigns, guests, invitees, or subcontractors, in the performance of the Consent, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees.
7. Termination. The Consent shall automatically terminate upon the earliest of the following to occur: (a) the release of the City Easement by the City; (b) the removal of the Sign by the Owner; or (c) the agreement to terminate by the parties or their successors or assigns. In the event of termination, the Owner shall remove the Sign at the Owner's expense and execute such document(s) as may be requested by the City for the purpose of further evidencing the termination of the rights granted in the Consent.