

Date: 5-22-12

CITY OF MADISON

Registration Statement - Water Utility Board

COMMITTEE

Please Print

Agenda No. 6

PLEASE PRINT CLEARLY

Name DOLORES KESTER
Address 1818 Winchester St
Madison WI 53704

Please check the appropriate boxes:

- Support
- Oppose
- Neither Support Nor Oppose

please see my letter and attach ment

- Wish to speak
- Do not wish to speak
- Available to answer questions

At this meeting are you representing an organization or a person other than yourself: Yes No
(If you answered "no," STOP; you need not complete the rest of this form. If you answered "yes," provide the name of who you represent and go on to the next question.)

Name, address and telephone number of each person or organization you are representing:

Are you being paid for your representation? Yes No

Are you appearing as part of your other paid duties for this person or organization? Yes No
(If you answered "no," STOP; you need not complete the rest of this form. If you answered "yes," go on to the next question.)

Speaking Limits: Public Hearing (Common Council)5 minutes
Information Hearing.....3 minutes
Other Items.....3 minutes

(SEE BACK)

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Date: 5/22/12

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Agenda No. <u>6</u>

PLEASE PRINT CLEARLY

Name Marie Powell

Address 1311 Lake View Ave.
MADISON WI 53704

Please check the appropriate boxes:

- Support
- Oppose
- Neither Support Nor Oppose

- and
- Wish to speak
 - Do not wish to speak
 - Available to answer questions

At this meeting are you representing an organization or a person other than yourself? Yes No
(If you answered "no," STOP; you need not complete the rest of this form. If you answered "yes," provide the name of who you represent and go on to the next question.)

Name, address and telephone number of each person or organization you are representing:

MESO

1311 Lake View Ave

MADISON WI 53704

Are you being paid for your representation? Yes No

Are you appearing as part of your other paid duties for this person or organization? Yes No
(If you answered "no," STOP; you need not complete the rest of this form. If you answered "yes," go on to the next question.)

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Registration Statement - Water Utility Board

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Agenda No. 6

PLEASE PRINT CLEARLY

Name: Jim Powell
Address: 1311 Lake View Ave
Madison WI 53704

Please check the appropriate boxes:

- Support
Oppose
Neither Support Nor Oppose

- Wish to speak
Do not wish to speak
Available to answer questions

At this meeting are you representing an organization or a person other than yourself: Yes No
(If you answered "no," STOP; you need not complete the rest of this form. If you answered "yes," provide the name of who you represent and go on to the next question.)

Name, address and telephone number of each person or organization you are representing:

MBSO
see above

Are you being paid for your representation? Yes No

Are you appearing as part of your other paid duties for this person or organization? Yes No
(If you answered "no," STOP; you need not complete the rest of this form. If you answered "yes," go on to the next question.)

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Information Hearing.....3 minutes
Other Items.....3 minutes

(SEE BACK)

Public Comments received via "Ask Us, Tell Us"

May 22, 2012

Name: Phyllis Hasbrouck
Address: 3113 View Rd., Madison, WI 53711
Date: 05/21/2012
Subject: Contact Water Utility Board

Message:

I was shocked to learn about item #6 26301 on your agenda for the May 22 meeting. You should remove this and add it to the agenda of a future meeting, to give people a chance to learn about it before you vote on it. Even though I am not on city water, I think it's terrible that people would be forced to have a microwave-emitting Smart Meter in their home. That is a technology that has not been proven safe, and no one should be forced to be a guinea pig.

The reporter can be contacted.

Name: Christopher Burant
Address: 212 Merry st.
Date: 05/21/2012
Subject: Contact Water Utility Board

Message:

Please postpone and set a separate public meeting for item #6 ie –Repealing and recreating Section 13.06, creating Section 13.065, and amending Section 1.083a of the Madison General Ordinances regarding water meter access requirements, the maintenance of water meter pits, and establishing new bond schedules for these violations.

The reporter can be contacted.

1818 Winchester Street
Madison, Wisconsin 53704-3457
Email: dakester@sbcglobal.net
May 22, 2012

Water Utility Board
City of Madison
Madison, Wisconsin 53702

Re: Legal Concerns in regard to Item #6 on agenda “water meter access” for Water Utility Board meeting 5-22-12

Dear Water Utility Board:

I have serious concerns as a citizen and as an attorney about Item 6 on the agenda for your meeting on May 22, 2012. This notice purports to give notice of a change to an existing city ordinance regarding “water meter access requirements.” I submit to you that this item as now written fails to give reasonably adequate notice to the public about this matter under the Wisconsin Open Meetings Law, Sec. 19.81 et seq, Wis. Stats., as recently interpreted by our Wisconsin Supreme Court in *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804. Whether notice is reasonable under the standard in *Buswell* requires a case-specific analysis” and “whether notice is sufficiently specific will depend upon what is reasonable under the circumstances.” *Id.*, ¶ 22. In making that determination, the factors to be considered include: “[1] the burden of providing more detailed notice, [2] whether the subject is of particular public interest, and [3] whether it involves non-routine action that the public would be unlikely to anticipate.” *Id.*, ¶ 28 (bracketed references added).

Although I have practiced law for over several decades, in reading this agenda item notice I find not even a hint that it refers to an extremely controversial subject, namely the Madison Water Utility’s current implementation of so-called “smart meters” for water use throughout the City of Madison. I also find no hint that the proposed ordinance here offered for approval by this Board includes provisions for draconian penalties up to \$1,000 per day for any specified impairment to access by the property owner. The reason I am aware of this comes not from the published meeting notice but from an acquaintance who, knowing of my current interest in water issues, sent me information separately in an email about the content of this agenda item.

I am deeply concerned that a subject so controversial, involving virtually every citizen in Madison or its environs in the proximity of any water meter, has not received the benefit of reasonable notice to the public about this agenda item and the proposed ordinance changes which it references. It would have been so easy and simple for the meeting notice to include better and clearer clues to the content and import of this agenda item.

Surely you are aware that the so-called “smart meters” which the Madison Water Utility is now seeking to install involve an unprecedented change in how water use is measured in our community—a change whose implications have not been sufficiently publicized.

Because this agenda item refers to subject matter which is far from routine, but is instead highly “novel” as this term is used by the *Buswell* court, I urge you now to table this agenda item until and unless the public can be given reasonable notice in compliance with the Wisconsin Open Meetings Law in regard to this proposed ordinance and related pending and proposed changes to the water utility system in Madison.

For your convenience I have attached the Wisconsin Open Meetings Law in its entirety, including Sec. 19.96, Stats., which provides:

No member of a governmental body is liable under this subchapter on account of his or her attendance at a meeting held in violation of this subchapter if he or she makes or votes in favor of a motion to prevent the violation from occurring....

I could be mistaken, but believe this legal provision would be complied with if this Board voted to table this agenda item as stated above until/unless the public can be given reasonable notice of its meaning and content.

Sincerely,

(s)

Dolores A. Kester

Kester Law Offices

P.O. Box 14073

Madison, WI 53708

Tel. 608-770-7061

Email: kesterlaw2007@sbcglobal.net