



## Legislation Text

---

**File #:** 39473, **Version:** 1

---

### **Fiscal Note**

The administrative fee of \$500 shall be deposited into Munis charge code 63029.

### **Title**

Authorizing the execution of an assignable Private Driveway Access Easement Agreement with Madison Area Rehabilitation Centers, Inc. for a private driveway across City of Madison Fire Station No. 8 property, located at 3945 Lien Road.

### **Body**

WHEREAS, the Madison Area Rehabilitation Centers, Inc., (the "Center") owns a property located at 3939 Lien Road (the "Center's Property"), also described as Lot 1, Certified Survey Map No. 4888 recorded on December 6, 1989 in Document No. 1925624; and

WHEREAS, where the Center operated a community and center-based employment and day service for adults with developmental disabilities; but has recently opened a new facility at 66 Buttonwood Court, in the American Family Center, in the City of Madison; and

WHEREAS, the Center has listed the Center's Property for sale and has an contingent offer on said Center's Property; and

WHEREAS, the Center's Property is served by an existing permanent easement for driveway purposes across City of Madison Fire Station No. 8 property located at 3945 Lien Road (the "Fire Station Property"), also described as Lot 2, Certified Survey Map No. 4888 recorded as Document No. 1925624; and

WHEREAS, the City of Madison also granted a Temporary Easement for Driveway Purposes to serve the Center's Property, as recorded on December 6, 1989 in Document No. 2175348, for an additional driveway area on the Fire Station Property, to provide a small turning radius to access the Center's loading dock facility; and

WHEREAS; the term of said Temporary Easement terminates upon the termination of the Center's present business operations; and

WHEREAS, the Center has requested that said Temporary Easement be amended to become an assignable Private Driveway Access Easement to provide the necessary turning radius and functional access to the Center's loading dock area for future users and/or owners of the Centers' Property; and

WHEREAS, the City Fire Department and Office of Real Estate Services have reviewed and approve of the conditional granting of an assignable Private Driveway Access Easement over a portion of the Fire Station Property; and

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to enter into an assignable Private Driveway Access Easement Agreement (the "Easement") across City of Madison Fire Station No. 8 property located at 3945 Lien Road (the "Fire Station Property"), with Madison Area Rehabilitation Centers, Inc., and their successors and assigns (the "Center"), on the following general terms and conditions:

1.) The Center shall have the sole right to use the Easement, as described in attached Exhibit A and depicted

in attached Exhibit B and C, for vehicular ingress and egress to and from the Centers' Property, together with the following rights: (a) the right to construct a paved driveway (the "Driveway"); (b) to maintain, pave, repave, mark and plow the Driveway at all times; and (c) to perform all other work incidental thereto. No above-grade improvements will be allowed in the Easement without the prior written approval of the City's Fire Chief. The Center shall not use the existing permanent driveway easement or the new Easement for open storage of or permanent parking of vehicles or equipment of any kind.

2.) The use of the Easement for ingress and egress by tractor trailer trucks will be restricted to the hours after 7:00 a.m. in the morning and before 7:00 p.m. in the evening. Tractor trailer trucks shall not be allowed to use either the existing or new easement areas at any other time, unless required by access of emergency vehicles or for safety reasons.

3.) The City grants the Center the option of expanding the Easement by addition of the property five feet in width lying South of the existing permanent easement and North of the South lot line of the Fire Station Property. The Center will give the City 30 days notice prior to expanding the Easement or beginning any construction, and that expansion and construction will be subject to City approval at that time. If the Center so chooses to add this property to the Easement, it may at the Center's sole expense, remove the shrubbery located there and pave up to the South lot line. In the event the Center removes the shrubbery and paves to the lot line, it shall be required by the City to construct a barrier along the property line that prevents cars and trucks from traveling between the Fire Station Property and the adjoining parcel. That barrier shall be constructed at the same time as the removal of the shrubbery and paving takes place, and shall be built so as to be consistent with the current architecture and landscaping of the Fire Station Property and with City approval. All notices and approvals required by the City for the Center's expansion of the Easement will be sent to, and administered by, the Office of Real Estate Services of the Economic Development Division of the City of Madison.

4.) The maintenance of the Easement, the existing permanent easement, and potentially the property five feet in width lying South of the existing permanent easement and North of the South lot line of the Fire Station Property (including any trees or shrubbery that may exist there) shall be the Center's exclusive responsibility, and all repairs and general upkeep shall be at the Center's sole expense, the only exception being any damage caused to said easement areas and property by the City, its agents, employees and invitees, which shall be cured by the City. The Center shall replace the paving material over the Easement area and existing permanent easement area as necessary and may use materials it deems advisable, but all repairs and replacements shall be conducted in an expeditious and workmanlike manner. Maintenance of the paved portion of the easement areas shall include snow removal at the Center's expense. Snow may be placed on the part of the Fire Station Property lying South of the existing permanent easement, but no snow shall be placed on the Fire Station Property located North or Northeasterly of the Easement or existing permanent easement area.

5.) The Center shall post the existing private driveway as a "one-way" driveway entering off of Lien Road and exiting onto Parkside Drive. The Center shall post a regulation "stop" sign at the exit of the existing private driveway onto Parkside Drive; and opposite that a "one-way do not enter" sign.

6.) In the space between the existing driveway for the Fire Station Property and the existing permanent easement area, adjacent to Parkside Drive, the total slope between the sidewalk and the curb shall be paved in concrete. In addition, starting behind the sidewalk and extending ten feet to the west, there shall be constructed an 18-inch high, 8-inch wide, 10-foot long, concrete retaining wall. These items shall be at the Center's expense.

7.) In the area of the curve in the Easement, the Center shall install and maintain a guardrail meeting City specifications.

8.) The City further grants to the Center and its agents the right to enter onto the Fire Station Property as may be necessary to construct, maintain or replace the improvements required under this Agreement, provided the same does not interfere with the activities of the City upon the Fire Station Property.

9.) The Center agrees that the present location of the original easement is moveable, providing that the easement as relocated still provides adequate access to the loading dock located on the Center's property.

10.) The City reserves the right of reasonable use and occupation of the Easement area, provided that such use and occupancy shall not interfere with or disturb the installation, operation, maintenance, repair, replacement and/or modification of the Center's driveway. Specifically, the City reserves the rights to the following with respect to said Easement: The right to install, operate, maintain, repair, replace and remove "Public or Private Improvements," such as public utilities, private utilities (e.g., private fiber optic), including the right to issue any and all necessary excavation permits, licenses and leases therefore.

11.) In the event the Easement is required for any public use or purpose, the City at its sole discretion, shall have the right to terminate the Easement, effective at any time, by giving the Center a minimum of one hundred eighty (180) days written notice of said termination.

12.) The Center shall carry commercial general liability insurance covering as insured the Lessee and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City's Risk Manager. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Easement. As evidence of this coverage, the Center shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, Center shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while this Easement is in effect, Center shall provide a renewal certificate to the City for approval.

13.) The Center shall be liable to and 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 officers, officials, 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 Center or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Easement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.

14.) In the performance of the services under this Easement, the Center agrees not to discriminate 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 Center further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

#### EXHIBIT A

Existing Driveway Access Easement area:

The Northerly 15.00 feet of the Southerly 20.00 feet of Lot 2, Certified Survey Map No. 4888, described as follows:

Commencing at the SW corner of said Lot 2; thence N 00°38'46" W, along the West line of said Lot 2, 5.00 feet to the North line of the existing public sanitary sewer easement and the point of beginning of this description; thence continue N 00°38'46" E, along said West line, 15.00 feet; thence S 89°27'23" E, 156.74 feet to the East line of said Lot 2; thence S 00°32'37" W, along the East line of said Lot 2, 15.00 feet to the North line of the existing public sanitary sewer easement; thence N 89°27'23" W, along said North line, 156.42 feet to the point of beginning of this description.

New Private Driveway Access Easement area:

Part of Lot 2, Certified Survey Map Number 4888, recorded in Volume 21 of Certified Survey Maps on Page 327 and 328 as Document Number 1925624, being more particularly described as follows:

Commencing at the Southeast corner of said Lot 2; thence N 00°32'37" E along the West line of Parkside Drive 20.00 feet; thence N 89°27'23" W, 101.33 feet to the point of beginning; thence along the arc of a curve to the right, having a radius of 50.00 feet and a long chord subtended bearing N 67° 15'14" W, 37.79 feet to a point of tangency; thence N 45°03'04" W, 9.19 feet to a point of curvature; thence along the arc of a curve to the right, having a radius of 50.00 feet and a long chord subtended bearing N 22°50'55" W, 37.79 feet to the West line of said Lot 2; thence S 00°38'46" E along the West line of said Lot 2, 55.41 feet; thence S 89°27'23" E, 55.41 feet to the point of beginning.

The locations of the Existing Driveway Access Easement Area and New Private Driveway Access Easement area are depicted on attached Exhibit B and C.