



Legislation Text

File #: 53663, **Version:** 1

Fiscal Note

No additional City appropriation required.

Title

Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easements for the benefit of Dane County to allow private storm water management facilities and a concrete patio within two existing public easements for sanitary sewer and storm sewer purposes on the property located at 1702 Pankratz Street. (12 A.D.)

Body

WHEREAS, Dane County, a Wisconsin quasi-municipal corporation (“Owner”) is owner of the property located at 1702 Pankratz Street (“Property”), legally described as follows;

Lot 46, Second Addition to Truax Air Park West, recorded as Document No. 3101354 in Volume 57-120A of Plats on pages 473-476, located in the NW ¼ of the NE ¼ of Section 31, T8N, R10E, City of Madison, Dane County, Wisconsin.

WHEREAS, the Owner granted to the City of Madison a Perpetual Easement for Public Storm Sewer and Sanitary Sewer Purposes, recorded as Document Number 3268680 in the Office of the Dane County Register of Deeds, and a Platted Public Storm Sewer and Sanitary Sewer Easement recorded on April 12, 1999 as Document Number 3101354 in the Office of the Dane County Register of Deeds (“City’s Easements”) for the placement of public storm sewer and sanitary sewer facilities across the Property; and

WHEREAS, Corben Land Development, LLC, a Wisconsin limited liability company (“Lessee”) is lessee of the Property under a long term lease by and between the Lessee and the Owner; and

WHEREAS, the Lessee and their general contractor have submitted a site plan for approval by the City for the construction of an office building on the Property; and

WHEREAS, the construction of the office building requires a private storm sewer, a private infiltration basin and a concrete patio (“Permitted Facilities”) that will be located in and across a portion of the City’s Easements; and

WHEREAS, As a condition of the Lessee’s site plan approval, a Consent to Occupy Easements is required by the City’s Engineering Division to memorialize the placement of the Permitted Facilities in and across in the City’s Easements, as legally described on attached Exhibit A and depicted on attached Exhibit B (the “Occupancy Area”), subject to the terms and conditions specified by the City.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison hereby authorizes the Mayor and the City Clerk to execute a Consent to Occupy Easements (“Consent”) to and for the benefit of the Owner in and across the Property, subject to the following terms and conditions:

1. Grant of Permission. The Owner, its successors and assigns, is permitted to occupy the Occupancy Area for the limited purpose of constructing, installing and maintaining the Permitted Facilities, as depicted on attached Exhibit B, all in accordance with the site plan (LNDSPPR-2018-00042) which has been conditionally approved by the City Engineering Division.

2. Construction and Maintenance.

- a. The Owner shall be responsible for all costs of the maintenance of the Permitted Facilities in compliance with applicable codes and ordinances.
- b. With the exception of routine maintenance and repairs and normal utilization of the Permitted Facilities, no changes to, additions to or alterations of the Permitted Facilities 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 herein conveyed, and shall ensure that such use and occupancy shall not interfere with or disturb the City's rights under the City's Easements.

4. Type of Grant. The granting of this Consent does not transfer, release, or convey any of the rights the City may have in the Occupancy Area by virtue of the City's Easements. The granting of this Consent shall be deemed to be permissive and shall preclude Owner from any claim of adverse possession against the City by virtue of any encroachment on or into the City's Easements.

5. Compensation for Damages. The City and the Owner understand and agree that the Permitted Facilities may be removed by the City without replacement or compensation to the Owner. The Owner shall not hold the City liable for any future expense to move the Permitted Facilities, if needed, for maintenance of the City's facilities within the City's Easements.

6. 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 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 this Consent, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees. This paragraph shall survive termination and assignment or transfer of this Consent.

7. Termination. This Consent shall automatically terminate upon the earliest of the following to occur: (a) the release of one or both of the City's Easements by the City; (b) the removal or abandonment of the Permitted Facilities by the Owner; or (c) the agreement to terminate by the parties hereto, or their successors or assigns. In the event of termination, the Owner shall remove the Permitted Facilities 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 hereby.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute any documents that are required to actualize the granting of the Consent to the County, on a form and in a manner that has been approved by the City Attorney.