



## Legislation Text

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**File #:** 61271, **Version:** 1

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### **Fiscal Note**

No City appropriation required.

### **Title**

Authorizing the City's execution of an Access Easement Agreement between the City and Madison Gas and Electric Company for access to an electric vault in the Capitol Square North Parking Garage located at 218 E. Mifflin Street. (2nd A.D.)

### **Body**

WHEREAS, the City is the owner in fee simple of property located at 218 East Mifflin Street, Madison Wisconsin, more particularly described on attached Exhibit A and depicted on attached Exhibit B (the "City's Property"); and

WHEREAS, the City's Property is improved with a public parking facility commonly known as the Capitol Square North Garage (the "Parking Structure"); and

WHEREAS, Madison Gas and Electric Company ("MG&E") has public utility facilities within the City-owned underground vault located partly on the City's Property and partly within the East Mifflin Street right-of-way (the "Vault"); and

WHEREAS, the general location of the Vault is denoted on Exhibit B, with the door location indicated on attached Exhibit C; and

WHEREAS, MG&E obtains access to the Vault via access panels located within the public sidewalk; however, due to site constraints, MG&E desires to have access to the Vault for its personnel via a door to be located within the subterranean area of the Parking Structure; and

WHEREAS, pursuant to MG&E services rule and filed rates as approved by the Wisconsin Public Service Commission, MG&E is required to have such access, at no cost to MG&E, which shall be upon the terms and conditions hereinafter set forth; and

WHEREAS, the City's Parking Utility and the City Attorney's Office have reviewed MG&E's request and approved the granting of said easement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to execute an Access Easement Agreement with Madison Gas and Electric Company for access to an electric vault in the Capitol Square North Parking Garage located at 218 E. Mifflin Street, on substantially the following terms and conditions:

1. Grant of Easement. The City grants and conveys to MG&E, and MG&E hereby accepts from the City, an access easement ("Access Easement") upon, over, and across the City's Property for ingress to and egress from the Vault.
2. Purpose.
  - a. The purpose of the Access Easement is to provide ingress and egress within the Parking Structure to enable MG&E, its employees, agents and invitees, access to the Vault for maintenance and repair of MG&E's facilities located within the Vault.

- b. Access to the Vault shall be obtained via an access door to be installed by MG&E in accordance with the terms of Paragraph 4 herein.
- c. Except for emergencies, MG&E shall be allowed vehicular access to the Parking Structure as a public user and shall be responsible for paying the hourly parking rate.
- d. In the event of an emergency, MG&E shall have unrestricted access to the Parking Structure to enable MG&E, its employees, agents and invitees, access to the Vault and shall not be responsible for paying the hourly parking rate during such time that the emergency exists. During the emergency, MG&E and/or the City may restrict some or all access the Parking Structure to ensure public safety.

### 3. Limitations of Access Easement.

- a. The use of the Access Easement by MG&E, its employees, agents and invitees, shall not unreasonably interfere with the City's operation of the Parking Structure, including, but not limited to: (i) vehicular and pedestrian ingress and egress; (ii) pedestrian and vehicular travel within the Parking Structure; and (iii) the parking of vehicles; all by the City, its employees, agents and invitees, including the general public.
- b. The City shall not erect or permit to be erected any sign, fence, wall, pole, post, structure, or other facility so as to prevent access to the Vault.
- c. The Access Easement shall not be used for open storage or parking of vehicles or equipment of any kind. Except for emergencies, MG&E, its employees, agents and invitees shall have the same rights as the general public to the use of the Parking Structure for parking purposes.

### 4. Special Conditions regarding Access Door.

- a. MG&E shall be permitted to install a doorway ("Access Door") at the general location shown in attached Exhibit C.
- b. MG&E will be responsible for all costs involving the installation, maintenance, repair, and replacement of the Access Door.
- c. The Access Door will provide access to the Vault for MG&E personnel (but not vehicles) and will open outward from the Vault. The Access Door shall have locks or other access control to prevent unauthorized access.
- d. Initial construction of the Access Door shall not commence without prior written approval of applicable plans and specifications by the City.
- e. With the exception of routine maintenance and repairs, no structural changes to or material alterations of the Access Door shall be permitted without the prior written approval of applicable plans and specifications by the City.
- f. The work of construction, repair and maintenance of the Access Door shall be done and completed in a good and professional manner at the sole expense of MG&E and shall be performed in such a manner as in no way to interfere with or endanger the use of the Parking Structure. In all cases, MG&E shall be responsible for following all applicable ordinances, codes,

statutes, and laws, and obtaining all permits required for any construction, repair or maintenance activity.

5. Notice of Construction and Material Alterations. Except for emergencies, routine maintenance and repairs, and normal utilization of the Access Door, MG&E shall give the City at least thirty (30) days written notice before commencing installation of the Access Door or performing significant alteration to the Access Door. In addition, MG&E shall obtain the City's approval of the construction schedule to ensure that it does not interfere with Parking Structure operations during major events.

6. Indemnification. MG&E 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 MG&E or its officers, officials, members, agents, employees, assigns, guests, invitees, or contractors, in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive termination of this Agreement.

7. Termination.

a. Unless otherwise terminated in accordance with Subparagraph 7.b., this Agreement shall be perpetual and exist until such time as the Vault no longer remains in the Parking Structure on the City's Property.

b. The City shall have the right to terminate this Agreement, at the sole discretion of the City of Madison, by giving MG&E a minimum of twelve (12) months written notice of termination. Notwithstanding the foregoing, the City agrees that it shall not exercise this termination right during the initial three (3) years of this Agreement.

c. In the event of termination under this paragraph, MG&E shall, at the City's option, remove the Access Door and restore the wall to the condition it was in prior to its installation. If the City elects to keep the Access Door, the City shall inform MG&E of the same and thereafter be responsible for the repair, maintenance and operation of the Access Door.

8. Notices. All notices to be given under the terms of this Agreement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For the City: City of Madison Parking Utility  
Attention: Parking Utility Manager  
P.O. Box 2986  
Madison, WI 53701-2986

For MG&E: Madison Gas and Electric Company  
Attention: Real Estate Manager 133 South Blair Street  
P.O. Box 1231  
Madison, WI 53701-1231

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

9. Accessibility. The Access Door shall conform where applicable to Chapter SPS 361.05 of the Wisconsin Administrative Code, Madison General Ordinances Section 39.05, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by MG&E.
10. Signs. Any signs on the Access Door shall be in conformity with the provisions of Chapter 31, Street Graphics Control, Madison General Ordinances, unless otherwise required by the Wisconsin Public Service Commission or other applicable state or federal laws. Signage for advertising purposes shall not be permitted.
11. Compliance. MG&E agrees, for itself and its employees, agents and invitees, to use the Access Easement in a manner fully complying with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
12. Non-Discrimination. In the performance of the services under this Agreement, MGE agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, 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. MGE further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity, or national origin.
13. Entire Agreement. All terms and conditions with respect to this Agreement are expressly contained herein, and the parties agree that neither the City nor MG&E has made any representations or promises with respect to this Agreement not expressly contained herein. No alteration, amendment, change, or addition to this Agreement shall be binding upon the parties unless in writing and signed by them. Any amendment to this Agreement shall be recorded with the Dane County Register of Deeds.
14. Binding Effect. This Agreement and rights granted herein shall be deemed to be covenants running with the land and shall insure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
15. Severability. If any term or provision of this Agreement or the application thereof to the City or MG&E or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to the City or MG&E or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
16. Public Record. This Agreement will be recorded at the office of the Dane County Register of Deeds.

NOW THEREFORE, BE IT FURTHER RESOLVED, that the Mayor and Clerk are hereby authorized to execute, deliver and record the easement, and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution in an easement form authorized by the City Attorney.