



## Legislation Text

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**File #:** 29726, **Version:** 1

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### **Fiscal Note**

\$500.00 Administrative Fee to be deposited into Account No. GN01-78231.

### **Title**

Authorizing the execution of a Non-Exclusive Permanent Limited Easement for private sidewalk and fiber optic cable purposes to Dean Health Plan Inc. and Newcomb Properties, LLC across City Stormwater Utility Parcel 533 located at 8308 Excelsior Drive.

### **Body**

WHEREAS, Dean Health Plan Inc. ("Dean") owns the property located at 1277 Deming Way, and Newcomb Properties LLC ("Newcomb") owns the property located at 1242 Fourier Drive, both properties being located adjacent to the City of Madison Stormwater Utility Parcel 533 ("City Parcel") at 8308 Excelsior Drive; and

WHEREAS, Newcomb is constructing a new office building for Dean at 1242 Fourier Drive, and Dean and Newcomb wish to construct a private sidewalk across the City Parcel to connect the Dean Property and the Newcomb Property, and also install a private fiber optic cable connection in the same area; and

WHEREAS, in order to install and maintain the sidewalk and fiber optic cable, Dean and Newcomb requires a Nonexclusive Permanent Limited Easement for private sidewalk and fiber optic cable purposes across the City Parcel located at 8308 Excelsior Drive; and

WHEREAS, City of Madison Engineering Division staff have reviewed and approve of the Permanent Limited Easement for the private sidewalk and fiber optic cable installations.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Nonexclusive Permanent Limited Easement for private sidewalk and fiber optic cable purposes (the "Easement"), to Dean Health Plan Inc. and Newcomb Properties LLC (the "Grantees") within the City of Madison Stormwater Utility Parcel 533 at 8308 Excelsior Drive, as more particularly described below and depicted on attached Exhibit A.

BE IT STILL FURTHER RESOLVED that the Easement shall be granted subject to the following conditions:

- a. Construction. The Grantees shall be responsible for all costs related to the construction of a Type V sidewalk and fiber optic cable (the "Facilities"), in accordance with plans submitted and approved by the City Engineering Division. The Grantees shall provide drawing, plans, cross sections and profiles to the City Engineering Division for review and approval of the location and depth of the private fiber optic cable and sidewalk design. The Grantee's work of construction, repair and maintenance of the Facilities shall be done and completed in good professional manner at the sole expense of the Grantee and in such a manner as in no to interfere with or endanger the use of the Easement area by the City. The Grantee's sidewalk shall constitute a public way that is privately owned and privately maintained.
- b. Permits. In all cases, the Grantee shall be responsible for following all applicable ordinances, codes, statutes and laws, and obtaining all permits required for any construction, repair or maintenance of the sidewalk or fiber optic cable. This includes all necessary permits from City Engineering and the Wisconsin Department of Natural Resources, and shall install and maintain all erosion control measures required under such permits; if applicable.

- c. Repair and Maintenance. The Grantees shall be responsible for all maintenance of the sidewalk, including but not limited to, repaving, repairing, and plowing. Following installation, no grade change to the Easement Area shall be made by either party with prior written approval of the other party. Grantee shall agree that the City shall not be held responsible for any damage to the Grantee's Facilities that may be caused by the City, its employees, contractors, or others. Grantee accepts all risk of the Facilities being damaged due to sewer or storm flows. If any reasonable use and occupation of the Easement area by the City shall necessitate the Grantee to remove or relocate the Facilities or any part thereof, the Grantee shall perform such work at such time as the City may approve, at the sole expense of the Grantee.
- d. Performance of Duties and Enforcement. In the event the Grantee shall fail to repair or maintain the sidewalk, the City shall perform such repairs and/or maintenance and assess all costs thereof against the Grantees in the manner and under the procedures set forth in Section 66.0907 Wisconsin Statutes, and Section 4.09(12) and 10.28(2) of the Madison General Ordinances.
- e. Diggers. The Grantees agree to join and maintain membership in Diggers Hotline and secure and maintain the services of a competent locating service. That membership in Diggers Hotline and contracting of a locating service shall be continuous and uninterrupted throughout the term of this easement agreement.
- f. City Facilities. Grantee's Facilities shall not interfere with City's existing storm water and sanitary sewer main facilities, and maintenance thereof, which are located within the City Storm Water Parcel 533 at 8308 Excelsior Drive.
- g. Removal. At such time that Grantee, or its successors, discontinue the use of the Facilities, the Grantee, or its successors, shall remove the Facilities at the Grantee's expense and the Easements shall be terminated.