



## Legislation Text

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**File #:** 49505, **Version:** 1

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### **Fiscal Note**

The proposed resolution authorizes a Consent to Occupy Easement to permit private improvements within the existent public sanitary sewer easement located at 5114 Spring Court. No City appropriation is required.

### **Title**

Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Jan G. Eisner and James R. Eisner to permit private improvements within the existing sanitary sewer easement, for the property located at 5114 Spring Court.

### **Body**

WHEREAS, Jan G. Eisner and James R. Eisner (collectively, the “Owners”) are the owners of certain real property located at 5114 Spring Court, as more particularly described on attached Exhibit A (the “Owners’ Property”); and

WHEREAS, the City of Madison has an existing sanitary sewer easement, per Document No. 3111465, located on the Owners’ Property (the “Easement”); and

WHEREAS, during the City’s review of a demolition permit and conditional use application to demolish and construct a new single-family residence, it was discovered that several of the new improvements would encroach into a portion of the Easement; and

WHEREAS, as a condition of approval of the Owners’ conditional use permit, the City required the Owners to obtain a Consent to Occupy Easement from the City to legally permit the Owners’ improvements within a portion of the Easement, as described on the attached Exhibit A and depicted on attached Exhibit B (the “Occupancy Area”); and

WHEREAS, the Engineering Division has reviewed and approved the granting of a Consent to Occupy Easement for the Owners’ improvements that encroach into the Easement, under the key terms and conditions as specified herein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Consent to Occupy Easement (the “Consent”), the key provisions of which are as follows:

1. Grant of Permission. The City will grant the Owners, their successors and assigns, permission to occupy the Occupancy Area, for the limited purposes of constructing, installing and maintaining a stone patio, balcony, covered walkway, and roof overhand (collectively, the “Permitted Improvements”), all in accordance with the site plan which was conditionally approved by the City Engineering Division. The City does not grant the Owners, their successors and assigns, permission to occupy the Occupancy Area with any building or footings, with the exception of the aforementioned Permitted Improvements. The Permitted Improvements are depicted on the attached Exhibit C.
2. Construction and Maintenance.
  - a. The Owners shall be responsible for all costs of design, construction/installation and maintenance of the Permitted Improvements in compliance with all applicable codes and ordinances.

- b. The Owners shall, at their sole expense, televise the public sanitary sewer line upon the completed construction of the Permitted Improvements and submit the results to the City Engineering Division for review. Should the City Engineering Division determine repairs are needed, said repairs shall be made at the Owners' sole expense. Notwithstanding the foregoing, the Owners may request the City to televise the public sanitary sewer line upon the completed construction of the Permitted Improvements and reimburse the City in full for said televising costs.
  - c. With the exception of routine maintenance and repairs and normal utilization of the Permitted Improvements, no changes to or alteration of the Permitted Improvements shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.
3. Use. The Owners 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 Easement.
4. Type of Grant. The granting of the Consent shall not transfer, release, or convey any of the rights the City may have in the Occupancy Area by virtue of the Easement. The granting of the Consent shall be deemed to be permissive and shall preclude the Owners from any claim of adverse possession against the City by virtue of any encroachment on or into the Easement and by virtue of the granting of the Consent.
5. Compensation for Damages. Both parties understand and agree that the Permitted Improvements may be disturbed or removed by the City without replacement or compensation to the Owners. The Owners shall not hold the City liable for any future expense to move said Permitted Improvements, if needed, for maintenance of the Facilities.
6. Termination. The Consent shall automatically terminate upon the earliest of the following to occur: (a) the vacation of the Easement by the City; (b) the abandonment of the Permitted Improvements by the Owners; or (c) the agreement to terminate by the parties, or their successors or assigns. In the event of termination, the Owners shall execute such document(s) as may be requested by the City for the purpose of further evidencing the termination of the rights granted by the Consent.
7. Indemnification. The Owners shall be liable to and hereby agree 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 Owners and/or their 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, or employees. This paragraph shall survive termination and assignment or transfer of the Consent.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute any and all additional documents that may be required to complete this transaction.