



## Legislation Text

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**File #:** 51066, **Version:** 1

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### **Fiscal Note**

The proposed resolution authorizes a Pedestrian/Bicycle Path Easement Agreement between the City of Madison and the Madison Metropolitan School District (MMSD). The agreement allows MMSD to install a gate along the westerly entrance to a public path that runs through the Midvale Elementary School property, located at 502 Caromar Drive. Terms of the agreement have been negotiated between MMSD, City Engineering, Traffic Engineering, and Real Estate staff. Use and maintenance of the public path shall not be inhibited, according to the agreement. No City appropriation is required.

### **Title**

Authorizing the execution of a Public Pedestrian/Bicycle Path Easement Agreement with Madison Metropolitan School District for an easement across the Midvale Elementary School property, located at 502 Caromar Drive.

### **Body**

WHEREAS, the Madison Metropolitan School District is the owner of the Midvale Elementary School property located at 502 Caromar Drive and more particularly described in attached Exhibit A (the "Property"); and

WHEREAS, the City has an unrecorded easement for a public path across the Property, which public path is part of a mid-block pathway system spanning eight blocks allowing for public pedestrian and bicycle traffic; and

WHEREAS, MMSD staff have raised concerns for the safety of the young students who attend Midvale Elementary due to direct access to a busy street from the playground on the Property, and MMSD has requested permission to install a gate across the westerly entrance to the public path; and

WHEREAS, the terms of an easement agreement have been negotiated between MMSD and City Engineering, Traffic Engineering and Real Estate staff, and the form of the easement agreement has been approved by the City Attorney's Office; and

WHEREAS, on March 19, 2018 the Madison School Board approved the easement agreement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to enter into a Public Pedestrian/Bicycle Path Easement Agreement (the "Easement") with the Madison Metropolitan School District ("MMSD"), on the following general terms and conditions:

1. Grant of Easement. MMSD shall grant to and for the benefit of the City a non-exclusive perpetual easement for public pedestrian/bicycle path purposes ("Easement"), including, but not limited to the right to maintain the existing paved pedestrian/bicycle path (the "Path"), including paving, repaving, repairing, marking, and replacing, and the right to perform all work incidental thereto, in, on, under and through the "Easement Area" described in Exhibit A and depicted on Exhibit B.
2. Reservation of Use by MMSD. MMSD shall reserve the right to use and occupy the Easement Area in a manner consistent with the rights conveyed in the Easement, provided that such use and occupancy shall not interfere with or disturb the City's operation, maintenance, repair, replacement and/or modification of the Path improvements. No above-ground improvements will be allowed in the Easement Area by MMSD, with the exception that pavement and/or concrete for driveway purposes will be permitted.

3. Landscaping by MMSD. Plantings and landscaping within the Easement Area shall not obstruct routine maintenance by the City. In the event of repair or reconstruction, plantings and landscaping may be removed by the City without replacement or compensation to MMSD. MMSD shall not change the grade of the Easement Area without the prior written approval of the City of Madison Engineering Division.
4. Maintenance of Path and Easement Area.
  - a. MMSD shall allow the City and its contractors the right of reasonable access to the Easement Area for persons and vehicles needed to perform periodic maintenance and repair of the Path.
  - b. MMSD shall be responsible for the removal of snow and ice from the Path.
  - c. MMSD shall be responsible for routine mowing of the Easement Area.
  - d. The City shall be responsible for maintenance, repair and replacement of the Path improvements.
5. Special Conditions regarding Gate.
  - a. MMSD shall be permitted to install a fenced gate ("Gate"), approximately eight feet (8') in width by approximately four feet (4') in height, at the westerly limit of the Easement Area parallel to Midvale Avenue. The Gate will create a continuous fence line running north to south on the existing school fence, as depicted on attached Exhibit C.
  - b. MMSD will be responsible for the purchase, installation, and maintenance of the Gate.
  - c. The Gate will open inward toward Midvale Elementary and will remain open at all times, secured by lock and chain, except during times when students are outside during the school day.
  - d. The Gate will close and latch between the existing fence pole and the Gate pole by a standard latch. The Gate latch will be accessible to be opened by a pedestrian or bicycle rider if the Gate is closed due to students being present.
  - e. When the Gate is closed, MMSD staff will monitor it so that if anyone needs to open the Gate to access the Path and is having difficulty with the latch, MMSD staff will assist them with opening and closing the Gate.
  - f. The Gate will not be locked closed at any time, with any type of chain or lock.
  - g. If the City finds that the Gate is not being operated as intended, or is in violation of any laws or regulations, the City shall have the right to remove the Gate at MMSD's expense.
6. Term. The Easement shall be perpetual, unless and until terminated upon agreement of the City and MMSD. The termination of the Easement shall be evidenced by recordation of a Termination of Easement Agreement signed by both parties.
7. Acts and Omissions. Each party shall be responsible its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or

omissions including providing its own defense, arising out of the Easement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of the Easement.

BE IT STILL FURTHER RESOLVED, that the Mayor and City Clerk are authorized to execute, deliver and record such other documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution.