# Legislation Text

**File #:** 52930, **Version:** 1

## Fiscal Note

The proposed resolution authorizes a Consent to Occupy Easement to permit private improvements within an existing public sanitary sewer and stormwater management easement located at 319 Yard Drive. City Engineering has reviewed and approved the Owner's plans and the Owner will be responsible for the construction, maintenance, and liability of the private improvements. No City appropriation is required.

## Title

Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Productive Properties - Commercial LLC to permit a private improvement within the existing public sanitary sewer and stormwater management easement upon the property located at 319 Yard Drive. (9th AD)

## Body

WHEREAS, Productive Properties - Commercial LLC (the "Owner") is the owner of certain real property located at 319 Yard Drive, more particularly described as Lot 2, Certified Survey Map No. 11583, recorded in Volume 70 of Certified Survey Maps, pages 306 - 310 as Document No. 4127353, City of Madison, Dane County, Wisconsin (the "Owner's Property"); and

WHEREAS, the City of Madison has an existing 40' Public Sanitary Sewer and Stormwater Management Easement, per Document No. 3664595, located on the Owner's Property (the "Easement"); and

WHEREAS, the Owner desires to construct, operate and maintain a private storm sewer within a portion of the Easement and desires to obtain the City's consent for said purpose; and

WHEREAS, as a condition of approval of the Owner's Permitted Use Site Plan Review, the City is requiring the Owner to obtain a Consent to Occupy Easement from the City to legally permit the Owner's improvements within that certain portion of the Easement, as described on Exhibit A and depicted on the 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 Owner's improvement that encroaches 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 Owner, its successors and assigns, permission to occupy the Occupancy Area, for the limited purposes of constructing, installing and maintaining a private storm sewer (the "Permitted Improvement"), all in accordance with the site plan which was conditionally approved by the City Engineering Division. The City does not grant the Owner, its successors and assigns, permission to occupy the Occupancy Area with any building or footings.

2. Construction and Maintenance.

    a. The Owner shall be responsible for all costs of design, construction/installation and maintenance of the Permitted Improvement in compliance with all applicable codes and ordinances.

b. The Owner shall be responsible for any required repair and/or maintenance of the Permitted Improvement and any associated scouring of the ground surface around the Permitted Improvement lying within the Easement that may occur from the public storm water flowing within the Easement area.

c. With the exception of routine maintenance and repairs and normal utilization of the Permitted Improvement, no changes to or alteration of the Permitted Improvement 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 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 Owner 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 Improvement may be disturbed or 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 said Permitted Improvement, 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 Improvement by the Owner; or (c) the agreement to terminate by the parties, or their successors or assigns. In the event of termination, the Owner 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 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, 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.

**EXHIBIT A**

Legal Description of the Occupancy Area



powered by Legistar™

A 15 inch diameter Private Storm Sewer and associated drainage structures located within part of an existing 40’ wide Public Sanitary Sewer and Stormwater Management Easement as granted within Lot 15, Silicon Prairie Business Park, recorded in Volume 58-015A of Plats, pages 77 - 79 as Document No. 3664595, now being part of Lot 2, Dane County Certified Survey Map No. 11583, recorded in Volume 70 of Certified Surveys, pages 306 - 310 as Document No. 4127353, all located in part of the SE ¼ of the NW ¼ of Section 28, T 7 N, R 8 E, in the City of Madison, Dane County, Wisconsin, the centerline of said improvements being generally described as follows:

Commencing at the southerly most corner of said Lot 2; thence N53º58’08”E, 117.57 feet along the southerly side of said Lot 2; thence N36º01’52”W, 23.19 feet to the point of beginning; thence N35º32’02”E, 52.66 feet; thence N71º22’23”E, 43.41 feet to the point of termination on the northerly line of said Public Sanitary Sewer and Stormwater Management Easement.



powered by Legistar™