

MADISON UTILITIES EASEMENT INFORMATION

What is an easement?

- An easement is an interest in land owned by another.
- Example: Madison Utilities (“MU”) owns or uses City easements to operate and maintain its water and sewer lines on property owned by private landowners. The landowner still owns the land across which the easement passes but MU has the right to use the land in a manner consistent with the stated purpose of the easement (*e.g.*, ingress/egress, accessing, operating, maintaining and/or repairing the utilities on the property, etc.).

What type easement does MU have across my property?

- It depends. MU directly acquires some easements for major water and sewer line projects either by negotiation or condemnation. However, much of MU’s residential water distribution and sewage collection infrastructure is located in utility and drainage easements or under street rights-of-way initially dedicated to the City of Madison by developers of residential subdivisions. MU has a franchise from the City authorizing it to use those easements and rights-of-way for its utility services.
- Example 1: An easement across your property may have been acquired by MU by easement deed from you (or a predecessor landowner) for a specific purpose stated in the deed (ingress/egress, sewer line, water line, etc.). MU’s use is limited to the stated purpose of the easement, together with access incident to those purposes. An easement deed may be granted for specific or multiple purposes (*e.g.*, water, sewer and ingress/egress easement), or for broader, more general purposes (*e.g.*, utility and drainage easement).
- Example 2: A perimeter utility and drainage easement around all residential lots in the City of Madison is dedicated to the City by the developer of lots in the subdivision. The developer constructs water and sewer lines within those easements and under street rights-of-way, and dedicates them to MU for maintenance. MU’s franchise from the City authorizes MU to use all City easements and rights-of-way and includes any access that is necessary for the authorized use. The City and other franchisees (*e.g.*, electric, gas and cable utilities) may also use these easements.

What are the landowner’s rights in the land burdened by the easement?

- The landowner remains the rightful owner of land “burdened by” or “subject to” an easement. The landowner may use the land in any lawful way the landowner desires as long as that use does not unreasonably interfere with MU’s rights to use its easement.
- Example: If MU owns a sewer line easement over a portion of the landowner’s residential lot and operates a sewer line in that easement, the landowner may not build or enlarge a home, fence or other structure across or over the easement in any fashion that would impede or prevent MU from accessing, maintaining or repairing its sewer line. Property owners also should not plant trees, shrubs or otherwise install landscaping features (ponds, retaining walls, etc.) that unreasonably interfere with MU’s use of the easement.

Landscaping that does not unreasonably interfere with MU's use and maintenance of its easement is acceptable with prior approval. **Please take note that if maintenance, repair, replacement or upgrade of MU's lines requires removal of landscaping, fences or any other structures from the easement, MU is not responsible for the cost of replacing the items which must be removed.** Whenever reasonably possible MU will contact property owners in advance to make appropriate arrangements for orderly removal of structures or landscaping that interfere with MU's use of the easement.

What are MU's rights in the land burdened by the easement?

- MU may use an easement in a manner consistent with the scope of the easement it holds, but may not expand the use of the easement beyond its scope.
- **Example:** If MU owns a sewer line easement, it has the right to gain access to the sewer line, and to operate, maintain and repair it. It may not, however, install a water main in it or use it for permanent ingress or egress to other property (ingress and egress is limited to that necessary to access its sewer line for operation, maintenance, repair, replacement and upgrade) Most MU easements, however, are either specific to the use to which they are put (e.g., water or sewer lines) or are general utility and drainage easements owned by the City to which MU is permitted access and use through its franchise with the City.

What are MU's rights if the landowner creates an obstruction that unreasonably interferes with its use of the easement?

- MU may remove obstructions that unreasonably interfere with the use of its easements. If necessary, it may seek an injunction to require the landowner to remove the obstruction, and may recover monetary damages from the landowner for costs or expenses incurred as a result of the obstruction.
- **Example 1:** If MU owns a sanitary sewer easement over a portion of the landowner's yard and the landowner begins construction of a pool over the easement, MU may order the property owner to cease construction on the project and obtain an injunction to prevent further construction if the landowner refuses that request.
- **Example 2:** If the landowner constructs a fence in an easement that prevents MU from access to its sewer line, MU can remove the fence itself or may seek an injunction forcing the landowner to remove the fence if the landowner prevents removal of the fence.

PLEASE NOTE: The landowner is ultimately responsible for any structures, fences, trees, plants or other objects on the landowner's property, so it is the landowner's responsibility to avoid interference with MU's use of its easements. Any necessary removal (and/or replacement) of such items will be at the landowner's sole expense.

If you are considering an activity or project that may interfere with MU's easement on your property, PLEASE CONTACT us at (256) 772-0253 to resolve the issue in advance. MU is committed to work with you to find the best solution for enjoyment of your property without interfering with utility services.