



## Legislation Text

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171884

ORIGINAL

ALD. PEREZ

Resolution directing St. Mary's Cement, Inc. to remove the spur track serving 712 West Canal Street from right-of-way and to repair the right-of-way, in the 12th Aldermanic District.

This resolution directs St. Mary's Cement, Inc. to remove the spur track serving 712 W. Canal Street from right-of-way and to repair the right-of-way, and directs the filing of a complaint and petition with the Wisconsin Office of Commissioner of Railroads.

Whereas, The City of Milwaukee, the Soo Line Railroad Company (d/b/a Canadian Pacific Railway) ("CP"), and St. Mary's Cement, Inc. ("St. Marys"), are parties to a December 15, 2004 Industry Track Agreement that allows the spur track crossing Canal Street and serving the St. Marys parcel at 712 W. Canal Street (the "Spur"); and

Whereas, Per the Industry Track Agreement: St. Marys is responsible for maintenance and repair of the Spur and its roadbed, including the Canal Street crossing (para. 6 and para. 7.I.); St. Marys must keep the area along the Spur in a level and neat condition including filling holes and ruts (para. 7.G.); St. Marys owns the Spur and if rail operations involving the Spur are abandoned, St. Marys has removal duties (para. 11); St. Marys must maintain protective devices for the Canal Street crossing and Spur (para. 17); CP may terminate the Industry Track Agreement on 30 day's notice to the City and St. Marys if St. Marys discontinues use of the Spur for a 12-month consecutive period or upon order of a competent public authority that makes continued use of the Spur impracticable (para. 20.A.); and

Whereas, St. Marys has never used the Spur since it was constructed with the Canal Street reconstruction project and as of the executed date of the Industry Track Agreement; and

Whereas, CP removed the switch on or about August 8, 2016, rendering the spur unusable without additional investment and construction on the City owned portion of the track; and

Whereas, The 12-month consecutive non-use condition in Industry Track Agreement para. 20.A. has been met allowing CP to terminate the Industry Track Agreement; and

Whereas, Consistent with Wis. Stat. 190.16 (5) and 85.09 and a May 11, 2017 Final Decision that the Wisconsin Office of Commissioner of Railroads ("OCR") issued in a case involving the City and a spur crossing Hopkins Street, the Spur should be deemed legally abandoned due to nonuse for at least 2 consecutive years, and due to facilities having been removed rendering the Spur unfit for service; and

Whereas, According to research conducted by Elisa Sibinski, 49 bicyclists crashed at the Spur crossing, and severe injuries resulted, including facial fracture, several broken collarbones, and a fractured pelvis (see Wisconsin Bike Fed's *Bicycle Blog of Wisconsin* posted February 28, 2018, and *Danger at the Crossing*:

*Cyclist Safety on Railroad Sidings in the Built Urban Environment*, by Elisa Sibinski, Spring 2017); and

Whereas, Wis. Stat. Chapters 85, 86, 190 and 195 contain provisions allowing the City, by its Common Council, to petition the OCR to order removal of the Spur and the repair of the right-of-way; now therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the Commissioner of Public Works, on behalf of the City and its Common Council, are hereby authorized and directed: to have the City Clerk cause service of a copy of this resolution upon St. Marys and CP, requiring St. Marys to remove the Spur, to restore the right-of-way, and to pay associated damages and expenses; and, be it

Further Resolved, The Commissioner of Public Works is authorized to take all necessary steps, in the event of noncompliance, to petition and file complaint with the OCR for an investigation and appropriate order requiring removal of the Spur by St. Marys, restoration of the right-of-way by St. Marys, and other appropriate relief including payment of damages, expenses, and forfeitures; and, be it

Further Resolved, That City officials and the Commissioner of Public Works are authorized to take such further actions as may be necessary to promote public health, safety and welfare associated with the Spur crossing, and to carry out the intent and purpose of this resolution, and to secure City's rights.

Department of Public Works  
Administrative Services Division  
Karen Dettmer  
3/23/18