



Legislation Details (With Text)

**File #:** 67542      **Version:** 1      **Name:** Southwest Path Encroachment Provisions  
**Type:** Ordinance      **Status:** Passed  
**File created:** 9/23/2021      **In control:** Attorney's Office  
**On agenda:** 11/2/2021      **Final action:** 11/2/2021  
**Enactment date:** 11/18/2021      **Enactment #:** ORD-21-00070  
**Title:** Amending Section 8.15(2) to Update the Southwest Path Encroachment Provisions.  
**Sponsors:** Grant Foster, Yannette Figueroa Cole  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
11/2/2021	1	COMMON COUNCIL	Adopt	Pass
10/20/2021	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
10/13/2021	1	TRANSPORTATION COMMISSION	Return to Lead with the Recommendation for Approval	
10/5/2021	1	BOARD OF PUBLIC WORKS	Referred	
10/5/2021	1	COMMON COUNCIL	Referred	
9/23/2021	1	Attorney's Office	Referred for Introduction	

**Fiscal Note**

No City appropriation required.

**Title**

Amending Section 8.15(2) to Update the Southwest Path Encroachment Provisions.

**Body**

DRAFTER'S ANALYSIS: The Southwest Path was constructed in 2000 following the conversion of the former State-owned rail corridor into an interim recreational trail. At that time, the City, the State of Wisconsin Department of Transportation, and the South Central Wisconsin Rail Transit Commission (SCWRTC) entered into a 20-year interim trail use agreement that allowed the City to improve the trail into what is now the Southwest Path, one of the City's busiest recreational and bicycle commuter trails. Under the terms of the original agreement, the City adopted MGO Section 8.15(2) addressing encroachments within the corridor. While some enforcement actions have been taken by the City, since 2000, unlawful encroachments by adjoining property owners within the corridor have expanded or been allowed to remain in place. As a condition of entering into a new interim trail use agreement with the State to continue the use of the corridor for the Southwest Path, the City is required to update its encroachment ordinance and ensure that any encroachments within the corridor are compliant with the terms of the agreement. This ordinance amendment incorporates the changes required under the updated interim trail use agreement as a condition of continuing the use of the Southwest Path.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (2) entitled "Southwest Bike Path" of Section 8.15 entitled "Regulation of Private Use of Greenways, Park Lands, and the Southwest Bike Path" of the Madison General Ordinances is amended as follows:

"(2) Southwest Bike Path. The Southwest Path, running 4.22 miles northeasterly from approximately 370 feet south of Lovell Lane to Randall Avenue, is State of Wisconsin owned rail bed and is the subject of an interim trail use agreement between the City and the State of Wisconsin. Under this agreement, the City has assumed responsibility for preserving public order upon the path corridor and for resolving matters concerning trespass upon and from the path property to adjacent private property. Under the interim trail use agreement and this subsection, certain encroachments may be authorized with State of Wisconsin Department of Transportation approval or notification, including by permits and specified documentation. It is the responsibility of the property owner to obtain the necessary permission from the State of Wisconsin for any such encroachment.

(a) Public Nuisance. Except as set forth in (b), private use of the Southwest Bike Path right-of-way, including, but not limited to, for fences, retaining walls, sheds or other outbuildings, gardens and/ or other landscaping, stairs, hardscape features, play structures and equipment, dog runs parking of vehicles or storage of personal property, is a public nuisance and is prohibited.

(b) Exceptions. Provided that they comply with any other applicable City ordinance requirements, the following encroachments may be authorized within the Southwest Path corridor:

1. Landscaping. Ornamental plantings, such as grasses, flowers, shrubs, and trees are allowed, except within 15 feet of the path surface or within 16 feet above the path surface. In addition, any tree that will be over 20 feet tall requires the approval of the City Forester. Mulch may be used as a landscaping feature. Vegetation including but not limited to grasses, perennials, small shrubs and trees. No vegetation, however, shall be planted in any drainage ditch or swale abutting the bike path, which at maturity will be closer than fifteen (15) horizontal feet or sixteen (16) vertical feet from the edge of the bike path surface. Planting of any tree that will attain twenty (20) or more feet at maturity requires prior approval of the Forestry Section of the Madison Parks Department.
2. Gardens. Vegetable gardens, including any associated protective fencing or cages, are authorized with State documentation and notification.
3. Fences. Permanent fencing is only allowed with a State issued permit. Temporary fencing not exceeding 30 inches tall that is used to delineate a garden and that does not run the full length of a property line is authorized without special approval, provided it is removed annually. Temporary construction fencing is allowed if it is needed to protect or secure a construction site. Fences that existed prior to April 1, 2000 may remain, as long as they do not present a hazard for the users of the bike path, as determined by the City Engineer. All such fences, however, shall be removed when the property is transferred to a new owner after the above date.
- ~~4.3.~~ Stairs. Stairs are only allowed with a State issued permit. Stairs for private use shall be allowed only if they comply with current building codes; the owner provides evidence of insurance, naming the City as an additional insured; indemnifies the City for any and all claims relating to the stairs; and obtains a permit from City Engineering.
4. Temporary mesh fences not exceeding thirty (30) inches in height, for the purpose of delineating gardens. Such fences shall not extend the full width of a property or otherwise give the appearance of defining private property.
5. Retaining Walls. Retaining walls are permissible without special approval by the State if the wall is 24 inches or less and is not poured concrete or mortared stone/masonry. A wall higher than 24 inches may require State documentation and notification or a State

permit depending on the circumstances. A retaining wall that includes poured concrete or mortared stone/masonry is only allowed with a State issued permit. Retaining walls not exceeding twenty-four (24) inches. Retaining walls, terraces, foot paths, and small stepping stones are permitted only to the extent that they delineate gardens, and they may not function as stairs.

6. Outbuildings. Outbuildings, including buildings or structures of any type, such as sheds, chicken coops, and garages, whether they include a foundation or not, are only allowed with a State issued permit. No such outbuilding shall be used for human habitation. Outbuildings without foundations that existed prior to April 1, 2000 may remain as long as they do not present a hazard to the users of the bike path, as determined by the City Engineer. All such outbuildings, however, shall be removed when the property is transferred to a new owner after the above date.
  7. Outbuildings with permanent foundations that existed prior to April 1, 2000 may remain as long as they do not present a hazard to the users of the bike path and if a permit is obtained from City Engineering.
  7. Foot Paths. Unpaved foot paths connecting the adjoining property to the path are allowed without special State approval. Small stepping stones, installed at grade, may be used for this purpose.
  8. Hardscape. The use of wood, stone, concrete, masonry or other hard landscaped materials to construct patios, decks, fire pits, and paths are only allowed with a State issued permit.
  9. Parking Areas. Parking areas are only allowed with a State issued permit.
- (c) Notwithstanding the exceptions in (b) above, any private encroachment that interferes with the operation, maintenance or future construction of the bike path or appurtenances, or that presents a safety hazard to path users, as determined by the City Engineer or the Director of Building Inspection Division, is a public nuisance and is prohibited.

2. The title of Section 8.15 entitled "Regulation of Private Use of Greenways, Park Lands, and the Southwest Bike Path" of the Madison General Ordinances is amended as follows:

"Section 8.15 - "Regulation of Private Use of Greenways, Park Lands, and the Southwest Bike Path"