

CITY OF MADISON, WISCONSIN

A 2nd SUBSTITUTE ORDINANCE _____

PRESENTED
REFERRED

February 26, 2013 _____

Creating Section 8.33 of the Madison General Ordinances to allow edible landscaping on City-owned land.

Food Policy Council, Board of Park Commissioners, Water Utility Board, Community Gardens Committee, Sustainable Madison Committee and Board of Public Works

Drafted by: Anne Zellhoefer

Date: April 3, 2013

LEGISTAR # 29178

SPONSOR: Aids. Rhodes-Conway

DRAFTER'S ANALYSIS: This ordinance will allow the planting and harvesting of edible landscaping on certain City-owned properties.

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

Section 8.33 entitled "Edible Landscaping on City-Owned Lands" of the Madison General Ordinances is created to read as follows:

"8.33 EDIBLE LANDSCAPING ON CITY-OWNED LANDS.

- (1) Purpose. The purpose of this ordinance is to encourage the planting and harvesting of locally-grown fruits, vegetables, nuts and other edible plant forms for public consumption, and to regulate the permitting, placement and maintenance of such edible landscapes on certain City-owned land. This ordinance is not intended to replace the already established process for siting and managing community gardens, and is not intended to permit plantings on public land that are only accessible to the permittee. All plantings under this ordinance shall be the property of the City and shall be publicly accessible. Permits must be obtained for any and all plantings under this ordinance.
- (2) Applicability. This ordinance shall be applicable to land owned solely by the City. This ordinance shall not be applicable to rooftops, medians, or rights-of way, including but not limited to street terraces, or to lands abutting bike paths or greenways, as the permissibility of plantings and the use and maintenance of those locations is governed by other existing ordinances.
- (3) Definitions. For the purpose of this section, the following words shall have the meanings indicated.
 - (a) Applicant means the person applying for an edible landscaping permit to plant and/or maintain edible landscapes on City-owned land.
 - (b) City-owned land means real property owned in fee by the City of Madison, including the subterranean, surface and air rights of such land.
 - (c) Department or Division Head means the individual whose agency is responsible for the City-owned land for which an applicant seeks an edible landscaping permit, or his or her designee.
 - (d) Edible landscape means any plant, other than invasive species as defined by Wis. Admin. Code ch. NR 40, that bears fruit, seeds, nuts, vegetables or other parts edible by humans.
 - (e) Permittee means the person who has obtained a valid edible landscape permit, and the person's agents, employees, members, officers and volunteers.

Approved as to form:

- (f) Person means any individual, partnership, association, corporation, joint venture, limited liability company, partnership, trust or other entity that may enter into contracts.
- (4) Administration. This section shall be administered by the Department or Division Head whose agency is responsible for the City-owned land for which an applicant seeks an edible landscaping permit. Each Department or Division Head is authorized to issue edible landscaping permits. The Food and Alcohol Policy Coordinator shall, in consultation with the relevant Department or Division Heads, establish a standard application and permitting process, including an on-line option, to allow applicants to submit an application in one place, regardless of which Department or Division is responsible for the land. This process shall be submitted to the Food Policy Council for its review and approval.
- (5) Application for Edible Landscaping Permit. Application for a permit shall be made to the relevant Department or Division Head. The Food and Alcohol Policy Coordinator shall, in consultation with the Department or Division Heads, develop criteria for the review of applications and the issuance of permits. These criteria shall be submitted to the Food Policy Council for its review and approval. The term of each permit shall be determined by the Department or Division Head, but may not be less than three years. No fee shall be charged in connection with an application or issuance of a permit. Each permit shall expire December 31. Denials of permits may be appealed in accordance with subsection (6)(l) of this ordinance. Permits may be assigned by any permittee, provided the successor permittee submits an application. A completed application shall include all of the following:
 - (a) The name, address and telephone number of the applicant, and the name of the applicant's authorized agent if the applicant is not an individual.
 - (b) A planting plan, drawn to scale, showing the size and location of the proposed planting area, a description of the genus and species of each plant intended to be planted and its location within the planting area, along with each plant's approximate height at maturity and a plan to confine any vegetation that may grow outside of the permitted area.
 - (c) Evidence that the applicant has notified the alderperson of the district and the applicable neighborhood association, if any, in writing of the application.
 - (d) An agreement between the applicant and the City prepared by the Food and Alcohol Policy Coordinator and in a form acceptable to the City Attorney and the City Risk Manager, that the applicant will hold harmless, defend and indemnify the City, its officers, officials, boards, committees, employees and agents, from and against all liability, damages, claims and penalties resulting from the planting, use, consumption, maintenance, or presence of the applicant's edible landscape on City-owned land. The agreement may be signed by the Department or Division Head on behalf of the City.
 - (e) Any supplementary information required by the Department or Division Head.
- (6) Standards. Every person shall plant, use, maintain, harvest and remove an edible landscape as follows:
 - (a) No person may plant or maintain an edible landscape on City-owned land without having obtained a permit in accordance with this ordinance.
 - (b) All vegetation planted by a permittee on City-owned land shall be the property of the City.
 - (c) Each permittee is responsible for contacting Digger's Hotline to identify and mark any underground utilities prior to digging within the City-owned land.
 - (d) All edible landscapes shall follow the planting plan approved by the Department and Division Head. If the permittee wishes to alter the approved planting plan, the permittee shall submit a new application.
 - (e) No vehicular access shall be allowed in the area designated for the edible landscape without the prior written consent of the Department or Division Head.
 - (f) No temporary or permanent improvements may be placed on the City-owned land by the permittee, with the exception that facilities for water service may be permitted at the permittee's cost and expense, subject to the prior written approval of the Department or Division Head. The permittee shall be responsible for the cost of all water, sewer and any other utility charges billed to the designated edible landscape area.

- (g) Notwithstanding subsection (6)(f) above, a permittee may post a sign in the permitted area containing information about the planting and the permittee, and stating that all fruits, vegetables, nuts and other edible plant forms are available for public harvest. All signs shall be reviewed and approved by the Department or Division Head. Any chemical agent, insecticide or fertilizer proposed for use by the permittee must be applied in accordance with the City's Pest Management Policy and approved prior to each and every use by the Department or Division Head. When chemical agents are applied, permittees shall post a sign at the permitted area stating the type of chemical agent and date of application.
 - (h) All cherry pickers, ladders, shears and saws used by the permittee to maintain plantings within the City-owned land shall be used and operated in a safe manner. Each permittee shall ensure that any person who intends to use a chainsaw shall have completed a chainsaw safety class, have appropriate safety equipment, and sign a waiver of liability on a form to be approved by the City's Risk Manager prior to using a chainsaw on City-owned land.
 - (i) All edible landscapes shall be maintained so as to be confined to the permitted area.
 - (j) The permittee shall remove all refuse and prune or remove all dead plant material from the City-owned land no later than November 15. Throughout the permit term, the permittee shall maintain the planted area in the presentable condition, consistent with the general appearance of the City-owned land in which it is located. All edible produce shall be removed promptly so as to not create a hazard or nuisance due to rotting.
 - (k) No person shall sell, or allow to be sold, any fruits, vegetables, nuts or other edible plant forms grown on City-owned lands.
 - (l) If any permittee fails to comply with the terms of the permit or this ordinance, the City may, at the direction of the Department or Division Head, terminate or refuse to renew the permit and remove and dispose of all edible landscaping. The Department or Division Head shall notify the applicant or permittee and the alder of the district thirty (30) days prior to the denial, termination or non-renewal of a permit. Any applicant who is denied a permit and any permittee whose permit is terminated or non-renewed may appeal such determination within fifteen (15) days of the mailing of the notice from the Department or Division Head to deny, terminate or non-renew the permit. Appeal shall be: to the Board of Park Commissioners for determinations made by the Park Superintendent or designee; to the Board of Public Works for determinations made by the City Engineer or designee; and to the Board of Water Commissioners for determinations made by the Water Utility Manager or designee. All requests for appeal shall be filed with the City Clerk and must inform the applicable Board of the reasons for the appeal. Within thirty (30) days of receiving the appeal, the Board shall hold a hearing at which the parties may offer testimony and documents. Within thirty (30) days of the hearing, the Board shall affirm, modify or reverse the determination made by the Department or Division Head and shall send a copy of the decision to the permittee by regular mail. Appeal from the action of any Board shall be by certiorari to Circuit Court within thirty (30) days of the determination of the Board.
- (7) Use. Each permittee's use of the City-owned lands shall be non-exclusive. Edible produce grown on City-owned lands as provided in this ordinance shall not be the property of the permittee but shall be available for harvest and personal consumption by any individual without fee or charge."