

AGENDA # _____

CITY OF MADISON, WISCONSIN

REPORT OF:	CITY ATTORNEY	PRESENTED	<u>May 16, 2006</u>
		REFERRED	_____
TITLE:	Public Greenway Use Permits	REREFERRED	_____

AUTHOR:	Michael P. May City Attorney	REPORTED BACK	_____

DATED:	May 9, 2006	ADOPTED	_____ POF _____
		RULES SUSPENDED	_____
		ID NUMBER	_____

TO THE MAYOR AND COMMON COUNCIL:

RE: Legistar File No. 03480
Ordinance Amending Section 8.15 of the Madison General Ordinances to establish requirements and procedures for public lands or greenway use permits.

This ordinance was initially introduced in a draft form prepared by someone other than the Office of City Attorney. It was referred to our office for approval. I would note that such a procedure is irregular; we construed it as a request to prepare an ordinance. For clarity and in order to meet some legal requirements, this ordinance is modified in some significant ways from that introduced draft. However, it is believed that this ordinance generally meets the intent of the original request.

There remain, however, two significant legal issues in the form of the ordinance.

1. Ownership of Items Placed on Public Lands.

Neither the draft ordinance, nor this version of the ordinance, specifies with clarity who is the owner of whatever is placed on the public lands. The requirement of obtaining a permit, insurance, and a bond suggest that ownership of the items placed in the public lands remain in some sense with the individual who obtains the permit.

In other instances where an individual owns anything which is on or encroaches upon public lands, the City requires some form of a lease or recordable encroachment agreement that will identify what is owned and who is the owner of anything on the public lands. This permitting type ordinance is deficient in not providing for such information.

There is also an important policy issue as to the extent to which the City desires to have third persons owning materials on public lands without such a lease or encroachment agreement. One option would be for the ordinance to explicitly state that all the items placed on public lands pursuant to this ordinance belong to the City. This might obviate the need for insurance or bonds. However, a much more straightforward method of accomplishing the results sought by this ordinance would be for individuals to make gifts to the City of whatever is desired to be placed on the public lands. The City could accept or reject the gift, or accept it with conditions. It would then be clear that the materials placed on the public lands belonged to the City, and there would be a record of having accepted the gift to the City. This option would require revising this ordinance.

2. Quasi-Judicial Review before the Board of Public Works.

The ordinance proposes a rather cumbersome appeal process before the Board of Public Works, which results in a quasi-judicial hearing, including witnesses and cross examination. Our office believes that a much more informal appeal type process would be much preferable to that proposed in this ordinance. If there were any significant number of appeals, staffing such appeals by the Office of the City Attorney under current staffing arrangements would be difficult.