

LEGISTAR #53204 - BODY

DRAFTER'S ANALYSIS: This ordinance fills in a gap in the City's current ordinances by creating a temporary land use permit for the City that will establish a formal process to allow third parties to temporarily use the City's non-right-of-way property (e.g. parkland, stormwater lands, greenways, and other municipal lands) for purposes not otherwise provided for by ordinance. Currently, persons may use other permits and ordinance procedures to use some City owned properties on a temporary basis (i.e., a parks event permit, a street use permit, a street occupancy permit, a facility rental agreement, etc.). However, in light of the general prohibition on the private use of City owned greenways and parklands in Sec. 8.15, there is not currently a formal process for allowing private parties to temporarily use these City-owned lands. Nor is there a provision in place to address the temporary use of other City-owned lands, such as well sites, municipal buildings, or land-banked lands. This has proven problematic when, for example, residential property owners wish to cross City-owned parkland or stormwater lands to cut down or remove a dangerous tree, or fix a fence marking the boundary between the properties. Absent any sort of process, City lands are often accessed and used without the City's knowledge or permission, and oftentimes damage to City property occurs. By creating this permit, private parties will not have to unlawfully use the City's property, and the City's interests will be protected by requiring City staff to review the proposal ahead of time and by requiring restoration of the City's land after the use occurs. This ordinance also gives the City the ability to require damage deposits or accept surety bonds to ensure that the City's property is fully restored following the use thereof

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

1. Section 8.10 entitled "Temporary Land Use Permit" of the Madison General Ordinances is created to read as follows:

"8.10 TEMPORARY LAND USE PERMIT

- (1) Temporary Land Use Permit Required. Except as otherwise allowed by these ordinances, or pursuant to an approved City policy or procedure, or by other legal right such as a lease, easement, license or other agreement with the City, no person shall use or occupy, or cause to be used or occupied, any portion of City-owned or leased greenways, park lands, or other City-owned lands for ninety (90) days or less without a temporary land use permit issued under this Section.
- (2) Administration. Permits under this Section shall be administered by the City department or division responsible for the land in question (the "Administrative Agency"). Each department or division head may designate someone within the Administrative Agency to administer this program.
- (3) Permit Application. An application for a temporary land use permit shall be in writing to the Administrative Agency. The permit shall describe the premises to be used or occupied by title, lot, block and/or street on or over which such use or occupancy is desired, the area of use or occupation sought, the character of the use or occupation, the duration of the proposed use or occupation, and the property and/or entity being served or benefitted by the use or occupation. The application shall include a drawing of the proposed use or occupation area, the application fee, the certificate of insurance required under Subdivision (4)(a), and an agreement to abide by all conditions set forth in Subsection (4).
- (4) Permit Conditions. Temporary land use permits issued under this Section shall have the following conditions:
 - (a) Responsibility for Occupation.
 1. Liability. By accepting the permit, the Permittee shall agree to be primarily liable for damages to person or property by reason of the granting of the permit and shall agree to hold harmless, defend, and indemnify the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties resulting from the use or occupation of the City-

- owned or leased greenways, park lands, or other City-owned lands as permitted under this Section.
2. Insurance. The Permittee shall be required to furnish a Certificate of Insurance, providing evidence of commercial general liability insurance with the City of Madison, its officers, officials, agents and employees named as additional insureds. The insurance shall include contractual liability coverage, apply on a primary and non-contributory basis, and minimum limits of one million dollars (\$1,000,000) per occurrence. The Risk Manager reserves the right to require higher limits and other coverage terms and conditions at his/her discretion. Permittee shall keep required insurance in full force and effect throughout the term of the permit. This insurance condition may be waived for other governmental units and in those instances where the Risk Manager, in consultation with the City Attorney's Office, determines that this requirement can be waived.
- (b) Permit Length and Renewal.
1. Permit Duration. A permit issued under this Section shall be valid for the period of time stated therein, which period shall not exceed ninety (90) days.
 2. Permit Extension. Upon good cause shown, the Administrative Agency may extend a permit under this Section from time to time as may be reasonably required upon written application made to him/her for that purpose.
 3. Renewal. A Permittee must submit a request to renew the permit no later than seven (7) days before the expiration of the permit. Any request made within seven (7) days or following the expiration of the permit shall be treated as a new application.
- (c) Occupation Limitations.
1. General. No permit shall be issued where the use or occupation within the proposed occupation area will unreasonably interfere with the public's use of the land, where the use or occupation will be an unreasonable risk to the health, safety and welfare of the public, or where the use interferes with another's right to use the land.
 2. Occupations Near Intersections and Driveways. No building, machinery, temporary structure or other material of any kind shall be placed within a vision clearance area as established under Sec. 27.05(2)(bb), except temporarily as otherwise allowed by this Section and Sec. 27.05(2)(bb).
- (d) Stormwater Considerations. The Permittee shall take all reasonable precautions to prevent or minimize any erosion from the premises and to provide for the free and unobstructed flow of water therein. Any erodible material (topsoil, gravel, sand, etc.) that is stored in the permitted area shall either be covered with plastic sheeting or protected with erosion control perimeter controls.
- (e) Storage Requirements. No material or equipment shall be stored on the Premises unless specifically authorized by the Administrative Agency. If allowed, all material or equipment stored on the Premises shall be stored in a neat, orderly and compact manner.
- (f) Site Maintenance. All accumulation of rubbish, debris, or other hazards within the permitted area shall be cleaned up every day before leaving the premises and all excavations shall be fenced off and backfilled or plated during non-work hours, as necessary, at the discretion of the Administrative Agency.
- (g) Removal for Public Purpose. Any material or machinery placed in a permitted area shall be removed upon twenty-four (24) hours notice given by the Administrative Authority if the land is needed for any public purpose.
- (h) Restoration. Upon either the expiration of the permit or, if the work of construction is completed before the permit expires, the completion of the work, the permitted area occupied under this Section shall be restored to its original

condition and left in good repair and condition. The Permittee shall be responsible for the repair of any damage noted by City staff and shall restore and repair it to the satisfaction of the Administrative Agency. The Administrative Agency shall inspect the area upon completion of the restoration and the Permittee shall make any further repairs required by the Administrative Agency needed to address any deficiencies that did not exist prior to the occupation. If Permittee does not adequately restore the permitted area as required, the City may perform any necessary repairs or restoration and either recover the costs thereof as a special charge under Sec. 4.09(13) against the benefitting property, from the damage deposit or surety bond, if applicable, or by any other legal means available to the City.

- (i) Damage Deposit or Surety Bond. If the Administrative Agency estimates that the damages to City property from the use of the premises may exceed \$1,000, the Administrative Agency may require the applicant to submit a damage deposit as a condition of granting the permit. Said deposit, if required, shall be based on a reasonable estimate of the potential damages that may be incurred by the City based upon the granting of the permit. If a deposit is required, the City shall hold this amount until the satisfactory restoration of the premises. If the restoration is not satisfactory, the City shall use all or a portion of the deposit to restore the premises, and return any balance that may remain. In lieu of a damage deposit, the City may accept a surety bond securing the permittee's restoration of the premises. Any such surety bond must be approved by the City Attorney. The application of the damage deposit to restoration costs or the use of the surety does not preclude the City taking other measures to ensure the full recovery of the restoration costs incurred by the City.
 - (j) Warranty. In instances where a damage deposit or surety bond is required under sub. 0, the restoration work shall have a minimum of a one-year warranty.
 - (k) Permit Fees. All permit fees and damage deposits, if applicable, shall be paid in full prior to the issuance of the permit or any extension thereof.
 - (l) Other Conditions. The Administrative Agency may add additional conditions to a permit issued under this Section that are reasonably necessary to protect the public's health, safety and welfare or the public's interests in the land, including after the issuance of the permit.
- (5) Public Trees. Any trimming, pruning or removal of public trees within the permitted area may require the issuance of a separate permit under Sec. 10.101. The trimming, pruning or removal of any City tree contrary to City ordinances or policies shall be cause to revoke a permit issued under this Section.
- (6) Revocation of a Permit. The violation of any condition of a temporary land use permit that endangers the health, safety and welfare of the public, or the violation of any other ordinance while occupying the permitted area, shall be cause to revoke a permit issued under this Section. Except in the case of an immediate threat to the health, safety and welfare of the public, the Administrative Agency shall provide written notice of the revocation to the Permittee who shall have no less than twenty-four (24) hours to comply with the permit requirements or other ordinance. If there is an immediate threat to the health, safety or welfare of the public, the Administrative Agency may immediately revoke the permit and shall provide written notification of this action to the Permittee in a timely manner.
- (7) Appeal. In the event the Administrative Agency denies an application for a temporary land use permit or revokes a permit under Subsection (6), the Administrative Agency shall inform the person, in writing, of the reasons for the determination. The person may appeal this decision within ten (10) days after mailing of the notice to the address of the person as shown on the application. Such appeal must be in writing to the City Clerk, and must indicate the reasons why the person believes the decision to be in error. Failure to so appeal this decision shall result in automatic approval of the denial or revocation without further action. Appeals pertaining to the decisions of the Parks Division shall be to the Board of Parks Commissioners, those pertaining to the decisions of the Water

Utility shall be to the Water Utility Board, those pertaining to Department of Transportation Properties shall be to the Transportation Commission, and all other decisions shall be to the Board of Public Works.

Within thirty (30) days after receipt of the appeal, or as soon thereafter as the body can meet, the review body shall hold a hearing at which the person and the Administrative Agency may present and question witnesses and present oral and written argument. Within twenty (20) days after the hearing, the administrative body shall cause to be issued a written decision which shall affirm, reverse or modify the determination of the Administrative Agency. Appeal of this decision shall be by Certiorari to Circuit Court and shall be commenced within thirty (30) days of the date of the decision sought to be reviewed or be waived.

(8) Permit Fees. The following permit fees apply to temporary land use permits issued under this Section:

(a) Application Fees. A minimum application fee of fifty dollars (\$50) for an occupation lasting one to seven (1-7) days, an application fee of seventy-five dollars (\$75) for an occupation lasting eight to thirty (8-30) days, and an application fee of one hundred dollars (\$100) for an occupation lasting greater than thirty (30) days shall apply. The application fee shall be double for untimely renewals or applications made after occupation has already begun.

(b) Calculation of Occupation Fees. In addition to the application fee, the Permittee shall pay the following occupation fee:

1. Parkland. For the temporary use or occupancy of parkland, the occupancy fee is \$50/day.
2. Greenways. For the temporary use or occupancy of greenways or drainageways, the occupancy fee is \$25/day.
3. Public Parking Facilities. For the temporary use or occupancy of public parking facilities, the occupancy fee shall be calculated for each parking space occupied at the established public parking rates.
4. Other Lands. For the temporary use or occupancy of other city owned or controlled lands, the occupancy fee shall be set by the Administrative Agency based upon the nature of the property and the use thereof by the City. Any such fee may not exceed \$25/day.

(c) Waiver of Fees. The Administrative Agency may waive the permit fees under this Subsection if, in the Administrative Agency's determination, the permit holder will be performing work that benefits the City.

(9) Penalty. Any person who fails to comply with any of the requirements of this Section, including the conditions of any temporary land use permit issued hereunder, shall upon conviction be subject to a forfeiture of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000). Each day or portion thereof such violation continues shall be considered a separate offense."

2. Subdivision (a) entitled "Public Nuisance" of Subsection (1) entitled "Greenways and Park Lands" 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 to read as follows:

"(a) Public Nuisance. Private use of City-owned or leased greenways and park lands including, but not limited to, fences, retaining walls, outbuilding sites, dog runs, play equipment and gardens, storage of piers, boat hoists, or other private personal property, planting or pruning of trees and shrubs, mowing of grass on park lands, chemical treatment of grass on park lands or greenways, or mowing of grass on greenways when posted for no mowing is a public nuisance and is prohibited unless approval to use City-owned or leased greenways is obtained pursuant to Subdivision (b) or the private use is pursuant to a valid permit issued under Sec. 8.10 or Sec. 8.33, MGO."

3. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Use or occupancy of City land without a temporary land use permit.	8.10(1)	\$200, 1st \$400, 2nd w/in 12 mos. \$500, 3 rd + sub.
Failure to abide by temporary land use permit conditions.	8.10(9)	\$200, 1st \$500, 2nd w/in 3 yrs. \$1000, 3rd+ w/in 3 yrs."

EDITOR'S NOTE: A new or revised forfeiture range must be approved by the Municipal Judge prior to adoption. This new range has been so approved.