



Legislation Text

File #: 08382, Version: 1

Fiscal Note

No significant fiscal impact is anticipated.

Title

Amending Section 8.15 of the Madison General Ordinances to add regulation of private use of the Southwest Bike Path right-of-way.

Body

DRAFTER'S ANALYSIS: This ordinance amendment makes certain private uses of the Southwest Bike Path private nuisances. When the City took over control of this State of Wisconsin land for use as a bike path, there existed numerous encroachments from abutting properties. City staff created a policy to balance the public use of the land as a bike path and existing private uses of the land. This policy has not been successful at containing the encroachments in this area. Putting regulation of the bike path into ordinance, rather than policy form will make enforcement of private use of this public land more efficient for the City and will provide an easier way for abutting property owners, potential buyers, and bike path users to know how private use of the bike path is treated.

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

Section 8.15 entitled "Regulation Of Private Use Of Greenways And Park Lands" of the Madison General Ordinances is amended to read as follows:

"8.15 REGULATION OF PRIVATE USE OF GREENWAYS, AND PARK LANDS, AND THE SOUTHWEST BIKE PATH."

(1) Greenways and Park Lands.

(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, 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 SubsectionSubdivision (2b).

(2b) The City Engineer may approve planting native grasses and/or forbs or removal of invasive species in a City-owned or leased greenway, provided that:

- (a)1.** the applicant is the owner of land abutting the greenway where the use is proposed;
- (b)2.** the City's ability to maintain the greenway is not adversely impacted by the proposed use;
- (c)3.** the applicant pays to the City Treasurer a fee of one hundred twenty-five dollars (\$125);
- (d)4.** the applicant agrees to indemnify, defend, and hold harmless the City and its officers, employees and agents against all loss or expense by reason of any claim or suit, or of liability imposed by law upon the City or its officials, agents, or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property, including loss of use thereof, arising from, in connection with, caused by or resulting from activities related to an approved use of a greenway, whether caused or contributed to by the negligent acts of the City, its officials, employees, or agents.

The approval may contain conditions, including but not limited to, the duration of the approval and the geographic limits for the proposed use. The applicant shall notify all property owners within one hundred (100) feet of the greenway where the proposed use is located at least three (3) days prior to the date the proposed use begins.

(2) Southwest Bike Path.

(a) Public Nuisance. Except as set forth in (b), private use of the Southwest Bike Path right-of-way for fences, retaining walls, sheds or other outbuildings, gardens and/ or other landscaping, stairs,

- play equipment, dog runs parking of vehicles or storage of personal property is a public nuisance and is prohibited.
- (b) 1. 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. 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.
3. 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 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 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.
- (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, as determined by the City Engineer, is a public nuisance and is prohibited.
- (3) Abatement. If the City determines that a public nuisance exists pursuant to (1) or (2), notice to remove such public nuisance shall be sent to the owner, occupant, or person causing, maintaining, or permitting the public nuisance. If the public nuisance is not removed within the time specified in the notice, the City shall remove the public nuisance or cause it to be removed. The cost of abatement shall be assessed as a special charge to the owner, occupant, or person causing, maintaining, or permitting the public nuisance. Any property held by the City after removal is subject to disposal thirty (30) days after a notice of removal is mailed to the owner, occupant or person causing, maintaining, or permitting the public nuisance.
- (4) Appeal. Any person aggrieved by a determination that a public nuisance exists may appeal within fifteen (15) days of the mailing of the notice to remove the public nuisance. Appeal shall be to the Board specified on the notice and will be either the Board of Public Works or the Board of Park Commissioners, depending on which Board has the control and management of the public property at issue. All requests for appeal shall be filed with the City Clerk and must inform the Board of the reasons for the appeal. Within thirty (30) days, the Board shall hold a hearing at which the parties may offer testimony and documents. Within twenty (20) days of the hearing, the Board shall affirm, modify, or reverse the determination that a public nuisance exists. Appeal from the action of the Board shall be to Circuit Court within thirty (30) days of the determination of the Board.
- (5) Penalty. Any person violating this ordinance shall, upon conviction thereof, be subject to a forfeiture of not less than ten dollars (\$10) nor more than five hundred dollars (\$500). Each day such violation continues shall be considered a separate offense. In addition to any other penalty imposed by this ordinance, the City Attorney may maintain an action pursuant to Ch. 823, Wis. Stats. to abate the nuisance."