



Legislation Details (With Text)

**File #:** 29241      **Version:** 1      **Name:** Terrace plantings  
**Type:** Ordinance      **Status:** Passed  
**File created:** 2/25/2013      **In control:** SUSTAINABLE MADISON COMMITTEE  
**On agenda:**      **Final action:** 4/16/2013  
**Enactment date:** 4/25/2013      **Enactment #:** ORD-13-00064  
**Title:** Amending Section 10.25 of the Madison General Ordinances to create a terrace planting ordinance.  
**Sponsors:** Satya V. Rhodes-Conway, Michael E. Verveer, Anita Weier, Scott J. Resnick, Marsha A. Rummel, Steve King, Matthew J. Phair, Lisa Subeck, Brian L. Solomon, Bridget R. Maniaci, Larry Palm  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
4/16/2013	1	COMMON COUNCIL	Adopt	Pass
4/9/2013	1	MADISON FOOD POLICY COUNCIL	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
3/19/2013	1	COMMUNITY GARDENS COMMITTEE (ended 12/2016)		
3/18/2013	1	SUSTAINABLE MADISON COMMITTEE	Return to Lead with the Recommendation for Approval	Pass
3/6/2013	1	MADISON FOOD POLICY COUNCIL		
3/6/2013	1	BOARD OF PUBLIC WORKS	Return to Lead with the Recommendation for Approval	Pass
2/27/2013	1	MADISON FOOD POLICY COUNCIL	Refer	
2/27/2013	1	MADISON FOOD POLICY COUNCIL	Refer	
2/27/2013	1	MADISON FOOD POLICY COUNCIL	Refer	
2/26/2013	1	COMMON COUNCIL	Re-refer	Pass
2/25/2013	1	Attorney's Office/Approval Group	Referred for Introduction	

**Fiscal Note**

No appropriation is required. The additional administrative responsibilities can likely be absorbed with existing staff resources.

**Title**

Amending Section 10.25 of the Madison General Ordinances to create a terrace planting ordinance.

**Body**

DRAFTER'S ANALYSIS: This ordinance amends Sec. 10.25 to create new terrace planting provisions that would generally allow residential property owners or occupants to plant non-woody plantings within the terrace right-of-way adjacent to their property. Plantings that are made consistent with the new provisions are an exception to the existing 24-inch height rule for plantings set forth in sub. (3) of this section. As part of the new provisions, certain landscaping features are expressly allowed, although the existing privilege in streets laws set forth in Sec. 10.31 and Wis. Stat. § 66.0425, remain in force. Pursuant to these changes, the City

Engineer, in consultation with the Food and Alcohol Policy Coordinator, will draft a terrace treatment policy that will dictate where on terraces plantings may occur and landscaping features may be placed, and set forth any other height or safety related restrictions. This policy will be formally adopted by the Board of Public Works, after consultation with the Food Policy Council. Once adopted, the terrace treatment policy will be enforceable, thereby replacing an informal policy of the City Engineering Division from 1995. This ordinance further makes it clear that anyone planting in the terrace does so at their own risk and, while the City will attempt to give notice before conducting any work that may disturb such plantings, the City may remove the plantings at any time without compensation. Finally, enforcement authority over this ordinance, which already lies with the Building Inspection Division, will also be granted to the City Engineering Division.

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

Section 10.25 entitled "Merchandise, Etc., Not to be Placed on Sidewalk or Terrace" of the Madison General Ordinances is amended to read as follows:

**"10.25 MERCHANDISE, ETC., NOT TO BE PLACED ON SIDEWALK OR TERRACE PLANTINGS IN THE TERRACES.**

- (1) Reserved for Future Use Definitions. For the purposes of this section, the following definitions apply:
  - (a) "Occupant" is any person who legally resides in a residential property immediately adjacent to a terrace, including any individual condominium owner within a condominium development.
  - (b) "Owner" is the person who has legal title to a property immediately adjacent to a terrace, and, for multi-unit properties, includes condominium associations.
  - (c) "Permissible plantings" are those plants, other than trees and shrubs, and landscape features that have been deemed permissible plantings under subsection (2).
  - (d) "Residential property" is any single or multi-family property zoned residential under Chapter 28, MGO.
  - (e) "Terrace" is that portion of the public right-of-way in between the curb or road-way and the adjoining lot line, whether or not the area is occupied by a sidewalk or multi-use path
  
- (2) Reserved for Future Use Permissible Plantings. The owner of a residential property may plant, maintain and cultivate, or allow an occupant of the residential property to plant, maintain and cultivate, certain plants and landscaping features within the terrace adjoining the owner's property if said plantings and landscaping features are consistent with the requirements of this subsection. Plantings may not include any trees or shrubs, the planting of which are subject to Secs. 23.21 and 23.22, MGO. Plantings and landscape features are permissible plantings under this subsection if the following conditions are met:
  - (a) Approved Plantings. Any non-woody plantings that are commonly found in vegetable gardens, flower gardens or landscaping are allowed. Any plant species that are deemed invasive and regulated under Wis. Admin. Code ch. NR 40, or elsewhere in these ordinances, are not allowed.
  - (b) Landscaping Features. Landscaping features meant to protect approved plantings, such as mulch, small rocks or other similar features, shall be allowed provided the materials are stable, do not create any potential public safety hazard, and are easily removable. Temporary wire fencing, lattices, vegetable cages and the like, are permissible landscaping features if necessary to assist the establishment of approved plantings. Specific criteria for these items shall be included in the terrace treatment policy provided for in sub. (2)(c) below. Pots, raised flower beds, railroad ties, and the like, are not landscaping features subject to this subdivision, but rather are encroachments subject to the privileges in street ordinance in Sec. 10.31.
  - (c) Terrace Treatment Policy. To ensure public safety and access to public facilities, the City Engineer, in consultation with the Food and Alcohol Policy Coordinator, shall prepare a terrace treatment policy that describes the following:
    1. Where on terraces approved plantings and landscaping features may be placed;

2. How high they are allowed to be maintained;
  3. Criteria for more permanent features, such as low retaining walls, steps, and other incidental items when those items are necessary due to steep grades within the terrace; and,
  4. Standards for the use of chemical agents such as insecticides or fertilizers.
- The terrace treatment policy shall be approved by the Board of Public Works, after consultation with the Food Policy Council, and any amendments to this policy shall be approved by the Board of Public Works in like fashion. Once the terrace treatment policy is approved, the owner or occupant of the property may only place plantings and landscaping features in the terrace pursuant to the terrace treatment policy.
- (d) Maintenance of Approved Plantings and Landscaping Features.
1. Approved plantings and landscaping features shall be maintained in a safe and orderly manner, free of any unapproved planting or landscaping feature and in the areas allowed under the terrace treatment policy.
  2. Under no circumstances shall an approved planting or landscaping feature obstruct or endanger the public's use of a roadway, sidewalk or other multi-use path, and all approved plantings and landscaping features shall be maintained so as not to interfere with the public's right of travel over these areas, or the visibility required to exit private driveways.
- (e) Responsibility. The owner or occupant responsible for the permissible plantings accepts full responsibility for the care and maintenance of the permissible plantings, and understands that permissible plantings in the terrace are made at their own risk, and that they may be removed at any time by the City without compensation. The owner or occupant seeking to place permissible plantings in the terrace is responsible for contacting Digger's Hotline to identify and mark any underground utilities prior to digging within the right-of-way.
- (f) Removal. Prior to performing any public works project that may threaten any permissible planting, the City shall attempt to notify property owners and occupants of the City's plans in order to give the owner or occupant sufficient time to relocate the plantings. This notification provision shall not apply in emergency situations or where such notice is not practicable.
- (3) Planting of Shrubbery on Terraces Prohibited. Except for permissible plantings made under sub. (2), No person shall plant or maintain or cause to be planted or maintained on any terrace between the sidewalk and curb on any street in the City of Madison any plant or shrub in excess of twenty-four (24) inches in height or within a distance of twenty-four (24) inches from the back of the curb unless necessary to control erosion of the soil.

Any plants or shrubbery planted or maintained on any terrace contrary to the provisions of this ordinance shall be removed. The enforcement of this ordinance shall be under the supervision of the Police Department, the City Engineering Division, and the Building Inspection Division of the Department of Planning and Community and Economic Development.

Upon default of any person ordered to remove said plants or shrubbery, the City Engineering Division and/or the Department of Planning and Community and Economic Development may cause said plants or shrubbery to be removed. The cost of removal shall be assessed against the lot adjoining the terrace upon which the plants or shrubbery were located as provided in Section 27.05(2)(bb), MGO of the Madison General Ordinances. Prosecution under this section shall not bar the City from causing the plants or shrubbery to be removed, nor shall the City's removal of the plants or shrubbery bar prosecution hereunder."

2. 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 and amending therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Planting of shrubbery on terraces prohibited.	10.25(3)	\$20, 1st; \$50, 2nd;

\$200, 3<sup>rd</sup>