File #: 80362, **Version:** 1

Fiscal Note
No City Funds required.
Title
Amending Section 8.15(1) and Creating Subsection 37.05(11) of the Madison General Ordinances to allow for certain greenway encroachments and the creation of a greenway privilege.
Body
DRAFTER'S ANALYSIS: Under existing ordinances, most encroachments into City greenways and park lands are not authorized, even if similar encroachments may be approved on other City owned lands. This ordinance would amend Sec. 8.15(1) to create a limited exception to this prohibition and allow for some encroachments into greenways that are solely managed by the Engineering Division, including lands managed by the Stormwater Utility (such as ponds and other detention basins). While gardens and temporary fencing may be allowed with notification and approval of the City Engineer, more extensive encroachments, including permanent fencing, retaining walls, stairs, outbuildings, hardscape and parking areas would require the granting of a greenway privilege under the newly created 37.05(11). A greenway privilege would be similar to a privilege in street under Sec. 10.31, and would be within the discretion of the City Engineer to grant. The City will retain the ability to remove any greenway encroachment that interferes with City operations or that presents a risk to the public health, safety and welfare.

****

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

1. Amending Subsection (1) entitled "Greenways and Park Lands" of Section 8.15 entitled "Regulation of Private Use of Greenways, Park Lands, and the Southwest Path" as follows:

"(1) Greenways and Park Lands .

(a) Public Nuisance. Except as provided for in this Subsection, the ~~P~~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, firewood or other private personal property, disposal or dumping of yard waste or garbage, planting or pruning of trees and shrubs, mowing of grass on park lands, or 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. For the purposes of this Section, a greenway has the definition provided under Sec. 16.23(2), and also includes any lands managed by the Stormwater Utility.

(b) Native Plantings and Invasive Removals. 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:

1. the applicant is the owner of land abutting the greenway where the use is proposed;
2. the City's ability to maintain the greenway is not adversely impacted by the proposed use;
3. the applicant signs an approved volunteer form by which 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. The City Engineer will ultimately determine if the use is approved and a permit for use will be issued.

(c) Permissible Use of Certain Greenways.

1. Eligible Greenways. Greenways managed solely by the Engineering Division, including lands managed by the Stormwater Utility, are subject to this Subdivision. Greenways, or portions thereof, that are managed by the Parks Division, on its own or in combination with the City Engineer, as indicated on the Parks and Open Space Inventory Map, which is part of the Adopted City of Madison Parks and Open Space Plan, are not subject to this Subdivision.
2. Permissible Encroachments. The following categories of encroachments may be authorized within eligible greenways, provided that the proposal, in the opinion of the City Engineer, does not impede water flow or have a risk of floatation, and that the encroaching party complies with any other applicable City ordinance requirements and any additional limitations imposed by the City Engineer:
    a. Mowing. Unless posted for no mowing, mowing of grass on greenways is permitted.
    b. Gardens. Vegetable gardens, including any associated protective fencing or cages, and confined compost bins are authorized with City Engineer notification and approval.
    c. Fences. Temporary fencing not exceeding 30 inches tall that is used to delineate a garden and that does not run the full length of a property line is authorized with City Engineering notification and approval, provided it is removed annually. Temporary construction fencing is allowed if it is needed to protect or secure a construction site. Permanent fencing is only allowed with a valid Greenway Privilege issued under Sec. 37.05(11).
    d. Stairs. Constructed stairs of any type are only allowed with a valid Greenway Privilege issued under Sec. 37.05(11).
    e. Retaining Walls. Retaining walls of any size, regardless of type (gravity or walls including poured concrete or mortared stone/masonry), are only allowed with a valid Greenway Privilege issued under Sec. 37.05(11).
    f. Outbuildings. Outbuildings, including buildings or structures of any type, such as sheds, chicken coops, and garages, whether they include a foundation or not, are only allowed with a valid Greenway Privilege issued under Sec. 37.05(11). No such outbuilding shall be used for human habitation.
    g. Hardscape. The use of wood, stone, concrete, masonry, galvanized metal or other hard landscaped materials to construct patios, decks, fire pits, raised garden beds, and paths are only allowed with a valid Greenway Privilege issued under Sec. 37.05(11).
    h. Parking Areas. Parking areas are only allowed with a valid Greenway Privilege issued under Sec. 37.05(11).
    i. Improvements of Public Benefit. Improvements that are deemed to be in the public interest, by the City Engineer or Board of Public Works, may require a valid Greenway Privilege issued under Sec. 37.05(11). Examples include an

encroachment into public lands for a walking/biking access path where the entirety of said path is open to the public but the path is privately owned.

3. Maintenance of Permissible Encroachments.
   a. Permissible encroachments authorized under this Subdivision shall be maintained in a safe and orderly manner, and used only for their designated purpose.
   b. Under no circumstances shall a permissible encroachment obstruct or endanger the public's use of the greenway for its intended purposes, as determined by the City Engineer.
4. Responsibility. The person responsible for the permissible encroachment accepts full responsibility for the care and maintenance of the permissible encroachment, and understands that permissible encroachments in the greenway are made at their own risk, and that they may be removed at any time by the City without compensation. The person seeking to place any permissible encroachments in the greenway is responsible for contacting Digger's Hotline to identify and mark any underground utilities prior to digging within the greenway.
5. Removal. Any greenway encroachments remaining upon the expiration of a Greenway Privilege or that not maintained consistent with Para. 4, shall become a public nuisance, subject to Subd. (a), and abatement under Subs. (4).

(d) Public Priority. Notwithstanding the exceptions in Subds. (b) and (c), or the issuance of a Greenway Privilege under Sec. 37.05(11), any private encroachment of a greenway that ultimately interferes with the use, operation, maintenance or future planning, development or construction of the adjacent greenway or appurtenances, or that presents a risk to the health, safety and welfare of the public, as determined by the City Engineer or the Director of Building Inspection Division, shall be considered a public nuisance and is prohibited under this Subsection. Upon such a determination, any approvals, permits or privileges associated with the encroachment shall be rescinded, withdrawn or terminated, and the encroachment shall be removed pursuant to Subs. (4).”

2. Creating Subsection (11) entitled “Greenway Privilege” of Section 37.05 entitled “The Public Stormwater System” as follows:

“(11) Greenway Privilege.

(a) Privilege. The privilege for certain permissible encroachments within a publicly owned greenway, as allowed for under Sec. 8.15(1)(c), shall be granted only as provided in this Subsection. All existing encroachments which are nonconforming to the provisions of this Subsection are to hereafter comply with the requirements of this Subsection and Sec. 8.15(1). No building permits shall be issued under Sec. 29.05 on any premises from where a greenway encroachment exists until the requirements of this Subsection are met, unless the City Engineer or their designee determines that an emergency condition exists which requires immediate remedy, provided an application for Greenway Privilege is submitted with the application for said building permit. For the purposes of this Subsection, a greenway has the definition provided under Sec. 16.23 (2), but also includes any lands managed by the Stormwater Utility.

(b) Application.
   1. Procedure. Applications for a Greenway Privilege shall be made to the Economic Development Division of the Planning and Community and Economic Development Department. A nonrefundable application and initial processing fee of five hundred dollars ($500) shall accompany said application. There shall be no proration of the application and initial processing fee. The City Engineer, or their designee, shall make the determination of whether to approve an application for a Greenway Privilege under this subsection.

powered by Legistar™

A legible drawing or survey completed by a Professional Surveyor at a convenient scale necessary to clearly depict and label all items on an 8½ × 14 size paper or in an equivalent digital file, showing the greenway privilege, improvements and area in relation to the owner's property shall also accompany said application. The survey shall be referenced to the published horizontal datum as required by the City Engineer. The drawing or survey shall include sufficient data to permit the applicant's Surveyor to include a complete legal description and determine and label the square footage of the greenway area occupied by the greenway privilege. Upon the approval of an encroachment by the City Engineer, a digital CADD file shall be provided in the format required by the City Engineer.

The City Engineer or their designee shall not recommend that the greenway privilege be granted unless the applicant shows that the requirements of this Subsection and Sec. 8.15 will be satisfied, and that applicable ordinances, resolutions and Board of Public Works policies will be complied with. If the Engineer recommends approval of an application for the greenway privilege, the Engineer shall inform the applicant in writing of the recommendation and the conditions of approval. Following concurrence of the applicant with the conditions of approval, the Director of the Economic Development Division or their designee (Director), in cooperation with the City Attorney, shall prepare an agreement, setting forth the requirements and conditions under which the greenway privilege is permitted. Following execution of all the documents by the applicant, the required documents are to be executed by the City Engineer. The Director shall monitor the payment of the annual fees, which may be collected as a special charge if not paid.

Following receipt of the insurance certificate and the first year's fee, the agreement may be recorded with the Dane County Register of Deeds. A copy of the recorded agreement shall be furnished to the Applicant. The Risk Manager shall monitor the insurance requirements.

2. Appeal. In the event the City Engineer disapproves an application for a greenway privilege, the City Engineer shall inform the applicant, in writing, of the reasons for disapproval. The applicant may appeal the City Engineer's decision to the Board of Public Works within thirty (30) days after mailing of the City Engineer's notice to the address of the applicant as shown on the application. Such appeal must be in writing, and must inform the Board of the reasons why the applicant believes the City Engineer's decision to be in error. Failure to appeal a denial shall result in automatic approval of the denial without further action by the City Engineer or Board of Public Works.

Within thirty (30) days after receipt of the appeal, the Board of Public Works shall hold a hearing at which the applicant and the City Engineer may present and question witnesses and present oral and written argument. Within twenty (20) days after the hearing, the Board shall issue a written decision which shall affirm, reverse or modify the determination of the City Engineer. Appeal of the Board of Public Works' 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.

(c) Conditions.

1. Conditions of Approval. A greenway privilege granted under this Subsection is subject to compliance with Sec. 8.15(1), as that ordinance may be amended from time-to-time, including any additional conditions imposed by the City Engineer. Any greenway privilege granted by the City Engineer shall be to the owner, agent or person obligated pursuant to a regulatory order of the property

adjacent to the greenway to be occupied and shall be on condition that the applicant or the applicant's heirs and assigns shall become primarily liable for damages to person or property by reason of the granting of the greenway privilege.

2. Insurance. The applicant shall be required to furnish a Certificate of Insurance, providing evidence of 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 and minimum limits of one million dollars ($1,000,000) per occurrence. The City of Madison Risk Manager reserves the right to require higher limits and other coverage terms and conditions at their discretion. Applicant shall keep required insurance in full force and effect throughout the term of the greenway privilege. This insurance condition may be waived for other governmental units and in those instances where the City of Madison Risk Manager, in consultation with the City Attorney's office, determines that this requirement can be waived.

3. Public Priority. Greenway privileges shall not interfere with the use, operation, maintenance or future planning, development or construction of the adjacent greenway or appurtenances, or present a risk to the health, safety and welfare of the public. Non-compliance with this requirement is cause for immediate termination of the greenway privilege.

(d) Removal of Encroachment. The applicant shall remove said encroachment or obstruction upon thirty (30) days written notice by the City Engineer, or sooner if removal is necessary to protect the health, safety and welfare of the public. Additionally, the applicant or the applicant's heirs or assigns shall be entitled to no damages for removal of the greenway privilege, and if the applicant shall not remove the same upon due notice, it shall be removed at the applicant's expense and levied as a special charge for current services rendered against the applicant's property as provided by law. In the event of acquisition of all or a portion of the applicant's property for a planned public improvement, no compensation will be paid to the applicant for the improvements constructed within the area on which the greenway privilege exists, for cost incurred in realigning personal property located on the area on which the privilege exists, or for loss of value or damage to the remaining improvements of the applicant caused by reasons of the acquisition or taking as provided under Wis. Stat. ch. 32.

In accepting the privilege, the applicant waives any and all right to contest in any manner the validity of this ordinance or Wis. Stat. § 66.0425, or the amount of compensation charged by the City of Madison.

The applicant may be required to comply with additional conditions as the City Engineer may impose, including execution of a written agreement incorporating all conditions upon which the greenway privilege is to be granted. Such agreement shall be binding upon the applicant, the applicant's heirs and assigns and may be drafted in recordable form and recorded in the Office of the Dane County Register of Deeds, and the terms and conditions contained in the agreement or resolution shall remain in full force and effect as long as the greenway privilege exists.

The privilege may be terminated by the applicant at any time by providing the City Engineer written notice of its desire to terminate this privilege. Following removal of the greenway privilege and restoration of the public area on which the greenway privilege existed to the satisfaction of the City Engineer, the Engineer shall cause to be recorded in the Dane County Register of Deeds office a suitable document terminating the privilege, if necessary. A copy of the document shall be furnished to the applicant and the City Clerk.

(e) Fee Schedule.

1. An annual minimum fee of five hundred dollars ($500) or an amount established

powered by Legistar™

hereinafter, shall be charged for the privilege of encroaching into the greenway. The annual fee may be levied as a special charge for current services rendered against the applicant's property as provided by law. The agreement may provide for alternative means of payment of annual fees in excess of ten thousand dollars ($10,000). An annual fee for less than twelve (12) months shall be prorated according to the number of months or fraction thereof for which the greenway privilege is issued. There shall be no proration upon termination of any privilege in streets.

2. The annual rental fees for privileges in streets under Sec. 10.31(3)(d) shall apply to a greenway privilege.

(f) Although subject to the provisions of this subsection, there shall be no application fee or annual fee (if encroachment is approved) for improvements of public benefit as provided for under Sec. 8.15(1)(c)2.i."

powered by Legistar™