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To: Public Works Committee

From: Brett Hebert, Director of Public Works

Subject: Plantings in the ROW

At the last Public Works Committee meeting I was asked to look into ordinances to allow planting in the Right-of-Way (ROW). Ultimately, this is a policy decision that will need to be made by the Committee and then Council. Below is our current ordinance that applies to plantings in the ROW and I also included a sample ordinance that allows for plantings in the ROW from Madison. I look forward to the discussion at our next meeting involving the pros and cons of allowing plantings in the ROW.

Current City of Stoughton Pertinent Ordinances

Ordinance 64-9 Street and Right-of-Way Use
(g) Private property in street rights-of-way.

(1) Private property adjacent to streets, in street rights-of-way, is permitted as follows:

(2) Permit required. A permit from the street superintendent shall be required for the following:

Any structure, installation or construction adjacent to the street, in the public right-of-way or park row, of private property for longer than 90 consecutive days, such as lamp posts, hitching posts, benches, sculpture or other art, decoration or improvement.

- (4)

Sec. 58-10 – Public Nuisance Affecting Peace and Safety

58-10(4) Obstruction of intersections. All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.

City of Madison Plantings in the ROW Ordinance

Sec. 10.25 PLANTINGS IN THE TERRACES.

(1) Purpose . The purpose of this Section is to establish criteria for private plantings and landscaping features within the terrace portion of the public right-of-way. This ordinance will allow for the permissive

use of the terrace without the need for additional permits or a privilege in street, provided such use does not interfere with the public's use of the space. Uses inconsistent with this Section may be subject to penalty hereunder, or may require approval under other Sections of these Ordinance. Uses consistent with this Section are an exception to the privilege in street requirements under Section 10.31 as they are being permitted by general ordinance affecting the whole public as allowed for under Wis. Stat. § 66.0425(1).

(2) 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 (3).

(d) "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.

(3) Permissible Plantings . The owner of a property may plant, maintain and cultivate, or allow an occupant or tenant of the 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, but must be removed at the end of the growing season. Specific criteria for these items shall be included in the terrace treatment policy provided for in sub. (c) below. Pots, concrete planters, irrigation equipment 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, except that raised planting beds are permissible landscaping features as provided for in the terrace treatment policy.

(c) Terrace Treatment Policy . To ensure public safety and access to public facilities, the City Engineer, in consultation with the Food and Alcohol Policy Administrator, shall prepare a terrace treatment policy that describes the following: (Am. by ORD-15-00116, 10-28-15)

1. Where on terraces and which 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;

4. Criteria for raised planting beds, including permissible features, materials, and locations; and,

5. 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.

(4) Planting of Shrubbery on Terraces Prohibited . Except for permissible plantings made under sub. (3), 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. 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. (Am. by ORD-08-00109, 10-7-08; ORD-12-00134, 1-2-13)

Respectfully,

Brett Hebert
Director of Public Works