

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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Action: An Ordinance Concerning Persons in Charge of Planting Strips and Amending Section 7.370 of the Eugene Code, 1971.

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Meeting Date: June 24, 2019  
Department: Public Works  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 8  
Staff Contact: Sarah Medary  
Contact Telephone Number: 541-682-6877

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## ISSUE STATEMENT

The City Council is scheduled to take action on an ordinance clarifying that the property owner responsible pursuant to Eugene Code 7.370 for maintaining the space between the curb and the sidewalk (commonly referred to as the “planting strip”) is the person in charge of the planting strip for purposes of EC 4.807 (trespass).

## BACKGROUND

The purpose of having setback sidewalks, which allow for vegetative planting strips between city streets and the sidewalk, is explained in the city’s sidewalk design standards and guidelines. Those stated purposes include: 1) providing a physical separation from vehicle traffic; 2) providing a safe and comfortable environment for pedestrians and motorists by fully separating pedestrians from vehicles; 3) providing space between the sidewalk and curb for street trees and other landscaping; and, 4) providing a distinct green edge to the street, further distinguishing the different uses.

Vegetative planting strips are not intended to serve as places for people to gather or for items (such as garbage and debris) to accumulate; when they are used in this manner, the purpose of the setback sidewalk is often compromised. Additionally, use of vegetative planting strips inconsistent with their intended purpose can result in obstructing the free movement of vehicles or pedestrians (a violation of EC 5.130) or in creating a safety hazard by obstructing the vision of people walking, biking, and driving, making them less likely to see the other transportation users.

Pursuant to EC 7.370, it is the duty of the property owner to maintain the planting strip in front of their property. In fulfillment of this duty, property owners often spend time and money to plant and maintain flowers, grass or other ground cover material in the planting strip abutting their property. The planting strips that abutting property owners are required to maintain are located within public right-of-way and right-of-way is dedicated differently throughout the city; some right-of-way is dedicated outright (*i.e.*, fee simple) and other is dedicated as an easement. The manner in which the right-of-way is dedicated impacts an abutting property owner’s authority over the planting strip. Usually, the exact nature of the right-of-way dedication (and the corresponding authority of the abutting property owner) is unknown by the property owner and

can only be determined by researching the right-of-way's history. Thus, even though abutting property owners are responsible for maintaining the planting strip (including clearing debris and garbage), in most cases it is not immediately clear whether the abutting property owner has the authority to prevent someone from using the planting strip, even when the use damages the vegetation, leaves behind garbage, or creates safety problems for people using the transportation system.

The lack of clarity regarding the authority of the abutting property owner over the planting strip can be addressed by amending EC 7.370 to include the following two sentences: "When the planting strip (*i.e.*, the space between the curb and the sidewalk) is a different surface-type than the sidewalk and is clearly separate and distinct from the sidewalk, the property owner responsible pursuant to this section for maintaining the planting strip in front of their property is the person in charge of those premises for purposes of EC 4.807."

On June 10, 2019, council held a public hearing at which 13 people spoke in favor of the proposed ordinance and seven people spoke in opposition. Additional testimony on this subject has been received via the mayor and council email.

#### **COUNCIL OPTIONS**

1. Adopt the ordinance as proposed.
2. Adopt the ordinance with modifications as determined by the City Council.
3. Take no action on the ordinance.

#### **CITY MANAGER'S RECOMMENDATION**

The City Manager recommends adopting the ordinance as proposed.

#### **SUGGESTED MOTION**

Move to adopt An Ordinance Concerning Persons in Charge of Planting Strips and Amending Section 7.370 of the Eugene Code, 1971.

#### **ATTACHMENTS**

- A. Ordinance Concerning Persons in Charge of Planting Strips

#### **FOR MORE INFORMATION**

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