

DRAFTER'S ANALYSIS: This ordinance creates Sec. 23.24(3), MGO, to impose penalties upon a person performing public or private work who either intentionally or negligently damages City trees, such that the tree must be removed. Under this new section, a person performing work must exercise ordinary care to prevent unnecessary damage to City trees and the root structures of City trees. The penalties provided for by the ordinance are based upon the diameter of the damaged tree, as measured at twelve (12) inches above ground level, and seeks to recover the average costs to the City of replacing the equivalent canopy cover of the damaged tree and the average costs incurred by the City to remove the damaged tree. A tree with a diameter of three (3) inches or less can be replaced with a new two (2) inch planting, with an approximate cost to the City of \$250. However, trees with diameters larger than three (3) inches cannot be easily replaced by the City, if they can be replaced at all. To replace the canopy cover of these lost trees, each two (2) inches of lost diameter can be replaced by a new two (2) inch planting. Hence, the replacement cost to the City will be approximately \$125 per diameter inch lost. Furthermore, the average cost to the City of removing a damaged tree (including labor, equipment and supplies) equates to approximately \$30 per inch of lost diameter. This provision is meant to apply to situations not already covered by clauses in public works contracts and is meant to operate in conjunction with the City's recently updated tree protection specifications. The purpose of this ordinance is to lead persons working in or near public lands to exercise sufficient care when working near trees or root structures to prevent the unnecessary loss of City trees, especially mature City trees that cannot be replaced, and to make the City reasonably whole for any loss of a City tree. In addition, this ordinance amends Secs. 1.08(3)(a)4 and 1.08(4) to create a bond schedule for violations of this new subsection and to provide enforcement powers for this new subsection to the City Engineer, the Street Superintendent, the Director of Building Inspection, and the Superintendent of Parks, and/or their designees.

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

1. The title of Section 23.24 of the Madison General Ordinances entitled "Breaking or Injuring Trees, Shrubs" is hereby amended to read as follows:

**"23.24 BREAKING, DAMAGING, OR INJURING TREES, SHRUBS."**

2. Subsection (3) of Section 23.24 entitled "Breaking, Damaging, or Injuring Trees, Shrubs" of the Madison General Ordinances is created to read as follows:

"(3) No person, during the course of performing or causing to be performed public or private work on or immediately adjacent to property that the City of Madison has an ownership interest in, including, without limitation, highways and highway right-of-ways, public walkways and bike paths, parks, and greenways, shall intentionally or negligently cause damage to any tree planted on said City of Madison property such that the tree must be removed. In performing or causing to be performed such work, persons are expected to exercise ordinary care to prevent unnecessary damage to the tree and root structure so that the tree remains viable after the work is performed. It shall not be a violation of this provision if the City Engineer or City Forester, or their designees, authorize the damage to the tree prior to the damage, or within a reasonable time thereafter. Each tree damaged shall be a separate violation, and any person violating this provision shall be subject to the following forfeitures: if the tree damaged has a diameter of three (3) inches or less (measured at twelve inches above ground level and rounded to the nearest inch), a forfeiture of two hundred and fifty dollars (\$250) plus thirty dollars (\$30) per diameter inch; if the tree damaged has a diameter of more than three (3) inches (measured at twelve inches above ground level and rounded to the nearest inch), a forfeiture of one hundred and fifty-five dollars (\$155) per diameter inch. However, no person shall be subject to a forfeiture under this subsection if that person has already reimbursed the City for the damage to the tree through the provisions of a public works contract."

3. 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>
Injuring trees/shrubs.	23.24(1) and (2)	\$300

Damaging a City tree.

23.24(3)

\$250 + \$30/inch, 0>3  
diameter inches  
\$155 per diameter inch  
over 3 inches”

4. Subsection (4) entitled "Issuance of Citations" 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 amending therein the following:

“Enforcement Official

Ordinance Chapter or Section and Title

City Engineer, Street Superintendent, and Building Inspection Division Director or her/his designee.

Section 8.15, Regulating Private Use of Greenways and Park Lands; Chapter 10, Streets, Alleys, Sidewalks, and Gutters; Section 23.24(3), Damaging a City tree.

Superintendent of Parks or her/his designee, and Park Rangers.

Section 8.16, Unauthorized Vehicles on Public Lands; Section 8.17, Vending in Public Parks; Section 8.185, Watercraft and/or Other Boating Equipment Storage on City Property Regulated; Section 8.19, Animals Prohibited in Certain Areas; Section 8.215, Lake Access Permits; Section 8.26, Temporary Structure Prohibited without Permit; Section 8.36, Play Golf on City Lands Restricted to Golf Courses; Section 8.42, Feeding Birds on Public Property Prohibited; Section 9.13, License for Selling on Public Streets; Section 10.056, Street Use Permit; Sections 10.18(1) and (6), garbage containers on terrace when prohibited; Section 23.24(3), Damaging a City tree.”