



Legislation Details (With Text)

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Title: Amending Section 10.10 of the Madison General Ordinances to update language and special assessment procedures for street tree installations.

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Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
4/17/2012	1	COMMON COUNCIL	Adopt	Pass
4/11/2012	1	BOARD OF PARK COMMISSIONERS	Return to Lead with the Recommendation for Approval	Pass
4/4/2012	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
3/21/2012	1	BOARD OF PUBLIC WORKS	Refer	
3/20/2012	1	COMMON COUNCIL	Referred	
3/13/2012	1	Attorney's Office/Approval Group	Referred for Introduction	

Fiscal Note

No appropriation is required.

Title

Amending Section 10.10 of the Madison General Ordinances to update language and special assessment procedures for street tree installations.

Body

DRAFTER'S ANALYSIS: Under current policies and procedures, new street trees are only installed and assessed under this Sec. 10.10, MGO at the request of adjoining property owners who, as a condition of the installation, are required to sign a waiver under Subsection (11) of this Ordinance. Hence, to date, it has not been necessary to follow the notice and hearing requirements of this Section. However, the City Attorney's Office has noticed that the procedures set forth in this Section are inconsistent with other City ordinances and State law and need to be updated, even though these changes will have no actual impact upon the street tree assessment procedures. Accordingly, this ordinance amends various provisions of Sec. 10.10, MGO, to update the language and special assessment procedures for street tree installations contained therein and to make this Section more consistent with Sec. 4.09, the general special assessment ordinance. Firstly, all references to the Street Tree Review Committee are changed to the Board of Public Works as the Street Tree Review Committee is no longer in existence and the Board of Public Works can best address the hearing requirements of Sec. 10.10 if such a hearing is ever needed as the Board is already tasked with this responsibility for other assessable public works projects under Sec. 4.09, MGO. In addition, the procedure involving street tree installations as part of street improvement projects is changed from reliance upon the procedures set forth in Wis. Stat. § 66.0703 to those set forth in Sec. 4.09, MGO, as this City provision already addresses special assessments related to such projects. By tying these sections together, City staff will not

have to follow separate procedures for different components of the same project. Furthermore, Subsection (8) is amended to add in a mailing requirement after council adoption of the authorizing resolution to make that requirement consistent with Sec. 4.09(8) and Wis. Stat. § 66.0703(8)(d). Moreover, the waiver form requirements are being changed to eliminate the need to advise property owners on the waiver form of the modification and appeal procedures under Subsections (9) and (10). This is being done to make such waivers consistent with those under Sec. 4.09 and Sec. 16.23 so that there is uniformity in the City's special assessment notice and hearing waiver procedures.

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

Section 10.10 entitled "Installation of Street Trees" of the Madison General Ordinances is amended to read as follows:

"10.10 INSTALLATION OF STREET TREES.

- (1) It shall be the policy of the City of Madison to promote and enhance the beauty and general welfare of the City through the planting and maintenance of trees or shrubs within the public right-of-way of any street, alley or highway. The City Forester shall direct, regulate and control the planting, care and removal of all public trees and shrubs within the City subject to the direction of the Superintendent of Parks and the Board of Public Works and the Board of Park Commissioners.
- (2) Diseased or destroyed street trees shall be replaced by the City, provided that adequate space for tree growth is available and subject to availability of funds. The replacement of diseased or destroyed trees shall not be assessed to the abutting property owner.
- (3) The full cost, including inspection and supervision, of the initial installation of street trees shall be assessed to the abutting properties providing that the abutting properties have not been denied access to the right-of-way in which the street trees are installed. Assessment for street trees shall be in accordance with Wis. Stat. § 66.0701 and this ordinance, except where street trees are installed as a part of a street improvement district project in which case ~~Wis. Stat. § 66.0703 Sec. 4.09, MGO~~, shall govern. The maintenance of street trees shall be the responsibility of the City.
- (4) When the City Forester proposes the installation of street trees assessed to abutting properties he/she shall prepare a report listing the street trees to be planted, their location and a schedule of assessments.
- (5) A notice shall be published in the official newspaper stating that the City Forester proposes to plant and assess street trees to each of the benefited properties and that the ~~Street Tree Review Committee~~ Board of Public Works will hold public hearings on the selection, planting and assessments. ~~The Street Tree Review Committee shall be made up of a member of the Park Commission designated by the President of the Park Commission, the Parks Superintendent and another City employee who is not the City Forester.~~ Such notice shall be published as a Class 1 notice, under Wis. Stat. ch. 985, ten (10) days before the hearing or proceeding, to every interested person whose post office address is known, or can be ascertained with reasonable diligence. The hearing shall commence not less than ten (10), and not more than forty (40) days after such publication.
- (6) ~~The Street Tree Review Committee~~ Board of Public Works shall hold a public hearing on the planting of trees and assessments and shall prepare a report to the Common Council which shall consist of a recommendation on the City Forester's report.
- (7) A notice shall be published in the official newspaper stating that the ~~Street Tree Review Committee~~ Board of Public Works has prepared a report on the City Forester's Report and that the Common Council will hold a public hearing on the assessments. Such notice shall be published as a Class 1 notice, under Wis. Stat. ch. 985, in the City and a copy of such notice shall be mailed at least ten (10) days before the hearing or proceeding, to every interested person whose post office address is known, or can be ascertained with reasonable diligence. The hearing shall commence not less than ten (10) and not more than forty (40) days after such publication.
- (8) The Common Council shall hold a public hearing on the assessments and after the hearing may

approve, disapprove or modify, or it may re-refer the report to the ~~Street Tree Review Committee~~ Board of Public Works with such directions as it deems necessary to change the plans for the tree planting and to accomplish a fair and equitable assessment.

Upon adoption by the Common Council, the assessments shall be deemed authorized and made, and the date of such adoption shall constitute the date of levy. Assessments so levied shall be a lien against the property from such date. A copy of the resolution adopted by the Common Council shall be mailed to every interested person whose post office address is known or can be ascertained with reasonable diligence.

- (9) After the project is completed and all costs have been charged to the project, the City Forester shall modify each special assessment proportionately based on actual cost sustained and submit a revised schedule of assessments to the Common Council.

Whenever the actual cost of any project shall, upon completion or after the receipt of bids, be found to vary materially from the estimates, or whenever any assessment is void or invalid for any reason, or whenever the Common Council shall determine to reconsider and reopen any assessment, it may, after giving notice as provided in Subsection (7) and after a public hearing, amend, cancel, or confirm any such prior assessment.

If the cost of the project shall be less than the special assessment levied, the governing body, without notice or hearing, shall reduce each special assessment proportionately where any assessments have been paid, the excess over cost shall be refunded to the property owner.

- (10) Any person against whose land a special assessment has been levied under this ordinance shall have the right to appeal therefrom in the manner prescribed in Wis. Stat. § 66.0703(12), within forty (40) days of the day of the final determination of the governing body.

- (11) The Council may, without any notice or hearing provided in Subsections (5), (6), (7) and (8), levy and assess the whole or any part of the cost of installation of street trees as a special assessment upon the property specially benefited thereby whenever notice and hearing thereon is in writing waived by all the owners of property affected by such special assessment. ~~The form of such waiver shall advise property owners of the availability of the procedures of this section and that waiver of such notice of hearing provisions does not preclude the Common Council from acting according to Subsection (9) nor the property owner's right of appeal contained in Subsection (10).~~

- (12) Special assessments for the installation of street trees shall be payable in installments as provided by Section 4.08 of the Madison General Ordinances.”