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Re: STREET TREE PROTECTION ORDINANCE
TO: Housing Strategy Committee
FROM: Realtors® Association of South Central Wisconsin¹
Robert C. Procter, Government Affairs Director
DATE: August 25, 2025

On behalf of the REALTORS® Association of South Central Wisconsin (RASCW), thank you for the opportunity to provide testimony on the proposed revisions to the City's Street Tree Protection Ordinance. RASCW's members support the protection of trees located in the City's right-of-way. Street trees enhance neighborhood life, offer environmental benefits, and add to community character. At the same time, we believe that several clarifications to the draft ordinance are necessary to ensure it functions as intended, provides fairness to property owners and contractors, and avoids unintended consequences for development projects.

Tree Protection Zone Limited to the Right-of-Way. As written, the definition of the Tree Protection Zone is ambiguous and could be interpreted to extend onto private property. This effectively creates a new form of setback requirement not contemplated by the ordinance, and one that could prevent reasonable use of private property. We recommend making clear that the Tree Protection Zone applies only within the City's right-of-way and does not extend onto adjacent private property.

Condition of the Tree as a Factor. The health and condition of the tree should be explicitly recognized as a factor in valuation and decision-making. This ensures the City prioritizes resources toward protecting viable, healthy trees and avoids imposing disproportionate replacement costs on projects where trees are already in decline.

Proportional Enforcement – Up to 20-Day Suspension. Current language allows for revocation of right-of-way permits for violations. Revocation is a severe penalty that could jeopardize projects valued at tens or even hundreds of millions of dollars. Large construction projects involve multiple contractors and subcontractors working under tight deadlines. Mistakes by the best of contractors are possible. Allowing for suspensions of up to 20 days instead of automatic revocation creates accountability while keeping enforcement proportional to the violation without threatening the project's viability.

These clarifications do not affect the ordinance's purpose or intent. They create clear, fair, and proportional rules for all parties involved. RASCW respectfully requests that these clarifications be incorporated into the final ordinance to ensure it provides protection for City-owned street trees while supporting clarity, fairness, and project feasibility. We have attached a chart showing the requested revisions. These revisions are the same as those requested by Smart Growth of Greater Madison.

¹ RASCW represents more than 3,400 members of the housing industry in South Central Wisconsin. RASCW supports the housing industry through advocacy for its members and consumers.

PROPOSED CLARIFICATIONS TO STREET TREE PROTECTION ORDINANCE
REALTORS ASSOCIATION OF SOUTH CENTRAL WISCONSIN

Section	City Draft	Proposed Clarifications	Comment
Standard Specs § 107.13 (Tree Protection Zone)	Tree Protection Zone is the greater of 5 feet or 1 foot per DBH. City Forester may adjust.	Defines as a radius; limited to public right-of-way; Forester may adjust considering construction equipment access.	The clarification as to 'radius', limited to the public right-of-way, and City Forester discretion were all items that the City Forester testified as being his interpretation of the Ordinance. These changes would only clarify and not change the intent.
MGO § 10.05(11)(d) (Tree Protection Requirement & Penalty)	Applicants must comply with §107.13 unless covered by trimming/removal permit. Penalty: \$500 or \$150/inch if removal occurs.	Clarifies penalties apply for 'unauthorized removal'.	This is a clarification that does not change the intent of the ordinance.
MGO § 10.05(12)(a) (Revocations/Suspensions)	Permit may be revoked, suspended, or refused if tree rules violated.	Explicitly allows up to a 20-day suspension for non-compliance or unauthorized damage to ROW trees.	No matter how professional or well-intentioned contractors are, mistakes happen. Revoking a ROW permit could cause a project to fail. These projects are always on tight deadlines. The penalty for a violation needs to be proportional to the violation. Endangering the viability of a project that is potentially tens or hundreds of million dollars because a contractor or subcontractor made a mistake is draconian.
MGO § 10.055(4)(s) (Tree Protection for Occupancy Permits)	Applicants must comply with §107.13 while occupying area. Penalty: \$500 or \$150/inch if removal occurs.	Same requirement but specifies “unauthorized removal” before per-inch fines apply.	This is a clarification that does not change the intent of the ordinance.

Section	City Draft	Proposed Clarifications	Comment
MGO § 10.055(5) (Public Trees)	Unauthorized trimming, pruning, or removal causes permit revocation.	Unauthorized trimming, pruning, or removal causes a 20-day suspension instead of automatic revocation.	Same comment as 3.
MGO § 10.08(3)(e) (Entrance Locations)	No entrance allowed where a City tree is present unless no other option and tree permit obtained.	Adds exceptions: (1) if other ordinance/policy conflicts, staff decides priority; (2) Forester discretion to allow removal considering tree size/condition if project would be adversely impacted.	This is a clarification that does not change the intent of the ordinance.
MGO § 10.105(5) (Tree Valuation)	Valuation policy considers replacement/reestablishment costs, size, age, species, soil, canopy, etc.	Adds “health condition” as a valuation factor. Reaffirms valuation should reflect City's actual replacement / reestablishment costs.	This is a clarification that does not change the intent of the ordinance.

From: [Bill Connors](#)
To: [Plan Commission Comments](#)
Subject: Smart Growth's Comments re Proposed Street Tree Protection Ordinance
Date: Friday, August 22, 2025 4:13:14 PM
Attachments: [SGGM Recommended Changes to Madison Street Tree Protection Ord 2025-08-22.pdf](#)

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Chair Gnam and Plan Commission Members:

Attached to this email are recommended changes from Smart Growth Greater Madison to the proposed street tree protection ordinance and changes to the Standard Specifications for Public Works Projects, Legistar 89254. Smart Growth is seeking more time to work with the ordinance's sponsors and staff on language that achieves the objectives of the proposed ordinance while minimizing negative consequences.

Smart Growth asks that you adopt a motion asking the Common Council to re-refer this ordinance to your commission to allow additional time to work collaboratively on the ordinance and standard specifications language.

There was no attempt to reach out to developers and contractors who are active in Madison regarding the concept for and text of the proposed ordinance before it was introduced. Smart Growth would have welcomed being able to hear from the sponsors about the problem they are seeking to fix and to share ideas about how to fix the problem while minimizing added risk, delays and costs to housing construction in Madison. Unfortunately, we have only started those conversations with City Forester Ian Brown.

Smart Growth encourages you to read the memo in Legistar from Alex Saloutos, dated August 11, 2025, about the lack of data and analysis to support the proposed ordinance. Smart Growth agrees with Mr. Saloutos's memo.

This proposed ordinance is yet another way that the city government makes housing more expensive in Madison. For example, developers of multi-family housing buildings will need to find a way to pass along to tenants the cost of a tree replacement plan produced by a certified arborist and the required contribution to the new street tree replacement fund. Although these costs might appear relatively small, they are on top of many other costs that the Madison city government imposes on new housing construction, including bird-friendly glass and green roofs.

Smart Growth recommends using Park Fee revenue to make the required contributions to the street tree replacement fund, if that is permitted by state law, to avoid increasing the cost of housing. Park Fee revenue is rarely spent to benefit residents of the greater Downtown area.

Smart Growth's greatest concern is about the provisions in the proposed ordinance authorizing the revocation of permits to use the street or other parts of the right of way (e.g., the terrace) to stage construction equipment and materials. In the tight spaces for infill development and redevelopment projects, it is often essential to be able to use the street and terrace to stage equipment and materials. The safety of workers, passing pedestrians and motorists, and nearby properties is of paramount importance when deciding where to stage equipment and materials for a substantial construction project.

The draft ordinance provides that if an employee of one of the contractors or

subcontractors mistakenly damages or kills a street tree that was supposed to be preserved, the city government may revoke the permits to use the street and terrace. For many infill development projects, the revocation of these permits would be a death sentence—the new building could not be completed.

City Forester Brown has said in that situation, the developer could apply for new permits to use the street and right of way. But under the proposed ordinance, the new permits might be denied.

Developers will be extremely reluctant to take the risk that their project might be hit with a death sentence in the midst of construction if a contractor's or subcontractor's employee makes a mistake. Lenders will be extremely reluctant to make loans for development projects if a project might be hit with a death sentence in the midst of construction if a contractor's or subcontractor's employee makes a mistake. If this proposed ordinance is enacted in its current form, many developers will not even explore projects on possible infill development sites because of the risk created by the presence of street trees. You will not see the housing development projects that never happen because they are never even explored as a result of this ordinance.

Smart Growth has recommended different ordinance text to address this concern.

Most of the other changes recommended by Smart Growth make the text of the ordinance and Standard Specifications match statements that City Forester Brown has made about how this new regulatory regime would work in practice.

Thank you for your consideration.

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August 22, 2025

Smart Growth Greater Madison recommends the following changes to the proposed changes to the Standard Specifications for Public Works Projects and the proposed Street Tree Protection Ordinance

Standard Specifications for Public Works Projects sec. 107.13

Current proposed new text:

The Tree Protection Zone is the area around a tree that is the greater of either 5 feet, or 1 foot for each DBH. The Tree Protection Zone may be increased or decreased by the City Forester based on the unique characteristics of the tree in question.

SGGM's recommended new text:

The Tree Protection Zone is the area around a tree that is within a radius from the tree that is the greater of either 5 feet, or 1 foot for each DBH. The Tree Protection Zone may be increased or decreased by the City Forester based on the unique characteristics of the tree in question and the need for construction equipment to access adjacent development sites. The Tree Protection Zone is only within the public right of way and does not extend into adjacent private property.

New subs. (11), para. (d) in MGO sec. 10.05

Current proposed new text:

(11) Other Obligations.

(d) Tree Protection.

1. Requirement. For any trees within the project area that are not the subject of a tree trimming, pruning or removal permit issued under Sec. 10.101, the applicant shall comply with Section 107.13, the Tree Protection Specifications, of the City's Standard Specifications for Public Works Construction, where applicable, while performing work under the permit issued under this Section.
2. Penalty. In addition to revocation or suspension of the permit under Sub. (12) and the requirements of Section 10.105, the failure to comply with the Tree Protection

3. Specifications as required under this Subdivision shall be subject to a forfeiture of five hundred dollars (\$500), unless the violation results in the removal of a tree, in which case the forfeiture shall be one hundred and fifty dollars (\$150) per trunk diameter inch of the impacted tree, as measured or estimated at 4 1/2 feet above the ground and rounded down to the nearest inch. Each day such violation or failure to comply continues shall be considered a separate offense.

(12) Revocations, Suspensions, Refusals to Issue or Extend Permits.

(a) Grounds . The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

16. The applicant or Permittee has failed to identify impacted trees, comply with Section 107.13, the Tree Protection Specifications, of the City's Standard Specifications for Public Works Construction or an approved tree trimming or tree replacement plan, or caused **unauthorized** injury or damages, including removal, of right-of-way trees on prior projects.

SGGM's proposed new text:

(11) Other Obligations.

(d) Tree Protection.

4. Requirement. For any trees within the project area that are not the subject of a tree trimming, pruning or removal permit issued under Sec. 10.101, the applicant shall comply with Section 107.13, the Tree Protection Specifications, of the City's Standard Specifications for Public Works Construction, where applicable, while performing work under the permit issued under this Section.
5. Penalty. In addition to revocation or suspension of the permit under Sub. (12) and the requirements of Section 10.105, the failure to comply with the Tree Protection Specifications as required under this Subdivision shall be subject to a forfeiture of five hundred dollars (\$500), unless the violation results in the **unauthorized** removal of a tree, in which case the forfeiture shall be one hundred and fifty dollars (\$150) per trunk diameter inch of the impacted tree, as measured or estimated at 4 1/2 feet above the ground and rounded down to the nearest inch. Each day such violation or failure to comply continues shall be considered a separate offense.

(12) Revocations, Suspensions, Refusals to Issue or Extend Permits.

(a) Grounds . The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

16. The applicant or Permittee has failed to identify impacted trees, **In addition, the Department may suspend a permit for 20 days if the applicant or Permittee failed to** comply with Section

107.13, the Tree Protection Specifications, of the City's Standard Specifications for Public Works Construction or an approved tree trimming or tree replacement plan, or caused **unauthorized** injury or damages, including removal, of right-of-way trees on prior projects.

New para. (s) in MGO sec. 10.055, subs. (4)

Current proposed new text:

(S) Tree Protection

1. Requirement. For any trees within the project area that are not the subject of a tree trimming, pruning or removal permit issued under Sec. 10.101, the applicant shall comply with Section 107.13, the Tree Protection Specifications, of the City's Standard Specifications for Public Works Construction, where applicable, while occupying the permitted area.
2. Penalty. In addition to revocation or suspension of the permit under Sub. (6) and the requirements of 10.105, the failure to comply with the Tree Protection Specifications as required under this Subdivision shall be subject to a forfeiture of five hundred dollars (\$500), unless the violation results in the removal of a tree, in which case the forfeiture shall be one hundred and fifty dollars (\$150) per trunk diameter inch of the impacted tree, as measured or estimated at 4 1/2 feet above the ground and rounded down to the nearest inch. Each day such violation or failure to comply continues shall be considered a separate offense.

SGGM's proposed new text:

(S) Tree Protection

1. Requirement. For any trees within the project area that are not the subject of a tree trimming, pruning or removal permit issued under Sec. 10.101, the applicant shall comply with Section 107.13, the Tree Protection Specifications, of the City's Standard Specifications for Public Works Construction, where applicable, while occupying the permitted area.
2. Penalty. In addition to revocation or suspension of the permit under Sub. (6) and the requirements of 10.105, the failure to comply with the Tree Protection Specifications as required under this Subdivision shall be subject to a forfeiture of five hundred dollars (\$500), unless the violation results in the **unauthorized** removal of a tree, in which case the forfeiture shall be one hundred and fifty dollars (\$150) per trunk diameter inch of the impacted tree, as measured or estimated at 4 1/2 feet above the ground and rounded down to the nearest inch. Each day such violation or failure to comply continues shall be considered a separate offense.

Change to subs. (5) of MGO sed. 10.055

Current proposed new text:

(5) Public Trees . Any trimming, pruning or removal of public trees within the permitted area will require the prior issuance of a separate permit under Sec. 10.101. The trimming, pruning or removal of any City tree without a permit issued under Sec. 10.101 or without the permission of the City Forester shall be cause to revoke a permit issued under this Section. Any tree removal is further subject to Sec. 10.105.

SGGM's recommended new text:

(5) Public Trees . Any trimming, pruning or removal of public trees within the permitted area will require the prior issuance of a separate permit under Sec. 10.101. The trimming, pruning or removal of any City tree without a permit issued under Sec. 10.101 or without the permission of the City Forester shall be cause to **revoke suspend** a permit issued under this Section **for 20 days**. Any tree removal is further subject to Sec. 10.105.

New paragraph (e) in MGO sec. 10.08, subs. (3)

Current proposed new text:

No entrance shall be located where an existing City street tree is present unless no other location is available, the applicant obtains a tree trimming, pruning or removal permit under Sec. 10.101, and the applicant complies with Sec. 10.105.

SGGM's recommended new text:

No entrance shall be located where an existing City street tree is present unless no other location is available, the applicant obtains a tree trimming, pruning or removal permit under Sec. 10.101, and the applicant complies with Sec. 10.105, **except as follows:**

1. **If another section of the Madison General Ordinances or City policy or City department prohibits an entrance from being located where a City street tree is not present, city staff shall decide which ordinance or policy has priority regarding the location of the entrance.**
2. **If an owner of private property shows that a proposed development project would be adversely impacted by requiring an entrance to be located where no existing City street tree is present, the City Forester has discretion to allow an applicant to obtain a permit to remove a City street tree under Sec. 10.101 taking into consideration the size and condition of the street tree that would be removed.**

New MGO section 10.105, subs. (5)

Current proposed new text:

Valuation. The City Forester shall determine the value of the removed street tree by applying the City Forester's Street Tree Valuation Policy, which policy shall be created by the City Forester and approved by the Board of Public Works. The Policy shall be updated at least bi-annually so that the valuations reflect the City's updated costs. In establishing the policy, the City Forester shall consider a tree's replacement cost (the costs that will be incurred by the City to purchase suitable replacement(s) for the tree), and reestablishment costs (the costs that will be incurred by the City to prepare a site suitable for sufficient canopy growth to replace the lost tree). Other factors to consider will include, but not be limited to, size, age, species, and character of the tree, type of street, soil condition, and the existing tree canopy. The value determination for a tree is meant to reflect the City's actual costs that would be incurred to replace the removed tree.

SGGM's recommended new text:

Valuation. The City Forester shall determine the value of the removed street tree by applying the City Forester's Street Tree Valuation Policy, which policy shall be created by the City Forester and approved by the Board of Public Works. The Policy shall be updated at least bi-annually so that the valuations reflect the City's updated costs. In establishing the policy, the City Forester shall consider a tree's replacement cost (the costs that will be incurred by the City to purchase suitable replacement(s) for the tree), and reestablishment costs (the costs that will be incurred by the City to prepare a site suitable for sufficient canopy growth to replace the lost tree). Other factors to consider will include, but not be limited to, size, age, species, and character of the tree, type of street, soil condition, health condition and the existing tree canopy. The value determination for a tree is meant to reflect the City's actual costs that would be incurred to replace the removed tree.