CITY OF STOUGHTON, 381 E. Main Street, Stoughton, WI 53589

ORDINANCE OF COMMON COUNCIL			
To amend City Ordinance Section 10-2 (d) *Construction Standards- Terrace Trees*, and to create City Ordinance Section 66-904(13), requiring the planting of terrace trees. Committee Action: Public Works Committee approved 3-0 Fiscal Impact: None			
File Number:	O-5-2018	**First Reading:** **Second Reading:**	January 23, 2018 February 6, 2018

The City Council of the City of Stoughton, Dane County, Wisconsin, ordains as follows:

1. **Section 10-2 (d) of the Stoughton Municipal Code is amended to provide as follows:**

(d) Terrace Trees.

(1) *Purpose*. The purpose of this Section is to provide for the planting of terrace trees in connection with the construction of new buildings on previously undeveloped lots or parcels. The City now requires terrace trees as a condition of approving land divisions under Chapter 66 of this Code. However, there are some undeveloped lots or parcels in the City that were created without a terrace tree requirement. This Section is intended to provide for terrace trees serving those lots and parcels.

(2) *Applicability*. This Section applies to all applicants for a permit to construct a building of any kind, excluded accessory structures, on a previously undeveloped lot or parcel, where the lot or parcel does not have terrace trees conforming to the requirements of this section at the time of application.

(3) Definitions.

a. "Small Tree" means a tree that will grow to 30 feet or less at maturity.
b. "Medium Tree" means a tree that will grow to between 30 feet and 70 feet at maturity.
c. "Large Tree" means a tree that will grow to more than 70 feet at maturity.

(4) *Terrace Tree Requirements*. Any person applying for a permit to construct a building on a previously undeveloped lot or parcel shall be required to provide for the planting of terrace trees in accordance with the requirements of this Section.

(5) *Number of Trees*. The required number and size of trees for a lot or parcel shall be the largest number and largest size feasible as determined by the Public Works Director or their designee and applying the following guidelines:

a. Spacing requirements:
   i. Small Trees – 30 feet.
   ii. Medium Trees – 40 feet.
   iii. Large Trees – 50 feet.
b. Terrace width:

i. 4 feet to 6 feet – Small Tree
ii. 6 feet to 8 feet – Medium Tree
iii. 8 or more feet – Large Tree

In determining the required number and size of trees, the Public Works Director or their designee may also consider power lines, existing trees, retaining walls, and other features relating to the feasibility of planting trees within the terrace.

(6) *Tree Planting Cost and Specifications*.

a. Except as expressly provided otherwise in this Section, all terrace trees required by this Section shall be planted by the City. The applicant shall pay a fee to the City for the number of required trees, in the amount per tree to be established annually by the Public Works Director based on the estimated, actual cost to purchase and plant trees during the applicable calendar year.

b. In those cases where the Public Works Director or their designee determines that there is insufficient, suitable terrace area to plant all required terrace trees, the Public Works Director may, with the consent of the property owner, authorize planting of such terrace trees on the applicable private lot or parcel and within 10 feet from the public right-of-way. If such trees will not be planted on the private lot or parcel, they shall be planted at another location approved by the Public Works Director or their designee within the City's urban forest.

c. Where the applicant's construction project requires approval of a landscaping plan by the City Plan Commission, the applicant may elect to provide for the planting of their own trees, subject to the requirements of this Section. The applicant's landscaping plan shall provide for the planting of not less than the number of terrace trees required by this Section. The terrace tree components of the landscaping plan shall be approved by the Public Works Director or their designee. All trees shall be planted in compliance with the City of Stoughton Tree Planting Specifications available from the Public Works Director. The applicant shall provide a deposit to the City Finance Director in an amount equal to the estimated cost of purchasing and planting such trees as established by the Public Works Director. If the applicant fails to plant the terrace trees required by the approved landscaping plan, and in accordance with the City's Tree Planting Specifications, the City may apply the deposit to remedy any defects or plant new trees. If the applicant plants the terrace trees required by the approved landscaping plan in accordance with the City's Tree Planting Specifications, the deposit shall be returned to the applicant.

2. Section 66-904 (13) of the Stoughton Municipal Code is created to provide as follows:

(13) Terrace Trees. The developer shall install or pay a fee to fund the installation of terrace trees. The number of required trees shall be determined using the methodology in Section 10-2 (5) of this Code. If the developer elects to install the required terrace trees, such installation shall be done in accordance with a tree planting plan approved by the Public Works Director or their designee. The tree planting plan shall specify the number, species and location of required trees. If the developer elects to pay a fee to fund the installation of terrace trees, the fee shall be calculated using the methodology in Section 10-2 (6) of this Code.

Dates
Council Adopted:_____

Mayor Approved: _____ _____
Donna Olson, Mayor

Published:_____

Attest:_____ _____
Holly Licht, City Clerk

To Mayor Donna Olson
Common Council

From Matthew Dregne, City Attorney

Date November 30, 2017

Re Terrace Trees

I have been working with City staff to develop an ordinance addressing the circumstances under which a property owner will be required to pay the City to plant publicly owned trees on public property (mainly terrace areas within public rights-of-way). The result of that effort is reflected in the attached ordinance. Under this ordinance, terrace trees will be funded in one of three ways, as follows:

1. Where land is subdivided for development, the developer will be required to pay a fee to fund the installation of terrace trees within the development.

2. Where someone constructs a building on a previously undeveloped lot, he or she will be required to fund the installation of terrace trees corresponding to that lot.

3. Where terrace trees are needed on existing, developed lots, the City will fund the installation.

We considered whether to require owners of existing, developed lots to pay for terrace trees when they undertake projects on their property. For example, to obtain a building permit, Section 10-2 (d) currently requires a property owner (excepting the owner of a single-family residence) who is expanding their building or parking lot to pay the City to purchase terrace trees. As explained below, we are concerned that approach would be unlawful and therefore recommend against it.

If the City requires a property owner to pay for a city-owned terrace tree as a condition of obtaining a building permit, the fee would be legally classified as a "development exaction." Under the 5th Amendment to the U.S. Constitution, a development exaction must satisfy a two-part test to be lawful: (1) the fee must bear an "essential nexus" to the

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reason for requiring the permit, and (2) the fee must be "roughly proportional" to the impact of the proposed project. When undeveloped land is being subdivided for development, or being initially developed, we think there is a case to make that the two-part test is met. The conversion of undeveloped land to developed land creates a need for trees to replace trees and vegetation lost to development, satisfying the "essential nexus" part of the test. The fees required by the enclosed ordinance are based on the street frontage of the subject new development, which we think addresses the rough proportionality requirement.

We see a material difference between imposing a tree fee in connection with converting undeveloped land to developed land, and imposing a fee as a condition of modifying an already-developed property. For example, assume the owner of a fully developed commercial property applies for permit to build a small addition onto their building. We see no "essential nexus" between the purpose of that building permit application and requiring the owner to pay for city trees.

Our second concern is based on equal protection. We see no basis for requiring owners of developed commercial or multi-family properties to pay for city street trees, while exempting owners of single-family homes from paying such fees. Without a reasonable basis for treating these classes of property owners differently, such a result would violate the Equal Protection Clause.

Attachment
cc: Brett Hebert, Director of Public Works
Rodney Scheel, Planning Director

CITY OF STOUGHTON, 381 E. Main Street, Stoughton, WI 53589

ORDINANCE OF COMMON COUNCIL			
To amend City Ordinance Section 10-2 (d) *Construction Standards-Terrace Trees*, and to create City Ordinance Section 66-904(13), requiring the planting of terrace trees. Committee Action: Public Works Committee approved 4-0 Fiscal Impact: None			
File Number:	O-12-2017	**First Reading:** **Second Reading:**	August 22, 2017 September 12, 2017

The City Council of the City of Stoughton, Dane County, Wisconsin, ordains as follows:

1. Section 10-2 (d) of the Stoughton Municipal Code is amended to provide as follows:

(d) Terrace Trees.

(1) *Purpose.* The purpose of this Section is to provide for the planting of terrace trees in connection with the construction of new buildings on previously undeveloped lots or parcels. The City now requires terrace trees as a condition of approving land divisions under Chapter 66 of this Code. However, there are some undeveloped lots or parcels in the City that were created without a terrace tree requirement. This Section is intended to provide for terrace trees serving those lots and parcels.

(2) *Applicability.* This Section applies to all applicants for a permit to construct a building of any kind, excluded accessory structures, on a previously undeveloped lot or parcel, where the lot or parcel does not have terrace trees conforming to the requirements of this section at the time of application.

(3) *Definitions.*

a. "Small Tree" means a tree that will grow to 30 feet or less at maturity.
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(4) *Terrace Tree Requirements.* Any person applying for a permit to construct a building on a previously undeveloped lot or parcel shall be required to provide for the planting of terrace trees in accordance with the requirements of this Section.

(5) *Number of Trees.* The required number and size of trees for a lot or parcel shall be the largest number and largest size feasible as determined by the Public Works Director or their designee and applying the following guidelines:

a. Spacing requirements:
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a. Except as expressly provided otherwise in this Section, all terrace trees required by this Section shall be planted by the City. The applicant shall pay a fee to the City for the number of required trees, in the amount per tree to be established annually by the Public Works Director based on the estimated, actual cost to purchase and plant trees during the applicable calendar year.

b. In those cases where the Public Works Director or their designee determines that there is insufficient, suitable terrace area to plant all required terrace trees, the Public Works Director may, with the consent of the property owner, authorize planting of such terrace trees on the applicable private lot or parcel and within 10 feet from the public right-of-way. If such trees will not be planted on the private lot or parcel, they shall be planted at another location approved by the Public Works Director or their designee within the City's urban forest.

c. Where the applicant's construction project requires approval of a landscaping plan by the City Plan Commission, the applicant may elect to provide for the planting of their own trees, subject to the requirements of this Section. The applicant's landscaping plan shall provide for the planting of not less than the number of terrace trees required by this Section. The terrace tree components of the landscaping plan shall be approved by the Public Works Director or their designee. All trees shall be planted in compliance with the City of Stoughton Tree Planting Specifications available from the Public Works Director. The applicant shall provide a deposit to the City Finance Director in an amount equal to the estimated cost of purchasing and planting such trees as established by the Public Works Director. If the applicant fails to plant the terrace trees required by the approved landscaping plan, and in accordance with the City's Tree Planting Specifications, the City may apply the deposit to remedy any defects or plant new trees. If the applicant plants the terrace trees required by the approved landscaping plan in accordance with the City's Tree Planting Specifications, the deposit shall be returned to the applicant.

2. Section 66-904 (13) of the Stoughton Municipal Code is created to provide as follows:

(13) *Terrace Trees.* The developer shall install or pay a fee to fund the installation of terrace trees. The number of required trees shall be determined using the methodology in Section 10-2 (5) of this Code. If the developer elects to install the required terrace trees, such installation shall be done in accordance with a tree planting plan approved by the Public Works Director or their designee. The tree planting plan shall specify the number, species and location of required trees. If the developer elects to pay a fee to fund the installation of terrace trees, the fee shall be calculated using the methodology in Section 10-2 (6) of this Code.

Approved: _____ _____
Donna Olson, Mayor

Attest: _____
Lana Kropf, City Clerk

Dates:

Council Adopted: _____

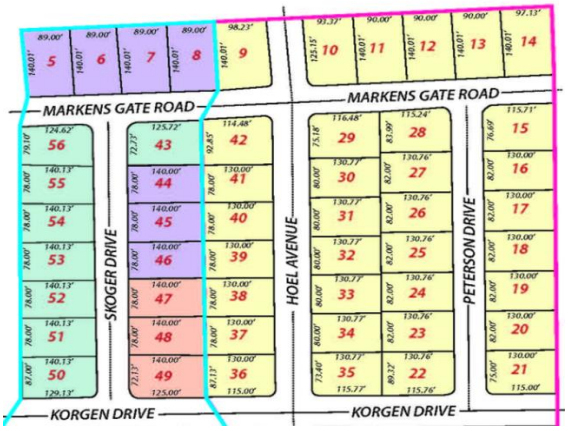
Published: _____

City Ordinance 10-2(d) and Section 66-904(13) Tree Planting Requirements Outlined

Situations	Are Tree Required? Current 10-2(d)	Are Tree Required? Proposed 10-2(d)	Notes
Is the Ordinance Legal	No	Yes	It is not lawful for the City to require the planting of terrace trees on previously developed lots within the city as this would be a violation of the 5th Amendment "development exaction" and "equal protection".(1)
Addition to structures or parking Lots on existing developed lots	Yes	No	Cannot require tree planting on developed lots without violating the 5th Amendment "development extraction" and "equal protection". Trees could still be planted using City funds within the right-of-way through the tree planting infill program.
New construction on subdivided land	Yes	Yes	Trees Required per Proposed **Chapter 66-904(13)**
New construction on previously undeveloped Lots	Yes	Yes	Trees Required per Proposed **Ordinance 10-2(d)**

Previously developed lot - Tree can't be required under the law

New Constuction on Subdivided Lots - Trees can be required



New construction on previously undeveloped Lots

Tree Commission Meeting Minutes
Thursday, November 30, 2017 at 4:30 PM
Ed Overland Room, City Hall, 381 E Main St, Stoughton

Members Present: Kevin Short, Mike Point, Dean Tangeman, Sid Boersma and Mitch Bergeson

Absent & Excused: Nick Yuknis and Bob Kardasz

Guest:

Staff: Director of Public Works Brett Hebert, City Forester John Kemppainen and Street Department Secretary Vickie Erdahl

Call to order: Meeting called to order @ 4:30 PM

1) **Communications:**

Hebert stated:

- Request for bids were sent out for tree trimming. *Kemppainen* divided the city into five zones with the south west zone being the starting point. The trimming will start in 2018. Some of 2017 funds will be rolled over. *Kemppainen* would like the city to be on a five year cycle plan. When bids are returned, they will need to go to Finance and then to Council for approval.
- The new forester's truck has been ordered. It is a one ton F550 w/box and is expected to arrive in the spring of 2018
- The city acquired an additional 55 acres off Cty.Trk A by the property that the new facility will be built on. The hope is to be able to have the wood chips and wood stored on site by 2019.

Kemppainen stated:

- A homeowner brought to his attention that the city had a tree tribute program. After some searching he found the brochure. This brochure is very out dated and needs to be reviewed. **Placed on January agenda**.

Point stated:

- The Senior Center was approached by the Youth Center requesting sawdust & chips to make fire compressed fire logs – does anyone know where they could get these materials?

2) **Forestry Reports:** *Kemppainen* spoke with Asleson's and they stated they haven't sold any wood. *Kemppainen* stated that he will be a speaker in February at the WI Arborist Association convention in Green Bay. His topic is Urban Wood.

3) **Update on Chapter 66 & Ord 10-2 (d) Terrace Trees:** *Hebert* shared a memo he received from the City Attorney which stated that in Ordinance 10-2 (d) where it states that an owner of a current developed lot, if expanding, to plant a tree violates the 5th amendment. This language will be removed from the ordinance and the requirement would only be for undeveloped properties. Chapter 66 would remain the same as it strictly pertains to new developments.

Motion by Boersma, seconded by Short to approve the changes to Ordinance 10-2 as written and recommend to the Public Works Committee to adhere to City Attorney Dregnes' recommendation. Motion carried 5-0.

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4) **Discuss and Recommend changes to the Stoughton Municipal Zoning Ordinance: Appendix B:** *Short,* after reviewing/comparing the city tree inventory, broke down the list of trees with point values from the zoning ordinance into three parts – foundation, parking lots and frontage trees divided by size and deciduous trees. Higher points would be assigned to trees that are deemed to be "more desirable" and diversify the forest as the city already has too many trees of certain species in case a disease strikes -- such as the emerald ash borer.

The Tree Commission would like certain invasive/nuisance species of trees to be removed from the current list as well as some others added. More discussion is needed and the committee is reviewing the lists and categories that *Short* suggested.

Hebert suggested that Planning Director Rodney Scheel be invited to the January meeting to explain how his department utilizes the list.

5) **Review and Recommendations for Private Property Tree Planting Consent Form:** ***Has been completed.***

6) **Approval of minutes from September 14, 2017 Meeting**: **Motion by Boersma seconded by Tangeman to approve the minutes. Carried 5-0.**

7) **Wood/Board Sales – Inventory & Tracking:** The current calculation for board feet that we have is around 1000 board feet out at the Racetrack barn. *Hebert* suggested having a wood auction and that we need to keep better track of the materials we have. Other suggestions mentioned: 1) offer wood to the public, 2) sell on-line – Wisconsin Surplus, 3) Craig's List, 4) ask Stoughton Lumber and have a structured sale to the public at the new facility. Will be discussed further at the next meeting.

8) **Future Agenda Items:** Stoughton Municipal Zoning Ordinance, wood sales, Tree Tribute Program

Motion by Boersma, seconded by Tangeman to adjourn the meeting at 6:00 p.m. Respectfully submitted 12/6/17, Vickie Erdahl - Staff

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Public Works Committee
Tuesday January 16, 2018 @ 4:30 PM
Fire Station Training Room, 401 E Main St

Members Present: Alderpersons Pat O'Connor, Michael Engelberger, Greg Jenson and Sid Boersma

Absent/Excused:

Staff: Planning Director Rodney Scheel, Street Supervisor John Halverson and Vickie Erdahl

Guests: Alderperson Regina Hirsch, Todd Larsen, Chandra Malmquist, Dan & Mary Jo Davis, Jason Dickens and Paul & Teresa Reedy

Call to Order: *O'Connor* called the meeting to order

1) Communications: *Hebert* reported:

- Discussed how the street department plows when there is a long storm event – keep the mains open and plow the secondary streets when storm has finished. On the secondary streets there is only two blocks before a main is reached.

2) Reports: *Erdahl* stated street openings permits were over the average for the year.

Old Business:

3) Public Works Facility Update: *Hebert* stated that there was a pre-bid meeting last week which was well attended so the city is hopeful that it will receive 708 bids for the project. The bids are due on January 25th. After the bids are received Angus Young will doing the vetting process and then the streets will review.

4) Review and Possible Action Regarding Proposed Revisions to Ordinance 10-2(d)-Construction Standards-Terrace Trees and to Create City Ordinance Section 66-904(13)-Terrace Trees: *Hebert* stated that after review of current ordinance 10-2(d), it was found that it may violate the "development exaction" law under the 5th Amendment. The city attorney issued a statement outlining his concerns which were included in the packet. The attorney also has concerns that the current ordinance violates the equal protection laws because it requires owners or developers of commercial or multi-family property who are proposing an addition to their property to pay for city trees, while exempting single family homes from paying fees for tree installation. *Hebert* presented the revised proposed ordinance10-2(d) that allows for the city to charge for the plating of terrace trees for new construction on previously undeveloped lots within the city. New construction that are part of a subdivision will require tree planting under Section 66-904(13). The ordinance also contains more detail for a clearer understanding on the number of trees and sizes that need to be planted. Additions to existing properties will not be charged for trees as it is deemed to be unlawful. The city can still use operating funds to plant trees in the right-of-way if we so choose. Landscaping plans on private property are still enforced.

Motion by Boersma, seconded by Engelberger to recommend to the Common Council to adopt the Ordinance 10-2(d) Construction Standards-Terrace Trees and Ordinance Chapter 66-904(13) as presented in the packet. Motion carried 3-0

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New Business:

5) **Approve December 19, 2017 Meeting Minutes:** **Motion by Engelberger, seconded by Boersma to approve the minutes. Motion carried 3-0.**

6) **2018 Road Construction Project Plans – Kristi Lane, Vernon St and Gjertson St:** *City residents spoke on their concerns:*

Gjertson St – Dan & Mary Jo Davis of 925 Hamilton St distributed a handout with pictures to show their property to show history and state some concerns with the current plan. This street is being narrowed nine feet with sidewalks installed on both sides of the street in this block.

The Davis's stated the following:

- They have 25 trees that are 50 yards old and 40 ft. tall and do not want to lose
- These trees provide privacy and block the view and noise of Dollar General which if removed the owner would have to put up a privacy fence
- The trees have been maintained and do not block the view of traffic
- There are no sidewalks on Gjertson St to the south or north
- When the house was built in was in the township
- Does not want the expense of a retaining wall
- Very little foot traffic on this street as there are only two homes in the block
- These trees are a valuable part of the yard and provide wildlife habitat

(*O'Connor left the meeting @ 5:00 PM)*

The owners are requesting a review to see if there are any other options, such as the sidewalk being placed closer to the curb and gutter, so that the trees can remain when the sidewalks are put in.

Planning Director Scheel will be working with the residents to see if anything can be modified. *Scheel* stated that perhaps the curb line could be adjusted for this property and that there are certain requirements that need to be met if the sidewalk is moved closer to the curb and pedestrian safety is also a concern.

Motion by Boersma, seconded by Engelberger to direct staff to work with the residents on modifications (if possible) and bring back to the Public Works Committee. Motion carried 3-0.

Kristi Lane - Paul & Teresa Reedy of 1233 Vernon St gave some history and state some concerns with the current plan. This street is being narrowed two feet on each side and sidewalks being installed.

The Reedys stated the following:

- They have arborvitae trees that are 50 years old and do not want to lose them
- No need to add sidewalk to the sub-station that is at the dead end and shouldn't encourage kids to walk down there
- Very little traffic on this one block street except the current residents
- Utility trucks can already turn around at the sub-station, so there is no need to extend
- Bigger concern is the poor drainage on the west side of the intersection of Kristi and Vernon

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- Feel the curb and gutter are good

The owners are requesting a review to see if there is any possibility that the sidewalk could be moved in order to save the trees. These trees also need to be trimmed.

Motion by Engelberger, seconded by Boersma to direct staff to work with the residents on modifications (if possible) and bring back to the Public Works Committee. Motion carried 3-0.

Vernon St – Jason Dickens of 227 S Academy St had some questions because of the grade of his property and space. This street is having sidewalk installed on the north side. Retaining walls will be installed to accommodate the sidewalk.

Jason stated:

- The sidewalk would be five feet from his garage and he would not be able to park because his car would block the sidewalk.
- It would reduce ¼ of his property space
- He already put in a retaining wall which now would have to be taken out and then another wall installed further in on the property

Mr. Dickens is requesting that the sidewalk be reviewed for any possibility that it could be installed closer to the curb.

Motion by Boersma, seconded by Engelberger to direct staff to work with the residents on modifications (if possible) and bring back to the Public Works Committee. Motion carried 3-0.

7) Review and Possible Action Regarding a Proposed 2018 Fee Adjustment for City Tree Planting: *Hebert* explained that annually the planting costs are reviewed. A handout was provided showing the high/low costs for tree purchases and the cost to plant. These costs were averaged and provided a cost for the city to base their fees on.

Hebert is requesting a $50.00 reduction to charge for trees in 2018 based on these calculations which lowers the cost from $350.00 to $300.00 per tree. The forms will be modified and given to the Planning Department.

Motion by Boersma, seconded by Engelberger to approve the cost reduction from $350.00 to $300.00 per tree. Motion carried 3-0.

8) Future Agenda Items: PW Facility Update , 2018 Street Reconstruction

Moved by Boersma seconded by Engelberger to adjourn the meeting at 5:55 pm. Motion carried 3-0. Respectfully submitted by Vickie Erdahl Administrative Assistant – 1/17/18.

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