

ORDINANCE NO. 2020-346

AN ORDINANCE OF THE TOWN OF WINDSOR AMENDING THE TOWN OF WINDSOR ZONING ORDINANCE, CHAPTER 27.36 – TREE PRESERVATION AND PROTECTION, TO ALLOW A PORTION OF THE MITIGATION FEES COLLECTED FOR TREE REMOVALS TO BE USED FOR MAINTENANCE OF TREES IN THE DOWNTOWN AREA, MAINTENANCE OF PROTECTED TREES ON PUBLICLY-OWNED PROPERTY THROUGHOUT THE TOWN, AND PURCHASE AND INSTALLATION OF TREES ON PUBLIC PROPERTY THROUGHOUT THE TOWN

WHEREAS, on June 19, 2019, as part of the Fiscal Year 2019-20 and 2020-21 budget discussions, the Town Council considered a request from the Town Green Village Association (TGVA) for funding assistance for a number of maintenance activities in public-private areas around the Town Green Village development, including tree maintenance. In recognition of the public interest, benefit and value provided by the trees in and around the downtown area, the Town Council agreed to provide funding assistance for maintenance of street trees; and

WHEREAS, the Town also recognizes the increasing maintenance costs associated with maintaining the health and safety of protected trees on Town property; and

WHEREAS, the Town’s Zoning Ordinance does not provide for the use of security deposits or in-lieu fee payments related to tree removal for the maintenance of trees within the Town of Windsor; and

WHEREAS, in order to support the on-going health of the protected trees on public land and to implement the Town Council’s direction on allocating funds for tree maintenance in commonly used public areas in the downtown, the Town has undertaken proposed amendments to the Town of Windsor Zoning Ordinance to allow for a certain percentage of forfeited security deposits and in-lieu fees to be used for tree maintenance; and

WHEREAS, the Planning Commission held a duly noticed public hearing on February 25, 2020, at which it reviewed the proposed amendments for tree preservation and protection, considered all public comments; and

WHEREAS, a duly noticed Town Council public hearing to consider this ordinance was scheduled for April 1, 2020 and was continued to a date certain of May 6, 2020; and

WHEREAS, on May 6, 2020, the Town Council held a public hearing and reviewed the proposed amendments to the Zoning Ordinance and continued the item to a future meeting, directing Town staff to consider the following:

1. Clarify that the funds set aside for maintenance of protected trees on publicly owned land be used for the purpose of preservation only, and not for general maintenance; and

2. Explore Council's interest that a portion of the tree mitigation funds be used for maintenance of protected trees on other publicly owned land, such as within creek areas; and
3. Explore whether the location where new trees are planted using the tree mitigation funds can be expanded to include other areas of Town, not just Town-owned property; and

WHEREAS, on July 15, 2020, the Town Council held a duly noticed public hearing and reviewed the proposed amendments to the Zoning Ordinance and continued the item to a date certain of September 2, 2020, directing Town staff to eliminate the proposed grant program for planting of new trees on private property, and to consider the possibility of planting new street trees in residential subdivisions; and

WHEREAS, on September 2, 2020, the Town Council reviewed the proposed amendments to the Zoning Ordinance and considered all public comments, and related CEQA exemption; and

WHEREAS, the proposed Zoning Ordinance Text Amendment to amend Chapter 27.36 for Tree Preservation and Protection is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3), the common sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. The proposed amendment does not allow for or encourage any more development than is already anticipated under the Town's 2040 General Plan and can be seen with certainty that there is no possibility that the amendments in question may have a significant effect on the environment.

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Windsor does hereby ordain as follows.

SECTION 1. The above recitals are hereby declared to be true and correct.

SECTION 2. Findings.
The Town Council finds that:

- A. A duly noticed public hearing, in accordance with California Government Code Section 65856, regarding the proposed amendments to the Zoning Ordinance was held by the Planning Commission on February 25, 2020, and by the Town Council on May 6, 2020, July 15, 2020 and September 2, 2020.
- B. The Town Council finds that this Ordinance is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3), the commonsense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment.
- C. The proposed amendment is consistent with the General Plan in that the proposed amendments will not have an effect on the General Plan goals and policies or density. The proposed amendments will incorporate language to allow tree maintenance and will

not change the requirements or regulations related to tree preservation and protection.

- D. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City in that it will enhance the public safety by better maintaining trees in commonly used public areas and appropriately maintaining protected trees on Town property.
- E. The proposed amendment is internally consistent with other applicable provisions of this Zoning Ordinance in that the amendments will provide for maintenance for trees in commonly used public areas and maintenance for protected trees on Town property. Therefore, the amendment is internally consistent with the provisions of the Zoning Ordinance.

SECTION 3. Article 3 – Chapter 27.36 of the Town of Windsor Zoning Ordinance entitled “Tree Preservation and Protection”, Section 27.36.060(H) – Security Deposits, is hereby amended as follows (additions **bold and underlined**, deletions in ~~strikethrough~~):

- H. Security Deposits.** A security deposit shall be posted to cover the value of protected trees for preservation. The security deposit will be collected with and subject to the same requirements as site improvements. Typical methods may be improvement agreements, encroachment permit, building permit, or other similar methods used by the Town to secure improvement requirements. Release of security for tree preservation shall be the same as the time frames defined within the agreement/permit method used to secure improvements.

Security deposits for tree preservation shall be subject to a tiered system as defined below.

- 1. Up to the first \$100,000 of tree value the deposit is 20%, thereafter tree valuations in excess of \$100,000 shall be 10% of the valuation in excess of \$100,000. Total security deposit amounts for any project shall not exceed \$50,000.

Creeks, riparian corridors and significant groves or stands of trees are considered a biological resource and construction activity is restricted from these areas. Creeks, riparian corridors and significant groves or stands of trees are exempted from security deposit requirements.

Town of Windsor sponsored/funded projects are exempt from security deposit requirements.

If any tree fails to survive or declines to a point where it is deemed to not be expected to survive, the Town may use the security value of the dead or declining tree(s) to purchase new trees for on or off-site use. In the event that replacement cannot be accomplished on-site, the security **deposit** will be placed in a fund with the Town of Windsor for use **as set forth in Section 27.36.061(A)(1)(b) planting trees within public right-of-way, parks, public landscape areas, or other areas as deemed appropriate by the Town of Windsor.**

If a tree or trees, that have been designated to be protected, are determined to have failed or died on their own and not through impacts from development, the security deposit shall not be used for replacement. This determination shall be made at the discretion of the Planning Director and may include an evaluation by the Town arborist, the cost to be borne by the developer.

NOTE: Single developed lot property owners that are proposing remodels, additions, pools, etc. are exempt from security deposits.

SECTION 4. Article 3 – Chapter 27.36 of the Town of Windsor Zoning Ordinance entitled “Tree Preservation and Protection”, Section 27.36.061(A)(1)(b) – In-Lieu Replacement, is hereby amended as follows (additions **bold and underlined**, deletions in ~~strikethrough~~):

b. **In-Lieu Replacement:** In the event that a development site is insufficient in size or use to plant any or all of replacement trees, the Town may accept payment of in-lieu fees by the applicant to the Town Oak Tree Fund. In-lieu fees, **together with any funds received from forfeited security deposits pursuant to Section 27.36.060(H)**, will be utilized by the Town **as follows:**

i. ~~to~~ **To purchase and install trees in future public open space, park space, permanently protected open space areas,** or other areas designated for tree planting,

ii. **For tree maintenance as described below:**

A. Maintenance of any type of street tree in the Town Center (TC) and Town Center Active Use Frontage Overlay (TCAUFO) zoning districts shall not exceed 10% of the collected in-lieu replacement fees and forfeited security deposits.

B. Maintenance, for the purpose of preservation, of protected trees on publicly owned land in any zoning district within the Town of Windsor shall not exceed 30% of the collected in-lieu replacement fees and forfeited security deposits. Publicly owned land includes land owned by the Town of Windsor or any other public agency. No more than half of the 30% shall be available for tree maintenance on land that is not owned by the Town of Windsor.

C. The percentage of the in-lieu fees and forfeited security deposits used for tree maintenance shall be of the total monies collected annually and shall include those monies existing in the tree mitigation fund prior to the effective date of the amended ordinance, or October 16, 2020.

Replacement tree costs for the purposes of satisfying in-lieu fees shall be based on the following scale of typical northern California wholesale tree cost plus average installation cost:

- 24-inch box = 2-inch trunk diameter = \$400
- 36-inch box = 3-inch trunk diameter = \$800
- 48-inch box = 4-inch trunk diameter = \$1,600

In-lieu fee replacement trees shall be a minimum 24-inch box size. If less than 6 inches are required, any combination of box sizes may be utilized. Where more than 6 inches of total replacement trunk diameter are required, the following minimum ratios of replacement tree sizes must be incorporated:

- 50% minimum must be a 48-inch box.
- 50% may be any combination of 24-inch and 36-inch boxes

Example: If a total of 24 trunk inches is to be replaced, the in-lieu fee requires half to be 48-inch box and the remainder may be 36-inch and/or 24-inch box. ((3, 48-inch (3 x \$1,600), 2, 36-inch (2 x \$800), and 3, 24-inch (3 x \$400) for a total of \$7,600)).

SECTION 5. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of such provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable. The Town Council of the Town of Windsor hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Effective Date.

This Ordinance shall be effective thirty (30) days following its adoption.

SECTION 7. Publication or Posting.

The Town Clerk of the Town of Windsor shall cause this Ordinance to be published, or to be posted in at least three (3) public places in the Town of Windsor, in accordance with Section 36933 of the Government Code of the State of California.

PASSED, APPROVED, AND ADOPTED this 16th day of September 2020, by the following vote:

**AYES: COUNCILMEMBERS FUDGE, OKREPKIE, SALMON,
VICE MAYOR LEMUS AND MAYOR FOPPOLI**

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE



DOMINIC FOPPOLI, MAYOR

ATTEST:



MARIA DE LA O, TOWN CLERK