ORDINANCE NO. 2007-212

ORDINANCE OF THE TOWN OF WINDSOR AMENDING THE TOWN'S ZONING ORDINANCE BY AMENDING CHAPTER 27.36 - TREE PRESERVATION AND PROTECTION AND ADDING SECTION 27.36.061 – TREE MITIGATION

THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals

It is the policy of the Town of Windsor to preserve as many protected trees as possible on both public and private property.

Where the removal of protected trees is deemed necessary for new construction, remodeling of existing structures, or modification or addition of new infrastructure, a method to replace removed trees is defined.

Whether on public or private property, trees function to visually enhance both the natural and designed landscape for the entire community, which surrounds it. Trees also function as important components of the environment for the entire community. The urban forest provides a wide variety of functions that promote the health, safety, and general welfare of Town residents, which may include, but are not limited, to the following:

1. Energy conservation by providing shade and cooling through evaporation and transpiration.
2. Improve air quality, both locally and globally, by absorbing carbon dioxide and ozone, particulate matter, and produce oxygen.
3. Reduction of wind speed and noise pollution.
4. Provide habitat for birds, small mammals, and other small wildlife.
5. Reduce storm run-off and soil erosion.
6. Increase real property values.
7. Enhance visual and aesthetic qualities that attract visitors and business.
8. *Serve* as a source of community image and pride.
9. Promote psychological and social health and interaction.
10. Enhance livability in an urban environment.

It is necessary to ensure that the Town will continue to realize the benefits provided by its urban forest, as trees are approved for removal for new community growth. The provisions of this ordinance are enacted with the following intentions:

1. Maintain the maximum amount of existing tree cover on public and private land within Town limits whenever possible.
2. Maintain appropriate tree diversity in tree species and age classes by replacing removed trees with a variety of tree sizes and species.

3. Maintain a stable and sustainable urban forest.
4. Promote conservation of natural resources and their benefits to the community.
5. Select, situate, and maintain replacement trees to maximize benefits and minimize hazards.

Benefits increase as tree canopy cover increases. By maintaining optimum cover, the Town is able to experience and realize the maximum benefits that an urban tree forest can provide.

The intent *of this ordinance* is to avoid a reduction in tree canopy cover by requiring replacement trees for all protected trees that are approved for removal. Protected trees that are removed must be replaced according to a replacement schedule, based roughly on achieving equivalent size of trunk and canopy in a reasonable amount of time.

The goal is to achieve "no net loss" of *the* canopy of protected tree species to maintain a functioning and consistent urban tree forest with a uniform visual and environmental capacity. A "no-net-loss" goal is intended within a 10-year period after replacement trees are installed.

The intent is to replace larger removed trees with a comparative quantity and size of smaller trees. It would be unreasonable to require replacement of removed trees with trees of the same trunk or canopy size because of the high cost of transplanting large specimen trees and the logistics of reasonably handling specimen trees. Although this approach would achieve the noted "no-net-loss" goal, its practicality keeps it from being a viable mitigation approach, except in the case of smaller trees.

It is also unreasonable to replace removed trees with small 5- or 15-gallon trees that would take many years to return to parity of size or function. This type of mitigation results in a "net loss" outcome and significantly diminishes the community as a whole during the time it takes a small tree to become a comparable large tree. *Removal of a 24" trunk diameter blue oak with a 15-gallon replacement tree may result in a net environmental loss for 60 to 80 years, if the replacement tree survives. By requiring significant mitigation replacement trees, the net loss is equalized to the benefit of the current community.*

Survivability of larger-sized replacement trees is expected due to their more significant trunk size, which is less easily damaged or broken after installation. Better trunk taper and flexibility is also expected. Larger trees are a greater immediate visual asset, come at a greater cost, and are generally better cared for as a result.

A "no-net-loss" goal is achieved by planting enough replacement trees to approximately replace the total size of the removed trunks immediately, and canopy size and volume within 10 years. *This mitigation requirement will generally replace a smaller quantity of larger trees by replanting a larger quantity of smaller trees, with the goal of restoring the original canopy area and volume after 10 years. In this manner, no net loss of canopy occurs in the short term, and a net gain may occur in the long term.* A possible net gain will help to offset the loss of unprotected trees and other vegetation lost to development.

It is not the intention of these mitigation requirements to penalize development projects; instead, it is intended to protect the integrity of the community in a manner that reasonably replaces and maintains the density of the urban forest. Removal of protected trees may not occur if a reasonable alternative plan can be designed and built while preserving these trees. Alternatively, a project may not be kept from development due to the required retention of protected trees.

There are times when development sites are insufficient in size or use to plant any or all replacement trees. The Town may accept payment of in-lieu fees by the applicant/developer to the Town's oak tree fund. The purpose of the oak tree fund is to provide an option to minimize the loss of protected trees by providing a fund for the Town to purchase and install trees in future public open space, parks, and/or other areas designated by the Town for tree planting.

SECTION 2. Findings.

1. The proposed amendment is consistent with the General Plan.
2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the Town of Windsor.
3. The proposed amendment is internally consistent with other applicable provisions of the Growth Control Ordinance.

SECTION 3. Amendment.

Chapter 27.36 – Tree Preservation and Protection of the Town's Zoning Ordinance shall be amended to add Section 27.36.061 – Tree Mitigation, as shown in Exhibit "A" attached to this Ordinance.

SECTION 4. Severability.

If any part of this Ordinance or the application thereof to any person is held invalid, the remainder of the Ordinance and the application of such provisions to other persons shall not be affected thereby.

SECTION 5. Effective Date.

This Ordinance shall take effect and be in force 30 days following its adoption.

SECTION 6. 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 21st day of February 2007 by vote as follows:

AYES: **COUNCILMEMBERS GOBLE, SALMON AND MAYOR PARKER**
NOES: **NONE**
ABSTAIN: **NONE**
ABSENT: **COUNCILMEMBERS ALLEN AND FUDGE**

WARIN J. PARKER, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK

Attachment: Exhibit "A" – 27.36.061 – Tree Mitigation

EXHIBIT "A"

27.36.061 TREE MITIGATION

An arborist report is required for all development project sites that contain protected trees. The Town maintains a list of arborists approved to work on Town projects. An initial deposit amount to prepare the report shall be paid by the owner/developer of the project. The deposit amount will be used to cover the cost of the report preparation. Additional fees will be collected if the actual costs exceed the initial deposit amount. If an arborist is utilized who is not on the list, that arborist's report is subject to a peer review by an approved Town arborist with the cost to be borne by the developer/owner of the project. Tree mitigation may be in the form of in-kind replacement, in-lieu replacement, and/or a combination of both.

A. **New Commercial and/or Residential (2 or more units) Development Projects.** In the event that there are no viable and/or practical alternatives except to remove a protected tree, the Town will require mitigation. All removed protected trees shall be replaced at the following ratios:

- All protected trees, determined by the project arborist to be in good (4) or excellent (5) health, and/or with moderate (3) to good (4) structure, shall be replaced on a one-to-one trunk diameter basis. (Example: A 24-inch protected tree in good or excellent condition must be replaced with new trees totaling 24 inches in trunk diameters.)

- All protected trees, determined by the project arborist to have fair (3) or marginal (2) health, and/or with marginal (2) structure, shall be replaced on a two-to-one trunk diameter basis. (Example: A 24-inch protected tree in fair-to-marginal condition must be replaced with new trees totaling 12 inches in trunk diameter.

- All protected trees, determined by the project arborist to have poor (1) health or poor (1) structure, are not required to be replaced.

1. Tree Mitigation:

An approved arborist must determine that a tree designated for preservation in a development project has a good chance at long-term survival as determined by an assessment of proposed development impacts. Simply preserving a tree does not excuse it from designated mitigation requirements; it must, in the professional opinion of the arborist, have a good chance to survive after all the impacts of construction are considered.

a. In-Kind Replacement: If the location of replacement tree planting will remain as a natural area suitable for the healthy and long-term growth of native trees, replacement of protected trees should occur in-kind. That is, a native tree species shall be replaced with the same native tree species. If the location of replacement tree planting will be part of an irrigated, ornamental landscape area, replacement of protected trees may occur with a water tolerant oak tree species as identified by the

project arborist. If an oak tree species cannot be used the project arborist may recommend a high-value ornamental tree species (as designated by a 70% species rating in the *Species Classification and Group Assignment Handbook,* which is an official publication of The Western Chapter of the International Society of Arboriculture).

Replacement tree ratios shall be applied as follows:

- 24-inch box replacement tree = 2-inch replacement trunk diameter
- 36-inch box replacement tree = 3-inch trunk replacement diameter
- 48-inch box replacement tree = 4-inch trunk replacement diameter

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 project requires removal of one 24" protected tree, a total of 24 trunk inches must be replaced. At least 12" of replacement trees must be 48" boxes. This requires at least 3 –48" boxes, and the balance of the requirement may be composed of either 24" or 36" boxes. If 36" boxes are chosen, then 4 would be required. A total of 24" of replacement trunk may be composed of 3-48" boxes plus 4-36" boxes.

Example: If a project requires removal of a 12", 26", and 10" protected trees, a total of 48 trunk inches must be replaced. At least 24" of replacement tree must be 48" boxes. This requires at least 6–48" boxes, and the balance of the requirement may be composed of either 24" or 36" boxes. If 24" boxes are chosen, then 12 would be required. A total of 48" of replacement trunk may be composed of 6-48" boxes plus 12-24" boxes.

At the time of replacement, equivalent sizes of trunk are required. After ten years time it is expected that replacement trunks will yield an equivalent volume of canopy to that which was originally removed, even though the equivalent canopy will be spread across a greater number of individual trees. This achieves the Town's goal of "no net loss" of protected tree canopy.

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 will be utilized by the Town to purchase and install trees in future public open space, park space, or other areas designated for tree planting.

   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 (3x$1,600), 2, 36-inch (2x$800), and 3, 24-inch (3x$400) for a total of $7,600).

2. Security Deposits:

Security deposits may be collected with and subject to the same requirements as site improvements, as outlined in Section 27.36.060 H. Security deposits are subject to a tiered system based on a percentage of tree values with a deposit amount not to exceed $50,000. The project arborist prepares a final evaluation of the protected trees based on impacts, protection, and maintenance during the construction period. If a tree(s) is recommended for removal at the end of construction the security amount collected may not meet the requirements of this ordinance for replacement. The developer shall be subject to the replacement requirements outlined in this ordinance. The developer shall be responsible for payment of the difference between the bond amount and the mitigation amount defined in this ordinance. The health and structural rating of the project arborist report will be used in determining the mitigation amount of the lost tree(s).

B. Existing Residential Lots (additions, accessory structures, etc.) An arborist report is required for residential project sites that may impact protected trees. The Town maintains a list of arborists approved to work on Town projects. If an arborist is utilized who is not on the list, that arborist's report is subject to a peer review by an approved Town arborist with the cost to be borne by the developer/owner of the project. Private property owners that are considering additions, decks, pools, and/or other accessory uses are required to identify protected trees that are located on the property and may be impacted by the proposed addition/use.

1. Tree Protection/Removal Requirements.

The Town requires the land developer to protect and preserve trees during the development/subdivision of residential parcels. The resulting lots are then sold to property owners with the understanding that the trees should be protected. Property owners may request any number of modifications to their properties that may in turn result in impacts to the protected trees. Lots with protected trees are subject to the following requirements for additions, pools, and/or other accessory uses that may result in an impact to the protected trees.

a. An arborist report is required for all properties considering additions, pools, and/or accessory structures that may have an impact on a protected tree, including improvements within the tree protection zone.

b. In the event that there is no viable and/or practical alternative to removal of protected trees to accommodate the addition, pool, and/or accessory structure the following shall apply:

    1. A request for a Tree Removal Permit for protected trees 15" or greater, determined by the project arborist to be in good (4) or excellent (5) health, and/or with moderate (3) to good (4) structure will require review and action by the Planning Commission at a noticed public hearing. The request will require a Tree Removal Permit, arborist report, statement justifying removal of the tree, and payment of a permit application fee. For protected trees 14" or less which are requested to be removed, the Planning Director shall review the request and make the determination for removal. If the Planning Director authorizes removal, mitigation shall be required either by in-kind replacement or in-lie fee payment, as defined in this ordinance. If the Planning Director denies the request for removal, the decision may be appealed.

    2. A request for a Tree Removal Permit for all protected trees, determined by the project arborist to be in fair (3) or marginal (2) health, and/or with marginal (2) structure may be approved and require mitigation. The Planning Director shall review the request and make the determination for removal. If the Planning Director authorizes removal, mitigation shall be required either by in-kind replacement or in-lie fee payment, as defined in this ordinance. If the Planning Director denies the request for removal, the decision may be appealed.

    3. A request for a Tree Removal Permit for all protected trees, determined by the project arborist to be in poor (1) health, poor (1) structure, or to be structurally unsafe or hazardous (1), will be approved and will not require mitigation.

c. Denial and/or appeal of a Tree Removal Permit and its conditions is subject to Section 27.36.090 – Appeals, Extensions, Revocation.

2. Tree Replacement Requirements:

a. **In-Kind Replacement** – In-kind replacement shall be the same as outlined in Section A.1.a. The arborist report shall specify the replacement value. The applicant/owner shall include a replacement landscape plan with the Tree Removal Permit. The building permit for the addition, pool, and/or other accessory use shall be conditioned to require installation of the replacement trees, prior to building permit final.

b. **In-Lieu Replacement** – In-lieu replacement shall the same as outline in Section A.1.b. The arborist report shall specify the replacement value. The applicant/owner shall pay to the Town the in-lieu fee with the Tree Removal Permit. The building permit for the addition, pool, and/or other accessory use shall be conditioned to require a Tree Removal Permit and payment of the in-lieu fee, prior to initiation of the work.

C. Penalties for Unauthorized Tree Removal:

Enforcement and Civil Penalties shall be applied to violations of this Tree Mitigation Ordinance per Section 27.36.100 Enforcement, in Chapter 27.36 of the Tree Preservation and Protection Ordinance.

Illegal or unauthorized removal of any protected tree will require payment of a determined 'replacement value,' as defined in Section 27.36.100, which is different and separate from mitigation replacement as addressed in Section 27.36.061.