ORDINANCE NO. 2024-386

AN URGENCY ORDINANCE OF THE TOWN OF WINDSOR AMENDING THE TOWN OF WINDSOR ZONING ORDINANCE, CHAPTER 27.36 - TREE PRESERVATION AND PROTECTION, TO REMOVE THE PERCENTAGE CAP ON ALLOWED MITIGATION FEES AND FORFEITED SECURITY DEPOSITS COLLECTED THAT CAN BE USED FOR MAINTENANCE OF PROTECTED TREES TO ASSIST IN EMERGENCY MEDITERRANEAN OAK BORER TREATMENT OF HERITAGE OAK TREES ON PUBLIC PROPERTY WITHIN TOWN LIMITS

WHEREAS, in July of 2023 the Town learned of a new pest threatening the heritage oak trees within Town limits; and

WHEREAS, the Mediterranean Oak Borer (MOB) is an ambrosia beetle which attacks valley oaks, blue oaks and Oregon white oaks by introducing a deadly fungi into the tree; and

WHEREAS, the pest is native to Mediterranean regions of the world where it is generally not a significant pest because it exists with natural predators to keep populations in balance; and

WHEREAS, the Town of Windsor had five confirmed cases of MOB infestations on public property by August of 2023; and

WHEREAS, the MOB infestation is rapidly spreading with a total of seven trees removed due to systemic infestations in five months; and

WHEREAS, Town staff sought guidance from the Town Arborist and Forestry Advisors through University of California Cooperative Extension to understand the scope of the infestation; and

WHEREAS, experts expect, based on the rate of spread observed, MOB has the potential to have significant and negative impact to the Town's heritage oaks; and

WHEREAS, impacts may result in the rapid death, creating a substantial public safety hazard and will cause the removal of many iconic trees within our public landscape; and

WHEREAS, any proposed treatment is considered experimental due to the lack of research on this new pest and is based on local data and success of treating similar pests; and

WHEREAS, Town staff compiled a comprehensive inventory and risk assessment of all heritage oak trees to be considered for treatment; and

WHEREAS, the recommendation is to treat all trees which fall within the Critical category and trees within the high category which have direct MOB exposure; and

WHEREAS, the anticipated cost of this treatment is expected to be more than $182,723; and

WHEREAS, the Town's Zoning Ordinance limits the use of collected in-lieu replacement fees and forfeited security deposits to 30% for the maintenance, for the purpose of preservation, of protected trees within the Town of Windsor; and

WHEREAS, an urgency ordinance that is effective immediately amending the Town of Windsor Zoning Ordinance to remove the cap on the use of collected in-lieu replacement fees and forfeited security deposits for tree maintenance, for the purpose of preservation, of protected trees on publicly owned land in any zoning district within the Town is necessary in order to act quickly and attempt to mitigate the spreading population of MOB and prolong the health of the protected trees on public land; and

WHEREAS, the Town Council hereby finds the approval of this Ordinance is categorically exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under Section 15307 – Actions by Regulatory Agencies for Protection of Natural Resources and Section 15308 – Actions by Regulatory Agencies for Protection of the Environment, of the CEQA Guidelines. The actions that would be accommodated by the proposed zoning text amendment are in direct response to a threat to natural resources and the natural environment within the Town of Windsor.

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

SECTION 1. FINDINGS

The Town Council of the Town of Windsor finds that all of the above Recitals are hereby declared to be true and correct and incorporated herein by reference.

SECTION 2. URGENCY FINDINGS

The Town Council of the Town of Windsor hereby finds that there is a current and immediate threat to the public health, safety, and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency ordinance, which finding is based upon the facts stated in the Recitals above, and in the Staff Report dated January 17, 2024, and considered during the January 17, 2024 Town Council meeting as well as any oral and written testimony at the January 17, 2024 Town Council meeting. The adoption and implementation of this Ordinance is an urgency measure necessary for the immediate preservation and protection of the public peace, health, and safety as detailed above. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the Town Council.

SECTION 3. Article 3 - Chapter 27.36 of the Town of Windsor Zoning Ordinance entitled "Tree Preservation and Protection", Section 27.36.061(A)(l)(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 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**, not in excess of** ~~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 **under Section 27.36.061(A)(1)(b)(ii)(A)** 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 at 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))."

SECTIONS 4. 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

Following adoption by at least a four-fifths (4/5) vote of the Town Council, this Ordinance shall be effective immediately upon adoption pursuant to Government Code section 36937(b). The Town Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the Town Clerk, in accordance with California Government Code Section 36933.

PASSED, APPROVED AND ADOPTED this 17th day of January 2024, by the following vote:

AYES:	**COUNCILMEMBERS FUDGE, SALMON, VICE MAYOR POTTER AND MAYOR REYNOZA**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**COUNCILMEMBER WALL**

ROSA REYNOZA, MAYOR

ATTEST:

IRENE CAMACHO-WERBY, TOWN CLERK