



STAFF REPORT AND FISCAL IMPACT NOTE

Resolution: R-49-18

Title: Forest Conservation – No Net Loss – Fees in Lieu of Reforestation and Afforestation

Date: January 7, 2019

STAFF REPORT

City Code Chapter 21.71, Forest Conservation, requires an applicant who submits a proposal to develop a tract of land that is 40,000 square feet or more (and not in the Chesapeake Bay Critical Area) to submit (1) a forest stand delineation and a forest conservation plan, and (2) meet city standards to protect retained forests and trees during construction. Applicants must meet afforestation or reforestation requirements on-site, unless an applicant demonstrates to the satisfaction of the Department of Planning and Zoning that on-site planting cannot be “reasonably accomplished.” If the applicant is unable to plant on-site, the applicant is required to plant off-site, unless that, too, can be demonstrated to not be “reasonably accomplished.”

Under Section 21.71.070.A.6, if the applicant demonstrates neither on-site nor off-site planting may be reasonably accomplished, the applicant may make a payment into the City’s Forest Conservation Fund pursuant to 21.71.110.A.2 or purchase credits from a forest mitigation bank pursuant to 21.71.120. To date, no applicant has availed themselves of either option.

The City Council is required to establish the fee to be paid into the Forest Conservation Fund by resolution. The current fee is \$10.00/square foot for a project inside a priority funding area and \$12.00/square foot for a project outside a priority funding area. Prior to the City adopting its own forest conservation law in 2016, the fee in lieu of planting pursuant to State law was \$0.305/square foot within the priority funding area and \$0.366 cents per square foot outside the priority funding area.

This resolution proposes to reduce the fees to \$1.00/square foot for a project inside a priority funding area and \$1.20/square foot outside a priority funding area.

Attached is a list of the fees in lieu of afforestation and reforestation in other Maryland municipalities and jurisdictions.

Note: In reviewing this resolution and the City Code provisions pertaining to Forest Conservation, we noted that Section 21.71.110.A.2 states that an applicant who cannot meet the planting requirements on- or off-site *shall* pay the fee into the Forest Conservation Fund. It does not have any language exempting those who choose to purchase forest mitigation credits under Section 21.71.120 from paying the fee into the Forest Conservation Fund. Since 21.71.070.A.6 states that applicants are given an option between paying the fee in lieu or purchasing forest mitigation bank credits, we recommend amending the Code to clarify that applicants who are unable to plant on- or off-site shall pay the fee into the Forest Conservation fund *only* if they do not exercise the option to purchase forest mitigation bank credits.

Prepared by: Pete Gutwald, Department of Planning and Zoning; Jacqueline Guild, Director of the Office of Environmental Policy, and Teresa Sutherland, City Manager

FISCAL IMPACT

We cannot determine the fiscal impact of this proposed ordinance.

With the adoption of Ordinance 27-18, which modified the reforestation requirements to require applicants to ensure “no net loss” of forest and eliminated credit for retaining forested acreage, it will become more difficult for applicants to reforest on-site. Consequently, unless applicants can reasonably accomplish off-site planting, they are more likely to exercise the options of paying a fee into the Forest Conservation Fund or purchasing credits from a forest mitigation bank. However, we are unable to predict how many applicants might choose to pay the fee in lieu of planting.

Also, reducing the fee in lieu of planting will result in less money available in the Forest Conservation Fund. Monies in the Forest Conservation Fund may be used only for costs directly related to afforestation and reforestation, including site identification, acquisition, preparation, maintenance of existing forests, and achieving tree canopy goals, with priority use of the funds for afforestation or reforestation within a City watershed.

Because the City has never received any fees in lieu of payment, we have no cost history on which to estimate the City’s costs of afforestation or reforestation. However, the Director of the Office of Environmental Policy believes reducing the fee in lieu of planting will likely result in insufficient funds to cover the City’s costs associated with these activities.

Currently, two applicants have submitted applications that are under review by the Department of Planning and Zoning (Parole Place, located along Forest Drive and Old Solomons Road, and the Village of Providence Point, located along Forest Drive and Crystal Springs Road). Both applicants are currently revising their existing applications, so we not yet know whether the applicants will choose to exercise the fee in lieu option.

Prepared by: Jodee Dickinson, Finance Director