

RESOLUTION NO. 2674-10

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR
APPROVING A PUBLIC FACILITIES IMPACT FEE
FOR FUTURE DEVELOPMENT WITHIN THE TOWN OF WINDSOR
AND SUPERSEDING A PUBLIC FACILITIES IMPACT FEE
ESTABLISHED BY RESOLUTION NO. 917-00**

RECITALS

WHEREAS, the General Plan (“General Plan”) of the Town of Windsor (“the Town”) was adopted March 13, 1996 and amended on July 17, 1996 by Resolution 538-96, on April 2, 1997 by Resolution 622-97, on January 6, 1998 by Resolution 679A-98, on September 15, 1999 by Resolution 842-99, on March 15, 2000 by Resolution No. 889-00, on February 19, 2003 by Resolution 1346-03, on March 19, 2003 by Resolution 1358-03, on July 20, 2005 by Resolution 1787-05, and on March 4, 2009 by Resolution 2437-09; and

WHEREAS, the General Plan applies to a Planning Area which includes the Town and land outside the Town in unincorporated Sonoma County which must also be considered to properly plan for the Town’s future; and

WHEREAS, the Town Planning Area encompasses approximately 13,200 acres, 4,130 of which are within the Town and 9,070 of which are outside the Town in unincorporated Sonoma County; and

WHEREAS, the General Plan outlines future land uses for approximately 4,130 acres within the Town; and

WHEREAS, the General Plan area is shown on the Land Use Map contained in the General Plan; and

WHEREAS, the General Plan summarizes the policy for financing the cost of improvements required to accommodate new development in the Town as follows: “the community services and facilities policies make clear that capital facility needs generated by new development should be financed by new development,” and that accordingly, future development in the Town should pay its fair share of needed infrastructure (See General Plan pp. 3-4, 3-5, 4-31, 4-35, 8-4); and

WHEREAS, a Program Environmental Impact Report (“E.I.R.”) was prepared for the General Plan pursuant to the California Environmental Quality Act (“C.E.Q.A.”) and certified by the Town Council on March 13, 1996 by Resolution Number 505-96; and

WHEREAS, the Town Council adopted Resolution Number 378-94 on October 19, 1994, in reliance on a report prepared by Recht, Hausrath & Associates, establishing a public facilities fee, describing the benefit and impact area on which the public facilities fee is imposed, listing the Town-owned public facilities to be financed, describing the estimated cost of these facilities,

and describing the reasonable relationship between the use of the public facilities fee, the need for the public facilities fee and the types of development projects on which the public facilities fee is imposed and setting forth time for payment; and

WHEREAS, Resolution Number 378-94 has been amended by Resolution Nos. 471-95 and 530-96; and

WHEREAS, adoption by the Town Council of the General Plan on March 13, 1996 occurred more than one year after preparation of the Recht, Hausrath & Associates report and the most recent amendment of the General Plan occurred five years after preparation such report; and

WHEREAS, Resolution No. 917-00 amended the fire facilities impact fee applicable to development within the Town; and

WHEREAS, the Town of Windsor Code establishes a public facilities fee applicable to development within the Town; and

WHEREAS, the Town of Windsor has retained NBS Local Government Solutions (“NBS”) to assist the Town in reviewing and updating the Town’s public facilities fee to reflect changes in public facilities costs since the public facilities fee was adopted; and

WHEREAS, NBS has prepared a report dated June 2009 and entitled “Development Impact Fee Study Related to Parks, General Government, and Fires Facilities” for the Town of Windsor (hereafter the “NBS Study”); and

WHEREAS, the NBS Study lists certain public facilities, further described below, that are necessary to accommodate future development in the Town, and

WHEREAS, the NBS Study demonstrates the appropriateness of modifying the Town’s public facilities fee in certain respects based on current estimates of the need for and cost of Town public facilities needed to accommodate new development, including (1) an inventory of existing community facilities establishing the Town’s public facility standard, (2) the per capita facility standard for residents and workers, (3) an estimate of the increase in the Town’s residential and service population between the year 2008 and the year 2018, a ten-year period, and (4) the cost of maintaining the Town’s public facilities’ standard for the estimated increase in the Town’s residential and service population by 2018; and

WHEREAS, the Town Council has adopted an ordinance creating and establishing the authority for imposing and charging public facilities fees to pay for Town owned public facilities within the jurisdictional limits of the Town; and

WHEREAS, in accordance the Government Code, at least 14 days prior to the public hearing at which this Resolution was adopted, notice of the time and place of the hearing was mailed to eligible interested parties who filed written requests with the Town for mailed notice of meetings on new or increased fees or service charges; and

WHEREAS, in accordance with the Government Code, the NBS Study was available for public review and comment for ten days prior to the public hearing at which this Resolution was adopted; and

WHEREAS, 10 days advance notice of the public hearing at which this Resolution was adopted was given by publication in accordance with Section 6062a of the Government Code; and

FINDINGS

WHEREAS, the Town Council finds as follows:

A. The purpose of the public facilities fee set forth in this Resolution is to finance public facilities to reduce the impacts caused by future development in the Town. Such facilities, described in the NBS Study include the following: Library, Town Civic Center expansion, partially-enclosed flexible use space, Town Corporation yard expansion, public safety facilities (police vehicles), other community facility (pool vehicle), and streetscape improvements.

B. The public facilities fee collected pursuant to this Resolution shall be used to finance the public facilities described in the NBS Study and/or alternative facilities in accordance with this Resolution.

C. After considering the NBS Study, the testimony received at this noticed public hearing, the agenda statements, the General Plan, the E.I.R., the Background Documents to this agenda report and all correspondence received (together, "Record"), the Town Council approves and adopts the NBS Study and incorporates such report herein and further finds that further development in the Town will generate the need for the public facilities described in the NBS Study and that such public facilities are consistent with the General Plan.

D. Adoption of the public facilities fee set forth in this Resolution as it relates to development within the Town is intended to obtain funds for capital projects necessary to maintain service within existing Town service areas. The Town currently provides a Civic Center, public safety, and other community services, and the public facilities fee set forth in this Resolution will be used to maintain current service levels. As such, such fee as it relates to development within the Town is not a "project" within the meaning of C.E.Q.A. (Pub. Res. Code § 21080(b)(8)(D)).

E. In adopting the public facilities fee set forth in this Resolution, the Town Council is exercising its powers under Article XI, Section 7 of the California Constitution.

F. The Record establishes:

1. That there is a reasonable relationship between the use of the public facilities fee set forth in this Resolution (payment for certain listed public facilities) and the type of development projects on which such fee is imposed in that all development in the Town - both residential and non-residential - generates or contributes to the need for the facilities listed in the

NBS Study; and

2. That there is a reasonable relationship between the need for the facilities listed in the NBS Study and the type of development projects on which the public facilities fee set forth in this Resolution is imposed in that new development in the Town - both residential and non-residential - will generate persons who live, work and/or shop in Windsor and who generate or contribute to the need for the facilities listed in the NBS Study; and

3. That there is a reasonable relationship between the amount of the public facilities fee set forth in this Resolution and the cost of the facilities listed in the NBS Study or that portion of such facilities attributable to the development on which such fee is imposed in that such fee is calculated based on the number of residents or employees generated by specific types of land uses, the total cost of construction of such facilities, and the percentage by which development within the Town contributes to the need for such facilities; and

4. That the cost estimates set forth in the NBS Study concerning the following costs allocable to new development within the Town: a portion of the Library costs; a portion of the Town Civic Center expansion costs; a portion of the partially-enclosed flexible use space costs; a portion of the Town Corporation yard expansion costs; the cost of public safety facilities (police vehicles); a portion of other community facility costs (pool vehicle); and a portion of streetscape improvements; are reasonable estimates for the cost of the public facilities listed in the NBS Study, and the fees expected to be generated by future development will not exceed the projected cost of such public facilities; and

5. The method of allocation of the fee set forth in this Resolution to a particular development bears a fair relationship, and is roughly proportional, to each development's burden on, and benefits from, the public facilities to be funded by such fee, in that such fee is calculated based on the number of residents or employees each particular development will generate.

G. The NBS Study is a detailed analysis of how public services will be affected by development in the Town and the public facilities required to accommodate that development.

ADOPTION OF FEE

NOW, THEREFORE, the Town Council of the Town of Windsor does resolve as follows:

1. Definitions.

a. "Commercial" shall mean any Development constructed or to be constructed on land having a General Plan land use designation of Retail Commercial, Service Commercial, Gateway Commercial, General Business, Neighborhood Center/Mixed Use, or Town Center/Mixed Use (as described in Table 4-1 of the General Plan) or zoning designation for facilities for the purchase or sale of commodities or services and/or the sales, servicing, installation or repair of such commodities or services and other space uses incidental to these activities. Commercial land uses include, but are not limited to: apparel and clothing stores; auto

dealers and malls, auto accessories stores; banks and savings and loans; beauty salons; book stores, discount stores and centers; dry cleaners; drug stores; eating and drinking establishments; furniture stores and outlets; general merchandise stores; hardware stores; home furnishings and improvement centers; hotels and motels; laundromats; liquor stores; restaurants; service stations; shopping centers; supermarkets; and theaters.

b. "Development" shall mean the construction, alteration or addition, other than by the Town, of any building or structure within the Town of Windsor.

c. "Facilities" shall include those facilities that are described in the NBS Study and in the Findings, above. "Facilities" shall also include comparable alternative facilities should later changes in projections of development in the region necessitate construction of such alternative facilities; provided that the Town Council later determines in accordance with applicable law that: (1) There is a reasonable relationship between Development within the Town and the need for alternative facilities; (2) the alternative facilities are comparable to the facilities listed in the NBS Study, and; (3) revenue from fees charged pursuant to this Resolution will be used only to pay new Development's fair and proportionate share of the alternative facilities.

d. "Fee" shall mean the charge or charges imposed on Development to fund the Facilities to ensure that such Development pays its fair share of facilities needs generated by such Development pursuant to this Resolution and applicable law.

e. "Industrial" shall mean any Development constructed or to be constructed on land having a General Plan land use designation of Public/Quasi Public/Institutional, or on land having a General Plan land use or zoning designation for the manufacture, production, assembly, or processing of consumer goods and/or other space uses incidental to these activities. Industrial land uses include but are not limited to: assembly; concrete and asphalt batching plants; contractors' storage yards; fabrication; lumber yards; manufacturing; outdoor stockyards and service yards; printing; processing; warehouse and distribution; and wholesale and heavy commercial uses. General Plan land use designations for Industrial include Light Industrial and Heavy Industrial.

f. "Mixed Development" shall mean a Development that includes more than one of the types of Development defined in this Section 1. Mixed Developments may combine residential types of Development (Single Family and Multiple Family), non-residential types of Development (Commercial, Industrial, and Office), or a combination of residential and non-residential types of Development.

g. "Multiple Family" shall mean any dwelling unit Development as defined in the Uniform Building Code, as adopted by the Town, which is constructed on property designated in the General Plan for eight (8) or more units (whether attached or detached) per acre.

h. "Office" shall mean any Development constructed or to be constructed on land having a General Plan land use or zoning designation for general business offices, medical

or professional offices, administrative or headquarters offices, offices for large wholesaling or manufacturing operations, and research and/or development and other space uses incidental to these activities. Office land uses include, but are not limited to: administrative headquarters; business parks; finance offices; insurance offices; legal offices; medical and health services offices and office buildings; professional and administrative offices; professional associations; real estate offices; research and/or development offices and travel agencies. General Plan land use designations for Office include "General Business" and "Town Center/Mixed Use."

i. "Single Family" shall mean a dwelling unit Development as defined in the Uniform Building Code, as adopted by the Town, which is constructed or to be constructed on property designated in the General Plan for fewer than eight (8) units (whether attached or detached) per acre.

2. Public Facilities Impact Fee Imposed.

A Fee shall be imposed and paid at the times, and in the amounts and otherwise apply and be administered as prescribed in this Resolution on the following Development: each Single Family and Multiple Family Development, (including each portion of such residential Development within Mixed Development), each non-residential Development (including Commercial, Industrial, and Office Development, as well as each portion of such non-residential Development within Mixed Development), and each addition of 1,000 square feet or more to any non-residential Development if it increases the existing building or structure by twenty five percent (25%) or more to any non-residential Development.

3. Time for Imposing Fee for Residential Subdivisions.

In accordance with Government Code Section 65961, the Fee for Single Family and Multiple Family subdivision Development for which tentative or parcel maps are required pursuant to the Subdivision Map Act (Government Code Section 66410 *et seq.*) shall be imposed at the time of approval of the conditions that apply to the tentative or parcel map for such residential subdivision Development, as applicable. Payment of the Fee shall be deemed to be a condition of all such tentative or parcel maps. Notwithstanding this Section 3, the time for payment of the Fee for all Development, including Single Family and Multiple Family subdivisions, shall be as specified in Section 4, below.

4. Time for Fee Payment.

a. In accordance with Government Code Section 66007, a Fee shall be charged and paid for each Single Family and Multiple Family residential Development upon the earlier of the date of final inspection, or issuance of the certificate of occupancy for such residential Development; except that, if the Fee is to reimburse the Town for expenditures previously made, or if the Town determines that the Fee will be collected for Facilities for which an account has been established and funds appropriated and for which the Town has adopted a proposed construction schedule prior to issuance of the building permit for such residential Development, then the Fee shall be charged and paid upon issuance of the building permit for such residential Development.

b. A Fee shall be charged and paid for each non-residential Development, including Commercial, Industrial, and Office Developments, upon issuance of the building permit for such non-residential Development.

c. A Fee shall be charged and paid for each non-residential Development involving any addition to any existing building or structure if the addition exceeds 1,000 square feet and if it increases the existing building or structure by twenty five percent (25%) or more upon issuance of the building permit for such non-residential Development.

d. A Fee shall be charged and paid for each Mixed Development upon the times specified in this Section 4 that apply to such Mixed Development. For example, where a Mixed Development includes Single Family and Multiple Family residential Development and Commercial and Office non-residential Development, and the Fee is to reimburse the Town for expenditures previously made, or the Town has made the required determination to permit requiring payment of the Fee upon issuance of the building permit, the Fee as applicable to the entire Mixed Development shall be paid upon issuance of the building permit for the Mixed Development. Where a Mixed Development includes residential and non-residential Development, and the Fee is not to reimburse the Town for expenditures previously made or the Town has not made the required determination to permit requiring payment of the Fee upon issuance of the building permit, the Fee as to the residential portion of the Mixed Development shall be paid upon the earlier of the date of final inspection or issuance of the certificate of occupancy for such residential portion, and the Fee as to the non-residential portion of the Mixed Development shall be paid upon issuance of the building permit for such non-residential portion.

5. Amount of Fee.

a. The amount of the Fee shall be as set forth below:

Residential	
Single Family	\$4,325/unit
Multiple Family	\$2,987/unit
Non Residential	
Commercial	\$854/1,000 sq. ft. of the building or structure
Office	\$1,424/1,000 sq. ft. of the building or structure
Industrial	\$610/1,000 sq. ft. of the building or structure

b. The amount of the Fee for Mixed Development shall be the sum of the following, as applicable:

i. The applicable amount per-unit pursuant to Section 5 (a), above, for each Single Family and Multiple Family Development within a Mixed Development.

ii. The applicable amount per 1,000 sq. ft. pursuant to Section 5(a), above, for each Commercial, Office, or Industrial Development or portion of such Developments within a Mixed Development.

iii. The applicable amount per 1,000 sq. ft. pursuant to Section 5(a) above, for non-residential Development involving an addition that exceeds 1,000 sq. ft. (if it increases the existing building or structure by twenty five percent (25%) or more) to an existing non-residential building or structure or a portion of a non-residential building or structure within a Mixed Development.

6. Designation of Developments.

Non-residential developments other than Mixed Developments (but including non-residential Developments within Mixed Developments) which are not within the definition of "Commercial," "Industrial," or "Office" established in Section 1, above, shall be designated as "Commercial," "Industrial," or "Office" by the Town Manager for purposes of imposition and charging of the Fee. The Town Manager shall assign such categories as consistently as possible with the definitions of such categories established pursuant to this Resolution or as later amended by the Town Council.

7. Exemptions From Fee.

a. The Fee shall not be imposed on:

i. Any alteration or addition to a residential structure, except to the extent that a residential unit is added to a single family residential unit or another unit is added to an existing multi-family residential unit;

ii. Any replacement or reconstruction of an existing residential structure that has been destroyed or demolished; provided that, the building permit for reconstruction is obtained within one year after the building was destroyed or demolished, unless the replacement or reconstruction increase the square footage of the structure by 50 percent or more.

iii. Any replacement or reconstruction of an existing non-residential structure that has been destroyed or demolished; provided that, the building permit for reconstruction is obtained within one year after the building was destroyed or demolished; and provided further that, there is no change in the land use designation of the property (as between Commercial, Office or Industrial).

iv. Any non-residential building or structure constructed on property on which a building or structure was demolished for which a development impact fee to fund public facilities has been paid to the Town within the prior ten year period; provided that, the exemption shall be in the amount of the previously-paid fee only; and provided further that, the applicant shall pay any additional amount based on the then-current Fee.

b. The Town Council, in its discretion, may waive the applicability of the Fee to certain Development constructed or to be constructed by a public entity on land having a General Plan land use designation of Public/Quasi-Public/Institutional upon findings of the

Town Council that such a waiver is in the interest of the public health, safety, and/or welfare, for reasons specified in the findings. Such reasons may include, but are not limited to, that the Fee, as it would apply to such Development by a public entity, will be sufficiently recovered in whole or in part from residential Development the residents of which may constitute the primary users of the public entity Development.

8. Use of Fee Revenue.

The revenues raised by payment of the Fee shall be placed in a separate, interest bearing account to permit accounting for such revenues and the interest which they generate. Such revenues and interest shall be used only for the Facilities and the purposes for which the Fee was collected, which are the following:

- a. To pay for acquisition of the Facilities;
- b. To pay for design, engineering, construction, and right-of-way or other property acquisition for, and reasonable costs of outside consultant studies related to, the Facilities;
- c. To reimburse the Town for the Facilities constructed by the Town with funds from other sources including funds from other public entities, unless such funds were obtained from grants or gifts intended by the grantor to be used for the Facilities.
- d. To pay for and/or reimburse costs of program development and ongoing administration of the Fee program, including, but not limited to, the cost of studies, legal costs, and other costs of updating the Fee.

9. Standards.

The Standards upon which the need for the Facilities is based are the standards of the Town, including the standards contained in the General Plan, the E.I.R. and those Town standards reflected in the NBS Study.

10. Periodic Review.

- a. During each fiscal year, the Town Manager shall prepare a report for the Town Council, pursuant to Government Code Section 66006, identifying the balance of Fee revenues in the Fee account.
- b. Pursuant to Government Code Section 66002, the Town Council shall also review, as part of any adopted Capital Improvement Program each year, the approximate location, size, time of availability and estimates of cost for all Facilities to be financed with the Fee. The estimated costs shall be adjusted in accordance with appropriate indices of inflation. The Town Council shall make findings identifying the purpose to which the existing Fee revenue balances are to be put and demonstrating a reasonable relationship between the Fee and the purpose for which it is charged.

11. Subsequent Analysis and Revision of the Fee.

The Fee set herein is adopted and implemented by the Town Council in reliance on the Record identified above. The Town may continue to conduct further study and analysis to determine whether the Fee should be revised. When additional information is available, the Town Council may review the Fee to determine that the Fee amounts are reasonably related to the impact of development within the Town. In addition to the inflation adjustments pursuant to Section 12, below, the Town Council may revise the Fee to incorporate the findings and conclusions of further studies and any standards in the General Plan.

12. Inflation Adjustments.

The purpose of this Section 12 is to provide for annual adjustments of the Fee for inflation, beginning July 1, 2010 and each July thereafter, as follows:

a. Construction Cost. Annually each July the Town Manager shall adjust the cost of construction of the Facilities by increasing/decreasing such construction cost by the annual percentage increase/decrease reached by comparing the Engineering News Record Construction Cost Index (20-city average) for the prior March or April over the same Construction Cost Index for the same month for the prior year. The Town Manager may round the adjusted Facilities construction cost to whole dollars.

b. Land Acquisition Cost. Annually each July, the Town Manager shall adjust the cost of acquiring real property interests for the Facilities by increasing/decreasing such land acquisition cost by the annual percentage increase/decrease reached by comparing the Engineering News Record Construction Cost Index (20-city average) for the prior March or April over the same Construction Cost Index for the same month for the prior year. The Town Manager may round the adjusted land acquisition cost to whole dollars.

c. Facilities Acquisition Cost. Annually each July, the Town Manager shall adjust the cost of acquiring (through purchase or otherwise) public safety facilities, and other community facilities by applying the then current Consumer Price Index for all urban consumers for the San Francisco/Oakland bay area for the prior March or April. The Town Manager may round the adjusted Facilities acquisition cost to whole dollars.

d. Total Annual Fee Adjustment. Annually each July, the Town Manager shall adjust the Fee by applying the total annual Fee adjustment for that year to the prior year's Fee. The total annual Fee adjustment shall be reached by apportioning the adjustment in construction cost, land acquisition cost and facilities acquisition cost calculated according to this Section 12 according to the percentage each cost comprises of the whole Fee pursuant to the NBS Study.

13. Effective Date.

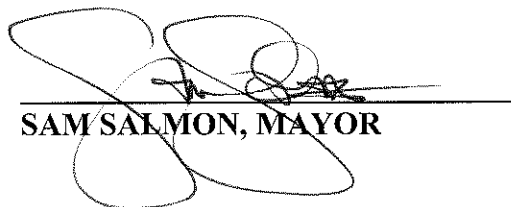
This Resolution shall become effective immediately. In accordance with Government Code Section 66017, the Fee shall be effective 60 days from the effective date of this Resolution. The Fee shall supersede the predecessor fee established by Resolution No. 917-00, upon the Fee becoming effective pursuant to Government Code Section 66017.

14. Severability.

Each component of the Fee and all portions of this Resolution are severable. Should any individual component of the Fee or any portion of this Resolution be adjudged to be invalid and unenforceable by a body of competent jurisdiction, then the remaining Fee components and/or Resolution portions shall be and continue in full force and effect, except as to those Fee components and/or Resolution portions that have been adjudged invalid. The Town Council of the Town of Windsor hereby declares that it would have adopted this Resolution and each section, subsection, clause, sentence, phrase, and other portion thereof, irrespective of the fact that one or more section, subsection, clause, sentence, phrase, or other portion may be held invalid or unconstitutional.

PASSED, APPROVED AND ADOPTED this 21st day of April 2010, by the following vote:

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



SAM SALMON, MAYOR

ATTEST:



BRIGITTE GRAHAM, DEPUTY TOWN CLERK