

**RESOLUTION NO. 2673-10**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR  
APPROVING PARK DEVELOPMENT IMPACT FEES  
FOR FUTURE DEVELOPMENT WITHIN THE TOWN OF WINDSOR  
AND SUPERSEDING THE EXISTING PARK IMPACT FEES  
ESTABLISHED BY RESOLUTION NO. 928-00**

**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 approved the Town of Windsor Parks and Recreation Master Plan ("Master Plan") by Resolution Number 803-99 on April 21, 1999 setting a facility standard for neighborhood and community parks and special recreation facilities

and including estimates of unit costs for acquisition and development of park land within the Town; and

**WHEREAS**, the Master Plan adopts a facilities standard of two acres per 1,000 Town residents for neighborhood parks and a standard of three acres per 1,000 Town residents for community parks; and

**WHEREAS**, by Resolution Number 889-00 adopted March 15, 2000, the Town Council approved a General Plan amendment changing the General Plan park land ratio to two acres of neighborhood parks and three acres of community parks per 1,000 Town residents; and

**WHEREAS**, Government Code Section 66477, also known as the "Quimby Act," establishes statutory guidelines and certain requirements that must be met concerning imposition by local legislative bodies, including cities, of requirements of dedication of land and/or payment of fees in lieu of dedication for park or recreational purposes as a condition of approval of certain subdivision tentative maps or parcel maps; and

**WHEREAS**, the Quimby Act applies only to fees and/or dedications imposed on certain subdivisions subject to the Subdivision Map Act (Government Code Section 64410 *et seq.*) to fund land acquisition costs for park or recreational purposes, and the Quimby Act does not apply to imposition of fees and/or dedication requirements for park or recreational purposes imposed on other development, or to imposition of fees and/or dedication requirements for purposes other than land acquisition, such as for recovery of improvement costs; and

**WHEREAS**, by Ordinance Number 92-22 on September 23, 1992 the Town Council adopted by reference Section 25-28 of the Sonoma County Code entitled "Park Land Dedication" requiring subdividers of land within the Town to dedicate land and/or pay fees in lieu of dedication for neighborhood and community park or recreational purposes as a condition of approval of final or parcel maps; and

**WHEREAS**, by Ordinance Number 2000-128 the Town Council repealed Section 25-58 of the Sonoma County Code (that had been adopted by reference) and amended the Town Code to require that each subdivider of land within the Town and that is subject to the Subdivision Map Act, dedicate land, pay fees in lieu thereof, or a combination of both for neighborhood and community park or recreational purposes, in accordance with the Quimby Act; and

**WHEREAS**, Section 16-3-140 provides that fees paid in lieu of dedication of land pursuant to Ordinance Number 2000-128 shall be equal to the applicable Park Land Acquisition Fee element of the Park Impact Fee established pursuant to Article 4, Chapter 6, Title 16 of the Town of Windsor Code; and

**WHEREAS**, the Town of Windsor, by Resolution No. 928-00, adopted on June 21, 2000, has established a park 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 park impact fee to reflect changes in park facilities costs since the Town park impact fee was last 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, as amended by Addendum Number 1 dated July 9, 2009 (hereafter the “NBS Study”); and

**WHEREAS**, the NBS Study lists certain park facilities that are necessary to accommodate future development in the Town, and

**WHEREAS**, the NBS Study demonstrates the appropriateness of modifying the Town’s park facilities fee in certain respects based on current estimates of the need for and cost of Town park facilities needed to accommodate new development, subject in part to the Quimby Act, including (1) an inventory of existing park facilities establishing the Town’s park facility standard, (2) the Town park facility standard per 1,000 residents, (3) an estimate of the increase in the Town’s service population between the year 2008 and the year 2018, a ten-year period, and (4) the cost of maintaining the Town’s park facility standard for the estimated increase in the Town’s service population by 2018; 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 notices 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 park impact fee set forth in this Resolution is to finance park facilities to reduce the impacts caused by future development in the Town. Such facilities, described in Exhibits 3-A and 3-B of the NBS Study include the following: An active sports center/complex, a community center, a community swimming pool complex, a multi-use sports park with field lighting, a destination playground, upgrades to Esposti Park, a regulation size baseball field, a little league baseball field, a skate park, a nature center, community gardens, dog parks, outdoor gym equipment,

horseshoe pits, tennis courts, an outdoor volleyball court, new community parks, and new neighborhood parks.

B. The park impact fee collected pursuant to this Resolution shall be used to finance the park 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 Master Plan, 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 park facilities described in the Report and that such park facilities are consistent with the General Plan.

D. Adoption of the park facilities impact 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 neighborhood and community park facilities, and the park facilities impact fee set forth in this Resolution will be used to maintain current service levels as reflected in the NBS Study. 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 park facilities impact 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 park impact fee set forth in this Resolution (payment for certain park facilities) and the type of development projects on which such fee is imposed in that all residential development in the Town 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 park impact fee set forth in this Resolution is imposed in that new residential development in the Town will generate persons who live in the Town 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 park impact 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 total cost of acquiring and approving such facilities, the anticipated demand for park facilities within the Town based on the anticipated park facility service population in the Town and the percentage

by which residential 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 land acquisition and improvement costs of the park facilities listed in the NBS Study are reasonable estimates, and that the fees expected to be generated by future residential development will not exceed the projected cost of such park facilities; and

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

G. The NBS Study is a detailed analysis of how public services will be affected by residential development in the Town and the park 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 of any residential 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 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. Park Impact Fee Imposed.

a. 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).

b. The Fee shall not be charged for non-residential Developments (Commercial, Industrial, or Office), nor shall the Fee be charged for non-residential Developments within Mixed Developments.

3. Time for Imposing Fee for Residential Subdivisions.

In accordance with Government Code Section 65961, the Fee for subdivisions 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 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/or Multiple Family 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 residential portions of the Mixed Development shall be paid upon issuance of the building permit for the Mixed Development. Where a Mixed Development includes 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.

5. Amount of Fee.

a. The amount of the Fee shall be as follows:

Park Land Acquisition

Single Family Residential	\$4,942/dwelling unit
Multiple Family Residential	\$3,412/dwelling unit

Park Improvement

Single Family Residential	\$3,438/dwelling unit
Multiple Family Residential	\$2,374/dwelling unit

Total

Single Family Residential	\$8,380/dwelling unit
Multiple Family Residential	\$5,786/dwelling unit

b. The amount of the Fee for Mixed Development shall be the sum of the applicable amounts per-unit pursuant to Section 5 (a), above, for each Single Family and Multiple Family Development within a Mixed Development.

6. Exemptions From Fee.

a. The Fee shall not be imposed on any of the following:

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.

7. 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 of and 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 reimburse developers that have designed and constructed any of the Facilities with prior Town approval and have entered into an agreement, as provided in Section 12, below; and
- e. 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.

8. 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., the Master Plan, and those Town standards reflected in the Report.

9. 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 Town 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.

10. 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 11, below, the Town Council may revise the Fee to incorporate the findings and conclusions of further studies and any standards in the General Plan or the Master Plan, as from time to time amended by the Town.

11. Fee Adjustments.

The purpose of this Section 11 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 as shown on Exhibits 3-A and 3-B in the NBS Study 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 (through purchase or otherwise) land as shown on Exhibits 3-A and 3-B in the NBS Study by increasing/decreasing such land 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) equipment as shown on Exhibits 3-A and 3-B in the NBS Study by applying the then current Consumer Price Index for all urban consumers for the San Francisco/Oakland bay area for the months of 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 and land acquisition cost calculated according to this Section 11 according to the percentage each cost comprises of the whole Fee pursuant to the NBS Study.

12. Credits and Reimbursement for Developer Constructed Facilities.

The Town and a developer may enter into an improvement agreement to allow the developer to construct certain of the Facilities. Such an agreement is totally discretionary on the part of the Town. Such agreement shall provide for security for the developer's commitment to construct the Facilities and shall refer to this Resolution for credit and reimbursement. If the Town enters into such an agreement with a developer prior to construction of one or more of the Facilities, the Town shall provide the developer a credit in accordance with the following:

a. Credit Amount. The credit shall be in the amount of the lowest bid received for construction of the facility, as approved by the Town Engineer. However, in

no event shall a credit pursuant to this provision exceed the current facility cost. For the purposes of this Section 12, such current facility cost shall be the amount listed in the NBS Study for that particular facility as subsequently adjusted pursuant to Sections 10 and 11 of this Resolution prior to issuance of the building permit for that facility. Once issued, credit pursuant to this Section 12 shall not be adjusted for inflation or any other factor. Credit provided pursuant to this Section 12 is not transferable.

b. Application of Credit. Credit pursuant to this Section 12 may be applied by developers against the Fee applicable to a particular project until the credit is exhausted or an excess credit results. The total credit shall be divided by the number of units to determine the amount of credit which can be applied against the Fee for each unit and, if the credit per unit is less than the Fee per unit, the developer shall pay the difference for each unit.

c. Reimbursement for Excess Credit. Reimbursement for excess credit shall only be from remaining unspent Fee revenues. Once all the Facilities have been constructed or acquired and to the extent Fee revenues are sufficient to cover all claims for reimbursement of Fee revenues, including reimbursement for excess credit, developers with excess credit shall be entitled to reimbursement, subject to such developers certifying in writing to the Town that the cost of constructing the facility which resulted in an excess credit was not passed on to homeowners, and indemnifying the Town from land owner claims for reimbursement under Government Code Section 66000 *et seq.* and Section 66001 in particular. If remaining fee revenues after all of the facilities have been constructed or acquired are insufficient to cover all claims for reimbursement of fee revenues, such claims, including claims for reimbursement of excess credit, shall be reimbursed on a pro rata basis in accordance with applicable law.

13. Credit Concerning Quimby Act Dedications and/or Fees Paid.

If a developer has dedicated land and/or paid a fee in lieu of dedication for a residential subdivision project under a Town ordinance adopted pursuant to the Quimby Act (Government Code Section 66410), and such residential subdivision project is later subject to imposition of the Fee, such developer shall be entitled to a credit against the Fee in accordance with the following:

a. The amount of credit shall equal the Park Land Acquisition element of the Fee applicable to the particular residential subdivision project and in effect at the time for payment of the Fee pursuant to this Resolution.

b. The Park Improvement element of the Fee applicable to the particular residential subdivision project in effect at the time for payment of the Fee pursuant to this Resolution shall continue to apply, notwithstanding any dedication of land and/or payment of a fee in lieu of dedication for the particular residential subdivision project pursuant to a Town ordinance adopted pursuant to the Quimby Act.

14. 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 park fee established and adopted by Resolution No. 928-00 upon the Fee becoming effective pursuant to Government Code Section 66017.

15. 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**

  
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**SAM SALMON, MAYOR**

**ATTEST:**

  
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**BRIGITTE GRAHAM, DEPUTY TOWN CLERK**