ORDINANCE NO. 2007-226

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR AMENDING AND UPDATING THE GROWTH CONTROL ORDINANCE, CHAPTER 4 OF TITLE XVI OF THE CODE OF THE TOWN OF WINDSOR

The Town Council of the Town of Windsor ordains as follows:

Section 1. Chapter 4 of Title XVI of the Code of the Town of Windsor is amended and updated to read as follows.

"CHAPTER 4 - GROWTH CONTROL

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16-4-100 Authority. This chapter is adopted pursuant to the general police powers of the Town of Windsor to protect the public health, safety and welfare of its residents and pursuant to the adopted Town of Windsor General Plan – 2015 goals, objectives and policies, and as more particularly set out in Community Development Pattern Implementation Program B.10. (Ord. No. 97-102 § 1 (part); Ord. No. 99-121 § 1 (part); Ord. No. 2000-136 § (part))

16-4-105 Title. This chapter shall be known as the "Growth Control Ordinance" of the Town of Windsor. (Ord. No. 97-102 § 1 (part); Ord. No. 99-121 § 1 (part); Ord. No. 2000-136 § 1 (part))

16-4-110 Purpose. The purpose of the Growth Control Ordinance is to accommodate growth anticipated under the General Plan, and to manage new development so that it occurs concurrently with necessary public services, facilities and infrastructure as follows:

A. By monitoring and regulating the Town's residential development, this chapter furthers the General Plan's Vision Statement to accomplish the following: retain the Town's small town character and rural atmosphere; respect natural resources; encourage compact urban-level development within the Town Limits; support rural and agricultural land uses beyond the Urban Growth Boundary; maintain flexibility to accommodate

change; and plan the location and timing of growth, taking into consideration infrastructure capacity, public service availability, and fiscal impacts.

B. This chapter supports the following General Plan objectives:

1. The Urban Growth Boundary provides the Town with sufficient land to accommodate the Town's growth control strategy through the horizon year of the General Plan by annually monitoring the Town's residential development.

2. Set priorities for development of areas within the Urban Growth Boundary, considering proximity to existing urban development, availability of public services and utilities, fiscal effects for the Town, and protection of Williamson Act land contracts by annually stating community development objectives, and targeting housing types or development areas as needed.

3. Ensure that growth occurs concurrently with the provision of adequate services and infrastructure by preparing an Annual Growth Control Report and making a related concurrency finding.

4. Designate a range of land uses to balance residential and economic development in a manner compatible with the Planning Area's environmental resources by preparing an Annual Growth Control Report upon consideration of the past year' s development activity and available infrastructure.

5. Reserve adequate land to accommodate commercial and future light industrial development to meet the needs for goods and services for the Town and to create jobs by preparing an Annual Growth Control Report upon consideration of the past year's development activity and available infrastructure.

6. Require new development to provide its fair share of required service and infrastructure in a timely manner by not releasing reserved allocations until related development applications have been reviewed through the Town's discretionary land use process, and approved. This timing for the allocations assures that applicants are substantially committed to projects, thereby assuring a more predictable, consistent flow of development impact fees to fund infrastructure projects.

7. Develop standards for the provision of community services, utilities, and facilities; provide adequate space to accommodate these services as development occurs; and deliver these services in a cost-effective manner to reduce the costs of service delivery by preparing an Annual Growth Control Report upon consideration of the past year's development activity and available infrastructure.

8. Strive to meet the Town's fair share of the regional housing need by exempting very low, low, and moderate income units for which Windsor has not met its regional share.

9. Preserve open space land for the continuation of commercial agricultural and productive uses, the protection and use of natural resources, the enjoyment of scenic

beauty and recreation, and protection from natural hazards by monitoring the Town's residential development through an Annual Growth Control Report.
(Ord. No. 97-102 § 1 (part); Ord. No. 99-121 § 1 (part); Ord. No. 2000-136 § 1 (part))

16-4-115 Findings. The Town Council has considered the effect of this Growth Control Ordinance and finds that the provisions of this chapter are necessary to promote the public health, safety and welfare. This chapter is based on accommodating general plan buildout to assure that housing opportunities in the region are not reduced. However, to the extent that such opportunities may be reduced, those reductions are justified to protect the character and quality of life for existing and future residents by managing and balancing new residential units so as not to exceed available resources including the developable land supply, public infrastructure capacity, public services, and fiscal resources. Pursuant to Government Code Section 65863.6, the Town makes the following specific findings:

A. Land Supply Constraints. The Town of Windsor General Plan and its related Environmental Impact Report identify environmental constraints in the Planning Area of the Town of Windsor. An Urban Growth Boundary has been established within the Planning Area to provide an adequate land supply for potential development to the year 2017. The location of the Town's Urban Growth Boundary recognizes that certain lands to its west, north, and east are unsuitable for urbanization due to Federal, State, County and local policies established for the protection of agricultural lands, oak woodlands, hillsides, vernal pool/wetland habitat, flood zones, steep slopes, seismic hazards, and scenic views. Development to the south of the Sphere-of-Influence and Urban Growth Boundary is also constrained by proximity to the Sonoma County Airport and the Sonoma County General Plan Community Separator policies. The Windsor General Plan provides land within the Urban Growth Boundary to accommodate urbanization through the life of the General Plan, and relies on a compact land use pattern to make efficient use of lands available for urbanization.

B. Public Services and Infrastructure Capacity/Concurrency. The Town of Windsor General Plan and its related Environmental Impact Report determined that existing infrastructure facilities will need to be expanded to serve ultimate buildout of the Urban Growth Boundary. The General Plan requires phased construction of water and wastewater treatment facilities to ensure that adequate capacity will be available. Updates to the following Master Plans are underway by the Town to identify improvements needed to serve the General Plan buildout population: Water Supply, Wastewater, and Storm Drainage. In order to ensure that infrastructure is provided to support new development as it occurs, it is necessary to monitor proposed new development and infrastructure capacity as described and planned for in the relevant Master Plans. In the interim, until such Master Plans have been updated, the provisions of this chapter will require annual identification of infrastructure deficiencies, which would limit the rate of growth until such deficiencies can be remedied.

C. Public Services. The Windsor Unified School District, Windsor and Rincon Valley Fire Districts, and Windsor Police Department provide essential public services for the promotion and protection of the general welfare and safety of Windsor residents. The Town finds that in order to ensure that the provision of these services keeps pace with

new development, it is necessary to manage increments of growth in accordance with the service provision of the above districts. This will involve annual identification of infrastructure deficiencies, including school facilities infrastructure.

D. Fiscal Resources. An economic study prepared in connection with the Windsor General Plan (Bay Area Economics, June 8, 1995) determined that there was a more limited market demand in the Windsor area for revenue generating land uses (commercial, office, light industrial, etc.), and a strong market demand for single-family residential growth rates increase. Additionally, a report prepared to assess the impacts of a proposed regional commercial center (Bay Area Economics, October 1995), found that Windsor's per capita sales were one-fourth (1/4) that of county wide per capita sales, indicating that residents are disproportionately shopping outside of Windsor in comparison to other Sonoma County communities. The Town finds it necessary to manage its mix of residential and non-residential land uses to emphasize economic growth and to ensure that public infrastructure and service costs associated with unmanaged residential growth do not exceed available fiscal resources resulting in decreased public service or maintenance activities or adverse fiscal consequences to the Town, to the detriment of the public safety and welfare.

E. Circulation. The Town of Windsor General Plan and its related Environmental Impact Report identify intersections which would be degraded to less than acceptable Levels of Service with unmitigated buildout of the Urban Growth Boundary. In order to ensure adequate capacity of the Town's circulation system concurrent with new growth and in conformance with the Town's Level of Service (LOS) standard, the Town finds it necessary to monitor and manage growth with appropriate mitigation to ensure meeting the Town's LOS standard.

F. Jobs/Housing Balance. The Town of Windsor General Plan and its related Environmental Impact Report document out-commuting trends in Windsor and traffic congestion on Highway 101. Nearly 69% of employed Windsor residents commute outside of Windsor (Association of Bay Area Governments Projections 2007). In order to reduce out-commuting and congestion on Highway 101 and promote an economically sustainable fiscal mix of residential/nonresidential land uses, the Town finds it necessary to manage the mix of residential to nonresidential growth to both accommodate residential growth and to emphasize economic growth.

G. Low, Very-Low and Moderate Income Housing Needs. A Housing Needs Assessment prepared in conjunction with the Town of Windsor General Plan found that Windsor exceeded its Housing Needs Determination for moderate and above moderate income housing units by nearly three thousand (3,000) units for the housing element planning period ending June, 1997. Based on the 2007-2012 ABAG Regional Housing Needs Allocation, there is an unmet need for Very Low, Low, and Moderate Income units. The Growth Control Ordinance will not constrain the provision of these units as they are exempted from obtaining Growth Control Allocations per the provisions of this chapter.
(Ord. No. 97-102 § 1 (part); Ord. No. 99-121 § 1 (part); Ord. No. 2000-136 § 1 (part))

16-4-120 Administration. The Town Council, by resolution, may from time to time adopt procedures, policies, rules, and requirements, including the adoption of processing fees, to implement and administer the provisions of this chapter.

The Town Council, by resolution, may establish procedures for processing Allocation Applications, Waiver Applications or Residential Development Applications when no allocations are currently available. (Ord. No. 97-102 § 1 (part); Ord. No. 99-121 § 1 (part); Ord. No. 2000-136 § 1 (part))

16-4-121 Applicability. The Growth Control Allocation provisions of this chapter shall apply to all new residential development, except as otherwise provided for in this chapter. (Ord. No. 99-121 § 1 (part); Ord. No. 2000-136 § 1 (part))

16-4-122 Agreements. Reserved Growth Control Allocations or Growth Control Allocations committed to a project through a Development Agreement, Allocation Agreement, or other agreement approved by the Town Council, shall be considered when establishing the number of Growth Control Allocations for current and future years' Growth Control Allocations, as specified in the terms of the agreement. (Ord. No. 99-121 § 1 (part); Ord. No. 2000-136 § 1 (part); Ord. No. 2006-211 § 3 (part))

16-4-123 Definitions.

A. Affordable units means units which are needed to meet the Town's ABAG Regional Housing Needs Allocation for Very Low, Low, or Moderate Income Units.

B. Allocation Agreement means an agreement between the Town and an Allocations applicant to secure allocations pursuant to the provisions of this chapter.

C. Allocation Application means material to be filed by an applicant seeking Reserved Growth Control Allocations. The contents and information required to be submitted as part of the Allocation Application shall be established by resolution of the Town Council. An Allocation Application is not an application for a development project for purposes of the Permit Streamlining Act. An Allocation Application is not an application for a project for purposes of the California Environmental Quality Act.

D. Allocation/Growth Control Allocation means a unit representing a potential Residential Dwelling Unit, as reserved for a specified year in accordance with this chapter, which reserved allocation is released upon Final Discretionary Approval of the project that is the subject of a Residential Development Application.

E. Final Discretionary Approval.

1. General. For the purposes of this chapter, Final Discretionary Approval means the last discretionary action by the Town which calls for the exercise of judgment in deciding whether to approve and/or how to carry out a project that is the subject of a Residential Development Application.

2. **Project Appeals**. If a project is appealed after Final Discretionary Approval and the approval is upheld, the original approval date is the Final Discretionary Approval. If a project is denied, but approved on appeal, the approval date is the Final Discretionary Approval.

3. **Projects with Multiple Discretionary Approvals**. For purposes of determining the date of Final Discretionary Approval for a project with multiple discretionary approvals, the action entitling an applicant to a use with a definite number of dwelling units shall be considered the date of Final Discretionary Approval.

F. Infrastructure concurrency finding means a determination, adopted by the Town Council, based on the facts and evidence provided annually by Town staff, that specified infrastructure facilities and public services either have adequate capacity, or needed facilities have been approved and financing mechanisms are in place to secure adequate capacity for a specified increment of new development.

G. Legal lot of record means a lot which is contained in a recorded subdivision map or which has been issued a Certificate of Compliance for which any identified conditions have been satisfied.

H. Low income unit means units which are affordable to households whose combined income is at or below 50% to 80% of the median income for Sonoma County as established by the Housing and Urban Development Department.

I. Merit Process means a process established by resolution of the Town Council setting forth the process for obtaining Reserved Growth Control Allocations including criteria to be used in evaluating Allocation Applications, and such other policies and procedures as deemed appropriate by the Town Council.

J. Moderate Income Unit means units which are affordable to households whose combined income is between 80% and 120% of the median income for Sonoma County as established by the Housing and Urban Development Department.

K. Project means potential future development with residential units as part or all of the development. Reservation of allocations pursuant to this chapter is not approval of such future development.

L. Remainder Lot/Parcel means a portion of any improved or unimproved unit or units of land that an Allocation applicant does not anticipate proposing for future subdivision. Development of the entire property is encouraged in order to ensure compliance with all applicable codes, policies, and ordinances. Remainder lots/parcels are strongly discouraged. For the purposes of this chapter, any potential remainder lots/parcels shall be shown on the Allocation Application as numbered parcels and shall be counted as one unit in determining the required allocations. Remainder lots/parcels shall not have more than one unit allocation per lot/parcel. Remainder lots/parcels shall be subject to the Growth Control Ordinance in place at the time development applications are anticipated.

M. Reserved Growth Control Allocation means an allocation reserved by the Town Council pursuant to the Merit Process, and which allows a developer to submit a Residential Development Application. Reserved Growth Control Allocations are required prior to submittal of a Residential Development Application. Reservation of a Growth Control Allocation is not a development project for purposes of the Permit Streamlining Act. Reservation of a Growth Control Allocation is not a project for purposes of the California Environmental Quality Act.

N. Residential building permit issuance means the point in time at which a permit is issued by the Building Department to build a new Residential Dwelling Unit in accordance with the Uniform Building Code and other local ordinances, and for which all applicable fees have been received by the Town.

O. Residential Development Application means an application submitted by an applicant for any and all necessary land use entitlements and environmental review for projects proposing any Residential Dwelling Units. An Allocation Application in accordance with this chapter is not a Residential Development Application.

P. Residential Dwelling Unit means 1 or more habitable rooms which are occupied or which are intended or designed to be occupied as a residence, with facilities for sleeping, living, recreating, cooking, bathing, and dining. Hotel/motel, community care facilities and health facilities as defined in the State Health and Safety Code, and similar commercial uses shall not be considered Residential Dwelling Units for purposes of this chapter.

Q. Second dwelling unit means a Residential Dwelling Unit which provides complete independent living facilities and includes permanent living facilities and includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as another dwelling is situated and which complies with the provisions of the Town's Second Dwelling Unit Ordinance.

R. Urban growth boundary means as shown on the General Plan Map.

S. Very low income unit means units which are affordable to households whose combined income is less than 50% of the median income for Sonoma County as established by the Housing and Urban Development Department. (Ord. 99-121 § 1 (part); Ord. No. 99-121 § 1 (part); Ord. No. 2000-136 § 1 (part))

T. Waiver Application means an application submitted by an applicant seeking any waivers authorized under this chapter. The contents and information required in such applications and the process for review of the applications shall be established by resolution of the Town Council.

16-4-124 Expiration, Timeframes/Revocation of Allocations.

A. Expiration of Allocations.

1. Reserved Allocations. Reserved Growth Control Allocations shall automatically expire with denial of the related Residential Development Application.

2. Released Allocations. Reserved Growth Control Allocations that have been released shall automatically expire upon any expiration of the related Final Discretionary Approval.

3. Extension of Allocations. Reserved Growth Control Allocations may be extended as provided by separate resolution of the Town Council.

4. Effect of Expiration. Affected projects shall be required to reapply for Growth Control Allocations in the same manner as all other new projects.

B. Timeframes/Revocation. By separate resolution, the Town Council may establish performance criteria and timeframes related to requesting, reserving, releasing and extending Allocations. The resolutions may, among other things, contain criteria that specify the timing of application submittals. Reserved and released Allocations may be revoked, and Allocation extensions may be denied, based on criteria established by separate resolution of the Town Council.

16-4-125 Exemptions and Waivers. The following types of residential units are exempted or waived from certain provisions of this chapter as follows.

A. Exemptions. The following types of units shall not be required to obtain Reserved Growth Control Allocations.

1. Special Needs Housing

a. Second dwelling units.
b. Very Low/Low/Moderate income units. The Town Council may, by resolution, establish a maximum number of moderate income units to be waived in any one year.

2. Previously Approved Projects. Residential units in subdivision projects with tentative map approval and/or recorded Parcel or Final Map, or with Reserved Allocations, prior to the effective date of this ordinance. This exemption shall be valid for as long as the tentative map is valid.

3. Single Unit. A single residential unit on a legal lot of record. Provided that no discretionary approval is required, and the unit is not included within an approved subdivision (tentative/final map), and there are no other residential units on the lot. This exemption includes a single caretaker/residential unit for a non-residential project.

B. Waivers. The Town Council may waive certain provisions of this chapter for residential units in Priority Development Areas, and in small new residential developments.

1. Priority Development Areas. The Town Council may, by resolution, establish priority development areas as an incentive to focus growth in those areas.

a. Downtown Plan Area. The Town Council may approve a Waiver for residential units in residential and/or mixed-use projects with a residential component in the Windsor Downtown Plan Area, as shown on Figure 1 of the Downtown Plan.

b. Additional Priority Development Areas. The Town Council may, by resolution, establish additional Priority Development Areas where developers may request a Waiver.

2. Projects of Four New Residential Units or Less. The Town Council may, by resolution, establish a pre-determined quantity of Allocations for small projects of four new residential units or less as an incentive for infill residential development.

3. Waiver Application and Process. The Town Council shall, by resolution, establish a Waiver process, including a Waiver Application, criteria for qualifying for a Waiver, and Town Council action on the Waiver Application.

16-4-135 Growth Control Allocations

A. Allocations Required. All Residential Dwelling Units must obtain Reserved Growth Control Allocations in accordance with this chapter, unless the units are exempt or obtain a Waiver as provided in this chapter.

B. Annual Residential Growth Control Allocations. Each year the Town Council shall establish, by resolution, the number of Growth Control Allocations to be reserved for the following year(s). The number of allocations shall be set based on consideration of the findings and determinations as set forth in Section 16-4-145, Annual Review. In addition, the Town Council shall limit residential growth to a growth rate of 2% to 3% per year in setting the number of allocations.

C. Allocation Application. A developer requesting Reserved Growth Control Allocations shall submit an Allocation Application to the Town. The Allocation Application shall contain information and materials established by resolution of the Town Council. Failure to provide all required information and materials will result in the applicant not being allowed to participate in the Merit Process.

D. Reserving Allocations.

1. Merit Process. The Allocation Application shall be reviewed through the Merit Process. Upon completion of the Merit Process, the Town Council, by resolution and at its sole discretion, may reserve allocations for the year requested, in accordance with the provisions of this chapter.

2. Annual Phasing for Large Projects. A project which exceeds 50 units shall be phased so that in any 1-year period, the number of Reserved Growth Control Allocations and related future building permits issued shall not exceed 50 units per

project per year. The annual phasing and related Allocations shall be reflected in an Allocation Agreement.

3. Insufficient Allocations. If the number of requested allocations for a project exceeds the number available in the year requested, and/or exceeds the number of units defined in this Ordinance, allocations may be reserved if the project is phased to be consistent with the available allocations and the remaining units would be placed first in line for reserving the next available allocations. Additional phasing may be required to be consistent with subsequent available allocations.

E. Effect of Reserved Allocations. After obtaining Reserved Allocations, the applicant may submit a Residential Development Application for the project. The Residential Development Application shall include evidence of compliance with this chapter, either through Reserved Allocations, exemption, or waiver. No Residential Development Application shall be deemed complete until and unless the requirements of this chapter have been met.

F. Releasing Reserved Allocations. Reserved Allocations shall be released upon Final Discretionary Approval of the project. The number of Reserved Allocations released upon Final Discretionary Approval shall not exceed the number of approved Residential Dwelling Units except as may be provided in an Allocation Agreement.

G. Expiration of Reserved Allocations. In addition to the provisions of Section 16-4-124, Reserved Allocations shall expire if a related Residential Development Application is not submitted within time frames established by separate resolution of the Town Council.

H. Not a Property Right. The reservation or release of Growth Control Allocations is not a property right, nor an entitlement. The terms "Allocation", "Growth Control Allocation", and "Reserved Growth Control Allocation" are associated with the administration of this chapter only. In the event that this chapter is amended or nullified, the above terms shall not be determined to convey any express property right or entitlement beyond the purposes of administering this chapter.

16-4-140 Annual Review - Annual Growth Control Report. No later than November 1st of each year, the Planning Department shall prepare a report to include the following components:

A. Infrastructure. The status of local infrastructure systems, specifying existing infrastructure, public facility, and service capacity, any approved expansions of capacity and related financing mechanisms, including but not limited to the following:

1. Transportation System Levels of Service (LOS) at key intersections as identified in the General Plan;

2. Parks – Status of existing, built, and planned;

3. Police – Status of activity, staffing, and equipment;

4. Fire Service – Status of activity, staffing, and equipment;

5. Schools – Status of existing and proposed;

6. Storm Drainage – Status of existing, built, and planned;

7. Wastewater – Status of existing, built, and planned;

8. Water – Status of existing, building, and planned.

This section of the report shall identify an increment of development which can be adequately served by public infrastructure and services based on existing capacity and approved expansions as well as on environmental review, project approvals and identification of funding mechanisms.

B. Infrastructure Concurrency Finding. Based on the facts and evidence in and supporting the report, the Town Council shall annually determine an increment of new development for which specified infrastructure facilities and public services either have adequate capacity, or, needed facilities have been approved and financing mechanisms are in place to secure adequate capacity.

C. Fiscal Information. The report shall also include specific fiscal information regarding the expected financial condition of the Town and how it relates to being able to provide services to residential development.

D. Housing Production. Information regarding the status of housing production in the Town, including building permits for exempt units, the number of Growth Control Allocations reserved, the acreage of land associated with approved development, the number of expired Growth Control Allocations, and the remaining developable acreage in the Town Limits and Urban Growth Boundary.

E. Development Projects. Current status of all tentative map, final map, and any other residential development projects.

F. Incentives. Recommendations regarding incentives or other programs for achieving General Plan goals, policies and objectives regarding housing in the community.

G. Recommendations. Recommendations regarding modifications of the Growth Control strategy to ensure timely and adequate provision of infrastructure and services; appropriate pacing of buildout of the Town's Urban Growth Boundary; and encouragement of General Plan Community Development and Housing goals which may not otherwise be provided. (Ord. No. 97-102 § 1 (part); Ord. No. 99-121 § 1 (part); Ord. No. 2000-136 § 1 (part))"

Section 2. California Environmental Quality Act ("CEQA").

The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, either directly or indirectly.

Section 3. Statutory Severability.

If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions may be declared unconstitutional, unlawful or otherwise invalid.

Section 4. Effective Date and Publication.

This ordinance shall take effect thirty (30) days from its passage. In accordance with California Government Code Section 36933(c), a summary of this ordinance and a certified copy of the full text of this ordinance was posted at least five (5) days prior to the Council's adopting of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the Town Council shall publish a summary of the ordinance with the names of those Town Council members voting for and against the ordinance in the *Windsor Times*. A certified copy of the full text of the Ordinance will be posted in the office of the Town Clerk within fifteen (15) days of its adoption.

PASSED, APPROVED AND ADOPTED this 5th day of December 2007 by the following vote:

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

DEBORA FUDGE, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK