RESOLUTION NO. 2392-08

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR ADOPTING AN UPDATED TRAFFIC IMPACT FEE FOR FUTURE DEVELOPMENT WITHIN THE TOWN OF WINDSOR

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 August 7, 2002, by Resolution 1251-02; on February 19, 2003, by Resolution 1346-03; on March 19, 2003, by Resolution 1358-03; and on July 20, 2005, by Resolution 1787-05; 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, 4,660 of which are within the Town and 8,540 of which are outside the Town in unincorporated Sonoma County; and

WHEREAS, the General Plan outlines future land uses for approximately 4,660 acres within the Town; and

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

WHEREAS, General Plan Policy *D.4* requires new development to pay its fair share of the cost of future transportation improvements and Implementation Program D.7 and Chapter 8.E provide for collection of a Traffic Impact Fee; and

WHEREAS, a Program Environmental Impact Report ("EIR ") was prepared for the General Plan pursuant to the California Environmental Quality Act ("CEQA") and certified by the Town Council on March 13, 1996, by Resolution Number 505-96; and

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

WHEREAS, the Town Council adopted Design Standards by Resolution 696.1-97A on December 1, 1997; and revised them on January 19, 2005, by Resolution 1722-05; and

WHEREAS, the Town of Windsor retained Whitlock & Weinberger Transportation (W-Trans) to assist the Town in reviewing and updating the Town's Traffic Impact Fee to reflect changes in public facilities costs since the Traffic Impact Fee was adopted; and

WHEREAS, W-Trans has prepared a report dated September 15, 2008, and entitled *Traffic Impact Fee Update* which is attached as Exhibit A (hereafter the "W-Trans Report"); and

WHEREAS, the W-Trans Report lists certain public facilities that are necessary to accommodate future development in the Town, and

WHEREAS, the W-Trans Report demonstrates the appropriateness of modifying the Town's Traffic Impact Fee in certain respects based on current estimates of the need for and cost of Town public facilities needed to accommodate new development; and

WHEREAS, the Town Council has adopted an ordinance creating and establishing the authority for imposing and charging Traffic Impact Fees to pay for Town-owned transportation 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 W-Trans Report was available for public review and comment for ten days prior to the public hearing at which this Resolution was adopted; and

WHEREAS, ten 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 Traffic Impact Fee set forth in this Resolution is to finance public facilities to reduce the impacts caused by future development in the Town. Such facilities are described in the W-Trans Report (Pages 20-24, in particular).

B. The Traffic Impact Fee collected pursuant to this Resolution shall be used to finance the public facilities described in the W-Trans Report and/or alternative facilities in accordance with this Resolution.

C. After considering the W-Trans Report, the testimony received at noticed public hearings, the agenda statements, the General Plan, the EIR, the Background Documents to the

agenda report for this resolution and all correspondence received (together, "Record"), the Town Council approves and adopts the W-Trans Report 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 W-Trans Report and that such public facilities are consistent with the General Plan.

D. Adoption of the Traffic 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 transportation facilities to accommodate the Level of Service Standard identified in the General Plan (Policy D.2.6 and Implementation Program D.4), and the Traffic Impact 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 CEQA (Pub. Res. Code § 21 080(b)(8)(D)).

E. In adopting the Traffic 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 that:

1. There is a reasonable relationship between the use of the Traffic Impact 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 W-Trans Report; and

2. There is a reasonable relationship between the need for the facilities listed in the W-Trans Report and the type of development projects on which the Traffic Impact 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 W-Trans Report; and

3. There is a reasonable relationship between the amount of the Traffic Impact Fee set forth in this Resolution and the cost of the facilities listed in the W-Trans Report 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 vehicle trips generated by specific types of land uses, the total cost of construction of such facilities, and the percentage by which new development within the Town contributes to the need for such facilities; and

4. The cost estimates set forth in the W-Trans Report are reasonable estimates for the cost of the public facilities listed in the W-Trans Report, 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 vehicular trips each particular land use will generate.

G. The W-Trans Report 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. "Development" shall mean the construction, alteration or addition, other than by the Town, of any building or structure within the Town of Windsor.

   b. "Facilities" shall include those facilities that are described in the W-Trans Report 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 (1) that there is a reasonable relationship between Development within the Town and the need for alternative facilities (2) that the alternative facilities are comparable to the facilities listed in the W-Trans Report, and (3) that 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.

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

   d. "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) with any Non-Residential types of Development

   e. "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 Mobile Home Park or High Density Residential (whether attached or detached).

f. "Non-Residential" shall mean any Development constructed or to be constructed on land having a General Plan land use designation of Neighborhood Center Mixed Use, Town Center/Mixed Use, Retail Commercial, Gateway Commercial, General Business, Service Commercial, Light Industrial and Heavy Industrial. "Non-Residential" shall also include any Development constructed or to be constructed on land having a General Plan land use designation of Public/Quasi Public Institutional, which shall be charged at the Light Industrial rate. The specific rate for Non-Residential Developments shall be as set forth in Section 5 for the particular land use designation.

g. "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 and on land designated in the General Plan as Medium-High Density Residential.

h. "Transit Core Area Development" shall mean development of any parcel, or any portion thereof, that is within one-half mile of the Town of Windsor Transit Depot.

2. Traffic Impact Fee Imposed.

Pursuant to Government Code Sections 66000 *et seq.* ("Mitigation Fee Act"), 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, 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 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 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	Per Dwelling Unit	FEE
Single Family		$9,460
Multiple Family (more than 840 sf)		$5,807
Second Unit (840 sf or less)		$2,435
COMMERCIAL / OFFICE	**Per 1,000 sq. ft.**	
General Business (Office)		$6,026
Commercial		$7,899
INDUSTRIAL	**Per 1,000 sq. ft.**	
Light Industrial		$3,899
Heavy Industrial		$1,165

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 Residential unit within a Mixed Development.

   ii. The applicable amount per 1,000 sq. ft. pursuant to Section 5(a), above, for the Non-Residential Development (based on the land use designation) or portion of such Developments within a Mixed Development.

   iii. The total fee for the Mixed Development shall be decreased by fifteen percent (15%) of the lower amount calculated per 5(b).i and 5(b).ii above.

c. Proposed Developments including a drive through window shall be assessed an additional surcharge in the amount of $4,683 per 1,000 sq. ft. for banks, pharmacies, and other commercial enterprises, and $39,806 per 1,000 sq. ft. for food and/or beverage service, such as fast food restaurants and coffee kiosks.

d. Proposed Developments within the Transit Core Area shall receive a credit in the amount of 9 percent of the fee applicable to the residential units and 3 percent for the non-residential uses calculated prior to the application of any other credits or surcharges.

e. For land use designations not specifically included in the table above, the fee shall be calculated at a rate of $9,366 per p.m. peak hour trip.

6. Designation of Developments.

Non-residential developments other than Mixed Developments (but including Non-Residential Developments within Mixed Developments) shall be assigned to a particular land use designation under "Non-Residential" by the Town Manager for purposes of imposition and charging of the Fee. The Town Manager shall make such

designations as consistently as possible with the definitions of such categories established pursuant to the General Plan, this Resolution and as such designation may later be 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 increases the square footage.

      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 trip generation or the land use designation of the property.

      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 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 EIR, Town of Windsor Design Standards (adopted by Resolution No. 696.l-97A and updated by Resolution 1722-05) and those Town standards reflected in the W-Trans Report.

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 Plan 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, 2009, and each July thereafter. Annually each July the Town Manager shall adjust the cost of construction of the Facilities 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 cost to whole dollars.

13. 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, such current facility cost shall be the amount listed in the Report for that particular facility as subsequently adjusted pursuant to Sections 11 and 12 of this Resolution prior to issuance of the building permit for that facility. Once issued, credit pursuant to this Section shall not be adjusted for inflation or any other factor. Credit provided pursuant to this Section is not transferable.

b. Application of Credit. Credit pursuant to this Section 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 (for a residential project) 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. If a credit pursuant to this Section is less than the Fee applicable to a particular non-residential development project, the developer shall pay the Town the balance in cash.

c. Reimbursement for Excess Credit. Reimbursement for excess credit shall only be from remaining unspent Fee revenues. Once all the Facilities have been

d. 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.

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 fee established by Resolution No. 985-01, 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 19th day of November 2008, by the following vote:

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

Debora Fudge

DEBORA FUDGE, MAYOR

ATTEST:

Maria De La O

MARIA DE LA O, TOWN CLERK



TRANSIT CORE AREA DEVELOPMENT ONE-HALF MILE RADIUS FROM TRANSIT DEPOT

EXHIBIT A

TOWN OF WINDSOR