ORDINANCE NO. 2009-251

AN ORDINANCE OF THE TOWN OF WINDSOR REPEALING IN ITS ENTIRETY TITLE XVI, CHAPTER 7, CHAPTER 16-7-100 "FINDINGS", 16-7-110 "ESTABLISHMENT OF DISTRICT", 16-7-120 "DESCRIPTION OF DISTRICT BOUNDARIES", 16-7-130 "AMENDMENTS TO THE ACT", 16-7-140 "DEFINITIONS", 16-7-150 "CLASSIFICATION OF BUSINESSES AND CALCULATION OF ASSESSMENTS", 16-7-160 "USE OF REVENUE", 16-7-170 "ADVISORY BOARD ANNUAL REPORT", 16-7-180 "ANNUAL LEVY OF ASSESSMENTS", 16-7-190 "BOUNDARY AND ASSESSMENT MODIFICATIONS", 16-7-200 "COLLECTION OF ASSESSMENTS", 16-7-210 "PENALTY FOR DELINQUENT PAYMENT", 16-7-220 "APPEALS", OF THE MUNICIPAL CODE.

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code §§ 36500 *et seq.*) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, business merchants located within Old Downtown Windsor requested that the Town Council establish a business improvement area to promote business activities and events within the District; and

WHEREAS, the Old Downtown Windsor Business Improvement District ("District") was established on July 7, 2004 by Ordinance No. 2004-182, adding Article 1 of Chapter 7 of Title XVI to the Town of Windsor's Municipal Code; and

WHEREAS, Ordinance No. 2004-182 established business classifications and reasonable assessments applicable to those business classifications; and

WHEREAS, the assessment fees collected on behalf of the District by the Town has enabled the District to conduct educational programs, provide promotion, marketing and advertising opportunities, and to sponsor public events benefiting businesses within the District, such as a Easter Egg Hunt, and Kids Movie Series on the Town Green; and

WHEREAS, California Streets and Highways Code section 36530 *et seq.* authorizes the Town to appoint an advisory board which shall prepare and file an annual report for each fiscal year for which assessments are to levied and collected to pay the costs of the improvements and activities described in the report; and

WHEREAS, the Town Council appointed an Advisory Board consisting of the District Board of Directors on June 20, 2007 by Resolution No. 2076-07; and

WHEREAS, the District's Advisory Board has prepared and filed with the Town Clerk the "Old Downtown Windsor Business Improvement District Fiscal Year 2008-2009 Annual Report" ("2008-2009 Report") and at the June 18, 2008 Council meeting, the Council considered and discussed the 2008-2009 Report; and

WHEREAS, pursuant to California Streets and Highways Code §36534, on June 18, 2008, the Town adopted Resolution No. 2306-08, entitled "A Resolution of the Town Council of the Town of Windsor Declaring Its Intention to Levy an Annual Assessment for Fiscal Year 2008/2009, and to Hold a Public Hearing" ("Resolution of Intention"), which declared the Town Council's intention to levy and collect assessments within the District for Fiscal Year 2008-2009, and to hold a public hearing, where written and oral protests are heard by the Town Council at the regularly scheduled Town Council meeting on July 16, 2008; and

WHEREAS, in accordance with California Streets and Highways Code §§ 36523(a) and 36534(b), the Town Clerk caused a complete copy of the Resolution of Intention to be published in a newspaper of general circulation at least seven days before the July 16, 2008 public hearing; and

WHEREAS, the Town Clerk caused complete copies of the Resolution of Intention to be mailed by first-class mail, following Council's action on June 18, 2008, to each business owner to be assessed in the 2008-2009 Report; and

WHEREAS, at said meeting of July 16, 2008, written and verbal evidence for and against the proposed assessments of the District was received and considered by the Town Council and, in accordance with section 36524 and 36525 of the Act, written protests were not received from business owners that will pay 50% or more of the proposed assessments, either concerning levy of the proposed assessments, or the types of proposed improvements or activities; and

WHEREAS, at said meeting of July 16, 2008, the Town Council adopted Resolution No. 2322-08, entitled " A Resolution Of The Town Council Of The Town Of Windsor Approving And Confirming The Old Downtown Windsor Business Improvement District Management Plan And Budget For Fiscal Year (FY) 2008/2009 And Levying The Assessment For The Old Downtown Windsor Business Improvement District For FY 2008/2009" which approved the levy of the assessments for the Old Downtown Windsor Business Improvement District for the 2008/2009 fiscal year pursuant to the requirements of the Business Improvement Area Law of 1989, Article 1 of Chapter 7 of Title XVI of the Town of Windsor Code; and

WHEREAS, on November 14, 2008 BID President Bill Fallis submitted a letter to the Town Council on behalf of the Advisory Board requesting that the Town of Windsor freeze the Old Downtown Windsor Business Improvement District's assessment fee for the 2008/2009 fiscal year; and

WHEREAS, the letter cites various explanations for the request to freeze the imposition and collection of the BID annual assessment for the 2008/2009; and

WHEREAS, the BID letter cites a loss of focus, declining member confidence, participation, and unity, confusion about the benefits of the BID and a sense of animosity amongst the BID members as reasons to freeze the BID assessments; and

WHEREAS, a freeze in the 2008/2009 imposition of assessment would afford the BID Board the time to accomplish a number of proposed goals including the establishment of a new methodology for improved & timely communication amongst the BID membership; and

WHEREAS, on January 7, 2009, the Town Council held a public hearing on the proposed freeze in the 2008/2009 imposition of assessment; and

WHEREAS, the Town Council received a staff report during the public hearing indicating that the annual estimated cost to maintain the BID is $10,000; and

WHEREAS, the Town Council discussed the BID letter which cites a loss of focus, declining member confidence, participation, and unity, confusion about the benefits of the BID and a sense of animosity amongst the BID members as reasons to freeze the BID assessments as well as initiate the disestablishment of the District; and

WHEREAS, the Town Council received testimony from the BID Advisory Board President that the District proposes to continue to operate as a non-profit organization and function as a volunteer merchant's association; and

WHEREAS, on January 7, 2009 the Town Council adopted Resolution No. 2414-09 which imposed a freeze on the imposition of assessments; and

WHEREAS, on January 7, 2009 the Town Council directed the Town Manager to initiate the process to disestablish the District; and

WHEREAS, pursuant to California Streets and Highways Code section 36550, on February 4, 2009, the Town Council adopted a Resolution No 2427-09, entitled "A Resolution of the Town Council of the Town of Windsor Declaring Its Intention to Disestablish the Old Downtown Windsor Business Improvement District and to Hold a Public Hearing" ("Resolution of Intention") which declared the Town Council's intention to disestablish the District, and to hold a public hearing, where written and oral protests are heard by the Town Council at the regularly scheduled Town Council meeting on March 4, 2009 at approximately 6:00 p.m. in the Council Chambers at Town Hall, 9291 Old Redwood Highway Building 400, Windsor, California; and

WHEREAS, in accordance with California Streets and Highways Code §§ 36523(a) and 36534(b), the Town Clerk caused a complete copy of the Resolution of Intention to be published in a newspaper of general circulation at least seven days before the March 4, 2009 public hearing; and

WHEREAS, in accordance with California Streets and Highways Code § 36523(b), the Town Clerk caused complete copies of the Resolution of Intention to be mailed by first-class mail, within seven (7) days following Council's action on February 9, 2009, to each business owner located within the District; and

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

Section 1. Title XVI, Chapter 7, Sections 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210 and 220 of the Town of Windsor Municipal Code are hereby repealed in their entirety, thus resulting in the disestablishment of the Old Downtown, Windsor Business District.

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

The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to 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. Before the expiration of fifteen (15) days after its passage, this ordinance, or a summary thereof, as provided in California Government Code § 36933, shall be published at least once in a newspaper of general circulation published and circulated in the Town of Windsor or be posted in at least three places in the Town of Windsor.

PASSED, APPROVED, AND ADOPTED this 18th day of March 2009, by the following vote:

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

ROBIN R. GOBLE, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK