

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADJUSTING THE EXISTING  
TRANSIT AREA DEVELOPMENT IMPACT FEE FOR PUBLIC INFRASTRUCTURE AND  
IMPROVEMENTS**

**WHEREAS**, the City Council of the City of Milpitas (“City”) has previously established a development impact fee program, set forth in Chapter 4 of Title VIII of the Milpitas Municipal Code, in order to collect revenue to defray the cost of public infrastructure and improvements necessitated by new development; and

**WHEREAS**, pursuant to Chapter 4 of Title VIII of the Milpitas Municipal Code, the City Council may adopt development impact fees for different areas within the City by resolutions with appropriate findings that set forth the bases for such fees and the formulae to calculate such fees; and

**WHEREAS**, on June 3, 2008, the City Council adopted Resolution No. 7760 approving the Transit Area Specific Plan, which identified basic public infrastructure needed to serve the new development in the Transit Area Specific Plan area and to maintain or improve levels of service for public facilities; and

**WHEREAS**, on September 2, 2008, the City Council adopted Resolution No. 7778 establishing a Transit Area Development Impact Fee (“TADIF”) pursuant to Government Code Section 66000, *et seq.* (“Mitigation Fee Act”) and Chapter 4 of Title VIII of the Milpitas Municipal Code to defray costs of constructing public infrastructure and improvements necessitated by new development in the Transit Area Specific Plan area, based upon a costs/fees technical report dated August 2008 prepared by Economic and Planning Systems, Inc., and which fees may be adjusted from time to time in accordance with Chapter 4 of Title VIII of the Milpitas Municipal Code; and

**WHEREAS**, Resolution No. 7778 establishing the Transit Area Development Impact Fee called for an annual evaluation of the TADIF fund balance and activity, and further called for annual adjustments of infrastructure costs to be determined by a regional index, and further called for periodic updates of the Infrastructure Financing Technical Report through the review of the infrastructure costs, development activity and collection and use of fees to date; and

**WHEREAS**, on December 18, 2012, the City Council adopted Resolution No. 8214 revising the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray additional costs of constructing such public infrastructure since the time of the original establishment of the Transit Area Development Impact Fee on September 2, 2008, which resolution was based upon a costs/fees technical report dated December 2012 prepared by Economic and Planning Systems, Inc. augmenting and updating the prior study regarding the Transit Area Development Impact Fee and was the basis for the increased impact fees proposed therein; and

**WHEREAS**, on March 4, 2014, the City Council adopted Resolution No. 8344 revising the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray additional costs of constructing such public infrastructure since the time of the original establishment of the Transit Area Development Impact Fee on September 2, 2008, which resolution was based upon a costs/fees technical report dated February 2014 prepared by Economic and Planning Systems, Inc. augmenting and updating the prior study regarding the Transit Area Development Impact Fee and was the basis for the increased impact fees proposed therein; and

**WHEREAS**, based upon increased design and construction costs as measured by the Engineering News Report Construction Cost Index (“ENR” for the San Francisco Bay Area, and for increased right of way or land costs based on appraisal, all as further described in the costs/fees 2019 Technical Memorandum by Economic and Planning Systems, Inc. dated May 20, 2019, the City Council now wishes to adjust the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray higher and additional costs of constructing such public infrastructure and improvements; and

**WHEREAS**, in accordance with Government Code Section 66018, the City Council conducted an open public hearing on the proposed fee adjustment set forth in this Resolution at its regularly scheduled meeting held on October 1, 2019, and notice of the time and place of this meeting, including a general explanation of this Resolution and the related development impact fee program ordinances and a statement regarding the availability of data indicating the amount of the

proposed Transit Area Development Impact Fee and the revenue sources anticipated to finance the improvements, was provided at least fourteen (14) days prior to this October 1, 2019, City Council meeting to those interested parties that requested such notice in writing, but since no such requests were made, notification of this hearing matter was provided in accordance with Government Code Section 66016; and

**WHEREAS**, notice of time and place of the public hearing on the adjustment to the Transit Areas Development Impact Fee was published in a newspaper regularly published once a week as required by California Government Sections 6062a and 66018, and public data indicating the amount of the revised Transit Area Development Impact Fee, estimated cost required to provide the public infrastructure or improvements, and the revenue sources anticipated to finance the facilities was made available to the public at least ten (10) days prior to the October 1, 2019 City Council meeting; and

**WHEREAS**, the City Council has received and considered any and all public comments, oral and written, received prior to or during the public hearing on the adjustment to the Transit Area Development Impact Fee; and

**WHEREAS**, the Transit Area Specific Plan includes a detailed description of public facilities required to serve the Transit Area Specific Plan area and a Financing Plan, dated May 28, 2008, updated periodically, that contains specific fiscal and financial policies, identifies public facilities costs and recommended financing mechanisms to pay for the needed public facilities; and

**WHEREAS**, the City Council has considered such Financing Plan and finds that it sets forth in-depth factual grounds for the need for a Transit Area Development Impact Fee as a means of assuring that new developments within the Transit Area pay their proportionate share of the costs of needed public facilities; and

**WHEREAS**, the City Council has also considered the 2019 Technical Memorandum describing the need for adjusted fees, along with the initial Milpitas Transit Area infrastructure Financial Technical Report (“Technical Report”), dated August 2008, pursuant to the policies contained in the Financing Plan; the 2019 Technical Memorandum prepared by Economic and Planning Systems, Inc., is on file with the City Clerk; and the public facilities for which the Transit Area Development Impact Fee will be used are specifically identified in the Basic Infrastructure Program, for which a summary of the schedule of costs is included in the 2019 Technical Memorandum; and

**WHEREAS**, the public facilities reflected in the Basic Infrastructure Program are needed to protect the health, safety and general welfare within the Transit Area Specific Plan area, to facilitate orderly urban development within the Transit Area Specific Plan area, and to promote economic well-being within that area and the City as a whole; and

**WHEREAS**, the 2019 Technical Memorandum attached to this Resolution, which memorandum describes the need for adjusted fees, further augments and updates the prior studies regarding the Transit Area Development Impact Fee and is the basis for the proposed adjustment to the fees as set forth in this Resolution and, when considered together with the Technical Report and the Transit Area Development Impact Fee Report, dated February 2014 (“2014 Report”), establishes the required nexus findings for the Transit Area Development Impact Fees; and

**WHEREAS**, the per-unit rate increase for new fees is substantial and may be a detrimental burden on desirable development that has already been approved but has not yet been permitted; the California Government Code Sections 66000, *et seq.* require that development impact fees be paid not later than final inspections or the issuance of a certificate of occupancy; the City Municipal Code requires impact fee payments be made at the time of building permit issuance unless otherwise described by the fee Resolution or otherwise required; and

**WHEREAS**, the City is planning and preparing an update of the Transit Area Specific Plan, including an updated development scenario and associated public infrastructure needs, with a corresponding infrastructure cost and fee study that can alter the amount and arrangement of allocated proportional share payments in a new resolution process; and

**WHEREAS**, establishing fees for the purpose of obtaining funds for impact mitigation is not an essential step culminating in action which may affect the environment and is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15273 of the CEQA Guidelines.

## FINDINGS

**NOW THEREFORE**, the City Council of the City of Milpitas, after duly considering the record before it, including the 2019 Technical Memorandum attached hereto, the Technical Report, and the 2014 Report, all of which are incorporated herein by this reference, makes the following findings and determines based upon the reports, testimony and other materials before it, including but not limited to the documents and information listed in the Recitals above, which are found to be true and correct and are fully incorporated herein by reference:

1. The purpose of the Transit Area Development Impact Fee is to finance basic public infrastructure facilities, as identified in the Basic infrastructure Program, as amended, that are needed to provide essential public services and assure the public safety for new development within the Transit Area Specific Plan area.
2. Based on the analysis set forth in the Technical Report as augmented by the 2014 Report and the 2019 Technical Memorandum and the comments received thereon, there is a need to impose an increase to the current development impact fee for basic infrastructure facilities identified in the Basic Infrastructure Program, as amended, so that development within the Transit Area will meet the standards and policies in the Transit Area Specific Plan and the City's General Plan.
3. The reports and facts and evidence presented to the City Council establish that there is a reasonable relationship between public facilities, as identified in the Basic Infrastructure Program, as amended, to be funded in part by the Transit Area Development Impact Fee proposed herein and the types of development on which the fee is imposed; and there is a reasonable relationship between the amount of the fee, as set forth in this Resolution, and the costs of needed public infrastructure facilities as they are specifically attributed to the various types of development within the Transit Area Specific Plan areas.
4. The cost estimates contained in the 2019 Technical Memorandum are an accurate reflection of the current construction costs for necessary basic infrastructure facilities and the fee revenues that are expected to be generated by new development will not exceed such development's proportionate share of these costs.
5. The proposed Transit Area Development Impact Fee is consistent with the City of Milpitas General Plan and the Transit Area Specific Plan.

## RESOLVED ACTIONS

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

### Section 1. General.

- A) This Resolution is adopted pursuant to California Government Code Section 66000 *et seq.* ("Mitigation Fee Act"), Article XI, Section 7 of the California Constitution, and the provisions of Chapter 4 of Title VIII of the Milpitas Municipal Code ("Fees for New Development").
- B) The fee established by this Resolution shall apply to all new development within the Transit Area as a condition precedent of building permit issuance to defray the cost of certain public infrastructure improvements and facilities required to serve or to benefit the new development. The fee established by this Resolution shall apply to all new development within the Transit Area that has not been issued a building permit(s) and has not fully paid the applicable Transit Area Development Impact Fee. The Transit Area is delineated by the boundaries of the adopted City of Milpitas Transit Area Specific Plan. This Resolution does not replace subdivision map exactions or other measures required to mitigate site-specific impacts of a development project, other regulatory, development and processing fees, funding required pursuant to a development agreement, funds collected pursuant to a reimbursement agreement for amounts that may exceed a development's share of public improvement costs, or assessment district proceedings, benefit assessments, or property taxes, unless so specified.

### Section 2. Definitions.

- A) "Transit Area" means the approximate 437-acre area of the City covered by the Transit Area Specific Plan adopted by the Milpitas City Council on June 3, 2008.

- B) “Transit Area Development Impact Fee” means the combined fee required to implement the Basic Infrastructure Program, as amended, in the amount calculated according to the formulae and methodologies set forth in this Resolution.
- C) “Basic Infrastructure Program” is the listing and schedule of public facilities that can be funded by the Transit Area Development Impact Fee that is applicable to all new development in the Transit Area. The Basic Infrastructure Program is included in the Infrastructure Financing Technical Report on file with the City Clerk.
- D) Land uses subject to the Transit Area Development Impact Fee are defined as follows:
- (1) “Residential” means all new single and multi-family dwellings.
  - (2) “Commercial” means any business engaging in the sale of merchandise and food. This category would also include those establishments providing commercial services, as defined in Milpitas Municipal Code XI-10-2.02, General Definitions. Uses in this category include but are not limited to retail stores, restaurants, banks, childcare facilities and beauty salons.
  - (3) “Office” means any administrative, professional, research, medical, or similar businesses, having only limited contact with the public, provided no merchandise or services are sold on the premises except those that are incidental or accessory to the primary use. Uses in this category include but are not limited to medical clinics and offices, real estate offices, and research and development businesses.
  - (4) “Hotel” refers to the definition provided in Milpitas Municipal Code XI-10-2.02, General Definitions.
  - (5) “Other Uses” means land uses not specifically defined by this section.

### Section 3. Fee Amount.

A) The amount of the Transit Area Development Impact Fee is based upon the findings in the Technical Report, with costs increased based on technical and financial analyses contained in the 2019 Technical Memorandum. That 2019 Technical Memorandum is attached hereto and incorporated herein by reference as **Exhibit A**. According to the Technical Memorandum, the following schedule of base fees shall apply to all new development in the Transit Area:

- a) Residential - \$40,487 per unit
- b) Commercial - \$26.49 per square foot
- c) Office - \$45.52 per square foot
- d) Hotel - \$0 per room
- e) Other Uses - The fee amount for uses not specifically defined in this Resolution shall be determined by the Finance Director or his or her designee. A focused nexus study may be required of the applicant to make the determination.

B) The fee amounts listed herein shall be subject to annual adjustment, as set forth in Section 9 of this Resolution, and as otherwise allowed by law. As described in the 2019 Technical Memorandum, the fee program should be reviewed annually as part of the City year-end financial reporting process and the technical reports and supporting data and information should be updated every three to five years, and the fee program may need to be revised during these reviews accordingly.

### Section 4. Transit Area Development Impact Fee Requirements.

A) General.

- (1) The amounts and calculation of the Transit Area Development Impact Fee are based upon the following considerations:
  - a. New development will pay only for the construction of those public facilities or where there is a reasonable relationship between the facilities funded and the benefits, demands and needs generated by the new development.
  - b. Each type of new development shall contribute to the funding of the needed facilities in proportion to the need for the facilities created by that type of development.
  - c. The public facilities funded by the Transit Area Development Impact Fee and the calculations resulting in

the Transit Area Development Impact Fee amount are documented in the original Infrastructure Financing Technical Report included in the materials considered for adoption of the original Transit Area Impact Fee in September of 2008 and which is here augmented by the 2014 Updated Report.

- d. The amount of the Transit Area Development Impact Fee shall include consideration for appropriate financing charges including any reimbursement payments made to developers or property owners pursuant to subsection 5.B (2), and shall include consideration for reimbursement of administrative costs pursuant to subsection 5.B (3).

- B) Applications Requiring Payment of Fee - Building Permit/ Certificate of Occupancy. Any applicant who receives a building permit or makes a valid permit application within one (1) year of the effective date of this resolution for a building permit to construct within the Transit Area Specific Plan area shall have such fees calculated prior to the issuance of the building permit and shall pay to the City, not later than final inspection or issuance of occupancy for each building, the fee in the amount as set forth in this Resolution and thereby calculated, unless earlier payment is required by City ordinance or State law. Developers who choose to take advantage of this deferred payment shall enter into an agreement with the Planning Department prior to the issuance of permits in order to specify the payment arrangements with respect to timing of payment upon occupancy. Projects subject to the provisions herein shall include those "pipeline" projects, as identified in the attached **Exhibit B** to this Resolution, which are currently known but that have not yet obtained permits. Disputes as to the timing of payment obligations as provided in these provisions shall be resolved by the Planning Director.
- C) Fee Unit. The unit basis of the Transit Area Development Impact Fee shall be charged for each new dwelling unit and new non-residential square footage. No Transit Area Development Impact Fee shall be charged for remodeling or for an addition to an existing building creating less than 500 square feet of additional floor area. For additions greater than 500 square feet the amount of the Transit Area Development Impact Fee for that addition shall be determined according to the formula set forth in Section 4(D).
- D) Formula for Calculating the Fee. The Transit Area Development Impact Fee, as set forth in this Resolution, shall be determined by a formula that is based on the cost of the required infrastructure, the proportion of those costs attributable to development in the Transit Area as a whole, and each unit of development's proportional share of the Transit Area costs as a whole. These formulas are included in the Infrastructure Financing Technical Report and shall be updated pursuant to this Resolution from time to time to reflect changes in construction costs, development schedules, availability of supplemental funds, and other relevant factors. Changes in such costs form the basis for the fee adjustments adopted in this Resolution and as described in the 2019 Technical Memorandum.

#### Section 5. Use of Fee Revenue.

The Transit Area Development Impact Fee shall fund public facilities, improvements identified in the Basic Infrastructure Program, as amended, and as determined in the Infrastructure Financing Technical Report and any future additions and amendments to the said report, all of which are incorporated by reference into this Resolution.

- A) The City shall deposit the fees collected under this Resolution in a special fund, the Transit Area Development Impact Fee Account, designated for funding facilities listed in the Basic Infrastructure Program.
- B) The fees and all interest earned on accrued funds shall be used only to:
  - (1) Fund the costs of the public facilities specified in the Basic Infrastructure Program, or to reimburse the City for such construction if funds were advanced by the City from other sources; or
  - (2) Reimburse developers or property owners for the costs accrued when a developer or property owner constructs and dedicates to the City a public facility(ies) included in the Basic Infrastructure Program and the sum value of the facility(ies) constructed (as estimated in the Basic Infrastructure Program) exceeds the total fee liability for a given project. Reimbursements shall include appropriate financing charges and shall be based upon the Local Agency Investment Fund (LAIF) quarterly interest rate. Financing charges included in any reimbursement payments to developers or property owners shall not exceed this interest rate, as calculated by the City's Director of Finance. Reimbursements shall not be available if the value of the constructed and dedicated improvement is below the total fee liability for a given project.

- (3) Reimburse the City of Milpitas, to offset administrative costs associated with administering and updating the Area Development Impact Fee, not to exceed two (2.0) percent of the applicable fee amount.

#### Section 6. Ministerial Exemptions.

The following actions or conditions shall qualify for a ministerial exemption from the Transit Area Development Impact Fee without having to go through the City Council exemption process set forth in Milpitas Municipal Code VIII-4-2.04:

- A) No Transit Area Development Fee shall be due for the demolition of an existing structure and the building of a new structure on the same site where the additional area in the new structure is 500 square feet or less and no additional dwelling units are created;
- B) No Transit Area Development Impact Fee shall be due if the Transit Area Development Fee or an equivalent amount has been previously paid in full (e.g. as a requirement of a subdivision map) for a particular property and use.

#### Section 7. Authority for Additional Mitigation.

Fees collected pursuant to this Resolution do not replace any existing development fees, except for the sewer treatment plant fee, VIII-2-7.04 "Treatment Plant Fees" and the park in-lieu fee, XI-01-9.07 "Amount of Fee In-Lieu of Land Dedication," or as otherwise the City Council may specifically provide, or demand or connection charges levied on a Citywide basis, or limit requirements or conditions to provide site-specific mitigation of site-specific impacts imposed upon development projects as part of the normal development review process.

#### Section 8. Annual Review.

Pursuant to Government Code Section 66006(b) and the provisions of Chapter 4 of Title VIII of the Milpitas Municipal Code, the City Council shall review annually a report prepared by staff documenting the amount of the Transit Area Development Impact Fee, fee fund balances, the amount of fees collected, and the amount of fee funds expended (by infrastructure item as shown in the Basic Infrastructure Program) and the fund balance of the TADIF Account.

#### Section 9. Annual Adjustments.

The Transit Area Development Impact Fee adopted pursuant to this Resolution shall be automatically increased each fiscal year by the Finance Director or his or her designee by the percentage increase in the Engineering News-Record (ENR) Construction Cost Index for the San Francisco Bay Area, measured from the immediately preceding December and December of the prior year.

#### Section 10. Periodic Update.

The Infrastructure Financing Technical Report shall be updated every three to five years. This update will include a thorough review of the infrastructure costs, development activity, and collection and use of fees to that date.

#### Section 11. Termination of Fee.

The City shall not collect the Transit Area Development Impact Fee established by this Resolution once funds sufficient to construct all improvements described in the then-current Basic Infrastructure Program have been collected.

#### Section 12. Severability.

The provisions of this Resolution are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

#### Section 13. Effective Date.

This Resolution shall take effect sixty (60) days after the date of its adoption in accordance with California Government Code Section 66017, provided this Resolution may take effect immediately if the City Council adopts a separate Resolution making the required findings of an urgency measure as provided by California Government Code Section 66017.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney