

**MILPITAS UNIFIED SCHOOL DISTRICT
RESOLUTION NO. 2017.23**

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE MILPITAS UNIFIED
SCHOOL DISTRICT APPROVING A SCHOOL FACILITIES NEEDS
ANALYSIS, ADOPTING ALTERNATIVE SCHOOL FACILITY FEES IN
COMPLIANCE WITH GOVERNMENT CODE SECTIONS 65995.5, 65995.6
AND 65995.7 AND MAKING RELATED FINDINGS AND DETERMINATIONS**

WHEREAS, the Board of Trustees (“Board”) of the Milpitas Unified School District (“District”) provides for the educational needs for Grade K-12th students within the Cities of Milpitas (“Cities”) and the County of Santa Clara (“County”); and

WHEREAS, the Board of the District, has adopted and imposed statutory school facility fees (“Statutory School Facility Fees”) pursuant to Education Code Section 17620 presently in the amounts of \$3.48 per square foot of assessable space of new residential construction in the District as defined in Government Code Section 65995(b)(1) (“Assessable space”), and \$0.56 per square foot of chargeable covered and enclosed space for all categories of new commercial/industrial development in the District (“Commercial/Industrial Fees”) as defined in Government Code Section 65995(b)(2); and

WHEREAS, the Board of the District therefore has elected to participate in the school facilities funding program established pursuant to the Leroy F. Greene School Facilities Act of 1998 (“SFP”) for both modernization and new construction projects and appointed a representative (“District Representative”) for such purposes and for the purpose of requesting an Eligibility Determination relative to considering the adoption of alternative school facility fees and amounts pursuant to Government Code Sections 65995.5 (“ASF/Level 2 Fees”) and 65995.7 (“ASF/Level 3 Fees”) (and collectively, “Alternative School Facility Fees”); and

WHEREAS, the District Representative has caused the completion and certification of Form SAB 50-01, the Enrollment Certification/Projection (“ECP”), form SAB 50-02, the Existing School Building Capacity (“ESBC”) and Form SAB 50-03, the Eligibility Determination (“ED”), and has submitted the ECP, ESBC and ED to the State Allocation Board (“SAB”) for approval pursuant to the SFP; and

WHEREAS, the District has met the requirements established by Government Code Section 65995.5; and

WHEREAS, new residential construction continues to generate additional students for the District’s schools and the District is required to provide K-12th (grade level) school facilities (“School Facilities”) to accommodate those students; and

WHEREAS, overcrowded schools within the District have an impact on the District’s ability to provide an adequate quality education and negatively impact the educational opportunities for the District’s students; and

WHEREAS, the District does not have sufficient funds available for the construction of the School Facilities, including acquisition of sites, construction of permanent School Facilities, and acquisition of interim School Facilities, to accommodate students from new residential construction; and

WHEREAS, the Board caused to be prepared a report entitled, "Facilities Needs Analysis for the Milpitas Unified School District" dated September 29, 2016 pursuant to applicable law including, but not by way of limitation, Government Code Section 65996.6 prior to the adoption of Alternative School Facility Fees; and

WHEREAS, the Board has received and considered the MUSD-2016/SFNA which includes all matters required by applicable law, including an analysis of (a) the purpose of the Alternative School Facility Fees, (b) the use to which the Alternative School Facility Fees are to be put, (c) the nexus (roughly proportional and reasonable relationship) between the residential construction and (1) the facilities for which the Alternative School Facility Fees are to be used, (2) the need for School Facilities, (3) the cost of School Facilities and the amount of Alternative School Facility Fees from new residential construction, (d) an evaluation and projection of the number of students that will be generated by new residential construction by grade levels of the District as described by Government Code Section 65995.6(e) a description of the new School Facilities that will be required to serve such students and (f) the present estimated cost of such School Facilities; and

WHEREAS, the MUSD-2016/SFNA in its final form has been available to the public, for at least thirty (30) days before the Board considered at a public hearing the adoption of the Alternative School Facility Fees; and

WHEREAS, all notices of the MUSD-2016/SFNA and adoption of Alternative School Facility Fees have been given in accordance with applicable law and copies of the MUSD-2016/SFNA have been provided thirty (30) days prior to all written requests filed with the District forty-five (45) days prior to a public hearing which was held in a manner required by law at a meeting of the Board of the District relating to the proposed adoption of the MUSD-2016/SFNA and Alternative School Facility Fees; and

WHEREAS, the MUSD-2016/SFNA has been provided to all local agencies responsible for land use planning for review and comment in compliance with Government Code Section 65995.6(c); and

WHEREAS, as to the approval of the MUSD-2016/SFNA and Alternative School Facility Fees, Government Code Section 65995.6(g) provides that the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the MUSD-2016/SFNA or adoption of this Resolution; and

WHEREAS, the District desires to approve the MUSD-2016/SFNA and adopt Alternative School Facility Fees pursuant to Government Code Sections 65995.5 and 65995.7 for the purpose of establishing Alternative School Facility Fees that may be imposed on residential construction calculated pursuant to Government Code Section 65995(b);

NOW THEREFORE, THE BOARD OF TRUSTEES OF THE MILPITAS UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

1. That the Board does hereby find and determine that the foregoing recitals and determinations are true and correct and that the MUSD-2016/SFNA meets all applicable legal requirements.
2. That the District has met the requirements established by Government Code Section 65995.5.
3. That the District has cause to prepare the MUSD-2016/SFNA which is on file at the District office address and is incorporated herein by this reference, which complies with all applicable statutory requirements, including the provisions of Government Code Section 65995.6.
4. That the Board hereby approves and adopts the MUSD-2016/SFNA for the purpose of establishing Alternative School Facility Fees as to future residential construction within the District.
5. That the Board finds that the purpose of the Alternative School Facility Fees imposed upon residential construction are to fund the additional School Facilities to serve the students generated by the residential construction upon which the Alternative School Facility Fees are imposed as provided in the MUSD–2016/SFNA and applicable law.
6. That the Board finds the Alternative School Facility Fees are hereby established as applicable and will be used to fund those School Facilities described in the MUSD-2016/SFNA and that these School Facilities are to serve the students generated by the residential construction within the District as provided in the MUSD-2016/SFNA.
7. That the Board finds that there is a roughly proportional reasonable relationship between the use of the Alternative School Facility Fees and the new residential construction within the District because the Alternative School Facility Fees imposed on new residential construction by this resolution will be used to fund School Facilities which will be used to serve the students generated by such new residential construction in accordance with applicable law set forth in the MUSD-2016/SFNA and on less than an estimated actual cost of the School Facilities estimated to result from additional residential construction as set forth in the MUSD-2016/SFNA.

8. That the Board finds that there is a roughly proportional reasonable relationship between the new residential construction upon which the Alternative School Facility Fees are imposed and the need for additional School Facilities in the District because new students will be generated from new residential construction within the District and the District does not have students capacity in the existing School Facilities to accommodate these students.

9. That the Board finds that the amount of the Alternative School Facility Fees imposed on new residential construction as set forth in this Resolution is roughly proportional and reasonably related to, and does not exceed the cost of, providing the School Facilities required to serve the students generated by such new residential construction within the District.

10. That the Board finds that a separate fund ("Fund") of the District and two or more sub-funds ("Sub-Funds") have been created or are authorized to be established for all Statutory School Facility Fees received by the District for the deposit of Statutory School Facility Fees, ASF/Level 2 Fees and ASF/Level 3 Fees, Commercial/Industrial Fees and mitigation payments ("Mitigation Payments") imposed on residential construction within the District and that said Fund and Sub-Funds at all times have been separately maintained, except for temporary investments, with other funds of the District as authorized by law.

11. That the Board finds that the monies of the separate Fund or the separate Sub-Funds, described in Section 12, consisting of the proceeds of Statutory School Facility Fees, ASF/Level 2 Fees, and ASF/Level 3 Fees, Commercial/Industrial Fees and Mitigation Payments have been imposed for the purposes of constructing those School Facilities necessitated by new residential construction as further set forth in the MUSD-2016/SFNA, and thus these monies may be expended for all those purposes permitted by applicable law.

12. That the MUSD-2016/SFNA determine the need for new School Facilities for unhoused pupils that are attributable to projected enrollment growth from the construction of new residential units over the next five years, based on relevant planning agency information and the historical generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed within the District, the Cities, or the County.

13. That the Board has identified and considered, and/or subtracted, as set forth in the MUSD-2016/SFNA, the following information in determining amounts of the ASF/Level 2 Fees and ASF/Level 3 Fees:

- (i) any surplus property owned by the District that can be used as a school site or that is available for sale to finance school facilities pursuant to Government Code Section 65995.6(b)(1);

- (ii) the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities pursuant to Government Code Section 65995.6(b)(2);
- (iii) local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units pursuant to Government Code Section 65995.6(b)(3);
- (iv) the full amount of local funds the Board has dedicated to facilities necessitated by new construction, including fees, charges, dedications or other requirements imposed on commercial or industrial construction pursuant to Government Code Section 65995.5(c)(2).

14. That the Board has calculated, as set forth in the MUSD-2016/SFNA, the maximum square foot fees, charges, or dedications to be established as Alternative School Facility Fees that may be collected in accordance with the provisions of Government Code Sections 65995.5(c) and 65995.7(a).

15. That the MUSD-2016/SFNA in its final form has been made available to the public for a period of not less than thirty (30) days.

16. That the public has had the opportunity to review and comment on the MUSD-2016/SFNA and the Board has responded to written comments it has received regarding the MUSD-2016/SFNA.

17. That notice of the time and place of the public hearing to adopt the MUSD-2016/SFNA ("Hearing"), including the location and procedure for viewing or requesting a copy of the proposed MUSD-2016/SFNA and any proposed revision therefore has been published in at least one newspaper of general circulation within the junction of the District at least thirty (30) days prior to the Hearing.

18. That the Board has mailed a copy of the MUSD-2016/SFNA no less than thirty (30) days prior to the Hearing to any person who made a written request forty-five (45) days prior to the Hearing.

19. That the MUSD-2016/SFNA has been provided to all local agencies responsible for land use planning for review and comment in compliance with Government Code Section 65995.6(c).

20. That the Board conducted the required Hearing on November 15, 2016 prior to the adoption of the MUSD-2016/SFNA and the Alternative School Facility Fees, at which time all persons desiring to be heard on all matters pertaining to the MUSD-2016/SFNA were heard and all information presented was duly considered.

21. That the Board hereby adopts Alternative School Facility Fees and establishes the Alternative School Facility Fees on new residential construction projects within the district in the following amounts:

A. Pursuant to Government Code Section 65995.6, ASF/Level 2 Fees in the amount of \$4.15 per square foot of Assessable Space for new residential construction, including new residential projects, manufactured homes and mobile homes as authorized under Education Code Section 17625. However, this amount shall not be imposed on any construction project used exclusively for housing senior citizens, as described in Civil Code Section 51.3, or as described in subsection (k) of Section 1569.2 of the Health and Safety Code or paragraph 9 of subdivision (d) of Section 15432 of the Government Code or any mobile home or manufactured home that is located within a mobile home park, subdivision, cooperative or condominium for mobile homes limited to older persons as defined by the Federal Fair Housing Amendments of 1988.

B. Pursuant to Government Code Section 65995.7, ASF/Level 3 Fees in the amount of \$8.29 per square foot of Assessable Space for new residential construction, including new residential projects, manufactured homes and mobile homes as authorized under Education Code Section 17625. However, this amount shall not be imposed on any construction project used exclusively for housing senior citizens, as described in Civil Code Section 51.3, or as described in subsection (k) of Section 1569.2 of the Health and Safety Code or paragraph 9 or subdivision (d) of Section 15432 of the Government Code or any mobile home or manufactured home that is located within a mobile home park, subdivision, cooperative or condominium for mobile homes limited to older persons as defined by the Federal Fair Housing Amendments of 1988.

22. That the proceeds of the Alternative School Facility Fees increased and established pursuant to this Resolution shall continue to be deposited into those Sub-Funds of the Funds identified in Section 12 of this Resolution, the proceeds of which shall be used exclusively for the purpose for which the Alternative School Facility Fees are to be collected.

23. That the Superintendent, or his/her designee, is directed to cause a copy of this Resolution to be delivered to the building of the Cities within the District's boundaries and the County along with a copy of all supporting documentation referenced herein and a map of the District clearly indicating the boundaries thereof, advising the Cities and County that the new residential construction is subject to the Alternative School Facility Fees increased pursuant to this Resolution and requesting that no building permit or approval for occupancy be issued by any of these entities for any new residential construction project, mobile home or manufactured home subject to the Alternative School Facility Fees absent a certificate of compliance ("Certificate of Compliance") from the District demonstrating compliance of such project with the requirements of the Alternative School Facility Fees, not that any building permit be issued for any non-residential construction absent a certification from this District of compliance with the requirements of the applicable Alternative School Facility Fees.

24. That the Superintendent, or his/her designee, is authorized to cause a Certificate of Compliance to be issued for each construction project, mobile home and manufactured home for which there is compliance with the requirement for payment of the Alternative School Facility Fee in the amount specified by this Resolution. In the event a Certificate of Compliance is issued for the payment of Alternative School Facility Fees for a construction project, mobile home or manufactured home and it is later determined that the statement or other representation made by an authorized party concerning the construction project as to square footage is untrue or in the event the zoning is declared invalid, then such Certificate of Compliance shall automatically terminate, and the appropriate City(ies) or County shall be so notified.

25. That regarding the timely provision of a Certificate Compliance by the District for residential construction, although not required by applicable law, the Board hereby determines that the MUSD-2016/SFNA is a proposed construction plan for purposes of requiring payment of Alternative School Facility Fees prior to the issuance of any building permit for residential construction in accordance with Government Code Section 66007 and that all Alternative School Facility Fees are appropriated for the purpose of accomplishing such construction plan.

26. That no statement or provision set forth in this Resolution, or referred to therein shall be construed to repeal any preexisting fee or mitigation amount previously imposed by the District on any residential or non-residential construction.

27. That if any portion or provision hereof is held invalid, the remainder hereof is intended to be and shall remain valid.

28. That the Alternative School Facility Fees shall take effect immediately after adoption of this Resolution and shall be in effect for one year.

APPROVED, ADOPTED, AND SIGNED ON NOVEMBER 15, 2016.

BOARD OF TRUSTEES OF THE M SCHOOL DISTRICT

By: _____
President of the Board of Trustees of the Milpitas Unified School District