

RESOLUTION NO. 1516-07

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE FREMONT UNION HIGH SCHOOL DISTRICT
TO IMPOSE AND INCREASE SCHOOL FEES ON RESIDENTIAL AND COMMERCIAL/INDUSTRIAL
DEVELOPMENT PROJECTS PURSUANT TO EDUCATION CODE SECTION 17620**

WHEREAS, the Governing Board ("Board") of the Fremont Union High School District ("District") provides for the educational needs for high school students within Santa Clara County; and

WHEREAS, the Board of the District has previously adopted and imposed statutory school fees ("Statutory School Fees") pursuant to Education Code section 17620 et seq. and Government Code section 65995 et seq. ("School Fee Legislation") in the amount of \$3.36 per square foot of assessable space of residential development in the District and \$0.54 per square foot of chargeable covered and enclosed space for commercial/industrial development, which amounts are shared between the District and each feeder elementary district with overlapping territory; and

WHEREAS, the State Allocation Board has authorized an adjustment for inflation in the amount of Statutory School Fees pursuant to Government Code section 65995 to **\$3.48** per square foot for assessable space of residential development and **\$0.56** per square foot of chargeable covered and enclosed space for the categories of commercial/industrial development, as long as such increases are properly justified by the District pursuant to law; and

WHEREAS, residential and commercial/industrial development continues to generate additional students for the District's schools and the District is required to provide 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 impacts the educational opportunities for the District's students; and

WHEREAS, the District does not have sufficient funds available for the construction or reconstruction of the School Facilities, to accommodate students from new residential and commercial/industrial development; and

WHEREAS, the Board of the District has received and considered an update and review of the report entitled "Development Impact Fee Justification" for Fremont Union High School District," dated March, 2012, ("Report"), which Report includes information, documentation, and analysis of the School Facilities needs of the District, including (a) the purpose of the Statutory School Fees; (b) the use to which the Statutory School Fees are to be put; (c) the nexus (reasonable relationship) between residential and commercial/industrial development and the following: (1) the use for Statutory School Fees; (2) the need for School Facilities; (3) the cost of School Facilities and the

amount of Statutory School Fees from residential and commercial/industrial development; (d) a determination of the impact of the increased number of employees anticipated to result from the commercial/industrial development (by category) upon the cost of providing School Facilities within the District; (e) an evaluation and projection of the number of students that will be generated by residential development; (f) the new School Facilities that will be required to serve such students; and (g) the cost of such School Facilities; and

WHEREAS, said Report pertaining to the Statutory School Fees and to the capital facilities needs of the District was made available to the public as required by law before the Board considered at a regularly scheduled public meeting the proposed increase in the Statutory School Fees; and

WHEREAS, all required notices of the proposed increase in the Statutory School Fees have been given; and

WHEREAS, a public hearing was held at a regularly scheduled meeting of the Board of the District relating to the proposed increase in the Statutory School Fees; and

WHEREAS, Education Code Section 17621 provides that the adoption, increase or imposition of any fee, charge, dedication, or other requirement, pursuant to Education Code section 17620 shall not be subject to Division 13 (commencing with section 21000) of the Public Resources Code.

NOW, THEREFORE, be it resolved by the Board of the District as follows:

1. That the above recitals are true and correct.
2. That the Board accepts and adopts the Report.
3. That the Board finds that the purpose of the Statutory School Fees imposed upon residential development is to fund the construction and/or reconstruction of School Facilities as authorized pursuant to the School Fee Legislation which is required to serve the students generated by the residential development upon which the Statutory School Fees are imposed.
4. That the Board finds that the Statutory School Fees imposed on residential development will be used only to finance those School Facilities described in the Report and related documents and that these School Facilities are required to serve the students generated by the residential development within the District; and that subject to any limitations set forth in the School Fee Legislation, the use of the Statutory School Fees will include construction or acquisition of School Facilities, remodeling existing School Facilities, the addition of technology, and acquiring and installing additional portable classrooms and related School Facilities, with the specific location of new schools, remodeling of existing School Facilities, and additional portables, as well as required central administrative and support facilities within the District, plus any studies authorized pursuant to Education Code section 17620(a)(5).

5. That the Board finds that there is a reasonable relationship between the use of the Statutory School Fees and residential development within the District because the Statutory School Fees imposed on residential development by this Resolution will be used to fund School Facilities which will be used to serve the students generated by such residential development.
6. That the Board finds that there is a reasonable relationship between the residential development upon which the Statutory School Fees are imposed and the need for School Facilities in the District because new students will be generated from residential development within the District and the District does not have student capacity in the existing School Facilities to accommodate these students.
7. That the Board finds that the amount of the Statutory School Fees levied on residential development as set forth in this Resolution is reasonably related to, and does not exceed the cost of, providing the School Facilities required to serve the students generated by such residential development within the District.
8. That the Board finds that the purpose of the Statutory School Fees imposed on new commercial/industrial development is to fund School Facilities required to serve the students generated by the new commercial/industrial development upon which the Statutory School Fees are imposed.
9. That the Board finds that the Statutory School Fees imposed on new commercial/industrial development (by category) will be used only to finance those School Facilities described in the Report and related documents, and that subject to any limitations set forth in the School Fee Legislation, these School Facilities are required to serve the students generated by such new commercial/industrial development; and that the use of the Statutory School Fees will include construction or acquisition of additional School Facilities, remodeling existing School Facilities, the addition of technology, and acquiring and installing additional portable classrooms and related facilities, as well as required central administrative and support facilities within the District plus any studies authorized pursuant to Education Code section 17620(a)(5).
10. That the Board finds that there is a reasonable relationship between the use of the Statutory School Fees and new commercial/industrial development by category within the District because the Statutory School Fees imposed on commercial/industrial development by this Resolution, will be used to fund School Facilities which will be used to serve the students generated by such new commercial/industrial development.
11. That the Board finds that there is a reasonable relationship between the commercial/industrial development by category, upon which the Statutory School Fees are imposed, and the need for additional School Facilities in the District because new students will be generated from commercial/industrial development within the District and the District does not have student capacity in the existing School Facilities to accommodate these students.

12. That the Board finds that the amount of the Statutory School Fees levied on commercial/industrial development by category as set forth in this Resolution is reasonably related to and does not exceed the cost of providing the School Facilities required to serve the students generated by such commercial/industrial development within the District.
13. That the Board finds that a separate account has been established for the deposit of Statutory School Fees imposed on residential and commercial/industrial development and that said account has at all times since been separately maintained, except for temporary investments, from other funds of the District.
14. That the Board finds that the funds of the account, described in Section 13, consisting of the proceeds of Statutory School Fees, have been imposed for the purposes of constructing and reconstructing those School Facilities necessitated by new residential and commercial/industrial development, and thus, these funds may be expended for those purposes. The Statutory School Fees may also be expended by the District for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of section 66001 of the Government Code. In addition, the District may also retain, as appropriate, an amount not to exceed in any fiscal year, three percent (3%) of the fees collected in that fiscal year pursuant to Education Code section 17620 for reimbursement of the administrative costs incurred by the District in collecting the Statutory School Fees.
15. That the Board hereby increases the Statutory School Fees as a condition of approval for residential development projects and imposes the Statutory School Fees on such development projects in the following amounts:
 - A. **\$1.39** in the Cupertino Union School District region of the District and **\$1.32** in the Sunnyvale Elementary School District region of the District, per square foot of assessable space for residential construction as set forth in Education Code section 17620(a)(1)(B)(C) and (D), which is the District's share of the maximum fee of **\$3.48** per square foot of residential development pursuant to allocation agreements with each school district having overlapping territorial jurisdiction with the District, including new residential construction; other residential construction; and manufactured homes and mobile homes as authorized under Education Code section 17625, except for any construction described in Government Code sections 65995.1 or 65996.2 ("Seniors and Migrant Worker Housing").

16. That this Board hereby imposes the Statutory School Fees as a condition of approval of commercial/industrial development projects and levies the Statutory School Fees on such development projects in the following amounts per square foot of chargeable covered and enclosed space (as defined in the School Fee Legislation) for the following categories of commercial/industrial development region of the District:

Building Type	Fee per Sq. Ft.
Parking Structures	\$0.01
Self-storage	\$0.02
Lodging	\$0.22
Schools	\$0.22
Warehouses	\$0.22
Auto Repair	\$0.22
Movie Theaters	\$0.22
Big Box Retail	\$0.22
All Shopping Ctrs	\$0.22
Hospital	\$0.22
Neighborhood Retail	\$0.22
Banks	\$0.22
Business Offices	\$0.22
Medical Offices	\$0.22

The above commercial/industrial fee amounts represent the maximum allowable based on the current fee sharing agreement with Cupertino Union Elementary School District. For the Sunnyvale Elementary School District the fee maximum is \$0.21 per square foot of commercial/industrial development. In addition, the aforementioned fee amounts apply to commercial/industrial categories whose calculated impact is at or above the \$0.22 per square foot level. For the categories below the \$0.22 per square foot threshold, the District may only levy the actual calculated commercial/industrial fee impact, then apply the appropriate fee sharing agreement percentage after the fact.

17. That the proceeds of the Statutory School Fees increased and established pursuant to this Resolution shall continue to be deposited into that account identified in Section 13 of this Resolution, the proceeds of which shall be used exclusively for the purpose for which the Statutory School Fees are to be collected, including accomplishing any study, findings or determinations required by subdivisions (a), (b) and (d) of section 66001 of the Government Code or retaining an amount not to exceed in any fiscal year, three percent (3%) of the fees collected in that fiscal year pursuant to Education Code section 17620 for reimbursement of the administrative costs incurred by the District in collecting the Statutory School Fees or in financing the described Report or in defending the imposition of Statutory School Fees.

18. That the Superintendent, or his or her designee, is directed to cause a copy of this Resolution to be delivered to the building official of the Cities within the District's boundaries and the County along with a copy of all the supporting documentation referenced herein and a map of the District clearly indicating the boundaries thereof, advising the Cities and County that new residential and commercial/industrial development is subject to the Statutory School Fees increased and readopted pursuant to this Resolution and requesting that no building permit or approval for occupancy be issued by any of these entities for any residential development project, mobile home or manufactured home subject to the Statutory School Fees absent a certification from this District of compliance of such project with the requirements of the Statutory School Fees, nor that any building permit be issued for any non-residential development absent a certification from this District of compliance with the requirements of the applicable Statutory School Fees.
19. That the Board hereby establishes a process that permits the party upon whom the commercial/industrial Statutory School Fees are imposed, the opportunity for a hearing to appeal that imposition of Statutory School Fees for commercial/industrial development as required by Education Code section 17621(e)(2). The appeal process is as follows:
 - A. Within ten (10) calendar days of being notified, in writing, (by personal delivery or deposit in the U.S. Mail) of the commercial/industrial Statutory School Fees to be imposed or paying the commercial/industrial Statutory School Fees, pursuant to Education Code section 17620, a party shall file a written request for a hearing regarding the imposition of commercial/industrial Statutory School Fees. The party shall state in the written request the grounds for opposing the imposition of commercial/industrial Statutory School Fees and said written request shall be served by personal delivery or certified or registered mail to the Superintendent of the District.
 - B. The possible grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the commercial/industrial Statutory School Fees are to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project.
 - C. Within ten (10) calendar days of receipt of the written request for a hearing regarding the imposition of commercial/industrial Statutory School Fees, the Superintendent of the District, or his or her designee, shall give notice in writing of the date, place and time of the hearing to the party appealing the imposition of commercial/industrial Statutory School Fees. The Superintendent, or his or her designee, shall schedule and conduct said hearing within thirty (30) calendar

days of receipt of the written request. The Superintendent, or his or her designee, shall render a written decision within ten (10) days following the hearing on the party's appeal and serve it by certified or registered mail to the last known address of the party.

- D. The party against whom the commercial/industrial Statutory School Fees are imposed may appeal the Superintendent's, or his or her designee's, decision to the Board of the District.
 - E. The party appealing the Superintendent's, or his or her designee's decision, shall state in the written appeal the grounds for opposing the imposition of the commercial/industrial Statutory School Fees and said written appeal shall be served by personal delivery or certified or registered mail to the Superintendent of the District
 - F. Within ten (10) calendar days of receipt of the written request for a hearing regarding the imposition of commercial/industrial Statutory School Fees, the Superintendent of the District, or his or her designee, shall give notice in writing of the date, place and time of the hearing to the party appealing the imposition of commercial/industrial Statutory School Fees. The Board of the District, shall schedule and conduct said hearing at the next regular meeting of the Board, provided that the party is given notice at least five (5) working days prior to the regular meeting of the Board. The Board shall render a written decision within ten (10) days following the hearing on the party's appeal and serve the decision by certified or registered mail to the last known address of the party.
 - G. The party appealing the imposition of the commercial/industrial Statutory School Fees shall bear the burden of establishing that the commercial/industrial Statutory School Fees are improper.
20. That the Superintendent is authorized to cause a certificate of compliance to be issued for each development project, mobile home and manufactured home for which there is compliance with the requirement for payment of the Statutory School Fees in the amount specified by this Resolution. In the event a certificate of compliance is issued for the payment of Statutory School Fees for a development project, mobile home or manufactured home and it is later determined that the statement or other representation made by an authorized party concerning the development project as to square footage is untrue, then such certificate shall automatically terminate and the appropriate city shall be so notified.
21. That no statement or provision set forth in this Resolution, or referred to therein shall be construed to repeal any preexisting fee previously imposed by the District on any residential or nonresidential development. Notwithstanding the preceding, if the

District adopts alternative school facilities fees for new residential construction pursuant to Government Code Sections 65995.5, 65995.6 and/or 65995.7 ("Alternative School Facilities Fees"), the District is hereby authorized to collect the Alternative School Facilities Fees in lieu of the Statutory School Fee with respect to new residential construction. If the Alternative School Facilities Fees should lapse or be terminated, then Statutory School Fees shall be collected for new residential construction at the amount set forth in this Resolution.

22. That the increase in the District's Statutory School Fees will become effective sixty (60) days from the date of this Resolution unless a separate resolution increasing the fees immediately on an urgency basis is adopted by the Board.

ADOPTED, SIGNED and APPROVED this ____ day of _____, 2016.

President of the Board of Trustees
Fremont Union High School District

Clerk of the Board of Trustees
Fremont Union High School District

