

GENERAL PLAN/LOCAL COASTAL PROGRAM
IMPLEMENTATION COMMITTEE

April 21, 2010

TO: MEMBERS OF THE COMMITTEE

FROM: Public Works Department
Stephen Badum, Public Works Director
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SUBJECT: FAIR SHARE FEE UPDATE

BACKGROUND

The City first enacted the Fair Share Fee in 1984 in recognition of the fact that there was inadequate funding to complete the arterial highway system and related components. The necessary improvements included widening existing arterials, constructing new arterials, and implementing additional lanes at key intersections. All funding sources including Gas Tax, Measure M, and funding of frontage improvements by developers were considered in establishing the funding shortfall. The shortfall was divided by projected increases in traffic from the future development resulting in a fee per added daily trip. An update to the Fair Share Fee program was approved in 1994 using the same methodology.

The approval of the updated General Plan in 2006 included the completion of the City's Master Plan of Streets and Highways along with a series of traffic mitigation measures that will be necessary to accommodate future traffic growth resulting from development within Newport Beach and the region. An Implementation Program was adopted with the General Plan Update and updating the Fair Share Fee is Implementation Program 7.2.

The Committee has reviewed and commented upon previous iterations of this study. In addition to input from the Committee, stakeholders including individuals and various trade organizations have provided comments, concerns and questions. This memorandum summarizes this input and provides responses.

FAIR SHARE FEE CALCULATION AND NEXUS REPORT

The City retained the firm of Revenue & Cost Specialists (RCS) to update the City's existing Fair Share Fees (FSF). RCS has prepared similar development impact fee reports for numerous municipal agencies. The report from RCS documents the improvement costs and how they were spread to various land use classifications. The updated Fees and related information can be found in the accompanying *Fair Share Fee Calculation and Nexus Report* (Appendix A).

The costs of future circulation system improvements were provided by the City to RCS. They are based upon preliminary plans and detailed estimates from the engineering firm of RBF. The plans and estimates are included as Appendix B. These costs are based upon 2006 construction estimates. The fees have been updated to reflect cost changes since 2006 in Schedule 1 of this memo and in the Fair Share Fee Implementation Resolution.

One of the significant changes in methodology in the RCS report is the use of trip-miles as an indicator of project impact on the roadway system rather than daily trips. The use of trip-miles is considered to be a more appropriate indicator as it reflects the fact that differing types of development generate not only different numbers of trips but also that those trips typically vary in length depending on their purpose. For example, commute trips between home and work are typically much longer than trips between home and the grocery store. The use of trip-miles results in a clearer assessment of the impact of development on the circulation system.

This memorandum also highlights the methodology used in the implementing the Fair Share Fees via ordinance and resolution. In addition to the change from using trips to trip-miles, the other significant change in the methodology is the use of CALTRANS' Construction Cost Index (CCI) instead of the Consumer Price Index (CPI). Because the CCI is based upon actual bid prices for key highway construction components, it more closely tracks the cost of implementing the improvements that are to be funded by the Fair Share Fee. Because of unusual volatility in the index over the past few years, the resolution specifies a five-year rolling average of the year to year increases to smooth any future volatility. This gives the City a better basis to forecast income from this fee and avoids dramatic increases to those paying the fee.

In California, State legislation sets certain legal and procedural parameters for the charging of development impact fees. This legislation was passed as AB1600 by the California Legislature and is now codified as California Government Code Sections 66000 through 66009. This State law went into effect on January 1, 1989.

AB1600 requires documentation of projects to be financed by Fair Share Fees prior to their levy and collection, and that the monies collected actually be committed within five years to a project of "direct benefit" to the development which paid the fees.

Specifically, AB1600 requires the following:

1. Delineation of the **PURPOSE** of the fee.
2. Determination of the **USE** of the fee.
3. Determination of the **RELATIONSHIP** between the use of the fee and the type of development paying the fee.
4. Determination of the relationship between the **NEED** for the facility and the type of development project.
5. Determination of the relationship between the **AMOUNT** of the fee and the **COST** of the portion of the facility attributed to the specific development project.

The RCS report utilizes a methodology consistent with the above requirements of AB1600. The report consists of three chapters:

Chapter 1 provides background on fee studies including more detailed discussion of the requirements of AB1600 and related court decisions.

Chapter 2 describes the demographics of future development in Newport Beach. Land uses are aggregated into fifteen (15) categories in the report. The Fair Share Fee Implementation Resolution expands those to twenty-nine (29) categories of land use commonly developed in the City. Table 2.1 lists current and future levels of development for the various land use categories.

Chapter 3 is the Circulation System chapter and includes three cost/fee Schedules at the end of the Chapter. Schedule 3.1 identifies each of the needed improvement projects, its costs, and the percentages of the cost to be borne by development as well as by other sources.

Schedule 3.2 identifies the level of impact fees that would need to be adopted to meet the basic capital needs identified in the Report. This schedule shows the fee for each of the aggregated land uses based upon 2006 data.

Schedule 3.3 identifies the cost (in current nominal dollar value) of the existing infrastructure, including land, physical improvements and capital equipment. This is the average amount that has been "invested" by the current community of residents and businesses. This equity is expressed in terms of the cost to construct or acquire the assets at current costs. Schedule 3.3 demonstrates that the existing investment in highway infrastructure is conservatively valued at \$993,181,510 which is more than seven times the \$136,501,346 of improvement costs on which the proposed Fair Share Fee is based. Another way to evaluate the equity of the proposed fee is to compare the existing infrastructure cost \$527.91 per-mile compared to the \$353.44 per trip-mile under the proposed Fair Share Fee.

ADJUSTMENTS TO FEES IN RCS REPORT

Due to the passage of time since the General Plan Update was approved and the date the cost estimates were prepared, two adjustments need to be applied to the fees identified in the Revenue & Cost Specialists' report. Table A details the projects which have received building permits since the General Plan Update. As shown at the bottom of the table this amounts to 5.9% of the total growth anticipated in the General Plan. Because the improvement costs must now be assigned to a smaller amount of future development, the fee has been adjusted to reflect this change.

Table A

Summary of Projects Permitted Since General Plan Update

Land Use (unit)	No. of Units	Trip-Mile Rate (T-M)	Trip-Miles
Low Density Residential (DU)	9	27.1 T-M/DU	243.9
Med. Density Residential (DU)	11	20.4 T-M/DU	224.4
Restaurant (sf)	1,829	83.6 T-M/ksf	152.9
Research/Development (sf)	-317,808	21.8 T-M/ksf	(6,928.2)
General Office (sf)	68,135	42.2 T-M/ksf	2,875.3
General Commercial (sf)	-735	43.0 T-M/ksf	(31.6)
Regional Commercial (sf)	238,313	43.6 T-M/ksf	10,390.4
Medical Office (sf)	328,626	48.1 T-M/ksf	15,8069.0
TOTAL			22,734.0

Total future increase in trip-miles permitted in General Plan = 386,209

Already permitted trip-miles = 22,734 or 5.9% of total

The cost estimates were prepared in 2007 and based upon 2006 costs. The most recent five-year rolling average for the Construction Cost index is 1.2% per year as shown on Table B. The total adjustment for four years since 2006 is 4.8%.

Table B
California Construction Cost Index
Five-Year Rolling Average

Year	Year-End Value	Year to Year Percent Change
2004	268.3	
		24.1
2005	280.6	
		4.5
2006	261.1	
		-6.9
2007	252.7	
		-3.2
2008	220.5	
		-12.7
2009		
SUM		5.8

Five-Year Average is $5.8/5 = 1.2\%$ per year

The RCS report indicates over \$425 million in improvement projects are required to accommodate the anticipated traffic from the City's General Plan build-out, including both projects related to existing deficiencies and those needed solely to support future growth. The portion of these costs attributable to future development (\$136,501,346) was derived on a per unit basis for residential land uses and on a per square foot basis for business land uses. The fee per trip-mile of \$353.44 in the RCS report must be adjusted by the combined increase from the two adjustments (4.8% divided by 0.941 which equals 5.1%) to arrive at a 2010 fee per trip-mile of \$371.46.

The proposed 2010 fees for the most common types of development are summarized in the Schedule on the following page. The existing (2009-2010 fees are shown for comparison.

Schedule 1

FAIR SHARE FEE SUMMARY TABLE				
Fair Share Fee Per Trip-Mile			\$371.47	
Land Use	UNIT	Trip-Mile Rate	Fee/Unit	2009 Fee
Res-Low (SFD)	DU	27.1	\$10,067	\$1,990
Res-Medium (SFA)	DU	20.4	\$7,578	\$1,555
Apartment	DU	19.4	\$7,207	\$1,176
Elderly Residential	DU	17.7	\$6,575	\$723
Mobile Home	DU	14.7	\$5,461	\$1,085
Motel	Room	17.8	\$6,612	\$1,827
Hotel	Room	22.2	\$8,247	\$1,899
Regional Commercial	TSF	43.7	\$16,233	\$3,979
General Commercial	TSF	43.0	\$15,973	\$7,235
Commercial/Recreation	TSF	73.0	\$27,117	\$7,235
Restaurant	TSF	83.6	\$31,055	\$12,100
Fast Food Restaurant	TSF	102.5	\$38,076	\$25,683
Auto Dealer/Sales	TSF	22.7	\$8,432	\$8,665
Yacht Club	TSF	44.7	\$16,605	\$9,043
Health Club	TSF	62.4	\$23,180	\$7,235
Tennis Club	Court	56.9	\$21,137	\$8,012
Marina	Slip	5.4	\$2,006	\$90
Theater	Seat	0.6	\$223	\$271
Newport Dunes	Acre	45.1	\$16,753	\$1,031
General Office	TSF	42.2	\$15,676	\$2,351
Medical Office	TSF	48.1	\$17,868	\$8,139
R & D	TSF	35.9	\$13,336	\$1,718
Industrial	TSF	21.8	\$8,098	\$904
Mini-Storage/Warehouse	TSF	18.4	\$6,835	\$472
Pre-School/Day Care	TSF	55.3	\$20,542	\$12,118
Elementary/Private School	STU	2.5	\$929	\$181
Hospital	Bed	49.8	\$18,499	\$2,062
Nursing/Conv. Home	Bed	7.3	\$2,712	\$488
Church	TSF	13.7	\$5,089	\$1,393

CONCERNS RAISED BY STAKEHOLDERS

During discussions of the update to the Fair Share Fee, interested parties identified issues and questions regarding how the fees were proposed to be calculated. These have been reviewed and are discussed below.

A. Banning Ranch roadways – considerable discussion has occurred due to the uncertainty of future development in this area and the amount of roadway construction needed. The General Plan has a preferred use of the area as Open Space while the owners of the property have presented the City a conceptual development program. The Circulation Element of the General Plan includes several arterial roadways crossing the property and is generally consistent with Orange County Transportation Authority's Master Plan of Arterial Highways (MPAH).

The circulation system in the Banning Ranch area is included in the Report as detailed on Schedule 3.1. The roadways included are based upon the MPAH. The General Plan Traffic Study concluded that failure to provide these connections results in the need for additional improvements along Coast Highway between the Santa Ana River and Newport Boulevard.

Another issue that was raised was that the engineering consultant used the same value for right of way on an undeveloped area such as Banning Ranch as they did for fully developed areas of the City. Based upon appraisal information and consideration of where on the property arterial roadways were likely to be constructed the cost was reduced from \$100/sf to \$50/sf.

Staff reviewed the portion of the MPAH on Banning Ranch that would likely be constructed by a developer per requirements of the Subdivision Map Act. Because preliminary analysis of the currently proposed development showed the need for less than the full cross section of the roads to be constructed with the project, only 25% of the cost of these road segments is included in the proposed Fair Share Fee. Another 50% of the cost is attributed to regional need as discussed below.

Adjustments to the Fair Share Fee should be made, if necessary, at such time as the City Council has determined the level of development and the roadway network and the project has approval from all other regulatory agencies.

B. Regional need – This analysis considers what percentage of the needed improvement costs should be borne by development as well as the share to be attributed to traffic growth resulting from development outside the city limits. Based upon forecasts prepared during the General Plan Update process, regional growth was estimated to be responsible for 50% of all future traffic growth in Newport Beach. Accordingly, all the improvement projects summarized on Schedule 3.1 have had 50% of the cost assigned to the *Regional Growth Demands* column. These costs will need to be funded by other programs available to the City such as Measure M, Gas Tax, etc.

As noted on Schedule 3.1, the FSF is anticipated to cover just over 30% of the total cost with the remainder coming from other sources.

C. Pedestrian improvements – The level of pedestrian improvements has been scaled back to less than half of that initially proposed to be included in the FSF program. Additionally only 50% of those improvements are included in the FSF in recognition of the benefit of such improvements to the existing community. Vehicular traffic flow will improve where pedestrian crossings can be removed by way of an overcrossing or controlled by an enhanced crossing that can be coordinated with adjacent traffic signals.

D. Contingency costs - The construction estimates include contingency costs for unforeseen work along with costs for design and construction engineering expressed as a percentage of the expected construction costs. These percentages have been analyzed and are felt to be realistic for the overall level of information available at this time.

E. Funding from other sources – Concern was expressed that the study has not fully considered funding from other sources. As mentioned above, the Fair Share Fee expected to generate only a little over 30% of the total cost of the improvements. The remaining 70% is expected to come from Gas Tax, Measure M, developer improvements, and neighboring jurisdictions which share boundary intersections. The Fair Share Fee Resolution includes a table showing the expected revenues from Gas Tax and Measure M. There is some uncertainty that the City will receive the amounts shown due to the State's ability to borrow or divert funds for other purposes.

F. Use of Trip-miles – As mentioned above, staff believes that while this has not been used to assess project impact on the circulation system in the past, it is still an appropriate measure to use since it considers the length of trips as well as how many come from various types of development. In addition, the methodology used in the RCS report gives consideration to pass-by and diverted trips based upon data developed by the San Diego Association of Governments that is used by agencies throughout the region.

G. Consideration of Mixed-Use - The General Plan provides for mixed-use development in several areas. The benefit of trip reduction from mixed-use projects will be addressed at the time a project is permitted using reduction factors established in the General Plan Traffic Study.

SUMMARY

This memorandum, along with the attachments, represents a comprehensive approach to updating the City's Fair Share Fee. It establishes a fair and equitable level of funds to be assessed future development. The methodology used in the RCS report apportions the costs to regional development, existing deficiencies, developers of projects adjacent to new roadways, and lastly to the Fair Share Fee program.

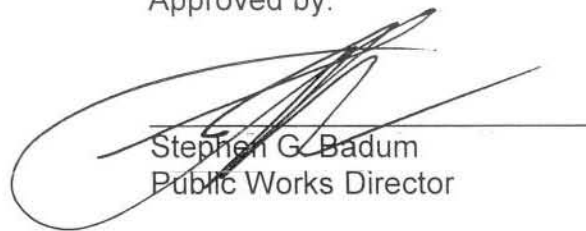
Attachment 1 is the revised Fair Share Fee Ordinance. It sets forth the framework for establishing the Fair Share Fee. The majority of the changes to the Ordinance reflect the change from using trips to trip-miles as the measure of project impact. The Ordinance retains the existing waiver for affordable housing as well as the provision granting credit for existing uses on a site to be redeveloped. The Ordinance also allows credit for mixed-use developments where appropriate. The existing fee appeal process is also retained in the revised Ordinance.

Attachment 2 is the revised Fair Share Implementation Resolution which sets forth in detail the methodology for determining the Fair Share Fee. The Exhibits attached to the Resolution are based upon the data in the RCS Report.

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Approved by:


Stephen G. Badum
Public Works Director

- Attachments:
1. Draft of Proposed Fair Share Ordinance
 2. Draft of Proposed Fair Share Fee Implementation Resolution
 3. Appendix A – Fair Share Fee Calculation and Nexus Report prepared by Revenue & Cost Specialists
 4. Appendix B – Circulation System plans and estimates Prepared by RBF.

ATTACHMENT A

DRAFT

FAIR SHARE FEE ORDINANCE

Chapter 15.38 FAIR SHARE TRAFFIC CONTRIBUTION ORDINANCE

15.38.010 Intent.

The City Council of the City of Newport Beach finds that future development, or redevelopment, of property within the City will result in traffic volumes that exceed the capacity of the existing City wide circulation system.

The City Council of the City of Newport Beach has determined that the failure to expand the capacity of the existing circulation element system in accordance with the Master Plan of Streams and Highways will cause unacceptable levels of congestion on streets and intersections, traffic accidents, air pollution, noise, and restrictions on access for emergency vehicles.

The City Council also finds and declares that, in the absence of this ordinance imposing a fair share traffic contribution, existing and future sources of revenue are inadequate to fund a substantial portion of the circulation system improvements necessary to accommodate traffic volume generated by future development or redevelopment of property and to avoid unacceptable levels of congestion and related adverse impacts. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.020 Purpose.

The City Council of the City of Newport Beach finds and determines that the adoption of this Fair Share Traffic Contribution Ordinance will raise revenues sufficient to enable the City to construct circulation system improvements that increase roadway capacity within the City of Newport Beach such that traffic generated by development and redevelopment of land within the city will not result in unacceptable levels of congestion of the circulation system.

The City Council also finds and declares that this chapter contains a fair and equitable method of determining the extent to which the development or redevelopment of land will generate traffic volumes and establishes a fair and equitable method for distribution of costs of circulation system improvements necessary to accommodate the traffic volumes generated by such development. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.030 Specific Findings.

The City Council, after thorough review of all relevant information, has made specific factual findings concurrently with the adoption of this chapter. The specific findings made by the Council as of the time of the adoption of this chapter are as follows:

A. On ~~May 29, 1972~~ July 15, 2006, the City Council adopted an updated General Plan, including Circulation Element and a Land Use Element, as ~~part of the general plan~~ for the City of Newport Beach. The Land Use Element specifies the permitted uses of land within the City of Newport Beach and places limits on the intensity and density of such use. ~~The land use element has been updated and amended, from time to time, to reflect changes in land use and intensities approved by the City Council subsequent to the adoption of the element;~~

B. The City Council has conducted a thorough and extensive study of the relationship between the land uses and densities permitted by the general plan and the actual development of property. The City Council has considered the effects of the fee with respect to the City's housing needs as established in the housing element of the general

plan.; The relationship between permitted uses and densities and actual development has been studied over a period of several years and based upon this study, the City Council is able to analyze trends in growth and development authorized under the general plan and relevant zoning ordinances. Based upon this study and analysis, the City Council is able to predict with some certainty, the magnitude and extent of future development;

C. The City Council has also studied and evaluated the extent to which different land uses generate automobile trips-miles (trip generation rates times average trip length). The City Council, in evaluating trip generation rates, has taken into consideration material developed in conjunction with the Newport Beach Traffic Model (NBTM) prepared by the Institute of Transportation Engineers and similar organizations. The traffic-trip-mile generation rates reflect the most accurate characterization of the actual traffic generated by specific land uses as well as the interaction between land uses;

D. The Council, based upon its study of trends in development and trip generation rates, has determined that the capacity of existing roadway improvements are inadequate to accommodate traffic volumes that will be generated by future development;

E. On March 11, 1974 July 25, 2006, the City Council adopted, as part of the General Plan, a Circulation Element. The Circulation Element contains a Master Plan of streets and Highways (MPSH) along with a list of required supplemental intersection improvements and transportation measures, and has been amended from time to time to reflect changes to the circulation system necessary or appropriate to prevent the occurrence of unacceptable levels of traffic congestion;

F. The City Council finds that implementation of the Master Plan of Streets and Highways and supplemental improvements and the Traffic Phasing Ordinance (TPO), as presently designed, would result in a circulation system which has the capacity to substantially accommodate the additional traffic volume that will be generated by anticipated future development;

G. Implementation of the Master Plan of Streets and Highways and the supplemental transportation improvements will require the construction of major improvements to the existing City-wide circulation system. The City Council has, after review of all relevant information, determined which roadway improvements are necessary to implement the Master Plan of Streets and Highways, the estimated cost of those improvements, and established funds available to make such improvements, as well as the extent to which funding is inadequate to make the necessary improvements. The Circulation Element contains a list of recommended intersection improvements needed to accommodate the additional traffic from future development allowed in the Land Use Element;

H. The City Council, in determining the extent to which funds are available to make roadway improvements, has evaluated present and future sources of State, Federal, and County funding, City revenues which are earmarked for roadway-related improvements, and the extent to which private development projects are required to construct or fund roadway improvements that will assist in the implementation of the master plan of streets and highways. The City Council has determined that the extent to which regional traffic will impact the circulation system of the City of Newport Beach is generally offset by existing and anticipated sources of funding from governmental entities or private

developers;

I. While the traffic volume generated by a single development may not be, in and of itself, sufficient to overload the existing circulation system, the cumulative impact of all new development and redevelopment will result in unacceptable levels of traffic congestion, unless the master plan of streets and highways is implemented. For this reason, the only fair and equitable method of securing the revenues necessary to construct required circulation system improvements is a contribution based solely on the extent to which new development generates additional traffic volumes. The formula for establishing each fair share traffic contribution is as fair and equitable as possible. The City Council also finds that, by requiring the contribution in conjunction with the issuance of building permits, or any other form of entitlement issued by City to construct or change the use of a building or property, the funds generated by this chapter will enable the City to construct major improvements to the circulation system concurrently with the traffic volumes created by development;

J. The ~~roadway-circulation system~~ improvements that will be constructed with funds generated by this chapter will significantly benefit the contributor in that the adverse impacts, such as noise, air pollution, delay, accidents, and inconveniences, will be alleviated or eliminated and the Council further finds that the benefit derived from roadway improvements is generally equivalent to the contributions received;

K. The contribution called for by this chapter will help to fund circulation system improvements that will increase the capacity of the streets and highways within the City of Newport Beach and the purpose and intent of this chapter is complementary to those provisions of the existing Traffic Phasing Ordinance which, for the most part, is predicated upon the need to improve intersections as opposed to roadway capacity;

L. Regular review, and possible revision, of the provisions of the related Fair Share Implementation Resolution establishing the trip-mile generation rates and procedures for the payment of fair share contributions, will allow for the adjustment of the contributions to be made under this chapter to ensure that those contributions are fair and equitable. (Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984)

15.38.040 Terms and Definitions.

For the purpose of this chapter, the following terms shall have the meanings indicated below:

A. "~~Trend-growth~~Build-Out" shall mean the level of future development and redevelopment of property in Newport Beach, ~~calculated as the percentage of general plan build-out anticipated~~ to occur by the year 2010-~~2025~~2030 and shall be expressed in the units listed for the trip generation rate as stated in the Fair Share Implementation Resolution.

B. "Gross floor area" shall mean all the area included within the surrounding exterior walls of the building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof of floor above.

C. "Land use category" shall mean any of the specific land uses that have been listed in the fair share implementation resolution and used to provide the basis for future traffic projections.

D. "Trip-mile generation rate" shall mean the number of average, daily trips generated

by land use category per unit of development, including adjustments for pass-by and diverted trips, multiplied by the average trip length in miles as stated in the Fair Share Implementation Resolution.

E. "Project" shall include any discretionary or ministerial action by the City resulting in the issuance of grading, building, plumbing, mechanical, or electrical permits, or any other form of entitlement issued by the City to construct on or change the use of a building or property.

F. "Roadway improvements" shall include those improvements necessary to complete the roadway to Master Plan configuration and to increase intersection capacity at locations identified in the Circulation Element. ~~and Those improvements shall include~~ and not be limited to: paving, curb and gutter, sidewalks, medians with landscaping, drainage facilities, traffic signals, street lighting, noise walls, right of ways, and improvements necessary to mitigate significant environmental impacts. The preparation of environmental documents, planning and design studies plans, specifications and estimates, and project management shall be considered a part of roadway improvements. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.045 Applicability.

The provisions of this chapter shall apply to all new development, and to any redevelopment or change of use of any existent building or parcel, unless otherwise provided herein. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.050 Establishment of Fair Share Traffic Contribution.

A. The fair share traffic contribution is based upon the unfunded portion of the estimated construction cost of the total circulation system roadway improvements necessary to implement the Master Plan of Streets and Highways and supplemental transportation improvements (net roadway costs), and the total number of vehicle trips anticipated as a result of ~~trend-growth~~build-out.

B. The fair share traffic contribution shall be calculated, in accordance with the following procedure and as established by the Fair Share Implementation Resolution adopted by City Council in conjunction with this chapter:

1. The City Council shall determine by resolution net roadway cost as follows:

a. The City Council shall determine which roadway and related improvements are necessary to implement the Master Plan of Streets and Highways in order to accommodate the level of development provided for in the Land Use Element;

b. The City Council shall determine, for each specific improvement, an estimate of the total costs necessary to complete each improvement along with the portion of those costs attributable to Build-out;

c. The City Council shall determine, with respect to roadway improvements, an estimate of the current and anticipated funding available to satisfy the costs of construction. In determining the amount of funding available for roadway improvements, the Council shall include funding from other governmental entities, City revenues earmarked for roadway construction purposes, and the extent to which private development projects are required to construct, fund or dedicate land for, the specific roadway improvement;

d. The City Council shall determine, for roadway improvements, the difference, if any, between the estimated costs of construction and the estimated funding available to

complete the improvement;

e. The extent to which the cost of construction for all roadway improvements exceeds the funds available, or anticipated for constructing the improvement, shall be the "net roadway cost."

2. The City Council shall determine the total anticipated average daily trips resulting from ~~trend-growth~~build-out as defined in Section 15.38.040(A), in the following manner:

a. The projected development in each land use category as established in the Fair Share Implementation Resolution shall be multiplied by the trip-mile generation rate established in the fair share implementation resolution to determine additional daily trip-miles.

b. All of the additional daily trip-miles of each land use category shall be added to determine the total additional daily trip-miles that the City's circulation system must accommodate in the future.

3. The City Council shall determine the average cost per trip-mile by dividing net roadway cost by the total additional daily trip-miles generated by ~~trend-growth~~Build-out.

4. The fair share traffic contribution required of any project shall be calculated in the following manner:

a. Residential Projects: The average cost per trip-mile shall be multiplied by the total number of trip-miles generated by the project, using the methodology and traffic generating rates established in this section. The cost per dwelling unit is the product of the trip-miles per dwelling unit and the average cost per trip-mile as established in this section. The cost per dwelling unit is multiplied by the total dwelling units to determine the fair share contribution.

b. Hotel/Motels: The average cost per trip-mile shall be multiplied by the number of trip-miles generated by each room, the product of which shall be then multiplied by the total number of rooms to determine the fair share contribution.

c. For office, retail, commercial and industrial uses, the following procedures apply:

i. The ~~traffic-trip-mile~~ generation rates shall be used to determine the number of trips per square foot;

ii. The number of trip-miles per square foot is multiplied by the average cost per trip-mile as determined by the methodology set forth in this section, to determine the cost per square foot;

iii. The cost per square foot is multiplied by the total square footage of a proposed project to determine the fair share contribution;

d. For those projects not falling in the above categories, the average cost per trip-mile shall be multiplied by the total number of trip-miles generated by the project, using the methodology, and ~~traffic-trip-mile~~ generation rates established in the Fair Share Implementation Resolution to determine the fair share contribution. In the event the proposed use is not listed in the table of ~~traffic-trip-mile~~ generation rates, the Traffic Engineer shall determine the appropriate trip-mile generation rate for the use. In determining the appropriate trip-mile generation rate the Traffic Engineer shall consider:

i. Whether the traffic characteristics of the land use are essentially the same as one of those listed in the fair share implementation resolution.

ii. If the hours of operation of the project are different than those normally observed by similar projects.

iii. If the project includes multiple land uses which are complementary from a traffic standpoint and the total trip generation is anticipated to be less than the sum of the trips from the individual land uses.

C. Every five years, or as deemed necessary, the City Council, in conjunction with the City's budget sessions, shall review the ~~trend~~ Build-out growth assumptions, trip-mile generation rates, and roadway improvement cost estimates, and if necessary, shall amend the Fair Share Implementation Resolution establishing the fair share traffic contribution to ensure that it is a fair and equitable method for the distribution of costs of circulation system improvements necessary to accommodate traffic volumes generated by ~~trend-growth~~ Build-out.

D. In the event no substantive changes to any of the provisions of this chapter or the ~~F~~air ~~S~~hare ~~I~~mplementation ~~R~~esolution occur during the time between the mandatory City Council reviews as set forth herein, the dollar amount set forth in the Fair Share Implementation Resolution exhibits, shall be increased automatically, based upon any interim increase in the ~~consumer price index (the Los Angeles-Anaheim-Riverside All Urban Consumers Index)~~ California Highway Construction Cost Index as maintained by the California Department of Transportation. This automatic increase shall be calculated by averaging the five-year rolling average change in the index based upon year end values of the Index and shall become effective on July 1 of any year that the City Council does not otherwise review the contents or provisions of this chapter and the Ffair Sshare Iimplementation Rresolution. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.060 Payment of Contribution.

No building or grading permit or any other form of entitlement issued by the City to construct on or change the use of a building or property shall be issued, and no construction shall be commenced, for any project not exempt from this chapter unless all contributions required pursuant to this chapter have been deposited with the City Finance ~~Administrative Services~~ Director. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.070 Use of funds.

The revenues raised by payment of this fee shall be placed in a separate and special account and such revenues, along with any interest earnings on that account, shall be used solely for the purpose of planning, designing and constructing roadway and related improvements or acquiring right-of-way necessary to complete implementation of the ~~m~~Master ~~p~~lan of ~~s~~Streets and ~~h~~ighways. Yearly, during the budget review, the City Council shall review fund balances and required roadway improvements and make a determination for use of the funds for the coming fiscal year. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.075 Nontransferable.

Fees paid under this chapter for a specific use on a parcel of land shall be considered to run with said parcel. Businesses may not transfer or take credit for fees paid upon relocation to another parcel. (~~Ord. 94-19 (part), 1984~~)

15.38.080 In Lieu Contributions.

The provisions of this chapter may be satisfied, in whole or in part, by the dedication of right-of-way, or the construction of roadway or related improvements necessary to the implementation of the master plan of streets and highways, as set forth herein:

A. In lieu credit may be given for Master Plan of Strees and Highways improvements which are not assumed to be required of adjacent developments pursuant to the Subdivision Map Act, and are included in the Fair Share Implementation Resolution.

B. In lieu credit may be given where application of the Traffic Phasing Ordinance to a specific development results in improvements that are shown on the Master Plan of Strees and Highways, except:

1. Improvements required pursuant to the Traffic Phasing Ordinance that may be or are temporary in nature, or those improvements that may have to be relocated, altered or removed in the future, shall not be eligible for consideration as an in lieu contribution.

2. Improvements required pursuant to the Traffic Phasing Ordinance that exceed the requirements of the Master Plan of Strees and Highways, that are necessary to accommodate a specific development, shall not be eligible for consideration as an in lieu contribution.

C. Acceptance of all proposed in lieu contributions shall be subject to the approval of the Planning Commission or the City Council on appeal or review. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

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15.38.085 Fee Adjustments.

A developer of any project subject to the fee described in Section 15.38.050 may apply to the City Manager for a reduction, adjustment, or a waiver of the fee established under this chapter based upon a showing that the trip generation rate is inapplicable to the proposed use.

A. The application shall be made in writing and filed with the Public Works Department and shall state in detail the factual basis for the claim of waiver, reduction, or adjustment. The City Manager shall consider the application within fourteen (14) days after the filing of the fee adjustment application.

B. If the developer wishes to obtain a permit or any other entitlement prior to the resolution of application, the application must be accompanied by a deposit of the full amount of the fee established under this chapter. The deposit will be held, under protest, until a final decision is made under this section.

C. The fee shall be as established in the Fair Share Implementation Resolution unless the following findings can be made:

1. The appellant has presented factual information which supports the use of a different trip generation rate from that used to calculate the fair share fee.

2. The appellant has demonstrated that the operational characteristics of the project are substantially different than those upon which the Institute of Transportation Engineers' (ITE) trip generation rate for similar projects was based. For the purposes of this finding, substantial shall mean twenty (20) percent or greater. The demonstrated reduction from ITE rates shall be applied to the trip generation rates specified in the Fair Share Implementation Resolution.

3. Appellant has demonstrated that for projects which are an expansion of an existing

use, that the appeal is based upon a claim of no net increase in trips from the expanded area and there are similar projects in the area which have trip generation rates at least as low as would result from dividing the current trips by the total project area after expansion.

D. The decision of the City Manager shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment or reduction of the fee, and the fee will be recalculated using the changed conditions. (~~Ord. 94-19 (part), 1994~~)

15.38.090 Exemptions.

The following projects shall be exempt, in whole or in part, from the contributions otherwise required by this chapter:

A. In the event a site contains one or more structures which are proposed to be demolished in conjunction with a new development, the contributions otherwise required by this chapter shall be reduced in an amount equal to the contributions that would have been required had the existing structure been subject to the provisions of this chapter.

B. In the event that no new construction is proposed, no contribution shall be required for the conversion from one land use category to another unless the land use category to which the property is to be converted generates more average daily trip-miles than the existing use. In such case, the contributions to be charged shall be based solely on the difference between the contributions required for each land use as set forth herein.

C. Where a land use proposed for a site is less intensive than the existing land use, no refund will be available to the developer. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.100 Retroactivity.

A. In those cases where a developer has submitted a fair share contribution required as a condition of approval prior to the effective date of this chapter, refunds are prohibited.

B. In those cases where a condition on a development approved prior to the effective date of this chapter states that a fair share contribution shall be determined prior to the issuance of building permits, the contribution shall be based upon the amounts set forth in the Ffair Sshare Iimplementation Resolution at the time building permits are issued. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.110 Waiver for Affordable Housing.

Contributions, otherwise required pursuant to this chapter, shall be waived for all affordable residential housing as that term is defined in the housing element, and for any "granny" units or "second units" as defined in Section 65852.1 of the Government Code. (~~Ord. 94-19 (part), 1994; Ord. 84-16 (part), 1984~~)

15.38.120 Supplementary Provisions.

It is the intent of the City Council that the contributions required by this chapter shall be supplementary to the contributions and conditions imposed upon projects pursuant to the provisions of this Code, the Subdivision Map Act, California Environmental Quality Act, and other state and local laws, ordinances or Charter provisions which may authorize the imposition of conditions or contributions on development. (~~Ord. 94-19~~)

~~(part), 1994: Ord. 84-16 (part), 1984)~~

15.38.130 Severability.

If any section or portion of this chapter is declared invalid, the remaining sections or portions are to be considered valid and unaffected by the determination of invalidity.

~~(Ord. 94-19 (part), 1994: Ord. 84-16 (part), 1984)~~

ATTACHMENT B

DRAFT

FAIR SHARE FEE

IMPLEMENTATION RESOLUTION

RESOLUTION NO. 2010- __

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH IMPLEMENTING THE FAIR SHARE
TRAFFIC CONTRIBUTION ORDINANCE (FAIR SHARE
IMPLEMENTATION RESOLUTION)**

WHEREAS, the City of Newport Beach General Plan and Zoning Code establish limits for the ultimate build-out of the City; and

WHEREAS, the City's Master Plan of Streets and Highways is designed to accommodate the anticipated levels of development permitted by the General Plan and Zoning Code; and

WHEREAS, the most recent update to the General Plan, approved in 2006, demonstrated the need to make certain improvements to intersections and other transportation facilities, in addition to those included in the Master Plan of Streets and Highways, in order to facilitate the movement of traffic at an acceptable level; and

WHEREAS, implementation of these improvements and the completion of the Master Plan of Streets and Highways must coincide with the new development anticipated; and

WHEREAS, the City has identified the specific improvements and estimated total costs to implement the Master Plan of Streets and Highways and supplemental improvements; and

WHEREAS, the City has determined the reasonable share of these costs attributable to new development within the City, existing deficiencies in the circulation system, and regional growth outside the city limits; and

WHEREAS, the City's ability to fund the balance of these improvements has been restricted by State legislation limiting the ability of local governments to impose new taxes; and

WHEREAS, a shortfall exists between the total costs of the required circulation system improvements to implement the City's Master Plan of Streets and Highways, with supplemental improvements, and the funds that are currently anticipated; and

WHEREAS, the Newport Beach City Council has determined that the balance of necessary funds to implement the Master Plan of Streets and Highways along with the supplemental improvements be borne by future development; and

WHEREAS, the City of Newport Beach City Council has developed an equitable system for allocating the unfunded costs to implement the Master Plan of Streets and Highways and supplemental improvements to new development; and

WHEREAS, the provisions of Section 15.38.050 of Chapter 15.38 of the Municipal Code provide for and authorize the adoption of a Fair Share Implementation Resolution;

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: This Resolution shall be known as the Fair Share Implementation Resolution and shall include the following Exhibits:

- A. The total estimated net roadway cost to implement the City's Master Plan of Streets and Highways and supplemental improvements necessary to accommodate anticipated growth within Newport Beach is set forth in the attached Exhibit "A".

B. The total anticipated increase in vehicle-miles resulting from build-out of all land use categories is as set forth in Exhibit "B".

C. The land use categories, trip-mile generation rates, and Fair Share Fee for each land use are as set forth in Exhibit "C".

Section 2: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this _____ day of _____, 2010.

Keith Curry, Mayor

ATTEST:

Leilani Brown,
City Clerk

Circulation System Build-Out
Net Roadway Cost

Net Cost for Fair Share Fee

Description	Estimated Cost	Percent	Apportioned Dollar Cost
1 - Bluff Road and Coast Highway	\$5,781,000	50.00%	\$2,890,500
2 - 15th Street and Coast Highway	\$5,781,000	50.00%	\$2,890,500
3 - 15th Street Extension	\$56,047,500	25.00%	\$14,011,875
4 - Newport Boulevard and 32nd Street	\$1,245,500	50.00%	\$622,750
5 - Riverside Avenue and Coast Highway	\$3,359,000	50.00%	\$1,679,500
6 - Bluff Road between 17th Street and 19th Street	\$54,763,914	25.00%	\$13,690,979
7 - MacArthur Boulevard and Campus Drive	\$2,121,000	25.00%	\$530,250
8 - Jamboree Road and Campus Drive	\$2,997,000	25.00%	\$749,250
9 - Campus Drive and Bristol Street North	\$16,585,000	26.00%	\$4,312,100
10 - Jamboree Road and Bristol Street South	\$4,911,166	50.00%	\$2,455,583
11 - MacArthur Boulevard and Ford Road/Bonita Canyon	\$2,673,000	50.00%	\$1,336,500
12 - MacArthur Boulevard and San Joaquin Hills Road	\$4,767,000	36.00%	\$1,716,120
13 - Coast Highway, Dover Drive to Newport Boulevard	\$21,534,000	50.00%	\$10,767,000
14 - Irvine Avenue and University Drive	\$8,709,000	25.00%	\$2,177,250
15 - Coast Highway and Bayside Drive	\$4,462,000	50.00%	\$2,231,000
16 - Placentia Avenue, between Hospital Road and Superior Avenue	\$4,790,000	50.00%	\$2,395,000
17 - 15th Street between Placentia Avenue to Monrovia Street	\$5,880,000	25.00%	\$1,470,000
18 - MacArthur Boulevard, Southerly of San Miguel to Coast Highway	\$2,672,000	50.00%	\$1,336,000
19 - 17th Street from Westerly Terminus to Bluff Road	\$6,754,500	25.00%	\$1,688,625
20 - Bluff Road between 17th Street to Coast Highway	\$66,380,500	25.00%	\$16,595,125
21 - 19th Street to Brookhurst Avenue	\$55,586,717	25.00%	\$13,896,679
22 - Arches Interchange Improvements	\$13,660,000	50.00%	\$6,830,000
23 - Intelligent Transportation System	\$8,568,000	50.00%	\$4,284,000
24 - Pedestrian Improvements	\$12,000,000	50.00%	\$6,000,000
25 - Grade Separation at Jamboree/MacArthur Intersection	\$54,052,000	38.00%	\$20,539,760
TOTAL ESTIMATED NEW PROJECT COSTS	\$426,080,797	32.18%	\$137,096,346

Exhibit A

TOTAL ANTICIPATED INCREASE IN TRIP-MILES						
Land Use	UNIT	Trip-Mile Rate	2006 UNITS	Build-Out UNITS	Increase in UNITS	Increase in Trip-Miles
Res-Low (SFD)	DU	27.1	18,702	20,023	1321	35,799.1
Res-Medium (SFA)	DU	20.4	10,974	15,670	4696	95,798.4
Apartment	DU	19.4	9,703	15,077	5374	104,255.6
Elderly Residential	DU	17.7	200	320	120	2,124
Mobile Home	DU	14.7	600	455	(145)	(2,131.5)
Motel	Room	17.8	134	139	5	89
Hotel	Room	22.2	3,231	5,642	2411	53,524.2
Regional Commercial	TSF	43.7	1,331.00	1,619.52	288.52	12,608.3
General Commercial	TSF	43.0	3,823.40	5,285.61	1,462.21	62,875.0
Commercial/Recreation	TSF	73.0	5.10	5.10	0	0
Restaurant	TSF	83.6	99.45	158.91	59.46	4,970.9
Fast Food Restaurant	TSF	102.5	15.64	13.94	(1.70)	(174.2)
Auto Dealer/Sales	TSF	22.7	201.30	244.65	43.35	984.0
Yacht Club	TSF	44.7	51.83	70.31	18.48	826.1
Health Club	TSF	62.4	16.77	93.05	76.28	4,759.9
Tennis Club	Court	56.9	60	62	2	113.8
Marina	Slip	5.4	1055	1,055	0	0
Theater	Seat	0.6	5489	5,565	76	45.6
Newport Dunes	Acre	45.1	64.00	64.00	0	0
General Office	TSF	42.2	11,657.11	11,187.20	(469.90)	(19,829.8)
Medical Office	TSF	48.1	959.72	1,505.11	545.39	26,233.3
R & D	TSF	35.9	81.73	81.73	0	0
Industrial	TSF	21.8	1,291.08	1,147.45	(143.63)	(3,131.1)
Mini-Storage/Warehouse	TSF	18.4	196.42	196.42	0	0
Pre-School/Day Care	TSF	55.3	48.05	49.00	.95	52.5
Elementary/Private School	STU	2.5	4999	5,055	56	140
Hospital	Bed	49.8	1031	2,001	970	48,306.0
Nursing/Conv. Home	Bed	7.3	661	68	(593)	(4,328.9)
Church	TSF	13.7	377.78	481.85	104.07	1,425.8
TOTAL						

Exhibit B

FAIR SHARE FEE SUMMARY TABLE			
Fair Share Fee Per Trip-Mile			\$371.47
Land Use	UNIT	Trip-Mile Rate	Fee/Unit
Res-Low (SFD)	DU	27.1	\$10,067
Res-Medium (SFA)	DU	20.4	\$7,578
Apartment	DU	19.4	\$7,207
Elderly Residential	DU	17.7	\$6,575
Mobile Home	DU	14.7	\$5,461
Motel	Room	17.8	\$6,612
Hotel	Room	22.2	\$8,247
Regional Commercial	TSF	43.7	\$16,233
General Commercial	TSF	43.0	\$15,973
Commercial/Recreation	TSF	73.0	\$27,117
Restaurant	TSF	83.6	\$31,055
Fast Food Restaurant	TSF	102.5	\$38,076
Auto Dealer/Sales	TSF	22.7	\$8,432
Yacht Club	TSF	44.7	\$16,605
Health Club	TSF	62.4	\$23,180
Tennis Club	Court	56.9	\$21,137
Marina	Slip	5.4	\$2,006
Theater	Seat	0.6	\$223
Newport Dunes	Acre	45.1	\$16,753
General Office	TSF	42.2	\$15,676
Medical Office	TSF	48.1	\$17,868
R & D	TSF	35.9	\$13,336
Industrial	TSF	21.8	\$8,098
Mini-Storage/Warehouse	TSF	18.4	\$6,835
Pre-School/Day Care	TSF	55.3	\$20,542
Elementary/Private School	TSF	2.5	\$929
Hospital	Bed	49.8	\$18,499
Nursing/Conv. Home	Bed	7.3	\$2,712
Church	TSF	13.7	\$5,089

Exhibit C

FAIR SHARE IMPLEMENTATION RESOLUTION

APPENDIX A

CALIFORNIA CONSTRUCTION COST INDEX

5-YEAR ROLLING AVERAGE EXAMPLE

<u>Year</u>	<u>Year-end Value</u>	<u>Percent Change</u>
2004	268.3	
		24.1
2005	280.6	
		4.5
2006	261.1	
		- 6.9
2007	252.7	
		-3.2
2008	220.5	
		-12.7
<u>2009</u>		
Sum		5.8

5-year average is $5.8/5 = 1.2\%$ per year