

**ORDINANCE NO. 824
(AS AMENDED THROUGH 824.3)
AN ORDINANCE OF THE COUNTY OF RIVERSIDE AMENDING AND SUPERSEDING
ORDINANCE NO. 824 AUTHORIZING PARTICIPATION IN THE WESTERN
RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

The Board of Supervisors of the County of Riverside ordains as follows:

Section 1. Title.

This Ordinance shall be known as the “Western Riverside County Transportation Uniform Mitigation Fee Program Ordinance of 2006” (“Ordinance”).

Section 2. Findings.

A. The County is a Member Agency of the Western Riverside Council of Governments (“WRCOG”), a joint powers agency consisting of the County of Riverside, and the fourteen cities situated in Western Riverside County. Acting in concert, the Member Agencies of WRCOG developed a plan whereby the shortfall in funds needed to enlarge the capacity of the Regional System of Highways and Arterials in Western Riverside County (the “Regional System”) could be made up in part by a Transportation Uniform Mitigation Fee on future residential, commercial and industrial development. A map depicting the boundaries of Western Riverside County and the system is attached hereto as Exhibit “A” and made a part hereof. As a Member Agency of WRCOG, the County participated in the preparation of a certain “Western Riverside County Transportation Uniform Mitigation Fee Nexus Study”, dated October 18, 2002 (“2002 Nexus Study”) prepared pursuant to California Government Code, Section 66000 et seq., the Mitigation Fee Act. Based on this nexus study, the County adopted and implemented an ordinance authorizing its participation in a Transportation Uniform Mitigation Fee Program.

B. WRCOG with the assistance of its member agencies have now prepared an updated “Western Riverside County Transportation Fee Nexus Study” (“Nexus Study”) pursuant to California Government Code Section 66000 et seq., the Mitigation Fee Act, for the purpose of updating the fees imposed by Ordinance No. 824 and 824.1.

C. Consistent with its previous findings made in the adoption of Ordinance 824, the Board of Supervisors has been informed and advised, and hereby finds, that future development within Western Riverside County and the cities therein will result in traffic volumes exceeding the capacity of the Regional System as it presently exists.

D. Consistent with its previous findings made in the adoption of Ordinance 824, the Board of Supervisors has been further informed and advised, and hereby finds, that if the capacity of the Regional System is not enlarged, the result will be substantial traffic congestion in all parts of Western Riverside County, with unacceptable Levels of Service throughout Western Riverside County by 2030.

E. The Board of Supervisors has been further advised, and so finds that funding, in addition to those fees adopted pursuant to the 2002 Nexus Study, will be inadequate to fund construction of the Regional System. Absent an update of the “Transportation Uniform Mitigation Fee” (“TUMF”) based on the Nexus Study, existing and known future funding sources

will be inadequate to provide necessary improvements to the Regional System, resulting in an unacceptably high level of traffic congestion within and around Western Riverside County.

F. The Board of Supervisors has reviewed the Nexus Study, and hereby finds that future development within the County and Cities will substantially adversely affect the Regional System, and that unless such development contributes to the cost of improving the Regional System, the Regional System will operate at unacceptable levels of service.

G. The Board of Supervisors hereby finds and determines that the failure to mitigate growing traffic impacts on the Regional System within Western Riverside County will substantially impair the ability of public safety services (police and fire) to respond. The failure to mitigate impacts on the Regional System will adversely affect the public health, safety and welfare.

H. The Board of Supervisors further finds and determines that there is a reasonable and rational relationship between the use of the TUMF and the type of development projects on which the fees are imposed because the fees will be used to construct the transportation improvements that are necessary for the safety, health and welfare of the residential and non-residential users of the development projects on which the TUMF will be levied.

I. The Board of Supervisors finds and determines that there is a reasonable and rational relationship between the need for the improvements to the Regional System and the type of development projects on which the TUMF is imposed because it will be necessary for the residential and non-residential users of such projects to have access to the Regional System. Such development will benefit from the Regional System improvements and the burden of such development will be mitigated in part by the payment of the TUMF.

J. The Board of Supervisors further finds and determines that the cost estimates set forth in the Nexus Study are reasonable cost estimates for constructing the Regional System improvements, and that the amount of the TUMF expected to be generated by new development will not exceed the total fair share cost to such development.

K. The Board of Supervisors further finds that the cost estimates set forth in the Nexus Study are reasonable cost estimates for the facilities that comprise the Regional System; and that TUMF program revenues to be generated by new development will not exceed the total fair share of these costs.

L. The fees collected pursuant to this Ordinance shall be used to help pay for the construction and acquisition of the Regional System improvements identified in the Nexus Study. The need for the improvements is related to new development because such development results in additional traffic thus creating the demand for the improvements.

M. By notice duly given and published, the Board of Supervisors set the time and place for a public hearing on the Nexus Study and the fee proposed thereunder, and at least ten days prior to the hearing, the County made the Nexus Study available to the public.

N. At the time and place set for the hearing, the Board of Supervisors duly considered that data and information provided by the public relative to the cost of the services for which the

fees are proposed and all other comments, whether written or oral, submitted prior to the conclusion of the hearing.

O. The Board of Supervisors finds that the Nexus Study proposes a fair and equitable method for distributing a portion of the unfunded costs of improvements to the Regional System.

P. The Board of Supervisors hereby adopts the Nexus Study, which Study is attached hereto as Exhibit "B", and incorporates it herein as though set forth in full.

Q. The Board of Supervisors hereby adopts this Ordinance to amend and supersede the provisions of Ordinance No. 824 and Ordinance No. 824.1.

Section 3. Definitions.

For the purpose of this Ordinance, the following words, terms and phrases shall have the following meanings:

- A. **"Class 'A' Office"** means an office building that is typically characterized by high quality design, use of high end building materials, state of the art technology for voice and data, on site support services/maintenance, and often includes full service ancillary uses such as, but not limited to a bank, restaurant/office coffee shop, health club, printing shop, and reserved parking. The minimum requirements of an office building classified as Class 'A' Office shall be as follows: (i) minimum of three stories (exception will be made for March JPA, where height requirements exist); (ii) minimum of 15,000 square feet per floor; (iii) steel frame construction; (iv) central, interior lobby; and (v) access to suites shall be from inside the building unless the building is located in a central business district with major foot traffic, in which case the first floor may be accessed from the street to provide entrances/ exits for commercial uses within the building.
- B. **"Class 'B' Office"** means an office building that is typically characterized by high quality design, use of high end building materials, state of the art technology for voice and data, on site support services/maintenance, and often includes full service ancillary uses such as, but not limited to a bank, restaurant/office coffee shop, health club, printing shop, and reserved parking. The minimum requirements of an office building classified as Class 'B' Office shall be as follows: (i) minimum of two stories; (ii) minimum of 20,000 square feet per floor; (iii) steel frame, concrete or masonry shell construction; (iv) central, interior lobby; and (v) access to suites shall be from inside the building unless the building is located in a central business district with major foot traffic, in which case the first floor may be accessed from the street to provide entrances/exits for commercial uses within the building.
- C. **"Development Project" or "Project"** means any project undertaken for the purpose of development including the issuance of a permit for construction.
- D. **"Gross Acreage"** means the total property area as shown on a land division map of record, or described through a recorded legal description of the property. This area shall be bounded by road rights of way and property lines.

- E. **“Habitable Structure”** means any structure or part thereof where persons reside, congregate or work and which is legally occupied in whole or part in accordance with applicable building codes, and state and local laws.
- F. **“Industrial Project”** means any development project that proposes any industrial or manufacturing use allowed in the following Ordinance No. 348 zoning classifications: I-P, M-S-C, M-M, M-H, M-R, M-R-A, A-1, A-P, A-2, A-D, W-E, or SP with one of the aforementioned zones used as the base zone.
- G. **“Low Income Residential Housing”** means residential units in publicly subsidized projects constructed as housing for low-income households as such households are defined pursuant to section 50079.5 of the Health and Safety Code. “Publicly subsidized projects,” as the term is used herein, shall not include any project or project applicant receiving a tax credit provided by the State of California Franchise Tax Board.
- H. **“Multi Family Residential Unit”** means a development project that has a density of greater than eight (8) residential dwelling units per gross acre.
- I. **“Non-Residential Unit”** means retail commercial, service commercial and industrial development which is designed primarily for non-dwelling use, but shall include hotels and motels.
- J. **“Recognized Financing District”** means a Financing District as defined in the TUMF Administrative Plan as may be amended from time to time.
- K. **“Residential Dwelling Unit”** means a building or portion thereof used by one (1) family and containing but one (1) kitchen, which is designed primarily for residential occupancy including single-family and multi-family dwellings. “Residential Dwelling Unit” shall not include hotels or motels.
- L. **“Retail Commercial Project”** means any development project that proposes any commercial use not defined as a service commercial project allowed in the following Ordinance No. 348 classifications: R-1, R-R, R-R-O, R-1-A, R-A, R-2, R-2-A, R-3, R-3-A, R-T, R-T-R, R-4, R-5, R-6, C-1/C-P, C-T, C-P-S, C-R, C-O, R-V-C, C-V, W-2, R-D, N-A, W-2-M, W-1, or SP with one of the aforementioned zones used as the base zone.
- M. **“Service Commercial Project”** means any development project that is predominately dedicated to business activities associated with professional or administrative services, and typically consists of corporate offices, financial institutions, legal and medical offices.
- N. **“Single Family Residential Unit”** means each residential dwelling unit in a development that has a density of 8 units to the gross acre or less.

Section 4. Establishment of the Transportation Uniform Mitigation Fee.

A. Adoption of TUMF Fee Schedule.

i. There is hereby adopted the following TUMF fee schedule:

- (1) \$10,046.00 per single family residential unit
- (2) \$7,054.00 per multi-family residential unit
- (3) \$2.35 per square foot of an industrial project
- (4) \$12.94 per square foot of a retail commercial project
- (5) \$6.56 per square foot of a service commercial project
- (6) \$2.19 per square foot of a service Class A or B Office

ii. The fees set forth in Section 4.A.i. shall be phased as follows:

From July 1, 2007 to June 30, 2008, the fee schedule shall be as follows

- (1) \$10,046.00 per single family residential unit
- (2) \$7,054.00 per multi-family residential unit
- (3) \$1.84 per square foot of an industrial project
- (4) \$9.99 per square foot of a retail commercial project
- (5) \$5.71 per square foot of a service commercial project
- (6) \$2.19 per square foot of a service Class A or B Office

From July 1, 2008 through June 30, 2009, the fee schedule shall be as follows:

- (1) \$10,046.00 per single family residential unit
- (2) \$7,054.00 per multi-family residential unit
- (3) \$2.09 per square foot of an industrial project
- (4) \$11.46 per square foot of a retail commercial project
- (5) \$6.14 per square foot of a service commercial project
- (6) Class A or B Office TBD

From July 1, 2009, the fee schedule shall be as follows:

- (1) \$10,046.00 per single family residential unit
- (2) \$7,054.00 per multi-family residential unit
- (3) \$2.35 per square foot of an industrial project
- (4) \$12.94 per square foot of a retail commercial project
- (5) \$6.56 per square foot of a service commercial project
- (6) Class A or B Office TBD

B. **Fee Calculation.** The fees shall be calculated according to the calculation methodology set forth in the Fee Calculation Handbook adopted July 14, 2003, as amended from time to time. The following shall be observed for purposes of calculating the fee:

i. For non-residential projects, the fee rate utilized shall be based upon the predominate use of the building or structure identified in the building permit or structure identified in the building permit and as further specified in the TUMF Administrative Plan.

ii. For non-residential projects, the fee shall be calculated on the total square footage of the building or structure identified in the building permit and as further specified in the TUMF Administrative Plan.

C. **Fee Adjustment.** The fee schedule may be periodically reviewed and the amounts adjusted by the WRCOG Executive Committee. By amendment to the Ordinance, the fees may be increased or decreased to reflect changes in actual and estimated costs of the Regional System including, but not limited to, debt service, lease payments and construction costs. The adjustment of the fees may also reflect changes in the facilities required to be constructed, in estimated revenues received pursuant to this Ordinance, as well as the availability or lack thereof of other funds with which to construct the Regional System. WRCOG shall review the TUMF program no less than every four (4) years after the effective date of this Ordinance.

D. **Purpose.** The purpose of the TUMF is to fund those certain improvements to the Regional System depicted on Exhibit "A" and identified in the Nexus Study, Exhibit "B".

E. **Applicability.** The TUMF shall apply to all new development within the WRCOG Boundary of County, as identified by Exhibit "C", unless otherwise exempt hereunder.

- F. **Exemptions.** The following new development shall be exempt from the TUMF:
- i. Low income residential housing.
 - ii. Government/public buildings, public schools and public facilities.
 - iii. The rehabilitation and/or reconstruction of any habitable structure in use on or after January 1, 2000 provided that the same or fewer traffic trips are generated as a result thereof.
 - iv. Development Projects which are the subject of a Public Facilities Development Agreement entered into pursuant to Government Code, Section 65864 et seq. prior to the effective date of Ordinance 824, wherein the imposition of new fees are expressly prohibited provided that if the term of such a Development Agreement is extended by amendment or by any other manner after the effective date of Ordinance 824, the TUMF shall be imposed.
 - v. Guest Dwellings, as defined in Section 21.31 of Ordinance No. 348.
 - vi. Additional single family residential units located on the same parcel pursuant to the provisions of any agricultural zoning classifications set forth in Ordinance No. 348.
 - vii. Kennels and Catteries established in connection with an existing single family residential unit and as defined in Sections 21.20 and 21.40a or Ordinance No. 348.
 - viii. Detached Second Units pursuant to Section 18.28a of Riverside County Ordinance No. 348 and Attached Second Units pursuant to Section 18.28b of Ordinance No. 348.
 - ix. The sanctuary building of a church or other house of worship, eligible for a property tax exemption.
 - x. Any nonprofit corporation or nonprofit organization offering and conducting full-time day school at the elementary, middle school or high school level for students between the ages of five and eighteen years.

G. **Credit.** Regional System improvements may be credited toward the TUMF in accordance with the TUMF Administrative Plan and the following:

Regional Tier

- i. **Arterial Credits:** If a developer constructs arterial improvements identified on the Regional System, the developer shall receive credit for all costs associated with the arterial component based on approved unit cost assumptions for the Regional

System. WRCOG staff must pre-approve any credit agreements that deviate from the standard WRCOG approved format.

ii. **Other Credits:** In special circumstances, when a developer constructs off-site improvements such as an interchange, bridge, or railroad grade separation, credits shall be determined by WRCOG and the County in consultation with the developer. All such credits must have prior written approval from WRCOG.

iii. The amount of the development fee credit shall not exceed the maximum amount determined by the most current unit cost assumptions for the Regional System or actual costs, whichever is less.

Local Tier

i. The local jurisdictions shall compare facilities in local fee programs against the Regional System and eliminate any overlap in its local fee program except where there is a Recognized Financing District has been established.

ii. If there is a Recognized Financing District established, the local agency may credit that portion of the facility identified in both programs against the TUMF in accordance with the TUMF Administrative Plan.

Section 5. Reimbursements.

Should the developer construct Regional System improvements in excess of the TUMF fee obligation, the developer may be reimbursed based on actual costs or the approved unit cost assumptions, whichever is less. Reimbursements shall be enacted through a three party agreement including the developer, WRCOG, and the County, contingent on funds being available. In all cases, however, reimbursements under such special agreements must coincide with construction of the transportation improvements as scheduled in the five-year Capital Improvements Program adopted annually by WRCOG.

Section 6. Procedures for the Levy, Collection and Disposition of Fees.

A. **Authority of the Building Department.** The Director of Building & Safety, or his/her designee, is hereby authorized to levy and collect the TUMF and make all determinations required by this Ordinance.

B. **Payment.** Payment of the fees shall be as follows:

i. The fees shall be paid at the time a certificate of occupancy is issued for the Development Project or upon final inspection, whichever comes first (the "Payment Date"). However this section should not be construed to prevent payment of the Fees prior to issuance of an occupancy permit or final inspection. Fees may be paid at the time application is made for a building permit, and the fee payment shall be calculated based on the fee in effect at that time, provided the developer tenders the full amount of his/her TUMF obligation. If the developer makes only a partial payment prior to the Payment Date, the amount of the fee due shall be based on the TUMF fee schedule in place on the Payment Date. The fees shall be calculated according to fee schedule set forth in the Ordinance and the calculation methodology set forth in the Fee Calculation Handbook adopted July 14, 2003, as amended from time to time.

ii. The fees required to be paid shall be the fee amounts in effect at the time of payment is due under this Ordinance, not the date the Ordinance is initially adopted. The County shall not enter into a development agreement which freezes future adjustments of the TUMF.

iii. If all or part of any development project is sold prior to payment of the fee, the property shall continue to be subject to the requirement for payment of the fee. The obligation to pay the fee shall run with the land and be binding on all the successors in interest to the property.

iv. Fees shall not be waived.

C. **Disposition of Fees.** All fees collected hereunder shall be transmitted to the Executive Director of WRCOG within thirty days for deposit, investment, accounting and expenditure in accordance with the provisions of this Ordinance and the Mitigation Fee Act.

D. **Appeals.** Appeals shall be filed with WRCOG in accordance with the provisions of the TUMF Administrative Plan. Appealable issues shall be the application of the fee, application of credits, application of reimbursement, application of the legal action stay and application of exemption.

E. **Reports to WRCOG.** The Director of Building and Safety, or his/her designee, shall prepare and deliver to the Executive Director of WRCOG, periodic reports as will be established under Section 7 of this Ordinance.

Section 7. Appointment of the TUMF Administrator.

WRCOG is hereby appointed as the Administrator of the Transportation Uniform Mitigation Fee Program. WRCOG is hereby authorized to receive all fees generated from the TUMF within the County, and to invest, account for and expend such fees in accordance with the provisions of this Ordinance and the Mitigation Fee Act. The detailed administrative procedures concerning the implementation of this Ordinance shall be contained in the TUMF Administrative Plan adopted May 5, 2003 and as may be amended from time to time. Furthermore, the TUMF Administrator shall use the Fee Calculation Handbook adopted July 14, 2003, as amended from time to time, for the purpose of calculating a developer's TUMF obligation. In addition to detailing the methodology for calculating all TUMF obligations of different categories of new development, the purpose of the Fee Calculation Handbook is to clarify for the TUMF Administrator, where necessary, the definition and calculation methodology for uses not clearly defined in the respective TUMF ordinances.

WRCOG shall expend only that amount of the funds generated from the TUMF for staff support, audit, administrative expenses, and contract services that are necessary and reasonable to carry out its responsibilities and in no case shall the funds expended for salaries and benefits exceed one percent (1%) of the annual net amount of revenue raised by the TUMF. The TUMF Administrative Plan further outlines the fiscal responsibilities and limitations of the Administrator.

Section 8. Severability.

If any one or more of the terms, provisions or sections of this Ordinance shall to any extent be judged invalid, unenforceable and/or voidable for any reason whatsoever by a court of competent jurisdiction, then each and all of the remaining terms, provisions and sections of this Ordinance shall not be affected thereby and shall be valid and enforceable.

Section 9. Judicial Review.

In accordance with State law, any judicial action or proceeding to attack, review, set aside, void or annul this Ordinance shall be commenced within 90 days of the date of adoption of this Ordinance.

Section 10. Ordinance 824.

This Ordinance supersedes the provisions of Ordinance 824 and Ordinance 824.1 provided this Ordinance is not declared invalid or unenforceable by a court of competent jurisdiction. If, for whatever reason, this Ordinance is declared invalid or unenforceable by a court of competent jurisdiction, Ordinance 824, 824.1, and all other related ordinances and polices shall remain in full force and effect.

Section 11. Effective Date.

This Ordinance shall become effective July 2, 2007.

Adopted: 824 Item 3.55 of 12/10/2002 (Eff: 02/08/2003)

Amended: 824.1 Item 9.2 of 12/21/2004 (Eff: 03/01/2005)

824.2 Item 16.3 of 05/02/2006 (Eff: 07/03/2006)

824.3 Item 15.7 of 05/01/2007 (Eff: 07/02/2007)