

**ORDINANCE NO. 824
(AS AMENDED THROUGH 824.12)
AN ORDINANCE OF THE COUNTY OF RIVERSIDE
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 2012” (“Ordinance”).

Section 2. FINDINGS. The Board of Supervisors finds that:

- a. The County, as a member agency of the Western Riverside Council of Governments (“WRCOG”), a joint powers agency comprised of the County of Riverside and sixteen (16) cities located in Western Riverside County, must act in concert with the WRCOG Member Agencies to develop and update a plan whereby the shortfall in funds needed to enlarge the capacity of the Regional System of Highways and Arterials in Western Riverside County (“Regional System”), depicted in Exhibit “A”, attached hereto and by this reference incorporated herein, could be made up in part by a Transportation Uniform Mitigation Fee (“TUMF”) on future residential, commercial and industrial development.
- b. WRCOG prepared a certain “Western Riverside County Transportation Uniform Fee Nexus Study,” dated October 18, 2002 (“2002 Nexus Study”) in compliance with the Mitigation Fee Act (Gov. Code §§ 66000 *et seq.*); whereby the County adopted and implemented an ordinance, based on the 2002 Nexus Study, authorizing the County’s participation in the TUMF Program.
- c. As a TUMF Participating Jurisdiction, the County must follow the recommendation made by the WRCOG Executive Committee and amend its TUMF ordinance, based on the new nexus study entitled “Transportation Uniform Mitigation Fee Nexus Study: 2009 Update” (“2009 Nexus Study”) to reflect changes in the TUMF network and the cost of construction in order to update, among other things, the TUMF Program Fee schedules.
- d. It has considered the 2009 Nexus Study, including its Addendum regarding temporary fee reduction, and its findings in adopting this ordinance.
- e. Continuation of a TUMF Program is essential because if the capacity of the Regional System is not enlarged and unless development contributes to the cost of improving the Regional System, the result will be substantial traffic congestion in all parts of Western Riverside County, with unacceptable Levels of Service. Furthermore, the failure to mitigate growing traffic impacts on the Regional System will substantially impair the ability of public safety services (police and fire) to respond and, thus, adversely affect the public health, safety and welfare.
- f. 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 in which the TUMF will be levied.

- g. 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 developments will be mitigated in part by payment of the TUMF.
- h. The cost estimates set forth in the new 2009 Nexus Study are reasonable cost estimates for constructing the Regional System improvements and the facilities that compromise the Regional System, 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.
- i. The impact of an economic recession on development and the construction sector in Western Riverside County, as indicated in the Addendum to the 2009 Nexus Study, has been substantial and a temporary fifty percent (50%) reduction in TUMF through December 31, 2010 will encourage economic development by reducing the overall cost of development. An adjustment of the entire TUMF Program will also assure that each development continues to contribute a fair share of the total Program costs.
- j. A minor decrease in TUMF revenues will not have a material effect on the ability to fulfill the purposes of the TUMF Program or the ability to make the findings recited herein pursuant to the Mitigation Fee Act.
- k. The Fees collected pursuant to this ordinance shall be used to help pay for the design, planning, construction of and real acquisition for the Regional System improvements and its facilities as identified in the 2009 Nexus Study. The need for the improvements and facilities is related to new development because such development results in additional traffic and creates the demand for the improvements.

Section 3. PURPOSE. The purpose of this ordinance is to authorize the County's participation in the TUMF Program which establishes and sets forth policies, regulations, and authorized uses of fees collected relating to the funding for the construction of improvements and facilities to enlarge the capacity of the Regional System of Highways and Arterials in Western Riverside County necessary to address the direct and cumulative environmental effects generated by new development projects described and defined in this ordinance.

Section 4. AUTHORITY. This ordinance is established under the authority of Article 11, Section 7 of the California Constitution and Title 7, Division 1, Chapter 5 of the Government Code, beginning with Section 66000 et seq., which provides that a local agency may establish fees for the purpose of defraying all or a portion of the cost of public facilities related to development projects.

Section 5. DEFINITIONS. As used in this ordinance, the following terms shall have the following meanings:

- a. Area Plan. The area plan as it is depicted in Exhibit "B" and noted as the unincorporated areas of Riverside County as referenced and attached to this ordinance.

- b. Board of Supervisors or Board. The Board of Supervisors of the County of Riverside.
- c. Class "A" Office. 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: (1) minimum of three stories (exception will be made for March JPA, where height requirements exist); (2) minimum of 10,000 square feet per floor; (3) steel frame construction; (4) central, interior lobby; and (5) 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.
- d. Class "B" Office. 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: (1) minimum of two stories; (2) minimum of 15,000 square feet per floor; (3) steel frame, concrete or masonry shell construction; (4) central, interior lobby; and (5) 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.
- e. County. The County of Riverside.
- f. Development Project or Project. Any project undertaking for the purposes of development including the issuance of a permit for construction.
- g. Gross Acreage. The total property area as shown on a land division of a 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.
- h. Habitable Structure. 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.
- i. Industrial Project. 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.
- j. Lower Income Residential Housing. Residential units in publicly subsidized projects constructed as housing for lower 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.
- k. Multi Family Residential Unit. A development project that has a density of greater than eight (8) residential dwelling units per gross acre.
- l. Non-Residential Unit. A retail commercial, service commercial and industrial

- development which is designed primarily for non-dwelling use, but shall include hotels and motels.
- m. Recognized Financing District. A Financing District as defined in the TUMF Administrative Plan as may be amended from time to time.
 - n. Residential Dwelling Unit. 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.
 - o. Retail Commercial Project. Any development project that proposes any commercial use which does not fall within the definition of a service commercial project as it is defined within this ordinance that are 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.
 - p. Service Commercial Project. 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, except any development project which falls under the definitions of a Class "A" or Class "B" Office defined above.
 - q. Single Family Residential Unit. Each residential dwelling unit in a development that has a density of eight (8) units to the gross acre or less.
 - r. Transportation Uniform Mitigation Fees or TUMF or Fees. The Fees imposed pursuant to the provisions of Ordinance No. 824.
 - s. TUMF Participating Jurisdiction. A jurisdiction in Western Riverside County which has adopted and implemented an ordinance authorizing participation in the TUMF Program and complies with all regulations established in the TUMF Administrative Plan, as adopted and amended from time to time by the WRCOG.
 - t. TUMF Program. The Process of collecting and expending Transportation Uniform Mitigation Fees.

Section 6. TRANSPORTATION UNIFORM MITIGATION FEE. The following fees collected pursuant to this ordinance shall provide revenue to pay for the design, planning, construction of and real property acquisition for the Regional System improvements and its facilities as identified in the 2009 Nexus Study. The Transportation Uniform Mitigation Fees shall be paid for each residential unit, development project or a portion thereof to be constructed, in the amounts specified for each category as defined herein and shown below commencing on the effective date of this ordinance:

- a. Adoption of TUMF Schedule. The following TUMF schedule is hereby adopted:
 - 1) \$8,873.00 per single family residential unit
 - 2) \$6,231.00 per multi-family residential unit
 - 3) \$ 1.73 per square foot of an industrial project
 - 4) \$ 10.49 per square foot of a retail commercial project
 - 5) \$ 4.19 per square foot of a service commercial project
 - 6) \$ 2.19 per square foot of a service Class A and B Office
- b. Fee Calculation. The fees shall be calculated according to the calculation methodology fee 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:

- 1) For non-residential projects, the fee rate utilized shall be based upon the predominant use of the building or structure identified in the building permit and as further specified in the TUMF Administrative Plan.
- 2) 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 the 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. Applicability. The TUMF, including during the temporary reduction period, shall apply to all new development within the WRCOG Boundary of County, as identified by Exhibit "B", attached hereto and by this reference incorporated herein, unless otherwise exempt hereunder.

Section 7. TEMPORARY FEE REDUCTION PERIOD. Pursuant to the fee adjustment authority set forth in Section 6.c. and notwithstanding Section 6.a., or any other provision of this ordinance, the following TUMF fee schedule shall apply:

- a. Temporary Fee Schedule.
 - 1) \$4,437.00 per single-family residential unit
 - 2) \$3,115.00 per multi-family residential unit
 - 3) \$ 0.86 per square foot of an industrial project
 - 4) \$ 5.24 per square foot of a retail commercial project
 - 5) \$ 2.10 per square foot of a service commercial project
 - 6) \$ 1.10 per square foot of a service Class A and B Office
- b. Application. The temporary fee reduction described in this section shall not apply to or affect fees owed under any development agreement or other contractual arrangement in effect on or before the effective date of Ordinance No. 824.12. If reduced fees are paid pursuant to this section at the issuance of a building permit and either the building permit or the application there for expires, subsequent building permit applications on the same parcel shall be subject to the full TUMF amount, unless the temporary fee reduction is still in effect at the time of the subsequent application
- c. Effect. No provision of this section shall entitle any person who has already paid the Transportation Uniform Mitigation Fees to receive a refund, credit or reimbursement of such payment. This section only effects a temporary change in the County's Transportation Uniform Mitigation Fees.
- d. Expiration. As of December 31, 2012, this section is repealed without further action by the Board of Supervisors, unless the Board of Supervisors repeals or modifies this section prior

to that date. The repeal of this section shall not affect the validity of actions taken or Transportation Uniform Mitigation Fees paid under the authority of this section.

Section 8. EXEMPTIONS. The following types of new development shall be exempt from the provisions of this ordinance:

- a. Lower income residential housing.
- b. Government/public buildings, public schools and public facilities.
- c. 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.
- d. Development Projects which are the subject of a Public Facilities Development Agreement (“Development Agreement”) entered into pursuant to Government Code section 65864 *et seq*, prior to the effective date of Ordinance No. 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 No. 824, the TUMF shall be imposed.
- e. Guest Dwellings, as defined in Section 21.31 of Ordinance No. 348.
- f. 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.
- g. Kennels and Catteries established in connection with an existing single family residential unit and as defined in Sections 21.40a and 21.20 of Ordinance No. 348.
- h. Detached Second Units pursuant to Section 18.28a of Ordinance No. 348.
- i. The sanctuary building of a church or other house of worship, eligible for a property tax exemption.
- j. 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.

Section 9. CREDIT. Regional System improvements may be credited toward the TUMF in accordance with the TUMF Administrative Plan and the following:

- a. Regional Tier.
 - 1) Arterial Credits. If a developer constructs arterial improvements identified in the Regional System, the developer shall receive credit for all costs associated with the arterial component based on approved the Nexus Study for the Regional System effective at the time the parties enter the credit agreement. WRCOG staff must pre-approve any credit agreements that deviate from the standard WRCOG approved format.
 - 2) 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 by WRCOG.
 - 3) The amount of the Fee credit shall not exceed the maximum amount determined by the 2009 Nexus Study for the Regional System at the time the credit agreement is entered into or actual costs, whichever is less.
- b. Local Tier.

- 1) 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.
- 2) 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 10. REIMBURSEMENTS. Should the developer construct Regional System improvements in excess of the TUMF obligation, the developer may be reimbursed based on actual costs or the approved Nexus Study, including Addendum 1, effective at the time the agreement was entered into, whichever is less. Reimbursements shall be enacted through an agreement between the developer and the County, contingent on funds being available and approved by WRCOG. 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 11. 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:
 - 1) 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 ("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 issuance of 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 pursuant to a WRCOG-Developer Deferral Agreement prior to the Payment Date, the amount of the fee due shall be based on the TUMF 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.
 - 2) 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.
 - 3) 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.
 - 4) Fees shall not be waived.
- c. Disposition of Fees. All fees collected hereunder shall be transmitted to the Executive Director of WRCOG within thirty (30) 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 12. of this ordinance.

Section 12. 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 otherwise clearly defined in the ordinance. 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 revenue raised by the TUMF Program. The TUMF Administrative Plan further outlines the fiscal responsibilities and limitations of the Administrator.

Section 13. VIOLATIONS AND PENALTIES. A violation of any provision of this ordinance is an infraction as hereinafter specified. A person is guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this ordinance is committed or continued. Any violation of this ordinance may be prosecuted by county authorities in the name of the people of the State of California, or redressed by civil action. Every violation determined to be an infraction is punishable by (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding two hundred dollars (\$200) for a second violation within one year; (3) a fine not exceeding five hundred dollars (\$500) for each additional violation within one year. The penalties herein are in addition to any other remedies provided by law and the payment of any penalty herein shall not relieve a person of the obligation to correct the violation.

Section 14. SEVERABILITY. If any of the terms, provisions or sections of this ordinance or the application thereof to any person or circumstances shall to any extent be judged invalid, unenforceable and/or voidable for any reason whatsoever by a court of competent jurisdiction, such invalidity or determination shall not affect the other

provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

Section 15. 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 ninety (90) days of the date of adoption of this ordinance.

Section 16. SUPERSESSION OF OTHER FEES. The Fees established by this ordinance shall supersede and replace those fees previously established and applicable under Riverside County Ordinance No. 824 and shall apply to the issuance of any development permit or entitlement made on and after the date that this ordinance takes effect.

Section 17. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its adoption.

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)

824.4 Item 15.2 of 05/20/2008 (Eff: 07/19/2008)

824.5 Item 3.79 of 07/01/2008 (Eff: 07/01/2008)

824.6 Item 16.3 of 04/28/2009 (Eff: 06/27/2009)

824.7 Item 3.33 of 12/1/09 (Eff: 12/31/2009) (Except that Section 6. subsection a.(4) shall take effect sixty (60) days after its adoption.) (Eff: 01/31/2010)

824.8 Item 3.70 of 12/14/2010 (Eff: immediately)

824.9 Item 3.81 of 01/11/2011 (Eff: immediately)

824.10 Item 3.27 of 01/25/2011 (Eff: 02/24/2011)

824.11 Item 3.42 of 02/08/2011 (Eff: immediately)

824.12 Item 3.18 of 11/22/2011 (Eff: 12/22/2011)

EXHIBIT "A"

MAP OF WESTERN RIVERSIDE COUNTY & REGIONAL SYSTEM

EXHIBIT "B"

WRCOG BOUNDARY OF COUNTY