

**ORDINANCE NO. 824
(AS AMENDED THROUGH 824.16)
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 2017” (“Ordinance”).

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

- A. The County is a member agency of the Western Riverside Council of Governments (“WRCOG”), a joint powers agency comprised of the County of Riverside and eighteen (18) cities located in Western Riverside County. Acting in concert, the WRCOG Member Agencies 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”), 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. As a Member Agency of WRCOG and as a TUMF Participating Jurisdiction, the County participated in the preparation of a certain “Western Riverside County Transportation Uniform Fee Nexus Study,” dated October 18, 2002 (the “2002 Nexus Study”) prepared in compliance with the Mitigation Fee Act (Gov. Code §§ 66000 *et seq.*) and adopted by the WRCOG Executive Committee. Based on the 2002 Nexus Study, the County adopted and implemented an ordinance authorizing the County’s participation in a TUMF Program.
- B. WRCOG, with the assistance of TUMF Participating Jurisdictions, has prepared an updated nexus study entitled “Transportation Uniform Mitigation Fee Nexus Study: 2016 Update” (“2016 Nexus Study”) in compliance with the Mitigation Fee Act (Gov. Code § § 66000 *et seq.*), for the purpose of updating the fees. On July 10, 2017, the WRCOG Executive Committee reviewed the 2016 Nexus Study and TUMF Program and recommended TUMF Participating Jurisdictions amend their applicable TUMF ordinances to reflect changes in the TUMF network and the cost of construction in order to update 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.
- D. The County has considered the 2016 Nexus Study 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 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 2016 Nexus Study are reasonable cost estimates for constructing the Regional System improvements and the facilities that comprise the Regional System, and 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 fees collected pursuant to this ordinance shall be used to help pay for the design, planning, construction of, and real property acquisition for the Regional System improvements and its facilities as identified in the 2016 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 necessary to address the direct and cumulative environmental effects generated by new development projects described and defined in this ordinance. The purpose of the TUMF is to fund those certain improvements to the Regional System as depicted in Exhibit "A" and identified in the 2016 Nexus Study.

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

California 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 words, terms and phrases shall have the following meanings:

- A. Board of Supervisors or Board. The Board of Supervisors of the County of Riverside.
- B. 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, onsite 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 requirements of an office building classified as Class "A" Office shall be as follows:
 - 1. Minimum of three stories (exception will be made for the March Joint Powers Authority, 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.
- C. 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, onsite 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 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.
- D. Development Project or Project. Any project undertaken for the purposes of development, including the issuance of a permit for construction.
- E. Disabled Veteran. Any veteran who is retired or is in process of medical retirement from military service who is, or was, severely

injured in a theatre of combat operations and has received a letter of eligibility for the Veterans Administration Specially Adapted Housing (SAH) Grant Program.

- F. Government/Public Buildings, Public Schools, and Public Facilities. Any facilities owned and operated by a government entity. A new development that is subject to a long-term lease with a government agency for government/public buildings, public schools, and public facilities shall apply only if all of the following conditions are met:
1. The new development being constructed is subject to a long-term lease with a government agency;
 2. The project shall have a deed restriction placed on the property that limits the use to government/public facility for the term of the lease, including all extension options, for a period of not less than 20 years. Any change in the use of the facility from government shall trigger the payment of the TUMF in effect at the time of the change is made;
 3. No less than ninety percent of the total square footage of the building is leased to the government agency during the term of the deed restriction and any extensions thereof;
 4. The new development is constructed at prevailing wage rates;
 5. A copy of the lease is provided to the County of Riverside and to WRCOG; and
 6. The intent of the lease is to provide for a long-term government use, and not to evade payment of TUMF.
- 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-SC, 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. Long-Term Lease. A lease with a term of no less than twenty years.
- K. Low Income Residential Housing. Residential units consisting of rental housing units or for-sale housing units made available, rented and restricted, or sold to "lower income households" (as defined in Health and Safety Code Section 50079.5). The following conditions must be met for this definition to apply:
1. Rental housing units shall be made available, rented, and restricted to lower income households at an "affordable rent" (as defined in Health and Safety Code Section 50053) for a

- period of at least fifty-five (55) years after the issuance of a certificate of occupancy for new residential development; and
2. For-sale housing units shall be sold to “persons or families of low or moderate income” (as defined in Health and Safety Code Section 50093) at a purchase price that will not cause the purchaser’s monthly housing cost to exceed “affordable housing cost” (as defined in Health and Safety Code Section 50052.5). For-sale housing units shall be restricted to ownership by persons and families of low or moderate income for at least forty-five (45) years after the issuance of a certificate of occupancy for the new residential development.
- L. Mixed-Use Development. As used in the TUMF Program, means developments with the following criteria: (1) three or more significant revenue-producing uses, and (2) significant physical and functional integration of project components.
 - M. Multi-Family Residential Unit. A “multiple family dwelling” as defined in Section 21.30. of Ordinance No. 348, in a development that has a density of greater than eight (8) residential dwelling units per gross acre.
 - N. Non-Profit Organization. An organization operated exclusively for exempt purposes set forth in section 501(c)(3) of the Internal Revenue Code.
 - O. Non-Residential Unit. A retail commercial, service commercial and industrial development that is designed primarily for non-dwelling use, but shall include hotels and motels.
 - P. Recognized Financing District. A Financing District as defined in the TUMF Administrative Plan as may be amended from time to time.
 - Q. 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.
 - R. Retail Commercial Project. Any development project that proposes any retail commercial activity use that is not defined as a service commercial project and is allowed in the following Ordinance No. 348 classifications: R-1, R-R, R-R-O, R-1A, R-A, R-2, R-2A, R-3, R-3A, 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-VC, 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. A Retail Commercial Project can include any eating/dining facility located on the retail commercial development premises.
 - S. 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, eating/dining facilities, and other uses related to personal or professional services.

- T. Single Family Residential Unit. A “one family dwelling” as defined in Section 21.29. of Ordinance No. 348, in a development that has a density of eight (8) units to the gross acre or less.
- U. TUMF Administrative Plan. TUMF Administration Plan adopted by the WRCOG Executive Committee on May 5, 2003, as amended, setting forth detailed administration procedures and requirements for the TUMF program.
- V. TUMF Participating Jurisdiction. A jurisdiction in Western Riverside County that 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 WRCOG.

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 2016 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 Fee Schedule. The following TUMF fee schedule is hereby adopted:

- (1) \$9,810.00 per Single Family Residential Unit
- (2) \$6,389.00 per Multi-Family Residential Unit
- (3) \$1.81 per square foot of an Industrial Project
- (4) \$7.50 per square foot of a Retail Commercial Project
- (5) \$4.75 per square foot of a Service Commercial Project
- (6) \$2.19 per square foot of a Class A Office
- (7) \$2.19 per square foot of a Class B Office

For Single-Family Residential projects, the fees set forth in Section 6.A. shall be phased in as follows:

From July 1, 2020 to December 31, 2020, the fee schedule shall be as follows:

- (1) \$9,478.00 per Single Family Residential Unit
- (2) \$6,389.00 per Multi-Family Residential Unit
- (3) \$1.81 per square foot of an Industrial Project
- (4) \$7.50 per square foot of a Retail Commercial Project
- (5) \$4.75 per square foot of a Service Commercial Project
- (6) \$2.19 per square foot of a Class A Office
- (7) \$2.19 per square foot of a Class B Office

B. Fee Calculation. The fees shall be calculated according to the calculation methodology fee set forth in the WRCOG TUMF Fee Calculation Handbook adopted July 14, 2003, as amended from time to time. In addition to data in the Fee Calculation Handbook, WRCOG Staff and the County may consider the following items when establishing the appropriate fee calculation methodology:

- 1. Underlying zoning of the site

2. Land-use classifications in the latest Nexus Study
3. Project-specific traffic studies
4. Latest standardized reference manuals such as the Institute of Traffic Engineers Trip Generation Manual
5. Previous TUMF calculations for similar uses

Prior to execution, the County shall transmit all draft credit/reimbursement agreements to WRCOG staff for review and comment. The County retains the discretion and authority to approve or deny all credit/reimbursement agreements under this ordinance.

The County shall determine the appropriate methodology to calculate the fee based upon the items identified in this section and the WRCOG TUMF Fee Calculation Handbook, subject to annual auditing procedures by WRCOG as provided in the Joint Powers Agreement of the Western Riverside Council of Governments and 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 this 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 shall apply to all new development within the County, unless otherwise exempt under this ordinance.

- E. Exemptions. The following types of new development shall be exempt from the provisions of this ordinance and the TUMF Administrative Plan:

1. Low Income Residential Housing as defined in Section 5.K. of this ordinance.
2. Government/Public Buildings, Public Schools, and Public Facilities as defined in Section 5.F. of this ordinance.
3. Public use airports appropriately permitted by the California Department of Transportation or other state agency.
4. Development Projects that are the subject of a Public Facilities Development Agreement entered into pursuant to Government Code section 65864 *et seq*, prior to February 8, 2003, 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 February 8, 2003, the TUMF shall be imposed.
5. 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.

6. Guest Quarters as defined in Section 21.35.a. of Ordinance No. 348 and pursuant to Section 18.18.d. of Ordinance No. 348.
 7. Second Units pursuant to Section 18.18.f. of Ordinance No. 348.
 8. Kennels and Catteries established in connection with an existing single family residential unit and as defined in Sections 21.40.a. and 21.20., respectively, of Ordinance No. 348.
 9. The sanctuary building of a church, temple or other house of worship, that is not revenue-generating and is eligible for a property tax exemption. This exemption excludes revenue-generating uses such as, but not limited to, concert venues, coffee or snack shops, book stores and for-profit day-care centers.
 10. Any non-profit, full-time day school at the elementary, middle school or high school level for students between the ages of five (5) and eighteen (18) years.
 11. New Single Family Residential Units constructed by Non-Profit Organizations, as defined in Sections 5.T. and 5.K., respectively, of this ordinance, specially adapted and designed for maximum freedom of movement and independent living for qualified Disabled Veterans, as defined in Section 5.E. of this ordinance.
 12. Other uses may be exempt as determined by the WRCOG Executive Committee as further defined in the TUMF Administrative Plan.
- F. Credit. Regional System improvements may be credited toward the TUMF in accordance with the TUMF Administrative Plan and the following:
1. 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 the approved Nexus Study for the Regional System effective at the time the credit agreement is entered into. 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 Nexus Study for the Regional System at the time the credit agreement is entered into or actual costs, whichever is less.
- 2. Local Tier
 - i. The County shall compare facilities in local fee programs against the Regional System and eliminate any overlap in its local fee program except where a Recognized Financing District has been established.
 - ii. If there is a Recognized Financing District established, the County may credit that portion of the facility identified in both programs against the TUMF in accordance with the TUMF Administrative Plan.

Section 7. 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 Nexus Study 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 Zone Transportation Improvement Program adopted annually by WRCOG.

Section 8. PROCEDURES FOR THE LEVY, COLLECTION AND DISPOSITION OF FEES.

- A. Authority of the Transportation and Land Management Agency. The Director of the Transportation and Land Management Agency, or designee, is hereby authorized to levy and collect the TUMF and make all determinations required by this ordinance in a manner consistent with the TUMF Administrative Plan.
- 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 (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 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 the 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 the fee schedule set forth in this 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 payment is due under this ordinance, not the date the ordinance is initially adopted. The County shall not enter into a development agreement that 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 along with a corresponding Remittance Report by the tenth (10) day of the close of the month for the previous month in which the fees were collected for deposit, investment, accounting and expenditure in accordance with the provisions of this ordinance, TUMF Administrative Plan, 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 the Transportation and Land Management Agency, or designee, shall prepare and deliver to the Executive Director of WRCOG, periodic reports as will be established under Section 9 of this ordinance.

Section 9. 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. 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 revenue raised by the TUMF Program. The TUMF Administrative Plan further outlines the fiscal responsibilities and limitations of the Administrator.

Section 10. TOLLING. County hereby agrees to the tolling, for a period of three (3) years from the completion of the fiscal year in which monthly remittances are or should have been made under this ordinance, or any statute of limitations for the commencement of legal action and any requirement for the prior submission of claims, as provided under state or local law, that is applicable to WRCOG's collection of TUMF Program Fees as required under the TUMF Administrative Plan.

Section 11. EFFECT. No provisions of this Ordinance shall entitle any person who has already paid the TUMF to receive a refund, credit or reimbursement of such payment.

Section 12. SEVERABILITY. If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity 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. If this ordinance is declared invalid or unenforceable in its entirety by a court of competent jurisdiction, Ordinance No. 824, as adopted through July 15, 2014, shall remain in full force and effect.

Section 13. 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 14. SUPERSESSON 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 15. EFFECTIVE DATE. This ordinance shall take effect sixty (60) days after its adoption.

Adopted: 824.16 Item 19.5 of 06/09/2020 (Eff: 08/08/2020)