

ORDINANCE NUMBER 1263

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AMENDING AND UPDATING THE CITY'S EXISTING ORDINANCE REGARDING PARTICIPATION IN THE WESTERN RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) PROGRAM AND ADOPT A TEMPORARY TUMF REDUCTION

The City Council of the City of Perris “(City)” ordains as follows:

Section 1. Title.

This Ordinance shall be known as the “Western Riverside County Transportation Uniform Mitigation Fee Program Ordinance of 2009” (“Ordinance”).

Section 2. Findings.

A. The City is a member agency of the Western Riverside Council of Governments (“WRCOG”), a joint powers agency comprised of the County of Riverside and 16 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”) could be made up in part by a Transportation Uniform Mitigation Fee (“TUMF”) on future residential, commercial and industrial development. A map depicting the boundaries of Western Riverside County and the Regional System is attached here as Exhibit “A” and incorporated herein. As a Member Agency of WRCOG and as a TUMF Participating Jurisdiction, the City 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 City adopted and implemented an ordinance authorizing the City’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: 2009 Update” (“2009 Nexus Study”) pursuant to California Government Code sections 66000 *et seq.* (the Mitigation Fee Act), for the purpose of updating the fees. On September 14 and October 5, 2009, the WRCOG Executive Committee reviewed the 2009 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. Consistent with its previous findings made in the adoption of Ordinance No. 1114 dated April 8, 2003, and Ordinance No. 1186 dated April 25, 2006, the City Council has been informed and advised, and hereby finds, that 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. Therefore, continuation of a TUMF Program is essential.

D. However, the City Council realizes 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, attached and incorporated as part of the 2009 Nexus Study in Exhibit "B." The City Council finds that a temporarily fifty percent (50%) reduction in TUMF fees through December 31, 2010 will encourage economic development by reducing the overall cost of development. The same adjustment of the entire TUMF Program will also assure that each development continues to contribute a fair share of the total Program costs without unduly burdening later projects to make up the TUMF revenues that would be effectively forfeited during the temporary reduction period. The City Council further finds that the resulting 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.

E. The City Council 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 in which the TUMF will be levied.

F. The City Council 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 developments will be mitigated in part by payment of the TUMF.

G. The City Council finds and determines that 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.

H. 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.

I. By notice duly given and published, the City Council set the time and place for a public hearing on the 2009 Nexus Study and the fees proposed thereunder, and at least ten (10) days prior to this hearing, the City Council made the 2009 Nexus Study available to the public.

J. At the time and place set for the hearing, the City Council duly considered data and information provided by the public relative to the cost of the improvements and facilities for which the fees are proposed and all other comments, whether written or oral, submitted prior to the conclusion of the hearing.

K. The City Council finds that the 2009 Nexus Study proposes a fair and equitable method for distributing a portion of the unfunded costs of improvements and facilities to the Regional system.

L. The City Council hereby adopts the 2009 Nexus Study, including its Addendum regarding temporary fee reduction, and its findings. The 2009 Nexus Study is attached and incorporated herein as Exhibit "B."

M. The City Council hereby adopts this Ordinance to amend and supersede the provisions of Ordinance No. 1114, dated April 8, 2003, and Ordinance 1186 dated April 25, 2006.

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 10,000 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 15,000 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 purposes of development, including the issuance of a permit for construction.

D. **“Gross Acreage”** means 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.

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 eight (8) units to the gross acre or less.

O. **“TUMF Participating Jurisdiction”** means 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.

Section 4. Establishment of the Transportation Uniform Mitigation Fee.

A. **Adoption of TUMF Schedule.** The City Council shall adopt an applicable TUMF schedule through a separate resolution, which may be amended from time to time.

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:

i. 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.

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.** Fee schedules 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. **Temporary Fee Reduction Period.**

i. Notwithstanding Section 4A of Ordinances No. 1114 and 1186, and the adopted TUMF schedule, the City Council may, by separate resolution, adopt a reduced TUMF fee schedule applicable only through December 31, 2010. The TUMF may be so reduced by up to fifty percent (50%) of fees established in the schedule adopted pursuant to Section 4A of this Ordinance. If fees are reduced, all other sections of Ordinance No. 1114 and 1186 shall still be in effect during the temporary fee reduction period. After December 31, 2010, the regular TUMF schedule, as adopted by the City Council and revised from time to time pursuant to Section 4A of this Ordinance, shall automatically apply.

ii. If reduced fees are paid pursuant to this Section 4D at the issuance of a building permit and either the application or the building permit expires, subsequent building permit application on the same parcel shall be subject to the full TUMF amount, unless the temporary fee reduction period is still in effect at the time the subsequent application is made.

E. **Purpose.** The purpose of the TUMF is to fund those certain improvements to the Regional System as depicted in Exhibit "A" and identified in the 2009 Nexus Study, Exhibit "B."

F. **Applicability.** The TUMF shall apply to all new development within the City, unless otherwise exempt hereunder.

G. **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 this Ordinance, 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 this Ordinance, the TUMF shall be imposed.
- v. Guest Dwellings.
- vi. Additional single family residential units located on the same parcel pursuant to the provisions of any agricultural zoning classifications set forth in the Municipal Code.
- vii. Kennels and Catteries established in connection with an existing single family residential unit.
- viii. Detached Second Units.
- 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.

H. **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 Nexus Study, including Addendum 1, 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 City 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, including Addendum 1, for the Regional System at the time the credit agreement is entered into 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 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 City, 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 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 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 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 City 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 (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 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 City, 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 revenue raised by the TUMF Program. The TUMF Administrative Plan further outlines the fiscal responsibilities and limitations of the Administrator.

Section 8. 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. This Ordinance does not create any new TUMF.

Section 9. 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 10. 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 11. Ordinances No. 1114 and 1186.

This Ordinance supersedes the provisions of Ordinances No. 1114 and 1186 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, Ordinances No. 1114 and 1186, and all other related ordinances and polices, shall remain in full force and effect.

Section 12. Effective Date.

This Ordinance shall take effect thirty (30) days after second reading.

ADOPTED, SIGNED and APPROVED upon this 8th day of December 2009, by the following vote:

AYES:	Evans, Rogers, Yarbrough, Landers, Busch
NOES:	None
ABSTAIN:	None
ABSENT:	None

By: _____
Mayor, Daryl R. Busch

ATTEST:

By: _____
City Clerk, Judy L. Haughney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF PERRIS)

I Judy Haughney, duly elected City Clerk of the City of Perris do hereby certify that the foregoing Ordinance Number 1263, introduced at a regular meeting of the City Council of the City of Perris held on the 10th day of November, 2009, was duly and regularly adopted by the City Council of the City of Perris at a regular meeting thereof held on the 8th day of December, 2009, by the following vote:

AYES: Evans, Rogers, Yarbrough, Landers, Busch
NOES: None
ABSENT: None
ABSTAIN: None

City Clerk, Judy L. Haughney

EXHIBIT "A"

MAP OF REGIONAL SYSTEM

EXHIBIT "B"

NEXUS STUDY

AND ADDENDUM 1 TEMPORARY FEE REDUCTION