

31) **Introduction of an Ordinance Amending Section 16.83.060 of the Lake Elsinore Municipal Code Regarding the Transportation Uniform Mitigation Fee (TUMF) Program**

Introduce by title only and waive further reading of AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF lake elsinore, CALIFORNia AMENDING LAKE ELSINORE MUNICIPAL CODE SECTION 16.83.060 TO authorize WRCOG to CALCULATE AND COLLECT FEES UNDER THE WESTERN RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) PROGRAM



REPORT TO CITY COUNCIL

To: Honorable Mayor and Members of the City Council

From: Jason Simpson, City Manager

Prepared by: Remon Habib, City Engineer

Date: November 14, 2023

Subject: Introduction of an Ordinance Amending Section 16.83.060 of the Lake Elsinore Municipal Code Regarding the Transportation Uniform Mitigation Fee (TUMF) Program

Recommendation

Introduce by title only and waive further reading of AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA AMENDING LAKE ELSINORE MUNICIPAL CODE SECTION 16.83.060 TO AUTHORIZE WRCOG TO CALCULATE AND COLLECT FEES UNDER THE WESTERN RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) PROGRAM

Background

The City of Lake Elsinore is a Member Jurisdiction of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside and eighteen cities located in Western Riverside County. Acting in concert, in 2002-2003, WRCOG member jurisdictions developed a plan whereby the shortfall in funds needed to enlarge the capacity of the Regional Systems of Highways and Arterials due to new development in Western Riverside County could be made up in part by a Transportation Uniform Mitigation Fee ("TUMF") on future residential, commercial, and industrial development.

Discussion

Currently, staff calculates TUMF fees for all development projects. Applicable fees are due prior to issuance of a Certificate of Occupancy, but the developer may elect to pay as early as issuance of a building permit. Fees are remitted to WRCOG monthly, and building permits are audited on a yearly basis. Under the current process and as defined in the TUMF Administrative Plan, "Any balance in TUMF obligation due to incorrect development project information will be the responsibility of the participating jurisdiction."

WRCOG created a process in 2017 which allows for WRCOG staff to calculate applicable TUMF fees for all development projects as well as accept payment should the participating agency elect to do so and modify their respective ordinances accordingly. Converting the manner which TUMF fees are calculated and paid directly to WRCOG significantly reduces the risk of the City being responsible for any incorrect fee calculations. Under the proposed process and consistent with the TUMF Administrative Plan, “In the event a participating jurisdiction makes the election to have WRCOG calculate and collect TUMF, WRCOG shall take full responsibility for calculating the TUMF obligation, and any shortfall in the calculation shall not be the responsibility of the participating jurisdiction.”

Fiscal Impact

There is no fiscal impact.

Attachments

Attachment 1 – Ordinance

Attachment 2 – Notice of Public Hearing

ORDINANCE NO. 2023-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA AMENDING LAKE ELSINORE MUNICIPAL CODE SECTION 16.83.060 TO AUTHORIZE WRCOG TO CALCULATE AND COLLECT FEES UNDER THE WESTERN RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) PROGRAM

WHEREAS, the City Council of the City of Lake Elsinore ("City") is a member agency of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside and 18 cities located in Western Riverside County. Acting in concert, the WRCOG and 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 could be made up in part by the Transportation Uniform Mitigation Fee ("TUMF") on future residential, commercial, and industrial development; and

WHEREAS, the City Council of the City had previously adopted Ordinance No. 2017-1381, titled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, AMENDING CHAPTER 16.83 TO UPDATE THE WESTERN RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) PROGRAM on September 26, 2017, to facilitate participation in the WRCOG TUMF program; and

WHEREAS, Section 16.83.060 of the Lake Elsinore Municipal Code, "Procedures for the Levy, Collection and Disposition of Fees," authorized the TUMF fee to be collected by the City from developers directly at the time such TUMF fees were due; and

WHEREAS, the City now desires to amend Section 16.83.060 to authorize the TUMF fees to be collected by WRCOG directly from the developers from the effective date of this Ordinance forward.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The recitals above are true and correct and are incorporated herein by this reference.

Section 2. Findings.

- A. WRCOG, upon the recommendations of the WRCOG Executive Committee, has adopted a process in which WRCOG calculates and collects TUMF on behalf of member agencies directly from the developer upon which the fee is imposed under the Western Riverside County Transportation Uniform Mitigation Fee Program Ordinance of 2018 and the City Council so desires WRCOG to collect the TUMF on behalf of the City.
- B. The findings set forth in Ordinance No 2017-1381 remain true and correct, and by this reference are incorporated into this Ordinance No. 2023-____ as set forth in full herein. This Ordinance No. 2023-____ shall amend and replace Lake Elsinore Municipal Code Section 16.83.060, and to the extent any provisions herein conflict with any provisions of Ordinance No. 2017-1381 or any other ordinance of the City, the City Council finds and determines that it is the intent of the City Council that the provisions herein shall control. All other provisions of Ordinance No. 2017-1381 shall remain in full force and effect.

Section 3. Amended Language to Lake Elsinore Municipal Code Section 16.83.060.

Lake Elsinore Municipal Code Section 16.83.060, Procedures for the Levy, Collection and Disposition of Fees, shall be amended in its entirety to read as follows:

16.83.060 Procedures for the Levy, Collection and Disposition of Fees.

- A. Authority of the Community Development Department. The Director of Community Development, or his/her designee, is hereby authorized to provide WRCOG with development project specifics for the calculation of TUMF in a manner consistent with the TUMF Administrative Plan.*
- B. Payment and Collection. Payment of the fees shall be as follows:*
- i. All fees collected hereunder shall be collected by WRCOG directly from the developer for deposit, investment, accounting and expenditure and in accordance with the provisions of this Ordinance, TUMF Administrative Plan, and the Mitigation Fee Act.*
 - ii. The TUMF fees shall be paid by the developer to WRCOG 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 TUMF fees by the developer to WRCOG prior to issuance of a certificate of occupancy or final inspection. TUMF fees may be paid at the issuance of a building permit, and the fee payment shall be calculated based on the TUMF 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 the 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.*
 - iii. 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.*
 - iv. 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.*
 - v. Fees shall not be waived.*
- C. Issuance of Certificate of Occupancy. The City shall not issue a certificate of occupancy for any Development Project until WRCOG has provided written evidence that it has collected the fee.*
- 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 Community Development, or his/her designee, shall prepare and deliver to the Executive Director of WRCOG, periodic reports as will be established under Section 16.83.070 of this Chapter.

Section 4. CEQA. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting physical change to the environment, directly or indirectly.

Section 5. 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 6. Severability. If any one or more 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 7. 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 8. Validity. This Ordinance amends and replaces Lake Elsinore Municipal Code Section 16.83.060, 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, the text of Lake Elsinore Municipal Code Section 16.83.060 as set forth in Ordinance No 2017-1381 and all other related ordinances and policies shall remain in full force and effect.

Section 9: Effective Date. This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

Section 10: Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause a synopsis of the same to be published according to law.

Passed, Approved, and Adopted at a regular meeting of the City Council of the City of Lake Elsinore, California, on this 14th day of November 2023.

Natasha Johnson
Mayor

Attest:

Candice Alvarez, MMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF LAKE ELSINORE)

I, Candice Alvarez, MMC, City Clerk of the City of Lake Elsinore, California, do hereby certify that Ordinance No. 2023- was introduced by the City Council of the City of Lake Elsinore, California, at its Regular meeting of November 14, 2023 and adopted at its Regular meeting of December 12, 2023 and that the same was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Candice Alvarez, MMC
City Clerk

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Lake Elsinore, California, will hold a Public Hearing on November 14, 2023, at 7:00 p.m., or as soon thereafter as the matter may be heard, at the Lake Elsinore Cultural Center, 183 North Main Street, Lake Elsinore, California, 92530, to consider the following:

Ordinance Amending Section 16.83.060 of Ordinance No. 2017-1381. City of Lake Elsinore seeks to amend Ordinance No. 2017-1381, Section 16.83.060 "Procedures for the Levy, Collection and Disposition of Fees," to authorize TUMF fees to be collected by WRCOG directly from the developers from the effective date of this Ordinance forward.

Why-By amending the ordinance, WRCOG will calculate and collect TUMF fees for all development projects reducing the risk of the City being responsible for any incorrect fee calculations.

Does this impact your project? If applicable, TUMF fees are to be paid to WRCOG directly.

ALL INTERESTED PERSONS are invited to submit written information, express opinions or otherwise submit written evidence by email to calvareza@lake-elsinore.org.

If you wish to legally challenge any action taken by the City on the above matter, you may be limited to raising only those issues you or someone else at the Public Hearing described in this notice, or in written correspondence delivered to the City prior to or at the Public Hearing. If you require accommodation to participate in a Public Hearing, please contact the City Clerk's office at (951) 674-3124 ext. 269. All Agenda materials are available for review on the City's website at lake-elsinore.org the Friday before the Public Hearing.

FURTHER INFORMATION on this item may be obtained by contacting Remon Habib, City Engineer at rhabib@lake-elsinore.org or (951) 674-3124, ext. 213.

Candice Alvarez, MMC
City Clerk

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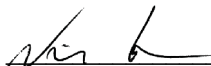
PROOF OF PUBLICATION

I am a citizen of the United States. I am over the age of eighteen years and not party to or interested in the above-entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper of general circulation, printed and published daily in the County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 25, 1952, Case Number 54446, under date of March 29, 1957, Case Number 65673, under date of August 25, 1995, Case Number 267864, and under date of September 16, 2013, Case Number RIC 1309013; that the notice, of which the annexed is a printed copy, has been published in said newspaper in accordance with the instructions of the person(s) requesting publication, and not in any supplement thereof on the following dates, to wit:

11/02/2023

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Date: November 2, 2023.
At: Riverside, California



Signature