

9) **Second Reading of an Ordinance Authorizing WRCOG to Calculate and Collect Fees Under the Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program**

Adopt 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: Candice Alvarez, MMC, City Clerk

Date: December 12, 2023

Subject: Second Reading of an Ordinance Authorizing WRCOG to Calculate and Collect Fees Under the Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program

Recommendation

Adopt 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/Discussion

At its Regular meeting on November 14, 2023, the City Council introduced by title only and waived further reading of the Ordinance.

Attachments

Attachment 1 – Ordinance

ORDINANCE NO. 2023-1490

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. 2023-1490 as set forth in full herein. This Ordinance No. 2023-1490 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 12th day of December 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. 2023-1490 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