

ORDINANCE NO. 746

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS AMENDING CHAPTER 3.23 OF THE INDIAN WELLS MUNICIPAL CODE PERTAINING TO THE COLLECTION OF TRANSPORTATION UNIFORM MITIGATION FEES

WHEREAS, the City of Indian Wells ("City") is a Member Agency of the Coachella Valley Association of Governments ("CVAG"), a joint powers agency consisting of the County of Riverside ("County"), the Agua Caliente Band of Cahuilla Indians, the Cabazon Band of Mission Indians, the Torres Martinez Desert Cahuilla Indians, the City of Blythe, and the nine cities (Desert Hot Springs, Palm Springs Cathedral City, Rancho Mirage, Palm Desert, Indian Wells, La Quinta, Indio and Coachella) situated in the Coachella Valley (collectively, "Member Agencies"); and

WHEREAS, acting in concert, the Member Agencies developed a plan whereby the shortfall in funds needed to enlarge the capacity of the Regional System of Highways and Arterials within CVAG's jurisdiction (the "Regional System") could be made up in part by a Transportation Uniform Mitigation Fee ("TUMF") imposed on future residential, commercial and industrial development within the jurisdiction; and

WHEREAS, as a CVAG Member Agency, the City participated in the preparation of the 1987 Coachella Valley Area Transportation Study ("1987 Transportation Study") prepared pursuant to the Mitigation Fee Act (Government Code section 66000 et seq.) and based on the 1987 Transportation Study, the City adopted and implemented CVAG's model TUMF ordinance as Indian Wells Municipal Code Chapter 3.23;

WHEREAS, CVAG commissioned Michael Baker International, Inc. to prepare an updated TUMF study entitled "Transportation Uniform Mitigation Fee (TUMF) 2018 Fee Schedule Update, Nexus Study Report", and dated March 2018 ("2018 Nexus Study") to establish updated TUMF levels and program revenue collection targets, which was approved by the CVAG Executive Committee on April 30, 2018; and

WHEREAS, the 2018 Nexus Study revealed the need to revise certain provisions of the model TUMF ordinance to reflect changes in the Mitigation Fee Act which governs the adoption and implementation of development impact fees and to reflect the findings of the 2018 Nexus Study; and

WHEREAS, by notice duly given and posted, on ** the City Council conducted a public hearing to consider approval of the 2018 Nexus Study and this Ordinance; and

WHEREAS, at the time and place set for the hearing, the City Council duly considered the data and information provided by CVAG, City staff and the public relative to the TUMF and all other comments, whether written or oral, submitted prior to the conclusion of the hearing; and

WHEREAS, the City Council wishes to accurately collect TUMF fees along with the other participating jurisdictions within the Coachella Valley as requested by the CVAG General Assembly.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIAN WELLS DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby specifically finds that all of the facts set forth in the Recitals of this Ordinance are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2. REVISED CHAPTER 3.23 "TRANSPORTATION UNIFORM MITIGATION FEE"

Indian Wells Municipal Code Chapter 3.23, "Transportation Uniform Mitigation Fee" is hereby amended to read as follows:

**"Chapter 3.23
Transportation Uniform Mitigation Fee**

3.23.010 Purpose, use and findings.

The City Council finds and determines as follows:

- A. The City is a Member Agency of the Coachella Valley Association of Governments ("CVAG"), a joint powers agency consisting of public agencies situated in the Coachella Valley (collectively, "Member Agencies").
- B. Acting in concert, the Member Agencies developed a plan whereby the shortfall in funds needed to enlarge the capacity of the Regional System of Highways and Arterials within CVAG's jurisdiction (the "Regional System") could be made up in part by a Transportation Uniform Mitigation Fee ("TUMF") imposed on future residential, commercial and industrial development within the jurisdiction.
- C. That CVAG commissioned the preparation of various studies ("Fee Studies") which evaluate population and employment growth, future transportation needs and the availability of traditional transportation funding sources to establish updated TUMF levels and program revenue collection targets.
- D. That the Fee Studies, as periodically updated, make it possible to determine a reasonable relationship between the cumulative regional impacts of new land development projects in the Coachella Valley on the Regional System and the need to mitigate these transportation impacts using funds levied through the TUMF program.
- E. That the Fee Studies, as periodically updated, establish the purposes of the TUMF, which may be summarized as a uniform development impact fee to help fund construction of the Regional System needed to accommodate growth in the Coachella Valley to the year 2030.
- F. That the Fee Studies, as periodically updated, establish that the TUMF proceeds will be used to help pay for the engineering, construction and acquisition of the Regional

System improvements identified therein. Such improvements are necessary for the safety, health and welfare of the residential and non-residential users of the development projects on which the TUMF will be levied.

G. That the Fee Studies, as periodically updated, establish a reasonable and rational relationship between the use of the TUMF proceeds and the type of development projects on which the TUMF is imposed.

H. That the Fee Studies, as periodically updated, establish the reasonable relationship between the impact of new development and the need for the TUMF.

I. That the TUMF program revenues to be generated by new development will not exceed the total fair share of these costs.

J. That the projects and methodology identified in the Fee Studies, as periodically updated, for the collection of fees is consistent with the goals, policies, objectives and implementation measures of the City's General Plan.

K. That the TUMF program complies with the provisions of the Mitigation Fee Act.

3.23.020 Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them as follows:

"Change of use" means any change in the use of an existing building that results in the increase of vehicular trips.

"Development" means any activity which requires discretionary or ministerial action by the City resulting in the issuance of grading, building, plumbing, mechanical or electrical permits, or certificates of occupancy issued by the City to construct, or change the use of, a building or property. Where "development" applies to an enlargement of an existing building, or a change of use of an existing building that results in increased vehicle trips, the average weekday trips shall be only the additional trips in excess of those associated with the existing use.

"Fee Study" means the studies prepared by CVAG and adopted by the City Council, which supports the fee established by this chapter, and includes all the underlying reports and documents referenced therein.

"Impact Fee Schedule" means the schedule of development impact fees approved by resolution of the City Council.

"Mitigation Fee Act" means the law set forth in the California Government Code (Government Code Section 66000 et seq.) that establishes the criteria for establishing a fee as a condition of approval of a development project.

"Regional System" means the regional system of roads, streets and highways identified by CVAG in its 2016 Transportation Project Prioritization Study (TPPS) to accommodate growth in the Coachella Valley to the year 2040. Only those projects scoring above 7.5 points in the TPPS are included for TUMF consideration.

"Transportation Mitigation Trust Fund" means the fund established pursuant to this chapter.

"TUMF" means the Transportation Uniform Mitigation Fee established by this chapter.

3.23.030 Fee Established

A. There is established a Transportation Uniform Mitigation Fee ("TUMF"), which shall apply to new development yet to receive final discretionary approval and/or issuance of a building permit or other development right and to any reconstruction or new use of existing buildings that results in change of use and generates additional vehicular trips.

B. The facilities to be funded by the TUMF are detailed in the Fee Study, which is on file with the City's Public Works Department.

C. The TUMF is in addition to the requirements imposed by other City laws, policies or regulations relating to the construction or the financing of the construction of public improvements within subdivisions or developments.

D. If the amount of the recommend mitigation fee is amended by CVAG pursuant to CVAG's annual review, the City Council shall amend its fee amount in accord by providing authorization to the Finance Director to amend the City's Fee Schedule accordingly.

3.23.040 Fund Established

A. There is established a Transportation Mitigation Trust Fund ("Trust Fund") into which TUMF proceeds shall be deposited.

B. TUMF proceeds shall be imposed and collected by the City and shall be transmitted to CVAG to be placed in the Trust Fund. All interest or other earnings of the Trust Fund shall be credited to the Trust Fund.

C. CVAG shall administer the Trust Fund in accordance with the Mitigation Fee Act.

3.23.050 Calculation and Collection of the TUMF

A. The method of calculating the TUMF shall be described in CVAG's Transportation Uniform Mitigation Fee Handbook, a copy of which is on file with the City's Public Works Department.

B. The amount of the fees due shall be the amount set forth in the applicable Impact Fee Schedule in effect at the time each fee is due. The TUMF shall be collected pursuant to the City's established procedures for the collection of development impact fees.

3.23.060 Use Restrictions

TUMF proceeds shall be solely used for the engineering, construction and acquisition of the Regional System improvements identified in the Fee Study and any other purpose consistent with this chapter. TUMF proceeds shall not be used for Regional System maintenance.

3.23.070 Exemptions and Credits

A. The following developments are exempted from payment of the fee required by this chapter:

1. Low and lower-income residential housing, including single-family homes, apartments and mobile homes built for those whose income is no more than eighty percent of the median income in the San Bernardino-Riverside Standard Metropolitan Statistical Area and as determined and approved by the City Council or its designee. The sales or rental price shall not exceed the affordability criteria as established under HUD Section 8 guidelines.

B. Credit against the TUMF shall be given where a developer improves streets included within the Regional System beyond the City's requirements established for on-site and off-site improvements imposed upon projects. To receive a credit, the developer shall obtain in advance an agreement with CVAG pursuant to CVAG's rules and regulations. That credit shall be an amount equal to the actual engineering and construction costs incurred at the time of the development to the extent that CVAG has included those costs in its estimated cost of constructing the Regional System.

3.23.080 Appeal Procedures

A. Any developer, who, because of the nature or type of uses proposed for a development project, contends that application of the TUMF is unconstitutional or unrelated to mitigation of the burdens of the development, may file a written appeal with the City within ninety days after imposition of the TUMF as a condition of approval or as otherwise provided by the Mitigation Fee Act.

B. The appeal shall be heard by the CVAG Executive Committee in accordance with CVAG's established policies and procedures for conducting such matters. The decision of the Executive Committee shall be final.

3.23.090 Administrative Fee

A. The City may impose an administrative fee in amount computed to cover the average cost to the City of processing the TUMF. The City shall establish such fee in accordance with the City's procedures for establishing service-related fees.

B. The administrative fee authorized by this section shall be in addition to the fee imposed under Section 3.23.030. The administrative fee, when collected, shall be retained by the City to recover its costs."

Section 3. The City Council finds that the proposed Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that the proposed Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 4. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 5. This Ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City.

PASSED, APPROVED, AND ADOPTED by the City Council of Indian Wells, California, on the 3rd day of November, 2022.

DANA REED
MAYOR

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF INDIAN WELLS)

CERTIFICATION FOR ORDINANCE NO. 746

I, Angelica Avila, Acting City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that Ordinance No. 746, having been introduced at a regular meeting of the City Council on October 6 2022, was again introduced, the reading in full thereafter unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 3rd day of November , 2022 and said Ordinance was passed and adopted by the following stated vote, to wit:

AYES:
NOES:

and was thereafter on said day signed by the Mayor of the City of Indian Wells.

ATTEST:

APPROVED AS TO FORM:

ANGELICA AVILA
CITY CLERK

TODD R. LEISHMAN
CITY ATTORNEY