

ORDINANCE NO. 1086

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LOS BANOS AMENDING CHAPTER 18
OF TITLE 3 OF THE LOS BANOS MUNICIPAL
CODE RELATING TO THE REGIONAL
TRANSPORTATION IMPACT FEE (RTIF)**

The City Council of the City of Los Banos does ordain as follows:

WHEREAS, the City Council in May 2005, adopted a Resolution approving the initial RTIF Study prepared by Merced County Association of Governments (MCAG); and

WHEREAS, in accordance with State Law requiring annual RTIF review, the MCAG Governing Board at their January 17, 2008 meeting, completed its annual review of the RTIF program with the approval of an updated RTIF Study; and

WHEREAS, the City Council in August 2008, adopted a Resolution approving the implementation of the updated RTIF Study; and

WHEREAS, provisions in the Municipal Code relating to the RTIF need to be updated.

Section 1. Chapter 18 of Title 3 of the City of Los Banos Municipal Code is hereby revised to read as follows:

Title 3

FINANCE

Chapter 18

REGIONAL TRANSPORTATION IMPACT FEE
(RTIF)

Sections:

Sec. 3-18.01	Intent.
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Sec. 3-18.01 Intent.

- (a) The City Council of the City of Los Banos finds that future development within the County of Merced to the year 2030 will result in traffic volumes in excess of capacity on the regional system of arterials, highways, and freeways as designated in this Ordinance.

- (b) The City Council of the City of Los Banos finds that failure to expand the capacity of the existing circulation system will result in new development causing unacceptable levels congestion on the arterials, highways, and freeways of the regional system.
- (c) The City Council also finds and declares that, in the absence of this chapter imposing a fair-share traffic fee upon new development, existing and future sources of revenue are inadequate to fund substantial portions of the regional transportation system improvements needed to avoid unacceptable levels of congestion and related adverse impacts caused by new development.

Sec. 3-18.02 Purpose.

- (a) The City Council of the City of Los Banos finds and determines that adoption of this regional transportation impact fee ordinance will raise additional revenues needed to construct improvements to accommodate traffic that will be generated by new development within the County and City of Los Banos.
- (b) The City Council also finds and declares that the Regional Transportation Impact Fee Study (MCAG, January 18, 2008) has determined the extent to which the new development of land will generate traffic volumes impacting the roadway system and that this chapter establishes a fair and equitable method for distributing unfunded costs of transportation improvements necessary to accommodate traffic volumes generated by such development.

Sec. 3-18.03 Specific Findings.

The need for regional transportation improvements and for the regional transportation impact fee established by the ordinance codified in this chapter are based on the finding of the Regional Transportation Impact Fee Study prepared by the Merced County Association of Governments whose Governing Board is composed of City Council members and County Supervisors from the County's six (6) cities and the County Board of Supervisors. The study has established that growth to the year 2030 will affect the entire regional transportation system and therefore that the area of impact for future development is appropriately the entire County of Merced. The Study made the following additional findings:

- (a) Population and employment within the County of Merced is anticipated to increase by ninety-eight (98%) percent and eighty-two (82%) percent, respectively by the year 2030 and will result in Levels of Service E and F (as defined in the Highway Capacity Manual, 6th edition) on existing arterials, highways, and freeways.
- (b) The Regional Transportation Plan (MCAG, 2007) modeled and evaluated the effect of projected growth to the year 2030 on all major arterials, highways, and freeways in Merced County and found that without expansion, the transportation system would suffer severe congestion. Further, the plan showed that the recommended transportation improvements would accommodate the traffic anticipated in the year 2030 at the desired Level of Service D.
- (c) Existing and future sources of public revenues are insufficient to fund all the needed transportation improvements.
- (d) The revenues generated by this regional transportation impact fee will provide additional funds necessary to construct the transportation improvements and will help provide the additional capacity needed in the year 2030 to accommodate the traffic generated by new development in the Cities and County of Merced.
- (e) The regional transportation impact fee is a fair and equitable method of distributing the cost of transportation improvements among the development that will generate the increased traffic.

Sec. 3-18.04 Definitions.

(a) "Merced County" means the unincorporated areas of the County of Merced and the incorporated areas of the six (6) cities within Merced County.

(b) "Regional system" means the following street, road, and highway segments:

- (1) State Highways: the portions of Interstate 5 and State Routes 33, 59, 99, 140, 152, 165 that lie within Merced County.
- (2) Bradbury Rd. from Hwy. 165 to Hwy. 99.
- (3) Bloss Ave. from Hwy. 165 to Hwy. 99.
- (4) Westside Blvd. from Hwy. 165 to Hwy. 99.
- (5) Lincoln Blvd. from Hwy. 140 to Peach Ave. in Livingston.
- (6) Main St. in Livingston from Peach Ave. to Hwy. 99.
- (7) Livingston-Cressey Rd. from Hwy. 99 to Santa Fe Ave.
- (8) Olive Ave. from Livingston-Cressey Rd. in Livingston to Santa Fe Ave. in Winton.
- (9) Santa Fe Ave. from the Stanislaus County line to Hwy. 59 / Olive Ave. in Merced.
- (10) Santa Fe Ave. from Plainsburg Rd. in Planada to the Madera County line.
- (11) Applegate Rd. from Hwy. 140 to Hwy. 99 in Atwater.
- (12) Winton Way from Hwy. 99 in Atwater to Santa Fe Ave. in Winton.
- (13) Buhach Rd. from Hwy. 140 to Santa Fe Ave..
- (14) Bellevue Rd. from Hwy. 99 to Lake Rd. or the Campus Parkway, including gaps.
- (15) Olive Ave. in Merced from Hwy. 59 to Campus Parkway.
- (16) G St. in Merced from Hwy. 99 to Bellevue Rd.
- (17) Mission Ave. from Hwy. 59 to Campus Parkway.
- (18) Plainsburg Rd. from Hwy. 99 to Hwy. 140.
- (19) Sandy Mush Rd. from Hwy. 59 to Hwy. 99.
- (20) Henry Miller Avenue-east from Interstate 5 in Santa Nella, across State Route 165 to Turner Island Road.
- (21) Los Banos to Gustine Route-along Volta Road, Ingomar Grade, Cottonwood Road and Hunt Road to Gustine.
- (22) Sandy Mush Road/Turner Island Road-west from State Route 99, across State Route 59 to Turner Island Road and south to State Route 152.
- (23) Washington Road-from Indiana Avenue to Highway 59.
- (24) Hutchins Road-from Carlucci Road to Indiana Avenue.
- (25) Indiana Avenue-from Highway 152 to Washington Road.
- (26) Walnut Avenue-in the County, from Livingston to Santa Fe Drive.
- (27) Le Grand Road-in the County, from Hwy 99 to Santa Fe Avenue.
- (28) Minturn Road-in the County, from Le Grand Road to the Madera County line.
- (29) Oakdale Road-in the County, from Highway 59 to the Stanislaus County line.
- (30) La Grange Road-in the County, from Highway 59's termination in Snelling to the Stanislaus County line.
- (31) Merced Falls Road-in the County, from Highway 59's termination in Snelling to the Mariposa County line.
- (32) The future Campus Parkway-from Highway 99 to end of route at Yosemite Avenue or UC Merced County.
- (33) Gurr Road-from State Route 140 near the McSwain area to Sandy Mush Road.

(c) The "Regional transportation plan" means the document adopted by the Merced County Association of Governments on May 17, 2007.

(d) "Average weekday peak-hour trips" mean the average number of peak-hour vehicle trips to or from a designated land use Monday through Friday.

(e) "Peak-hour" means the one-hour long period during which the maximum amount of traffic occurs. Often the peak-hour is a rush period when commuters travel to and from work.

(f) "Trip generation rate" means the number of average weekday peak-hour trips generated by a particular land use. The land use categories correspond to those used in the regional travel model maintained by MCAG. The trip generation rate for each land-use category is the rate published by the Institute of Transportation Engineers, 6th Edition. The land use categories and peak-hour trip generation rates are as follows:

Residential, single-family (ITE Code 210)	1.00 trips per dwelling unit
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Residential, multi-family (ITE Code 220)	0.61 trips per dwelling unit
Retail commercial, general (ITE Codes 800-912 except those listed below)	1.86 trips per 1,000 sq. ft. floor area
Retail commercial, high turnover (ITE Codes 831-837, 844-847, 851-853, 911-912)	10.86 trips per 1,000 sq. ft. floor area
Retail commercial, low turnover (ITE Codes 814, 823, 848, 860, 862, 890)	1.25 trips per 1,000 sq. ft. floor area
Retail commercial, over 50,000 sq. ft. gross floor area (ITE Code 820, and any 800-999 with 50,000+ sq. ft.)	3.58 trips per 1,000 sq. ft. floor area
Office commercial (ITE Codes 710-770)	1.79 trips per 1,000 sq. ft. floor area
Industrial (ITE Code 110-170)	0.75 trips per 1,000 sq. ft. floor area

(g) "Development" means any discretionary or ministerial action by the City resulting in the issuance of grading, building, plumbing, mechanical, or electrical permits, conditional use permits or certificates of occupancy issued by the City to construct, to change the use of, a building or property.

Where development applies to a change in use of, or enlargement of an existing building, the average weekday peak-hour trips shall be only the additional trips in excess of those associated with the existing use.

(h) "Merced County Association of Governments" means the joint powers agency delegated to manage and administer the regional transportation impact fee and whose members are the incorporated Cities and the County of Merced.

(i) "Merced County Association of Governments Regional Transportation Impact Fee Trust Fund" or "trust fund" means the account to which regional transportation impact fees collected under this chapter are deposited with the Merced County Treasurer by the Cities and County for any lawful use as provided in this chapter.

(j) "Regional Transportation Impact Fee Policy Board" (RTIF Policy Board) means those members of the MCAG Governing Board whose appointing jurisdiction has adopted the ordinance codified in this chapter.

Sec. 3-18.05 Applicability.

This chapter shall apply only to new development and to any reconstruction of existing buildings that will generate additional vehicular trips. The provisions of this chapter shall take effect May 15, 2009.

Sec. 3-18.06 Establishment of regional transportation impact fee.

(a) The regional transportation impact fee is not intended to be the sole source of funding for construction of the regional system. Furthermore, the total amount of fees collected pursuant to this chapter shall not exceed the cost of construction of the regional system.

(b) The Merced County Association of Governments has calculated the regional transportation impact fee according to the following procedure:

(1) MCAG determined the total costs of the regional transportation improvements.

(2) MCAG established a capital improvements program. This will include each regional transportation improvement project with its total project cost, and

sources of funds to pay for the project, specifically showing the amount for each project to be funded through the regional transportation impact fee.

- (3) MCAG determined the total amount to be funded by the fee by summing the fee shares of each project in the capital improvements program.
- (4) MCAG determined the total number of peak-hour trips associated with new development, for each land use category listed in Section 3-18.04(f) of this chapter, by using the MCAG traffic model and subtracting the number of peak-hour trips generated in Merced County by each category in the year 2005 from the number of such trips generated by the same category in the year 2030.
- (5) MCAG determined a per-trip cost by dividing the total amount to be funded by the fee by the total number of trips associated with new development.
- (6) MCAG determined a cost per unit of development for the land use categories listed in Section 3-18.04(f) of this chapter. This cost will be calculated by multiplying the per-trip cost by the average peak-hour trips per unit of development. Units of development will be dwelling units for residential land uses, and 1,000 square feet of floor area for commercial, industrial, and other land uses.
- (7) The fee for each new development is calculated by multiplying the cost per unit of development by the number of units being developed.
- (c) As shown in the regional transportation impact fee study, MCAG has determined that the cost per peak-hour trip is Three Thousand One Hundred Fifteen and No/100ths (\$3,115.00) Dollars.
- (d) The regional transportation impact fee study has calculated the following transportation impact fee schedule for these land use categories:

Residential, single-family	\$3,115 per dwelling unit
Residential, multi-family	\$1,892 per dwelling unit
Retail commercial, general	\$4,146 per 1,000 sq. ft. floor area
Retail commercial, high Turnover	\$12,082 per 1,000 sq. ft. floor area
Retail commercial, low Turnover	\$2,780 per 1,000 sq. ft. floor area
Retail commercial, over 50,000 sq. ft.	\$7,161 per 1,000 sq. ft. floor area
Office commercial	\$3,337 per 1,000 sq. ft. floor area
Industrial/Ag processing	\$1,409 per 1,000 sq. ft. floor area

- (e) Should the applicant believe the land use category in subsection (d) of this section is not appropriate for their application, the applicant may propose a more appropriate development category, subject to the approval of the City Manager or their designee, and alternative trip generation rate from the ITE Trip Generation Code noted in this chapter for use in calculation of the appropriate trip generation rate, or;
- (f) Should the applicant believe the land use category in subsection (d) of this section is not appropriate for their application, the applicant may have prepared, at their own expense, a trip generation study conducted by a licensed traffic engineer that forecasts the anticipated peak-hour trips for the proposed development. The study procedure and results shall require the approval of the City Manager or their designee.

Sec. 3-18.07 Findings.

The City Council finds that the RTIFS:

- (a) Identifies the purpose of the RTIF;
- (b) Identifies the use to which the fee will be put, including specific facilities;
- (c) Demonstrates a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;
- (d) Demonstrates a reasonable relationship between the need for the public facility and type of development project on which the fee is imposed; and
- (e) Shows a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

Sec. 3-18.08 Exemptions.

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

The reconstruction of any building that has been destroyed by fire, flood, or natural disaster so as the reconstructed building both continues the prior use and generates the same or fewer trips as the original building.

Sec. 3-18.09 Credits.

- (a) Where an applicant, otherwise subject to this chapter dedicates and/or improves those regional roads, highways, or freeways identified in Exhibit A of this chapter beyond the requirements established in subsection (b) of this section, the applicant shall receive a credit against his regional transportation impact fee. That credit shall be an amount equal to the land value of dedicated land and/or the actual engineering and construction costs incurred at the time of the development to the extent that the MCAG has included those costs in its estimated cost of constructing the regional system.
- (b) The fee required by this chapter shall be supplementary to any fees and conditions imposed upon projects under the provisions of the Subdivision Map Act, California Environmental Quality Act, and other State and local laws, ordinances, or administrative policy which may authorize the imposition of conditions or contributions on development and the applicant shall not be entitled to any credits for such contributions or conditions.
- (c) The in-lieu-of-fee credit for any land dedications shall be based on the fair market value of the land dedicated as determined by an appraisal process with consultation with MCAG.
- (d) Should the in-lieu-of-fee credit exceed the applicant's total fee, the difference may be credited against any of the applicant's future development which would be subject to the fee, or a reimbursement agreement may be entered into.
- (e) Should a developer be required to provide improvements which benefit adjacent undeveloped land, the developer may be reimbursed for a proportionate share of the cost of such improvements under special agreements with MCAG and contingent upon future fees contributed from other benefited developments. In all cases, however, reimbursements under such special agreements must be timed to coincide with construction of the transportation project as scheduled in the Capital Improvement Plan adopted by MCAG.

Sec. 3-18.10 Collection of fee.

The RTIF shall be collected at the time when the City grants an occupancy permit for residential structures or at the time of the issuance of a building permit for nonresidential structures.

For a change of use or other development subject to this chapter, that would not require a building permit, the fee shall be collected at the time of the issuance of a use, development, or business license permit, whichever occurs first.

Sec. 3-18.11 Regional transportation impact fee fund.

- (a) All monies collected from payments of the regional transportation impact fee shall be deposited with the County Treasurer of Merced County in the trust fund.
- (b) All monies in the trust fund shall be used solely for the delivery of the regional transportation projects identified in this chapter. Project delivery includes preparation of environmental and engineering documents, right-of-way acquisition, construction, project support, and fund administration. All interest or other earnings of the trust fund shall be credited to the trust fund.

Sec. 3-18.12 Appeal process.

An applicant who disputes the amount of impact fee may file a written notice of appeal with the City Manager or their designee. Within fifteen (15) days of the appeal, the City Manager or their designee shall provide written notification of his/her decision. If unsatisfied with the decision of the City Manager or their designee, the applicant may resubmit a written appeal to the City Council. Thereafter, the City Council shall render its decision by a majority vote of those members present within sixty (60) days of the filing of the appeal.

Sec. 3-18.13 Annual fee and program review.

- (a) The City Council shall annually review, pursuant to Government Code Section 66006, and if necessary amend the Regional Transportation Impact Fee Program to ensure that it continues to be a fair and equitable method to distribute the costs of improvements necessary to accommodate traffic volumes generated by future growth. This review will coincide with the adoption of the five (5)-year Capital Improvement Program pursuant to Government Code section 66006(d). In adjusting the fee program, the following shall be considered:
 - (1) Adding new transportation projects that meet program criteria;
 - (2) Deleting projects that have been completed;
 - (3) Adjust the average per trip cost to reflect changes in construction costs;
 - (4) Adjust the average per-trip cost to reflect changes in land values as indicated in an annual survey of local government costs for land subject to right-of-way acquisition;
 - (5) Revise the average per-trip cost to reflect changes in the list of regional projects as that list may be amended from time to time by the RTIF Policy Board.
- (b) Unless otherwise amended by the City Council, the fees listed in Section 3-18.06(d) of this chapter shall be adjusted on July 1 of each year based upon the Engineering Construction Cost Index as published by the Engineering News Record.
- (c) Changes in the regional transportation impact fee resulting from the annual review will have no effect on fees already paid into the trust fund.
- (d) At the time of the annual review, the City Council shall make findings for any fees remaining unexpended and uncommitted in the trust fund for five (5) or more years after deposit demonstrating a reasonable relationship between the fee and the purpose for which it was charged. Unless a need for such fees can be demonstrated, the unexpended or uncommitted portion including interest that has accrued, shall be refunded to the current record owner of the development project on a prorated basis.

Sec. 3-18.14 Severability.

If any one or more of the terms, provisions, or sections of this chapter shall to any extent be adjudged invalid, unenforceable, or void, by a court of competent jurisdiction, each and all of the remaining terms, provisions, and sections of this chapter shall not be affected thereby and shall be valid and enforceable.

Sec. 3-18.15 Effective date.

The ordinance codified in this chapter shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of the ordinance codified in this chapter and cause the same to be posted and published once within fifteen (15) days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this chapter and a certified copy of the text of this chapter shall be posted in the Office of the City Clerk five (5) days prior to the date of adoption of the ordinance codified in this chapter; and, within fifteen (15) days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this chapter, together with the vote for and against the same, in the Office of the City Clerk.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the Los Banos City Council on the 1st day of April 2009, and was adopted at a regular meeting of the Los Banos City Council on the 15th day of April 2009 by the following vote:

AYES: Council Members Sousa, Stone, Mayor Jones
NOES: Council Member Villalta
ABSENT: Council Member Faria

APPROVED:

/s/ Tommy Jones
Tommy Jones, Mayor

ATTEST:

/s/ Lucille L. Mallonee
Lucille L. Mallonee, City Clerk

Exhibit A - List of Projects on the Regional System

The following transportation projects are those which when completed will together mitigate the traffic impacts on the regional transportation system of future growth to the year 2030 throughout Merced County. The City Council, upon adoption of this chapter, shall amend the Circulation Element of the General Plan to include these regional projects and any amendments.

The Regional Transportation Impact Fee shall be solely for funding environmental clearance analysis and reports, design engineering, right-of-way acquisition, construction, fund management, project support, and other necessary expenses for the delivery of Regional System projects and any other purpose consistent with this chapter. The Fee may not be used for system maintenance.

RTIF PROJECT LIST

A	Bellevue Rd - connection to 99 – from new interchange to Atwater
B	Mission Ave. - improvement - from 59 to 99 (not adding lanes)
C	SR 59 "Atwater-Merced Highway" realign from SR 99 to Bellevue Road w/ new SR 99 interchange
D	SR 59 - widen to 4 lanes - from Mission Ave. to Childs Ave.
E	SR 59 - widen to 4 lanes - from 152 to Mission Ave.
F	SR 140 "Bradley Overhead" - widen to 4/5 lanes - from Parsons to Santa Fe Ave.
G	SR 140 - widen to 4/5 lanes - from Santa Fe Ave. to Campus Parkway
H	SR 140/33 "Gustine Truck Route" - bypass Gustine
I	SR 152 "Los Banos Bypass"
J	SR 165 - widen to 4/5 lanes - from Hilmar to Stanislaus County or alternate project to reduce traffic on SR 165 through Hilmar
K	Dos Palos road improvements
L	Winton Parkway interchange improvements and widening
M	Campus Parkway from SR99 to Yosemite Ave.