

ORDINANCE NO. 42

AN ORDINANCE OF THE TOWN OF APPLE VALLEY ESTABLISHING AN ARTERIAL STREET SYSTEM DEVELOPMENT FEE, A FRONT FOOTAGE FEE, AND A RIGHT-OF-WAY FEE

THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY DOES HEREBY ORDAIN AS FOLLOWS:

Section 1 - Article 3 of the Apple Valley Municipal Code is hereby amended by adding a new Chapter 3.28 to read:

"Chapter 3.28

ARTERIAL STREET SYSTEM DEVELOPMENT FEE

3.28.010 - Short Title

3.28.020 - Purpose

3.28.030 - Findings and Intent

3.28.040 - Definition

3.28.050 - Establishment of Arterial System Redevelopment Fee

3.28.060 - Payment of Fee

3.28.070 - Fee Adjustment

3.28.080 - Use of Fees

3.28.090 - Fee Review

3.28.100 - Fees, Credits, and In-Lieu Payments

3.28.110 - Supplementary Provisions

3.28.120 - Appeal Process

3.28.010 - Short Title. This chapter of the Apple Valley Municipal Code may be referred to as the "Arterial Street System Development Fee Ordinance" of the Town of Apple Valley.

3.28.020 - Purpose. The purpose of this chapter is to establish an Arterial Street System Development Fee, a Front Footage Fee, and a Right-of-Way Fee in accordance with Government Code Section 66000, et seq., that imposes upon future development an equitable share of the costs of future arterial street system improvements.

3.28.030 - Findings and Intent. The Town Council finds as follows:

- A. Future development of property within the Town will result in traffic volumes that exceed the capacity of the existing Town-wide arterial street system.
- B. Failure to expand the capacity of the existing arterial street system will cause unacceptable levels of congestion on streets and intersections, traffic accidents, air pollution, noise, and restrictions on access for emergency vehicles.
- C. Existing and future sources of revenue are inadequate to fund a substantial portion of the arterial street system improvements required to accommodate the increased levels of traffic generated by future development.
- D. The impacts of contemplated future development have been studied and presented to the Town in a report prepared by Willdan Associates entitled "Report, Arterial System Financing Program for the Town of Apple Valley, March 1990," which report analyzes the need for the roadway improvements and sets forth the relationship between new development, roadway improvements required to accommodate the new development and the estimated cost of those improvements.
- E. The Arterial Street System Development Fee provided for by this chapter is established in accordance with the requirements of Government Code Section 66000 et seq., and provides for a fair and equitable method of distributing the costs of arterial street system improvements necessary to accommodate traffic volumes generated by future development.
- F. In establishing the fees described in the following sections, the Town Council has found that the Town is proceeding in a timely fashion with the preparation of the General Plan; the Town Council further finds and determines: 1) there is a reasonable probability that the action

proposed will be consistent with the General Plan proposal being considered or studied or which will be studied within a reasonable time; 2) there is little or no probability of substantial detriment to or interference with the future adopted General Plan if the proposed action is ultimately inconsistent with the plan; and 3) the proposed action complies with all other applicable requirements of state law and local ordinances. The Town Council has also considered the effects of the fees with respect to the housing needs of the Town and of the region in which the Town is situated.

3.28.040 - Definitions. For the purposes of this chapter, the following terms shall be defined as follows:

- A. Average Daily Trips shall mean the number of vehicular trips to and from a defined location averaged over a 24-hour, weekday period.
- B. 20-Year Arterial Street System Improvement Plan shall mean the systematic program for upgrading the Town's primary arterial streets to be phased over the succeeding Town's 20 years from the effective date of this chapter. The nature and extent of these improvements and their associated cost estimates are contained in the report entitled "Report, Arterial System Financing Program for the Town of Apple Valley, March 1990."
- C. Development Project shall mean the construction of residential, commercial, industrial, or other buildings and structures, and the addition of floor space to existing non-residential buildings and structures. Development project shall also mean any change of use of property which requires a building permit and which will generate additional daily trips above which can be reasonably associated with the current use of the property.
- D. Peak Trip Generated shall mean the number of average weekday trips occurring between 4 p.m. to 6 p.m.
- E. Roadway Improvements shall mean those improvements necessary to implement the 20-Year Arterial Street System Improvement Plan and shall include and not be limited to paving, curb and gutter, sidewalk, medians, drainage facilities, traffic signals, street lighting, rights-of-way, and other improvements necessary to mitigate or avoid deficiencies in the traffic circulation system.

F. Trend Growth shall mean the anticipated maximum amount of future development based on analyzing the Victor Valley Infrastructure Enhancement Program 1988, and the current Town Development Plan in Apple Valley and shall be expressed in terms of the number of undeveloped units permitted within each land use category.

3.28.050 - Establishment of Arterial Street System Development Fee. An Arterial Street System Development Fee is hereby established and imposed upon all development projects. The Town Council shall set forth in a separate resolution called the Arterial Street System Development Fee Resolution, the specific amount of the fee, a list of the specific public improvements to be financed with the fee, an estimate of the cost of these improvements, and a description of the reasonable relationship between the fee and the various types of new development.

(A). - Establishment of the Front Footage Fee. A Front Footage Fee is hereby established and imposed upon all development projects except development projects involving only a change of use. The amount of the fee shall be based upon the estimated cost of constructing curbs, gutter, sidewalks, and parking spaces for the number of linear feet fronting the development.

(B). - Establishment of the Right-of-Way Fee. If a right-of-way is acquired by purchase or through condemnation from a property where such right-of-way would be required to be dedicated as a condition of developing that property, the developer shall be required to pay a fee in the amount of the condemnation or purchase price plus all the expenses, costs, and fees incurred in acquiring the rights-of-way.

(C). - Calculation of Required Fee. The Town Manager shall be responsible for calculating the fee required by this chapter in accordance with the terms of this chapter and the Arterial Street System Development Fee Resolution.

3.28.060 - Payment of Fees. The fees required pursuant to this chapter shall be established effective at the time of issuance of building permit. These fees shall be paid prior to actual issuance of a building permit for any development project required to make such contribution, except that in the case of a residential development, such fee shall be paid prior to the issuance of an occupancy permit.

3.28.070 - Fee Adjustment. Any developer or property owner subject to the fees described in Sections (A), (B), or (C) may apply to the Town Council for a reduction or adjustment to that fee, or a waiver of that fee, based upon the absence of any reasonable relationship or nexus between the traffic impacts

of that development and either the amount of the fee charged or the type of facilities to be financed. The application shall be made in writing and filed with the Town Clerk not later than: 1) 30 days prior to the public hearing on the development permit application for the project; or 2) if no development permit is required, at the time of the filing of the request for a building permit or occupancy permit. The application shall state in detail the factual basis for the claim of waiver, reduction, or adjustment. The Town Council shall consider the application at the public hearing on the permit application or at a separate hearing when a public hearing is not otherwise required to be held within 60 days after the filing of the fee adjustment application. The decision of the Town Council shall be final. If a reduction, adjustment, or waiver is granted, any change in use on the subject property or any increase in the square footage of the development project shall invalidate the waiver, adjustment, or reduction of the fee.

3.28.080 - Use of Funds. The fees paid pursuant to the provisions of this chapter shall be placed into a fund to be used solely for the purpose of constructing roadway improvements necessary to complete implementation of the 20-Year Arterial Street System Improvement Plan.

3.28.090 - Fee Review. Prior to July 1 of each year, during the budget review process, the Town Council shall review fund balances and required roadway improvements and make a determination as to whether the amount and type of fees should be adjusted.

3.28.100 - Fees Credits and In-Lieu Payments. A developer shall be entitled to a reduction in the amount of the fees required by this chapter by the amount of engineering and construction costs that have been or will be reasonably incurred for roadway arterial street system improvements required to be constructed or installed by the developer as a condition of development approval. All fee reductions for in-lieu contributions shall be subject to the prior approval of the Town Manager and shall be limited to actual engineering and construction costs for improvements consistent with the Town's primary arterial standards. Costs for improvements which exceed the Town's primary arterial standards or are in addition to the requirements imposed by the Town shall be excluded from the amount by which the fees shall be reduced.

3.28.110 - Supplementary Provisions. The fees required by this chapter shall be supplementary to the fees and conditions imposed upon development projects pursuant to the provisions of the Subdivision Map Act, California Environmental Quality Act, and other state and local laws, ordinances, or administrative regulations which may authorize the imposition of conditions or fees on development.

3.28.120 - Appeal Process. The Town Manager or his designee shall be responsible for administering the provisions of this chapter. Decisions made by the Town Manager may be appealed to the Town Council."

Section 2 - Severability. If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason 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 the chapter. The Town Council hereby declares that it would have adopted this chapter and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

Section 3 - This ordinance and the actions taken thereby shall become effective 30 days following the date of its adoption. The Town Clerk shall certify to the adoption of this ordinance and shall cause the same to be posted in at least three public places within 15 days after the date of its adoption.

Section 4 - This ordinance was adopted after a noticed public hearing, at which time the Council also considered the "Report, Arterial System Financing Program for the Town of Apple Valley," which report was available to the general public for a period of at least 14 days prior to the public hearing. This ordinance shall be operative with respect to development projects 60 days after its adoption pursuant to Government Code Section 65962.

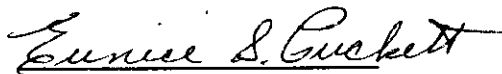
PASSED AND ADOPTED this 24th day of April, 1990.



Mayor

ATTEST:

(SEAL)

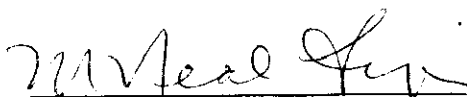


Town Clerk

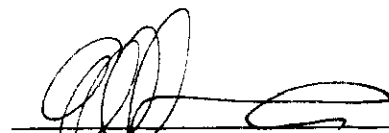
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APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



TOWN ATTORNEY



TOWN MANAGER

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
TOWN OF APPLE VALLEY

I, Eunice S. Puckett, Town Clerk of the Town of Apple Valley, California, hereby certify that the foregoing Ordinance was duly and regularly introduced at a meeting of the Town Council on the 28th day of March, 1990, and that thereafter the said ordinance was duly and regularly adopted at a meeting of the Town Council on the 24th day of April, 1990, by the following vote, to wit:

AYES: Councilmembers Davis, DePrisco, Larkin, Mayor Pro Tem Turner and Mayor Pearson

NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Apple Valley, California, this 24th day of April, 1990.

Eunice S. Puckett
TOWN CLERK

(SEAL)
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Exhibit 4 - Ordinance and Resolution

STATE OF CALIFORNIA

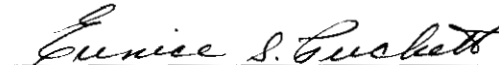
COUNTY OF SAN BERNARDINO

TOWN OF APPLE VALLEY

I, Eunice S. Puckett, Town Clerk of the Town of Apple Valley, California, do hereby certify that the attached Ordinance No. 42 is a true and correct copy of a Town Ordinance duly adopted by the Town Council of the Town of Apple Valley, and it has been published or posted pursuant to law, in that it has been posted on the 27th day of April, 1990, in three public places within said Town, namely,

- A. Town Administrative Office
22521 Shawnee Road
Apple Valley, California
- B. Apple Valley Library
22051 Highway 18
Apple Valley, California
- C. Apple Valley Community Center
13467 Navajo Road
Apple Valley, California

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Apple Valley, California, this 27th day of April, 1990.


Town Clerk

(SEAL)