

ORDINANCE NO. 5
AN ORDINANCE OF THE BOARD OF DIRECTORS OF
THE BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT
REPEALING AND REPLACING "ORDINANCE 5"
BY ESTABLISHING BIMID DEVELOPMENT IMPACT FEES
AND ADOPTING THE HARRIS & ASSOCIATES FEE STUDY
PUBLISHED BY THE DISTRICT ON APRIL 8, 2013

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT:

Section 1: Purpose and Authority.

This ordinance establishes Development Impact Fees for the Bethel Island Municipal Improvement District (BIMID or District), may be referred to as "Ordinance Five" and is adopted pursuant to the authority of Article XI, Section 7 of the California Constitution, Government Code Sections 66000 et seq. (hereinafter "Mitigation Fee Act"), Government Code sections 65000 et seq. (the Planning and Zoning Law of the State of California) and in accordance with the findings set forth in the ordinance and the Development Impact Fee Study referenced and codified herein.

Pursuant to Ordinance Five, the District has established fees which will be imposed upon development projects for the purpose of mitigating the impacts that the development projects have upon the District's ability to provide public facilities.

Section 2: Findings.

In order to mitigate the impacts caused by new and anticipated development within the District's boundaries, the District's Board of Directors ("Board of Directors") has determined that development impact fees are needed in order to finance certain public improvements and to pay for new developments' fair share of the acquisition and improvement construction costs and other costs necessary, or convenient, for the construction of those improvements. In establishing the fee described in the following sections, the Board of Directors has found the fees to be consistent with the requirement Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the California Government Code because the fees:

- a) Identify the purpose of each of the development impact fees;
- b) Identify the use to which the development fees will be put and the facilities for which the fee is charged;
- c) Identify how the need for the impact fee and the impact fee's use bear a reasonable relationship to the type of development project on which the fee is imposed; and
- d) Demonstrate that there is a reasonable relationship between the amount of the revised drainage impact fee imposed on new development and the cost of facilities attributable to new development.

Section 3: Action – Repeal and Replace Existing Ordinance Five

The current Bethel Island Municipal Improvement District Ordinance Five is superseded as follows by the following:

Article I – General Provisions and Definitions

5.110 – Use of Fees

- A. The fees imposed by the District pursuant to Ordinance Five shall be used to pay, in whole or in part, the estimated reasonable cost of providing specified public facilities as described in the ordinance or resolution that adopts the District's most recent Development Impact Fee Study.
- B. As described in the fee study adopted by the Board of Directors on May 16, 2013, the specified public facilities are categorized into separate and distinct sets of public facilities based upon the type of public facility to be provided, or other identifying features. Each separate set of specified public facilities described in the fee study shall be referred to in this Ordinance as a "public facility category." Public facility categories include, but are not limited to: flood control, parks, and capital facilities.
- C. For each separate public facility category, a separate fee shall be calculated and imposed, and each separately imposed fee shall be collected by the District and deposited in a separate and distinct "fee fund," subject to the accounting requirements of the Mitigation Fee Act.
- D. In order to more effectively mitigate the impact of new development, and maximize the use of fee revenues, fee revenues may be used as temporary loans from one fee fund to another fee fund only if the Board of Directors makes findings, of the following:
 1. Based upon planned phasing of the public facilities, and anticipated timing of fee revenues to be collected, it is in the District's best interests to allow the temporary loan.
 2. The development projects which are required to pay fees to the fee fund from which the loan is made will receive a benefit from the use of the loan by the separate fee fund to which the loan is made.
 3. All requirements of the Mitigation Fee Act have been satisfied, including a specification of the amount loaned, the date of repayment, and the interest rate to be paid.

5.120 – Calculation of Fees by Fee Study and Adoption of Ordinance Five

- A. Pursuant to the Mitigation Fee Act, in any action establishing, increasing, or imposing a fee as a condition of approval of a development project, a fee study shall be prepared for each public facility category, subject to District Board of Director approval by adoption of a fee study and an updated Ordinance Five. In addition to the findings supporting the adoption of impact fees identified in the impact fee ordinance, each revision to Ordinance Five shall include adoption of a fee study that establishes the following:

1. Identify the purpose of the fee by identifying the estimated types and quantities of development projects subject to the fee, and the public facility category to be funded by the fees.
2. Identify the use of the fee by identifying the specified public facilities to be funded by the fees.
3. Determine how there is a reasonable relationship between the District's use of the fee and the types of development projects on which the fee is to be imposed by demonstrating how the development projects will benefit from the specified public facilities to be funded by the fees.
4. Determine how there is a reasonable relationship between the need for the specified public facilities and the types of development projects on which the fee is to be imposed, by demonstrating how the development projects create a demand for the construction of the specified public facilities to be funded by the fees.
5. Determine how there is a reasonable relationship between the amount of the fee and the cost of the specified public facility attributable to the development projects on which the fee is to be imposed. This shall include two elements: (1) a quantification of the estimated reasonable cost of providing the specified public facility, which may include the estimated costs of land acquisition, design, construction, construction administration, general administration (including establishment and enforcement) of the fee program, and contingencies; and (2) an identification of the method by which the District quantifies the proportionate responsibility of each development project for the cost of the specified public facilities, which may be satisfied by establishing a formula which reasonably quantifies the proportionate responsibility of various types of development projects using standardized units of measurement.

B. The current set of Impact Fees are set by a fee study conducted by Harris & Associates and adopted by the BIMID Board on May 16, 2013. Those fees are as follows:

Development Type	Flood Control	Parks	Public Facilities	Administration (5%)	Total
Single Family Residential	\$ 4,428	\$ 632	\$ 114	\$ 259	\$ 5,433 per unit
PUD Residential Unit	\$ 3,838	\$ 547	\$ 99	\$ 224	\$ 4,708 per unit
Multi-Family Residential	\$ 3,247	\$ 463	\$ 84	\$ 190	\$ 3,984 per unit
Mobilehome	\$ 2,657	\$ 379	\$ 68	\$ 155	\$ 3,260 per unit
Non-Residential	\$ 2,952	NA	\$ 76	\$ 151	\$ 3,180 per 1000 sf

Section 5.130 – Definitions

- A. As used in this chapter, all words, phrases, and terms shall be interpreted in accordance with the definitions set forth in the Mitigation Fee Act, unless otherwise defined herein.
 1. "Applicant" means any person, or other legal entity, which applies to the District for approval of a development project.
 2. "Change of use" means any proposed use of an existing structure (or a previously existing structure) on a parcel which: (a) requires a building permit or other permit or District approval (such as a conditional use permit or a zoning

- administrator permit), and (b) the proposed use is included in a different property use category (as defined in an adopted fee study and Ordinance implementing the fee study) than the last legal use of the existing structure, and (c) the proposed use results in impacts greater than the last legal use of the existing structure.
3. "Development project" means any project undertaken for the purpose of development, as defined in the Mitigation Fee Act, and shall specifically include any building permit, or any other permit or District approval required for a change of use. Development project shall specifically include any change of use or remodel other than residential remodels.
 4. "Fee" means, for the purpose of this chapter, a development impact fee imposed by the District in accordance with this chapter.
 5. "Fee fund" means each of the separate and distinct funds into which fees for each public facility category are deposited.
 6. "Impact fee ordinance" means this chapter.
 7. "Inflation index" means a recognized standard index (such as the Consumer Price Index), as determined by the District Manager or his or her designee to be a reasonable method of calculating the impact of inflation upon cost estimates set forth in the adopted fee study and Ordinance Five.
 8. "Mitigation Fee Act" means Cal. Gov't Code §§ 66000 et seq.
 9. "Permit" means the District permit required for a development project, or, if the development project consists of a change of use for which no permit is required, any other permit or District approval required for the change of use.
 10. "Public facility" means any public improvements, public services, or community amenities, as defined by the Mitigation Fee Act, including, but not limited to: traffic improvements, park land dedication, park facility improvements, capital facilities (such as water treatment plants), fire facilities, and any similar public facility.
 11. "Public facility category" means a separate and distinct set of public facilities as described in Section 5.120.A.
 12. "Remodel" means any proposed improvement or reconstruction of an existing structure (or a previously existing structure) on a parcel which: (a) requires a building permit or other permit or District approval (such as a conditional use permit or a zoning administrator permit), and (b) results in impacts greater than the last legal use of the existing structure.
 13. "Specified public facility" means those public facilities described in the most recent fee study and most recent revision of Ordinance Five, the total program costs of which are used as the basis for the calculation of a fee, as described in Section 5.120.A.
 14. "Vested development rights" means an applicant's right to proceed with development of a development project in substantial compliance with the local ordinances, policies, and standards in effect at the time that the rights vest, as the term is defined in the vesting tentative map statutes (Cal. Gov't Code §§ 66498.1 through 66498.9), development agreement statutes (Cal. Gov't Code §§ 65864 through 65869.5), and state law.

Article II – Payment of Fees

Section 5.210 – Obligation to Pay Fees

- A. Each applicant for District approval of a development project (including applications for a change of use and non-residential remodels) shall pay impact fees to the District, in accordance with the amounts set forth in an adopted fee study and this Ordinance, unless the applicant establishes, to the satisfaction of the District Manager or his or her designee, entitlement to a fee exemption pursuant to Article II or a fee adjustment pursuant to Article III of this Ordinance.
- B. The obligation to pay impact fees pursuant to this chapter shall not replace an applicant's obligation to mitigate development project impacts in accordance with other requirements of state or local law.

Section 5.220 – Timing of Payment

- A. At Permit Issuance. Except as otherwise provided in this section, the fees for each unit of development within a development project shall be paid in full prior to the issuance of the permit required for that unit of development.
- B. Compliance. No District official or agency may issue a permit with respect to a development project unless either the fees required by this chapter have been paid as required by subsection (a) of this section or an agreement between the District and the Developer has been entered into and recorded in connection with the development project. No District official or agency may certify final inspection or issue a certificate of occupancy for a unit of development, or otherwise allow occupancy of a unit of development, until the fees required by this chapter, with respect to such unit, are paid in accordance with this section.

Section 5.230 – Amount of Fees

- A. The amount of any fee to be paid for a unit of development within a development project shall be the amount of the fee in effect, pursuant to the adopted fee study and Ordinance Five, on the date of permit issuance. However, if any fee is paid more than 18 months after the date of permit issuance, then the amount of the fee shall be the amount in effect, pursuant to the most recently adopted fee study, at the time that full payment is made to the District.
- B. The amount of any fee to be paid in connection with a change of use shall be: (1) the amount of the fee required pursuant to subsection (a) of this section for the proposed use, (2) minus the amount of the fee paid for the last legal use of the existing structure.
- C. The amount of any fee to be paid in connection with a non-residential remodel shall be the amount of the fee required pursuant to subsection (a) of this section for that portion of the remodel which generates impacts greater than the last legal use of the existing structure.
- D. In the event that a previous partial fee payment is made for any unit of development, the full fee to be paid for that unit shall be the amount of the fee in effect, pursuant to the

most recently adopted fee study, at the time of permit issuance, less the amount of the previous partial payment.

- E. The applicant shall have the burden of proving the amount of any fee previously paid, the date on which payment was made, and the unit of development for which payment was made.

Section 5.240 – Park Land Development Fees

- A. The District's approval of each residential development project shall be conditioned upon the payment of a park land development fee in an amount proportionate to the number of residents estimated to reside within the development project, and sufficient to maintain the District's park development fee standard of 0.47 acres per 1000 residents. This development fee is separate from any park fees levied by the County of Contra Costa and is intended solely to benefit Bethel Island and its residents.

Section 5.250 – Fee Adjustments by the District

- A. The District reserves the right to update and adjust each fee from time to time, in accordance with the Mitigation Fee Act. The fee may be adjusted periodically to reflect revised facility standards, receipt of funding from alternative sources, revised facilities or costs, or changes in demographics or the land use plan.
- B. In addition to such adjustments, the fees will be adjusted annually on or before January 31st to account for future escalation in construction costs based upon the Engineering News Record construction cost index (for streets, drainage facilities, etc.) for the San Francisco area.
- C. The fee in effect at the time any applicant has obtained a vested development right shall be subject to adjustment by the District, as incorporated in the most recently adopted fee study in effect at the time that full payment of the fee is made, based upon any or all of the following criteria:
 - 1. Adjustments in the amount of the estimated construction costs of providing the specified public facilities based upon adjustments in accordance with the inflation index.
 - 2. Adjustments to replace estimated costs with actual costs (including carrying costs) of providing the specified public facilities.
 - 3. Adjustments to reflect more accurate cost estimates of providing the specified public facilities based upon more detailed analysis or design of the previously identified specified public facilities.

Section 5.260 – Exemptions and Exceptions

- A. Non-residential development projects are exempt from impact fees for park land dedication fees and park facility fees.
- B. Residential development projects are exempt from impact fees for a remodel so long as the remodel does not result in a change of use.
- C. An applicant may request a refund of a fee previously paid in accordance with this chapter only if the applicant provides written documentation to the satisfaction of the

District Manager or his or her designee that: (1) the building permit (including any permit or District approval on which the fee was imposed) is cancelled or voided, and (2) work has not progressed on the building permit which would allow commencement of a new use or change of use, and (3) the District has not already committed the fees to the construction of public facilities. Any refund made pursuant to this subsection may, in the discretion of the District Manager or his or her designee, include a deduction to cover the District's administrative costs of processing the refund.

- D. A development project shall be exempt from the requirements of this impact fee ordinance if the applicant provides documentation, to the satisfaction of the District Manager or his or her designee, of federal, state, or local law (including a duly adopted resolution of the BIMID Board of Directors) which establishes entitlement to the exemption.

Article III - Fee Protests, Appeals, and Adjustments

Section 5.310 – Notice of Protest Rights

- A. Each applicant is hereby notified that, in order to protest the imposition of any impact fee required by this chapter, the protest must be filed in accordance with the requirements of this chapter and the Mitigation Fee Act. Failure of any person to comply with the protest requirements of this chapter or the Mitigation Fee Act shall bar that person from any action or proceeding or any defense of invalidity or unreasonableness of the imposition.
- B. On or before the date on which payment of the fee is due, the applicant shall pay the full amount required by the District and serve a written notice to the District Office with all of the following information: (1) a statement that the required payment is tendered, or will be tendered when due, under protest; and (2) a statement informing the District of the factual elements of the dispute and the legal theory forming the basis for the protest.
- C. After receipt of the notice from the applicant, and prior to the informal hearing to be scheduled in accordance with Section 5.320, the District Manager or his or her designee shall investigate the factual and legal adequacy of the applicant's protest. At the request of the District Manager or his or her designee, the applicant shall provide additional information or documentation in substantiation of the protest.
- D. The applicant shall bear the burden of proving, to the satisfaction of the District Manager or his or her designee, entitlement to a fee adjustment. The evidence (information and documentation) to be submitted by the applicant in support of the protest shall include, but not be limited to, an identification of the amount of the fee which the applicant alleges should be imposed upon the development project, and all factual and legal bases for the allegation. The applicant shall identify each portion of this impact fee ordinance and any currently applicable adopted fee study which the applicant claims supports the allegation. The applicant shall identify each portion of this impact fee ordinance and each portion of any fee study which the applicant claims fails to support the District's imposition of the fee upon the development project.

Section 5.320 – Informal Hearing

- A. The District Manager shall schedule an informal hearing regarding the protest, to be held no later than 60 days after the imposition of the impact fees upon the development project, and with at least 10 days' prior notice to the applicant (unless either dates are otherwise agreed by the District Manager and the applicant).
- B. During the informal hearing, the District Manager shall consider the applicant's protest, relevant evidence assembled as a result of the protest, and any additional relevant evidence provided during the informal hearing by the applicant and the District. The District Manager shall provide an opportunity for the applicant to present additional evidence at the hearing in support of the protest. However, in weighing relevant evidence, the District Manager may consider the extent to which the applicant provided requested substantiating evidence prior to the hearing.

Section 5.330 – District Manager's Determination

- A. When the District Manager determines that sufficient evidence has been submitted to decide the protest, the District Manager shall close the informal hearing and issue a written determination regarding the protest. The District Manager may continue the informal hearing in order to assemble additional relevant evidence. The District Manager's determination shall support the fee imposed upon the development project unless the applicant establishes, to the satisfaction of the District Manager, entitlement to an adjustment to the fee.

Section 5.340 – Appeal of District Manager's Determination

- A. Any applicant who desires to appeal a determination issued by the District Manager pursuant to Section 5.330 shall submit a written appeal to the District. A complete written appeal shall include a complete description of the factual elements of the dispute and the legal theory forming the basis for the appeal of the District Manager's determination. An appeal received by the District more than 10 calendar days after the District Manager's determination may be rejected as late. Upon receipt of a complete and timely appeal, the District Manager shall schedule a hearing before the BIMID Board of Directors ("Board of Directors") to consider and rule on the appeal.

Section 5.350 – Appeal Hearing

- A. The Board of Directors, in coordination with the applicant and the District Manager, set the time and place for the appeal hearing, and provide written notice thereof. The Board of Directors may issue directives related to the conduct of the hearing in an effort to facilitate resolution of the dispute or narrow the issues in dispute, including a prehearing or post-hearing brief from the applicant, and scheduling presentation of evidence during the hearing. The Board shall consider relevant evidence, provide an opportunity for the applicant and the District Manager to present additional noncumulative evidence at the hearing, and preserve the complete administrative record of the proceeding.

Section 5.360 – Decision of Board

- A. Within 60 days after the Board of Directors closes the hearing and receives post-hearing briefs (if any), the Board of Directors shall issue a written decision on the appeal hearing which shall include a statement of findings of fact in support of the decision. The Board of Director's discretion shall be limited to a determination that either supports the District Manager's determination or orders the District to refund all or a portion of the impact fees to the applicant. The applicant shall bear the burden of proving entitlement to a fee adjustment. The decision of the Board of Directors is final and conclusive but subject to judicial review.

Section 5.370 – Costs of Protest

- A. The applicant shall pay all District costs related to any protest or appeal pursuant to this chapter. At the time of the applicant's protest, and at the time of the applicant's appeal, the applicant shall pay a deposit in an amount of \$5000 to cover the estimated reasonable cost of processing the protest and appeal. If the deposit is not adequate to cover all District costs, the applicant shall pay the difference within 20 days after receipt of written notice from the District Manager.

Section 5.380 – Acknowledgment of Adjustment or Waiver

- A. As a condition of any adjustment or waiver made for a fee imposed upon a particular development project, the applicant may be required by the District Manager or the Board of Directors to provide an acknowledgment and waiver, in a form acceptable to the District, of any further right to protest or appeal the District's imposition of fees for that development project.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the District or any officer or employee thereof a mandatory duty of care towards persons and property within or without the District, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

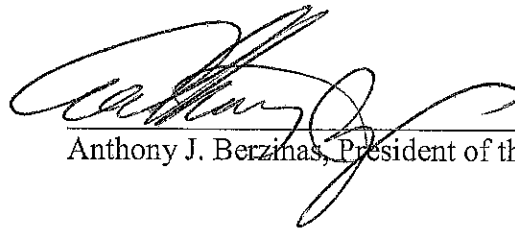
If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without invalid provision or application, and to this end the provisions of this ordinance are severable. This District Board hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance enforced.

Section 6: Effective Date and Publication.

This Ordinance shall take effect sixty (60) days after the date of its adoption and shall be posted for one week in three public places in the District after adoption. A subsequent finding of the board, entered in its minutes, that posting has been made is conclusive evidence that the posting has been properly made. The foregoing Ordinance of the Board of Directors of the Bethel Island Municipal Improvement District was duly introduced on April 18, 2013 and adopted by the Board at its regular meeting on May 16, 2013 by the following vote:

AYES: Directors: Berzinas, Eisenbeis, Amrine, Quinn, and Myers
NOES: None
ABSENT: None
ABSTAIN: None

INTRODUCED: April 18, 2013
ADOPTED: May 16, 2013
EFFECTIVE: July 16, 2013



Anthony J. Berzinas, President of the Board

ATTEST:



Robert Amrine, Jr., Board Secretary