

**ORDINANCE NO. 24**

**AN ORDINANCE OF THE BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT UPDATING ITS POLICIES AND PROCEDURES CONCERNING VEHICULAR ACCESS TO BETHEL ISLAND LEVEES**

WHEREAS, the Board of Directors has recently provided updated direction to staff concerning when and under what circumstances vehicles shall be allowed to drive on levees; and

WHEREAS, this Ordinance is enacted to confirm this updated policy direction and to approve measures to be taken by staff to implement this direction;

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Bethel Island Municipal Improvement District, as follows:

Section 1. In recognition of the role that the Bethel Island Municipal Improvement District (“BIMID”) plays in minimizing the risk of levee failures, but also taking into account the past allowances of vehicular access on levees, the Board of Directors hereby adopts and enacts the policy of minimizing and reducing vehicular access to Bethel Island levees whenever and wherever reasonably possible.

Section 2. Accordingly, the Board takes the following actions by this Ordinance:

(a) The Board directs staff to continuously seek opportunities to minimize and/or reduce vehicular access to Bethel Island levees whenever and wherever reasonably possible.

(b) In order to implement the Board’s policies regarding vehicular access:

(1) Legal Authority. The Board directs staff to prohibit vehicular access to *designated* Bethel Island levees pursuant to California Vehicle Code § 21116, subject only to the limited exceptions provided below, notwithstanding any existing policies, rules or regulations to the contrary. A true and correct copy of Cal. Veh. Code § 21116 is attached as *Exhibit “A”*.

(2) Signing. The Board directs staff to post the required signing pursuant to Cal. Veh. Code § 21116 (b) on those designated levees which will be subject to this Ordinance.

(3) Policy Review. The Board directs staff to review existing policies, rules, and regulations, and to bring back any needed modifications to assure consistency with this Ordinance.

(4) Required Approval. Unless exempt pursuant to Section (2) (b) (6), below, anyone wishing to receive approval to drive on one or more of the designated levees, must

first seek approval from BIMID by submitting and obtaining approval of an *Application for Approval to Drive on Levee* (a copy of which attached as *Exhibit "B"* and approved as BIMID's required application).

(5) Approval Criteria. Staff shall only approve an *Application for Approval to Drive on Levee* unless it makes the following findings based on substantial evidence:

(i) The applicant is a resident of Bethel Island who occupies property immediately adjacent to a designated Bethel Island levee; or a service provider hired directly by BIMID; and

(ii) The applicant has hired one or more service providers (i.e. plumbers, roofers, etc.) to work on his or her property and the inability of those service provider(s) to access the property from the levee will result in significant additional costs; or the applicant is "land-locked" in the sense that he or she has no legal access to the property without driving on the levee.

(6) Exemptions. The following individuals and / or entities are exempt from the requirement to obtain BIMID approval prior to driving on a designated levee:

(i) Those who were previously allowed to drive on a levee may be "grandfathered-in" in the sense that they may continue to drive on the levee to the extent previously allowed if BIMID is able to make all of the following findings based on substantial evidence: (aa) at the time this Ordinance took effect, they had permission from BIMID to drive on the levee; (bb) they have complied with all applicable rules and regulations governing vehicular access to the levee(s); and (cc) they have not stopped driving on the levee for a period of six (6) consecutive months, after receiving BIMID's original approval to drive on the levee.

(ii) Emergency providers who have their own levee gate locks and keys such as the sheriff's department, fire department, and county medical personnel, are exempt from the requirement to obtain BIMID approval prior to driving on the levees; and

(iii) Regulatory / governmental entities such as the Army Corp. of Engineers, and Fish & Game, are also exempt from the requirement to obtain BIMID approval prior to driving on Bethel Island levees but will still be required to obtain gate keys as needed from BIMID staff and to immediately return those keys upon completion of their visit.

(7) Rules. The Board approves and adopts staff's proposed *Rules of Conduct Governing Permission to Drive on Bethel Island Levees* (a copy of which is attached as *Exhibit "C"*) as the official rules and regulations governing vehicular access to levees.

(8) Term. There shall be two types of approvals: (i) temporary (which shall be for up to seven days); and (ii) long-term (which shall be for two years). Applicants may request an extension of these terms prior to the expiration of their current term.

(9) Key Deposit. Each applicant requiring the issuance of a levee gate key shall pay a refundable deposit of \$250.00 by credit card only.

(10) Administration / Appeal. Staff shall administer the application process subject to the right of appeal by an applicant to the Board of Directors within ten days after an adverse ruling or decision has been made.

(11) Staff Authority. Staff is hereby authorized to process and approve, conditionally approve, or deny, *Applications for Approval to Drive on Levee* consistent with this Ordinance, including the development of administrative rules and regulations, the development of *standard* conditions of approval (dealing with such things as insurance requirements, key issuance, etc.) and the imposition of *specific* conditions of approval unique to particular applications. Staff is also authorized to require reasonable proof that an applicant meets one of the specified exceptions to the prohibition against driving on the levees and in the case of an application based on being land-locked, is specifically authorized to require proof that there is no other legal access to the site.


(12) Enforcement. Upon learning that an individual or entity is driving on a designated levee without the required permission from BIMID, staff shall issue a written *Notice of Violation / Demand to Cease & Desist* under the signature of BIMID's General Counsel. If the violation continues, General Counsel shall agendize a closed session to discuss the particulars with the Board of Directors in order to determine whether legal action should be taken.

Section 2. This Ordinance shall take effect thirty (30) days after the date of its adoption and shall be posted for one week in three public places within the Bethel Island Municipal Improvement District thereafter. 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 forgoing Ordinance of the Board of Directors of the Bethel Island Municipal Improvement District was duly introduced on September 15, 2022 and adopted by the Board at its regular meeting on October 13, 2022 by the following vote:

AYES:           Directors:       Smith, Berzinas, Kirk, Knorr, Jr.  
NOES:  
ABSENT:       Directors:       Lucas  
ABSTAIN:

INTRODUCED: September 15, 2022  
ADOPTED: October 13, 2022  
EFFECTIVE: November 11, 2022

  
\_\_\_\_\_  
Bruce Smith, President of the Board

ATTEST:

  
\_\_\_\_\_  
Lisa Kirk, Board Secretary

APPROVED AS TO FORM:

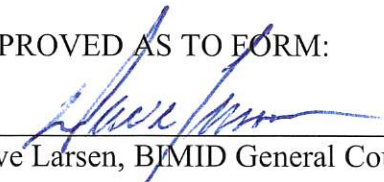
  
\_\_\_\_\_  
Dave Larsen, BIMID General Counsel

EXHIBIT "A"

## West's Ann. Cal. Vehicle Code § 21116

### **21116. Levees, banks of waterways, and pipeline rights-of-way**

(a) No person shall drive any motor vehicle upon a roadway located on a levee, canal bank, natural watercourse bank, or pipeline right-of-way if the responsibility for maintenance of the levee, canal bank, natural watercourse bank, or pipeline right-of-way is vested in the state or in a reclamation, levee, drainage, water or irrigation district, or other local agency, unless such person has received permission to drive upon such roadway from the agency responsible for such maintenance, or unless such roadway has been dedicated as a public right-of-way.

(b) For this section to be applicable to a particular levee, canal bank, natural watercourse bank, or pipeline right-of-way, the state or other agency having responsibility for maintenance of the levee, canal bank, natural watercourse bank, or pipeline right-of-way shall erect or place appropriate signs giving notice that permission is required to be obtained to drive a motor vehicle thereon and giving notice of any special conditions or regulations that are imposed pursuant to this section and shall prepare and keep available at the principal office of the state agency or other agency affected or of the board of such agency, for examination by all interested persons, a written statement, in conformity with the existing rights of such agency to control access to the roadway, describing the nature of the vehicles, if any, to which such permission might be granted and the conditions, regulations, and procedure for the acquisition of such permission adopted pursuant to this section.

(c) Nothing in this section prohibits the establishment of bicycle paths or routes (as prescribed by Article 6.5 (commencing with Section 5078) of Chapter 1 of Division 5 of the Public Resources Code) on levees, canal banks, natural watercourse banks, or pipeline rights-of-way.

### **Credits**

(Added by Stats.1970, c. 926, p. 1684, § 1. Amended by Stats.1971, c. 1361, p. 2682, § 2, operative May 3, 1972.)

West's Ann. Cal. Vehicle Code § 21116, CA VEHICLE § 21116

EXHIBIT "B"

**APPLICATION FOR APPROVAL TO DRIVE ON LEVEES**

DATE: \_\_\_\_\_

INSTRUCTIONS: Vehicular access is not allowed behind gated Bethel Island levees by California Vehicle Code § 21116 except as otherwise permitted by Ordinance No. 24 of the Bethel Island Municipal Improvement District (“BIMID”). If you believe you qualify for an exception to this state law and wish to receive permission to drive on a portion of the levee, please fill out this application legibly, truthfully, and completely and submit it to BIMID staff for review.

APPLICANT’S INFORMATION

Section 1. Type of Application

The applicant is:

a resident                       a BIMID contractor

Section 2. Applicant’s Information:

(a) Name (person(s) or company & responsible party):

\_\_\_\_\_  
\_\_\_\_\_

(b) Email Address(es):

\_\_\_\_\_  
\_\_\_\_\_

(c) Mailing Address(es):

\_\_\_\_\_  
\_\_\_\_\_

(c) Telephone Number(s):

\_\_\_\_\_  
\_\_\_\_\_

(d) Driver’s License Number(s):

\_\_\_\_\_  
\_\_\_\_\_

Note: Please attach an extra sheet if needed to complete your responses.



Bethel Island Municipal Improvement District  
P.O. Box 244 / 3085 Stone Road  
Bethel Island, CA 94511  
(925) 684 – 2210

Section 3. Type of Approval:

- (a) The reason applicant is applying to drive on the levee is:  
 to respond to emergencies  access a jobsite  access a residence  
 other: \_\_\_\_\_.
- (b) Applicant is applying for permission drive on the levee:  
 on a temporary basis (up to 7 days)  on a long-terms basis (for 2 years)

Section 4. Information Required:

Please provide the following information / submittals:

- (a) Why you qualify for an exception to the rule against driving on levee(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (b) The date(s) and time(s) you need levee access and why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (c) What portion of the levee are you seeking permission to drive on? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (d) Documentation as required by BIMID staff to support your responses to the above questions (i.e. proof you are land-locked if that is the basis for your application).
- (e) Confirmation that you have received, read, understand and agree to comply with the *Rules of Conduct Governing Permission to Drive on the Bethel Island Levee* (copy attached) and that failure to comply with these rules may result in the revocation of your privilege to drive on the levees, by placing your initials next to each rule on the attached copy, signing at the bottom of the attached copy, and submitting it along with this application to BIMID staff.

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- (f) Proof as required by BIMID staff of the type of insurance required in Section 5, below, as a condition of approval of your application to drive on the levee.

Note: Please attach an extra sheet if needed to complete your responses.

Section 5. Disposition of Application:

- (a) This application was approved subject to the standard conditions of approval listed immediately below: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) This application was approved subject to the following specific terms and conditions addressing issues unique to your application in addition to the standard conditions listed immediately below: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (c) (c) Effective \_\_\_\_\_, 20\_\_\_\_, your application was denied for the reasons indicated immediately below; and you have ten (10) days from this date to file an appeal with BIMID in the manner required (see staff): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Regina Espinoza  
BIMID General Manager