

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
ORDINANCE NO. 3064 RELATING TO PEDESTRIAN
BRIDGE DEVELOPMENT IMPACT FEE FOR OTAY RANCH
VILLAGES ONE, TWO, FIVE, AND SIX RELATING TO THE
ANNUAL REVIEW AND ADJUSTMENT OF FEES

WHEREAS, the City's General Plan Land Use and Public Facilities Elements require that adequate public facilities be available to accommodate increased population created by new development; and

WHEREAS, the City Council has determined that new development within certain areas within the City of Chula Vista as identified in this ordinance, will create adverse impacts on certain existing public facilities which must be mitigated by the financing and construction of those facilities identified in this ordinance; and

WHEREAS, developers of land within the City are required to mitigate the burden created by their development by constructing or improving those facilities needed to provide service to their respective developments or by the payment of a fee to finance their portion of the total cost of such facilities; and

WHEREAS, development within the City contributes to the cumulative burden on pedestrian facilities in direct relationship to the amount of population generated by the development or the gross acreage of the commercial or industrial land in the development; and

WHEREAS, the goal of the Otay Ranch General Development Plan (GDP) is to organize land uses based upon a village concept to produce a cohesive, pedestrian friendly community, encourage non vehicular trips and foster interaction amongst residents; and

WHEREAS, a component of the Otay Ranch circulation system is a comprehensive trail system to provide for non-vehicular alternative modes of transportation; and

WHEREAS, the Otay Ranch GDP requires that a non-auto circulation system, such as pedestrian walkways, bike paths, and, where appropriate and feasible, grade separated arterial crossings be provided to encourage pedestrian activity between villages; and

WHEREAS, the City Council adopted the Otay Ranch Villages One and Five Pedestrian Bridge Development Impact Fee (Impact Fee) by Ordinance 2767 (Ped Dif Bridge Ordinance) in order to pay for pedestrian bridge facilities that will serve Otay Ranch Villages One and Five; and

WHEREAS, the City Council amended the original Ped Bridge DIF Ordinance 2767 on January 7, 2003, by Ordinance 2892, to include Otay Ranch Village Six to pay for its fair share of bridge improvements as a condition of issuance of building permits; and

WHEREAS, the City Council amended the Ped Bridge DIF Ordinance 2892 on February 20, 2007, by Ordinance 3064, to include Otay Ranch Village Two to pay for its fair share of bridge improvements as a condition of issuance of building permits; and

WHEREAS, the Conditions of Approval for Otay Ranch Village Two tentative map require that a funding mechanism be established to pay for one-half of Village Two's fair share of bridge improvements; and

WHEREAS, pedestrian facilities, including a continuous village pathway and cartpath system, that will directly connect Villages One, Five, Six and Two, have been built, or are proposed. Continuity of these pedestrian facilities requires crossing major streets. Rather than street-level crossings, pedestrian bridges have been included as part of the pedestrian circulation system. Such over-crossings encourage and facilitate the use of the pedestrian facilities and reduce the danger to pedestrians; and

WHEREAS, the completion of the pedestrian bridges in Village Two will complete the linkage of the pedestrian facilities in Villages One, Five, Six and Two, enhancing overall pedestrian access in and among these villages; and

WHEREAS, the Village Two tentative map requires that the developer construct certain pedestrian bridges that are part of this overall pedestrian circulation system.

WHEREAS, the construction of these pedestrian bridges will be facilitated by including their funding in the current Impact Fee program by: 1) amending the per unit fees payable at issuance of a building permit; 2) revising the facilities to be financed by the Impact Fee; and 3) revising the territory to which the Impact Fee is applicable to include Village Two; and

WHEREAS, the original Ped Bridge DIF Ordinance used the persons per dwelling unit rates established in Section 17.10.040 of Chula Vista Municipal Code for the various residential land use categories in deriving the Equivalence Dwelling Unit ratio upon which the Impact Fee is based; and

WHEREAS, the person per dwelling unit rates for Parkland Dedication in Sec. 17.10.040 were modified by Ordinance No. 2886. The rates for single family went from 3.22 persons per unit to 3.52 persons per unit and the multiple-family rates went from 2.21 persons per dwelling units to 2.61 persons per unit. The attached, cluster housing or planned unit development and the duplex categories were deleted from Sec. 17.10.040; and

WHEREAS, Otay Ranch, Villages One, Five, Six and Two are those areas of land within the City of Chula Vista surrounded by Telegraph Canyon Road, Otay Lakes Road, Heritage Road, Olympic Parkway, La Media Road, Birch Road, and State Route 125. This area is shown on the map marked Exhibit "2," which is included as an attachment to the City of Chula Vista Pedestrian Bridge Development Impact Fee Report for Otay Ranch Village Two, dated February 13, 2007, on file in the Office of the City Engineer; and

WHEREAS, City Engineering Staff has approved the City of Chula Vista Pedestrian Bridge Development Impact Fee Report dated November 6, 1998; the updated Pedestrian Bridge Development Impact Fee Report for Otay Ranch Village Six dated December 17, 2002; the updated Pedestrian Bridge Development Impact Fee Report for Village Two dated February 13, 2007 and updated Pedestrian Bridge Development Impact Fee Report for Village Two dated June 15, 2015 (Report); and

WHEREAS, the Report, recommends pedestrian over-crossing facilities needed for pedestrian access, and establishes a fee payable by persons obtaining building permits for developments within Otay Ranch Village Two benefiting from the construction of these facilities; and

WHEREAS, there are four Pedestrian Over Crossings (POC) proposed for the Otay Ranch Villages One, Five, Six and Two: North La Media Bridge POC between Villages One and Five, South La Media Road POC between Villages Six and Two, West Olympic Pkwy Bridge POC between Villages One and Two, and East Olympic Parkway Bridge POC between Villages Five and Six; and

WHEREAS, the Environmental Review Coordinator has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA; and

WHEREAS, the City Council has determined that the amount of the Impact Fee levied by this ordinance does not exceed the estimated cost of providing the public facilities identified by the report.

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

SECTION 1. Environmental Review

The Environmental Review Coordinator has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA.

SECTION 2. Acceptance of Reports

The City Council has reviewed the proposed Pedestrian Bridge Development Impact Fee Report, dated June 15, 2015, and has accepted same, by Resolution No. _____ in the form on file in the Office of the City Clerk; the City Council previously reviewed, accepted and adopted Pedestrian Bridge Development Impact Fee Reports, dated November 6, 1998, December 17, 2002, and February 13, 2007 (collectively, the Reports).

SECTION 3. Facilities

The facilities to be financed by the Impact Fee are fully described in the Reports and incorporated herein by this reference, (Facilities), all of which Facilities may be modified by the

City Council from time to time by resolution. The locations at which the Facilities will be constructed are shown on Exhibit "1" of the approved 2002 and 2007 Reports. The City Council may modify or amend the list of projects herein considered to be part of the Facilities by written resolution in order to maintain compliance with the City's Capital Improvement Program or to reflect changes in land development and estimated and actual pedestrian generation.

SECTION 4. Territory to Which Fee Is Applicable

The area of the City of Chula Vista to which the Impact Fee herein established shall be applicable is set forth on Exhibit "2" of the 2002 and 2007 Reports and is generally described herein as the "Territory."

SECTION 5. Purpose

The purpose of this ordinance is to establish the Impact Fee in order to provide the necessary financing to construct the Facilities within the areas shown in Exhibit "1" of the Report, in accordance with the City's General Plan.

SECTION 6. Establishment of Fee

The Impact Fee, to be based on a per Equivalent Dwelling Unit (EDU) basis, and payable prior to the issuance of building permits for residential development projects within the Territory, is hereby established to pay for the Facilities.

SECTION 7. Due on Issuance of Building Permit

The Impact Fee shall be paid in cash upon the issuance of a residential building permit. Early payment is not permitted. No building permit shall be issued for residential development projects subject to this ordinance unless the developer has paid the Impact Fee imposed by this ordinance.

SECTION 8. Determination of Equivalent Dwelling Units

Residential land uses shall be converted to Equivalent Dwelling Units for the purpose of this fee based on the following table:

Fee by Land Use		
Land Use	People per household	EDU's
Single Family ("SFD")	3.52	1
Multi Family ("MF")	2.61	0.74

"Single family" shall mean a residential unit within a subdivision, planning area or neighborhood with a net density of 8 units per acre or less as shown on the approved tentative map for said subdivision, planning area or neighborhood.

"Multi-Family" shall mean a residential unit within a subdivision, planning area or neighborhood with a net density of greater than 8 units per acre or any residential unit within a

mixed-use project as shown on the approved tentative map for said subdivision, planning area or neighborhood.

SECTION 9. Time to Determine Amount Due; Advance Payment Prohibited

The Impact Fee for each development shall be calculated at the time of building permit issuance and shall be the amount as indicated at that time and not when the tentative map or final map was granted or applied for, or when the building permit plan check was conducted, or when application was made for the building permit.

SECTION 10. Purpose and Use of Fee

The purpose of the Impact Fee is to pay for the planning, design, construction and/or financing (including the cost of interest and other financing costs as appropriate) of the Facilities, or reimbursement to the City or, at the discretion of the City if approved in advance in writing, to other third parties for advancing costs actually incurred for planning, designing, constructing, or financing the Facilities. Any use of the Impact Fee shall receive the advance consent of the City Council and be used in a manner consistent with the purpose of the Impact Fee.

SECTION 11. Amount of Fee; Amendment to Master Fee Schedule

The initial Impact Fee shall be calculated at the rate of \$844 per Single Family Dwelling Unit (SFD) and \$626 per Multiple Family Dwelling Unit (MF). Chapter XVI, Other Fees, of the Master Fee Schedule, Section E, shall be amended to read as follows:

"E. Otay Ranch Villages 1, 5, 6 and 2 Pedestrian Bridge Development Impact Fee.

This section is intended to memorialize the key provisions of Ordinance No. 2892, but said ordinance governs over the provisions of the Master Fee Schedule. For example, in the event of a conflict in interpretation between the Master Fee Schedule and the ordinance, or in the event that there are additional rules applicable to the imposition of the Impact Fee, the language of the ordinance governs.

a. Territory to which Fee Applicable

The area of the City of Chula Vista to which the Impact Fee herein established shall be applicable is set forth in Exhibit "2" of the City of Chula Vista Pedestrian Bridge Development Impact Fee Report for Otay Ranch Village Two dated February 13, 2007, and is generally described as the area surrounded by Telegraph Canyon Road, Otay Lakes Road, Heritage Road, Olympic Parkway, La Media Road, Birch Road, and State Route 125.

b. Rate per Residential Land Use and Fee

The Impact Fee shall be calculated at the rate of \$844 per EDU and translated into a fee per land use based on the people per household factor given below, which rate shall be

adjusted from time to time by the City Council.

Residential Land Use	EDU's	EDU's
Single Family (SFD)	1	\$844
Multi Family (MF)	0.74	\$626

The amount of the fee shall be adjusted, starting on October 1, 2016, and on each October 1st thereafter, based on the one-year change (from July to July) in the Los Angeles Construction Cost Index (ENR-CCI) as published in the Engineering-News Record Magazine. Adjustments to the above fees based on the ENR-CCI shall be automatic and shall not require further action of the City Council. The reasons for which non-automatic adjustments may be made include, but are not limited to the following: changes in the type, size, location or cost of the facilities to be financed by the Impact Fee; changes in land use in the City's General Plan; other sound engineering, financing and planning information. Adjustments to the above Impact Fee may be made by resolution amending Chapter 16 (Development and In-lieu Fees) of the City's Master Fee Schedule.

c. When Payable

The Impact Fee shall be paid in cash not later than immediately prior to the issuance of a building permit.”

SECTION 12. Authority for Accounting and Expenditures

The proceeds collected from the imposition of the Impact Fee shall be deposited into a public facility financing fund (“Otay Ranch Villages 1, 5, 6 and 2 Pedestrian Bridge Development Impact Fee Fund,” or alternatively, “Fund”) which is hereby created and shall be expended only for the purposes set forth in this ordinance, the Director of Finance is authorized to establish various accounts within the Fund for the Facilities identified in this ordinance and to periodically make expenditures from the Fund for the purposes set forth herein in accordance with the facilities phasing plan or capital improvement plan adopted by the City Council.

SECTION 13. Findings

The City Council hereby finds the following:

- A. The establishment of the Impact Fee is necessary to protect the public safety and welfare and to ensure the effective implementation of the City's General Plan.
- B. The Impact Fee is necessary to ensure that funds will be available for the construction of the Facilities concurrent with the need for these Facilities and to ensure certainty in the capital facilities budgeting for growth impacted public facilities.
- C. The amount of the fee levied by this ordinance does not exceed the estimated cost of providing the Facilities for which the fee is collected.

- D. New development projects within the territory will generate a significant amount of pedestrian traffic that current pedestrian facilities cannot service, therefore construction of the Facilities will be needed to service new development projects.
- E. That the legislative finding and determination set forth in Ordinances 2767, 2892 and 3064 continue to be true and correct.

SECTION 14. Impact Fee Additional to other Fees and Charges

The Impact Fee established by this section 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.

SECTION 15. Mandatory Construction of a Portion of the Facilities; Duty to Tender Reimbursement Offer

Whenever a developer is required as a condition of approval of a development permit to construct or cause the construction of the Facilities or a portion thereof, the City may require the developer to install the Facilities according to design specifications approved by the City and in the size or capacity necessary to accommodate estimated pedestrian traffic as indicated in the Report and subsequent amendments. If such a requirement is imposed, the City shall offer, at the City's option, to reimburse the developer from the Fund either in cash or over time as Fees are collected, or give a credit against the Impact Fee levied by this ordinance or some combination thereof, in the amount of the costs incurred by the developer that exceeds their contribution to such Facilities as required by this ordinance, for the design and construction of the Facility not to exceed the estimated cost of that particular Facility as included in the calculation and updating of the Impact Fee. The City may update the Impact Fee calculation, as City deems appropriate prior to making such offer. This duty to offer to give credit or reimbursement shall be independent of the developer's obligation to pay the Impact Fee.

SECTION 16. Voluntary Construction of a Portion of the Facilities; Duty of City to Tender Reimbursement Offer

If a developer is willing and agrees in writing to design and construct a portion of the Facilities in conjunction with the prosecution of a development project within the Territory, the City may, as part of a written agreement, reimburse the developer from the Fund either in cash or over time as Fees are collected, or give a credit against the Impact Fee levied by this ordinance or some combination thereof, in the amount of the costs incurred by the developer that exceeds their contribution to such Facilities as required by this ordinance, for the design and construction of the Facility not to exceed the estimated cost of that particular Facility as included in the calculation and updating of the Impact Fee and in an amount agreed to in advance of their expenditure in writing by the City. The City may update the Impact Fee calculation, as City deems appropriate prior to making such offer. This duty to extend credits or offer reimbursement shall be independent of the developer's obligation to pay the Impact Fee.

SECTION 17. Procedure for Entitlement to Reimbursement Offer

The City's duty to extend a reimbursement offer to a developer pursuant to Section 15 or 16 above shall be conditioned on the developer complying with the terms and conditions of this section:

- a. Written authorization shall be requested by the developer from the City and issued by the City Council by written resolution before developer may incur any costs eligible for reimbursement relating to the construction of the Facilities, excluding any work attributable to a specific subdivision project.
- b. The request for authorization shall contain the following information, and the City may from time to time request such other information as:
 - (1) Detailed descriptions of the work to be conducted by the developer with the preliminary cost estimate.
- c. If the Council grants authorization, it shall be by written agreement with the Developer, and on the following conditions among such other conditions as the Council may from time to time impose:
 - (1) Developer shall prepare all plans and specifications and submit same to the City for approval;
 - (2) Developer shall secure and dedicate any right-of-way required for the improvement work;
 - (3) Developer shall secure all required permits and environmental clearances necessary for construction of the improvements;
 - (4) Developer shall provide performance bonds in a form and amount, and with a surety satisfactory to the City;
 - (5) Developer shall pay all City fees and costs.
 - (6) The City shall be held harmless and indemnified, and upon demand by the City, defended by the developer for any of the costs and liabilities associated with the improvements.
 - (7) The developer shall advance all necessary funds for the improvements, including design and construction. The City will not be responsible for any of the costs of constructing the facilities.
 - (8) The developer shall secure at least three (3) qualified bids for work to be done. The construction contract shall be granted to the lowest qualified bidder. Any claims for additional payment for extra work or charges during construction shall be justified and shall be documented to the satisfaction of the City Engineer.

- (9) The developer shall provide a detailed cost estimate, which itemizes those costs of the construction attributable to the improvements. Soils Engineering shall be limited to 7.5 percent of the project cost, Civil Engineering shall be limited to 7.5 percent of the hard cost and landscape architecture shall be limited to 2 percent of the landscaping cost. The estimate is preliminary and subject to final determination by the City Engineer upon completion of the Public Facility Project.
- (10) The agreement may provide that upon determination of satisfactory incremental completion of the public facility project, as approved and certified by the City Engineer, the City may pay the developer progress payments in an amount not to exceed 75 percent of the estimated cost of the construction completed to the time of the progress payment but shall provide in such case for the retention of 25 percent of such costs until issuance by the City of a Notice of Completion.
- (11) The agreement may provide that any funds owed to the developer as reimbursements may be applied to the developer's obligations to pay the impact Fee for building permits to be applied for in the future.
- (12) When all work has been completed to the satisfaction of the City, the developer shall submit verification of payments made for the construction of the project to the City. The City Engineer shall make the final determination on expenditures, which are eligible for reimbursement.
- (13) After final determination of expenditures eligible for reimbursement has been made by the Public Works Director, the parties may agree to offset the developer's duty to pay Impact Fees required by this ordinance against the City's duty to reimburse the developer.
- (14) After offset, if any funds are due the developer under this section, the City may at its option, reimburse the developer from the Fund either in cash or over time as Fees are collected, or give a credit against the Impact Fee levied by this ordinance or some combination thereof, in the amount of the costs incurred by the developer that exceeds their required contribution to such Facilities as required by this ordinance, for the design and construction of the Facility not to exceed the estimated cost of that particular Facility as included in the calculation and updating of the Impact Fee and in an amount agreed to in advance of their expenditure in writing by the City.
- (15) A developer may transfer a credit against the Impact Fee to another developer with the written approval of the City Engineer in his/her sole discretion.

SECTION 18. Procedure for Fee Modification

Any developer who, because of the nature or type of uses proposed for a development project, contends that application of the Impact Fee imposed by this ordinance is unconstitutional or unrelated to mitigation of the burdens of the development, may apply to the City Council for a waiver or modification of the Impact Fee or the manner in which it is calculated. The application shall be made in writing and filed with the City Clerk not later than ten days after notice is given of the public hearing on the development permit application for the project, or if no development permit is required, at the time of the filing of the building permit application. The application shall state in detail the factual basis for the claim of waiver or modification, and shall provide an engineering and accounting report showing the overall impact on the Development Impact Fees (DIF) and the ability of the City to complete construction of the Facilities by making the modification requested by the applicant. The City Council shall make reasonable efforts to consider the application within sixty days after its filing. The decision of the City Council shall be final. The procedure provided by this section is additional to any other procedure authorized by law for protection or challenging the Impact Fee imposed by this ordinance.

SECTION 19. Fee Applicable to Public Agencies

Development projects by public agencies, including schools, shall be exempt from the provisions of the Impact Fee.

SECTION 20. Assessment District

If any assessment, community facilities district or special taxing district is established to design, construct and pay for any or all of the Facilities ("Work Alternatively Financed"), the owner or developer of a project may apply to the City Council for reimbursement from the Fund or a credit in an amount equal to that portion of the cost included in the calculation of the Impact Fee attributable to the Work Alternatively Financed. In this regard, the amount of the reimbursement shall be based on the costs included in the Report, as amended from time to time, and therefore, will not include any portion of the financing costs associated with the formation of the assessment or other special taxing district.

SECTION 21. Expiration of this Ordinance

This ordinance shall be of no further force and effect when the City Council determines that the amount of Impact Fees which have been collected reaches an amount equal to the cost of the Facilities.

SECTION 22. Time Limit for Judicial Action

Any judicial action or proceeding to attack, review, set aside, void or annul this ordinance shall be brought within the time period as established by law. In accordance with Government Code Section 66020(d)(1), the ninety-day approval period in which parties may protest begins upon the effective date of this ordinance.

SECTION 23. Other Not Previously Defined Terms

For the purposes of this ordinance, the following words or phrases shall be construed as defined in this Section, unless from the context it appears that a different meaning is intended.

- (a) "Building Permit" means a permit required by and issued pursuant to the Uniform Building Code as adopted by reference by this City.
- (b) "Developer" means the owner or developer of a development.
- (c) "Development Permit" means any discretionary permit, entitlement or approval for a development project issued under any zoning or subdivision ordinance of the City.
- (d) "Development Project" or "Development" means any activity described in Section 66000 of the State Government Code.
- (e) "Single Family Attached Dwelling" means a single-family dwelling attached to another single family dwelling, with each dwelling on its own lot.

SECTION 24. Effective Date

This ordinance shall become effective sixty days after its second reading and adoption.

Presented by

Approved as to form by

Kelly Broughton
Development Services Director

Glen R. Googins
City Attorney