



MEMORANDUM

To: Dr. Natasha Baker, Superintendent
From: Craig McAlpin, Chief Business Official
Bob Nicholson, Vice President, EH&A
Date: December 9, 2020
RE: Public hearing regarding the consideration and adoption of a statutory school facility fee increase in accordance with the State Allocation Board ("SAB") statutory school facility fee increase for new residential and commercial/industrial construction, and adopt Resolution 20-21-06 Approving an Increase in Statutory School Facility Fees Imposed on New Residential and Commercial/Industrial Construction

The District must conduct a public hearing for the purpose of hearing from the public prior to the consideration and possible adoption of a resolution by the Board of Trustees of the Banning Unified School District entitled "**RESOLUTION OF THE BOARD OF TRUSTEES OF THE BANNING UNIFIED SCHOOL DISTRICT APPROVING AN INCREASE IN STATUTORY SCHOOL FACILITY FEES IMPOSED ON NEW RESIDENTIAL AND COMMERCIAL/ INDUSTRIAL CONSTRUCTION PURSUANT TO EDUCATION CODE SECTION 17620 AND GOVERNMENT CODE SECTION 65995.**" This hearing is regarding the SAB 2020 statutory fee increase for new residential and commercial/ industrial construction.

District Staff believes that facts set forth in the Fee Justification Study entitled "Fee Justification Report for New Residential and Commercial/Industrial Development" (the " Fee Study") reflect the average student generation rates, amount of future development and costs of school facilities to accommodate students generated from such construction. The SAB has established the allowable maximum fee for level 1 residential development to be Four Dollars and Eight Cents (\$4.08) per square foot, and commercial/industrial development to be \$0.66 per square foot and, based on the facility cost impacts to the District for the residential construction and for commercial/industrial construction, it appears the District's justifiable fee exceeds \$4.08 (residential) per square foot and Sixty-Six Cents (\$0.66) (commercial/industrial) per square foot, for every business type.

An advertised Notice of Public Hearing, and the draft Fee Justification Report Summary are included with this memo. This Notice of consideration of the Fee Study and the adoption of the

Bob Nicholson's Fee Justification Study Resolution and Public Hearing

Statutory School Fees has been published, and the Study has been made available for public review, both in accordance with legal requirements.

After the public hearing, the Board shall consider whether to approve the Fee Study and adopt by resolution the Statutory School Fees justified by the Fee Study. After adoption of the Fee Study and the new Statutory School Fees, District staff will give notice to relevant local agencies.

The approval of Resolution No. 20-21-06 will allow Banning Unified School District to levy Level 1 statutory school facility fees for residential and commercial/industrial construction based on the SAB approval amount, following a public hearing and consideration by the Board of Education, and a mandated waiting period of 60 days. The fees collected will be used as required by Government Code Section 65995 et seq. and Education Code Section 17620 et seq., only for projects related to growth.

Financial Impact: A raise in Developer Fees paid to the District from \$3.79 per square foot to \$4.08 for Residential, and from \$.61 per square foot to \$.66 for Commercial/Industrial.

RESOLUTION NO. 20-21-06

**RESOLUTION OF THE GOVERNING BOARD OF THE
BANNING UNIFIED SCHOOL DISTRICT
APPROVING AN INCREASE IN LEVEL I STATUTORY SCHOOL
FACILITY FEES IMPOSED ON RESIDENTIAL AND COMMERCIAL/
INDUSTRIAL CONSTRUCTION PURSUANT TO EDUCATION CODE
SECTION 17620 AND GOVERNMENT CODE SECTION 65995**

WHEREAS, the Governing Board (“Board”) of the Banning Unified School District (“District”) provides for the educational needs for students in grades K through 12 within the City of Banning, the City of Beaumont, City of Desert Hot Springs, and the City of Palm Springs (collectively, “Cities”), located in portions of the County of Riverside (“County”); and

WHEREAS, on January 22, 2020, the State Allocation Board (“SAB”) authorized an adjustment in the maximum statutory school fee amounts for school districts pursuant to Government Code Section 65995(b)(3) to Four and 08/100 Dollars (\$4.08) per square foot for assessable space of residential construction (“Residential Statutory School Fees”) and Sixty-Six Cents (\$0.66) per square foot of chargeable covered and enclosed space for the categories of new commercial/industrial construction (“Commercial/Industrial Fees,” and collectively with the Residential Statutory School Fees, the “Level I Statutory School Fees”); and

WHEREAS, residential and commercial/industrial construction continues to generate additional students for the District’s schools, and the District is required to provide school facilities (“School Facilities”) to accommodate those students; and

WHEREAS, overcrowded schools within the District have an impact on the District’s ability to provide an adequate quality education and negatively impact the educational opportunities for the District’s students; and

WHEREAS, the District does not have sufficient funds available for the construction or reconstruction of School Facilities to accommodate students from residential and commercial/industrial construction; and

WHEREAS, Special District Financing & Administration prepared and the Board received and considered a report entitled, “Fee Justification Report for New Residential and Commercial/Industrial Development” (“Study”), dated May 12, 2020, which includes information, documentation, and analysis of the School Facilities needs of the District, including: (a) the purpose of the Level I Statutory School Fees; (b) the use to which the Level I Statutory School Fees are to be put; (c) a determination of the impact of the increased number of employees anticipated to result from the commercial/industrial construction (by category) upon the cost of providing School Facilities within the District; (d) an evaluation and projection of the number of students that will be generated by residential construction; (e) the anticipated new School Facilities that will be required to serve such students; and (f) the cost of such School Facilities; and

WHEREAS, the Study contains information demonstrating a nexus (roughly proportional and reasonable relationship) between the residential and commercial/industrial construction and: (1) the use for Level I Statutory School Fees, (2) the need for School Facilities, (3) the cost of School Facilities, and (4) the amount of Level I Statutory School Fees from residential and commercial/industrial construction; and

WHEREAS, the Study pertaining to the Level I Statutory School Fees and to the capital facilities needs of the District has been available to the public for at least ten (10) days before the Board considered at a regularly scheduled public meeting the increase in the Level I Statutory School Fees; and

WHEREAS, all notices of the proposed increase in the Level I Statutory School Fees have been given in accordance with applicable law; and

WHEREAS, a public hearing was duly held at a regularly scheduled meeting of the Board relating to the proposed increase in the Level I Statutory School Fees; and

WHEREAS, as to the Level I Statutory School Fees, Education Code Section 17621 provides that the adoption, increase or imposition of any fee, charge, dedication, or other requirement, pursuant to Education Code Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

NOW, THEREFORE, THE GOVERNING BOARD OF THE BANNING UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. That the Board accepts and adopts the Study, which is incorporated herein by reference.

Section 2. That the Board finds that the purpose of the Level I Statutory School Fees imposed upon residential construction is to fund the construction and reconstruction of School Facilities required to serve the students generated by the residential construction upon which the Level I Statutory School Fees are imposed.

Section 3. That the Board finds that the Level I Statutory School Fees imposed on residential construction will be used to finance construction and reconstruction of School Facilities identified in the Study and related documents discussed therein. Such uses shall include but not necessarily be limited to construction or acquisition of additional School Facilities, remodeling existing School Facilities, acquiring and installing additional portable classrooms and related School Facilities, as well as any required central administrative and support facilities within the District.

Section 4. That the Board finds that there is a roughly proportional and reasonable relationship between the use of the Level I Statutory School Fees and the type of residential and commercial/industrial construction on which the fee is to be imposed, because the Study

demonstrates that the increase in student enrollment resulting from such development will necessitate the construction or reconstruction of School Facilities to accommodate such growth.

Section 5. That the Board finds that there is a roughly proportional and reasonable relationship between the residential and commercial/industrial construction upon which the Level I Statutory School Fees are imposed and the need for School Facilities discussed in the Study, because the Study demonstrates that such development will require the District to construct and/or reconstruct School Facilities to accommodate growth from such development.

Section 6. That the Board finds that the amount of the Level I Statutory School Fees imposed on residential and commercial/industrial construction as set forth in this Resolution is roughly proportional and reasonably related to, and does not exceed the cost of, providing the School Facilities required to serve the students generated by such development.

Section 7. That the Board finds that a separate fund (“Fund”) and/or sub-funds (“Sub-Funds”) have been created or are authorized to be established for all monies received by the District for the deposit of Level I Statutory School Fees and mitigation payments (“Mitigation Payments”) imposed on construction within the District and that said Fund and Sub-Funds at all times have been separately maintained, except for temporary investments, with other funds of the District as authorized by law.

Section 8. That the Board finds that the monies of the separate Fund or the separate Sub-Funds described in Section 7, consisting of the proceeds of Level I Statutory School Fees and Mitigation Payments have been imposed for the purposes of constructing and reconstructing those School Facilities necessitated by residential and/or commercial/industrial construction, and thus, these monies may be expended for all those purposes permitted by applicable law, including but not necessarily limited to the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, and retention of up to three percent (3%) of the fees collected in any fiscal year for reimbursement of the administrative costs incurred by the District in collecting the Level I Statutory School Fees pursuant to Education Code Section 17620.

Section 9. That the Board hereby increases the Level I Statutory School Fees for residential development projects and imposes the Level I Statutory School Fees on such development projects in the amount of \$4.08.

Section 10. That this Board hereby increases the Level I Statutory School Fees as a condition of approval of new commercial/industrial construction projects and levies the Level I Statutory School Fees on such development projects in the preceding amounts per square foot of chargeable covered and enclosed space for all categories of commercial/industrial construction to \$0.66.

Section 11. That the proceeds of the Level I Statutory School Fees increased and established pursuant to this Resolution shall continue to be deposited into those Funds and Sub-Funds identified in this Resolution, the proceeds of which shall be used exclusively for the purpose for which the Level I Statutory School Fees are to be collected, including, as to Level I

Statutory School Fees, accomplishing any study, findings or determinations required by subdivisions (a), (b) and (d) of Section 66001 of the Government Code, or retaining an amount not to exceed in any fiscal year, three percent (3%) of the fees collected in that fiscal year pursuant to Education Code Section 17620 for reimbursement of the administrative costs incurred by the District in collecting the Level I Statutory School Fees or in financing the described Study or in defending the imposition of Level I Statutory School Fees.

Section 12. That the District's Superintendent, or designee, is directed to cause a copy of this Resolution to be delivered to the building officials of the Cities and the County, as well as to the Office of Statewide Health Planning and Development ("OSHPD"), along with a copy of all the supporting documentation referenced herein and a map of the District clearly indicating the boundaries thereof, advising the Cities, Counties and OSHPD that residential and commercial/industrial construction is subject to the Level I Statutory School Fees increased pursuant to this Resolution and requesting that no building permit or approval for occupancy be issued by any of these entities for any residential development project, mobile home or manufactured home subject to the Level I Statutory School Fees absent a certification of compliance ("Certificate of Compliance") from the District demonstrating compliance of such project with the requirements of the Level I Statutory School Fees, nor that any building permit be issued for any nonresidential construction absent a certification from this District of compliance with the requirements of the applicable Level I Statutory School Fees. The Board determines that the Level I Statutory School Fees are not subject to Government Code section 66007 and that a certificate of compliance is required prior to the issuance of any building permit.

Section 13. That the Board hereby adopts and establishes the procedures that permit the party against whom the Commercial/Industrial Fees are imposed the opportunity for a hearing to appeal that imposition of Commercial/Industrial Fees for commercial/industrial construction as stated in Education Code Section 17621 and Government Code Section 66020 and 66021. These procedures are as follows:

a. Within ten (10) calendar days of being notified, in writing, (by personal delivery or deposit in the U.S. Mail) of the Commercial/Industrial Fees to be imposed or paying the Commercial/Industrial Fees, pursuant to Education Code Section 17620, a party shall file a written request for a hearing regarding the imposition of Commercial/Industrial Fees. The party shall state in the written request the grounds for opposing the imposition of Commercial/Industrial Fees and said written request shall be served by personal delivery or certified or registered mail to the Superintendent.

b. The possible grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the Commercial/Industrial Fees are to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project.

c. Within ten (10) calendar days of receipt of the written request for a hearing regarding the imposition of Commercial/Industrial Fees, the Superintendent, or

designee, shall give notice in writing of the date, place and time of the hearing to the party appealing the imposition of Commercial/Industrial Fees. The Superintendent, or designee, shall schedule and conduct said hearing within thirty (30) calendar days of receipt of the written request. The Superintendent, or designee, shall render a written decision within ten (10) days following the hearing on the party's appeal and serve it by certified or registered mail to the last known address of the party within ten (10) calendar days after rendering such decision.

d. The party against whom the Commercial/Industrial Fees are imposed may appeal the Superintendent or designee's decision to the Board by filing a notice of appeal within ten (10) calendar days of receipt of the notice of the decision, stating in the written appeal the grounds for opposing the imposition of the Commercial/Industrial Fees, and the written appeal shall be served by personal delivery or certified or registered mail to the Superintendent.

e. Within ten (10) calendar days of receipt of the notice of appeal, the Superintendent, or designee, shall give notice in writing of the date, place and time of the hearing to the party appealing the imposition of Commercial/Industrial Fees. The Board shall schedule, and conduct said hearing at the next available regular meeting of the Board, provided that the party is given notice at least five (5) working days prior to the regular meeting of the Board. The Board shall render a written decision within ten (10) days following the hearing on the party's appeal and serve the decision by certified or registered mail to the last known address of the party within ten (10) days after rendering such decision.

f. The party appealing the imposition of the Commercial/Industrial Fees shall bear the burden of establishing that the Commercial/Industrial Fees are improper.

Section 14. That the Superintendent, or designee, is authorized to cause a Certificate of Compliance to be issued for each development project, mobile home and manufactured home for which there is compliance with the requirement for payment of the Level I Statutory School Fees in the amounts specified by this Resolution. In the event a Certificate of Compliance is issued for the payment of Level I Statutory School Fees for a development project, mobile home or manufactured home and it is later determined that the statement or other representation made by an authorized party concerning the development project as to square footage is untrue or in the event the zoning is declared invalid, then such Certificate of Compliance shall automatically terminate, and the appropriate Cities, County or OSHPD shall be so notified.


Section 15. That no statement or provision set forth in this Resolution, or referred to herein, shall be construed to repeal any preexisting fee or mitigation amount set forth in a mitigation agreement.

Section 16. That, if any portion or provision hereof is held invalid, the remainder hereof is intended to be and shall remain valid.

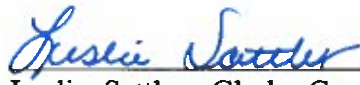
Section 17. That the increase in the District's Level I Statutory School Fees will become effective sixty (60) days from the date of this Resolution unless a separate resolution increasing the fees immediately on an urgency basis is adopted by the Board.

APPROVED, ADOPTED, AND SIGNED on December 9, 2020.

**GOVERNING BOARD OF THE BANNING
UNIFIED SCHOOL DISTRICT**

By: 

Jason Smith, President, Governing Board of the
Banning Unified School District

By: 

Leslie Sattler, Clerk, Governing Board of the
Banning Unified School District

