

DEVELOPER FEES

Level 1 Funding: Residential, Commercial and Industrial Construction

~~Before taking action to establish, increase or impose developer fees, the Board of Trustees shall conduct a fee justification study which: (Government Code 66001)~~

- ~~1. Identifies the purpose of the fee and the use to which the fee will be put~~
- ~~2. Determines a reasonable relationship between the fee's use and the type of development project for which the fee is imposed~~
- ~~3. Determines a reasonable relationship between the need for the public facility and the type of development project for which the fee is imposed~~
- ~~4. Determines a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributed to the development for which the fee is imposed~~

Level 1 Funding: Notice and Hearing Requirements

~~Before levying developer fees or prior to increasing an existing fee, the Board shall schedule a public hearing. The Superintendent or designee shall mail notice of the time and place of the meeting, including a general explanation of the matter to be considered and a statement that the required data are available, at least 14 days prior to the meeting to any interested party who has requested such information. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The District may charge a fee reasonably related to the cost of providing these materials. (Government Code 66016)~~

~~Information on the anticipated amount of fees, other available funds and funding sources, and the estimated cost of planning, land acquisition and school construction shall be made available to the public at least 10 days before the hearing. (Government Code 66016)~~

~~At the hearing, the Board shall adopt a resolution for the levying of the developer fees. (Government Code 66016) The resolution shall set forth:~~

- ~~1. The purpose of the fee and the public improvement(s) that the fee will be used to finance (Government Code 66006)~~
- ~~2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001~~

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3. ~~The District's determination of either of the following conditions which allow collection of the fees at the time when building permits are issued: (Government Code 66007)~~
- a. ~~That the fees are to reimburse the District for previous expenditures~~
 - b. ~~That the fees shall be collected for public improvements or facilities for which an account has been established, funds have been appropriated and the District has adopted a proposed construction schedule or plan~~

Level 2 Funding: Residential Construction

~~In order to impose residential construction fees within the limits of Government Code 65995.5, the Board shall: (Government Code 65995.5)~~

- 1. ~~Make a timely application to the State Allocation Board for new construction funding for which it is eligible~~
- 2. ~~Conduct and adopt a school facility needs analysis pursuant to Government Code 65995.6~~
- 3. ~~Satisfy at least two of the requirements set forth in Government Code 65995.5(b)(3)(A-D) (Government Code 65995.5)~~

Level 2 Funding: Notice and Hearing Requirements

~~At least 45 days prior to completion of the school facility needs analysis, the Board shall notify and provide copies of the analysis to the planning commission or agency of the city or county with land use jurisdiction within the District. Upon request of either party, the Board and city or county shall meet within 15 days following notification. (Government Code 65352.2)~~

(cf. 7131—Relations with Local Agencies)

~~The Board shall adopt the school facility needs analysis by resolution at a public hearing. (Government Code 65995.6)~~

~~This analysis may not be adopted until the analysis, in its final form, has been made available to the public for a period of not less than 30 days. Prior to its adoption, the public shall have the opportunity to review and comment on the analysis and the Board shall respond to written comments it receives regarding the analysis. (Government Code 65995.6)~~

~~During the period of public review, the analysis shall be provided to the local agency responsible for land use planning for its review and comment. (Government Code 65995.6)~~

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~~No less than 30 days prior to the hearing, notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the District. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous places within the District's jurisdiction not less than 30 days prior to the hearing. (Government Code 65995.6)~~

~~In addition, the Superintendent or designee shall mail a copy of the needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The District may charge a fee reasonably related to the cost of providing these materials. (Government Code 65995.6)~~

~~The school facility needs analysis may be revised at any time. The revision is subject to the same conditions and requirements applicable to the adoption of the analysis. The existing school building capacity shall be recalculated as part of any revision to the needs analysis. (Government Code 65995.6)~~

~~The fees authorized by Government Code 65995.6 and Government Code 65995.7 shall be adopted by resolution as part of the adoption or revision of the school facilities needs analysis. The fees shall take effect immediately upon adoption of the resolution and may not be effective for more than one year. (Government Code 65995.6)~~

Level 3 Funding: Residential Construction

~~When Level 3 fees are authorized by law and the District qualifies for Level 2 funding pursuant to Government Code 65995.5, the Board may assess a fee on residential construction pursuant to the requirements of Government Code 65995.7.~~

Level 3 Funding: Notice and Hearing Requirements

~~Pursuant to Government Code 65995.7, the notice and hearing requirements, resolution requirement, and term of effectiveness for Level 3 funding shall be the same as the requirements for Level 2 funding as specified above.~~

All Developer Funding Fees: Additional Requirements

The District shall send a copy of any Governing Board resolution adopting or increasing Level 1, 2, or 3 developer fees to the city and county, accompanied by all relevant supporting documentation and a map indicating the boundaries of the area subject to the fee. (Education Code 17621)

In cooperation with local governmental agencies issuing building permits, the Superintendent or designee shall establish a means by which all of the following shall be accomplished:

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1. The project applicant shall receive a written statement of the amount of the fees and notification that the 90-day approval period during which the applicant may protest has begun. (Government Code 66020)
2. The Superintendent or designee shall receive and retain acknowledgment that the above notification was received.
3. Before a permit is issued and upon the payment of the applicable fee or requirement, the Board shall immediately certify that the fee has been paid or that the District has determined that the fee does not apply to the development project. (Education Code 17620)

Developer fees shall be deposited, invested, accounted for and expended pursuant to Government Code 66006. Developer fees shall be deposited in a separate capital facilities account, except for temporary investments allowed by law, and shall be used only for the purpose for which they were collected. Interest income earned by the capital facilities account shall also be deposited in that account and used only for the purpose for which the fee was originally collected. (Government Code 66006)

For each separate account so established, the Superintendent or designee shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year: (Government Code 66006)

1. A brief description of the type of fee in the account or fund
2. The amount of the fee
3. The beginning and ending balance of the account or fund
4. The amount of the fees collected and the interest earned
5. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees
6. An identification of an approximate date by which the construction of the public improvement will commence if the District determines that sufficient funds have been collected to complete financing on an incomplete public improvement
7. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan
8. The amount of refunds made pursuant to Government Code 66001(e) and any allocations made pursuant to Government Code 66001(f)

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~~The Board shall review the above information at the first regularly scheduled public Board meeting which occurs 15 days after the information is made available to the public. Fifteen day prior notice of this meeting shall be mailed to any parties filing a written request pursuant to Government Code 66006. (Government Code 66006)~~

~~In addition to discharging its public disclosure duties regarding the levying of developer fees, the Board shall, for the fifth fiscal year after the first deposit into the account or fund and every five years thereafter, make all of the following findings with respect to the portion of the account or fund that remains unexpended, whether committed or uncommitted: (Government Code 66001)~~

- ~~1. Identify the purpose to which the fee is to be put~~
- ~~2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged~~
- ~~3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements originally identified~~
- ~~4. Designate the approximate dates on which the funding referred to in item #3 is expected to be deposited into the appropriate account or fund~~

Calculation of Amount

- ~~1. Assessable Space. Government Code 65995(b)(1) defines construction for a new residential development to include "assessable space".~~
- ~~2. Fee Exclusions

 - ~~a. Agricultural Buildings. No fee may be levied on an agricultural building unless the Board makes the following findings:

 - ~~(1) The amount of the fee is reasonably related and limited to the needs of the community for school facilities caused by the development~~
 - ~~(2) The amount of the fee does not exceed the estimated reasonable cost of providing for the construction or reconstruction of school facilities necessitated by the development from which the fees are to be collected.~~~~~~

~~In determining the amount of fees to be levied on an agricultural building, the relationship between the proposed increase and the number of employees, if any, the size and specific use of the agricultural building, and the cost of the construction shall be considered. No fee shall be applied to an agricultural building if either the number of employees is not increased as a result of the construction of the building, or housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, dedication, or other form of requirement has been applied under Section 17620. In developing this finding, the district shall~~

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~~consult with the county agricultural commissioner or the county director of the cooperative extension service~~

- ~~b. Disaster. No fee shall be levied on reconstruction of a residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, such as fire, earthquake, landslide, mudslide, flood, or unforeseen event that produces material damage or loss, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed.~~
- ~~c. Pursuant to Education Code 17620, some types of construction may be exempted~~
- ~~d. In addition, no fee will be levied on the construction of any buildings which would be exempt from taxation pursuant to subsections (a) through (g) inclusive, of Section 3 and Subsections (b) and (c) of Section 4 of Article XIII of the California Constitution. Such buildings include churches, public facilities owned by public entities, dormitories at a college or seminary, libraries or museums that are free and open to the public, buildings used exclusively for educational purposes by a public entity or a nonprofit institution of higher education, buildings used exclusively for religious worship and hospitals or institutions for charitable purposes owned and used by nonprofit entities~~

When sufficient funds have been collected to complete the financing of public improvements but such improvements remain incomplete, the District shall, within 180 days of the date that a determination of sufficient funding was made, either identify an approximate date by which construction will begin or refund the unexpended revenues in accordance with Government Code 66001. (Government Code 66001)

Appeals Process for Protests by Developers

The Superintendent or designee shall establish an appeals process for the handling of protests by developers. (Education Code 17621)

Developers of residential, commercial, and industrial projects who claim that the developer fee has been inappropriately levied shall use the following procedures: (Government Code 66020)

1. The developer shall tender any required payment in full or provide satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.
2. The developer shall serve written notice to the Board. ~~This notice~~ which shall include:
 - a. A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest

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- b. A statement informing the Board of the factual elements of the dispute and the legal theory forming the basis for the protest
3. The protest shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees.
 4. ~~A request for a hearing will be reviewed by the Superintendent or designee to ensure that the information requested in section b above is provided and that grounds for appeal are set forth. A request lacking information or grounds will be returned without action. An incomplete request may be resubmitted with complete information and grounds for appeal; however, the 90-day time period continues to run until a complete request is received in the office of the Superintendent or designee. Once a request for a hearing is received in good order, a hearing will be scheduled for the next scheduled Board meeting at least 15 days following receipt of request for a hearing. The appellant will be notified of the date, time and place of the hearing by first class mail addressed to the name and address given in the request for hearing.~~

At the time of the imposition of the fee, the Superintendent or designee shall provide each project applicant written notice that the 90-day period in which the applicant may initiate a protest has begun. The developer may file an action to attack, review, set aside, void or annul the imposition of the fees imposed on the development project within 180 days of delivery of the notice. (Government Code 66020)

Hearing Process

~~Once a hearing is scheduled, it will not ordinarily be continued to a later date. It is the appellant's responsibility to appear and present any and all evidence desired to be considered by the Board at the time assigned for the hearing.~~

5. ~~Procedure for Appeal I hearing. The party appealing the imposition of the fee bears the burden of establishing that the fee is improper.~~
 - a. ~~Appeals shall be heard by the Board. A quorum for regular Board meeting purposes constitutes a quorum for appeals hearings~~
 - b. ~~The appellant shall proceed first and may present evidence in the form of documents and testimony of witnesses. Appellant must furnish a complete, clear and legible copy of all documents requested to be considered by the Board. The Board may limit testimony and documentary evidence that it finds to be unduly cumulative (repetitive) or lacking in relevance to the grounds of the appeal. The Board and the District's representative at the hearing may question witnesses for the appellant~~

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- ~~e. — Following the appellant's presentation, the district's representative may present evidence in the form of documents and testimony of witnesses. The District need not present evidence unless appellant has offered some evidence to show that the fee is improper as applied to the project~~
- ~~d. — The Board and the appellant may question the District witnesses. Each side may present rebuttal evidence. Following presentation of all the evidence, appellant may offer a final argument and the District's representative may offer a final argument. The hearing will then be closed~~
- ~~e. — The Board may take action to uphold the fee as imposed, set aside the fee, reduce the fee or defer action. Appellant shall be informed, in writing, within five days of the Board's action or decision~~

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

DEVELOPER FEES (continued)**State References**2 CCR 1859-1859.199Ed. Code 17070.10-17077.10Ed. Code 17582Ed. Code 17620-17626Gov. Code 6061Gov. Code 6066Gov. Code 65352.2Gov. Code 65864-65869.5Gov. Code 65995-65998Gov. Code 66000-66008Gov. Code 66016-66018.5Gov. Code 66020-66025**Management Resources References**Court DecisionWebsite**Cross References-Codes**713172107212**Description**Leroy F. Greene School Facilities Act -
<https://simbli.eboardsolutions.com/SU/nuvesXH7AflQqD0mGTa3wA==>Leroy F. Greene School Facilities Act of 1998 -
<https://simbli.eboardsolutions.com/SU/fu4PsUtUAb4qYYOY9breHg==>District deferred maintenance fundLevies against development projects by school districtsOne time noticeTwo weeks' noticeCommunicating and coordinating of school sitesDevelopment agreementsDeveloper feesFees for development projectsDevelopment project feesProtests and audits**Description**A.M. v. Albertsons, LLC, (2009) Cal.App.4th 455
AASA The School Superintendents Association -
<https://simbli.eboardsolutions.com/SU/MOaF8AO8cslshSlfGc13QQoEQ==>**Description**Relations With Local Agencies -<https://simbli.eboardsolutions.com/SU/gSigOkghdaSslsh4y0plusplusMrM4w==>Facilities Financing -<https://simbli.eboardsolutions.com/SU/cRK5YTNBgZiwCEWOUi9cdQ==>Mello-Roos Districts -<https://simbli.eboardsolutions.com/SU/EE9jFvxqFAHQXxgo8klHrg==>