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LEVYING SCHOOL FEES & TOP 15 SCHOOL FEE QUESTIONS

By

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Commencing January 1, 1987, school districts were authorized by statute for the first time to levy statutory school fees on new residential and commercial/industrial developments. Originally set forth in Government Code Sections 53080 and 65995, Assembly Bill 2926, known as the 1986 School Facilities Legislation granted school districts the right to levy fees to offset the impacts to school facilities from new residential and commercial/industrial developments.

In 1987, statutory school fees were authorized to be levied in the amount of \$1.50 per square foot of assessable space of new residential space and \$0.25 per square foot of covered or enclosed space in any commercial or industrial development. Since 1987, these amounts have increased and are currently \$2.97 and \$0.47, respectively, and can now be found in Education Code Section 17620 and Government Code Section 65995.

With the adoption of Senate Bill 50 and Proposition 1A in 1998, school districts have the option, upon meeting certain requirements, of adopting alternative school fees ("Alternative School Fees"), also known as Level II Fees and Level III Fees in accordance with Government Code Sections 65995.5, 65995.6 and 65995.7.¹ The preparation requirements in regard to adopting Alternative School Fees differ significantly from the preparation requirements for Statutory School Fees. Moreover, such Alternative School Fees, which are individually calculated for each school district, apply solely to residential construction within a school district and are in excess of the Level I Fee currently authorized in the amount of \$2.97 per square foot of assessable space, as discussed above. More specifically, the Level II Fee, which amount is intended to represent fifty percent of a school district's school facility costs, applies when the State Allocation Board ("SAB") is apportioning State Funding. The Level III Fee on the other hand, which is intended to represent one hundred percent of a school district's school facility costs, applies when the SAB officially ceases to make such apportionments.

1. WHAT STEPS DOES A SCHOOL DISTRICT NEED TO FOLLOW TO ESTABLISH THE COLLECTION OF SCHOOL FEES?

A. Level I and Commercial/Industrial Fees:

In order to levy Statutory School Fees pursuant to Education Code Section 17620 and Government Code Section 65995, a school district must prepare and adopt a Fee Justification Study ("FJS"). Statutory School Fees apply to new residential construction and new commercial and industrial construction and are also referred to as Level I Fees. With the adoption of SB 50 and Proposition 1A in 1998, school districts have the option, upon meeting certain requirements, of adopting Alternative School Fees, also known as Level II Fees and Level III Fees in accordance with Government Code Sections 65995.5, 65995.6 and 65995.7. Even for those school districts that adopt Alternative School Fees, we suggest school districts also adopt an FJS and have Statutory School Fees in place in the event the school district fails to meet the eligibility requirements discussed below for Level II Fees or the Level II Fees are successfully challenged.

¹ SB 50 created the authority for school districts to levy Alternative School Fees which created what are commonly referred to as Level II and Level III school fees ("Level II Fees" and "Level III Fees"). With the enactment of SB 50 and the creation of Alternative School Fees, the original Statutory School Fees pursuant to Education Code Section 17620 and Government Code Section 65995 are now referred to as ("Level I Fees").

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Government Code Section 66001 requires school districts to establish a nexus in the FJS between the type of development in a school district and the amount of fees levied upon such development based on the need for such fees.

The following procedures should be followed:

- Mail the Notice of Public Hearing to any interested person who has requested in writing notification prior to the public hearing at which the FJS may be adopted.
- The FJS must be made available to the public at least ten days prior to the public hearing.
- The Notice of Public Hearing must be published in a newspaper of general circulation – the first publication at least ten days prior to the public hearing and the second publication at least five days after the first publication – Government Code Section 6062a.
- The school district must hold a public hearing at a regularly scheduled meeting of the governing board, at which time input from the public is requested and any written correspondence on the FJS is reviewed.
- Pursuant to Education Code Section 17621(c), upon adoption of the FJS, the school district must notify local planning agencies (applicable cities and counties) of the new Statutory School Fees and must notify the planning agencies that the new Statutory School Fees will be effective 60 days after adoption unless urgency resolutions are adopted.
- Pursuant to Education Code Section 17621(b), if the school district desires to adopt an urgency resolution in order to make the Statutory School Fees immediately effective, two such resolutions must be adopted. Each resolution is effective for thirty days and requires a 4/5 vote of the governing board. The Board must also make a finding that the urgency resolutions are necessary to respond to a current and immediate threat to the public health, welfare or safety.

B. Level II Fees:

Government Code Section 65995.5 contains a number of preliminary steps prior to preparing a School Facilities Needs Analysis (“SFNA”), which upon adoption by the governing board, allows a school district to impose Level II Fees. Level II Fees are effective immediately after adoption and valid for one year.

- A school district must first apply for state funding with the SAB (Forms SAB 50-01, 50-02, 50-03).
- SAB will issue an eligibility determination to the school district regarding its application. Note: If SAB fails to respond within 120 days, the school district is deemed to have received eligibility.
- To prepare or revise an SFNA and adopt Alternative School Fees, the school district must meet at least two of the following four requirements in Government Code Section 65995.5(b)(3):
 1. Specified percentage of “substantial enrollment” of the school district’s pupils are on multi-track year-round schedule
 2. Held a local GO bond election within the past four years which received at least 50% + 1 of all votes cast

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3. District has issued debt or incurred obligations for capital outlay in a specified percentage of the district's local bonding capacity
4. At least twenty percent of the teaching stations within the district are relocatable classrooms

Government Code Sections 65352.2 and 65995.6(c) and (d) require that the following steps be taken to properly adopt an SFNA:

- At least 45 days prior to the adoption of the SFNA, the school district shall offer to meet and confer with the local planning agencies of the cities and counties within the school district.
- The Notice of Public Hearing shall be published in a newspaper of general circulation within the school district at least 30 days prior to the public hearing. We also recommend the school district post the Notice of Public Hearing at the district's normal posting locations.
- The school district must mail a copy of the SFNA not less than 30 days prior to the public hearing to anyone who has made a written request at least 45 days prior to the public hearing.
- The school district shall make the SFNA available in its final form for a period of not less than 30 days prior to the public hearing including sending the final SFNA to the local planning agencies.
- During the 30 day public review period, the public shall have the opportunity to review and comment on the SFNA and the governing board shall respond to written comments it receives regarding the SFNA.
- The governing board shall adopt the SFNA by resolution, after holding a public hearing on the matter.

2. CAN SCHOOL DISTRICTS COLLECT LEVEL III FEES?

No. Pursuant to Government Code Section 65995.7, the SAB needs to make a determination that state funds are no longer available to approve apportionments for new construction. Upon making this determination, the SAB shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available.

In addition to the SAB determination, a school district must have adopted an SFNA that justifies levying a Level III Fee. Only then can school districts charge Level III Fees.

3. WHAT EXEMPTIONS EXIST FOR SCHOOL FEES?

A. Qualified Senior Citizen Housing:

Government Code Sections 65995.1 and 65995.2 provides that school districts may only charge the Commercial/Industrial Fee for qualified senior citizen housing.

Four types of senior citizen housing qualify for this special treatment:

- Senior citizen housing development projects described in Civil Code Section 51.3 (One resident is at least age 55 plus other restrictions). This section does not

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apply to the County of Riverside (please see “special living environments” as defined in Civil Code Section 51.11 which only applies to the County of Riverside)²;

- A “residential care facility for the elderly” as described in Health and Safety Code Section 1569.2(k) (residents age 60 and over plus other restrictions);
- A “multilevel facility for the elderly” as described in Government Code Section 15432(d)(9) (residents age 62 and older plus other restrictions); and
- A mobile home development limited to older persons as described in the Federal Fair Housing Amendments Act of 1988 (age varies by program; generally age 55 or 62).

Residences that do not meet these standards should be charged the regular residential fee rates. School districts should also require proof from the developer that the project qualifies as senior citizen housing in the form of CC&Rs. If the development is later converted to another type of use, Government Code Section 65995.1(c) states that the Level II Fee (if currently being levied by the school district; if not, then the Level I Fee), may be charged at the time of conversion minus any school fees previously paid.

B. Churches and Religious Organizations:

Pursuant to Government Code Section 65995(d), school districts may not levy school fees on any facility used exclusively for religious purposes and that are exempt from property taxation under California law.

C. Private Full-Time Day School:

Pursuant to Government Code Section 65995(d), school districts may not levy school fees on any “facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code.” A private full-time day school offers instruction in the several branches of study required to be taught in the public schools and attendance is required to be taken. We recommend that school districts obtain a copy of the affidavit that private schools are required to file pursuant to Education Code Section 33190 from any private full-time day school requesting this exemption.

D. Government Agencies:

Pursuant to Government Code Section 65995(d), school districts may not levy school fees on “any facility that is owned and occupied by one or more agencies of federal, state, or local government.”

² Civil Code Sections 51.3 and 51.11 are slightly different with the most notable difference being the definition of “senior citizen housing development.” Section 51.3 defines a “senior citizen housing development,” in part, as “a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units.” Section 51.11 defines “senior citizen housing development,” in part, as “a residential development developed with more than 20 units as a senior community by its developer and zoned as a senior community by a local government entity, or characterized as a senior community in its governing documents, as these are defined in Section 1351, or qualified as a senior community under the federal Fair Housing Amendments Act of 1988, as amended.”

E. Construction for Handicapped Accessibility:

Education Code Section 17620 (a)(1)(C)(ii) states that school districts are not authorized to levy school fees against residential construction if the construction qualifies for the exclusion set forth in Revenue and Taxation Code Section 74.3(a), which excludes from school fees the following: construction, installation, or modification of an existing single-family or multi-family dwelling unit to make the structure more accessible to a disabled person. The proof required for the exclusion is a statement signed by a licensed physician or surgeon of appropriate specialty which certifies that the person is severely and permanently disabled and identifies the specific disability-related requirements necessitating accessibility improvements or features. The statement must also identify the construction, installation, or modification that was necessary to make the structure more accessible to the disabled person.

The definition of a severely and permanently disabled person is any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, that results in a functional limitation as to employment or substantially limits one or more major life activities of that person, and that has been diagnosed as permanently affecting the person's ability to function, including, but not limited to, any disability or impairment that affects sight, speech, hearing, or the use of any limbs.

F. Residential Additions Less than 500 Square Feet:

Education Code Section 17620(a)(1)(C)(i) permits school districts to charge Level I Fees on residential additions only if the resulting increase in assessable space exceeds 500 square feet. Therefore, there is an exemption of school fees for any addition less than 500 square feet.

While we are aware that some school districts charge Level II Fees for additions over 500 square feet, we do not believe that the statutory definition nor the required nexus exists in the SFNA for charging Level II Fees on additions. Thus, we suggest the Level I Fee be charged on additions over 500 square feet.

G. Reconstruction of a Structure Destroyed in a Disaster:

Education Code Section 17626 contains an exemption for school fees for the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster. Disaster is defined as: "a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss." The exemption does not apply for the square footage of the reconstructed structure that exceeds the square footage of the structure that was damaged or destroyed.

We believe that if a new owner wants to rebuild a home on property where the original home was destroyed in a disaster, the new owner would still qualify for the credit intended by Education Code Section 17626.

As an example, if a 2,000 square foot home owned by Person A is destroyed in a disaster and Person B (new owner) wants to rebuild a 2,800 square foot home, we believe that a school district is permitted to charge the current Level II Fees (if applicable; if not, then Level I Fees) on 800 square feet. The Level II Fee may be charged because the 800 square feet is viewed as new construction and not an addition.

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H. Greenhouse Space:

Education Code Section 17622 contains an exemption for greenhouse or other space that is covered or enclosed for agricultural purposes unless the governing board makes specified findings.

4. CAN SCHOOL DISTRICTS CHARGE FOR SECOND FLOOR ADDITIONS?

It depends. We believe that Education Code Section 17620(a)(1)(C)(i) permits school districts to charge Level I Fees on residential additions only if the resulting increase in assessable space exceeds 500 square feet. If the second floor addition is greater than 500 square feet, the school district may charge the Level I Fee for all of the square footage that is being added.

5. CAN SCHOOL DISTRICTS CHARGE A HOMEOWNER FOR AN ADDITIONAL 495 SQUARE FOOT ADDITION IF THE HOMEOWNER HAS ALREADY COMPLETED A 2000 SQUARE FOOT ADDITION?

It depends. If new building permits are necessary, the 495 square foot addition is less than the 500 square foot threshold for imposing school fees pursuant to Education Code Section 17620(a)(1)(C)(i). Therefore, the school district may not levy any additional fees. However, if the previous building permits have not been finalized, this may be treated as a 2495 square foot addition on which fees may be levied. But, the school district should look into whether the additional 495 square feet is due to an afterthought or a subterfuge to avoid additional fees.

6. CAN SCHOOL DISTRICTS CHARGE FOR RESIDENTIAL REDEVELOPMENT?

It depends. When faced with a residential redevelopment question, a school district can generally approach the situation one of two ways depending on the language in their SFNA or FJS (this depends on whether the school district assesses Level I or II Fees). The first approach is to charge for the entire square footage of the residential redevelopment structure. The second approach is to charge for the net difference between the square footage of the previous structures(s) and the square footage of the residential redevelopment structures(s) (thereby providing a credit for the previous structures(s)).

In addition, the school district needs to analyze the "nexus" requirements of Government Code Section 66000 *et seq.* Specifically, Government Code Section 66001(a) requires a showing that there is a reasonable relationship between the school fee's use and the type of development project on which the fee is imposed (subdivision (3)) and a reasonable relationship between the need for the school facility and the type of development on which the fee is imposed (subdivision (4)).

If residential redevelopment is likely to occur within a school district, we recommend the school district work with the consultant drafting the SFNA or FJS to ensure the reports accurately consider redevelopment within the district. In addition, when school districts receive questions pertaining to the levy of school fees on residential redevelopment, we recommend that they consult with their attorneys to verify that they are charging the correct school fee amount.

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7. CAN SCHOOL DISTRICTS CHARGE FOR REDEVELOPMENT OF COMMERCIAL/INDUSTRIAL PROJECTS?

It depends. Pursuant to Education Code Section 17620 a school district may charge the Commercial/Industrial Fee on new commercial and industrial construction. However, the chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction. Government Code Section 65995(d) defines construction as new construction and reconstruction of existing buildings for residential, commercial, or industrial.

If the developer is demolishing currently standing commercial/industrial structures and replacing them with new commercial/industrial structures, the school district should most likely give a credit for the currently standing commercial/industrial structures and charge the current Commercial/Industrial Fee for any excess square footage between the old and new buildings. However, before charging, a closer analysis would need to be done to establish the appropriate nexus between the fee charged and the type of commercial/industrial building being replaced (*i.e.*, will this type of commercial/industrial structure produce less employees and thus less children than the one it replaced.)

If the developer is constructing new commercial/industrial buildings where commercial/industrial buildings used to stand (*i.e.*, they were demolished several years ago), then the school district may decide to still give a credit for the commercial/industrial structures that used to exist on the property. Our firm believes that the phrases "that construction" and "first building permit" are not clear in Education Code Section 17620 and the school district should discuss each commercial/industrial redevelopment project with their legal counsel to decide the best approach based on the facts with regard to the proposed development.

8. CAN SCHOOL DISTRICTS CHARGE SCHOOL FEES FOR DEVELOPMENT OUTSIDE OF THE DISTRICT'S BOUNDARIES?

No. Education Code Section 17620(a)(1) permits school districts to levy fees against any construction within the boundaries of the district. Therefore, when the school districts receive the building permit information from the cities or counties, they should double check that the property falls within their boundaries before processing the request and giving the developer a Certificate of Compliance.

9. IF A SCHOOL DISTRICT IS EXPERIENCING DECLINING ENROLLMENT, CAN THEY STILL CHARGE THE CURRENT LEVEL I FEE? LEVEL II FEE?

It depends. Regarding Statutory School Fees: if an FJS shows that the school district's costs meet or exceed the current Level I Fee and Commercial/Industrial Fee amounts, the District is allowed to levy the justified amounts even when enrollment is declining.

Regarding Alternative School Fees: if an SFNA shows that the District's costs exceed the Level II Fee and the projected enrollment exceeds any excess capacity for the five-year period of the SFNA, the District may levy Alternative School Fees after adopting the SFNA.

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10. CAN LEVEL I AND II FEES BE USED FOR THE FOLLOWING?

A. New Construction:

Yes. Level I Fees may be spent on new construction projects on facilities that create new capacity to accommodate new students that result from new construction. Level II Fees shall only be expended on the school facilities identified in the SFNA as being attributable to projected enrollment growth from the construction of new residential units.

B. Modernization:

No, except. Level I and II Fees may be spent on modernization projects to the extent the projects add new capacity to accommodate new students that result from new construction.

C. Regular Maintenance/Routine Repair:

No. Pursuant to Education Code Section 17620(a)(3)(A), Level I and II Fees may not be spent on the regular maintenance or routine repair of school buildings and facilities.

D. Asbestos Projects:

No. Pursuant to Education Code Section 17620(a)(3)(B), Level I and II Fees may not be spent on the inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction.

E. Deferred Maintenance:

No. Pursuant to Education Code Section 17620(a)(3)(C), Level I and II Fees may not be spent on deferred maintenance. Deferred maintenance projects include: major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-containing materials, and any other items of maintenance approved by the SAB.

F. Non-Facility Costs:

Yes. Pursuant to Education Code Section 17620(a)(5), Level I Fees collected may also be spent on the following non-facility costs: the costs of conducting an SFNA and FJS, and preparing the Annual and Five-Year Report. In addition, a school district may also retain "an amount not to exceed, in any fiscal year, three percent of the fees collected in that fiscal year pursuant to this section. . . ." The three percent amount is for the reimbursement of administrative costs incurred in collecting the fee. For school districts

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that levy a Level II Fee, the three percent amount is calculated only on the amount of Level I Fees collected.

The Three Percent Rule allows a school district to retain no more than three percent of the Level I Fees, collected in that fiscal year on residential and commercial/ industrial construction for administrative costs in collecting all Statutory School Fees. These costs may include providing adequate staff, consultants and legal counsel to oversee and verify compliance with payment, investment and expenditures of school fees. District personnel who provide these services may be compensated, up to the Three-Percent limit, from school fees. Presumably, this would not be the sole function of such personnel, thus a reasonable allocation of their duties relating to the administration of collecting school fees can be funded through the Statutory School Fees fund.

11. HOW OFTEN IS A SCHOOL DISTRICT REQUIRED TO COMPLETE AN FJS OR SFNA?

A. FJS:

It depends. If the school district wants to capture the new Statutory School Fees (adjusted every January in even-numbered years by the SAB), then the district is required to prepare a new FJS or update a previously prepared FJS. However, if the school district desires to continue levying the older Statutory School Fee amounts, then a new FJS is not required. The school district should be cognizant of, and determine whether the nexus exists under the previous FJS to still be levying the older Statutory School Fee amounts and whether there are any changes in circumstances that would affect the FJS in place. Also, the school district always wants to have a valid and current FJS in place in case the SFNA is challenged and rendered invalid.

B. SFNA:

At least annually. Pursuant to Government Code Section 65995.6(f), an SFNA is not effective for more than one year. We suggest that school districts calendar the adoption of the new SFNA for four weeks before the SFNA expires so that the Level II Fee will not lapse if the District encounters any obstacles preparing the SFNA, such as the Building Industry Association of Southern California ("BIA") challenging the data in the SFNA.

12. WHAT SCHOOL FEES SHOULD SCHOOL DISTRICTS CHARGE FOR MANUFACTURED HOMES, MOBILE HOMES AND FACTORY-BUILT HOUSING?

The definitions of manufactured homes, mobilehomes and factory-built housing provide important background to the questions and answers presented below.

- Pursuant to Health and Safety Code Section 18007, a manufactured home is: a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein . . .

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- Pursuant to Health and Safety Code Section 18008, a mobilehome is: a structure that meets the requirements of Section 18007. "Mobilehome" does not include a commercial coach, as defined in Section 18001.8, factory-built housing, as defined in Section 19971, or a recreational vehicle, as defined in Section 18010.
- Pursuant to Health and Safety Code Section 19971, factory-built housing is: a residential building, dwelling unit, or an individual dwelling room or combination of rooms thereof, or building component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage, or destruction of the part, including units designed for use as part of an institution for resident or patient care, that is either wholly manufactured or is in substantial part manufactured at an offsite location to be wholly or partially assembled onsite in accordance with building standards published in the California Building Standards Code and other regulations adopted by the commission pursuant to Section 19990. Factory-built housing does not include a mobilehome, as defined in Section 18008, a recreational vehicle, as defined in Section 18010.5, or a commercial modular, as defined in Section 18012.5.

Education Code Section 17625 sets forth the prerequisites that must be met before school districts may levy school fees on Manufactured Homes or Mobilehomes. We do not believe this section applies to Factory-Built Housing. An important difference is that Manufactured Homes and Mobilehomes are required to be built on permanent chassis whereas Factory-Built Housing is not built on a chassis. Further, the Health and Safety Code treats Manufactured Homes and Mobilehomes essentially the same, but Health and Safety Code Section 19971 provides that Factory-Built Housing should not be treated like Mobilehomes or Manufactured Homes. As a result, we believe Education Code Section 17620, not Education Code Section 17625, applies to Factory-Built Housing because Factory-Built Housing is treated as "new residential construction" rather than as a Manufactured Home or Mobilehome under Education Code Section 17625.

- a) **If an existing manufactured home or mobilehome is replaced with a new manufactured home or mobilehome and the new manufactured home or mobilehome is placed on the original manufactured home or mobilehome's pad, may school districts levy school fees?**

No. A fee may only be levied if all three requirements under Education Code Section 17625(a) are satisfied. Education Code Section 17625(a)(2) requires that the mobilehome is located, installed or occupied on a space or site on which no other mobilehome was previously located, installed or occupied. Therefore, if an existing mobilehome is replaced with a new mobilehome and the new mobilehome is placed on a prior mobilehome's pad, a school district cannot levy school fees on the new mobilehome because it is located on a site where a mobilehome was previously located. Education Code Section 17625(a) does not draw a distinction on whether the mobilehome is located inside or outside of a mobilehome park.

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- b) **For the question above, does it matter if the replacement manufactured home or mobilehome has a permanent foundation?**

No. The fact that a manufactured home or mobilehome has a permanent foundation is not significant for purposes of whether or not school districts may levy school fees. The definitions of both manufactured home and mobilehome indicate that these vehicles are “designed to be used as a dwelling with or without a permanent foundation.” Pursuant to Education Code Section 17625(a)(2), school districts may not levy school fees because the replacement mobilehome is to be located on a space on which a mobilehome was previously located.

- c) **May school districts charge school fees on additions to manufactured homes or mobilehomes?**

No. Our firm believes that manufactured homes or mobilehomes are not treated the same as “new residential construction” pursuant to Education Code Section 17620. School districts may only levy school fees on manufactured homes or mobilehomes that: (1) satisfy the three requirements set forth in Education Code Section 17625(a); and (2) do not qualify for any of the specific exemptions under Education Code Section 17625(c). We believe a subsequent addition to a manufactured homes or mobilehome would not authorize the levy of school fees as such fee would not be charged on its initial installation or occupancy.

- d) **If there is a manufactured home or mobilehome located within a school district that is moved from its original pad to a new pad within the district, may the district collect school fees at the new location?**

No. School fees may only be levied on manufactured homes or mobilehomes that: (1) satisfy the three requirements set forth in Education Code Section 17625(a); and (2) do not qualify for any of the specific exemptions set forth in Education Code Section 17625(c). The first of the three requirements states that school fees may only be levied upon the initial location, installation or occupancy of a manufactured home or mobilehome within the school district. Because the manufactured home or mobilehome’s first location would be considered the initial location within the school district, the district cannot charge school fees when the owners move the manufactured home or mobilehome to another location within the district.

- e) **If an existing manufactured home or mobilehome is replaced with a factory-built house and the factory-built house is placed on the original manufactured home or mobilehome’s pad, may a school district levy school fees?**

Yes. Pursuant to Education Code Section 17625(d), if a manufactured home or mobilehome is replaced with a permanent residential structure (*i.e.*, a factory-built house, a bricks and mortar home, etc.) on the same lot, then the school district may give a credit for the original fee paid for the manufactured home or mobilehome that is due toward the payment of the fee due under Education Code

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Section 17620 for the factory-built house. The key difference between a manufactured home or mobilehome and a factory-built house is that the manufactured home and mobilehome have a chassis while a factory-built house does not because it is built offsite and then assembled onsite.

f) What school fee amount should school districts be charging for manufactured homes or mobilehomes?

The Level II Fee, if that rate is in effect within the school district, and if not, then the Level I Fee. If the manufactured home or mobilehome meets the three requirements as explained above under Education Code Section 17625(a) and does not qualify for any of the specific exemptions in Education Code Section 17625(c), then the school district should be charging the Level II fee (or Level I fee, if applicable in the district at such time).

As explained above, pursuant to Government Code Section 65995.2, only the Commercial/Industrial Rate should be charged for manufactured homes or mobilehomes that are located within a mobilehome park in which residence is limited to older persons.

g) What school fee amount should the school district be charging for factory-built homes?

The Level II Fee, if that rate is in effect within the school district, and if not, then the Level I Fee. Factory-built homes are treated the same as "new residential construction" pursuant to Education Code Section 17620. Please see the preceding definitions to determine if a structure is a factory-built home.

h) If the school district has previously collected school fees for a manufactured home or mobilehome in a situation in which the district was not authorized to levy school fees, may the owner require the district to repay such school fees?

Yes. Education Code Section 17625(e) provides that notwithstanding any other provision of law, after January 1, 1987, any school district that collected any fee from a manufactured home or mobilehome "shall immediately repay the fee" to the person who made the payment if the fee would not have been authorized pursuant to Education Code Section 17625(a). Accordingly, if the district now collects school fees for manufactured homes or mobilehomes that do not meet the three requirements of Education Code Section 17625(a) or manufactured homes or mobilehomes that are exempt from School Fees pursuant to Education Code Section 17625(c), the district will have to repay those school fees.

i) If the school district has previously collected school fees for factory-built homes in a situation in which the district was not authorized to levy school fees, may the owner require the district to repay such school fees?

Yes. To protest the amount of fees levied on residential development by a school district, the complaining party must pay the fee and submit a letter

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protesting the amount of the fee within 90 days of the date of imposition of the fees. (Government Code §§ 66020(a) and 66020(d)(1).) If a protest is timely served, an action to attack an imposition of fees must then be filed within 180 days of the protest. (Government Code §66020(d)(2).) Fees that are not protested in a timely manner cannot be the subject of a civil action for recovery. (Government Code § 66020(d).) Thus, if the District has collected fees for a factory-built house that was not subject to fees pursuant to Education Code Section 17620, and the person who made the payment files a timely protest with the District, the District would be required to repay the fees.

13. IS THERE A TIME LIMIT ON WHEN SCHOOL DISTRICTS ARE REQUIRED TO GIVE REFUNDS ON SCHOOL FEES?

No. Pursuant to Education Code Section 17624, school districts are required to repay the school fee (without interest) to the person from whom the fee was originally paid, less an administrative charge for collecting and repaying the fee. The section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction.

When someone requests a refund, we recommend that school districts request proof of original payment from the individual, proof that the project has been cancelled and construction has not commenced from the appropriate city or county agency, and verify that a refund has not yet been paid.

If the developer's original building permit has expired and they are seeking to now bring their school fees current, the school district has two options with respect to refunding the school fees (before selecting an option the school district must review its Certificate of Compliance): (1) refund the school fees originally paid and charge the current school fees due (including any increase in square footage); or (2) charge the difference in square footage between the two projects (if any) at the current school fee rate or simply charge the difference between the school fees due at the old and new rate.

14. WHAT ARE THE REQUIREMENTS FOR COMPLETING "ANNUAL" AND "FIVE-YEAR" REPORTS?

The Annual Reporting requirements are contained in Government Code Section 66006 and include the following:

- The Annual Report must be made available to the public within 180 days after the close of the fiscal year.
- For fiscal year 2007-08, the Annual Report must be made available to the public on or before Friday, December 26, 2008. Due to the Christmas holiday, we recommend that the Annual Report is made available on or before Tuesday, December 23, 2008.
- The school district shall review the Annual Report at the next regularly scheduled public meeting not less than 15 days after the Annual Report is made available to the public.
- The Notice of Public Meeting shall be mailed at least 15 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting.

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- The Annual Report should contain the type of fees collected, the amount collected, the beginning and ending balances in the fund; any interest earned on the fees collected; identify the public improvement on which the fees were expended, the amount spent and what percentage of the total project cost the amount spent represented.
- The Annual Report should contain an approximate date by which construction of the public improvement will commence if the school district determines that sufficient funds have been collected to complete the financing of the project; any inter-fund transfers or loans; and the amount of any refunds issued.

The Five-Year Reporting Requirements are contained in Government Code Sections 66001 and 66006 and include the following:

- The school district shall review the Five-Year Report at the next regularly scheduled public meeting not less than 15 days after the Five-Year Report is made available to the public.
- The Notice of Public Meeting shall be mailed at least 15 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting.
- The Five-Year Report must be completed by a school district every fifth fiscal year following the first deposit into the account of funds in which Reportable Fees (Level I and Level II Fees) are deposited.
- The Five-Year Report must include certain findings with regard to the funds that remain unexpended and whether or not such funds are committed or uncommitted to specific school facilities projects.
- If the Five-Year Report findings are not made at the appropriate time, school districts must return any unexpended monies. To avoid risking this penalty provision, we recommend that school districts prepare the Five-Year Report every year in conjunction with the Annual Report.
- The Five-Year Report includes identifying the purpose to which the Reportable Fees are to be put and demonstrating a reasonable relationship between the Reportable Fees and the purpose for which they are charged. In addition, the school district must identify all sources and amounts of funding anticipated to complete the financing of incomplete projects, as well as the approximate date on which such funding is expected to be deposited.

For the Annual and Five-Year Report, we recommend the following adoption guidelines:

- The school district should publish and post the Notice of Public Meeting no later than 15 days prior to the public meeting.
- We recommend that school districts begin the preparation process no later than October to ensure timely compliance.

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15. WHAT ARE THE CURRENT ISSUES FACING SCHOOL DISTRICTS WHEN PREPARING THEIR FJS AND SFNAs?

School districts should expect to see a reduced collection in school fees as residential and commercial/industrial construction continues to slow. School districts may encounter more individuals asking for refunds for construction projects where the building permits have expired. Even if funds are not available in the school fee accounts, the school district needs to find money to make these refunds.

Additionally, the BIA has been scrutinizing SFNAs lately, particularly with regard to land acquisition costs, student generation rates, and the number and size of units projected over the next five years. Further, the BIA has requested that school districts adopt the Level II Fee on a phase in basis, but we do not believe that there is statutory authority for school districts to do so. Also, the BIA has requested that school districts allow developers to defer payment of school fees until occupancy. An issue we see with this request is that the school districts could become an unsecured creditor if the developer becomes bankrupt such that the school districts could be required to consent to occupancy without payment. Recently, one Chapter of the BIA has suggested that the developers they represent would be willing to post a letter of credit if the payment of school fees is deferred until occupancy.

Should you have any questions or comments in regard to any of the matters contained herein or would like any assistance in regard to complying with the applicable legal requirements pertaining to Fee Justification Studies, SFNAs and/or Annual Reports and Five-Year Reports, please do not hesitate to contact Megan Watt (mwatt@bawg.com) at (949) 851-1300 or (800) 649-0997.

The applicability of the legal matters discussed may differ substantially in individual situations. The foregoing information has been prepared by Bowie, Arneson, Wiles & Giannone as an overview of the subjects discussed and should not be construed as individual legal advice.