

Fresno Unified Administrative Regulation (AR) 7211 Developer Fees

In order to finance the construction or reconstruction of school facilities needed to accommodate increased student enrollment resulting from new development, the Governing Board may establish, levy, and collect developer fees on residential, commercial, and industrial construction within the district, subject to restrictions specified by law and administrative regulation.

Before taking action to establish, increase, or impose Level 1 developer fees, the Governing Board 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.

Before levying developer fees, or prior to increasing an existing fee, the Board shall hold a public hearing. The Superintendent or designee shall mail notice of the time and place of the meeting at which a public hearing shall occur, including a general explanation of the matter to be considered and a statement that the required data is 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, the use to which the fee is to be put, and the public improvement(s) that the fee will be used to finance (Government Code 66001, 66006)
2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001
3. If the district requires payment of the fee at a time earlier than the date of final inspection or the issuance of a certificate of occupancy, 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

In the case of any commercial or industrial development, the Board shall make findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse. The Board shall also conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. (Education Code 17621)

Level 2 Funding Fees: Residential Development

In order to impose Level 2 residential construction fees within the limits of Government Code 65995.5, the Board shall, in addition to fulfilling the requirements above for Level 1 fees, undertake the following: (Government Code 65995.5)

1. Make a timely application to the State Allocation Board (SAB) for new construction funding for which it is eligible and be determined to be eligible by SAB
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)

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)

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)

Not 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)

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)

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 Fees: Residential Construction

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

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

Special Case-By-Case Fee Considerations

The District acknowledges the value to the community for charitable organizations to create developments whose mission is to provide services bearing on the health & welfare of families and their school-aged children. Therefore, the District may, on a case-by-case basis, waive any potential residential development fees and charge the commercial rate for developments that provide a benefit to the public in general and to constituents living within District boundaries, in particular. Such developments must further fulfill the following criteria:

- The development and underlying real property are owned and controlled by a 501c3 public benefit/charitable non-profit corporation;
- The development is to provide emergency, transitional, or therapeutic housing for those experiencing homelessness, domestic violence, human-trafficking, substance addiction, or other circumstances in which supports are critical to address the needs of vulnerable members of the community;
- The housing is not intended to be permanent and does not involve the payment of rent or lease payments by the user, and there is no legal tenancy relationship created between the development owner and user;
- The development includes an integrated environment containing at least three (3) of the following categories of services: physical/mental health services, counseling, education, food/nutrition, child care, recreation, substance abuse services, and other such supports.

In the event of a material change in the use of any temporary residential facilities as indicated above (e.g., from temporary to “permanent” leased residential units), the District reserves the right to review any such material changes and, as appropriate, recoup the residential developer fee rate, at the then-current level, from the owner or any successor in interest.

Use of Fees

The Board shall review the above information provided by the Superintendent or designee pursuant to Government Code 66006 regarding each account or fund into which developer fees have been deposited, 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.

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:

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 and the Board 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)

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)

Process for Protests by Developers

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
 - 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 with the Executive Director of Facilities & Management 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. The Superintendent or Designee will serve as Hearing Officer and issue a ruling to the protest.

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)

Fresno Unified School District prohibits discrimination, harassment (including sexual harassment), intimidation, and bullying based on actual or perceived race, color, ethnicity, national origin, immigration status, ancestry, age (40 and above), religious creed, religion, political belief or affiliation, gender, gender identity, gender expression, genetic information, mental or physical disability, sex, sexual orientation, marital status, pregnancy or parental status, childbirth, breastfeeding/lactation status, medical condition, military and veteran status, or association with a person or a group with one or more of these actual or perceived characteristics or any other basis protected by law or regulation, in its educational program(s) or employment.

Regulation FRESNO UNIFIED SCHOOL DISTRICT
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