



DEVELOPER FEE FAQ—GENERAL INFORMATION

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1. Why does the District Charge Developer Fees?

As a means to fund school facilities needed as a result of development. Government Code § 65995, Education Code § 17620 and Assembly Bill 2926, also known as the “1986 School Facilities Legislation,” granted school districts the right to levy fees to offset the impacts of school facilities from new residential and commercial industrial developments.

If the District does not collect all the developer fees it is deemed legally entitled to, the District may be considered ineligible to receive certain state funding.

2. Where can the District charge Developer Fees?

The District may only charge school fees inside District boundaries. Education Code § 17620(a)(1) permits school districts to levy fees against any construction within the boundaries of the district.

District boundaries include the Cities of Avalon (including the entire island of Santa Catalina), Lakewood, Long Beach, Signal Hill and the unincorporated areas of the County of Los Angeles which are within the District’s boundaries.

3. How/when are the fees levied?

1. Residential:

A. On any **new** residential construction. Hallways and other common areas are also levied fees pursuant to the CC&Rs that developers will adopt where condo owners have proportional ownership to these common areas.

B. On any residential additions over 500 square feet. This is an accumulative number. In other words, the 500 square feet minimum is applied to the building throughout the course of the structure's life.

C. Accessory Dwelling Units ("ADUs"). ADUs are separate residential units that can house a new family that generates new students. Fees are assessed against all new ADU square footage in the same manner as with other new residential construction. ADUs are not additions to existing residential structures. Therefore, the exemption for additions 500 square feet or less are not applicable. A new ADU is charged fees even if it is only 300 square feet. However, if an addition is added to an existing ADU, the addition exemption would apply. The following examples illustrate the application of fees, exemptions, and credits for ADUs:

- i. Construction of a new ADU that is detached or added to the exterior of an existing residential structure. In this example, the ADU would be fully assessed fees because it is a new residential structure that did not exist before. The mere fact that the ADU may be attached to an existing residential structure is not relevant. Thus, a 450-square foot ADU attached to an existing residential structure would be levied fees on the new 450 square feet of residential space.
- ii. Construction of an ADU that converts part of an existing residential structure and adds additional square footage beyond the existing residential structure. In this example, there would only be the levy of fees for the added square footage, because the fees for the converted square footage would be offset by the existing residential square footage. Thus, a 450-square foot ADU that converts 200 square feet of an existing residence would only be levied fees for the new 250 square feet of residential space.
- iii. Conversion of existing residential space into an ADU. If the new ADU would be entirely enclosed within an existing residence, no fees would be levied, since there is no new square footage being created by the ADU. However, fees would apply to the

conversion of a garage into an ADU since school fees are not levied against garages.

Note that the impact fee restrictions on ADUs imposed by Senate Bill 13 ("SB 13") are only applicable to impact fees levied by cities, counties, and special districts. School districts are independently authorized to levy school developer fees per Education Code § 17620. SB 13 does not modify, suspend, or mention Education Code § 17620. Accordingly, SB 13 does not restrict school districts' levies of school fees on ADUs. For the same reasons, AB 881 does not limit the levy of school developer fees on ADUs.

D. Excluded

The following are excluded from the fees: Carports, walkways, garages, overhangs or patios, enclosed patios, detached accessory structures or similar enclosed areas, exclusively religious facilities, exclusively private full-time day schools, owned and operated federal facilities, owned and operated state facilities, owned and operated local agency facilities, construction to make a residential dwelling more accessible to a disabled person (requires a statement from a doctor), reconstruction of a structure destroyed in a disaster, replacement of a manufactured home on the original pad, replacement of a mobile home on the original pad, and greenhouses.

2. Commercial/industrial development:

Covered and enclosed spaces of commercial or industrial construction

Includes: hotels, inns, motels, tourist homes, short-term (30 days or less) lodging, senior citizen housing (restricted to 55 years old and over, Civil Code, § 51.3), residential care facilities for the elderly (Health & Safety Code, § 1569.2(k)), multilevel facility for the elderly (Gov. Code, § 14432(d)(9)), mobile home development limited to older persons (55 – 62), and private universities.

Excludes: storage areas incidental to the development, garages, parking structures, unenclosed walkways, or utility or disposal area, and residential hotels.

4. How much are the fees?

Fees Subject to Change:

1. **Level I** fees are subject to change every year in January but are effective 60 days from the date that the District elects to adopt the fee increase.
2. **Level II** fees are subject to change annually if approved by the District and a School Facility Needs Analysis (SFNA) is adopted by the District. These fees are effective the day after adoption.

3. **Level III** fee is only effective when there are no state bond funds available.

5. Where do I pay my developer fees?

Fees must be paid IN PERSON at the LBUSD Facilities Development and Planning Branch, 2425 Webster Ave, Long Beach CA 90810. Fees are collected M-F 9:00am – 3:00pm.

NOTE: Avalon developers may have their fees processed via mail. Please contact the Facilities Development and Planning Branch for instructions.

6. What are the acceptable payment methods?

ONLY check or money order-NO CASH OR ATM/CREDIT CARDS

1. Checks or money orders made to: LBUSD Developer Fee Collector.
2. Returned checks will receive a \$25.00 processing fee.
3. The fees must be paid prior to the issuance of a building permit

7. Can I protest my fees?

YES.

Protest Procedure:

- a. Tender payment in full.
- b. Protest must be made in writing and received by the School District within 90 calendar days of the date the fees were paid. Protest must state:
 - a. That the required payment is tendered under protest, and
 - b. The factual elements of the dispute and legal theory forming the basis for the protest.
- c. Address all correspondence to: Attn: Governing Board, care of Facilities Department and Planning, Attention Developer Fee Collector, 2425 Webster Avenue, Long Beach, CA 90810.

8. Are there refunds of fees?

IN CERTAIN CIRCUMSTANCES.

1. Only if construction does not commence, as provided in Education Code § 17624 and Government Code § 65995.
2. To obtain a refund, you must provide certification from the city that the project has been canceled. Allow 30 to 60 days to receive the refund. The District will withhold \$50.00 from the original amount paid for the developer fee as an application fee.
3. **Refund Procedure:**
 - a. Fill out the Certificate of Compliance Refund Form.
 - b. Attach a copy of the certificate of cancellation from the city with the paperwork.

- c. Submit to the Director of Facilities for proper signature.
 - d. Submit to Accounting for the refund.
4. Explanation verbage:
- a. Applicant originally applied for and paid \$_____ in Developer Fees. Due to unforeseen circumstances, the project has since been cancelled. The applicant is now requesting a refund of the developer fees paid. Attached are: letter request for fees paid, and a copy of the voided building permit. After confirming that the applicant's original fee payment was received and deposited please process a refund of the \$_____ developer fee, minus \$50.00, which will be withheld as an application fee. The total refund is \$_____, payable to the applicant. Refund from Developer Fee account _____.

9. Is there a time limit on for refunds on school fees?

YES.

Education Code § 17624 authorizes refunds; however, per Civil Code § 338(a), the statute of limitations for a refund is three (3) years from the date that a refund becomes available. A refund becomes available once the building permit that Developer Fees where paid on expires.

10. Is Demolition Credit available?

IN CERTAIN CIRCUMSTANCES.

1. Commercial/Industrial - Education Code §17620(a)(1)(A) specifically requires a demolition credit for existing covered square footage of commercial/industrial construction regardless of its age. However, under section 17620(a)(1)(A), no credit is available for commercial/industrial that no longer exists on the day the building permit for the new construction was first applied for.
2. Residential - A credit for demolition of a residential structure against reconstruction is available if the current fee justification study does not consider reconstructed residential structures to generate new students beyond the original residential structure.
3. Disaster reconstruction - Education Code § 17626(a) defines a disaster as "a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss." Any structure that is damaged or destroyed as a result of a disaster is entitled to a demolition credit against reconstruction, so long as the rebuilt square footage does not exceed the structure's original square footage. (*Ibid.*)

11. What is a Certificate of Compliance?

A Certificate of Compliance is the form that must be completed and certified by the **District** and returned to the appropriate city.

12. May I obtain an extension for paying my fees?

YES.

Only at the Board's sole discretion can an extension be granted. The Board may grant an extension for any number of days up to and including thirty (30) days. **ONLY** three extensions are given to the developer for a total of 90 days. If a building permit is not issued, for the construction of the corresponding dwelling unit, the developer will be reimbursed all amounts paid less a \$50.00 application/handling fee, without interest, that was paid to obtain the Certificate of Compliance.

13. How are the developer fees spent?

The fees are to be used for designated school facility projects to house students attending Long Beach Unified School District.

Level I (Statutory School Fees)

- a. New construction or modernization of facilities for new capacity to accommodate new students resulting from new construction.
- b. Non-facility school costs associated with the costs of conducting a School Facilities Needs Analysis, preparing the Annual and Five-year Report, and not more than 3% of the amount collected may be spent on the administrative time necessary for the collection of the fees.
- c. California Education Code section 17620, subdivision (a)(1) allows developer fees to be used to fund "the construction of school facilities" subject to limitations set forth in relevant sections of the Government Code. In general, Education and Government Code sections and case law require that the District be able to show a reasonable relationship between the impact of the development and the use of the fees.

Level I Fees and Level II Fees

- a. **New Construction:** YES. Level I fees may be spent on new construction projects on facilities for new capacity to accommodate new students that result from new construction. Level II Fees shall be solely expended on the school facilities identified in the SFNA as been attributable to projected enrollment growth from the construction of new residential units.

Construction to improved accessibility for the handicapped: Education Code § 17620(a)(1)(C)(ii) states that a district is not authorized to levy developer

fees against residential construction if the construction qualifies for the exclusion set forth in Revenue and Taxation § 74.3, which excludes from developer fees the following: construction, installation, or modification of an existing building to make the structure more accessible to a disabled person or that person's legal guardian. The proof required for the exclusion is a statement signed by a licensed physician or surgeon of appropriate specialty which certifies that a 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.

- b. **Modernization:** NO modernization except Level I and Level 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:** Pursuant to Education Code § 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 § 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 § 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 item of maintenance approved by the SAB.
- f. **Non-Facility Costs:** YES. Pursuant to Education Code § 17620(a)(5), Level I Fees may also be spent on the following non-facility costs: the costs of conducting an SFNA and FJS, preparing the Annual and Five-Year Report, and not more than three percent (3%) of the amount collected per fiscal year may be spent on the administrative time necessary for the collection of Level I Fees.
- g. **Portable Installation:** Installing portable classrooms meets the requirements of construction or reconstruction of a school facility. The question to ask, therefore, is whether the work would have to be performed absent the development. If, for instance, a portable is being installed to take advantage of the class-size reduction program and the District has not incurred an increase in student population, the District could not use developer fees to

fund installation. If, however, the District can show that it has experienced an increase in student population and in order to accommodate that increase and take advantage of class-size reduction programs it must install the portable, the District probably could justify using developer fee funds to install the classroom.

- h. **Interim Housing During Modernization:** It depends. Developer fees may only be spent for interim housing if it is part of a project that will increase school capacity to house children generated by new development.
- i. **Purchase Text books, Furniture and Supplies:** While text books, furniture , and supplies are “school-related considerations to a school district’s ability to accommodate enrollment,” they do not fall within the concepts of “construction” or “reconstruction.” Therefore, the purchase of supplies is not generally a proper use of developer fees.
- j. **Installing Technology:** If a district can show that the technology being installed is a function of growth resulting from developments, it will likely be able to use the fees to install the technology. Installing technology should, however, be distinguished from merely purchasing additional computers. It is the installation (e.g. cabling) that can be brought within the definition of “construction” or “reconstruction.” If the district is installing technology throughout its existing campuses, the portion of the costs that is associated with the installation that is attributable to new development may be paid with the developer fees. The remainder of those costs relating to existing students must be [aid from other sources. The district should retain records that would justify the proper allocation in the event that a developer or interested party later requests documentation.

Level II Fees have to relate to school facilities identified in the SFNA as being attributable to projected enrollment growth from the construction of new residential units.

14. Are there fees for Manufactured Homes, Mobile Homes, and Factory-Built Homes?

1. Definitions

- a. **Manufactured Home:** Health and Safety Code § 18007. A structure, transportable on one or more sections, within 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...
- b. **Mobile Home:** Health and Safety Code § 18008. A structure that meets the requirements of section 18007. “Mobile home” 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.

c. **Factory-Built Housing:** Health and Safety Code § 19971. 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 mobile home, as defined in section 18008 a recreational vehicle, as defined in section 18010.5, or a commercial modular, as defined in section 18012.5.

2. **If an existing manufactured home or mobile home is replaced with a new MF or MH and it is placed on the original pad, may school districts levy school fees?**

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

3. **For the question above, does it matter if the replacement manufactured home or mobile home has a permanent foundation?**

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

4. **May school districts charge school fees on additions to manufactured homes or mobile homes?**

NO. Manufactured homes or mobile homes are not treated as “new residential construction” per Education Code § 17620. School districts may only levy school fees on manufactured homes or mobile homes that: (1) satisfy the three requirements set forth in Education Code § 17625(a); and (2) do not qualify for any of the specific exemptions under Education Code § 17625(s). A subsequent addition to a manufactured home or mobile home would not authorize the levy of school fees as such fee would not be charged on its initial installation or occupancy.

5. If there is a manufactured home or mobile home 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 mobile homes that: (1) satisfy the three requirements set forth in Education Code § 17625(a); and (2) do not qualify for any of the specific exemptions set forth in Education Code § 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 mobile home within the school district. Because the manufactured home or mobile home’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 mobile home to another location within the district.

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

YES. Per Education Code §17625(d), if a manufactured home or mobile home 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 mobile home that is due toward the payment of the fee due under Education Code § 17620 for the factory-built house. However, pursuant to Education Code § 17620(a)(l)(C)(i), the District may only levy school fees if the resulting increase in assessable space exceeds 500 square feet. The key difference between a manufactured home or mobile home and a factory-built house is that the manufactured home and mobile home have a chassis while a factory-built house does not because it is built offsite and then assembled onsite.

7. What school fee amount should school districts charge for manufactured homes or mobile homes?

The Level II Fee, if the rate is in effect within the school district, and if not, then the Level I Fee. If the manufactured home or mobile home meets the three requirements as explained above under Education Code § 17625(a) and does not qualify for any of the specific exemptions in Education Code § 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 § 65995.2, only the Commercial/Industrial Rate should be charged for manufactured homes or mobile homes that are located within a mobile home park in which residence is limited to older persons.

8. What school fee amount should the school district charge 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 proceeding definitions to determine if a structure is a factory-built home.

9. If the school district has previously collected school fees for a manufactured home or mobile home 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 § 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 mobile home “shall immediately repay the fee” to the person who made the payment if the fee would not have been authorized pursuant to Education Code § 17625(a). Accordingly, if the district now collects school fees for manufactured homes or mobile homes that do not meet the three requirements of Education Code § 17625(a) or manufactured homes or mobile homes that are exempt from School Fees pursuant to Education Code § 17625(c), the district will have to repay those school fees.

10. 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 own require the district to repay such school fees?

YES. The protest the amount of fees levied on residential development by a school district, the complaining party must pay the fee and submit a letter protesting the amount of the fee within 90 days of the date of imposition of the fees, (Gov. Code § 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 protest, (*id.* § 66020(d)(2)). Fees that are not protested in a timely manner cannot be the subject of a civil action for recovery, (*id.* § 66020(d)). Thus, if the District has collected fees fro a factory-built house that was not subject to fees pursuant to Education Code § 17620, and the person who made the payment files a timely protest with the district, the district would be required repay the fees.

15. Are remodeling projects assessed Residential Fees?

YES. Level 1 Fees are applied to remodeling that adds more than 500 square feet.

1. Should I charge a residential owner for an additional 395 square foot addition if he has already completed a 2500 square foot addition within the last 11 months?

Depends: If new building permits are necessary, the 395 square foot addition is less than the 500 square foot threshold for imposing developer fees per Education Code § 17620(a)(1)(C)(I). Therefore, the district may not levy any additional fees. However, if the previous building permits have not been finalized, this may be treated as a 2895 square foot afterthought or a subterfuge to avoid additional fees?

2. Are there second floor addition charges?

It Depends. Per Education Code § 17620(a)(1)(C)(I), if the second-floor addition is greater than 500 square feet, then the school district may charge Level I Fees for the size of the total addition.

16. May I pay my fees with a Letter of Credit (LOC)?

NO. The posting of a bond or letter of credit (LOC) is a method in which a developer owes a district funds but cannot pay all of it up front. In the case of paying for development that has not yet been approved by the City, the District is not yet owed any funds. In fact, if we allowed this, the District would be placed in a compromised position since a Certificate of Compliance would be issued without any funds to account for it. Furthermore, the District would be forgoing any increases in fees.

17. Will fees be assessed on a use conversion, i.e., commercial property to residential?

YES. Changing the use from commercial/industrial to residential is considered “New Residential Construction” and will be assessed the current Level II fee. This holds even if there is no construction per se, as this will be the first time the space has been used as a residence; therefore, opening up the potential to house school-aged children.

If the developer can prove that fees were paid for the original commercial/industrial construction, a credit for this payment may be applied to the amount of new residential fees assessed. However, the burden of proof lies with the developer.

If, in the future, the space is converted back to commercial space, NO REFUND/CREDIT may be issued.

18. Can Developer Fees be utilized to pay for Charter facilities?

California law does not specifically prohibit a district from using developer fees to pay for charter school facilities. On the other hand, whether a district can allocate developer fees to charter school facilities depends in part on whether the charter school facilities will provide capacity to accommodate students generated by new development within the district.

Charters are schools of choice and are not typically opened or expanded because of growth in district student population, but in some situations, they could be tied to growth, especially a dependent charter. Most charters tend to result in movement of existing school enrollment from a regular school to a charter school, and absent other factors, use of developer fees to build or modernize a charter site may not meet nexus requirements if all the addition of the charter is merely reshuffling district enrollment (or if the growth at the charter is occurring because the charter is attracting out of district students). However, using developer fees to modernize or create space for a charter may be appropriate if it allows the district to increase capacity at another site to make room for growth.