

# State Allocation Board Authorizes Level 1 Fee Increase

January 24, 2020

School districts are authorized to levy a fee against any construction, subject to certain exceptions, within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities necessitated by the development. (Ed. Code, §17620(a)(1).) School impact fees, commonly known as “Level 1” or developer fees, are adjusted for inflation every two years by the State Allocation Board (SAB) at its January meeting.

On January 22, 2020, the SAB authorized an increase in the maximum Level 1 fee per square foot for as follows:

- **Residential Construction:** School districts may now charge up to **\$4.08** per square foot of accessible space of new residential construction.
- **Commercial/Industrial Construction:** School districts may now charge up to **\$0.66** per square foot of chargeable covered and enclosed commercial/industrial space.

The new amounts reflect a 7.64% increase over existing rates of \$3.79 and \$0.61 per square foot, respectively.

All school districts may adopt up to the maximum authorized Level 1 fees if justified. Unified school districts may collect the full Level 1 fee amounts, while non-unified school districts share the total maximum amount of justified Level 1 fees pursuant to a fee-splitting agreement.

School districts must take specific action to make the fee increase applicable within their districts. To take advantage of the increase, each school district should act now and follow the statutory process to adopt the increased Level 1 fees.

**Step 1 – Fee Justification Study.** A school district must prepare or update its Fee Justification Study to establish that a nexus exists between the amount and types of development in a school district and the need for additional school facilities to house students generated by development. A Fee Justification Study must:

- Identify the purpose of the fees;
- Identify the use(s) to which the fees will be put;
- Determine whether a reasonable relationship exists between the fee’s use and the type



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- of development project on which the fee is imposed; and
- Determine whether a reasonable relationship exists between the need for school facilities and student growth resulting from the forms of development on which the fee is imposed.

We generally recommend that the Fee Justification Study be prepared or updated by an outside consultant every five years or each time a district raises its Level 1 fee, whichever occurs earlier. This is true even if a school district also collects Level 2 or Level 3 fees because Level 1 fees are imposed pursuant to separate legal authority. If Level 2 or Level 3 fees are ever invalidated, expire, or are successfully challenged, Level 1 fees will remain in place and should be justified based on the findings in the district's last Fee Justification Study. Furthermore, Level 1 fees are the only school impact fees that may be imposed on commercial/industrial construction, and senior housing, so it is important to keep pace with the increases permitted by state law as long as the amounts are justified by an updated Fee Justification Study.

**Step 2 – Public Review.** Once the Fee Justification Study is prepared, it must be made available for public review for at least ten (10) days prior to a public hearing held by the governing board as part of a regularly scheduled meeting at which the Fee Justification Study and the Level 1 fees are adopted.

**Step 3 – Publish Notice.** Notice of the time and place of the public hearing must be advertised in a newspaper of general circulation at least ten (10) days before the date of the public hearing. The Notice must be published twice within that ten-day period, with at least five (5) days between each publication, as further specified by statute. The Notice must also be mailed at least fourteen (14) days prior to the date of the public hearing to any interested party who has filed a written request with the District.

**Step 4 – Public Hearing.** The public hearing is held as part of a regularly scheduled meeting of the governing board. Public comments on the Fee Justification Study or the Level 1 fee rates are received at this time.

**Step 5 – Board Adoption.** After the public hearing portion of the meeting, the governing board may adopt the Fee Justification Study and the Level 1 fee rate by board resolution. Level 1 fees generally become effective sixty (60) days after adoption of the resolution, unless adopted on an urgency basis within limited circumstances.

Note that the SAB fee increase applies only to the Level 1 fees that are authorized by Education Code section 17620, *et seq.*, and Government Code section 65995. The increase does not affect Level 2 or Level 3 fees authorized by Government Code section 65995.5, *et seq.*, which are alternative fees specifically calculated by each school district to yield a per square foot fee in excess of the Level 1 fee amounts. Level 2 and Level 3 fees may be adopted by a school



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district if certain statutory conditions are met. They must be recalculated annually, and may only be imposed on residential construction. The statutory requirements for adopting Level 2 or 3 fees are beyond the scope of this bulletin.

Proposition 13/AB 48, if approved by voters in March 2020, would suspend Level 3 fees until January 1, 2028. Further, this measure would eliminate the imposition of developer fees on multi-family housing developments within one-half mile of a major transit stop, as well as provide a 20% fee reduction for other multi-family developments throughout the State. For further information on Proposition 13/AB 48, please see DWK's bulletin on the subject at the following link: [AB 48 Bulletin](#). DWK attorneys will be closely monitoring the impacts and outcomes. Please do not hesitate to contact a DWK attorney in our Business, Property, Public Finance or Construction practice groups with your questions.

We are excited to announce that the third edition of our popular **DWK Developer Fee Digest** is in production and will be available later this spring upon request. Contact a DWK attorney if you would like us to provide you with a complimentary copy of this publication, or if you have questions about adopting school impact fees.

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