

FRESNO UNIFIED SCHOOL DISTRICT
DEVELOPER FEE GUIDELINES
Revised February 27, 2024

BACKGROUND

In 1986 the state legislature enacted AB 2926 (effective January 1, 1987), which authorized school districts to collect school impact fees (developer fees) on residential and commercial/industrial development. The Fresno Unified School District (District) Board of Trustees (Board) approved the implementation of developer fees on April 11, 1991. The collection of developer fees are based on the provisions of Government Code Section 65995 and Education Code Section 17620. District Board Policy (BP) 7211 and related Administrative Regulation (AR) 7211 provide the specifics relating to the implementation and collection of developer fees.

The District collects what are known as Level 1 developer fees, which are the fees authorized by AB 2926 (as opposed to the alternative Level 2 or 3 fees authorized under SB 50 in 1998). The maximum allowed Level 1 fees are adjusted in January of each even numbered year by the State Allocation Board, and the adjustment is based on changes in the Class B Construction Cost Index. Prior to changing the Level 1 fee amounts, the District must have prepared a developer fee justification study that justifies any increase in fees. The study and fee adjustment must be adopted by the Board at a noticed public hearing. The revised fees become effective sixty days after the Board action.

RESIDENTIAL DEVELOPMENT

Residential construction includes any construction where the purpose is to provide a residence or livable space in excess of thirty (30) days per year, including, but not limited to: single and multiple family dwellings, planned unit developments, apartments and condominiums, accessory dwelling units, dormitories, extended stay motels, and any detached structures related to these that are used as living space (i.e. guest house, pool house or similar). Manufactured homes and mobile homes are considered residential construction. Residential development can also include the conversion of commercial/industrial structures to residential use and mixed use development, where part of the structure is used for residential purposes and part for commercial/industrial use.

Developer fees are assessed on “assessable space” as defined in AB 181 in 1989 and is “...all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure or similar area.” The building department of the city or county that issues the building permit determines the assessable space.

New Residential Development on Vacant Land

This type of development can be single family, multi-family, or a mixture of single and multi-family and is subject to the full Level 1 fee assessment. For multi-family structures with internal hallways and entry ways, the full area within the exterior perimeter is chargeable.

Senior citizen complexes can be a special case of this category of development. Government Code Section 65995.1 limits the developer fees on this category of development to the adopted commercial/industrial fee amount. If a senior citizen development later converts to non-senior citizen residential development, the developer must pay the difference in fees between the previously paid commercial/industrial amount and the current residential fee amount. The District requires developers of senior citizen projects potentially subject to the reduced commercial/industrial fee amount enter into an agreement with the District to pay the higher fee increment if conversion to a non-senior citizen project takes place, and the agreement is recorded as a covenant that runs with the land.

Additions to Existing Residential Units

Residential additions of 500 square feet or less to an existing structure are exempt from developer fees. The 500 square foot exclusion is cumulative for the life of a structure. If a residential addition exceeds 500 square feet, the fee is chargeable for the total area of the addition. The calculation of the resulting increase in assessable space shall be the net impact of the addition and any decreases in square footage from the same project.

Relocated Dwelling Units

If a permanent dwelling unit is moved into the District from outside, fees can be assessed for the full square footage of the dwelling unit. However, if the dwelling unit replaces an existing residential dwelling unit that is demolished as part of the project permit, credit should be allowed for the demolished square footage. If a dwelling unit is moved within the District, fees can only be charged for an increase of square footage, and only if it is greater than 500 square feet.

Manufactured and Mobile Homes

Manufactured and mobile homes are generally defined as a structure that is transportable in one or more sections, is built on permanent chassis and is designed to be used as a dwelling with or without a permanent foundation (see Health and Safety Code Sections 18008 and 18007 for precise definitions).¹ Commercial coaches, factory built housing, or recreational vehicles are not considered manufactured or mobile homes.

In accordance with Education Code Section 17625, manufactured and mobile homes are subject to school fees only if they comply with all of the following.

1. The manufactured or mobile home is being located, installed or occupied for the first time in the District.
2. The site of the manufactured or mobile home is the first time the site has been occupied.
3. The site improvements necessary for the placement of the manufactured or mobile home commenced after September 1, 1986.

The above limitations mean that if a manufactured or mobile home is moved from one location in the District to another location in the District, fees cannot be charged. If the movement is from outside the District to within the District, fees can be charged unless the relocated manufactured or mobile home is replacing an existing manufactured or mobile home.

Education Code Section 17625(g) contains a provision for waiver of fees if a manufactured or mobile home is moved into the District from another District and the manufactured or mobile home is owned by a person 55 or older who is also a member of a lower income household as defined in Health and Safety Code section 50079.5. This waiver is permissive and not mandatory.

Manufactured or mobile homes are subject to the same general requirements for fee collection as new single family residential construction, including determining the assessable space subject to fees and the 500 square foot exemption for residential additions.

Disaster Reconstruction

Education Code Section 17626(a) defines a disaster as a “fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.” Replacement structures are exempt from

¹ The definitions of manufactured and mobile homes are essentially the same in the Health and Safety Code, except that mobile homes are defined as being constructed prior to June 15, 1976, and manufactured homes are defined as being constructed on or after to June 15, 1976.

developer fees if the replacement construction takes place within three years of the disaster damage occurrence. If the replacement construction square footage is in excess of the damaged structure, the excess square footage is not exempt from fees. It is the applicant's responsibility to provide information that accurately identifies the square footage of the damaged structure being replaced.

Accessory Dwelling Units (ADUs)

An accessory dwelling unit is a small separate residential unit that is constructed on residential property containing an existing primary residential structure. ADUs are authorized by SB 13, which provides for the waiver of some development fees. However, the impact fee restrictions for ADUs imposed by SB 13 are only applicable to impact fees levied by cities, counties, and special districts. School impact fees are authorized by Education Code Section 17620, and SB 13 does not suspend or modify Education Code 17620.

ADUs are new residential construction as defined in Education Code Section 17620(a)(1)(B) and can house a new family that generates new students. The District charges developer fees for ADUs, regardless of the square footage of the proposed structure. ADUs are not additions to existing residential structures; therefore, the exemption for additions of 500 square feet or less is not applicable.

ADUs can be detached from the primary residence, attached to it, or built within the walls of an existing residential structure. An ADU is charged the full residential fee unless all or part of it is within the walls of an existing residential structure. In a case where an ADU is entirely within the walls of an existing residential structure, no fee would be charged. If the ADU is partially within the walls of an existing structure, the ADU would only be charged for the square footage that is added to the existing structure. In a case where an ADU is provided as the result of a garage conversion, a fee would be charged since no fee was initially charged for garage space in a residence (not considered assessable space).

Replacement of Existing Residential Development with New Residential Development

The type of projects can include: 1) single family residential units replacing single family residential units; 2) multi-family units replacing multi-family units; 3) single family units replacing multi-family units; and 4) multi-family units replacing single family units. The following paragraphs provide examples and a process to compute fees that is internally consistent.

An example of single family units replacing single family units would be a subdivision development with multiple units on land that already has one or more single family units that are to be demolished. A square footage credit shall be given for the demolished units if the demolition is part of the project approval permits. The credit would be applied to the first series of units to receive building permits.

Another example would simply be an existing residential unit being replaced by another unit. Credit for the existing square footage shall be given and a fee paid only if the square footage of the new unit is greater than the unit replaced.

An example of multi-family units replacing multi-family units would be the demolition of one or more multi-family units to be replaced by a greater number of multi-family units. There is a court decision specific to this issue (Cresta Bella, LP v. Poway Unified School District) in which the court ruled that school developer fees could not be charged on replacement housing unless the district specifically addressed this subject in a fee study. Developer fees can only be charged on the increase in square footage.

Single family units replacing multi-family units is not common, but it is possible. An example would be the development of a subdivision on land with an existing multi-family structure (for example, a four-plex). If the demolition is part of the total project approval, it is recommended that a square footage credit for the demolished units be allowed against the first group of single family units receiving building permits.

Multi-family units replacing single family units is possible when a single family older unit is demolished on a parcel large enough for multi-family development. If the demolition of the single family unit is part of the project permit approval, it is recommended that square footage credit be granted against fees due for the multi-family development.

COMMERCIAL AND INDUSTRIAL DEVELOPMENT

Construction shall be considered commercial or industrial when the structure's primary purpose is used to for the production of income, to manufacture, treat, alter, shape, form, construct, hold, store, or display goods for sale, or to house during any business hours the personnel of an enterprise whose purpose is to provide goods and services to the community.

Commercial and industrial buildings are all building occupancies other than residential buildings. Included are those buildings where the primary purpose is to provide a service or a product, such as, retail establishments, offices, manufacturing and industrial plants, warehouses, medical treatment centers, health care center, convalescent hospitals, senior citizen retirement centers, and others that may be listed in the future.

Commercial buildings also include, but are not limited to, hotels, inns, motels, tourist homes, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include residential hotels.

Exclusions include storage areas incidental to the development, garages, parking structures, unenclosed walkways, utility or disposal areas, and residential hotels.

Chargeable Space – Commercial/Industrial Buildings

Government Code section 65995(b)(2) defines commercial/industrial chargeable space for which developer fees can be charged as:

The covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the development, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

Shell buildings will be subject to the commercial/industrial developer fees unless the applicant demonstrates a legally enforceable restriction to an exempt use.

Replacement of Commercial/Industrial or Residential by Commercial/Industrial

Education Code section 17620(a)(1)(A) provides that “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.” Therefore, with commercial and industrial construction, developer fees may be assessed to any square footage of enclosed space in excess of the square footage of the prior existing structure, measured on the date the first building permit is issued for a project. This essentially means that a “credit” is to be given per square foot to all commercial and industrial construction for any structures (commercial, industrial, or residential) that were demolished on the site after the beginning of a project.

Replacement of Commercial/Industrial by Residential

Changing the use from commercial/industrial to residential is “new residential construction”, and therefore is subject to school fees. This applies even if there is no increase in square footage as this will be the first time the

space has been used as residential, thus making the space available to house school age children.

Since the converted space is no longer used for commercial/industrial uses, a credit equal to the current commercial/industrial fee for the converted space can be applied to the residential fees due. This means that the difference between the residential and commercial/industrial fees will be charged.

MIXED USE DEVELOPMENT

New Mixed Use Development

New construction that is a mixture of residential and commercial/industrial can be charged the appropriate fees for each type of construction. However, if the project also includes the demolition of existing residential or commercial/industrial structures, credit against fees due should be given as described in prior sections.

Conversion of Existing Development to Mixed Use Development

Most commonly, conversion of existing structure(s) to mixed use is commercial/industrial converting to a mixture of commercial/industrial and residential. This type of conversion can also include additional square footage of commercial/industrial and/or residential. No fee would be due for the commercial/industrial portion of the mixed use development that is within the original building footprint. Credit can be given for the square footage converted to residential under the section detailing the replacement of commercial/industrial to residential development. If the mixed use includes additional commercial/industrial or residential, the appropriate fees can be charged for the additional square footage.

DEVELOPMENT FEE COLLECTION PROCEDURE

1. The District collects developer fees at 4600 N. Brawley, Fresno, CA 93722.
2. The various municipalities within the Fresno Unified School District are the issuing agents for building permits within their municipalities. Prior to issuance of a building permit, the developer/owner must obtain a signed release of payment or exemption from Fresno Unified School District regarding the collection of developer fees.
3. The developer/applicant must complete the Developer Fee Certification Form.
4. The square footage of residential, commercial/industrial development for which fees will be charged shall be determined by the jurisdiction issuing the building permit for the project. For this purpose, the applicant shall provide the District a copy of the building permit application.
5. Other essential information that must be provided by the developer/owner includes:
 - Tract and lot number (s) (new subdivision) or the APN number (old subdivision or infill lot)
 - Site Address(es)
 - Total number of units (for multiple family developments)
6. District personnel shall provide the elementary school attendance area. This data is kept for use in enrollment projections for each school.
7. Fee certification for multiple lots may be covered by one fee certificate if they are in the same tract. Lot numbers, addresses, and square footage for each must be provided on the form or an attached sheet. The attached sheets must be stapled to the fee certification statement.
8. Two copies of the developer fee certification form shall be returned to the developer/owner: one for his file and one to be returned to the jurisdiction issuing the building permit. Two copies shall be retained by the District: one for the record keeping section and one for the accounting department.

ADJUSTMENTS/REFUNDS

Adjustments

Revisions to previously paid developer fees totaling less than one hundred (100) square feet will be exempt from adjustment. This may include slight revisions to square footage of new homes, revision to plans, or other adjustments. Any adjustment over 100 square feet will be collected at the full prevailing rate in effect at the time of the adjustment (for any adjustments adding overall square footage) or refunded (at the developer/owner's request, for any adjustments decreasing overall square footage) at the rate which was in effect at the time the fee was paid. In situations involving adjustments, a "Supplemental Developer Fee Certificate Form" must be completed. This certificate shall be attached to the original fee certificate. Furthermore, in the event that any adjustment of any size when combined with any original development square footage otherwise exempt from collection collectively exceeds assessable space of 500 square feet, developer fees for the entire adjusted amount of square footage shall be collected at the full prevailing rate in effect at the time of the adjustment.

Refunds

Education Code Section 17624 authorizes refunds when appropriate conditions have been met. The District will issue refunds, less a \$25 handling fee, for canceled or modified projects upon written request from the developer/owner. Upon receipt of the written request, the District will contact the city or county for verification that the building permit has not yet been issued, has been canceled or expired with no permit activity or inspections, and no permit application is in progress. Upon verification, a "Developer Fee Refund Request Form" will be completed and a refund check will be issued.

FEE PROTESTS

Education Code section 17261 provides that any party on whom developer fees have been levied for industrial, commercial, or residential construction can protest the levying of said fees in accordance with Government Code section 66020. District AR 7211 provides detailed information about the process for fee protests.

If unresolved at District hearing level, the developer may file legal action to attack, review, set aside, void or annul the imposition of the fees imposed on the development project. Action must be filed within 180 days of delivery of the initial notification. (Government Code 66020).

SPECIAL CASE-BY-CASE FEE CONSIDERATIONS

AR 7211 provides a framework for the identification of projects that have value to the community by charitable organizations for which residential fees may be waived with commercial/industrial fees being charged instead. Such projects are considered on an individual case basis, and it is the project developer's responsibility to provide the appropriate justification.