

Colton Joint Unified School District

Dr. Frank Miranda, Ed.D., Superintendent
Rick Jensen, Assistant Superintendent, Business Services Division
Owen Chang, Director, Facilities, Planning & Construction



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DEVELOPER FEE FAQ—GENERAL INFORMATION

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1. Why does the District charge developer fees?

The District charges developer fees to fund school facilities needed as a result of development. Government Code section 65995 and Education Code section 17620 grant school districts the right to levy fees against new residential and commercial developments to offset their impacts on school facilities.

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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. (Cal. Code Regs., tit. 2, § 1859.81 subd. (c).)

2. Where can the District charge developer fees?

Education Code § 17620(a)(1) permits school districts to levy fees against any construction within their boundaries.

District boundaries include parts of unincorporated San Bernardino and Riverside Counties and the Cities of San Bernardino, Grand Terrace, Rialto, Colton, and Fontana.

3. How/when are the fees levied?

Residential:

Developer fees are charged:

- A. On new residential construction, pursuant to Education Code section 17620 subdivision (a)(1)(B).
- B. On any residential additions over 500 square feet, pursuant to Education Code section 17620, subdivision (a)(1)(C)(i).

Accessory Dwelling Units (“ADU”) are charged residential fees. An ADU is defined as “an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence.” (Gov. Code 65852.2, subd. (j)(1).) Fees are assessed against all new ADU square footage in the same manner as with other new residential construction. Renovations to existing ADUs are only assessed fees if they are greater than 500 square feet. The following examples illustrate the application of fees, exemptions, and credits to ADUs:

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- A. 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.
- B. 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.
- C. 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 restrictions on local government impact fee levies on ADUs imposed by Government Code section 65852.2 subdivision (f)(3)(A) do not apply to school districts. (Gov. Code, § 65852.2, subd. (j)(5).)

Manufactured Homes & Mobile Homes: Fees levied on these homes are subject to some additional regulations. The definitions of manufactured homes and mobile homes can be found in Health and Safety Code sections 18007 and 18008.

Manufactured homes and mobile homes can only be assessed fees under three conditions:

- 1) The fees can only be applied to the initial location, installation, or occupancy.

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- 2) Fees can only be charged if no manufactured home or mobilehome was previously on the site.
- 3) The pad or foundation system was constructed after September 1, 1986.

(Ed. Code, § 17625 subd. (a).) Fees cannot be charged on additions. (§ 17625 subd. (c)(3).) If the mobile home or manufactured home is replaced by a permanent residential structure on the lot, the fees paid will count towards the fees due for the permanent structure. (§ 17625 subd. (d).) Note that fees assessed on factory-built homes are not subject to the regulations above. They will be assessed fees consistent with ordinary residential construction. The major difference between manufactured/mobile homes and factory-built homes is that factory-built homes are assembled on site. (See Health & Saf. Code, § 19971.)

Areas excluded from fees: covered or uncovered walkways, garages, overhangs or patios, enclosed patios, detached accessory structures or similar areas (Gov. Code, § 65995 subd. (a)(1)), 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 (§ 65995 subd. (d)), construction to make a residential dwelling more accessible to a disabled person (requires a statement from a doctor) (Ed. Code, § 17620 subd. (a)(C)(ii); Rev. & Tax. Code, § 74.3.), reconstruction of a structure destroyed in a disaster (Ed. Code, § 17626), replacement of a manufactured home on the original pad, replacement of a mobile home on the original pad (Ed. Code, § 17625 subd. (b)(3).), and spaces that are covered or enclosed for agricultural purposes (Ed. Code, § 17622).

Commercial/industrial development:

Fees can be charged for new commercial and industrial construction, pursuant to Education Code section 17620 subdivision (a)(1)(A). Chargeable space does not include the square footage of any structure on the site as of the date the first building permit is issued. (§ 17620 subd. (a)(A).) Note that senior housing and care facilities are charged commercial/industrial fees, not residential. (Gov. Code, § 65995.1 subd. (a).) Additionally, hotels, inns, motels, tourist homes or

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other lodging with a maximum 30-day stay for guests are charged the commercial rate. (Gov. Code, § 65995 subd. (d).)

Assessable space excludes storage areas incidental to the development, garages, parking structures, unenclosed walkways, or utility or disposal areas. (Gov. Code, § 65995 subd. (b)(2).)

4. How much are the fees and how are they determined?

Fees are subject to change. There are three levels of fees that may be charged per square foot, depending on circumstances in the District and in the state.

Level 1 fees are authorized by Education Code section 17620 and Government Code section 65995, provided a school district meets the requirements of Government Code section 66001. These requirements include identifying the purpose and use of the fees, and the nexus between the two. In January of every even-numbered year, the State Allocation Board updates the maximum allowable Level 1 fees based on inflation. (§ 65995 subd. (b)(3).)

Level 2 fees may be authorized when a district has a particular need for additional school-building funds and can meet the requirements of Government Code section 65995.5. This includes making a timely application to the State Allocation Board for new construction funding (§ 65995.5 subd. (b)(1).), conducting a school facilities needs analysis pursuant to Government Code section 65995.6, and meeting additional overcrowding criteria (§ 65995.5 subd. (b)(3)(A-D)). Section 65995.5 subdivision (c) provides a formula for calculating the fee. Level 2 fees only apply to residential construction. (§ 65995.6 subd. (a).)

Level 3 fees may be charged if the State Allocation Board determines that funds for new school facilities are not available. (Gov. Code, § 65995.7 subd. (a).) Level 3 fees are intended to cover the entire cost of new construction projects. They only apply to residential construction. (§ 65995.6 subd. (a).)

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5. Where do I pay my developer fees?

Fees must be paid in person at the Colton Joint Unified School District Facilities Department located at 325 Hermosa Avenue, Building 5, Colton CA 92324.

6. What are the acceptable payment methods?

The District exclusively accepts cashiers' checks and money orders. Note that fees must be paid prior to the issuance of a building permit, per Education Code section 17620 subdivision (b).

7. Can I protest my fees?

Yes. Government Code section 66020 outlines the procedures for protesting school fees. A protesting party must tender payment in full and serve written notice on the District's governing body. (Gov. Code, § 66020 subd. (a).) The notice must inform the District that the fees were paid under protest and inform the District of the factual elements of the dispute and legal theory for the protest. (§ 66020 subd. (a)(2)(B).) A protest must be filed within 90 days of the imposition of the fees. (§ 66020 subd. (d)(1).)

A properly filed protest is a prerequisite to any legal action to challenge school impact fees. (Gov. Code, § 66020 subd. (d)(2).)

8. Are there refunds of fees?

In certain circumstances, fees may be refunded. For instance, if a building permit expires without commencement of construction, fees paid in association with the project are to be refunded pursuant to Education Code section 17624. Refunds may also be provided if the

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District does not make findings in accordance with Government Code section 66001 subdivision (e) or if the District concludes that the initial assessment of fees was excessive.

To obtain a refund pursuant to section 17624, fill out and submit the District's refund application form, along with accompanying documentation demonstrating that the project was cancelled. The District will withhold \$50 from the original amount paid as an administrative fee. For other refunds, please use the protest procedures set out in Government Code section 66020.

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

Yes. Civil Code section 338 subdivision(a) provides that the statute of limitations for refunds is three years from the date the refund becomes available.

However, with respect to refunds pursuant to Government Code section 66001, the statute of limitations is one year. (*County of El Dorado v. Superior Court* (2019) 42 Cal. App. 5th 620, 625.)

10. Is demolition credit available?

In the following circumstances, demolition credit will be available.

A. 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, section 17620(a)(1)(A) does not provide a credit for commercial/industrial buildings that no longer exist on the day the building permit for the new construction was first applied for.

B. Residential - A credit for demolition of a residential structure against reconstruction is available to the extent the new construction does not increase the number of students generated.

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The District will analyze the impact of the demolition and reconstruction of dwelling units to determine whether additional students will be generated. (*Cresta Bella, LP v. Poway Unified School Dist.* (2013) 218 Cal. App. 4th 438, 448-49.)

C. 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 local government before a building permit can be issued pursuant to Education Code section 17620 subdivision (b).

12. How are the developer fees spent?

School fees are used to fund the construction or reconstruction of school facilities, pursuant to Education Code section 17620. Level 2 fees must be expended on the school facilities identified in the facilities needs analysis as being attributable to projected enrollment growth from construction of new residential units. (Gov. Code, § 65995.5 subd. (f).)

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

Yes. Changing the use of a property from commercial/industrial to residential is considered “New Residential Construction” and will be assessed the current residential 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.

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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 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 or credit may be issued.