

RESOLUTION NO. 17-043

RESOLUTION OF THE BOARD OF EDUCATION OF THE BERKELEY UNIFIED SCHOOL DISTRICT TO APPROVE SCHOOL FACILITY FEE JUSTIFICATION STUDY AND TO ADOPT LEVEL I RESIDENTIAL & COMMERCIAL/INDUSTRIAL DEVELOPER FEES FOR SCHOOL FACILITIES

WHEREAS, future residential, commercial, and industrial development is anticipated to cause an increase in enrollment beyond the capacity of the Berkeley Unified School District ("District") existing facilities, which necessitates the construction or reconstruction of educational facilities; and

WHEREAS, Education Code section 17620 *et seq.* and Government Code section 65995 *et seq.* authorize the governing board of any school district within the state of California ("State") to levy a fee against new residential, commercial and industrial development projects within the school district for the purpose of funding the construction and reconstruction of school facilities; and

WHEREAS, the District has not previously adopted and imposed statutory school fees for new residential, commercial and industrial development pursuant to Education Code section 17620; and

WHEREAS, pursuant to Government Code section 65995(b)(3), the State Allocation Board, at its January 27, 2016 meeting increased the maximum amount of statutory fees that may be imposed by unified school districts and amended those fees at its February 24, 2016 meeting, to \$3.48 per square foot of assessable space for residential developments and \$0.56 per square foot for commercial and industrial developments ("School Fees"); and

WHEREAS, the District does not have sufficient funds available for the construction or reconstruction of school facilities, including acquisition of school sites, construction of permanent school facilities, and interim school facilities to accommodate students generated from new development; and

WHEREAS, at its regularly scheduled public meeting on November 16, 2016, the Board of Education ("Board") considered the School Facility Fee Justification Study prepared by School Facility Consultants ("Study"); and

WHEREAS, the Board reviewed and considered the findings in the Study which analyzes the District's current school facilities, the estimated number of students which will be generated by new residential, commercial and industrial development within the District, and the estimated costs which will be required to construct permanent school facilities to accommodate the students generated by such new development; and

WHEREAS, the Study justifies the District's imposition of school fees on residential construction as set forth in this Resolution by analyzing student generation data for residential development projects and by demonstrating that

new and/or reconstructed school facilities are necessary to accommodate increased enrollment resulting from such development; and

WHEREAS, the Study further justifies the District's imposition of school fees on new commercial and industrial construction as set forth in this Resolution by analyzing specific categories of commercial and industrial development which were determined to impact the district's school facilities based upon the square footage of the construction, the anticipated number of employees and the number of new students generated by such employees; and

WHEREAS, the findings in the Study demonstrate that the estimated costs of providing school facilities for students generated by new development will exceed the maximum amount of revenue which will be collected from school fees levied pursuant to Education Code section 17620 *et seq.* and Government Code section 65995 *et seq.*; and

WHEREAS, based on the findings in the Study, this Board deems it to be necessary, justified, and in the best interest of the students, teachers, parents and electorate of the District to establish and impose the School Fees in the amount authorized by Education Code section 17620 *et seq.* and Government Code section 65995 *et seq.* of Three Dollars and Forty-Eight Cents (\$3.48) per square foot of new residential development and Fifty-Six Cents (\$0.56) per square foot of new commercial/industrial development; and

WHEREAS, the School Fees levied against new residential, commercial and industrial development will be used to finance or fund school facilities necessary to accommodate students generated from new development, including but not limited to, construction of new school facilities, remodeling of existing school facilities, and acquiring and installing related facilities in accordance with Education Code section 17620; and

WHEREAS, no city or county may issue a building permit for any new residential, commercial or industrial development within the District absent a certification by the District of compliance by the owner/developer with the requirements regarding school facilities fees as set forth in Education Code section 17620 *et seq.* and Government Code section 65995 *et seq.*; and

WHEREAS, the District has : (1) made available to the public ten (10) days prior to its public meeting the Study and data indicating the estimated cost required to provide the facilities for which the School Fees are levied and the revenue sources anticipated to provide the facilities as demonstrated in the Study; (2) has mailed notice at least fourteen (14) days prior to this meeting to all interested parties who have requested in writing notice of the meeting on new fees; and (3) has held a duly noticed, regularly scheduled public meeting on November 16, 2016 at which oral and written testimony was received regarding the Study and the proposed adoption of School Fees; and

WHEREAS, the appropriate land use jurisdictions will be notified of the adoption of the School Fees levied by the District and will be requested to to work

with the District to assure that the school facilities fee program benefits the residents and students of the community.

NOW THEREFORE, the Board of Education of the Berkeley Unified School District hereby resolves, determines, and finds the following:

Section 1. That the foregoing recitals are true.

Section 2. That the Board has reviewed and confirmed that the Study accurately reflects current information and justifies the adoption of School Fees pursuant to this Resolution and hereby approves the Study.

Section 3. That the Board hereby adopts the imposition of school fees levied against all new residential development and additions resulting in an increase of assessable space in excess of five hundred (500) square feet pursuant to Education Code section 17620 *et seq.* and Government Code section 65995(b)(1) in the amount of Three Dollars and Forty-Eight Cents (\$3.48) per square foot.

Section 4. That the Board hereby adopts the statutory school fee levied against all new commercial and industrial development pursuant to Education Code section 17620 *et seq.* and Government Code section 65995(b)(2) in the amount of Fifty-Six Cents (\$0.56) per square foot.

Section 5. That the Board finds, based upon the Study, information and testimony presented in conjunction with these proceedings, as follows:

Section 5.1. New residential, commercial and industrial development will result in an increase in student enrollment, which will require the District to provide additional school facilities to accommodate new growth, and therefore a reasonable relationship exists between the District's need for new and reconstructed school facilities, and the types of development on which the School Fees will be imposed.

Section 5.2. School Fees levied on new residential, commercial and industrial development will be used to finance school facilities necessary to serve students generated from such development.

Section 5.3. The increase in student enrollment resulting from residential, commercial and industrial development necessitates the construction or reconstruction of new and/or existing facilities to accommodate such growth and therefore a reasonable relationship exists between the use of the School Fees (construction and reconstruction of school facilities to accommodate such new growth) and the residential, commercial and industrial development on which the School Fees will be imposed.

Section 6. That the Board directs staff to ensure that the School Fees collected by the District are deposited in a separate account and that said account shall be separately maintained, except for temporary investments, from other funds of the District.

Section 7. The Board finds that the funds of the account, described above in Section 6, consisting of the proceeds of School Fees, have been imposed for the purposes of construction and reconstruction of those school facilities necessitated by new residential and commercial/industrial development, and that these funds may be expended for those purposes. The School Fees may also be expended by the District for the costs of performing any study or otherwise making the findings and determinations required under Government Code section 66001, subdivisions (a), (b), and (d). In addition, the District may also retain, as appropriate, an amount not to exceed in any fiscal year, three percent (3%) of the School Fees collected in that fiscal year pursuant to Education Code section 17620(a)(5) for reimbursement of the administrative costs incurred by the District in collecting the School Fees.

Section 8. That the Board hereby establishes a process that provides the party against whom the commercial/industrial School Fees are imposed an opportunity for a hearing to appeal the imposition of School Fees on a commercial/industrial development project as required by Education Code section 17621(e)(2). The appeal process is as follows:

Section 8.1. Within ten (10) calendar days of being notified, in writing, by personal delivery or deposit in the U.S. Mail, of the commercial/industrial School Fees to be imposed on a particular commercial/industrial project, or within ten (10) calendar days of paying the commercial/industrial School Fees pursuant to Education Code section 17620(a)(1)(A), a party shall file a written request with the District's Chief Business Official for a hearing regarding the imposition of commercial/industrial School Fees. The party shall state in the written appeal the grounds for the appeal, which shall be served by personal delivery or certified or registered mail.

Section 8.2. The possible grounds for an appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the commercial/industrial School Fees are to be imposed, or that the employee generation or student generation factors utilized under the applicable category are inaccurate as applied to the project.

Section 8.3. The Chief Business Official, or designee, shall render a written decision within thirty (30) calendar days following receipt of the written appeal and deliver it to the appealing party by certified or registered mail to the last known address of the party.

Section 8.4. The party against whom the commercial/industrial School Fees are imposed may appeal the Chief Business Official's decision to the Board. Any appeal to the Board must be filed within ten (10) calendar days of receipt of the Chief Business Official's written decision.

Section 8.5. The party appealing the Chief Business Official's decision to the Board shall state in the written appeal to the Board the grounds for opposing the Decision. The written appeal shall be served by personal delivery or certified or registered mail addressed to the President of the Board at the District

office 2020 Bonar St., Room 202, Berkeley, CA 94702.

Section 8.6. The possible grounds for an appeal of the Chief Business Official's decision to the Board include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the commercial/industrial School Fees are to be imposed, or that the employee generation or student generation factors utilized under the applicable category are inaccurate as applied to the project.

Section 8.7. Within ten (10) calendar days of receipt of the written appeal of the Chief Business Official's decision to the Board regarding the imposition of commercial/industrial School Fees, the Board Secretary or designee shall give notice in writing of the date, place and time of the hearing before the Board, to the appealing party. The Board shall notice and conduct said hearing at the next available regular or special meeting of the Board, provided that the appealing party is given notice at least five (5) calendar days prior to the meeting of the Board. The Board shall render a written decision on the appeal within ten (10) calendar days following the Board's hearing on the party's appeal, and serve the Board's decision by certified or registered mail to the last known address of the appealing party.

Section 8.8. The party appealing the imposition of the commercial/industrial School Fees shall bear the burden of establishing that the commercial/industrial School Fees are improper.

Section 9. That no statement or provision set forth in this Resolution, or referred to herein, shall be construed to repeal any pre-existing fee previously imposed by the District on any residential or nonresidential development.

Section 10. That the Board finds and determines that the adoption or imposition of the School Fees in accordance with Government Code section 65995 is statutorily exempt from CEQA pursuant to Education Code section 17621(a).

Section 11. That District staff is hereby instructed to work with the appropriate land use jurisdictions to ensure compliance with Education Code section 17620(c), which provides that no city or county may issue a building permit for any development project within the District without certification by the District of compliance by that development project with the school facilities fee requirements of this Resolution. The Board determines that the School Fees are not subject to Government Code section 66007 and that a certificate of compliance is required prior to the issuance of any building permit.

Section 12. That, in accordance with Education Code section 17621(c), District staff is hereby instructed to transmit certified copies of this Resolution, accompanied by all relevant supporting documentation including the Study and a map of the boundary area of the District subject to the School Fees, to all appropriate land use jurisdictions issuing building permits within the District, informing each of them of the District's current school facilities fee for development projects, which jurisdictions shall include the Planning Commission and Board of

Supervisors of Alameda County and the Planning Commission and City Council of the City of Berkeley.

Section 13. That pursuant to Education Code section 17621(a), the School Fees designated herein shall take effect sixty (60) days after the date of this Resolution.

PASSED AND ADOPTED this 16th day of November, 2016, by the following vote of the Board of Education to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

President of the Board of Education

ATTEST:

Clerk of the Board of Education