



Client Alert

Developer Fee Collection Timing: SB 937 And Schools



I. What is SB 937

As of January 1, 2025, SB 937 modifies Government Code section 66007 with the aim of aiding certain residential developments by delaying payment of impact fees until the earlier of final inspection or certificate of occupancy (hereinafter referred to as “Project Completion”).

The language of SB 937 is unclear. Schools should also be aware that some may contend that SB 937 applies to school impact fees (“Fees”).

Schools should be aware that Education Code section 17620(b) prohibits issuance of a building permit until schools certify that Fees have been paid. Additionally, Education Code section 17621(c), allows schools to choose whether Fees are subject to Government Code section 66007 and its provisions regarding delayed fee collection.

II. Why Does SB 937 Matter?

SB 937 raises the following practical issues:

a. If SB 937 applied, schools would likely be “cut out” of the permitting process, and the practical risk of nonpayment would increase. For example, a Permit Issuing Agency could determine that a project is exempt, or charge a lower rate, or simply forget about the fee. In these cases, a school’s practical ability to recover the Fees will be hampered. In a real-world example, a 2023 decision in *Calexico Unified School District v. City of Calexico* held that a school district had no recourse against a City that issued building permits without requiring payment of roughly \$1 million in school Fees.



b. If SB 937 applied, it would essentially eliminate the “lead” time for school districts to collect and use Fee proceeds to develop school facilities for students from new development prior to occupancy of the homes.

c. For certain “designated residential development projects” (defined below), SB 937 would force school districts to charge the (lower) rate applicable at the time a building permit is pulled, even though Project Completion and Fee collection may not happen for years thereafter, thereby shifting years of inflation costs onto school districts. See, Gov’t Code section 66007(c)(1)(B).

III. Does SB 937 apply to school district developer fees?

Although SB 937 modifies Government Code section 66007, it did not change or repeal Education Code sections 17620(b), or 17621(c). Thus, a rational interpretation is that school districts building permits should not be issued prior to Fee payment, and schools are still be able to choose whether they are subject to Government Code section 66007.

SB 937 prohibits local agencies imposing impact fees from requiring payment “notwithstanding any other provision of law,” until the “date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first.” However, the “notwithstanding” language in Government Code section 66007 predated SB 937, and was specifically addressed in *RRLH, Inc. vs. Saddleback Valley Unified School Dist.* (1990) 222 Cal.App.3d 1602 (Saddleback), which held that despite Government Code section 66007’s “notwithstanding any other law” language, the more specific language in Education Code section 17620 gave schools the ability to require payment prior to issuance of a building permit. Saddleback is relevant here, because “the Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes in the light of such decisions as have a direct bearing upon them. *People v. Overstreet* (1986) 42 Cal.3d 891, 897. The Legislature was presumed to be aware of Education Code section 17620, and Saddleback, when it passed SB 937, and it did nothing to change either one, indicating an intent to leave them intact.

In light of the foregoing, we believe there is a reasonable argument that SB 937 does not apply to school district developer fee collection at all. However, schools should be aware that there was some limited discussion in legislative hearings about the bill’s application to schools (which may simply be because Government Code section 66007’s provisions always applied to schools who chose for it to apply). Schools should also be aware that some Permitting Issuing Agencies may contend that it does apply to schools.

Schools may wish to confirm with their local City or County regarding how they will apply the new law. A sample letter for this purpose can be found [here](#).

IV. Even Assuming SB 937 Applies, There Are Certain Exemptions That a District May Be Able to Utilize.



If we assume that SB 937 applies to schools, there are a series of exemptions that districts may be able to use to still collect fees at the building permit stage.

a. Exemption No. 1: The Plan/Appropriation Exemption.

This exemption may apply if a District can establish:

- 1) An account has already been established for the developer fees (this is legally required for school impact fees i.e. Fund 25)
- 2) Funds have been “appropriated,” which is defined as official board approval to make expenditures and incur obligations for specific purposes.
- 3) A proposed construction schedule or plan has been adopted prior to final inspection or issuance of the certificate of occupancy. SB 937 provides two (non-exhaustive) examples of how a school district can satisfy this part of the exemption: (i) the adoption of the capital improvement plan, and (ii) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to an outdated subdivision of law. These examples are not the only means of compliance.

b. Exemption No 2: The “Reimbursement” Exemption.

A second exemption applies if the fees are being collected as reimbursement for expenditures previously made. This exemption would arguably apply where projects eligible for developer fees have been funded through alternative means and the developer fees are used to “reimburse” those funds/accounts.

V. A More Limited Set of Exemptions Potentially Apply to “Designated Residential Construction” (Which Includes Affordable Housing Projects and Projects Under 10 Units).

SB 937 defines certain projects as “Designated Residential Construction,” include:

- Projects dedicated 100% to lower income households;
- Low barrier navigation centers;
- Affordable housing developments in commercial zones;
- Mixed-income housing development along commercial corridors;
- Housing developments qualifying for a streamlined and ministerial approval process;
- Projects located on land owned by an institution of higher education or a religious institution;
- Residential projects entitled to a density bonus; and
- Housing projects with 10 or fewer units.



SB 937 limits the applicability of the “Plan/Appropriation Exemption” (discussed above) to schools that have adopted a plan pursuant to Section 17017.5 of the Education Code. However, this statute relates to the Leroy F. Greene State School Building Lease-Purchase Law of 1976, a program that is no longer operational. This may limit a districts ability to claim compliance with this exemption to Designated Residential Construction.

Designated Residential Construction, does however, have a similar “Reimbursement Exemption” (discussed above) that would permit earlier collection of the Fees, if the Fees or charges are being imposed to reimburse the school district for expenditures previously made.

VI. Options Going Forward.

Cities and Counties will be making decisions about how to apply SB 937. Schools may want to proactively address this issue using one of the options below:

Option 1:

Send a letter to the applicable Permit Issuing Agency stating the school district’s position that SB 937 does not apply to school districts (pursuant to the analysis in Section II, above) and ask the Permit Issuing Agency to confirm that they will continue to honor Education Code Sections 17620(c), and 17621(c), and collect the Fees as a condition of issuance of building permits.

Option 2:

[This option may be used on its own or in conjunction with Option 1] – The school can prepare documentation justifying the application of one of the exemptions described above. To that end, a District may need to (1) identify a facilities plan and appropriation to fit the “Plan/Appropriation Exemption” discussed above and/or (2) identify projects that were funded by other sources of facilities funds that can fit the “Reimbursement Exemption” discussed above. A District may wish to pass a formal resolution outlining the applicability of the exemption(s).