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January 30, 2017

VIA ELECTRONIC MAIL ONLY

School districts should ensure that cities/counties properly calculate square footage for School Fees

California school districts may levy “Statutory School Fees” and “Alternative School Fees” under Education Code section 17620 *et seq.* and Government Code section 65995 *et seq.* (collectively “School Fees”). School Fees are used to mitigate the cost of building new school facilities to accommodate students from new development. Developers pay School Fees based on the square footage of their residential and commercial construction projects. The applicable city or county calculates the square footage of the development project under Government Code section 65995 (“Section 65995”), and provides the square footage to the school district.

Lately, there have been disputes about how cities and counties should calculate the square footage of apartment buildings. Developers insist that cities/counties must calculate square footage using a so-called “net-rentable” or “habitable” methodology. This methodology asks the city/county to calculate the square footage of each individual apartment unit, but exclude the remainder of areas within the building including interior hallways, stairwells, and/or storage units/lockers. This “net-rentable” methodology, and any similar variation, in our opinion, violates Section 65995.

For residential construction, Section 65995(b)(1) states that school districts may levy School Fees on “all of the square footage within the perimeter of a residential structure,” with certain exclusions found outside residential structures. Section 65995(b) also requires cities/counties to calculate square footage for School Fees using “the standard practice of that city or county in calculating structural perimeters.” When a developer entices a city/county to use a “net-rentable” methodology, excluding hallways, that calculation does not include all of the square footage within the perimeter of the apartment building. It also likely violates the city/county’s “standard practice” in calculating structural perimeters.

Ask yourself:

- Does my city/county have written policies on how they calculate square footage for School Fees?

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- Does my city/county use a “net-rentable” methodology or some other restrictive methodology that does not include all of the square footage within the perimeter of a residential structure?
- Does my city/county use the same methodology for calculating the square footage for School Fees that it uses to determine square footage for other purposes?

To ensure receipt of the proper amount of School Fees, each school district should contact the appropriate personnel at its city/county to verify that the calculation of square footage complies with Section 65995. To the extent a city/county is using two different procedures for calculating square footage, the issue should be raised with the city/county with reference to Section 65995. We also recommend that the school district’s legal counsel be contacted to address legal issues with the city/county.

If you have questions or comments regarding this information, please contact either Wendy Wiles (wwiles@bawg.com) or Jeff Frey (jfrey@bawg.com) at (949) 851-1300.

The applicability of the legal matters discussed may differ substantially in individual situations. The foregoing information has been prepared by Bowie, Arneson, Wiles & Giannone as an overview of the subjects discussed and should not be construed as individual legal advice.