RESOLUTION NO. 12-45

**OF THE GOVERNING BOARD OF
THE SAN LEANDRO UNIFIED SCHOOL DISTRICT, ALAMEDA COUNTY,
CALIFORNIAREGARDING THE LEVY AND COLLECTION
OF LEVEL 1 SCHOOL FACILITIES FEES**

WHEREAS, the California Legislature has authorized individual school districts to impose School Facility Fees which may be used to construct or reconstruct school facilities to provide adequate schools to serve new development projects; and

WHEREAS, the Governing Board of the San Leandro Unified School District ("Board") has determined that school facilities will be needed to serve the growing community as new development occurs; and

WHEREAS, the State Allocation Board has recently adjusted the maximum allowable fees per square foot on construction pursuant to Government Code Section 65995(b)(3) as follows:

Residential	$3.20
Commercial/Industrial	$0.51; and

WHEREAS, the Board has collected, examined, and analyzed written evidence, and has heard and considered evidence and testimony at a duly-noticed public hearing regarding the levy and collection of School Facilities Fees; and

WHEREAS, the Board has in all respects complied with legal requirements concerning establishing and imposing the fees; and

WHEREAS, the Board reviewed a Justification Document that determined that the San Leandro Unified School District could justify and levy a fee of $3.20 per square foot for residential construction, and a fee of at least $0.51 per square foot for commercial and industrial construction; and

WHEREAS, the District seeks to impose the maximum rate allowable under Level 1 fees in those situations where the District will collect Level 1 fees;

NOW, THEREFORE, the Board finds and directs as follows:

1. Justification Report:

The Board has conducted a duly-noticed public hearing at which it has received and examined the written evidence listed and referred to as the Justification Document and thereby incorporated herein by reference. The Board has also considered any additional oral and written evidence and testimony presented at the hearing. The evidence and testimony support the findings herein.

2. School Facilities Fees are Necessary and Reasonable:

Based on any findings and evidence contained in the Board's earlier resolutions on this subject, as well as the evidence presented to this Board at the hearing, this Board reaffirms its earlier resolutions, adopts the findings and conclusions set forth as its own, and finds each of the following:

A. The purpose of levying such fees, charges, dedications or other requirements is to finance the construction and/or reconstruction of school facilities. The proceeds shall also be used for reimbursement of the administrative costs incurred in collecting and repaying fees, charges, dedications, and other requirements; and for the costs of performing any study and otherwise making the findings and determinations required by law; as well as any other use permitted by law. The public facilities to be financed hereby are as defined in Section 1 above.

B. These fees will be used to fund the construction or reconstruction of school facilities needed to reduce overcrowding which exists or will exist in the district and impairs or will impair the normal functioning of educational programs.

C. The overcrowding to be reduced by use of these fees exists or will exist because the enrollment projected to result from continuing residential, commercial or industrial development exceeds the state-certified capacity of the district to provide adequate housing.

D. The amount of fees to be paid pursuant to this Resolution bears a reasonable relationship and is limited to the needs of the community for school facilities and is reasonably related and limited to the need for schools caused by residential, commercial or industrial development.

E. The amount of fees to be paid pursuant to the Resolution does not exceed the estimated reasonable costs of providing for the

construction or reconstruction of school facilities necessitated by the development projects from which the fees are to be collected.

F. As determined in the written and oral evidence and testimony, there is a reasonable relationship between the use of the fees, charges, dedications, and other requirements and the impacts from the development project on which the fees are imposed; there is a reasonable relationship between the need for the above described school facilities and the impact arising from the type of development project on which the fees, charges, dedications and other requirements are imposed; and there is a reasonable relationship between the amount of the fees, charges, dedications and other requirements and the cost of the public facilities or portion of the public facilities attributable to the development.

G. The uses of the fees proposed and implemented pursuant to this Resolution are reasonably related to the types of development projects on which the fees are imposed.

H. The reference to fees herein refers to both the fees collected under Government Code Section 65995 and fees collected as a mitigation measure or condition of a development project involving approvals by governmental agencies.

3. Exemptions From Fees:

This Board recognizes that various categories of residential, commercial, or industrial development, as well as individual development projects, are or will be exempted from fees imposed under Education Code Section 17620 by such statutory provisions as Education Code Sections 17620, 17622, 17625, 17626, Government Code Sections 65995, 65995.1, 65995.2, 66000, 66001, and judicial decisions.

4. Compliance with Law:

All terms in this Resolution shall be given the definition provided by applicable law. It is the Board's intent that this Resolution comply with Education Code Sections 17620-17626 inclusive; Government Code Sections 65995-66009, inclusive; and other applicable law.

5. Adoption of Fees:

A. Based upon all of the findings contained in this Resolution and the evidence presented to the Board at the hearing," this Board increases the previously levied fee upon any development project within the boundaries of the District to the following amounts:

1. $3.20 per square foot of "assessable space" of all new residential construction, except adults only housing as required by law; and

2. $3.20 per square foot of "assessable space" of all other residential construction to the extent of any resulting increase in assessable space in excess of 500 square feet; and

3. $0.51 per square foot of all chargeable and enclosed space in the case of any new commercial or industrial construction.

B. This Board determines that the fees to be levied will be collected for public improvements or facilities for which an account has been established and funds appropriated, and for which the Board has adopted a proposed construction schedule or plan. Based on this determination, and pursuant to Section 66007(b) of the Government Code, this Board orders that payment of the fees specified above will be required prior to issuance of a building permit.

C. This Board will deposit, invest and account for the fees as required by law and shall periodically review the facilities fee account pursuant to Government Code Sections 66011 and 66006 and other applicable law and will either make the findings required by Government Code Sections 66001 and 66006 or direct the refund of the fees.

D. With respect to commercial and industrial development, the Board finds as follows:

1. Based upon the Board's earlier resolutions, the findings and the evidence presented to this Board at the hearing on this Resolution, the Board finds that, in general, the various categories of commercial and industrial development, should and shall be included within the assessment on commercial and industrial projects.

2. A Justification Document prepared by the District, determined the impact of the increased number of employees anticipated to result from the commercial and industrial development pursuant to Education Code 17621 (e)(1)(B) and this Board has considered the results of such study in making its findings herein. This Board further adopts the appeal procedure attached as Exhibit "A."

E. With respect to space that is covered or enclosed for agricultural purposes, and based upon the Board's earlier resolutions, the

findings and the evidence presented to this Board at the hearing on this resolution, the Board finds that:

1. In general, the fees for commercial and industrial projects as imposed on agricultural projects bear a reasonable relationship and are limited to the needs to the community for elementary or high school facilities caused by the development.

2. The amount of the fees does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees are to be collected.

6. Impact of Level 2 Fees and Mira Fees

Nothing herein shall preclude the District from collecting Level 2 fees or from collecting fees pursuant to existing negotiated agreements or project conditions that were imposed under the County General Plan ("Mira Fees") in lieu of the Level 1 fees provided herein. The Level 1 fee shall only be levied in those instances where the District cannot, or elects not to collect the Level 2 fees or the Mira fees.

7. Transmittal of Resolution

A copy of this Resolution shall be transmitted forthwith to the City of San Leandro and Alameda County accompanied by all relevant supporting documents and a map clearly indicating the boundaries of the area subject to the fees, charges, dedications and other requirements.

8. Prohibition Against Permit Issuance Absent Compliance with This Resolution:

Pursuant to Education Code Section 71620(b), no city or county may issue a building permit for any residential, commercial or industrial construction, as defined by law, absent certification by the Superintendent or his/her designee of (1) compliance by that project with any fee, charge, dedication, or other requirement under this Resolution or (2) his/her determination that the fee, charge, dedication, or other requirement does not apply to the construction.

9. Superintendent Authorized to Take Necessary and Appropriate Action:

The Board further directs and authorizes the Superintendent to take on its behalf such further action as may be necessary and appropriate to effectuate this Resolution, including entering into an Agreement

with the County of Alameda or the County Office of Education for the collection of such fees.

10. Resolution Does Not Limit Board Authority:

Nothing herein shall preclude satisfaction of the requirement of payment of the amount set forth above by dedication of land on terms acceptable to the Board; or preclude acceptance by the Board of fees charges, or land whose value exceeds that required by this Resolution. In the absence of any such agreement to accept a dedication of land, the above amounts shall be collected in the form of fees, charges, or other requirements. Nothing herein shall be interpreted to preclude the District from taking any other action, including but not limited to levying any other fee, charge or requirement of dedication or land, or from requesting the City or County from levying a fee, charge, mitigation measure or other requirement which the District determines is necessary to provide school facilities which meet the needs of the District, its students, and the community. Such additional requirement may also include participation in a Mello-Roos Community Facility District. The Superintendent or his/her designee is authorized to enter into negotiations with property owners regarding the substitution or charges, dedications, or other requirements in lieu of, or in addition to, the payment of fees as described herein; provided, however, that the value of such charges, dedications, or other requirements shall be greater than or comparable to the amounts specified herein. In no event shall the District's share of such fees exceed the maximum amount that can be justified under the study presented to the Board on June 19, 2012. The District expressly makes the findings set forth in Section 2 above for all additional fees, charges, mitigation measures or other requirements referenced herein.

11. Deposit in Fund:

All fees and charges, along with any interest income earned thereon, shall be deposited in a separate capital facilities fund in a manner to avoid any co-mingling of the fees and charges with other revenues and funds of the District, and shall be expended solely for the purposes for which the fees and charges are collected, which the Board hereby designates to be those purposes permitted by any applicable law.

12. Refunds:

In the event that a project qualifies for refund of the fee, charge, dedication, or other requirement under Education Code Section 17624, repayment shall be made, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

13. Effective Date:

Pursuant to Education Code Section 17621(a), the adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective a minimum of sixty (60) days following the adoption of this Resolution on June 19, 2012. The new fees shall take effect August 19, 2012.

14. Severability:

If any clause, phrase, sentence, or section in this Resolution is held invalid, the remaining clauses, phrases, and sections of the Resolution shall remain valid and shall be interpreted in the manner most consistent with deleting the invalid provision.

15. Certification of Resolution:

I, Cindy Cathey, Secretary of the Governing Board of the San Leandro Unified School District of Alameda County, State of California, do hereby certify that the forgoing Resolution proposed by _____, seconded by _____, was duly passed and adopted by said Board, at an official and public meeting thereof, this 19th day of June 2012, with the following vote:

AYES:
NOES:
ABSENT:

By: _____
President, Governing Board of the
San Leandro Unified School District

ATTEST:

_____
Secretary of the Board of Education
San Leandro Unified School District

EXHIBIT B

PROCEDURE TO APPEAL IMPOSITION OF COMMERCIAL OR INDUSTRIAL DEVELOPMENT FEE

In accordance with Government Code Section 53080.1, subdivision (e)(2), the following appeals procedure is available to any developer who wishes to contest a fee imposed by the District on residential, commercial or industrial development.

A. Procedure to Appeal Fee Imposition

1. Written Statement of Appeal

   a. Any appeal of the administration's decision to impose fees on development must be presented to the District's Superintendent or his/her designee in writing.

   b. The developer's written statement of appeal shall be dated and include the specific grounds for the appeal and any information that supports the developer's contention that the fee imposition is improper.

   c. The written statement of appeal must be submitted by the developer to the Superintendent or his/her designee within five (5) days of the administration's determination to impose the fee.

2. Appeal to Superintendent or His/Her Designee

   a. The Superintendent or his/her designee shall have an opportunity to investigate the contentions made in the developer's statement of appeal. In conjunction with this investigation, the Superintendent or his/her designee may request to meet with the developer.

   b. Within seven (7) days from the date of receipt of the developer's statement of appeal, the Superintendent or his/her designee shall mail the developer a decision in writing either granting or denying the appeal.

3. Governing Board

   a. If the developer is dissatisfied with the decision of the Superintendent or his/her designee, the developer may request a hearing before the Governing Board.

b. The developer's request for a hearing must be received in the District office within seven (7) days of the date of the Superintendent's decision upholding the fee imposition.

c. The date for the hearing shall be established by the District as soon as practicable following receipt of the developer's request. It shall be the District's prerogative to decide whether the hearing will be conducted at a regular meeting of the governing board or at a special meeting.

d. As soon as possible and in no event less than five (5) days before the date set for the hearing, the District shall send the developer a written notice including the time, date and place set for the hearing.

B. Conduct of the Hearing

1. At the hearing, the developer shall bear the burden of establishing that the fee is improper.

   a. The developer shall be allotted 15 minutes in which to present the information showing that the fee requirement is improper.

   b. The District administration shall have 15 minute in which to present information rebutting the developer's contentions.

   c. The Governing Board has the discretion to grant either party or both additional time in which to present information in further support of their contentions.

2. Within five (5) days of the hearing, the Governing Board or its designee shall mail the developer a notice in writing of its decision either granting the appeal or upholding the fee imposition.

3. All hearings conducted pursuant to this section shall be informal in nature and be designed to determine the parties' contentions without unnecessary formality.

C. Miscellaneous

1. Any failure on the part of the developer to pursue their appeal within the timelines stated in this procedure shall result in the developer's forfeiture of their opportunity for a hearing before the Governing Board.

2. The timelines contained in this procedure may be extended by mutual written agreement of all parties.

3. It will be sufficient in meeting any of the notice requirements contained in this procedure for the District to send such notices to the developer by regular mail at their last known address as listed on their statement of appeal.

4. Whenever the deadline for any act required under this procedure falls on a Saturday, Sunday or holiday, the time shall automatically be extended to the next business day.