

**RESOLUTION NO. 25-015 OF THE GOVERNING BOARD OF THE
BERKELEY UNIFIED SCHOOL DISTRICT
REGARDING ACCOUNTING OF DEVELOPMENT FEES
(ANNUAL SCHOOL IMPACT FEE REPORT & FIVE-YEAR FINDINGS)
FOR 2023-2024 FISCAL YEAR
IN THE FOLLOWING FUND OR ACCOUNT:**

Fund 25, Capital Facilities Fund
(Government Code sections 66001(d) & 66006(b))

1. Authority and Reasons for Adopting this Resolution.

- A. Pursuant to Government Code section 65995(b)(3), the State Allocation Board, at its meeting in January 2022, and subsequently at its meeting in January 2024, adjusted the maximum amount of statutory school impact fees that may be imposed on new development based on the RS Means Construction Cost Index, which is independently published and referenced in the statute establishing school impact fees.
- B. Berkeley Unified School District (“District”) has levied statutory and/or other fees imposed on new development (“School Impact Fees”) pursuant to various resolutions, including, without limitation, Resolution No. 17-051, dated February 8, 2017, and Resolution No. 24-045, dated June 12, 2024, which are collectively referred to herein as the “School Facilities Fee Resolutions” and are hereby incorporated by reference into this Resolution. These resolutions were adopted under the authority of Education Code section 17620, *et seq.* and Government Code section 65995, *et seq.*
- C. The School Facilities Fee Resolutions approved and adopted the District’s current and past Justification Studies, and the findings contained therein (collectively, the “Fee Studies”), which are incorporated herein by reference. The Fee Studies and adopting School Facilities Fee Resolutions establish the requisite reasonable relationship (essential nexus) and rough proportionality between the purpose, need for, and use of the School Impact Fees and the impact of development constructed within the District’s boundaries in accordance with applicable law.
- D. The collection of School Impact Fees is essential to provide necessary public school facilities to serve residential and commercial/industrial development projects, and is necessary to avoid, substantially lessen, or otherwise mitigate impacts of such projects on school facilities under the California Environmental Quality Act (Public Resources Code, §§21000, *et seq.*). As recognized in the City of Berkeley General Plan environmental review documents, payment of School Impact Fees by developers serves as mitigation under CEQA to satisfy the impact of development on school facilities.
- E. The District has received and expended School Impact Fees in fiscal year 2023-2024 in connection with the construction, reconstruction, rehabilitation, and

refurbishment of school facilities (“School Facilities”) of the District necessary to accommodate student population growth resulting from development, to cover costs attributable to the increased demand for School Facilities reasonably related to new development and necessary to maintain existing levels of service, to reduce overcrowding caused by the development on which fees were imposed, to cover costs of interim housing, to reimburse the District for expenditures previously made on School Facilities necessitated by development, and/or for indirect and support services and other school-related considerations relating to the District’s ability to accommodate enrollment growth generated from new development as permitted by law, including administrative costs in connection with the collection of fees, and legal fees and other costs connected with the establishment of the fee and the required reportings and findings. Such School Facilities projects (and other school-related considerations) include, without limitation, projects listed in the attached 2023-2024 Annual School Impact Fee Report and Five-Year Findings, prior Annual School Impact Fee Reports and Findings, the Fee Studies, the District’s Facilities Needs Assessment prepared as part of the Master Plan Process (approved May 29, 2019), and any updates thereto, which are each incorporated herein by reference.

- F. In accordance with California Government Code section 66006(a), the District has established a separate capital facilities account or fund, more specifically identified as **Fund 25, Capital Facilities Fund** (“Fund”), deposited these School Impact Fees in the Fund (including interest income earned thereon), maintained the Fund in a manner to avoid any commingling of the School Impact Fees with other revenues and funds of District, except for temporary investments, as applicable, and expended the School Impact Fees solely for the purposes for which they were collected.
- D. Government Code section 66006(b)(1) requires the District to make an annual accounting of the Fund (“Annual School Impact Fee Report”), which shall contain the following information for the fiscal year:
- (i) A brief description of the type of School Impact Fees in the Fund;
 - (ii) The amount(s) of the School Impact Fee(s);
 - (iii) The beginning and ending balance of the Fund;
 - (iv) The amount of the School Impact Fees collected and the interest earned;
 - (v) An identification of each District public improvement (“Project”) that School Impact Fees were expended on, and the amount of the expenditures on each Project, including the total percentage of the cost of the Project that was funded with School Impact Fees;
 - (vi) An identification of an approximate date by which the construction of a Project will commence if the District determines that sufficient funds have been collected to complete financing on an incomplete Project, as identified in Government Code section 66001(a)(2), and the Project remains incomplete;

- (vii) An identification of each Project identified in a previous Annual School Impact Fee Report, and whether construction began on the approximate date noted in the previous Report. If construction did not commence by the approximate date provided in the previous Report, the reason for the delay and a revised approximate date that construction will commence.
 - (viii) A description of each interfund transfer or loan made from the Fund, including the Project on which the transferred or loaned School Impact Fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the Fund will receive on the loan; and
 - (ix) The amount of refunds made pursuant to Government Code section 66001(e), the number of persons or entities identified to receive those refunds, and any allocations made pursuant to Government Code section 66001(f).
- E. Furthermore, Government Code section 66001(d) provides that for the fifth fiscal year following the first deposit of School Impact Fees into the Fund, and every five years thereafter, the District shall make all of the following “Findings” with respect to that portion of the Fund remaining unexpended, whether committed or uncommitted, if there are any funds remaining in the Fund at the end of the **2023-2024** fiscal year:¹
- (i) Identification of the purposes to which the School Impact Fees are to be put;
 - (ii) Demonstration of a reasonable relationship between the School Impact Fees and the purposes for which they are charged;
 - (iii) Identification of all sources and amounts of funding anticipated to complete financing of the District’s incomplete Projects (“Anticipated Funding”); and
 - (iv) Designation of the approximate dates on which the Anticipated Funding is expected to be deposited into the Fund.

When the Findings are required by Government Code section 66001(d), they shall be made in connection with the Annual School Impact Fee Report required by Government Code section 66006.

- F. Government Code sections 66001(d) and 66006(b)(2) further require that the Annual School Impact Fee Report and the proposed Five-Year School Impact Fee Findings be made available to the public no later than December 27, 2024, that the Annual School Impact Fee Report information and proposed Findings be reviewed by this Board at its next regularly scheduled board meeting held no earlier than 15

¹ Although the Five-Year Findings under Section 66001 are only required every five years, in the interest of transparency and consistency, the District strives to provide the information set forth under subpart (d) on an annual basis. The District’s legal obligation to provide the information set forth in Government Code section 66001 is only mandated every five-years from the date of first deposit into Fund 25 after it was established.

days after such information becomes available to the public, and that notice of the time and place of this meeting (as well as the address and website where the Annual School Impact Fee Report and proposed Findings may be reviewed) be mailed at least 15 days prior to this meeting to anyone who has requested it. Any person may file a written request for mailed notice of the District's Board meeting to review the Annual School Impact Fee Report pursuant to Government Code section 66006(b).

- G. The Annual School Impact Fee Report for the 2023-2024 fiscal year and proposed Five-Year School Impact Fee Findings are attached hereto as Exhibit "A" and incorporated herein. The Superintendent has informed this Board that the Annual School Impact Fee Report and proposed Findings, along with a draft copy of this Resolution, were made available to the public on November 19, 2024, and may be found on the District's website at the following link: <https://www.berkeleyschools.net/developer-fee-posting-2024-11-19/>. The Superintendent has further informed this Board that notice of the time and place of this meeting (as well as the address and website at which this information has been available for review) was mailed and posted on the District's website at least 15 days prior to this meeting to anyone who had requested it.
- H. Pursuant to Government Code section 66006(d), any person may request an audit of the District's School Impact Fees pursuant to Government Code section 66023.
- I. The District has substantially complied with all of the foregoing provisions.
- J. The Superintendent has also informed this Board that there is no new information which would adversely affect the validity of any of the findings made by this Board in its applicable School Facilities Fee Resolutions.

2. **What This Resolution Does.**

This Resolution makes various findings and takes various actions regarding the Fund, including the approval and adoption of the 2023-2024 Annual School Impact Fee Report and Five-Year Findings, as required by and in accordance with Government Code sections 66001(d) and 66006(b).

NOW, THEREFORE, BASED ON ALL FINDINGS AND EVIDENCE CONTAINED IN, REFERRED TO, OR INCORPORATED INTO THIS RESOLUTION, AS WELL AS THE EVIDENCE PRESENTED TO THIS BOARD AT THIS MEETING, THE BERKELEY UNIFIED SCHOOL DISTRICT'S BOARD OF EDUCATION HEREBY, FINDS, RESOLVES, DETERMINES, AND ORDERS AS FOLLOWS:

Section 1: That the foregoing recitals are true, and together with the Exhibits hereto and above-referenced documents incorporated by reference, are collectively incorporated herein.

Section 2: That the proposed 2023-2024 Annual School Impact Fee Report and Five-Year Findings ("2023-2024 Report & Findings") are attached hereto at Exhibit A and incorporated herein by reference.

Section 3: That, pursuant to Government Code sections 66001(d) and 66006(b)(1) and (2), the District has made available to the public the requisite information and proposed findings concerning collection and expenditure of School Impact Fees related to School Facilities for students resulting from new development within the District. Furthermore, pursuant to Government Code sections 66001(d)(2) and 66006(b)(2), the Board has reviewed the School Impact Fees Report and proposed Findings at a public meeting not less than 15 days after the School Impact Fees Report and proposed Findings were made available to the public and notice was posted on the District's website and mailed as required.

Section 4: That, in accordance with Government Code section 66006(b)(2), this Board has reviewed the 2023-2024 Annual School Impact Fees Report as contained in Exhibit A (attached hereto and incorporated herein) and determined that it meets the requirements set forth in Government Code section 66006(b)(1). Together in conjunction of its review and consideration of the 2023-2024 Report & Findings, the Board has reviewed and considered the District's School Facilities Fee Resolutions, the current and past Fee Studies, the Facilities Needs Assessment approved as part of the Master Plan process, the prior Annual School Impact Fee Reports and Findings, including without limitation the Report & Findings from fiscal year 2022-2023 and its adopting Resolution No. 24-014, dated December 6, 2023 ("Prior Report"), and the findings set forth therein, respectively, and hereby reasserts said findings. These documents are incorporated herein by reference.

Section 5: That, in accordance with Government Code section 66001(d), the District's proposed Five-Year School Impact Fee Findings as set forth in Exhibit A (attached hereto and incorporated herein) contain the requisite findings and are made in connection with the public information set forth in the Annual School Impact Fees Report. The Board adopts said Findings.

Section 6: That the Board hereby determines that all School Impact Fees, collections, and expenditures have been received, deposited, invested, expended, and reported in compliance with the relevant sections of the Government Code and all other applicable laws.

Section 7: That the unexpended amounts currently held in the Fund are either encumbered for projects already approved by the Board or will be needed for projects already identified in the District's budget, Annual Reports & Findings, and/or facilities master planning documents, and as otherwise justified by the Fee Studies adopted by the School Facilities Fee Resolutions.

Section 8: The Board hereby determines that, because all of the findings required by Government Code section 66001(d) have been made with respect to the fees that were levied as more specifically set forth in Exhibit A, the District is not required to refund any moneys in the Fund as provided in Government Code section 66001(e).

Section 9: That the Board hereby determines that the District is in compliance with Government Code section 66000, *et seq.*, relative to receipt, deposit, investment, expenditure, reporting, or refund of School Impact Fees received and expended relative to School Facilities for students generated from new development.

Section 9: That the Board hereby approves and adopts the attached 2023-2024 Annual School Impact Fees Report and Five-Year Findings.

Section 10: 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.

Certificate of Resolution.

I, _____, _____ of the Governing Board of the Berkeley Unified School District of Alameda County, State of California, certify that this Resolution proposed by _____, seconded by _____, was duly passed, approved, and adopted by the Board, at an official and public meeting this 4th day of December, 2024, by the following vote:

AYES:

NOES:

ABSENT:

EXHIBIT A

**BERKELEY UNIFIED SCHOOL DISTRICT’S 2023-2024
ANNUAL SCHOOL IMPACT FEE REPORT AND FIVE –YEAR
SCHOOL IMPACT FEE FINDINGS
(Government Code §§ 66001 & 66006)
2023-2024 FISCAL YEAR**

J. Annual School Impact Fee Report

The fee amounts reported were authorized by the District’s Board of Education.² The fees partially mitigate the impact caused by residential and commercial/industrial development and do not adequately fund the school facilities necessary to accommodate student growth.

Each of the capitalized letters A-H below, correspond to the specific letter and portion of Government Code section 66006(b)(1):

A. FEES COLLECTED IN FUND 25 (CAPITAL FACILITIES FUND) - A brief description of the types of School Impact Fees in the Fund:

- (1) Level 1 School Impact Fees
 - Commercial/industrial development
 - Senior Housing

 - new residential development
 - residential additions, remodels, expansions, reconstruction

B. AMOUNT OF FEE – The amount of the School Impact Fees for the 2023-2024 fiscal year:

Type of Fee Collected	Amount of Fee (\$3.48/sf for Residential and \$0.56/sf for Commercial and Senior Housing)³
<i>Effective Date:</i>	June 8, 2017
Level 1 – Residential	\$ 953,559.88
Level 1 – Commercial/Industrial	\$ 57.12
Level 1 – Senior Housing	\$ 0

C. BEGINNING & ENDING FUND BALANCE FOR FISCAL YEAR 2023-2024:

² See Resolution No. 17-081, dated February 8, 2017.

³ The Board adopted Resolution No. 24-045, dated June 12, 2024, during FY 2023-2024, but the school impact fee rate increase did not go into effect until after the close of FY 2023-2024.

July 1, 2023 Beginning Fund Balance:	\$ 3,280,196.09
June 30, 2024 Ending Fund Balance:	\$ 4,276,205.47

D. REVENUE – The amount of the School Impact Fees collected and the interest earned for the 2023-2024 fiscal year:

Amount of fees collected (gross):	\$ 953,617.00
Interest earned:	\$ 65,147.13
TOTAL REVENUE (GROSS):	\$ 1,018,764.13

E. EXPENDITURES – Projects on which School Impact Fees were expended during the 2023-2024 fiscal year and the amount of the expenditures on each Project, including the total percentage of the cost of the Project that was funded with School Impact Fees:

Project	Amount Expended in 2023-2024 Fiscal Year	% Funded with School Impact Fees
Professional/Consulting/Legal Services and School Impact Fee Support: incurred in connection with developer fee related school facility projects, fee adoption, and requisite reporting (Ed. Code, §17620(a)(5); Gov. Code, §66001(a),(b)&(d); 66016; 66018).	\$ 22,754.75	100%
TOTAL EXPENDITURES:	\$22,754.75	N/A

F. INCOMPLETE PROJECTS FUNDED WITH SCHOOL IMPACT FEE REVENUES – Incomplete Projects for which sufficient funds have been collected (as of the end of the 2023-2024 Fiscal Year) to complete financing of the Project, and the approximate date by which construction of the Project will commence:

Incomplete Projects for Which Sufficient Funds Have Been Collected to Complete Financing of Project	Approximate Date Construction Will Commence	Anticipated Funding Amount	If Project did not commence per previous report: reason & anticipated commencement date
Sylvia Mendez Project (Wing Addition): Addition of classrooms to accommodate growth resulting from development	June 2025	\$ 15,000,000	N/A

Sylvia Mendez Interim Housing (temporary classrooms and support space)	March 2024	\$846,689	N/A
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G. INTERFUND TRANSFERS & LOANS – Description of each interfund transfer or loan made to and/or from the Fund for the 2023-2024 fiscal year:⁴

Amount of Interfund Transfer or Loan	Project that Transferred or Loaned Fees Expended on	Date Loan to be Repaid on (Loans Only)	Rate of Interest on Loan (Loans Only)
No Interfund Transfers or Loans were made			

H. REFUNDS & ALLOCATIONS – The amount and number of refunds made pursuant to Government Code section 66001(e) and allocations made pursuant to Government Code section 66001(f) for the 2023-2024 fiscal year:

Refunds Made:	N/A
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II. Five-Year School Impact Fee Findings

The following findings are made in connection with the public information set forth in the District’s 2023-2024 Annual School Impact Fee Report.

A. PURPOSE TO WHICH SCHOOL IMPACT FEE IS TO BE PUT (Gov. Code, §66001(d)(1)(A)): With respect to only that portion of the School Impact Fees Fund remaining unexpended at the end of the 2023-2024 fiscal year, the purpose of the School Impact Fees is to finance the construction or reconstruction, including refurbishment and rehabilitation, of School Facilities necessary to accommodate student population growth resulting from development, cover costs attributable to the increased demand for School Facilities reasonably related to new development and necessary to maintain existing levels of service, reduce overcrowding caused by the development on which the fees were levied, and/or to reimburse the District for expenditures previously made on School Facilities. As necessary, the fees will be used to provide interim housing for children generated by new development and for other school-related considerations relating to the District’s ability to accommodate enrollment growth generated from new development as permitted by law. Likewise, fees will also be used for other indirect and support services related to construction and reconstruction of School Facilities necessitated by growth resulting from new development, including administrative costs connected with the establishment of the fee and the required reportings. Projects (and other school-related considerations) include, without limitation, the following:

⁴ Reimbursement of direct and administrative costs incurred for collecting developer fees for 2023-2024 fiscal year (3% of amount of developer fees collected for fiscal year) pursuant to Education Code section 17620(a)(5) equals \$28,608.51 for fiscal year 2023-2024, and will be reflected as a transfer in the fiscal year 2024-2025 report.

Project	Estimated Cost
1. Sylvia Mendez Project	\$ 49,349,440
2. Sylvia Mendez Interim Housing	\$846,689
3. 2026 Justification Study	\$20,000
4. BHS Capacity & Expansion Project (TBD) ⁵	\$24,750,000

In addition to the above, School Facilities projects (and other school-related considerations) also include those projects identified in the District’s prior Annual Reports & Findings, the Fee Studies, and the District’s Facilities Needs Assessment, developed as part of the District’s Master Plan process and approved May 29, 2019 (said documents are incorporated herein by reference).

B. REASONABLE RELATIONSHIP BETWEEN SCHOOL IMPACT FEE & PURPOSE (Gov. Code, §66001(d)(1)(B)): As more particularly described in the District’s Fee Studies and adopting School Facilities Fee Resolutions (incorporated herein by reference), which establish the requisite nexus, there is a reasonable relationship and rough proportionality between the School Impact Fees charged for residential and commercial/industrial development and the need and purposes for which they will be expended, as described in Paragraph A, in that the students that are generated by residential and commercial/industrial development will be accommodated by the School Facilities for which the School Impact Fees are expended. The District is currently over capacity and does not have any excess capacity to house students in its current facilities, does not have adequate facilities to accommodate students from new development, and thus there is a reasonable relationship between the School Impact Fees charged and the need for construction and reconstruction, including refurbishment and rehabilitation, of School Facilities.

The School Impact Fees collected do not exceed the cost of accommodating students generated by development. Rather, the School Impact Fees only partially mitigate the impact caused by residential and commercial/industrial development and do not adequately fund the School Facilities necessary to accommodate student growth. More specifically, if the District collects the current maximum fee of \$4.79 per square foot of residential construction, such school impact fees will offset only 42.5 percent of the District’s school facility cost attributable to residential development. Likewise, if the District collects the current maximum fee of \$0.78 per square foot of commercial/industrial construction, such school impact fees will offset only 7.8 percent to 32.9 percent of the District’s school facility cost attributable to commercial/industrial development. Moreover, the District’s current classroom facilities require substantial capital investments, estimated at approximately \$1.3 billion (2018 dollars) in order to renovate, replace, and expand District education facilities. The District does not have sufficient capacity to house students generated by development, and the District’s School Impact Fees are fully justified.

C. ANTICIPATED SOURCES & AMOUNTS OF FUNDING TO COMPLETE FINANCING OF INCOMPLETE PROJECTS (Gov. Code, §66001(d)(1)(C)): With respect to only that portion of the School Impact Fees Fund remaining unexpended at the end of the 2023-2024 fiscal year, the sources and amounts of Anticipated Funding to complete financing of any incomplete improvements identified in Paragraph A are as follows:

⁵ Anticipated sources and amounts are to speculative at this time for this proposed project. The project is listed for transparency purposes and demonstrates need.

<u>Anticipated Source of Funding</u>	<u>Anticipated Amount of Funding</u>
1. Measure G General Obligation Bond Proceeds (\$ in Possession of District)	\$40,000,000 _
2. School Impact Fees	\$6,000,000
Total Anticipated Funding:	\$46,00,000

Note: The District has commissioned site facility condition assessments, site master planning, and a district-wide, comprehensive master facilities plan, which will also include a plan for funding the District’s long-term facility needs. These documents will include lists of recommended projects, in order of need and priority. School Impact Fees will be included in the funding model, to address construction/renovation (refurbishment) needs resulting from increased student enrollment due to development.

D. APPROXIMATE DATE THAT ANTICIPATED FUNDING IS EXPECTED (Gov. Code, §66001(d)(1)(D)): With respect to only that portion of the School Impact Fees Fund remaining unexpended at the end of the 2023-2024 fiscal year, the following are the approximate dates on which the Anticipated Funding referred to in Paragraph C above is expected to be deposited into the Fund:

<u>Anticipated Source of Funding</u>	<u>Approximate Dates Funding Expected</u>
1. Measure G General Obligation Bond Proceeds (\$ in Possession of District)	August 2024
2. School Impact Fees	June 2025