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TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66342] (*Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 4.7. School Facilities [65970 - 65981] (*Chapter 4.7 added by Stats. 1977, Ch. 955.)*

65970. The Legislature finds and declares as follows:

- (a) Adequate school facilities should be available for children residing in new residential developments.
- (b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.
- (c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.
- (d) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.
- (e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California.

(*Added by Stats. 1977, Ch. 955.*)

65971. (a) The governing body of a school district that operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

- (1) That conditions of overcrowding exist in one or more attendance areas within the district that will impair the normal functioning of educational programs, including the reason for the existence of those conditions.
- (2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) (1) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

(2) The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

(3) If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

(*Amended by Stats. 2006, Ch. 538, Sec. 315. Effective January 1, 2007.*)

65972. Within the attendance area where it has been determined pursuant to Section 65971 that conditions of overcrowding exist, the city council or board of supervisors shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, or approve a tentative subdivision map for residential purposes, within such area, unless the city council or board of supervisors makes one of the following findings:

- (1) That an ordinance pursuant to Section 65974 has been adopted, or
- (2) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council or board of supervisors would benefit the city or county, thereby justifying the approval of a residential development otherwise subject to Section 65974.

(Added by Stats. 1977, Ch. 955.)

65973. As used in this chapter, the following terms have the following meanings:

- (a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school as determined by the governing body of the district.
- (b) "Reasonable methods for mitigating conditions of overcrowding" includes, but is not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.
- (c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

(Amended by Stats. 2006, Ch. 538, Sec. 316. Effective January 1, 2007.)

65974. (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

- (1) The general plan provides for the location of public schools.
- (2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.
- (3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.
- (4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.
- (5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding that the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(e) (1) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a school facilities master plan administered by a joint powers authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to subdivision (b) of Section 65995. However, in determining

developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Public School Construction, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

(2) Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

(3) Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code.

(Amended by Stats. 2006, Ch. 538, Sec. 317. Effective January 1, 2007.)

65974.5. Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the subject of the proposed expenditure.

(Added by Stats. 1989, Ch. 1209, Sec. 24. Effective October 1, 1989.)

65975. (a) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976, (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.) of a school project to be constructed in an attendance area where fees have been collected pursuant to Section 65974, all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project as required by item (1) of Section 17761 of the Education Code. Nothing in this section shall increase the amount of fees that would otherwise be collected pursuant to Section 65974.

(b) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.), of a school project to be constructed in an attendance area where land has been received pursuant to Section 65974, the district may use the fair market value of the land to provide all or a portion of its 10 percent of the school project as required by item (1) of subdivision (a) of Section 17761. In order to use the value of land to meet the 10 percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full 10 percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the Education Code.

(Added by Stats. 1983, Ch. 1254, Sec. 5.)

65976. As a part of the notice required by Section 65971, or in any event before the city council or board of supervisors make a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

(Amended by Stats. 1985, Ch. 1498, Sec. 4.5.)

65977. Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, the governing body of the city or county shall enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter.

(Added by Stats. 1977, Ch. 955.)

65978. Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. The report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council.

During the time that the report has not been filed in the manner prescribed in this section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter.

(Amended by Stats. 1984, Ch. 1062, Sec. 1.)

65979. (a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

(Amended by Stats. 2006, Ch. 538, Sec. 318. Effective January 1, 2007.)

65980. For the purposes of Section 65974 the following terms mean:

(a) "Approval of a residential development" means any approval for the development prior to and including the issuance of a building permit for the development.

(b) "Classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" and shall include no other facilities.

(c) "Interim facilities" are limited to any of the following:

(1) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(2) Temporary classroom toilet facilities not constructed with permanent foundations.

(3) Reasonable site preparation and installation of temporary classrooms.

(4) Land necessary for the placement thereon of any of the facilities described in paragraph (1) or (2).

(Amended by Stats. 1985, Ch. 1498, Sec. 6.)

65980.1. Notwithstanding Section 65980, for the purposes of Section 65974, interim facilities shall include leased residential dwellings used by the Lodi Unified School District for school purposes.

(Added by Stats. 1983, Ch. 82, Sec. 1. Effective June 14, 1983.)

65981. If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter.

(Added by Stats. 1979, Ch. 282.)