School Impacts and Local Land Use Authority
Frequently Asked Questions
Updated May 10, 2016

Q: Are the City and School District separate entities?
A: The City of Palo Alto and the Palo Alto School District are separate entities. The City is governed by the City Council and the School District is governed by the School Board.

Q: How is the school district funded?
A. PAUSD is a "basic aid" district which means that most of its funding comes from local property taxes, rather than from state funding. Only about 10% of school districts in California are basic aid districts. Most basic aid districts are located in affluent communities. Other local basic aid districts include Mill Valley, Woodside and Los Altos.

As a basic aid district, Palo Alto's revenue is not tied to the number of enrolled students. As a result, if PAUSD adds students but property taxes do not grow, the amount available per student declines. On the other hand, if property taxes increase and enrollment is flat or declining, there is more funding to spend per student.

The voters have also passed a parcel tax which is levied against assessed parcels located in Palo Alto. The parcel tax funds are primarily used to hire additional teachers to reduce class size.

In addition, the Palo Alto voters passed a bond measure which may only be used to fund capital improvements.

Q. Can the City assess a school impact fee on new development?

A. The City cannot impose a school impact fee, but State law allows the School District to impose a fee on new development provided it has a study justifying the need for the fee. State law allows the fees to be set at three different levels. PAUSD is currently charging Level 1 fees. The State establishes the amount of fees which can be assessed against new residential and commercial development and adjusts the rate every two years.

In order for Level 2 or Level 3 fees to be levied, a school district has to take many steps far beyond the fee justification study required to levy Level 1 fees. The statutory requirements and the application process can be found in Government Code §§ 65995.5(b)(3) *et. seq.*

Q: Does the City have the ability to deny a project solely because it would create additional school impacts?
A. No, Palo Alto is prohibited from denying a project on the grounds that it might increase demands on existing school facilities or require construction of new school

facilities. Under State law, payment of school impact fees "shall be the exclusive method[] of considering and mitigating impacts on school facilities," and "are . . . deemed to provide full and complete school facilities mitigation. (Gov. Code §§ 65996 (a) and (b).) In addition, Palo Alto may not deny or refuse to approve a legislative or adjudicative act for "the planning, use, or development of real property" on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts specified by State law. (Gov. Code § 65995(i).)

While State law prohibits cities from extracting additional school impact fees, from a practical standpoint, since Palo Alto is a basic aid district, redevelopment of a site generally increases the tax basis of a property and can in fact increase local revenue available to a school district.

Q. If the City believes the development fee is inadequate to mitigate school impacts can it impose other mitigations on a project?

A. Under State law, the capped school facilities fee is the only measure school districts may impose to mitigate the impact of future development on school facilities. (*Chawanakee Unified School District v. City of Madera* (2011) 196 Cal. App. 4th 1016, 1023.)

Q. Can the City plan for housing that is more suitable for households without children?

A. The City has authority to determine its own vision for housing through the comprehensive plan process. For instance, if demographic trends show the community's need for smaller units to accommodate an aging population, Palo Alto's Housing Element may consider incentives to encourage such housing. However, these decisions are still subject to other federal and state laws that prohibit housing discrimination. Under fair housing laws, cities cannot take zoning actions that discriminate against certain protected categories of people. One of the protected categories is "familial status" which includes households containing at least one child under age 18. Courts are beginning to more closely scrutinize local land use decisions which have a disparate impact on households with children.

Thus in a recent case titled *Avenue 6E Investments, LLC v. City of Yuma (2016) U.S. App. LEXIS 5601,* the Ninth Circuit found legitimate Fair Housing Act (FHA) and Equal Protection claims where developers challenged a city council's decision to deny their proposed affordable housing development and related zoning changes. The court held that racially derogatory comments expressed by neighbors provided enough evidence to support the possibility that the Yuma City Council made its decision with an intention to keep out what was likely to be a largely Hispanic and moderate to low-income group of homebuyers, in violation of the FHA and the Equal Protection Act.