

## BUSINESS & FACILITIES UPDATE

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### **For Purposes of School Impact Fees, Assessable Space Includes Interior Common Areas.**

1901 First Street Owner, LLC (“First Street”) is the developer of a residential apartment complex. To obtain building permits, First Street was required to pay a school impact fee to the Tustin Unified School District (the “District”) pursuant to Education Code Section 17620. First Street submitted its square footage totals to the City of Santa Ana. First Street based its square footage totals on the “net rentable” method, which includes the square footage of the individual apartment units, but excludes everything else in the building. The City accepted First Street’s calculation and informed the District.

The District objected to the use of the net rentable method. According to the District, that method did not include all of the square footage within the interior common areas, as required by Government Code Section 65995 (“Section 65995”). For purposes of school impact fees, Section 65995 calculates the applicable fee as follows: “In the case of residential construction . . . one dollar and ninety-three cents (\$1.93) per square foot of assessable space. ‘Assessable space,’ for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, covered or uncovered walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.” (Gov. Code, § 65995, subd. (b)(1).) The City rejected the District’s position and confirmed the net rentable method was its “standard practice.”

The District filed an administrative appeal. Rather than challenge the appeal, the City decided to abandon its net rentable method. The City re-calculated the square footage of the development to include interior common areas, which resulted in an increase of approximately 70,000 square feet, increasing the school impact fee First Street owed by nearly \$240,000.

First Street objected to the change and filed its own administrative appeal. In the meantime, First Street paid the increased fees under protest. The administrative hearing officer found in favor of First Street, concluding that the City’s standard practice of calculating net rentable space should

have applied. The hearing officer ordered the District to refund the portion of the fees First Street had paid under protest. The District refused to refund the fees.

First Street sued the District seeking a refund of the excess fees. The trial court denied First Street's request. In doing so, the trial court interpreted Section 65995 as precluding the net rentable method the City had initially used. First Street appealed.

The Court of Appeal affirmed the trial court's decision. The Court of Appeal concluded that "assessable space" as defined in Section 65995, plainly includes interior common areas, such as interior hallways, storage rooms, mechanical rooms, fitness centers, and lounges. In doing so, the Court of Appeal rejected First Street's argument that the City's standard practice of using the net rentable method must apply. "First Street's position is that the standard practice must govern even if that practice does not comply with section 65995's definition of assessable space. . . . The flaw in First Street's reasoning is apparent from the plain language of the statute. The 'standard practice' referred to in section 65995, subdivision (b)(1), is specifically the standard practice of calculating the square footage within the *perimeter* of a residential *structure*. A standard practice of calculating something else does not qualify."

*1901 First Street Owner, LLC v. Tustin Unified School District* (2018) \_\_Cal.App.5th \_\_.

This article was written by [Hengameh Safaei](#), Associate, from the Los Angeles office of Liebert Cassidy Whitmore. Hengameh is a member of the firm's Business and Facilities practice group which assists public agency clients in matters including construction, contracts, purchase agreements and real property. Hengameh can be reached at (310) 981-2000 or at [hsafaei@lcwlegal.com](mailto:hsafaei@lcwlegal.com). For more information regarding the update above or about our firm please visit our website at <http://www.lcwlegal.com>, or contact one of our offices below.

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6033 W. Century Blvd.  
5<sup>th</sup> Floor  
Los Angeles, CA 90045  
(310) 981-2000

135 Main Street  
7<sup>th</sup> Floor  
San Francisco, CA 94105  
(415) 512-3000

5250 North Palm Ave.  
Suite 310  
Fresno, CA 93704  
(559) 256-7800

550 West C Street  
Suite 620  
San Diego, CA 92101  
(619) 481-5900

400 Capitol Mall  
Suite 1260  
Sacramento, CA 95814  
(916) 584-7000