

ORANGE UNIFIED SCHOOL DISTRICT UTILIZATION OR DISPOSITION OF SURPLUS REAL PROPERTY AND FACILITIES

**BOARD OF EDUCATION MEETING
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OVERVIEW

- Definition of Terms
- Methods of generating revenue through the utilization and disposition of surplus property
- Legal requirements for each method

DEFINITION OF TERMS

- Surplus Real Property

“Any real property, together with any personal property located thereon, belonging to the district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession.”

(Education Code § 17455)

DISPOSITION OR UTILIZATION OF PROPERTY

- If real property and/or facilities have no current or projected future need by the district, how best to dispose of the property to maximize revenue.
- How to best use or leverage surplus or underutilized property.
- Potential District Surplus Properties:
 - Killefer
 - Parkside
 - Peralta
 - Walnut

METHODS FOR UTILIZING PROPERTY

- Primary methods of utilizing surplus property:
 - Lease
 - Joint Occupancy
 - Joint Use

METHODS FOR DISPOSING OF SURPLUS REAL PROPERTY

- Sale
- Exchange

LEASING SURPLUS REAL PROPERTY

- Education Code §§ 17455 et seq. provides the general power of a school district to lease real property, together with any personal property located thereon, for a term not to exceed 99 years which has been found not to be needed by the district for school classroom buildings at the time of delivery of possession.

PROCEDURE FOR LEASING SURPLUS REAL PROPERTY

- Pursuant to Education Code § 17388, prior to the lease of surplus real property, the governing board of a school district is required to appoint a District Advisory Committee (sometimes referred to as a 7/11 Committee) to advise the governing board in the development of district-wide policies and procedures governing the use or disposition of school buildings or space in school buildings which are not needed for school purposes.
- District complied with this requirement in 2008.

Procedure for Leasing Surplus Property – cont.

- Unless the lease contains a purchase option, no public entities are entitled to priority under Education Code § 17464.
- School District may still be subject to the Naylor Act commencing at Education Code § 17485.
- The Naylor Act applies generally to any schoolsite owned by a school district in which the governing board determines to either lease or sell the schoolsite.
- The term “schoolsite” as used in the Naylor Act means “a parcel of land, or two or more contiguous parcels, which is owned by a school district.”

COMPLIANCE WITH CEQA

- A proposed lease of surplus real property must comply with the California Environmental Quality Act (“CEQA”) as found at Public Resources Code §§ 21000 – 21178.1, and the interpretive regulations for implementing CEQA, known as the CEQA Guidelines, located at Title 14, California Code of Regulations, at §§ 15000 – 15387.

Compliance with CEQA – cont.

- The CEQA process entails 3 separate phases. As the lead agency for purposes of CEQA, the District will need to:
 - (1) Conduct a preliminary review of the proposed project to determine whether it is subject to CEQA.
 - (2) Prepare an Initial Study to determine whether the project may have a significant environmental effect.
 - (3) Prepare an Environmental Impact Report (“EIR”), if the project may have a significant effect, or a Negative Declaration, if no significant effects will occur.

DECLARATION OF INTENTION TO LEASE SURPLUS REAL PROPERTY

- The governing board in regular open session, by a two-thirds vote of all its members, must adopt a resolution declaring its intention to lease the surplus real property for its intended purpose (Education Code § 17466).
- Resolution must describe the property to be leased, specify the minimum lease amount and the terms upon which the property will be leased, and whether the board will pay a commission to a real estate broker.
- Resolution must fix a time not less than 3 weeks thereafter in which sealed bids will be received and declared.

OPENING AND ACCEPTANCE OF BIDS

- At the time and place fixed in the resolution for the meeting of the governing board, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the governing board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection with, shall be finally accepted, unless a higher oral bid is accepted, or the governing board rejects all bids. (Education Code § 17472.)

Opening and Acceptance of Bids – cont.

- Pursuant to Education Code § 17473, before accepting any written proposal, the governing board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to lease the property upon the terms and conditions specified in the resolution, for a rental exceeding by at least five percent (5%), the highest written proposal, after deducting the real estate broker commission, if any, shall be finally accepted. Final acceptance shall not be made, until the oral bid is reduced to writing and signed by the offeror.

ACCEPTANCE OR REJECTION OF BID

- The final acceptance of the bid may be made either at the same session or at any adjourned session of the same meeting held within 10 days. (Education Code §17475.)
- The governing board may at this session, if it deems such action to be for the best public interest, reject any and all bids, either written or oral, and withdraw the Properties from sale. (Education Code § 17476.)
- Once the bid is accepted, although not required, it is recommended that the board adopt a resolution of acceptance identifying the successful bidder and the rental rate. A resolution of acceptance authorizes and directs the board president, or other board member to execute the lease and to deliver it upon performance and compliance by the lessee of all the terms or conditions of the contract to be performed. (Education Code § 17478.)

LEASE BETWEEN AGENCIES

- School Districts are authorized to lease surplus real property to another public entity pursuant to “permissive” Education Code § 35160 which provides:
 - “On and after January 1, 1976, the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.”

JOINT OCCUPANCY

- Allows a school district who owns a site to enter into a lease with any person or entity upon mutually agreed upon terms and conditions for no more than 66 years (Education Code §§ 17515 – 17526).
- Agreement must include the following:
 - That the contracting party construct or provide for the construction of a building, which when completed, will be jointly occupied by both parties;
 - Title to that portion of the building to be occupied by the private party remain exclusively the personal property of that party during the term of the lease;
 - Title to that portion of the building to be occupied by the district shall vest in the district upon completion and acceptance by the district; and
 - No rental fee or other charge for the use of the building shall be paid by the district.

Joint Occupancy – cont.

- Require lessee to either post a performance bond or irrevocable letter of credit as determined by the governing board (Education Code § 17524).
- Governing board must adopt a resolution declaring its intent to consider proposals (Education Code § 17521). The resolution must include the following:
 - Description of proposed site.
 - Intended use of that portion of the building(s) to be occupied by the district.
 - Fix a time not less than 90 days thereafter for the board to receive and consider all plans and proposals submitted.

Joint Occupancy – cont.

- The adopted resolution must be published at least once a week for three weeks in a newspaper of general circulation (Education Code § 17522).
- When considering submitted proposals, the governing board may select the plan or proposal that best meets the needs of the district and enter into a contract incorporating the approved plan or proposal (Education Code § 17524).

SCHOOL DISTRICT JOINT USE AGREEMENTS

- Authorizes a school district to enter into agreements to make vacant classrooms or other space in operating school buildings available to rent or lease, including during normal school hours (Education Code §§ 17527 – 17535).
- Any lessee is eligible except private educational institutions which maintain K-12 programs.
- First priority use must be given to educational agencies conducting special education programs and second priority to other educational agencies.

School District Joint Use Agreements – cont.

- “Building” includes both onsite and offsite facilities and improvements which are appropriate for the proper operation or function of the building to be jointly occupied and used, as mutually agreed upon by the parties. It also includes permanent improvements of school grounds (Education Code § 17528).
- Conditions to Joint Use Agreement
 - Must comply with competitive leasing provisions of Education Code §§ 17455 et seq.)
 - Governing Board must determine that the proposed joint occupancy will not:

School District Joint Use Agreements – cont.

- Interfere with the educational program or activities
- Unduly disrupt the residents in the surrounding neighborhood
- Jeopardize the safety of the children of the school
- Space Limitations
 - Amount of classroom space leased in any schoolsite during regular school hours may not exceed 45% of the total classroom space at that school or exceed 30% of the district's total classroom space in operating schools.
 - If governing board by 2/3 vote determines that the lease is compatible with the educational purpose of the school, the 45% limit on a school's classroom space may be exceeded, but not the 30% of total district classroom space.

School District Joint Use Agreements – cont.

- Joint use may exceed 30% of total district classroom space if the lease is for a day care center, nursery school, or special education class.
- Terms of Agreement
 - Duration may not exceed 5 years, unless capital outlay improvements are made on the school property for park and recreation purposes by public entities and nonprofit corporations.
 - The rental or lease rates may not be less than fair market rental for comparable facilities, except if rented to public entities.

School District Joint Use Agreements – cont.

- Another joint use mechanism is authorized by Education Code § 17052. Under this provision, the State Board of Education apportions on July 1st of each year to qualifying school districts funds for joint-use projects to construct libraries, multipurpose rooms, and gymnasiums, on school campuses where these facilities are used jointly for both school and community purposes.
- Participation Requirements:
 - The school does not have the type of facility for which it seeks funding.

School District Joint Use Agreements – cont.

- The school district agrees to provide local matching funds for 50 percent of the eligible cost of the facility (based on per-square foot cost limits or per-pupil cost limits or both), and 100% local or joint-use funding for all costs that exceed that standard.
- The school district has obtained approval of the plans for the facility from the Division of the State Architect and the State Department of Education.
- The school district has entered into a joint-use agreement with its joint-use partner that specifies (1) the method for sharing capital and operating costs, (2) the relative responsibilities for the operation and staffing of the facility, and (3) the manner in which the safety of school pupils will be maintained during school hours.
- The school district demonstrates that the facility will be used to the maximum extent possible for school and community purposes after regular school hours.

STATE BOARD OF EDUCATION WAIVER

- Where a school district is unsuccessful in securing responsive bid proposals for leasing or selling surplus real property, or believes that bidding is not in its best interest, a district may, as authorized by Education Code §§ 33050 et seq., seek a general waiver from the normal competitive bidding procedures.
- Approximately 60-90 days is normally required to process a regular waiver request and obtain approval from the State Board of Education. The General Waiver Request Form, including instructions, and Waiver Calendar for the sale or lease of real property can be obtained on the Department of Education website at <http://www.cde.ca.gov/re/lr/wr/>.

State Board of Education Waiver – cont.

- Certain sections of the Education Code may not be waived pursuant to § 33050(a). These sections include:
 - § 17459 which imposes duty to offer surplus land if sold for low- and moderate income housing or park and recreational purposes.
 - § 17462 involving use of funds from sale.
 - § 17464(a) offering the property for park and recreational purposes.
- Prior to forwarding the waiver request to the State Board of Education, district must:
 - (1) first consult with and obtain the written position of the exclusive representative of employees and advisory committee/school site council; and
 - (2) governing board hold a properly noticed public hearing on the general waiver request.

State Board of Education Waiver – cont.

- A school district may request the waiver of certain sections of the competitive sale process, e.g. portions of Education Code sections 17466, 17472, and 17475, and all of 17473 and 17474, to allow the district to utilize a “request for proposal” process, thereby maximizing the proceeds from the sale.

EXCHANGE OF PROPERTY

- School districts are authorized to exchange any of their real property for real property of another person or private business firm (Education Code §§ 17536 – 17538).
- The exchange of property may be upon any terms and conditions agreed to by the parties and may be entered into without complying with any other provisions of the Education Code.
- Governing Board by 2/3 vote must adopt a resolution of intent to exchange the property. The resolution must identify the properties and the terms and conditions, not including price, upon which they will be exchanged.

CONCLUSION

- We have discussed various methods of generating revenue for school districts through the utilization and disposition of surplus property.
 - Lease
 - Joint Occupancy
 - Joint Use
 - Sale
 - Exchange
- We have reviewed the legal requirements for each method.