

USE OF SCHOOL FACILITIES

Purpose

While district facilities and grounds exist primarily for the instruction and benefit of district students and other educational purposes of the district, the Board of Trustees believes that school facilities and grounds are a vital community resource which should be used to foster community involvement and development. Therefore, the Board authorizes the use of school facilities by district residents and community groups for purposes specified in the Civic Center Act, to the extent that such use does not interfere or conflict with school activities or other school-related uses, upon the terms and conditions set forth in this policy and other applicable Board policies, procedures, and administrative regulations.

(cf. 6145.5 - Student Organizations and Equal Access)

Authority

California law permits the Board to grant the use of school facilities or grounds as a civic center upon the terms and conditions the Board deems proper, subject to the limitations, requirements, and restrictions set forth in the Civic Center Act. The district retains sole discretion to determine which of its facilities shall be made available for use. The Board has authority to levy and adjust fees. Furthermore, special or additional labor or services may be required, in the district's sole discretion, for safety or security purposes, or to protect school facilities and grounds, maintain order on school sites, prevent interference with the regular conduct of school work, and/or otherwise to support the civic center use in a safe and efficient manner.

Use of school property shall be under the supervision of the Superintendent or designee. For the effective management and control of school facilities and grounds, the Superintendent or designee shall maintain procedures and regulations that: (Education Code 38133)

1. Aid, encourage, and assist groups desiring to use school facilities for approved activities.
2. Preserve order in school facilities and on school grounds and protect school facilities, designating a person to supervise this task, if necessary.

(cf. 0450 - Comprehensive School Safety Plan)

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

3. Ensure that the civic center use of school facilities or grounds is not inconsistent with the use of school facilities or grounds for school purposes, and does not interfere with the regular conduct of school work.

The district may allow the use of school facilities and grounds in accordance with other provisions of law. As necessary to ensure efficient use of school facilities, the Superintendent or designee may, with the Board's approval, enter into an agreement for the joint use of any school facilities or

grounds. The Board shall approve any such agreement only if it determines that it is in the best interest of the district and the community.

(cf. 1330.1 - Joint Use Agreements)

Priority of Users

The Superintendent or designee shall give priority to district or school-related activities in the use of school facilities and grounds (e.g., educational programs or activities related to the instructional and educational programs of the district, regular conduct of school work and school activities, etc.). Thereafter, uses authorized under the Civic Center Act shall be given preference in the following order, and then on a first-come, first-served basis:

1. **Contracted users**

(e.g., joint use agreements, license agreements, joint occupancy agreements, leases, etc.,)

2. **Category 1 Users:**

District and school affiliated groups and support groups (i.e., PTA, PTO, School-Connected Organizations, Millbrae Education Foundation (MEF), Citizen Advisory Committees, booster clubs, etc.)

3. **Category 2 Users:**

City of Millbrae Park and Recreation Elementary and Middle After School Sports programs, Non-profit (501(c)(3)), volunteer-based, community youth programs whose primary purpose is to promote youth and school activities, such as Boy Scouts, Girl Scouts, YMCA, Camp Fire USA, etc.; and (b) local, volunteer-based, community recreational youth sports leagues (non-profit or public agency) that charge participants no more than a nominal fee (a "nominal fee" means an average of no more than sixty dollars (\$60) per month). Further priority is given if at least seventy-five percent (75%) of program participants in such programs are children residing in district boundaries and/or attending district schools. Other non-profit or public agency youth programs and activities. Users must provide a letter copy of non-profit status.

4. **Category 3 Users:**

Public agency or governmental entity use, such as City of Millbrae (other than Elementary & Middle After School Sports programs), county, or other school district meetings; community, recreational, cultural, and civic programs and activities for adults, etc. Non-profit cultural, recreational, civic, service, community, or public affairs groups or organizations, such as homeowners groups, senior citizen groups, religious organizations, veterans groups, etc.

5. **Category 4 Users:** Private, non-community based events closed to the public, or for-profit or commercial events or uses

Fees

The Civic Center Act protects the community's investment in school facilities and grounds by incorporating fees that ensure school facilities and grounds are safe, in good repair, and in good working order for youth and community activities. The cost of making district facilities and grounds available shall be borne by the user in accordance with the Civic Center Act. The Board shall adopt a comprehensive schedule of fees ("Fee Schedule") to be charged for community use of school facilities and grounds, including, but not limited to, classroom(s), gym(s), library(ies), auditorium(s), multi-use room(s), and outdoor basketball court(s). The Fee Schedule shall be prepared in accordance with 5 CCR 14037-14042. (5 CCR 14041) The Fee Schedule shall be reviewed annually, and updated as needed to reflect any increased or other adjustments in costs of maintaining district's facilities and grounds.

The Fee Schedule is based on the following categories of use:

1. Category 1 Users – Operational Cost Fee:

Category 1 shall apply to the following groups and organizations whose activities are directly related to or for the benefit of district schools and its students

- a. District and school affiliated groups and support groups (i.e., PTA, PTO, School-Connected Organizations, Millbrae Education Foundation, Citizen Advisory Committees, booster clubs, district employee organizations whose membership is composed solely of district employees, etc.)

2. Category 2 Users – Reduced Fee:

Category 2 shall apply to the following groups and organizations

- a. City of Millbrae Parks and Recreation program participants in such programs are children residing in district boundaries and/or attending district schools
 - i. Elementary School After School Sports programs (ONLY)
 - ii. Middle School After School Sports programs (ONLY)
- b. Non-profit (501(c)(3), volunteer-based, community youth programs whose primary purpose is to promote youth and school activities, when no admission is charged or contributions solicited (except when directly expended for the welfare of the district's students or for charitable purposes), such as the Boy Scouts, Girl Scouts, YMCA, Camp Fire USA, etc.
- c. Local, volunteer-based, community recreational youth sports leagues (non-profit or public agency) that charge participants no more than a nominal fee (a "nominal fee")

means an average of no more than sixty dollars (\$60) per month), which is used to pay for necessities such as uniforms, equipment, facilities, snack bars, and trophies. The youth sports league programs qualifying for Category 1 must be local, must be run by volunteers, must not pay coaches, and may be affiliated with local high schools.

- d. Except for uses governed by Education Code section 38134(d) and (e) for which mandatory fees are specified, any other non-profit (501(c)(3)) or public agency use determined by the Board and/or the Superintendent to advance the educational goals, programs, and/or activities of the district for which, in the Board/Superintendent's discretion (and only in limited and unusual circumstances), direct cost or fair rental value fees would not be appropriate.

3. Category 3 – Direct Cost Fee:

Category 3 shall apply to public, City of Millbrae (other than Elementary & Middle After School Sports programs) agencies, governmental entities, and non-profit (501(c)(3) recreational, cultural, civic, service, religious, or public affairs groups and organizations with a community-focused program, including, without limitation, homeowners group meetings, senior citizen group meetings and activities, veterans group meetings and activities, religious organizations for services, non-profit or public agency adult recreation programs, public agency or governmental entity meetings, non-profit or public agency youth programs that do not qualify for Category 2, and all other uses governed by Education Code section 38134 for which mandatory Direct Cost fees (as defined below) are specified. Category 3 is intended to encompass all civic center uses other than those specified as qualifying for classification under Category 1, Category 2, or Category 4, unless otherwise specified herein.

Pursuant to Education Code section 38134 and Title 5 of the California Code of Regulations, section 14037, *et seq.*, the Superintendent or designee shall charge for Category 3 use of school facilities or grounds under the Civic Center Act a fee not exceeding the district's direct costs (Operational Direct Costs and Capital Direct Costs, as defined below), unless otherwise specified herein.

Additionally, when any use of school facilities or grounds is for religious services, the district shall charge an amount at least equal to the district's direct costs. (Education Code 38134) The hourly Category 3 fees set forth in the Fee Schedule and charged under the Civic Center Act for community use of each, or each type of, school facility or grounds, are intended to reflect the community's proportionate share of the district's direct costs associated with the total use of the school facility or grounds, as follows: (Education Code 38134; 5 CCR 14038-14041)

4. Category 4 – Fair Rental Value Use

Category 4 shall apply to uses of school facilities or grounds for entertainment or meetings where admission is charged, sales completed, or contributions solicited and net receipts are not to be expended for charitable purposes or for the welfare of the district's students, and includes, without limitation, commercial or for-profit community activities that qualify as a civic center use under the scope of the purposes of the Civic Center Act, and individual family with children attending district schools, use for one-time events, such as a picnic or birthday party (not for-profit uses) Category 4 shall also apply to uses governed by Education Code section 38134 for which mandatory Fair Rental Value fees (defined below) are specified. (Education Code 38134).

Category 4 users shall be charged Fair Rental Value when using school facilities or grounds, meaning the Direct Costs (as defined above) to the district plus the amortized costs of the facilities or grounds used by the user group for the duration of the activity authorized.

District's direct costs associated with the total use of the school facility or grounds, as follows: (Education Code 38134; 5 CCR 14038-14041)

1. Operational Direct Costs

Operational Direct Costs include the civic center user's proportionate share of the estimated costs of supplies, utilities, janitorial services, other services of district employees and/or contracted workers, and salaries and benefits paid to district employees directly associated with the administration of the Civic Center Act to operate and maintain school facilities and grounds, including all school and district equipment used by civic center users. (Ed. Code 38134(g)(1)(A); 5 CCR 14037(b)(2) & 14040).

2. Capital Direct Costs

Capital Direct Costs include the civic center user's proportionate share of the estimated costs of maintenance, repair, restoration, and refurbishment of school facilities or grounds. (Ed. Code 38134(g)(1)(B); 5 CCR 14037(b)(1) & 14039).

Any funds collected as Capital Direct Costs shall be deposited into a special fund to be used only for capital maintenance, repair, restoration, and refurbishment of school facilities and grounds. (5 CCR 14042)

Capital Direct Costs shall not apply to the following:

1. Organizations retained by the district or school to provide instruction or instructional activities to students during school hours (5 CCR 14037(b)(2); Ed. Code 38134(g)(1)(B)(ii)(II)).
2. Classroom-based programs that operate after school hours where participants spend at least 50 percent of operational hours in a classroom, including, but not limited to,

after-school, tutoring, and child care programs. (5 CCR 14037(b)(1)(B)(i); Ed. Code 38134(g)(1)(B)(ii)(I)).

3. General classroom facilities. However, for purposes of this exclusion, specialty teaching spaces (such as, without limitation, dance or art studios, music practice or performance spaces, theaters, gyms, Caroline Shea Center, laboratories, etc.) and school grounds (including, without limitations, athletic fields, basketball courts, etc.) are NOT general classroom facilities. Capital Direct Costs shall apply to all specialty teaching spaces, school grounds, and other non classroom spaces. (5 CCR 14037(b)(1)(A); Ed. Code 38134(g)(1)(B)(i); *see generally* 5 CCR 14030(c) & (g)-(k)).

Operational Direct Costs apply to the foregoing except as otherwise stated herein.

(cf. 5148 - Child Care and Development)

(cf. 5148.2 - Before/After School Programs)

Operational direct cost fees shall not be discounted to any group or organization except as expressly authorized herein and the discount is specifically authorized in the adopted fee schedule. (5 CCR 14041).

Non-Civic Center Use

Non-Civic Center Use includes commercial or for-profit activities that do not qualify as a civic center use, and any other use or activity that is outside the scope of the purposes of the Civic Center Act. Except as otherwise required by law, the district is under no obligation to make school facilities or grounds available for non-civic center use.

When applicable, fees charged for non-civic center use shall be determined by the Superintendent or designee based on comparable going-market rates or as otherwise required in accordance with applicable law.

Miscellaneous (All Categories)

Except for uses governed by Education Code section 38134 for which mandatory fees are specified, the district retains, in its sole discretion, all rights to determine which user group Category and fee is applicable based on the category or type of use or applicant, consistent with the Civic Center Act and other applicable law.

Special or additional labor or services may be required at the district's discretion, including if (1) the civic center use occurs outside times when a district employee is available on site to open, set-up, supervise, and/or secure the facility (as applicable) as part of his/her normal duties during his/her regular hours; (2) the civic center activity exceeds the normal capacity of the custodial, personnel, or security services available; (3) the civic center activity requires excess use of utilities, such as water or electricity, etc.; (4) any other uses or activities, which, in the district's discretion, require special or additional labor or services beyond the scope of what is covered by the District's Fee Schedule. If special or additional labor or services are required, or if the civic center use results

in additional costs to district, the civic center user shall also pay the direct cost of such special or additional labor or services and/or additional costs.

All user Categories shall pay all possessory interest charges and/or taxes levied for use of the facilities pursuant to California Revenue and Taxation Code section 107.6 and other applicable law.

Subject to prior approval by the Board, the Superintendent or designee may grant the use of school facilities or grounds on those days on which district schools are closed. (Education Code 37220)

(cf. 6115 - Ceremonies and Observances)

There shall be no advertising on school facilities and grounds except as allowed by district policy specified in BP 1325 - Advertising and Promotion.

(cf. 1325 - Advertising and Promotion)

Legal Reference:

EDUCATION CODE

10900-10914.5 Community recreation programs

32282 School safety plan

37220 School holidays

38130-38139 Civic Center Act, use of school property for public purposes

BUSINESS AND PROFESSIONS CODE

25608 Alcoholic beverage on school premises

GOVERNMENT CODE

54950-54963 The Ralph M Brown Act

MILITARY AND VETERANS CODE

1800 Definitions

REVENUE AND TAXATIONS CODE

107.6 Notification of taxability of possessory interest

CODE OF REGULATIONS, TITLE 5

14037-14042 Proportionate direct costs for use of school facilities and grounds

UNITED STATES CODE, TITLE 20

7905 Equal access to public school facilities

COURT DECISIONS

Good News Club v. Milford Central School, (2001) 533 U.S. 98

Lamb's Chapel v. Center Moriches Union Free School District, (1993) 508 U.S. 384

Cole v. Richardson, (1972) 405 U.S. 676

Connell v. Higgenbotham, (1971) 403 U.S. 207

ACLU v. Board of Education of Los Angeles, (1961) 55 Cal.2d 167

Danskin v. San Diego Unified School District, (1946) 28 Cal.2d 536

Ellis v. Board of Education, (1945) 27 Cal.2d 322

ATTORNEY GENERAL OPINIONS

82 **Ops.Cal.Atty.Gen.** 90 (1999)

79 **Ops.Cal.Atty.Gen.** 248 (1996)

76 **Ops.Cal.Atty.Gen.** 52 (1993)

Legislative History:

AB 1557 (2016)

Management Resources:

CSBA PUBLICATIONS

Maximizing Opportunities for Physical Activity Throukh Joint Use of Facilities, Policy Brief February

2010

Building Healthy Communities: A School Leader's Guide to Collaboration and Community Engagement, 2009

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>