

# MODESTO CITY SCHOOLS

## Board Policy

BP 3280

### BUSINESS AND NON-INSTRUCTIONAL OPERATIONS

#### → Sale or Lease of or Rental of District-Owned owned Real Property

The Governing Board believes that district facilities and resources should be utilized in an economical and practical manner. The Superintendent or designee shall periodically study the current and projected use of all district facilities to ensure the efficient utilization of space for the effective delivery of instruction.

*(cf. 1330 - Use of School Facilities)*

*(cf. 7110 - Facilities Master Plan)*

*(cf. 7111 - Evaluating Existing Buildings)*

*(cf. 7160 - Charter School Facilities)*

Prior to the sale or lease of any surplus real property, the Board shall appoint a district advisory committee to advise the Board regarding the use or disposition of schools or school building space which is not needed for school purposes. The Board may elect not to appoint a district advisory committee for any of the following: (Education Code 17388, 17391)

1. A rental of property for a period of time not exceeding 30 days
2. A lease or rental of surplus property to a private educational institution for the purpose of offering summer school
3. A sale, lease, or rental of surplus property to be used for teacher or other employee housing
4. Until July 1, 2024, a sale or lease of surplus property that has not previously operated, or was not constructed to be operated, as an early childhood education facility or a school for elementary or secondary instruction

*(cf. 1220 - Citizen Advisory Committees)*

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In addition, to ensure that the proposed disposition of the property conforms with any general plan adopted by the local planning agency that affects or includes the area where the surplus property is located, the Board shall submit a report to the local planning agency describing the location of the surplus property and the purpose and extent of the proposed sale or lease. (Government Code 65402)

The Board shall determine whether the sale or lease of the surplus property is subject to review under the California Environmental Quality Act. (Public Resources Code 21000-21177; 14 CCR 15061-15062)

The Board may meet in closed session with its real property negotiator prior to the sale or lease of real property by the district in order to grant its negotiator authority regarding the minimum price or rent and terms of the sale or lease. (Government Code 54956.8)

*(cf. 9321 - Closed Session)*

When selling or leasing district real property, the Board shall comply with applicable procedures and give priority to specified public agencies as required by law. (Education Code 17230, 17464, 17485-17499; Government Code 54222)

*(cf. 5148 - Child Care and Development)*

*(cf. 5148.2 - Before/After School Programs)*

*(cf. 5148.3 - Preschool/Early Childhood Education)*

**Resolution of Intention to Sell or Lease**

Before ordering the sale or lease of any real property, the Board shall adopt a resolution by a two-thirds vote of all of its members at a regularly scheduled open meeting. The resolution shall describe the property proposed to be sold or leased in such a manner as to identify it, specify the minimum price or rent, describe the terms upon which it will be sold or leased, and specify the commission or rate, if any, which the Board will pay to a licensed real estate broker out of the minimum price or rent. The

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resolution shall fix a time, not less than three weeks thereafter, for a public meeting, held at the Board's regular meeting place, at which sealed proposals to purchase or lease will be received and considered. (Education Code 17466)

*(cf. 9320 - Meetings and Notices)*  
*(cf. 9323.2 - Actions by the Board)*

The Superintendent or designee shall provide notice of the adoption of the resolution and of the time and place of the meeting that will be held to consider bids by posting copies of the resolution, signed by the Board, in three public places not less than 15 days before the date of the meeting. In addition, the notice shall be published at least once a week for three successive weeks before the meeting, in a newspaper of general circulation published in the county in which the district is located, if such a newspaper exists. (Education Code 17469)

At least 60 days prior to the public meeting, the Superintendent or designee shall take reasonable steps to provide written notification of the public meeting, by certified mail, to the former owner from whom the district acquired the property. (Education Code 17470)

### Acceptance/Rejection of Bids

At the public meeting specified in the resolution of intention to sell or lease property, the Board shall open, examine, and declare all sealed bids. Before accepting a written proposal, the Board shall call for oral bids in accordance with law. (Education Code 17472, 17473)

The Board may reject any and all bids, either written or oral, and withdraw the properties from sale when the Board determines that rejection is in the best public interest. If no proposals are submitted or the submitted proposals do not conform to all the terms and conditions specified in the resolution of intention to lease, the Board may lease the property in accordance with Education Code 17477. (Education Code 17476, 17477)

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Of the proposals submitted by responsible bidders which conform to all terms and conditions specified in the resolution of intention to sell or lease, the Board shall finally accept the highest bid after deducting the commission, if any, to be paid to a licensed real estate broker, unless the Board accepts a higher oral bid or rejects all bids. (Education Code 17472)

The final acceptance of the bid may be made either at the same meeting specified in the resolution or at any adjourned/continued meeting held within 10 days. Upon acceptance of the bid, the Board may adopt a resolution of acceptance that directs the Board president, or any other Board member, to execute the deed or lease and to deliver the document upon performance and compliance by the successful bidder of all of the terms and conditions of the contract. (Education Code 17475-17478)

*(cf. 1431 - Waivers)*

**Use of Proceeds**

The Superintendent or designee shall ensure that the proceeds from the sale or lease with an option to purchase of surplus district property are used for one-time expenditures and not for ongoing expenditures such as salaries and general operating expenses. (Education Code 17462; 2 CCR 1700)

Proceeds from a sale of surplus district property shall generally be used for capital outlay or maintenance costs that the Board determines will not recur within a five-year period. Proceeds from a lease of district property with an option to purchase may be deposited into a restricted fund for the routine repair of district facilities, as defined by the SAB, for up to a five-year period. (Education Code 17462)

However, if the Board and SAB determine that the district has no anticipated need for additional sites or building construction for the next 10 years and no major deferred maintenance requirements, the proceeds from the sale or lease with an option to purchase may be deposited in a special reserve fund for the future maintenance and renovation of school sites or in the district's general fund. (Education Code 17462)

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In addition, until July 1, 2024, if district surplus property was purchased entirely with local funds, the proceeds from the sale or lease of the property, together with any personal property located on the property, may be deposited into the general fund of the district and may be used for any one-time general fund purpose. Before exercising this authority, the Board shall: (Education Code 17463.7)

1. Submit to SAB documents certifying that the sale of real property does not violate the provisions of a local bond act and the real property is not suitable to meet projected school construction needs for the next 10 years
2. At a public meeting, adopt a plan for expending one-time resources from the sale or lease of the property which identifies the source and intended use of the surplus property proceeds and describes the reasons that the expenditure will not result in ongoing fiscal obligations for the district

Whenever the district sells real property that was purchased, improved, or modernized with funds that were received from a state school facilities funding program within the previous 10 years, the district shall notify OPSC within 90 calendar days of the sale of the property if the proceeds from the sale are not used for capital outlay and the property is not sold to a charter school, another school district, a county office of education, or an agency that will use the property exclusively for the delivery of child care and development services. If SAB subsequently makes a finding that the sale is subject to Education Code 17462.3, the district shall return the funds to the SAB within 90 calendar days of the finding. (2 CCR 1702)

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#### **Legal Reference:**

##### **EDUCATION CODE**

*17219-17224 Acquisition of property not utilized as school site; nonuse payments; exemptions*

*17230-17234 Surplus property*

*17385 Conveyances to and from school districts*

*17387-17391 Advisory committees for use of excess school facilities*

*17400-17429 Leasing property*

*17430-17447 Leasing facilities*

*17453 Lease of surplus district property*

*17455-17484 Sale or lease of real property, especially:*

*17462.3 State Allocation Board program to reclaim funds*

*17485-17500 Surplus school playground (Naylor Act)*

*17515-17526 Joint occupancy*

*17527-17535 Joint use of district facilities*

*33050 Request for waiver*

*38130-38139 Civic Center Act*

##### **GOVERNMENT CODE**

*50001-50002 Definitions*

*54220-54232 Surplus land, especially:*

*54222 Offer to sell or lease property*

*54950-54963 Brown Act, especially:*

*54952 Legislative body, definition*

##### **PUBLIC RESOURCES CODE**

*21000-21177 California Environmental Quality Act*

##### **CODE OF REGULATIONS, TITLE 2**

*1700-1702 Surplus property; use of proceeds*

##### **COURT DECISIONS**

*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District, (2006) 139 Cal.App.4th 1356*

##### **ATTORNEY GENERAL OPINIONS**

*94 Ops.Cal.Atty.Gen. 82 (2011)*

##### **Management Resources:**

##### **CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS**

*Closing a School Best Practices Guide*

##### **OFFICE OF PUBLIC SCHOOL CONSTRUCTION PUBLICATIONS**

*Unused Site Program Handbook, December 2015*

##### **WEB SITES**

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

*California Department of Education, School Facilities Planning Division:*

*<http://www.cde.ca.gov/ls/fa>*

*Coalition for Adequate School Housing: <http://www.cashnet.org>*

*Office of Public School Construction: <http://www.dgs.ca.gov/opsc>*

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~~Vacant classrooms in operating schools shall be made available for rent or lease to other school districts, educational agencies, governmental units, non-profit organizations, community agencies, professional agencies, commercial and non-commercial firms, corporations, partnerships, businesses, and individuals.~~

~~Priority in leasing or renting vacant classroom space shall be given to educational agencies, particularly those conducting special education programs.~~

~~In the event that a school district contracts to utilize a classroom(s), the agreement shall spell out detailed responsibilities of the parties with respect to student control/discipline, scheduling and use of related facilities.~~

~~The opening and accepting of all rental and leasing proposals shall be declared at a public meeting.~~

~~A District advisory committee known as the Joint occupancy advisory Committee shall be established 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.~~

~~The Joint Occupancy Advisory Committee shall consist of not less than seven (7) nor more than eleven (11) members, and shall be representative of the following:~~

- ~~1. The ethnic, age group and socio-economic composition of the District.~~
- ~~2. The business community, such as store owners, managers or supervisors.~~
- ~~3. Landowners and renters.~~

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~~4. Teachers and administrators.~~

~~5. Parents of students.~~

~~6. Persons with expertise in environmental impact, legal contracts, building codes, and land use planning.~~

~~7. Representatives from CSEA (California School Employees Association).~~

~~By May 15 of each school year, the District Advisory Committee shall:~~

~~1. Review the projected school enrollment and other data as provided by the District to determine the amount of surplus space.~~

~~2. Establish and, if necessary, update a priority list of use of surplus space that will be acceptable to the community.~~

~~3. Cause to have circulated throughout the attendance area a priority list of use of surplus space and provide for hearings of community input to the Committee on acceptable uses of space when deemed necessary.~~

~~4. Make a final determination of limits of tolerance for use of space.~~

~~5. Forward to the District Governing Board a report recommending new and continuing use of surplus space.~~

~~A local Site Advisory Committee shall be established at each school where leasing or renting is authorized.~~



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**The Committee shall consist of membership as follows:**

- 1. Two (2) parents.**
- 2. Two (2) neighborhood non-parent residents living within the attendance boundary.**
- 3. Two (2) school staff members.**
- 4. Principal of the school.**

**The duties of the Committee shall be:**

- 1. To implement the policies established by the Board of Education regarding joint occupancy.**
- 2. To work under the guidance of the District Joint Occupancy Advisory Committee.**
- 3. To assist the real estate broker in seeking out leases for the Joint Occupancy Program.**
- 4. To affirm the acceptability of prospective lessees, who meet Board of Education approved criteria, at the local school site.**

**The Board of Education may employ a licensed real estate broker as its leasing agent to secure lessees and to negotiate the terms of the leases or rentals. All leases will be approved by the Board of Education.**

**The program shall be coordinated by the Director of Administrative Services or a designee appointed by the Superintendent.**

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~~The building principal shall act as the Joint Occupancy Resident Manager. The principal shall serve as the site contact person for the lessees regarding questions and requests. He/she will refer requests/needs to the proper department (i.e. Business Office, Maintenance, Custodial, Groundskeeping, etc.).~~

### Zoning Procedure

- ~~1. A master list of potential uses are to be prepared which City and District staff feel, from a land use and educational perspective, would be compatible with a neighborhood in general.~~
- ~~2. The District shall apply for Planned Development (PD) Zoning which requires that permitted uses be specified. Based on the master list, District Joint Occupancy Advisory Committee and the Local Site Advisory Committee shall determine which uses would be desirable for a given school. Subject to City Council approval of the zoning, the uses selected would become the permitted uses.~~
- ~~3. Upon approval of the Planned Development Zone, the District shall be authorized to proceed with a leasing program within the Use List selected.~~

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ADOPTED: September 16, 1980