



Important Considerations When Leasing Your District Building or Facilities

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Introduction

- Steps to Take Before Leasing Property
 - Approvals and Procedures to Lease Property
- Awarding Lease to a Tenant
 - Lease to Public Agency
 - Public Competitive Bidding
 - Short Term Leases
- Key Lease Terms

Steps to Take Before Leasing Property

1. Determine Property is Surplus
2. Board Resolution
3. Publish Notice

Step One: Determine that Property is Surplus

- Review Facility Master Plan
- Consider Future Program Needs
- Surplus Property:

“[a]ny 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.”

Ed. Code § 81360



Step Two: Board Resolution

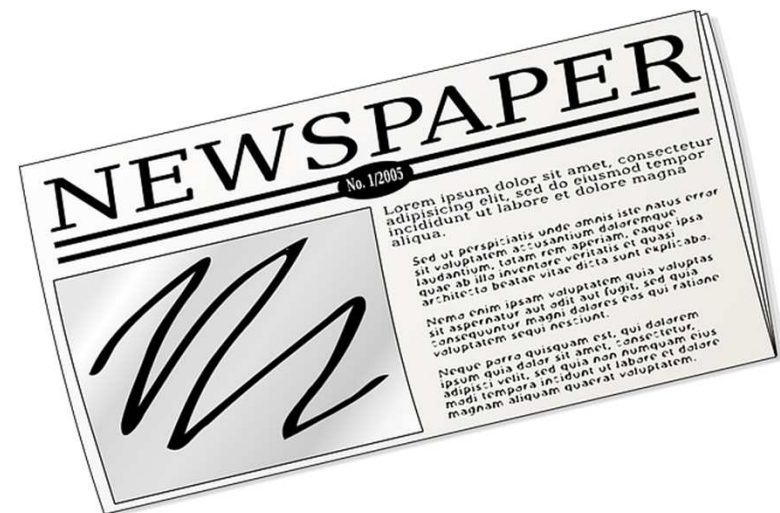
- Board Adopts Resolution Declaring Intent to Lease Property
 - Regular Open Meeting
 - Need Two-Thirds Vote of All Members
- Board Must Make the Following Findings Via Resolution:
 - Property is not and will not be needed by district for school classroom building in the foreseeable future;
 - Property is surplus to the district's needs;
 - Board intends to lease the property.

Step Two: Board Resolution

- Resolution Must Include:
 - Description of Property to be Leased
 - Minimum Rental Price
 - Terms and Conditions of Lease
 - Commission Amount or Rate, if any
 - Option of the Board to Reject all Bids
 - Time and Place at which Board will Receive and Consider Sealed Bids.

Step Three: Publish Notice

- Publish Notice of Resolution of Intention to Lease
- Post in 3 Public Places in District for at least 15 Days Before Bid Opening
- Publish in Newspaper Once a Week for 3 Successive Weeks



Special Considerations

- Required to Provide Notice to Local Planning Commission (?)
- Offers to Public Entities (?)
 - Only applies to Leases with Option to Purchase (Ed. Code § 81365.5)



Lease With Public Agency

- Separate Rules for Leases to Public Agency
 - Lease of property to federal government, state, county, city, special district, or any other school district need not only comply with Ed. Code §§ 81430 to 81433.
- Board Must Find Property is Surplus
- Board Resolution and Publication
- Mutually Agreeable Terms and Conditions



Public Competitive Bidding

- District may Lease Property to Public via Competitive Open Bidding Process
- Open Bids at Public Meeting
- Board Must Accept Highest Bid that Conforms with Lease Requirements
- Board May Reject All Bids

Public Competitive Bidding

- Board may Delegate Officer to Open Bids
 - Board Must Still Accept Bid, or Reject All Bids, at a Subsequent Meeting
- Exception to High Bid Requirement
 - Apply to Board of Governors of California Community Colleges for Waiver
 - Board of Governors will Determine if Waiver is in Best Interests of District

Exception: Short Term Leases

- District May Avoid Most Leasing Requirements for Short Term Leases
- Buildings, Grounds, or Space Not Needed for Academic Activities
- Term Over 5 Days, Less than 5 Years
- Can Avoid Public Competitive Bidding Requirements

Exception: Short Term Leases

- Board and Lessee May Agree on Terms
- Public Notice and Agenda Requirements
 - Description of Proposed Lease
 - Methodology to Determine Lease Rate
- Lease Must Include Two Conditions:
 - Lease is Subject to Renegotiation
 - Lease may be Rescinded after 60 Days' Notice

Key Lease Terms

- Legal and Enforceable Document
 - Establish Relationship
- Importance of Language
 - Clear and Unambiguous
 - Identify the Duties and Responsibilities of Each Party
 - Don't Include a Provision Just Because it is Always in Leases
 - If you Don't Understand a Provision, Revise for Clarity
- Ensure Terms Match Resolution



Key Lease Terms

- Recitals
 - Identify District as Owner of Property
 - Identify Precise Premises to be Leased
 - Identify Lessee
 - Establish that Board Found Property is Surplus
 - Set Forth District's Statutory Authority to Enter into Lease
 - Not Valid until approved by Board

Key Lease Terms

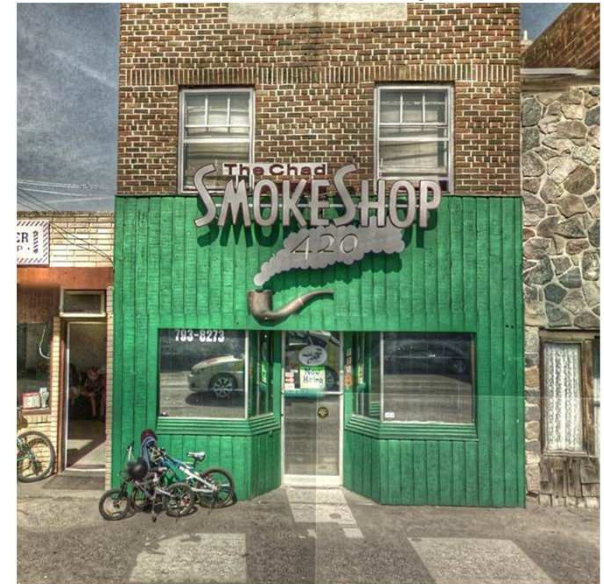
- Term
 - Commencement/Delivery Date
 - Renewal Options
- Payment
 - Rent Amount
 - How and When Payment Due
 - Rent Adjustments and Increases
 - Late Payment Fees
 - Security Deposit
 - Taxes



Key Lease Terms

- Use

- Purpose of Lease and Lessee's Permitted Uses
- Lessee Responsible for all Use or Operating Costs
- Lessee will Comply with all Applicable Laws or Regulations at all Times during Lease
- Require Lessee to Secure, at its Sole Expense, all Necessary and Required Permits and Licenses



Key Lease Terms

- **Common Areas**
 - Identify Permitted Common Areas
 - Establish Each Parties' Duties and Responsibilities to Use and Maintain Common Areas
 - Require Lessee to Cooperate with Other Tenants, if applicable
 - Permitted Parking Areas
- **Utilities**
 - Which Party Pays for Which Utilities
 - Custodial Services

Key Lease Terms

- Tenant Improvements or Alterations
 - Construction
 - Determine Financially Responsible Party
 - Signs
- Repairs and Maintenance
 - Tenant Should Keep and Maintain Premises in Good Condition
 - Repairs Caused by Tenant's Use?
 - Repairs Caused by Wear and Tear?
 - Maintenance and Replacement of Facility, Building System, and Equipment



Key Lease Terms

- District's Right to Inspect or Enter Upon Property
- Liens
- Lessee's Employees
 - Not Employees or Agents of District
- Assignment or Subletting

Key Lease Terms

- **Insurance**
 - General Liability
 - Automobile Liability
 - Fire Insurance
 - Workers' Compensation
- **Indemnification**
 - Lessee will indemnify and defend District for any liability caused by Tenant's possession of premises.

Key Lease Terms

- **Damage to Premises**
 - Establish Parties Rights and Duties if Property is Damaged or Destroyed
- **Default by Lessee**
- **Termination**
 - For Cause
 - For Breach of Default
 - For Convenience

Key Lease Terms

- **Condition of Premises At End of Lease**
 - Premises Returned in Good Condition
 - Return of all keys
 - Removal of Improvements of Alterations
- **Holding Over**
- **Alternative Dispute Resolution**
 - Mediation
 - Arbitration
 - Attorneys' Fees

Key Lease Terms

- **General Provisions**
 - Integration Clause
 - Severability
 - Counterparts
 - Amendments
 - No Discrimination
 - Governing Law

Thank You!

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