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COVID-19 Advisory



Reopening Considerations for Third Party Use of School Facilities Under the Civic Center Act

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Some California counties have reached the milestones required to begin reopening school facilities for use by the community. As plans are made whether to reopen school sites for the 2020-21 school year, school districts are beginning to confront the challenges of managing third party use of school property and facilities under the Civic Center Act. It is important to remember that the management, direction and control of school facilities is vested in the district's governing board, and that the board has the power to determine whether and when facilities will open, if at all, to accommodate Civic Center Act user groups. A governing board's decision in this regard will be informed by its partnership with local stakeholders and County officials, and are further subject to Governor's orders during the pandemic.

As districts begin to address new or continuing third party use of its facilities, they may want to consider several legal and practical factors, including:

- **Confirmation that Specific Use Is Permitted and that Compliance with County Order Is Verifiable**

Whether a facility user has an existing facility use agreement or permit, or is seeking a permit to use district facilities for the first time, districts must confirm the current permissible activities allowed by their applicable County Health order. For example, while the public may gather for conduct of religious services, restrictions on the number of people gathering indoors must be observed, along with social distancing protocols. In addition, certain outdoor sports may be allowed to continue, but gathering of spectators is not permitted. The district may need to devise new procedures to verify that a specific requested use is permitted and that user groups are operating in compliance with local orders while using school facilities. If the district will not be able to verify compliance with orders, it may wish to consider refusing to issue permits for that specific type of use.

- **Updating of Civic Center Act Policies and Regulations**

While Civic Center policies and regulations are available in template form for school districts to adopt, most policies may not take into consideration some of the specific issues that may arise as a result of the pandemic. For example, use groups and specific kinds of events and activities must conform to the minimum standards set forth in State and local County Health orders, and large group events and performances may need to be eliminated. Maintenance and deep cleaning requirements and expectations of user groups may need to be evaluated. Insurance coverage requirements for third party users may need to be increased or adjusted. Cost formulas may need to be revised. Board policies and administrative regulations are useful tools for reviewing current policies and creating new or revised parameters for Civic Center Act use of facilities.

- **Updating Facility Use Agreement or Preparation of an Addendum to Cover COVID-Specific Risks**

A well-drafted facility use agreement or permit covers indemnity, insurance, condition of the property, risk/cost allocation between the parties, and requirements for deep cleaning and/or maintenance of the facility, among other terms. The agreement provides a road map and instruction guide for facility use, and in the current COVID-19 environment, provides

additional guidance on mitigating risk, including mitigating the spread of COVID-19. Districts should be reviewing their forms of agreement/permit to ensure that terms cover pandemic-related concerns appropriately. Users who have existing or continuing agreements should be required to sign an addendum to cover such issues as:

A specific hold-harmless clause and updated insurance requirements. While the school district's standard indemnity language contained in facility use documents may be broad enough to protect against the additional risks during the pandemic we now face, it is always a prudent step to review the language with the specific risks in mind. If in doubt, inclusion of a specific risk, rather than reliance on a general category of risks, is advisable. Separate from indemnity, but of equal importance, is a review by the district's risk manager of the insurance requirements for facility use to confirm that proper insurance types and limits are being required and delivered prior to facility use.

An "As-Is" clause. Another risk mitigation measure for school districts to consider is the state of the property, including any known or potentially dangerous conditions. While districts should continue to make efforts to identify and remediate potentially hazardous or unsafe conditions within its facilities, it is also prudent to ensure that facility users have inspected and signed off on the current state of the facilities, such that they are accepting use of those facilities in their "as-is" condition for the term of the particular use. These provisions work in tandem with other protective measures, such as indemnity and insurance requirements, to mitigate the risk of financial loss to the district's assets, while allowing Civic Center uses to continue.

- **Increasing Fees for Deep Cleaning**

One of the key features of the social distancing protocols contained in County Health orders, as supplemented by State guidance for specific industries, is the minimum requirements and/or recommendations for "deep cleaning" of district facilities using EPA-approved products effective against COVID-19 before and after use by each distinct user group. The costs of deep cleaning, including custodial staff time, should be factored into the facility use charges passed on to each user group. Additionally, the district must consider whether it is appropriate for the user to perform the cleaning during or after its activities on district property, or whether district janitorial staff or a third party cleaning service should perform those tasks. All of these decisions must be clearly delineated in the use or permit documentation.

DWK's Business & Property and Construction practice group has developed template Facility Use Agreements, interim addenda to Facility Use Agreements, Board Policies, Administrative Regulations, and facility use fee spreadsheets that can be uniquely tailored to assist districts safely and adeptly navigate the ever-changing COVID-19 landscape.

Should you need any assistance in updating your District's forms, policies, or fee calculations, or if you would like to discuss further the risks and rewards of reopening facilities under the Civic Center Act, please contact an attorney in our [Business & Property](#) and [Construction](#) practice groups. For more information regarding the impact of COVID-19 on your district's operations, please visit our COVID-19 Resources page at <https://www.dwkesq.com/covid-19-resources-page/>.