



K-12 Facility Use Guidelines

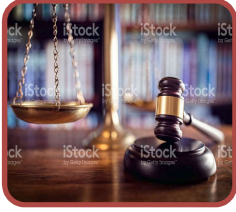
Every public school facility is a civic center.

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Version dated January 4, 2017



Facility Use at a Glance



Comply with Civic Center Act

- Education Code Section 38130 – K-12
- Education Code Section 82537 – Community Colleges

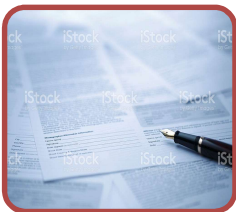


Maintain a District Board Policy Consistent with the Civic Center Act

- Sample District Policy



Implement an approval and authorization process consistent with the District's Board Policy



Use a standard Facility Use Agreement

- See Sample Facility Use Agreement for K-12 Districts
- See Sample Facility Use Agreement for Community Colleges



Requirements for User Groups

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**CALIFORNIA CIVIC CENTER ACT, EDUCATION CODE
SECTION 38130-38139 22**



K-12 FACILITY USE GUIDELINES

BACKGROUND

Every public school facility is a civic center.

The Civic Center Act, Education Code Section 38130 et seq. provides that “[e]very public school facility is considered a civic center where citizens, school-community councils, and clubs as well as senior, recreation, education, political, artistic, and other organizations may meet. The school district may grant the use of school facilities and grounds upon certain terms and conditions deemed proper by the governing board and subject to specified limitations, requirements, and restrictions set forth within the law.”¹

GOAL

The Civic Center Act states that “[e]very public school facility is ... a civic center.” Accordingly, Districts are frequently under pressure from businesses, public entities, and members of the public to provide access for use of their facilities. This could pose a significant premises liability exposure to the District if the use is not controlled and strictly risk managed. **The goal of these guidelines is to balance the mandate for the use of school facilities as a civic center with the need to manage appropriate and safe use of school facilities while maintaining minimal liability impact to the District.**

SPECIFIC OBJECTIVES

Promulgation of a Board Policy

Districts should draft, approve, and implement a Use of Facilities Policy. Education Code Section 38130 et seq. provides that “[t]he [D]istrict may grant the use of school facilities and grounds upon certain terms and conditions deemed proper by the governing board and subject to specified limitations, requirements, and restrictions set forth within the law.” The framework for a sample policy is outlined in the next section of these guidelines.

Development of a Facility Use Approval and Authorization Process

Districts should develop an approval and use process that includes:

1. The acceptability and availability of the facility for the proposed use,

¹ A complete copy of the Civic Center Act is included at the end of this chapter. The current version can be found at [this URL](#).

2. Considerations associated with the type of user,
3. The acceptability of the proposed use, and
4. The costs (*direct, indirect* (such as liability and insurance), and, in the case of Category 3 users, *market*) and cost allocations (i.e., who pays for each itemized cost, the user or the District) associated with the proposed use.

Use of a Standard District Facility Use Agreements

Districts should develop and use standard facility use agreements. Since different indemnification and insurance standards apply to Education Code Section 38134(a) users (*in general, such users are nonprofit organizations, clubs, associations [other than public agencies] organized to promote youth and school activities, or recreational youth sports leagues that charge participants no more than a nominal fee {wherein “nominal fee” means an average of no more than sixty dollars per month}, which will not engage in fund raising activities not designed to benefit youth or a public school in the opinion of the District Board*) and other users not covered by this section of the Civic Center Act, separate, standard facility use agreements should be developed and used for each use type. See **Sample District Form—Use of Facilities 1** (for Category 1 and 3 facility users) and **Sample District Form—Use of Facilities 2** (for Category 2 facility users) near the end of these guidelines for sample agreements.

Consideration of District Liability Concerns

Districts should make sure that their liability concerns are addressed by requiring safety inspections of facilities, by requiring good housekeeping and maintenance of facilities, and by requiring use to provide liability insurance (and, as appropriate, designated insured additional insured endorsement naming the District as an additional insured) in accordance with the District’s Use of Facilities’ policy. Typically, commercial general liability insurance with limits of at least \$1 million per occurrence and \$2 million in aggregate should be required of all users. In addition, a designated insured additional insured endorsement to such coverage that names the District, its trustees, officers, employees, and agents should be required for user groups for which Education Code Section 38134(a) does **not** apply. (If alcohol service is contemplated for user groups for which Education Code Section 38134(a) does **not** apply, then liquor liability insurance as indicated on **Sample District Form—Use of Facilities 1** should also be required.)

USE OF FACILITIES POLICY

The District should have a Use of Facilities Policy to ensure that the District is consistent

with the Civic Center Act. It is important that all user groups be required to adhere to the District's policy with regard to the use of their facilities. Lack of consistent, clear facility use rules and procedures could open the District to allegations of discrimination should another group not be allowed to use a facility due to lax or inconsistent enforcement of rules and procedures.

The Use of Facilities Policy should include the following:

- Listing of the priority order of usage depending upon the nature of the group.
 1. District activities
 2. Student Body activities
 3. Other Public Entity activities
 4. Non-Profit Organization activities
 5. Community activities
 6. For-Profit Business activities
- List of which facilities the District will make available for public use and the circumstances under which they will be made available. The District has certain facilities which should not be made available for public use such as offices, vocational education classrooms (woodshop, auto shop, metal shop, welding, etc.), chemistry and biology laboratories, maintenance facilities, etc.
- Require that all user groups for which Education Code Section 38134(a) does **not** apply sign an "Application and Permit for Use of Facilities" (see **Sample District Form—Use of Facilities 1** (a copy of this form is located near the end of this chapter)) agreeing to hold harmless the District, its officers, employees and agents from any losses which may result from the user group's use of the facilities. Be sure that the person signing on behalf of the user group has authority to do so. Please refer to the sample form at the end of this chapter which the District may wish to adopt or modify as needed. Note that user groups for which Education Code Section 38134(a) does **not** apply may be allowed alcohol use when AB 2073 conditions apply (e.g., there are no pupils on campus and the District has approved such use (see California Business and Professions Code Section 25608)²). **Sample District Form—Use of Facilities**

² Also, Note that California Business and Professions Code Section 23789, in part, currently states that "[t]he [D]epartment [of Alcoholic Beverage Control] is specifically authorized to refuse the issuance, other than renewal or ownership transfer, of any retail license ... for premises located **within at least 600 feet of schools** This distance shall be measured pursuant to rules of the

1 has additional terms and conditions for those groups seeking to serve alcohol. Note that use of responsible beverage servers should be mandatory, limitations on the type and quantities of alcohol service per attendee should be enforced, and provisions for liquor liability insurance that names the District an additional insured from the group should be required.

- Require that all user groups for which Education Code Section 38134(a) applies sign an “Application and Agreement for Use of Facilities” (see **Sample District Form—Use of Facilities 2** (a copy of this form is located near the end of this chapter)). Be sure that the person signing on behalf of the user group has authority to do so. Please refer to the sample form at the end of this chapter which the District may wish to adopt or modify as needed.
- Require that all users provide liability insurance coverage with limits acceptable to the District. These liability limits will depend upon the nature and risks inherent in the activity based upon the potential for losses and injuries. ASCIP recommends a minimum limit of \$1,000,000 per occurrence for General Liability that all users wherein Education Code Section 38134(a) applies; ASCIP recommends a minimum limit of \$1,000,000 per occurrence for General Liability which includes an additional insured endorsement equivalent in coverage scope to a Designated Insured additional insured endorsement (or an ISO CG 20 26 11 85 form or its equivalent) naming the District, its elected officials, trustees, officers, employees, **[volunteers,]** and agents additional insureds for all users wherein Education Code Section 38134(a) does **not** apply.
- Require the user group to reimburse the District for **direct costs** relating to the use of the facility. These would include items such as utilities, custodial and maintenance overtime to set up, tear down, and clean up the facilities after use, wear and tear of the facility, such as extra irrigation that may be required due to the extensive use of an athletic field by the group, etc. The District should have a fee schedule outlining the charges to be assessed against the user groups so that all costs are standardized. The District shall charge **fair rental value** for facilities to business organizations which are making a profit from the activity, such as a commercial venture.

Rules and regulations relative to the use of facilities, such as:

- Prohibition on the serving of alcohol.

department. The California ABC is currently working on establishing rules which will coordinate AB 2073 conditions of use with ABC rules and regulations.

- Prohibition on the use of outdoor or indoor pyrotechnic devices.
- Prohibition on the use of trampolines.
- **[Prohibition on the use of firearms]**.
- Prohibition on hazardous recreational activities as delineated in Government Code Section 831.7³.
- Prohibition on the use of mechanical amusement devices.
- A statement that the user group is responsible for any damage to District facilities, normal wear and tear excepted.
- User group is responsible for providing adequate security for the activity, as deemed appropriate by the District.
- User is responsible for inspecting the facility prior to use to identify hazards. Additionally, user shall use the facility in the current “as is” condition.
- Any other rules and regulations deemed appropriate by the District.

At times, a group requesting the use of District facilities does not have liability insurance coverage. Such groups may purchase coverage through various insurance vehicles. Please contact your ASCIP risk services consultant for details about these programs. Alternatively, they may approach community service organizations such as Kiwanis, Rotary, Elks, churches, foundations, booster groups, or other similar organizations, and request that they sponsor the user group; this would enable the user group to have liability coverage through the sponsoring organization.

³ As used in this section, "hazardous recreational activity" means a recreational activity conducted on property of a public entity that creates a substantial, as distinguished from a minor, trivial, or insignificant, risk of injury to a participant or a spectator. "Hazardous recreational activity" also means: (1) Water contact activities, except diving, in places where, or at a time when, lifeguards are not provided and reasonable warning thereof has been given, or the injured party should reasonably have known that there was no lifeguard provided at the time. (2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given. (3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, mountain bicycling, boating, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, self-contained underwater breathing apparatus (SCUBA) diving, spelunking, skydiving, sport parachuting, paragliding, body contact sports, surfing, trampolining, tree climbing, tree rope swinging, waterskiing, white water rafting, and windsurfing. For the purposes of this subdivision, "mountain bicycling" does not include riding a bicycle on paved pathways, roadways, or sidewalks. For the purpose of this paragraph, "body contact sports" means sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants.

Districts are sometimes asked to provide sponsorship for an event or other activity based on a user group's inability to comply with the District's "Use of Facilities" policy. In most cases, this is not recommended, since the group leaders/organizers may inadvertently become "volunteers" and any injuries or losses, which may occur, could become the District's responsibility.

USE OF OUTDOOR FACILITIES

It is relatively easy for the District to limit the use of indoor facilities since access is easily controlled. However, it takes more effort to control the use of outdoor facilities such as football fields, baseball fields, swimming pools, and playground areas during non-school hours.

The District should take steps to minimize liability exposures by encouraging groups using the outdoor facilities to go through the formal process of District approval and maintaining facilities. The following are suggested for consideration:

- Signs should be posted at the facilities advising groups of the approval for use of facilities procedure in order to have the facilities reserved on a priority basis. For example, the sign could read: "Use of this field is by permit only. Only groups that have obtained written permission from the District have consent to use these facilities. To obtain written permission, contact _____ at the office of the school".
- Any group, which has followed the formal Use of Facilities procedure and completed an Application for Use of Facilities form and provided a Certificate of Insurance, should have priority for facility use. A permission pass card should be issued to that group which could read as follows:

"The _____ group has permission to use _____ facilities at _____ on _____ between the hours of _____ and _____ and has priority over all other users."

- Facilities, which are surrounded by fencing, should have gates or other types of entrances designed to limit access to people on foot or bicycles, but not vehicles.

SAFETY INSPECTIONS

One of the most common claims against a District is the allegation that a dangerous or defective condition of equipment or premises caused an injury. To prevail on a defective or dangerous condition allegation, the plaintiff would have to show that a defect existed

and that the District did not provide any corrective action.

It is very important that the District conduct regular inspections of its facilities, especially those which are open to the public, as a part of the District's Injury and Illness Prevention Program (IIPP) in an effort to reduce the potential for injury and illness to faculty, staff, students, and guests of the district and to comply with the Cal/OSHA General Industry Safety Orders Section 3203 requiring an Injury and Illness Prevention Program (IIPP). This will enable the District to either correct hazardous conditions which are uncovered or allow other preventative measures to be taken, such as posting of warning notices, orange cones, caution tape, etc. In addition to worker safety law, California has specific laws related to playground safety (see Health and Safety Code sections 115725-115735). It begins:

- “(a) All new playgrounds open to the public built by a public agency or any other entity shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the United States Consumer Product Safety Commission.
- (b) Replacement of equipment or modification of components inside existing playgrounds shall conform to the playground-related standards set forth by the American Society for Testing and Materials and the playground-related guidelines set forth by the United States Consumer Product Safety Commission.
- (c) All public agencies operating playgrounds and all other entities operating playgrounds open to the public shall have a playground safety inspector, certified by the National Playground Safety Institute, conduct an initial inspection for the purpose of aiding compliance with the requirements set forth in subdivision (a) or (b), as applicable. Any inspection report may serve as a reference when upgrades are made, but is not intended for any other use.”

Although there may be budgetary constraints in regard to certain types of repairs and corrective measures, it is important that the District take reasonable steps to mitigate the risk of injury. Failure to mitigate these hazardous conditions will inevitably result in cost to the District and/or its insurer.

The District should use a customized inspection checklist for the areas and facilities at each site. This will enable the inspections to be conducted with a minimal amount of time since the workload can be spread among many different persons rather than be delegated

as the sole responsibility of a single individual.⁴

CIVIC CENTER ACT – GENERAL INFORMATION

Education Code Section 38130 et al., commonly referred to as the “Civic Center Act” states that “there is a Civic Center at each and every public school facility and grounds.” The Act also states which groups are entitled to use District facilities and stipulations that apply. The Act provides for three categories of user groups as follows:

Category 1:

The District “may grant the use of school facilities or grounds as a Civic Center upon the terms and conditions the Board deems proper” for the following purposes:

- Public, literary, scientific, recreational, educational, or public agency meetings.
- Discussion of matters of general or public interest.
- The conduct of religious services for temporary periods on a one time or a renewable basis provided the Governing Board charges the church or religious organization an amount at least equal to the District’s direct costs.
- Childcare or day care programs for children of preschool and elementary school age.
- The administration of examinations for the selection of personnel by public agencies.
- Supervised recreational activities.
- A community youth center.
- Other purposes deemed appropriate by the Governing Board.

The District may charge for its direct costs such as supplies, utilities, custodial services and salaries paid to District employees, which are necessitated by the organization’s use of the facilities and grounds.

Category 2:

The District “shall grant the use of school buildings, grounds, and equipment”, when an alternative location is not available, to non-profit organizations, clubs or associations organized to promote youth and school activities of the District, and recreational youth sports leagues that charge participants no more than a nominal fee wherein “nominal fee” means an average of no more than sixty dollars (\$60) per month, as determined by the

⁴ Legal References: CCR Title 8 Section 3203 and Health and Safety Code Sections 115725 to 115735.

Governing Board, such as, but not limited to:

- Girl Scouts, Boy Scouts, Campfire Girls
- Parent-Teachers' Associations
- School Community Advisory Councils
- American Red Cross (Emergency Shelters)
- AYSO

The Education Code permits the Governing Board to ... "charge an amount not to exceed its direct costs..." i.e., employee overtime, utilities, clean up, etc., for the use of facilities by these groups.

The Education Code requires that the Governing Board first adopt a policy specifying which activities shall be charged. The policy should also include the amount of these direct cost charges or the basis of calculating the charges.

Category 3:

In the case of entertainment, social functions or meetings where admission fees are charged or contributions are solicited, and the net receipts are not expended for the welfare of the pupils, of the District, or for charitable purposes, the District shall charge the user an amount equal to the fair rental value of the property. Fair rental value means the direct cost of the District plus the amortized cost of the school facilities or grounds used for the duration of the activity.

In no event is the District allowed to authorize use to an individual, society, group, or organization intending to further any movement for the purpose of overthrowing the Government of the United States by force, violence or other unlawful means.

REQUIREMENTS FOR USER GROUPS

The District must take all necessary measures to reduce its exposure to property and liability losses whenever any entity or group asks permission to use its facilities. There is nothing in the Education Code which precludes the District from requiring user groups to provide the following:

- With the exception of those entities described in Education Code Section 38134(a), a written agreement to hold the district harmless from any loss or liability arising out of use of the facility.

- Evidence of adequate insurance by means of a Certificate of Insurance (and, for those entities not specified in Education Code Section 38134(a), an additional insured endorsement in favor of the District).
- With the exception of those entities described in Education Code Section 38134(a), naming the District as additional insured by a separate endorsement to the user group's liability policy.

In conclusion, the District has liability insurance to cover losses caused by its negligence, and the District must require all user groups to provide liability insurance to cover losses caused by their negligence.

SAMPLE DISTRICT FORM—USE OF FACILITIES 1

DISTRICT

APPLICATION AND PERMIT FOR THE USE OF FACILITIES BY A USER OTHER THAN AN EDUCATION CODE 38134(a) USER

Date of Application: _____ Facility: _____

Multi-Purpose Room _____ Kitchen _____ Classrooms(s): _____ Others: _____

Month: _____ Day(s) of Month: _____ Time(s): _____ No. of Attendees: _____

Facility will be furnished "AS IS" unless requests for furniture and equipment are indicated below. If equipment is available, a fee for its use may be assessed by the Business Office according to the _____ District (District) Fee Schedule.

Equipment or Furniture needed:

1. What is the purpose of the meeting? _____
2. Is admission charged? ____ If so, how much? ____
3. Will contributions be solicited or accepted? ____
4. Membership dues? _____ How much? _____
5. If yes on 2, 3, or 4 above, for what purpose will be net proceeds be used? _____
6. Is supervision by school personnel necessary? ____
If yes, indicate positions _____ and no. of hours: _____
7. Is alcohol service planned for this event (NOTE: host service of beer and wine only, no cash bar)? ____ If this option is selected, additional terms and conditions shall apply.

(Attach additional pages if necessary.)

CONDITIONS FOR PERMISSION TO USE SCHOOL FACILITIES: FACILITY USER agrees that the District makes no representations or warranties as to the condition of the facilities which the FACILITY USER is entitled to use, and FACILITY USER agrees to take such property and facilities "AS IS." FACILITY USER acknowledges that it shall be FACILITY USER's responsibility and obligation to assure that the property and facilities are in proper and safe condition to be used for the purpose anticipated; and FACILITY USER acknowledges that it shall be obligated to inspect such property and facilities before they are used and to take affirmative steps where necessary to warn users or rectify hazards in order to prevent injuries to property and persons. APPLICANT FOR FACILITY USE agrees to refuse the use of the property if unsatisfactory conditions are not rectified prior to scheduled use. FACILITY USER further acknowledges receipt of a copy of the District's RULES AND REGULATIONS FOR USE OF FACILITIES. By the Applicant's signature below, the FACILITY USER agrees to abide by all rules and regulations governing the use of the District's facilities and the conduct of all meetings. FACILITY USER further acknowledges that facility use is contingent upon full compliance with these rules as well as any site rules specified by the site administrator.

ALL PERMISSIVE USERS, WHOSE USE IS NOT MANDATED BY THE CIVIC CENTER ACT, AGREE BY THEIR SIGNATURE BELOW TO HOLD THE _____ DISTRICT, ITS GOVERNING BOARD AND THE INDIVIDUAL MEMBERS THEREOF AND ALL DISTRICT OFFICERS, AGENTS AND EMPLOYEES FREE AND HARMLESS FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE THAT MAY ARISE OUT OF, OR IN ANY WAY BE CONNECTED WITH THIS FACILITY USE AGREEMENT. HOWEVER, THIS AGREEMENT DOES NOT PERTAIN TO LOSSES OR INJURIES THAT ARE THE RESULT OF THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DISTRICT.

Applicant must submit this form to the Site Administrator fifteen (15) working days prior to the date of use to insure time for processing. Applicant acknowledges that the District's willingness to rent this facility is contingent upon approval by the Site Administrator and by the District's Business Services Department. Permission will not be granted until all necessary documents such as certificates of insurance are received by the District. User will be mailed a copy of the Agreement for the Use of School Facilities when permission is granted and this copy of the Agreement should be carried by the user as proof of permission for facility use.

In accordance with **Education Code Sections 38135-38136**, the following is statement shall be certified:

STATEMENT OF INFORMATION

The undersigned states that, to the best of his or her knowledge, the school property for use of which application is hereby made will not be used for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States by force, violence or other unlawful means;

That _____, the organization on whose behalf he or she is making application for use of school property, does not, to the best of his or her knowledge, advocate the overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means, and that, to the best of his or her knowledge, it is not a Communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States. This statement is made under the penalties of perjury.

_____ (Signature) _____ (Date)

Name of FACILITY USER's Organization: _____

Name of Representative/Agent (please print): _____

Signature of Representative: _____

Address _____

Work Phone: () _____ Other Phone: () _____

Email _____

APPLICANT: PLEASE DO NOT WRITE BELOW THIS LINE.

TO THE SITE ADMINISTRATOR: This request must be submitted to Business Services ten (10) working days prior to event to insure that necessary processing may be completed. Your signature indicates that the above request will not conflict with the education program and that the facility is available at the time requested.

Administrator's Signature _____ Date _____

Administrator's Comment or Conditions: (optional): _____

Are additional conditions for facility attached? _____ If so, number of pages: _____

Direct Fee or Fair Market Rental? _____ Fee Amount Due(\$): _____

DATE APPLICATION RECEIVED BY BUSINESS OFFICE: _____

APPROVED ___ NOT APPROVED ___

APPROVED WITH ALCOHOL USE ___

IF this event is APPROVED WITH ALCOHOL USE, the following additional terms and conditions apply.

Service: All alcohol service is on a host bar basis, beer and wine only. Service shall be by L.E.A.D trained (<http://www.abc.ca.gov/programs/Lead%20webpage.html>), responsible, licensed and insured beverage service provider. Alcohol service shall be by ticket only (issued by the permittee) with a limit of ___ tickets per attendee and service will be limited to the following timeframe, _____.

Liquor Liability: In addition to the general liability insurance requirement of the District, a liquor liability insurance policy with minimum limits of \$1 million per occurrence that names the District, its trustees, officers, employees, and agents additional insured is required.

SAMPLE DISTRICT FORM—USE OF FACILITIES 2
APPLICATION AND AGREEMENT FOR THE USE OF FACILITIES
BY AN EDUCATION CODE 38134(a) USER

Date of Application: _____ Facility: _____
Multi-Purpose Room _____ Kitchen _____ Classrooms(s): _____ Others: _____
Month: _____ Day(s) of Month: _____ Time(s): _____ No. of Attendees: _____

Facility will be furnished "AS IS" unless requests for furniture and equipment are indicated below. If equipment is available, a fee for its use may be assessed by the Business Office according to the _____ District (District) Fee Schedule.
Equipment or Furniture needed: _____

1. What is the purpose of the meeting? _____
2. Is admission charged? ____ If so, how much? _____
3. Will contributions be solicited or accepted? _____
4. Membership dues? ____ How much? _____
5. If yes on 2, 3, or 4 above, for what purpose will be net proceeds be used? _____
6. Is supervision by school personnel necessary? ____
If yes, indicate positions _____ and no. of hours: ____.

This Use of Facilities Agreement ("Agreement") is entered into by **[Name of District]** ("District") and **[Name of User]** ("User").

The User has requested, and the District has approved, the User's use of **[Specify the school and facilities covered by this Agreement]**, including restroom and parking facilities ("Facilities"), for the purpose(s) of **[Describe Purpose(s)]**, a use and relationship authorized under **Education Code 38131 and 38134(a)** in that User is a nonprofit organization, a club or association (other than a public agency) organized to promote youth and school activities, or a recreational youth sports league that charges participants no more than a nominal fee wherein "nominal fee" means an average of no more than sixty dollars (\$60) per month, which will not engage in fund raising activities not designed to benefit your nonprofit organization or a public school. Neither the User, nor its employees, agents, guests nor invitees are authorized to use any other real property, or physical improvements to real property, other than the Facilities covered by this Agreement.

This Agreement is effective from **[inception date]** to **[termination date]**, unless otherwise terminated or extended by a written document executed by both parties.

Use of the Facilities shall occur on dates and times mutually agreed to by the District and the User, as evidenced by a jointly executed writing. Such use shall not interfere with the District's ability to carry on educational activities, interfere with the District's ability to carry on recreational activities, or interfere with other potential users' authorized right to use District property, including the Facilities covered by this Agreement.

User's right to use the Facilities **[is subject to a direct fee of \$_____, determined to be the operational cost to the District for the User's use of the Facilities and evidence of adequate liability insurance by means of a Certificate of Insurance.] [is not subject to a direct fee but subject to and evidence of adequate liability insurance by means of a Certificate of Insurance.]**

At all times, the User, and its guests and invitees at the Facility, shall comply with the District's rules, regulations, and policies, copies of which are deemed to have been provided to the User prior to the execution of this Agreement. The User and its guests and invitees shall also (a) conduct themselves in accordance with all other potentially relevant federal, state or local laws or regulations, (b) respect the District's employees, students, and property, and (c) engage in safe and appropriate behavior in an effort to avoid harm, injury, disputes or altercations with others. The User is responsible for ensuring that its Directors, Officers, agents, employees, contractors, guests, invitees, and participants, as well as any other individual who will attend or view the contemplated activities at the Facilities, comply with these requirements.

User shall at all times, provide equipment and instructors trained, experienced, and otherwise suitable for the purposes of the User's intended use of the Facilities. User shall ensure that the District's property is not altered, modified or changed in any manner absent the District's express prior and written consent. Failure to comply with these obligations shall, at the discretion of the District, be a basis to immediately terminate this Agreement.

The District shall ensure that the Facilities are timely and properly made available for use by the User. The User waives any claim against the District for damages relating to its use of the Facilities, including, but not limited to, theft or destruction of the User's property.

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Application and Agreement for Facility Use by an EC 38134(a) User

The parties understand and agreed that certain rights and obligations are governed by **Education Code Section 38134(i)**, which states:

"Any school district authorizing the use of school facilities or grounds under subdivision (a) shall be liable for any injuries resulting from the negligence of the district in the ownership and maintenance of those facilities or grounds. Any group using school facilities or grounds under subdivision (a) shall be liable for any injuries resulting from the negligence of that group during the use of those facilities or grounds. The district and the group shall each bear the cost of insuring against its respective risks and shall each bear the costs of defending itself against claims arising from those risks."

Notwithstanding any other provision of law, this subdivision shall not be waived. Nothing in this subdivision shall be construed to limit or affect the immunity or liability of a school district under Division 3.6 (commencing with Section 810) of title 1 of the government Code, for injuries caused by a dangerous condition of public property.

This Agreement may be terminated due to the User's discontinuance of the activities contemplated by this Agreement, the District's need to modify or negate the use of the Facilities in order to carry out its required or offered educational or recreational activities, the impossibility or impracticability caused by any actual or planned change, the modification or repair to the Facilities, or to circumstances affecting the safety or health of anticipated users of the Facilities. Notice of the termination of this Agreement is effective on 60-days written notice, absent exigent circumstances requiring termination on a more expedited basis for health or safety issues.

Each provision of this Agreement shall be interpreted in a manner giving meaning and purpose to each term and provision and, to the fullest extent possible, rendering the Agreement, as a whole, valid and effective. If any provision of this Agreement is deemed invalid, all remaining provisions shall remain effective. All issues regarding the interpretation and effectiveness of this Agreement are controlled by California law, **with any disputes subject to binding arbitration, with the parties agreeing that such arbitration is to be conducted in the most expeditious and cost effective manner. The prevailing party in such an arbitration, at the arbitrator's discretion, may be awarded reasonable attorney's fees and costs.**

This is a fully integrated document, containing the entirety of the parties' agreements. Both parties must agree in writing to any change in the terms of this Agreement; neither oral modification nor course of conduct will be deemed a sufficient basis to alter or change the terms of this Agreement. The provisions of this contract cannot be waived, nor shall either party rely upon the actual or alleged failure to require complete compliance with all aspects of this Agreement as an excuse or basis not to carry out its own respective obligations.

In accordance with **Education Code Sections 38135-38136**, the following is statement shall be certified:

STATEMENT OF INFORMATION

The undersigned states that, to the best of his or her knowledge, the school property for use of which application is hereby made will not be used for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States by force, violence or other unlawful means;

That _____, the organization on whose behalf he or she is making application for use of school property, does not, to the best of his or her knowledge, advocate the overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means, and that, to the best of his or her knowledge, it is not a Communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States. This statement is made under the penalties of perjury.

By: _____ Dated: _____
As Authorized Agent of the "User"

This Agreement has been duly reviewed and approved by the authorized agents of the District and User, who warrant and represent that they have the power and authority to bind their respective principals to the terms of this Agreement

Dated: _____

By: _____ Title: _____
As Authorized Agent of the "User" Dated: _____

By: _____ Title: _____
As Authorized Agent of the "District" Dated: _____

THE CALIFORNIA CIVIC CENTER ACT, EDUCATION CODE SECTION 38130-38139

TITLE 2. ELEMENTARY AND SECONDARY EDUCATION [33000 - 64100] (Title 2 enacted by Stats. 1976, Ch. 1010.), **DIVISION 3.** LOCAL ADMINISTRATION [35000 - 45460] (Division 3 enacted by Stats. 1976, Ch. 1010.), **PART 23.** SUPPLEMENTAL SERVICES [38000 - 38139] (Part 23 repealed (by Sec. 6) and added by Stats. 1996, Ch. 277, Sec. 5.), **CHAPTER 4.** Miscellaneous Provisions [38110 - 38139] (Chapter 4 added by Stats. 1996, Ch. 277, Sec. 5.), **ARTICLE 2.** Use of School Property [38130 - 38139] (Article 2 added by Stats. 1996, Ch. 277, Sec. 5.) **Section:**

38130.

This article shall be known and may be cited as the **Civic Center Act**. (Added by Stats. 1996, Ch. 277, Sec. 5. Effective January 1, 1997. Operative January 1, 1998.)

38131.

- (a) There is a civic center at each and every public school facility and grounds within the state where the citizens, parent teacher associations, Camp Fire girls, Boy Scout troops, veterans' organizations, farmers' organizations, school-community advisory councils, senior citizens' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions that in their judgment pertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside. For purposes of this section, "veterans' organizations" are those groups included within the definition of that term as specified in subdivision (a) of Section 1800 of the Military and Veterans Code.
- (b) The governing board of any school district may 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 this article, for any of the following purposes:
- (1) Public, literary, scientific, recreational, educational, or public agency meetings.
 - (2) The discussion of matters of general or public interest.
 - (3) The conduct of religious services for temporary periods, on a one-time or renewable basis, by any church or religious organization that has no suitable meeting place for the conduct of the services, provided the governing board charges the church or religious organization using the school facilities or grounds a fee as specified in subdivision (d) of Section 38134.
 - (4) Child care or day care programs to provide supervision and activities for children of preschool and elementary schoolage.
 - (5) The administration of examinations for the selection of personnel or the instruction of precinct board members by public agencies.
 - (6) Supervised recreational activities including, but not limited to, sports league activities for youths that are arranged for and supervised by entities, including religious organizations or churches, and in which youths may participate regardless of religious belief or denomination.
 - (7) A community youth center.
 - (8) A ceremony, patriotic celebration, or related educational assembly conducted by a veterans' organization.
 - (9) Other purposes deemed appropriate by the governing board. (Amended by Stats. 2006, Ch. 205, Sec. 2. Effective January 1, 2007.)

38133.

The management, direction, and control of school facilities under this article are vested in the governing board of the school district which shall promulgate all rules and regulations necessary to provide, at a minimum, for the following:

- (a) Aid, assistance, and encouragement to any of the activities authorized in Sections 38131 and 38132.
- (b) Preservation of order in school facilities and on school grounds, and protection of school facilities and school grounds, including, if the governing board deems necessary, appointment of a person who shall have charge of the school facilities and grounds for purposes of their preservation and protection.
- (c) That the use of school facilities or grounds is not inconsistent with the use of the school facilities or grounds for school purposes or interferes with the regular conduct of schoolwork. (Amended by Stats. 2002, Ch. 1168, Sec. 9. Effective September 30, 2002.)

38134.

- (a)
 - (1) (The governing board of a school district shall authorize the use of school facilities or grounds under its control by a nonprofit organization, or by a club or an association organized to promote youth and school activities, including, but not necessarily limited to, any of the following:
 - (A) The Girl Scouts; the Boy Scouts; Camp Fire USA; or the YMCA.
 - (B) A parent-teacher association.
 - (C) A school-community advisory council.
 - (D) A recreational youth sports league that charges participants no more than a nominal fee. As used in this subparagraph, "nominal fee" means an average of no more than sixty dollars (\$60) per month.
 - (2) This subdivision does not apply to a group that uses school facilities or grounds for fundraising activities that are not beneficial to youth or public school activities of the school district, as determined by the governing board of the school district.
- (b) Except as otherwise provided by law, a governing board of a school district may charge an amount not to exceed its direct costs for use of its school facilities or grounds pursuant to this section. A governing board of a school district that levies these charges shall first adopt a policy specifying which activities shall be charged an amount not to exceed direct costs.
- (c) The governing board of a school district may charge an amount, not to exceed its direct costs for use of its school facilities or grounds by the entity using the school facilities or grounds, including a religious organization or church, that arranges for and supervises sports league activities for youths as described in paragraph (6) of subdivision (b) of Section 38131.
- (d) The governing board of a school district that authorizes the use of school facilities or grounds for the purpose specified in paragraph (3) of subdivision (b) of Section 38131 shall charge the church or religious organization an amount at least equal to the school district's direct costs.
- (e) In the case of an entertainment or a meeting where an admission fee is charged or contributions are solicited, and the net receipts are not expended for the welfare of the pupils of the school district or for charitable purposes, a charge equal to fair rental value shall be levied for the use of the school facilities or grounds.

- (f) If the use of school facilities or grounds under this section results in the destruction of school property, the entity using the school facilities or grounds may be charged for an amount necessary to repay the damages, and further use of the facilities or grounds by that entity may be denied.
- (g) As used in this section:
- (1) "Direct costs" to the school district for the use of school facilities or grounds includes all of the following:
 - (A) The share of the costs of supplies, utilities, janitorial services, services of school district employees, and salaries paid to school district employees directly associated with the administration of this section to operate and maintain school facilities or grounds that is proportional to the entity's use of the school facilities or grounds under this section.
 - (B) The share of the costs for maintenance, repair, restoration, and refurbishment, proportional to the use of the school facilities or grounds by the entity using the school facilities or grounds under this section as follows:
 - (i) For purposes of this subparagraph, "school facilities" shall be limited to only nonclassroom space, and "school grounds" shall include, but not necessarily be limited to, playing fields, athletic fields, track and field venues, tennis courts, and outdoor basketball courts.
 - (ii) The share of the cost for maintenance, repair, restoration, and refurbishment shall not apply to:
 - (I) Classroom-based programs that operate after school hours, including, but not necessarily limited to, after school programs, tutoring programs, or child care programs.
 - (II) Organizations retained by the school or school district to provide instruction or instructional activities to pupils during school hours.
 - (iii) Funds collected under this subparagraph shall be deposited into a special fund that shall only be used for purposes of this section.
 - (2) "Fair rental value" means the direct costs to the school district plus the amortized costs of the school facilities or grounds used for the duration of the activity authorized.
- (h) By December 31, 2013, the Superintendent shall develop, and the state board shall adopt, regulations to be used by a school district in determining the proportionate share and the specific allowable costs that a school district may include as direct costs for the use of its school facilities or grounds.
- (i)
- (1) A school district authorizing the use of school facilities or grounds under subdivision (a) is liable for an injury resulting from the negligence of the school district in the ownership and maintenance of the school facilities or grounds. An entity using school facilities or grounds under this section is liable for an injury resulting from the negligence of that entity during the use of the school facilities or grounds. The school district and the entity using the school facilities or grounds under this section shall each bear the cost of insuring against its respective risks, and shall each bear the costs of defending itself against claims arising from those risks.
 - (2) Notwithstanding any other law, this subdivision shall not be waived. This subdivision does not limit or affect the immunity or liability of a school district under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code for injuries caused by a dangerous condition of public property.
- (j) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

38135.

Any use, by any individual, society, group, or organization for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States or of the state by force, violence, or other unlawful means shall not be permitted or suffered.

Any individual, society, group, or organization which commits any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government by force, violence, or other unlawful means while using school property pursuant to the provisions of this chapter is guilty of a misdemeanor. (Added by Stats. 1996, Ch. 277, Sec. 5. Effective January 1, 1997. Operative January 1, 1998.)

38136.

No governing board of a school district shall grant the use of any school property to any person or organization for any use in violation of Section 38135.

For the purpose of determining whether or not any individual, society, group, or organization applying for the use of the school property intends to violate Section 38135, the governing board shall require the making and delivery to the governing board, by the applicant of a written statement of information in the following form:

STATEMENT OF INFORMATION

The undersigned states that, to the best of his or her knowledge, the school property for use of which application is hereby made will not be used for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States by force, violence or other unlawful means;

That _____, the organization on whose behalf he or she is making application for use of school property, does not, to the best of his or her knowledge, advocate the overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means, and that, to the best of his or her knowledge, it is not a Communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States. This statement is made under the penalties of perjury.

_____ (Signature) _____

The school board may require the furnishing of additional information as it deems necessary to make the determination that the use of school property for which application is made would not violate Section 38135.

Any person applying for the use of school property on behalf of any society, group, or organization shall be a member of the applicant group and, unless he or she is an officer of the group, must present written authorization from the applicant group to make the application.

The governing board of any school district may, in its discretion, consider any statement of information or written authorization made pursuant to the requirements of this section as being continuing in effect for the purposes of this section for the period of one year from the date of the statement of information or written authorization. (Added by Stats. 1996, Ch. 277, Sec. 5. Effective January 1, 1997. Operative January 1, 1998.)

38137.

Written statements of information as required by Section 38136 need not be under oath, but shall contain a written declaration that they are made under the penalty of perjury, and any person so signing the

statements who willfully states therein as true any material matter which he or she knows to be false, is subject to the penalties prescribed for perjury in the Penal Code. (Added by Stats. 1996, Ch. 277, Sec. 5. Effective January 1, 1997. Operative January 1, 1998.)

38138.

Notwithstanding the provisions of this article or any other provisions of law, when a nonpartisan charitable organization organized under the laws of this state has constructed or will construct, subject to the provisions of Article 3 (commencing with Section 39140) of Chapter 2 of this part, a school athletic and youth center facility at no cost to a school district, upon a school-district-owned site to be owned by and for the benefit of the school occupying the site, the governing board of the school district, in accepting the donation and prescribing the conditions and restrictions with respect thereto, may permit the general use of the facility under the provisions of this article for specified supervised recreational activities which are sponsored by or conducted by the donor organization, and may also permit the donor organization to use the facility for this purpose at times when the facility is not being used by the school district for the educational program and related school activities of the designated beneficiary school, unless the use and occupancy of the facility by the donor organization would otherwise interfere with the regular conduct of the school. Any use granted to the donor organization shall, however, immediately and forever terminate if the donor organization denies the use of the facility to any person because of their race, religion, creed, national origin, ancestry, or sex.

This section shall apply only to elementary school districts in San Diego County which had an average daily attendance of 425 or less during the 1970–71 school year, and which, during the 1970–71 school year, had a modified assessed valuation per pupil in average daily attendance of between forty-five thousand dollars (\$45,000) and fifty thousand dollars (\$50,000). (Added by Stats. 1996, Ch. 277, Sec. 5. Effective January 1, 1997. Operative January 1, 1998.)

38139.

- (a) Public primary schools shall post at an appropriate area restricted to adults information regarding missing children provided by the Department of Justice pursuant to Section 14208 of the Penal Code.
- (b) Public secondary schools shall post at an appropriate area information regarding missing children provided by the Department of Justice pursuant to Section 14208 of the Penal Code. (Amended by Stats. 1999, Ch. 832, Sec. 1. Effective January 1, 2000.)