

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education March 2023 AgendaItem #W-04

## Subject

Request by **Moorpark Unified School District** to waive California *Education Code* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Number

8-10-2022

## Type of Action

Action, Consent

## Summary of the Issues

The Moorpark Unified School District (USD) is requesting to waive all of California *Education Code* (*EC*) sections 17472, 17473 and 17474, and portions of sections 17455, 17466, 17468, 17469, 17470, and 17475, which will allow the district to sell or lease a piece of property, in a manner that best serves its schools and community, through the Request for Proposal (RFP) process.

## Authority for Waiver

California *EC* Section 33050

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

The California Department of Education (CDE) recommends approval with the following conditions: that the proposal the district’s governing board determines to be the most desirable shall be selected within 30 to 60 days of the public meeting where the proposal was received, and that the reasons for that determination be discussed in public session and included in the minutes of the meeting.

## Summary of Key Issues

Under provisions of *EC* Section 33050, Moorpark USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale or lease of a piece of real property located at 5700 Condor Drive Moorpark, CA 93021, which formally housed the Moorpark Community High School, through an RFP rather than a public bid process. The district closed the site, which was declared surplus in January 2016. The 7-11 Committee recommended that the district explore potential educational uses for the site. The district has done so, including leasing the site to Ventura County Office of Education for use as a career technical education facility. However, that program was closed due to low enrollment after three years, and the site is not currently being used for any educational or community programs. While the 7-11 Committee is no longer meeting as a body, its members were consulted in preparation for the waiver item, and a majority were in favor of pursuit of the waiver.

Recently, the district was contacted by a private individual with an unsolicited fair market value offer to purchase the site for a commercial business venture. The site is located in an area zoned M-1 which is land intended for industrial uses. Discussions with the city have also ruled out other types of development due to the site’s current zoning. The district is requesting that the State Board of Education (SBE) approve this waiver so that the district can continue discussions with the interested individual while also entertaining additional competitive bids on this property.

### Demographic Information

Moorpark USD is a suburban district located in the city of Moorpark, within Ventura County. It has an enrollment of 5,772 students.

**Because these are general waivers, if the State Board of Education (SBE) decides to deny the waivers, it must cite one of the seven reasons in *EC* Section 33051(a), available on the California Legislation Information web page at** <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.>

## Summary of Previous State Board of Education Discussion and Action

The SBE has approved all previous waivers regarding the bidding process and the sale or lease of surplus property. The district is requesting to waive the same or similar provisions for the sale or lease of surplus property.

## Fiscal Analysis

The flexibility in property disposition requested herein will allow the district to maximize value from the saleor lease of the property.

The district has certified that the site has been owned for more than 10 years and therehave been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursement is not due to the State Allocation Board.

## Attachments

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Moorpark Unified School District General Waiver Request 8-10-2022 (6 pages). (Original waiver request is signed and on file in the Waiver Office).

# Attachment 1: Summary Table

California *EC* Section 17455 et seq.

| **Waiver Number** | **District** | **Properties** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 8-10-2022 | Moorpark Unified School District | 5700 Condor Drive Moorpark, CA 93021, Moorpark Community High School | **Requested:**January 19, 2023 toJanuary 19, 2026**Recommended:** January 19, 2023 toJanuary 17, 2025 | 10/24/2022 | 10/24/2022Public Hearing Advertised: local newspaper, district website  | California School Employees AssociationRichard PoncianoPresident10/21/2022**Support** Moorpark Educators AssociationBrian FriefieldPresident09/19/2022**Neutral** | District Surplus Property Advisory Committee9/13/2022**No Objections** |

Created by the California Department of Education

March 2023

# Attachment 2: **Moorpark Unified School District General** **Waiver Request 8-10-2022**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 5673940

Waiver Number: 8-10-2022

Active Year: 2022

Date In: 10/27/2022 5:52:53 PM

Local Education Agency: Moorpark Unified

Address: 5297 Maureen Ln.

Moorpark, CA 93021

Start: 1/19/2023

End: 1/19/2026

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale of Surplus Property

Ed Code Section: 17455, 17466, 17468, 17469, 17470, 17472 (all), 17473 (all), 17474 (all), 17475

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: The Moorpark Unified School District (“District”) desires to waive the following sections and portions of the *Education Code* (“*EC*”). Specifically, the District requests that the language in brackets [] be waived:

*EC* § 17455. The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school 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. The sale or lease may be made without first taking a vote of the electors of the district [ and shall be made in the manner provided by this article].

Rationale: The language indicating that the sale of the property is to be made in the manner provided by this article should be waived, because the District is asking that several provisions of the article be waived and consequently, the sale or lease will not be made in the manner provided in Article 4.

*EC* § 17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased] and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker [out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered].

Rationale: The stricken language to be waived provides for the governing board to state a minimum price and the terms upon which the property will be sold or leased. The stricken language also would require specification of a meeting where proposals would be received and considered. The District is requesting that the requirement of stating a minimum price and terms be waived, so that it can focus on negotiating directly with a Proposed Buyer to maximize proceeds as much as possible while ensuring that the property is developed in a manner that will benefit the community. Also, as the District cannot predict in advance the timing of negotiations with interested purchasers, it cannot at the time of adopting the resolution contemplated by this Section 17466, know when proposals must be brought back to the governing board for consideration.

*EC* § 17468. If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified [in the resolution]. No commission shall be paid unless there is contained in or with the [sealed] proposal [or stated in or with the oral bid], which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property.

Rationale: The stricken language to be waived provides for the District to receive sealed and oral bids to purchase or lease the property at an identified meeting of the District’s governing board. The District is requesting that the requirement of sealed bids and oral bidding to purchase or lease the property be waived, allowing the District negotiate the sale or lease of the property with a qualified purchaser.

*EC* § 17469. Notice of the adoption of the resolution [and of the time and place of holding the meeting] shall be given by posting copies of the resolution signed by the board or by a majority thereof in three public places in the district [, not less than 15 days before the date of the meeting,] and by publishing the notice not less than once a week for three successive weeks [before the meeting] in a newspaper of general circulation published in the county in which the district or any part thereof is situated, if any such newspaper is published therein.

Rationale: The stricken language to be waived assumes that the Board would be setting a specific meeting to receive proposals for the purchase of the property. Such a requirement, however, will be removed pursuant to the language stricken within *Education Code* Section 17466. As modified, the District would still be required to provide notice of its adoption of a resolution of intent to sell the property, but the posting of that resolution and notice in a newspaper would no longer be tied to an established date to receive proposals.

*EC* § 17470. (a) The governing board of a school district that intends to sell or lease real property pursuant to this article shall take reasonable steps to ensure that the former owner from whom the district acquired the property receives notice [of the public meeting prescribed by Section 17466], in writing, by certified mail, [at least 60 days prior to the meeting].

(b) The governing board of a school district shall not be required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest [bid] price.

Rationale: The stricken language to be waived assumes that the Board would be setting a specific meeting to receive proposals for the purchase or lease of the property. Such a requirement, however, will be removed pursuant to the language stricken within *Education Code* Section 17466. As modified, the District would still be required to take reasonable steps to provide notice to the former owner, but the provision of such notice would no longer be tied to an established date to receive proposals.

*EC* § 17472. [At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids].

Rationale: The stricken language to be waived provides for the District to receive and open sealed proposals and oral bids to purchase or lease the property at an identified meeting of the District’s governing board. The District is requesting that the requirement of sealed proposals and oral bidding to purchase or lease the property be waived, allowing the District to negotiate the sale or lease of the property with a qualified purchaser. This will allow the District to maximize the District’s ability to negotiate the most favorable transaction terms, including but not limited to price.

*EC* § 17473. [Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offeror.]

Rationale: The entire section is to be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids.

*EC* § 17474. [In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

Rationale: The entire section is to be waived because the District, in negotiating an agreement to sell or lease the property, will not be accepting oral bids.

*EC* § 17475. The final acceptance by the governing body may be made [either at the same session or at any adjourned session of the same meeting held within the 10 days next following].

Rationale: Modification of the section would remove the requirement that the governing board accept a proposal at the same meeting received, and would instead allow the governing board to consider proposals received and, as desired and appropriate, direct further negotiation, and complete the transaction at the time most beneficial to the District.

Outcome Rationale: The Moorpark Unified School District (“District”) owns the parcel of real property located at 5700 Condor Drive Moorpark, CA 93021, which formally housed the Moorpark Community High School site (referred to herein as the “Property”). Surplus school buildings remain located on the Property. Currently, the Property is not being used by the District, there are no community groups authorized to use the Property, and the District does not need use of the Property as it has been declared surplus.

In January 2016, the District’s 7-11 committee, established pursuant to *Education Code* section 17389, recommended the District’s Board of Education (“Board’) retain the site and explore potential uses, such as expansion of career technical education opportunities for students and to allow for other educational opportunities as deemed necessary and feasible. In the six years since the 7-11 committee made its recommendation, the District has considered various potential options for the Property, but was not able to find a necessary and suitable educational use for the Property. Based on the recommendation of the committee, the District leased the site to the Ventura County Office of Education (“VCOE”) for use as an East Ventura County Career Technical Education Center for approximately three (3) years. However, VCOE ceased this use due to low enrollment. It has been vacant since then. Recently, the Board declared the Property to be exempt surplus property. Members of the 7-11 Committee were consulted in the preparation of this waiver application and a quorum confirmed their support for its submission.

The District seeks to maximize both the beneficial use of the site for the surrounding community and the value. The District has received an unsolicited proposal to purchase the Property from a member of the Moorpark community (“Proposed Buyer”). The Proposed Buyer desires to purchase the Property for fair market value for purposes of operating a catering business, which the District, community members and local city officials view as a desirable result as it would support surrounding community goals. Accordingly, after consideration of the 7-11 Committee’s recommendations, the needs of the District, and the preferences and interests of the community and local city officials, the District intends to continue negotiations with this Proposed Buyer while also considering any other offers received for the Property. The District intends to negotiate the sale of the Property in a manner that promotes the best interests of the District and the Moorpark community, and maximizes value. As such, the District requires the flexibility to consider various factors, including, but not limited to purchase price, in negotiating a sale of the Property.

As a result, the District is seeking a waiver of certain portions of the *Education Code* so it can pursue a negotiation and potential sale of the Property. District staff, in consultation with legal counsel, will engage in negotiations with the Proposed Buyer, while also considering any other offers received to ensure a fair and beneficial result for the District.

The District needs the ability to be flexible and work with any potential buyer to determine what type of transactional terms will yield the best result for the District. The requested waiver will allow the District to sell the Property through this more beneficial, flexible process. The District has developed a strategic plan for negotiating a suitable outcome for the Property and is working closely with legal counsel to sell the Property in a fair and advantageous manner. The District is requesting a waiver for the term of three (3) years in order to have the ability to complete a sale and close escrow on a purchase that may take years to complete. However, the District is open to a shorter term waiver, with subsequent renewal submissions if necessary, if such shorter term is found more appropriate.

Student Population: 5845

City Type: Small

Public Hearing Date: 10/24/2022

Public Hearing Advertised: Posted on the District website and published in local paper.

Local Board Approval Date: 10/24/2022

Community Council Reviewed By: Facilities Advisory (7-11) Committee

Community Council Reviewed Date: 9/13/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Sarah Polito

Position: Legal Counsel

E-mail: spolito@f3law.com

Telephone: 760-304-6005

Fax:

Bargaining Unit Date: 09/13/2022

Name: California School Employees Association (CSEA), Mo

Representative: Richard Ponciano

Title: President

Phone: (800) 632-2128

Position: Support

Comments:

Bargaining Unit Date: 09/13/2022

Name: Moorpark Educators Association (MEA)

Representative: Brian Friefeld

Title: President

Phone: (805) 422-4680

Position: Neutral

Comments: