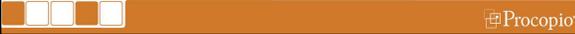




Charter Facilities: A How-To Guide
 (non-Prop 39)
 CCSA Annual Conference 2013 — San Diego
 Presented by:
John C. Lemmo, Esq.
 Procopio, Cory, Hargreaves & Savitch LLP
David Wilson, Chief Organizational Officer
 King Chavez Neighborhood of Schools

TOPICS WE WILL COVER

- Legal restrictions on school site development
- Basic steps in due diligence
- Applicability of building codes
- Options for addressing zoning requirements
- Issues to address in lease or acquisition of property



FACILITIES LIFECYCLE

Major Stages of Charter School Facilities Development:

1. Short-term - Start Up
2. Mid-term – Growing to Scale
3. Long-term - Sustainability



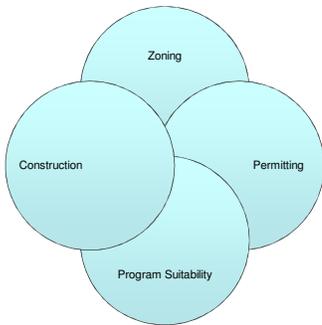
IDEAS

1. Co-locate with Church, YMCA, Boys Club
2. Rent Compliant Facility w/ Minimal TI's
3. Work a Deal with the District
4. Convert Commercial or Retail Space
5. Portables on an Empty Lot
6. Develop Property with a Partner
7. Long Term Lease w/ Capital Provided by Landlord



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COMPLIANT FACILITY



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LEGAL RESTRICTIONS ON CHARTER SCHOOL SITE SELECTION

- Asbestos screening
 - Federal law requires screening and remediation (15 USC section 2643; 40 CFR sec. 763)
 - State law requires owner to disclose asbestos in premises (Health & Safety Code sec.25915 et seq.)
- Lead exposure
 - Federal law requires schools to be reviewed for sources of lead exposure; State forbids use of lead in school construction (Ed. Code section 32245)
- DHS certifies contractors
- Be especially cautious with pre-1980 structures (Include in Phase I Environmental Review)



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OTHER CHARTER SITE LOCATION LIMITS?

- AB 1358 limits charter schools within 2 miles of airport without DOT approval
- Charter school law prescribes geographical limits
 - Typically within district, county or surrounding counties
 - Some schools have waivers or statutory exemptions



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OTHER SCHOOL DISTRICT SITE LOCATION LIMITS INAPPLICABLE TO CHARTERS, INCLUDING:

- Freeway proximity
- Power lines
- High pressure gas lines under site
- Air pollution emitters
- Proximity to bars, alcohol sales
- Seismic safety
- Historical agricultural use of site
- Environmental hazards (e.g., methane)



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PROGRAM SUITABILITY

Does it work for your school?

1. Sufficient Space – Now and Future
2. Location
3. Amenities
4. Affordability



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ZONING COMPLIANCE?

- Cities and counties don't plan for schools
- School districts may adopt resolutions exempting school sites from zoning compliance (Gov. Code section 53091 et seq.)
- Districts may adopt zoning exemption on behalf of charter school, but only within district's boundaries (Gov. Code 53097.3)
- Consequently, charter schools almost always seek conditional use permits (CUP) to meet local zoning requirements



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GETTING A CONDITIONAL USE PERMIT

- Conditional use permit is a form of "contract" zoning:
 - Like a zone change, grant of a CUP is **discretionary**
 - "General welfare" standard gives lots of latitude to condition approval
 - Conditions are limited to things within your control, and related to your use, or they are invalid
- Process requires:
 - Notice to neighbors who may be affected
 - Environmental review under CEQA
 - Public hearing(s)
 - Right of appeal from planning commission



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GETTING A CONDITIONAL USE PERMIT

- CUP process requires time:
 - City may require traffic and other studies to be submitted with application
 - Political process means neighborhood support is key
 - City staff will often require additional information and resubmittals
- Process requires money, too:
 - Architect / project consultants are likely needed
 - City will take deposit against its work
- City staff may be helpful if consulted prior to permit application, especially in smaller cities



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BUILDING CODE COMPLIANCE?

- School districts are exempt from local building code enforcement (limited Fire Code jurisdiction)
- Federal facilities exempt from local building codes
- Charter schools *are subject* to building code enforcement (Education Code sec. 47610)



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BUILDING CODE COMPLIANCE?

- Most common impediments to meeting code for classroom use:
 - Restrooms / fixtures
 - Hallway widths
 - Sprinklers (fire)
 - ADA requirements (e.g., elevators)
 - Electrical systems
- ***Remodeling will require updating entire facility to current code***



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BUILDING CODE COMPLIANCE?

- Your architect, consultant or contractor should look at space early
 - Describe your use clearly, as this matters
 - Get a report and estimate for corrections
 - Use in valuing or negotiating price for facility



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ENVIRONMENTAL REVIEW UNDER CEQA

- Common school site issues:
 - Traffic safety, parking and potential liability
 - Neighborhood compatibility
 - Offsite drainage and onsite grading
 - Sewer or septic systems



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OPTIONS FOR CONTRACTING FOR CONSTRUCTION

- Competitive bidding not generally required, but design-bid-build common
- Construction management
- Design-build fixed price
- Time and materials



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PROFORMA

Show me the money:

1. Income over five Years
2. Expenses Over five Years
3. How Much You Can Afford



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PUBLIC FUNDING

Main Sources of Reliable Funding:

1. Average Daily Attendance (ADA)
2. SB 740
3. Federal Facilities Grant
4. Prop 39
5. Office of Public School Construction (OPSC)
6. Community Development Block Grant (CDBG)



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PRIVATE DEBT

Who gets your public \$

1. Landlord
2. Tax Exempt Bonds
3. New Market Tax Credits
4. Private Developer
5. Bank Loan



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FUNDING SOURCES AFFECT LEGAL RESTRICTIONS THAT APPLY TO YOUR PROJECT

- School district rules apply if you are:
 - Using district facilities or land
 - Using district or state bond funds
 - Getting State bond funds through SAB
- Most "school district" rules don't apply if you:
 - Obtain all funds from charter school operations
 - Use a mix of charter school and private funds
- Even totally private funding and development will have some special "public school" restrictions



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PREVAILING WAGE LAWS?

- Apply to "public works" as defined in Labor Code section 1720 et seq., which is triggered by use of certain public funds
 - Requires contractor to pay "prevailing wages rates" set by the State (usually higher than local wages) and comply with certain record keeping and other requirements
 - If public agency contracts for improvements, prevailing wage laws apply
 - If any public funds are used (other than just ADA funding), prevailing wage laws apply



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REAL ESTATE PROFESSIONALS

1. Brokers and Agents
2. Architects and Engineers
3. Contractors and Project Managers
4. Developers
5. Attorneys



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NEGOTIATION POINTS

1. Tenant Improvements
2. Scaled Payments
3. Length of Lease
4. Escalator
5. Termination Clause
6. "NNN" vs. Gross
7. Don't Sign without Good Legal Review



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