



LOS ANGELES UNIFIED SCHOOL DISTRICT Board of Education Report

Report Number:	28-08/09
Date:	July 8, 2008
Subject:	Charter School Zoning Exemption Policy and Trial Program
Responsible Staff:	
Name	José Cole-Gutiérrez, Executive Director
Office/Division	Charter Schools Division
Telephone No.	(213) 241-2665

A. EXECUTIVE SUMMARY

Action Proposed: Adoption of the Charter School Zoning Exemption Policy and authorization to implement the Charter School Zoning Exemption Trial Program. See Attachment A for the Charter School Exemption Policy.

The Charter School Zoning Exemption Trial Program will be administered during the 2008-09 fiscal year and will not conduct more than 10 projects.

Staff Recommendation and Rationale: Approve the adoption of the Charter School Zoning Exemption Policy (Policy) and authorization to implement the Charter School Zoning Exemption Trial Program (Trial Program). The Policy establishes guidelines and procedures for exempting property from city and county zoning ordinances on behalf of charter schools. The Trial Program provides an opportunity to fully study the issues associated with issuing zoning exemptions on behalf of charter schools on a small scale by:

- Limiting the amount of projects
- Restricting period of consideration
- Testing proposed guidelines and procedures
- Identifying municipal challenges and impacts

By granting a zoning exemption under this Policy and Trial Program, the Board of Education (Board) will address District priorities to relieve overcrowding and consider alternative, long-range facilities solutions for students attending charter schools. Charter school participants will waive their Proposition 39 requests for a period coterminous with their corresponding zoning exemption.

Background: The District may render a city or county zoning ordinance inapplicable to a proposed use of property by the District, pursuant to Government Code Section 53094(b), which provides,



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

“...the governing board of a school district, that has complied with the requirements of Section 65352.2 of [the Government Code] and section 21151.2 of the Public Resources Code, by a vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district.”

However, this general authority to exempt property from city or county zoning ordinances is expressly limited to property that is used for classroom facilities and pursuant to Government Codes Section 53094(b) may not include warehouses, administrative buildings, automotive buildings or automotive storage and repair buildings.

In addition to the above mentioned general exemption authority, the District may also exercise its authority to exempt charter school facilities from city or county zoning ordinances when those charter school facilities are located within the geographical jurisdiction of the District (currently Los Angeles County), pursuant to Government Code Section 53097.3, which provides,

“Notwithstanding any other provision of this article, no school may render a city or county ordinance inapplicable to a charter school facility pursuant to this article, unless the facility is physically located within the geographical jurisdiction of that school district.”

The Board of Education has previously adopted staff recommendations invoking an exemption to make local city and county ordinances, including city and county redevelopment plans, inapplicable to LAUSD new school construction projects. These decisions have addressed District priorities to reduce overcrowding in schools within the District by providing new facilities and adding space to existing facilities. Under specific circumstances and criteria set forth in this policy and to help meet District priorities, the Board could consider applications for zoning exemptions for charter schools.

The District leads the nation with the largest number of authorized charter schools. There are 125 charter schools serving approximately 45,000 students throughout the District. It is anticipated that an additional 25 schools will open in the fall of 2008 increasing the charter population to approximately seven percent of the District's student population.

Charter schools are recognized as “...part of the District's family and as



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

an asset from which we can learn (LAUSD Charter Schools Policy, adopted 2002),” and the District encourages collaboration with charter schools to advance its mission to ensure all students are college prepared and career ready. Specifically, the District’s 2002 Charter Schools Policy stipulates some of the following priorities for collaboration:

- Provide possible solutions to urban school challenges through practices that help:
 - Ease the shortage of school facilities and seat space
 - Narrow the achievement gap among students of various backgrounds
 - Increase responsible parent and student involvement in learning
 - Improve teacher quality and performance evaluation systems
- Provide data to help identify and evaluate issues that affect quality educational programs and student learning and achievement
- Serve as laboratories to test, demonstration and disseminate ideas that can promote better educational practices
- Provide an additional educational option for parents

The District continues to work diligently to provide facilities to students attending charter schools under Proposition 39. In the 2007-08 school year, the District received 55 Proposition 39 facility request applications for the 2008-09 school year resulting in the total request of approximately 17,000 seats. Many of the applications requested secondary seats in the District’s most impacted attendance areas. Extending offers proved challenging due the shortage and condition of existing campuses.

Increased demand for seats by charter schools on District campuses combined with the District’s instructional reform efforts to increase student achievement and building program to relieve overcrowding cause the need for alternative solutions for Proposition 39. Zoning exemptions, deliberately administered through a due diligence policy and process adopted by the Board and in concert with applicable local jurisdictions can provide one such alternative solution.

Policy Implications:

This action establishes a District policy and corresponding trial program for fiscal year 2008-09 for exercising the Board’s zoning exemption authority on behalf of charter schools. The Trial Program will terminate on July 1, 2008.



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

Budget Impact:

Applicant Charter School agrees that it shall be solely responsible to pay for any and all actual and reasonable costs and expenses incurred by the District related to processing, evaluation, investigation or enforcement of any of the conditions in Step IV, representations made in the Charter School Zoning Exemption Application, or findings made by the Board pursuant to its exercise of a zoning exemption. All applications shall include an initial deposit of \$10,000 of which \$2,500 is non-refundable.

Issues/Considerations:

As the Office of General Counsel has previously advised, pursuant to Government Code Sections 53094, 53097.3 and related statutes, case law and legislative history, the Board may exempt charter schools from local zoning ordinances under limited circumstances, but such action is not without difficulties, risks and challenges. Although such risks may not be eliminated entirely, they may be reduced by implementing a uniform and consistent District policy for the exercise of zoning exemptions on behalf of charter schools.

Staff recommends a policy and trial program to provide an opportunity to fully study the issues associated with issuing zoning exemptions on behalf of charter school on a small scale. It is anticipated there is a great demand for use of this tool and while it will assist the District in meeting its obligations under Proposition 39, the zoning exemption process requires careful consideration and implementation.

Long-term unintended consequences are unknown at this time. The goal of the Trial Program is to pursue innovative and alternative solutions for increasing the capacity of public school facilities while limiting full implementation until all potential issues and impacts are identified and studied.

The application (to be finalized consistent with the approved policy) sets forth criteria to address District priorities to relieve overcrowding as well as require the charter school to demonstrate necessary municipal and community support for the proposed project.

Legal safeguards are in place to mitigate risk and liability to the District. Charter schools will be responsible for all costs associated with the District's execution of a zoning exemption.

The Charter School Zoning Exemption Policy explicitly provides for an environmental review prior to granting the zoning exemption.

Effect of "yes" vote:

An approval would permit the adoption of the Charter School Zoning Exemption Policy and authorization to implement the Charter School Zoning Exemption Trial Program.



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

Effect of “no” vote: A denial would prohibit the adoption of the Charter School Zoning Exemption Policy and authorization to implement the Charter School Zoning Exemption Trial Program.

B. BOARD REPORT

Action Proposed: Adoption of the Charter School Zoning Exemption Policy and authorization to implement the Charter School Zoning Exemption Trial Program. See Attachment A for the Charter School Exemption Policy.

The Charter School Zoning Exemption Trial Program will be administered during the 2008-09 fiscal year and will not conduct more than 10 projects.

Expected Outcomes: The Policy establishes guidelines and procedures for exempting property from city and county zoning ordinances on behalf of charter schools. The Trial Program provides an opportunity to fully study the issues associated with issuing zoning exemptions on behalf of charter schools on a small scale by:

- Limiting the amount of projects
- Restricting period of consideration
- Testing proposed guidelines and procedures
- Identifying municipal challenges and impacts

By granting a zoning exemption under this policy and trial program, the Board will address District priorities and consider alternative, long-range facilities solutions for students attending charter schools. Charter school participants will waive their Proposition 39 requests for a period coterminous with their corresponding zoning exemption.

Board Options and Consequences: An approval would permit the adoption of the Charter School Zoning Exemption Policy and authorization to implement the Charter School Zoning Exemption Trial Program.

A denial would prohibit the adoption of the Charter School Zoning Exemption Policy and authorization to implement the Charter School Zoning Exemption Trial Program.

Policy Implications: This action establishes a District policy and corresponding trial program for fiscal year 2008-09 for exercising the Board’s zoning exemption authority on behalf of charter schools. The Trial Program will terminate on July 1, 2008.

Budget Impact: Applicant Charter School agrees that it shall be solely responsible to pay for any and all actual and reasonable costs and expenses incurred by the District related to processing, evaluation, investigation or enforcement of any of the conditions in Step



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

IV, representations made in the Charter School Zoning Exemption Application, or findings made by the Board pursuant to its exercise of a zoning exemption. All applications shall include an initial deposit of \$10,000 of which \$2,500 is non-refundable.

Issues and Analysis:

☐ **No legal issues**

☐ **Legal
informative
attached**

As the Office of General Counsel has previously advised, pursuant to Government Code Sections 53094, 53097.3 and related statutes, case law and legislative history, the Board may exempt charter schools from local zoning ordinances under limited circumstances, but such action is not without difficulties, risks and challenges. Although such risks may not be eliminated entirely, they may be reduced by implementing a uniform and consistent District policy for the exercise of zoning exemptions on behalf of charter schools.

Staff recommends a policy and trial program to provide an opportunity to fully study the issues associated with issuing zoning exemptions on behalf of charter school on a small scale. It is anticipated there is a great demand for use of this tool and while it will assist the District in meeting its obligations under Proposition 39, the zoning exemption process requires careful consideration and implementation.

Long-term unintended consequences are unknown at this time. The goal of the Trial Program is to pursue innovative and alternative solutions for increasing the capacity of public school facilities while limiting full implementation until all potential issues and impacts are identified and studied.

The application (to be finalized consistent with the approved policy) sets forth criteria to address District priorities to relieve overcrowding as well as require the charter school to demonstrate necessary municipal and community support for the proposed project.

Legal safeguards are in place to mitigate risk and liability to the District. Charter schools will be responsible for all costs associated with the District's execution of a zoning exemption.

The Charter School Zoning Exemption Policy explicitly provides for an environmental review prior to granting the zoning exemption.

Committee Information:

Reporting Requirements and Benchmarks:

The Trial Program will automatically terminate on July 1, 2009.

Accountable Staff:

José J. Cole-Gutiérrez, CSD Executive Director
Yi Hwa Kim, OEHS Director
Michelle Meghrouni, OGC Associate General Counsel



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

John Creer, PD&B Director

**Applicable
Board
Delegations:**

Superintendent's None
Comments:

**Miscellaneous
Issues and
Matters:**

☐ **Desegregation
Impact
Statement
attached**

☐ **Division of
Accountability
and Systemwide
Performance**

X Informative

Respectfully submitted,

DAVID L. BREWER III
Superintendent of Schools

APPROVED AND
PRESENTED BY:

A handwritten signature in dark ink, appearing to read "Jose Cole", written over a horizontal line.

JOSÉ J. COLE-GUTIÉRREZ
Executive Director
Charter Schools Division

APPROVED BY:

JAMES MORRIS
Chief of Staff



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

ATTACHMENT A

CHARTER SCHOOL ZONING EXEMPTION POLICY

The District may exercise a zoning exemption on behalf of an individual charter school for a specifically identified property on a case by case basis upon completion of the five step process outlined below.

- | | |
|------------------|---|
| Step I. | Completion of Application by Charter School |
| Step II. | Identification of the Category of Property |
| Step III. | Findings Made By Board |
| Step IV. | Satisfaction of Conditions by Charter School |
| Step V. | Board Directs Staff to Take Subsequent Actions |

Step I. Completion of Application by Charter School

Prior to the exercise of any zoning exemption, the Applicant Charter School shall complete a Charter School Application for Zoning Exemption on a form provided by the District, reasonably similar to attached Charter School Application for Zoning Exemption, as may be amended by District staff from time to time. Applicants shall pay to LAUSD all costs associated with reviewing and issuing a zoning exemption. All applications shall include an initial deposit of \$10,000 of which \$2,500 is non-refundable as set forth in the application to cover reasonable administrative costs. Additional funds may be required to complete the zoning exemption.

Step II. Identification of the Category of Property

Notwithstanding the fact that the authority for the exercise of a zoning exemption by the District is provided by statute, the exercise of this authority carries certain inherent risks to the District. The least amount of risk exposure to the District occurs when the District exempts property in which it has a traditional legal or equitable interest. However, when certain findings are made, the District may also exempt property in which it has no traditional legal or equitable interest. The two categories of property eligible for a zoning exemption are as follows:

- A. Traditional Legal or Equitable Interest. Property in which the District has a traditional legal or equitable interest, includes but is not limited to when:
 - The property is owned by the District and leased to a charter school;
 - The property is owned by the LAUSD Financing Corporation (Land Bank), leased by the District, and subleased to a charter school; or
 - The property is owned by a third-party, leased by the District; and subleased to a charter school.
- B. No Traditional Legal or Equitable Interest. Property in which the District does not have a traditional legal or equitable interest, includes but is not limited to when:



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

- The property has been acquired by a charter school pursuant to the Charter School Facilities Program, in accordance with Education Code Sections 17078.52 *et seq.*, and title to the property is held in trust for the public school system by the District;
- The property is owned by a third-party and leased by a charter school; or
- The property is owned by a charter school.

Step III. Findings Made By Board

Prior to the exercise of any zoning exemption, the Board **shall** make the following findings:

1. Existing and Good Standing Charter. The District has granted the applicant a charter pursuant to the Charter Schools Act which remains valid and in effect. (Education Code Sections 14600 *et seq.*). The charter school operator is a validly formed entity and is in good standing under the laws of the State of California.
2. No Prior Denial by Local Jurisdiction. No local jurisdiction with authority over the property has made a decision to deny the Applicant Charter School or its representative a zoning exemption, variance, conditional use permit, or other permit requiring discretionary action related to the property. The District shall not exercise a zoning exemption for the property if any such denial by a local jurisdiction has occurred.
3. Financial Soundness. The Applicant Charter School has demonstrated to the District that it has sufficient financial resources to justify a zoning exemption.
4. Acknowledgment of No Warranty for Particular Use or Purpose. The Applicant Charter School has agreed and has acknowledged in writing that by granting a zoning exemption, the District does not make any representation or warranty, express or implied, regarding the condition, safety or fitness of the property for school use or any other use or purpose.
5. Charter School Facility Lies Within Los Angeles County. The property upon which the charter is or will be located lies within the District's geographical jurisdiction. (Government Code Section 53097.3).
6. Environmental Review. The proposed Charter School site had undergone or will have completed the necessary Site Screening per OEHS protocol and has complied with the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* (CEQA) prior to site occupancy.
7. Use for Classroom Facilities. The Applicant Charter School has represented that it intends to use the property for classroom facilities for a school.
8. Two-thirds Vote by Board. The decision to exempt has been made upon a two-thirds vote of the Board of Education. (Government Code Section 53094(b)).
9. Proposition 39 Waiver. Written acknowledgement by the Applicant Charter School that will waive its Proposition 39 rights for a period of time coterminous with the Applicant Charter



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

School's occupancy of the exempted property under the corresponding charter authorized by the District.

10. Supplemental Findings. All such other findings that the District deems relevant to the zoning exemption, which **may include** but shall not be limited to the following examples:
 - a. The District provides financial assistance to the Applicant Charter School under the Charter School Facility Grant Program.
 - b. The property has been acquired by the Applicant Charter School pursuant to the Charter School Facilities Program and title to the property is held in trust for the public school system by the District.
 - c. The property to be exempted was previously used by the District for school use.
 - d. By granting a zoning exemption, one or more of the following goals is furthered:
 - (i) Ease the shortage of school facilities and seat space for those District schools whose enrollment is above the state average for similar grade levels.
 - (ii) Narrow the achievement gap among students of various backgrounds;
 - (iii) Increase responsible parent and student involvement in learning;
 - (iv) Provide an additional educational option for parents; and/or
 - (v) Facilities serve as a laboratory to test, demonstrate and disseminate ideas that can promote better educational practices.
 - e. Any findings that the District recommends including in order to draw a nexus between the property or the Applicant Charter School and the District to support a zoning exemption.

Step IV. Satisfaction of Conditions by Charter School

Each exemption approved by the Board shall be conditioned upon the satisfaction of the following by the Applicant Charter School:

1. Provide Proof of Insurance. Applicant Charter School shall obtain, maintain and provide proof of insurance policies in the amounts and for the types required by District policy and as may be amended from time to time by the District.
2. Execute a Waiver and Release of Liability and Indemnity. The Applicant Charter School shall execute a waiver and release of liability and indemnity for any claims arising out of the District's exercise of the zoning exemption on behalf of the Applicant Charter School, which shall be in substance and form satisfactory to the District.
3. Acknowledgement of Compliance with DSA or Local Building Codes. At its sole cost and expense Applicant Charter School shall **either**:



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

- a. Comply with all standards and requirements of the Division of the State Architect ("DSA") and obtain all required approvals therefrom; **OR**
- b. Comply with the applicable building codes for the local governmental jurisdiction in which the Applicant Charter School is located, and obtain all permits and required approvals therefrom.

The Applicant Charter School agrees that by granting a zoning exemption, the District does not make any representation or warranty, express or implied, regarding the condition, safety or fitness of the property for school use or any other use or purpose, and that the District's grant of a zoning exemption is absolutely and strictly conditioned upon compliance with DSA or applicable local building codes. The Applicant Charter School agrees that failure to comply with (a) or (b) above shall result in the zoning exemption being deemed void, automatically invalidated without further action, and shall be immediately revoked.

4. Acknowledgement of Responsibility for CEQA and Environmental Review. Applicant Charter School agrees that:
 - a. The Applicant Charter School, at its sole cost and expense, shall comply with the Office of Environmental Health and Safety ("OEHS") protocol for environmental and CEQA review of proposed charter schools, as provided in the District document entitled, "OEHS Review of Proposed Charter School Projects," and as such document is amended from time to time. This will include conducting an environmental screening of the property as outlined in Title V, California Code of Regulations, Sections 14000-14012, as would be required for a District school project as well as proof of compliance with CEQA. Findings and all relevant documents must be submitted to the District prior to approval of zoning exemption.
 - b. The District's exercise of its zoning exemption authority on behalf of the Applicant Charter School is absolutely conditioned upon the Applicant Charter School complying with CEQA and all environmental laws, regulations, rules and requirements, and if at any time the Applicant Charter School is not in compliance with CEQA or environmental laws, regulations, rules or requirements, then the zoning exemption exercised on behalf of the Applicant Charter School shall be void, automatically invalidated without further action, and shall be immediately revoked.
5. Charter School Responsible for All Costs Associated with Zoning Exemption. Applicant Charter School agrees that it shall be solely responsible to pay for any and all actual and reasonable costs and expenses incurred by the District related to processing, evaluation, investigation or enforcement of any of the conditions in this Step IV, representations made in the Charter School Zoning Exemption Application, or findings made by the Board pursuant to its exercise of a zoning exemption.
6. Charter School Execution of Compliance Documents. The Applicant Charter School shall execute any and all appropriate documents that District staff deems reasonably necessary for compliance with the conditions in this Step IV.



LOS ANGELES UNIFIED SCHOOL DISTRICT

Board of Education Report

7. Charter School Compliance with Supplemental Conditions. The Applicant Charter School shall comply with any additional conditions that the District deems reasonably necessary as a condition to the Board's exercise of a zoning exemption.
8. Charter School Submission of Letters of Support. The Applicant Charter School shall submit documented evidence of community outreach and support for the proposed project. Such documented evidence shall include all of the following at a minimum:
 - a. A letter of support from the elected city official (i.e., council member) representing the area in which the property is located;
 - b. A letter of support from the neighborhood council for the area in which property is located (if applicable); and
 - c. Any and all city and applicable agency meeting agendas and minutes (i.e. meetings of city council, planning commissions, area planning commissions, building and safety commissions, neighborhood councils, redevelopment agencies, etc.) that include discussion of the proposed school project.

Step V. Board Directs Staff to Take Subsequent Actions

As a part of the zoning exemption Board action, the Board shall direct and authorize staff to do the following:

1. Notification of City or County Planning Commission. Notify the applicable city or county planning commission having jurisdiction over the property exempted within 10 days of the Board's zoning exemption action. (Government Code Section 53094(c)).
2. Staff to Execute Compliance Documents. Enter into all agreements with the Applicant Charter School evidencing the conditions in Step IV above.