

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 16 –

**RESCINDING RESOLUTION 09-78 AND ADOPTING A
PROCEDURE TO LEASE DISTRICT REAL PROPERTY
AND COMMENCE UNLAWFUL DETAINER ACTIONS**

WHEREAS, Section 31 of the District Act states that the Board "shall be governed in the sale, lease, or other disposition of real property by the requirements of law governing that action by counties";

WHEREAS, Section 31 further states that the Board by "resolution [may] prescribe a procedure for the leasing of real property owned by the district alternative to the requirements of law governing counties";

WHEREAS, on February 14, 2012, the Board by Resolution No. 09-78 adopted a procedure to lease real estate property owned by the District and to commence unlawful detainer actions;

WHEREAS, Resolution No. 09-78 required that District residential real properties that are available to be leased be advertised in a manner that is reasonably competitive;

WHEREAS, Resolution No. 09-78 also limited the tenancy of District residential real properties to a month-to-month lease;

WHEREAS, as District residential real properties become vacant, the Board seeks to make those residential properties available to the County of Santa Clara ("County") for lease at a fair market rental rate in support of the County's affordable housing program that prioritizes housing the homeless ("Affordable Housing Program");

WHEREAS, if a District residential real property is not expected to be demolished within two years, the Board desires that the month-to-month lease limitation not be applicable to that property, and that it may be leased for an initial term of up to 12 months;

WHEREAS, to the extent District residential properties are leased to the County in support of the Affordable Housing Program, the Board desires that those residential properties be exempt from the requirement that their availability for leasing be advertised in a manner that is reasonably competitive; and

WHEREAS, the Board desires to adopt this amended and restated resolution prescribing a procedure for leasing District residential and non-residential property that the District does not have an immediate need for, where such procedure is different than the requirements of law governing counties for leasing real property.

NOW THEREFORE, BE IT RESOLVED, that the Board adopts the following general procedure to enable the Chief Executive Officer ("CEO") (or designee) to lease District non-residential and residential property that the District does not have a short-term need for:

A. Leasing District Non-Residential Real Properties

When assessing whether to lease District non-residential real property ("Non-Residential Property") to a tenant, the CEO (or designee) shall evaluate whether the District has a short-term need for it. If there is not a short-term need, the CEO (or designee) may lease the Non-Residential Property on behalf of the District subject to the following conditions:

1. The Non-Residential Property is not leased under a joint use lease agreement with another public entity.
2. The term of the Non-Residential Property lease agreement ("Non-Residential Property Lease") must not conflict with the District's future need for the Non-Residential Property.
3. Leasing the Non-Residential Property must not have a negative impact on streams, creeks, waterways, or other elements of the environment, and District Environmental Planning staff provides written affirmation of California Environmental Quality Act (CEQA) compliance prior to executing the Non-Residential Property Lease.
4. The Non-Residential Property Lease provides the District with a right to terminate the tenancy at its convenience after providing the tenant with at least ninety (90) calendar days written notice.
5. Non-Residential Property available for lease is advertised in a manner that is reasonably competitive and at a fair market rental rate, except where a public purpose exists that justifies leasing that the Non-Residential Property at fair market rental rate without advertising its availability, and all other Non-Residential Property leasing requirements of this resolution are met. Examples of such justification may include:
 - A. Where the Non-Residential Property is landlocked (inaccessible from a public roadway) and there is only one directly adjacent prospective tenant (landowner or holder of a verifiable written lease or rental agreement with a remaining term of at least five years), or
 - B. Where the Non-Residential Property is landlocked (inaccessible from a public roadway) and there is only one directly adjacent prospective tenant (landowner or holder of a verifiable written lease or rental agreement with a remaining term of at least five years), or
 - C. Where the Non-Residential Property is temporarily required for a District project or program for no more than two years by a District contractor, or in cases other than those described in 5 A and B, above, where it is unclear whether a public purpose may justify leasing the Non-Residential Property at fair market rental rate without advertising, staff will present the matter to the Board for clarification and or direction.
6. The fair market rental rate of the Non-Residential Property is no more than \$5,000 per month (Fair market rental rates greater than \$5,000 per month require the approval of the Board).

7. The Non-Residential Property must be accessible from a public roadway or from the prospective tenant's land immediately adjacent to the Non-Residential Property.
8. The Non-Residential Property Lease requires the tenant to indemnify and hold harmless the District, its directors, officers, agents, and employees from all claims, costs and liability arising out of tenant's use or possession of the Non-Residential Property.
9. The Non-Residential Property Lease requires the tenant to maintain comprehensive/commercial general liability insurance that is satisfactory to the District's risk manager.
10. If the Non-Residential Property contains a District administrative office building, pumping plant, or other building used for District purposes, it shall not be leased without the prior approval of the Board.
11. District staff inspects the Non-Residential Property on an annual basis.
12. If the District reasonably expects the presence of hazardous materials on the Non-Residential Property, a pre-lease environmental due diligence evaluation must be conducted at the proposed tenant's expense to determine whether hazardous materials are actually present on the Non-Residential Property.
13. Financial reports of the Non-Residential Property's income and expenses are made available to the Board at least annually.

B. Leasing District Residential Real Properties

When assessing whether to lease District residential real property ("Residential Property") to a tenant, the District CEO (or designee) must evaluate whether the District has a short-term need for the property. If there is no short-term, the CEO (or designee) may lease the Residential Property on behalf of the District subject to the following conditions:

1. The term of the Residential Property lease agreement ("Residential Property Lease") must not conflict with the District's future need for the Residential Property.
2. The Residential Property is leased at a fair market rental rate.
3. The Residential Property is advertised in a manner that is reasonably competitive, except that Residential Property leased to the County in support of its Affordable Housing Program is not required to be advertised.
4. The Residential Property fair market rental rate is monitored on an annual basis, and if the fair market rental rate increases, the Residential Property Lease's rental rate must be increased accordingly.
5. The Residential Property shall only be leased on a month-to-month basis, except that Residential Property may be leased for an initial term of up to 12 months in support of the Affordable Housing Program so long as the Residential Property is not expected to be demolished within two years from the date it is leased.

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6. The Residential Property is managed with a reasonable degree of care.
7. The Residential Property is leased and managed in accordance with all applicable federal, state, and local laws, including California's fair housing laws, which include but are not limited to, the California Fair Employment & Housing Act, Unruh Civil Rights Act, Ralph Civil Rights Act, Bane Civil Rights Act.
8. The Residential Property is accessible from a public street or roadway.
9. The Residential Property is used solely for residential purposes.
10. Financial reports of the Residential Property's income and expenses are made available to the Board at least annually.

C. Restated Resolution

Resolution No. 09-78 adopted by the District Board on November 12, 2009 is hereby amended and restated in its entirety as set forth in this amended and restated resolution. This amended and restated resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on (insert meeting date):

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

By: _____
BARBARA KEEGAN
Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk/Board of Directors