

RESOLUTION NO. 09-78

PROCEDURE TO LEASE DISTRICT REAL PROPERTY AND COMMENCE UNLAWFUL DETAINER ACTIONS

WHEREAS, Section 31 of the District Act states that 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”; and

WHEREAS, the Board desires to adopt a 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 delegate) to lease District property that the District does not have a short-term need for:

When assessing whether to lease District non-residential property, the CEO (or delegate) must evaluate whether the District has a short-term need for the property. If there is not a short-term need for the property, the CEO (or delegate) may lease the property on behalf of the District subject to the following terms and conditions:

Leasing Non-Residential Properties

1. The property is not leased or rented (“Leased”) under a Joint Use Lease agreement with another public entity;
2. The term of the Lease must not conflict with the District’s future need for the property;
3. Leasing the 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 Compliance;
4. The Lease agreement provides the District with a right to terminate non-residential Leases at its convenience after providing the tenant with at least 90 calendar days written notice;
5. The property is advertised in a manner that is reasonably competitive and is Leased at a fair market rate except in cases where a public purpose exists that justifies leasing the property at fair market value without advertising and all other Leasing Non-Residential Properties requirements of this resolution are met.

Examples of such cases may include:

- A. where the District property is landlocked (inaccessible from a public roadway) and there is only one directly adjacent prospective tenant (landowner or holder of

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a verifiable written lease or rental agreement with a remaining term of at least five years), or

- B. where the District property is temporarily required for a District project or program for no more than two years by a District contractor, or

In cases alternate to 5 A and B, above, where it is unclear whether a public purpose may justify leasing District property at fair market value without advertising, staff will present the matter to the Board for clarification and or direction;

6. The District Board approves Lease agreements that have a lease value of more than \$5,000 per month;
7. The property must be accessible from a public roadway or from the proposed tenant's adjacent land;
8. The Lease agreement requires the tenant to indemnify and hold harmless the District, its directors, officers, agents, and employees arising out of tenant's use or possession of the property;
9. The Lease agreement requires the tenant to maintain comprehensive/commercial general liability insurance that is satisfactory to the District's risk manager;
10. If the property contains District administrative office building, pumping plant, or other building that is used for District purposes, it cannot be leased without the prior approval of the District's Board;
11. District staff inspects the property on an annual basis;
12. If the District reasonably expects the presence of hazardous materials on the 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 property; and
13. Financial reports of the property's income and expenses are made available to the Board at least annually.

Leasing Residential Properties

When assessing whether to Lease District residential property, the District CEO (or delegate) must evaluate whether the District has a short-term need for the property. If there is not a short-term need for the property, the CEO (or delegate) may Lease the property on behalf of the District subject to the following conditions:

1. The term of the Lease or rental agreement ("Lease") must not conflict with the District's future need for the property;

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2. The property is Leased at a fair market rate;
3. The property is advertised in a manner that is reasonably competitive;
4. The fair market Lease rate for the property is monitored on an annual basis, and if the fair market lease rate increases, the property Lease rate must be increased accordingly;
5. The property must be Leased on a month-to-month basis only;
6. The property is managed with a reasonable degree of care;
7. The 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 property must be accessible from a public street or roadway;
9. The property is used solely for residential purposes; and
10. Financial reports of the property's income and expenses are made available to the Board at least annually.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on November 12, 2009.

AYES: Directors R. Santos, L. Wilson, T. Estremera, J. Judge, R. Kamei,
P. Kwok, S. Sanchez

NOES: Directors None

ABSENT: Directors None

ABSTAIN: Directors None

SANTA CLARA VALLEY WATER DISTRICT

By: Sig Sanchez
SIG SANCHEZ
Chair/Board of Directors

ATTEST: LAUREN L. KNOFF

Michelle King
acting Clerk/Board of Directors