

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

January 11, 2022

FROM

BOB PAGE, Registrar of Voters

SUBJECT

Agreements for County Use of Real Property for Election Purposes

RECOMMENDATION(S)

1. Adopt **Resolution No. 2022-002** pursuant to California Government Code section 25350.51, authorizing the Purchasing Agent to execute template facility use agreements, lease agreements or use permits for County use of real property for election purposes for a term not to exceed four years and a rental cost not to exceed \$10,000 per month with the Resolution expiring on January 10, 2027.
2. Approve facility use agreement template for facilities needed to administer elections, including polling places, election supply depot sites, early vote sites, and poll worker training locations for a term not to exceed four years and a rental cost not to exceed \$10,000 per month.
3. Authorize the Purchasing Agent to waive standard County contract terms pursuant to County Policies 11-05 and 11-07 and County Standard Practice 11-07 SP when executing use agreements for facilities needed to administer elections, upon consultation with County Counsel and Risk Management.

(Presenter: Bob Page, Registrar of Voters, 387-2100)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). In practice Discretionary General Funding (Net County Cost) traditionally finances the majority of the costs of an election. A portion of election expenses are billed to local jurisdictions – cities, school districts, and special districts – based upon the number of contests on the ballot and the number of registered voters for each contest. Adequate appropriation and revenue have been included in Registrar of Voters' (ROV) 2021-22 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The recommended Resolution, facility use agreement template, and delegation of authority to waive standard County contract terms pursuant to County Policies 11-05 and 11-07 and County Standard Practice 11-07 SP will enable ROV to secure the facilities needed to conduct elections to ensure voters have sufficient access to cast a ballot and receive service from trained poll workers.

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For each countywide election, ROV works to secure from 300 to 400 polling places, about 25 election supply depot sites, five early vote sites, and from 15 to 20 poll worker training locations. ROV recently started to identify locations for the June 7, 2022 Statewide Primary Election and November 8, 2022 Statewide General Election. Poll worker training for the Statewide Primary Election is scheduled to start in mid-February 2022.

Government Code section 25350.51 allows the Board of Supervisors (Board) to delegate to the Purchasing Agent or other appropriate County official the authority to lease real property for use by the County or to obtain use of real property for the County by license for a term not to exceed five years and for a rental not to exceed \$10,000 per month.

On November 7, 2000 (Item No. 54), the Board adopted Resolution No. 2000-248, authorizing the Chief Executive Officer (CEO) to lease real property for use by the County of a term equal to or less than three years, with a rental cost equal to or less than \$2,500 per month and a premises of less than 5,000 square feet.

On July 13, 2021 (Item No. 49), the Board adopted Resolution No. 2021-136, authorizing the CEO to execute lease agreements or use permits for County use of real property for election purposes for the September 14, 2021 California Gubernatorial Recall Election and a rental cost not to exceed \$10,000 per month with the Resolution expiring on November 1, 2021. The Board also approved a facility use agreement template and authorized the CEO to waive standard County contract terms in facility use agreements upon consultation with County Counsel and Risk Management.

Additionally, on July 13, 2021 (Item No. 49), ROV stated it would present an agenda item to the Board, following the expiration of Resolution No. 2021-136, that summarized the facility use agreements and permits executed for the recall election. Attached to this agenda item is the summary report, which identifies whether the County's template agreement or property owner's agreement or permit was executed and whether the agreement or permit required the CEO to waive any standard County contract terms.

About 150 of the facility owners contacted, including cities and school districts, required the County to execute their use agreement in order to use their facilities. All agreements were reviewed and approved by County Counsel. Any agreements that contained terms that were not standard County contract terms were identified for negotiation. When the property owner would not agree to a standard County insurance or indemnity provision, the agreement was forwarded to Risk Management for evaluation. This process was also used when a facility owner sought to negotiate an amendment to the County facility use agreement template.

County Counsel and Risk Management's review and approval of non-standard County contract terms was completed in accordance with County Policies 11-05 and 11-07 and County Standard Practice 11-07 SP. County Counsel and Risk Management also considered Government Code section 895.2, which allocates risk between two public entities.

To ensure voters throughout the county had sufficient access to a voting location, some compromise on agreement terms was required. ROV expects compromise on agreement terms will be required for future elections as well.

From the lessons learned during the September 14, 2021 California Gubernatorial Recall Election, the recommended Resolution, facility use agreement template, and delegation of authority incorporate three key changes:

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1. The agreements and use permits will be executed by the County Purchasing Agent.
2. The indemnification and insurance requirements in the facility use agreement template have been modified pursuant to County Standard Practice 11-07 SP to reflect that the County will use the facilities of others.
3. The term of the facility use agreement template will be up to four years so that multiple elections can be covered by one agreement. Prior to each election, a written election plan will be mutually agreed upon by ROV and the property owner. A sample election plan is provided on Exhibit B of the template agreement.

Recommendation No. 1

The recommended Resolution would only apply to facilities used for purposes associated with conducting elections, leaving the provisions of Resolution No. 2000-248 in effect for all other County uses of real property. ROV requests amended delegated authority for election purposes, because:

- Voting locations larger than 5,000 square feet enable ROV to better and more efficiently serve voters during an election. The Resolution does not include a limit on square footage to allow ROV to use all available locations for the election. Government Code section 25350.51 does not place a limit on square footage either.
- Of the voting locations ROV used for the recall election, 12 cost more than \$2,500 per month.

The recommended Resolution will expire in five years on January 10, 2027.

Recommendation No. 2

About 165 of the facility owners contacted during the recall election did not have a use agreement that they required the County to sign. The recommended County facility use agreement template will ensure basic terms – term and cost – and liability protections are agreed to in writing.

Recommendation No. 3

As stated above, ROV expects compromise on agreement terms with property owners will be required as the availability of suitable facilities for voting locations in many communities in the county is limited. It is recommended that the Board authorize the Purchasing Agent, pursuant to County Policies 11-05 and 11-07 and County Standard Practice 11-07 SP, to waive standard County contract terms in these use agreements upon consultation with County Counsel and Risk Management.

ROV will provide the Board and CEO with an annual report summarizing all lease agreements or use permits executed under the Resolution.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jolena Grider, Deputy County Counsel, 387-5455) on December 14, 2021; Purchasing (Leo Gomez, Purchasing Manager, 387-2063) on December 15, 2021; Risk Management (Victor Tordesillas, Director, 386-8623) on December 14, 2021; Finance (Sofia Almeida, Administrative Analyst, 387-5423) on December 16, 2021; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-3076) on December 16, 2021.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Dawn Rowe Seconded: Janice Rutherford
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: January 11, 2022



cc: w/Resolution
File - Registrar of Voters w/attach
CCM 01/13/2022