

Subject: City of Ottawa Leasing Policy

File Number: ACS2022-PIE-CRO-0007

Report to Finance and Economic Development Committee on 28 June 2022

and Council 6 July 2022

Submitted on June 16, 2022 by Peter Radke, Director, Corporate Real Estate Office, Planning, Real Estate and Economic Development Department

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Ward: Citywide

Objet : Politique de location à bail de la Ville d'Ottawa

Dossier : ACS2022-PIE-CRO-0007

Rapport au Comité des finances et du développement économique

le 28 juin 2022

et au Conseil le 6 juillet 2022

Soumis le 16 juin 2022 par Peter Radke, Directeur, Bureau des bien immobilier municipal, Services de la biens immobiliers municipal, Direction générale de la planification, de l'immobilier et du développement économique

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REPORT RECOMMENDATION

That the Finance and Economic Development Committee recommend that Council adopt the proposed City of Ottawa Leasing Policy, as described in Document 1 attached to this report.

RECOMMANDATION DU RAPPORT

Que le Comité des finances et du développement économique recommande au Conseil d'adopter la politique de location à bail de la Ville d'Ottawa, décrite dans le document 1 joint au présent rapport.

EXECUTIVE SUMMARY

On April 8, 2019, the Office of the Auditor General tabled report [ACS2019-OAG-BVG-0002](#) which reviewed the City of Ottawa's leasing practises. Chief among their recommendations was the need for the Corporate Real Estate Office ("CREO") to develop a Leasing Policy for application across the City.

The proposed City of Ottawa Leasing Policy, attached as Document 1, establishes CREO as the corporate landowner, sets the criteria for acquiring or disposing of temporary real property rights, ensures the City reviews its own property inventory prior to leasing from third parties and establishes a consistent and effective approach to the management of surplus spaces leased out to the public.

In addition, the proposed Leasing Policy solidifies that any new Lease Agreement will require the Tenants to assume all property taxes and operational costs associated to the leased space, provide the City an insurance certificate and pay market rent, if applicable.

When space within a City facility is not required for City operations, the proposed policy allows for Community Licensing to be offered at less than market rent to organizations. The not-for-profit organizations must assume the operational costs associated with the spaces they will occupy and must remain in good standing with the City. A City Department must sponsor said organizations and provide a rationale to support a less than market rent for the City space.

Operational costs recovery will affect many longstanding tenants of exclusive use Community Licenses across City facilities. There may be some concerns from groups who have benefited from the below market rent values and/or below operational costs. To aid in the transition, where the organization can demonstrate hardship, cost recovery will be increased incrementally over a period of up to 5 years commencing in the first quarter of 2023.

In preparing the Leasing Policy, many municipalities and jurisdictions were consulted, including most notably the City of Brampton, Kingston, Mississauga, Toronto and the National Capital Commission.

RÉSUMÉ

Le 8 avril 2019, le Bureau de la vérificatrice générale déposait le rapport [ACS2019-OAG-BVG-0002](#), qui examinait les pratiques de location à bail de la Ville d'Ottawa. Ce rapport recommandait essentiellement au Bureau des biens immobiliers municipaux (« BBIM ») d'élaborer une politique sur la location à bail, à appliquer sur tout le territoire municipal.

La politique proposée de location à bail de la Ville d'Ottawa, **jointe en tant que document 1**, définit le BBIM comme étant le propriétaire, établit les critères d'acquisition et d'aliénation des droits immobiliers temporaires, permet de s'assurer que la Ville vérifie son propre inventaire de ses biens immobiliers avant de louer auprès de tiers, et institue une approche uniforme et efficace dans la gestion des locaux excédentaires offerts au public.

Par ailleurs, la politique proposée de location à bail renforce le principe selon lequel tout nouveau contrat de location à bail exigera du locataire qu'il prenne en charge l'ensemble des impôts fonciers et des coûts de fonctionnement associés à l'espace loué, qu'il fournisse à la Ville une attestation d'assurance et qu'il paie le loyer du marché, le cas échéant.

Lorsqu'aucune partie d'une installation municipale n'est requise pour les opérations de la Ville, la politique proposée permet d'offrir des permis d'occupation communautaires à des organisations à des loyers inférieurs à ceux du marché. Les organisations sans but lucratif doivent acquitter les frais d'exploitation des locaux occupés et être en règle auprès de la Ville. Une direction générale de la Ville doit parrainer lesdites organisations et justifier le loyer inférieur à celui du marché de l'espace loué à la Ville.

Le recouvrement des frais d'exploitation a une incidence sur les nombreux locataires de longue date qui ont des permis d'occupation communautaires à usage exclusif dans l'ensemble des installations municipales. Il est possible que les groupes qui ont profité des loyers inférieurs à ceux du marché ou de coûts de fonctionnement réduits pour avoir accès à ces locaux expriment des motifs de préoccupation. Pour faciliter la transition, dans les cas où des organisations ont des difficultés et qu'ils peuvent le démontrer, le recouvrement des coûts est haussé progressivement sur une durée pouvant atteindre cinq ans, à compter du premier trimestre de 2023.

En élaborant la politique de location à bail, de nombreuses municipalités et administrations ont été consultées, parmi lesquelles on peut mentionner Brampton, Kingston, Mississauga, Toronto ainsi que la Commission de la capitale nationale.

BACKGROUND

On April 8, 2019 the Office of the Auditor General tabled report [ACS2019-OAG-BVG-0002](#) which reviewed the City of Ottawa's leasing practise. Chief among their recommendations was the need for the Corporate Real Estate Office ("CREO") to develop a Leasing Policy for application across the City which includes:

- CREO's role as the sole owner of City owned real estate;
- Responsibility and accountabilities for CREO's Leasing Section; and
- A definition of the bookings and sub-lease criteria that City client groups must adhere to for all rentals.

In response to this recommendation, management undertook to develop and implement a comprehensive leasing policy.

The purpose of this report is for Council to adopt the Leasing Policy as described in Document 1 attached to this report.

DISCUSSION

The City of Ottawa derives its authority to acquire and dispose of Real Property from the *Municipal Act 2001, S.O. 2001, c. 25, (Municipal Act)*. While there is no specific section in the *Municipal Act* authorizing the City to engage in leasing activities, Section 9 states, "A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act". A "Natural Person" can engage in leasing activities and consequently so can the City.

The purpose of the proposed Leasing Policy is to establish a framework for the approval and execution of Lease Agreements for use by the City to ensure that such Agreements are fair, reasonable and in the best interest of the City. The proposed Leasing Policy would apply to all City employees (City Client Departments) engaging in Lease Agreements requiring approval by City Council or under its delegated authority. Lease Agreements include the acquisition and disposal of temporary real property rights by way of a Lease, Licence of Occupation, Consent to Enter or Joint Use Agreement. The Leasing Policy does not apply to City Client Departments allocating daily or hourly use of City owned facilities for specific events.

Review of other Jurisdictions:

In drafting the proposed Leasing Policy, City staff investigated the leasing practises of other jurisdictions including most notably the municipalities of Brampton, Kingston, Mississauga and Toronto. These were selected for their size and governance similarities to Ottawa. The leasing policies of federal jurisdiction such as the National Capital Commission were also investigated.

Generally, leasing functions are listed within broader real estate policies (Brampton) or in acquisition and disposal policies (Mississauga). The City of Toronto has delegated its leasing function to a third party created by the City, [Create TO](#), which does not include leasing to community groups. Kingston has a standalone leasing policy which clearly outlines the following:

- Legislated authorities from which the leasing function derives;
- Specific responsibilities of real estate staff;
- Responsibility for paying Property taxes and Insurance; and,
- How properties are determined to be available for leasing.

The City's proposed leasing policy is consistent with leasing policy in other jurisdictions.

Regarding community groups, the City of Toronto directly oversees leasing to community groups through its [Community Space Tenancy Policy](#). While other municipalities have provisions for community groups, Toronto establishes types of leasing for these groups, among them a Community Hub Tenancy, "intended to support a variety of services and programs, and which is characterized by three or more Tenants co-located in a space with intentional service and program integration" and an Incubator Tenancy, "intended to support a not-for-profit organization with shared space within a Community Partner or Community Hub Tenancy to build organizational capacity and develop programs to meet a new or emerging community need." The Policy further mandates that these groups be financially sustainable and have programs and services that align with community needs and plans.

CREO as the City's Corporate Landowner

The proposed Leasing Policy establishes CREO as the Corporate Landowner enabled to provide the policy and procedures to be followed when entering into and administering Lease Agreements. As the Corporate Landowner, CREO has the authority to offer City Property Rights for Lease. CREO would be enabled to establish

factors when deciding the availability of property including, without restriction, future City requirements, marketability, suitability, and appropriateness for the intended use. Such actions would occur based on collaboration with the appropriate City Departments.

Market Rent

Section 106 of the *Municipal Act* prevents the City from assisting any business or commercial enterprise through the leasing of property at below market value. Market Rent is defined as the rate that a property would most likely command on the open market, as evidenced by current rentals being paid or asked for comparable property and for similar uses.

Market Rent is normally determined by one of the following methods:

- A survey of Market Rents for comparable Real Property;
- The highest rents tendered in response to an advertisement;
- The rent contained in the best proposal rated against predetermined selection criteria;
- The fixed rent plus the percentage of gross sales revenue that is normal for the industry as determined by a survey;
- The appraised business value of the lease;
- Any other practice that is typical of the market for a comparable lease; or
- Alternative uses that may not be considered the highest and best market use but serve as an interim or beneficial City purpose in which a secondary market may exist (Value-In-Use e.g. vacant development land used for farming, alternative commercial uses, storage/warehouse, parking, program space).

Revenue from leasing

All City-owned Real Property is a corporate asset and not assets of any individual City Client Department. As is the current practice, revenues from leasing agreements shall be directed to appropriate City Client Departments that have a stake in the leased space.

Risk Management: Municipal Taxes and Insurance

All Lease Agreements would be subject to property taxes if the space is occupied by an individual or organization that would otherwise be taxable if the individual or organization owned the land, as determined by the Municipal Property Assessment Corporation (MPAC). The City will provide Agreements to MPAC to determine the appropriate tax class. The City would recover the tenant's proportionate share of the property tax through the Lease Agreement. Tenants with registered charitable status would be responsible for paying property taxes and making application for tax rebates as applicable.

The City would require that any individual(s) or organization(s) occupying City lands through a Lease Agreement carry insurance including but not limited to property and General Commercial Liability coverage in amounts deemed appropriate for their business and any potential damage they may cause to City Real Property. The Tenant insurance would name the City as an additional insurer.

Method of securing tenants at Market Rent

The leasing and negotiation methods utilized must ensure transparent and accountable processes are followed when entering into Lease Agreements.

CREO, along with the Client City Department, shall determine the appropriate method of securing a Tenant or Licensee, which may include:

- a public call for bids via tender or proposal;
- Marketing by CREO;
- using a realtor; or,
- negotiating directly with an existing tenant who is in good standing with the City.

Availability of Real Property is limited and therefore priority may be given to service groups or clubs affiliated with the City, in consultation with the appropriate City Client Department.

In considering which groups to recommend, consideration may be given to the following:

- Support from a City Client Department;
- Alignment between Client Department mandate and potential client;

- Number of years in operation;
- Area in which the group provides services;
- Scope, magnitude and type of service offered;
- Ability of the group to operate without financial assistance from the City, both in the short- and long-term;
- Total costs and benefits to the City in assisting the group;
- The degree to which the group participates in commercially oriented activities; or
- The degree to which the group is or was in good standing of other Lease Agreements with the City.

Community Licenses

Section 107 of the *Municipal Act* provides that the City may lease property for as little as nominal consideration for any purpose that Council considers to be in the interest of the City. The concept of Market Rent may not always suit the pursuit of the City's wider objectives and purposes. The City may want to provide financial incentive in the form of an offset in Community Licenses. Such an offset may include favorable terms and conditions and/or a reduction from Market Rent. Any reductions would not go below the City's Operating Cost recovery. The extent of such offsets would have to be justifiable to attain the desired outcome in support of the objectives and purposes of the City. It would be necessary to estimate and/or quantify the value of these criteria and offsets against Market Rents in accordance with CREO's Policies and Procedures.

The proposed Leasing Policy establishes guidelines to follow when offering Lease Agreements to not-for-profit and community organizations. In establishing the criteria to follow, the proposed Leasing Policy attempts to strike a balance between the City's obligation to the taxpayer to prudently manage its land holdings with its responsibility to ensure public accessibility to its lands. To this end, Community Licenses are intended for community organizations looking to occupy space within a City facility. The criteria to follow when offering Community Licenses would include:

- All community organizations will be responsible for payment of all operating costs attributable to their licenced property, either directly or as additional rent.

- Licences with operating costs billed by the City as additional rent may have those costs reviewed annually or upon its renewal. Operating costs may be adjusted over the term of the Licence as required to account for inflation or other increased costs.
- Licences with operating costs billed by the City as additional rent may have those costs reviewed annually. Operating costs may be adjusted as required to account for inflation or other increased costs.
- Unless exempted, community organizations shall be subject to property assessment and taxation for the licenced property if applicable.
- The community organization must be in good standing and not be in default of any provision of their current Community License with the City to qualify and be considered for a less than Market Rent licence. An example if this would be: if an organization fails to provide an insurance certificate, the City reserves the right to not consider the organization for a less than Market Rent licence.
- Community Licences will not allow for a change in use, assignment, ownership or sub-letting, without the consent of CREO.

Operational Cost recovery and transition

An analysis of recent Operating Costs for City facilities was completed for City facilities and funds an average annual operating cost of \$11 per square foot. This rate was calculated by using the total actual operating cost divided by the total square footage of typical Recreational and Cultural building types. Specialized spaces such as arenas and pools were not included in the calculation since they are high cost, premium space and do not accurately reflect the cost of operating the spaces offered for license. The City will review this rate on an annual basis.

From a financial perspective all agreements will be required to maintain a full operating cost recovery rate on revenue leases

To aid existing longstanding tenants having exclusive use of City facilities, where such tenants can demonstrate hardship with the new rate, the operational cost recovery will be increased incrementally over a period of up to 5 years.

Roles and Responsibilities

The Leasing Policy establishes clear roles and responsibilities for CREO's leasing unit. In addition, the Leasing Policy defines the role of the Accommodation Branch, Facility Operations Services and the various City Departments.

Accommodation Branch:

The Accommodations Branch will maintain a current listing and space availabilities of City facilities and ensure all required facility attributes such as gross area is entered in appropriate computer software or a database. Staff will review the availability of City facilities prior to entering into an Acquisition Lease.

Facility Operation Services:

Facility Operations Services will provide operating costs for City Real Property to support Lease Agreements negotiated at Market Rent. In addition, they will provide on an annual basis the operating costs per square foot for Recreation, Cultural and Facility Services Portfolio of non-specialized City owned facilities. The operating costs will be shared with CREO and all City Client Departments to ensure that costs are being recovered in Lease Agreement.

City Client Departments:

- Secure budget and provide rationale for Acquisition Leases.
- Monitor and provide property management support for occupancy in City facilities and provide operational costs information to CREO as necessary.
- Become sponsoring department supporting the offer of Community Licenses and provide services to evaluate and monitor as necessary.
- Advise CREO's Accommodations Branch of space within City facilities available for lease to add to inventory.
- Execute and administer Lease Agreements under fifteen thousand dollars \$15,000 per annum provided:
 - The Lease Agreement template provided by CREO is used in all instances of Revenue Lease Agreements;
 - A certificate of insurance from the occupant naming the City an additional insured is obtained for Revenue Lease Agreements;

- The Lease Agreement is completed in conformity with this Policy and reported to CREO.
- The Agreement serves the City Client Department's interest.

CREO has the authority to administer the application of this Policy and prepare procedures and directives to this effect.

RURAL IMPLICATIONS

The City of Ottawa owns a number of properties in rural Ottawa which will fall under the proposed policy.

CONSULTATION

Staff from the from the Recreation, Cultural and Facilities Services Department; Community and Social Services Department; as well as from the Corporate Services Department and Legal Services were consulted in the drafting of this report.

Implementation of this policy is anticipated for the first quarter of 2023, which will provide ample time for staff to consult with the various stakeholders including existing tenants of City space.

COMMENTS BY THE WARD COUNCILLORS

This is a city-wide report – not applicable.

LEGAL IMPLICATIONS

The proposed Leasing Policy addresses the concerns raised by the 2019 Auditor General report. The proposed Leasing Policy will help provide further clarity and consistency to practices and procedures for the variety of Agreements the City enters into respecting its inventory of properties. There are no legal impediments to approving the recommendations in this report.

RISK MANAGEMENT IMPLICATIONS

There are no risk implications with this report.

ASSET MANAGEMENT IMPLICATIONS

The recommendations documented in this report are consistent with the City's [Comprehensive Asset Management \(CAM\) Program](#) objectives. The implementation of the Comprehensive Asset Management program enables the City to effectively manage

existing and new infrastructure to maximize benefits, reduce risk, and provide safe and reliable levels of service to community users. This is done in a socially, culturally, environmentally, and economically conscious manner.

The purpose of the proposed Leasing Policy is to establish a framework for the approval and execution of Lease Agreements for use by the City to ensure that such Agreements are fair, reasonable and in the best interest of the City.

FINANCIAL IMPLICATIONS

There are no financial implications with the recommendation with this report.

ACCESSIBILITY IMPACTS

Accessibility has been considered in the development of the proposed Leasing Policy.

All new and redeveloped City owned, leased or operated spaces and facilities are intended to be inclusive and accessible to everyone through the application of the City of Ottawa's Accessibility Design Standards (ADS). The ADS are mandatory Standards to the City, freely shared for use publicly, and provide practical examples of solutions to optimize accessibility for new construction or for the redevelopment of existing spaces and facilities owned, leased or operated by the City of Ottawa.

ECONOMIC IMPLICATIONS

There are no Economic Impacts with this Report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental impacts with this report.

TERM OF COUNCIL PRIORITIES

This project addresses the following Term of Council Priorities:

- Economic Growth and Diversification
- Thriving Communities.

SUPPORTING DOCUMENTATION

Document 1 City of Ottawa Leasing Policy

DISPOSITION

Following Council's approval, CREO will incorporate the Leasing Policy into the Corporate Policy Manual.