

City of Ottawa Leasing Policy

Approved By:

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Policy Statement:

The purpose of this Policy is to establish the framework for the approval and execution of Agreements related to the acquisition and disposal of temporary Real Property rights of the City of Ottawa (hereby known as the City) to ensure that such agreements are fair, reasonable and in the best interest of the City.

Purpose:

The purpose of this Policy is to ensure that transparent and accountable processes are followed in the acquisition and disposal of temporary Real Property rights and to ensure that costs and revenues are fair, reasonable and in the best interests of the City.

Application:

This Policy will apply to all City employees (City Client Departments) engaging in Agreements that require approval by City Council or a delegated authority. This Policy does not apply to City Client Departments allocating daily or hourly use of City owned facilities for specific events or programs.

The Corporate Real Estate Office (CREO) shall act as the corporate landowner and is responsible and accountable for applying the principles contained in this policy when entering into Agreements.

Policy Requirements:

Policy statements will be supported by a procedures manual for implementation.

Revenue Lease Agreements at Market Rent:

Unless permitted by law and authorized by Council, or as permitted under this policy, CREO, as the City's corporate landowner, is obligated to temporarily dispose of City owned or Leased Real Property at Market Rent. This requirement is set out in Section 106 (1) of the *Municipal Act, 2001*.

Market Rent is the rate that a City owned Real Property would most likely command on the open market, as evidenced by current rent being paid or charged for comparable property and a similar use.

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).

In addition to establishing a Market Rent for Real Property, the following criteria should also be considered:

- The treatment of Operating Costs within the established Market Rent in consideration of the Lease Structure;
- The transfer or recovery of City Operating Costs (in-kind contributions / offsets to Operating Costs or program costs that would otherwise be expenses to the City);
- Other benefits to the City; or
- Vested Improvements.

These criteria are factors which together may affect a determination of financial offsets and adjustments to arrive at Market Rent. See **Appendix A** and **Appendix C** for additional details and considerations.

A Consent to Enter, which provides an individual/entity temporary access to City property does not require Market Rent consideration but an administrative fee and/or cost recovery and security deposit may be levied as applicable.

Revenue Lease Agreements at less than Market Rent (Community Licenses):

The concept of Market Rent may not always be appropriate in the context of delivering public services and programming that are in the public interest, and in achieving the City's wider objectives overall. The City is entitled under Section 107 of the *Municipal Act, 2001* to allow persons (including corporations), that are not manufacturing businesses or other industrial or commercial enterprises, to use/Lease City-owned Real Property at less than Market Rent if it is considered to be in the interest of the Municipality. The City may want to provide financial incentives in the form of an offset in a Community License. Such an offset may include favorable terms and conditions and/or a reduction from Market Rent, but not less than Operating Cost recovery rent. The extent of such offsets must be justifiable to attain the desired outcome in support of the objectives and program mandates of the City or the Client Department. It is necessary to estimate and/or quantify the value of these offsets against Market Rent in accordance with this Policy. Refer to **Appendix B**: Guidelines for Not-for-Profit organizations and Community Licences. **Appendix C** provides Guidelines for transitioning below-Market Rent tenants to an Operating Cost recovery level of rent.

Revenue:

All City-owned Real Property is a corporate asset and not an asset of any individual City Client Department. Revenues from Agreements shall be directed to appropriate City Client Departments.

Municipal Taxes:

A Lease and/or License is subject to property taxes if it is occupied by an individual or organization that would otherwise be taxable, as determined by the Municipal Property Assessment Corporation, unless designated by Council as a Municipal Capital Facility. The City will provide Agreements to MPAC to determine the appropriate tax class. The City will recover the Tenant's proportionate share of property taxes through the Lease and/or License.

Tenants with registered charitable status are responsible for paying property taxes and making application for tax rebates as applicable.

Insurance and Indemnification:

The City requires that any individual(s) or organisation(s) (Tenants) occupying City lands through an Agreement or Consent to Enter must 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's certificate of insurance shall name the City as an additional insured.

Additionally, the City will require appropriate indemnification within Agreements.

Notice of Surplus Real Property Available for Lease at Market Rent:

When surplus Real Property becomes available for Lease, notice of the available space

shall be provided to the public by one or more of the following methods:

- Posting a sign on the Real Property for a period of not less than 10 days; and/or
- Posting a notice on the City's website for a period of not less than 10 days.

Method of Securing a Tenant at Market Rent:

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

CREO, along with the Client City Department, will determine the appropriate method of securing a Tenant, 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.

Priority:

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 factors:

- Support from a City Client Department;
- Alignment between Client Department mandate and potential client;
- Number of years in operation;
- Program area in which the group provides services;
- Scope, magnitude and type of service offered;
- An assessment of the group's ability to operate without financial assistance from the City, both in the short and long term;
- Total costs and benefits (both pecuniary and non-pecuniary/ in-kind benefits) to the City in assisting the group; and
- The degree to which the group is or was in good standing in other Agreements with the City.

Responsibilities:

CREO:

- Acquire leased property for a City Client Department.
- Act as the City's corporate landowner and as official leasing agent for occupancies of the City's Real Property.
- Offer City Property Rights for Lease, renew Agreements and terminate Lease Agreements when appropriate.

- Establish factors to consider when deciding the availability of property including, without restriction, future City requirements, marketability, suitability, and appropriateness for the intended use.
- Act as the primary point of contact for all Tenants with responsibility for Agreement administration and consult with Client Departments as required.
- Generate and oversee the Corporate Leasing Policy and establish procedures for its implementation and administration.
- Determine if a proposed occupation of City property should be administered as a Lease, Licence or Consent to Enter.
- Liaise with Legal Services, Financial Services and other City Departments in the application of the Corporate Leasing Policy and procedures.
- Negotiate Agreements and prepare reports to Council or its delegated authority recommending terms and conditions.
- Provide Agreement templates for Client Departments to use exclusively; any changes to approved Agreement templates must be approved by CREO;
- Enter into an Agreement whenever the City's Real Property is occupied.
- Administer Agreements, conduct annual reconciliation of rents/fees, and maintain records in appropriate software applications and/or in hard copy.
- Maintain responsibility for agreements where more than one client department impacted
- Coordinate with Revenue Services to submit Agreements to MPAC

Accommodations Branch:

- Maintains a current listing of City facilities and ensures all required facility attributes such as "gross floor area" is entered in the Corporate SAP Real Estate Module.
- Review the availability of City Facilities prior to entering into an Acquisition Lease.

Facility Operations Service (Recreation Cultural and Facility Services (RCFS):

- Provides Operating Costs for City Real Property to support expense reconciliation for Agreements.
- Provides, on an annual basis, the average Operating Cost per square foot for City-owned facilities within the RCFS portfolio. The Operating Costs will be shared with CREO and all City Client Departments to ensure that all or some portion of Operating Costs are being recovered through Agreements.

City Client Departments:

- Secure budget and provide rationale for Acquisition Leases.
- Monitor and provide property management support for occupancy in City facilities and provide Operating Cost information to CREO as necessary.
- Act as a sponsoring department for Tenants requesting a Base Rent less than

Market Rent.

- Act as sponsoring department, identifying criteria to support Community Licenses and evaluate and monitor the services provided by the Tenant, as necessary.
- Advise Accommodations Branch of space that becomes available for Lease within City facilities, which can be added to the inventory of available space.
- Execute and administer Agreements that have a value of less than fifteen thousand dollars (\$15,000) per annum provided that:
 - The Agreement template issued by CREO is used in all instances;
 - A certificate of insurance from the Tenant naming the City as an additional insured is obtained for Revenue Leases; and
 - The Agreement is completed in conformity with this Policy and a copy is forwarded to CREO for entry into SAP and for tracking.
 - The Agreement serves the City Client Department's interest

City Council:

City Council has authority to approve all Agreements not covered by the Delegation of Authority By-law.

Delegated Authority:

The General Manager, Planning, Infrastructure and Economic Development, Director of the Corporate Real Estate Office, Manager of Realty Services, Manager of Realty Initiatives and Development, and/or the Program Managers of CREO, by way of a Delegated Authority Approval Report and in accordance with the provisions of the Delegation of Authority By-law 2020-360, as may be amended from time to time, have the authority to approve the acquisition and disposal of Real Property in accordance with the provisions of that By-law.

Legal Services:

Legal Services acts as legal counsel to City departments and advises the City on Real Property transactions, including the review and the formation of Agreements. The City Solicitor has authority to undertake all legal proceedings required for Real Property transactions.

Monitoring:

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

References:

- Disposal of Real Property Policy
- Public-Private Partnerships Policy
- Public-Private Partnerships Procedures
- Corporate Accounts Receivable Policy

Legislative and Administrative Authorities:

- Grants and Contribution Policy, effective January 1, 2011 as amended
- Acquisitions Policy December 23, 2014
- Delegation of Authority By-Law 2012-109, as amended
- Admin Fee By-Law 2010-115, as amended
- City of Ottawa Official Plan, as amended
- The Municipal Act, Ontario, as amended
- The Assessment Act, Ontario, 2001, as amended
- Commercial Tenancies Act, Ontario, 1990 as amended
- Residential Tenancies Act, Ontario, 2006, as amended
- Planning Act, Ontario, 1990, as amended
- Accessibility Policy, effective April 11, 2012 as amended (this refers to adherence to the AODA)
- Community Garden Network Plan
- Municipal Tax Sales Act, 1990
- Local Planning Appeal Tribunal Act, 2017
- Planning Act, 1990
- Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56

Definitions:

Acquisition Lease: The Lease or Licence of property that is owned by a third party or individual and is Leased by the City for its use.

Additional Rent: An amount payable by a Tenant to a Landlord in accordance with the Lease Agreement that is in addition to Base Rent for items including, but not limited to, Operating Costs, common area maintenance, property taxes and Landlord's building and property insurance.

Agreement: Includes acquisition and disposal of temporary Real Property rights by way of a Lease, Licence of Occupation, or Joint Use Agreement.

Base Rent: An amount payable by a Tenant to a Landlord in accordance with a Lease Agreement for the occupation of space. A Base Rent will represent the return on and of the capital asset and does not include Additional Rent.

Client Department: A City department that requires a leased space to carry out its required programming and operations or provides support to CREO in the administration and management of City leased space.

Community Licence: A Lease or Licence Agreement from the City with community organizations at below market rates that delivers services and/or programs in alignment with, or in support of, the City's services and programs.

Consent to Enter: An agreement between two parties allowing one to have a non-exclusive right to enter the other's property for a specific low risk use and time frame.

Delegated Authority: Authority to approve a Lease or Licence pursuant to the Delegation of Authority By-law 2020-360, as amended.

Joint Use Agreement: An agreement between two or more parties for the joint construction (if applicable), use and maintenance of a shared facility.

Gross Lease: A Lease structure whereby the Tenant pays an all-inclusive fixed rent, and the responsibility to pay Operating Costs are incurred by the Landlord. The use of this structure depends on market expectations, negotiations, the ability to delineate and quantify Operating Costs.

Lease: A contract whereby the landowner gives the right of possession to a Tenant for a specified time period in return for payment.

Lease Structure: A Lease structure can broadly be defined as a Net Lease, Semi-Gross Lease or Gross Lease, or some other variation.

Licence or Licence of Occupation: A Licence that provides use of space for operational purposes and provides the occupant with additional facility use and resources in exchange for consideration, whether Market Rent or below Market Rent (not below Operating Costs). A Licence does not grant the licensee an interest in the property, but only a limited right to use the property, is revocable at the Landlord's discretion, and is non-transferable.

Market Rent: The rate that a property would most likely command on the open market, as evidenced by current rentals/fees being paid for comparable property for a similar use.

Net Lease: A Lease structure that is net to the Landlord, whereby the responsibility to pay Operating Costs, is incurred by the Tenant in addition to the Base Rent payments, either as direct or recoverable Operating Costs. The use of this structure depends on market expectations, negotiations, the ability to delineate and quantify Operating Costs.

Operating Costs: Costs and/or pro-rated costs (non-capital related) associated with the day-to-day maintenance and operations of a property, which may include:

- Utilities: electricity, water, sewer, natural or propane gas, telephone;
- Repair and maintenance: heating, ventilation, air conditioning, electrical, structural, roof, plumbing, fire, life and safety systems, painting, decorating, drywall, flooring, other maintenance;
- Cleaning: janitorial, materials, garbage and waste removal;
- Roads and grounds: maintenance, repair landscaping;
- Security: wages or contract fees;
- Taxes, licences and licence fees and insurance; and

- Administrative costs: supplies, wages, salaries and overhead.

Real Property: The physical land, building, structures, water lots or any portions thereof plus any rights associated with ownership of the property.

Revenue Lease: The Lease or Licence of Real Property owned by the City to a third party or individual. In this case, the City acts as a Landlord.

Semi-Gross Lease: A Lease structure that is a blend of a Net and Gross Lease, whereby the Landlord and Tenant share in the payment of Operating Costs. The use of this structure depends on market expectations, negotiations, the ability to delineate and quantify Operating Costs.

Tenant: A holder of Real Property under a Lease or other Agreement with the right of possession.

Tenant Improvements: Improvements to a leased space that benefit only the Tenant and its uses, such as floor coverings, interior painting, interior partitions and doors, window coverings, stages, seating, fixtures, etc.

Enquiries:

For more information on this Policy, contact:
Manager, Realty Initiatives and Development
Corporate Real Estate Office

Appendix A

Leasing at Market Value (Revenue Leases) – Additional Considerations

Environment:

The proposed Tenant will assume responsibility for carrying out remediation of contaminated sites. In cases where contamination is a consideration, an adjustment to Market Rent could be made to offset the environmental cleanup and monitoring costs. To this end, the valuation will include an estimate of market value for the site as if clean, with adjustments to the rental rate to reflect the cost of remediation if it is assumed by the Tenant.

Transfer of City of Ottawa Expenses:

The Tenant should generally assume Operating Costs for their leased space. However, in certain cases, the nature and characteristics of a property may cause it to have higher Operating Costs than other similar properties, making that property less attractive to a prospective Tenant. In such a case, the City may consider leasing the space at a below Market Rent in order to secure a tenant for that space who will, in turn, absorb the Operating Costs. Lease rates below market rate but above operating costs can be facilitated with justification by the client department.

Other Benefits to the City of Ottawa:

An Agreement may contain Tenant obligations which exceed what could be considered as normal in the market when compared to similar competing properties. These additional obligations (that portion of the commitment which is beyond what could be considered as normal in the market) may be allowing the City to meet a wider mandate and may represent a net financial and program benefit to the City. As such, the City may be justified in leasing the property at a less than Market Rent to attract prospective Tenants to the property.

Retail or Commercial:

One Tenant's overall impact on the balance of a multi-tenant Real Property can cause Market Rents to vary between, for example, anchor Tenants, public program delivery partners as Tenants, and other Tenants who may provide a retail or service mix that is expected to provide an overall advantage by paying full Market Rent. Therefore, distinct Market Rents for different Tenants occupying the same location can occur depending on the Tenant's contribution to the whole.

Vested Improvements:

Tenant improvements may have a positive, neutral, or negative effect on market value or Market Rent, e.g. improvements that enhance the use of the property will increase

the property's value for rent; improvements that are removed at the end of the Lease, restoring the property to its original condition will have no effect on the sale or rental value; and improvements that detract from the highest and best use of the property will decrease the property's rental value.

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Appendix B

Guidelines for Not-for-Profit and Community Lease Agreements (Community Licences)

Statement of Intent:

The purpose of these Guidelines is to formalize a process for providing less than Market Rent for a Community License of City-owned Real Property to qualified not-for-profit and community organizations.

Guiding Principles:

- The City is responsible to hold public lands in trust and ensure public accessibility.
- The City has an obligation to its taxpayers to prudently manage its land holdings.
- The City acknowledges a need to provide qualified community organizations with agreements at less than Market Rent.
- The organization's ability to provide certain services not being provided by the City and the benefits of the programs and services improve the quality of life for the citizens of Ottawa.
- Qualified organizations must meet the requirements of Section 107 of the *Municipal Act*. An adjustment to the Market Rent rate could be made to offset the environmental cleanup and monitoring costs in order to benefit from below Market Rent. The benefit(s) to the City may include:
 - The provision of services and programming that would otherwise be an expense to the City or not be provided.
 - Maintaining or increasing the asset value of the property occupied through upkeep, maintenance and capital improvements, which are quantifiable and demonstrated by the community organization.

Restrictions on Property Availability:

- Client Departments, in consultation with CREO have the authority to determine the availability of properties for Community Licences.
- Factors determining the availability of property include, without restriction, future City requirements, marketability, suitability, and appropriateness for the intended use.

General Terms and Conditions for Community Licenses:

- Community organizations are responsible for payment of all Operating Costs attributable to their licenced space, either directly or as Additional Rent.
- 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 increases in costs.

- Unless exempted, community organizations shall be subject to property assessment and taxation for the licenced space, 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 below Market Rent Licence.
- Community Licences will not allow for a change in use, assignment, or sub-letting without the consent of CREO and the Client Departments.
- The City Client Departments will provide a list of approved Community Licences on a quarterly basis to CREO, including documentation supporting their selection and applicable certificates of insurance.

These Guidelines are subject to:

- All City approved policies, procedures, and bylaws,
- All applicable federal and provincial statutes and regulations

Appendix C

Transition to Operating Cost Recovery

The City must recover City Operating Costs from the Tenants of City Real Property, including all Agreements.

CREO has worked in partnership with RCFS staff to derive a method for the recovery of City facility Operating Costs. Where City facilities can be categorized as complex facilities or stand-alone facilities, Operating Cost recovery shall be established in the following manner:

Complex facilities (i.e. recreation centres with pools, ice pads; multiple tenants etc.):

These facilities may have elevated Operating Costs as a result of other activities or services that may not be a fair representation of the Operating Cost associated with the Tenant's occupancy or common use of the facility. RCFS staff will provide at the beginning of each year an appropriate unit cost per square foot, representing the average Operating Costs pertaining to reasonable costs associated with the Tenant's occupancy or common use of the complex facility. This would not include realty taxes which may be applicable to the Tenant if deemed taxable. Taxes will be recoverable directly from the Tenant.

The REA applies the established average unit cost to the rentable area of the tenanted space to calculate the annual recovery (which may include the Tenant's proportionate shared use of certain common areas). Operating Costs will increase at the rate of inflation over the term of the agreement. At renewals or new leases, the REA will request an up-to-date unit cost recovery.

Stand alone facilities (non-complex)

This may include facilities such as community centres, rural offices, other facilities where expenses can be quantified or divisible. RCFS staff will provide an annual Operating Cost estimate per square foot for the particular facility. The REA will apply the provided unit cost to the rentable area of the tenanted space to calculate the annual recovery (which may include the tenants proportionate shared use of certain common areas). Operating Costs will increase at the rate of inflation over the term of the agreement. At renewals or new leases, the REA will request an up-to-date unit cost recovery.

Exception: If at all possible, trackable/metered expenses pertaining directly to the tenanted space will be paid directly by the Tenant and deducted from any recoverable cost estimates.

CONSIDERATIONS:

Operating Cost recovery will affect many of the City's long-standing Tenants of City facilities who have exclusive-use Community Licenses. There may be some concern from groups who have benefited from access to their spaces at below Market Rents and Operating Cost recovery rates.

To aid in the transition to Operating Cost recovery, as these existing Leases and Licences are renewed, the initial rent to be paid will not immediately increase to full Operating Cost recovery. Instead, this directive will be phased in over a period of three to five years following the adoption of this Policy or Q1 of 2023, whichever is the latter. Alternatively, Tenants may benefit from a Base Rent freeze for the first three-year period. In order to benefit from the Base Rent freeze, City Client Departments sponsoring community groups must provide a rationale and have a sign-off from its General Manager.