

## City of Kingston

Policies and Procedures

Real Estate & Construction Services



**Effective Date**      **May 3, 2011**  
**Revision Date**      **Dec 20, 2011**  
**Revision No.**        **2.0**  
**Authority**            **Council**

### **REVENUE LEASING AND LICENSING POLICY**

#### **A. PURPOSE**

The purpose of this policy is to establish guidelines for the leasing and licensing of property owned by the City when made available for third party use. The policy supports the City's overall realty asset management strategy and asset rationalization initiatives which determine what properties may be made available for lease/license and under what terms and conditions.

#### **B. POLICY SCOPE**

This policy applies to all new agreements and expired agreements upon renewal, for occupation of City property, defined as Revenue Leases/Licenses. The policy does not apply to the following:

1. Encroachments on Municipal Rights-of-way;
2. Facilities Rentals as defined in the City's Fees By-Law;
3. Lease of Property located in Community Improvement Areas as defined by the Planning Act.
4. Acquisition Leases
5. Community Gardens
6. Business Licenses
7. Employment Lands and Economic Development Initiatives

#### **C. REVISION HISTORY**

<b>Date</b>	<b>Rev. No.</b>	<b>Change</b>	<b>Ref. Section</b>	<b>Approved by:</b>
May 3, 2011	1.0	Revenue Leasing and Licensing Policy	Not applicable	Council – Report 49
Dec 20, 2011	2.0	Community Leasing and Licensing et al	15 et al	Council – Report 13

## D. DEFINITIONS

**Acquisition Lease/License:** The lease/license of property for use by the City from third parties.

**Appraisal:** An estimate or opinion of the rental value of lands and/or buildings. Usually it is a written statement setting forth an opinion of the value of property as of a specified date supported by presentation and analysis of relevant data.

**Community Lease/License:** An agreement to the lease/license of property at below market rates to community organizations that deliver services and programs in alignment with City services and programs.

**Facility Rentals:** City owned property which is made available for short term rentals at rates established by the City's Fees and Charges By-Law.

**Gross Lease/License:** An agreement in which the tenant/licensee pays a fixed rate of rent/fee and the landlord pays all maintenance, utilities, taxes and capital costs without further adjustment from the tenant/licensee.

**Lease:** An agreement between a landlord and a tenant for exclusive occupation including grant of rights for a specified period of time and for a specified consideration (rent).

**License:** An agreement between a landlord and a licensee for non-exclusive occupation including grant of privileges for a specified period of time and for a specified consideration (fee).

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

**Municipal Capital Facility:** An agreement under Subsection (110) of the Municipal Act for capital facilities as outlined by Ontario Regulation 603/06 as amended.

**Net Lease/License:** An agreement in which the tenant /licensee pays a base rent/fee plus its proportionate share of maintenance, insurance, utilities, property taxes and other operating costs related to the tenant's/licensee's occupancy of the property. Allowance for capital costs are included in the base rent/fee paid to the City.

**Not-for-profit:** Corporation without share capital incorporated under Section II of the Corporations Act of Canada for the purpose of carrying on, without pecuniary gain to its members, objects of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or the like objects.

**Partner Group Sports and Recreation:** A type of permit holder having characteristics as defined under the Sports Field and Ice Allocation Policies or other similar policies as may be developed for the City's sports and recreation facilities.

**Property:** For the purposes of this policy, property is intended to include all real property defined as land, buildings, structures, water lots or any portions thereof plus any rights associated with ownership of the property.

**Revenue Lease/License:** The lease/license of City owned property to a third party group or individual.

## E. GOALS

1. Provide a framework for managing leases/licenses that is fair, transparent, accountable and sustainable.
2. Ensure returns to the City that are fair, reasonable and are in the best interests of the City.
3. Abide by the requirements of the Municipal Act, the Assessment Act, other applicable statutes and City policies with respect to the lease/license of property.

## F. TABLE OF AUTHORITIES

City of Kingston Official Plan	Section 9.9: To acquire or sell land for municipal purpose which may include leasing/licensing.
Master Accommodation Plan	Makes recommendations with respect to use of city buildings for accommodation.
City of Kingston Corporate Strategic Plan 2009-2011	Leasing/licensing is a tool to support the four pillars of a sustainable community.
Real Estate and Construction Services Departmental Strategic Plan	Leasing/Licensing is a component of the corporate realty asset management strategy.
Policy on the Sale and Acquisition of Real Property, 2006	"Lease/license" as a form of sale of property is not included in this policy.
Corporations Act, Part II, Canada	Regulates not-for-profit incorporation and maintenance of incorporated status.
Municipal Act, Ontario	Section 106 – City is not permitted to provide below market rent to industrial or commercial enterprises. Section 107 – Notwithstanding Section 106, City may provide grants to persons/organizations for purposes that Council considers to be in the best interest of the municipality. Section 110 – City may enter into Municipal Capital Facility agreements to provide financial or other assistance at less than fair market value or at no cost Section 361 – City must have a tax rebate program for eligible charities.
Assessment Act, Ontario	Section 3 (1) 9 – Land owned by a municipality is not tax exempt if it is occupied by a tenant who would be taxable if the tenant owned the land.
Commercial Tenancies Act, Ontario	Outlines the relationship, rights and obligations between landlords and commercial tenants which includes everyone but residential tenants.
Residential Tenancies Act, Ontario	Outlines the relationship, rights and obligations between landlords and residential tenants.
Planning Act, Ontario	S. 27 – Municipalities may charge no rents or reduced rents in city-owned facilities within approved Community Improvement Plan areas to encourage redevelopment.
Income Tax Act, Canada	S. 248 (1) – Provides criteria for registered charities.

## **G. ROLES AND RESPONSIBILITIES**

### **1. City Council:**

- 1.1. Council or its delegated authority will approve all individual leases/licenses.

### **2. Committees of Council:**

- 2.1. The Administrative Policies Committee will review policies related to leasing/licensing and make recommendations to Council. This Committee will also provide a forum for City staff to present and for Committee members and members of the public to express their views on such policies.

### **3. Commissioner:**

- 3.1. May act as delegated authority as may be directed by Council.

### **4. Real Estate and Construction Services Department (RCS):**

- 4.1 Act as the City's official leasing/licensing agent for all occupancies of City property.
- 4.2 Primary point of contact for all tenants/licensees with responsibility for lease/license administration.
- 4.3 Generate leasing/licensing policies and establish procedures for administration.
- 4.4 Determine if proposed occupation of City property is defined as a lease or a license.
- 4.5 Negotiate leases/licenses and prepare reports to Council recommending terms and conditions.
- 4.6 Administer lease/licenses, conduct annual reconciliation of rents/fees, and maintain records in appropriate software application and in hard copy.
- 4.7 Provide revenue estimates for budget purposes to facility managers.
- 4.8 Consult with Other City Departments on other leasing/licensing proposals for consideration.
- 4.9 Liaise with Legal Services, Finance and other Departments in the application of leasing/licensing policies and procedures.
- 4.10 Maintain an inventory of property available for lease or license.

### **5. Finance Department**

- 5.1. Maintain financial accounting system necessary to track the payment of rents/fees, issue invoices as necessary and assist RCS with annual reconciliation of rents/fees and preparation of monthly reports for RCS.
- 5.2. Support RCS with financial analysis as required.

### **6. Legal Services Department**

- 6.1. Give advice to RCS in the development of leases/licenses including form of lease/license, terms and conditions.
- 6.2. Review and confirm satisfaction of leasing/licensing documents including execution of documents by City.
- 6.3. Assist RCS with legal responses to leasing/licensing matters as they arise.

## **7. Other City Departments**

- 7.1 Monitor and provide property management support for occupancies in facilities managed by other departments and provide information to RCS as necessary.
- 7.2 Direct inquiries for lease/license of City property to RCS.
- 7.3 Submit proposed lease/license arrangements, including property for community leases/licenses with RCS for review. Consultation with RCS before proposing lease/license arrangements.
- 7.4 Become sponsoring department to provide funding for grants for community leases/licenses and provide services to evaluate and monitor as necessary.
- 7.5 Assist RCS with issues pertaining to environmental conditions of the occupancy.
- 7.6 Advise RCS of property available for lease/license to add to inventory.

## **H. POLICY DETAILS**

### **1. Compliance with Policy**

- 1.1 This policy is to be administered in accordance with the City's policies and strategies related to real property including acquisition, facility management, asset rationalization and disposal.

### **2. Allocation of Property**

- 2.1 Use of municipally owned property shall be subject to the following order of priority:
  - 2.1.1 Municipal purposes including administration, program and service delivery which may include the provision of space for community purposes
  - 2.1.2 City funded agencies, boards and commissions
  - 2.1.3 Agencies with fee for service agreements
  - 2.1.4 General public at market rents including not-for-profits agencies, other levels of government, individuals and the private sector
- 2.2 As space becomes available for third party use the City will invite offers through open advertisement and such space will be subject to the allocation of property under this policy and on terms and conditions as may be determined in conjunction with City departments.
- 2.3 Notwithstanding the provisions of this policy, nothing shall fetter the absolute discretion of Council to lease or license property on such terms and conditions as may be fixed by Council for purposes which it deems to be in the best interest of the municipality whether or not the lease/license is to the party who has presented the best offer.

### **3. Market Value**

- 3.1 The lease/license of City property will be for market value to be determined by appraisal.
- 3.2 The City may also consider lease/license agreements at below market rents subject to the provisions of this policy regarding Community Leasing/Licensing in Section H.15.

### **4. Appraisal**

- 4.1 All lease/license rates shall be supported with a recent appraisal completed by an independent Real Estate Professional or by qualified City staff.
- 4.2 Where the estimated value of an annual lease/license is greater than \$50,000 in net rent/fees, the appraisal must be completed by an independent Real Estate Professional.
- 4.3 Appraisals will be based on similar uses of property and will be prepared in accordance with current standards of practice within the real estate industry.

### **5. Written Leases/Licenses**

- 5.1 All leases/licenses will be in a written form satisfactory to the Director of Legal Services.

### **6. Approval of Leases/Licenses**

- 6.1 Occupation of any and all property will require terms and conditions to be approved by Council or their delegate save and except for City-owned properties that are managed by and in the care and control of Utilities Kingston, Kingston Hydro, the Police Services Board and the Library Board.

### **7. Allocation of Costs**

- 7.1 Unless there is a compelling business case to do otherwise, all leases/licenses will be written as net leases/licenses with the tenant responsible for payment of their share of all operating costs included but not limited to taxes, utilities, maintenance, insurance and other costs related to the tenant's/licensee's occupation of the property. If a gross lease/license format is required it will include an allocation for all operating costs as described.
- 7.2 Unless there is a compelling business case to suggest otherwise, all tenant improvements to leased/licensed property will be paid for by the tenant/licensee either as an upfront capital contribution or to be recovered by the City as additional rent/fees in the terms of the lease/license.

### **8. Property Taxes**

- 8.1 All leased property will be subject to property taxes if it is occupied by a tenant that would otherwise be taxable if the tenant owned the land. The City shall recover the tenant's proportionate share of the property tax through the lease agreement.

- 8.2 Licensed property will be subject to property taxes if it is occupied by a private corporation or individuals that would otherwise be taxable if the licensee owned the land conditional on the specific business terms of the license agreement.
- 8.3 Tenants with registered charitable status shall be responsible for paying property taxes and making application for tax rebates as applicable.

## **9. Financial Due Diligence**

- 9.1 Staff will conduct a financial background check, credit check or otherwise review financial statements that have been audited or reviewed by a third party for all prospective tenants/licensees including a criminal record verification through the Canadian Police Information Center (CPIC) for lease/licenses to individuals at their own expense. This requirement may be waived at the discretion of the Director of Finance or his/her designate where other information or history regarding the prospective tenant/licensee is known to the City and is deemed acceptable to the Director of Finance or his/her designate.

## **10. Environmental Due Diligence**

- 10.1 Prospective tenants/licensees will be required to complete a prescreening survey to identify in detail, all materials, pollutants, including but not limited to, chemicals and related items that may be used and/or stored on the leased/licensed property. RCS will seek the assistance of the Commissioner of Sustainability and Growth or his/her designate having responsibility for environmental review services in determining suitability of the tenant/licensee for occupancy and/or terms and conditions regarding any materials of concern.

## **11. Environmental and Sustainability Objectives**

- 11.1 In keeping with the City's environmental and sustainability objectives all agreements will have a provision that the tenant/licensee must agree that any decision made by the City with respect to the operation of the leased/licensed property in furtherance of these objectives during the term of the lease/license, will be considered to have been made by the City acting reasonably and will cooperate with the City in implementing these changes. In particular, the City will be requesting that tenant improvements to leased space meet the City's Facility Accessibility Design Standards the extent it is practical and financially feasible.

## **12. Unsolicited Requests**

- 12.1 Unsolicited requests to lease/license City property will require a pre-consultation with RCS staff to determine the suitability of the tenant/licensee and the property for potential lease/license should it not already be a property included in the City's surplus inventory.

### **13. Rent Increases**

- 13.1 Leases/licenses will be negotiated with appropriate terms that will allow the City to increase rents/fees annually.
- 13.2 As a minimum standard, rent increases will be negotiated as annual fixed step increase in line with the Consumer Price Index for Ontario.
- 13.3 For leases/licenses with terms of 5 years or more, the City will include provisions in the lease/license which permit rents/fees to be reviewed at market rates of no more than 5 year intervals.

### **14. Insurance**

- 14.1 The City will not extend its insurance coverage to tenants/licensees.
- 14.2 The City will require all tenants/licensees to carry their own insurance as determined by the City's Legal Services Department including but not limited to property and liability coverage in amounts deemed appropriate for the business of the tenant/licensee.
- 14.3 All tenants/licensees will be required to name the City as an additional insured.

### **15. Community Leases/Licenses**

- 15.1 Subject to the allocation of space identified in Section H.2 and the availability of funding from a sponsoring department, the City may offer to make space available for community leases/licenses. Community leases/licenses will be required to meet all other sections of this policy including requirements for written agreements, insurance, environmental and financial due diligence and compliance with environmental sustainability objectives as may be determined by the City.
- 15.2 Tenants/Licensees must meet the following minimum eligibility requirements to be considered for a community lease/license:
  - 15.2.1 Membership must be dominated by City of Kingston residents and programs and services must directly benefit City of Kingston residents.
  - 15.2.2 Must be incorporated as a not-for-profit organization in good standing with provincial or federal authorities to be considered for a lease.
  - 15.2.3 Non-incorporated organizations may be considered for license agreements provided acceptable insurance can be provided.
  - 15.2.4 Must not be engaged in services mandated by senior levels of government or activities which primarily support provincial or national interests notwithstanding City may be delivery agent for such programs and services.



- 15.3 Sponsoring City Department will further evaluate proposals for a **community lease** subject to the following general criteria and any other specific terms and conditions as may be determined by the City in consideration of the space being made available for lease and available funds:
- 15.3.1 Degree of alignment with sponsoring City department
  - 15.3.2 Demonstrated (need/demand/gap) in community that is not being met by the City or the private sector
  - 15.3.3 Degree to which the group is the main provider of its particular activity for City of Kingston residents
  - 15.3.4 Assessment of suitability for proposed space
  - 15.3.5 Assessment of the benefits to be provided in return for community lease
  - 15.3.6 Sustainability of the organization
  - 15.3.7 Appropriate controls in place to ensure financial accountability and governance
  - 15.3.8 Assessment of ability to pay based on financial strength of the applicant
  - 15.3.9 Degree to which applicant is willing and able to accommodate Facility Accessibility Design Standards in its tenant improvements
- 15.4 Sponsoring City Department will further evaluate the request for a **community license** subject to the following criteria and any other specific terms and conditions as may be determined by the City in consideration of the space being made available for license:
- 15.4.1 Degree of alignment with sponsoring City department
  - 15.4.2 Demonstrated (need/demand/gap) in community that is not being met by the City or the private sector
  - 15.4.3 Degree to which the group is the main provider of its particular activity for City of Kingston residents
  - 15.4.4 Assessment of the benefits to be provided in return for community license
  - 15.4.5 Assessment of suitability for proposed space
  - 15.4.6 Sustainability of the organization
  - 15.4.7 Willingness to share facilities with other community organizations
  - 15.4.8 Willingness to accept hours of operation and accessibility as determined by City

- 15.5 Subject to the availability of funding from the Sponsoring Department, the City may consider a grant for a portion of or all of the rent for a **community lease** within City buildings including base rent, operating costs and taxes as follows:
- 15.5.1 Level 1 – City Grant for 100% of Base Rent, Operating Costs and Property Taxes (as applicable)
  - 15.5.2 Level 2 – City Grant for significant portion of Base Rent , Operating Costs and Property Taxes
  - 15.5.3 Level 3 – City Grant for 100% of Base Rent Only. Tenant pays Operating Costs and Taxes
  - 15.5.4 Level 4 - City Grant for Portion of Base Rent Only. Tenant pays Operating Costs and Taxes
  - 15.5.5 Level 5 – No City Grant. Tenant pays 100% of Base Rent, Operating Costs and Taxes
- 15.6 Applicants for community leasing will be expected to identify the level of grant required as part of the evaluation process. While it is the objective of the City to encourage tenants to achieve the highest level of sustainability possible, grants will be awarded on basis of an evaluation as per Section 15.3 and availability of funds which may include ability to meet minimum levels of sustainability.
- 15.7 Community **licenses** will be considered for office and administration support facilities only. Space for programming and activities will be provided through common facilities and subject to user fees as established by City by-laws. Otherwise, community groups requiring exclusive possession of space for programming and supporting offices will be subject to the provisions of a lease.
- 15.8 Priority for community **licenses** within sports and recreation facilities will be for Partner Groups – Sports and Recreation. Priority for community licenses for other groups within sports and recreation facilities and all groups within other facilities will be subject to highest evaluation criteria.
- 15.9 Fees for **community licenses** within City buildings may be established as follows:
- 15.9.1 \$ 1 per year – Partner Groups - Sports and Recreation for office and storage space only within sports and recreation facilities.

- 15.9.2 \$ 1 per year for office and storage space only for community groups providing programs and services through other partnership agreements with the City as approved by sponsoring departments.
- 15.10 Tenants and licensees may be required to submit information at the discretion of the City to maintain eligibility for community lease/license as part of an ongoing performance monitoring requirement. Such reports may include request for information on the group's activities, membership, revenues and expenses.
- 15.11 City may consider entering into Municipal Capital Facility Agreements as per Section 110 of the Municipal Act for community leases to further reduce or eliminate rent including any or all of base rent, operating costs, and property taxes.
  - 15.11.1 Lease must meet all minimum eligibility requirements and demonstrate a high evaluation assessment as identified in Section 15.3 for Community Leases.
  - 15.11.2 Purpose of lease must be for social, cultural or recreational activities and make a significant contribution to strategic initiative(s) endorsed by Council.
  - 15.11.3 Unsolicited requests for Municipal Capital Facility Agreements will not be accepted. Proposals must be submitted to Council through a Sponsoring Department.
  - 15.11.4 Submission to Council must be supported by a detailed business plan describing how the proposal meets the requirements of this section including the following minimum additional information:
    - 15.11.4.1 Description of organization(s) including legal establishment, history and membership
    - 15.11.4.2 Five (5) year operating budget projection including value of financial contributions from City
    - 15.11.4.3 Growth projections for ten (10) years
    - 15.11.4.4 Extent to which proposal provides opportunities for increase community participation
    - 15.11.4.5 Extent to which proposal leverages other funding sources

## **I. INQUIRIES**

Inquiries concerning this policy may be made to:

Speros Kanellos, Director

Real Estate & Construction Services

613-546-4291 ext 3133

[skanellos@cityofkingston.ca](mailto:skanellos@cityofkingston.ca)