

# MUNICIPAL LEASE POLICY



## 1. PURPOSE

The Purpose of this policy is to establish guidelines for leasing property owned by the Town of Erin ("Town").

## 2. POLICY SCOPE

This policy applies to all new agreements and existing agreements upon renewal, for occupancy of Town property defined as Revenue Leases. The policy does not apply to the following:

- Encroachments on Municipal rights-of-way; and
- Facilities rentals for recreational purposes.

## 3. DEFINITIONS

**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:** An agreement to the lease of property at below market rates to community organizations that deliver services and programs in alignment with Municipality services and programs.

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

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

**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.

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

**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 national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or the like objects.

**Property:** For the purpose of this policy, property is intended to include all real property defined as land, buildings, and structures.

**Revenue Lease:** The lease of Municipality owned property to a third party, group or individual.

#### 4. GOALS

- 4.1 Provide a framework for managing leases that is fair, transparent, and accountable.
- 4.2 Ensure returns to the Municipality that are fair, reasonable and are in the best interests of the Municipality.
- 4.3 Abide by the requirements of the Municipal Act, the Assessment Act, other applicable statutes and Municipality policies with respect to the leasing of property.

#### 5. ROLES AND RESPONSIBILITIES

- 5.1 **Council** – Council or its delegated authority will approve all individual leases.
- 5.2 **Municipal Staff** – The CAO will review policies related to leasing and make recommendations to Council.
- 5.3 **Finance Department** – Maintain financial accounting system necessary to track the payment of rents, issue invoices as necessary and assist staff with annual reconciliation of rents.
- 5.4 **Legal Services** – The Municipal lawyer to provide advice to staff in the development of leases including form of lease, terms and conditions. Review and confirm satisfaction of leasing documents including execution of documents by the Municipality. Assist staff with legal responses to leasing matters as they arise.

## **6. POLICY DETAILS**

### **6.1 Compliance with Policy:**

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

### **6.2 Allocation of Property**

6.2.1 Use of municipally owned property shall be subject to the following order of priority:

- Municipal purposes including administration, program and service delivery;
- Municipality funded agencies, boards and committees;
- Agencies with fee for service agreements; and
- Not-for-profit organizations, other levels of government and the general public.

6.2.2 The Municipality will invite offers through open advertisement.

6.2.3 Nothing shall fetter the absolute discretion of Council to lease 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 is to the party who has presented the best offer.

### **6.3 Market Value**

The lease of Municipality property will be for market value based on similar uses of property.

### **6.4 Appraisal**

Council may or may not require an appraisal of the subject property.

### **6.5 Written Leases**

All leases will be in a written form satisfactory to the CAO.

### **6.6 Approval of Leases**

Occupancy of any and all property will require terms and conditions to be approved by Council or their delegate.

## **7. ALLOCATION OF COSTS**

7.1 Unless there is a compelling business case to do otherwise, all leases will be written as net leases 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 occupancy of the property. If a gross lease 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 capital improvements to leased property will be paid for by the tenant either as an upfront capital contribution or to be recovered by the Municipality as additional rent in the terms of the lease.

## **8. ENVIRONMENTAL DUE DILIGENCE**

8.1 Prospective tenants will be required to complete a pre-screening 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 property. Staff will seek the assistance from the Erin Fire and Emergency Services to assist in determining suitability of the tenant for occupancy and/or terms and conditions regarding any materials of concern.

8.2 All agreements will have a provision that the tenant must agree that any decision made by the Municipality with respect to the operation of the leased property during the term of the lease will be considered to have been made by the Municipality acting reasonably and will cooperate with the Municipality in implementing these changes.

## **9. PRE-CONSULTATION**

Unsolicited requests to lease Municipality property will require a pre-consultation with staff to determine the suitability of the tenant and the property.

## **10. RENT INCREASES**

11.1 Leases will be negotiated with appropriate terms that will allow the Municipality to increase rents annually.

11.2 As a minimum standard, rent increases will be negotiated as annual fixed set increase in line with the Consumer Price Index for Ontario.

11.3 For leases with terms of 5 years or more, the Municipality will include provisions in the lease which permit rents to be reviewed at market rates of no more than 5 year intervals.

## **11. INSURANCE**

12.1 The Municipality will not extend its insurance coverage to tenants.

12.2 The Municipality may require all tenants to carry their own insurance as determined by the Municipality but not limited to property and liability coverage in amounts deemed appropriate for the business and the tenant.

12.3 All tenants will be required to name the Municipality as an additional insured.

## **12. COMMUNITY LEASES**

13.1 The Municipality may consider community leases subject to the provisions of this subsection of the policy and the availability of funding. Otherwise, all other sections of this policy will apply including requirements for written agreements, insurance, environmental and financial due diligence and compliance with environmental sustainability objectives as may be determined by the Municipality.

13.2 Tenants must meet the following minimum eligibility requirements to be considered for a community lease:

- Must be incorporated as a not-for-profit organization in good standing with provincial or federal authorities to be considered for a lease;
- Non-incorporated organizations may be considered for license agreements provided acceptable insurance can be provided.
- Programs and services must be in alignment with or complement programs and services of the Municipality.

13.3 The CAO will further evaluate the request for a community lease subject to the following general criteria:

- Degree of alignment with Municipal programs and services
- Demonstrated need/demand/gap in community that is not being met by the Municipality or the private sector.
- Degree to which the group is the main provider of its particular activity for the Municipality.
- Assessment of suitability for proposed space
- Assessment of the benefits to be provided in return for community lease
- Sustainability of the organization
- Appropriate controls in place to ensure financial accountability and governance
- CAO must support the grant
- Assessment of ability to pay based on financial strength of the applicant

13.4 The Municipality may consider a grant for a portion of or all of the rent for a community lease within Municipal buildings including base rent, operating costs and taxes.

13.5 Tenants may be required to submit reports at the discretion of the Municipality to maintain eligibility for community lease. Such reports may include request for information on the group's activities, membership, revenues and expenses.

13.6 The Municipality reserves the right to terminate community leases.