

POLICY

	Policy:	MUNICIPAL LEASE POLICY		
	Department:	Chief Administrative Office		
	Division:	Clerks	By-law No.:	
	Administered By:	Municipal Clerk	Approval Date:	May 14, 2019
	Replaces:	Execution of Agreements, Leases, and Contracts		
	Attachment(s):			

1. POLICY STATEMENT

The Corporation of the Town of Amherstburg is committed to establishing consistent and transparent controls and procedures for the leasing of property owned by the Town, while ensuring that the Town's corporate assets and interests are safeguarded.

2. PURPOSE

- 2.1. This policy provides a framework for managing leases that is fair, reasonable and in the best interests of the Town in support of the Council/CAO approved projects, programs and policies.
- 2.2. This policy ensures returns to the municipality that are fair, reasonable and in the best interest of the Town.
- 2.3. This policy ensures compliance with the provisions of the Municipal Act 2001, the Assessment Act, and any other applicable statutes and Town policies with respect to leasing of property.

3. SCOPE

- 3.1. This policy applies to all parties entering lease agreements with the Corporation of the Town of Amherstburg. This includes any agents, assignees, or authorized consultants acting on behalf of the Town for use of town-owned properties.
- 3.2. This policy applies to all new agreements and existing agreements upon renewal for occupancy or Town property defined as revenue leases.
- 3.3. This policy does not apply to facility rentals agreements for recreational purposes, Employment contracts between an individual and the Town, and encroachments on Municipal rights-of-way.
- 3.4. This policy shall be reviewed every five (5) years from the date it becomes effective, and/or sooner at the discretion of the CAO or designate.

4. DEFINITIONS

- 4.1. **Appraisal** is 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 a specified date supported by presentation and analysis of relevant data.

- 4.2. **Community Lease** is an agreement to the lease of property at below market rates to community organizations that deliver services and programs in alignment with Town services and programs.
- 4.3. **Direct Negotiation** is the non-competitive bargaining process between two parties seeking to reach an agreement. Direct negotiation is considered an efficient and effective use of taxpayers' dollars.
- 4.4. **Gross Lease** is 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.
- 4.5. **Lease** is 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).
- 4.6. **Market Value** is 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.
- 4.7. **Not-For-Profit Organization** is a type of organization that does not earn profits for its owners. All money earned or donated is used in pursuing the organizations objectives and keeping it operational.
- 4.8. **Property**, for the purpose of this policy, property in intended to include all real property defined as land, buildings, and structures.
- 4.9. **Revenue Lease** is a contract by which the owner (lessor) of a property grants a second party the right to its exclusive possession and use under specific conditions.

Other common definitions, acronyms, and terms are available in the Glossary located on the Town's Policies webpage.

5. **INTERPRETATIONS**

Any reference in this policy to any statute or any section of a statute shall, unless expressly stated, be deemed to be reference to the statute as amended, restated or re-enacted from time to time. Any references to a by-law or Town policy shall be deemed to be a reference to the most recent passed policy or by-law and any replacements thereto.

6. **GENERAL CONDITIONS**

6.1. **Allocation of Property**

- 6.1.1. Use of municipally owned property shall be subject to the following order of priority:
 - Municipal purposes, including administration, program, and service delivery;
 - Municipally funded agencies, boards, and committees;
 - Agencies with fee for service agreements; and
 - Not-for-profit organizations, other levels of government, and the general public.
- 6.1.2. The Town may enter into direct negotiations on unsolicited requests to lease property where Council deems it is in the best interest of the Town.

- 6.1.3. The Town of Amherstburg will invite offers through open advertisement.
- 6.1.4. Occupancy of any and all property will require terms and conditions to be approved by the Town.
- 6.1.5. Council reserves the right to refuse, in its sole discretion, any submission to lease any property or part thereof, regardless of whether the applicant has met all policies herein for purposes which it deems to be in the best interest of the Town.

6.2. **Market Value**

The lease of Municipal property will be for market value based on similar leases.

6.3. **Appraisal**

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

6.4. **Written Leases**

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

6.5. **Approval of Leases**

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

6.6. **Allocation of Costs**

- 6.6.1. 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 any other costs incurred 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 in the lease but not limited to the cost described herein.
- 6.6.2. 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 Town as additional rent in the terms of the lease.
- 6.6.3. The lease of the Town of Amherstburg property will be for market value based on similar uses of the property.

6.7. **Environmental Due Diligence**

- 6.7.1. 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 Fire and Emergency Services to assist in determining suitability of the tenant for occupancy and/or terms and conditions regarding any materials of concern.
- 6.7.2. 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.

6.8. **Pre-consultation**

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

6.9. Rent Increases

- 6.9.1. Leases will be negotiated with appropriate terms that will allow the Municipality to increase rents annually.
- 6.9.2. As a minimum standard, rent increases will be negotiated as annual fixed set increase in line with the Consumer Price Index for Ontario.
- 6.9.3. 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.

6.10. Insurance

- 6.10.1. The Corporation of the Town of Amherstburg will not extend its insurance coverage to tenants.
- 6.10.2. The Town may require all tenants to carry their own insurance as determined by the Town but not limited to property and liability coverage in amounts deemed appropriate for the business and tenant.
- 6.10.3. All tenants will be required to name the Corporation of the Town of Amherstburg as an additional insured.

6.11. Sub-Leasing

- 6.11.1. Lessees wishing to sub-let premises are required to seek written Council permission.

6.12. Community Leases

- 6.12.1. In order to be considered for a Community Lease, tenants must meet the following minimum eligibility requirements:
 - The tenant must be incorporated as a not-for-profit organization in good standing with provincial or federal authorities, and provide proof of standing to the Town;
 - Non-Incorporated organizations may be considered for license agreements provided acceptable insurance can be provided.
 - Acceptable insurance must be provided; and
 - Programs and services must be in accordance with, or complement, programs and services of the Town.
- 6.12.2. The Town 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
 - Town must support the grant
 - Assessment of ability to pay based on financial strength of the applicant.
- 6.12.3. 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.

- 6.12.4. 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.
- 6.12.5. The Town of Amherstburg reserves the right to terminate community leases.

7. RESPONSIBILITIES

- 7.1. **Council** has the authority and responsibility to:
 - 7.1.1. Approve all individual leases.
- 7.2. The **CAO** has the authority and responsibility to:
 - 7.2.1. Negotiate and finalize terms of all individual leases.
 - 7.2.2. Review policies related to leasing and make recommendations to Council.
- 7.3. The **Municipal Clerk (or designate)** has the authority and responsibility to:
 - 7.3.1. Review all agreements, leases or contracts that include insurance requirements or any indemnification clauses.
- 7.4. The **Finance Department** has the authority and responsibility to:
 - 7.4.1. Maintain financial accounting systems necessary to:
 - (i) track the payment of rents;
 - (ii) issue invoices as necessary; and,
 - (iii) assist staff with annual reconciliation of rents.
- 7.5. The **Town Solicitor** has the authority and responsibility to:
 - 7.5.1. Advise staff in the development of leases, including, but not limited to, form of lease, terms and conditions, and assisting staff with legal consult in relation to leasing matters as needed.
 - 7.5.2. Review and confirm satisfaction of leasing documents, including execution of documents by the Town of Amherstburg.
 - 7.5.3. Assist staff with legal responses to leasing matters as they arise.
- 7.6. **Staff** have the authority and responsibility to:
 - 7.6.1. Review policies related to leasing and make recommendations to Council/CAO.

8. REFERENCES AND RELATED DOCUMENTS

- 8.1. *Municipal Act, 2001*
- 8.2. *Assessment Act*
- 8.3. *Municipal Statute Law Amendment Act, 2006, S.O. 2006, c. 32*
- 8.4. *Canada Not-for-profit Corporations Act (NFP Act)*