

#81 TOWN OF LUNENBURG PROPERTY LEASE PROCEDURAL POLICY

1. PURPOSE

1.1 The purpose of this Policy is to establish a process for leasing property (land and/or buildings) owned by the Town of Lunenburg (“Town”) and administered by the Town of Lunenburg Council (“Council”) and staff.

2. LEGISLATIVE AUTHORITY

2.1 The NS Municipal Government Act give municipalities the authority to lease municipal property subject to certain terms and conditions set out in the Act. This Procedural Policy will be interpreted and applied with reference to the Act and any amendments to it.

3. SCOPE

3.1 This Policy applies to all new lease agreements and existing agreements upon renewal, for occupancy of Town property. The Policy does not apply to:

- Encroachments on Town rights-of-way (see: Encroachment Bylaw #65); and
- Recreation or Fire Hall facilities rentals (see: relevant rental agreements).

4. OBJECTIVES

4.1 Provide a framework for managing leases that is consistent and accountable.

4.2 Ensure lease returns to the Town that are fair, reasonable and in its best interests.

4.3 Compliance with the requirements of the Municipal Government Act other applicable statutes and Town Bylaws Policies with respect to the leasing of municipal property.

5. DEFINITIONS

Appraisal - 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 - agreement for the lease of property that may be at below market rates to not for profit community organizations delivering services and programs in alignment with Town services and programs.

Council - Town of Lunenburg municipal Council.

Gross Lease - agreement in which the tenant pays a fixed rate of rent and the landlord pays all maintenance, utilities, taxes, insurance and capital costs without further adjustment from the tenant except Tenant's insurance.

Lease - agreement between a landlord and a tenant for exclusive occupancy (with the exception of designated common space) including grant of rights for a specified period of time and for a specified consideration (rent).

Market Value - 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 - 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 Town.

Not for profit - Federally or Provincially incorporated 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 like objectives in compliance with Federal legislation. Other organizations that do not have Federal non-profit recognition, but are incorporated as non-profit societies in Nova Scotia and who carry out the above objects may also be considered not-for-profit by Council.

Property - includes all real property defined as land, buildings, and structures.

Town - the Town of Lunenburg, a municipal body corporate.

6. ROLES AND RESPONSIBILITIES

6.1 **Council** - Council will approve new and the renewal of existing leases as per this Policy or as delegate to staff as set out herein.

6.2 **Legal Services** - Town lawyer provides advice to Council and staff in the development of leases including form of lease, terms and conditions. Review and confirm satisfaction of leasing documents including execution and recording of documents by the Town. Assist staff with legal responses to leasing matters as they arise.

6.3 **Town Staff** - Administrative staff with the assistance of other relevant staff members will review policies related to leasing and make recommendations to Council. Finance staff will maintain financial accounting system necessary to track the payment of rents, issue invoices as necessary and with annual reconciliation of rents. The CAO is further authorized to personally or by an agent may negotiate and execute Town real property lease renewals for a term not exceeding one year.

7. POLICY DETAILS

7.1 Allocation of Property

7.1.1 The use of Town owned property shall be subject to the following order of priority:

- Town purposes including administration, program and service delivery;
- Town funded agencies, boards and committees;
- not-for-profit organizations;
- other levels of government;
- and the general public.

7.1.2 Council may invite offers to lease Town property through open advertisement on recommendation of Town staff.

7.1.3 Council may also consider unsolicited recommendations to lease Town lands. In such instances Council may decide to publically advertize the Town lands for lease to the general public or not if the request is made for fair market value to an abutting property owner or non-profit organization as permitted in this Policy and the MGA.

7.1.4 Council may 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 Town.

7.2 Market Value

The lease of Town property will be for market value based on similar uses of property, taking into account the zoning, commercial vs. residential proposed use, under-sized parcels, and other relevant factors. Community leases as set out in Section 12 may be considered for rental fee reductions.

7.3 Appraisal

Council will obtain an appraisal of the subject property unless there are valid stated reasons for some alternate means of property valuation. The appraiser will be asked to take into account the above noted market value consideration. Appraisal fees will be paid by the prospective tenant which may be paid back over time at Council's discretion.

7.4 Survey

Council will obtain a survey of the subject property unless there are valid stated reasons for not. The survey fees will be paid by the prospective tenant may be paid back over time at Council's discretion.

7.5 Term of Lease

Lease terms shall not exceed 20 years in accordance with the Municipal Government Act. It is the intention of Council to consider shorter term leases to facilitate regular reviews of the benefits of continuing with the lease arrangement or terminating.

Provision should also be made in the lease that if the purpose of the lease, e.g., non-profit recreational use, specified development, is not carried out within a stipulated time Council may review and revoke the lease.

7.6 Naming Rights of and Signage on Town Leased Land

Council reserves the right at all times to determine if Town leased lands may be named after an individual, company, etc. and any signage to be placed on the land.

7.7 Written Leases

All leases will be in written form satisfactory to Council.

7.8 Approval of Leases

7.8.1 Occupancy and use of any leased property will require terms and conditions to be approved by Council in advance.

7.8.2 Council must approve by motion the lease and/or buildings with the exception of community leases at less than fair market value which require a two-thirds majority of Council present and voting to be approved.

7.8.3 Lease negotiations may be conducted in an in camera session of Council with final decisions made in open session.

7.8.4 The CAO may personally or by agent approve, negotiate and execute lease renewals of Town real property for one year or less.

8. ALLOCATION OF COSTS

8.1 Unless there is a compelling reason to do otherwise, all leases will be written as net leases with the tenant also responsible for payment of their share of all operating costs including but not limited to the costs to prepare the lease (municipal legal, survey, appraisal and recording fees), 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.

8.2 Unless there is a compelling business case to suggest otherwise, all capital improvements to the 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. Tenants will not be entitled to recover any capital cost contributions they may make which shall remain the property of the Town unless Council otherwise agrees.

9. PRE-CONSULTATION

All requests to lease Town property will require a pre-consultation with staff to determine the suitability of the tenant and the property. Staff will provide a report and recommendation to Council following this. Unsolicited requests to lease Town property will require a pre-consultation with staff to determine the suitability of the tenant and the property.

10. ENVIRONMENTAL DUE DILIGENCE

All Town property is leased on an “as is - where is” basis with no environmental or other representations to the tenant or others.

11. RENT INCREASES

11.1 Leases will be negotiated with appropriate terms that will allow the Town to increase rents annually. As a minimum standard, rent increases will be negotiated as annual fixed set increase based on the previous calendar year’s Consumer Price Index for Nova Scotia.

11.2 For leases with terms of five years or more, the Town will include provisions in the lease which allow rents to be reviewed and reset at market rates of no more than five year intervals.

12. INSURANCE

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

12.2 The Town requires 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 use and the tenant which a minimum should be \$1.0 million and as further recommend by the Town Solicitor and insurer from time to time.

12.3 All tenants will be required to name the Town as an additional insured in their insurance Policy.

13. COMMUNITY LEASES

13.1 The Town 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 lease agreements, insurance, environmental and financial due diligence and compliance with environmental sustainability objectives as may be determined by the Town.

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

- Incorporated as a not-for-profit organization in good standing with Provincial or Federal authorities;
- Programs and services must be in alignment with or complement programs and services of the Town as set out in the *Municipal Government Act* or including:
 - Degree of alignment with Town programs and services.
 - Demonstrated need/demand/gap in community that is not being met by the Town or the private sector.

- Degree to which the group is the main provider of its particular activity for the Town.
- 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.
- Assessment of ability to pay based on financial strength of the applicant.

13.3 The Town may consider a reduced rent for a portion of or all of the rent for a community lease of Town buildings and/or including base rent, operating costs and taxes.

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

13.5 The Town reserves the right to terminate community leases as set out in the Town lease or if no longer used by a qualifying community group.

14. EXECUTION AND RECORDING OF LEASE

14.1 The Council by motion must authorize the Mayor and Clerk to sign approved leases.

14.2 If the lease renewal is for one year or less, the Clerk and Mayor are hereby authorized to sign the lease renewal on behalf of the Town.

14.3 Whenever practicable Town leases will be recorded at the Registry of Deeds. The cost of which will be borne by the Lessee.