



Title: LEASE AND LICENSE POLICY		Number: 0152
Reference: Administrative Committee - July 3, 2014	Adopted by City Council: August 5, 2014	Supersedes:
Prepared by: LAND & PROPERTIES DEPARTMENT		

STATEMENT:

THE CITY OF MEDICINE HAT SHALL CLEARLY SET OUT THE PARAMETERS FOR THE CITY TO ESTABLISH THRESHOLDS, ACCOUNTABILITIES AND SPHERES OF AUTHORITY FOR THE LEASE AND LICENSE OF REAL ESTATE. ALL LEASES AND LICENSES OF REAL ESTATE MUST BE APPROVED BY COUNCIL EXCEPT WHERE OTHERWISE STATED IN THIS POLICY.

PRINCIPLES:

This Policy sets out the parameters within which the City may enter into a lease or a license of Real Estate.

1. The Land & Properties Department shall manage the land bank to protect a healthy ecology, meet the needs of future generations and produce revenue.
2. The City shall encourage sustainable land management practices on its leased and licensed lands.
3. Where practical, the Land & Properties Department shall provide a leasing or licensing function for undeveloped lands (lands without improvements) and a rental function for developed lands (lands with improvements) until required for Municipal Use or development. Leases and Licenses provide a number of benefits to the City, including but not limited to the transfer of the burden of maintenance onto third parties and the opportunity for the City to maximize revenue with an interim use.
4. Agricultural land must be leased or licensed solely for agricultural purposes.
5. The City shall grant or enter into leases or licenses that provide community and social benefits.
6. The City shall enter into leases, whether as landlord or tenant, and licenses, whether as licensor or licensee, with judgment and care, under circumstances then prevailing, which persons of prudence and discretion exercise in the management of their own property and affairs.

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ROLE OF COUNCIL

Receive, review and adopt this policy and any recommended amendments thereto.

Approve the Land Management Plan on an annual basis.

Approve all Leases and Licenses unless otherwise stated in this policy.

ROLE OF CAO – MUNICIPAL SERVICES AND COO – ENERGY SERVICES

The CAO or COO may, within their respective divisions, approve any lease or license agreement where:

- (a) the gross revenue or expenditure, as the case may be, over the initial term of the lease or license is based on market value and is within the CAO or COO signing authority as per Signing Authority Policy 0126; or
- (b) the gross revenue or expenditure, as the case may be, over the initial term of the lease or license has been accounted for in a budget adopted by Council.

May delegate any of their powers, duties and functions set out in this Policy or the Procedures to one or more City employees.

Refer any Lease or License Agreements that in the opinion of the CAO or COO, as applicable, should be approved by Council.

The CAO or COO, as applicable, may approve exceptions to the Procedures on a case by case basis.

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1. DEFINITIONS

- 1.01 CAO means Chief Administrative Officer, Municipal Services.
- 1.02 COO means Chief Operating Officer, Energy Services.
- 1.03 City means the Municipal Corporation of the City of Medicine Hat or the area contained within the municipal boundaries of the City of Medicine Hat as the context requires.
- 1.04 Council means the municipal council for the City.
- 1.05 Expressions of Interest (EOI) means a competitive public offering for Real Estate.
- 1.06 Land Management Plan means a Real Estate inventory under the responsibility of the Land & Properties Department that sets out at minimum, in respect of each piece of Real Estate in it, the opinion of the Land & Properties Department as to the highest and best use and market value of that Real Estate.
- 1.07 Licensee means a person or corporation or other entity, including the City, to whom a License is granted or issued.
- 1.08 License means any agreement in writing whereby a person or corporation are licensor confers upon a person or corporation as licensee the right to non-exclusive use and possession of land or premises for an agreed upon period of time.
- 1.09 Lease means any agreement in writing whereby a person or corporation as landlord confers upon another person or corporation as tenant the right to exclusive use and possession of land or premises for an agreed upon period of time.
- 1.10 Lease or License Agreement means an agreement for the Lease or License of Real Estate in a form satisfactory to the City Solicitor and either the CAO or COO, as applicable.
- 1.11 Market Value or market value shall have the same meaning ascribed to that term in the *Municipal Government Act* (Alberta), as amended or replaced from time to time.
- 1.12 Municipal Use means providing accommodation to one or more City departments.
- 1.13 Real Estate means real property.
- 1.14 Tenant means a person or corporation or other entity, including the City, to whom a Lease is granted.
- 1.15 Tender means an offer or bid made to the City, in response to Lease or License City-owned Real Estate.
- 1.16 Senior Managers means the CAO, COO, Commissioners and General Managers or any of them.

This policy is subject to any specific provision of *The Municipal Government Act* or other relevant legislation or Union agreement.

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2. RESPONSIBILITIES

2.01 Administrative Committee

- (a) Make recommendations to Council regarding any amendments to this Policy.
- (b) Adopt procedures to implement this Policy.

2.02 City Departments

- (a) Determine when Real Estate under the Department's responsibility can be Leased or Licensed.
- (b) Must contact Land & Properties Department to coordinate the Lease or License of that Real Estate.

2.03 City Solicitor

- (a) Assist in the preparation of Lease or License Agreements referred to the City Solicitor Department for that purpose, in a form satisfactory to the City Solicitor and either the CAO or COO, as applicable.

2.04 General Manager of Corporate Asset Management

- (a) In accordance with the City's then prevailing long-term facility plan, assess whether a current or potential Lease or License under which the City has or may acquire an interest, satisfies a Municipal Use.

2.05 Manager of Land & Properties

- (a) May make recommendations through Administrative Committee and the Corporate Services Committee to Council regarding the Land Management Plan.
- (b) May negotiate the Lease and License of City-owned Real Estate once the Land Management Plan has been approved by Council.
- (c) May negotiate any Lease or License Agreement under which the City has or will have an interest as tenant or licensee, provided the General Manager of Corporate Asset Management has determined that the subject Real Estate is both required for Municipal Use and consistent with the City's approved long-term facility plan.
- (d) May negotiate any Lease or License Agreement under which the City has or will have an interest as landlord or licensor, provided the General Manager of Corporate Asset Management has determined that the subject Real Estate is both unnecessary for a Municipal Use and consistent with the City's approved long-term facility plan.
- (e) May administer any Lease or License Agreement that the City has entered into.
- (f) Provide Council an annual Lease and License report setting out all Leases and Licenses that have been approved by a person other than Council.
- (g) May delegate any of the powers, duties, and functions set out in subsections (a) to (e) inclusive to one or more employees of the Land & Properties Department.

2.06 Senior Managers

- (a) Ensure that all City staff in their respective departments are aware of this Policy and the Procedures.

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3. PROCEDURES

3.01 General Procedures

- (a) All inquiries received by a City department as to whether the City is willing to lease or license Real Estate must be referred to the Land & Properties Department for conduct in accordance with this Policy and the Procedures.
- (b) All City Departments must utilize the services or consult with the Land & Properties Department to lease or license Real Estate.
- (c) In consultation with Corporate Asset Management, the Land & Properties Department shall act as a resource and/or coordinate the process for all leasing and licensing transactions by the City.

3.02 Exemption

- (a) This Policy and the Procedures apply to all Leases and Licenses of Real Estate where the City is a party, except for City-owned land that is administered by other City Departments, including but not limited to:
 - (1) Short terms rentals of Recreation Facilities, Parks and Civic Facilities;
 - (2) Leases and Licenses of the Gas Utility entered into for the purpose of exploration, development, production and distribution of natural gas and petroleum resources; and
 - (3) Airport Lands (Air side).

3.03 Types of Leases and Licenses.

- (a) The City may enter into Leases, as Landlord or Tenant, and Licenses, as Licensor or Licensee, of Real Estate.
- (b) The following types of Leases and Licenses are normally considered for profit:
 - (1) Agricultural (grazing and cultivation);
 - (2) Commercial;
 - (3) Parking;
 - (4) Storage;
 - (5) Garden Leases;
 - (6) Access Rights-of-Way and Surface Leases;
 - (7) Property Leases (With Improvements);
 - (8) Roadways; and,
 - (9) Miscellaneous and Other (for example, signs).
- (c) Clubs, non-profit organizations and societies that provide uses that are considered benefits to the community are normally considered not for profit:

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3.04 Method of City Offering Real Estate for leasing and licensing

- (a) Leases and licenses may be issued by:
 - (1) Expressions of Interest (EOI);
 - (2) Direct lease or license;
 - (3) Bid process;
 - (4) Tender; or
 - (5) As otherwise determined by the Manager of Land & Properties.

3.05 Target Annual Lease Rate or License Rate of City-Owned Real Estate

- (a) In the case of for-profit entities, the target Lease or License rate is 7.5% of the subject Real Estate's market value, exclusive of operating costs, for the annual Lease or License rate; and
- (b) In the case of non-profit entities, the annual Lease or License rate may be less than market value but is subject to approval by Council.

3.06 Lease and License Process Initiation

The Land & Properties Department may initiate the applicable process set out in subsections 3.07, 3.08, and 3.09:

- (a) on its own initiative;
- (b) if an individual(s), corporation, or other entity inquires, in writing, as to whether the City will consider Leasing or Licensing City-owned land to or from that individual or corporation or other entity; or
- (c) another City Department has received all required internal approvals to Lease or License Real Estate and that department instructs the Land & Properties Department to Lease or License Real Estate for that purpose.

3.07 Process for Leases and Licenses of City-Owned Real Estate Granted to For-Profit Entities.

- (a) In respect of all captioned Leases and Licenses, the Land & Properties Department shall take the following steps in sequential order:
 - (1) The interested party sends Land & Properties a letter expressing interest in Leasing or Licensing City-owned Real Estate.
 - (2) Evaluate the letter of interest.
 - (3) Complete Technical Coordinating Committee (TCC) circulation to obtain TCC comments and recommendations on existing or potential issues.
 - (4) If the proposal is acceptable to the Land & Properties Department, after considering the comments and recommendations of TCC, the Purchaser and the City will negotiate acceptable terms and conditions of the Lease and License based upon the City's standard terms and conditions.
 - (5) The Manager of Land & Properties shall refer any Lease or License negotiations regarding terms that deviate from the standard terms and conditions or any Lease or License rate that does not meet market value to the CAO, COO, or Council, as applicable, for consideration.
 - (6) Once an agreement in principle is reached between the City and the prospective landlord or Licensor, as applicable, the City will prepare a Lease or License Agreement, as the case may be, and any other documents as required, in a form and content satisfactory to the CAO or COO, as applicable, and the City Solicitor.

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- (7) The Tenant or Licensee signs the Lease or License Agreement and returns it to the Land & Properties Department.
- (8) The Lease or License Agreement is approved in accordance with the Policy and executed by the Mayor and City Clerk.
- (9) Closing of the Lease or License transaction.
- (10) The Manager of Land & Properties shall provide Council an annual Lease and License report setting out all Leases and Licenses.

3.08 Process for Leases and Licenses of City-Owned Real Estate Granted to Non-Profit Entities.

- (a) In respect of the captioned Leases and Licenses, the Land & Properties Department shall take the same steps outlined in section 3.07.

3.09 Process for Leases and Licenses Where the City is the Proposed Tenant or Licensee

- (a) In respect of all captioned Leases and Licenses, the Land & Properties Department shall take the following steps in sequential order:
 - (1) Request that the General Manager of Corporate Asset Management, in consultation with the applicable City Department, evaluate whether the subject Real Estate fits within the City's approved long-term facility plan and satisfies a Municipal Use. In undertaking this evaluation, factors that may be considered by the General Manager of Corporate Asset Management include but are not limited to the physical condition of the Real Estate, the comments of the applicable City Department, the proposed Lease or License rate, the proposed terms and conditions of Lease or License, and environmental considerations.
 - (2) Inspect the subject Real Estate with Corporate Asset Management and the applicable City Department.
 - (3) If the Real Estate is acceptable to the Manager of Land & Properties and the General Manager of Corporate Asset Management, after considering at least the factors outlined in (1) and (2) above, the Manager of Land & Properties shall obtain the appropriate approval for the City to enter into the proposed Lease or License, and such approval will be deemed to be subject to the negotiation of an agreement in a form satisfactory to the CAO or COO, as applicable, and the City Solicitor.
 - (4) Upon receipt of the appropriate approval for the City to enter into the proposed Lease or License, the prospective Lessor or Licensor and the Manager of Land & Properties will negotiate the Lease or License agreement, as the case may be, and any other documents that may be reasonably required to give effect to the Lease or License agreement, provided that the form and content of all such documents and the Lease or License agreement shall be subject to the satisfaction of the CAO or COO, as applicable, and the City Solicitor.
 - (5) Notwithstanding subsections 2.05 (c) and (d) above, if the Manager of Land & Properties considers any term or condition that is under negotiation to be unacceptable or not commercially reasonable, the Manager of Land & Properties shall refer such term or condition to the CAO, COO, or Council, as applicable, for consideration.

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- (6) Upon receipt of the final form of the Lease or License agreement, and any related document, the Manager of Land & Properties shall ensure the Lease or License Agreement, and any related document, is executed by the Mayor and City Clerk.
- (7) The Lease or License Agreement is returned to the Landlord or Licensee for execution.
- (8) Closing of the Lease or License transaction.
- (9) Transfer responsibility of the subject Real Estate to the applicable City department. That City Department is responsible for all costs incurred by the City to Lease or License the subject Real Estate and shall promptly reimburse the City Department(s) that bore those costs.