

City Policy & Procedure

Subject: Land and Building Lease

Policy: 1001

Covers: Leasing of City Owned Real Property

Effective: January 1, 2016

Revised: December 7, 2015

Purpose: To provide a consistent framework for the leasing of City owned real property and to ensure the City is fairly and appropriately compensated for the leasing of City owned property.

The principles guiding the procedure for the leasing of City owned lands and buildings not required for operational purposes include:

1. To provide benefits to the public through leasing of vacant lands and/or premises;
2. To recover costs for operation, replacement and taxes of lands and/or premises;
3. To ensure consistency and transparency in leasing through a consistent Lease Agreement;
4. To guide Administration in managing City owned real property; and
5. To allow Administration and City Council to issue Lease Agreements to a Charity or Non-profit Organization that assists the community at large.

This policy governs the long-term leasing or rental of real property, including any interest in land, buildings, office space, storage space, of the City's real property. The lease or rental of real property may only be entered into under the procedures outlined herein.

**Where there is any conflict or inconsistency between the policies and procedures adopted by the City of Brandon and the terms of a Collective Agreement entered into and adopted by the City of Brandon, and/or the provisions contained within a statute or regulation of the Government of Canada and/or the Province of Manitoba and/or a by-law of the City of Brandon, the Collective Agreement or the Federal or Provincial statute or regulation or by-law of the City of Brandon shall supersede such policies or procedures adopted by the City of Brandon.*

DEFINITIONS

Charity: means a charity in Canada registered with the Charities Directorate of the Canada Revenue Agency. According to the Canada Revenue Agency:

A registered charity is an organization established and operated for charitable purposes, and must devote its resources to charitable activities. The charity must be resident in Canada, and cannot use its income to benefit its members. A charity also has to meet a public benefit test. To qualify under this test, an organization must show that:

- a. its activities and purposes provide a tangible benefit to the public
- b. those people who are eligible for benefits are either the public as a whole, or a significant section of it, in that they are not a restricted group or one where members share a private connection, such as social clubs or professional associations with specific membership
- c. the charity's activities must be legal and must not be contrary to public policy

To register as a charity, the organization has to be either incorporated or governed by a legal document called a trust or a constitution. This document has to explain the organization's purposes and structure.

City: means the corporation of the City of Brandon.

Encroachment: refers to the construction onto the property of another, such as a building, wall, eave, fence, retaining wall, landscaping, stairs, sign, canopy, etc.

Gross Land Value: refers to the land value established by appraisal or assessed land value as set by the Brandon Assessment Branch.

Lease: means an agreement by which an owner of real property (lessor) gives the right to occupy to another (lessee), for a specified period of time (term) and for a specified consideration (rent) and may include other site specific conditions or terms as agreed to by the parties to the agreement.

Lessee: refers to the party to whom a lease (the right to occupy) is given in return for a consideration (rent).

Non-profit Organization: means:

- a. a corporation that is prohibited from paying dividends to its members and distributing the assets to its members on a winding-up, or
- b. any other entity established under a law of Manitoba or Canada for a purpose other than to make a profit, but does not include a credit union, caisse populaire or co-operative established under a law of Manitoba or Canada.

Premises: means buildings and those immediate surrounding areas owned by the City.

Real Property: means lands and anything permanently affixed to the land, such as buildings, fences and those things attached to the building, such as light fixtures, plumbing and heating fixtures, or other such items which would be personal property if not attached, and any improvements located thereon or under ownership by the City, including roads, streets, lanes, or walkways which have been or may be stopped up and closed.

Real Property Taxes: means a tax levied on both real and personal property; the amount of the tax is dependent on the value of the property (includes municipal, school and local improvement levy [if any]).

Rental Rate: is the appropriate percentage rate that is applied each year to the land value of the particular land use. (The rates as established in the attached Land Use Table may be subject to change periodically upon City Council approval.)

POLICY

1. Administration

This policy shall be administered on behalf of the City of Brandon through the Development Services Division, Property Administration Section.

2. General Lease Provisions

a. Term

The standard term for leases shall not exceed five (5) years and may provide renewal periods thereafter up to a maximum of 30 years in duration. Renewals will be assessed on a case by case basis, allowing the City to review, re-evaluate and possibly re-negotiate.

b. Renewal Periods

- i. Renewal periods may range from one (1) year to five (5) years, provided that the Lessee has complied with its covenants and performed its obligations in accordance with the Lease, and the total of the primary term and the renewal terms do not exceed thirty (30) years. Any extensions beyond a thirty (30) year term will be assessed on a case by case basis.
- ii. Upon the expiry or any Renewal Period for a Market Lease, the Property Section will review the annual Rental Rate in comparison to the Gross Land Value as set by the Brandon Assessment Branch.
- iii. Upon the expiry or any Renewal Period for a Non-market Lease, the Property Section will review the lease agreement, and if both parties agree on a further renewal, an administration fee will apply.

c. Maintenance

All Leases shall specify that the Lease is completely carefree “Net Lease” for the City, and that the City shall not be responsible for any costs, charges, expenses or otherwise, of any nature whatsoever, arising from or relating to the Lands during the Term or any Renewal Term, whether foreseen or unforeseen, and whether or not within the contemplation of the parties prior to or upon the Commencement Date. No representation or warranty will be made, expressly or impliedly, by the City respecting the suitability of the Lands for use and occupation by the Lessee.

Any maintenance under the following Lease categories shall contain at a minimum the following site specific conditions:

i. Bare Land Rental

The Lessee shall be solely responsible for all costs associated with maintaining the Lands, such maintenance to include but not be limited to regravelling, grading, paving, re-paving, seasonal maintenance and upkeep, landscaping such as grass and/or weed cutting, snow removal or otherwise.

ii. Office Space Rental

1. The Lessee will be responsible for any damages to the interior portions of the said Premises caused by deliberate or accidental actions of employees, clients, and volunteers of the Lessee, excepting normal wear and tear of the Premises.
2. The Lessee will be responsible for any interior structural alterations required by reason of the Lessee's occupancy of the Premises as set out hereinbefore, provided however, that no alterations of the said leased Premises shall be made unless same shall have first been approved in writing by the City.
3. The City agrees that the rent payable by the Lessee is inclusive of the Lessee's portion of the following:
 - a. All charges for water, heat, and electricity and any other utilities;
 - b. Caretaking of common areas, if any;
 - c. Any maintenance contracts with regard to the building facilities including mechanical, central systems, structural maintenance and maintenance of the interior and exterior fabric of the building;
 - d. Insurance for the building and surrounding property with the exception of tenant's liability insurance; and
 - e. Capital improvement reserve contribution.

iii. Agricultural Land Rental

1. For crop land, the Lessee agrees to cultivate, till, manure, and employ such Lands that is now, or shall hereafter be brought under cultivation in a good and proper manner so as not to impoverish or injure the soil, and to supply all labour, materials and equipment necessary therefore;
2. For hay land, the Lessee agrees to cut, bale, and remove all the bales from the Lands commencing and immediately following baling the hay crop or no later than October 25th of each year and to undertake the cutting, baling, and removal of hay on the Lands in a good and proper manner so as not to impoverish or injure the soil, and to supply all labour, materials and equipment necessary therefore;
3. the City makes no claim as to the quality or the quantity of the crop or hay that will be produced on the Lands;
4. The Lessee shall not remove any sloughs or standing trees on the Lands without prior consent in writing from the City;
5. The Lessee shall maintain a minimum 15.24m (50') setback from any stream, river, ditch, creek, or embankment located on the Lands; and
6. The Lessee shall comply with any existing conservation, easement or other legal encumbrance on the Certificate of Title.

iv. Airport Rental

1. Airport Terminal Space

The rental of office space at the Airport Terminal shall be in accordance with Section 2.c.ii. above.

2. Airside Leases

- a. The Lessee shall pay to the City all applicable fees for flying, training, landing fees and concession fees as set down by Transport Canada in the bulletin of "Air Services Fees Regulations" as amended from time to time, and to make such payments at the end of each month during the Term or any Renewal Term, same to be accompanied by a copy of the official records of the Lessee, and to make available to the City for inspection all records and books kept for this purpose by the Lessee;
- b. The City reserves the right to erect a fence or gate to maintain, or establish a prescribed security requirement but shall consult with the Lessee as to the location and timing of any security requirement construction; and
- c. The Lease shall require compliance with all City, Provincial, and Federal airside security requirements imposed by said agencies.

v. Groundside Leases

1. The Lessee shall cooperate and abide with any order or plan made in furtherance of airport security; and
2. The Lessee shall in all respects, abide by and comply with the published Airport Security Plan.

d. Condition of Property

- i. The Lessee will lease the Lands on an "as is/where is, with all faults" basis, and without any representations or warranties by the City as to the characteristics or suitability of the Lands for the intended use by the Lessee.
- ii. The Lessee acknowledges that no warranty has been made or implied by the City respecting the suitability of the said Lands for any uses thereon. The Lessee further acknowledges that any building permit to be issued by the Planning & Building Safety Department or any other government authority will be issued at the request of the Lessee and the issuance of such building permit shall not be deemed to be a warranty by the City or any other such government authority as to the suitability of the building or the site for the intended or future uses. The Lessee shall complete its due diligence in this regard.

e. Monitoring for Lease Compliance

- i. The City, its agents and others authorized by the City, shall be permitted unrestricted access, from time to time, to enter upon its Lands, for purposes such as but not limited to viewing the condition of the Lands, to inspect the Lands generally or as part of its asset management program, or to prevent default by the Lessee with respect to its covenants and obligations in accordance with their Lease. Reasonable advance notice shall be provided by the City to the Lessee but no such access or entry shall constitute re-entry by the City or an eviction, or entitle the Lessee to any abatement of Rent.

f. Taxes

- i. The Lessee shall pay all taxes applicable to rent which are now or may be imposed by either the Federal or Provincial Government.
- ii. The Lessee shall pay all Real Property Taxes which may at any time during the lease be imposed, assessed or levied on the Lands.
- iii. For office space rentals only, the Lessee shall pay their proportionate share of all Real Property Taxes.
- iv. The Lessee of a Non-Market Lease shall be exempt from paying Real Property Taxes.

g. Insurance

The Lessee shall obtain, maintain and pay for Insurance, for and in respect of the Lands, taking into account the use and occupancy of the Lands by the Lessee, and considering all persons who may be at or upon the Lands as a result of the use and occupancy of the Lands by the Lessee. The insurance coverage of the Lessee for the Lands shall cover such risks and be of such amounts as are agreeable to the City, which at all times shall be of a minimum of two million dollars (\$2,000,000.00) per incident with respect to tenant's legal liability, public liability and property damage claims. The Lessee shall provide to the City, within thirty (30) days of the Commencement Date, a Certificate of Insurance which shall confirm that the City has been named as an additional insured. Thirty (30) days written notice shall be given to the City prior to the coverage being cancelled, materially changed or lapsed.

h. Recognition of Value Contributed by Lessee

Permanent value contributed by the Lessee to the Premises in conjunction with tenant structural improvements of more than 20% of the value of the Premises may upon review by the City be recognized through credits against rent. Free standing structural additions will not represent a value unless identified as having a real property tax value.

i. Rent Credits

If approved by Administration, rent credits or rental offsets may be negotiated prior to the installation of any tenant structured improvements. Upon installation, these improvements immediately become the property of the City, however is the responsibility of the Lessee for all maintenance and repairs during the term of the Lease. Examples of improvements include, but are not limited to, structural modifications, permanent fixtures (ceilings, flooring, interior walls), etc. Customized modifications for the specific needs of a Lessee based on operational needs or preferences will be excluded.

j. Termination

- i. All leases shall be subject to termination upon any one of the following:
 1. Whenever the Lessee shall fail to keep, perform or observe any of the covenants and obligations pursuant to a Lease Agreement, and such failure shall continue for or shall not be remedied by the Lessee within a period of ten (10) days after the City has

- provided notice, in writing, to the Lessee demanding that such failure be immediately remedied;
2. If the Lessee cancels insurance for the Lands or fails to insure the Lands pursuant to the Lease;
 3. If the Lessee makes an assignment for the benefit of creditors or files an assignment in bankruptcy, or should the Lessee be adjudicated as being insolvent or bankrupt, or petitions or applies to any tribunal, to any receiver, trustee or liquidator, or commences any proceedings for dissolution, windup or liquidation;
 4. Any receiver, trustee, or liquidator is appointed for the Lessee and is not discharged within a period of thirty (30) days;
 5. If the Lessee by any act indicates consent to or approval of or acts in acquiescence of proceedings for the appointment of any receiver, trustee or liquidator;
 6. The Lessee abandons or attempts to abandon the Lands or ceases to use the Lands as defined in the Lease for a period of thirty (30) consecutive days (winter months excluded);
 7. The Lease and/or any goods, chattels or equipment of the Committee is seized or attempted to be seized, it shall be lawful for the City to enter into and upon the Lands, and the Lease shall, at the option of the City, and with or without entry, terminate, and all rights of the Lessee with respect to the Lands shall be absolutely forfeited and shall lapse such that the Lessee shall immediately surrender the Lands to the City; or
 8. The Lessee attempts to assign its interest in the Lease or to sublet all or any part of the Lands without the prior written permission of the City;

and the City may, at its option, without notice or any form of legal process whatsoever, proceed to rescind and terminate the Lease or re-enter to recover possession of the Lands.

- ii. Unless otherwise specified in the Lease or in the case of an off-set granted in rent credits by the City, any buildings, structures, improvements or appurtenances made to and upon the Lands shall belong to and are the separate property of the Lessee. The Lessee shall, upon termination or other sooner cancellation of the Lease, remove all buildings, structures, fixtures, signs, and improvements or appurtenances made to and upon the Lands within a six (6) month period from the termination date, and shall, at the expense of the Lessee solely, repair and renew to the satisfaction of the City all portions of the Lands which may at any time be damaged. Should the Lessee fail to remove all buildings, structures, fixtures, signs, and improvements or appurtenances made to and upon the Lands within a six (6) month period from the termination date, all such buildings, structures, fixtures, signs, improvements or appurtenances made to and upon the Lands shall become the property of the City, with no compensation to the Lessee for the value of any and all improvements, construction, work or otherwise upon the Lands. The Lessee shall, upon termination or other sooner cancellation of the Lease, peaceably and quietly leave, surrender and yield up unto the City, the Lands, buildings, structures, fixtures, signs, and improvements or appurtenances made to and upon the Lands, in such good and sufficient repair as in its first and former estate (reasonable use and wear thereof excepted).

3. Market Value Lease

- a. This section applies to Real Property that has been deemed to have no present use for any municipal purpose, and is not available for sale as Surplus Lands under the Land Transaction Policy & Procedure, and is therefore potentially available for lease.
- b. When Real Property is not reserved, or otherwise required for municipal purposes, a lease may

be granted and the lease agreement shall reflect rent and other costs equivalent to the full current market rental value, except as provided in Section 4 “Non-Market Lease”, given that market value reflects the highest and best use of the Real Property.

- c. Leases may be granted either as a sole source or by bid process.
- d. Where a lease is identified for bid process, a notice of tender will be initiated by the Property Section and released through the Purchasing Section of the Treasury Department
- e. **Annual Rental Rate**

The following four (4) categories of leases currently exist: Agricultural Crop/Hayland, Commercial/Residential, Building/Office/Storage, and Airport (Airport Terminal space, Airport Commercial/Non-commercial, and Non-Airport/Non-commercial.)

- i. Rental rates for Agricultural Crop/Hayland will be established on a price per acre value.
- ii. Rental rates for Commercial/Residential and Airport Commercial/Non-Commercial, and Non-Airport/Non-Commercial will be established through a Percentage of Land Value, where land value is established by appraisal or assessed land values as set by the Brandon Assessment Branch.

For Percentage of Land Value pricing methods, annual rental payments are calculated as follows:

$$\text{Annual Rental} = \text{Gross Land Value} \times \text{Rental Rate}$$

Example: A Commercial Use Lease with a Gross Land Value of \$70,000:

$$\text{Annual Rental} = \$70,000 \times 0.10 = \$7,000$$

- iii. Rental Rates for Building/Office/Storage and Airport Terminal Space will be established on a price per square foot value.
- iv. Annual Rental Rates as listed in the Table of Land Use Rental Rates shall be reviewed by the Property Section every four (4) years and any proposed changes presented to City Council.
- v. Notwithstanding Sections 3.e., and 4 of this policy, the Property Section may bring forward the lease of Lands at less than the market value rental rate for City Council’s consideration if the City is not a majority land owner.

4. Non-Market Lease

- a. The City recognizes the significant value of the services offered by charities or Non-profit Organizations that enhance the educational, social, cultural and physical well-being of the community.
- b. A Non-Market Lease is a means for City Council to support organizations within the community that further Council’s objectives to enhance the quality of life while delivering services economically to the citizens of Brandon.

- c. The City may lease the use of City Lands at a nominal fee of \$1.00 (non-market lease) to a Charity or Non-profit Organization offering community services for public benefit and the City considers it to be in the public interest to do so.
- d. An application process will be used to determine whether a Non-profit Organization or charity is eligible for a non-market lease.
- e. The Charity or Non-profit Organization shall not use the property in any way that is contrary to the permitted use stated in the lease.
- f. A non-refundable administration fee shall be applied to all Non-Market leases in accordance with the City Fee Schedule for preparing agreements for each Lease Agreement including any future renewals.

g. **Eligible Organizations**

To be eligible for a non-market lease, the application must be a registered Charity and be in good standing with the Charities Directorate of the Canada Revenue Agency, or be a Non-profit Organization.

h. **Application Process**

- i. When land is available for potential use by a Charity or Non-profit Organization, the City shall advertise its availability twice (2x) in the local newspaper and on its website.
- ii. The Property Section shall coordinate a review and evaluation of all applications received with Administration based on the criteria in Section 4.i. below and provide City Council with a recommendation. Administration shall also report on the suitability of the Lands/Premises for the intended use by the applicant. The successful applicant shall make a presentation to City Council in support of their application, which shall outline their purpose, their past milestones and future objectives.
- iii. The Lease term for a Non-Market Lease to a Charity or Non-profit Organization shall be for a maximum of ten (10) years. Options for renewal will be subject to the Lessee complying with its covenants and performing its obligations in accordance with the Lease. The Lessee shall submit a request for an extension in writing to the Property Section, and will be subject to a presentation to City Council on the basis of their request. The Non-profit or charitable status of the Lessee must be maintained through the term or any renewal item of the Lease.

i. **Application Review Criteria**

- i. The guidelines listed below will assist in determining the most suitable applicant for any Lands available for lease:
 - 1. The primary service offered provides a demonstrable public benefit.
 - 2. Participation or membership is available to a broad demographic in the community or the non-profit society serves an identified need to a broad demographic in the community. Priority shall be given to those programs which impact on the largest number of people in the community.
 - 3. The applicant provides the only opportunity or one of only a few opportunities for the service, activity or benefit in the community.

4. The applicant does not generally compete directly with the business community in the service it provides or the society's services are offered in very different ways, or are accessible to persons who do not normally have access to the services or facilities in the private sector.
5. Service will be provided primarily to Brandon residents as demonstrated by a membership list or other suitable records.
6. The applicant must have a significant volunteer component. Societies with a large degree of community volunteer involvement within their last fiscal year shall be given priority over those with little or none.
7. The applicant must demonstrate that it is capable of efficient and effective administration of the assistance provided (through an organized board, administration, and a stable contact).

j. **Grandfather Provisions**

- i. This provision applies to all leases in effect on December 31st, 2015 whose lease rental rate is below the rate for their subject classification of land in the Table of Land Use Rental Rates adopted on December 7th, 2015. This provision will expire on January 1st, 2020.
- ii. Grandfathered Ease-In Implementation of the January 1st, 2016 Lease Rental Rate Increase will be completed in the following steps:
 1. All leases currently at the old lease rental rates (which is defined as any lease rental rate that is less than the rate for a corresponding class of property in the Table of Land Use Rental Rates found in this policy) will be reviewed and the difference between the old rental rate and the new rental rate will be calculated and divided by 5 to determine the annual step increase in the rental rate.
 2. All leases that renew during the period January 1st, 2016 to December 31st, 2016 will have their lease rental rate increased at their renewal date by one times their annual step increase, or 20% of the rental rate increase. The annual step increase will be added to the annual rental rate at each subsequent anniversary until the new lease rental rate is reached. This will include all leases on a month to month or an automatic annual renewal basis.
 3. All leases that renew during the period January 1st, 2017 to December 31st, 2017 will have their lease rental rate increased at their renewal date by two times their annual step increase, or 40% of the rental rate increase. The annual step increase, or 20% of the rental rate increase, will be added to the annual rental rate at each subsequent anniversary until the lease rental rate is reached.
 4. All leases that renew during the period January 1st, 2018 to December 31st, 2018 will have their lease rental rate increased at their renewal date by three times their annual step increase, or 60% of the rental rate increase. The annual step increase, or 20% of the rental rate increase, will be added to the annual rental rate at each subsequent anniversary until the lease rental rate is reached.
 5. All leases that renew during the period January 1st, 2019 to December 31st, 2019 will have their lease rental rate increased at their renewal date by four times their annual step increase, or 80% of the rental rate increase. The annual step increase, or the remaining 20% of the rental rate increase, will be added to the annual rental rate at the next anniversary, at which time they will have reached their new lease rental rate.
 6. All leases that renew on or after January 1st, 2020 will have their lease rental rate increased at their renewal date to the new rental rate.

7. A Lessee who is paying the lease rental rate adopted on January 1st, 2016 will not be subject to any rate adjustments until the end of their primary or renewal terms that occur on or after January 1st, 2020, at which time their lease rental rate will be adjusted to the then-current rate.

Calendar Year of Renewal Date	Percentage of Increase Implemented on Anniversary Date				
	Year 1	Year 2	Year 3	Year 4	Year 5
January 1 st to December 31 st , 2016	20%	20%	20%	20%	20%
January 1 st to December 31 st , 2017	n/a	40%	20%	20%	20%
January 1 st to December 31 st , 2018	n/a	n/a	60%	20%	20%
January 1 st to December 31 st , 2019	n/a	n/a	n/a	80%	20%
January 1 st , 2020 and subsequent	100%	100%	100%	100%	100%

5. Encroachment

- a. When the Property Section becomes aware of the existence of an Encroachment that extends beyond a resident's private property boundaries onto a public road right of way, a public property such as a park or other City owned land, authorization through an Encroachment Agreement is required from the City to protect its interests.
- b. The property owner responsible for the Encroachment, or their lawyer, may submit a written request to the Property Section for the Encroachment to be reviewed by the City.
- c. If upon review the City has no objections to the Encroachment, the property owner shall enter into an Encroachment Agreement with the City to allow the continuation of the existing Encroachment for a period not exceeding the life of the structure and pay all required fees, inclusive of a one-time administration fee.
- d. If upon review the City has objections to the Encroachment, the property owner shall be required to remove the encroaching structure within a reasonable timeframe and shall repair and renew all portions of the right of way, public property or City owned land which may at any time be damaged, to the satisfaction of the City at the cost of the property owner solely. If the property owner does not comply with the removal of the encroaching structure, the City may complete the work and add all costs to taxes pursuant to The Municipal Act.
- e. Applicants requesting a new structure to be constructed intentionally encroaching onto a public road right of way, a public property or other City owned land shall submit a written request and site plan inclusive of measurements for the Encroachment to the Property Section for review and consideration, with the final decision to be solely at the discretion of Administration with an appeal to Council as a general business item.
- f. If a survey or Building Location Certificate prepared by a Manitoba Land Surveyor is not available to confirm the exact Encroachment measurements, the Property Section shall use its best efforts to calculate said Encroachment.
- g. If at any point a structure that is covered under an Encroachment Agreement with the City is removed, evidence of its removal shall be submitted to the Property Section. Once the Property Section confirms that the encroaching structure has been removed, and all terms of the Encroachment Agreement have been satisfied, the City shall undertake to void the Encroachment Agreement and all future annual fees.

- h. The City will generally support encroachments in the downtown area of the City where the architectural character of the area is being complimented and/or retained, and recognizing that a large number of commercial properties have been built at property line.
- i. An encroachment once authorized by the City may continue to be used but the encroachment shall not be added to, rebuilt or structurally altered except:
 - i. as may be necessary to remove the encroachment; or
 - ii. as may be necessary for the routine maintenance of the encroachment.
- j. If the structure benefitting from the encroachment is damaged or destroyed by fire or from any other means, and/or the structure sustains material damage (as determined within the absolute discretion of the City), the property owner covenants and agrees that the structure as the case may be shall be removed from the City owned land completely, and if reconstructed, be placed wholly within the property lines of the property owner, with reconstruction to be in accordance with then existing by-laws and regulations of the City of Brandon and subject to section 5.d. above.
- k. The City will not authorize any property owner to be entitled to register an Encroachment Agreement by Caveat against Certificate of Title to any public road right-of-way.

l. **Encroachment Fee Calculation**

- i. The following calculation is used when determining the annual encroachment fee for an encroaching structure:
 1. Find Gross Assessed Value of LAND only (not the buildings);
 2. Divide it by the Square Footage of the Lot (private property);
 3. This equals the Price Per Square Foot;
 4. Calculate the square footage of the area that the structure is encroaching (length x width);
 5. Multiply this area by the Price Per Square Foot as calculated above;
 6. Total equals the yearly encroachment fee.

The minimum is \$75.00 and the maximum is \$500.00 (2015). These values are subject to increases under the City's Fee Schedule.

- ii. The annual encroachment fee for an encroaching structure shall be prorated from the effective date as specified in the Encroachment Agreement. This prorated fee is due and payable upon signing of the Encroachment Agreement. All future annual fees will be added to taxes.
 - iii. If multiple free standing structures are encroaching and approved by Administration to remain or be installed, the total area calculated shall include each portion of each structure's encroachment area totalled together.
- m. **Insurance**
- i. The property owner shall obtain, maintain and pay for Insurance, for and in respect of the Lands, taking into account the use and occupancy of the Lands by the property owner, and considering all persons who may be at or upon the Lands as a result of the use and occupancy

of the Lands by the property owner. The insurance coverage of the property owner for the Lands shall cover such risks and be of such amounts as are agreeable to the City, which at all times shall be of a minimum of two million dollars (\$2,000,000.00) per incident with respect to tenant's legal liability, public liability and property damage claims. The property owner shall provide to the City, within thirty (30) days of signing the Encroachment Agreement, a Certificate of Insurance which shall confirm that the City has been named as an additional insured. Thirty (30) days written notice shall be given to the City prior to the coverage being cancelled, materially changed or lapsed.

Nothing in this Policy shall in any way be construed to limit the prerogative of the City to make decisions, to negotiate site specific conditions, or take action respecting the leasing of improved real property outside the provisions of this Policy.

Any deviations from this Policy shall be approved by City Council.

Related Information

- The Municipal Act, C.C.S.M., c.M225
- Confidential Table of Land Use Rental Rates

General powers

250(2) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following:

(a) acquire, hold, mortgage and dispose of land, improvements and personal property, or an interest in land, improvements and personal property;

Powers respecting municipal roads

288 A municipality may, subject to section 291, lease land on which was located a municipal road that has been closed under section 290;

Revision Date: December 7, 2015

Authorized By: *Heather Ewasiuk*
City Council

Per: Heather Ewasiuk
City Clerk

Motion #: 383

Authorized By: *Patrick Pulak*

Patrick Pulak, City Engineer
Director of Engineering Services
& Water Resources