

Town of Greater Napanee Commercial Leasing Policy



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Department:	Legislative Services	Contact:	Clerk
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1. Introduction

The purpose of this policy is to establish the framework for approving and executing agreements related to the acquisition and disposal of temporary Real Property rights (leases) for commercial purposes in Town facilities.

2. Purpose

The purpose of this Policy is to ensure that there are transparent and accountable processes in place for the disposal of temporary Real Property rights (leases), that costs and revenues are fair, reasonable, in the best interests of the Town, and that everyone is subject to a standard set of rules. This policy does not apply to below-market rent to non-profit and community groups, which is subject to a different policy.

3. Scope

This Policy will apply to all Town employees (Town departments) who enter into agreements that require the approval of Town Council or through any staff who have been delegated such authority by Council. This policy does not apply to Town departments that allocate daily or hourly use of Town-owned facilities for specific events or programs.

4. Definitions

“Additional Rent” means an amount payable by a Tenant to the Town in its capacity as landlord in accordance with the lease agreement that is in addition to base rent for items including, but not limited to, operating costs, common area maintenance, property taxes, and the Town’s building and property insurance.

“Agreement” includes disposal of temporary real property rights by way of a commercial lease or similar contractual arrangement entered into by the Town and a third party.

“Base Rent” means an amount payable by a tenant to the Town in its capacity as a landlord in accordance with its lease agreement for the occupation of

Town-owned space.

“Bonusing” means favourable rent to a private business that contravenes Section 106 of the *Municipal Act*, which states that leasing or selling land below market value or granting exemptions from municipal rates is prohibited when it confers an undue benefit on a commercial business. Notwithstanding Section 106, Council retains broad authority to enter into agreements for such things Council deems to be in the best interest of the municipality, which can include reduced rent where there is a clear benefit back to the community in exchange.

“Clerk” means the Clerk or Deputy Clerk as appointed by Council under the *Municipal Act*.

“Joint Use Agreement” means an agreement between two or more parties for the joint construction (if applicable), use and maintenance of a shared facility.

“Gross Lease” means a lease structure whereby the tenant pays an all-inclusive, fixed rent, and the responsibility to pay operating costs is incurred by the Town as landlord. The use of this structure depends on market expectations, negotiations, and the ability to delineate and quantify operating costs.

“Lease” means a contract in which the Town, as landowner, grants a tenant the right of possession for a specific period in return for payment.

“Market Rent” means the rate that a property would most likely command on the open market, as evidenced by current rentals/fees being paid for at comparable properties or facilities for a similar use.

“Non-Payment of Rent (Default)” A tenant is considered in default if rent is not received within 17 business days after the rent is due. This period includes a three-day grace period, followed by a 14-day notice period during which documentation has been sent to the tenant.

“Operating Costs” means costs and/or pro-rated costs (non-capital related) associated with the day-to-day maintenance and operations of a property, which may include:

- Utilities: electricity, water, sewer, natural or propane gas, telephone;
- Repair and maintenance: heating, ventilation, air conditioning, electrical, structural, roof, plumbing, fire, life and safety systems, painting, decorating, drywall, flooring, other maintenance;
- Cleaning: Janitorial, materials, garbage and waste removal;

- Roads and grounds: maintenance, repair landscaping;
- Security: wages or contract fees;
- Taxes, licenses, license fees, insurance; and
- Administrative costs: supplies, wages, salaries and overhead.

“Real Property” means the physical land, building, structures, water, lots or any portions thereof, plus any rights associated with the ownership of the property.

“Remedies” means actions the Town may take in the event of non-payment of rent, including termination of the lease, collections, and/or a ban on all future leasing opportunities with the Town.

“Responsible Department Head” means the Manager or Director of the Town department responsible for the operations of the facility where space is being leased. The Responsible Department Head is not responsible for the leasing arrangement itself.

“Revenue Lease” means the lease or license of real property owned by the Town to a third party or individual. In this case, the Town acts as the landlord.

“Tenant” means a holder of real property under a lease or other agreement with the right of possession.

“Tenant Improvements” means improvements to a leased space that benefit only the tenant and its uses, such as floor coverings, interior painting, interior partitions and doors, window coverings, stages, seating, fixtures, etc.

“Town” means the Corporation of the Town of Greater Napanee

5. Responsibilities

5.1. Town Council

Council is responsible for:

- a) Approval of all policies related to the leasing of municipal property, and any amendments;
- b) Approving the addition or removal of any municipal property available for commercial lease; and
- c) Approval of any lease agreements unless authority has been otherwise delegated to staff through approved renewal terms or within the Town’s Delegation of Authority By-law.

5.2. Clerk

Responsibility and authority is delegated to the Clerk or designate, to:

- a) Act as the Town's official leasing agent;
- b) Offer Town properties for lease, renew agreements and terminate leases where appropriate;
- c) Establish factors to consider when deciding on the availability of property, including, without restriction, Town requirements, marketability, suitability, and appropriateness of intended use;
- d) Act as the primary point of contact for tenants in matters specifically related to the tenancy agreement;
- e) Oversee the Corporate Leasing Policy and establish procedures for its implementation and administration;
- f) Liaise with the Town's legal counsel, finance department and other Town departments in the application of the Commercial Leasing Policy;
- g) Negotiate Agreements and prepare reports to Council recommending terms and conditions; and
- h) Maintain responsibility for an agreement when more than one Town department is impacted.

5.3. Responsible Department Head

Responsibility is delegated to the Responsible Department Head, or designate, to:

- a) Maintain responsibility for the operations of the facility where space is being leased;
- b) Provide details to the Clerk on applicable space, known operating costs, and confirms all information related to facility attributes, including gross floor area;
- c) Provide, on an annual basis, the average operating cost per square foot for buildings and/or space within buildings that are identified as leasable space. This information will be used to ensure that all or part of the operating costs are recovered through agreements;
- d) Provide property management support for leased spaces that are unrelated to lease payments or contractual concerns and are part of a broader Town facility, including repairs and maintenance; and
- e) Act as a sponsoring department for tenants requesting a base rent below market value. This can involve serving as an official partner through an agreement or as a reference for the tenant.

6. Policy

6.1. Revenue Lease Agreements at Market Rate

Unless permitted by law and authorized by Council, or as permitted under this policy, the Town is obligated to temporarily dispose of the Town-owned or leased real property at market rent. This requirement is also set out in Section 106 (1) of the Municipal Act, 2001, the anti-bonusing provision, which prevents municipalities from giving financial or other advantages to specific businesses.

Market Rent is the rate that a Town-owned real property would most likely command in the open market, as evidenced by current rents paid or charged

for comparable property and a similar use. In determining Market Rent, Town staff are expected to use one of the following methods to determine what is fair:

- A survey of Market Rents for comparable real property by Town staff and reviewed by Town Council;
- The highest rents tendered in response to an advertisement or request for proposals;
- An appraised value by a third party.

In addition to establishing a Market Rent for Town property, the Town should also consider:

- How operating costs for the leased space are being paid (Town or lease holder);
- The value of vested improvements a leaseholder may make to the property that will become Town property at the end of the lease;
- Any in-kind contributions or offsets to operating costs that represent a financial benefit to the Town.
- Unless otherwise directed by Council, all lease agreements shall include an annual inflationary rate indexed to CPI.

6.2. Revenue

All Town-owned real property is a corporate asset and not an asset of any individual Town department. The allocation of lease revenue will be determined by Council through the budget process.

6.3. Municipal Taxes

A lease and/or license is subject to property taxes if it is occupied by an individual or an organization that would otherwise be taxable, as determined by the Municipal Property Assessment Corporation, unless designated by Council as a Municipal Capital Facility (MPC). An MPC includes facilities such as those used for general administration, cultural facilities, or recreation centres.

The Town will recover the tenant's proportionate share of property taxes through the lease or license in arrangements that do not involve an MPC.

6.4. Insurance and Indemnification

The Town requires that any tenant occupying Town lands under a commercial lease agreement carry insurance, including, but not limited to, property and General Commercial Liability coverage in amounts deemed appropriate for their business or activity and for any potential damage they may cause to Town property. The tenant's certificate of insurance shall name the Town as an additional insured.

Additionally, the Town will require appropriate indemnification within

agreements.

6.5. Notice of Surplus Real Property Available for Lease at Market Rate

When surplus real property becomes available for lease, notice of the available space shall be provided to the public by one or more of the following methods:

- Posing a sign on the real property for a period of not less than 10 days; and/or;
- Posting a notice on the Town's website for a period of not less than 10 days; and/or;
- Promotion on the Town's social media sites for a period of not less than 10 days.

6.6. Method of Securing a Tenant at Market Rate

The leasing and negotiation methods utilized must ensure transparent and accountable processes are followed when entering into agreements.

Appropriate methods of securing a tenant include:

- A public call for bids via tender or proposal;
- An advertising effort including the Town's website, local media and social media for a period of no less than two weeks to solicit interest.
- Using a realtor, or
- Negotiating directly with an existing tenant who is in good standing with the Town

6.7. Agreement Terms

All new lease agreements are to be approved by Town Council.

For existing tenants with an option to renew built into their lease agreement, a renewed lease can be executed by staff, provided the leaseholder is in good standing. A notice of the renewal will be provided to Town Council in the form of an information report.

Lease agreements may only include an option to renew with a time frame that cannot exceed the length of the original lease agreement.

6.8. Priority

The availability of Town space for commercial lease is limited. As a result, the Town may give priority to one lease applicant over another for Town space after considering the following factors:

- Alignment between the service priorities of the Town and a potential client;
- The types of goods and/or services the prospective tenant will provide;
- Scope, magnitude and type of service offered;
- Number of years a potential tenant has been in operation;
- The degree to which the group is or was in good standing in other Agreements with the Town

6.9. Defaults – Remedies for Non-Payment of Rent

The Town will provide written notice of rental arrears within three business days of non-payment. The written notice will include information on the amount due, a 14-day deadline to remedy the issue, and a statement that the Town will pursue all available remedies to ensure the outstanding rent is paid.

A tenant is considered in default if any rent or other charges due under a lease or other agreement remain unpaid for more than 14 business days after written notice is provided by the Town.

Remedies for non-payment of rent will include:

- Assigning late penalties and administrative fees to the tenant to cover all costs incurred by the Town to pursue remedies for non-payment of rent;
- Notice of the Town's intent to terminate the lease for non-payment and to retake possession of the property 7 business days after the expiry of the 14-day notice provided to the tenant for non-payment of rent;
- Sending outstanding rent to a third-party collections agency and applying all costs associated with collections to the outstanding sum of rent;
- Excluding the tenant from any future leasing opportunities with the Town for a period of no less than 5 years.

7. Related Documents

N/A

Appendices

N/A

Revision History

Date	Number	Description
February 10, 2026	LS-2026-01	NEW