



City of Murrieta City Council Policy

POLICY: **LEASE OF REAL PROPERTY**

POLICY NO.: 100-16

DATE: October 16, 2012

I. PURPOSE

The City of Murrieta generally makes certain surplus facilities and real property available for lease to qualified businesses and other organizations. Through implementation of this lease management policy, the City aims to maximize its return on investment while ensuring responsible management of community assets for both ratepayers and taxpayers.

II. POLICY

- A. The City has the authority to enter into a lease or license agreements with businesses and other organizations for City surplus or under-utilized property at regular market rates.
1. While a master leasing and licensing template will be developed in consultation with the City Attorney's Office, each transaction will be negotiated individually with differing terms and conditions.
 - a. The City will develop a master lease format based on modern leasing practices and similar formats used by other public agencies.
 - b. Any lease agreement must be drafted in the approved master lease template with any modifications approved by the City Manager or his/her designee, with the City Attorney's consent.
 - c. In general, leases do not have to be put out to bid and are exempt from the purchasing policy.
 - d. This policy does not constitute an endorsement of any business or organization's beliefs, policies, procedures or products by the City of Murrieta or its employees.
- B. Policy Objectives: The objectives of this policy are to:
1. Provide a mechanism whereby the City can utilize surplus and unused property for the benefit of the community through revenues and additional sales tax generation.
 2. Ensure fair and consistent lease conditions between the City and tenants.
 3. Provide accountability and transparency for lease agreements to prevent the appearance of impropriety.
 4. Make certain that City-owned facilities are appropriately maintained, developed and occupied responsibly having regard to the interests of local communities and the care of the assets.
 5. Ensure sound financial management and effective administration of City leasing arrangements.
- C. Standards for determining qualified tenants
1. Tenants must have a history of performance and lease compliance, such as:

- a. Tenant's record with respect to prompt and accurate payment of rent;
- b. Tenant's record of compliance with existing leases;
- c. Appropriateness of the proposed tenant business with respect to the total of mix of uses and character of the area, as well as with respect to the long-term planning goals of the City;
- d. Tenant's financial investment and credit;
- e. Other pertinent considerations as may be appropriate and determined from time-to-time by the City Council and the City Manager.
- f. Tenant must maintain an active business license with the City.

D. Fair Market Value: All leases shall be at fair market rent, as defined above.

1. On occasion, the City shall have the flexibility to enter into an arrangement whereby a lease will be structured to provide for a minimum rent with the addition of a business' proceeds or percentage of gross sales.
 - a. If a tenant agrees to such an arrangement, an independent auditor will be appointed to examine the business accounting records for lease compliance on a pre-determined schedule.
 - b. Such costs will be shared evenly between the City and tenant.
2. If an economic benefit to the City can be demonstrated (i.e., sales tax generation, addition of jobs), the City may enter into an agreement with a business for a reduced rate.
 - a. Such arrangements must be approved by City Council action.
 - b. The increase in calculated sales tax generation must be for more than the annual fair market value averaged over the term of the lease.
 - c. In increase in jobs means a minimum of ten newly created positions at above the City's median income level.
3. In cases where a tenant is proposing major improvements to a site at significant private investment, the City may authorize a temporary reduction in rent or an arrangement whereby the improvements are factored into the rent proceeds over a multi-year agreement.
 - a. Such agreements must be agreeable to all mutual parties and approved through City Council action.
 - b. The City retains ownership of improvements that cannot be removed unless otherwise specified in the lease agreement.

E. Adjustment of Rents

1. Approved rental rates shall be reviewed annually and adjusted to reflect changes in the Consumer Price Index (CPI).
2. Adjustments shall be automatically made at each anniversary of the execution of the lease agreement, unless such other arrangement has been mutually agreed upon in the lease agreement.
3. The adjustment shall reflect the change in the CPI listed by the U.S. Department of Labor, Bureau of Labor Statistics, using the following criteria: All urban customers, all services, within the Los Angeles-Anaheim-Riverside Metropolitan Area.

F. Conditions of Use

1. Approved Uses
 - a. Use on such a lease site shall be in conformance with all City planning, zoning and land use policies.

- b. Tenants proposing or considering new or modified uses for a site will be referred to the Planning Department of the City for review and approval.
 - c. Any lease approval shall not bind either City or the City Council as obligating itself to any other governmental agent, board, commission, or agency with regard to any discretionary action relating to development or operation of the leased premises.
2. Nuisance
 - a. The terms of the lease agreement require that tenants undertake their permitted activities without adversely impacting the quality of life of nearby neighbors and the community.
 - i. The City reserves the right to terminate or to restrict the use of premises by tenants not meeting this requirement.

G. Maintenance Responsibilities

1. Each tenant is required to maintain a leased facility in a condition determined in the lease agreement.
 - a. Lease agreements will specify responsibility of the City and tenant, including responsibility for maintaining the structure, building shell, parking facilities, landscaping and interior condition.
 - b. Specific responsibilities will be negotiated with each tenant taking into account the nature, age and condition of the facility and included in a schedule to that tenant's lease.
 - c. In general, the City shall provide reasonable upkeep and responsiveness to provide tenant with a facility or property that can be utilized in accordance with the lease purposes.
2. Maintenance Inspection
 - a. The City has a paramount interest in ensuring that the improvements and regular maintenance on the lease site are being properly maintained and are in a safe and secure condition.
 - b. The City shall inspect all leased facilities on a regular basis.
 - c. City staff will require significant deficiencies noted in the lease site inspection report be repaired or cured by the tenant.
 - d. As long-term leases draw close to expiration, tenants tend to defer or not report maintenance items. The City must carefully monitor and strictly enforce lease maintenance provisions to safeguard against substandard conditions.
 - e. Keys and Locks
 - i. In order to be made available for access for emergency services, all keys shall be compatible with a master set held by the City's Public Works Department, unless agreed to prior to the execution of the lease.

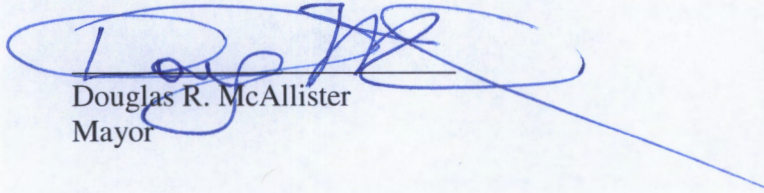
H. Sub-leasing, Assignment and Relocation

1. Generally, a tenant may not sub-lease a portion or the entirety of a property.
 - a. On occasion, the City Manager may approve of a sub-leasing agreement through written approval.
 - b. Prior to the approval of a sub-lease, the tenant shall submit written notice to the City Manager that such an arrangement is being requested.
 - i. Tenant must submit a copy of a sublease agreement for approval by the City.

- ii. All conditions and provisions of the tenant lease must be included within the sublease agreement.
- iii. All subleases must maintain an active city business license.
- c. Subleases are non-transferable.

HISTORY

Adopted



Douglas R. McAllister
Mayor

ATTACHMENT A**Definitions**

1. **Lease/License:** An agreement to the lease/license of certain City-owned real property at market rates to businesses or other organizations.
2. **Lease:** An agreement between the City and a tenant for exclusive occupation including grant of rights for a specified period of time and for a specified consideration (i.e., rent). Represents typical occupation where tenant has full access to the defined space, with little to no restriction on use within the space. This type of tenancy is subject to all applicable federal, state and local rules and regulations.
3. **Rent:** The proceeds or monetary amount for the use of City-owned property, typically paid each month.
4. **License:** An agreement between the City and a licensee for non-exclusive occupation including grant of privileges for a specified period of time and for a specified consideration (i.e., fee). An example of this type of occupancy is the shared use of offices, work space, equipment, and storage facilities. This space tends to be occupied on a seasonal basis or an intermittent basis. A fee is negotiated based on terms of use permitted as opposed to a typical fair market rent under a lease situation.
5. **Fair Market Value:** 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, or set by an independent appraiser with credentials for determining market value.
6. **Property:** For the purposes of this policy, property is intended to include all real property defined as land, buildings, lots or any portion of assets of the City, including any rights associated with ownership of the property. May include anything permanently affixed to the land, such as structures, fences and those things attached to the buildings, such as light fixtures, plumbing and heating fixtures, or other items that would be personal property if not attached.
7. **Maintenance:** All upkeep, repair and proper care to preserve a property in a safe working environment. Includes aesthetic upkeep, such as painting and landscape maintenance.
8. **Force Majeure** – A force that cannot be controlled or resisted; something beyond the control of the parties involved. Includes acts of God (e.g., flood, tornadoes, etc.) and acts of man (e.g., riot, strikes, arson, etc.).
9. **Leasehold Improvements** – Improvements made to a City-owned property that is leased to a tenant, whereby such improvement is for the benefit of the tenant. Such expense is typically paid for by the tenant upon the negotiated consideration of offset to the lease payment. (Sometimes called Tenant Improvements)
10. **Tenant:** One to whom a grant of property or property rights is made. May also be called grantee or lessee.