

POLICY	
Policy Number: DEV2020-002	Date Approved: July 2020
Department: Development Services	Date Reviewed: October 2020
Leasing of and Encroachments onto Municipal Property	

### 1. **Policy Statement**

A policy establishing the framework and procedures for the approval and execution of leases and encroachments on property owned by the Town, for private use.

### 2. **Purpose**

The purpose of this policy is to establish guidelines for the leasing of property, when made available for third party use or the recognition of private encroachments onto municipal property.

### 3. **Scope**

This policy applies to all new agreements and expired agreements upon renewal, for occupation of Town property.

### 4. **Definitions**

Not Applicable

### 5. **Policy & Procedures**

#### 4.1 **Goals:**

- Provide a framework for managing leases and encroachments that is fair, transparent, accountable and sustainable;
- Ensure returns to the Town are fair, reasonable and in the best interest of the municipality;
- Abide by the requirements of the Municipal Act, the Assessment Act, other applicable statutes and Town policies.

### 4.3 Table of Authorities:

Town of Kirkland Lake Strategic Plan	<p>Makes recommendations to review and implement policy.</p> <p><u>Action Item</u>: Make Kirkland Lake Presentable (ED-15 &amp; ED-16)</p>
Town of Kirkland Lake Official Plan	<p>Section 2.6.4.2.2 states: “The Town shall continue to take the necessary steps to service and offer for sale and where appropriate, lease industrial land. Revenues from such land sales shall be set aside in a specified Council approved reserve fund.”</p> <p>Section 3.2.1.3 states: “It shall be a policy of Council to retain all land, laneways and road allowances that are encumbered by municipal services, gas pipes, or hydro and telephone lines. These services shall be protected from incompatible development. Leases should also be avoided on all lands that are encumbered.”</p>
Municipal Act, Ontario	<p>Section 106 – Town is not permitted to provide below market rent to industrial and commercial enterprises.</p> <p>Section 107 – Notwithstanding Section 106, Town may provide grants to persons/organizations for purposes that Council considered to be in the best interest of the municipality.</p>
Assessment Act, Ontario	Section 3 (1) 9 – Land owned by a municipality is not tax exempt if it is occupied by a tenant who would be taxable if the tenant owned the land.
Commercial Tenancies Act, Ontario	Outlines the relationship, rights and obligations between landlords and commercial tenants which includes everyone but residential tenants.
Residential Tenancies Act, Ontario	Outlines the relationship, rights and obligations between landlords and residential tenants.
Planning Act, Ontario	Section 27 – Municipalities may charge no rents or reduced rents in city-owned facilities within approved Community Improvement Plan areas to encourage redevelopment.
Income Tax Act, Canada	S. 248 (1) – Provides criteria for registered charities

#### **4.4 Roles and Responsibilities:**

1. Town Council
  - a. Council or its delegated authority will approve all individual leases.
2. Corporate Services Department
  - a. Maintain financial accounting system necessary to track the payment of fees, issue invoices as necessary and assist with the annual reconciliation of rents.
3. Development Services Department
  - a. Act as the Town's official leasing agent for all occupancies of Town property.
  - b. Primary point of contact for all tenants/leases.
  - c. Generate leasing/encroachments and establish procedures for administration.
  - d. Prepare reports to Council recommending terms and conditions.
  - e. Consult with other Town Departments on leasing/encroachment proposals.
  - f. Maintain an inventory of property available for lease.
4. Other Town Departments
  - a. Direct inquiries for leases of Town property to the Development Services Department.

#### **4.5 Leasing versus Ownership**

Based on the Town's preference for property ownership, all reports to Council must clearly identify why a lease interest should be pursued, as opposed to purchase. There are many variables which can affect whether a property should be leased, including:

- Short-term nature of space requirements
- Underlying program funding may be unpredictable or temporary in nature
- Municipal and/or public services exist and the Town must retain ownership of the land

#### **4.6 Value**

1. The lease of Town property will be for a value set by the Town of Kirkland Lake, in accordance with the User Fees By-law for that given year. It shall be reflective of market value.
2. Leases will be negotiated with appropriate terms that will allow the Town to increase fees annually.
3. As a minimum standard, fee increases will be negotiated as annual fixed step increases consistent with the Consumer Price Index of Ontario.
4. For leases with terms of more than five years, the Town will include provisions in the lease which permits fees to be reviewed at market rates of no more than five year intervals.

#### **4.7 Allocation of Costs**

1. All leases will be written as net leases/licenses with the tenant responsible for payment of their share of all operating costs included but not limited to taxes, utilities, maintenance, insurance and other costs related to the lease holders occupation of the property.

#### **4.8 Property Tax**

1. All leased property will be subject to property taxes if it is occupied by a tenant that would otherwise be taxed if the tenant owned the land. The Town shall recover the tenant's proportionate share of the property tax through the lease agreement.
2. Tenants with registered charitable status shall be responsible for paying property taxes and making application for tax rebates, as applicable.

#### **4.9 Financial Due Diligence**

1. Staff will conduct a financial background check to ensure the applicant is not in any tax arrears or has any outstanding payments that would prohibit the lease/encroachment, in accordance with the Property Sales and Other Land Uses to Residents in Arrears Policy.

#### **4.10 Insurance**

1. The Town will not extend its insurance coverage to lease holders.

2. The Town will require all lease holders to carry their own insurance including but not limited to property and liability coverage in amounts deemed appropriate for the business of the lease holder.
3. All lease holders will be required to name the Town as an additional insured.

#### **4.11 Procedures**

All applications shall be circulated to internal departments and, in some cases, external agencies, listed on Schedule "A". The package circulated shall include:

- Mapping of the subject property including location, subdivision plan, survey (if any);
- Location of all public and private services;
- Lot area; and
- Applicants proposed plans for the property.

All municipal lots, which are to be leased or encroached upon, are to be searched with the Master of Titles. The cost for such search shall be borne by the prospective lease holder.

When reviewing lease and encroachment requests, Council shall consider the following:

- Council shall discourage leases on full lots in plans of subdivision. Full lots on a plan of subdivision shall be advertised and offered for sale to encourage development.
- Council shall discourage leases for the purpose of storing recreational vehicles and material.
- Council shall discourage leases and encroachments on laneways, road allowances or properties that are encumbered with public services.
- Council shall discourage development (buildings, fences, storage, etc.) on leased land. If development is required, development on top of public services or within the angle of repose, shall be prohibited.
- Council shall not encourage new construction that encroaches onto municipal land.

When an application is received, a report will be presented to the next scheduled in-camera Council meeting for consideration on whether to proceed with drafting a lease/encroachment agreement. If Council is agreeable to the said lease/encroachment, staff will provide public notice, containing the

information and format as described on Schedule “B”, by circulating a letter to adjacent property owners.

If Council is satisfied with the request, a By-law shall be passed by Council, in accordance with the Procedures for Giving Public Notice By-law, giving authority to the Mayor and Clerk to execute all documents related to the lease or encroachment of the said lands.

Should Council deem it necessary, leases or encroachment agreements shall be registered on title at the expense of the lessee.

#### **4. Summary**

This policy shall apply to the lease of or encroachment onto real property owned by the Corporation.

## **Schedule "A"**

### CIRCULATION LIST – INTERNAL DEPARTMENTS

*Director of Development Services*

*Chief Building Official*

*Clerk*

*Treasurer*

*Economic Development Officer*

*Director of Public Works*

*Fire Chief*

*Chair Person for Joint Health and Safety  
Committee*

*Tax Collector*

*Waterworks Foreman*

*Roads Foreman*

*Director of Parks and Recreation*

### CIRCULATION LIST – EXTERNAL DEPARTMENTS

If utilities are present, please contact the appropriate utility company.

## **Schedule "B"**

The notice of intent to lease/encroach shall include the following information:

- The date on which a bylaw to lease/encroach the land will be considered;
- Municipal address, legal description and/or location map which the Clerk deems sufficient to identify the lands;
- The approximate size of the land by reference to dimensions and/or area, and a brief description of any buildings;
- The proposed use of lands and/or reason for the lease/encroachment;
- The general identification of the Lessee (e.g. adjacent land owner);
- The date on which the land was declared surplus;
- Information advising the public when and where additional information may be obtained and/or comments can be submitted for Council's consideration.