



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Lease Dispute Between City and Queen St. Patrick Market Inc. Regarding 238 Queen Street West Property

Date:	July 23, 2014
To:	Government Management Committee
From:	City Solicitor
Wards:	20 – Trinity Spadina
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City and contains advice that is subject to solicitor-client privilege.
Reference Number:	

SUMMARY

The St. Patrick Market (the “Market Building”) at 238 Queen St. W., is leased by the City to Queen-St. Patrick Market Inc. (“Market Inc.”) for a 50 year term pursuant to a lease dated June 15, 1989 (the “Lease”).

From 1989 to June 19, 2014, the City sub-leased the basement of the Market Building pursuant to a sub-lease dated June 16, 1989 (the “Sub-Lease”).

Legal actions were commenced by Market Inc. against the City and by the City against Market Inc., each alleging that the other had failed to pay the correct amounts owed under the Lease and Sub-Lease. In addition, the City’s legal action sought termination of the Lease on the basis of other alleged breaches of the Lease.

The purpose of this report and the confidential attachment is to seek instructions from Council as to the proposed settlement of the financial dispute between the City and Market Inc. relating to the financial terms of the Lease and Sub-Lease.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council authorize the public release of the confidential instructions to staff in Confidential Attachment 1, if adopted by City Council.
3. City Council direct that the remaining information in Confidential Attachment 1 remain confidential as it contains advice that is subject to solicitor-client privilege.

Financial Impact

Financial impact is set out in the Confidential Attachment.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its July 15, 2008 meeting, City Council considered a report from the City Solicitor dated July 8, 2008 and instructed City Staff to proceed in accordance with the recommendations contained in the confidential attachment to that report. See:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.CC23.5>

ISSUE BACKGROUND

History of the Market Building

The Market Building is at 238 Queen Street West. It is a one storey heritage brick building located on the north side of Queen Street West, near the intersection of John Street.

Lease Between The City and Market Inc.

Pursuant to authority granted by Council by the adoption of Clause 54 of Executive Committee Report No. 15, as amended, at its meeting on May 4 and 5, 1989, the City entered into the Lease with Market Inc. on June 15, 1989 and the Sub-Lease on June 16, 1989.

The key terms of the Lease are as follows.

1. It is for a 50 year term (1989 to 2039).
2. Base rent of \$51,145.55 per year is currently payable, and a formula in the Lease is applied to increase the Base Rent every five years in step with inflation.

3. Percentage Rent equal to 10% of the “net operating profit” is payable to the City each year.
4. Market Building is to be used for a bakery, meat and seafood store, fruit and vegetable stand, and the sale of prepared foods (cooked or uncooked), among other things.

Sub-lease Between Market Inc. and the City for the Basement of the Market Building

The basement space sub-leased by the City is to be used by non-profit organizations. It was vacant at the time that the City gave notice in March, 2014 of its intention to terminate the Sub-Lease.

A term of the Sub-Lease required the City to pay Additional Rent, defined as its share of property taxes, utility charges, and other expenses applicable to the basement, calculated in accordance with a specific provision in the Lease.

Current Use of the Market Building

Real Estate staff advise that the main floor of the Market Building has been divided to allow for multiple users. The majority of the Market Building is currently empty. There is a fast food restaurant and a coffee shop/bakery currently operating. Signs indicate space is available for lease.

Legal Application to Collect Arrears of Rent Owed by Market Inc.

Pursuant to authority granted by Council by the adoption of Clause 11 of Report 19 of the Corporate Services Committee at its meeting on December 16 and 17, 1998, the City Solicitor has standing authority to enforce leases to collect rental arrears.

Pursuant to that authority, the City commenced a court application against Market Inc. in November, 2007 for payment of arrears of rent owing under the Lease, among other things.

In November, 2007, Market Inc. also commenced a court action against the City alleging that the City failed to pay Additional Rent owing in respect of the basement premises.

COMMENTS

The Confidential Attachment provides legal advice regarding the Lease and Sub-Lease and the claims for payment of rental arrears and other monies by Market Inc. and the City.

The Chief Corporate Officer has been consulted in the preparation of this report, and concurs with the recommendation being made by the City Solicitor.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information: Lease Dispute Between City and Queen St. Patrick Market Inc. Regarding 238 Queen Street West Property