

Community Space Tenancy Policy

Date: October 6, 2017
To: Executive Committee
From: Deputy City Manager, Internal Corporate Services, and
Executive Director, Social Development, Finance and Administration
Wards: All

SUMMARY

The City of Toronto's *Policy for City-Owned Space Provided at Below-Market Rent (BMR)* provides Council and staff with a process for leasing City-owned or managed space (Community Space) at below market rent to non-profit organizations that deliver community and cultural services to residents and further the City's strategic objectives. The policy has supported collaboration to build strong neighbourhoods, investments in community and cultural groups, and programs that respond to local needs.

Staff, in consultation with existing BMR tenants, have conducted a review of the BMR policy. This report proposes to replace the BMR policy with a new Community Space Tenancy (CST) policy. The CST policy retains the main components of the BMR policy while adding necessary elements to meet the needs of the City and the non-profit sector. New elements include requirements for formal leases, clearer eligibility criteria and four types of tenancies: Legacy, Community Partner, Incubator and Community Hub.

The CST policy ensures that the City continues to meet its policy objectives to provide a consistent, fair, accountable and transparent approach to leasing Community Space to service sector and cultural organizations at less than market rates, while fostering partnerships that support these organizations to meet resident needs. The Policy includes a regular review process to ensure that it continues to adapt as needed to meet these objectives.

If adopted, the CST policy would take effect for Legacy Tenants, Community Partner and Community Hub tenancies on January 1, 2018. Incubator tenancies will be implemented if the required resources are approved through the 2018 budget process.

RECOMMENDATIONS

The Deputy City Manager, Internal Corporate Services and the Executive Director, Social Development, Finance and Administration recommend that:

1. City Council adopt the Community Space Tenancy Policy as set out in Appendix A, to come into effect on January 1, 2018.
2. City Council authorize the Deputy City Manager, Internal Corporate Services, in consultation with the Executive Director, Social Development, Finance and Administration and/or the Division Head responsible for the tenants' programs, to administer and manage all lease agreements approved by City Council under the Community Space Tenancy Policy, including the provision of any consents, approvals, notices and notices of termination provided that the Deputy City Manager, Internal Corporate Services may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.
3. City Council authorize the Deputy City Manager, Internal Corporate Services, in consultation with the Executive Director of Social Development, Finance and Administration and/or the Division Head responsible for the tenants' programs, to approve new leases with tenants occupying space pursuant to the Community Space Tenancy Policy when a prior lease entered into pursuant to the policy has expired, provided that such tenant remains in good standing, continues to meet all criteria of the policy, and the new lease is on substantially the same terms and conditions as the lease for such tenant previously approved by City Council.
4. City Council authorize the Deputy City Manager, Internal Corporate Services, in consultation with the Executive Director of Social Development, Finance and Administration, and/or the Division Head responsible for the tenants' programs, to approve lease arrangements for vacant space located within a City facility occupied by three or more tenants operating with intentional program and service integration pursuant to the Community Space Tenancy Policy, where such vacancy arises from the termination of a prior tenancy by the City, the replacement tenant meets all criteria of the Community Space Tenancy Policy and the new lease is on substantially the same terms and conditions as the terminated lease previously approved by City Council.
5. City Council authorize the Deputy City Manager, Internal Corporate Services, in consultation with the Executive Director of Social Development, Finance and Administration, and/or the Division Head responsible for the tenants' programs, to consent to the subleasing of space occupied by a tenant pursuant to the Community Space Tenancy Policy to no more than two subtenants, provided any such subtenant meets all criteria of the Community Space Tenancy Policy and enters into a Sublease Acknowledgement Agreement with the City.
6. City Council authorize severally each of the Deputy City Manager, Internal Corporate Services and the Director, Real Estate Services to execute such leases, and any related documents on behalf of the City.

7. City Council request that the Deputy City Manager, Internal Corporate Services and Executive Director of Social Development, Finance and Administration, in consultation with the City Solicitor, coordinate with the City Manager regarding the manner in which the delegations identified above can be incorporated in the new Delegation Framework approved by City Council as part of the City-wide real estate model.

8. City Council request the Executive Director, Social Development, Finance and Administration and the Chief Financial Officer to include \$75,000 to support the incremental operating expenses of Incubator Tenants using community space under the Community Space Tenancy Policy, for consideration in the 2018 Budget process with other City priorities.

9. City Council direct the Deputy City Manager, Internal Corporate Services to include a summary of Community Space tenancies authorized by Council or by delegated authority in the annual report to the Government Management Committee on all real estate transactions.

FINANCIAL IMPACT

Approval of the CST policy will allocate Community Space to organizations that provide services aligned with the goals and objectives of the City and its divisions. Actual financial implications will be determined on a site-by-site basis as a CST lease is recommended to City Council, and will include foregone rental revenue and property tax revenue for CST tenants in Community Space designated as municipal capital facilities.

There are currently approximately 100 tenancies in Community Space leased at lower than market rental rate, either under to the BMR policy or through historical or special lease arrangements.

A new request of \$75,000 is included as a new priority in the 2018 Operating Budget Submission for Social Development, Finance and Administration to support the incremental operating expenses of Incubator Tenants using Community Space under the CST Policy. This request will be referred to the 2018 budget process for consideration with other City priorities.

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

DECISION HISTORY

On October 1, 2, and 3, 2002, Council adopted the report titled Policy for City-Owned Space Provided at Below-Market Rent as the first step in rationalizing how City-owned space is provided to community and cultural organizations.

<http://www.toronto.ca/legdocs/2002/agendas/council/cc021001/pof13rpt/cl001.pdf>

At its meeting on June 24, 25 and 26, 2003, Council adopted the report titled Implementation of the Policy for City-owned Space Provided at Below Market Rent outlining the below-market rent implementation work plan and further refinement of the eligibility criteria.

<http://www.toronto.ca/legdocs/2003/minutes/council/cc030624.pdf>

At its June 27, 28 and 29, 2006 meeting, Council adopted the report from the Community Services Committee titled Increasing the Supply of Space Available for Community Use. Council clarified its priorities by endorsing the policy direction of designating community use as the second priority for the allocation of surplus City owned property, after the development of affordable housing.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060627/cms4rpt/cl010.pdf>

At its meeting on November 19 and 20, 2007, Council adopted the report titled Providing City-Owned Space to Community Organizations at Below-Market Rent. In adopting this report, Council granted authority to enter into below market rent leases with 73 existing non-profit organization tenants provided there is no negative financial impact to the City, and directed that new space made available for community use through the City's surplus property disposal process or negotiated in Section 37 agreements be allocated through a competitive process.

<http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-7803.pdf>

At its meeting on September 26 and 27, 2011, Council adopted the report titled Core Service Review - Final Report to Executive Committee. This report requested that the City Manager undertake a study of community infrastructure provided through libraries, community centres, community hubs, related agencies and organizations, and report to the Executive Committee on a plan that maximizes the use of the City's assets and enhances service system coordination.

<http://www.toronto.ca/legdocs/mmis/2011/ex/bgrd/backgroundfile-40702.pdf>

City Council on November 27, 28 and 29, 2012, directed in its 2012 Update on the Policy for City-Owned Space Provided at Below-Market Rent report that a "Return on Investment" measure be developed and included in future BMR reports, and that new spaces made available through the City's surplus property disposal process or negotiated in the Section 37 development process must be made available through a competitive process except where a local development process has already taken place.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX25.7>

On June 19, 2017, Executive Committee considered an initial draft of the CST policy in report EX26.23 and referred the item to the Deputy City Manager, Internal Corporate Services and the Executive Director, SDFA, for further community consultation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX26.23>

COMMENTS

There are currently approximately 100 tenancies in Community Space leased at lower than market rental rate, either under to the BMR policy or through historical or special lease arrangements.

The provision of accessible Community Space is a key component of building strong neighbourhoods. Community use of Community Space at below-market rent is a form of collaboration and investment in community and cultural organizations. These organizations in turn provide community programs and services that are aligned with and support the City's strategic objectives. The absence of Community Space directly impacts the availability of programs and services that are responsive to local needs.

The City undertook this review of the BMR Policy to support continued collaboration with community organizations as the non-profit sector and the City's approach to managing its real estate portfolio evolve. The CST policy retains important elements of the previous BMR policy, such as tenants paying nominal rent and covering the building operating costs, and a Request for Expression of Interest (REOI) process to invite applications for available Community Space. In preparing this CST policy, Social Development, Finance and Administration (SDFA) and Real Estate Services (RES) reviewed the BMR policy and procedures with staff of Facilities Management, Parks, Forestry & Recreation (PFR), Economic Development & Culture (EDC), Legal Services and Children Services. All current BMR tenants were given the opportunity to provide feedback on key policy elements through information sessions, email and an online survey.

Existing BMR lease agreements will be updated within five years of the CST policy coming into effect or as they expire or come up for renewal. New CST tenants, or existing below-market rent tenants (except Legacy Tenants) without leases or whose lease terms, including any renewals, have expired, will enter into new leases pursuant to the CST policy. In the limited cases where the unexpired term of an existing below-market rent tenancy is greater than five years, a new lease will be entered into with the subject tenant upon expiry of the term, provided the tenant meets the criteria set out in the CST policy. The BMR policy will be rescinded following the expiration or termination of the final lease entered into pursuant to the said policy.

Organization tenants of Community Space whose tenancies pre-date the 2002 BMR policy are defined in the policy as "Legacy Tenants." Legacy Tenants will continue under the terms of their existing lease or, if they are without a lease or if their lease has expired, they will be required to enter into a lease formalizing their tenancies under their existing terms within five years of the effective date of the CST policy. A Legacy Tenant can seek to amend their tenancy terms by entering into a new lease that complies with the CST policy. Allowing Legacy Tenants to continue under the terms of their existing tenancies recognizes the stewardship of Community Space by long-term tenants and their role in community development in their respective neighbourhoods.

To be eligible for a Community Space Tenancy lease or sublease, an organization must:

- be incorporated as a not-for-profit corporation, and may not be a subsidiary or related entity of a for-profit corporation or a for-profit social enterprise;
- provide social or health programs and/or services (excluding emergency shelters and housing) or cultural or recreational services to Toronto residents that:
 - meet a community need;
 - which are consistent with the strategic directions or objectives of City Council and/or a City Division;
 - that the City may otherwise provide; and
 - will be the only services and functions provided in the Community Space and will be available to the public.
- satisfy the City that it is in good financial standing and is not in default under any existing lease, service agreement, or other agreement with the City, and has limited risk of insolvency or bankruptcy;
- satisfy all requirements outlined in the Request for Expressions of Interest (REOI), in the CST policy and comply with all applicable laws and policies of the City.

Below-Market Occupancies Not Covered by the CST Policy

There are situations where the City provides below-market space to organizations under different Council authority, eligibility criteria or objectives than what is intended with the CST policy or the BMR policy.

The CST policy would not apply to the allocation of Community Space to organizations:

- that operate under short-term or occasional permits or licences issued by the City for the use of Community Space;
- that operate under Purchase of Service Agreements with the City for child care, hostels, affordable housing, and emergency shelters;
- that provide housing; or
- whose core service is the provision of space at below market rates.

Organizations that fall outside the CST Policy may have specific funding arrangements and lease requirements with other levels of government that may require adherence to specific regulations and rules. This allows Program Divisions such as Affordable Housing, Shelter, Support & Housing Administration and Children's Services to deliver mandated programs more efficiently. Accordingly, the respective Program Divisions will seek Council approval for their lease agreements.

For example the City supports not-for-profit organizations whose core service is to make space affordable to other organizations, individuals, and micro-enterprises and recognizes that their business models require being able to sublease space to multiple tenants, while being able to invest in capital improvements that affect all tenants. Toronto Artscape and Akin Projects are examples of not-for-profit organizations that provide affordable space for self-employed artists, entrepreneurs, and start-up social businesses, which are essential to cultural and economic development.

Key Elements of Community Space Tenancy Policy:

Four Types of Community Space Tenancies

The BMR policy was originally designed to meet the needs of organizations with well-developed governance, a need for full-time space, and see themselves primarily as a tenant of the City rather than as a service partner. Non-profit organizations may not always fit this description, and the City and communities are not always well-served by the "one-size-fits all" approach of the existing BMR policy.

In response to this, the CST policy defines four distinct tenancy types. These CST policy terms may differ from terms an organization may use to describe itself or its services.

- *Community Partner Tenant*
A single non-profit organization leasing a dedicated Community Space providing stable, consistent, and accessible community programs and services. The tenant will be responsible for all operating costs associated with the occupancy of the Community Space.
- *Community Hub Tenant*
Three or more non-profit organizations each leasing their own dedicated space within a City facility with intentional program and service collaboration and integration. Each tenant is responsible for their proportionate share of operating costs, which will reflect both dedicated and common space of the City facility. All tenants will agree to a co-location agreement that sets out the terms of integration, dispute resolution and shared services.
- *Incubator Tenant*
Short-term leases for grassroots organizations to meet an emerging need, and to develop organizational capacity. An Incubator tenant will be co-located with a Community Partner tenant or in a Community Hub. Operating costs associated with Incubator tenancies will be supported through the \$75,000 request in the 2018 budget process.

- *Legacy Tenant*
An historic Community Space Tenancy that predates the *Policy for City-Owned Space Provided at Below-Market Rent*, as adopted by Council in 2002.

Initial Lease Terms and Successive Terms

For Community Partner, Community Hub and Legacy Tenants, the CST policy establishes a standard lease term of five years, but provides flexibility for shorter or longer terms if the organization can demonstrate to the City's satisfaction a need based on capital or operating funding requirements; for example, tenants that plan to invest significant capital in a Community Space may qualify for a longer lease term. For Incubator Tenants, the lease term is two years, with the possibility of a successive term of two years. After a maximum of four years, Incubator Tenants will have the opportunity to apply for a CST tenancy as either a Community Partner or Community Hub Tenant, or leave the CST portfolio.

All initial leases entered into pursuant to the CST policy will require City Council approval. However, approval for new leases with tenants occupying space pursuant to the CST policy when a prior lease has expired would be through the delegated authority of the Deputy City Manager, Internal Corporate Services, in consultation with the Executive Director of SDFSA and/or the Division Head responsible for the tenants' programs, provided that such tenant remains in good standing, continues to meet all criteria of the CST policy, and the new lease is on substantially the same lease terms and conditions for such tenant previously approved by City Council.

Subleasing

During consultation with a range of current tenant organizations, tenants have expressed their desire to be able to sublease a portion of their space to offset their operating costs and/or address a need within their communities. There are very rare instances where subleasing has occurred without the consent or knowledge of the City, which adds a level of risk and liability to the City. The CST policy supports organizations and reduces risk by allowing Community Partner Tenants to formally sublease to no more than two subtenants on a cost recovery basis. Any exemption to the number of subtenants is at the discretion of the City.

Subtenants of BMR tenants in possession of their subpremises as of the effective date of the CST policy will be required to enter into a sublease acknowledgement agreement at the same time the tenant enters into its initial lease pursuant to the CST policy. The limit on two subtenants shall not apply to any subtenants in possession as of June 1, 2017.

This approach ensures that the City is aware of subleasing arrangements, that all subtenants meet the CST requirement, and that all organizations have an opportunity to apply for space. It also demonstrates the City's commitment to strengthening partnerships with and within the not-for-profit sector in order to provide the broadest range of services to communities.

Streamlined, Transparent and Consistent Application Process

The majority of existing BMR tenants were identified through a City-wide REOI process whereby the City issues a notice to the public that invites application for a below-market rent tenancy in an available Community Space. This process will be improved under the new CST policy through an REOI portal on the SDFA website that will advertise any Community Space that become available for lease or sublease.

Interested organizations can submit a proposal, which is reviewed for eligibility, and the successful tenant is selected through a points-based panel review process. The REOI process allows City goals and objectives to be incorporated on a property-specific basis, taking into account the needs of the neighbourhood in question, the nature of the space available, and emerging divisional and City priorities. Site-specific assessment criteria are included in the REOI. These assessment criteria will determine the degree to which organizations are aligned with neighbourhood-specific goals and objectives, and the likelihood of organizations achieving their stated objectives. When Community Space becomes available for sublease or in a Community Hub, current tenants can help draft the REOI and participate in the review panel to attract applications from organizations whose services and programs align with theirs, if desired.

Support for Social Purpose Enterprise and Subleasing

For the purposes of this policy, a social purpose enterprise (or social enterprise) can describe a range of revenue-generation activities by a business or organization, which have primarily social objectives and whose revenues are reinvested in capital assets, operations and services. The CST policy will permit tenants to engage in social purpose enterprises in a Community Space that align with their social, health, cultural or recreational services, such as an employment training café or printing press. Revenues must be solely used to support the tenant's program, administration, facility operation or capital costs. The tenant must receive prior approval from the Executive Director of SDFA and the Division Head responsible for the tenants' programs. As part of the annual reporting, organizations must demonstrate that net revenue generated is re-invested directly into programs and services delivered by the organizations at the CST space.

Social Cost Saving Derived from CST Space and Annual Reporting

Organizations delivering services and programs pursuant to the CST policy align with the City's strategic objectives, and can be compared to programs that would be otherwise delivered directly by a City Division or Agency. The City therefore derives social value from leasing spaces pursuant to the CST policy. City Council previously directed staff to develop a measure for Social Return on Investment (SROI) to quantify the value of BMR tenancies. Some challenges encountered in developing the SROI have been the lack of available outcome data from City divisions as well as tenants, and finding enough financial proxies to measure social impact.

Until a meaningful SROI calculation is available, an annual reporting criteria will be included as a term of the CST lease agreement. This reporting mechanism will capture the range of programs and services being provided on-site, operating and capital budgets, and number and range of clientele and partnerships.

Municipal Capital Facility Designation

Section 252 of the *City of Toronto Act, 2006*, allows the City to enter into agreements for municipal capital facilities which may provide for an exemption of all or part of the taxes levied for municipal and school purposes on land on which "municipal capital facilities" are or will be located. Ontario Regulation 603/06 prescribes various classes of property eligible as municipal capital facilities for which such tax exemptions may be granted. These classes of property include cultural, recreational, social or health services. However, there are some restrictions on exempting lands for the provision of cultural, recreational or tourist purposes, such that the facility must be City-owned, primarily for local community use, for City purposes and for a public use in accordance with Ontario Regulation 603/06.

The City seeks Community Space Tenancies to deliver cultural, recreational, health and social services in partnership with community organizations that the City would otherwise be directly providing to meet its strategic goals and priorities. For this reason, when seeking City Council approval for any Community Space Tenancy, Council recommendation shall also be sought to designate the CST space as municipal capital facility and to request a property tax exemption from municipal and educational purposes, if applicable. This measure would provide reassurance and a significant financial benefit to community organizations and the residents who rely on their services. CST leases would stipulate that the CST tenant would be responsible for property taxes in the event that the Municipal Property Assessment Corporation determines the CST space is taxable.

Next Steps

Upon adoption of the CST policy, SDFA, RES and other City stakeholders will develop procedures and plan for January 1, 2018 implementation. Staff will also continue to consult tenant organizations on these procedures to ensure clarity and effective implementation of the policy.

The Deputy City Manager, Internal Corporate Services and the Executive Director of SDFA, in consultation with supporting divisions and tenant organizations, will review the CST Policy at least every five years and recommend any changes to ensure that it continues to align with the City's real estate management approaches and supports the non-profit sector and Toronto residents.

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ATTACHMENTS

Community Space Tenancy Policy
Appendix 1 - Minimum Lease Requirements
Appendix 2 - Occupancy Cost Allocations for Community Space Tenancies

Appendix A

Community Space Tenancy Policy

1. Policy Statement

The City has a history of providing Community Space to not-for-profit community and cultural organizations at Below-Market Rent. These organizations are important partners in furthering the delivery of the City's strategic objectives through programs and services to Toronto residents that meet a community need. This policy supports this ongoing collaboration and investment in not-for-profit community and cultural organizations through a transparent, accountable and fair framework for the provision of these leased Community Spaces.

This Policy replaces the previous City of Toronto *Policy for City-Owned Space Provided at Below-Market Rent*. All new Community Space Tenancies granted as of the effective date of this policy must be granted pursuant to, and comply with, this policy. Organizations already using Community Space under the previous policy will be incorporated into this policy framework upon the expiration of their existing leases. Legacy Tenants will continue under the terms of their existing lease document or, if making use of Community Space pursuant to an undocumented tenancy arrangement, will be required to enter into lease documents formalizing their tenancies in a manner reflecting their existing terms within five years of the effective date of this Policy. A Legacy Tenant can seek to amend their tenancy terms by entering a new lease that complies with the CST Policy.

This Policy would not apply to the allocation of Community Space to organizations:

- that operate under short-term or occasional permits or licences issued by the City for the use of Community Space;
- that operate under Purchase of Service Agreements with the City for child care, hostels, affordable housing, and emergency shelters; or
- that provide housing; or
- whose core service is the provision of space at below market rates.

2. Definitions

2.1 Agency refers to a City-controlled body created by the City to deliver specific services or operate certain activities.

2.2 Below-Market Rent refers to a rental cost charged by the City to lease Community Space that is below the market rate identified by the City for that space or a comparable space.

2.3 City refers to the City of Toronto.

2.4 City Council refers to the main governing and legislative body for the City.

2.5 Co-location Agreement refers to an agreement entered into between the City and a Community Hub Tenant in respect of the lease of a Community Space Tenancy.

2.6 Community Hub Tenancy refers to a type of Community Space Tenancy intended to support a variety of services and programs, and which is characterized by three or more Tenants co-located in a space with intentional service and program integration. A Tenant in a Community Hub Tenancy may be referred to as a "Community Hub Tenant".

2.7 Community Partner Tenancy refers to a type of Community Space Tenancy intended to support services and programs, typically delivered by a single organization. A Tenant in a Community Partner Tenancy may be referred to as a "Community Partner Tenant".

2.8 Community Space refers to any space owned or leased by the City, including but not limited to a commercial building, cultural facility, heritage building or industrial building, or vacant land.

2.9 Community Space Tenancy refers to a leasing arrangement at Below-Market Rent, between the City and a Tenant for Community Space.

2.10 Division Head refers to the Executive Director, General Manager or otherwise-named head of a City Division.

2.11 Incubator Tenancy refers to a type of Community Space Tenancy intended to support a not-for-profit organization with shared space within a Community Partner or Community Hub Tenancy to build organizational capacity and develop programs to meet a new or emerging community need. A Tenant in an Incubator Tenancy may be referred to as an "Incubator Tenant."

2.12 Legacy Tenancy refers to an historic Community Space Tenancy that predates the *Policy for City-Owned Space Provided at Below-Market Rent*, as adopted by Council in 2002. A Tenant in a Legacy Tenancy may be referred to as a "Legacy Tenant."

2.13 Municipal Capital Facility refers to a Community Space that is made exempt from property taxation under subsection 252(6) of the *City of Toronto Act, 2006* as a facility used for the provision of social or health services or for cultural or recreational services pursuant to paragraphs 10 and 16 subsection 2(1) of Ontario Regulation 603/06, as applicable.

2.14 Not-for-profit refers to a federally or provincially incorporated not-for-profit organization.

2.15 Operating Division refers to the City Division that is responsible for the operational management of a Community Space.

2.16 Request for Expressions of Interest or REOI refers to a notice issued by the City that invites applications for a Community Space Tenancy in an available Community Space.

2.17 Social Purpose Enterprise refers to a program or service delivered by a Tenant in a Community Space, where the primary purpose is part of the social, health, cultural, or recreational services being provided by the Tenant but which may generate revenue ancillary to that purpose and which revenue is solely used to support the Tenant's program, administration, operating or capital costs.

2.18 Sublease Acknowledgement Agreement refers to an agreement entered into amongst the City, a Community Partner Tenant and a Subtenant in respect of the sublease of a Community Space Tenancy.

2.19 Subtenant refers to an organization that subleases a portion of Community Space from a Community Partner Tenant.

2.20 Supporting Program Division refers to the City Division that supports the programs offered by at Tenant, and which may or may not also be the Operating Division.

2.21 Tenant refers to an organization that leases Community Space pursuant to a Community Space Tenancy.

3. Eligibility for Community Space Tenancies

3.1 An organization seeking to apply for or enter into a new Community Space Tenancy or a sublease thereof must:

3.1.1 be a Not-for-profit corporation, and may not be a subsidiary or related entity of a for-profit corporation or a for-profit social enterprise.

3.1.2. provide social or health services or cultural or recreational services to Toronto residents that:

- a) Meet a community need;
- b) Which are consistent with the strategic direction and neighbourhood, and/or specific objectives of City Council and/or a City Division;
- c) Are services that the City may otherwise provide; and
- d) Will be the only services and functions provided in the Community Space and will be available to the public.

3.1.3 be in good financial standing and not in default under any existing lease, service agreement, or other agreement with the City, and have limited risk of insolvency or bankruptcy;

3.1.4 satisfy all requirements outlined in the Request for Expressions of Interest and in this policy, and comply with all applicable laws and policies of the City.

3.2 If, at any time during the term of a Community Space Tenancy, a Tenant fails to satisfy any or all of the above criteria, the City shall be entitled, upon sixty days' notice, to terminate the subject Community Space Tenancy.

4. Application and Review Process for Community Space Tenancies

4.1 All Community Space Tenancies and subleases thereof will be made available to eligible organizations through a Request for Expressions of Interest process administered by Social Development, Finance and Administration Division. The Executive Director of Social Development, Finance and Administration will invite applications for the Community Space by issuing an REOI which will include at a minimum:

4.1.1 a description the Community Space available;

4.1.2 geographic and demographic information, including local area studies if available and socioeconomic information of households in the area;

4.1.3 any service or program priorities and requirements of the City, Operating Division and/or the Supporting Program Division for the area;

4.1.4 an estimate based on the previous or current annual and expected future operating costs, capital costs, municipal taxes and any other costs associated with the Community Space, and the responsibilities of the City and Tenant or Subtenant, as the case may be, with respect to these costs;

4.1.5 requirements for any regular or periodic reporting by the Tenant or the Subtenant, as the case may be, to the City on use of Community Space, programs and services being offered, and other information as required by the City;

4.1.6 requirements for insurance coverage;

4.1.7 parameters for identifying Incubator Tenants, which will be consistent with the criteria used by Social Development, Finance and Administration to assess eligibility for community grant funds;

4.1.8 the requirement for the organization to attest that it will be providing only social, health, recreational or cultural services to the public from the Community Space and that the Community Space will be occupied and used by the Tenant for a service or function that would otherwise be provided by the City;

4.1.9 the requirement for the organization to complete and sign a Declaration of Compliance with the City's Human Rights and Anti-Harassment/ Discrimination Policy; and

4.1.10 evaluation criteria that identify how applications will be reviewed and the preferred Tenant or Subtenant selected.

4.2 All REOI applications will be reviewed by Social Development, Finance and Administration in consultation with Real Estate Services, Facilities Management, and the Operating Division and Supporting Program Division, as appropriate, and will apply the evaluation criteria set out in the REOI. In the case of Community Hubs, the hub may have a representative on the selection panel. In the case of subleasing, the Head Tenant may participate on the panel.

4.3 In cases where the Community Space is leased by the City from a third-party landlord, the REOI review process will include provisions for obtaining landlord consent, where required.

4.4 Upon identification of a proposed Tenant or Subtenant, Social Development, Finance and Administration and Real Estate Services will submit a report to City Council that will include:

4.4.1 Recommendation to enter into a Community Space Tenancy lease with the proposed Tenant or Sublease Acknowledgement Agreement with the proposed Subtenant;

4.4.2 The major terms and conditions of the Community Space Tenancy or Sublease Acknowledgement Agreement;

4.4.3 Recommendation for a Municipal Capital Facility by-law, if applicable, which provides a property tax exemption, as per sections 5.12 and 5.13 of this Policy; and

4.4.4 Relevant details of the Community Space, including estimated operating and capital costs for the first year of the term of the lease or sublease, as the case may be, and services and programs to be delivered.

5. Community Space Tenancy Leases and Agreements

5.1 Each organization in a Community Space Tenancy must sign a lease or a Sublease Acknowledgement Agreement, as the case may be, created and administered by Real Estate Services in consultation with Legal Services, on a form approved by Legal Services.

5.2 Legacy Tenants will be entitled to continue to occupy such Community Space in accordance with the terms of such Legacy Tenancies, provided that any Legacy Tenant with no formal lease agreement or whose lease agreement has expired shall be required to enter into a lease agreement with the City on the same terms as the subject Legacy Tenancy, together with the minimum lease terms identified in the attached Appendix 1 within five years of the effective date of this Policy. Any Legacy Tenant who seeks to amend the terms of such Legacy Tenancy will be required to enter into a new lease in accordance with this policy as it would apply to a non-Legacy Tenant.

5.3 Leases for Community Partner Tenants will permit the subleasing of a portion of the Community Space to a maximum of two Subtenants, except as set out in Section 5.4, subject to the consent of the Deputy City Manager, Internal Corporate Services, in consultation with the Executive Director of Social Development, Finance and Administration and/or the Supporting Division, and under the conditions that include but are not limited to:

5.3.1 that the Community Space be made available through the REOI process;

5.3.2 that the Subtenant meets eligibility requirements of this Policy;

5.3.3 that the City, the Community Partner Tenant and the Subtenant enter into a Sublease Acknowledgement Agreement;

5.3.4 that the term of the Sublease Acknowledgement Agreement be no longer than the term of the Community Partner Tenant's lease;

5.3.5 that the Community Partner Tenant be permitted to charge costs to the Subtenant on a cost-recovery basis only;

5.3.6 that the Community Partner Tenant retain responsibility for all costs and requirements as per the lease with the City.

5.4 Subtenants of BMR tenants in possession of their subpremises as of the effective date of the CST policy will be required to enter into a Sublease Acknowledgement Agreement at the same time the tenant enters into its initial lease pursuant to the CST policy, and the aforementioned limit on two subtenants shall not apply to any subtenants in possession as of June 1, 2017.

5.5 Social Development, Finance and Administration and/or the Supporting Program Division requires Tenants to enter into additional agreements for service delivery and, in the case of a Community Hub Tenancy, a Co-location Agreement.

5.6 All initial leases entered into pursuant to this Policy must be approved by City Council.

5.7 City Council has authorized the Deputy City Manager, Internal Corporate Services, in consultation with the Executive Director of Social Development, Finance and Administration and/or the Supporting Division, to approve, subject to compliance on the part of the Tenant or the Subtenant, as the case may be, with this policy, the following:

5.7.1 new leases with Tenants occupying Community Space pursuant to this policy whose prior leases have expired provided the new leases are on substantially the same terms and conditions as the initial leases previously approved by City Council;

5.7.2 lease arrangements for vacant space located within a City facility occupied by three or more tenants operating with intentional program and service integration pursuant to this policy, where such vacancy arises from the termination of a prior tenancy by the City, provided the new lease is on substantially the same terms and conditions as the terminated lease previously approved by City Council; and

5.7.3 Sublease Acknowledgement Agreements.

5.8 In the exercise of the approval authority set out in Section 5.7., leases and Sublease Acknowledgement Agreements must meet minimum conditions as deemed appropriate by the City, including but not limited to the following:

5.8.1 a new lease must contain substantively the same terms and conditions as the previous lease;

5.8.2 the term of a new lease shall not exceed the term of the previous lease;

5.8.3 Tenant or Subtenant must be in good standing and not in default under any lease or other agreements with the City, and must be delivering services and programs to the satisfaction of the City;

5.8.4 Tenant or Subtenant must be in good financial standing with limited risk of insolvency or bankruptcy;

5.8.5 no portion of the Community Space is used for purposes not described in the lease or any other agreements with the City;

5.8.6 Tenant or Subtenant must comply with and maintain its eligibility criteria throughout the term as outlined in Section 3 of this policy; and

5.8.7 Tenant or Subtenant must comply with all applicable provisions of this policy.

5.9 Notwithstanding Section 5.7, the Deputy City Manager, Internal Corporate Services may, at any time, refer the consideration of any agreement anticipated hereunder to City Council for its determination and direction.

5.10 The standard term of a lease pursuant to this policy will be five years for a Community Partner Tenant or Community Hub Tenant, and two years for an Incubator Tenant, and the City may at its sole discretion adjust the term at the request of the Tenant at the time the lease is entered into by the City and the Tenant;

5.11 An Incubator Tenant may enter no more than two consecutive leases for a total term of four years, after which the organization can apply for a CST as either a Community Partner or Community Hub Tenant under the terms of this Policy.

5.12 When seeking City Council approval for any initial Community Space Tenancy, Real Estate Services, where appropriate, will concurrently request Council recommendation of a property tax exemption for the space to be leased to the Tenant as a municipal capital facility for the provision of social and health services or cultural or recreational services pursuant to subsection 252(6) (c) of the City of Toronto Act, 2006 and paragraphs 10 and 16 of subsection 2(1) of Ontario Regulation 603/06.

5.13 Notwithstanding Section 5.12 of this Policy, for Community Space Tenancies intended to provide cultural services, Real Estate Services may or may not request Council recommendation of a property tax exemption as a municipal capital facility, pursuant to restrictions provided in subsection 6 of Ontario Regulation 603/06.

5.14 Real Estate Services is responsible for managing, monitoring and informing Operating and Supporting Program Divisions of Community Space Tenancies one year in advance of the subject lease expiry dates.

6. Administration and Occupancy Cost Responsibilities

6.1 Real Estate Services, Social Development Finance and Administration and the relevant Supporting Program Division will coordinate the administration of Community Space Tenancies and this policy.

6.2 Social Development Finance and Administration is responsible for addressing all program-related issues including internal Tenant disputes, with the support of Real Estate Services and the Supporting Program Division.

6.3 Responsibilities for operational and capital costs associated with each type of Community Space Tenancy are outlined in Appendix 2, but are subject to change at discretion of Real Estate Services, Social Development Finance and Administration and the relevant Supporting Program Division.

7. Social Purpose Enterprises

7.1 All Tenants are permitted to engage in Social Purpose Enterprise activities to generate revenue to build capacity, enhance programming and maintain or improve the Community Space, provided the Tenant receives prior approval from the Executive Director of Social Development, Finance and Administration and the Supporting Program Division, and all revenue generated is ancillary to the Tenant's primary mandate and is reinvested in service and program delivery at the Community Space leased by the Tenant or in improvements to the Community Space and reported to the City as per Section 8 of this policy.

8. Reporting and Monitoring

8.1 All Tenants shall submit an annual report to Social Development, Finance and Administration and the Supporting Program Division (if applicable) each year, in a format and by a deadline to be determined by the City.

8.2 Social Development, Finance and Administration is responsible for providing copies of all Tenant reports to Real Estate Services Division Head or their designate.

8.3 Real Estate Services will include a summary of Community Space Tenancies in its annual report to Government Management Committee on all real estate transactions.

9. Request/Complaint Review Process

9.1 If any organization or person would like to make a complaint or request a review of a decision made in accordance with this policy, they may request a review, in writing, to Social Development, Finance and Administration.

9.1.1 the Executive Director of Social Development, Finance and Administration or designate will review the request or complaint and make a determination and respond in writing to the applicant or complainant.

9.1.2 the Executive Director of Social Development, Finance and Administration or designate may seek input or advice from other City Divisions as appropriate.

9.2 This Policy and the process and instructions on how to submit a complaint, comment or concern will be posted on the City's website and be accessible in print upon request.

10. Policy Review

10.1 The Deputy City Manager, Internal Corporate Services and the Executive Director of Social Development, Finance and Administration, in consultation with Operating and Supporting Divisions and tenant organizations, will review this Policy at least every five years and recommend any changes to ensure that it continues to meet policy objectives.

Links

City of Toronto Act, 2006 <https://www.ontario.ca/laws/statute/06c11#BK9>

Ontario Regulation 603:06: Municipal and School Capital Facilities – Agreements and Tax Exemptions <https://www.ontario.ca/laws/statute/06c11#BK9>

Canada Not-for-profit Corporations Act (S.C. 2009, c. 23)

<http://laws.justice.gc.ca/eng/acts/c-7.75/>

Appendix 1 - Minimum Lease Requirements

| DEMISE AND TERM | |
|------------------------------|---|
| Leased Premises | Comprising an area of approximately _____ ft ² of space, on the _____ floor of the building municipally known as _____, Toronto, Ontario (the "Building"). |
| Term | Five years. |
| Use of Common Facilities | The Tenant will have non-exclusive use to common facilities within the Building in common with all other tenants. |
| Condition of Leased Premises | The Tenant will accept the Leased Premises, the Building and the lands on which same are situate in an "as is" condition. |
| Right to Terminate | The Landlord will have the right to terminate the Lease on sixty (60) days' notice. |
| Overholding | The Tenant will be deemed a month to month tenant if the lease term ends and they remain in possession of the Leased Premises (with the Landlord's approval). |
| RENT | |
| Basic Rent | Basic Rent for the Term is \$2.00 per annum plus all applicable taxes. |
| Additional Rent | Additional Rent is estimated at \$_____ per ft ² of the Leased Premises per annum, which includes operating costs, utilities and property taxes, plus the Tenant's share of common area costs. The Tenant will pay the estimated monthly additional rent, which will be reconciled at the end each year. |
| Pre-Authorized Bank Payment | The Tenant shall arrange to pay all charges under the Lease through pre-authorized bank payment. |
| Late Payment Charges | Interest on any rental payments outstanding shall be paid to the Landlord at the rate of 1.25% per month (15% per annum). The Tenant shall pay to the Landlord a charge of forty dollars (\$40.00) for each NSF payment. |
| Net Lease to Landlord | The Lease shall be absolutely net to the Landlord. Any obligation which is not stated to be that of the Landlord shall be the Tenant's responsibility. |

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|---------------------------------------|---|
| DEMISE AND TERM | |
| TAXES | |
| Tenant's Taxes and Sales Taxes | The Tenant shall pay all applicable taxes imposed by all levels of government in respect of its business at the Leased Premises. |
| Tenant's Contribution to Realty Taxes | The Tenant shall pay to the Landlord its proportionate share of all taxes assessed and charged against the Leased Premises, if any. |
| HVAC | |
| Operation of Regular HVAC System | The Landlord shall provide and operate the current heating, ventilating and air-conditioning (if any) equipment and systems serving the Leased Premises. |
| USE AND OCCUPANCY OF LEASED PREMISES | |
| Permitted Use | The Tenant agrees that it shall only carry out the following use at the Leased Premises: [insert permitted use]. The Tenant shall pay all expenses and obtain and maintain at all times, all permits, licenses and authorizations necessary to carry on its Permitted Use; The Tenant shall at all times comply with the terms and conditions of the Service Agreement between the Landlord and the Tenant relating to the Tenant's use of the Leased Premises. |
| Subleasing | The Tenant shall not be entitled to sublease the Leased Premises without the consent of the Landlord. |
| ALTERATIONS & OTHER TENANT WORK | |
| Tenant Work | Any work to the Leased Premises to be completed at the behest of the Tenant will be completed by the Tenant at its own expense, provided: (a) the Tenant shall not perform work on the Leased Premises until it has received the Landlord's written approval of its plans and drawings. (b) once approved, such plans and drawings shall not be modified by the Tenant without the prior written consent of the Landlord. (c) If the Landlord requests, the Tenant shall comply with the Landlord's policies respecting non-discrimination and Fair Wage Policy. |

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|---|---|
| DEMISE AND TERM | |
| MAINTENANCE AND REPAIRS | |
| Landlord's Repairs | The Landlord shall repair and maintain the Building's structure, external components and Common Facilities, as would a prudent owner of similar Lands and Buildings. |
| Tenant Repairs | The Tenant shall operate, repair, maintain and keep the Leased Premises and all leasehold improvements in good condition and repair. The Tenant shall also repair any damage to the Building caused by the Tenant. |
| INSURANCE AND LIABILITY | |
| Tenant's Insurance | <p>The Tenant shall have property insurance equal to one hundred percent (100%) of the full replacement cost of the Leased Premises insuring:</p> <p>(a) Comprehensive general liability insurance with limits of not less than five million dollars (\$5,000,000.00) per occurrence, and adds the Landlord as an additional insured; and</p> <p>(b) Standard owner's automobile liability insurance with limits of not less than one million dollars (\$1,000,000.00) in respect of any one accident. The Tenant shall deliver to the Landlord proof of the insurance in the form of a certificate of insurance signed by an authorized representative of the insurer.</p> |
| Notice of Material Change or Cancellation | Each insurance policy obtained by the Tenant in respect of the Leased Premises will contain a clause requiring the insurers to notify the Landlord of any material change or cancellation of the Policy. |

| DEMISE AND TERM | |
|-------------------------------|---|
| Release | The Tenant will release the Landlord from any and all liability for claims which the Tenant is indemnified under any insurance. |
| DEFAULT | |
| Remedies by Landlord. | In the event of default by the Tenant under the Lease, the Landlord may: terminate the Lease and all rights of the Tenant; immediately re-enter and repossess the Leased Premises and the Term shall be forfeited and void; enter the Leased Premises and make such alterations and repairs as are necessary in order to relet the Leased Premises; exercise its right of distress and the Tenant will waive any present or future limitation on the Landlord's right of distress; suspend the supply to the Leased Premises of any benefit, service, utility or additional service furnished by the Landlord until the default is cured. |
| ENVIRONMENTAL PROVISIONS | |
| Hazardous Substances | The Tenant shall not allow any hazardous substances or materials to be stored or used at the Leased Premises. |
| RELEASE & INDEMNITY | |
| Release of Landlord by Tenant | The Landlord shall not be liable for any personal injury or death of, or loss or damage to any property belonging to the Tenant or any other person at the Lands or Building. The Tenant will release the Landlord from all claims in respect of damage required to be insured against by the Tenant. |
| Indemnity by Tenant | The Tenant will fully indemnify and save harmless the Landlord and its Authorized Members of, from and against all claims whatsoever. The Tenant agrees that it will not pursue any Claim against a third party which may result in any Claim by such third party against the Landlord. |

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| DEMISE AND TERM | |
| GENERAL COVENANTS, REPRESENTATIONS & WARRANTIES | |
| <p>Tenant Covenants, Representations & Warranties</p> | <p>The Tenant agrees with the Landlord that:</p> <p>(a) it will observe and perform all covenants and obligations of the Tenant, including to pay to the Landlord when due Rent;</p> <p>(b) the use of the Leased Premises shall be at the Tenant's sole cost, and the Tenant will comply with all Applicable Laws made by all governments (federal, provincial or municipal), and any other entity with lawful authority to regulate; and</p> <p>(c) the Tenant will submit to the Landlord's auditors and the City Solicitor all corporate books and records of the Tenant for inspection.</p> |

APPENDIX 2:

Occupancy Cost Allocations for Community Space Tenancies (See Section 6.3)

(Note: Legacy Tenants may have cost allocations that differ from those presented below, under historical agreements that preceded the 2002 Below-Market Rent Policy)

| | Community Partner Tenancy (Tenant may assign within a Sublease a portion of costs to a Subtenant at or below cost-recovery) | Community Hub Tenancy | Incubator Tenancy |
|---|---|---|---|
| Building operating costs (utilities, security, cleaning, regular maintenance, minor repairs related to their programming and services and leasehold improvements) | Tenant is responsible for its proportionate share of costs. | Each Tenant is responsible for its proportionate share costs, including common areas. | Social Development, Finance and Administration (SDFA) is responsible for Incubator Tenant's proportionate share of building operating costs up to a total annual amount of \$75,000 distributed equally among all Incubator Tenants. The balance of building operating costs not paid by SDFA will be paid by the Tenant, unless the Operating or Supporting Program Division chooses to assume such costs. |
| Building capital costs - "fit up" to prepare space for initial occupancy | Tenant is responsible for capital "fit up" costs | Each Tenant is responsible for its proportionate share of capital "fit up" costs of its designated and/or common spaces as applicable | Operating Divisions may choose to assume capital costs associated with "fit up" for Incubator Tenants. The balance of fit up costs not paid by Operating Division will be paid by the Tenant. |

| | Community Partner Tenancy (Tenant may assign within a Sublease a portion of costs to a Subtenant at or below cost-recovery) | Community Hub Tenancy | Incubator Tenancy |
|---|--|--|--|
| State of good repair and building capital costs | Operating Division is responsible if issue is related to building envelope or health and safety. Tenant is responsible for other state of good repair costs. | Operating Division is responsible if issue is related to building envelope or health and safety. Tenant is responsible for other state of good repair costs. | Operating Division is responsible for all state of good repair and building capital costs |
| Building capital costs | Operating Division is responsible for building capital costs | Operating Division is responsible for building capital costs | Operating Division is responsible for building capital costs |
| Property tax | Tenant is responsible for property tax attributable to their use unless exempted as a Municipal Capital Facility | Each Tenant is responsible for property tax attributed to their use unless exempted as a Municipal Capital Facility | Operating or Supporting Program Division is responsible for property tax attributed to their use unless exempted as a Municipal Capital Facility |