



**Committee of Whole Report
For the Meeting of July 13, 2023**

To: Council **Date:** June 21, 2023

From: Peter Rantucci, Director of Strategic Real Estate

Subject: Delegation of Authority for Market Leasing & Licensing of City Lands

RECOMMENDATIONS

1. That Council instruct the City Solicitor to prepare a bylaw delegating to the Director of Strategic Real Estate authority to negotiate, execute and administer leases and licences of occupation for City properties, other than streets or parks, subject to the following restrictions:
 - i. For new leases or licences, with a fair market value of no more than \$150,000 per year, to be determined by the basic rent or fee payable under the lease or licence;
 - ii. Leases and licences to be in a form satisfactory to the City Solicitor; and
 - iii. The maximum term not to exceed fifteen years inclusive of any rights of renewal.
2. Nothing in this delegation will prevent the Director of Strategic Real Estate from first seeking Council approval for a proposed transaction if the Director believes this approval is advisable.
3. That Council direct the Director of Strategic Real Estate to report to Council annually on all leases and licences approved pursuant to this delegation.
4. That Council direct the Director of Strategic Real Estate to identify and report back to Council with additional recommendations on other types of delegation which improve the efficiency and effectiveness of City operations.

EXECUTIVE SUMMARY

The City of Victoria's real property portfolio falls into three categories:

1. City owned property within road-right-of-way or statutory-right-of-way ("Transportation Properties").
2. City owned property within parks and recreational facilities ("Parks & Recreation Properties").
3. City owned property, that is not Transportation Properties or Parks & Recreation Properties, including property leased by the City as tenant for municipal undertakings ("Other City Properties").

Strategic Real Estate (SRE) oversees the real estate aspects of the Other City Properties including the leasing and licensing of these lands where appropriate, for fair market value that generates approximately \$2.3M in revenue annually.

Currently, the City does not have any substantive form of delegated authority for staff to make decisions related to the leasing and licensing of City real estate. The lack of delegated authority results in considerable staff and Council time and resources that must be reallocated from other priority files to prepare, review and present Council reports. Additionally, the lack of delegated authority results in significant delays that negatively impact the City's ability to: (a) effectively negotiate and secure good tenants (b) be more creative in securing short-term revenue opportunities and (c) prevent extended vacancies and (d) ensure vibrant and active frontages.

Based on a jurisdictional scan of eleven similarly sized municipalities, the City is the only jurisdiction to not maintain some substantive level of delegated staff authority for leasing and licensing of municipal real estate. These delegations have generally occurred to provide for greater resource efficiency and recognizing that the subject matter is operational business to be managed by staff.

The City must adhere to *Community Charter* requirements which prohibits aiding a business when disposing of land whether by sale or lease. In the leasing and licensing of City owned lands, this means the City must ensure that the rental rates being applied reflect fair market value. Additionally, prior to a disposition the *Community Charter* requires the City to post public notice of the proposed disposition. Collectively these provisions provide a level of accountability and transparency on decisions whether made under a delegated authority or by Council. The *Community Charter* requirements provide the regulatory framework within which SRE must adhere to when administering the City's leases and licences.

The recommended delegation bylaw would improve the City's effectiveness in managing its properties and increase revenue and programming opportunities. Just as important, the delegation would result in more efficient use of City resources on other higher priorities, versus the significant administrative burden and related resources currently spent on what is a routine operation of a real estate department. As part of the delegation bylaw, it is also recommended that, in addition to the statutory public notice, the Director of Strategic Real Estate report to Council on an annual basis, with an overview of agreements approved under the new authorities.

The delegation authority being recommended at this time would only apply to leases and licences at fair market value ("commercial leases and licences") as these are the most common delegation, versus delegation of nominal value or below market leases and licences that can occur with non-profit users. However, the Director of Strategic Real Estate believes there are additional opportunities to identify other areas of delegation related to other types of dispositions and acquisitions, that are routine or operational, and will bring forward an additional report in the fall once further review is completed.

PURPOSE

The purpose of this report is to seek Council instructions for the City Solicitor to prepare a bylaw delegating authority to the Director of Strategic Real Estate to approve commercial leasing and licensing agreements for Other City Properties, within the recommended limits.

BACKGROUND

Under section 154(1) of the *Community Charter* Council may, by bylaw "delegate its powers, duties and functions, including those specifically established by an enactment, to the extent provided, to an officer or employee of the municipality". Currently, the City does not have any substantive form of delegated authority for carrying out real estate transactions involving leases or licences. The City does delegate some limited approval authority (e.g. decorative/underpinning encroachments) under

the *Land Use Procedures Bylaw No.16-028*, as well as the *Delegation of Signing Authority Bylaw No.09-031 (and amendment No.19-116)* delegating authorization to staff the ability to sign certain agreements *after* approval by Council has been granted.

ISSUES AND ANALYSIS:

Operational Impacts

For Other City Properties, there are four major negative implications resulting from the existing lack of delegation: 1) considerable City resources must be reallocated from other priority files to prepare, review, present and consider Council reports, 2) agreement negotiation timelines are extended by up to two-months beyond industry standards while seeking Council approval to execute, adding substantial risk and outcome uncertainty for both negotiating parties 3) the City is missing an opportunity to generate revenue from shorter-term commercial licences and leases; and 4) decision delays can result in extending periods of vacancy.

Jurisdictional Scan Results

SRE staff have completed a jurisdictional scan of eleven comparably-sized municipalities with commercial portfolios, to determine the level of delegation they possess for real property transactions. The review determined that the municipalities reviewed possessed some form of real property delegation authority for staff, with commercial leasing and licensing being the most prevalent form of delegation. Interviews with other jurisdictions with more up to date delegations, and comparatively sized commercial portfolios, determined that the delegated annual rent value range limit was between \$50,000 - \$250,000 with average term length limits of 10 to 15 years. The jurisdictional scan also heard lessons-learned such as ensuring that the limits on lease value are 'future-proofed' to account for anticipated rent rate increases to ensure the delegation bylaw does not require frequent updating.

Proposed Authority Delegation

To address the administrative challenges with the current commercial agreement approval process, and incorporating lessons-learned from the jurisdictional scan, a term and value limited delegation bylaw is being recommended to Council. The authority delegation matrix proposes to grant the Director of Strategic Real Estate the authority to negotiate and approve commercial leases and licenses solely for the purpose of fair market value transactions.

Figure 1 – Delegation Matrix

Delegation	Retained By Mayor & Council	Director, Strategic Real Estate
Lease & Licence Basic Rents	Term: >15 Years including renewals	Term: ≤15 Years Including renewals
	Value: >\$150,000 per annum	Value: ≤\$150,000 per annum

The 'value' threshold recommends an upper limit of \$150,000 per annum and term lengths of up to 15 years¹ including any renewals, to capture the City's lower-risk, 'bread and butter' tenancies, while ensuring Council will continue to have discretion over agreements on strategic, higher-profile properties that comprise approximately 10% of the current leases or licences issued. This threshold also future proofs the delegation bylaw by presenting a rate that reflects anticipated continued growth in commercial rental values due to market conditions.

¹ SRE's preference is to enter commercial leases with a 5-year initial term and a renewal option for an additional 5 years which is an industry standard. However, there may be some limited instances where a second 5-year renewal option is a market necessity because the tenant is making significant investments into tenant improvements (e.g. restaurant kitchen). Leases with a 15-year potential term, if all renewal options are exercised, would only be used in limited circumstances where appropriate and necessary.

The proposed delegation bylaw will also give the Director of Strategic Real Estate the authority to renew, assign, sub-lease/sub-license, modify, and terminate agreements signed under the delegated authority, within the term and value limit parameters established in the delegation bylaw. For agreements retained under the authority of Mayor & Council, the Director of Strategic Real Estate will have the authority to renew agreements where option to renew provisions have been set out in the agreement approved by Council.

For clarity, the delegation of authority proposed will **NOT** apply to:

- Leasing or licensing at rates below fair market value, that includes “donation in kind” licences;
- Leasing or licensing for affordable housing purposes;

OPTIONS AND IMPACTS

Option 1 – Prepare a delegation bylaw, for the commercial leasing and licensing of Other City Properties, for Council approval. (RECOMMENDED)

Under this option, approximately 90% of commercial lease and licence activity currently undertaken by the City will be delegated to staff. Longer-term, higher-profile, or higher-value property leasing is excluded from this delegation, as is ‘donation-in-kind’ licences (such as those to not-for-profit housing providers) and below-market agreements with other non-profits.

A delegation bylaw would improve the City’s ability to be competitive in the open market, leading to more certainty for prospective tenants, quicker turn around times, and less staff and Council time dedicated to preparing and reviewing Council reports for what is viewed as a typical operation of a real estate department. The recaptured staff and Council time can be better spent on higher priority projects and initiatives. Under the delegation bylaw, the Director of Strategic Real Estate will also retain the ability to refer any particularly significant or controversial matters to Council for a decision.

Option 2 – (Status Quo) Do not approve the delegation of leasing and licensing of City properties to Strategic Real Estate staff, and that all requests for commercial leasing and licensing continue to be presented to Council for consideration.

Under this option, Council retains the ability to review and approve all leasing and licensing activity undertaken by the City. Without delegation, the City will continue to be less responsive than the open market to potential tenants, which increases risk to the City and to the tenants.

Due to the time required to prepare, schedule and present reports to Council, lower-value or shorter-term licensing opportunities will continue to be missed; and the continued administrative burden would mean staff resources will not be allocated to highest and best uses in all instances.

Option 3 – Prepare a bylaw delegating to the Director of Strategic Real Estate all commercial leases and licences of occupation.

This option would authorize the Director of Strategic Real Estate to handle all commercial leases and licences of occupation without a need for Council approval. It is essentially the same as Option 1 but without any restriction on the term or value of the lease. This would result in an even greater administrative efficiency but would go beyond delegations typically done by other local governments.

As under Option 1, this delegation would still be subject to the statutory requirement to publish public notices of disposition prior to finalization of the leases. It would also be subject to the same annual reporting obligation and the ability for the Director of Strategic Real Estate to refer any particularly significant or controversial matters to Council for a decision.

Alternatively, Council could, under this option, set limits, as to value and term, that are higher than those recommended under Option 1.

Alignment with City Objectives

Accessibility Impact Statement

There are no anticipated accessibility impacts resulting from the recommended option of this report.

2023 – 2026 Strategic Plan

- Economic Health and Community Vitality
 - Accelerate Victoria 3.0 to create a strong, resilient, local economy
 - Support small businesses and the visitor economy, and work to strengthen and add vitality to the downtown core
 - Activate streets, sidewalks, patios and public space, and support business initiatives and ideas
 - Investigate partnerships and new forms of public-sector revenue generation to fund new services and amenities
- Arts, Culture, Music, Sport, and Entertainment
 - Support arts programming, including public programming, live music and public art

Financial Plan

No immediate impacts to the City's Financial Plan are anticipated from advancing this proposed delegation of authority; however, in the long-term staff anticipate the ability to enter into new revenue-generating opportunities not currently available due to resourcing challenges.

Official Community Plan Consistency Statement

There are no anticipated OCP impacts resulting from the recommended option of this report.

CONCLUSION

Developing a delegation of authority bylaw for commercial leasing and licensing agreements on City properties will reduce administrative burden and ensure that the City remains competitive when negotiating with prospective tenants for vacant commercial space. The term and value thresholds, as proposed, are intended to mitigate potential risks by limiting the delegation to capture the City's lower-risk, 'bread and butter' tenancies, while ensuring Council will continue to have discretion over agreements on strategic, higher-profile properties.

Respectfully submitted,

Peter Rantucci, Director of Strategic Real Estate

Report accepted and recommended by the City Manager.