

Council Policy

Leasing



Council Policy	
Legal Authority	<i>Local Government Act 1995</i> <i>Local Government (Functions and General) Regulations 1996</i>
Department	Governance and Legal

1. Title

Council Policy - Leasing

2. Purpose

The purpose of this Policy is to:

- ensure decisions about the granting of leases, licences and subsidies are made transparently and in accordance with established criteria; and
- ensure the City's property is appropriately optimised and maintained in accordance with the City's Strategic Community Plan and Corporate Business Plan.

3. Scope

This policy applies to the leasing and licencing of City property and does not apply to the hiring of the City's property.

4. Definitions

Any word that is not defined below is taken to have its dictionary definition.

Act means the *Local Government Act 1995 (WA)*.

City means the City of Kwinana.

Commercial Organisation means an entity that is not a Not-for-Profit Organisation.

Not-For-Profit Organisation means an entity that does not operate for the profit, personal gain or other benefit of its members or third parties and which applies all profits to the organisation's purposes.

Property means any property, building, facility (or part thereof) owned or managed by the City and capable of being leased or licenced by the City.

Lease means a disposition of Property, according to the criteria established in this Policy.

Licence means a disposition of Property, according to the criteria established in this Policy and otherwise an agreement where an Organisation is given a right to use Property under particular conditions, such as use only during certain times and days.

Organisation means a Commercial Organisation or Not-For-Profit Organisation.

Regulations means the *Local Government (Functions and General) Regulations 1996 (WA)*.

5. Pre-Leasing/Licencing Requirements

Prior to the granting of a lease/licence, a prospective tenant / licensee must:

- submit an Expression of Interest Form <http://www.kwinana.wa.gov.au/expression-of-interest-leasing-properties>
- pay a non-refundable Lease Administrative Fee; and
- agree that the rent or licence fee will be based on the City's undertaking of a market valuation as well as the City's assessment of the subsidy criteria contained at **Tables 1** and **2** of this Policy and any other relevant considerations.

6. Eligibility and Calculation of Rent Subsidy

The City may subsidise rent for eligible Organisations. The eligibility criteria is set out in **Table 1** and the features of each category are summarised in **Table 2**.

Organisations who do not meet the eligibility criteria for either a peppercorn rent or a discounted market rent will pay the full market value of the Property, unless the City determines otherwise.

7. Standard Lease / Licence Conditions

The following outlines the standard lease/licence conditions (unless otherwise agreed).

7.1 The tenant / licensee must make the following payments:

- a) **Rent** or Licence Fee; and
- b) **Outgoings** including building insurance, electricity, water, telephone costs other utility costs and rates (if applicable).

7.2 The tenant / licensee must:

- a) take out and maintain public liability insurance (\$20 million) (**Public Liability Insurance**);
- b) be liable for all actions or omissions of subtenant/licensee's employees, contractors, invitees and agents (**Liability**);
- c) indemnify the City against all actions, claims and costs made or suffered by the City unless caused by the negligent or wrongful act of the City (**Indemnity**);
- d) keep the Property in good tenantable condition including cleaning, repairing and maintaining. Unless agreed otherwise, the City will be responsible for structural / capital repairs including repairs to air-conditioning, roofs, lifts, building systems etc. Where the Property is shared with the City or other tenants and the City arranges cleaning of the whole of the Property, a cleaning contribution will be required (**Cleaning, Repairs and Maintenance**);

- e) obtain **written consent** from the City before altering, hiring or subleasing the Property. Note: Any alteration will remain the City's property unless otherwise specified in the Agreement or specified as a condition of consent (**Alterations**); and
- f) provide the City, on request, with annual statement of accounts, hirer details and details about the activities occurring on the Property including participation rates, budgets allocated to maintenance and repairs and any other information reasonably required by the City (**Provision of Information**).

7.3 In circumstances where the proposed tenant has fully or substantially funded and or constructed a building on the City's Property to be leased, the following conditions will apply:

- a) the tenant will pay a pre-determined agreed rent;
- b) the tenant will pay all outgoings including building insurance (taken out by the City);
- c) the tenant will be responsible for all repairs and maintenance of the building (including of a structural nature); and
- d) when the tenant vacates the Property, the tenant must remove the building or leave the building and or structures in a tenantable condition.

Table 1 – Eligibility Criteria for subsidised rent

Elements	Criteria
1. Not-for-profit Organisation	<ul style="list-style-type: none"> • Is a legal entity incorporated under the <i>Associations Incorporation Act 2015</i> or the <i>Australian Charities and Not-for-Profits Commission Act 2012</i>; • Applies all or any surpluses towards its purposes; • Prohibits dividends/profits from being paid to its members; • Is exempt from paying income tax; and • Is financially viable, demonstrates good financial management, record-keeping practices and maintains records for audit purposes.
2. Use/Activity	<ul style="list-style-type: none"> • Community demand exists for the service or activity offered by the Organisation; • The service or activity will increase social engagement and promote health and wellbeing of the community; • The intended use of the Property is consistent with City objectives and current business plans; and • The service or activity is non-discriminatory and is open to all residents who meet the participation criteria.

Table 2 – Peppercorn and Discounted Market Rent

Category	Annual Rent	Eligibility
Discounted market rent	A reduction off the market rental valuation of up to 30%	<ul style="list-style-type: none"> Meets all relevant eligibility criteria in Table 1.
Peppercorn rent	As determined annually in the City's Schedule of Fees and Charges	<p><u>Standard Peppercorn</u></p> <ul style="list-style-type: none"> Meets all relevant eligibility criteria in Table 1; Provides significant and extensive community benefit; Has limited revenue-raising ability (net of cost of service); and Is run predominantly by volunteers. <p><u>Non-Standard Peppercorn</u></p> <ul style="list-style-type: none"> Building fully or substantially funded or constructed by the proposed Tenant.

8. References

Name of Policy	Leasing Policy
Date of Adoption and resolution No	09/09/2015 #562
Review dates and resolution No #	13/04/2016 #162 12/08/2020 #223 22/12/2022 #263
New review date	12/08/2024
Related documents	<p>Acts/Regulations <i>Local Government Act 1995</i> <i>Local Government (Functions and General) Regulations 1996</i> <i>Land Administration Act 1997</i></p> <p>Plans/Strategies City of Kwinana Strategic Community Plan and Corporate Business Plan</p> <p>Policies Nil</p> <p>Work Instructions Promapp – Create a New lease / license / management agreement.</p>

Note: Changes to References may be made without the need to take the Policy to Council for review.