

Bill No. 299
2014

By-law No. A.- _____

A By-law to adopt City Council Policy
8(27)entitled Lease Financing Policy.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Council Policy 8(27) is adopted per attached Schedule "A";
2. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council June 23, 2014.

Mayor

Cathy Saunders
City Clerk

First Reading - June 23, 2014
Second Reading – June 23, 2014
Third Reading – June 23, 2014

Schedule "A"

8(27) Lease Financing Policy

1. Policy Statement

This policy constitutes The City of London's (the "City") statement of policies and goals relating to the use of Lease Financing Agreements, in accordance with Ontario Regulation 653/05 made under the *Municipal Act, 2001*.

2. Definitions

"Lease Financing Agreement" - means a financial agreement for the purposes of obtaining long term financing of a capital undertaking of the municipality.

"Material Impact" - means the costs or risks that significantly affect, or would reasonably be expected to have a significant effect, on the City's debt and financial obligation limit as determined by O. Reg. 403/02.

"Combined Material Impacts" - means the costs or risks of a proposed Non-Material Lease which when combined with all other Non-Material Leases entered into or proposed to be entered into in a particular year by the City.

"Non-Material Lease" - means a Lease Financing Agreement that will not result in a Material Impact on the finances of the City and includes:

- (i) rental agreements which have a term of less than one year and the cancellation of which results in no financial penalty to the City;
- (ii) commercial real property leases with a term of five years or less;
- (iii) Lease Financing Agreements requiring annual payments for an individual lease of less than \$250,000;
- (iv) Lease Financing Agreements, where the net present value of all lease payments, including possible extensions, renewals and bargain purchase options, is less than \$2 million in the year the Lease Financing Agreement is entered into.

"Material Lease" - means a Lease Financing Agreement that is not a Non-Material Lease.

3. Purpose

The purpose of this policy is to provide guidance to staff when contemplating Lease Financing Agreements for the provision of municipal equipment and facilities. Lease Financing Agreements may be preferred to outright purchase and/or debt financing of equipment and facilities. The City may enter into Lease Financing Agreements in order to acquire the rights to use capital property and equipment, including some or all of the benefits and risks of ownership for specific periods of time and stipulated rental payments.

4. Statement of Polices and Goals

- (a) The following goals and objectives will be used in the consideration and evaluation of all Lease Financing Agreements:
 - (i) The City shall only consider Lease Financing Agreements that prioritize the City of London's governing principles;
 - (ii) Lease Financing Agreements shall be entered into with care and prudence, applying experience and professional judgement to each agreement reviewed, with the best interest of the City's ratepayers in mind;
 - (iii) All lease financing activities shall adhere to statutory requirements as governed by the Ontario *Municipal Act, 2001* as well as other Council approved policies;

- (iv) Consideration will be given to its impact on future ratepayers in order to achieve an appropriate balance between lease financing and other forms of funding;
 - (v) The City shall manage the exposure to financial risk and the financial impact the Lease Financing Agreements will have on current and future fiscal years.
- (b) Without limitation, the City may enter into Lease Financing Agreements:
- (i) for the purpose of obtaining long-term financing of a capital undertaking;
 - (ii) to finance equipment, buildings, land or other assets that the City does not have a long-term interest in or may not be able to acquire through other means; or
 - (iii) where a lease provides material and measurable benefits compared with other forms of financing.
- (c) It is the opinion of the Council and the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate that the category of Lease Financing Agreements defined as Non-Material Leases in this policy will not result in a Material Impact for the City.
- (d) It is the opinion of the Council and the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate that Non-Material Leases that require or may require the City to make payments after the expiry of the term for which the Council authorizing the agreement was elected and that have a Combined Material Impact less than 20% of the City's annual debt and financial obligation limit determined in accordance with O. Reg. 403/02 will not result in a Material Impact for the City.

5. Application of the Policy (General Provisions - All Lease Financing Agreements)

- (a) All Lease Financing Agreements shall be reviewed by the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate who shall determine:
- (i) if this policy applies;
 - (ii) if the Lease Financing Agreement is a Material or Non-Material Lease;
 - (iii) the financial and other risks of the Lease Financing Agreement, compared to other forms of financing, which shall include:
 - a. The ability for lease payment amounts to vary if based on changes in an underlying benchmark debt instrument (generally expressed as a particular Government of Canada Bond);
 - b. The ability for lease payments to vary based on changes in the assumed residual values of the asset being leased;
 - c. Uncertainty over leasing costs if contract needs are to be extended or renewed. The normal practice of the City will be to negotiate these costs prior to the Lease Financing Agreement being executed; and
 - d. The potential for the seizure and removal of leased equipment if the leasing company goes into default of its obligations to creditors, and its creditors have the legal right to seize assets of the leasing company. The practice of the City will be to assess the financial strength of the normal leasing company prior to the leasing agreement being executed.
- (b) All Lease Financing Agreements shall include a schedule of all fixed payments, if any, required for the term and any extensions or renewal.
- (c) The requirements in section 6 apply to all Lease Financing Agreements except;
- (i) Non-Material Leases that do not or may not require the City to make payments after the expiry of the term for which the Council authorizing the agreement was elected; or
 - (ii) Non-Material Leases that require or may require the City to make payments after the expiry of the term for which the Council authorizing the agreement was elected and that have a Combined Material Impact less than 20% of the City's annual debt and financial obligation limit determined in accordance with O. Reg. 403/02.

- (d) A Lease Financing Agreement to which this policy does not apply must comply with any other applicable City policies or procedures, including without limitation to any requirements for review, approval and reporting to Council.

6. Lease Financing Agreements Approval Process

- (a) This section applies to:

- (i) all Material Leases; and
- (ii) all Non-Material Leases that require or may require the City to make payments after the expiry of the term for which the Council authorizing the agreement was elected and that have a Combined Material Impact greater than 20% of the City's annual debt and financial obligation limit determined in accordance with Ontario Regulation 403/02.

- (b) Before entering into a Lease Financing Agreement the Corporation shall:

- (i) have the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate prepare a report with a recommendation assessing, in her or his opinion, the costs and financial and other risks associated with the proposed Lease Financing Agreement including any possible extensions or renewals which report shall include:
 - a. a comparison between the fixed and estimated costs and the risks associated with the proposed Material Lease and those associated with other methods of financing;
 - b. a statement summarizing, as may be applicable, the effective rate or rates of financing for the Material Lease, the ability for lease payment amounts to vary, and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the lease;
 - c. a statement summarizing any contingent payment obligations under the lease that, in the opinion of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate, would result in a Material Impact for the municipality, including lease termination provisions, equipment loss, equipment replacement options and guarantees and indemnities;
 - d. a summary of the assumptions applicable to any possible variations in the lease payment and contingent payment obligations; and
 - e. any other matters the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate or City Council considers advisable.

- (c) Obtain legal advice and financial advice with respect to the proposed agreement.

- (d) Consider if the scope of the proposed transaction warrants obtaining legal advice or financial advice with respect to the proposed agreement that is from a source independent of the source of the advice mentioned in paragraph (c) above.

- (e) Consider, as of the date of the report under paragraph (i) above, whether the costs of financing for the proposed agreement are lower than other methods of financing available to the City and whether the risks associated with the proposed agreement are reasonable. Costs of any legal or financial advice would also be included in the costs of financing.

- (f) If at any time after a report is made but before the proposed Lease Financing Agreement is entered into, the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate becomes of the opinion that a changed circumstance with respect to the proposed Lease Financing Agreement may result in a Material Impact for the City, the report shall be updated as soon as reasonably possible and present the updated report to Council.

7. Annual Report to Council

- (a) Once in every fiscal year or more often if Council requires, the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate shall provide a report to Council containing the following:
 - (i) a description of the estimated proportion of the total financing arrangements of the municipality that is undertaken through Lease Financing Agreements to the total long-term debt of the City;
 - (ii) a description of the change, if any, in that estimated proportion since the previous year's report;
 - (iii) a statement by the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate as to whether, in his/her opinion, all Lease Financing Agreements were made in accordance with this policy; and
 - (iv) any other information that may be requested by Council or that, in the opinion of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate, should be recorded.