

# CITY OF WELLAND

## POLICY

<b>Policy Title:</b> Lease Agreements	
<b>Date of Approval:</b> February 18, 2003	<b>Policy Number:</b> FIN-004-0001
<b>Lead Role:</b> City Treasurer	<b>Support Role:</b> City Manager
<b>Cross Reference:</b> By-law 2003-29	<b>Next Review Date:</b>
<b>Council File Number:</b> 00-121/03-60	<b>Revision Date:</b>

### Policy Statement:

City Council has the authority to enter into an agreement for the provision of municipal capital facilities. The purpose of this policy is to establish procedures, practices and requirements for entering into leases for said facilities and for reporting increased public disclosure of leases to Council within statutory limitations per the Government of Ontario under Ontario Regulation 46/94, as amended to the Municipal Act, R.S.O. 1990, c. M.45 and the Municipal Act, 2001, S.O. 2001, c.25, as amended.

As agreements under this section may include financing leases, Council recognizes that there are inherent risks associated with such arrangements and that compliance with this policy shall ensure that the necessary due diligence is undertaken by staff in the review of all financing lease agreements and that Council is provided full disclosure on the impacts of these leases prior to entering into any agreement for the provision of capital facilities.

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The intention of this policy is to outline the objectives of the City of Welland as follows:

- a) Adherence to applicable statutory requirements;
- b) Preparation and adoption of a statement of finance leasing policies and goals prior to enactment of applicable by-law;
- c) Meeting new leasing provisions requires the City to analyze and disclose specific standardized information in finance leasing contracts including lease terms, an evaluation of risk, a comparative analysis of financing options and other reporting requirements for which the City Treasurer will be responsible;
- d) Finance leasing arrangements that extend beyond the term of Council and those deemed by the City Treasurer to be material (leases totalling \$20,000 and over) are subject to satisfying specific requirements for all material leasing transactions as follows:

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- The municipality is required to authorize each financing lease transaction allowing for scrutiny by Council and the public. The finance lease will include a complete repayment schedule of all fixed payments for the term of the lease and disclosure of the effective rate of financing,
  - Prior to undertaking a material finance leasing agreement, Council will evaluate the lease agreement based on a report from the City Treasurer that includes legal and financial advice. This will ensure that the municipality has an accurate picture of its costs,
  - Where the municipality's finance leasing arrangements could affect the regional government's credit rating, the City is required to advise Regional Niagara of leasing agreements, including the schedules and terms, before passing a by-law;
- e) That per the amendment prescribed under Ontario Regulation 799/94, the City receives lease payments which are deemed to have a material impact (or combination of all Non-Material leases in a particular year that collectively would have a Combined Material impact) into account in determining the municipality's debt and financial obligation ARL (Annual Repayment Limit);
- f) Preparation of a report on all finance lease agreements and transactions to be prepared at least once in a fiscal year.

This policy will be implemented with the aid of the accompanying procedural guidelines through the authority of the Treasurer for the City of Welland or his/her designate in the Financial & Corporate Services Department.

### **LEASING GOAL SUMMARY REQUIREMENTS:**

The goal of this policy is to ensure that where it is determined to be in the best interests of the City to engage in material financing lease agreements, that prior to finalizing such agreements that the following issues be addressed as required:

- 1) Classes of Municipal Facilities: The lease is for eligible classes as outlined under subsection 110 (1) of the Act.
- 2) Schedule of all Fixed Payments Prior to approving any material financial lease, Council shall be presented with said schedule required under the lease including amounts required under any possible extension or renewal of the lease.
- 3) Financial Advice: The City Treasurer shall prepare a report to Council with recommendations, assessing, in the opinion of the City Treasurer, the costs and financial and other risks associated with the proposed financing lease, including:
  - a comparison between the fixed and estimated costs and risks associated with the proposed lease and those associated with other methods of financing,

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- a statement summarizing, as applicable, the effective rate or rates of financing for the lease, the ability for the lease payments to vary and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the lease,
  - a statement summarizing any contingent payment obligations under the lease that in the opinion of the City Treasurer would result in a material impact for the municipality, including lease termination provisions, equipment loss, equipment replacement options and guarantees and indemnities,
  - a summary of the assumptions applicable to any possible variations in the lease payment and contingent payment obligations, and
  - any other matters the City Treasurer or Council consider advisable including whether the scope or the financing lease warrants obtaining independent financial advice.
- 4) Legal Advice: The City Solicitor shall provide to Council legal advice on any proposed financing lease, and, in the opinion of the City Solicitor, should the scope of the proposed transaction warrant, recommend to Council that legal advice with respect to the proposed financing lease be obtained from a source independent of the City.
- 5) Reporting: Where City Council has entered into one or more financing leases in a year the City Treasurer shall prepare and present to Council once in that year, or more often if Council so desires, a detailed annual report containing:
- i) a description of the estimated proportion of the total financing arrangements that have been undertaken through financing leases to the total long-term debt of the City and a description of the change, if any, in that estimated proportion since the previous year's report; and
  - ii) A statement by the City Treasurer as to whether, in his or her opinion, all financing leases were made in accordance with the provisions contained in this policy adopted by the municipality;
  - iii) Any other information that may be requested by Council, or that, in the opinion of the City Treasurer, should be recorded.
- 6) Council's Role: In considering the report and recommendation from the City Treasurer, Council is responsible for ensuring that legal and financial advice has been obtained, and must consider whether the scope of the proposed lease warrants further legal or financial advice from an independent source.

Prior to entering into a lease that has a Material Impact or related leases that have a Combined Material Impact, Council must advise the Region of Niagara, in writing, of the proposed Financing Lease.

If Council decides to approve entry into the Financing Lease, such approval shall be by by-law.

- 7) Exceptions: A financing lease may be entered into without complying with this policy if:
- The financing lease is deemed by the City Treasurer not to materially impact the City's debt and financial obligation repayment limit,
  - The Combined Material Impact of the costs and risks of that financing lease with the costs and risks of all other financing leases that were deemed not to have a material impact, which were entered into during the year, would not result in an overall material impact on the City.

## **REQUIREMENTS**

### A) Authority to commit to Financing Lease Agreements

When leasing is feasible, such agreements shall only be entered into after provision of full required disclosure and recommendations by the City Treasurer and City Solicitor and final approval by Council by by-law.

### B) Leases

For the purposes of this policy the following selected and applicable sections are provided as defined and specified under The Municipal Act, Ontario Regulation 46/94:

- 1) "financing lease" means a lease allowing for the provision of municipal capital facilities if the lease may or will require payment by the municipality beyond the term for which the council was elected;  
"lower-tier municipality" means a municipality that forms part of a regional municipality for municipal purposes;  
"material impact" means costs or risks that significantly affect, or would reasonably be expected to have a significant effect on, the debt and financial obligation limit prescribed under Ontario Regulation 799/94;  
"Municipal capital facilities" and "school capital facilities" include land, as defined in the Assessment Act, works, equipment, machinery and related systems and infrastructures.  
"Regional Municipality" means a municipality that was a regional or district municipality or the County of Oxford on December 31, 2001. O. Reg. 46/94, s. 1; O. Reg. 189/01, s. 1; O. Reg. 266/02, s. 1.
- 2) The council of a municipality may enter into an agreement in accordance with the Ontario Municipal Act for the provision of the following classes of municipal capital facilities:
  - 1) Facilities used by the council.
  - 2) Facilities used for the general administration of the municipality.
  - 3) Municipal roads, highways and bridges.
  - 4) Municipal local improvements and public utilities, except facilities for the generation of electricity.

- 5) Municipal facilities related to the provision of telecommunications, transit and transportation systems.
- 6) Municipal facilities for water, sewers, sewage, drainage and flood control.
- 7) Municipal facilities for the collection and management of waste and garbage.
- 8) Municipal facilities related to policing, fire-fighting and by-law enforcement.
- 9) Municipal facilities for the protection, regulation and control of animals.
- 10) Municipal facilities for public libraries.
- 11) Municipal facilities that combine the facilities described in paragraphs 1 to 10.
- 12) Parking facilities ancillary to facilities described in any of paragraphs 1 to 11.
- 13) Municipal community centers.
- 14) Parking facilities ancillary to facilities described in paragraph 13.
- 15) Municipal facilities used for cultural, recreational or tourist purposes.
- 16) Municipal general parking facilities and parking facilities ancillary to facilities described in paragraph 15.