

CITY OF CHICO
Administrative Procedure and Policy Manual

Subject: City Property Leases		Number: 11-66
		Effective Date: 10/6/2015
Department(s) Affected: Citywide		Supersedes:
AP&P Assigned to: City Manager		
Authority: CMC 2.12.010A City Council Approved 10/6/2015, Item 4.6		File Reference: PM11-66
		Approved: <i>Mark Orme</i>

1.0 BACKGROUND

The City allows the leasing of City-owned property to various entities. Terms and conditions for the City leases vary dramatically and consistency is needed to allow City Administration to make decisions on terms and conditions which provide more equitable return on the use of City property.

2.0 SCOPE OF POLICY

This policy applies to all City-owned property and defines the requirements for any City lease agreement.

3.0 POLICY

It is the policy of the City to enter into written lease agreements for any City-owned property with clear requirements that

1. Protect City interests in its property in line with the public purpose thereof;
2. Foster direct benefits to the Chico community; and
3. Maximize the return received by the City in both financial and operational terms.

The City Manager is empowered to negotiate and finalize agreements for City property. The City Manager shall seek City Council approval for any lease agreement term greater than five years. Airport leases that are annually-renewing leases (for example, small hangers) do not require City Council approval unless the lease term is set in greater than five year increments at each renewal and/or the leased space collectively is greater than 5,000 square feet.

A written lease agreement is required for any City-owned property where the lessee will receive possession and/or use for a period greater than 90 consecutive days or possession and/or use for a

period of over six months, whichever is shorter. This does not apply to room rentals where the City maintains an established fee schedule.

4.0 DEFINITIONS

Public Purpose – direct services provided by the City or that would have otherwise been provided by the City.

Example - Entity requesting space in a City building provides economic development services to attract businesses to Chico. This is a function of the City, thus, a partnership for the City with this entity would be classified as a public purpose.

Public Benefit – other benefits that have a direct/indirect nexus to furthering a City priority and/or benefiting the public as a whole.

Example - Entity requesting space in a City building coordinates volunteers assisting low income families and individuals with legal assistance in navigating federal, state and local regulations. To the extent that the activity is significantly focused on City residents, this entity's activity would be classified as a public benefit.

5.0 PROCEDURE

Lease proposals shall be evaluated in terms of the following elements, but not limited to

1. **Public Purpose** – direct services provided by the City or that would have otherwise been provided by the City;
2. **Public Benefit** – other benefits that have a direct/indirect nexus to furthering a City priority and/or benefiting the public as a whole;
3. **Use of Property** – nature of the proposed use of the property;
4. **Consideration** – consideration offered in the form of rent and other monetary-related items;
5. **Maintenance Support** – utilities and ongoing maintenance costs for City property;
6. **Financial Capability** – leassee's ability to sustain obligations under the lease agreement;
7. **Impact** – direct and indirect impact to the area surrounding the leased property, environmental factors, and public resource requirements;
8. **Expertise** – expertise regarding the proposed leasehold development and operation, as well as the nature of proposed development; and
9. **General Plan Consistency** – consistency of the intended use with the General Plan and zoning.

5.1 PROCESS FOR SUBMITTING PROPOSAL TO LEASE A CITY-OWNED PROPERTY

In order to ensure consistency in evaluation, any request for leasing of City property will require a written request from the potential lessee or third-party facilitating a lease on behalf of another entity.

The written request must include the following information regarding the leasing entity:

Leasing Entity

- Legal Name of Entity leasing the property;
- Other Names used by the leasing entity and commonly recognized name;
- Legal status of the entity (501c3, llc, corporation, etc.);
- Contact information for each current location of entity;
- Contact information for each principal of the entity;

City Property Information

- Identification of the specific City property requested;
- Term of use (3 years, every first Thursday of the month, etc.);
- Date when occupancy is requested to begin;
- Summary information of any capital changes that will be requested which alter or improve the property;

Intended Use

- Detailed information regarding the intended use of the property;
- Public purpose or benefits provided by the intended use of the property;
- Intended population served by use, including portion residing within Chico;
- Impacts of the lease – traffic, environmental, surrounding neighborhood, etc.; and

Compensation and Terms

- Outline of the lease agreement terms, specifically monetary and non-monetary items, which the lessee is proposing for the property.

If the City Manager determines that the potential lessee is a viable option to lease City property, the City can request the following information, but not be limited to

1. **Service Projection** - Projection of the number of people that will utilize the organization's services;
2. **Proof of Legal Status** – The organization will submit proof verifying the legal status of the entity (501c3, Llc, corporation, etc.);
3. **Other Leases Listing** – a list of all the property the organization leases, the use of those properties, and the lease or rent paid for those leased properties;
4. **Projected Staff** - the number of projected full-time equivalent staff the organization will utilize for operations within the City property;
5. **Financial Capabilities** – Three years of documentations showing the organizations financial condition and capabilities (i.e. review of financial statements or income tax returns, etc.);

6. **Board of Directors** - a non-profit must have a board of directors. The names, addresses and contact information for the board of directors will be provided to the city;
7. **Organizational Chart** - an organizational chart of the organization will be provided to the City;
8. **Performance Measures** – operational and performance measures for the organization will be provided to the City;
9. **Additional Information** - the City may request any additional information the City feels is necessary to determining whether to lease City property to a particular organization; and
10. **Failure to Provide** – failure to provide any of the requested information may lead to a no recourse rejection.

6.0 EXCEPTIONS

Policy cannot address every nuance within a lease agreement or property negotiation, nor does policy language necessarily apply in certain circumstances. Thus, it is the City Manager's responsibility to ensure when engaging in negotiations or applying this policy to make decisions in the best interest of the City as provide under Section 3.0.

Exhibit 1

Elements of Lease Agreements

The following elements will be addressed in all City lease agreements in order to ensure there is consistency among the City's leases, as well as to protect the public's interest in the City asset.

1. PRICING GUIDELINES

The City will generally seek fair market value for all City property leases. The City may consider below market rates for organizations that provide a public purpose or public benefit predominately to City residents through the lease of City property.

MARKET RATE LEASES

The City may consider leasing vacant City property that is not immediately needed for governmental operations. The lease rate for City property should generally be market rate unless the lessee will undertake activities which, in the assessment of the City Manager, falls within Section 5.0 elements 1 and/or 2.

Appraisals, not greater than six months old from date of lease execution, may be required prior to City agreement for lease when the property is to be leased under the following conditions

1. **Market Rate** – use of property does not fall within Section 5.0 elements 1 and/or 2;
2. **Long Lease** – term of the lease will allow for a lease term that is greater than five cumulative years;
3. **Competition** – when multiple requests to lease are received on the specific property;
4. **Specialized Requirements** – federal or state requirements necessitate the lease at market rates (i.e. grant conditions for airport property); and/or
5. **Other** – when requested by the City Manager.

If an initial appraisal is performed, a new appraisal may be conducted for the leased property every five years to ensure lease terms reasonably reflect market rate.

BELOW MARKET RATE LEASES

The City may consider leasing vacant City property for a public purpose and/or public benefit at below market rates. To lease City property at a below market rate, potential lessees must meet the following criteria

1. **Non-Profit Status** – lessee is a recognized non-profit organization with a IRC 501c(3) status which generates substantial revenue through non-profit activities;
2. **City Focus** – lessee provides services substantially for City residents and lease of City property is for the purpose of servicing those City residents;

3. **Duplication or Substitution** – lessee services within leased property would not duplicate or substitute services currently provided within the City unless the City is able to ascertain mutual benefit in providing services within the property;
4. **Leverage** – while priority will be given to a lessee who is able to leverage other resources to benefit City residents, City may consider providing a lease to a new or struggling organization where the below market rate may serve to accelerate the organization’s ability to become self-sustaining;
5. **Financial Sustainability** – lessee is able to demonstrate ability to commit sufficient financial resources and effort to meet lease obligations and can reasonably remain a viable organization for the duration of the lease;
6. **Organizational Leadership** – lessee maintains a board of directors who regularly meet to discuss organization finances and operations;
7. **Open Meetings** – lessee organization provides open meetings and transparent information regarding finance and operations;
8. **Commitments** – lessee organization is in good standing with all obligations to the City, other governments or private entities (i.e. paid on all bills, not subject to any court judgement against the organization, etc.); and
9. **Fraud** – lessee organization or its principal employees have not been convicted of fraud, theft, or other crimes of wrongdoing against the organization or other entities.

The City may entertain a below market rate lease where the City reasonably expects a significant economic development opportunity; however, this type of lease will require City Council approval.

In granting a below market rate lease, the City will document the estimated value of the benefit provided to the entity as an in-kind contribution.

GOVERNMENTAL LEASES

Governmental Agencies: The City may lease property to other governmental agencies at below market rate if the City deems the following criteria apply:

1. Activity at City property is intended to provide substantial service to City residents;
2. Agency does not possess or have use of property elsewhere within the City where the intended activity can be provided;
3. Use of City property is not used to circumvent use of lessee agency property in order to reduce lessee activity or facility costs;
4. Governmental agency intends to pay all the utility and reasonable maintenance costs of the City property; and
5. City finds a substantial interest in providing City property for another governmental agency use.

2. TERM GUIDELINES

While the City is open to long-term leases, the City desires to have reasonable measures of control during the lease term in the event the City requires use of its property. Additionally, long leases may represent a policy interest for the City Council, and thus, would benefit from public scrutiny and City Council approval. As a result, the lease terms will take into account the following elements

1. **General Term** – City Manager will approve leases to no more than five years unless beneficial conditions exist to seek a longer term;
 - a) Beneficial conditions may include, but are not limited to, substantial economic development potential, significant investment of capital requiring a longer return on investment, etc.;
2. **City Leases Greater than Five Years** – any lease, other than airport leases whose cumulative lease period will be greater than five years (includes possible extensions and renewals) will require City Council approval;
3. **Airport Leases** –annually-renewing leases (i.e. small hangers) do not require City Council approval unless the lease term is set in greater than five year increments at each renewal and/or the leased space(s) collectively are greater than 5,000 square feet;
4. **Public Purpose and Benefit** – any lease that does not have a public purpose and/or public benefit component will require City Council approval;
5. **Automatic Renewals** – automatic renewals shall not be provided in City property leases;
6. **Agreement Extensions** – extensions on an existing lease agreement will require written consent of the City;
7. **Appraisals** – City may require an appraisal, at the lessee’s cost, for any City property leased for a period greater than five years;
8. **Termination** – any lease greater than five years should have a provision giving the City the ability to take back the property; and
9. **Default** – any lease should have a provision that outlines the default conditions and an immediate termination of the lease if the default is not cured.

3. LEASE EXTENTIONS AND RENEWALS

Extensions and renewals of leases will be considered by taking into account, but not limited to, the following elements:

1. **Good Performance** – City staff will review the history of the lessee in regards to rent payments, maintenance issues and lessee’s compliance with the existing lease terms;
2. **Past Improvements** – Value of improvements made by lessee to the City’s property;
3. **Future Improvements** – Lessee proposes capital investment and redevelopment of City property which is acceptable to the City; and
4. **Compliance** – Lessee is in compliance with provisions of this AP&P at the time of extension.

4. SUBLEASES

While the City will not generally allow subleasing of City property by a lessee, the City may consider a subleasing request under the following conditions;

1. **Public Purpose and Benefit** – sublease will further the public purpose or benefit provided by the lessee;
2. **Similar Conditions** – sublease will comply with the same requirements and uses of the primary lease and leasing organization including financial and operational requirements;
3. **Compliance with Policy** – sublease will comply with all elements of this AP&P;
4. **City Review** – city will have ability to review materials necessary and may approve or deny any sublease;
5. **No Detriment** – sublease cannot be detrimental to the City’s rights under the primary lease;
6. **No Right to Sublease** – lessee will have no right that requires the City to grant a sublease and lessee will not have the right to sublease unless it is explicitly allowed under a written lease agreement or amendment; and
7. **Insurance and Liability** – insurance and indemnity requirements of sublease shall equal or exceed the primary lease. The City shall be named as an additional insured on the subleasee’s policy, if the City deems the requirement a condition of the subleasee.

5. LEASE PAYMENT METHODS

The City can negotiate with the following methods of lease payments:

1. fixed rates;
2. percentage of income;
3. alternative funding options (other investments which may derive a monetary benefit to the City)
4. any combination of the three; and
5. Late payments will be assessed an automatic ten percent (10 %) late fee on the unpaid lease amount due and an additional daily delinquent fee after 30 days of \$100/day. Failure to make current lease payments may result in City terminating lease.

6. TAXES

As applicable, all lessees will be responsible for paying possessory taxes or other property related taxes, which may be due as a result of their tenancy. City shall notify Butte County Assessor of possessory interests.

7. MAINTENANCE

The City and the lessee responsibility for maintenance will be included in the lease agreement. The lessee may be asked to take responsibility for regular maintenance within the

1. interior of the building;
2. exterior landscaping;
3. plumbing and electrical;
4. windows;
5. exterior property maintenance (may include parking area);
6. payment of utilities; and/or
7. an exception given for normal wear and tear to the property.

The City, unless otherwise determined, will be responsible for maintaining the

1. roof;
2. exterior walls;
3. foundation; and
4. heating and air.

The City will be given the ability to conduct inspections of the property as well as the ability to conduct preventive maintenance to the roof, exterior walls, foundation, and heating and air as needed with prior notice to the lessee. For emergency repairs, the City may access the property without prior notice.

8. IMPROVEMENTS

The lessee cannot make any improvements to the property without the written permission of the City Manager. For any approved improvement, the following conditions will apply:

1. **Maintenance** – lessee will be responsible for the full maintenance of the improvements during their tenancy;
2. **Removal** – lessee will remove all improvements at the termination of the lease at no cost to the city and restore the property to its original condition unless the City agrees otherwise;
3. **Reversion** – if the lessee does not remove the improvements, the improvements may, unless the City agrees otherwise, to revert to the City, or the City may assess the cost of removal to the lessee; and
4. **Right-of-Way** – any improvements made to the Right-Of-Way will generally be deeded to the City, unless otherwise agreed.

9. AUDITS

The City will have the right to audit any of its leases, when it is determined necessary by the City. As appropriate, the audit clause will allow for the City's access to all records and information necessary to ensure compliance and evaluate the risk of fraud, waste, and abuse.

10. CANCELTION CLAUSES

The City will include a lease provision to terminate all leases for the following reasons

1. **Intended Purpose** – if the lessee is no longer using the leased property for the intended purpose that was written in the primary lease;
2. **Failure to Pay or Late Payments** – if the lessee is no longer able to pay the full amount of rent, or late payments are made multiple times throughout the term of the lease;
3. **Compliance** – if the property is not being maintained by the lessee outside of the expected normal wear and tear;
4. **Discrimination** – if the lessee discriminates against anyone because of an individual’s race, ethnicity, national origin, citizenship status, political affiliation, religion, sex, disability, medical condition, marital status, sexual orientation, gender, military status, age, and any other protected class as governed by law;
5. **Criminal Activity** – if the lessee or its agents are convicted of any crime that took place on the leased property; and
6. **Without Cause** – the City can terminate a lease without cause with a 30 to 90 day notice. For termination at no fault of the lessee, the City may agree within the lease to some type of compensation to account for investments made by the lessee into the property and/or impacts that are not unavoidable by the lessee.

Additionally, the City may terminate any below market value leases, if the lessee

1. promotes any political party, political organizations, political figures and political candidates at the leased property;
2. if the lessee promotes any religion, religious organizations and religious figures at the leased property;
3. if the lessee no longer provides a service that was included in the lease without the prior approval of the City Manager;
4. if the lessee provides a service that was not included in the lease without the prior approval of the City Manager;
5. if the City finds that the services being provided are no longer necessary or adequate to justify the below market rent;
6. if the lessee fails to provide the residents of the City access to the benefits being provided; and
7. if the residents of the City are no longer the majority beneficiary of the services being provided.

11. DEPOSITS AND SECURITY

The City may require deposits and other security as part of the lease agreement in order to address abnormal damage to City property not cured as required, to address improvements not removed as required, and/or to address outstanding lease and late payments upon termination of tenancy.

12. AMENDMENTS

Lease agreements may be amended from time to time. All amendments will be executed by

written amendment to the lease and will require City Manager approval. If the original agreement required City Council action, all amendments involving substantive change to the lease terms will also require City Council action. Emergency amendments, temporary or otherwise, may be made by the City Manager on a case by case basis when the change is necessary to ensure continuity of operations for the City of leasee as well as the potential for significant loss and cost to the City. The amendments will be reported to the City Council within 30 days of agreement.

12. OTHER CITY REQUIREMENTS

The City will require that every lessee or subleasee will remain in good standing and full compliance with any other agreement, law, regulation, or requirement that involves the City. This will include, but is not limited to, a business license, use permit, accounts payable account related to a City debt, any other agreement or contract involving the City, etc. Failure to remain in compliance with these items will constitute a breach of the lease agreement.

13. OTHER CLAUSES

The City Manager may require other clauses as necessary to protect the interests of the City and City residents.