



## CITY COUNCIL AGENDA REPORT

**Subject: COUNCIL MOTION – NABI BUILDING LEASE  
NEGOTIATIONS**

On July 13, 2015 Councillor Hughes provided notice in accordance with Section 23 of Procedure Bylaw 35/2009 that she intended to bring forward the following motion:

*In order for Council to debate the motion, the motion must be formally moved.*

(Councillor Hughes)

That Administration begin negotiations with NABI for their Mission Hill building lease contract renewal, to be effective at the end of their current lease agreement.

**Attachments:**

1. Administrative Backgrounder
  - a. C-CAO-15 - City Council Policy – City Owned Building Lease Rates

Originating Department(s):	Legislative Services
Author(s):	B. Gaskarth, Legislative Officer
City Manager Signature:	Date:

## **Administrative Backgrounder NABI Lease Negotiation**

On July 13, 2015, Councillor Hughes provided notice in accordance with Section 23 of Procedure Bylaw 35/2009 that she intended to bring forward the following motion:

“That Administration begin negotiations with NABI for their Mission Hill building lease contract renewal, to be effective at the end of their current lease agreement.”

### **BACKGROUND:**

Prior to beginning negotiations to extend the lease timeframe on the City-owned 13 Mission Avenue building with NABI, there are several processes that need to occur in advance;

1. Assess the overall condition of the City-owned building and the costs that the City will incur to keep the building operational and functional for the period of a lease extension timeframe.
2. Examine the potential uses that the City may have for this ideally located building in support of future visions for the downtown.
3. Examine the existing lease agreement to determine the implications of opening negotiations now.
4. Examine the implications of the recently approved Policy C-CAO-16 City-Owned-Building-Lease-Rate-Policy on the lease rate for this facility for this tenant.

Additional information regarding each of the above points is provided below.

Additionally, an alternative Motion is presented at the end of this backgrounder for the Councillors consideration.

### **1. Assess the Building Condition**

The building at 13 Mission Avenue that is currently occupied by NABI was originally constructed as a school in the late 1940's. In 1953 there was an addition built to the structure. The building was renovated to function as a business office space in 1983. The last full building evaluation was conducted in 2001, and in 2008 a partial evaluation was also conducted prior to lease renewal. In 2008 the building was also inspected by the St. Albert Fire Department to review Fire Code deficiencies and a letter was sent to the tenant to address non-compliance issues. This letter was referenced in the terms of the 2008 lease.

The City is responsible for capital costs related to the structural, electrical and mechanical aspects of the building, which includes components that are eemed at the end of their useful life.

Overall the facility is in fair condition. Interior upgrades were undertaken by the tenant in 2008 to address noted deficiencies from the 2008 partial building evaluation. The evaluation noted the Building Code/ Fire Code concerns which were followed up on by the St Albert Fire Department. The building is under an asbestos management plan because there are numerous areas where asbestos is present in the building. The exterior building shell (walls, stucco, windows) with the exception of the roofing system is virtually unchanged since construction and is still serviceable at this time. The surrounding grounds and parking lot are also in fair condition.

Potential Action:

Undertaking a complete assessment of the building is recommended in order to determine the operational and capital costs that may be required on this building over the medium and long term future. This will allow for an informed decision on the costs associated with the long term viability of the building. It is estimated that this evaluation could cost \$20,000 and take up to 2 months to complete.

**2. Other Potential Uses**

This building is ideally located in the core of St. Albert and could serve a number of civic functions in support of any number of visions for this important part of the community. Prior to extending the lease agreement with the existing tenant, it would be prudent for the City to determine the opportunities for other long-term or future uses of this City-owned building and space.

Potential Action:

To this end it is recommended that Administration undertake the following exercises prior to extending the lease to the current tenant

- a. Undertake an internal City department 'call for proposals' for potential uses of this City-owned facility
- b. Complete the Council directed incubation strategy to determine impacts and opportunities with NABI at this location

**3. Existing Lease Considerations**

In 2013 NABI exercised their right of renewing the lease for an additional 5 years with the terms in the 2008 lease agreement. The relevant clauses from the current agreement are as follows.

*6. Term*

*a. This Lease shall be effective for a period of five years (commencing on the Effective Date) plus any renewal term exercised pursuant to Subsection (b).*

*b. The Landlord shall, upon the Tenant's written request provided to the Landlord not later than ninety (90) days before the expiration of the five (5) year period referenced in Subsection (a), grant to the Tenant an opportunity*

*to renew this Lease for a further period of five (5) years (Subject to such modifications as the Parties agree).*

*c. If the Tenant (without the Landlord's objection and without any written agreement to the contrary) remains in possession of the Leased Premises after the expiration of the Term, the Tenant shall lease the Leased Premises on a month-to-month basis, subject otherwise to the provisions of this Lease (which shall be read with such changes as are appropriate to a monthly tenancy).*

Sub clause 6b provides NABI the right to renew the lease and the highlighted portion provides the City the opportunity to modify the agreement upon the tenant's written request to renew. Should Administration be directed to develop an extension to the lease agreement with NABI, this clause will be focused upon in making modification that both parties agree upon.

The following highlighted clause in section 11 in the agreement addresses the action that may be taken if any unforeseen costs that would deem the building unviable become known at some time during the lease agreement term. However, this does not remove the City's fiscal responsibility of understanding the long term requirements for this building.

*11. Major Repair*

*a. If at any time the Landlord determines that a major repair of, or system replacement within, the Leased Premises is necessary, the Landlord may require that the Tenant vacate the Leased Premises, or a part thereof, while the repair is undertaken.*

*b. If the Landlord reasonably determines that any necessary repair(s) and/or replacement(s) would be cost prohibitive, the Landlord may terminate this Lease upon providing the Tenant with reasonable notice thereof.*

*c. The Landlord shall not be liable or in any way responsible to the Tenant with respect to any loss, injury or damage, economic or otherwise, alleged to have been caused by the requirement to vacate the Leased Premises or by the termination of this Lease in accordance with this Section 11.*

Potential Action:

Administration would undertake a formal review of the relevant terms of the existing agreement with the intention of beginning negotiations with NABI for a lease extension.

**4. City-Owned-Building-Lease-Rate-Policy**

Since the recent renewal of the lease agreement with NABI, Administration has developed and Council has approved Policy C-CAO-16 City-Owned-Building-Lease-Rate-Policy (Attachment 1a). This Policy dictates the manner in which

agreements for a variety of NGO's and other entities will address the lease rate that will be charged for the use of City-owned buildings. With this new policy in place, any lease negotiations with NABI will invoke the newer and higher lease rates that they may be required to pay based on their business classification.

There are several statements of direct application in this policy that are shown below;

*“Right Of First Refusal” means a contractual right that gives a lessee the option to enter a lease with the lessor (City) for the use and/or occupancy of City owned buildings, according to specified terms, before the lessor is entitled to enter into that transaction with a third party*

This clause does not preclude the City from using the facility for a City function.

The lease rate for any renegotiation would be based on the determination of the classification of NABI within the realm of the following categories, as stated in the Policy.

*4. Lease Rate Classification*

*Lease rate classification shall be determined in accordance with the following at the discretion of the City Manager:*

*a. Nominal Lease Rate – An organization that is a registered Not-for-Profit that is providing a public Recreation, Culture or Social Service within the community that is not in direct competition with a Private entity shall be entitled to a nominal lease for City owned space subject to space availability.*

*b. Non-Market Value Lease Rate – A Not-for-Profit entity that primarily offers a direct service for private benefit or is in direct competition with a Private Entity and services offered demonstrate a public benefit shall be eligible for a non-market lease rate of 50% of the established market value rate, subject to space availability.*

*c. Market Value Lease Rate – All For-Profit entities shall pay a lease rate that is equal to or greater than market value as determined via a lease rate analysis in accordance with the Municipal Government Act. The City Manager may approve a Market Value lease agreement for use and/or occupancy of City owned Buildings provided that:*

- i. selection of the lessee is based on a competitive process;*
- ii. the lease amount to be charged is at and/or exceeds Market Value;*
- iii. the term of the lease does not exceed ten (10) years including renewals;*
- iv. the basic rent amount (excluding operating costs, shared revenue and other additional rent) to be paid to the City, does not exceed \$100,000 per year.*

The classification of NABI in the context of this policy is in dispute between the parties and this would need to be determined and agreed upon prior to enacting the other aspects indicated in this report. Depending on the outcome of determining NABI's classification and their reaction, some of the other aspects of this report may become a moot point.

Additionally, the following section of the policy indicates that an independent appraisal of Market Value should be undertaken regularly.

*Lease Rate Analysis*

*The City Manager shall at least once every three (3) years, retain an independent appraiser to determine a current Market Value for comparable lease spaces within the city and present to Council a report on current City owned building lease arrangements, changes in appraised market values and any proposed modifications to this policy*

Potential Action:

Administration would need to undertake an independent Market Value assessment of lease rates in St. Albert and present to Council. This may also require an independent review of the classification of NABI as it relates to this policy and hence the correct and applicable lease rate as dictated by the policy.

**Summary**

Determining the long term utilization of the City-owned 13 Mission Avenue building is a critical component of this Notice of Motion. The lease extension agreement and the ongoing relationship with NABI at this location is only one potential outcome of this larger consideration. Careful examination of a number of aspects of the agreement(s), policies and the opportunities associated with this property should be undertaken in a strategic manner.

As such an alternative Motion could be as follows;

“That Administration determines the long term viability of the 13 Mission Avenue building and also examines the potential range of uses of the City-owned building/site in the context of our future vision for downtown and report findings back to Council in Q1 2016 prior to commencing lease renegotiations with NABI “

Attachment:

1(a) C-CAO-15 - City Council Policy – City Owned Building Lease Rates

Report Date	July 28, 2015
Committee/Department	Economic Development
Executive Director Review	Guy Boston P. Eng.



City of St. Albert  
**CITY COUNCIL POLICY**

City Owned Building Lease Rates

AUTHORITY	APPROVED	Res. No.	mm dd	REVISED	Res. No.	mm dd
City Council		C374-2014	07 14			

## Purpose

To establish standards and guidelines related to the lease terms and rates of City owned buildings with Not-for-Profit and For-Profit entities.

## Policy

In a consistent, transparent, and equitable manner, and as prescribed by this policy, the City shall administer lease arrangements with Not-for-Profit and For-Profit entities for the use and/or occupancy of City owned buildings.

## Definitions

In this policy:

“For-Profit Entity” means a person, group, or business with a primary goal of making a profit.

“Lease” means a contractual arrangement between a lessee and a lessor for the use and/or occupancy of property.

“Lessee” means a person, group, or business that enters into a lease for the use and/or occupancy of property.

“Lessor” means a person, group, or business who owns property that is for lease.

“Market Value Lease” means the highest price (value) a willing lessee would pay and a willing lessor would accept, both parties being fully informed, for the use and/or occupancy of property marketed for a reasonable period of time.

“Nominal Lease” means a nominal consideration (normally \$1.00 per year) of payment used to satisfy the requirements for the creation of a lease.

“Non-Market Value Lease” means a lease with a rate or payment (value) being 50 percent of a Market Value lease.



“Not-for-Profit Entity” means an organization incorporated under the *Societies Act* or *Companies Act* of Alberta.

“Operating Cost” means the costs for provision of electricity, gas, water, sewer, telecommunication, cable and any other rates or services assessed in connection with the use and/or occupancy of City owned buildings.

“Right Of First Refusal” means a contractual right that gives a lessee the option to enter a lease with the lessor (City) for the use and/or occupancy of City owned buildings, according to specified terms, before the lessor is entitled to enter into that transaction with a third party.

## Responsibilities

The City Manager shall ensure that all applicable standards and legislative requirements associated with this policy are satisfied.

## Standards

### 1. Lease Rate Analysis

The City Manager shall at least once every three (3) years, retain an independent appraiser to determine a current Market Value for comparable lease spaces within the city and present to Council a report on current City owned building lease arrangements, changes in appraised market values and any proposed modifications to this policy.

### 2. Nominal and Non-Market Value Lease Guidelines

As a means to support Not-for-Profit entities within the community, and to enhance the quality of life while delivering services economically to the residents of St. Albert, the City may consider a Nominal or Non-Market Value lease of City owned buildings under the following circumstances:

- a. where Not-for-Profit entities provide suitable recreation, sport, cultural, and community-oriented activities, programs, or services which provide the greatest benefit to the community as a whole, in addition to their direct benefit to individuals;
- b. where the primary services offered by the Not-for-Profit entity provide a demonstrable public benefit;
- c. where participation is available to a broad demographic in the community, or the Not-for-Profit entity services an identified need to an at risk demographic in the community;
- d. where the Not-for-Profit entity provides the only opportunity for the service, activity, or benefit in the community;
- e. where the Not-for-Profit entity's services do not compete directly with the business community in the service it provides, or if its services compete with those of the



- business community, where the services are be accessible to persons who do not normally have access to the services or facilities in the private sector; and
- f. services provided to residents can be substantiated by a membership list or other suitable client records.

### 3. Nominal and Non-Market Value Lease Eligibility

Provided the Not-for-Profit offer programs or services that meet the Guidelines established under section 2 of this Policy, the City may grant a Nominal or Non-Market Value lease to a Not-for-Profit entity where all of the following conditions are met:

- a. the City owned building or space to be utilized will be operated by a registered Not-for-Profit entity;
- b. the Not-for-Profit entity must provide proof of Not-for-Profit registered status and be in good standing with the Province of Alberta Corporate Registry;
- c. the City does not need the subject property for alternate purposes during the proposed lease term; and
- d. the Not-for-Profit shall meet the exemption from taxation requirements in Section 362 of the *Municipal Government Act*.

### 4. Lease Rate Classification

Lease rate classification shall be determined in accordance with the following at the discretion of the City Manager:

- a. Nominal Lease Rate – An organization that is a registered Not-for-Profit that is providing a public Recreation, Culture or Social Service within the community that is not in direct competition with a Private entity shall be entitled to a nominal lease for City owned space subject to space availability.
- b. Non-Market Value Lease Rate – A Not-for-Profit entity that primarily offers a direct service for private benefit or is in direct competition with a Private Entity and services offered demonstrate a public benefit shall be eligible for a non-market lease rate of 50% of the established market value rate, subject to space availability.
- c. Market Value Lease Rate – All For-Profit entities shall pay a lease rate that is equal to or greater than market value as determined via a lease rate analysis in accordance with the *Municipal Government Act*. The City Manager may approve a Market Value lease agreement for use and/or occupancy of City owned Buildings provided that:
  - i. selection of the lessee is based on a competitive process;
  - ii. the lease amount to be charged is at and/or exceeds Market Value;
  - iii. the term of the lease does not exceed ten (10) years including renewals;
  - iv. the basic rent amount (excluding operating costs, shared revenue and other additional rent) to be paid to the City, does not exceed \$100,000 per year.



## 5. Operating Cost Allocation

A lease agreement shall be subject to a cost allocation for the operating costs of the leased premises as a condition of the lease; this allocation may be subject to an annual cost escalation (inflation) factor as agreed to upon execution of the agreement.

## 6. Lease Agreements

The City Manager shall ensure that standardized Lease Agreement templates exist for both Market Value and Non-Market Value Lease arrangements; these templates shall be updated at the discretion of the City Manager reflecting applicable terms and provisions to protect the interest of the City where possible and where necessary, lease agreement terms may be negotiated at the discretion of the City Manager.

## 7. Pre-Existing Leases

The provisions contained within this policy shall be subject to new leases or renewal of lease at their expiration.

## 8. Lease Opportunities

- d. Upon the expiration of a lease term with a Not-for-Profit entity, the entity shall have Right of First Refusal for a new lease, provided, at the discretion of the City Manager the City does not require the building or any portion thereof for municipal purposes.
- e. When it is determined that a building in the City's inventory is available for lease, the City Manager shall administer public Expression of Interest and/or Request for Proposal processes.

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**Legal References:** *Municipal Government Act (MGA), Societies Act, Companies Act*

**Cross References:** Policy C-CAO-05, CAO Limitations on Financial Conditions and Activities; Policy C-ED-03, Land Transactions; Policy C-P&E-06, Affordable Housing

