



**STAFF REPORT  
ACTION REQUIRED**  
with Confidential Attachment

**Lease with Muzik Clubs Inc.**

<b>Date:</b>	May 12, 2015
<b>To:</b>	The Board of Governors of Exhibition Place
<b>From:</b>	City Solicitor
<b>Wards:</b>	
<b>Reason for Confidential Information:</b>	This report contains advice or communications that are subject to solicitor-client privilege.
<b>Reference Number:</b>	

**SUMMARY**

The purpose of this report is to report to the Board on legal issues respecting an extension of the term of the lease with Muzik Clubs Inc.

**RECOMMENDATIONS**

The City Solicitor recommends that:

1. The Board receive this report for information.
2. The Board direct that Confidential Attachment 1 remain confidential as it contains advice and information that is subject to solicitor-client privilege.

**Financial Impact**

There is no financial impact beyond what has already been approved in the current year's budget.

**DECISION HISTORY**

At its meeting of April 23, 2003, the Board approved a Lease with Muzik Clubs Inc. for the entire Horticulture Building commencing February 16, 2004 and expiring on February 15, 2024.

Lease with Muzik Clubs Inc.

At its meeting of December 19, 2012, the Board, subject to approval of City Council, approved terms and conditions of an amendment to the lease.

[http://www.explace.on.ca/database/rte/files/Item%2019-Muzik\(1\).pdf](http://www.explace.on.ca/database/rte/files/Item%2019-Muzik(1).pdf)

At its meeting of May 24, 2013, the Board received the City Solicitor's report with respect to the Muzik Clubs Inc. Lease Amendment – Disposal of City Property.

[http://www.explace.on.ca/database/rte/files/Item%208-Muzik\(1\).pdf](http://www.explace.on.ca/database/rte/files/Item%208-Muzik(1).pdf)

## **ISSUE BACKGROUND**

At its meeting of December 19, 2012, the Board adopted the recommendations in the report from the Chief Executive Officer dated December 17, 2012, titled "Muzik Clubs Inc. Lease Amendment" to amend the existing lease with Muzik of the Horticultural Building and lands, which amendments included the extension of the lease from twenty years for a further term of ten years, for a total term of thirty years. At its meeting of May 24, 2013, the Board received the related report from the City Solicitor regarding the Official Plan constraints on the City's and Board's ability to extend the term of the lease.

The earlier report from the City Solicitor advised the Board that due to the City's Official Plan policy restricting the disposition of City-owned land designated as Open Space, no extension of the term of the Muzik lease beyond a total of 21 years would be possible without obtaining an Official Plan Amendment to the designation of the Horticultural Building and lands included in the lease.

I have been asked to address a number of questions arising out of my earlier advice, with a view to exploring options for the Board and Muzik to come to a suitable arrangement to give effect to the Board's earlier conditional approval to extend the term of the lease.

## **COMMENTS**

I have been asked the following questions:

1. Could the parties agree to terminate the existing lease and then give a new lease to Muzik for a fresh 20 year term? Or, since there is less than 10 years remaining in the term of the current lease, could a 10 year extension be granted now since the combined total number of years remaining in the term plus the new extension would be less than 21 years?
2. Would granting a new lease to the existing tenant without conducting an RFP be contrary to policies against sole sourcing?
3. Is the Board exposed to the possibility of being successfully sued by the tenant because the Board agreed to grant an extension to the term of the lease but did not

proceed due to Council's policy prohibiting the extension without an Official Plan Amendment?

1. Granting a new terms or extending the current term

Two related suggestions were put to me: (i) could the parties agree to terminate the current lease now and enter into a new 20 year lease? or (ii) since the term of the Muzik lease has approximately nine years left to run, extending the term for a further ten years would mean an aggregate remaining term of less than 21 years, so could a ten year extension be granted now even though it could not have been when the matter was first dealt with two years ago? The City's Disposal By-law set out in Chapter 213 of the Municipal Code defines a sale of land to include leases of 21 years or longer. To give effect to this provision, it must be interpreted to mean a cumulative 21 year period including renewals, extension, etc. Council made this clear in its adoption of EX 43/7 on May 11 and 12, 2010 entitled "Delegation of Authority in Certain Real Estate Matters" where the General Condition (n) specifically refers to leases which do not comprise disposals as being "Leases... (including options/renewals) of less than twenty-one (21) years". Accordingly, the calculation of the lease term begins on the commencement date of the lease term and would include any extension, such that the lease term would be calculated as the aggregate of the initial term and any additional time granted. Whether the extension was granted at the outset of the term of the lease or at some point later on is irrelevant. Trying to do indirectly what cannot be accomplished directly by either extending the term since current lease has less than ten years remaining, or by terminating the lease and entering into a new lease for a new term of less than 21 years, in order to get around the City's land disposal process, is not permissible.

2. Sole-sourcing

The term sole source is not generally used in the context of real estate transactions. Because of the immovable nature of real estate, or its unique characteristic, there are frequently instances where it is desirable to dispose of real property to a specific named entity, rather than offering it to the market; for example, where a piece of a City-owned land has been declared surplus, it often makes good sense to sell such land to an adjacent land owner, rather than to offer the parcel to the market place. For this reason, the City's procurement policies regarding sole-sourcing do not generally apply to real estate transactions. Accordingly, the City's land disposal policy permits the City to direct the sale of land that has been declared surplus to a particular named purchaser.

Further, it is always open to the Board to approve of award of a contract, including a lease, where no competitive process has been engaged in, if the Board determines that it is in the interests of the Board to do so if such award is otherwise within the scope of the Board's authority.


3. Legal liability for a claim for damages

The comments provided with respect to these matters are subject to solicitor-client privilege and are contained in Confidential Attachment 1.

**CONTACT**

Barbara A. Cappell  
Solicitor, City of Toronto Legal Services Division  
Real Estate Law Section  
Tel: (416) 397-4055; Fax: (416) 397-5624  
E-mail: [bcappell@toronto.ca](mailto:bcappell@toronto.ca)

**SIGNATURE**

  
Anna Kinastowski  
City Solicitor

**ATTACHMENTS**

Attachment 1 – Confidential Information