

RESOLUTION NO. 1768

A RESOLUTION OF THE CITY OF ANACORTES  
ESTABLISHING POLICIES AND PROCEDURES  
PERTAINING TO THE LEASING OF CITY PROPERTY

WHEREAS, a portion of the income of the City of Anacortes is generated by leases with various tenants located on City owned property; and

WHEREAS, most jobs on City property are generated by various tenants; and

WHEREAS, the City Council of the City of Anacortes deems it necessary to set policies and procedures for leasing properties belonging to the City; and

WHEREAS, the City Council should regularly review the leasing policy in order to keep up with appropriate rates and rental adjustment practices.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Anacortes as follows:

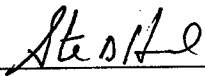
1. The lease policy of the City of Anacortes is hereby updated as set forth by resolution entitled: "A Resolution of the City of Anacortes Establishing Policies and Procedures Pertaining to the Leasing of City Property," a copy of which is attached hereto as Exhibit A and by this reference incorporated herein.

**PASSED AND APPROVED** by the Anacortes City Council this 5th day of January, 2009.

CITY OF ANACORTES

  
H. Dean Maxwell, Mayor

ATTEST:

  
Steve D. Hogle, City Clerk/Treasurer

APPROVED AS TO FORM:

By:   
Bradford E. Furlong, City Attorney, WSBA # 12924



CITY OF ANACORTES  
LEASING POLICY

I. DEFINITIONS

A. Superior Job Producer:

A tenant that generates a significant number of living wage jobs and that would be desired by many communities for those jobs. This would be a business that is either not located in City of Anacortes currently or will move outside of City of Anacortes if they cannot be accommodated within the City of Anacortes. They are generally looking for a variety of property and/or business incentives to locate or stay in the City of Anacortes.

B. Marine Related Tenant:

A tenant who needs access to marine waters to conduct business.

C. Mainstream Tenant:

A tenant who does not need to locate on City property to conduct business. These are tenants that private enterprise could potentially accommodate within the City.

D. Incubator Tenant:

An existing business moving from the proprietor's home, garage, yard or shed to the business's first leased space.

E. Start-up Tenant:

A new business beginning operations on City owned property.

F. Struggling Tenant:

An existing tenant whose business is struggling to survive due to temporary market conditions. The tenant must demonstrate to the City there is a significant probability that the tenant's business will not survive if the struggling tenant policy is not implemented and that it will survive if the policy is implemented.

## II. GOALS

### A. Superior Job Producer:

Locate appropriate (as determined by the City Council) superior job producer tenants on City property to stimulate the creation of living wage jobs.

### B. Marine Related Tenants:

Locate tenants that need access to marine waters on properties with access to marine waters.

### C. Mainstream Tenants:

Locate enough Mainstream Tenants on City property to provide cash flow for the City which would create incentives for winning desired Superior Job Producer Tenants, Marine Related Tenants, Incubator Tenants, and Start-up Tenants without putting undue pressures on City taxpayers as well as maintain and grow the number of jobs within the City.

### D. Incubator Tenants:

Locate transition business on City property to help them become stable and established, gain market share, grow revenues, and gain employees.

### E. Start-up Tenants:

Locate Start-Up Businesses on City property to help them become stable and established, gain market share, grow revenues, and gain employees.

### F. Struggling Tenants:

Assist established businesses in maintaining market share, revenues and employment levels during temporary downturns in the market place.

## III. STRATEGIES

### A. Land/Building Rents:

The rental rate for City owned land/buildings will be market rate in the community. It will consider the condition of the land/building location, age of the building, and size of the building, and other similar properties will assist in determining rental rates.

B. City Construct Tenant Improvements:

The City will consider constructing tenant improvements or constructing a building for a qualified tenant and amortize that cost over the term of the lease or longer under certain circumstances.

C. Maintenance Costs:

For City-owned buildings, the City will consider scheduling and coordinating landscaping installation and maintenance, drainage, building maintenance responsibilities such as HVAC systems, sprinkler systems and gutter maintenance for tenants. Tenants will be responsible for this work and will pay these costs monthly, based on an annual budget.

D. Capital Improvement:

For City-owned buildings, City staff will develop management plans that include maintenance and capital improvement schedules and budgets for each building. The maintenance and capital improvement budgets will be included in the City's overall operating and capital improvement budgets and six-year capital facility plan annually. This will include a replacement reserve sinking fund for replacement of deteriorating items such as: roofs, asphalt, building poles, parking lots, landscaping, etc.

E. Response to Prospective Tenant:

It is our intent to provide rapid service to our prospective tenants to approximate the private business sector. Our target is to have an agreed upon letter of intent with a qualified prospective tenant within seven days and a lease ready for execution by the executive director or commission within two (2) weeks.

F. Marine Related Tenants:

Marine Only: If feasible, utilize marine property only for marine related businesses.

G. Mainstream Tenants:

Lease to mainstream tenants using methods similar to the private sector.

H. Incubator Tenants:

1. Provide four-year step in leases to transition businesses.

2. Building Rental Rates: One-quarter of market value for year one, one-half of market value for year two, three-quarters for year three, and full market value for year four. Prospective tenants must develop and submit at least a four (4) year business plan demonstrating the viability of the business. The plan will show adequate capitalization and reserves to support the fixture and equipment needs, operational costs, and the payroll demands identified in the business plan. The business plan will be attached as part of the lease.

3. Transition to Mainstream Tenants: At the end of the four-year incubator period, the business will be entitled to up to a ten (10) year lease as a Mainstream Tenant if they have met revenue and employment projections included in business plan.

4. Extension of Incubation Period: At the end of the four-year incubator period, if the business has not met revenue and employment projections included in business plan, the business has opportunity to appeal to the City Council for additional time in the incubator program. Tenant must demonstrate to the City Council clear and convincing evidence of temporary market conditions that require additional time in the incubator program to meet business plan goals.

I. Start-up Tenants:

1. Provide six year leases with a four-year step-in to new business.

2. Building Rental Rates: One-quarter of market value for year one, one-half of market value for year two, three-quarters for year three, and full market value for year four. Starting in year five, there will be annual CIP rental adjustments. Prospective tenants must develop and submit at least a six (6) year business plan demonstrating the viability of the business. The plan will show adequate capitalization and reserves to support the fixture and equipment needs, start-up costs, and the payroll demands identified in the business plan. The business plan will be attached as part of the lease.

Longer term leases may be considered by the City at the prospective tenant's request. The prospective tenants must submit a business plan that demonstrates the viability of the business over the term requested.

3. Early Buy-out: The Start-up Tenant shall be entitled to buy out the lease if they can demonstrate they have outgrown their lease premises. They can buy-out the lease for 25% of the rent due in the remaining lease term. If they relocate on City property, the City may consider forgiving the buy-out obligation.

J. Struggling Tenants:

1. Assist the Struggling Tenant whose business is in jeopardy of failing without relief.
2. City accounting departments will review the financial records, ledgers, and other supporting documents of tenant applying for the program to determine whether tenant qualifies as a Struggling Tenant and for an adjusted rent schedule and determine whether appropriate accounting practices are in place to measure the success or failure of the program.
3. Existing tenants will be eligible to apply for Struggling Tenant status and an adjusted rent schedule with the City. Any and all determinations made by the City pursuant to this Struggling Tenant policy are at the City's sole discretion, are final and not appealable in any fashion or in any forum. Final authority for any determinations rests with the Mayor.
4. The eight (8) year amended rent schedule reflects a rent adjustment of up to  $\frac{3}{4}$  current rent for the first year, up to  $\frac{1}{2}$  rent plus CPI the second year, and up to  $\frac{1}{4}$  rent plus CPI for the third year. Starting in year four through eight, the rent will be current monthly rent plus CPI, plus  $\frac{1}{60}^{\text{th}}$  of the difference between the initial and adjusted year one, year two, and year three rents. Sixty days prior to the end of the first year of an amended rent schedule, the City accounting department may re-evaluate tenant's eligibility for Struggling Tenant status and the City may terminate rent adjustments for second year if Tenant no longer meets the definition of a Struggling Tenant.
5. The tenant shall provide annual financial information to the City to confirm the tenant continues to be eligible for the adjusted rent schedule.

IV. BASIC POLICIES

The basic policies of the City regarding industrial/commercial land and buildings are as follows.

A. Property Utilization:

Utilize, improve, and develop City properties for lease.

B. Highest and Best Use:

Seek the highest and best use of all City properties, consistent with proper land use planning.

C. Tenant Priorities:

Priority will be to attract Superior Job Producer, Marine Related, Incubator, or Start-Up Tenants.

D. Rental Rates:

Conduct ongoing marketing analysis on City property and buildings to establish and maintain appropriate rental rates.

E. Short-term Leases:

Six-month leases shall pay additional four percent. Month-to-month leases shall pay an additional eight percent.

F. Rent Adjustments:

Require CPI rent adjustments annually.

G. Boilerplate Provisions:

Lease conditions vary from tenant to tenant. Good business practice requires certain "boilerplate" provisions, such as indemnity and hold harmless, environmental, the City's right of entry for inspection, maintenance of the premises, taxes, fixtures and equipment, liability and casualty insurance, condemnation, default, costs and attorney fees, notices, waivers, month-to-month tenancy on termination of lease, and other.

H. Assignment:

It is the policy of the City to prohibit any assignment or sublease by a tenant without the prior written consent of the City. Approval will not be unreasonably withheld.

I. Structural Changes:

Structural changes to buildings require prior written consent of the City. State law requires that all improvements be either removed or become property of the City upon termination of the lease.

J. Insurance:

Insurance provisions require the tenant to provide certification of insurance with the City listed as additional insured and to prohibit cancellation of insurance without prior notice to the City. General liability insurance must be provided for the benefit of the City usually in the amount of \$1,000,000.

K. Rent Security:

The City Council considers two months' rent, including leasehold excise tax, as adequate rent security for all leases. Further, tenants who invest their own funds in real property improvements on City land in an amount that equals or exceeds one year's rent, including leasehold tax, shall be considered to have satisfied the rent security requirements.

L. Mayor Authority:

The Mayor does not have the authority to enter into leases without City Council approval.

M. Lease Extension:

Lease extensions rent will be adjusted to current fair market value. Lease extensions will be determined based on tenant needs, tenant performance, jobs produced, condition of the building and needs of the City.

N. Lease Buy-Out:

Should the City deem it necessary for significant community-wide benefit that a lease be terminated prior to the expiration of the lease term, the City will purchase the building at the current fair market value of the improvement as determined by appraisal or commercial real estate professional.

V. RENT

A. Rent Amount:

Rent rates shall be established as set forth in Section III. STRATEGIES.

B. Rent Adjustment:

The following shall apply to rent adjustments:

1. CPI: Adjustments based on the change in purchasing power of the dollar shall use the Consumer Price Index for all Urban Consumers (Seattle-Tacoma-Bremerton) (CPI), as is issued from time to time by the U.S. Department of Labor, Bureau of Labor Statistics.

2. Month-to-Month Lease: All month-to-month leases shall be adjusted annually on January 1<sup>st</sup>. This may be done by CPI adjustment, fair market value or other appropriate means of establishing the reasonable rent.

3. Appeal of Rent Adjustment: If a tenant believes a CPI adjustment is 10% or more above market rates or they believe and can demonstrate that the compounding rent increases threaten the viability of its service provider or manufacturing business they may appeal the CPI adjustment to the City Council.

C. Land Values:

Annually, the City will obtain individual market values for all land parcels for City leased property.

D. Building Values (including land):

Annually, the City will evaluate market values of all City owned buildings (including land) to determine a range of lease rates for each marketable building. Actual leases will be negotiated based on length of term, capital investment, number of jobs, types of jobs (living wage), as well as any substantial development.

## VI TERM

A. Land Lease:

1. Initial Term. The initial term may be up to thirty (30) years, and will be determined according to the needs of the tenant, design standards of improvements, useful life of the improvements, and future needs of the City.<sup>1</sup>

2. Option to Extend. The initial term may be extended by two (2) additional ten (10) year periods provided tenant has met maintenance standards outlined in the lease, made upgrades extending the useful life of the improvements, and the proposed additional term is supported by outside professionals such as structural engineers and/or architects, and future needs of the City.<sup>2</sup>

B. Building Lease:

1. Initial Term. The initial term may be up to thirty (30) years, and will be determined according to the needs of the tenant, design standards of improvements, useful life of the improvements, and future needs of the City.<sup>3</sup>

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<sup>1</sup> Useful life of the building needs to be determined in writing by Lessee's architect, engineer, building designer, or other qualified professional.

<sup>2</sup> Useful life of the building needs to be determined in writing by Lessee's architect, engineer, building designer, or other qualified professional.

<sup>3</sup> Useful life of the building needs to be determined in writing by Lessee's architect, engineer, building designer, or other qualified professional.

2. Option to Extend. The initial term may be extended by two (2) additional ten (10) year periods provided tenant has met maintenance standards outlined in the lease, made upgrades extending the useful life of the improvement, and the proposed additional term is supported by outside professionals such as structural engineers and/or architects, and future needs of the City<sup>4</sup>. The initial lease and option period will not exceed thirty (30) years.

## VII. TERMINATION OF LEASE

At the termination of the lease, the City has the right to request the tenant to remove all improvements, including buildings. This supports the goals of quality construction, maintenance standards, and minimizes the financial exposure to the City.

## VIII. PERFORMANCE OF REQUIREMENTS

The City recognizes its obligation to ensure development and continued operation of viable business on its property. The City may employ accomplishment goals such as performance requirements in its leases. Establishment of such requirements ensures that the tenant will develop the property as the tenant has represented to the City. The performance requirements can take various forms depending upon the nature of the development: capital investment amounts, employment of a minimum number of persons (from the local labor force when practical), type of job (living wage), production above a certain level, or some other reasonable measure to ensure a viable activity. Performance requirements are not intended to be established at a maximum level, but rather at a threshold level of viability for operation of the business.

## IX. QUALIFICATIONS OF TENANT

### A. Leasing application process:

1. A letter of intent shall be submitted on forms developed by City staff.
2. The Director of Finance will conduct a financial review. The financial review will be appropriate to the tenant and may include any or all of the following: credit report, Dunn and Bradstreet report, financial statements, tax returns, or such other information the Director of Finance deems necessary. The Finance Director will communicate the results of the financial review to the Mayor.
3. If the Mayor recommends approval, then the City will prepare a lease for City Council approval as appropriate.

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<sup>4</sup> Useful life of the building needs to be determined in writing by Lessee's architect, engineer, building designer, or other qualified professional.

4. If the Mayor does not recommend approval, then the prospective tenant has the opportunity to address the City Council at a regular City Council meeting and request reconsideration.

B. Open Public Record:

All information provide to the City is subject to the requirements of open public records laws. If a public records request is made, the City will notify the party submitting the records and said party will assume all costs of preventing disclosure of such documents.

X. VARIATION FROM POLICY


The policy set forth above may be varied from time to time to fit particular instances as is deemed advisable by the City Council.

XI. REVIEW OF POLICY

The leasing policy shall be reviewed from time to time as deemed appropriate by the City Council.

**PASSED AND APPROVED** by the Anacortes City Council this 5<sup>th</sup> day of January 2009.

CITY OF ANACORTES

  
H. Dean Maxwell, Mayor

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