

# LEASE AGREEMENTS AND LEASE AGREEMENT POLICY FOR SPORT AND RECREATION FACILITIES

Item A-SR (01-2010) CM 2010/07/22	REPORT ON THE STATUS OF LEASE AGREEMENTS AND THE PROPOSED NEW LEASE AGREEMENT POLICY FOR SPORT AND RECREATION FACILITIES
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## RESOLVED:

1. **That** the contents of the report on the status of lease agreements and the proposed new Lease Agreement Policy for Sport and Recreation Facilities **BE NOTED**.
2. **That** all new lease agreements **SHALL BE** in line with the new Policy on Lease of Sport and Recreation Facilities.
3. **That** all existing Lease Policies on Sport and Recreation Facilities **BE RESCINDED**.
4. **That** where there is more than one application for the same facility, a presentation **BE MADE** to the Portfolio and the matter **BE DEALT WITH** in line with the applicable legislation.
5. **That** where there is an existing lease agreement with an option to renew clause, the lessee **BE AFFORDED** the opportunity to exercise the existing right.
6. **That** the proposed new Lease Agreement Policy for Sport and Recreation Facilities **BE APPROVED**.
7. **That** all applications received **BE PERUSED** and **APPROVED** on their merits in terms of legislation applicable at that stage.
8. **That** a public participation process **BE UNDERTAKEN** in terms of the Asset Transfer Regulations, 2008 where applicable.
9. **That** the Executive Director: Corporate and Legal Services or nominee **ACQUIRE** a valuation of a facility when an application is received and such costs **BE RECOUPED** from the successful applicant.
10. **That** the City Manager or nominee **BE AUTHORISED TO SIGN** all approved lease agreements in line with Council's resolution.
11. **That** the Executive Director: Sport, Recreation, Arts & Culture **BE REQUESTED** to schedule a meeting with the departments and all lease holders to present the lease agreement policy to ensure that all parties are cooperating and for a programme to **BE DRAFTED** by the Executive Director to deal with all non-complying lease holders.

## ANNEXURE B

**PROPOSED POLICY ON LEASE AGREEMENTS FOR SPORT AND RECREATION FACILITIES****PURPOSE OF THE POLICY**

This policy is intended to act as a guideline on the use of sport and recreation facilities under lease and procedures to follow in finalizing lease agreements.

**OBJECTIVES**

- To ensure that there is a proper and updated register of all lease agreements for sport and recreation facilities.
- To ensure equitable access to Council facilities by all members of the community.
- To generate appropriate revenue on leased facilities.
- To curb the deteriorating state of some leased facilities, and underutilized facilities.

**BACKGROUND**

The existing policy on lease agreements for sport and recreation facilities has been in place since September 2002 as the Council approval (ITEM SR 98-2002). Most of the existing lease agreements are those that were inherited by Ekurhuleni Metropolitan Municipality from the erstwhile Councils through the amalgamation process. There is a need to review the policy to ensure compliance with relevant legislation.

**DEFINITIONS**

<b>LESSOR –</b>	shall mean the Ekurhuleni Metropolitan Municipality
<b>LESSEE –</b>	shall mean a sport and recreation club or sport and/or recreation federation or user of facility that has a contract with the Municipality.
<b>LEASE AGREEMENT –</b>	shall mean the contract between the lessor and the lessee
<b>LEASE PERIOD –</b>	shall mean a period of three years.
<b>MAINTENANCE –</b>	shall mean day to day cleaning, grass cutting, and any other related functions within a facility.
<b>PERIOD –</b>	shall mean the duration of the lease agreement between the lessor and the lessee.
<b>TRANSGRESSION –</b>	shall mean the violation of the terms and conditions and responsibilities set out in this lease agreement policy.
<b>TERMINATION –</b>	shall mean the termination of the lease agreement by either the lessee or the lessor by giving a one month notice to either lessee or lessor.
<b>VALUATION –</b>	shall mean the determination of the value of the facility and the applicable rate thereof.

**Introduction**

The meaning of the contents of this policy shall be taken as is and any confusion with interpretation shall be referred to the legal experts for clarification. It is believed that the policy, when implemented properly, shall give meaning to proper facility management and maintenance, especially leased facilities. It further attempts to ensure that all role players understand and are clear on their responsibilities and obligations.

## **1. Application for lease agreement**

- 1.1. The prospective lessee shall, in writing, apply to Council through the Executive Director Sport Recreation Arts and Culture (ED: SRAC) for all related sport and recreation leases.
- 1.2. The lessee shall indicate the time period the lease agreement is needed for.
- 1.3. The lessee shall demonstrate, through the submission of the Development Plan and the Full List of active and affiliated Clubs, its commitment to the transformation of sport agenda in the country subject to the provisions of the Constitution of the Republic of South Africa.
- 1.4. The lessee shall submit a bank statement, which will be used for purposes of determining the financial viability of the lessee to maintain Council facilities. The lessee must produce a constitution and an instruction, by way of minutes of a meeting, nominating a delegate/s to negotiate a lease agreement with Ekurhuleni Metropolitan Municipality.

## **2. Processing of the application**

- 2.1 Upon receipt of the application, ED: SRAC shall within five working days acknowledge receipt of such application.
- 2.2 ED: SRAC shall, within one week, investigate the possibility of such a facility being leased, and consult with relevant departments, especially Legal and Administration and Finance.
- 2.3 The Legal and Administration Department shall no later than two weeks the application was received, assist SRAC by appointing a suitably qualified valuator (where facility is not valuated) to value the facility and give concise market related rental. SRAC will be responsible for the cost of such.
- 2.4 The ED: SRAC shall request the applicant to present to the SRAC Portfolio Committee for recommendation to Council.
- 2.5 Upon approval by the SRAC Portfolio Committee, the application shall follow Council process and a Public Participation process shall be instituted through the City Manager.
- 2.6 Where there are no objections and Council has approved the application, the applicant shall enter into a lease agreement with council, subject to the legal requirements and delegations at that stage.

## **3. Management of lease agreements**

- 3.1 The original copy of the signed lease agreement shall be kept by the Legal and Administrative Department. (CCC office of where the property is situated)
- 3.2 Duplicate copies shall be kept by the Department Sport, Recreation, Arts and Culture.
- 3.3 The Finance Department shall open an account in the name of the lessee for billing purposes for services such as water, electricity, refuse removal and the monthly rental of the facility.
- 3.4 Whereby the agreed upon period for payment is annually, 3, 3 shall apply and agreed terms and conditions are signed for.

## **4. Alterations to leased facilities**

- 4.1 No lessee shall alter or change any structures on Council property without prior written approval by Council.
- 4.2 Applications regarding any structural changes to Council owned properties (sport and recreation facilities) shall be referred to the relevant department, who shall then advise the relevant departments. Applications must be submitted through the department SRAC.

- 4.3 Any alterations to Council's properties shall be handled by the relevant department subject to all applicable legal prescripts and Council policies.
- 4.4 The cost for any proposed alteration/s to Council's facility shall be for the account of the requesting lessee which costs shall not be refundable on expiration or termination of a lease whichever comes first.

## **5. Sub-letting of leased facilities**

- 5.1 Applications for sub-letting portions of the leased facility shall be in writing to Council through ED: SRAC,
- 5.2 Where a provision is made to sub-lease Council owned property, such sub-lease shall subject to Council's prior permission. The rental amount in respect of the sub-lease shall be determined by Council, taking into consideration the existing lease.
- 5.3 Council shall take into consideration the nature of the sub-lease being applied for, possible conflict with existing lease, impact on the nature of the facility and security before approving such.

## **6 Maintenance of leased facilities**

**The following options shall be available for maintenance purposes:**

### **6.1 Full maintenance**

- 6.1.1 The lessee shall do maintenance and adhere to all relevant legislation to the satisfaction of the ED: SRAC or nominee.
- 6.1.2 The lessee shall give monthly maintenance reports to ED: SRAC as part of the monitoring process and recording of maintenance costs.
- 6.1.3 The lessee shall work within Council's supply chain management policy, and where possible, utilise suppliers and contractors registered on the municipal database.

### **6.2 Part maintenance**

- 6.2.1 The lessee shall be responsible for the day-to-day cleaning of the facility, provision of necessities (toilet paper, paper towels, soap) in the ablutions and the municipality shall maintain the rest of the surroundings.
- 6.2.2 The lessee shall fall within the Department's maintenance programme and shall continuously liaise with relevant officials to ensure that maintenance standards are met.
- 6.2.3 Where there is no response and any action from the relevant officials, the lessee shall, in writing, complain to the ED: SRAC.
- 6.2.4 ED: SRAC shall investigate the lack of maintenance and take necessary steps based on the outcome.

## **7 Monitoring and evaluation of lease agreements (Clause 7, 8 and 9 shall be subject to the applicable legal prescripts and Council's processes and procedures)**

- 7.1 ED: SRAC shall put uniform systems in place to ensure that SRAC officials monitor the use and condition of leased facilities.
- 7.2 A report shall be given by the officials on their site visits and recommendations thereof.
- 7.3 A comprehensive quarterly report shall be provided to the relevant portfolio committee by ED: SRAC or Nominee on the status of all leased facilities and shall include any challenges experienced and recommendations.

**8 Operating of business at sport facilities**

8.1 A lessee shall be entitled to the full business rights existing subject to all applicable legislation.

**9. Safety and Security**

9.1 The Lessee shall be responsible for ensuring that the assets of Council at a leased facility are safe and secured during the lease period, through the provision of adequate security. This will only apply to lease agreements with full maintenance.

9.2 The lessee shall report all breaks-ins, vandalism at leased facilities within 24 hours of occurrence.