

# Corporate Real Estate: Leases and Licensing Audit



**September 19, 2024**

Domenic Pellegrini, Senior Audit and Investigations Specialist

Brigitte Minard, Deputy Auditor General

Charles Brown, Auditor General

Office of the Auditor General



**Hamilton**

OFFICE OF THE  
AUDITOR GENERAL

## Contents

Executive Summary.....	3
Audit Objectives.....	7
Background .....	7
Lease versus Licence .....	7
Organization .....	8
Scope .....	8
Detailed Findings.....	10
The Systems - ARCHIBUS and TRACKER.....	10
Accountability and Transparency for Lease and Licence Administration.....	12
Administration of Below Market Rents.....	14
Delegations of Authority (DOA) .....	15
Standardized Agreements .....	16
Policies and Procedures Framework .....	17
Review of Lease Agreement Status .....	18
Licences .....	22
Other Observations .....	25
Licence for 15+ Years With No Increase In Rent.....	25
Inconsistency Between ARCHIBUS and TRACKER .....	25
Need for Proactive Reporting Systems – Notification/Tickler Reports .....	26
Rent Collection and Arrears.....	26
Leases: Current Collection Process for Bad Debts/Arrears through AR Finance .....	28
Accumulated Arrears: Revenues Lost or Unlikely to be Fully Collected .....	29
Case 1: Company A - Arrears of \$720K Accumulated in Four (4) Years.....	30
Case 2: Company B - Invoicing Started 10 Months after the Lease Began.....	31
Case 3: Company C and D - Unpaid Taxes due to City’s Late Administration .....	32
Case 4: Company E - Delayed Invoicing By City Causing Arrears .....	32
Case 5: Company F - Lateness in Renewal of Agreement and Subsequent Delayed Billing ..	33
Case 6: Company G - Continuing to Invoice a Vacated Lease for 33 Years .....	33
Case 7: Company H - Licence Agreement Forgotten About for four (4) Years.....	34
Case 8: Companies I and J - Invoicing does not Agree with Licence Terms/Late Renewal ....	34
Case 9: Companies K and L - Licensing at Below Market Value.....	35
Case 10: Company M - City did not Invoice for 22 months.....	35
Other Issues .....	36
Lack of Monitoring of Insurance Requirements .....	36
Recommendations.....	37
Conclusion.....	37

## Executive Summary

- 1 The objectives of this audit were to assess the administration of leases and licences for efficiency, effectiveness, and compliance with City policies, guidelines and legislation, including whether systems and practices are providing the City with reasonable assurance that its assets are being appropriately safeguarded, and revenues maximized.
- 2 A lease is a legally binding contract outlining the terms under which one party (the lessor) agrees to rent a property it owns to another party (the lessee). In Ontario, a lease usually confers exclusive possession of a property to the lessee. A licence is also a legally binding contract, but does not confer exclusive possession, rather it gives the licensee the right or privilege to enter and use the licensor's property in a certain manner. The audit focused exclusively on lease-out arrangements or revenue leases/licences where the City acts as a landlord.
- 3 There are several actors involved in the administration of leases and licences. They include Corporate Real Estate Office (CREO), Corporate Facilities and Energy Management Division (CFEM), various program areas (primarily Recreation Division – REC), and Legal Services.
- 4 Through our audit process, we developed a number of observations and findings.
- 5 From a systems perspective, lease and licence administration is carried out primarily through ARCHIBUS, TRACKER (SharePoint site), and Legend software. We observed that one significant drawback of ARCHIBUS is that most of the information is not write-protected and therefore vulnerable to being changed without any trace as to the source and timing of the change. Further, it does not offer the complete functionality of a fully integrated lease administration solution. None of the systems used for leases and licences integrate with the financial systems used corporately, which affects the efficiency, accuracy, and timeliness respecting the tracking of invoicing, receipt of payment, and account status. In all systems we observed some data that was incomplete or not up to date, and data that was in disagreement when compared between systems.
- 6 In reviewing how leases/licences administration is organized, we found there was some documentation to clarify certain aspects of the roles, responsibilities, and processes of coordination between the various parties. However, in practice we found the administration to be inefficient, prone to error, and there are missed opportunities. The analysis in our detailed findings shows that there are numerous problems occurring in lease administration sufficient to suggest the current approach is not serving the City's needs. CREO has recognized that there are issues and inherent risks in the current approach, and they have considered centralizing lease administration. The Office of the Auditor General (OAG) concurs

this could be advantageous as a viable way forward for meaningful improvement. We also note in the report some improvements that could be made in the CREO/CFEM agreement, and we cite the development of a business agreement between CREO and REC as an opportunity. In general, we concluded that the City has a fragmented system of managing leases and licences, and the current approach to maintaining reliable data needs much improvement.

- 7 From time to time the City will lease or licence space at below market rental rates to a party that is a community group, charity, or not for profit entity. While there are criteria for such decisions, we noted that procedures supporting these criteria, including the documentation and analysis could be more robust. With any space that is rented at below market rent there is an implied subsidy in the difference between fair market value and actual rent. In our view, management needs to review and renew the current criteria and procedures for below market rental, looking for improvement opportunities toward achieving greater consistency and compliance with existing City policy, and toward a more transparent and accountable process.
- 8 We also observed the need for update to the delegations of authority for leases and licences, and for ensuring their inclusion in official policy documents.
- 9 One key tool used by administrators of leases and licences is a comprehensive agreement between the parties, and we observed that the agreements currently under administration can vary considerably in form, content, and language. In 2015 Recreation (REC) decided to improve their administration of licences toward achieving a greater level of uniformity, and improving oversight and due diligence, by standardizing their agreement structures. However, for leases this has not happened, and we have observed that there are agreements that have not kept up with evolving standards, including some that have been in place since pre-amalgamation and that need to be brought into consistency with current City policies and best practices for lease administration. We concluded that CREO would benefit from efforts to standardize agreements as much as possible. This would facilitate uniformity, improve the efficiency and effectiveness of contract management, and ease the burden of legal review and oversight.
- 10 For effective administration, it is important to have a leasing policy. A comprehensive leasing policy establishes the key policies, requirements, roles, decision criteria, procedures, guidance, and checklists that seek to enable sound lease administration. The benefits include maintaining of institutional knowledge, training, generating sufficient awareness of requirements amongst all involved parties, supporting City objectives, more assured compliance with City requirements and legislation, greater transparency and accountability, fairness in business dealings, and value for money. While the City does have some procedures, roles and criteria developed for specific aspects of lease

administration, they are not as comprehensive or fulsome as they could be and are generally lacking in detailed or standard operating procedures.

- 11 We are aware of another municipal jurisdiction having a comprehensive policy framework supported by defined procedures that explain how the key requirements of leasing policy are to be met. Given there is contemplation of reorganization of leasing responsibilities to improve consistency and effectiveness of service delivery, it makes sense to suggest that, once directions have been decided, the development of a policy framework and set of standard operating procedures be undertaken.
- 12 In a review we conducted of data accuracy in the system(s), we found a large number that required status adjustment as they were erroneously recorded. Specifically, we found that of 85 active leases, there were 31 (or 36%), not 18, in overhold – which is to say that 31 agreements had expired and gone into month-to-month tenancy pending a new agreement. We discovered that 65% of these overholds were three (3) or more years in overhold status. We therefore concluded that the accuracy of lease information is not reliable, not kept up to date, and overholds need to be dealt with more expeditiously. Further, there were examples of overholds that simply went into effect at then-existing rent which bears risk of revenue leakage or loss.
- 13 For licences, the level of data challenge was similar. Actual licences in overhold were 97 vs 34 in the system, with 74% of them having been in overhold for longer than three (3) years, including one that had been in overhold for more than 15 years with no adjustment to monthly rent.
- 14 In addition, we encountered discrepancies between ARCHIBUS and TRACKER data for the same properties and identified a need for more proactive reporting/notification of upcoming and time sensitive administration requirements such as agreement expiry, renewal, overhold, rent escalation etc.
- 15 As part of the audit, OAG evaluated procedures for rent collection and arrears management. For leases, rent collection is performed by the City's Corporate Finance function – specifically, Accounts Receivable (AR Finance). It is a cumbersome process because it relies on AR Finance coordinating with program areas and involves a financial system that is not integrated with lease administration systems, making the process vulnerable to human error, delay, and inconsistency, particularly when accounts get into arrears. The system of collection for **licences** operates differently than leases and is conducted through multiple channels and processes that include the use of the Legend software and spreadsheets that facilitate the tracking of rents/fees.
- 16 Overall, we found the processes for collection of rents and fees for leases and licences, including overdue or unpaid amounts, to be inherently weak, and

inadequate to ensure full collection and restoration of arrears on a timely basis. OAG believes this is due to the lack of robust process, weak accountability, poor "line of sight" into the status of receivables, and lack of timely action when confronted with collection issues. Some of the challenges are rooted in the fact that responsibilities are dispersed amongst multiple parties and multiple tools, with few incentives to engage in aggressive collection efforts.

- 17 In analyzing the status of arrears (rental payments long past due) at the date of our audit, we found that the accumulated arrears and rental losses or revenues unlikely to be fully collected to be approximately **\$1.2 million**. In investigating the circumstances, we found various types of issues and problems contributing to such significant arrears and losses including delays in invoicing – in some cases from 10 to 22 months; tax arrears arising from untimely action by the City; and a licence agreement that was forgotten about for 4 years. In fact, we found six (6) examples of tenants not being invoiced for multiple years. There was also a case where a tenant continued to be invoiced and collected from for 33 years after the lease had been vacated. We describe some specific cases in our report.
- 18 OAG made 35 recommendations in this report.

## Audit Objectives

- 19 The primary objectives of this audit were to assess whether the administration of leased and licensed City-owned properties is efficient and effective, and compliant with City policies, guidelines and legislated requirements. The audit also evaluated whether the systems, practices and procedures being followed are providing the City with reasonable assurance that its assets are being appropriately safeguarded and controlled, and that revenues to the City are maximized where applicable.

## Background

- 20 In the course of conducting an investigation into another matter, the Office of the Auditor General (OAG) obtained information suggesting that the City's practices with respect to the administration of leases and licences were not up to date, and that this has resulted in higher risk and/or losses to the City, including that rents were not being collected on a timely basis, or not at all. In the past 4 years annual revenues from leasing and licensing of City space has ranged from \$1.7M to \$2.2M per annum.

### Lease versus Licence

- 21 A lease is a legally binding contract outlining the terms under which one party (the lessor) agrees to rent a property it owns to another party (the lessee). In Ontario, a lease usually confers exclusive possession of a property to the lessee. This exclusive right of possession may exist even if the lease imposes some restrictions, such as how the property may be used.
- 22 A licence with respect to real property normally does not confer exclusive possession to the licensee. It only gives the licensee the right or privilege to enter and use the licensor's property in a certain manner or for a specified purpose. It is a personal right between the licensor and licensee and does not create any estate or interest in the property. A licence grants permission without which the use of such property could be considered a trespass.
- 23 In practice, a lease is appropriate where the City is acting as a landlord, and intends to confer exclusive possession, as for example when renting property to a tenant that is a commercial enterprise. The use of a lease affords the tenant statutory protection under landlord/tenant legislation and ensures due process in how matters between the landlord and tenant are to be handled.

## Organization

- 24 The administration of leases and licences is the responsibility of several actors.
- 25 The City's Recreation Division deals almost exclusively with licence agreements and administers the use of sports fields, recreational facilities, old town halls and community centres. The Recreation division also acts as a conduit with both School Boards for the use of the City's open spaces. The Recreation Division does not generally enter into lease agreements.
- 26 The City's Facilities Planning & Business Solutions Section is part of the Corporate Facilities and Energy Management Division (CFEM) of Public Works. It primarily deals with lease administration applicable to buildings and properties in the Public Works portfolio. This section also utilizes facility use agreements when renting space over the short-term. This section, often referred to as Facilities Management (FM), also manages the storing and tracking of all real estate agreements (i.e., leases, licences, facility use agreements, easements, etc.) through ARCHIBUS, a system used to manage and administer leases, licences and properties (including facilities management).
- 27 The Corporate Real Estate Office (CREO) is part of the City's Economic Development Division. The CREO manages the commercial lease transactions and provides front-end lease administration. The Office is involved in negotiating more complex leases and licence transactions. It is also engaged in tidying up lease and licence documents; the administration of agreements that cannot be done by FM; and much of the communications with Accounts Receivable regarding rent collections.
- 28 One staff person in each of the above areas is responsible for the administration of leases and licences. In addition, solicitors from Legal Services assist with the drafting and finalization of various agreements and provide advice with respect to agreement interpretation and disputes or issues of various kinds.

## Scope

- 29 The scope of the audit was limited to leases and licences administration, and more specifically those found in the ARCHIBUS database as at December 23, 2022. The audit focused exclusively on standard **lease-out** arrangements (i.e., revenue leases where the City is a landlord) and did not review administration of lease-in arrangements (where the City is a tenant) or non-standard leases that involve complex arrangements or consideration.
- 30 Further, the audit sampled those revenue leases and licences whose status was either Active, Overhold or Recurring. An Active lease or licence is defined as one



that has not reached its expiry date - as these are the ones OAG considered currently in force for the purposes of the audit. Overhold refers to leases or licences whose agreement has expired. These may be referred to as month-to-month leases or licences. In the case of our sample, the expiry/termination/end date occurred before December 31, 2022, but the tenant continued to occupy the property with the City's consent. A Recurring lease is one where the overhold period has been extended indefinitely.

- 31 The OAG interviewed management and staff affiliated with the CREO, Facilities Management, Recreation, Legal Services, and Finance and Administration. The OAG also examined a variety of lease and licence agreements, Delegated Authority documents, consultant reports, audits, and the ARCHIBUS and TRACKER systems. The information collected was then analyzed and is presented in our findings below.

## Detailed Findings

### The Systems - ARCHIBUS and TRACKER

- 32 There are two main systems used to administer lease arrangements – ARCHIBUS and TRACKER (SharePoint site). (Note that for **licensing** there is another system called Legend that is used by Recreation Division to administer licenses. It is discussed in the next section of the report).
- 33 ARCHIBUS is an Integrated Workplace Management System (IWMS). It is designed to provide detailed information and insight into facility operations including real estate, infrastructure, buildings, physical assets, and project data. In the City of Hamilton this system is mostly managed and used by the Facilities Section of the City's Facilities and Energy Management Division. It is also used by the Corporate Real Estate Office to keep track of various transactions carried out by this section including information about various lease and licence agreements. This information may be accessed by searching ARCHIBUS via File Number, Property Roll Number, Street name and Number, Key Words (i.e., lessee and/or licensee's name), or by the Real Estate staff that entered the data. Real Estate staff are responsible for entering and maintaining the lease and licence records. This includes ensuring that the various "Details" tabs in ARCHIBUS are up to date. These tabs are Appraisals, Circulations, Sales, Purchases, Licence Agreements, Leases, and Mail. When updating licence and lease agreements, Real Estate staff can provide general information such as lease and licence terms and conditions as well as linking the Delegated Authority (DA) document. (Note: The DA document is a memo issued by the Corporate Real Estate Office stating that it has approval for the lease or licence agreement.) The DA is sent to the Ward Councillor, as well as to City managers and staff in various City divisions and sections impacted by the lease or licence. It also summarizes the major terms and conditions of the actual lease or licence agreement itself. This information is necessary for lease and licence contract management.
- 34 One drawback with ARCHIBUS as it's currently used is that most of the information is **not** write protected. The system is vulnerable to (not secure from) undetectable editing. For example, the information in ARCHIBUS may be viewed and edited by anyone using the City's eNet with access to ARCHIBUS' Real Property and Lease Management Portal. While individuals with such access is limited to some staff in the Corporate Real Estate Office (CREO) and Facilities Management and Corporate Programs (FM) these individuals can make changes to some of the information on many of the fields on the various ARCHIBUS screens. The information may be changed without any trace as to who made the change and when it was made. The fields that could be changed include the term

dates, the staff assigned the file, the file status, and the comments. In addition, the approval document and lease and licence agreement documents normally attached to the file could be added or removed. The recent cybersecurity incident experienced by the City only elevates the importance of being able to secure system data and to log and track changes and their origins.

35 Further, the ARCHIBUS system, in its current state of deployment, does not offer the complete functionality of a fully integrated lease administration solution. For example, it cannot reliably provide notification reports of leases coming to end of term or deliver the functionality of a "rent roll."

36 A **Rent Roll** is a tool that can be used by management to monitor the status of each lease and licence. The Rent Roll includes:

- an identification number,
- monthly rent amount,
- lease/licence commencement date,
- date that payments are to be made or come due,
- expiry date,
- renewal options,
- free rent period (if applicable), and
- delinquent payments.

37 Corporate Facilities provided a log, listing all of the City's leases and licences that was obtained off the information available in ARCHIBUS. This log only listed the data referred to in the first six bullets above. It did not include data on delinquent payments. This information can only be provided by Accounts Receivable (AR). Therefore, a Rent Roll as described above is not available. Management responsible for leases have no way of knowing which lessees are delinquent in remitting payments unless they are informed by Accounts Receivable.

38 TRACKER is another method used by CREO, Financial Services (i.e., Finance and Admin) Facilities Management, and Legal Services to track the documentation and execution of real estate transactions, including lease and licence agreements. Legal Services staff especially appreciate using this application as it keeps the relevant information that they need at hand, such as tenant's name, property location, attached lease or licence, and highlights unusual terms in the lease or licence. TRACKER was developed in house with the assistance of the City's Information Technology Division using the SharePoint platform. Unfortunately, TRACKER only contains leases and licences with a start date of 2019, or later. Therefore, it cannot provide a complete listing of the City's lease and licence agreements. In addition, we found discrepancies between information stored in

TRACKER and information in ARCHIBUS. In our view, an expanded use of SharePoint technology would be beneficial and should include separating the ability to make changes to the data and for ensuring the information is up to date and complete from those that use the lease and licence information in the system (ARCHIBUS), as well as the system tracking/logging of those who made the changes and when they were made.

- 39 Overall, these observations lead one to think it could be advantageous for the City to procure an integrated solution for lease administration. The alternatives to this approach would be to enhance the ARCHIBUS system, and/or TRACKER, or to explore the use of the City's Enterprise Asset Management (EAM) system that is being implemented across Public Works, for its feasibility in delivering improved functionality for lease administration, including agreement and rent status, notifications and administration of collections. It is our understanding that there has been no such assessment of EAM, nor is one planned. While a use case was developed to find a solution for the tracking of lease agreements, EAM has not been in consideration for replacement of ARCHIBUS' current level of functionality with respect to leasing, nor as a system that could offer an improved level of service, which OAG believes to be an important consideration.

(See Recommendation 1 in Appendix "B" to Report AUD24005.)

## **Accountability and Transparency for Lease and Licence Administration**

- 40 As explained earlier in this report, the administration of leases and licences takes place through the actions of at least four players – Recreation Division, Facilities Management, Corporate Real Estate Office, and Legal Services.
- 41 For leases, there is a shared administrative responsibility between Corporate Real Estate Office (CREO) and Facilities Management (FM). There is a "Business Agreement" between CREO and FM that describes the various roles that each party plays in the entire process. According to that agreement, after a joint process to determine whether occupiable City space is available to third party tenants, it is CREO that acts as leasing agent, and is responsible for finding a tenant and negotiating and completing an agreement. After fulfillment by CREO of all the documentation requirements of the lease, they are provided to FM who is responsible for lease administration throughout the tenancy, including resolution of any issues or disputes. FM is also responsible for providing, by using ARCHIBUS, the necessary information to CREO for tracking of lease rates, escalations, renewals, notification requirements, termination dates etc. on a monthly basis.

- 42 While the description, as documented, does seem to provide evidence of clear and unambiguous intent and processes that function smoothly, in actual practice, we have observed this approach to be inefficient, prone to error, and missed opportunities. In our view, the contributing factors to dysfunction begin with the reality that the different "actors" involved in lease administration have unique pressures, different priorities, skill sets, and knowledge. Also, the reality is that the procedures followed in practice do not strictly adhere to the processes and responsibilities as described, blurring the lines of responsibility and accountability. Further, as one can see from our analysis later in this report, there are numerous problems occurring in lease administration sufficient to suggest that the current approach is not serving the City's needs.
- 43 One solution that has been discussed amongst the parties is the gathering of lease administration into one centralized function that will assume all or most of the responsibility. CREO has recognized that there are issues and inherent risks in the current approach to administration and accordingly retained a consultant – an expert in real estate administration – to make recommendations for improvement. One of the consultant's main conclusions was for the City to centralize lease administration. In our view, this could be advantageous in terms of improving consistency and professionalism, and in resolving some of the current issues and lowering the risks that poor oversight of leases currently bears. It is our conclusion that CREO, in consultation with its partners, is in the best position to determine the merits of a centralization alternative. Regardless of the direction they choose to go, however, we would advocate that the status quo is not a viable way forward for meaningful improvement, and alternatives do need to be identified to address existing gaps so that there is more effective coordination of administration.
- 44 We also noted improvements that could be made with respect to the agreement between FM and CREO that defines roles and responsibilities. For example, it is stated in the document that various lease administration parameters will be tracked and reported to CREO on a monthly basis. However, we found little evidence that this was being done. It is also stated with respect to renewals that "where there are no salient changes or negotiations in terms, conditions or mutual agreement required, FM will proceed, in consultation with CREO to complete the renewal." This begs the question of what the process is for identifying the changes to terms and conditions that ought to be pursued. Further, there is no clarity with respect to the circumstances under which Legal Services should be involved and by whom.
- 45 For licences, it is our understanding that Recreation Division is meant to be the primary administrator. However, it does not appear that there is any formal documentation or "Business Agreement" between Recreation Division (REC) and CREO as there is between FM and CREO to clarify roles and responsibilities, including information sharing and data management. In the absence of such an

agreement, and based on our observations, it is unclear then exactly how responsibilities are divided with respect to licences, or how the data management is meant to evolve. Currently, there is no single source of data for licences. Licence administration data is maintained on two (2) systems – ARCHIBUS and Legend, and there are some licences we found active in ARCHIBUS not in Legend and some active in Legend not in ARCHIBUS. In addition to this being very difficult to ensure a complete and accurate listing of licences, we also observed that while REC is primary for administration of licences, there were some licences that were being maintained by CREO.

- 46 Our overall conclusion was that the City has a very fragmented system of managing leases and licences and that the current approach toward maintaining reliable data needs improvement.

(See Recommendations 2-5 in Appendix “B” to Report AUD24005.)

## Administration of Below Market Rents

- 47 From time to time the City will lease or licence space at below market rental rates to a party that is a community group, charity, or not for profit entity. In the Business Operating Agreement between CREO and FM there is guidance provided that supply the criteria that must be met for City facilities to be considered “eligible” for lease/licence at below market. In general, these parties must be not for profit entities whose activities support City objectives, are providing 50% or more of their resources toward serving City residents, and whose mandates are not the responsibility of other levels of government. While having such criteria is an important step toward accountability and sound management, we noted that procedures supporting these criteria, including the documentation and analysis could be more robust. In some of the files examined there was little analysis regarding the decision, and an absence of financial assessment on the parties wishing to rent City space. Further, there does not seem to be any account taken of the possible interest of other groups, in the criteria that have been established.
- 48 With any space that is rented at below market rent there is an implied subsidy in the difference between fair market value and actual rent. This was confirmed in the fact that, in our research, we found that according to the approved policy in October 2001 report CS01090 “except where Council specifies otherwise, all City of Hamilton real property transactions, including leases, will be based on fair market value, even when the other party to the transaction is another level of government, public sector agency, or non-profit organization providing services to City residents. In the latter case, the City may choose to use its **grant process** to wholly or partially offset the amount involved.”

49 This policy was modified by Council in November 2004, pursuant to recommendations contained in report PD04303 that provided guidance that would be followed in granting below market rents. Policies, principles and procedures were developed as part of a Real Estate Portfolio Management Strategy. The key criteria and principles recommended that property may be leased at below market if deemed to be in the public interest by Council and is subjected to a business case that establishes the lost revenue (implied subsidy) and justifies use by a community group. The criteria actually implemented applied four tests:

- the lessee must be a non-profit,
- it must demonstrate that more than 50% of its resources serve Hamilton residents,
- its services will further City objectives,
- there is no resulting subsidization of services supported by other levels of government.

50 In our view, the modified process begs the question of how it fully meets the recommendations of report PD04303, including a business case/financial impact analysis, and that Council deems the arrangement in the public interest. Also unclear is how the approach ensures the level of transparency befitting a grant or subsidy, and fairness in the accommodation of possible competing interests amongst parties that may wish to rent City space at below market rates.

(See Recommendations 6-7 in Appendix "B" to Report AUD24005.)

## Delegations of Authority (DOA)

51 As part of this audit OAG reviewed the delegated authorities that are in place for the approval of leases and licences.

52 For leases, the original authorities come from Committee of the Whole Report 01-029 which was amended in 2004 by PD04303. According to these documents, the authority to approve lease of land, including renewal or expiry of leases rests with the General Manager (or designate), for terms that do not exceed 5 years and are satisfactory to Legal Services, for a value of up to \$150,000. The City Manager has authority up to \$250,000 above which Council approval would be necessary. The delegated authority is silent, however, on what authority is required under the circumstances where a below market rent is to be granted, where the quantum of implied subsidy could be a significant amount.

53 For licences, according to the February 2015 report CES15002, the delegated authority rests with the General Manager of Community and Emergency Services

(or designate) to an amount not exceeding \$10,000 per year and not exceeding five (5) years. In this case, there is no provision for a higher level of authority i.e., the City Manager, nor is there any DOA guidance when the amount being charged is not representative of market conditions and therefore imply a level of subsidy.

54 We also note that it would be beneficial from a transparency perspective for these DOA limits to form part of the City's real estate leasing and licensing policy framework.

(See Recommendation 8 in Appendix "B" to Report AUD24005.)

## Standardized Agreements

55 A key tool to have in the administration of leases and licences is a comprehensive agreement between the parties. An up to date, detailed agreement offers the City the best possible efficiency of administration and protection from loss, adversity or other risks, in addition to minimizing disputes and misunderstandings with the tenant/licensee.

56 We observed that the agreements currently under administration can vary considerably in form, content and language. Some of this is due to the fact that the particular situations under each contract will vary according to circumstances and type of agreement. In other cases, they exist because the City still maintains older agreements that were executed years ago under different conditions and administrations, and have become out of date due to evolving standards for lease agreements, new legal precedents, and changing City policies.

57 For licences, the Recreation Division in 2015 was facing significant issues with inconsistency in their agreements due to, in some cases, an absence of standardized terms and conditions, or in others, an absence of agreements at all. So, they decided to improve their administration of licences toward achieving a greater level of uniformity and to improve their oversight and due diligence by standardizing agreement structure and content. In consultation with Legal Services, they developed standard template agreements and have been transitioning these agreements over time to the new formats.

58 For leases, this has not happened and we have observed that there are agreements that have not kept up with evolving standards, including some that have been in place since pre-amalgamation and that need to be brought into uniformity with current City policies, and best practices for lease administration. For example, we found agreements that were not reflective of current City policy with respect to financing charges for late payment (prime plus 2%), or that were



inadequate by contemporary standards regarding insurance requirements, indemnification, dispute resolution, audit rights or penalties.

59 Some agreements that come to end of term have not adequately provided for overhold through a provision that provides for automatic escalation of rent which can result in rents failing to keep up with the market.

60 We concluded that CREO would benefit from efforts to standardize agreements as much as possible. This would facilitate uniformity, improve the efficiency and effectiveness of contract management, and ease the burden of legal review and oversight. Variations that are needed to address unique situations would not only stand out, but would then receive focused attention, and eventually become a source of knowledge that could be applied to special circumstances and equip administrators with greater contract management expertise.

(See Recommendations 9-10 in Appendix "B" to Report AUD24005.)

## **Policies and Procedures Framework**

61 For effective and efficient leasing administration, it is important to have a leasing policy. A comprehensive leasing policy establishes the key policies, requirements, roles, decision criteria, procedures, guidance, and checklists that seek to enable sound lease administration. The benefits include maintaining of institutional knowledge, training, generating sufficient awareness of requirements amongst all involved parties, supporting City objectives, more assured compliance with City requirements and legislation, greater transparency and accountability, fairness in business dealings, and value for money.

62 While the City does have some procedures, roles, and criteria developed for some specific aspects of lease administration, they are not as comprehensive or fulsome as they could be and are generally lacking in detailed or standard operating procedures. Standard operating procedures are those meant to cover off all the key elements of administration of leases and are used to explain how key requirements of leasing are to be administered, including the monitoring of financial transactions and compliance with terms and conditions. Some of the general areas of coverage we would expect to see in terms of these procedures include decision to lease, rent determination, operating cost recovery, in-kind lease agreements, delegation of authority, below market rents, invoicing, collections, agreement compliance, monitoring of terms and conditions, reporting, dispute resolution, renewal, termination, property maintenance, data management, roles/responsibilities, overholds, subleasing, insurance, indemnification etc.

63 We are aware of another municipal jurisdiction having a comprehensive policy framework supported by defined procedures that explain how the key requirements of leasing policy are to be met. Additionally, we realize the CREO is contemplating the reorganization of leasing responsibilities to improve consistency and effectiveness of service delivery. Therefore, it makes sense to suggest that, once directions have been decided, the development of a policy framework and set of standard operating procedures would make a valuable contribution to the transitioning to the new model of delivery, while at the same time improving current processes.

(See Recommendation 11 in Appendix "B" to Report AUD24005.)

## Review of Lease Agreement Status

64 OAG reviewed an extraction of lease agreement data from ARCHIBUS as of December 23, 2022. According to the system, there were **366** lease agreements with different types of status as of that date. This includes leases where the City is the landlord as well as those where it is the tenant.

65 Not counting a considerable number of leases no longer under administration due to their being expired or terminated, we broke it down into the following, which shows there were 85 that would be considered current City-as-landlord leases:

**Table 1: Current Breakdown - Active, Overhold and Recurring Leases in ARCHIBUS as of December 23, 2022**

STATUS	City Is:				
	Landlord (Original)	Landlord (Revised)	Tenant	Other	Total
Active	65	54	37	8	<b>99</b>
Overhold	18	31	6	1	<b>38</b>
Recurring	2	0	0	0	<b>0</b>
<b>Total</b>	<b>85</b>	<b>85</b>	<b>43</b>	<b>9</b>	<b>137</b>

\*Other - the City is either both Tenant/Landlord, or the status was not stated.

66 Based on our analysis of lease-outs (landlord leases), we found a large number that required status adjustment as they were erroneously recorded as being active when their actual status was overhold (Table 1, Landlord (Original) vs Landlord

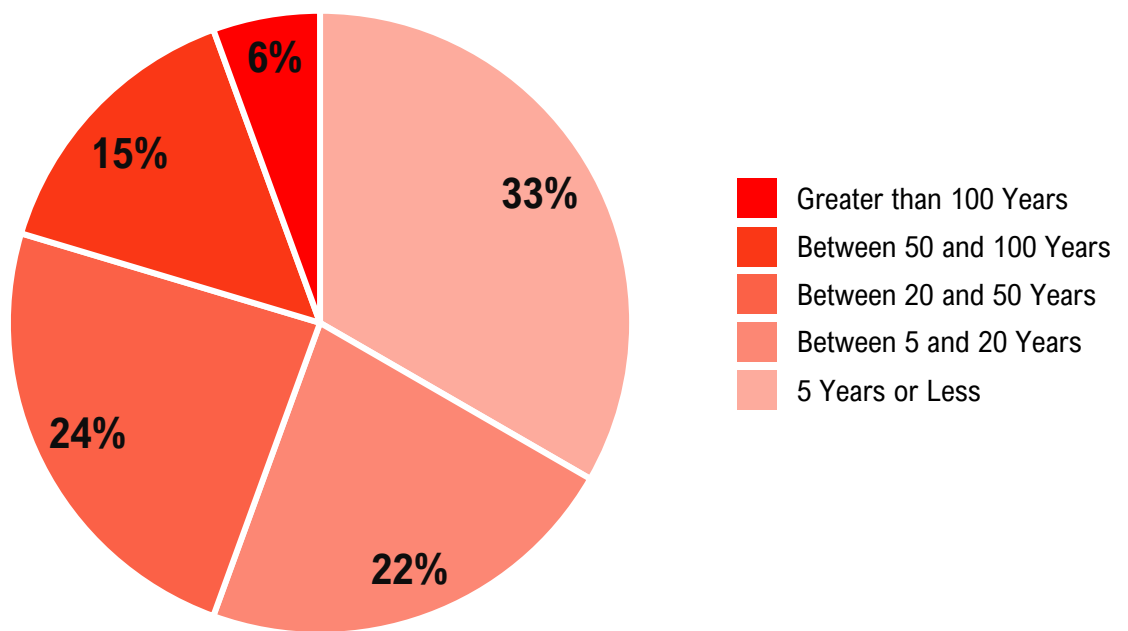
(Revised)). Overhold is triggered when a lease expires, and tenancy continues on a month-to-month basis pending renegotiation.

67 As far as the length of term of leases is concerned, those 54 that are in the "active" category (within the agreement period) have considerable variation (Table 2):

**Table 2: Active Leases, Length Lease Term in Years**

<b>Active Leases, Lease Term – Length in Years</b>		
Greater than 100 Years	3	6%
Between 50 and 100 Years	8	15%
Between 20 and 50 Years	13	24%
Between 5 and 20 Years	12	22%
5 Years or Less	18	33%
<b>Number of Active Leases</b>	<b>54</b>	<b>100%</b>

**54 Active Leases -  
Lease Term Length in Years**



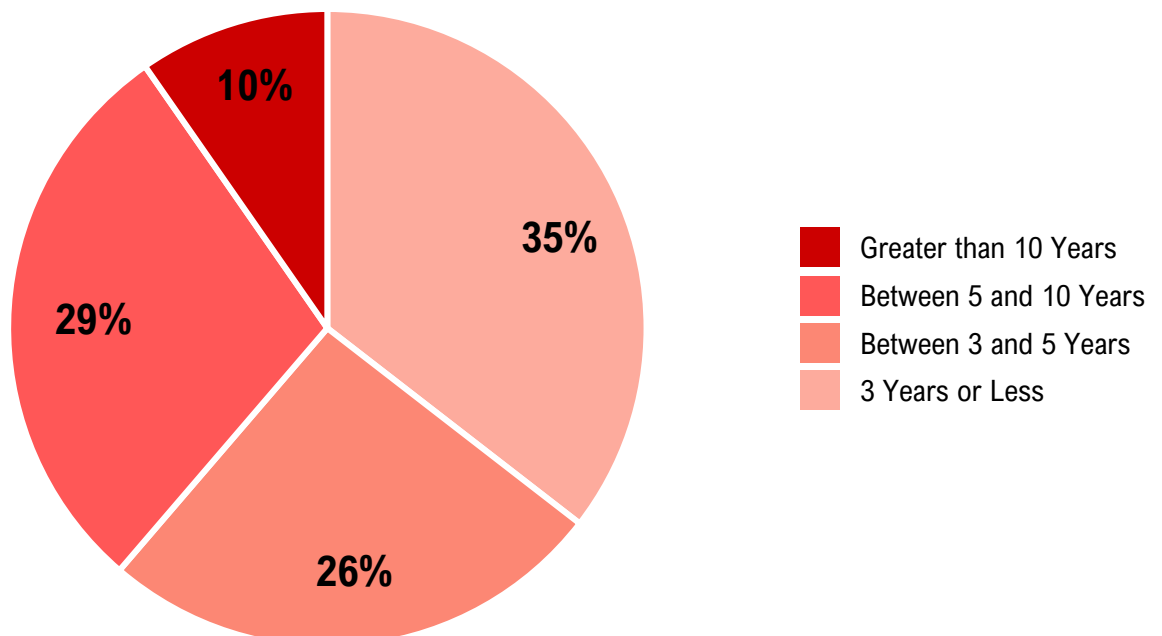
68 As far as the revised numbers in Table 1 are concerned, where the City acts as landlord, one can see that of the 85 leases that are in force, a substantial number, 31 (or 36%) are on overhold, meaning they need to be formally renewed.

69 Of the 31 leases on overhold that need to be renewed, 65% had been on overhold for 3 years or more (see Table 3 below) .

**Table 3: Leases on Overhold including Active and Recurring past Termination Date - Years in Overhold**

<b>Leases on Overhold including Active and Recurring past Termination Date - Years in Overhold</b>		
Greater than 10 years	3	10%
Between 5 and 10 years	9	29%
Between 3 and 5 years	8	26%
3 years or less	11	35%
<b>Total</b>	<b>31</b>	<b>100%</b>

**31 Leases on Overhold including Active and Recurring Past Termination Date - Years in Overhold**



70 From these observations we concluded that the accuracy of lease information is not reliable, and not kept up to date. Additionally, overholds need to be dealt with on a more timely basis.

71 Further, we found examples where the overhold was renewed at then-existing rent, which works in favour of the tenant since it is reasonable to presume there should be increases reflecting fair market value which do not get addressed in a timely fashion because of the associated protracted process, resulting in lost revenue to the City. This is one area where having appropriate legal language and a clause that escalates the rent on expiry into overhold would be beneficial to the City.

### Some Examples

72 Clearly, the risk with having significant numbers of leases on overhold for long periods of time is revenue leakage. If the rent paid by the lessee is not increased to keep up with inflation and market prices, over time, the City could lose material amounts of revenue. Accordingly, we analysed 20 leases that had been on overhold for three years or longer from Table 3 above. Our review showed that in thirteen of these leases there was a provision in the lease agreement itself to increase the rent payment either by the rate of inflation or by a set amount. In four of the 20 cases the rent payable was nominal (\$1 per year). Obviously, for these, it was of little consequence that rent payable should increase by a set amount each year. However, in three of the 20 cases reviewed, the original agreement did not set a requirement to increase the rent by any prescribed amount each year. One of these leases has been on overhold for five years, the second has been on overhold for eight years, and the third by for nine years. As such, the City has lost money on three of the 12 leases (25%) that have been on overhold for five (5) years or longer.

## Licences

- 73 OAG also reviewed an extraction of licence data from ARCHIBUS showing **400 licence agreements** with different types of status - active, overhold, recurring, superseded, expired, terminated, cancelled, and vacated.
- 74 Only active, overhold, and recurring leases are considered current, meaning they are still in effect and require staff monitoring and administration.
- 75 Accordingly, we analysed the number of licences that were in force (active, overhold, recurring) which was 179 as shown below in Table 4. However, within the breakdown of the 179 we found a large number of licences that required status adjustment as they were actually in overhold as opposed to active (within the agreement period) status. Essentially, ARCHIBUS was not up to date with respect to licence data. The revised numbers are also shown below in Table 4.

**Table 4: Current Breakdown - Licences in ARCHIBUS by Portfolio**

			Portfolio falls under the following sections:					
STATUS	Original Number	Revised Number	Corporate	Real Estate	Recreation	Parks	Not Identified	Other
Active	131	81	13	7	7	4	45	5
Overhold	34	97	11	19	45	5	12	5
Recurring	14	1	0	0	1	0	0	0
<b>Total</b>	<b>179</b>	<b>179</b>	<b>24</b>	<b>26</b>	<b>53</b>	<b>9</b>	<b>57</b>	<b>10</b>

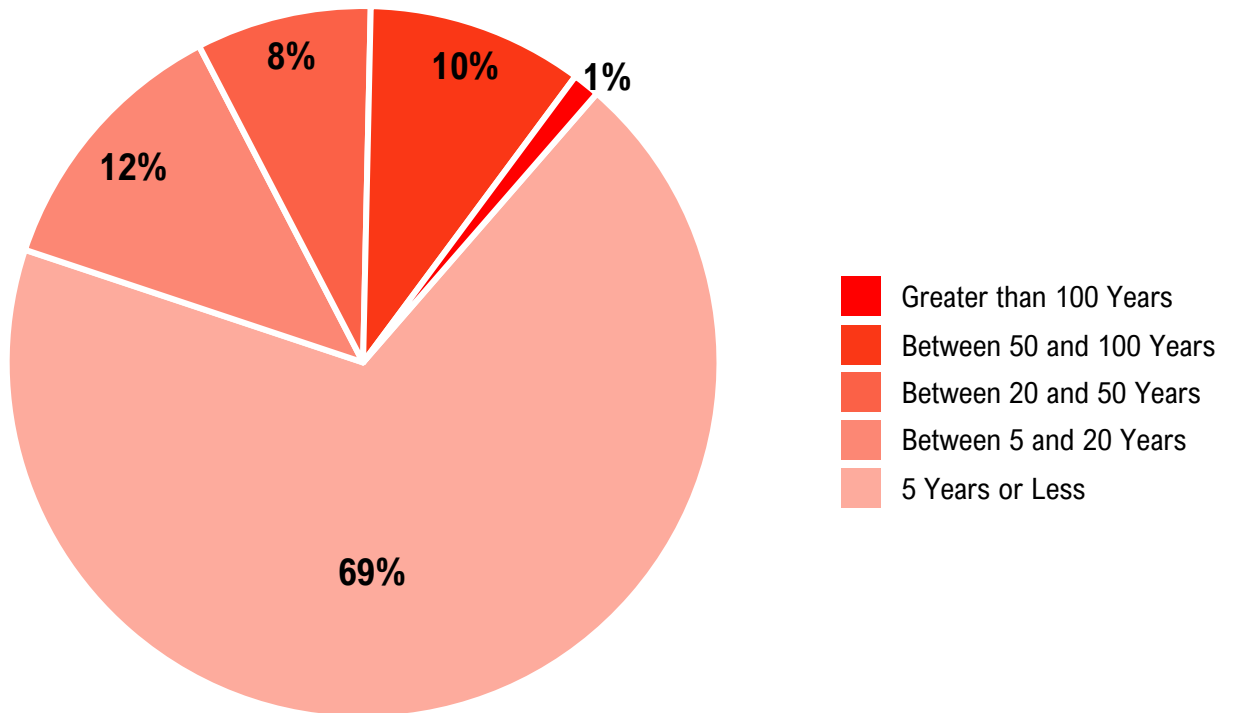
- 76 The list of licences was broken down by portfolio holder (responsible Division/Section). In Table 4 above, we noted that a portfolio holder was not identified for 57 licences – this information was not entered in ARCHIBUS.
- 77 As far as the length of term of licences is concerned, those that are in the “active” category (within the agreement period) have considerable variation:

**Table 5 - Active Licences - Length of the Term**

Licence Term – Length in Years		
Greater than 100 Years	1	1%
Between 50 and 100 Years	8	10%
Between 20 and 50 Years	6	8%
Between 5 and 20 Years	10	12%
5 Years or Less	56	69%
<b>Number of Active Licences</b>	<b>81</b>	<b>100%</b>

Note: 19% of Active licences have a term of 20 years or more.

**81 Active Licences -  
 Lease Term Length in Years**



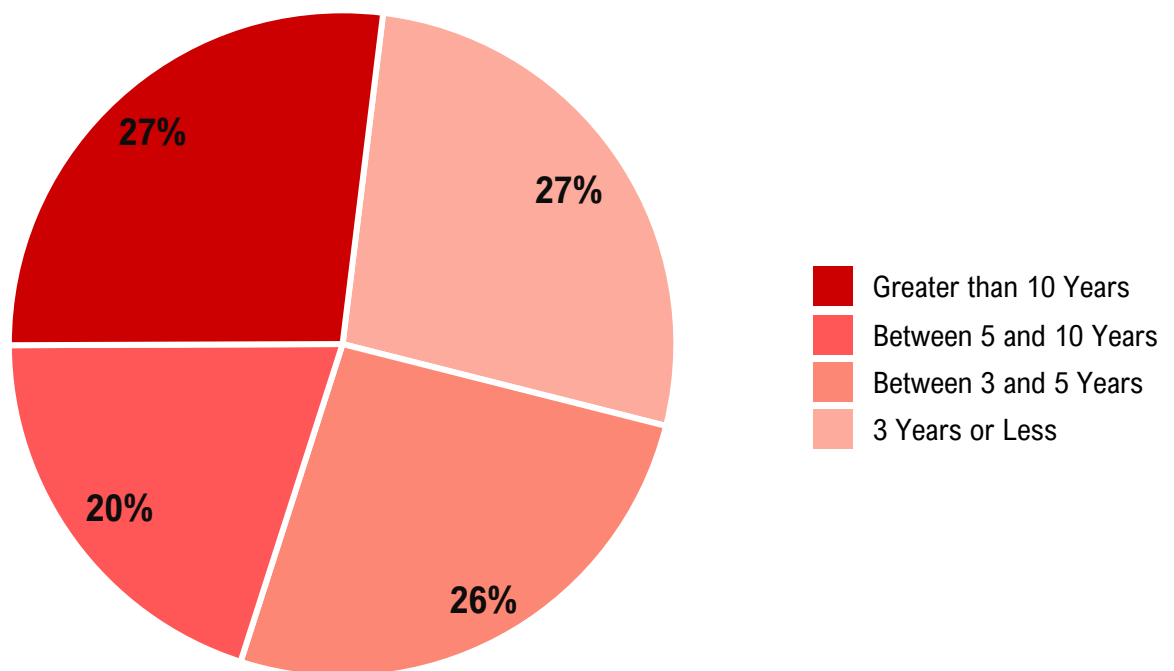
78 As noted in Table 5 above that of the 81 active licences listed in Table 4, 69% are for a term of 5 years or less.

79 From Table 4 above one can also see that a substantial number (97) of licences are in overhold. These comprise 54% of the in-force licences.

**Table 6: Licences on Overhold – Years in Overhold**

<b>Licences on Overhold, including Active and Recurring past Termination Date – Years in Overhold</b>		
Greater than 10 Years	26	27%
Between 5 and 10 Years	20	20%
Between 3 and 5 Years	25	26%
3 Years or less	26	27%
<b>Total</b>	<b>97</b>	<b>100%</b>

**97 Leases on Overhold including Active and Recurring Past Termination Date - Years in Overhold**





- 80 From Table 6 above one can also see that a substantial number of licences (97) are in overhold. These comprise 54% of the in-force licences.
- 81 Of the 97 licences on overhold that need to be renewed, about 73% have been on overhold for more than 3 years (Table 6).
- 82 From these observations we concluded that the accuracy of licensing information is not reliable, and not kept up to date, and overholds need to be dealt with more expeditiously.

## Other Observations

### Licence for 15+ Years With No Increase In Rent

- 83 As was noted for leases, having licences on overhold for a long period of time without appropriate renewal increases the risk of revenue leakage. An example of such a case is the licence agreement between the City and a private corporation for a large City lot (175 feet by 234 feet).
- 84 Originally this licence covered a one-year term from November 1, 2006 to October 31, 2007. The original fee was \$1,350 (+HST) per month. The licence agreement was renewed for a second year starting November 1, 2007, until October 31, 2008 with the fee increasing to \$1,400 (+HST) per month. A comment in ARCHIBUS simply states that further renewals are the sole prerogative of the City with the agreement of the Ward Councillor. In 2023, almost 15 years later, the same licensee is still paying \$1,400 per month. In addition to this, although the agreement indicates that the licensee is responsible for paying realty taxes, the City's Tax Section noted that taxes have not been paid as MPAC ruled this property to be tax exempt. The City's Tax Section has not been able to determine when this tax exemption was last reviewed by MPAC. As was the case with overhold leases, there is no documentation in ARCHIBUS indicating whether the rate charged is fair compensation for the use of this location, and there is no procedure directing staff to renew expiring agreements in a timely manner.

### Inconsistency Between ARCHIBUS and TRACKER

- 85 There have been **66 new leases** added to ARCHIBUS since January 2019, yet only **52 leases** added to TRACKER in the same period. Although more leases have been added to ARCHIBUS than to TRACKER it was surprising to note that there are 26 leases in ARCHIBUS that are not found in TRACKER, and 12 leases

were found in TRACKER that were not found in ARCHIBUS. There is no single source of the truth for leases.

- 86 There have been **65 new licences** added to ARCHIBUS since January 2019, and **64 licences** added to TRACKER in the same period. However, when accounting for CityHousing Hamilton licences that are reflected in ARCHIBUS, and not on TRACKER, as well as new licences added to TRACKER that are pending in ARCHIBUS, the discrepancy is larger– 16 licences are in ARCHIBUS that are not on TRACKER, and 15 licences are on TRACKER but not in ARCHIBUS. Therefore, neither TRACKER nor ARCHIBUS may be relied upon as a complete and accurate record of all licences. There is no single source of the truth for licences. This reiterates the point made earlier in this report regarding the need for accurate data to be maintained.

## **Need for Proactive Reporting Systems – Notification/Tickler Reports**

- 87 One weakness we encountered was the need for more formal, proactive reporting of upcoming and time sensitive administration requirements. This is one factor that has contributed to delayed administration and lack of timeliness in administering renewals, which in turn has led to a proliferation of agreements in overhold for prolonged periods of time. One such report that is used in lease administration is a notification or tickler report - a log that tracks and provides advance notice of key lease dates. The report must be comprehensive and current. The information on this report can be obtained from various sources i.e., Excel worksheets, SharePoint forms or reports, or lease administration software.
- 88 A confounding factor is that to produce Tickler reports, ARCHIBUS requires that the Defer Date and the Renewal Date fields be complete and accurate. As this is not always the case, Tickler reports that rely on this data may not always be produced, or they may be inaccurate.

(See Recommendations 12-15 in Appendix "B" to Report AUD24005.)

## **Rent Collection and Arrears**

- 89 The invoicing and collection of **lease revenue** is performed by the City's Accounts Receivable Section in the Financial Services Division (AR Finance). The efficacy of this process is reliant on program areas to supply the necessary information to AR Finance, who do not invoice and collect fees unless informed to do so. The tool used to inform AR Finance is the Request for Invoice (RFI) form. This

document is prepared at the beginning of the lease, by staff in the various sections or divisions that are responsible for administering leases - CREO, Facilities Management (FM) or Recreation, and on occasion Finance. AR Finance normally issues invoices electronically, a process which records the amount of receivable due to the City in the PeopleSoft financial system. ARCHIBUS (the system used for lease administration) and PeopleSoft (the City's financial system) are not connected in any way. In order to verify that any collected or collectable lease revenue is consistent with the amounts specified in the agreements, these amounts must be traced back to an RFI document and/or what is recorded in ARCHIBUS as the monthly rent, which is a manual process. The financial system not being integrated with lease administration systems makes the process vulnerable to human error, delay and inconsistency.

- 90 The system of **collection for licences** is administered differently than leases and is conducted through multiple channels and processes that include the use of the Legend software application and spreadsheets that facilitate the tracking of rents/fees. Except for a few instances, there is no RFI process that requires going through the corporate AR Finance procedures as there is for leases. Generally, the administration of collections is the responsibility of program areas. In addition, there is much less revenue to manage, on the order of \$100K annually. This is due to the large volume of licences in which the use of facilities is provided at nominal (below market) rents/fees.
- 91 A significant problem with the administration of licence revenue is that there is no "one line of sight" into the collective status of all receivables which exacerbates the challenges with managing collections on a timely basis. For example, we asked for an aged receivables report on licences that would tell us the latest status of licence fee collection. We expected such a report to be "readily available" as it is considered a standard tool for administration of receivables in most industries. However, we were unable to obtain one which tells us that important aspects of oversight are systemically lacking. Additionally, there is no involvement by AR Finance in any receivables monitoring as there is with leases. In our view, there should be a monthly ageing report of receivables that is made available to program managers and AR Finance so that they can be alerted to long overdue accounts that could run into collection difficulties.
- 92 Overall, we found the processes for collection of rents and fees for leases and licences, including overdue or unpaid amounts, to be inherently weak and inadequate to ensure full collection and restoration of arrears on a timely basis. OAG believes this is due to the lack of a robust process, poor accountability, poor "line of sight" into the status of receivables, and lack of timely action when confronted with collection issues. Some of the challenges are rooted in the fact that responsibilities are dispersed amongst multiple parties and multiple tools, with few incentives to engage in aggressive collection efforts. For example, as

described in the following section, collection of overdue accounts requires close coordination between AR Finance and the program areas, which is very much dependent on timely action by program area staff. Further, the current process for allocating the associated lease revenues allows recognition and credit to the program area even when lease revenue has not yet been collected or has been overdue for months. In our view, this offers little incentive to be appropriately responsive to overdue account situations. We also found that for leases and licences there is not a robust process for monitoring of receivables by the program areas on a timely basis. We also found inconsistency in how financing charges for late payment are administered – in some cases not applying the rate pursuant to City policy, in others not applying any rate at all.

### **Leases: Current Collection Process for Bad Debts/Arrears through AR Finance (Accounts Receivable)**

- 93 While most lessees adhere to the terms of their agreement and pay their rent on time, some do not. Since AR Finance is responsible for the billing and collection of the rent, AR Finance attempts to collect the arrears incurred. The first step is a reminder phone call. If the rent payments are still not received, AR Finance contacts the FM section to inform them that the lessee is behind in their payments. Occasionally FM is already aware of the arrears as they often have been communicating with the lessee. In other occasions, this will be new information to FM. In either case, FM will reach out to the lessee to investigate and if needed to arrange payment terms. This process involves negotiations between the lessee, FM and often also Legal Services. As each case is unique, this process can take weeks or even months. AR Finance is not informed about the negotiation unless the lessee is refusing to negotiate, or negotiations break down. Once AR Finance is advised of this, they begin the collections process by issuing the collections letter. If payment is still not forthcoming a collection agency is engaged.
- 94 Finally, if the collection agency determines that the arrears are uncollectible, they are written off. However, since rent is being credited as revenue to the program, division or section when the invoice has been completed, there is often no urgency for program, FM and/or the CREO to declare the unpaid rent uncollectible. As such, it sometimes takes years before the unpaid rent is declared bad debt and included in the Accounts Receivable write off reports presented to and approved by Council. It was noted in one case that approximately \$48K in uncollected rent due between July and November 2014 was not collected. This bad debt was not written off until March 2023.

(See Recommendations 16-18 in Appendix "B" to Report AUD24005.)

## Accumulated Arrears: Revenues Lost or Unlikely to be Fully Collected

- 95 In the following analysis we cite a number of cases of uncollected rents and arrears, and a very large quantum of lost or "unlikely to be collected" revenues that form the basis for our conclusions. In one particularly egregious case licence fees were not collected for four years.
- 96 The summary below in Table 7 shows the uncollected rents/fees as of our audit sample date.
- 97 Out of 85 leases that were actively being managed, 8 experienced collection issues, 5 of which have accumulated significant arrears that had not be collected. Similarly, for licences, out of 131 active licences, 11 experienced collection issues, all of which have accumulated significant arrears.
- 98 The accumulated arrears and/or lost revenue or revenue that is unlikely to be fully collected was approximately \$1.2M.

**Table 7: Arrears and/or Lost Revenue**

Arrears and/or Lost Revenue	Number	Amount (\$)
<b>Leases</b>	2	720,000
	1	152,000
	1	30,000
	1	20,500
<b>Licences</b>	6	51,300
	1	6,200
	3	195,200
<b>Total Uncollected</b>		<b>\$1,175,200</b>

- 99 A discussion of the various cases of arrears is illustrative of the issues that have contributed to the problem.

## Case 1: Company A

### Arrears of \$720K Accumulated in Four (4) Years

- 100 Case 1 involves a company that leased two (2) properties comprising 93,000 sq. ft. of total space and a licence for the use of 2 acres. At the time of audit, Company A was in arrears to the City for \$720,000 which had accumulated over four (4) years of intermittent and incomplete monthly payments. At the time of audit it was in litigation over its debt to the City.
- 101 For the two leases, the commencement date was April 1, 2019. This was well before the agreements were actually signed by the City on May 10, 2019. Following the May 10 signing, a first invoice was then issued on July 3, 2019 for the payment due August 1 with no accounting for the four months due at that point. A subsequent invoice was issued on July 24 for the retro payments due on April 1, May 1, June 1, and July 1. On August 7<sup>th</sup>, the tenant paid only \$10,000 of the total \$88,703 invoiced. Therefore, by the end of August 2019, not even two months after the first invoice was issued, this tenant was already \$79K in arrears.
- 102 For the licence, the agreement commencement date was July 1, 2019. This was a week before the City actually signed the agreement – July 8, 2019. It then took nine months before the tenant was first invoiced for the use of the land at this property. The invoices were issued by the City on April 2, 2020, at a point in time when the tenant was already \$55K in arrears.
- 103 In addition to these issues there were other red flags regarding this account. At first signing, the lessee's address was not a business address, rather it "care of" their law firm. Subsequently, this address was changed to a non-existent address, and following that, to the address of a separate company. In reviewing the file, we found no evidence of any background or credit checks being performed prior to contracting the lease.
- 104 As time went on there were long delays before actions were being taken on recovery of arrears and larger and larger arrears were accumulating.
- 105 By February 3, 2020, the arrears totaled about \$200K not including interest charges. The City did receive a \$10K cheque on February 6, 2020, and two more cheques totaling \$29.5K on February 19, 2020. Within two days the bank notified the City that the latter two cheques were NSF (not sufficient funds). A complicating factor was the tenant's then-claim that they had spent approx. \$40K to repair a leaky roof on the premises even though such repair was contrary to Section 9 (e) of the lease agreement which states that the City is responsible the structural repair of the roof and exterior walls of the Premises.

106 Unfortunately, the City did not initiate timely eviction and, in this particular case, the delay of enforcement proceedings brought them into the period when the Province changed the Commercial Tenancies Act (CTA) such that commercial evictions were banned beginning May 1, 2020 due to the COVID-19 pandemic. This ban, initially expected to last until August 31, 2020, was extended by the Province to end on April 22, 2022. The arrears continued to grow until the lease expired and the company left the premises in April 2022. By then the arrears, including finance charges, had reached \$720K. If the "enforcement proceedings" had started much earlier, when it became apparent the tenant could not make payments on a regular basis, the City may have avoided the repercussions of these changes to the Commercial Tenancies Act because of the pandemic, and the City would have avoided a substantial part of the accumulated losses of \$720,000.

(See Recommendations 19-25 in Appendix "B" to Report AUD24005.)

## Case 2: Company B

### Invoicing Started 10 Months after the Lease Began

107 Case 2 involves a company that leased 3,336 sq ft of a downtown Hamilton property. At the time of audit, it was in arrears to the City for \$152,000.

108 The commencement date for the lease was September 1, 2021. ARCHIBUS shows that Company B had been the lessee on a prior lease agreement with the City, and under that lease the tenant usually made the payments on time. Therefore, when the new lease agreement was being implemented, there were no red flags indicating a potential risk of default. Additionally, invoicing for the lease agreements was prompt, and usually took place one month before payment was due.

109 Although the invoicing was timely, no lease payments were received from the lessee until June 24, 2022, more than 10 months after the lease began. At the time this first payment was made, almost \$88K was in arrears. By October 25, 2023, the lessee was 18 months behind in payments resulting in arrears of \$141.4K, and they had accumulated an additional \$10.6K in finance charges. Further, it is our understanding that this tenant has not made a payment since March 2023. The City's FMs Manager has requested Legal Services' assistance in helping to recover the arrears from the lessee.

110 We also observed that the information on the lease, specifically the address, was not consistent with the address on the RFI, which showed the property address of the previous lease.

(See Recommendation 26 in Appendix "B" to Report AUD24005.)

### Case 3: Company C and D

#### Unpaid Taxes due to City's Late Administration

- 111 There were two companies with accumulated arrears of \$30K and \$20.5K that resulted from not meeting lease obligations to pay property taxes.
- 112 Under the Company C lease, there was a change required in the assessment of the property that had to be initiated by the City. The Municipal Property Assessment Corporation (MPAC) had originally deemed this property tax-exempt. To change the property's assessment, the City's Taxation Section was to provide MPAC with a copy of the lease agreement, which started on May 1, 2016. However, this change was not initiated until three years after the lease agreement was signed. Further, MPAC did not correct the tax-exempt status until 2022. The result was that property taxes were not paid by the tenant over the entire term of the lease agreement as they would have been had the assessment been administered on a timely basis. Under the Assessment Act, the City is only able to recover taxes owing for the current year and the two prior years (i.e., 2020 to 2022) which it has since done. So, due to inaction initiating the change in assessment, the City lost property tax revenue from May 1, 2016, to December 31, 2019. The City's Taxation Section estimates that the City lost \$45K-\$50K in tax revenue of which the municipal portion was \$27K- \$30K.
- 113 For Company D, the City's Taxation Section indicated that earlier this year they were \$24.4K in arrears on 2022 property taxes. This amount, which included penalty and interest, was paid in full July 27, 2023. However, as of Oct 25, 2023, they were \$20.5K in arrears on the 2023 property taxes.

(See Recommendation 27 in Appendix "B" to Report AUD24005.)

### Case 4: Company E

#### Delayed Invoicing By City Causing Arrears

- 114 The City leases one of its properties to Company E. The agreement covers a 20-year term from November 1, 2019, to October 31, 2039, and calls for an initial lease fee of \$3,411 plus HST due at the beginning of each month, with a stipulation it will increase annually by the average percentage increase in the Ontario Consumer Price Index (CPI). In 2023, the monthly rent payable rose to \$3,848.88 plus HST. However, as it takes time for staff to obtain the increase in the Ontario CPI and calculate the rate increase, the tenant is not invoiced for the first three months of the year. Once the CPI is available, the tenant is then issued an invoice for the catch-up in three months' rent, and subsequent months are invoiced at the new monthly rate. This practice leaves the City at risk, whereas it would be more beneficial to the City if it was administered differently. For example, the City could



invoice at the old rate until the new rate is calculated, with a one-time adjustment or catch-up adjustment applied over remaining months. A note could be added to the invoices to explain the pending increased rate when it is calculated.

(See Recommendation 28 in Appendix "B" to Report AUD24005.)

## **Case 5: Company F**

### **Lateness in Renewal of Agreement and Subsequent Delayed Billing**

115 The City entered into a licence agreement with Company F in 2005 to use space in a Community Centre. The term ran for 10 months each year from September 1 to June 30 of the following year, consistent with the school calendar. The agreement ended up being on overhold for 11 years from 2006 to 2017, without adjustment to monthly rent. It was then formally renewed from September 1, 2017 to June 30, 2022, and again from September 1, 2022, to June 30, 2027. The latest renewed agreement indicates that the \$600 fee is to be paid monthly. However, this agreement was not finalized until February 2023, well after it took effect on September 1, 2022. Further, Company F was not invoiced for the entire period from September 1, 2022, to June 30, 2023 until May 17, 2023. By that time, the tenant was nine months or \$5,400 in arrears. AR Finance indicated that as of June 30, 2023, the tenant has paid off the arrears. However, the City could and should have avoided this situation by initiating a new agreement well in advance of the expiry or end date. Further, the City's tardiness in not issuing invoices until well after the extension agreement had been reached in February 2023 contributed to increasing arrears. By failing to renew on a timely basis, and allowing delays in invoicing, the City ended up providing the tenant an interest free short-term loan, and also incurring additional unnecessary risk.

(See Recommendation 15 in Appendix "B" to Report AUD24005.)

## **Case 6: Company G**

### **Continuing to Invoice a Vacated Lease for 33 Years**

116 In January 2023, Company G emailed the City's AR Finance section asking for clarification on invoices it had received. While the amount was small, it took both Finance and Real Estate two weeks and about 12 emails for staff to conclude that the utility should not have been billed. It turned out that the Company had been invoiced for \$50 plus HST every year since 1990 even though the City had donated the land to the Conservation Authority in July 1990. The City had been invoicing the company despite the fact the lease had long since been vacated. Contributing factors to this error were the absence of a control procedure to ensure timely notification to AR Finance of changes to lease status and further, that ARCHIBUS records are linked to AR Finance records through address

information. At times the address description is not specific enough or may have changed over time. It would be preferable that the linkage be based on agreement number or an equivalent unique identifier, which should also be referenced in each invoice.

(See Recommendation 29 in Appendix "B" to Report AUD24005.)

## Case 7: Company H Licence Agreement Forgotten About for four (4) Years

117 After the City purchased a property in August of 2018, Company H, the existing tenant continued to occupy and use the property. Shortly after purchase, the City prepared a Delegated Authority (DA) document including a Schedule of Major Terms and Conditions showing that the City expected this tenant to pay a licence fee of \$3,000 per month plus HST. The DA was signed off appropriately. However, a **licence agreement** was never completed. The Real Estate staff responsible for this file retired and the file was forgotten. Company H continued to use the property rent free for almost four years. The City was unable to recover rent from this tenant for the period September 2018 to May 2022. In addition, there were payments being received under a utility agreement that is only for \$1,000 per month instead of the \$3,000 per month noted in the DA document. By our estimation the City has lost approximately \$195,200 on this lease.

(See Recommendations 30-31 in Appendix "B" to Report AUD24005.)

## Case 8: Companies I and J Invoicing does not Agree with Licence Terms/Late Renewal

118 We found two instances where the fee that was invoiced by AR Finance was inconsistent with the fee noted in Licence Agreement:

- 1) Company I has a cellular tower agreement with the City. The five-year extension of this licence ran from September 1, 2018 to August 31, 2023. The licence fees invoiced by AR Finance were erroneously based on an RFI that did not conform to the agreement. Over the five-year period there was a small (\$40 monthly) discrepancy between the total fees invoiced compared to the fees in the licence agreement.
- 2) Company J entered into a two-year extension of the original licence agreement for the use of a City parking lot from June 1, 2021, to May 31, 2023. The licence fee was \$1,700.00 + HST paid in advance, annually, on June 1st of each year of the term. At the time of this review (late 2023), payment for an extension to this agreement beginning June 1, 2023 was still

being negotiated. This is another example of inadequate lead times. What should be happening is that a renewal is being completed in advance and/or payment being made, and receivable set up according to terms of an overhold clause until the new lease is signed.

(See Recommendation 15 in Appendix "B" to Report AUD24005.)

## Case 9: Companies K and L Licensing at Below Market Value

- 119 At the end of 2015, the City entered into a licence agreement with Company K. It involved three parking spaces that were to be used exclusively by the licensee. The licence was \$720 per year (\$60 per month), for 4 years, due in advance, which was received in full at the beginning of the term.
- 120 The licensee, Company K, then sought and obtained the City's agreement to allow it to enter into a sublicense with a third party. Specifically, the City agreed to allow the sublicensee to license half the space for \$720 per year (\$60 per month). In effect, the licensee was able to completely offset the licence fee they were paying to the City by renting out half of the space. Thus, it appears the City lost a potential revenue opportunity of \$2,800 (Greater than this if one considers how much more revenue was received in the next lease which averaged \$5,800/year vs \$720). To further complicate matters, it appears the space was actually being used to service four parking spots, not three.
- 121 When this agreement expired in the fall of 2019, it was replaced by two 5-year licence agreements with two different tenants (Companies K and L). However, the new Delegated Authority document was still based on three parking spaces at this location, instead of the four in actual use, as observed by the OAG. So, while the City did receive much better value for these spaces in the new agreements (\$5,800/year vs \$720/year), it still lost out. One of the tenants was allocated two spaces and paid \$19,340 for five years. This was twice the amount paid by the other tenant (\$9,670) who was allocated and only paid for 1 space, even though there appear to be four spaces in use. We have confirmed on multiple occasions there are four cars parking on the property. This means that the City is potentially losing value of nearly \$9,700.

## Case 10: Company M City did not Invoice for 22 months

- 122 Company N entered into a 5-year licence to install telecommunications equipment on City property. The licence fee is due annually in advance. The commencement date of the agreement was May 1, 2021. However, the City did not issue a request

for invoice (RFI) until 22 months into the agreement. In fact, the first payment covering 3 years was sent in by Company M a week before the RFI went out. According to the agreement, late payment fees are supposed to be charged of 12% per annum. In this case, the late payment penalty of approx. \$6,170 was waived as the City received payment before the Company was invoiced. In effect, the City lost value of \$6,170.

## Other Issues

123 In addition to the above we found:

- Six examples of tenants not being invoiced for multiple years with a total missing revenue of \$51,372.
- Thirty-three cases where agreements had expired but are still listed as active.
- Six examples where agreements had expired but the licensee remains in place/on-site.
- Four cases where agreements were extended however that information is not reflected in ARCHIBUS (expiration date not updated).
- An active agreement in ARCHIBUS that was not an agreement but a proposal, and another that was active that should have been cancelled or terminated.
- In about 20% of the cases where the City is the licensee, this fact was not readily apparent in ARCHIBUS. The unreliability of ARCHIBUS means it takes more difficult to determine the true nature and status of licences, and whether fees are being collected when they should be.

124 We would also note that in commercial leasing and licensing, other organizations don't generally issue invoices in order to be paid. It may be preferable that automatic payments can be pursued, assuming a system could be set up to facilitate the timely identification of arrears in receivables.

(See Recommendations 32-34 in Appendix "B" to Report AUD24005.)

## Lack of Monitoring of Insurance Requirements

125 The lease and licence agreements used by the City have an Insurance and Indemnification clause designed to protect the City against claims for personal injury, death, property damage etc. arising from accidents or events occurring on the leased/licenced property. These clauses are very specific as to minimum insurance coverage limits as well as the different risks covered. The expectation is that the lessee /licensee pay the insurance premium to keep it in force for the

duration of the lease/licence agreement to indemnify themselves and the City. The agreements also have a proof of insurance clause whereby the tenant is to retain certified copies of the insurance policies and is to submit these upon request to the City to verify compliance with this clause.

- 126 City staff are not vigilant in ensuring proper and adequate coverage of its leased/licenced properties. Proof of insurance had not been procured for nine of the twelve licenced properties and five of the eight leased properties reviewed - that is 70% (14 out of 20) of overall cases reviewed. As the City is not vigilant in ensuring proper and adequate coverage of its leased/licenced properties, some of the tenants of these properties facing financial pressures may reduce their insurance coverage or allow it to lapse. Since the City is not regularly checking this coverage, it has placed itself at risk of millions of dollars in liability in the event of an accident at one of the leased/licenced properties.

(See Recommendation 35 in Appendix "B" to Report AUD24005.)

## Recommendations

- 127 Please refer to Appendix "B" to Report AUD24005 for a list of Recommendations and the related Management Responses that will address the key audit findings, with a focus on data collection and financial reporting, maximizing and collecting revenues, and related process improvements in the administration of leases and licences.

## Conclusion

- 128 The OAG has brought forward 35 recommendations to strengthen lease and licence governance and management at the City of Hamilton.
- 129 The OAG would like to thank the Corporate Real Estate Office team, the Corporate Facilities and Energy Management Division, the Recreation Division, and the Legal Services Division. We look forward to following up with management in the future to see the progress of their action plans and their impact on improving the administration of leases and licences at the City of Hamilton.

---

**Office of the  
Auditor General**

---

**Charles Brown, CPA, CA**  
Auditor General

**Brigitte Minard, CPA, CA, CIA, CGAP, CFE**  
Deputy Auditor General

**Domenic Pellegrini, CPA, CIA**  
Senior Audit and Investigations Specialist

**Phone:** 905-546-2424 ext. 2257

**Email:** [auditorgeneral@hamilton.ca](mailto:auditorgeneral@hamilton.ca)

**Website:** [hamilton.ca/audit](http://hamilton.ca/audit)

Copies of our audit reports are available at: [hamilton.ca/audit](http://hamilton.ca/audit)

Alternate report formats available upon request.