

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



Audit Scope and Future Reporting

- The audit focused on standard **lease-out** arrangements (i.e. City is the Landlord).
- The OAG is currently doing additional audit work regarding Hamilton Waterfront Trust Leases at Pier 7.
- The findings will be reported at a future Audit, Finance and Administration Committee meeting in 2024.

What is a Lease?

- A legally binding contract outlining the terms under which one party agrees to rent a property it owns to another party.
- A lease usually confers exclusive possession of a property.
- This exclusive right of possession may exist even if the lease imposes some restrictions, such as how the property may be used.

What is a Licence?

- A licence normally does not confer exclusive possession to the licensee.
- It only gives the right or privilege to enter and use the property in a certain manner or for a specified purpose.
- It is a personal right 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.

Who Does What?

Corporate Real Estate Office:

- Manages the commercial lease transactions and provides front-end lease administration.
- Is involved in negotiating more complex leases and licence transactions.
- Tidying up lease and licence documents; the administration of agreements that cannot be done by Facilities Management; and much of the communications with Accounts Receivable regarding rent collections.

Who Does What?

Recreation Division:

- Deals almost exclusively with licence agreements.
- Administers the use of sports fields, recreational facilities, old town halls and community centres.
- Works with School Boards for use of open spaces.

Who Does What?

Corporate Facilities and Energy Management Division:

- Lease administration applicable to buildings and properties in the Public Works portfolio.
- Utilizes facility use agreements when renting space over the short-term.
- Manages the storing and tracking of all real estate agreements through ARCHIBUS, a system used to manage and administer leases, licences and properties (including facilities management).

Who Does What?

Legal Services:

- Solicitors assist with the drafting and finalization of various agreements.
- Provides advice on agreement interpretation, disputes, and other issues.

Audit Objectives

- **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;
- **To evaluate** 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
- **To determine** if revenues to the City are maximized (where applicable).

What We Did

- Reviewed Active, Overhold, and Recurring Leases.
- Interviewed staff.
- Performed detailed data review and analysis.
- Reviewed relevant documentation.
- Compiled ten case examples to communicate the findings.

What We Found

Governance

- Need for updates to delegations of authority and including them in official policy documents.

Systems and Data

- None of the lease and licence systems integrate with corporate financial systems.
- Impacts invoice tracking, receipt of payment and account status.
- Significant data issues were identified and is not reliable or current.

What We Found

Administration

- Inefficient, error prone, and there are missed opportunities.
- Current approach not serving the City's needs.
- Procedures, roles and criteria are not comprehensive or fulsome and lack detail.

Below Market Rental Rates

- A more transparent and accountable process is needed.

What We Found

Collections

- Weak and inadequate collections process.
- Inadequate to ensure full collection and restoration of arrears on a timely basis.
- We found accumulated arrears, rental losses, and revenues that are unlikely to be fully collected to be about **\$1.2 million**.

What We Found

Leases on Overhold including Active and Recurring Past Termination Date - Years in Overhold		
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%
Total	31	100%

What We Found

Licences on Overhold, including Active and Recurring Past Termination Date – Years in Overhold		
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%
Total	97	100%

Case Examples

Company A	Four (4) Years of Intermittent and Non-Payments Accumulating to \$720K in Arrears.
Company B	Invoicing Started 10 Months after the Lease Began.
Companies C and D	Unpaid Taxes due to City's Late Administration.
Company E	Delayed Invoicing By City Causing Arrears.
Company F	Lateness in Renewal of Agreement and Subsequent Delayed Billing.

Case Examples

Company G	Continuing to Invoice a Vacated Lease for 33 Years .
Company H	Licence Agreement Forgotten About for Four Years .
Companies I and J	Invoicing Does Not Agree with Licence Terms/Late Renewal.
Companies K and L	Licensing at Below Market Value.
Company M	City Did Not Invoice for 22 months .

Conclusion

- Overall, 35 recommendations were made to Management
 - Management agreed with all recommendations.
- Management is currently working on implementing their management responses.
- OAG is recommending that Council directs Management to report back with a status update by March 2025.



Hamilton

THANK YOU