

Breach of Lease Policy

Responsible Division Works and Infrastructure

Responsible Business Unit Building Works

Responsible Officer Community Lease Officer

Affected Business Units Building Works

ECM Document Set ID 4221165

Purpose

To provide a structured and consistent approach when dealing with breaches of Council's Community Lease and License/User Agreement terms.

Scope

This policy applies to all Community Lease and License/User Agreements in place for the use of City properties. The City's objective is to provide a consistent and equitable approach when dealing with a breach of agreement terms.

Definitions

For the purpose of this policy —

Agreement: a legally binding arrangement between parties, i.e. a Lease, License or User Agreement.

Authorised Contact/s: individuals of a group, organisation or club who have been nominated as the primary contacts for all lease, licence or user agreement correspondence.

Breach: a violation of a law, obligation or responsibility under an agreement.

City: City of Bayswater.

Council: means the Council of the City of Bayswater.

Lease: a contract by which one party conveys land, property or service to another for a specified time usually in return of periodic payment.

Licence: a contract for the non-exclusive use of a facility.

Licensee: a person, group, club or organisation that holds a licence for the use of a property.

Lessee: a person, group, club or organisation that holds the lease for the exclusive use of a property.

Lessor: the owner of an asset that is leased to another party.

Sub-tenant: someone who occupies all or part of a premises under a lease agreement with the original/primary tenant of the premises.

User Agreement: contractual arrangement outlining the terms and conditions associated with usage, as negotiated.

Policy Statement

1. Where a Lessee/Licensee:
 - a. does anything that constitutes a breach of any of their obligations under the tenancy agreement; or
 - b. fails to do a thing where not doing that thing constitutes a breach of their obligations under the tenancy agreement;this will be reported to the Manager of Building Works in the first instance.
2. In the event that a breach of agreement is clearly evident, the City will endeavour to provide the Lessee/Licensee in writing with a 'Breach Notice' within 48 hours of the breach occurring or being identified by the City.
3. A Breach Notice **must be** in writing and signed by the Manager Building Works or Director Works and Infrastructure. The notice must clearly identify:
 - a. The premises;
 - b. Date the breach occurred or date the breach was identified by the City;
 - c. Which of the Lessee/Licensees obligations under the agreement have been breached; and
 - d. A time frame as specified in the agreement, or when none is specified, no less than 28 full days from the date of the notice being considered as received/delivered, for the Lessee/Licensee to rectify the breach or pay compensation to the City.
 - e. The Lease/License holder has a responsibility to ensure upon receiving a Breach Notice, that this is also communicated to all relevant user groups, clubs and sub-tenants of the premises.

Form of Delivery

4. A Breach Notice must be delivered by registered post to the recorded postal address of the Lessee/Licensee, or delivered by hand to one of the listed 'Authorised Contacts' as nominated by the Lessee/Licensee.
5. A Breach Notice is considered to have been received:
 - Immediately when delivered by hand to an Authorised Contact; or
 - Five business days following the date of posting.

6. It is assumed that the Lease/License holder, upon receiving a Breach Notice, has also communicated to all relevant user groups, clubs and sub-tenants of the premises as instructed in the notice.

Rectifying and/or Addressing a Breach

7. It is considered that the Lessee/Licensee has adequately addressed a Breach Notice when the required remedial actions have been undertaken to the satisfaction of the City and within the timeframe specified. These may include any of the following actions:
 - Contacted the City, in writing, acknowledging the breach and offering a suitable solution to resolve the breach and/or a negotiated outcome. With the City then providing confirmation in writing, agreeing to the alternative solution and/or negotiated terms.
 - The City has been compensated for the loss or damage suffered as a result of the breach.
 - Any outstanding Rent, Outgoings, or Other Payments have been paid in full.
 - The Lessee/Licensee has complied with any notice provided, to remedy any default/breach to an acceptable standard, as determined by the City.

No Action Taken to Address a Breach of Agreement Terms

8. The Lessee/Licensee is responsible for ensuring they adequately address a Breach Notice within the timeframe specified and provide the City with acknowledgement, in writing, upon receiving the notice.
9. Where the Lessee/Licensee is in breach of their agreement terms for failure to pay any amounts payable to the City, or has failed to adequately rectify the breach within a reasonable time, the Lessee/Licensee will be advised in writing, that the matter will be referred to the City's Executive Leadership Team (ELT), where the following options will be considered, dependant on severity of situation:
 - Collection action for any outstanding amounts payable by the Lessee/Licensee.
 - A notice to be sent by the City's Solicitors to the Lessee/Licensee, in an attempt to resolve the situation.
 - A mediation meeting be arranged with the Lessee/Licensee and relevant City Officers to further discuss the breach of terms and negotiate a resolve.
 - The City may remedy the breach at the Lessee's/Licensee's cost.
 - Dependant on the situation, a report be presented to Council to consider options for further action, in-line with the provisions of the agreement. The Lessee/Licensee will be notified in writing, that a report is being presented to the Council once the meeting agenda has been finalised.

Recording Breaches of Tenancy Agreements

10. Breach notices will be recorded in the Lessee's/Licensee's files for 5 years and will be used to inform City officers when;
 - Reviewing the annual performance of Councils Community Lease, License and User Agreements;
 - Renewing Lease, Licence or User Agreements;
 - When deciding best course of action to take should the Lessee/Licensee fail to rectify or address a breach of a similar nature.
11. Breach notices will not be considered by City officers in decision making after 5 years from the date of issue.

Related Legislation

Residential Tenancies Act 1987

Related Documentation

City of Bayswater Community and Commercial Lease KPI's and Assessment Criteria

City of Bayswater Lease Agreements

Document details

Risk evaluation	Moderate
Strategic link	Work together to deliver the best outcomes for the community by managing our resources in a financially responsible way.
Council adoption	22 March 2022 Resolution 10.6.1.3
Next review due	22 March 2024