

TOWN OF MIDLAND
BY-LAW 2004-78

A By-law to provide for a lease financing policy for the Town of Midland

WHEREAS the Municipal Act, S.O. 2001, O.Reg. 266/02 provides that the council of a municipality may enter into financing lease agreements if the municipality has adopted a statement of the municipality's lease financing policies and goals; and

WHEREAS it is deemed expedient for the Town of Midland to have a lease financing policy in place;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND ENACTS AND BE IT ENACTED AS FOLLOWS:

1. That the Lease Financing Policy attached hereto as Appendix "A" and forming part of this by-law, shall be herein confirmed as the policy for Town of Midland.
2. That this by-law shall come into force and effect on the final passage thereof.

BY-LAW read a first, second and third time and finally passed at a meeting of Council on the Twenty-fifth day of October 2004.

Mayor

Clerk

SCHEDULE "A" TO BY-LAW 2004-78
LEASE FINANCING POLICY

1.0 STATEMENT OF POLICIES AND GOALS

The purpose of this policy is to establish a framework and outline requirements for entering into leases of municipal capital facilities and equipment and for reporting such leases to Council.

Leasing is an important option for local governments. For a number of reasons, the Town may prefer to lease an asset rather than purchase it outright. The choice may be a function of strategic investment or of comparative cost. It may be economically advisable for the Town to enter into lease arrangements in order to acquire the rights to use capital property and equipment, including some or all of the benefits and risks of ownership, for specific periods of time and stipulated rental payments.

When entering into a lease arrangement, possible risks need to be assessed, such as:

- a) Leasing an asset may be more costly than buying it, if the terms of the lease are negotiated without conducting a thorough lease versus purchase analysis to assess whether terms available through leasing are more or less favourable than other arrangements.
- b) Risk of obsolescence may be transferred to the lessee.
- c) The lease is a contractual agreement and generally non-cancellable prior to expiration.
- d) Fixed contractual charges have to be met.
- e) When the asset is expected to have a residual value at the end of the lease period, any future benefit of this residual value is lost if the asset is leased.

2.0 DEFINITION

2.1 For purposes of this policy, "financing lease" shall mean a lease allowing for the provision of municipal capital facilities if the lease may or will require payment by the municipality beyond the term for which the council was elected.

2.2 For the purposes of this policy, "material impact" shall mean an individual financing lease with annual payments exceeding \$30,000 considered by Council and the Treasurer to have a material impact for the purposes of Section 5 of this policy; and

2.2.1 for the purposes of this policy, any combination of leases entered into or proposed to be entered into in any year by the Town, with total annual payments exceeding 5% of the Town's Annual Repayment Limit as prescribed by Ontario Regulation 799/94, is considered by Council and the Treasurer to have a material impact.

2.3 For the purposes of this policy, "municipal capital facilities" includes land, works, equipment, machinery and related systems infrastructure.

3.0 REQUIREMENT

Before entering into a financing lease, Council shall:

- 3.1 Have the Treasurer prepare a report with recommendations, assessing, in the opinion of the Treasurer, the costs and financial and other risks associated with the proposed financing lease, including:
 - a) a comparison between the fixed and estimated costs and the risks associated with the proposed lease and those associated with other methods of financing;
 - b) a schedule of all fixed amounts of payment required under the lease including amounts required under any possible extension or renewal of the lease;
 - c) a statement summarizing, as may be applicable, the effective rate or rates of financing for the lease, the ability for the lease payment amounts to vary, and the methods or calculations, including possible financing rate changes, that may be used to establish that variance under the lease;
 - d) a statement summarizing any contingent payment obligations under the lease that in the opinion of the Treasurer would result in a material impact for the municipality, including lease termination provisions, equipment loss, equipment replacement options and guarantees and indemnities;
 - e) a summary of the assumptions applicable to any possible variations in the lease payment and contingent payment obligations, and any other matters the Treasurer or Council considers advisable.
- 3.2 Obtain legal advice and financial advice with respect to the proposed financing lease;
- 3.3 Consider if the scope of the proposed transaction warrants obtaining legal advice or financial advice with respect to the proposed financing lease that is from a source independent of the source of the advice mentioned in clause (3.2).
- 3.4 Consider and give its assessment of the report prepared under clause (3.1), including whether, in its opinion, the costs of financing for the proposed financing lease are lower than other methods of financing available to the municipality, and whether the risks associated with the financing lease are reasonable.

4.0 ANNUAL REPORTING

- 4.1 Where Council has entered into one or more financing leases in a year, the Treasurer shall prepare and present to Council in that year a detailed report containing:
 - a) a description of the estimated proportion of the total financing arrangements that have been undertaken through financing leases to the total long-term debt of the Town and a description of the change in that estimated proportion since the previous year's report.
 - b) a statement by the Treasurer as to whether, in his/her opinion, all financing leases were made in accordance with the provisions contained in this policy.

5.0 EXCEPTION

- 5.1 A financing lease may be entered into without complying with this policy if the financing lease is deemed by the Treasurer not to materially impact the Town's debt and financial obligation repayment limit. The definition of material impact to be considered by the Treasurer in making this determination is included in Section 2.2 of this policy.

- 5.2 A financing lease may be entered into without complying with this policy if the "lessee" is a Town Reserve Fund. The Reserve Fund asset purchase must comply with the Town's purchasing by-law.