

ORDINANCE NO. 3.2010

ORDINANCE BY THE CITY COUNCIL OF THE CITY OF HARLOWTON,
MONTANA, ADOPTING A MUNICIPAL CODE SECTIONS REGARDING THE
POLICIES AND PROCEDURES FOR THE LEASING OF CITY OWNED LANDS.

RECITALS

WHEREAS, The City Council has determined that it is necessary to have a policy and procedures in placed for the leasing of the land that the City of Harlowton owns;

NOW, THEREFORE, BE IT ORDAINED, by the City Council, City of Harlowton, Montana, as follows:

Sec. 1

The City Council proposes that Title 16.0 be adopted and to read as follows:

TITLE 16

**POLICY AND PROCEDURES FOR THE LEASING OF
CITY OWNED LANDS.**

Sections:

16.01.010 DEFINITIONS. When used in this sub-chapter, unless a different meaning clearly appears from the context:

- (1) "Animal unit" means 1 cow, 1 horse, 5 sheep, or 5 goats;
- (2) " Animal-units-month carrying capacity" (A.U.M.) means that amount of natural feed necessary for the complete subsistence of one animal unit for one month;
- (3) "Best interests of the City" means those considerations that will produce the maximum return to the City withy the least damage to the long-term productivity of the land;
- (4) "City" means the City of Harlowton, a Montana municipal corporation.



(5) "Codes means the municipal codes for the City of Harlowton.

(6) "Commercial Building" means land occupied or to be occupied for commercial use as a temporary or principal place of business or equivalent of the same, and the supporting buildings, in the immediate vicinity;

(7) "Council" means the City Council for the City of Harlowton;

(8) "Crop" means such products of the soil as are planted and harvested, including but not limited to cereals, vegetables and grass maturing for harvest or harvested, but not including grass used for pasturage;

(9) "Custom Farming" means farming for another at a fixed fee. Such fixed fee may not be based on a crop share percentage;

(10) "Full market value" means the most probable price in terms of money that a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus;

(11) "Grazing land" means land which is principally valuable for pasturage or the feeding of livestock on growing grass or herbage;

(12) "Handicapped lessee" means a lessee certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major activities, such as writing, seeing, hearing, speaking, or mobility, and that limit the lessee's ability to obtain, retain, or advance in employment;

(13) "Land use license" or "license" means a contract by which the Council conveys an interest in City lands for a specific term and fee, and for a use other than that for which the land is classified;

(14) "Lease means a contract by which the Council conveys City lands for a term of years for a specified rental, and for the use for which the land is classified;

(15) "Lease fee adjustment" means the process by which the City Council applies the rental rate contracted in the lease to the most recent appraised market value to determine if it is necessary to alter the annual rental payment. The adjustment will occur at the review period defined in the lease and at the time of renewal;

(16) "Lessee" means the person or persons in whose name a surface lease appears on record in the offices of the City, whether such person or persons be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for a surface lease but with

whom a formal surface lease has not been completed and finalized;

(17) "License" means the person or persons in whose name a license appears on the record in the offices of the City, whether such person or persons be the original licensee or subsequent assignee;

(18) "Mayor" means the Mayor for the City of Harlowton;

(19) "Person" means any individual, firm association, corporation, governmental agency or other legal entity;

(20) "Property" means any property owned by the City or held in the name of the City by any department, boards, or authorities of the local government as defined by Section 7-1-412(19),MCA;

(21) "Real Property" means lands, structures, buildings, and interest in land, including lands under water and riparian right, and all things and rights usually included within the term "Real Property" , including not only fee simple absolute but also all lesser interest, such as easements, right-of-way-, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal, or equitable, pertaining to real property, as defined under Section7-1-4121(20), MCA;

(22) "Surface" means the superficial part of land including the soil and waters which lie above any minerals;

(23) "Timber land" means land which is principally valuable for the timber that is on it, for the growing of timber or for watershed protection;

(24) "Tract" means the land or portion thereof as described by a specific lease or license or application for the same;

(25) "Unleased land" means land that is not under lease at the time of an application to lease or land on which the lease has been recently canceled by the Council or surrendered by the lessee;

(26) "User" means any lessee, , licensee, or permittee.

16.01.020 GENERAL PROVISIONS.

(1) The City has the authority to direct, control , lease, exchange and sell lands owed and/or by it pursuant to Section7-1-4124 (3),MCA. It has the authority to issue leases for agriculture, grazing, recreational, residential, commercial, and other uses under such terms and conditions as best meet the duties of the Council pursuant to 7-1-412(19),MCA.

(2) Failure to comply with any provisions contained in any Municipal Code is grounds for cancellation of the lease, permit or license, or license, or assessment of any other penalty specified herein or by law. The Council has the authority to make management decisions to protect the best interests of the City.

16.01.030 ADMINISTRATIVE DETAILS AND INFORMATION.

(1) General inquiries, applications for leases, easements, land use licenses or permits, improvements, and any questions regarding the leasing or usage of City land may be directed to the City Clerk. Payments of all money required or permitted under these Codes or pursuant to the provisions of any surface use shall be made to the City Clerk. All Checks, Drafts, and money orders shall be made payable to City of Harlowton.”

(2) The City Clerk shall maintain records of all City real property. Such records shall contain all pertinent information concerning a particular tract of City land. Such records shall be open for public inspection at all times during regular business hours.

(3) Any notice or correspondence required to be sent to a lessee or licensee shall be sent to the name and address appearing on the lease, license or permit form filed in the City records. Correspondence sent by the City to such name and address shall be deemed sufficient notice for all purposes. If the lessee or licensee desires to change such address he must notify the City Clerk in writing. Any change in name of the lessee shall be made only through assignment procedures in Section 16.01.140.

16.01.030 TERM OF LEASE OR LICENSE.

(1) In general, a lease or license for agricultural or grazing lands shall be for a 5 year period. A residential lease shall be for a period not to exceed 5 years. A lease for Commercial use shall be for a 5 year period.

16.01.040 LEASE AND LICENSE FORMS, BID FORMS, AND BONDING.

(1) The Council must approve all lease forms and changes in lease forms prior to their use. The original of the lease shall be mailed to the lessee and the City Clerk shall keep the duplicate original on file.

(2) Leases shall be issued without bond unless required by the Council. Licenses shall be issued without bond unless required by the Council. If a bond is required it shall be under such conditions and in a form prescribed by the Council.

(3) The Council reserves the right to add special conditions to a lease or license to protect the interests of the trust and its resources.

16.01.050 LANDS AVAILABLES FOR LEASING OR LICENSING.

(1) Lands available for leasing or licensing under these rules include any property under the jurisdiction of the City.

(2) The Council shall classify and reclassify land in accordance with its capability to support a particular use. The following classes are established:

(a) class 1 shall be agricultural land / grazing

(b) class 2 shall be recreational lands;

(c) class 3 shall be Commercial other than class a-b.

(3) The City does not guarantee that fences or other boundary indicators on site are a true indication of legal property boundaries. The lessee or licensee may be responsible for the cost of any survey which is made necessary by a challenge to the proper boundary of the City owned land. Such costs may be considered an improvement on the land.

16.01.060 MINIMUM BID

The Council will set minimum bids for each of the grazing leases and will be reviewed and or changed at any time.

16.01.070 PAYMENTS - WHEN DUE

For Commercial, grazing, and recreational leases the City Clerk will mail written notices to the lessee or licensee beginning in January 1 of each year stating amount of rental due. The notice shall also state that the payment is due March 1, and if not paid by April 1 the lease is or can be cancelled.

16.01.080 COMPETITIVE BIDDING

(1) Minimum bid set by Council at time of bidding process based on lease history.

(2) When a lease or license takes effect after July 30 and before February 28 of the next year, the lessee or licensee shall pay both the rental prorated based on the yearly rental due and full yearly rental due for the next succeeding year before the lease or license is executed.

(3) If there are special circumstances, a lessee or licensee of agricultural land must write to the Council prior to November 1 if they wish an extension for rental payment beyond the December 31 deadline. All extension requests must set forth the reasons for the extension and verification of those reasons by the appropriate sources. In all cases permission for an extension may only be given in writing by the Council and such extension may not extend beyond April 1 of the following year.



16.01.090 RENEWAL OF LEASE OR LICENSE AND PREFERENCE RIGHT.

(1) The Council retains the right to select the best lessee possible to fulfill the operation obligations under any lease. In the exercise of the Council's discretion to select the best lessee possible for agriculture and grazing leases, the Council recognizes that retention of stable, long-term lessees who are familiar with operation history and characteristics of the lease promotes good stewardship of the land. Such security of land tenure encourages the lessee to place and develop improvements which, in turn, increases the productivity of the land and improves its management. Consequently, it is the Council's policy to allow an incumbent lessee in good standing, a preference right to meet the high bid and retain the lease.

16.01.100 CANCELLATION OF LEASE OR LICENSE.

(1) The Council may cancel any lease or license if the lessee or licensee commits fraud or misrepresents facts to the City which, if known, would have had an effect on the issuance of the lease or license, uses the land for any purpose not authorized in the lease or license, or violates the terms of the lease, license or these rules, fails to manage the land in a husband-like manner consistent with conservation of the land resources and the perpetuation of its productivity, or for any other reason provided by law. The lessee or licensee of a canceled lease or license shall not be entitled to any refunds or exemptions from any payments due to the City.

(2) The City shall immediately notify the lessee or licensee by certified mail of the cancellation and the reason for it, and the lease or license shall be deemed canceled 15 days after such notice is received by the lessee or licensee, unless the lessee or licensee files a notice of appeal with the Council prior to the expiration of the 15-day period, in which case the lease or license remains in effect until the Council decides the matter. Within 10 days after receipt of notice of appeal the Council shall notify the lessee or licensee of the time and place of the hearing before the council. The time and place of the hearing may be changed by the Council after 10 days notice to the lessee or licensee. The burden of proof to show why the lease or license should not be canceled shall be borne by the lessee or licensee. The Council may reinstate the lease or license where it finds that the violation is not serious enough to warrant cancellation and restore all rights and privileges upon payment of penalty up to 3 times the annual rental against the lessee or licensee. Payment of the penalty may be considered as notice of appeal for the purpose of keeping the lease in effect until the Council decides the matter. If the Council does not reinstate the lease or license, the land shall be re-advertised for lease or license .

16.01.110 MORTGAGES AND PLEDGES

(1) City land leases or licenses and leasehold interests may not be pledged or mortgaged by the lessee or licensee.

16.01.120 ESTATES

(1) In the event of lessee's or licensee's death, the lease or license shall be transferred to the decedent lessee's or licensee's estate. The Council shall consider the estate to be the lessee or licensee until such time as proof of different ownership is received by the Council. In most cases the Council shall require a copy of the decree of distribution or assignment by a court-appointed personal representative. Exception to this rule may be allowed when the Council determines that an unusual situation exists.

(20) All provisions of these rules, including but not limited to : leasing, licensing, subleasing, reporting, assignments, and payments; also apply to leases or licenses held by a decedent's estate.

16.01.130 IMPROVEMENTS

(1) A lessee or licensee may place improvements on City land which are necessary for the conservation or utilization of such City land with the approval of the Council; however: The lessee or licensee shall apply for permission prior to placing any improvements on City land on the form prescribed by the Council and then in current use.

(2) Lease holder may deduct the cost of improvements up to but not exceeding the amount of the annual lease.

16.01.140 RESERVATIONS.

(1) The City reserves to itself and its representatives and authorized lessees and licensees the right to enter upon City lands for the purposes contained within the lease or license. The City also reserves the right for itself and representatives to enter upon City lands for any lawful purposes including inspections.

16.01.150 WATER RIGHTS

(1) If a water right is or has been developed on City land by the lessee or licensee for use on the leased or licensed land, such water right shall belong to the City. The lessee or licensee shall be entitled to compensation for the reasonable value of the improvements associated with the water right by any new lessee, licensee, or purchaser if such improvements are sold to a new lessee or licensee or purchaser . This shall not be construed to make the City liable for the value of any water right. Any water rights hereafter secured by the lessee and licensee on City lands shall be secured in the name of the City of Harlowton.

(2) A lessee or licensee of City owned land may not sell or otherwise dispose of a City owned water right for any purpose. Such practices may constitute sufficient grounds for cancellation of the lease or license.



16.01.160 EASEMENTS.

(1) The City reserves to itself the right to grant easements for public purposes on City lands, the surface of which is leased or licensed. The Council may grant easements upon City lands without the prior consent of a lessee or licensee. However, the Council will require the grantee to compensate the lessee or licensee for damages to improvements, crops, or the leasehold interest and file proof of that fact with department prior to the granting of such easement. . If an easement limit's the use by a lessee or licensee the lease or license shall be adjusted to reflect the loss of use.

(2) Any person desiring an easement for public purposes shall apply to the Council on a form prescribed by the Council. The applicant shall pay full market value for the interest disposed of. The easement shall terminate when the land ceases to be used for its specified public purpose unless the easement is authorized by the Council for a specific term.

The council shall terminate the easement by notifying the grantee at his last known address that the public purpose has ceased or the specified term has expired. If the easement ceases to be used for the specified use, the grantee shall notify the Council of the termination of the easement.

(3) Within 5 years of the granting of an easement by the board, the grantee must put the easement to the use which is allowed in the right-of-way deed. Failure to put the easement to such use shall be sufficient cause for forfeiture of the easement upon written notice by the City.

INSURANCES

All lease holders with the exception of the JCC and Depot need \$1,000,000.00 (1 million) liability insurance. With the City named as additionally insured.

OTHER OBLIGATIONS OF LESSEE

Lessee shall spray for and control noxious weeds and maintain existing fences at Lessee's expense.

