

LEASEHOLDER REQUEST FOR SUPPORT: NATURAL HIGH FITNESS

Issue

Natural High Fitness, the current leasee and operator of the gym space at the Okotoks Recreation Centre (ORC), has requested amendments to the lease that are outside Administration's authority of approval.

Motion Arising From In Camera

That Administration be directed to implement Option _____ for Request 1 as indicated in In Camera report 3.2.

And

That Administration be directed to implement Option _____ for Requests 2 and 3 as contained in In Camera report 3.2.

Report

On March 15, 2022, the Town of Okotoks received a request from Natural High Fitness (NHF) for the following:

1. waiving of all lease payment arrears;
2. no rent charged until June 2022; and
3. rent reduction to less than market for the balance of 2022.

Administration does not have the authority to write off debt over \$5,000, nor to lease space to for profit companies for other than market value. Therefore, the request from NHF is presented to Council for consideration.

Administration has received a legal opinion on the options to move the request forward and the Town's lawyer, Jennifer Sykes, will be present at the In Camera discussion to provide legal insight.

The last two (2) years have been disruptive to the community. Isolation, economic constraints, and uncertainty have impacted the social wellness of our residents. Administration has evaluated the request from NHF using multiple lenses including financial, social, and environmental. Allowing all residents to have access to inclusive programs, services, and amenities at the ORC plays a pivotal role in physical, social, and mental recovery. Continued uninterrupted access to facilities has been prioritized as the guiding priority in the development of alternatives.

Options for Consideration

Request 1: Waiving of all lease payment arrears

Administration reviews these types of requests on an annual basis for the calendar year they apply too. Currently, Administration reviews outstanding aged account

receivables as required by policy. At year end, the Town will provide for a bad debt allowance based on a number of factors for each customer. This amount in the 'allowance' for bad debt is included in the financial statements. When it is determined that the amount is not recoverable under the policy, Council approval is required for amounts over \$5,000. A formal resolution will contain the name of the holder of the bad debt being written off.

For 2021, the current arrears are \$[REDACTED] + GST totalling \$[REDACTED] for NHF.

OPTION 1: If Council agrees to write off this debt, a resolution will be presented at the same time as the annual financial report at the April 25, 2022 Council meeting. Administration has already included this amount in the 'allowance' for bad debt to inform the financial statements so the financial statements will not be impacted by this decision.

OR

OPTION 2: Council may not grant the request from NHF and move to demand payment for the lease arrears.

For the request from NHF to write off 2022, Administration recommends considering this as part of the lease negotiations below under Request 2 and 3.

Request 2 and 3: Zero rent for January to May 2022 and reduced rent for June to December 2022.

In reviewing Request 2 and 3, Administration has developed two viable alternatives for consideration that are consistent with the Town's priority of ensuring minimized reduction in service delivery to the public, below:

1. compliance with section 70 of the *Municipal Government Act (MGA)*; and
2. issuance of a demand notice for payment of lease / Distrain and Re-enter.

Section 70 of the *MGA* is the guiding source for this decision. It indicates that if the Town is going to grant an interest in land or recreation for less than market value to a for profit company, this decision must be advertised. If that is the case, Council would advertise their intent to take such action, with details. Only after the advertising requirements are met as outlined in the *MGA*, would Council be able to formally pass a resolution allowing for reduced rent to NHF.

At the time the lease was negotiated, the market rate for facilities was \$[REDACTED] per [REDACTED], which is the rate NHF is currently being billed at. NHF is requesting \$0 lease rate for January to May 2022, and a substantially reduced amount for June to December 2022, however they do not specify the exact amount. Council input will be required.

OPTION 3A: Compliance with section 70 at the March 28, 2022 Council meeting.

If Council supports this option, a report will be added to the March 28, 2022 public agenda to include the proposed advertising and public information regarding the proposed rent reduction. Advertising would occur in the April 6 and 13, 2022 editions of the Western Wheel with the Council decision coming forward at the April 25, 2022 Council meeting.

OPTION 3B: Compliance with section 70 at the April 11, 2022 Council meeting.

If Council supports this option, a report will be brought back to the public agenda for the April 11, 2022 meeting with the proposed advertising and public information regarding the proposed rent reduction. Advertising would occur in the April 20 and 27, 2022 editions of the Western Wheel with the Council decision coming forward at the May 9, 2022 Council meeting.

While option 3A is better from a timing perspective for quicker decision making, organizational readiness to deal with the anticipated questions and information to support this process may be time constraining from an administrative perspective.

OPTION 4: Demand notice for payment of lease arrears/ [REDACTED]

If Council does not grant the request from NHF, the next step would be for the Town, as landlord, to give notice to pay (the lease requires 5 days' notice). [REDACTED]


The Town will need to monitor the facility and equipment [REDACTED]

[REDACTED] try to reach some kind of settlement agreement so that both parties can have a clean break. [REDACTED]

Service Delivery Implications

There is a real risk in either scenario that the Town may need to step in and provide gym services until a longer term operator is determined. What will be critical for success is access to the equipment. Any disruption in service may require approval of refunds for all pass holders as a result in change of service levels which is another reason why minimal reduction in access to the fitness facility at the ORC has been the guiding principle of decision making.

Financial Situation: Natural High Fitness



If a timely solution can not be found, the risk to the Town is that it will lose the current service provider immediately and the Town may be forced into interim operation of the facility. The bigger risk is the loss of an important community asset at a time the community is focused on connection and access to recreation amenities to ensure community and individual health.

CAO Comments

While the CAO traditionally does not provide comments to In Camera reports, the complexity of this issue requires some context. In this scenario, Council is between a rock and a hard place. The “rock” will be concerns from the taxpayers regarding a ‘bailout’ of a for profit service provider. The “hard place” will be not having access to a fully functioning multi purpose facility that is an essential service for the community as it continues to recover. At the end of the day, I recommend that the Town pursue compliance with section 70 of the *MGA* and for the year of 2022, allow \$0 rent to May and allow for 50% rent from June to the end of the year which is consistent with what other landlords are charging. This recommendation is consistent with the values of the organization - ensuring we try to find solutions in difficult times. From an organizational reputation perspective, I much prefer the headline of “Town supports organization to recover after tough pandemic times” than “Town ends lease for non-payment of rent during pandemic”. Organizational readiness to respond to this request will be critical to ensure we can lead the conversation on this and Council support will be required.

Attachment(s)

1. Appendix A - Contextual Information on Fitness and Recreation Centres
2. Appendix B - Financial and Social Impacts
3. 2022 Multiplex Fitness Comparison
4. Natural High Letter to the Town – March 2022
5. Natural High Fitness Lease

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March 23, 2022

*Redacted under FOIP s. 16(1)(a)(ii) and (c)(ii)(iii)