

Management Committee

Meeting date: March 9, 2022

For the Metropolitan Council meeting of March 23, 2022

Subject: RF 7-2 Use of Council Property Policy Update

District(s), Member(s): All Districts; All Members

Policy/Legal Reference: Minn. Stat. §§ 473.123 Subd. 4(d)

Staff Prepared/Presented: Greg Ewig, Director of Real Estate, 651-602-1556

Division/Department: Regional Administration/Real Estate

Proposed Action

That the Metropolitan Council adopt RF 7-2 Use of Council Property Policy version 3.

Background

RF 7-2 Use of Council Property policy was last updated in 1998 and originally focused on employee use of Council Property. As part of the regular updating process, the Policy was reviewed and refreshed to reflect a more expanded application to include third parties. The revisions reflect the latest expectations related to financial covenants, incidental use and prohibited uses of Council property.

A Council-wide Policy and Procedure Review Team reviews all policies and procedures for consistency, clarity, and compliance. This team reviewed version RF 7-2 Use of Council Property Policy version 3 and endorsed it to move forward to the Council approval process.

Rationale

Minnesota Statutes §473.123, subdivision 4(d), permits the Metropolitan Council to adopt policies and procedures governing its operations. These revisions clarify the policy, align with best practices and previously taken Council action.

Thrive Lens Analysis

This policy action supports the Council's Thrive Stewardship Outcome. This update will further promote responsible management of the Council's facilities and land and effective use of the Council's real property, facilities and infrastructure.

Funding

No funding is tied to the proposed action.

Known Support / Opposition

There is no known opposition to the proposed action



POLICY

Use of Council Property Policy

RF 7-2

Category: Financial Management

Business Unit Responsible: Regional Administration

Policy Owner: Deputy Regional Administrator

Policy Contact: Mary Bogie, Deputy Regional Administrator

Synopsis: To provide for use of Council facilities and property so as to comply with the public purpose doctrine.

POLICY

The Metropolitan Council retains control of its physical facilities, furnishings, and other property, and they are to be used for authorized business purposes. The Council reserves the right to make reasonable regulations regarding their use and care. An employee shall not use or allow the use of Council time, supplies, or Council-owned or -leased property or equipment for the employee's private interests, or any other use not in the interest of the Council, except as provided by law.

PURPOSE OF POLICY

To provide for use of Council facilities and property so as to comply with the public purpose doctrine.

Notify employees and visitors that the Council retains control of its facilities and property, and those facilities and property are not to be used for unauthorized purposes or purposes that are contrary to the policies, procedures, and mission of the Council.

BACKGROUND & REASONS FOR POLICY

The Council wishes to protect public resources and to provide guidance on the appropriate use of publicly owned property.

The Council has a right and certain legal duties to supervise and control the workplace environment with respect to health, safety, nondiscrimination, and other matters.

Employees have certain rights to privacy within their own person and possessions and the Council has need for supervision, control, and the efficient operation of the workplace.

IMPLEMENTATION & ACCOUNTABILITY

The Human Resources Department is responsible for distributing the policy and procedures to all employees and to receive employee acknowledgments.

All employees are responsible for reviewing this policy and procedures and for acknowledging receipt in writing.

This policy and accompanying procedures apply to all employees, including managers and supervisors.

PROCEDURES

- [RF 7-2a Expectations of Privacy in the Workplace Procedure](#)
 - [RF 7-2b Use of Council Facilities by Consultants Procedure](#)
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RESOURCES

Related Procedures

- [TECH 1-1a Cell Phone Services and Equipment Procedure](#)
- [TECH 1-1b Email and Intranet/Internet Usage Procedure](#)
- [TECH 1-1c Computer Usage Procedure](#)

Other Resources

- [Council Resolution No 2016-26, Public Purpose Doctrine](#)
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HISTORY

Version 2 – Template Update

10/12/2020 - Updated content into new template.

Version 1 – Approval Date

09/11/1998

Last Reviewed Date

09/11/1998

Next Content Review Date

05/05/2021

Former Reference #

4-6-3

Version

2



POLICY

Use of Council Property Policy

RF 7-2

Category: Financial Management

Business Unit Responsible: Regional Administration

Policy Owner: Deputy Regional Administrator

Policy Contact: Georges Gonzalez, Deputy Regional Administrator

Synopsis: To provide guidance on the use of Metropolitan Council real estate consistent with the Metropolitan Council's planned use and the public purpose doctrine.

POLICY

The Metropolitan Council will effectively manage all real property and facilities (collectively "Property") it owns and uses in pursuit of its mission and shall operate its Property to ensure the safe and responsible delivery of Metropolitan Council services and regional development efforts.

PURPOSE OF POLICY

General purpose

This policy governs the use of all Metropolitan Council real properties and facilities, whether owned in fee, easement, other interest, or leased, and shall be applied to ensure all appropriate legal, financial, operational, security and considerations related to equity are met. The Metropolitan Council retains control of its land, facilities, furnishings, and other property, which shall only be used for authorized public purposes.

Procedures

The Metropolitan Council shall implement procedures regarding use and care of its Property to ensure such use complies with all federal, state, and local obligations.

Third-party use of property

A third party, such as a tenant, licensee or permittee, may use Metropolitan Council property only in furtherance of a public purpose, for uses identified in a written agreement, and shall remain subject to all applicable funding covenants and restrictions, such as restrictions related to private use related to tax exempt bond-financed properties or incidental use specifically related to federally funded transit properties. The Metropolitan Council reserves the right to cancel any Property agreement involving a third party if any of the following conditions exist:

1. Third party occupancy conflicts with Metropolitan Council funding covenants and restrictions.
2. The third party uses the Property in an unsafe, inappropriate, or illegal manner.
3. The use becomes contrary to the Metropolitan Council's public mission.

Employee use of property

An employee shall not use or allow the use of Metropolitan Council time, supplies, Property, or equipment for an employee's private interests, or any other use not in the interest of the Metropolitan Council, except as provided by law.

The Metropolitan Council has a right, obligation, and duty to supervise and control its Property to ensure compliance with all appropriate requirements, such as funding restrictions. This provision includes use of the workplace environment with respect to health, safety, nondiscrimination, and other matters as further established within Metropolitan Council policies and procedures. Employees have certain rights to privacy within their own person and possessions, and the Metropolitan Council has need for supervision, control, and the efficient operation of the workplace, and use of its real property and facilities. See [RF 7-2a, *Expectations of Privacy in the Workplace Procedure*](#),

IMPLEMENTATION & ACCOUNTABILITY

All employees are responsible for adhering to this policy when using Metropolitan Council Property or agreements with third parties for the use of Metropolitan Council Property. Managers are responsible for monitoring Property use within their areas of responsibility. All use of Metropolitan Council Property, whether owned, leased, or otherwise governed by agreement shall follow these general policies:

- A. Agreements shall be in writing.** Any use of Metropolitan Council-owned or leased property by third parties must be in writing, for a public purpose, and comply with all applicable state, federal, and local requirements and restrictions.
- B. Costs shall be paid for use of Property.** The Metropolitan Council shall charge a fee for the use of its Property that is no less than an amount necessary to cover the direct costs attributable to such use unless otherwise provided for by law.
- C. Property remains subject to public funding requirements.** Use of Metropolitan Council Property remains subject to all applicable public funding obligations when public funding was used to acquire, repair, or improve Metropolitan Council Property.
- D. Limits private uses of Metropolitan Council Property.** Under very limited circumstances and only after consultation with the Office of General Counsel may Metropolitan Council Property be used for a private use.
- E. Prohibit certain uses on Metropolitan Council Property.** The Metropolitan Council will not allow use of its Property for hunting or trapping; political issues and candidates; religion or religious causes; to promote or to serve alcohol, tobacco, or illicit substances; or to promote, display, or host obscene, offensive, or unlawful services and materials.
- F. Conflicts of interest.** The Metropolitan Council shall not enter into any Property agreements in which a Metropolitan Council Member or employee, or their immediate family members, has an indirect or direct personal financial interest or will personally benefit financially.

PROCEDURES

- [RF 7-2a *Expectations of Privacy in the Workplace Procedure*](#)
- [RF 7-2b *Use of Council Facilities by Consultants Procedure*](#)
- [RF 7-2c *Use of Council Property Procedure \(pending\)*](#)

DEFINITIONS

Incidental use: Limited, authorized non-transit use of transit Property acquired with FTA funding. Incidental uses must not conflict with the approved purposes of the project and must not interfere with the intended transit uses of the project property.

Lease or use agreement: refers to an agreement between the Metropolitan Council and a third party allowing use and/or occupancy of Metropolitan Council Property for a defined term, value, and use. Agreements may include Metropolitan Council leases to a third party (as a landlord) or the Metropolitan Council leasing from a third party (as a tenant).

Property: collectively refers to all real property interests and/or facilities owned or leased by the Metropolitan Council. Includes easements, licenses, and public-to-public agreements that obligate the parties to use Metropolitan Council property to fulfill a particular public purpose.

Public purpose: occurs where a use benefits the community as a whole, use directly relates to the functions of government, and does not have as its primary objective the benefit of a private interest. (RE Short Co. V. City of Minneapolis, 269 N.W.2d 331 (Minn. 1978).

Public Purpose Doctrine: permits a governmental entity to expend public funds or use of its resources only if the primary purpose of the expenditure is public and the expenditure directly relates to the governmental purposes for which the entity was created.

RESOURCES

Related Procedures

- RF 9-1 Real Estate Policy

Other Resources

- [Council Resolution No 2016-26, Public Purpose Doctrine](#)

HISTORY

Version 3 – Approval Date

Xx/xx/xxxx – Expanded policy beyond employee use of property to include leasing of Council property and establishing procedure regarding use of property and reference to the new procedure.

Version 2 – Approval Date

10/12/2020 – Updated Content into new template.

Version 1 – Approval Date

09/11/1998

Last Reviewed Date

Not Set

Next Content Review Date

05/05/2023

Former Reference

4-6-3

Version

3



Comparison Version

(Strikeout = removed language. Underlined = added language)

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Policy Owner: Deputy Regional Administrator

Policy Contact: ~~Mary Bogie~~, Georges Gonzalez, Deputy Regional Administrator

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POLICY

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09/11/1998

Last Reviewed Date

09/11/1998

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05/05/2024₃

Former Reference #

4-6-3

Version

2₃