



Administrative Policy Manual

Policy No: H-1

Date: 12-21-2011

Approved: City Council

SUBJECT: POLICY FOR RENT DEFAULTS UNDER LEASES

1. **PURPOSE:** To establish policies and procedures to equitably manage delinquent lease payments for the City and the Redevelopment Agency owned properties.
2. **SCOPE:** The City of Indio ("City") and the Redevelopment Agency ("Agency") hereby establish policies and procedures that will guide the process for managing existing and future delinquent lease payments, of City and Agency owned properties, which are processed by the Finance Department and managed by the Public Works and Economic Development Department. This policy shall be implemented on a prospective basis and to the extent possible; its terms shall be incorporated into new leases entered into by the City and Agency.
3. **GENERAL RENT COMMENCEMENT POLICY:** Unless a free-rent period is agreed upon, future leases shall provide that the tenant shall commence paying rent the first calendar day of each month, or pro-rated amount thereof, following the execution date of the lease; without offset, deduction on demand.
4. **RENT DEFAULT:** Upon discovery of a delinquent lease payment the City/Agency will pursue the following actions unless stated differently in an existing lease agreement:
 - 4.1. After 15 days. If any installment of rent is not received by the City's Finance Department within fifteen (15) days of the date on which it is due the tenant will be required to pay a five percent (5%) of the past due payment as liquidated damages.
 - 4.2. After 30 days. If the tenant is in default for a period of thirty (30) days or more, then the City's Finance Department shall notify the respective City Departments which shall promptly notify the tenant in writing regarding a potential termination of the lease.
 - 4.3. After 45 days. If the tenant is in default for a period of forty-five (45) days or more, the Finance Department shall notify the respective Department which shall promptly notify the City/Agency Attorney. The City/Agency Attorney shall then prepare and send a letter indicating that the tenant has three days to pay the full amount plus late charges, or leave is forfeited and must quit.

4.4. Failure to Pay. If tenant fails to make the timely payment according to subsection 4.3, the lease term will end and the City/Agency Attorney will commence the unlawful detainer process if necessary to obtain possession.

4.5. Attorney Fees. New leases shall provide that (i) the tenant shall pay the City any attorneys' fees or notice/process service fees incurred by Landlord by reason of Tenant's failure to pay rent or other charges when due hereunder; (ii) and all unpaid amounts shall accrue interest from the date due the lesser of the maximum rate allowed by law, or 10% per annum until paid.

4.6. Eviction. Public Works or the Economic Development Department shall work with the City Attorney/Agency Counsel in the event an eviction is necessary.

5. **AUTHORITY/DISCRETION:** The City Manager/Executive Director will have the authority and discretion to make minor modifications to this policy as needed to continuously reflect the Agency's priorities and needs



**SUBMITTAL TO THE CITY COUNCIL AND
REDEVELOPMENT AGENCY
CITY OF INDIO, CALIFORNIA
DECEMBER 21, 2011**

FROM: Economic Development Department

SUBJECT: Adoption of Policy establishing a formal process to equitably manage delinquent lease payments of City and Redevelopment Agency owned properties.

RECOMMENDED MOTION: Adopt the Policy for Rent Defaults Under Leases and authorize the City Manager/Executive Director to implement.

SUMMARY: The City and Redevelopment Agency lease many of their properties to various types of uses throughout the city. Accordingly, Staff has drafted a formal policy to address occurrences of delinquent lease payments. The attached Policy (Attachment A) sets forth a more formal and uniform process. Adhering to this Policy will ensure that the City/Agency maximizes its means to recover any outstanding balance(s) and essentially protect its investments.

(Continued on the next page)

Prepared by Scott Trujillo,
Senior Neighborhood Coordinator 12-12-2011

FINANCIAL DATA	Cost associated with this action:	N/A	In current year budget:	N/A
	Current F.Y. general fund cost:	N/A	Budget adjustment:	N/A
	Future FY. cost:	N/A	For fiscal year:	N/A
Source of funds: N/A		Current account balance: N/A		
Account number: N/A		Balance remaining if approved: N/A		
Legal Review: Craig A. Steele Agency Counsel	Department Head Review: Mariano Aguirre Development Manager	Financial Review: Rob Rockwell Finance Director		
CITY MANAGER'S RECOMMENDATION: APPROVE		CITY MANAGER'S SIGNATURE 		

BACKGROUND: The proposed Policy allows the City/Agency to adhere to a more formal and equitable process as it relates to delinquent lease payments by tenants occupying City/Agency owned properties. This policy is triggered only when the tenant does not pay the due lease amount on time as prescribed in their respective lease, and will identify the process and procedures used to notify, collect, cure and ultimately evict if necessary. Although much of the procedure is already identified within existing leases, an actual policy will formalize the process and delineate the responsible duties of each internal Department within the City organization. Furthermore, it creates consistency and fair practices for all tenants whereas all future leases will be consistent with this policy. The Delinquent Lease Policy's scope, late charges, and eviction procedures are further described in the attached Policy.

The Agency is currently unable to enter into any new leases/contracts/agreements or commit funds to new uses under the pending California Supreme Court Case against the State of California (regarding the State legislation eliminating Redevelopment Agencies). Until that case is decided and it is clear the Agency may reinstitute redevelopment functions, Staff recommends that the City/Agency adopt this Policy as an administrative matter in order to be prepared for the restoration of Agency activities.

FINANCIAL ANALYSIS: There will be no financial impact to the General Fund.

ALTERNATIVES:

- A) Not adopt the policy.
- B) Approve a modified policy that incorporates direction from the City Council/Agency Board.

ATTACHMENT(s):

Attachment A – Policy for Rent Defaults Under Leases

Councilmember Wilson called attention to Page 17, Section 5 of the Plan, and suggested taking out the word "consider" and that we "require" any property where there is a development agreement that we must have a detailed analysis on the finances of the project, at the expense of the applicant.

Mr. Aguirre stated a lot depends on what decision the state makes month. He suggested a presentation at the annual strategic retreat with the city council. A recommended action item is for the city council to consider a market study.

After discussion, it was moved by Councilmember Ramos Watson, seconded by Councilmember Wilson and unanimously carried to **ADOPT** the 2012-2013 Economic Development Plan to include a real estate financial analysis of Disposition Development Agreements and Tax Sharing Agreements or any type of city assistance, be performed for each.

7. POLICY ESTABLISHING A FORMAL PROCESS TO MANAGE DELINQUENT LEASES OF CITY AND REDEVELOPMENT AGENCY OWNED PROPERTIES

Daniel Arvizo, Senior Planner, recommended adoption of a policy establishing a formal process to equitably manage delinquent lease payments for city and Redevelopment Agency owned properties. Adhering to this policy will ensure that the City/Agency maximizes its means to recover any outstanding balances and essentially protect its investments.

Agency/Councilmember Holmes suggested each segment in the City deserves a separate look and a different view. Agency/Councilmember Wilson questioned discrimination based on area or the level of financial success in society. Roxanne Diaz, City Attorney, stated the city can look at different areas of the city, depending on what the goals are, but when you adopt a policy you want to apply the policy generally across the board so that everyone is treated the same. Agency/Councilmember Torres suggested drafting the leases in that same manner.

After discussion, it was moved by Agency/Councilmember Holmes, seconded by Agency/Councilmember Torres and **unanimously carried to ADOPT a policy for Rent Defaults Under Leases** and **AUTHORIZE** the City Manager/Executive Director to implement.

8. E2G2 INTERNET BASED BUSINESS LICENSE PILOT PROGRAM

Dan Martinez, City Manager, reported on an internet based business license, pilot program. The plan is to automate business license services. Providing direct access to city services helps staff work more efficiently with local area businesses. In exchange for being in the pilot program the city will receive twenty percent of any advertising revenue generated through the online software application. Advertising through the software application will be at the discretion of local businesses. The only cost to the city will be internal staff time needed to assist with the implementation and rollout of the pilot program which is expected to take approximately six months.