



# Memo to Council

Date: February 11, 2025

Subject: Exclusivity Clauses Review – Motion Served by Councillor Callan Morrison

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## Motion Served

Notice of the following motion was provided at the January 28, 2025, Regular Council meeting:

**THAT staff report back on the use of exclusivity clauses in City contracts in order to better understand the use and scope of these clauses, and identify policy or other tools to ensure the City obtains the best value in its contract negotiations.**

## Background

Exclusivity clauses as well as non-compete clauses can be used strategically for both vendors and the City in securing favorable contract terms which includes guarantees on service, reductions in service costs or increases in revenues, as well as for reductions in risk for future unforeseen circumstances that may be unfavorable to either party. In many cases these clauses do not have negative consequences, but there are situations where these clauses can have unintended consequences and affect the City from entering into other contracts or use agreements that would be advantageous for the City or its residents. These exclusivities can also prevent other user groups from providing a service and/or utilizing a facility to its full intended use.

A recent example of this is with our local sport associations who book the arenas for their games and tournaments and want to use the concession area in Arena 1. User groups are restricted on the product offerings they are permitted to provide while fundraising for their teams and using the City concession stand due to an exclusivity clause in the vending machine providers agreement. This agreement prevents a significant number of popular products from being offered for sale within the recreation centre by other vendors or user groups. This exclusivity can heavily restrict the fundraising abilities of these groups during tournaments and games and discourages the use of the concession for fundraising purposes as fundraising is limited. Team sports require registration fees and often have additional costs such as team fees, team gear, and tournament/travel costs. Competition at a high level can be very expensive for families in our community, and removing barriers to fundraising opportunities while utilizing existing civic facilities intended for the sale of snacks and beverages should be permitted by these groups without significant restrictions on what can be offered. With the City investing in new recreation facilities such as the new field house at Bob Favelle Field, it is essential that we look at how these clauses are framed so as not to have unintended effects on future work or facilities. Although the concession stand is used as an example in this report, there are other exclusivities / non-compete clauses in other agreements that should be examined to ensure that

the City is maintaining a strong position and is not restricted for making moves that would be strategically advantageous for itself or its residents and continues to put our residents first in our decision making.

The intent of this motion is for staff to report back and provide recommendations on how the City can best navigate these types of clauses when they appear in contract proposals, and to also identify what policy and benefit threshold should be considered before entering into any clause that would be restrictive on the City and its resident user groups.

### Requested Timeline

<u>Level</u>	<u>Criteria</u>	<u>Staff Turnaround Time</u>
<input type="checkbox"/> Urgent	<ul style="list-style-type: none"> <li>Regulatory or interjurisdictional requirements</li> <li>Major and immediate risk and/or financial impact</li> </ul>	< 3 months
<input checked="" type="checkbox"/> Time-sensitive	<ul style="list-style-type: none"> <li>Significant impact to the community</li> <li>Significant financial impact</li> </ul>	3-6 months
<input type="checkbox"/> Non-urgent	All other work	< 12 months
<input type="checkbox"/> Other		

### Council Strategic Plan Alignment

This motion aligns with the following Council Strategic Plan Goal(s):

- Strategic Goal 1.3 – Lead with Good Governance: Maintain and improve the efficiency of City processes;
- Strategic Goal 3.3 – Enhance Community Well Being: Provide recreation services and access to indoor and outdoor amenities for all ages and abilities; and
- Strategic Goal 3.3 – Enhance Community Well Being: Facilitate community well-being through programs and long-term planning.

### Council Options

The following responses are available for Council consideration:

1. Receive for information.
2. Refer to staff to bring back a report (staff will determine if the nature of the work warrants a project proposal or a staff report, and will include considerations with respect to feasibility, resources, timeline, strategic plan alignment, and legislative analysis).
3. Other.