

**LEESBURG EXECUTIVE AIRPORT
LEASE POLICY FOR TERMINAL SPACE**

INTRODUCTION AND PURPOSE

The Leesburg Executive Airport (“Airport”) is owned and operated by the Town of Leesburg, Virginia (the “Town”), and operates under the adopted Rules, Regulations and Minimum Standards. Under the Code of Virginia, the Town’s governing body, the Leesburg Town Council, has the authority to lease terminal space. Under the Council/Manager Form of Government, the Town Manager, or their designee—the Airport Director, makes the decision to lease terminal space, followed by a recommendation from the Airport Commission.

The Airport Commission is an advisory body to the Town Council that oversees the Airport Rules, Regulations, and Minimum Standards, reviews leases, and makes recommendations to the Town Council and Airport Director to ensure effective and efficient administration of the Airport.

The purpose of this Policy is to ensure the long-term financial success of the Airport Terminal, ensure a fair process is used by the Town, and to ensure the Town is following the Code of Virginia and Virginia Constitution provisions regulating the lease of Town-owned property. This Policy shall apply to any new lease for terminal space or any new amendment to any existing lease executed after the date this Policy is adopted by the Airport Commission. This Policy does not apply to ground leases, Town-owned hangars, tie-down spaces, or terminal space leases for local, state or federal agencies.

APPLICABLE LAW

Under Va. Code § 15.2-1800, the Town must hold a public hearing to lease its real property (unless the Town is leasing to another public body, political subdivision or authority of the Commonwealth of Virginia). Therefore, **all leases, except those with public entities of the Commonwealth of Virginia, must be approved by the Town Council, after a public hearing.**

Under Va. Code § 15.2-2100, *et seq.*, any lease of public property **shall not exceed a term of 40 years. Before granting a lease for a term of more than five (5) years, the Town must publicly receive bids after advertisement.**¹ Under Va. Code § 15.2-2102, the Town Council must accept the highest bid from a responsible bidder and shall adopt the ordinance as advertised. There is no mechanism for negotiation in the bidding process for real property under that section. However, the Town Council may reject a higher bid and accept a low bid from a responsible bidder and award the lease to the lower bidder if the Town Council opines that some reason affecting the interest of the Town makes it advisable to do so. That reason must be written into the body of the ordinance granting the lease. Under Va. Code § 15.2-2103, the Town Council may advertise for further bids if no bid or no satisfactory bid is made. Finally, under Va. Code § 15.2-2105, no lease may be amended that extends or enlarges the time of the lease unless a call for public bids is advertised, along with the proposed ordinance. Therefore, since no negotiation is authorized

¹ The Attorney General has opined that leases for a period of five (5) years or less are exempt from public advertisement and bidding requirements, but whether a new short-term lease is an “amendment” to or “extension” of the present lease is a factual matter. *See 1982-83 Va. Op. Atty. Gen. 115 (August 10, 1982)*. In other words, if a proposed lease with the same lessee could be construed as creating a new short-term lease upon substantially different contractual terms, then the requirements listed in Va. Code § 15-2-2100 *et seq.* are not required.

by the Virginia Code when leasing terminal space, any parameters the Town places in its bid paperwork must be specific and written to accomplish the Town's lease objectives.²

APPLICATION FOR LEASE, EVALUATION CRITERIA AND DETERMINATION OF TERM

Any individual or entity interested in leasing terminal space at the Airport shall complete an Airport Lease Application ("Application") and submit the Application to the Airport Director. All interested parties submitting an application must provide proof of income and rental references, along with signatures of all parties whose names are submitted as owning an interest in the business or whose names will appear on leases or other documents as a partner, director or corporate officer.

All applicants will be subject to the following **Evaluation Criteria**:

- Nature of business
- Verification of ability to do business in Virginia
- A current credit report for each party owning or having a financial interest in the business and a credit report on the business itself, covering all geographical areas in which it has done business in the 10-year period immediately prior to the application
- Current financial statements prepared by a Certified Public Accountant
- Listing of assets owned or being purchased or leased which will be used in the business on the Airport
- Written authorization for the FAA, any aviation or aeronautics commissions, administrators, and departments of all states in which the applicant has engaged in aviation business to release information in their files relating to the applicant or its operation
- Copy of insurance liability coverage
- Professional qualifications of personnel

The Town reserves the right to independently evaluate the applicant's financial information and, in its sole judgment and opinion, determine the applicant's financial ability to provide responsible, safe and adequate services to the public.

Leases for PREMIUM Terminal Space

All leases for PREMIUM terminal space shall have a minimum lease term of five (5) years. PREMIUM terminal space includes the following suites: Suite 1, Suite 1A, Suite 1B, and Suite 3.

PREMIUM terminal space may be offered to the current tenant for renewal for one (1) additional five (5) year term if the tenant desires to renew the lease and so long as the tenant has met the following **Pre-**

Lease Conditions:

1. The tenant has not been delinquent for any lease payments more than three (3) times in the past two (2) years;
2. The tenant is not delinquent at the time of renewal;
3. The tenant has not received written notice from the Airport Director of a violation of the Rules, Regulations and Minimum Standards;
4. The tenant has not filed for bankruptcy;

² The Virginia Public Procurement Act ("VPPA") (Va. Code § 2.2-4300 *et seq.*) does not apply to the lease of real property; it applies only to goods and services.

5. The tenant has not received written notice of a violation of local, state or federal law regarding its operations at the Airport;
6. The tenant agrees to the new terms of the renewed lease.

If the current tenant agrees and qualifies for one (1) additional five (5) year term, the lease shall be approved by Town Council after a public hearing.

All leases for PREMIUM terminal space shall be bid after the current tenant has leased the space for two (2) consecutive five (5) year terms or for a lease term of at least ten (10) years. After the bidding process occurs, all PREMIUM terminal space must be approved by the Town Council, after recommendation by the Airport Commission, and after a public hearing. The Airport Commission's recommendation must be based upon the **Evaluation Criteria**.

If any PREMIUM terminal space becomes available or a current tenant does not seek a renewal, the Airport Director shall seek interest in the PREMIUM terminal space by issuing a Notice of Request for Applications for Premium Terminal Space. Any individual or entity interested must submit an Application to the Airport Director within the time period in the notice. If, after the Airport Director seeks interest, and more than one individual or entity submits an Application, the Airport Director shall evaluate the applications based upon the **Evaluation Criteria** and offer a lease for five (5) years to the applicant that scores highest on the evaluation criteria. The Town Council must approve the five (5) year lease after a public hearing.

In the alternative, and in the event the Airport Director receives more than one (1) Application, the Airport Director may decide to bid the PREMIUM terminal space for five (5) or ten (10) years. The bid criteria shall contain, at a minimum, the **Evaluation Criteria and Pre-Lease Conditions**.

Leases for NON-PREMIUM Terminal Space

All leases for NON-PREMIUM terminal space shall be for less than five (5) years as determined in the discretion of the Airport Director. NON-PREMIUM terminal space includes the following suites: Suite 4, Suite 5, and Suite 6.

NON-PREMIUM terminal space may be renewed by the current tenant for terms that total no more than ten (10) years if the tenant desires to renew the lease and so long as the tenant has met the following **Pre-Lease Conditions**:

1. The tenant has not been delinquent for any lease payments more than three (3) times in the past two (2) years;
2. The tenant is not delinquent at the time of renewal;
3. The tenant has not received written notice from the Airport Director of a violation of the Rules, Regulations and Minimum Standards;
4. The tenant has not filed for bankruptcy;
5. The tenant has not received written notice of a violation of local, state or federal law regarding its operations at the Airport;
6. The tenant agrees to the new terms of the renewed lease.

If the current tenant agrees and qualifies for a renewal of the lease, the lease shall be approved by Town Council after a public hearing.

In the event a NON-PREMIUM terminal space becomes available or a current tenant does not seek a renewal, the Airport Director shall seek interest in the NON-PREMIUM terminal space by issuing a Notice of Request for Applications for Non-PREMIUM Terminal Space. Any individual or entity interested must submit an Application to the Airport Director within the time period in the notice. If, after the Airport Director seeks interest, and more than one individual or entity submits an application, the Airport Director shall evaluate the applications based upon the **Evaluation Criteria** and offer a lease for less than 5 years to the applicant that scores highest on the evaluation criteria. The lease must be approved by Town Council, after a public hearing.

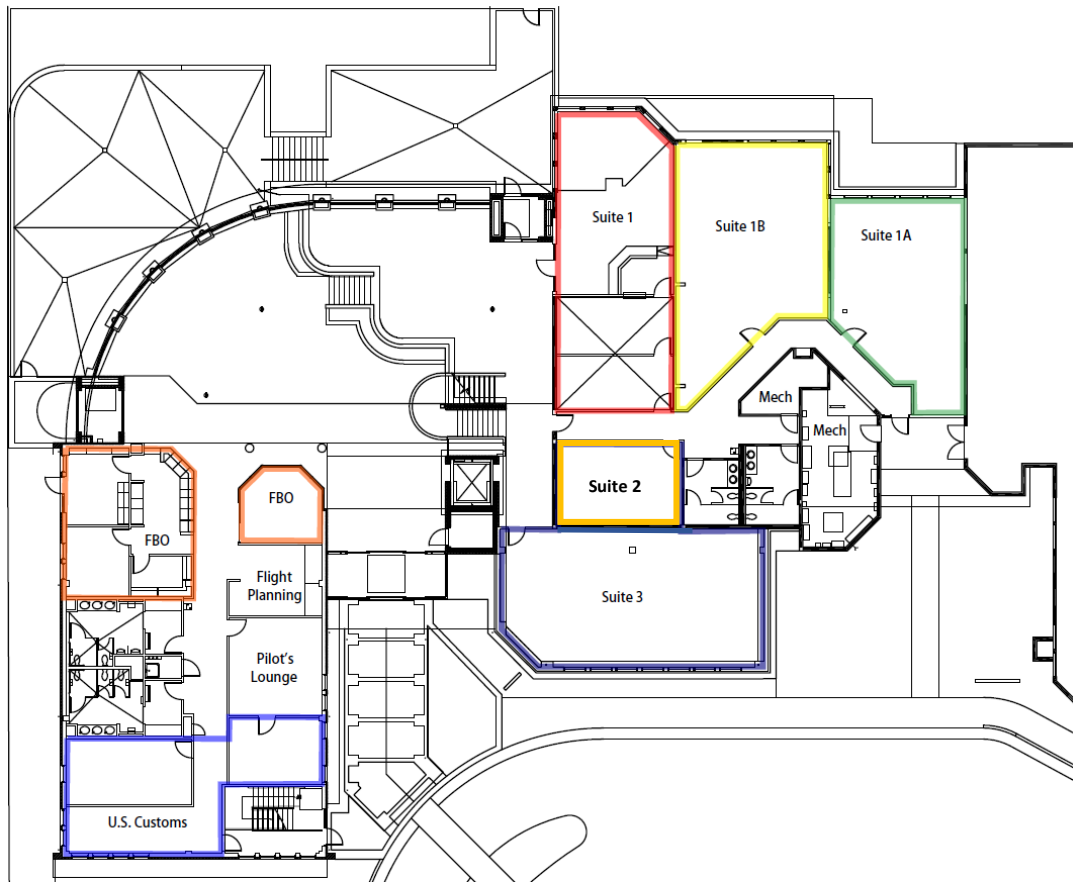


Figure 1 - 1st Floor Layout

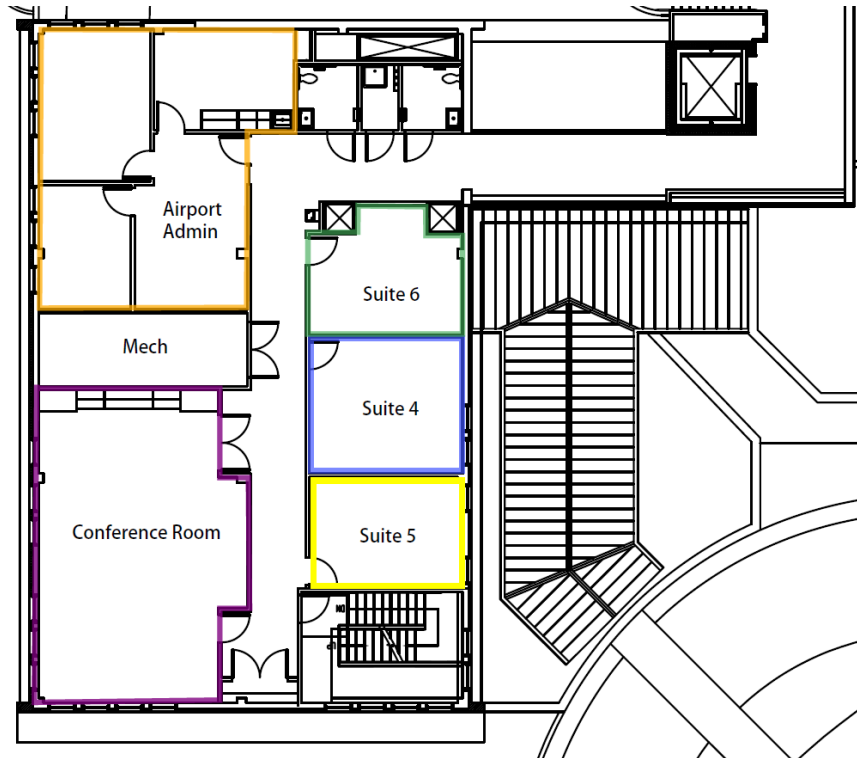


Figure 2 - 2nd Floor Layout

ATTACHMENTS

1. [Airport Rules, Regulations and Minimum Standards](#) provisions relating to leases (link)
2. Town Code Section §2-223 (Leesburg Executive Airport Commission)
3. Code of Virginia §§ 15.2-1800, 15.2-2100 et seq., Constitution of Virginia, Article VII, §9 (Sale of Property and granting of franchises)

Leesburg Town Code

Sec. 2-223. - Leesburg Executive Airport Commission.

(a) *Recreated and reestablished.* The Leesburg Executive Airport Commission is hereby recreated and reestablished.

(b) *Commission duties.* The Leesburg Executive Airport Commission oversees rules and regulations at the town executive airport. The commission makes recommendations to the town council and the airport director to ensure effective and efficient administration of the airport.

(c) *Membership.* Membership, exclusive of the rules outlined in division 1 of this article, membership on the executive airport commission may consist of town residents, town property owners, town business owners, or anyone employed in the town. An additional member shall be appointed by the county board of supervisors to serve a two-year term and shall serve as the liaison to the county board of supervisors.

(d) *Additional powers and duties.* The following shall be additional powers and duties of the executive airport commission:

- (1) Review all requests for services, leases and proposals for airport developments originated with or directed by the commission, and refer the commission's recommendations to the town manager for implementation or to the town council if required by law.
- (2) Maintain a continuous oversight and review of the airport rules and regulations and make recommendations from time to time to the town manager for proposed amendment of the airport rules and regulations and to the director for the effective and efficient administration of the airport rules and regulations.
- (3) Prepare and maintain a capital improvement plan for development of the airport.
- (4) Make recommendations concerning the adoption of rules governing operations at the airport as are necessary and appropriate.
- (5) Review and make recommendations to the town council of proposed annual budgets for airport improvements and operations.
- (6) Make recommendations to the town council on development and utilization of land and commercial operations at the airport, including leases thereof.
- (7) Perform such duties and have such powers as prescribed by the airport rules and regulations.
- (8) Make recommendations to establish rates of charge for services provided by the department, such as aircraft tie down, hangar and other rents, fuel and lubricant charges and landing fees.
- (9) Maintain liaison with county offices to promote implementation of appropriate land use controls affecting the airport.
- (10) Initiate timely actions with both the Federal Aviation Administration, state department of aviation and the state corporation commission, division of aeronautics, to provide priority support to proposed improvement or expansion of the airport.
- (11) Conduct public surveys and meetings, as appropriate, to aid in planning improvements and acquiring public support for the airport.

(Ord. No. 2008-0-17, § XXIV(art. VII(2.88)), 6-24-2008)

Code of Virginia

§ 15.2-1800. Purchase, sale, use, etc., of real property.

A. A locality may acquire by purchase, gift, devise, bequest, exchange, lease as lessee, or otherwise, title to, or any interests in, any real property, whether improved or unimproved, within its jurisdiction, for any public use. Acquisition of any interest in real property by condemnation is governed by Chapter 19 (§ [15.2-1901](#) et seq.). The acquisition of a leasehold or other interest in a telecommunications tower, owned by a nongovernmental source, for the operation of a locality's wireless radio communications systems shall be governed by this chapter.

B. Subject to any applicable requirements of Article VII, Section 9 of the Constitution, any locality may sell, at public or private sale, exchange, lease as lessor, mortgage, pledge, subordinate interest in or otherwise dispose of its real property, which includes the superjacent airspace (except airspace provided for in § [15.2-2030](#)) which may be subdivided and conveyed separate from the subjacent land surface, provided that no such real property, whether improved or unimproved, shall be disposed of until the governing body has held a public hearing concerning such disposal. However, the holding of a public hearing shall not apply to (i) the leasing of real property to another public body, political subdivision or authority of the Commonwealth or (ii) conveyance of site development easements, or utility easements related to transportation projects, across public property, including, but not limited to, easements for ingress, egress, utilities, cable, telecommunications, storm water management, and other similar conveyances, that are consistent with the local capital improvement program, involving improvement of property owned by the locality. The provisions of this section shall not apply to the vacation of public interests in real property under the provisions of Articles 6 (§ [15.2-2240](#) et seq.) and 7 (§ [15.2-2280](#) et seq.) of Chapter 22.

C. A city or town may also acquire real property for a public use outside its boundaries; a county may acquire real property for a public use outside its boundaries when expressly authorized by law.

D. A locality may construct, insure, and equip buildings, structures and other improvements on real property owned or leased by it.

E. A locality may operate, maintain, and regulate the use of its real property or may contract with other persons to do so.

Notwithstanding any contrary provision of law, general or special, no locality providing access and opportunity to use its real property, whether improved or unimproved, may deny equal access or a fair opportunity to use such real property to, or otherwise discriminate against, the Boy Scouts of America or the Girl Scouts of the USA. Nothing in this paragraph shall be construed to require any locality to sponsor the Boy Scouts of America or the Girl Scouts of the USA, or to exempt any such groups from local policies governing access to and use of a locality's real property. The provisions of this paragraph applicable to a locality shall also apply equally to any local governmental entity, including a department, agency, or authority.

F. This section shall not be construed to deprive the resident judge or judges of the right to control the use of the courthouse.

G. "Public use" as used in this section shall have the same meaning as in § [1-219.1](#).

§ 15.2-2100. Restrictions on selling certain municipal public property and granting franchises.

A. No rights of a city or town in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works shall be sold except by an ordinance passed by a recorded affirmative vote of three-fourths of all the members elected to the council, notwithstanding any contrary provision of law, general or special, and under such other restrictions as may be imposed by law. Notwithstanding any contrary provision of law, general or special, in case of a veto by the mayor of such an ordinance, it shall require a recorded affirmative vote of three-fourths of all the members elected to the council to override the veto.

B. No franchise, lease or right of any kind to use any such public property or any other public property or easement of any description, in a manner not permitted to the general public, shall be granted for a period longer than forty years, except for air rights together with easements for columns for support, which may be granted for a period not exceeding sixty years.

Before granting any such franchise or privilege for a term in excess of five years, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor, in such manner as is provided by § [15.2-2102](#), and shall then act as may be required by law.

Such grant, and any contract in pursuance thereof, may provide that, upon the termination of the grant, the plant as well as the property, if any, of the grantee in the streets, avenues and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation become the property of the city or town; but the grantee shall be entitled to no payment by reason of the value of the franchise. Any such plant or property acquired by a city or town may be sold or leased or, if authorized by general law, maintained, controlled, and operated by such city or town. Every such grant shall specify the mode of determining any valuation therein provided for and shall make adequate provisions by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant.

C. Any additional restriction now required in any existing municipal charter relating to the powers of cities and towns in selling or granting franchises or leasing any of their property is hereby superseded; however, nothing herein contained shall be construed as affecting the term of any existing franchise, lease or right. The requirement of an affirmative three-fourths vote of council shall apply only to the sale of the listed properties and not to their franchise, lease or use.

D. The provisions of this section shall only apply to cities or towns and shall not apply to counties or other political subdivisions.

§ 15.2-2101. Ordinance proposing grant of franchise, etc., to be advertised.

A. Before granting any franchise, privilege, lease or right of any kind to use any public property described in § [15.2-2100](#) or easement of any description, for a term in excess of five years, except in the case of and for a trunk railway, the city or town proposing to make the grant shall advertise a descriptive notice of the ordinance proposing to make the grant once a week for two successive weeks in a newspaper having general circulation in the city or town. The descriptive notice of the ordinance may also be advertised as many times in such other newspaper or newspapers, published outside the city, town or Commonwealth, as the council may determine. The advertisement shall include a statement that a copy of the full text of the ordinance is on file in the office of the clerk of the city or town council.

B. The advertisement shall invite bids for the franchise, privilege, lease or right proposed to be granted in the ordinance. The bids shall be in writing and delivered upon the day and hour named in the advertisement and shall be opened in public session and marked for identification by the person designated in the advertisement to receive such bids. The cost of the required advertisement shall be paid

by the city or town which shall be reimbursed by the person to whom the grant is made. The city or town shall have the right to reject any and all bids and shall reserve this right in the advertisement.

§ 15.2-2102. How bids received and to whom franchise awarded.

The presiding officer shall read aloud, or cause to be read aloud, a brief summary of each of the bids that have been received, for public information, and shall then inquire if any further bids are offered. If further bids are offered, they shall be received. The presiding officer shall thereafter declare the bidding closed. The presiding officer shall receive recommendations from the staff relative to any bids received in advance and staff's recommendations, if any, on any bids received at the advertised council meeting. After such other investigation as the council sees fit to make, the council shall accept the highest bid from a responsible bidder and shall adopt the ordinance as advertised, without substantial variation, except to insert the name of the accepted bidder. However, the council, by a recorded vote of a majority of the members elected to the council, may reject a higher bid and accept a lower bid from a responsible bidder and award the franchise, right, lease or privilege to the lower bidder, if, in its opinion, some reason affecting the interest of the city or town makes it advisable to do so, which reason shall be expressed in the body of the subsequent ordinance granting the franchise, right, lease or privilege. The process described in this section may run concurrently with any other advertisement or public ordinance requirements of this title, or such requirements as may be contained in charters of such cities or towns.

Article VII. Local Government

Section 9. Sale of property and granting of franchises by cities and towns

No rights of a city or town in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three-fourths of all members elected to the governing body.

No franchise, lease, or right of any kind to use any such public property or any other public property or easement of any description in a manner not permitted to the general public shall be granted for a longer period than forty years, except for air rights together with easements for columns of support, which may be granted for a period not exceeding sixty years. Before granting any such franchise or privilege for a term in excess of five years, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor. Such grant, and any contract in pursuance thereof, may provide that upon the termination of the grant, the plant as well as the property, if any, of the grantee in the streets, avenues, and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation therefor, become the property of the said city or town; but the grantee shall be entitled to no payment by reason of the value of the franchise. Any such plant or property acquired by a city or town may be sold or leased or, unless prohibited by general law, maintained, controlled, and operated by such city or town. Every such grant shall specify the mode of determining any valuation therein provided for and shall make adequate provisions by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good order throughout the term of the grant.