



Information about leasehold

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Summary of contractual arrangements when commercial property is made available on a leasehold basis

1. Basic principles of leasehold tenure

In October 2019, the Munich City Council adopted a landmark ruling to make city-owned commercial and inner-city property available solely on a leasehold basis in the future. The City Council will only consult on exceptions to this rule in well-founded individual circumstances.

What is leasehold?

Leasehold is the temporary right to erect, use, maintain and hold possession of a structure on and/or below the surface of a plot of land without being the owner of the site (cf. § 1 Paragraph 1 German Hereditary Building Rights Act, ErbbauRG).

Who is the owner of the site?

The owner of the site is the freeholder, in this case the City of Munich.

Who is the owner of existing buildings on the leasehold site or of structures that are yet to be erected?

Buildings already present on the site and any structures developed in future are owned by the leaseholder.

What does leasehold cost?

Leasehold tenure requires payment of a ground rent instead of a purchase price. The amount of ground rent charged for each commercial property is determined individually by the Valuation Office of the City of Munich. Ground rent is then payable to the freeholder in monthly or annual installments. It is, however, also possible to pay ground rent on a one-off basis at the commencement of the leasehold term (so-called capitalized ground rent).

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Can land charges and similar encumbrances be placed on a leasehold?

The provisions of the Hereditary Building Rights Act permit encumbrances. Nevertheless, consent from the freeholder is always required. Any encumbrance must be compatible with the principles of sound business practice, and the purpose for which the leasehold has been created must not be significantly impaired or jeopardized (see § 7 (2) ErbbauRG).

Over what period is leasehold tenure agreed?

The term of a leasehold in the commercial sector is currently between 40 and 60 years. A different term may be negotiated in justified individual cases. Responsibility for the final decision rests with the City Council.

What happens when a leasehold expires?

After expiry of the contractually agreed term, the leaseholder receives compensation for buildings from the City of Munich in the amount of two thirds of the value of a structure at the time of the termination of the leasehold.

The City Valuation Office ascertains the value of the building by means of an expert report. When the value of a building is being determined, discounts may be considered due to limited marketability or because of any contamination and soil pollution caused by commercial operations. Following expiry of the leasehold, buildings and structures must be transferred to the city free of any rental or lease arrangements. There is no obligation to demolish.

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2. Overview of the most important contractual conditions when a commercial leasehold agreement is concluded

Purpose of the leasehold

A leasehold purpose is agreed. The purpose of the leasehold should be assigned to a type of use under building law (e.g. simple commercial use) rather than being restricted to one particular trade.

Commercial obligations/commitments

- **Application for planning permission/construction projects**

Applications for planning permission on the leasehold site to be made by the leaseholder **within one year** of notarial certification.

Design of construction project to be coordinated with the Department of Urban Planning and Building Regulation. Consent must be obtained for the installation of advertising structures.

- **Completion of buildings/establishment of commercial operations**

Completion of the structures necessary for the establishment of a commercial operation and actual location of the company on the site **within three years** of notarial certification of the leasehold agreement.

As part of the project, 95% of the floor space permissible on the site must be constructed in accordance with the Land Use Ordinance (BauNVO).

- **Use of buildings erected**

Requirement for commercial operators **predominantly to make their own use** of the site and the building for the purpose described in the leasehold agreement for a period of 10 years from moving in. Predominant own use is assumed if the proportion of the effective area used by the commercial operator (leaseholder) for their own operations is at least 51% of the available space.

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Further commercial obligations/commitments

- **Restriction on use**
Exclusion of undesirable uses (e.g. brothel-like establishments, betting shops, dating agencies, etc.) by registering an easement in the Land Register.
- **Pre-emptive right in favor of the City of Munich**
Granting of an encumbered right of pre-emption in favor of the City of Munich pursuant to §§1094 ff. German Civil Code (BGB) via an entry in the Leasehold Land Register.
- **Restriction on disposal and encumbrance, consent for letting** A leasehold may not be sold and/or encumbered with a sub-ground lease or with land charges or similar without the prior consent of the city. Subleasing/subletting is only possible with the permission of the city.
- **Agreement of contractual penalties**
Contractual penalties are levied in the event of a breach of the agreed commitments (e.g. submission of a building application, own use, right of inspection etc.).
- **Agreement on reversion**
Reversion, i.e. repossession of the leasehold by the city, usually requires a very serious contractual infringement on the part of the leaseholder (e.g. arrears in ground rent payments of over two years, breach of the agreed contractual purpose).
- **Compliance with the catalog of ecological criteria**
Ecological and building biology requirements must be observed when commercial buildings are constructed (e.g. exclusion of certain building materials, conditions relating to building services engineering).
More detailed information on this topic is available at:
https://www.muenchen.de/rathaus/Stadtverwaltung/Referat-fuer-Stadtplanung-und-Bauordnung/Wohnungsbau/oekokatalog_vorwort.html
- Compliance with the **requirement to install photovoltaic systems** on at least 75% of the roof area. These systems must produce an output of 9kW/100m². Optionally, roof greening may be used as an alternative on up to 25% of this area.

Adjustment of ground rent

- **to the consumer price index**

In the event of monthly or annual payment of the ground rent, a review takes place at regular intervals. An adjustment is made provided that the consumer price index (CPI) used as a basis has increased or decreased by at least 5% since the most recent adjustment. Ground rents are first reviewed after 5 years and then every 3 years thereafter. Such reviews and adjustments do not occur in the case of capitalized payment.

- **in the event of more intensive use**

Ground rents are recalculated/reassessed if the actual floor space constructed exceeds that used as a basis for determination of the ground rent and conclusion of the contract.

- **in the case of higher value use**

If the leasehold site or the structures erected are put to higher value use (e.g. purely residential use instead of simple commercial use) than was assumed at the time when the ground rent was assessed and the contract was concluded, then the city has the right to reassess the ground rent and to charge an adjusted rate.

Further information

After completion of the selection procedure by the Department of Labor and Economic Development, the company recommended for occupation of the site receives a leasehold agreement via the Municipal Services Department.

If you have any general questions regarding leasehold rights and the contractual terms and conditions outlined in this information sheet, please contact the Property Services Section at the Municipal Services Department (is-za.kom@muenchen.de).