



City of Hamilton

CITY COUNCIL ADDENDUM

20-011

Wednesday, May 20, 2020, 9:30 A.M.

Due to the COVID-19 and the Closure of City Hall

All electronic meetings can be viewed at:

City's Website: <https://www.hamilton.ca/council-committee/council-committee-meetings/meetings-and-agendas>

City's YouTube Channel: <https://www.youtube.com/user/InsideCityofHamilton> or Cable 14

5. COMMITTEE OF THE WHOLE

5.4 DISCUSSION ITEMS

- *5.4.f Social Bicycles & City of Hamilton Contract (PED20109) (Wards 1, 2, 3, 4, and 13)
- *5.4.g Status of Planning Meetings During the COVID-19 Pandemic Emergency (PED20108) (City Wide)


7. NOTICES OF MOTIONS

- *7.1 Utilizing the Rooftop of York Boulevard Parkade as Temporary Open-Air Performance Space
- *7.2 Property Tax Assistance Measures – Monthly Pre-authorized Payments



Hamilton

INFORMATION REPORT

TO:	Mayor and Members Committee of the Whole
COMMITTEE DATE:	May 20, 2020
SUBJECT/REPORT NO:	Social Bicycles and City of Hamilton Contract (PED20109) (Wards 1, 2, 3, 4, and 13)
WARD(S) AFFECTED:	Wards 1, 2, 3, 4, and 13
PREPARED BY:	Peter Topalovic (905) 546-2424 Ext. 5129
SUBMITTED BY:	Brian Hollingworth Director, Transportation Planning and Parking Planning and Economic Development Department
SIGNATURE:	

On Friday May 15, the City of Hamilton received a letter from Social Bicycles LLC, owned by Uber Inc., indicating that they are intending to terminate the SoBi Hamilton bike share system operations effective June 1, 2020. The City of Hamilton owns the bicycles and stations. There is an operating agreement with Social Bicycles LLC (most recently renewed on February 28, 2020) through which Social Bicycles LLC operates the system at no cost to the City. This contract is not due to expire until February 19, 2021.

The purpose of this Information Report is to inform Council of the notice of intent to terminate the operations contract by Social Bicycles LLC, and the implications for Hamilton's Bike Share system. As of the writing of this Report, staff are in communications with Social Bicycles LLC and Uber Inc. seeking clarification on their position and reminding them of their contractual obligations to the City.

COUNCIL DIRECTION

On September 26, 2018, the Public Works Committee authorized staff to commence negotiations and seek a renewed contract with Jump Mobility, the operator of the SoBi Hamilton Bike Share Program, regarding the continuation of Hamilton's bike share system. Specific terms for the negotiations were set out in Public Works Report PED18223. On December 26, 2018, Jump Mobility (JUMP) agreed in principle to the terms for the contract renewal and a five-year extension.

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SUBJECT: Social Bicycles and City of Hamilton Contract (PED20109) (Wards 1, 2, 3, 4, and 13) - Page 2 of 5

On April 29, 2019, Report PED18223(a), was presented to the Public Works Committee, which brought forward several amendments to the contract in order to incorporate the Jump Mobility electric pedal-assist bike share program and to allow for potential sponsorship revenues. Throughout 2019, staff worked with JUMP to incorporate these amendments, and an amended contract was signed on February 28, 2020 which expires on February 19, 2021.

INFORMATION

1.0 Current Contract and Notice of Termination

On February 19, 2019, the first five years of the public bike share transit operations contract was complete, and Social Bicycles LLC first agreed to continue the Contract for another five years (the second term). However, in late 2019, Social Bicycles LLC clarified their intent to only renew for a two-year period, which required an amendment to the Contract. This Contract is contained in Appendix "A" attached to Report PED20109. This adjusted the Contract end date to February 19, 2021. During this time, JUMP took over operations of the bike share program and ended their subcontract with Hamilton Bike Share Inc.

The City has been awaiting Social Bicycles LLC's decision in to renew for an additional two years – until February 19, 2023, which was an option in the Contract; however, on May 15, 2020, Social Bicycles LLC/Uber Inc. sent a letter seeking to terminate the Contract eight months early on June 1, 2020. This letter is attached as Appendix "B" to Report PED20109.

This termination date would be in contravention of the contract that Social Bicycles LLC signed with the City of Hamilton on February 28, 2020, which expires on February 19, 2021

2.0 Implications for Hamilton's Bike Share System

Should Social Bicycles LLC cease to operate the system on June 1, 2020, as indicated, there are many significant operational concerns. A shut down of the system would impact 26,000 active members, many of whom have prepaid for services for up to one-year. There are 900 bicycles and 130 stations in operation that have no storage facility or ability to move the bikes into a storage, should one be found.

A service interruption would impact users who rely on this system for daily travel, including essential service workers. It is noteworthy that over 300 new members have signed up during the early days of the COVID-19 emergency declaration. The system has been operating as an essential service and is vital for the COVID-19 recovery

period to offset capacity reductions that are in place for transit due to physical distancing.

Upon receiving the May 15, 2020 letter, City Staff have reminded Social Bicycles LLC of their contractual obligations, including that they are to operate the system at no cost to the City until February 19, 2021. The City is willing to work with Social Bicycles LLC/Uber Inc. on a successful transfer to a new operator, however, June 1, 2020 is not enough time to accomplish a reasonable or feasible transition.

Under the provisions of the contract, Uber could transfer the contract to another party and provide the necessary operational funding in order to operate the system until February 19, 2021. The City of Hamilton has confirmed, through correspondence with Hamilton Bike Share Inc. (HBSI), that they can resume operations of the public bike share transit system as they did from 2015 to 2019, before Social Bicycles LLC, operating as JUMP, ended their operations contract to use its own staff to operate the program.

If Social Bicycles LLC/Uber Inc. choose to terminate their contract early and end the service, then the City would need to look at other operating models if the system is to continue. Staff would need to bring a report to Council on these models and their costs. Notwithstanding, the recent intent to terminate operations and previous negotiations to reach the current renewed contract in place today, staff were in the process of initiating the development of a Bike Share Expansion Plan, which would include a Business Case for expansion of service to other areas of the City. In addition, plans to upgrade the existing bicycle infrastructure was also being developed by staff. Advancing work on this expansion plan will need to be put on hold until operations for the existing system can be stabilized.

3.0 Financial Context

Under the current contract, Social Bicycles LLC operates the system at no cost to the City. Under the term of the contract, there is no obligation for Social Bicycles LLC to share financial statements. However, staff are aware that the system does not generate net profits and requires an operational funding. It is estimated that the net cost to operate the system would be \$50,000 to \$65,000 per month if a contract with a new operator could be established. On an annualized basis, this would be approximately \$700,000. This does not include any potential off-sets that may be attainable through advertising assets that can be monetized.

4.0 Evolution of Hamilton's Bike Share System

The City of Hamilton received a Metrolinx Grant for Quick Wins Transit Projects in 2007 and used a portion of these funds to purchase the capital requirements for a public bike

SUBJECT: Social Bicycles and City of Hamilton Contract (PED20109) (Wards 1, 2, 3, 4, and 13) - Page 4 of 5

share transit system from Social Bicycles Inc., which was formally launched in March 2015. The Request for Proposals and subsequent Contract with the City of Hamilton was for the provision of bike share equipment, start-up and operations of a public bike share transit system at no operational cost to the City. The City owns the bike share bicycles, controllers, station racks and station signage.

The contract set-up through the request for proposals process was a five-year term which was renewable for two additional periods, each five years long, for a total operations timeline of 15 years. Social Bicycles LLC subcontracted the operations of the program to local non-profit operator, Hamilton Bike Share Inc.

The public bike share transit system is publicly known as SoBi Hamilton and quickly established itself as one of the most successful bike share systems in a medium sized city in North America; winning two awards including one from the Transportation Association of Canada and the Canadian Clean 50 Top 15 projects. It was also one of the first “smart bike”, free floating bike share systems in North America and Social Bicycles’ first large scale city operation. Bike share system riders have taken over 1.6 M trips and travelled over 2 M kms. This reputation led to Hamilton being selected to host the Eighth North American Bike Share Association Conference in 2021, which may be moved to 2022 because of the pandemic.

In 2017, the City partnered with Hamilton Bike Share Inc. to expand the Everyone Rides Initiative (ERI), Canada’s first Bike Share Equity program, through a Federation of Canadian Municipalities and Hamilton Community Foundation grant. The ERI has removed barriers to travel for thousands of Hamiltonians who cannot afford to access bike share, as well as, newcomers to Hamilton, and those who require adaptive bicycles, such as tricycles.

In 2019, Social Bicycles LLC, rebranded as JUIMP Mobility and was purchased by Uber Inc. which was focused on an e-bike system.

As of May 2020, the SoBi Hamilton public bike share transit system has over 26,000 active members, with 900 bicycles in operation across 130 stations. Riders have travelled 2.3 M kms across over 1.6 M trips. Compared to average car travel, they have reduced 1,000 tons of carbon equivalent, 91 M calories, and saved \$1.3 M dollars collectively.

The Hamilton public bike share transit system has operated successfully, but since the private sector has funded the operations entirely, there has been no opportunity to expand the service area. A feasibility study conducted by the City in 2018, indicated that it is feasible to expand to areas East of Ottawa Street, and areas on the Escarpment, especially from the Mountain Brow to Mohawk Road.

SUBJECT: Social Bicycles and City of Hamilton Contract (PED20109) (Wards 1, 2, 3, 4, and 13) - Page 5 of 5

In 2019, Council approved funding for a business plan to further build upon the bike share expansion feasibility study, including an assessment of the potential to expand the program further in Dundas, Ancaster and Waterdown. This expansion will require capital grants and operational funding, and be presented to Council at a future date, subject to solidifying current operations. If the operations are transferred to another operator, there is greater flexibility to evolve and expand the system.

In 2019-20, the City also received Ontario Municipal Commuter Cycling (OMCC) funding to enhance bike share stations and bike share controllers in order to ensure all bike share equipment that involves locking the bikes to stations is upgraded.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" - Amendment to the City of Hamilton – Social Bicycles Operating Agreement

Appendix "B" - Letter from Social Bicycles LLC, owned by Uber Inc., on May 15, 2020 indicating that they would terminate the SoBi Hamilton bike share transit system operations contract on June 1, 2020

TP:cr

**AMENDMENT
TO THE
CITY OF HAMILTON - SOCIAL BICYCLES
OPERATING AGREEMENT**

THIS AMENDMENT (the "**Amendment**") is effective as of 28 February 2020 (the "**Amendment Effective Date**") and is between **The City of Hamilton (Ontario Canada)**, % Public Works Department, Transportation Division, 77 James Street North, Suite 400, Hamilton, Ontario, L8R 2K3, Canada (the "**City**") and **Social Bicycles, LLC (successor-in-interest to Social Bicycles, Inc.)**, 55 Prospect Street, #410, Brooklyn, New York, 11201, USA (the "**Contractor**"). The City and the Contractor are referred to collectively herein as the "**Parties**" and individually as a "**Party**."

RECITALS

WHEREAS, on 19 March 2014 the City and the Contractor entered into an Operating Agreement (the "**Contract**") for certain products and services for use in a bicycle sharing program in the City of Hamilton, Ontario (Canada) and certain of the Contractor's obligations were subcontracted to Hamilton Bike Share Inc. (the "**Subcontractor**"); and

WHEREAS, on or around April 2018 Social Bicycles, LLC was acquired by, and became a wholly-owned subsidiary of Uber Technologies, Inc.; and

WHEREAS, on or around November 2018, the Parties exchanged correspondence intending to amend the terms of the Contract for a certain period; and

WHEREAS, on or around May 2019, Jump Technologies Canada Inc. ("**Jump Canada**") acquired certain assets of the Subcontractor; and

WHEREAS, the Contractor subcontracts certain of its obligations to Jump Canada; and

WHEREAS, the Parties have now agreed to a renewal period and revised terms and conditions for such period.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree to amend the Contract as follows:

1. Capitalized terms not otherwise defined in this Amendment will have the meanings assigned to them in the Contract.
2. **Section 7** is deleted in its entirety and is replaced with the following:

"Therefore the term of this Contract is five (5) years. The Parties mutually consent and agree this Contract renewed for one two-year renewal on February 19, 2019 and, unless otherwise specified herein, will terminate on February 19, 2021. Notwithstanding any other Contractor obligations in this Contract, the Contractor's transfer service obligations in Section 8 will not apply after February 19, 2021 nor after any permitted assignment under this Contract. At the mutual consent of each of the Parties, and as otherwise described in Section 2. (Term of the Contract) in the Special Provisions to the Request for Proposals, this Contract may be renewed for additional two-year terms after February 19, 2021, as many times as mutually agreed upon by the parties in writing. There is no obligation on either of the Parties to extend the Contract or any portion of the Contract beyond the first two-year renewal term. Should the Parties decide to extend the Contract for any particular time period, any such extension shall be on the same terms and conditions of the original Contract (excepting for necessary updates and changes)."

3. **Section 16** is amended to remove the word "sponsorships" such that the second sentence reads as follows:

"Revenues from user fees and memberships are expected to compensate the Contractor to operate, maintain, and promote the Bicycle Sharing System."

The Parties agree that the profit sharing formula for the first renewal period, as referred to in section 18 is (a) the Contractor retains 100% of user revenues and (b) the City retains 100% of sponsorship revenues.

4. **Section 20** is deleted in its entirety and is replaced with the following:

“During the first two-year renewal term after the first five-year initial term: (a) funds will be distributed according to the profit sharing formula in Section 18 (Compensation); and (b) the Contractor will have a right-of-first-refusal for all Bicycle Sharing System sponsorships that City is considering during the first renewal term. The City will submit the name(s) of the proposed sponsor(s) to the Contractor and the Contractor will have ten (10) business days to reject or approve the City’s proposed sponsor.”

5. **Section 25(a)(ii)** is deleted in its entirety and is replaced with the following:

In the case of the Contractor:

Social Bicycles, LLC
1455 Market Street, Suite 400,
San Francisco, California, 94103, USA,
Attn: NeMo - Legal
Email - nemolegal@uber.com / Phone - (866)-576-1039

6. **Section 31(j)** is deleted in its entirety and replaced with the following:

“Neither party shall have any liability to the other party or any other person for any claims, demands, actions, causes of action, interest, costs, damages, expenses, fines, penalties, loss, suits or other proceedings for loss, damage, injury or death resulting from the exercise of a party’s rights under this section except as may be caused by a party’s negligence or willful misconduct.”

7. Except as specifically modified or amended by this Amendment, the Contract will remain in full force and effect and, as so modified or amended, is hereby ratified, confirmed and approved. This Amendment will be deemed a part of, and construed in accordance with, the Contract. In the event of any inconsistencies between this Amendment and the Contract, the terms of this Amendment will control.

8. This Amendment may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Facsimile and digital signatures will be deemed original signatures for all purposes under this Amendment. When properly signed, this Amendment may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.

In witness whereof, the Parties hereto have executed this Amendment as of the Amendment Effective Date written above.

Social Bicycles, LLC

By: *Avra van der Zee*
Name: Avra van der Zee
Title: Director, Market Entry
Date: March 15, 2020

City of Hamilton

By: **Jason Thorne**
Name: Jason Thorne
Title: General Mgr., Planning & Economic Development
Date: March 14, 2020

Approval Authority granted by City Council on May 9, 2019, Public Works Committee Report PED18223(a), dated April 29, 2019, Item 14.2

Approved As To Form:

P. D'Souza

Patricia D’Souza
Solicitor
Legal Services
March 12, 2020

Approved As To Content:

Brian Hollingworth

Brian Hollingworth
Director, Transportation, Planning & Parking
March 13, 2020

SOCIAL BICYCLES LLC
55 PROSPECT STREET, STE. 410
BROOKLYN, NY 11201

May 15, 2020

Peter Topalovic
Program Manager – Sustainable Mobility
Planning and Economic Development
Transportation Planning & Parking
City of Hamilton
71 Main Street West
Hamilton, Ontario L8P 4Y5

Dear Mr. Topalovic:

We are collectively living in the most harrowing pandemic of our lifetime and it has significantly impacted companies in ways unimaginable just a few months ago. You may have heard about last week's announcement that LIME acquired the JUMP brand and assets. We now have some additional news to share with you. As a result of the challenges associated with the Covid-19 pandemic, we have made the very difficult decision to shut down all remaining bike and scooter operations that are not part of last week's announcement, including in the city of Hamilton. We write to notify you that Social Bicycles, LLC will be closing operations in Hamilton on June 1, 2020 and end its support of the bikeshare system.

All bikeshare owners/operators are re-evaluating their future, especially in light of Covid-19's shelter-in-place and the requirements to re-open their business. Please know that we will immediately assist Hamilton with a wind-down of operations. This may include assistance with collection of vehicles, inventory list, or other mutually agreeable tasks. In addition, if you are considering continuing a bikeshare offering in Hamilton, we can make introductions to potential service providers (such as for software support, spare parts and people operations) so you can explore direct relationships with them.

Thank you for your past business and support. Again, we wish we didn't have to make this difficult decision and deliver this news. We wish all the best for the citizens in the city of Hamilton. Please let me know if we can answer any questions about our wind-down or provide assistance as you make arrangements to work with new service provider(s).

Sincerely,




Bill Knapp
General Manager, US & Canada



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

INFORMATION REPORT

TO:	Chair and Members Committee of the Whole
COMMITTEE DATE:	May 20, 2020
SUBJECT/REPORT NO:	Status of Planning Meetings During the COVID-19 Pandemic Emergency (PED20108) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Steve Robichaud (905) 546-2424 Ext. 4281
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

The purpose of this Information Report is to provide Council with an update on the status of statutory public meetings under the Planning Act and Ontario Heritage Act since the onset of the COVID-19 pandemic, and the various Provincial Orders that have limited opportunities for public gatherings.

BACKGROUND

Under the *Municipal Act, 2001*, any regular, special or other meeting of a council, of a local board or of a committee must be open to the public with certain limited exceptions. This provision applies to each of Hamilton's Planning Committee, Committee of Adjustment and Municipal Heritage Committee.

As part of its response to the Covid-19 Pandemic/Emergency (the "Emergency"), in addition to imposing physical distancing measures, the Province amended the *Municipal Act* to permit members of council, a local board and a committee, who are participating in meetings electronically, to be counted in determining quorum and to participate in a meeting closed to the public.

Hamilton's Procedural Bylaw was subsequently amended to permit the Mayor and Councillors to attend Council and committee meetings electronically. However, City Council has suspended the meetings of all standing committees until at least June 15, 2020 and is, in the interim, holding virtual or electronic meetings of the Committee of the Whole followed by a Council meeting.

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**SUBJECT: Status of Planning Meetings During the COVID-19 Pandemic
Emergency (PED20108) (City Wide) - Page 2 of 5**

Statutory meetings and public hearings under the Planning Act and the Ontario Heritage Act in the City of Hamilton take place primarily through one of three committees: Planning Committee, Committee of Adjustment and Municipal Heritage Committee. No meetings of these committees have been held since the onset of the Emergency and the introduction of limitations on public gatherings and institution of physical distancing requirements. Therefore, while the City has continued to receive and process development applications, certain planning matters, such as Official Plan Amendments, Zoning By-law Amendments and Minor Variances have not been able to proceed to a final decision.

Provincial Orders continue to limit the ability to hold in-person committee meetings. To undertake virtual meetings of the Planning Committee, Committee of Adjustment and/or Municipal Heritage Committee would require the City to amend its procedural by-laws governing these committees.

HISTORICAL BACKGROUND

March 17, 2020—Province declares Covid-19 Pandemic Emergency (now extended until June 2, 2020) and subsequently issues a series of emergency orders including one which limits gatherings to 5 people (unless of the same household or attending a funeral which is limited to 10 people).

March 20, 2020—Council resolved to:

- a. postpone meetings of all standing committees and hold Committee of the Whole/Council meetings via teleconference until June;
- b. grant the City Clerk the authority to establish procedures and take all steps necessary to facilitate electronic participation by members of Council in Council and/or Committee meetings held in the Council Chamber;
- c. direct staff to install the necessary technology in the Council Chambers for members of Council to participate electronically at Council and/or Committee meetings held in the Council Chamber; and
- d. amend the Procedural By-law permitting '*electronic participation, in accordance with the Municipal Act, 2001 and/or any other applicable legislation...by members of Council at Council and/or Committee meetings during an emergency when attending in-person is not possible*'.

April 8, 2020—the City commenced holding Committee of the Whole/Council meetings via teleconference and Council enacted by-law revisions requiring every person to maintain a distance of at least two (2) metres from every other person and limiting social gatherings to five (5) people.

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INFORMATION

Planning Committee

Among other responsibilities, the Planning Committee's mandate is to consider and make recommendations to Council on matters related to:

- the *Planning Act*, the *Ontario Heritage Act*, the *Municipal Act, 2001*, the *Condominium Act*, the *Niagara Escarpment Act* and other applicable legislation regarding planning, development engineering, by-law enforcement, licensing and downtown planning issues; and
- the *Ontario Building Code*, Zoning By-laws, the Property Standards By-laws, Licensing By-law, Animal Control By-law, Sign By-law and other relevant By-laws.

The *Planning Act* requires that Statutory Public Meetings be held in certain circumstances (e.g. applications to amend the official plan or zoning bylaw or approve plans of subdivision) which meetings are held by Planning Committee. Public notice of these Meetings is provided by:

- a. requiring, approximately one month before the Meeting, the installation of a public notice sign on-site, after an application has been deemed complete, which will stipulate the date/time of the Meeting; and
- b. mailing, no later than 17 days prior to the Meeting, written notice of the Meeting to all property owners within 120 metres of the subject lands and those who wrote in requesting to be notified of the Meeting.

The numerous references in the *Planning Act* to 'public meetings' (58) and to 'oral submissions' (35) underline the City's obligation to facilitate public participation and input at these Meetings. The challenge presented by the Emergency, and particularly the physical distancing consequences, is whether municipalities can continue to meet these obligations in a roughly equivalent and meaningful way.

Committee of Adjustment

The Committee of Adjustment ("C of A") is a committee established by Council by-law pursuant to the *Planning Act* which deals with applications for minor variances to zoning by-laws and consents (i.e. property severances).

The *Planning Act* requires that each application be heard within 30 days of receipt, that each such hearing shall be in public "*and the committee shall hear the applicant and*

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every other person who desires to be heard in favour of or against the application, and the committee may adjourn the hearing or reserve its decision” [s.45(4)(6) PA].

Generally speaking, the conduct of C of A hearings is governed by the *Statutory Powers Procedures Act* which [s.5.2 SPPA] permits the holding of ‘*electronic hearings*’ if the tribunal has made rules to hold an electronic hearing.

Municipal Heritage Committee

The Municipal Heritage Committee (“MHC”) is an advisory standing committee which is appointed by, and is responsible/accountable to, Council. It helps Council make decisions on matters related to the designation and conservation of property of cultural heritage value or interest, including individual properties and heritage conservation districts.

Under the *Ontario Heritage Act*, Council is not required to establish an MHC, but once it does, Council is required to consult with the MHC:

- before giving its intention to designate a property [s.29(2) OHA];
- on applications to alter designated properties where the alteration is likely to affect the property's heritage attributes as set out in the by-law designating the property [s.33(4)];
- on applications to demolish or remove any building or structure on designated property [s.34(2)];
- before considering an application from an owner of designated property, to repeal the by-law or part thereof designating the property [s.31(2)];
- before passing by-laws providing for the entering into of easements or covenants with owners of real property, or interests therein, for the conservation of buildings of cultural heritage value or interest [s.37(1)]; and
- before passing a by-law to define one or more areas as an area to be examined for future designation as a heritage conservation district [s.40(3)].

Provincial Changes to the Planning Act

Effective April 15, 2020, the Province issued comprehensive new legislation affecting timelines under the *Planning Act* that allows a municipality to continue processing development applications, notices of decision to be issued and appeals to be filed. This new legislation also allows a municipality to pause the processing of a development application, including where a notice of decision has already been issued, by requiring the reissuance of a notice of decision or extending the deadline for issuance of a notice of decision which, in turn, extends the deadline for filing an appeal of that decision. The new rules also state that any time during the Emergency does not count towards non-decision appeal timelines in the *Planning Act*, which may pause some non-decision appeals.

To summarize, after April 15, 2020:

- a municipal authority can make decisions and issue notices on *Planning Act* matters during the Emergency;
- but, if a municipal authority is unable or unwilling to make a decision on a *Planning Act* matter during the Emergency, it need not do so until after the Emergency is over. No appeal rights from a non-decision will accrue; and
- any decision made during the Emergency is subject to the usual notice requirements and will create rights of appeal, but the municipal authority is not obligated to forward the appeal record to the LPAT until the Emergency is over.

Provincial representatives advised that the primary reason for these changes was to permit municipalities to assess whether they can adequately process planning applications and hold statutory public meetings while adhering to Emergency orders and public health advice including physical distancing requirements.

However, the Province also noted, without providing any further tools or clarifying legislation, that municipalities '*can consider how to meet the Planning Act's requirements using electronic and virtual channels to engage and solicit feedback from the public on land use planning matters while maintaining physical distancing*'.

CITY OF HAMILTON

NOTICE OF MOTION

Council Date: May 20, 2020

MOVED BY COUNCILLOR J. FARR.....

Utilizing the Rooftop of York Boulevard Parkade as Temporary Open-Air Performance Space

WHEREAS in January 2014, Hamilton Council approved the Music Strategy which included four goals, to strengthen the local music industry, grow audiences and appreciation of music, increase access to music experiences; and cultivate music creation and talent;

WHEREAS in March 2019 Council approved the Creative Industries Sector Profile Report and Implementation Recommendations (PED19056) in which music was identified as one of the City's top growth areas;

WHEREAS Hamilton's music industry employs an estimated 7,725 workers and has a total of 541 businesses;

WHEREAS the Live Music Venues Research Report has identified that Hamilton's direct GDP from music venues is \$32.6M with \$2.6M from property taxes and total revenues generated by venues was \$62.7M;

WHEREAS the City, with the support and advice of the Hamilton Music Advisory Team (HMAT), has completed a number of actions, including: Musician Loading Zones; Annual Musician Conferences; social media and marketing efforts (@HamOntMusic); Music Mondays outdoor concert series at City Hall; one-to-one mentoring for musicians; support for Hamilton Public Library's Music Archive; Hamilton showcases at local venues; and completion of a draft live music venue report that measures the economic and social impacts of the City's live music sector;

WHEREAS the Provincial Orders resulting from the COVID-19 pandemic have had a significant impact on the music and performing arts sector;

WHEREAS the required closure of a number of venues that normally host such performances has negatively impacted artists as well as host organizations and venue operators;

WHEREAS the City's Economic Development Division's Business Impact Survey found that 71% of creative businesses reported that COVID had impacted their revenues by more than 50% and 36% of businesses in this sector have decreased employment by 100%;

WHEREAS temporarily repurposing a City-owned space to be used by the local performing arts industry provides an opportunity to support the performing arts sector during the COVID-19 recovery phase; and

WHEREAS in considering potential locations for such a use, the top level of the York Boulevard Parkade presents a number of benefits, including that it is currently under-utilized, it would not displace other users which may be the case for other public spaces such as parks, it is fully accessible, it allows for audience sizes to be controlled, and it does not have immediate surrounding sensitive land uses such as residential uses

THEREFORE BE IT RESOLVED:

- (a) That staff from the Corporate Real Estate Office and Tourism and Culture Division, in consultation with Transportation Planning and Parking Division, be authorized and directed to initiate an open call to seek interest from potential Licensees to operate a small, temporary open-air performance space venue to be located on the underutilized top level of the York Boulevard Parkade located at 28 York Boulevard for the 2020 season, which would include organizing, scheduling and managing a small performance series program;
- (b) That the General Manager, Planning and Economic Development, or their designate, be authorized and directed to negotiate and execute a Licence Agreement, and any other necessary documents, on behalf of the City with the successful proponent (the "Licensee") for the use of the top level of the York Boulevard Parkade as a temporary open air performance space venue based substantially on the terms and conditions attached, with such other content satisfactory to the General Manager, Planning and Economic Development and in a form satisfactory to the City Solicitor
- (c) That the Tourism and Culture Division be authorized and directed to contribute to the initial start-up costs related to the creation of a temporary open-air performance space venue at the York Boulevard Parkade to an upset limit of \$7,500, to be funded from the City's Economic Development Reserve; and
- (d) That Real Estate and Legal fees of \$1,500, associated with a Licence Agreement for the use of the York Boulevard Parkade as a temporary open-air performance space venue, be funded from the City's Economic Development Reserve and credited to Account No. 45408-812036 (Real Estate – Admin Recovery).

Major Terms and Conditions

Location:	Top level, York Boulevard Parkade, 28 York Boulevard, Hamilton, ON.
Term:	A season running from approximately late June to approximately late October.
Objective:	Creation of a small, temporary outdoor performance space, and hosting a performance series including live music and the performing arts, in a manner that benefits artists as well as community partners who normally host performance art events.
Value Consideration:	Licence Fee to be at nominal value, fully net and carefree to the Licensor. Licensee to assume all costs, expenses, fees and losses (if any) associated with the scheduling, operation and management of the small concert series to be further detailed in the Licence Agreement.
Licensor Financial:	To provide a maximum of \$7,500 one-time contribution at the execution of the Lease to the operator for reimbursement of expenses associated with the following: <ul style="list-style-type: none">• staging• security fencing• seating• hygiene stations• other costs associated with setting up the venue, where agreed to in writing, by the Director of Tourism and Culture, but shall not include any operating expenses.
Operational Days & Times:	<ul style="list-style-type: none">• Generally, not operating later than 10 pm on any day, or earlier than 5 pm on weekdays.• Changes to allowable dates and/or hours may be permitted at the sole discretion of the City and where agreed to in writing by the Director of Tourism and Culture.
Sponsorships:	<ul style="list-style-type: none">• The Licensee may secure presenting sponsors for one or more individual events but is not permitted to secure any sponsorships that imply sponsorship of the venue.• Any sponsors must be agreed to in writing by the Director of Tourism and Culture.

	<ul style="list-style-type: none"> • The Licensee shall provide appropriate recognition of the City of Hamilton’s support for the venue and program, and the City of Hamilton’s Music City brand, as directed by the Director of Tourism and Culture.
Community Partnership:	<ul style="list-style-type: none"> • The Licensee will ensure the involvement of community partners as event hosts or presenting partners. Community partners should be Hamilton-based businesses or groups that have, in the previous calendar year, hosted or managed ticketed performances or events.
Performances:	<ul style="list-style-type: none"> • All performing artists must be compensated in accordance with established industry standards and recommended practices. • The operator will provide for diverse performance opportunities, including diversity of art forms, diversity of performers, and performances that appeal to a diversity of audiences.
Operational Conditions:	<ul style="list-style-type: none"> • The Licensee will be required to submit a venue layout plan, as well as any modification to the layout plan, to be approved by the Director of Tourism and Culture. It is expected that the venue layout plan will need to ensure physical distancing of at least 2 metres between audience members. • Noise levels shall be controlled and kept to community acceptable levels and pursuant to consolidated Noise By-law 11-285 (i.e. maximum of 60 dba at point of reception, 90 dba within 10m) and with all applicable municipal by-laws governing such noise and events as may be in force from time to time. • Security fencing must ensure that patrons do not have access to the top parking level roof edge. • Must provide portable hygiene stations and regular cleaning in accordance with any requirements to be established by the City and Public Health. • Must meet any attendance maximums established by the City, at the City’s sole discretion. It is expected that this maximum will be approximately 50 individuals at any one time, inclusive of audience members, performers, staff and anyone else.

	<ul style="list-style-type: none"> • Licensee must provide a security plan for prior approval by the Director of Tourism and Culture, which will generally include security on the top level of the parkade, as well as accesses, patrol and monitoring of the rest of the parkade. • Licensee must provide for cleaning and garbage removal, including cleaning of stairwells on event days. • Licensee may not block or interfere with normal parking operations and patrons accessing or leaving the parkade. • Licensee will agree to abide by the City's Operating Rules & Regulations, as provided by the General Manager or designate, acting reasonably, which may change from time to time and will be updated by the General Manager or designate and provided to the Licensee as required. • Licensee will agree to abide by the City's Municipal Alcohol Policy as provided by the General Manager or designate, acting reasonably, which may change from time-to-time and will be updated by the General Manager or designate and provided to the Licensee as required • Licensee's personnel must have valid Smart Serve certification • Licensee shall at its sole cost and expense at all times comply with all provisions of any present or future law, by-law, rule, regulation, or order enacted or made by any Federal, Provincial, City, Regional or Municipal authority having jurisdiction including all of the City's policies as may be adopted by City Council from time to time • Licensee will agree to provide an indemnification to the City in accordance with the requirements of the City's Risk Management department. • Any other terms and conditions deemed necessary by the City Solicitor, from time to time.
<p>Insurance Requirements</p>	<p>Licensee shall obtain and maintain for the duration of the term:</p> <ul style="list-style-type: none"> • Commercial General Liability insurance with a minimum limit of \$5MM per occurrence and

	<p>\$5MM in the aggregate endorsed to include the City of Hamilton as additional insured and Host Liability Insurance.</p>
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CITY OF HAMILTON

NOTICE OF MOTION

Council Date: May 20, 2020

MOVED BY COUNCILLOR C. COLLINS.....

Property Tax Assistance Measures – Monthly Pre-authorized Payments

WHEREAS, in light of the current Covid-19 pandemic, Council approved Property Tax Assistance and Other Measures (FCS20038) on April 8, 2020;

WHEREAS, one of the approved assistance measures was the 60-day waiving of penalty and interest charges on the April 30th property tax instalment;

WHEREAS, for taxpayers not able to pay the April 30th instalment, full payment would be required by June 30th in order to avoid penalty and interest charges;

WHEREAS, the City of Hamilton offers several monthly pre-authorized payment plans;

WHEREAS, taxpayers are currently not eligible to enrol in monthly pre-authorized payments, if their April 30th property tax instalment is outstanding; and,

WHEREAS, providing some flexibility to the monthly pre-authorized payment plans during these unprecedented times will assist in increasing enrolment in pre-authorized payments, which in turn allows the City to continue to receive property tax payments, while providing additional assistance to taxpayers for the remainder of the 2020 taxation year.

BE IT THEREFORE RESOLVED:

That additional assistance be provided to taxpayers wishing to enroll in monthly pre-authorized payments commencing in July, 2020, by allowing the inclusion of the outstanding April 30th property tax instalment in the calculation of the monthly payments for the remainder of 2020.