



City of Hamilton

AUDIT, FINANCE AND ADMINISTRATION COMMITTEE REVISED

Meeting #: 21-001

Date: January 14, 2021

Time: 9:30 a.m.

Location: 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

Angela McRae, Legislative Coordinator (905) 546-2424 ext. 5987

1. APPROVAL OF AGENDA

(Added Items, if applicable, will be noted with *)

2. DECLARATIONS OF INTEREST

3. APPROVAL OF MINUTES OF PREVIOUS MEETING

3.1. December 10, 2020

4. COMMUNICATIONS

5. DELEGATION REQUESTS

5.1. Sanaullah Chaudhry, respecting a water bill totaling \$2,193.34 (for October 18 - Dec. 18th through Alectra-Bill) (For a future meeting)

5.2. Kevin Rachman, SmartCentres REIT, respecting staff Report FCS17008(a) (Item 9.1 on today's agenda) on a request made, on behalf of SmartCentres (For today's meeting)

- *5.3. Robert Ridley, on behalf of Olympia Gerl, respecting a Water Billing Charging Anomaly (For a future date)

6. CONSENT ITEMS

7. PUBLIC HEARINGS / DELEGATIONS

- 7.1. Kevin Rachman, SmartCentres REIT, respecting staff Report FCS17008(a) (Item 9.1 on today's agenda) on a request made, on behalf of SmartCentres

8. STAFF PRESENTATIONS

9. DISCUSSION ITEMS

- 9.1. Development Charge (DC) Demolition Credit Extension Request, 651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a)) (City Wide) (Outstanding Business List Item)
- 9.2. 2020 City of Hamilton External Audit Plan (FCS21002) (City Wide)
- 9.3. City of Hamilton / Ministry of Transportation Municipal Transit Enhanced Cleaning Transfer Payment Agreement (FCS21005) (CityWide)
- *9.4. Protection of Privacy Policy (FCS21003) (City Wide)

10. MOTIONS

11. NOTICES OF MOTION

- *11.1. Waiving of the 'False Alarm' Fee for Famee Furlane

12. GENERAL INFORMATION / OTHER BUSINESS

13. PRIVATE AND CONFIDENTIAL

- 13.1. December 10, 2020 - Closed Minutes

Pursuant to Section 8.1, Sub-section (f) of the City's Procedural By-law 18-270, as amended, and Section 239(2), Sub-section (f) of the *Ontario Municipal Act, 2001*, as amended, as the subject matter pertains to advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

14. ADJOURNMENT



AUDIT, FINANCE AND ADMINISTRATION COMMITTEE MINUTES 20-013

9:30 a.m.

December 10, 2020

Council Chambers

Hamilton City Hall

Present: Councillors M. Wilson (Chair), B. Clark, C. Collins, L. Ferguson, B. Johnson, J. Partridge, M. Pearson, and A. VanderBeek

THE FOLLOWING ITEMS WERE REFERRED TO COUNCIL FOR CONSIDERATION:

1. Appointment of Committee Chair and Vice-Chair for 2021 (Item 1)

(Collins/Pearson)

- (a) That Councillor B. Clark be appointed as Chair of the Audit, Finance & Administration Committee for 2021.

Result: Motion CARRIED by a vote of 8 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(Pearson/VanderBeek)

- (b) That Councillor L. Ferguson be appointed as Vice-Chair of the Audit, Finance & Administration Committee for 2021.

Result: Motion CARRIED by a vote of 8 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

2. Consent Items (Item 7)

(Pearson/VanderBeek)

- (a) That Consent Items 7.2 through 7.7 be received, as presented:
- (i) **Criteria for Participation in Assessment Appeals (FCS20063(a)) (City Wide) (Item 7.2)**
 - (ii) **2020 Third Quarter Request for Tenders and Proposals Report (FCS20033(b)) (City Wide) (Item 7.3)**
 - (iii) **2020 Third Quarter Non-Compliance with the Procurement Policy Report (FCS20035(b)) (City Wide) (Item 7.4)**
 - (iv) **2020 Third Quarter Emergency and Non-competitive Procurements Report (FCS20034(b)) (City Wide) (Item 7.5)**
 - (v) **\$51,075,000 Serial Debentures Dated November 3, 2020 and Maturing November 3, 2021 to 2035 (FCS20100) (City Wide) (Item 7.6)**
 - (vi) **Standards and Approved Products Committee Report (PW20080) (City Wide) (Item 7.7)**

Result: Motion CARRIED by a vote of 8 to 0, as follows:

- YES - Chair - Ward 1 Councillor Maureen Wilson
- YES - Ward 5 Councillor Chad Collins
- YES - Ward 15 Councillor Judi Partridge
- YES - Ward 13 Councillor Arlene VanderBeek
- YES - Ward 12 Councillor Lloyd Ferguson
- YES - Ward 11 Councillor Brenda Johnson
- YES - Ward 10 Councillor Maria Pearson
- YES - Ward 9 Councillor Brad Clark

3. 2021 Budget Submissions Volunteer Advisory Committee (HUR20012) (City Wide) (Item 10.1)

(Ferguson/VanderBeek)

- (a) That the Volunteer Advisory Committee 2021 budget base submissions be approved as follows and referred to the 2021 budget process:
- (i) Advisory Committee on Immigrant & Refugees in the amount of \$3,500, attached as Appendix "A" to Report HUR20012;
 - (ii) Aboriginal Advisory Committee in the amount of \$3,552, attached as Appendix "B" to Report HUR20012;
 - (iii) Hamilton Mundialization Committee in the amount of \$5,890, attached as Appendix "C" to Report HUR20012; and,

- (iv) Hamilton Status of Women Committee in the amount of \$3,500, attached as Appendix "D" to Report HUR20012.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
NOT PRESENT - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

4. 2021 Budget Submissions Volunteer Advisory Committee (CM20013) (City Wide) (Item 10.2)

(Johnson/Partridge)

- (a) That the Volunteer Advisory Committee 2021 budget base submissions be approved as follows and referred to the 2021 budget process:
 - (i) Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee in the amount of \$3,960, attached as Appendix "A" to Report CM20013; and,
 - (ii) Committee Against Racism in the amount of \$8,900, attached as Appendix "B" to Report CM20013.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
NOT PRESENT - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

5. Parklane Workplace Management System (HUR20013) (City Wide) (Item 10.3)

(Pearson/Ferguson)

- (a) That the request to move from single source-procurement to standardization for a five (5) year term (January 1, 2021 to December 31, 2025), pursuant to Procurement Policy #14 – Standardization, for access to, and use of the Parklane Workplace Management System, be approved; and,

- (b) That the Executive Director, Human Resources be authorized to negotiate, enter into and execute the extension of the current agreement and any ancillary documents required to give effect thereto with Parklane Computer Systems, in a form satisfactory to the City Solicitor.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
NOT PRESENT - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

6. HMRF – HWRF Pension Administration Sub-Committee Report 20-001 – November 24, 2020 (Item 10.4)

(Pearson/Ferguson)

(a) 2020 Master Trust Pension Statement of Investment Policies and Procedures (FCS20074) (City Wide) (Item 8.1)

- (i) That Appendix “A” to HMRF/HWRF Pension Administration Sub-Committee Report 20-001 respecting the 2020 City of Hamilton Defined Benefit Pension Plans Master Trust Statement of Investment Policies and Procedures be approved and replace the previous 2019 City of Hamilton Defined Benefit Pension Plans Master Trust Statement of Investment Policies and Procedures contained in Report FCS19073 and approved by Council on January 22, 2020; and,
- (ii) That Appendix “A” to HMRF/HWRF Pension Administration Sub-Committee Report 20-001 respecting the 2020 City of Hamilton Defined Benefit Pension Plans Master Trust Statement of Investment Policies and Procedures be forwarded to the Hamilton Street Railway Pension Advisory Committee for their information.
- (iii) That an Asset Liability Modelling Study be performed on the HMRF/HWRF/HSR Pension Plans up to a limit of \$90,000, to be funded from the respective Pension Plans based on their prorated share of total assets.

(b) Hamilton Wentworth Retirement Fund (HWRF) Valuation at December 31, 2019 (FCS20064) (City Wide) (Item 8.2)

That the December 31, 2019 actuarial valuation for the Hamilton Wentworth Retirement Fund (HWRF) per Appendix “A” to Report FCS20064 be received for information.

(c) Hamilton Municipal Retirement Fund (HMRF) Valuation at December 31, 2019 (FCS20065) (City Wide) (Item 8.3)

That the December 31, 2019 actuarial valuation for the Hamilton Municipal Retirement Fund (HMRF) per Appendix "A" to Report FCS20065 be received for information.

(d) Master Trust Pension Investment Performance Report as at December 31, 2019 (FCS19075(a)) (City Wide) (Item 9.1)

That Report FCS19075(a), respecting the Master Trust Pension Investment Performance Report as at December 31, 2019, be received.

(e) Master Trust Pension Investment Performance Report as at June 30, 2020 (FCS20075) (City Wide) (Item 9.2)

That Report FCS20075, respecting the Master Trust Pension Investment Performance Report as at June 30, 2020, be received.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
NOT PRESENT - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

7. Authority to Negotiate and Place a Debenture Issue(s) for CityHousing Hamilton Corporation (CHH) Projects (FCS19068(a)) (City Wide) (Item 10.5)

(Clark/Pearson)

- (a) That the General Manager, Finance and Corporate Services, be authorized to enter into and execute any necessary agreements, including any agreements with Infrastructure Ontario's Loan Program, to secure the capital funding required for CityHousing Hamilton Corporation project at 55 Queenston Road with content acceptable to the General Manager, Finance and Corporate Services and in a form satisfactory to the City Solicitor;
- (b) That the General Manager, Finance and Corporate Services, be authorized and directed to negotiate and confirm the terms, placement and issuance of all debenture issue(s) and / or private placement debenture issue(s), in either a public or private market and / or bank loan agreements and debenture issue(s) and / or variable interest rate bank loan agreements and debenture issue(s), in an amount not to exceed \$4,200,000 Canadian currency in support of CityHousing Hamilton for project at 55 Queenston Road;

- (c) That the General Manager, Finance and Corporate Services, be authorized and directed to enter into and execute any necessary agreements, to engage the services of all required persons, agencies and companies to secure the terms and issuance of the debenture issue(s) described in recommendation (b) to Report FCS19068(a) including, but not limited to, external legal counsel, fiscal agents and financial professionals, with content acceptable to the General Manager, Finance and Corporate Services and in a form satisfactory to the City Solicitor;
- (d) That the General Manager, Finance and Corporate Services, Mayor and City Clerk are individually authorized and directed to enter into and / or execute, on behalf of the City of Hamilton, all agreements and necessary ancillary documents to implement Recommendation (b) to Report FCS19068(a) and in order to secure the terms and issuance of the debenture issue(s) described in Recommendation (b) to Report FCS19068(a) with content acceptable to the General Manager, Finance and Corporate Services and in a form satisfactory to the City Solicitor;
- (e) That the General Manager, Finance and Corporate Services be authorized and directed to administer all agreements and necessary ancillary documents described in Recommendations (a), (c) and (d) to Report FCS19068(a); and,
- (f) That staff be directed to prepare, for Council's consideration, all necessary By-law(s) to authorize and implement CityHousing Hamilton Corporation projects as attached in Appendix "A" to Report FCS19068(a) including By-laws for the purpose of authorizing the debenture issue(s) in accordance with Recommendations (b), (c), (d), (e), and (f) to Report FCS19068(a) and any by-laws necessary to negotiate, place and secure the required capital funding in accordance with Recommendation (a) to Report FCS19068(a).

Result: Motion CARRIED by a vote of 8 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

8. 2021 Grant Advances – City Enrichment Fund (GRA20004) (City Wide) (Item 10.6)

(Pearson/Johnson)

- (a) That effective Jan 1, 2021, an advance of funds be provided to the organizations specified in the attached Appendix "A" to Report GRA20004, and;
- (b) That any outstanding arrears due to the City of Hamilton by the organizations (as shown in the attached Appendix "A" to Report GRA20004) be first applied against the approved grant funding, including advances until the debt is satisfied, prior to that organization receiving the balance of any approved payment.

Result: Motion CARRIED by a vote of 8 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

9. 9252 Twenty Road West, Mount Hope – Water and Wastewater / Storm Charges Deferred Payment Arrangement (FCS20107) (Ward 11) (Item 10.7)

(Johnson/Pearson)

That the General Manager, Finance and Corporate Services, be authorized to enter into a deferred payment arrangement with a four-month repayment period commencing in January 2021, pertaining to water and wastewater / storm charges for a total amount of \$230,229.52 regarding Alectra Utilities (Alectra) account numbers 5092581300 and 6092581300 with the service address of 9252 Twenty Road West, Mount Hope.

Result: Motion CARRIED by a vote of 6 to 0, as follows:

CONFLICT - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
CONFLICT - Ward 9 Councillor Brad Clark

10. Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee - Budget Expenditure Request (CM20012) (Item 10.8)

(Johnson/Pearson)

- (a) That Report CM20012, respecting the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee - Budget Expenditure Request, be received.

Result: Motion CARRIED by a vote of 8 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(Johnson/Partridge)

- (b) That the following budget allocation from the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee budget, be approved:

Motion 7.3:

- (i) That a budget allocation of \$500.00 from the LGBTQAC's budget to assist spectrum Hamilton in running their online events and weekly online peer support;
- (ii) That a budget allocation of \$500.00 from the LGBTQAC's budget to assist Kyle's Place in stocking their food pantry;
- (iii) That a budget allocation of \$500.00 from the LGBTQAC's budget to assist the Sex Workers' Action Program Hamilton (SWAP) in supporting their ongoing drive to compile Harm Reduction Outreach Packages; and,
- (iv) That a budget allocation of \$500.00 from the LGBTQAC's budget to assist The SPACE Youth Centre in supporting their OQRA and Kaleidoscope programs.

Result: Motion CARRIED by a vote of 7 to 1, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
NO - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

**11. Governance Review Sub-Committee Report 20-003 - December 2, 2020
(Added Item 10.9)**

(Collins/Partridge)

That the Governance Review Sub-Committee Report 20-003, be approved **as amended**, as follows:

1. **Integrity Commissioner Work Plan (FCS20016(a)) (City Wide) (Item 10.1)**
 - (i) Report FCS20016(a), respecting the Integrity Commissioner Work Plan was referred back to Clerk's staff and Principles Integrity to determine an upset limit for development of each the following and report back to the Governance Review Sub-Committee:
 - (1) Council Code of Conduct;
 - (2) Council/Staff Relations Policy;
 - (3) Protocols for review and/or investigation of complaints, and reporting on complaints;
 - (4) Members' roles and responsibilities including with respect to appointments to, and sitting on, external bodies and separate entities such as municipal corporations;
 - (5) Advisory Committee/Task Force Governance Issues, and Codes of Conduct (Local Boards); and,
 - (6) Such Other issues of integrity or governance that Council wishes to assign;
 - (ii) ***That staff be directed to gather and review Council/Staff Relations policies from other municipalities and bring recommendations on a new policy to the governance committee by April 30, 2021.***
 - (iii) ***That staff be directed to write to the Ministry of Municipal Affairs and Housing, which governs the Conflict of Interest Act to obtain a second opinion on common law to determine which of a Councillors' family members would a Councillor be obliged to declare conflicts of interest on.***
 - (iv) ***That staff be directed to write a letter to Principles Integrity to seek insight into how Janice Atwood-Petkovski manages her work to avoid Conflicts of Interest given her past relationship with the City of Hamilton as an employee.***

Result: Motion CARRIED by a vote of 7 to 0, as follows:

- YES - Chair - Ward 1 Councillor Maureen Wilson
- YES - Ward 5 Councillor Chad Collins
- YES - Ward 15 Councillor Judi Partridge
- YES - Ward 13 Councillor Arlene VanderBeek

YES - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

12. Hamilton Street Railway Pension Plan Valuation at January 1, 2020 (FCS20066) (City Wide) (Added Item 10.10)

(Ferguson/Pearson)

That the January 1, 2020 actuarial valuation for the Hamilton Street Railway Pension Plan per Appendix "C" to Report FCS20066 be received for information.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

13. Commercial Relationship Between the City of Hamilton and Century Group Inc. (FCS18100(b)/LS18060(b)) (City Wide) (Item 14.1)

(VanderBeek/Collins)

- (a) That **amended** Confidential recommendations (a) and (b) be released publicly following approval by Council; and,
- (b) That the contents of Report FCS18100(b) / LS18060(b), respecting the Commercial Relationship Between the City of Hamilton and Century Group Inc., remain confidential.

Result: Motion CARRIED by a vote of 6 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
NOT PRESENT - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

FOR INFORMATION:

(a) CHANGES TO THE AGENDA (Item 2)

The Committee Clerk advised of the following changes to the agenda:

5. COMMUNICATIONS ITEMS

- 5.1 Correspondence from the Hamilton Waterfront Trust respecting their December 31, 2019 Audited Financial Statements
Recommendation: Be received
- 5.2 Correspondence from Principles Integrity, respecting the Recommendations of Governance Review Sub-Committee re Ethical Framework Work Plan
Recommendation: Be received and referred to consideration of Item 10.9 - Governance Review Sub-Committee Report 20-003 - December 2, 2020

7. CONSENT ITEMS

- 7.1(f) Hamilton Status of Women Advisory Committee - October 22, 2020
- 7.1(g) Committee Against Racism - January 28, 2020
- 7.1(h) Committee Against Racism - February 25, 2020
- 7.1(i) Committee Against Racism - October 27, 2020
- 7.1(j) Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) Advisory Committee - February 18, 2020
- 7.1(k) Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) Advisory Committee - September 15, 2020
- 7.1(l) Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) Advisory Committee - October 20, 2020

10. DISCUSSION ITEMS

- 10.9 Governance Review Sub-Committee Report 20-003 – December 2, 2020
- 10.10 Hamilton Street Railway Pension Plan Valuation at January 1, 2020 (FCS20066) (City Wide)

(Pearson/Ferguson)

That the agenda for the December 10, 2020 Audit, Finance and Administration Committee meeting be approved, as amended.

Result: Motion CARRIED by a vote of 8 to 0, as follows:

- YES - Chair - Ward 1 Councillor Maureen Wilson
- YES - Ward 5 Councillor Chad Collins
- YES - Ward 15 Councillor Judi Partridge
- YES - Ward 13 Councillor Arlene VanderBeek
- YES - Ward 12 Councillor Lloyd Ferguson

YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(b) DECLARATIONS OF INTEREST (Item 3)

Councillor Wilson declared a non-pecuniary interest to Item 10.7, respecting 9252 Twenty Road West, Mount Hope – Water and Wastewater / Storm Charges Deferred Payment Arrangement (FCS20107) (Ward 11) as she has a family member who lives in the condominium corporation that is set out in the report.

Councillor Clark declared an apparent interest to Item 10.7, respecting 9252 Twenty Road West, Mount Hope – Water and Wastewater / Storm Charges Deferred Payment Arrangement (FCS20107) (Ward 11) as he has family members who live in Twenty Place.

(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 4)

(i) November 19, 2020 (Item 4.1)

(Pearson/VanderBeek)

That the Minutes of the November 19, 2020 meeting of the Audit, Finance and Administration Committee be approved, as presented.

Result: Motion CARRIED by a vote of 8 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(d) COMMUNICATIONS (Item 5)

(Partridge/Collins)

That Communication Items 5.1 and 5.2, be approved, as follows:

(i) Correspondence from the Hamilton Waterfront Trust respecting their December 31, 2019 Audited Financial Statements (Added Item 5.1)

Be received.

(ii) Correspondence from Principles Integrity, respecting the Recommendations of Governance Review Sub-Committee re Ethical Framework Work Plan (Added Item 5.2)

Recommendation: Be received and referred to consideration of Item 10.9 -
Governance Review Sub-Committee Report 20-003 - December 2, 2020

Result: Motion CARRIED by a vote of 8 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(e) CONSENT ITEMS (Item 7)

(VanderBeek/Pearson)

That the following Volunteer Advisory Committee Minutes, be received:

- (i) Hamilton Mundialization Committee - February 19, 2020 (Item 7.1(a))
- (ii) Hamilton Mundialization Committee - October 21, 2020 (Item 7.1(b))
- (iii) Hamilton Status of Women Committee - January 23, 2020 (Item 7.1(c))
- (iv) Hamilton Aboriginal Advisory Committee - March 5, 2020 (Item 7.1(d))
- (v) Committee Against Racism - September 22, 2020 (Item 7.1(e))
- (vi) Hamilton Status of Women Advisory Committee - October 22, 2020
(Added Item 7.1(f))
- (vii) Committee Against Racism - January 28, 2020 (Added Item 7.1(g))
- (viii) Committee Against Racism - February 25, 2020 (Added Item 7.1(h))
- (ix) Committee Against Racism - October 27, 2020 (Added Item 7.1(i))
- (x) Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) Advisory
Committee - February 18, 2020 (Added Item 7.1(j))
- (xi) Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) Advisory
Committee - September 15, 2020 (Added Item 7.1(k))
- (xii) Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) Advisory
Committee - October 20, 2020 (Added Item 7.1(l))

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson

YES - Ward 5 Councillor Chad Collins
NOT PRESENT - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(f) PRESENTATIONS (Item 9)

(i) Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee Annual Presentation (Item 9.1)

(Ferguson/Partridge)

That the consideration of Item 9.1, the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee Annual Presentation be postponed until later in the meeting to allow for the Presenter to resolve audio issues.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
NOT PRESENT - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(g) DISCUSSION ITEMS (Item 10)

(Ferguson/Partridge)

That Item 9.1, the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee Annual Presentation be considered following the consideration of Item 10.7.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
NOT PRESENT - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(h) PRESENTATIONS (Item 9) (Continued)

(i) Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee Annual Presentation (Item 9.1)

Cameron Kroetsch, Chair, Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee addressed the Committee with the LGBTQ Advisory Committee Annual Presentation.

(Johnson/Partridge)

That the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee Annual Presentation, be received.

Result: Motion CARRIED by a vote of 8 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
YES - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(i) DISCUSSION ITEMS (Item 9) (Continued)

(i) Governance Review Sub-Committee Report 20-003 – December 2, 2020 (Added Item 10.9)

(VanderBeek/Pearson)

That Item (d)(i) respecting Report FCS20016(a), the Integrity Commissioner Work Plan, be lifted from the Information Section of the Governance Review Sub-Committee Report 20-003 and added as Item 1.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(Clark/Collins)

That Item 1 of the Governance Review Sub-Committee Report 20-003 **be amended** by adding the following sub-sections (ii) and (iii):

- (ii) ***That staff be directed to gather and review Council/Staff Relations policies from other municipalities and bring recommendations on a new policy to the governance committee by April 30, 2021.***
- (iii) ***That staff be directed to write to the Ministry of Municipal Affairs and Housing, which governs the Conflict of Interest Act to obtain a second opinion on common law to determine which of a Councillors' family members would a Councillor be obliged to declare conflicts of interest on.***

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(Clark/Partridge)

That Item 1 of the Governance Review Sub-Committee Report 20-003 ***be further amended*** by adding the following sub-section (iv):

- (iv) ***That staff be directed to write a letter to Principles Integrity to seek insight into how Janice Atwood-Petkovski manages her work to avoid Conflicts of Interest given her past relationship with the City of Hamilton as an employee.***

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

For further disposition of this matter refer to Item 11.

(j) GENERAL INFORMATION / OTHER BUSINESS (Item 13)

- (i) Amendments to the Outstanding Business List (Item 13.1)

(Pearson/VanderBeek)

That the following amendments to the Audit, Finance & Administration Committee's Outstanding Business List, be approved:

- (a) Items Considered Complete and Needing to be Removed:
- (i) Criteria for Participation in Assessment Appeals (FCS20063)
(City Wide)
Added: August 13, 2020 at I AF&A Item 5.4
Completed: December 10, 2020 AF&A - Item 7.2
OBL Item: 20-I
 - (ii) Citizen Committee Report - Lesbian, Gay, Bisexual,
Transgender and Queer (LGBTQ) Advisory Committee Budget
Expenditure Requests
Added: November 19, 2020 at AF&A - Item 9.4
Completed: December 10, 2020 AF&A - Item 10.8
OBL Item: 20-L

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(k) PRIVATE AND CONFIDENTIAL (Item 14)

(Collins/Pearson)

That Committee move into Closed Session respecting Item 14.1, pursuant to Section 8.1, Sub-section (f) of the City's Procedural Bylaw 18-270, and Section 239(2), Sub-section (f) of the *Ontario Municipal Act, 2001*, as amended, as the subject matter pertains to advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
YES - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

(i) **Commercial Relationship Between the City of Hamilton and Century Group Inc. (FCS18100(b)/LS18060(b)) (City Wide) (Item 14.1)**

Staff were provided direction in Closed Session.

For disposition of this matter refer to Item 13.

(l) **ADJOURNMENT (Item 15)**

(Pearson/Partridge)

That, there being no further business, the Audit, Finance and Administration Committee, be adjourned at 12:28 p.m.

Result: Motion CARRIED by a vote of 7 to 0, as follows:

YES - Chair - Ward 1 Councillor Maureen Wilson
YES - Ward 5 Councillor Chad Collins
YES - Ward 15 Councillor Judi Partridge
YES - Ward 13 Councillor Arlene VanderBeek
NOT PRESENT - Ward 12 Councillor Lloyd Ferguson
NOT PRESENT - Ward 11 Councillor Brenda Johnson
YES - Ward 10 Councillor Maria Pearson
YES - Ward 9 Councillor Brad Clark

Respectfully submitted,

Councillor Wilson, Chair
Audit, Finance and Administration
Committee

Angela McRae
Legislative Coordinator
Office of the City Clerk

Request to Speak to Committee of Council

Submitted on Thursday, December 24, 2020 - 1:00 pm

==Committee Requested==

Committee: Audit, Finance and Administration Committee

==Requestor Information==

Name of Individual: Sanaullah Chaudhry

Name of Organization:

Contact Number:

Email Address:

Mailing Address:

Reason(s) for delegation request:

Urgent Request: My Water Bill of total \$2,193.34 (for October 18 - Dec. 18th through Alectra-Bill) is very shocking for me. To survive, special request to waive one time this 'water-bill of \$2193' to be highly appreciated. All details of my property / House available to present upon acceptance of my request.

Regards

Sanaullah Chaudhry

Will you be requesting funds from the City? No

Will you be submitting a formal presentation? No

Request to Speak to Committee of Council

Submitted on Wednesday, January 6, 2021 - 8:42 am

==Committee Requested==

Committee: Audit, Finance & Administration Committee

==Requestor Information==

Name of Individual: Kevin Rachman

Name of Organization: SmartCentres REIT

Contact Number:

Email Address: krachman@smartcentres.com

Mailing Address:

3200 Highway 7

Vaughan ON

L4K 5Z5

Reason(s) for delegation request: The Staff Report on a request I made, on behalf of SmartCentres, is before Committee on Jan. 14, 2021. I would like to address Committee, and any questions Members may have about the request, the Oct. 22, 2020 presentation submitted to Committee and/or about development plans related to the request.

Will you be requesting funds from the City? No

Will you be submitting a formal presentation? No

Request to Speak to Committee of Council

Submitted on Monday, January 11, 2021 - 11:36 pm

==Committee Requested==

Committee: Audit, Finance & Administration Committee

==Requestor Information==

Name of Individual: Robert Ridley - on behalf of Olympia Gerl (homeowner)

Name of Organization:

Contact Number:

Email Address:

Mailing Address:

Reason(s) for delegation request:

Water Billing Overcharging Anomaly – Senior level escalation
Ref#XXXXXXXXXX

- usage billed for January (104m³) and March (76m³) were entirely unprecedented, while February reverted back to normal (3 m³)
- we have been attempting to remedy this over the last months with Alectra, but they have been unwilling to date
- A plumber has done a full inspection of all pipes and fixtures, and has confirmed in writing that there is no issue or evidence of flooding, leakage or anything else that would account for the high charges; his final assessment is that the problem is the meter.
- There are further details I would like to inform the committee and request she is credited back for the over-billing

Will you be requesting funds from the City? No

Will you be submitting a formal presentation? No



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	January 14, 2021
SUBJECT/REPORT NO:	Development Charge (DC) Demolition Credit Extension Request, 651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Shivon Azwim (905) 546-2424 Ext. 2790
SUBMITTED BY:	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department
SIGNATURE:	

RECOMMENDATION(S)

- (a) That the request to extend the City Development Charges (DC) demolition credits for the Mountain Plaza Mall (651-677 Upper James Street) for an additional five years, to January 12, 2025, be denied;
- (b) That the subject matter respecting the “Delegation from Kevin Rachman, SmartCentres REIT, regarding an Extension to a Development Charges Credit”, be identified as complete and removed from the Audit, Finance and Administration Committee Outstanding Business List.

EXECUTIVE SUMMARY

The Audit, Finance and Administration Committee, at its meeting on October 22, 2020, received a presentation (Appendix “A” to Report FCS17008(a)) from Kevin Rachman on behalf of SmartCentres REIT requesting an extension on the Development Charges (DC) demolition credits for the Mountain Plaza Mall development and directed staff to report back to the Audit, Finance and Administration Committee on the matter.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Development Charge (DC) Demolition Credit Extension Request,
651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a))
(City Wide) – Page 2 of 7**

A decision to extend the DC demolition credits has a City-wide impact since the funds collected through DCs are used to fund the growth-related portions of capital projects throughout the City. DC By-law 19-142 places a five-year limitation on DC demolition credits to both discourage vacant, undeveloped lots where buildings used to be and to recognize that excess capacity is absorbed back into the system for DC background study calculations. The five-year limit on DC demolition credits has been contained in the DC By-laws since 2004.

There have been some extenuating circumstances in which the five-year limit has been previously extended, specifically, when development proposals were finalized and ready for development at the time of demolition. Precedent exists for extending DC demolition credits to a maximum of 10 years for a large-scale mall redevelopment through the approval of Report FCS16084 which extended the DC demolition credits for the Centre on Barton redevelopment and through the approval of Report FCS17008 which extended the DC demolition credits for Mountain Plaza Mall in 2017. Currently, no precedent exists for extending DC demolition credits for longer than 10 years. As of December 2020, the developer has not submitted any additional site plan applications. Staff does not recommend establishing this precedent.

As at January 12, 2020, the remaining 44,781.40 square feet of unused DC demolition credits expired. If the demolition credit extension request was granted, the DC reserves would need to be replenished through other funding sources. An amount equal to the foregone collections would need to be drawn from sources such as the related tax and rates service reserves. As at December 2020, the value of 44,781.40 square feet of non-industrial space in the combined sewer system is \$840,099.06 (\$18.76 per square foot). Given that the redevelopment has taken longer than initially planned, the City has not realized increased property taxes on the portion of undeveloped land.

Staff is recommending denying the extension of the DC demolition credits because of the precedent it would set, the accompanying financial impact and the lack of evidence that this delay in development is outside the intended scope for the limit on DC demolition credits.

The City is responsible for collecting Education DCs on behalf of the School Boards but does not have the authority to extend credits for Education DCs. As a result, there are no recommendations, nor is there further mention of Education DCs contained within Report FCS17008(a).

Alternatives for Consideration – See Pages 6-7

**SUBJECT: Development Charge (DC) Demolition Credit Extension Request,
651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a))
(City Wide) – Page 3 of 7**

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Any development on the Mountain Plaza Mall property will be subject to the DC rates and policies in effect at the time of development.

Staffing: N/A

Legal: SmartCentres REIT is a commercial enterprise and, while extensions of DC demolition credits have been made in extenuating circumstances, the decision to extend must be balanced with the bonusing provisions in Section 106 of the *Municipal Act, 2001*.

HISTORICAL BACKGROUND

2007	Mountain Plaza Mall property acquired by Calloway REIT (Hamilton) Inc.
2008	Site plan approval obtained for redevelopment of enclosed mall into seven buildings.
2009-2010	Demolition of former enclosed mall occurred for a combined total of 256,957.79 square feet demolished.
2009-2012	Building Permits issued for six buildings utilizing 209,709.18 square feet of the DC demolition credits from the available 256,957.79 square feet.
January 12, 2015	The unused DC demolition credits of 47,248.61 square feet expired.
April 22, 2015	A five-year extension is requested on the expired DC demolition credits in anticipation of constructing a seventh building.
June 8, 2015	Council approves a two-year extension of the demolition credits (to January 12, 2017) through Report FCS15041.
August 20, 2016	Applied for building permit for Penguin Pickup to utilize 640.02 square feet of the DC demolition credits from the available 47,248.61 square feet.

**SUBJECT: Development Charge (DC) Demolition Credit Extension Request,
651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a))
(City Wide) – Page 4 of 7**

- December 12, 2016 A request to extend the remaining 46,608.59 square feet (non-industrial class) of demolition credits by an additional three years is received.
- January 12, 2017 The unused DC demolition credits of 47,248.61 (46,608.59 + 640.02 from unissued permit) square feet expired.
- March 8, 2017 Council approves a three-year extension of the remaining 47,248.61 square feet (non-industrial class) demolition credits, to January 12, 2020, through Report FCS17008
- 2017 2,467.22 square feet of available demolition credits are utilized through two building permits (Taco Bell & Penguin Pickup).
- January 12, 2020 The unused DC demolition credits of 44,781.40 square feet expired.
- October 22, 2020 A request to extend the remaining 44,781.40 square feet (non-industrial class) of DC demolition credits by an additional five years is received.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The General Manager, Finance and Corporate Services, has been delegated authority to provide extensions to DC demolition credits in cases where the demolition was in a rural area and cases where, in the opinion of the General Manager, Planning and Economic Development, there were delays in the redevelopment that were beyond the control of the developer (LPAT appeals for example). The request from SmartCentres REIT does not fall under either of the circumstances where Council has delegated authority to staff.

Precedent exists for extending DC demolition credits to a maximum of 10 years for a large-scale mall redevelopment through the approval of Report FCS16084 which extended the DC demolition credits for the Centre on Barton redevelopment and through the approval of Report FCS17008 which extended the DC demolition credits for Mountain Plaza Mall in 2017.

Currently, no precedent exists for extending DC demolition credits for longer than 10 years. As of December 2020, the developer has not submitted any additional site plan applications. Staff does not recommend establishing this precedent.

**SUBJECT: Development Charge (DC) Demolition Credit Extension Request,
651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a))
(City Wide) – Page 5 of 7**

RELEVANT CONSULTATION

Planning – Planning and Economic Development Department
Economic Development – Planning and Economic Development Department
Legal and Risk Management Services – Corporate Services Department

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Five-Year Limit on Demolition Credits

The five-year limit on DC demolition credits recognizes that when preparing the DC Background Study, the City must assess the available capacity within the system and make existing capacity available to new development. If the redevelopment of a demolished property does not occur within five years, its capacity will have been absorbed back into the system for the purposes of calculations in the DC Background Study. The five-year limit on DC demolition credits has been contained in the DC By-laws since 2004. A further benefit of the five-year limit is that it discourages vacant, undeveloped lots where buildings used to stand.

This redevelopment project at 677 Upper James Street involved the demolition of a 256,957.79 square foot enclosed mall and construction of eight new buildings. There are currently no site plan applications submitted indicating future plans to build.

There are some extenuating circumstances in which staff has recommended the five-year limit to be extended. This occurs, generally, when development proposals are finalized and ready for development. The property at Mountain Plaza Mall did fall into this category with the previous DC demolition credit extensions. However, due to changing markets, the future plans for the undeveloped portion of the site are yet to be determined and, therefore, this development no longer falls into this category.

Impact of COVID-19 and Future Development Plans

Through their presentation to the Audit, Finance and Administration Committee on October 22, 2020, SmartCentres noted that COVID-19 related closures have impacted the willingness and ability of retailers to open new locations. The remaining demolition credits, which had been extended to 10 years versus the standard five years, expired on January 12, 2020, prior to any significant COVID-19 related closures in the City of Hamilton or the mandatory Provincial shutdown which began in March 2020. Since the extended DC demolition credits expired prior to COVID-19 related closures and site plans have not yet been submitted for the undeveloped portion of the site, staff suggests that the expiry would have occurred regardless of COVID-19.

**SUBJECT: Development Charge (DC) Demolition Credit Extension Request,
651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a))
(City Wide) – Page 6 of 7**

Planning and Economic Development staff has identified that there are currently no site plan applications submitted for future development at the site. The developer had a significant amount of time between the last demolition credit extension approval and the expiry of the remaining demolition credits to develop new plans or to find a retailer or tenant. Although SmartCentres noted that they are currently working to identify the best use for vacant and unbuilt parcels, there is no firm indication that development will occur in the near future or within the requested five-year extension time frame.

Municipal Property Taxes

The undeveloped land results in foregone tax revenue each year the land remains vacant. The estimated municipal property taxes on the vacant land awaiting development totals \$13,500 annually. The estimated municipal property taxes, if the vacant land had been developed into approximately 45,000 square feet of retail space, would have been \$266,400 annually. Through their presentation, SmartCentres identified that non-commercial uses are now being explored as a potential future development. It is evident that the City has missed out on a substantial amount in property taxes by the redevelopment taking longer than initially planned.

For the above reasons, staff is recommending denying the request for further demolition credit extension.

ALTERNATIVES FOR CONSIDERATION

Alternative – Provide the Requested Five-Year Extension of DC Demolition Credits

This alternative would see that the requested five-year extension of the DC demolition credits would result in 44,781.40 square feet expiring on January 12, 2025 (all non-industrial class).

Financial Implications: Any development on the Mountain Plaza Mall property that occurs during the period of the DC demolition credit extension would potentially result in foregone DC collections. Using the current DC rates, the 44,781.40 square feet of unused DC demolition credits would result in \$840,099.06 of foregone DC collections, which would need to be funded from other sources, such as the related rates service reserves and the tax stabilization reserve.

Staffing Implications: None

Legal Implications: None

**SUBJECT: Development Charge (DC) Demolition Credit Extension Request,
651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a))
(City Wide) – Page 7 of 7**

Policy Implications: Sets precedent

Pros: Allows the developer additional time to plan future development and obtain building permits and offset future DC expenses with demolition credits.

Cons: Foregone DC collections that will have to be funded by other sources and providing special treatment to one developer

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS17008(a) - Development Charges Demolition Credit Extension Mountain Plaza Mall Development Request Presentation

SA/dt



Presentation to City of Hamilton
Audit, Finance & Administration Committee
Thursday, October 22, 2020 9:30 a.m.

Mountain Plaza Mall – Hamilton
Development Charge Credits – SmartCentres REIT
Kevin Rachman, Senior Director Development



Mountain Plaza Mall - 2009



Aerial of Enclosed Shopping Centre Prior to Redevelopment (2009)



Summary of Request

SmartCentres REIT is committed to the continued redevelopment and modernization of **Mountain Plaza Mall**.

SmartCentres REIT is requesting a **5-year extension to the remaining Development Charge Credits**, accrued as a result of the demolition of portions of the original enclosed mall.



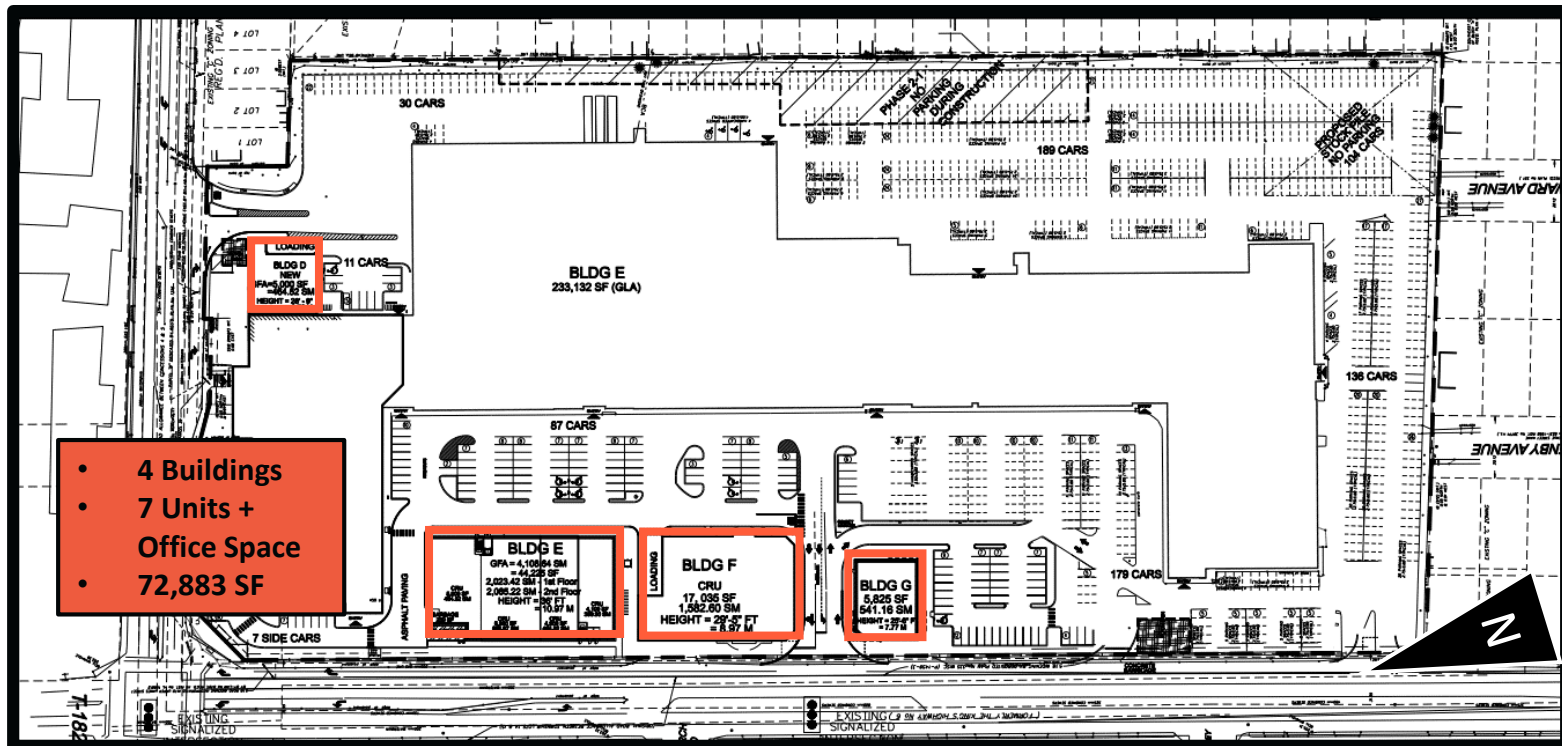
Mountain Plaza Mall 2020



Redevelopment: Phase 1

2009 – Retail Building Construction

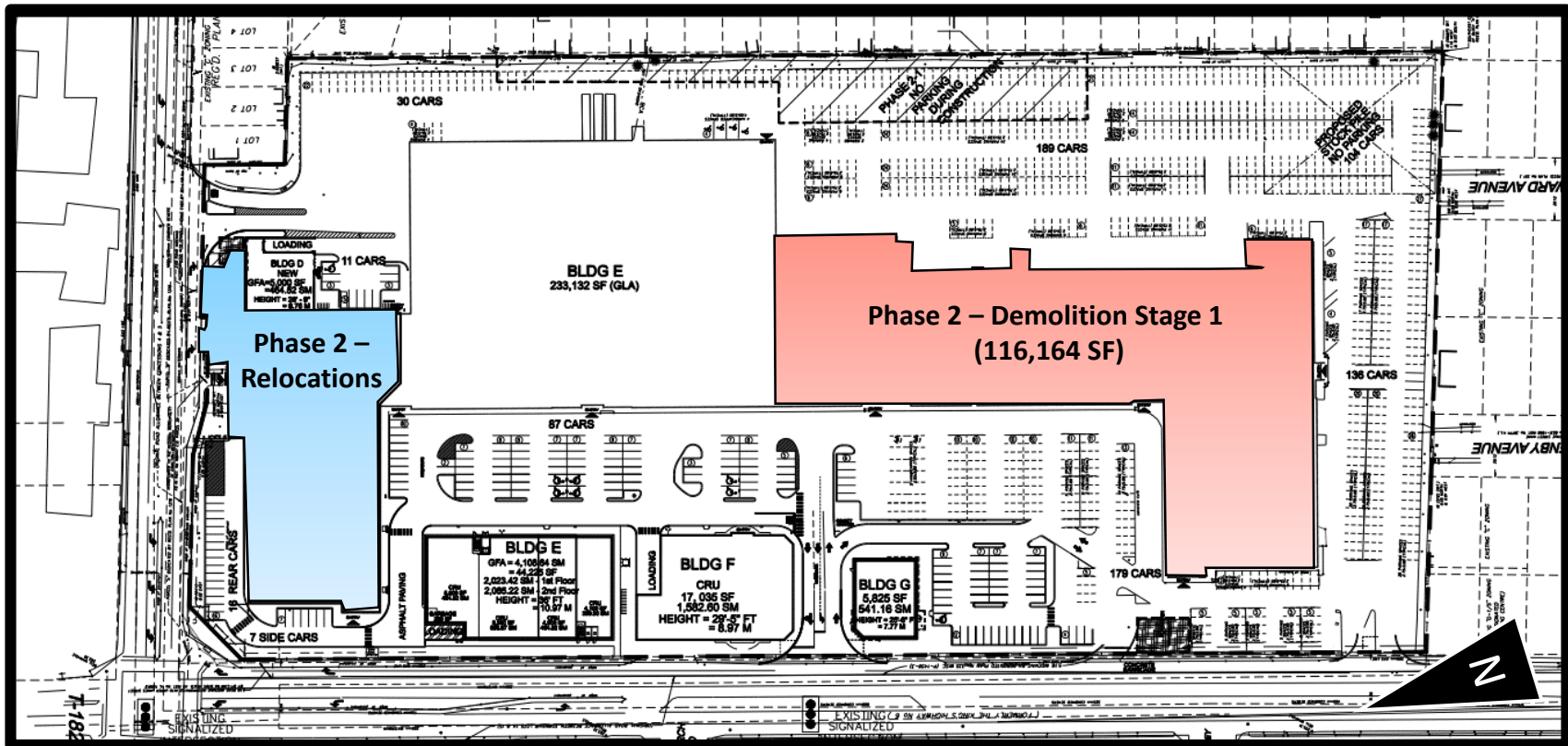
- 4 buildings, containing a total of 7 retail units and some 2nd Floor office space (totaling 72,883 SF /6,771 m² GLA) were constructed
- Construction along the Upper James frontage allowed for the entire enclosed shopping centre to remain open throughout the build
- Development Charge Credits from the upcoming demolition were used for these buildings





2010 – Relocations and Stage 1 Demolition

- Various retail tenants relocated to the northern area of the original enclosed mall (in blue)
- Stage 1 of demolition included the south portion of the shopping centre (in red)

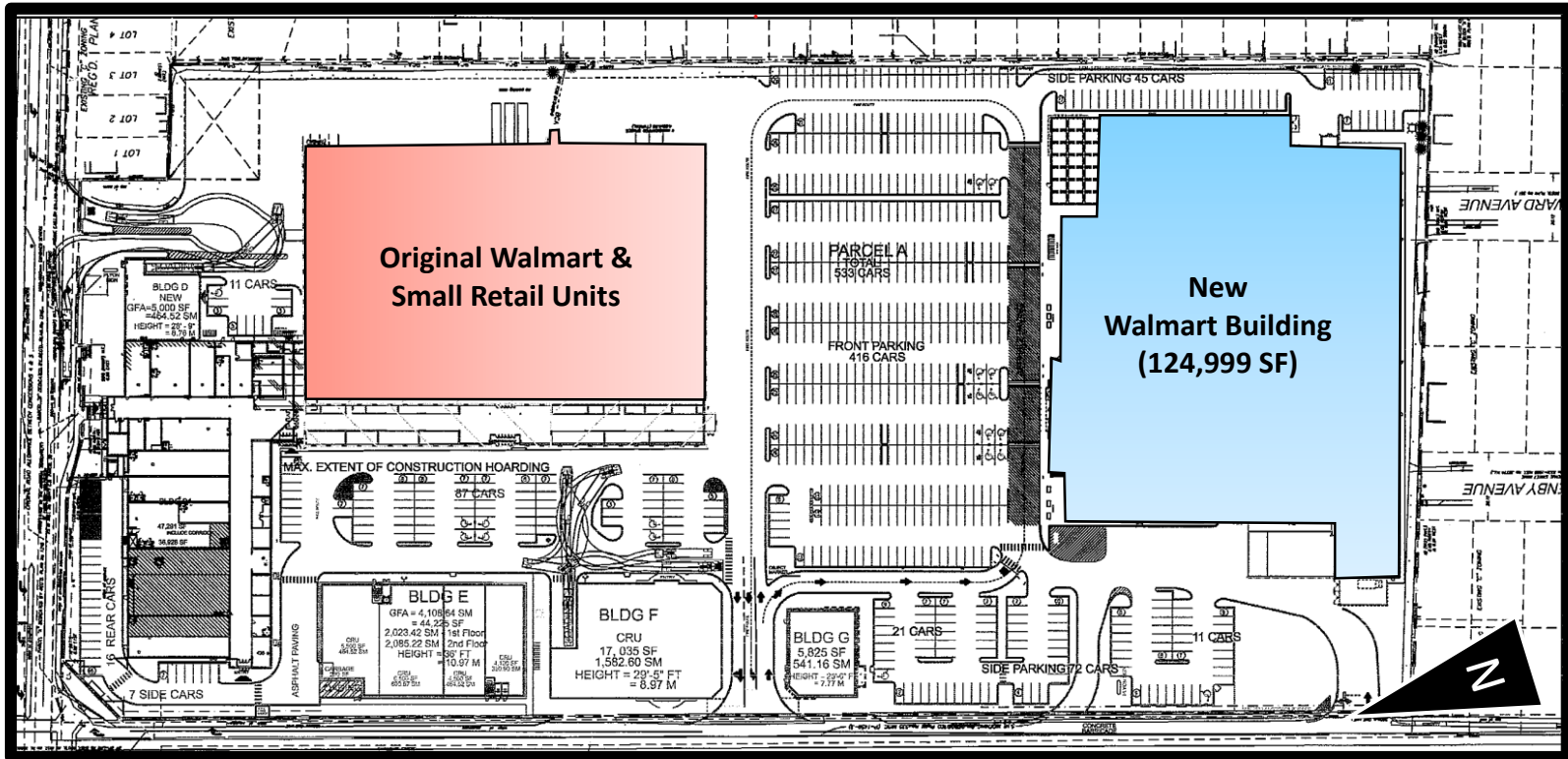




Redevelopment: Phase 3

2010 – New Walmart Building Construction

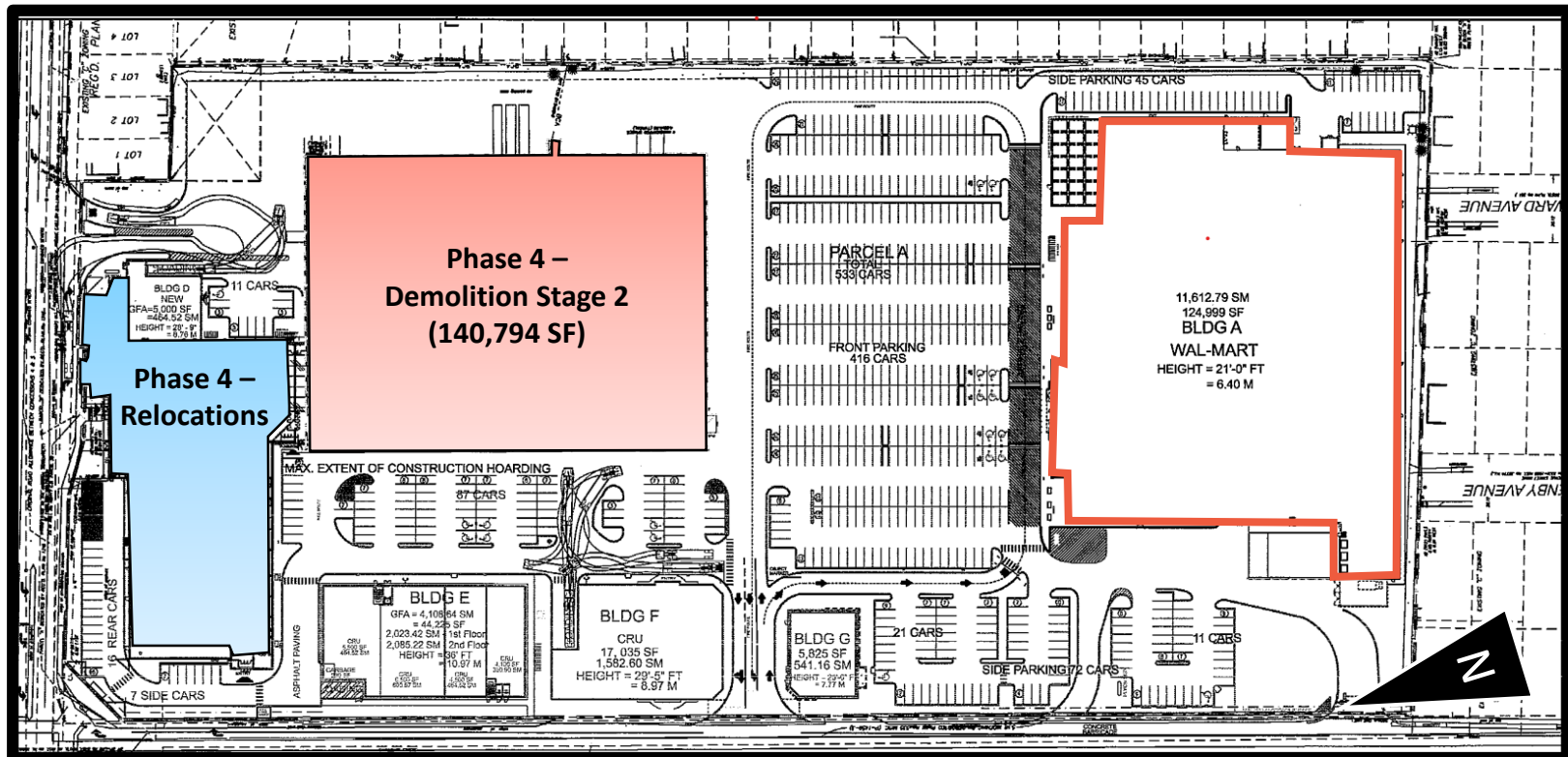
- New stand-alone Walmart building constructed along the southernmost property line
- Original Walmart remained operational within the enclosed mall throughout construction





2011 - Demolition of Original Walmart & Adjacent Small Retail Units

- Walmart was moved to its new building
- Various businesses within the adjacent small retail units were relocated
- Stage 2 of demolition included the original Walmart and a series of small retail units

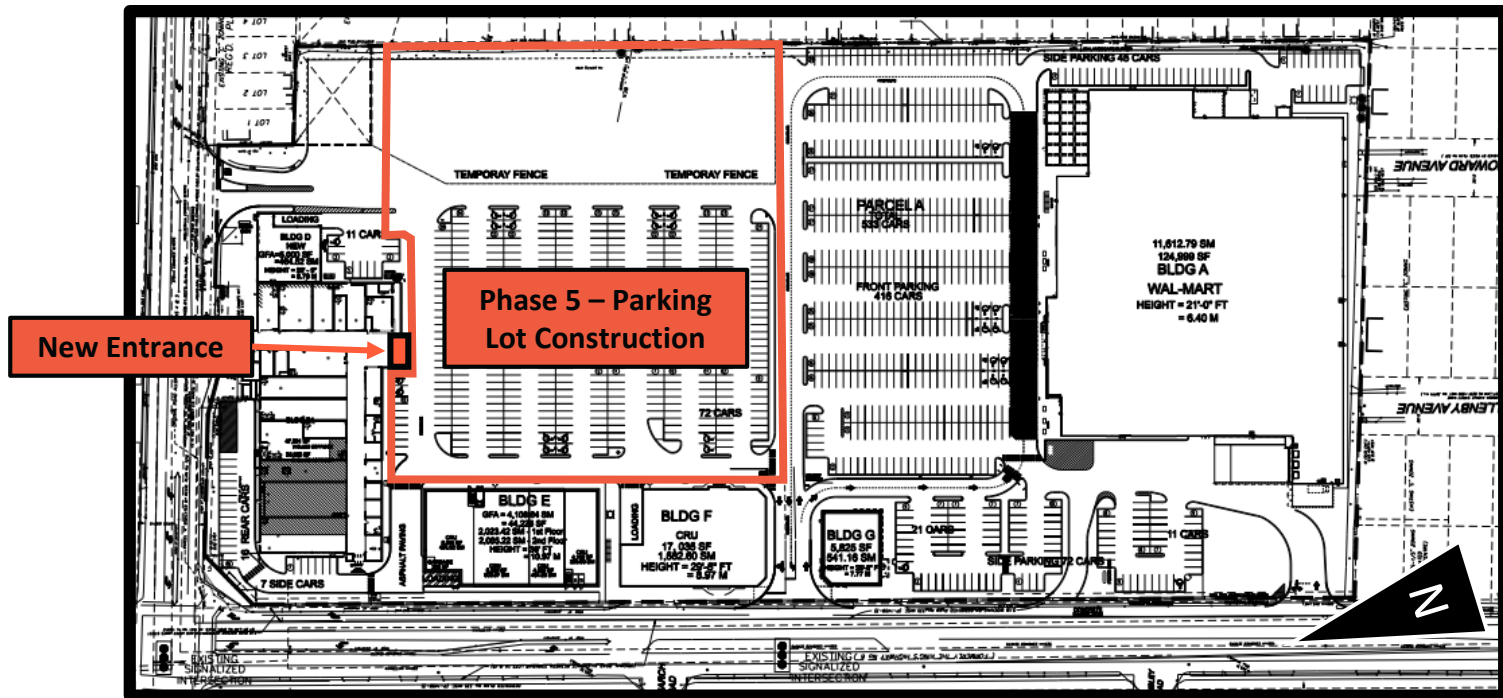




Redevelopment: Phase 5

2011/2012 – Parking Lot and New Entrance Construction

- Parking lot constructed in multiple phases to facilitate customer access to all stores and ensure all tenants remained open throughout
- New entrance to enclosed mall was constructed with direct access to the new parking lot

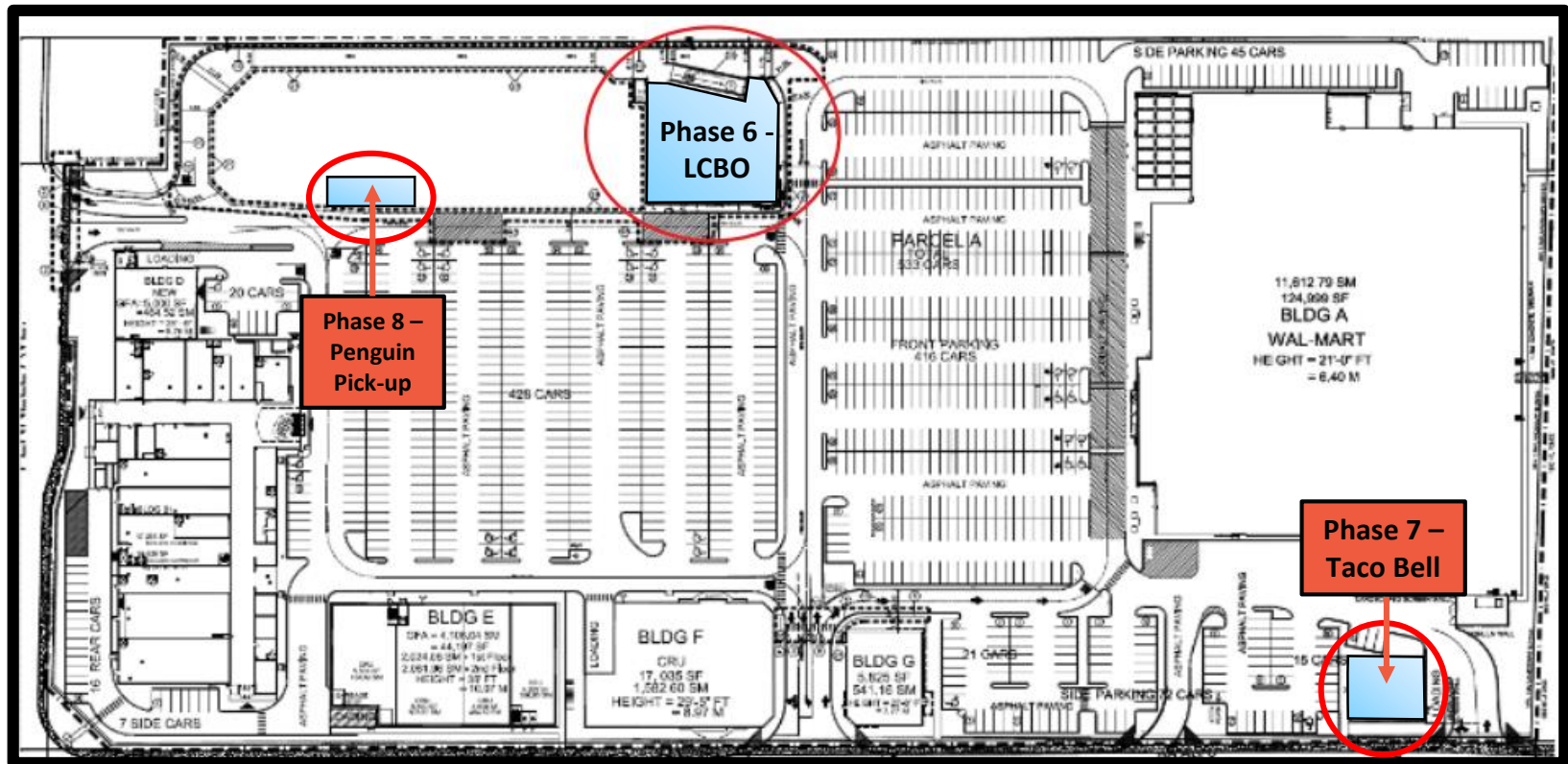




Redevelopment: Phases 6, 7 & 8

2013-2017 – Construction of Additional Buildings

- 2013 – LCBO (Building C6) 11,994 SF/1,114m²
- 2017 – Taco Bell with drive-thru (Building K) 2,190 SF/202m²
- 2017 – Penguin Pick-up (Building C7) 293 SF/27m²





Building & Demolition Permit Totals

BUILDING & DEMOLITION PERMIT LIST

PERMIT TYPE	BUILDING	PERMIT DATE	PERMIT #	PHASE	SQ.M.	SQ.FT.
Building	Building E (Multi-unit)	Apr. 14, 2009	08-276885	1	(4,168.00)	(44,863.99)
Building	Building F (Shopper's)	Mar. 31, 2009	08-276387	1	(1,581.02)	(17,017.96)
Building	Building G (CIBC)	Mar. 10, 2009	09-181866	1	(541.25)	(5,825.97)
Building	Building D (Beer Store)	Apr. 14, 2009	09-182310	1	(465.74)	(5,013.18)
Demolition	Enclosed - South	Apr. 8, 2009	09-181866	2	10,792.00	116,164.12
Building	Building A (Walmart)	Nov. 24, 2009	09-191857	3	(11,612.41)	(124,994.94)
Demolition	Enclosed - Walmart	Jan. 12, 2010	09-201602	4	13,080.16	140,793.67
Building	Building C6 (LCBO)	Apr. 10, 2012	12-104533	6	(1,114.20)	(11,993.15)
<u>DEVELOPMENT CHARGE CREDITS EXTENDED IN 2017</u>					4,389.54	47,248.61
Building	Building K (Taco Bell)	Mar. 31, 2017	17-100989	7	202.00	2,174.31
Building	Building C7 (Penguin Pick-Up)	Apr. 11, 2017	16-123541	7	27.21	292.91
<u>DEVELOPMENT CHARGE CREDITS REQUESTED FOR EXTENSION IN 2020</u>					4,160.33	44,781.21



Redevelopment Planning

2017-Present – Completing Mountain Plaza Redevelopment

- SmartCentres has actively engaged with potential tenants, since before the time of its previous extension request in 2017
- The intervening time has seen a significant shift in the retail landscape with the rise of e-commerce (online retail), ultimately impacting potential new tenancies
- COVID-related closures have further impacted the willingness/ability of retailers to open new locations, as they diligently focus on their *bricks & mortar* stores
- This redefined retail economy has necessitated a ‘rethink’ to SmartCentres’ approach to further stages of the redevelopment of Mountain Plaza Mall
- SmartCentres continues to work diligently to identify the highest and best use for the unbuilt and vacant parcels, as well as the remaining section of the enclosed mall
- The modernization of this prominent community destination remains our objective, however additional time is required to develop a plan that will prove to be viable for our company and welcomed by Hamilton Council and Staff



Summary of Request

SmartCentres REIT is requesting a 5-year extension of the remaining Development Charge Credits accrued through the demolition and redevelopment of Mountain Plaza Mall.



Projected Timeline for Further Redevelopment

- 2021 - Engage with Staff in a Pre-Application Conference (PAC)
- 2021-2022 - Phase 1 Applications & Consultation with Staff
- 2023 - Phase 1 Council Approval
- 2023-2025 - Phase 1 Building Permit & Construction
- 2025-2026 - Phase 2 Applications & Consultation with Staff*

* It is expected that any remaining Development Charge Credits would be enveloped in this application



THANK YOU



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Services and Taxation Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	January 14, 2021
SUBJECT/REPORT NO:	2020 City of Hamilton External Audit Plan (FCS21002) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Shelley Hesmer (905) 546-2424 Ext. 3020
SUBMITTED BY:	Rick Male Director, Financial Services and Taxation & Corporate Controller Corporate Services Department
SIGNATURE:	

RECOMMENDATION

That Appendix "A" attached to Report FCS21002 respecting the 2020 City of Hamilton External Audit Planning prepared by KPMG be received.

EXECUTIVE SUMMARY

Council, at its meeting of September 11, 2017, approved the Audit, Finance and Administration Committee recommendation and Report FCS17073, "Appointment of External Auditor 2017-2021" wherein KPMG was selected as the City of Hamilton's (City) external auditor.

KPMG's audit approach and scope of work for the City of Hamilton and its related entities for the 2020 fiscal year is provided in their Audit Planning Report for the year ended December 31, 2020 (refer to Appendix "A" to Report FCS21002). KPMG's Audit Planning Report outlines their audit responsibilities and audit approach in accordance with Canadian generally accepted auditing standards. The audit standards focus the audit on areas where there is greater risk of misstatement. KPMG has tailored their audit of the City to several specific audit areas: including revenue recognition, deferral policies including grants, tangible capital assets, employee future benefits liability, landfill liability, investments and related income, and operating expenses.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: 2020 City of Hamilton External Audit Plan (FCS21002) (City Wide) -
Page 2 of 3**

KPMG will be discussing the audit work required on the financial statements for the Library, Housing, and Business Improvement Areas with the respective boards or oversight bodies.

Alternatives for Consideration – None

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The 2020 external audit fees of \$215,000 are within the limits of the approved 2020 Operating Budgets for the City and the entities included in the report.

Staffing: There are no associated staffing implications.

Legal: There are no associated legal implications.

HISTORICAL BACKGROUND

KPMG, has been the provider of the City of Hamilton’s external audit services since 2012, having been the successful proponent of a 2011 Request for Proposals (RFP). In December 2016, KPMG had approached senior management with a proposed contract renewal for the next five years. Financial Services staff brought Report FCS17048 to the Audit, Finance and Administration Committee on May 08, 2017, to seek authority to negotiate with KPMG and to bring back the results of such efforts to a future Committee meeting. Report FCS17073 was presented to the Audit, Finance and Administration Committee on August 16, 2017, and provided the necessary follow-up and recommendations. Council at its meeting of September 11, 2017, approved the Audit, Finance and Administration recommendation and Report FCS17073 “Appointment of External Audit for Fiscal Years 2017 to 2021” wherein KPMG’s annual audit fees for the five-year period of 2017-2021 will be \$215,000 per year.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Not Applicable

RELEVANT CONSULTATION

The 2020 Audit Planning Report from KPMG and the City of Hamilton 2020 Year End Plan had been discussed with management of the City’s Departments and Board including:

**SUBJECT: 2020 City of Hamilton External Audit Plan (FCS21002) (City Wide) -
Page 3 of 3**

- Corporate Services Department
 - General Manager of Finance and Corporate Services
 - Director of Finance Services, Taxation and Corporate Controller
 - Director of Financial Planning, Administration and Policy
 - Manager of Business Application Support, Accounts Payable and Receivable
 - Manager of Payroll and Pensions
 - Managers of Finance and Administration
 - Manager of Current Budgets and Fiscal Planning
 - Manager of Capital Budget and Development
- Hamilton Police Services – Chief Accountant
- Hamilton Public Library – Director of Finance and Facilities

The Finance and Administration staff of the Corporate Services Department co-ordinate the audit work with the City's operating departments and divisions.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The annual audit planning report and external audit plan provides the committee with an opportunity to review the audit approach and expectations of the audit. KPMG will be available to answer questions about their report.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report FCS21002 – The City of Hamilton Audit Planning Report for the year ended December 31, 2020, as prepared by KPMG.

SH/dw

The City of Hamilton

Audit Planning Report
for the year ended December 31, 2020



Prepared on November 23, 2020 for
presentation to the Audit Committee
on January 14, 2021



Table of contents

EXECUTIVE SUMMARY	2
COVID-19: EMBEDDING RESILIENCE & READINESS	3
AUDIT RISKS	5
MATERIALITY	10
AUDIT QUALITY AND TRANSPARENCY	11
KEY DELIVERABLES AND MILESTONES	12
APPENDICES	13

Executive summary

COVID-19

On March 11, 2020, the coronavirus (COVID-19) was declared a global pandemic by the World Health Organization. In Canada, the federal and provincial governments have enacted emergency measures to combat the spread of the virus.

See pages 3 and 4 for additional discussion.

Audit and business risks

Our audit is risk-focused. In planning our audit we have taken into account key areas of focus for financial reporting. These include:

- Revenue recognition and deferral policies including grants
- Tangible capital assets,
- Employee future benefits liability,
- Landfill liability,
- Investment and related income,
- Operating expenditures,
- Adoption of CAS 540 - *Estimates*

Audit materiality

Materiality has been determined based on prior period total revenues. We have determined group materiality to be \$49,900,000.

We have reviewed the scope of work across segments and business across the group. Materiality will be set at lower thresholds where necessary to meet requirements of various funding agencies

Independence and quality control

We are independent and have extensive quality control and conflict checking processes in place. We provide complete transparency on all services and follow Audit Committee approved protocols.

Current developments and audit trends

Please refer to page 19 for relevant accounting and/or auditing changes relevant to the city and relevant audit trends

This Audit Planning Report should not be used for any other purpose or by anyone other than the Finance and Administration Committee. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this Audit Planning Report has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

COVID-19: Embedding Resilience & Readiness

Potential financial reporting implications

Refer to our [COVID-19 Financial Reporting](#) site:

- Events or conditions that cast significant doubt regarding going concern
- Impairment of non-financial assets (e.g., PPE)
- Impairment of financial assets including investments
- Fair value measurements
- Employee benefits and employer obligations
- Provisions, contingencies and onerous contracts
- Impact on funding received from federal and provincial governments
- Impact on programs and operations managed by the City
- Impact on capital projects managed by the City
- Subsequent events

Potential implications on internal control over financial reporting

- Reconsideration of financial reporting risks, including fraud risks, given possible new pressures on management or new opportunities to commit fraud given changes in internal controls over Financial Reporting (ICFR) or to bias estimates
- Consideration of the appropriateness of segregation of duties because of a potential reduction in the number of employees
- Consideration of changes in the individuals performing the control (e.g. re-directing the performance to head-office or realignment efforts).
- New or enhanced detective controls to respond to new financial reporting risks or elimination of on-site preventative controls
- Reconsideration of internal control impacts related to broader IT access given work from home arrangements

Potential financial reporting implications related to disclosures

- Events and conditions that cast significant doubt regarding going concern (including "close calls")
- Significant management judgments and sources of estimation uncertainty that have significant risk
- Liquidity risks

Other potential considerations

- Reporting significant changes in ICFR
- Possible enhanced disclosure requirements (e.g. liquidity, critical accounting estimates)
- Cyber security (e.g., wire transfers schemes)
- Possible delay in approval or filing of consolidated financial statements

COVID-19: Embedding Resilience & Readiness (continued)

Similarly, COVID-19 is a major consideration in the development of our audit plan for your 2020 consolidated financial statements.

Potential audit implications

Planning and risk assessment

- Understanding the expected impact on the relevant metrics for determining materiality (including the benchmark) and the implication of that in identifying the risks of material misstatement, responding to such risks and evaluating uncorrected misstatements
- Understanding the potential financial reporting impacts, the changes in the City of Hamilton's environment, and changes in the entity's system of internal controls, and their impact on our:
 - identified and assessed risks of material misstatement
 - audit strategy, including the involvement of others and the nature, timing and extent of tests of controls and substantive procedures

Executing

- Remote auditing if required
 - Increased use of other collaboration tools (Skype, Teams, etc.) and the need for written management acknowledge for their use
 - Potential increased use of electronic evidence (and understanding the entity's processes to provide such evidence to us)
 - Timing of procedures may need to change
 - Tests of controls and related walkthroughs may need to be deferred (to allow the entity to put new or revised controls in operation and to be able to re-perform such controls)
 - Understanding the City's potential financial reporting impacts, the changes in the City's environment, and changes in the City's system of internal control, and their impact on our:
 - design of the analytical procedures
 - need to perform additional procedures or early audit work
-

Audit risks

Relevant factors affecting our risk assessment

Complexity



Estimate



Related party transaction



Significant financial reporting risk	Why is it significant?
Fraud risk from revenue recognition	This is a presumed fraud risk under Canadian Auditing Standards. Audit standards require us to assume there are generally pressures/incentives on management to commit fraudulent financial reporting through inappropriate revenue recognition. This can be penetrated through revenue cut-off or manual journal entries and other adjustments related to revenue recognition.
Fraud risk from management override of controls	This is a presumed fraud risk. We have not identified any specific additional risks of management override relating to this audit.

Our audit approach

We have identified the following areas where this presumed fraud risk is relevant:

- Government grants
- Development charges

Government grant revenue recognition is dependent on the terms of the grant and can be complex depending upon the terms. The City receives many different types of grants with different terms and conditions.

Fraud could include misapplying expenditures to incorrect grant funded programs in order to maximize returnable funding.

The nature of development charges and their use create complexity in the timing of revenue recognition.

Our audit approach will consist of performing substantive procedures to address the relevant assertions associated with the significant risk.

As the risk is not rebuttable, our audit methodology incorporates the required procedures in professional standards to address this risk. These procedures include testing of journal entries and other adjustments, performing a retrospective review of estimates and evaluating the business rationale of significant unusual transactions.

Data and analytics tools will be used to perform work in this area.

Audit risks (continued)

Other areas of Focus	Why are we focusing here
Government Grants	Risk of material misstatement related to the completeness and accuracy of grant revenue
Tangible Capital Assets	Risk of material misstatement related to the classification, completeness, and accuracy of tangible capital assets

Our audit approach

We will perform a substantive test over timing of revenue recognition

We will perform the following procedures:

- Evaluate the design and implementation of controls over disbursements
- Test the operating effectiveness of the controls
- Substantive test over additions to confirm classification as an asset versus expense
- Review amortization policy and perform recalculations
- Review construction in progress to ensure amounts are properly transferred to correct capital asset classes and amortization expense commences on a timely basis.
- Review of financial statement note disclosure in accordance with PSAS.
- We will agree fair value estimates of contributed tangible capital assets to supporting third party documentation or estimated by the City; we will perform procedures to address the new CAS 540, Auditing Accounting Estimates and Related Disclosure requirements related to valuation estimates.
- We will also perform required procedures to assess the potential risks with respect to impairment of assets as a result of the ongoing COVID-19 pandemic. Based on the nature of City's operations, it is not expected that this will be a significant risk during the audit.

Audit risks (continued)

Other areas of Focus	Why are we focusing here
Employee Future Benefits (EFB)	Risk of material misstatement related to the completeness and accuracy of the liability and related expenses
Landfill Liability & contaminated sites	Risk of material misstatement related to the completeness and accuracy of the liability and related expenses

Our audit approach

We will perform the following procedures:

- Reliance on actuaries (management specialist) engaged by the City; update our understanding of the activities over the quality of information used, the assumptions made, the qualifications, competence and objectivity of the preparer of the estimate, and the historical accuracy of the estimates.
- Assess method, data and, assumptions used by actuary and management in calculation of the EFB liability for reasonableness.
- We will perform audit procedures to address the new CAS 540, Auditing Accounting Estimates and related disclosure requirements related to the estimates involved. Communicate with actuaries and test HR data provided to the actuaries, if applicable.
- Review financial statement disclosures in accordance with PSAS.

We will Perform the following procedures:

- Update our understanding on the controls and practices in place at the City surrounding recognition, measurement and completeness of contaminated sites and review and testing of management’s key assumptions and estimates.
- Make inquiries of key stakeholders to validate the completeness assertion of contaminated sites
- Substantive test over the completeness and accuracy of the landfill liability
- Reliance on the specialist engaged by the City to estimate the landfill liability
- Assess the method, data and assumptions used by the specialist in developing the estimated landfill liability
- We will perform audit procedures to address the new CAS 540, Auditing Accounting Estimates and related disclosure requirements related to the estimates involved.
- Review financial statement disclosures in accordance with PSAS.

Audit risks (continued)

Other areas of Focus	Why are we focusing here
Investment and related income	Risk of material misstatement related to the existence and valuation of investments and accuracy of related income
Operating expenditures including payroll	Risk of material misstatement related to the completeness, existence, and accuracy of expenditures

Our audit approach

COVID-19 Implications:

- To assess if there is a loss in value of the portfolio investment and whether such a decline is other than temporary. Perform audit procedures to assess whether a write-down is necessary.

We will perform the following procedures:

- Confirm investment and income balances with investment managers
- Review of financial statement note disclosure in accordance with Public Sector Accounting Standards (PSAS).

We will perform the following procedures:

- Evaluate the design and implementation of controls over disbursements
- Test the operating effectiveness of the controls
- Substantively test a sample to confirm appropriate classification and treatment of expenses
- Search for unrecorded liabilities.
- Examine significant accrued liabilities for existence, accuracy and completeness

Audit risks (continued)

Other areas of Focus	Why are we focusing here
<p>CAS 540, Auditing Accounting Estimates and Related Disclosures</p> <p>Effective for audits of Entities with year-ends on or after December 15, 2020</p>	<p>This revised auditing standard is required to set a globally consistent approach for the audit profession. As estimates become more complex, the revised standard will assist auditors in critically assessing estimates and their elements and design sufficient and appropriate procedures to address those elements. Refer to the embedded Link for CPA Canada's Audit Client Briefing notes for this new standard. LINK</p>

Our audit approach

Expected impact on the audit:

- o more emphasis on the need for exercising professional skepticism
- o more granular risk assessment to address each of the components in an estimate (method, data, assumptions)
- o more granular audit response designed to specifically address each of the components in an estimate (method, data, assumptions)
- o more focus on how we respond to levels of estimation uncertainty
- o more emphasis on auditing disclosures related to accounting estimates
- o more detailed written representations required from management

We anticipate there being incremental work associated with the adoption of this standard for the upcoming year-end audit both on the parts of our engagement team and on the part of management to ensure we appropriately consider and implement this requirement.

We are currently developing our proposed approach with respect to estimates and will be in discussions with your management team on the level of work required and expected involvement.

We have determined that this standard will impact the work performed over the following estimates:

- o Development charges
- o Landfill liability
- o Contaminated sites
- o Developer contributed assets
- o Pending litigations
- o Assessment appeals
- o Employee future benefits and Other Post Employment Benefits.

This is not an exhaustive list but has been determined based on our preliminary risk assessment procedures.

Materiality

Materiality is used to identify risks of material misstatements, develop an appropriate audit response to such risks, and evaluate the level at which we think misstatements will reasonably influence users of the financial statements. It considers both quantitative and qualitative factors. To respond to aggregation risk, we design our procedures to detect misstatements at a lower level of materiality.

Materiality determination	Comments	Amount
Materiality	Determined to plan and perform the audit and to evaluate the effects of identified misstatements on the audit and of any uncorrected misstatements on the financial statements. The corresponding amount for the prior year's audit was \$51,200,000.	\$49,900,000
Benchmark	Based on total revenue from 2019-20 City of Hamilton Financial Statements. For the fiscal 2019-2020 audit the corresponding figure used in audit was \$2,050,067,000 (2018-19 revenue figure)	\$1,997,089,000
% of Benchmark	The corresponding percentage for the prior year's audit was 2.5%	2.5%
Performance materiality	Used 75% of materiality, and used primarily to determine the nature, timing and extent of audit procedures. The corresponding amount for the prior year's audit was \$38,400,000	\$37,400,000
Audit Misstatement Posting Threshold (AMPT)	Threshold used to accumulate misstatements identified during the audit. The corresponding amount for the previous year's audit was \$2,500,000	\$2,400,000

We will report to the Audit Committee:



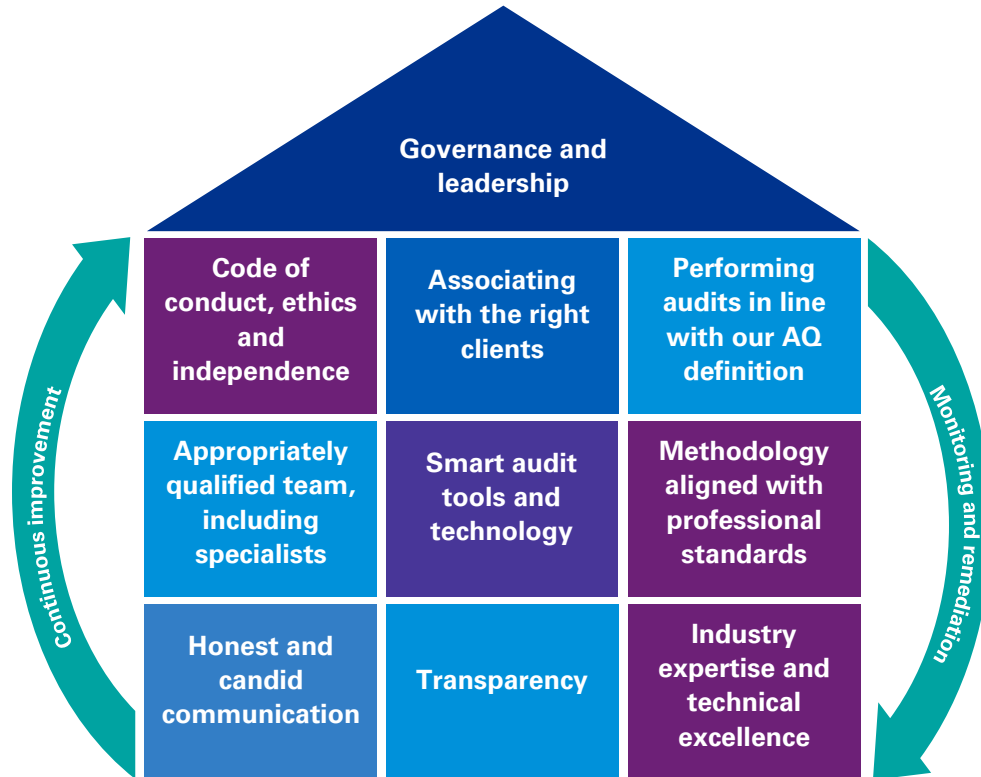
Corrected audit misstatements



Uncorrected audit misstatements

Audit quality and transparency

KPMG maintains a system of quality control designed to reflect our drive and determination to deliver independent, unbiased advice and opinions, and also meet the requirements of Canadian professional standards. Quality control is fundamental to our business and is the responsibility of every partner and employee. The following diagram summarizes the key elements of our quality control system.



Audit Quality Framework

What do we mean by audit quality?

Audit Quality (AQ) is at the core of everything we do at KPMG.

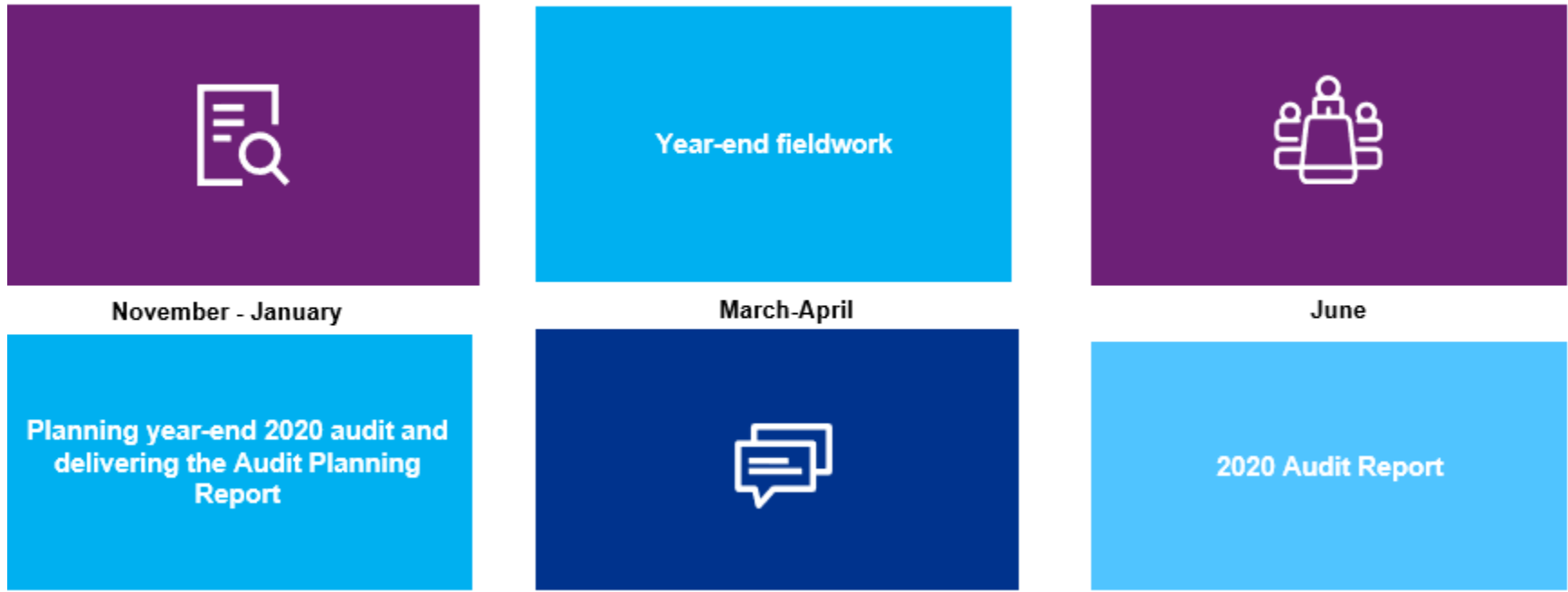
We believe that it is not just about reaching the right opinion, but how we reach that opinion.

We define 'audit quality' as being the outcome when audits are:

- Executed consistently, in line with the requirements and intent of applicable professional standards within a strong system of quality controls, and
- All of our related activities are undertaken in an environment of the utmost level of **objectivity, independence, ethics, and integrity**.

Our AQ Framework summarises how we deliver AQ. Visit our [Audit Quality Resources page](#) for more information including access to our [Audit Quality and Transparency report](#).

Key deliverables and milestones



Appendices

Content

Appendix 1: Required communications

Appendix 2: Use of technology in the audit

Appendix 3: KPMG's audit approach and methodology

Appendix 4: Lean in Audit™

Appendix 5: Audit and Assurance Insights

Appendix 6: Preparing for PSAB Standard Changes



Appendix 1: Required communications

Reports to the Audit Committee

At the completion of the audit, we will provide our findings report to the Audit Committee.

Representations of management

We will obtain from management certain representations at the completion of the audit.

Matters pertaining to independence

At the completion of our audit, we will provide re-confirm our independence with the Audit Committee.

Internal control deficiencies

Other control deficiencies, identified during the audit, that do not rise to the level of a significant deficiency will be communicated to management.

Required inquiries

Professional standards require that during the planning of our audit we obtain your views on the identification and assessment of risks of material misstatement, whether due to fraud or error, your oversight over such risk assessment, identification of suspected, alleged or actual fraudulent behaviour, and any significant unusual transactions during the period.

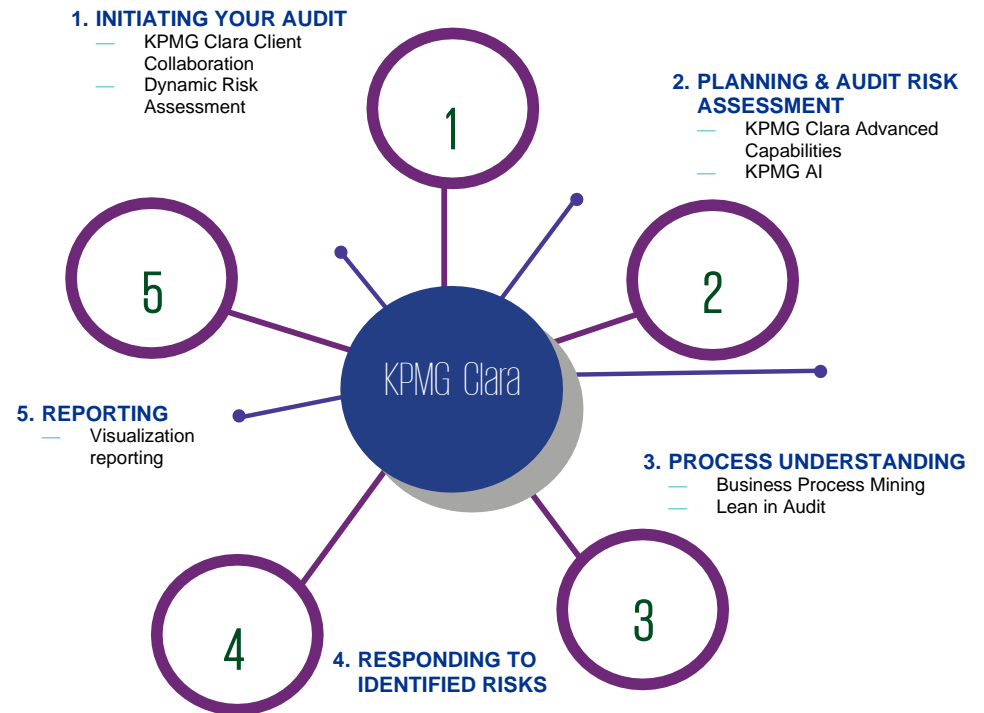
Appendix 2: Use of technology in the audit

Clara is KPMG's integrated, smart global audit platform that allows our teams globally to work simultaneously on audit documentation while sharing real time information. Clara also leverages advanced technology in the execution of various audit procedures, for overall risk assessment and for performing substantive audit procedures over 100% of selected transactions through the use of robotic process automation (KPMG "Bots"). KPMG's use of technology provides for:

1. a **higher quality audit** – looking at 100% of selected data
2. a **more efficient audit** as we are focussed on the transactions that are considered higher risk and
3. an audit that provides **insights into your business** through the use of technology in your audit with our extensive industry knowledge.

We are also actively piloting Artificial Intelligence ("AI") tools which will be used in future audits.

Our five-phased audit approach



Appendix 3: KPMG's audit approach and methodology

Collaboration in the audit

A dedicated KPMG Audit home page gives you real-time access to information, insights and alerts from your engagement team.

Issue identification

Continuous updates on audit progress, risks and findings before issues become events.

Data-driven risk assessment

Automated identification of transactions with unexpected or unusual account combinations – helping focus on higher risk transactions and outliers.



Deep industry insights

Bringing intelligence and clarity to complex issues, regulations and standards.

Analysis of complete populations

Powerful analysis to quickly screen, sort and filter 100% of your journal entries based on high-risk attributes.

Reporting

Interactive reporting of unusual patterns and trends with the ability to drill down to individual transactions.

Appendix 4: Lean in Audit™

An innovative approach leading to enhanced value and quality

Our innovative audit approach, Lean in Audit, further improves audit value and productivity to help deliver real insight to you. Lean in Audit is process oriented, directly engaging organizational stakeholders and employing hands-on tools, such as walkthroughs and flowcharts of actual financial processes.

By embedding Lean techniques into our core audit delivery process, our teams are able to enhance their understanding of the business processes and control environment within your organization – allowing us to provide actionable quality and productivity improvement observations.

Any insights gathered through the course of the audit will be available to both engagement teams and management. For example, we may identify control gaps and potential process improvement areas, while management has the opportunity to apply such insights to streamline processes, inform business decisions, improve compliance, lower costs, increase productivity, strengthen customer service and satisfaction and drive overall performance.

How it works

Lean in Audit employs three key Lean techniques:

1. Lean training

Provide basic Lean training and equip our teams with a new Lean mindset to improve quality, value and productivity.

2. Interactive workshops

Perform interactive workshops to conduct walkthroughs of selected financial processes providing end-to-end transparency and understanding of process and control quality and effectiveness.

3. Insight reporting

Quick and pragmatic insight report including immediate quick win actions and prioritized opportunities to realize benefit.

Appendix 5: Audit and Assurance Insights

Our latest thinking on the issues that matter most to Audit Committees, Boards and Management.

Featured insight	Summary	Reference
Audit & Assurance Insights	Curated thought leadership, research and insights from subject matter experts across KPMG in Canada	<u>Learn more</u>
The business implications of coronavirus (COVID 19)	Resources to help you understand your exposure to COVID-19, and more importantly, position your business to be resilient in the face of this and the next global threat.	<u>Learn more</u>
	Financial reporting and audit considerations: The impact of COVID-19 on financial reporting and audit processes.	<u>Learn more</u>
Accelerate 2019/20	Perspective on the key issues driving the Audit Committee agenda	<u>Learn more</u>
Momentum	A quarterly Canadian newsletter which provides a snapshot of KPMG's latest thought leadership, audit and assurance insights and information on upcoming and past audit events – keeping management and board members abreast on current issues and emerging challenges within audit.	<u>Sign-up now</u>

Appendix 6: Current developments and audit trends

Title	Details	Link
Public Sector Update – connection series	Public Sector Accounting Standards are evolving – Get a comprehensive update on the latest developments from our PSAB professionals. Learn about current changes to the standards, active projects and exposure drafts, and other items.	Contact your KPMG team representative to sign up for these webinars. Public Sector Minute Link

Public Sector Accounting Standards

The following are upcoming changes that will be effective in future periods. We have provided an overview of what these standards are and what they mean to your financial reporting so that you may evaluate any impact to your future financial statements.

Standard	Summary and implications
Asset Retirement Obligations (“ARO”)	<ul style="list-style-type: none"> – A new standard has been approved that is effective for fiscal years beginning on or after April 1, 2022 – The new standard addresses the recognition, measurement, presentation and disclosure of legal obligations associated with retirement of tangible capital assets in productive use. Retirement costs would be recognized as an integral cost of owning and operating tangible capital assets. PSAB currently contains no specific guidance in this area. – The ARO standard would require the public sector entity to record a liability related to future costs of any legal obligations to be incurred upon retirement of any controlled tangible capital assets (“TCA”). The amount of the initial liability would be added to the historical cost of the asset and amortized over its useful life. – As a result of the new standard, the public sector entity would have to: <ul style="list-style-type: none"> • consider how the additional liability will impact net debt, as a new liability will be recognized with no corresponding increase in a financial asset; • carefully review legal agreements, senior government directives and legislation in relation to all controlled TCA to determine if any legal obligations exist with respect to asset retirements; • begin considering the potential effects on the organization as soon as possible to coordinate with resources outside the finance department to identify AROs and obtain information to estimate the value of potential AROs to avoid unexpected issues.

<p>Financial Instruments</p>	<ul style="list-style-type: none"> – accounting standards, PS3450 <i>Financial Instruments</i>, PS2601 <i>Foreign Currency Translation</i>, PS1201 <i>Financial Statement Presentation</i> and PS3041 <i>Portfolio Investments</i> have been approved by PSAB and are effective for years commencing on or after April 1, 2022 – Equity instruments quoted in an active market and free-standing derivatives are to be carried at fair value. All other financial instruments, including bonds, can be carried at cost or fair value depending on the government’s choice and this choice must be made on initial recognition of the financial instrument and is irrevocable. – Hedge accounting is not permitted. – A new statement, the Statement of Re-measurement Gains and Losses, will be included in the financial statements. Unrealized gains and losses incurred on fair value accounted financial instruments will be presented in this statement. Realized gains and losses will continue to be presented in the statement of operations. – Based on stakeholder feedback received, PSAB is considering certain scope amendments to PS 3450 <i>Financial Instruments</i>. An exposure draft with the amendments is expected to be issued in 2020. The proposed amendments are expected to include the accounting treatment of bond repurchases, scope exclusions for certain activities by the federal government, and improvements to the transitional provisions
<p>Revenue</p>	<ul style="list-style-type: none"> – A new standard has been approved that is effective for fiscal years beginning on or after April 1, 2023. – The new standard establishes a single framework to categorize revenues to enhance the consistency of revenue recognition and its measurement. – The standard notes that in the case of revenues arising from an exchange, a public sector entity must ensure the recognition of revenue aligns with the satisfaction of related performance obligations. – The standard notes that unilateral revenues arise when no performance obligations are present, and recognition occurs when there is authority to record the revenue and an event has happened that gives the public sector entity the right to the revenue.
<p>Employee Future Benefit Obligations</p>	<ul style="list-style-type: none"> – PSAB has initiated a review of sections PS3250 <i>Retirement Benefits</i> and PS3255 <i>Post-Employment Benefits, Compensated Absences and Termination Benefits</i>. Given the complexity of issues involved and potential implications of any changes that may arise from this review, the project will be undertaken in phases. Phase I will address specific issues related to measurement of employment benefits. Phase II will address accounting for plans with risk sharing features, multi-employer defined benefit plans and sick leave benefits. – Three Invitations to Comment were issued and have closed. The first Invitation to Comment sought guidance on whether the deferral provisions in existing public sector standards remain appropriate and justified and the appropriateness of accounting for various components of changes in the value of the accrued benefit obligation and plan assets. The second Invitation to Comment sought guidance on the present value measurement of accrued benefit obligations. A third Invitation to Comment sought guidance on non-traditional pension plans. – The ultimate objective of this project is to issue a new employment benefits section to replace existing guidance.
<p>Public Private Partnerships (“P3”)</p>	<ul style="list-style-type: none"> – A taskforce was established in 2016 as a result of increasing use of public private partnerships for the delivery of services and provision of assets. – A Statement of Principles (“SOP”) was issued in August 2017 which proposes new requirements for recognizing, measuring and classifying infrastructure procured through a public private partnership.

-
- The SOP proposes that recognition of infrastructure by the public sector entity would occur when it controls the purpose and use of the infrastructure, when it controls access and the price, if any, charged for use, and it controls any significant interest accumulated in the infrastructure when the P3 ends.
 - The SOP proposes the public sector entity recognize a liability when it needs to pay cash or non-cash consideration to the private sector partner for the infrastructure.
 - The infrastructure would be valued at cost, with a liability of the same amount if one exists. Cost would be measured by discounting the expected cash flows by a discount rate that reflects the time value of money and risks specific to the project.

International Strategy

- PSAB is in the process of reviewing its current approach towards International Public Sector Accounting Standards. This project may result in changes to the role PSAB plays in setting standards in Canada.
 - Two consultation papers were released for comment in May 2018 and March 2019 both of which have closed. The consultation paper described the decision-making criteria PSAB expects to consider in evaluating the international strategy that best serves the public sector. It also introduced four proposed international strategies that PSAB considers to be viable. A final decision was expected at the March 2020 meeting. As of the date of this report, nothing has been released from PSAB.
-



kpmg.ca/audit



KPMG LLP, an Audit, Tax and Advisory firm (kpmg.ca) and a Canadian limited liability partnership established under the laws of Ontario, is the Canadian member firm of KPMG International Cooperative ("KPMG International").

KPMG member firms around the world have 174,000 professionals, in 155 countries.

The independent member firms of the KPMG network are affiliated with KPMG International, a Swiss entity. Each KPMG firm is a legally distinct and separate entity, and describes itself as such.

© 2020 KPMG LLP, a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.





CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	January 14, 2021
SUBJECT/REPORT NO:	City of Hamilton / Ministry of Transportation Municipal Transit Enhanced Cleaning Transfer Payment Agreement (FCS21005) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Craig Webb (905) 546-2424 Ext. 1870
SUBMITTED BY:	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department
SIGNATURE:	

RECOMMENDATION(S)

- (a) That the Mayor and the City Clerk be authorized and directed to enter into a Transfer Payment Agreement attached as Appendix "A" to Report FCS21005 between the City of Hamilton and the Province of Ontario related to the funding commitment made by the Province of Ontario to the municipality regarding Municipal Transit Enhanced Cleaning funding in a form satisfactory to the City Solicitor;
- (b) That, upon being passed, a certified copy of the authorizing By-law and resolution, together with the signed Transfer Payment Agreement for the Municipal Transit Enhanced Cleaning be forwarded to the Ministry of Transportation.

EXECUTIVE SUMMARY

On June 29, 2020, the Province of Ontario announced \$15 M in funding for 110 municipalities province-wide. The funding will be distributed amongst all 110 municipalities using a modified version of the gas tax formula. Specifically, \$500 will serve as the base amount for each recipient with the balance being determined by 70% ridership and 30% population utilizing the same data as the 2019 / 2020 Gas Tax program allocations. The expected allocation for Hamilton is \$464,413.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: City of Hamilton / Ministry of Transportation Municipal Transit Enhanced Cleaning Transfer Payment Agreement (FCS21005) (City Wide) – Page 2 of 4

The authorizing By-law and Transfer Payment Agreement attached as Appendix “A” to Report FCS21005 are provided as a condition of the transfer of funds, provided by the Province of Ontario to the City of Hamilton under this Program.

Under the terms and conditions of the attached Transfer Payment Agreement, an authorizing by-law is required to authorize the Mayor and City Clerk to sign the “Transfer Payment Agreement between Her Majesty the Queen in Right of the Province of Ontario, Represented by the Minister of Transportation for the Province of Ontario and the City of Hamilton related to Funding Provided by the Province of Ontario to the Municipality for Municipal Transit Enhanced Cleaning”.

Council had previously delegated authority for submission of agreements and documents related to Safe Restart Agreement funds through Report FCS20085. As this funding allocation is separate from the Safe Restart agreement a separate Council authorization is required by the Ministry of Transportation.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Ratification of the Transfer Payment Agreement is a condition of the City of Hamilton becoming eligible for an estimated \$464,413 in provincial funding relating to Municipal Transit Enhanced Cleaning funding.

Staffing: None.

Legal: None.

HISTORICAL BACKGROUND

None.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

None.

RELEVANT CONSULTATION

None.

SUBJECT: City of Hamilton / Ministry of Transportation Municipal Transit Enhanced Cleaning Transfer Payment Agreement (FCS21005) (City Wide) – Page 3 of 4

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Under the Municipal Transit Enhanced Cleaning funding allocation, a base amount of \$500 plus an additional amount based on a modified dedicated gas tax formula of 70% transit ridership and 30% municipal population delivers an estimated \$464,413 to the City of Hamilton.

The funding will be used as a one-time funding source for expenditures related to enhanced cleaning expended between April 1, 2020 and December 31, 2020. The eligible costs that can be claimed are as follows:

- costs of cleaning materials for the Municipal Transit Enhanced Cleaning (MTEC);
- costs of hand sanitizer for passenger and staff use;
- costs of safety wear for the MTEC, such as gloves or goggles;
- costs of equipment purchased for the MTEC;
- costs of contracted services for the MTEC;
- costs of salaries, including redeployment of staff, for the MTEC;
- any other cost that, in the opinion and at the sole discretion of the Province, is necessary for the MTEC.

Under the terms and conditions of the attached Transfer Payment Agreement, a by-law is required to authorize the Mayor and City Clerk to sign the “Transfer Payment Agreement between Her Majesty the Queen in Right of the Province of Ontario, Represented by the Minister of Transportation for the Province of Ontario and the City of Hamilton related to Funding Provided by the Province of Ontario to the Municipality for Municipal Transit Enhanced Cleaning”.

ALTERNATIVES FOR CONSIDERATION

None.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

**SUBJECT: City of Hamilton / Ministry of Transportation Municipal Transit
Enhanced Cleaning Transfer Payment Agreement (FCS21005) (City
Wide) – Page 4 of 4**

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS21005 – Transfer Payment Agreement – Municipal Transit
Enhanced Cleaning

CW/dt

TRANSFER PAYMENT AGREEMENT FOR MUNICIPAL TRANSIT ENHANCED CLEANING

THIS TRANSFER PAYMENT AGREEMENT for Municipal Transit Enhanced Cleaning (the "Agreement") is effective as of the Effective Date (both "Agreement" and "Effective Date" as further defined in section A1.2 (Definitions)).

B E T W E E N:

Her Majesty the Queen in right of Ontario as represented by the
Minister of Transportation for the Province of Ontario

(the "**Province**")

- and -

City of Hamilton

(the "**Recipient**")

BACKGROUND:

In response to the COVID-19 pandemic and subject to the terms and conditions set out in the Agreement, the Province has agreed to provide funding to the Recipient for the Municipal Transit Enhanced Cleaning ("MTEC" as further defined in section A1.2 (Definitions)).

CONSIDERATION:

In consideration of the mutual covenants and agreements contained in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Province and the Recipient agree as follows:

1.0 ENTIRE AGREEMENT

1.1 Schedules and Sub-schedule to the Agreement. The following schedules and sub-schedule form part of the Agreement:

Schedule "A" - General Terms and Conditions

Schedule "B" - Contact Information and Authorized Representatives

Schedule "C" - Eligible Expenditures and Ineligible Expenditures

Schedule "D" - Claim and Attestation Submission, Supporting Documentation and
Payment Procedures

Sub-schedule "D.1" - Claim and Attestation Form

1.2 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties (as defined in section A1.2 (Definitions)) with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

2.0 CONFLICT OR INCONSISTENCY

2.1 **Conflict or Inconsistency.** In the event of a conflict or inconsistency between any of the requirements of:

- (a) Schedule "A" (General Terms and Conditions) and any of the requirements of another schedule or a sub-schedule, Schedule "A" (General Terms and Conditions) will prevail to the extent of the inconsistency; or
- (b) a schedule and any of the requirements of a sub-schedule, the schedule will prevail to the extent of the inconsistency.

3.0 COUNTERPARTS

3.1 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

3.2 **Electronic Execution and Delivery of Agreement.**

- (a) The Agreement may:
 - (i) be executed and delivered by scanning the manually signed Agreement as a PDF and delivering it by email to the other Party; or
 - (ii) subject to the Province's prior written consent, be executed and delivered electronically to the other Party.
- (b) The respective electronic signature of the Parties is the legal equivalent of a manual signature.

4.0 AMENDING THE AGREEMENT

4.1 **Amendments.** The Agreement may only be amended by a written agreement.

4.2 **Execution of Amending Agreements.** An amending agreement under section 4.1 (Amendments) may be executed by the respective representatives of the

Parties listed in Schedule "B" (Contact Information and Authorized Representatives).

5.0 ACKNOWLEDGEMENT

5.1 **Acknowledgement.** The Recipient acknowledges that:

- (a) the Funds are to assist the Recipient to carry out the MTEC and not to provide goods or services to the Province;
- (b) the Province is not responsible for carrying out the MTEC; and
- (c) the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the MTEC or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

5.2 **Acknowledgement from Province.** The Province acknowledges that the Recipient is bound by the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and any information provided to the Recipient in connection with the MTEC or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

- SIGNATURE PAGE FOLLOWS -

The Parties have executed the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO**, represented by the
Minister of Transportation for the Province of Ontario

Date

Name: Caroline Mulroney
Title: Minister

CITY OF HAMILTON

Date

Name: Fred Eisenberger
Title: Mayor

I have authority to bind the Recipient.

Date

Name: Andrea Holland
Title: City Clerk

I have authority to bind the Recipient.

SCHEDULE "A" GENERAL TERMS AND CONDITIONS

A1.0 INTERPRETATION AND DEFINITIONS

A1.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency will be in Canadian dollars and currency; and
- (e) all accounting terms not otherwise defined in the Agreement have their ordinary meanings.

A1.2 **Definitions.** In the Agreement, the following terms will have the following meanings:

"Agreement" means this agreement, entered into between the Province and the Recipient, all of the schedules and the sub-schedule listed in section 1.1 (Schedules and Sub-schedule to the Agreement), and any amending agreement entered into pursuant to section 4.1 (Amendments).

"Authorities" means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Agreement or the MTEC, or both.

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"Effective Date" means the date of signature by the last signing Party to the Agreement.

"Eligible Expenditures" means the costs of the MTEC that are eligible for funding by the Province under the Agreement, and that are further described in section C2.1 (Scope of Eligible Expenditures).

“Event of Default” has the meaning ascribed to it in section A12.1 (Events of Default).

“Expiry Date” means June 30, 2021.

“Funds” means the money the Province provides to the Recipient pursuant to the Agreement.

“Indemnified Parties” means Her Majesty the Queen in right of Ontario, and includes Her ministers, agents, appointees, and employees.

“Ineligible Expenditures” means the costs of the MTEC that are ineligible for funding by the Province under the Agreement, and that are further described in section C3.1 (Scope of Ineligible Expenditures).

“Loss” means any cause of action, liability, loss, cost, damage, or expense (including legal, expert and consultant fees) that anyone incurs or sustains as a result of or in connection with the MTEC or any other part of the Agreement.

“Maximum Funds” means \$464,413.

“MTEC” means the municipal transit enhanced cleaning as described in section C1.1 (Description of the MTEC).

“Notice” means any communication given or required to be given pursuant to the Agreement.

“Notice Period” means the period of time within which the Recipient is required to remedy an Event of Default, pursuant to paragraph A12.3(b), and includes any such period or periods of time by which the Province extends that time in accordance with section A12.4 (Recipient not Remediating).

“Parties” means the Province and the Recipient.

“Party” means either the Province or the Recipient.

“Proceeding” means any action, claim, demand, lawsuit, or other proceeding that anyone makes, brings or prosecutes as a result of or in connection with the MTEC or with any other part of the Agreement.

“Records Review” means any assessment the Province conducts pursuant to section A7.4 (Records Review).

“Reports” means the reports described in Schedule “D” (Claim and Attestation Submission, Supporting Documentation and Payment Procedures).

“Requirements of Law” means all applicable requirements, laws, statutes, codes, acts, ordinances, approvals, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, directions, and agreements with all Authorities.

A2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

A2.1 General. The Recipient represents, warrants and covenants that:

- (a) it has, and will continue to have, the experience and expertise necessary to carry out the MTEC;
- (b) it is in compliance with, and will continue to comply with, all Requirements of Law related to any aspect of the MTEC, the Funds, or both;
- (c) if Funds are used for acquired goods or services, or both, these were acquired in compliance with the Recipient’s policies and procedures and, to the extent possible under the COVID-19 unprecedented times, through a process that promotes the best value for the money;
- (d) it is in compliance with the insurance requirements set out in section A10.1 (Recipient’s Insurance); and
- (e) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds including, without limitation, information relating to any eligibility requirements, the MTEC and related timelines was true and complete at the time the Recipient provided it and will continue to be true and complete.

A2.2 Execution of Agreement. The Recipient represents and warrants that it has:

- (a) the full power and authority to enter into the Agreement; and
- (b) taken all necessary actions to authorize the execution of the Agreement, including passing a municipal by-law authorizing the Recipient to enter into the Agreement.

A2.3 Governance. The Recipient represents, warrants and covenants that it has, will maintain, in writing, and will follow:

- (a) procedures to enable the Recipient to manage the Funds prudently and effectively;
- (b) procedures to enable the Recipient to complete the MTEC successfully;

- (c) procedures to address any identified risks to the MTEC initiatives, all in a timely manner;
- (d) procedures to enable the preparation and submission of all Reports required pursuant to Article A7.0 (Reporting, Accounting and Review); and
- (e) procedures to enable the Recipient to address such other matters as the Recipient considers necessary to carry out its obligations under the Agreement.

A2.4 **Supporting Proof.** Upon request of the Province and within the timelines set out in the request, the Recipient will provide the Province with proof of the matters referred to in this Article A2.0 (Representations, Warranties and Covenants).

A3.0 TERM OF THE AGREEMENT

A3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiry Date unless terminated earlier pursuant to Article A11.0 (Termination on Notice) or Article A12.0 (Event of Default, Corrective Action and Termination for Event of Default).

A4.0 FUNDS AND CARRYING OUT THE MTEC

A4.1 **Funds Provided.** The Province will:

- (a) provide the Recipient up to the Maximum Funds towards the Eligible Expenditures the Recipient incurred and paid for the purpose of carrying out the MTEC;
- (b) provide the Funds to the Recipient in accordance with the payment procedures provided for in Schedule "D" (Claim and Attestation Submission, Supporting Documentation and Payment Procedures); and
- (c) deposit the Funds into an account designated by the Recipient provided that the account:
 - (i) resides at a Canadian financial institution; and
 - (ii) is in the name of the Recipient.

A4.2 **Limitation on Payment of Funds.** Despite section A4.1 (Funds Provided):

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides evidence satisfactory to the Province that the Recipient's council has authorized the execution of the Agreement by the

Recipient by municipal by-law; and

- (b) the Province may adjust the amount of Funds it provides to the Recipient based upon the Province's assessment of the information the Recipient provides to the Province pursuant to section A7.2 (Preparation and Submission).

A4.3 Use of Funds and Carry Out the MTEC. The Recipient will do all of the following:

- (a) spend the Funds only for Eligible Expenditures; and
- (b) not use the Funds to cover any Eligible Expenditure that has or will be funded or reimbursed by one or more of any third party, including any level of government, or ministry, agency, or organization of the Government of Ontario, other than the Province pursuant to the Agreement.

A4.4 Rebates, Credits and Refunds. The Province will calculate Funds based on the actual Eligible Expenditures to the Recipient to carry out the MTEC, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

A5.0 RECIPIENT'S DISPOSAL OF ASSETS

A5.1 Disposal. The Recipient agrees not to sell, lease or otherwise dispose of any assets acquired with the Funds without the Province's prior written consent.

A6.0 CONFLICT OF INTEREST

A6.1 No Conflict of Interest. The Recipient represents and warrants that there is and there will continue to be no conflict of interest in respect to how the MTEC has been and will continue to be carried out and that the Recipient will use the Funds without an actual, potential, or perceived conflict of interest.

A6.2 Conflict of Interest Includes. For the purposes of this Article A6.0 (Conflict of Interest), a conflict of interest includes any circumstances where:

- (a) the Recipient; or
- (b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships, or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased, and impartial judgment relating to the MTEC, the use of the Funds, or both.

A6.3 Disclosure to Province. The Recipient will:

- (a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential, or perceived conflict of interest; and
- (b) comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

A7.0 REPORTING, ACCOUNTING AND REVIEW

A7.1 Province Includes. For the purposes of sections A7.4, A7.5 and A7.6, "Province" includes any auditor or representative the Province may identify.

A7.2 Preparation and Submission. The Recipient will:

- (a) submit to the Province at the address referred to in section A15.1 (Notice in Writing and Addressed):
 - (i) all Reports in accordance with the timelines and content requirements as provided for in Schedule "D" (Claim and Attestation Submission, Supporting Documentation and Payment Procedure); and
 - (ii) any other reports in accordance with any timelines and content requirements the Province may specify from time to time; and
- (b) ensure that all Reports and other reports are:
 - (i) completed to the satisfaction of the Province; and
 - (ii) signed by an authorized signing officer of the Recipient.

A7.3 Record Maintenance. The Recipient will keep and maintain for a period of seven years from their creation:

- (a) proper and accurate financial accounts and records, kept in a manner consistent with generally accepted accounting principles in effect in Canada or with the public sector accounting standards approved or recommended by the Public Sector Accounting Board including, without limitation, its contracts, invoices, statements, receipts, and vouchers and any other evidence of payment relating to the Funds or otherwise to the MTEC; and
- (b) all non-financial records and documents relating to the Funds or otherwise to the MTEC.

A7.4 **Records Review.** The Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to conduct an audit or investigation of the Recipient regarding the Recipient's compliance with the Agreement, including assessing any of the following:

- (a) the truth of any of the Recipient's representations and warranties; and
- (b) the Recipient's allocation and expenditure of the Funds.

A7.5 **Inspection and Removal.** For the purposes of any Records Review, the Province may take one or more of the following actions:

- (a) inspect and copy any records and documents referred to in section A7.3 (Record Maintenance); and
- (b) remove any copies the Province makes pursuant to section A7.5(a).

A7.6 **Cooperation.** To assist the Province in respect of its rights provided for in section A7.5 (Inspection and Removal), the Recipient will cooperate with the Province by:

- (a) ensuring that the Province has access to the records and documents including, without limitation, paid invoices and original receipts, wherever they are located;
- (b) assisting the Province in copying records and documents;
- (c) providing to the Province, in the form the Province specifies, any information the Province identifies; and
- (d) carrying out any other activities the Province requests.

A7.7 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

A7.8 **Auditor General.** The Province's rights under Article A7.0 (Reporting, Accounting and Review) are in addition to any rights provided to the Auditor General pursuant to section 9.2 of the *Auditor General Act* (Ontario).

A8.0 COMMUNICATIONS REQUIREMENTS

A8.1 **Acknowledge Support.** Unless the Province directs the Recipient to do otherwise, the Recipient will in each of its MTEC-related publications whether written, oral or visual:

- (a) acknowledge the support of the Province for the MTEC;
- (b) ensure that any acknowledgement is in a form and manner as the Province directs; and
- (c) indicate that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

A9.0 INDEMNITY

A9.1 Indemnification. The Recipient will indemnify and hold harmless the Indemnified Parties from and against any Loss and any Proceeding, unless solely caused by the negligence or wilful misconduct of the Indemnified Parties.

A10.0 INSURANCE

A10.1 Recipient's Insurance. The Recipient is responsible for its own insurance and has been carrying, at its own costs and expense, and requiring the same from its subcontractors, all the necessary and appropriate insurance that a prudent municipality in similar circumstances would maintain in order to protect itself and the Indemnified Parties and support the Recipient's indemnification set out in section A9.1 (Indemnification). For greater certainty, the Recipient is not covered by the Province of Ontario's insurance program and no protection will be afforded to the Recipient by the Government of Ontario for any Loss or Proceeding that may arise out of the MTEC or the Agreement.

A11.0 TERMINATION ON NOTICE

A11.1 Termination on Notice. The Province may terminate the Agreement at any time without liability, penalty, or costs upon giving at least 30 days' Notice to the Recipient.

A11.2 Consequences of Termination on Notice by the Province. If the Province terminates the Agreement pursuant to section A11.1 (Termination on Notice), the Province may take one or more of the following actions:

- (a) cancel all further instalments of Funds; and
- (b) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient.

A12.0 EVENT OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT

A12.1 Events of Default. It will constitute an Event of Default if, in the opinion of the Province, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement including, without limitation, failing to do any of the following in accordance with the terms and conditions of the Agreement:

- (a) use or spend any of the Funds or related interest for a purpose other than that contemplated under the Agreement without the prior written consent of the Province; or
- (b) provide, in accordance with section A7.2 (Preparation and Submission), Reports or such other reports as may have been requested pursuant to paragraph A7.2(b).

A12.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

- (a) provide the Recipient with an opportunity to remedy the Event of Default;
- (b) suspend the payment of Funds for such period as the Province determines appropriate;
- (c) reduce the amount of the Funds;
- (d) cancel all further instalments of Funds;
- (e) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient;
- (f) demand from the Recipient the payment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (g) demand from the Recipient the payment of an amount equal to any Funds the Province provided to the Recipient;
- (h) demand from the Recipient the payment of an amount equal to the costs the Province incurred or incurs to enforce its rights under the Agreement, including the costs of any Record Review and the costs it incurs to collect any amounts the Recipient owes to the Province; and
- (i) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

A12.3 Opportunity to Remedy. If, in accordance with paragraph A12.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

- (a) the particulars of the Event of Default; and
- (b) the Notice Period.

A12.4 Recipient not Remediating. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to paragraph A12.2(a), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in paragraphs A12.2 (b), (c), (d), (e), (f), (g), (h) and (i).

A12.5 When Termination Effective. Termination under this Article A12.0 (Event of Default, Corrective Action, and Termination for Default) will take effect as provided for in the Notice.

A13.0 FUNDS UPON EXPIRY

A13.1 Funds Upon Expiry. The Recipient will, upon expiry of the Agreement, pay to the Province any Funds and interest remaining in its possession or under its control.

A14.0 DEBT DUE AND PAYMENT

A14.1 Payment of Overpayment. If at any time the Province provides Funds in excess of the amount to which the Recipient is entitled under the Agreement, the Province may:

- (a) deduct an amount equal to the excess Funds from any further instalments of Funds; or
- (b) demand that the Recipient pay an amount equal to the excess Funds to the Province.

A14.2 **Debt Due.** If, pursuant to the Agreement:

- (a) the Province demands from the Recipient the payment of any Funds or an amount equal to any Funds; or
- (b) the Recipient owes any Funds or an amount equal to any Funds to the Province, whether or not the Province has demanded their payment,

such amounts will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay the amounts to the Province immediately, unless the Province directs otherwise.

A14.3 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

A14.4 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province as provided for in Schedule "B" (Contact Information and Authorized Representatives).

A14.5 **Fails to Pay.** Without limiting the application of section 43 of the *Financial Administration Act* (Ontario), if the Recipient fails to pay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

A15.0 NOTICE

A15.1 **Notice in Writing and Addressed.** Notice will be:

- (a) in writing;
- (b) delivered by email, postage-prepaid mail, personal delivery or courier; and
- (c) addressed to the Province and the Recipient as set out in Schedule "B" (Contact Information and Authorized Representatives), or as either Party later designates to the other by Notice.

A15.2 **Notice Given.** Notice will be deemed to have been given:

- (a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; and
- (b) in the case of email, personal delivery or courier on the date on which the Notice is delivered.

A15.3 Postal Disruption. Despite paragraph A15.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail will not be deemed to be given; and
- (b) the Party giving Notice will provide Notice by email, personal delivery or courier.

A16.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

A16.1 Consent. When the Province provides its consent pursuant to the Agreement:

- (a) it will do so by Notice;
- (b) it may attach any terms and conditions to the consent; and
- (c) the Recipient may rely on the consent only if the Recipient complies with any terms and conditions the Province may have attached to the consent.

A17.0 SEVERABILITY OF PROVISIONS

A17.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement.

A18.0 WAIVER

A18.1 Waiver Request. Either Party may, by Notice, ask the other Party to waive an obligation under the Agreement.

A18.2 Waiver Applies. If in response to a request made pursuant to section A18.1 (Waiver Request) a Party consents to a waiver, the waiver will:

- (a) be valid only if the Party that consents to the waiver provides the consent by Notice; and
- (b) apply only to the specific obligation referred to in the waiver.

A19.0 INDEPENDENT PARTIES

A19.1 Parties Independent. The Recipient is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any

actions that could establish or imply such a relationship.

A20.0 ASSIGNMENT OF AGREEMENT OR FUNDS

A20.1 No Assignment. The Recipient will not, without the prior written consent of the Province, assign any of its rights or obligations under the Agreement.

A20.2 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on:

- (a) the Recipient's successors, and permitted assigns; and
- (b) the successors to Her Majesty the Queen in right of Ontario.

A21.0 GOVERNING LAW

A21.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

A22.0 FURTHER ASSURANCES

A22.1 Agreement into Effect. The Recipient will:

- (a) provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains; and
- (b) do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

A23.0 JOINT AND SEVERAL LIABILITY

A23.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

A24.0 RIGHTS AND REMEDIES CUMULATIVE

A24.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in

substitution for, any of its rights and remedies provided by law or in equity.

A25.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

A25.1 Other Agreements. If the Recipient:

- (a) has failed to comply with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or one of Her agencies (a "**Failure**");
- (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
- (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (d) such Failure is continuing,

the Province may suspend the payment of Funds for such period as the Province determines appropriate.

A26.0 SURVIVAL

A26.1 Survival. The following Articles, sections and paragraphs, and all applicable cross-referenced Articles, sections, paragraphs, schedules and sub-schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Articles 1.0 (Entire Agreement), 2.0 (Conflict or Inconsistency), 5.0 (Acknowledgment), and A1.0 (Interpretation and Definitions) and any other applicable definitions, paragraph A2.1(a), sections A4.4 (Rebates, Credits and Refunds), A5.1 (Disposal), A7.1 (Province Includes), A7.2 (Preparation and Submission) to the extent that the Recipient has not provided the Reports or other reports as may have been requested to the satisfaction of the Province, A7.3 (Record Maintenance), A7.4 (Records Review), A7.5 (Inspection and Removal), A7.6 (Cooperation), A7.7 (No Control of Records), A7.8 (Auditor General), Articles A8.0 (Communications Requirements) and A9.0 (Indemnity), sections A11.2 (Consequences of Termination on Notice by the Province) and A12.1 (Events of Default), paragraphs A12.2 (b), (c), (d), (e), (f), (g), (h) and (i), Articles A13.0 (Funds Upon Expiry), A14.0 (Debt Due and Payment), A15.0 (Notice) and A17.0 (Severability of Provisions), section A20.2 (Agreement Binding), Articles A21.0 (Governing Law), A23.0 (Joint and Several Liability), and A24.0 (Rights and Remedies Cumulative), and this Article A26.0 (Survival).

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"
CONTACT INFORMATION AND AUTHORIZED REPRESENTATIVES

<p>Contact information for the purposes of Notice to the Province</p>	<p>Address: Strategic Investments Office Ministry of Transportation 777 Bay, 30th Floor Toronto, ON M7A 2J8</p> <p>Attention: Kevin Dowling, Manager, Strategic Investments Office</p> <p>Phone: (416) 585-6312 Email: kevin.dowling@ontario.ca</p>
<p>Contact information for the purposes of Notice to the Recipient</p>	<p>Position: Director of Transit</p> <p>Address: 2200 Upper James Street Mount Hope ON L0R 1W0</p> <p>Attention: Debbie Dalle Vedove</p> <p>Phone: (905) 564-2424 x1860 Email: debbie.dallevedove@hamilton.ca</p>
<p>Contact information for the senior financial official in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province in respect of the Agreement</p>	<p>Position: General Manager, Finance and Corporate Services</p> <p>Address: 71 Main St W Hamilton ON L8P 4Y5</p> <p>Attention: Mike Zegarac</p> <p>Phone: (905) 540-6150 Email: mike.zegarac@hamilton.ca</p>
<p>Authorized representative of the Province for the purpose of Section 4.2 (Execution of Amending Agreements - Exceptions)</p>	<p>Position: Director, Municipal Programs Branch, Ministry of Transportation</p>
<p>Authorized representative of the Recipient for the purpose of Section 4.2 (Execution of Amending Agreements - Exceptions)</p>	<p>Position: Director of Transit</p>

SCHEDULE "C"

ELIGIBLE EXPENDITURES AND INELIGIBLE EXPENDITURES

C1.0 MTEC

C1.1 Description of the MTEC. To address health related issues in respect of the COVID-19 pandemic, the Recipient has been acquiring goods and services for the MTEC of its transit system. Subject to Article C2.1 (Scope of Eligible Expenditures) and for greater clarity, the costs of the MTEC that are eligible for funding by the Province under the Agreement are only those that are supplemental to the Recipient's regular transit system cleaning.

C2.0 ELIGIBLE EXPENDITURES

C2.1 Scope of Eligible Expenditures. Subject to Article C3.0 (Ineligible Expenditures), Eligible Expenditures include the direct costs incurred by the Recipient on or after April 1, 2020 and on or before December 31, 2020 and that, in the opinion of the Province, are considered to have been properly and reasonably incurred and are necessary for the MTEC of transit vehicles and any other public and non-public facing transit assets, that provide or support transit services. In addition to having been incurred, these costs will have to have been paid by the Recipient prior to being submitted to the Province for payment and may include:

- (a) costs of cleaning materials for the MTEC;
- (b) costs of hand sanitizer for passenger and staff use;
- (c) costs of safety wear for the MTEC, such as gloves or goggles;
- (d) costs of equipment purchased for the MTEC;
- (e) costs of contracted services for the MTEC;
- (f) costs of salaries, including redeployment of staff, for the MTEC; and
- (g) any other costs that, in the opinion of the Province, are considered necessary for the MTEC.

C3.0 INELIGIBLE EXPENDITURES

C3.1 Scope of Ineligible Expenditures. Without limitation, the following costs will be considered Ineligible Expenditures:

- (a) costs incurred before April 1, 2020 and after December 31, 2020;
- (b) costs not paid prior to having been submitted to the Province for payment;
- (c) marketing costs including advertising, promotion and communications;
- (d) core administrative and overhead costs (e.g., rent, telephone and communication lines/services, insurance, and computers);
- (e) Recipient's staff, including permanent and seasonal, salaries and travel costs unless otherwise indicated in C2.1 (Scope of Eligible Expenditures);
- (f) legal, audit, or interest fees;
- (g) budget deficits;
- (h) personal protective equipment, unless otherwise indicated in C2.1 (Scope of Eligible Expenditures);
- (i) refundable Harmonized Sales Tax or other refundable expenses (e.g., security deposits, etc.); and
- (j) any other costs that, in the opinion of the Province, are considered ineligible for payment under the Agreement.

SCHEDULE "D"

CLAIM AND ATTESTATION SUBMISSION, SUPPORTING DOCUMENTATION AND PAYMENT PROCEDURES

D1.0 CLAIM AND ATTESTATION

D1.1 Claim and Attestation from the Recipient's Senior Financial Official. The Recipient will use the form in Sub-schedule "D.1" (Claim and Attestation Form) for the submission of its claim for payment.

D2.0 SUPPORTING DOCUMENTATION

D2.1 Report on Expenditures and Additional Report and Information. The Recipient will, together with the claim form described in section D1.1 (Claim and Attestation from the Recipient's Senior Financial Official), submit the following supporting documentation with its claim for payment:

- (a) a report on expenditures using the form in Appendix A (Form of Report on Expenditures) to Sub-schedule "D.1" (Claim and Attestation Form); and
- (b) any additional reports or information, or both, the Province may request at its sole discretion and in a form provided by the Province.

D3.0 PAYMENT PROCEDURES

D3.1 Submission of Claim for Payment and Required Documentation. The Recipient will submit its claim for payment, together with the supporting documentation set out in section D1.1 (Claim and Attestation from the Recipient's Senior Financial Official) and section D2.1 (Report on Expenditures and Additional Report and Information) on or before January 31, 2021.

D3.2 Claim Payments. Subject to the terms and conditions set out in the Agreement and if due and owing under the Agreement, the Province will use its reasonable efforts to make the payment to the Recipient for the claim submitted pursuant to section D3.1 (Submission of Claim for Payment and Required Documentation) in a timely manner.

D3.3 No Interest. The Province will under no circumstances be liable for interest for failure to make a payment within the time limit provided for in section D3.2 (Claim Payments).

D3.4 **No Obligation to Pay.** For greater clarity and without limitation to any other right of the Province, the Province will have no obligation to pay a claim if it does not meet the terms and conditions of the Agreement including, without limitation, if the claim is missing any of the required supporting documentation or is submitted after January 31, 2021, or both.

**SUB-SCHEDULE "D.1"
CLAIM AND ATTESTATION FORM**

Ministry of Transportation File No.: _____

TO: Ministry of Transportation
Transportation Programs Office
10th Floor
151 Bloor Street West
Toronto, ON M5S 1S4

Attention: Manager, Transportation Programs Office
Email: MTO-Transit Cleaning Funding @Ontario.ca

FROM: **[Insert address of the senior official]**

Attention: **[insert name and title of Recipient senior official]**
Telephone No.: **[insert telephone number of Recipient senior official]**

RE: Transfer Payment Agreement for Municipal Transit Enhanced Cleaning

In the matter of the Transfer Payment Agreement for Municipal Transit Enhanced Cleaning entered into between Her Majesty the Queen in right of Ontario, represented by the Minister of Transportation for the Province of Ontario, and the **[insert the name of the Recipient]** (the "Recipient"), on **[insert the month day, and year]** _____ (the "Agreement").

I, _____ **[insert the name and title of the senior official]**, an authorized representative of the Recipient, having made such inquiries as I have deemed necessary for this attestation, hereby certify that to the best of my knowledge, information and belief.

1. On and as of the date set out below:
 - a. all representations and warranties contained in Article A2.0 (Representations, Warranties and Covenants) and section A6.1 (No Conflict of Interest) of the Agreement are true and accurate;
 - b. Funds have been solely used on Eligible Expenditures as claimed in this Claim and Attestation Form and the Form of Report on Expenditures attached as Appendix A (Form of Report on Expenditures) to this Claim and Attestation Form;

- c. the Recipient is in compliance with all the terms and conditions of the Agreement, and no Event of Default, as described in the Agreement, has occurred and is continuing; and
 - d. all records (including, without limitation, contracts, invoices, statements, receipts, vouchers) are being retained in accordance with the requirements of the Agreement.
2. The Eligible Expenditures have been incurred by the Recipient on or after April 1, 2020 and on or before December 31, 2020, and paid on or before January 31, 2021.

By signing below, I hereby claim a payment in the amount of \$ _____, on behalf of the Recipient, on account of the Province's contribution towards the Eligible Expenditures of the MTEC costs.

Declared at _____ (city), in the Province of Ontario, this _____ day of _____, 20_____.

(Signatures)

Name:

Title:

Witness Name:

Title:

I have authority to bind the Recipient.

**APPENDIX A
 FORM OF REPORT ON EXPENDITURES
 TO
 SUB-SCHEDULE "D.1" (CLAIM AND ATTESTATION FORM)**

MTEC Expenditure Report - April 1, 2020 to December 31, 2020	
Date:	
Recipient's Name:	
Total Funds Allocated:	
Total Funds Claimed:	
Remaining Allocation:	

Date of Invoice (if Applicable) (DD/MM/YY)	Period of Work Performed		Vendor Name	Description of Expense	Eligibility per Schedule "C"	Amount Paid (\$)				
	From (DD/MM/YY)	To (DD/MM/YY)				Subtotal w/o HST (\$) (a)	Total HST (\$) (b)	Recoverable HST (\$) (c)	Net Total (\$) (a) + (b) - (c)	Amount Claimed (\$)
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
Total						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

<u>Results Achieved with Provincial Funding:</u>
<u>Additional Comments:</u>
<u>Conclusion:</u>

Recommended for payment:

Date:

[insert/print the name and title of the Recipient's authorized representative]

Recommended for payment:

Date:

**[insert/print the name of the Director]
Director, Ministry of Transportation**



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
City Clerk's Office

TO:	Chair and Members Audit Finance and Administration Committee
COMMITTEE DATE:	January 14, 2020
SUBJECT/REPORT NO:	Protection of Privacy Policy (FCS21003)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Lisa Barroso, Manager, Corporate Records and FOI (905) 546-2424 Ext. 2743
SUBMITTED BY:	Andrea Holland City Clerk, Office of the City Clerk
SIGNATURE:	

RECOMMENDATION(S)

- (a) That Report FCS21003 entitled Protection of Privacy Policy, be received;
- (b) That the Protection of Privacy Policy, attached as Appendix "A" to Report FSC21003, be approved; and,
- (c) That the request for 1 FTE to support the administration of the privacy policy, be referred to 2021 budget deliberations for consideration.

EXECUTIVE SUMMARY

The City is responsible for information assets created through the provision and management of city services. Staff are obligated to protect personal information under the *Municipal Freedom of Information & Protection of Privacy Act* (MFIPPA) and the *Personal Health Information Protection Act* (PHIPA). The City is committed to protecting the privacy of individuals while balancing an open, transparent and accessible approach to governing. While the Protection of Privacy Policy is not mandated through legislation, the Protection of Privacy Policy, attached as Appendix A, establishes accountability, roles and responsibilities and direction to support staff through legislated privacy requirements and guidelines. Once the Policy is approved, operational, support documentation and training will be provided to all staff.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Protection of Privacy Policy FSC21003 (City Wide) - Page 2 of 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: An additional FTE is requested in the Records and FOI section of the Clerk's office in order to continue to support and educate staff in our legislated requirement to protect personal and confidential information. The total cost of an additional FTE is \$109,000.

Staffing: There are currently two Access & Privacy Officers supporting corporate staff in managing personal information and personal health information, with the exception of personal health information administered under programs supported by the Medical Officer of Health. The Access & Privacy Officers have been spending a majority of their time processing access requests for information due to the increased volume of requests being received in the past few years. This past year, there has been a notable increase in providing staff with privacy advice and support to ensure they are meeting their privacy obligations. Due to the heightened awareness of our privacy obligations, there has also been an increase in the number of privacy breaches reported and investigated by the FOI team. In addition to the increased workload, the team began preparing Privacy Impact Assessments (PIA) to support the heightened awareness and need to evaluate corporate initiatives to ensure the protection of privacy is embedded into the design and architecture of our systems and business practices. In order to fulfil the organizations obligations under MFFIPA, an additional staff position is required that focuses on education, investigations and privacy analysis.

Legal: We are obligated to administer Access & Privacy legislation.

HISTORICAL BACKGROUND

In the past, Committee discussions regarding the administration of MFIPPA were more focused on the public's right to access information. Issues regarding the protection of privacy were more prevalent this year. The City must be equally committed to protecting the privacy of individuals while balancing an open, transparent and accessible approach to governing. Staff require support in understanding the legislated requirements related to the protection of personal information in the City's custody or control.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The *Municipal Freedom of Information & Protection of Privacy Act* (MFIPPA) supports two key purposes:

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that:
 - (i) information should be available to the public

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Protection of Privacy Policy FSC21003 (City Wide) - Page 3 of 4

- (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information;
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

The purposes of the *Personal Health Information Protection Act* (PHIPA) are:

- (a) to establish rules for the collection, use and disclosure of personal health information about individuals that protect the confidentiality of that information and the privacy of individuals with respect to that information, while facilitating the effective provision of health care;
- (b) to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in this Act;
- (c) to provide individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in this Act;
- (d) to provide for independent review and resolution of complaints with respect to personal health information; and
- (e) to provide effective remedies for contraventions of this Act.

RELEVANT CONSULTATION

This policy has been reviewed by members of the Senior Leadership Team, Legal Services, Public Health, IT Security and Risk Management.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As a best practice, the adoption of a Protection of Privacy Policy outlines the organization's commitment to the protection of personal information assets that the City has custody and control over. It further outlines the roles and responsibilities of various staff positions across the organization. It is a key foundational policy for the management of the City's information assets.

The FOI team's workload increased substantially this past year to support the increased demand to provide advice and assistance relating to privacy matters. Privacy awareness will continue to be prevalent with the adoption and implementation of the Protection of

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

SUBJECT: Protection of Privacy Policy FSC21003 (City Wide) - Page 4 of 4

Privacy Policy. Staff will be required to take mandatory privacy training as part of implementing the policy to ensure staff are confident about their responsibilities to protect privacy. It will be important for the FOI team to be available to support staff, who are very likely to have questions and require continued guidance. As indicated, a new and additional volume of work will be realized through the preparation and review of Privacy Impact Assessments (PIA) to evaluate corporate initiatives to ensure the protection of privacy is embedded into the design and architecture of our systems and business practices. PIA's are an important process, designed to identify, assess and mitigate privacy risks, which supports the principles of *Privacy by Design*, developed by the Information & Privacy Commissioner of Ontario. There will also be continued work involved in developing and maintaining associated policies and procedures to support staff in their work. All of this important work cannot be sustained within the existing staff complement in the FOI section. Providing training to improve staff awareness of their obligations under MFIPPA and PHIPA is the basis of safeguarding personal information assets and preventing information incidents from occurring.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**Our People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED**Appendix A – Protection of Privacy Policy**

Protection of Privacy Policy

Policy Statement

The City of Hamilton recognizes that it is responsible for information assets created through the provision and management of city services. Ensuring sensitive personal information is protected is integral to maintaining public trust and confidence in government.

The City is legislatively obligated to protect personal information under *the Municipal Freedom of Information & Protection of Privacy Act* (MFIPPA) and the *Personal Health Information Protection Act* (PHIPA). The City is committed to protecting the privacy of individuals while balancing an open, transparent and accessible approach to governing.

The City will embed the protection of privacy 'into the design and architecture of IT systems and business practices'.¹

Purpose

The purpose of this policy is to establish staff accountability, define roles and responsibilities and support staff through legislated privacy requirements and guidelines. All City Departments shall adhere to the requirements of MFIPPA in respect of exemptions to disclosure of sensitive personal and confidential information.

MFIPPA provides a formal right of access to records that are in the City's custody, or under its control, subject to limited and specific exemptions to disclosure. MFIPPA also provides individuals with an expectation of privacy.

Application

This policy applies to:

- All personal information including personal health information in the custody and control of the City, not limited by the scope of any individual statute or regulation.
- All City employees including full-time, part-time, casual, contract, volunteer and student/co-op placement employees hired or placed by the City.
- Vendors, contractors or consultants working for the City. They are required to uphold MFIPPA requirements and are subject to the same obligations for the handling of personal information, including privacy breach reporting. Departments are required to include MFIPPA obligations when contracting with Vendors and under Vendor

¹ Privacy by Design *The 7 Foundational Principles*, Ann Cavoukian, Ph.D

Performance Management obligations, this includes undertaking privacy impact assessments and identifying privacy design obligations when a Vendor is handling personal information on behalf of the City.

- The delivery of services, systems and activities that manage information within the City. Privacy obligations and overall governance of personal information must be considered within existing policies and practices of the City.

This Policy does not apply to:

- Personal information and/or constituency records of Members of Council, and/or Council appointees, which are not considered to be in the custody and control of the City. The use of personal and confidential information by elected officials and or appointee's is governed by the Code of Conduct. Complaints regarding the misuse of such information are investigated by the City's Integrity Commissioner.
- The City's Auditor General and Integrity Commissioner / Lobbyist Registrar are directly accountable to City Council. The Municipal Act requires that these officers perform their duties in an independent matter and establishes confidentiality requirements of their information.
- Separate institutions as defined under MFIPPA, including but not limited to Library Board, Police Services Board, CityHousing Hamilton.
- Information subject to legislation that overrides the privacy provisions of MFIPPA.

Policy Requirements

Personal Information - Protection of Personal Privacy

One of the key principles of the *Municipal Freedom of Information and Protection of Privacy Act* is the protection of personal privacy. For the definition of personal information, see Appendix A entitled 'What is Personal Information'.

Collection of Personal Information

The City's employees, or agents acting on the City's behalf, shall only collect personal information that they are authorized to collect. This authority can be one of the following:

- collection of the information is expressly authorized by provincial or federal legislation;
- the information is used for the purposes of law enforcement; or,
- the information is necessary to the proper administration of a lawfully authorized activity.

The City shall only collect personal information directly from the individual to whom it relates, except in circumstances set out in MFIPPA or other legislation. Examples of these include:

- where the individual authorizes another method of collection;
- the personal information may be disclosed to the City under the authority of the Freedom of Information and Protection of Privacy Act ("FIPPA");
- where the Information & Privacy Commissioner of Ontario (IPC) has authorized the City to collect the information indirectly from another person;
- the information is collected for the purpose of law enforcement; and,
- where other legislation provides for a different method of collection.

When collecting personal information, the City must provide the individual with a notice of collection statement that contains:

- the City's legal authority to collect the information;
- the principal purposes for which the information is intended to be used; and,
- the title, business address and telephone number of an officer or employee who can answer questions about the collection (why it is being collected, how it will be used).

Notice of collection statements are prepared by staff in consultation with the Privacy staff. See Appendix B attached entitled Providing Notice of Collection.

Use of Personal Information

The City is required to take reasonable steps to ensure that personal information is not used unless it is accurate and up to date. The City may only use information if the use is consistent with the purpose for which it was collected. Any other use may only occur with the expressed consent of the individual.

The City is only permitted to use personal information:

- if the individual has consented to the particular information being used;
- for the purpose for which it was obtained or compiled;
- for a consistent purpose, (i.e. the individual might reasonably expect the use);
- for a purpose permitted by MFIPPA or other legislation; or
- for the purpose for which the information was collected by the City under MFIPPA.

Disclosure of Personal Information

The City is only permitted to disclose personal information in the following circumstances:

- in compliance with Part I of the Act – Right of Access, or other provisions of MFIPPA;
- if the individual has consented to its disclosure;
- for the purpose for which it was collected;
- for a consistent purpose, (i.e. the individual might reasonably expect the disclosure);

- disclosure is made to an employee, consultant or agent of the City who needs the record in the performance of their duties, and if the disclosure is necessary and proper in the discharge of the City's functions;
- to comply with federal or provincial legislation;
- to a law enforcement agency in Canada to aid an investigation;
- in compelling circumstances affecting personal health or safety;
- in compassionate circumstances, (to contact next of kin or friend of an injured, ill or deceased person);
- to a provincial or federal government department for auditing of cost-shared programs; and
- as specifically permitted by other legislation.

Retention of Personal Information

Personal information that has been collected by the City shall be retained for at least one year after it is used, unless another retention period has been provided in the City's Records Retention by-law 11-040, as amended, or the individual has consented to its earlier disposal. The purpose of this retention period is to ensure that individuals have a reasonable opportunity to obtain access to their personal information.

Privacy Complaints and Investigations

Individuals may submit a complaint to the Information & Privacy Commissioner of Ontario (IPC) if they believe that the City of Hamilton has improperly collected, used, disclosed, retained or disposed of their personal information. The City Clerk shall receive notice from the IPC in the event that an individual has lodged a complaint and an investigation is being undertaken.

The City's corporate Privacy Office shall, in consultation with appropriate Division staff, represent the institution during a privacy complaint investigation. The responsible Divisional employee shall cooperate and assist the Privacy Office during the course of the investigation.

Responding to a Privacy Breach Under the Act

Upon learning of a privacy breach or a potential privacy breach under MFIPPA, staff shall immediately notify their Manager and the Privacy Office. The Privacy Office will assist the responsible employee in responding to the breach of personal privacy.

See Appendix C for Guidelines on Managing Privacy Breaches.

Roles and Responsibilities

Employees

- Protect privacy in executing operational duties and ensure personal information is handled with care and confidentiality in all City activities.
- Ensure the collection, use and disclosure of personal information is consistent with obligations of MFIPPA and guidance of the IPC and Privacy Office.
- Only collect personal information with proper authority and informed consent and only collect information necessary and proper in the discharge of the Division's functions.
- Ensure personal information is accessed only as required to carry out assigned duties and service delivery.
- Report a potential privacy breach to a supervisor/manager immediately if unauthorized access, collection, or dissemination of information is suspected. Assistance is sought to contain and assess impact and response to a potential breach.
- Take mandatory privacy awareness training for the appropriate handling of personal information to understand responsibilities and protect privacy in the performance of their duties.
- Take reasonable steps to ensure that personal information is not used unless it is accurate and up to date.
- Ensure privacy obligations and impact is assessed for all projects that handle data through the completion of a Privacy Impact Assessment. Project management must include an assessment of data architecture, a review of governance obligations, and required safeguards.
- Ensure Vendor contracts and performance complies with all privacy requirements, including mandatory breach response and reporting to the City.

Management within each Department

- Promote a culture and business practices that ensure City information is accessible, while respecting legislative requirements and the principles for responsible collection, use, protection and disclosure of personal information set out in this policy;
- Ensure that policies, procedures, and privacy breach reporting requirements are followed to prevent unauthorized use or disclosure of personal information. This may include security and safeguarding protocols for information management and data governance within a Department/Division, between Departments/Divisions, Vendor responsibilities, and external access.
- Ensure that the retention of personal information under the custody and control of the City is in keeping with this Policy and the Records Retention By-law 11-040;

- When introducing new services, programs, systems and technologies, prepare a Privacy Impact Assessment to address privacy implications, as required, in compliance with the principles set out in this policy;
- With respect to information security, ensure all information is protected and cannot be accessed by unauthorized individuals and processes are in place to maintain its integrity;
- Ensure privacy is embedded into the creation of all procedures for the collection, use, protection and disclosure of personal information by City employees and third parties (e.g. vendors, contractors);
- Release requested personal information directly to a requesting individual, when the information does not fall under one of the exemptions to disclosure of personal information set out in Section 38 of MFIPPA. When not permitting the release of personal information to the individual to whom it pertains, advise that individual that they may file a formal request for access to information from the Access & Privacy Office; and
- Report apparent and suspected breaches of privacy to the Privacy Office immediately, taking steps to contain the breach and mitigate privacy risks as first priority.

Medical Officer of Health

- Responsible and accountable for overseeing the administration of the Personal Health Information Protection Act (PHIPA)

City Clerk

- Responsible and accountable for overseeing the administration of the *Municipal Freedom of Information & Protection of Privacy Act* (MFIPPA), and the *Personal Information Protection and Electronic Documents Act* (PIPEDA) within the municipality and for decisions made under the above legislation;
- Ensure oversight and compliance with this policy; and
- Investigate and respond to privacy complaints received from the Information Privacy Commissioner of Ontario (IPC).

Director of Information Technology

- Ensure all information handled on behalf of a Department is subject to IT architecture and governance that upholds the data use and access restrictions required under the consent and use for which the information was collected.
- Ensure Privacy by Design principles, attached as Appendix D, privacy risk assessment and data architecture is integrated throughout IT project design, security assessment, business impact assessment, and project management governance, in cooperation with the Privacy Office.

- Ensure platforms, data handling protocols, data analytics, and associated governance do not create or access personally identifiable information without consent.
- Ensure IT Vendor obligations uphold MFIPPA requirements.
- Establish clear breach response protocols for all IT data architecture projects
- Establish audit trail best practices that are supported by technology tools in place within the City to ensure unauthorized internal access to information is monitored and reported.

Manager, Corporate Records and Freedom of Information (Office of the City Clerk, Privacy Office)

- Manage the corporate Privacy Office;
- Provide advice and establish standards, protocols and procedures to support this policy;
- Review Departmental guidelines and procedures with respect to privacy upon request from the Department;
- Review and make recommendations regarding the privacy impact of new and existing City services, programs, systems and technologies upon request from the Department (i.e. conduct Privacy Impact Assessments);
- Develop privacy awareness tools and training and make available to all City staff to improve privacy awareness; and
- Investigate reports of privacy breaches and complaints of the misuse of personal information brought to their attention by City staff and advise staff on their response.

Program Manager, Healthy and Safe Communities

- Provide advice and establish standards, protocols and procedures to support the *Personal Health Information Protection Act (PHIPA)*;
- Investigate reports of privacy breaches and complaints of the misuse of personal health information brought to their attention by City staff and advise staff on their response.

Monitoring

The City Clerk shall be responsible for receiving complaints or concerns related to this policy.

Legislative and Administrative Authorities

The *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* governs the collection, use and disclosure of information by certain institutions in Ontario including municipalities, public library boards, and police services boards. The purpose of MFIPPA is to provide a right of access to information in the custody of and under the control of the institutions with the principle that information should be made available to the public and that necessary

exemptions from the right of access should be limited and specific. The purpose of MFIPPA is also to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

The *Personal Health Information Protection Act* (PHIPA) sets out rules for the collection, use and disclosure of personal health information. These rules will apply to all health information custodians operating within the province of Ontario and to individuals and organizations that receive personal health information from health information custodians. The rules recognize the unique character of personal health information – as one of the most sensitive types of personal information that is frequently shared for a variety of purposes, including care and treatment, health research, and managing our publicly funded health care system.

The *Personal Information Protection and Electronic Documents Act* (PIPEDA) is a Canadian law relating to data privacy. It governs how private sector organizations collect, use and disclose personal information in the course of commercial business. In addition, the Act contains various provisions to facilitate the use of electronic documents. PIPEDA became law on 13 April 2000 to promote consumer trust in electronic commerce. The act was also intended to reassure the European Union that the Canadian privacy law was adequate to protect the personal information of European citizens.

Definitions

Collection means the collection of personal information from or about the individual to whom the information relates including unintended or unprompted receipt.

Disclosure means the release of personal information by any method (e.g., sharing information by any means such as verbally, sending an email, posting online) to anybody or person.

Disposition means the action taken with regards to personal information including destruction, transfer to another entity, or permanent preservation.

Information Management means planning, creating, capturing, organizing, protecting, using, controlling, sharing, disposing of its information assets through which the value of that information is identified, and trusted.

Personal information is recorded information about an identifiable individual. Refer to section 2 (1) of MFIPPA for additional information.

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90m56_e.htm

Personal Health Information is identifying information about an individual that relates to their health or providing health care to the individual. Refer to section 4 PHIPA for additional information:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_04p03_e.htm#BK5

Privacy by Design means to build privacy and data protection, into the design specifications and architecture of information and communication systems and technologies at the beginning, in order to facilitate compliance with privacy and data protection principles.
<http://www.privacybydesign.ca/>

Privacy breach means the improper or unauthorized creation, collection, use, disclosure, retention or disposition of personal information.

Privacy Impact Assessment (PIA) is a process for identifying, assessing and mitigating privacy risks.

Use means the purpose(s) for which the information was obtained or compiled.

Confidential information means information that is subject to the exemptions to disclosure found in s. 9 (Relations with Governments), s. 10 (Third Party Proprietary Information) and s. 14 (1) (Personal Privacy) of MFIPPA, as well as any other information that the City deems to be confidential.

References

Privacy by Design Principles – Information & Privacy Commissioner of Ontario
Municipal Freedom of Information & Protection of Privacy Act
Records Retention By-law 11-040, as amended

Appendices

Appendix A – What is Personal Information
Appendix B – Providing Notice of Collection
Appendix C – Guidelines on Managing Privacy Breaches
Appendix D – Privacy by Design Principles



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Fact Sheet

What is Personal Information?

October 2016

INTRODUCTION

The *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* (the acts) protect the privacy of personal information while providing individuals with a right of access to their own information.

In this fact sheet, we provide guidance about how the Information and Privacy Commissioner (IPC) interprets the term “personal information.”

HOW IS PERSONAL INFORMATION DEFINED IN THE ACTS?

The acts define personal information as “recorded information about an identifiable individual,” and include a list of examples of personal information (see Appendix A for the full definition).

Recorded information

Information can be recorded in any format, such as paper records, electronic records, digital photographs, videos or maps.

About an identifiable individual

Information is about an identifiable individual if:

- it is about the individual in a personal capacity; that is, it reveals something of a personal nature about the individual, and
- it is reasonable to expect that an individual can be identified from the information (either alone or by combining it with other information)

The listed examples include a person’s name when combined with other information about them, such as their address, sex, age, education, or medical history. These examples are not exhaustive and many other kinds of information may still qualify as personal information.

FREQUENTLY ASKED QUESTIONS

What if an individual is acting in a business, professional or official capacity?

The acts specifically exclude from the definition of personal information the name, title, contact information or designation that identifies a person in a business, professional or official capacity. This includes a business carried out in a home.

As a general rule, information about an individual in a business, professional or official capacity is not considered to be personal information.

However, even if information relates to an individual in such a capacity, it may still qualify as personal information if it reveals something of a personal nature about the individual. The context in which the information appears is important.

Is an address personal information?

An address, by itself, is not personal information because it is about a property and not an individual. However, information about a property can qualify as personal information if it reveals something personal. For example, a police service placed a lawn sign on a property stating that it was the site of a search warrant for illicit drugs. The IPC decided that the address on the sign was personal information because it revealed allegations of criminal activity against individuals associated with the property.

Does an individual's name qualify as personal information?

Like an address, a name by itself is not personal information. A name is personal information if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

Can information about a business be personal information?

Generally, business information is not considered personal information. The term "individual" in the definition of personal information means that it only relates to natural persons. Sometimes confidential business information is confused with personal information. Business information may hold tremendous value and importance for organizations, but it is not personal information.

Is information about deceased individuals their personal information?

Information about an individual is not personal information if they have been dead for more than thirty years.

CONCLUSION

It is important to examine the context in which information appears in determining whether the information is "about" an individual and whether the individual is "identifiable." Depending on the context, information may not meet the definition of personal information because it is, for example, information about a property or business, or about an individual in a business capacity. You can find IPC orders and complaint reports regarding the definition of personal information on the IPC's website (www.ipc.on.ca).

APPENDIX

Definition of “personal information” in the acts

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.



NUMBERS
REVISED SEPTEMBER 1998

IPC Practices

PUTTING ONTARIO'S INFORMATION AND PRIVACY LEGISLATION TO WORK
INFORMATION AND PRIVACY COMMISSIONER/ONTARIO
ANN CAVOUKIAN, Ph.D., COMMISSIONER



Providing Notice of Collection

Under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act (the Acts), government organizations must provide notice to individuals when collecting personal information - whether collection is made directly or indirectly.

Quite often complaints received by the Information and Privacy Commissioner (IPC) are the result of the lack of notice or incomplete notice. The IPC has found that while most institutions provide notice, some are not providing adequate notice.

This issue of IPC Practices explains the notice requirements and suggests procedures for providing proper notice.

Section 39(2) of the provincial *Act* and section 29(2) of the municipal *Act* state that when collecting personal information, unless an exception applies, an institution **must** provide the individual to whom the personal information relates with notice which includes specific details on the following three requirements:

- the legal authority for the collection;
- the principle purpose(s) for which the personal information is intended to be used;
- the title, business address and telephone number of a person employed by the institution who can answer questions about the collection.

Manner of Providing Notice

Notice may be provided either orally - in person, over the telephone; or in writing - on an application form,

on a posted sign, in a newspaper ad; or in any other manner which informs the individual about the collection.

Exceptions to Providing Notice

- provincial and municipal Acts

Sections 39(2) and (3) of the provincial *Act* and section 29(3) of the municipal *Act* state that the notice requirement does not apply where:

- the Minister (who is the Chair, Management Board of Cabinet) waives notice; or
- the head cites a law enforcement exemption.

- municipal *Act* only

In addition, section 29(3)(c) of the municipal *Act* provides that the notice requirement does not apply if the *Act's* regulations provide that notice is not required.

Section 4 of Regulation 823 under the municipal *Act* states that where a head makes available to the public a statement describing the purpose(s) of the collection of personal information and the reason that notice has not been given, then the institution is not required to give notice of the collection to each individual. However, this only applies where:

- providing notice would frustrate the purpose of the collection;
- providing notice might result in an unjustifiable invasion of another individual's privacy; or
- the collection is for the purpose of determining suitability or eligibility for an award or honour.

Unsolicited Personal Information

Sometimes institutions receive personal information, such as resumes, which they did not request. If an institution does not retain unsolicited personal information, notice is not required. However, if an institution subsequently uses this personal information, for example, by placing unsolicited resumes in an inventory or by considering them at a later date, then the institution is obliged to notify the individual.

Recommended Procedures

The IPC encourages institutions to consider the following procedures for providing notice:

1. Advise all staff that under sections 38(2) of the provincial *Act* and 28(2) of the municipal *Act*, an institution must be certain that it has the authority to collect personal information, either directly or indirectly.
2. When notice is provided, ensure that the notice meets the three requirements listed in section 39(2) of the provincial *Act* and section 29(2) of the municipal *Act*:

- *The legal authority for the collection:* Cite the proper legal authority that permits the collection by referring to the specific act and section which authorizes the collection. Where an act does not specifically refer to collection, provide the specific section of an act or by-law which authorizes the activity or program for which the information must be collected.

Note: It is insufficient to say, "This information is being collected in accordance with *the Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*."

- *The principal purpose(s) for which the personal information is intended to be used:* Be sure to fully inform the individual from whom the information is collected about how the information will be used.

Many complaints received by the IPC's Compliance department about collection, use and disclosure are the result of inadequate notice to the individual regarding the intended use of his or her personal information.

- *The title, business address and telephone number of a person employed by the institution who can answer any questions about the collection:* Ensure that the individual will have no difficulty in contacting someone who can provide answers to questions or additional information about the collection.
3. Include procedures in your operations/procedures manual for staff to follow when giving oral or written notice. This will ensure that all staff are aware of their responsibilities to provide notice and that the notice meets the *Acts*' three requirements.

Example of Written Notice

Here is an example of notice that may be used on a job application form:

Personal information on this form is collected under the authority of *the Municipal Act*, R.S.O. 1980, c.302 (as amended), and will be used to determine the qualifications for employment with the Town of Cityville. Questions about this collection should be directed to the Human Resources Co-ordinator, 110 Elm Street, Cityville, Ontario, L3P 2N1, (313) 234-5678.

IPC Practices

is published regularly by the **Office of the Information and Privacy Commissioner.**

If you have any comments regarding this publication, wish to advise of a change of address or be added to the mailing list, contact: _____ J

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletypewriter): (416) 325-7539
Website: <http://www.ipc.on.ca>



50% recycled
including 20%
post-consumer
fibre

t.O
00
00
—
Z
C
Q

Privacy Breaches Guidelines for Public Sector Organizations



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario



Ontario's privacy laws set out the rules for how public sector organizations should manage information about identifiable individuals – namely, personal information.

This guide explains what a privacy breach is and how to respond to one. It can also help you develop your own privacy breach response plan.

If you are an organization subject to Ontario's health privacy law, you should refer to our guidance, *Responding to a Health Privacy Breach: Guidelines for the Health Sector*.

WHAT IS A PRIVACY BREACH?

A privacy breach occurs when personal information is collected, retained, used, disclosed, or disposed of in ways that do not comply with Ontario's privacy laws. The most common privacy breaches occur when unauthorized persons gain access to personal information. For example, personal information may be seized in a cyberattack, stolen (such as through theft of a portable device) or accessed by an employee for improper purposes.

RESPONDING TO A PRIVACY BREACH

When a privacy breach occurs, you should do the following:

IMMEDIATELY ALERT APPROPRIATE PARTIES

Alert all relevant staff of the breach, including your freedom of information and privacy coordinator, and determine who else within your organization should be involved in addressing the breach.

CONTAIN THE BREACH

Identify the nature and scope of the breach and the action you need to take to contain it:

- determine what personal information is involved
- take corrective action, for example:
 - ensure that no personal information has been retained by an unauthorized recipient and get their contact information in case follow-up is required
 - ensure that the breach does not allow unauthorized access to any other personal information by taking appropriate action (for example, changing passwords or identification numbers, or temporarily shutting down a system)
 - in a case of unauthorized access by staff, consider suspending their access rights
 - retrieve hard copies of any personal information that has been disclosed

NOTIFY THOSE AFFECTED BY THE BREACH

You should notify those affected as soon as reasonably possible if you determine that the breach poses a real risk of significant harm to the individual, taking into consideration the sensitivity of the information and whether it is likely to be misused. If law enforcement is involved, ensure that notification will not interfere with any investigations.

Notification should be direct, such as by telephone, letter, email or in person. Indirect notification can be used in situations where direct notification is not possible or reasonably practical, for instance, when contact information is unknown or the breach affects a large number of people.

Notification to affected individuals should include:

- details of the extent of the breach and the specifics of the personal information that was compromised
- the steps taken and planned to address the breach, both immediate and long-term

Appendix A to report FCS21003 Protection of Privacy Policy

- a suggestion, if financial information or information from government-issued documents is involved, to:
 - contact their bank, credit card company, and appropriate government departments to advise them of the breach
 - monitor and verify all bank account, credit card and other financial transaction statements for any suspicious activity
 - obtain a copy of their credit report from a credit reporting bureau
- contact information for someone within your organization who can provide additional information and assistance, and answer questions
- a statement that they have a right to make a complaint to the IPC and how to do so

INVESTIGATE

- Identify and analyze the events that led to the breach
- Review your policies and practices in protecting personal information, privacy breach response plans and staff training to determine whether changes are needed
- Determine whether the breach was a result of a systemic issue and if so, review your program-wide or institution-wide procedures
- Take corrective action to prevent similar breaches in the future and ensure your staff are adequately trained
- If you have contacted the IPC, advise us of your findings and remedial measures, and cooperate with any further investigation we undertake into the incident

NOTIFYING THE IPC

You should notify the IPC of significant breaches, such as those that may involve sensitive personal information or large numbers of individuals, or when you are having difficulties containing the breach. In these situations, you should notify the IPC as soon as reasonably possible.

Appendix A to report FCS21003 Protection of Privacy Policy
In situations where you will be notifying a large number of individuals, it is important to contact the IPC before you begin the notification process, so that we are prepared to respond to inquiries. The IPC can assist you with your breach response plan.

WHAT HAPPENS WHEN THE IPC INVESTIGATES?

When responding to a report or complaint of a privacy breach, or initiating our own investigation, we may:

- assess whether the breach has been contained and affected individuals adequately notified
- interview individuals involved
- review and provide advice on your organization's policies and any other relevant documents
- issue a report after the investigation, which may include recommendations
- issue an order

The purpose of the IPC investigation is future-oriented — that is, if there was a privacy breach, the IPC will assist the institution in taking steps to prevent similar occurrences.

HOW TO REDUCE THE RISK OF FUTURE PRIVACY BREACHES

You should consider the following measures to prevent privacy breaches:

- educate your staff about Ontario's privacy laws and your organization's policies and practices governing the collection, retention, use, security, disclosure and disposal of personal information
- conduct privacy impact assessments before introducing or changing technologies, information systems, and processes to ensure privacy risks are identified and addressed
- seek input from appropriate parties such as your legal counsel and security units, your freedom of information and privacy coordinator, the Ontario ministry responsible for information and privacy matters, and our office, as necessary

ADDITIONAL RESOURCES

The IPC has guidance that can assist your organization in meeting its privacy responsibilities and avoiding a privacy breach. You can find these documents in the guidance section of the IPC's website (www.ipc.on.ca).

About the IPC

The role of the Information and Privacy Commissioner is set out in the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Personal Health Information Protection Act*. The commissioner is appointed by the Legislative Assembly of Ontario and is independent of the government of the day.



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

2 Bloor Street East, Suite 1400
Toronto, Ontario, Canada M4W 1A8
Phone: (416) 326-3333 / 1-800-387-0073
TDD/TTY: 416-325-7539

www.ipc.on.ca
info@ipc.on.ca

September 2019



Privacy by Design

The 7 Foundational Principles

Ann Cavoukian, Ph.D.

Information & Privacy Commissioner
Ontario, Canada

Privacy by Design is a concept I developed back in the 90's, to address the ever-growing and systemic effects of Information and Communication Technologies, and of large-scale networked data systems.

Privacy by Design advances the view that the future of privacy cannot be assured solely by compliance with regulatory frameworks; rather, privacy assurance must ideally become an organization's default mode of operation.

Initially, deploying Privacy-Enhancing Technologies (PETs) was seen as the solution. Today, we realize that a more substantial approach is required — extending the use of PETs to *PETS Plus* — taking a positive-sum (full functionality) approach, not zero-sum. That's the “*Plus*” in *PETS Plus*: positive-sum, not the either/or of zero-sum (a false dichotomy).

Privacy by Design extends to a “Trilogy” of encompassing applications: 1) IT systems; 2) accountable business practices; and 3) physical design and networked infrastructure.

Principles of *Privacy by Design* may be applied to all types of personal information, but should be applied with special vigour to sensitive data such as medical information and financial data. The strength of privacy measures tends to be commensurate with the sensitivity of the data.

The objectives of *Privacy by Design* — ensuring privacy and gaining personal control over one's information and, for organizations, gaining a sustainable competitive advantage — may be accomplished by practicing the following 7 Foundational Principles (*see over page*):

The 7 Foundational Principles

1. **Proactive** not Reactive; **Preventative** not Remedial

The *Privacy by Design* (PbD) approach is characterized by proactive rather than reactive measures. It anticipates and prevents privacy invasive events *before* they happen. PbD does not wait for privacy risks to materialize, nor does it offer remedies for resolving privacy infractions once they have occurred — it aims to *prevent* them from occurring. In short, *Privacy by Design* comes before-the-fact, not after.

2. Privacy as the **Default Setting**

We can all be certain of one thing — the default rules! *Privacy by Design* seeks to deliver the maximum degree of privacy by ensuring that personal data are automatically protected in any given IT system or business practice. If an individual does nothing, their privacy still remains intact. No action is required on the part of the individual to protect their privacy — it is built into the system, *by default*.

3. Privacy **Embedded** into Design

Privacy by Design is embedded into the design and architecture of IT systems and business practices. It is not bolted on as an add-on, after the fact. The result is that privacy becomes an essential component of the core functionality being delivered. Privacy is integral to the system, without diminishing functionality.

4. Full Functionality — **Positive-Sum**, not Zero-Sum

Privacy by Design seeks to accommodate all legitimate interests and objectives in a positive-sum “win-win” manner, not through a dated, zero-sum approach, where unnecessary trade-offs are made. *Privacy by Design* avoids the pretense of false dichotomies, such as privacy *vs.* security, demonstrating that it *is* possible to have both.

5. End-to-End Security — **Full Lifecycle Protection**

Privacy by Design, having been embedded into the system prior to the first element of information being collected, extends securely throughout the entire lifecycle of the data involved — strong security measures are essential to privacy, from start to finish. This ensures that all data are securely retained, and then securely destroyed at the end of the process, in a timely fashion. Thus, *Privacy by Design* ensures cradle to grave, secure lifecycle management of information, end-to-end.

6. **Visibility** and **Transparency** — Keep it **Open**

Privacy by Design seeks to assure all stakeholders that whatever the business practice or technology involved, it is in fact, operating according to the stated promises and objectives, subject to independent verification. Its component parts and operations remain visible and transparent, to users and providers alike. Remember, trust but verify.

7. **Respect** for User Privacy — Keep it **User-Centric**

Above all, *Privacy by Design* requires architects and operators to keep the interests of the individual uppermost by offering such measures as strong privacy defaults, appropriate notice, and empowering user-friendly options. Keep it user-centric.

Revised: January 2011
Originally Published: August 2009
Information and Privacy Commissioner of Ontario
2 Bloor Street East, Suite 1400
Toronto, Ontario • CANADA • M4W 1A8
Telephone: 416-326-3333 • 1-800-387-0073
Web: www.ipc.on.ca • www.privacybydesign.ca
E-mail: info@ipc.on.ca

CITY OF HAMILTON

NOTICE OF MOTION

Audit, Finance & Administration Committee: January 14, 2021

MOVED BY COUNCILLOR B. JOHNSON.....

Waiving of the ‘False Alarm’ Fee for Famee Furlane

WHEREAS, the Famee Furlane of Hamilton is the social and cultural centre for Italians from the FRIULI, the northeastern most region of Italy and a non-profit community-based organization with membership comprised mostly of people of FRIULAN origin;

WHEREAS, Famee Furlane of Hamilton’s revenues have been significantly impacted by the Coronavirus pandemic;

WHEREAS, the organization is comprised of volunteers;

WHEREAS, on November 30, 2020 Famee Furlane of Hamilton had a new volunteer testing their fire alarm and he was unaware that the Fire Department needed to be contacted first; and

WHEREAS, Famee Furlane of Hamilton was therefore issued a “false alarm” fee as per the City of Hamilton’s User Fee bylaw;

THEREFORE, BE IT RESOLVED:

That staff be directed to waive the “false alarm” fee of \$753.50 for Famee Furlane’s false alarm on November 30, 2020, as compassionate relief, and that staff communicate to Famee Furlane of Hamilton that this is a one-time waiving of the 2021 fee only.