



CITY OF HAMILTON
CITY MANAGER'S OFFICE
Finance, Administration and Revenue Generation

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| TO: | Mayor and Members General Issues Committee |
| COMMITTEE DATE: | December 2, 2015 |
| SUBJECT/REPORT NO: | Farmers' Market Operating Agreement (CM12009(e)) (City Wide) |
| WARD(S) AFFECTED: | City Wide |
| PREPARED BY: | John Hertel, Ext 2739 Eleonora Filippone, Ext 4707 |
| SUBMITTED BY: | John Hertel Director, Finance, Administration & Revenue Generation |
| SIGNATURE: | |

RECOMMENDATION

- (a) That the Mayor and City Clerk be authorized and directed to execute the Operating Agreement between the City of Hamilton and Hamilton Farmers' Market Corporation, attached as Appendix "A" to Report CM12009(e);
- (b) That Market By-law 10-209 be repealed as of the date the Operating Agreement attached as Appendix "A" to Report CM12009(e) is executed by all parties; and
- (c) That the item on the Outstanding Business List respecting this matter be identified as completed and removed from the General Issues Committee Outstanding Business List.

EXECUTIVE SUMMARY

In December 2014, the City of Hamilton incorporated Hamilton Farmers' Market Corporation ("Market Corporation"), a not-for-profit entity, for the purpose of operating the Market. The City is the sole voting member of Market Corporation. The board of directors is comprised of councillors, citizen members and vendor members.

The Market is currently operated pursuant to Market By-law 10-209 and effectively functions as a division of the Finance and Corporate Services Department of the City.

In order to pass control of the Market from the City to Market Corporation, an Operating Agreement must be entered into setting out the responsibilities of Market Corporation and the support services which the City will provide.

Briefly summarized, the Operating Agreement sets out that Market Corporation will be responsible for all aspects in the operation of the Market, including selection of stallholders; setting Market days and hours; enforcement of stallholder contracts; programming; and advertising. Market Corporation will provide annual reports to City Council and must obtain the approval of City Council on its annual budget.

The City will provide financial assistance and support services to the Market, including services from Human Resources, Legal Services, Finance, IT and Facilities. The Operating Agreement expresses that one of the goals of Market Corporation is to reduce the Market's dependence on subsidies from the City.

As the Market facility will remain a City asset and Market employees will remain employees of the City, the City will continue to play a deciding role in facility management and employment matters, after consultation with Market Corporation.

Market Corporation was incorporated as a municipal services corporation under the authority of Ontario Regulation 599/06 of the Municipal Act, 2001. As such, Market Corporation must comply with various laws applicable to municipalities. These obligations are set out in the Operating Agreement.

The Operating Agreement may require amendment from time to time. It is contemplated that City staff will have the authority to amend the Agreement on behalf of the City, save and except for any material amendments (including but not limited to the objects of Market Corporation, financial accountability, and any matter contained in Market Corporation's corporate by-laws) which will require approval by City Council.

The Operating Agreement attached as Appendix "A" to Report CM12009(e) was approved by Market Corporation's board of directors at its meeting of November 2, 2015.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial: The City will continue to provide financial assistance in the operation of the Market; however, it is a specified goal for Market Corporation to reduce the Market's dependence on subsidies from the City. Market Corporation will provide financial reports and its annual budget to City Council for approval.

Staffing: The City will provide support services to the Market as needed, including services from Human Resources, Legal Services, Finance, IT and Facilities.

Legal: In 2014, City Council approved a new governance model for the Market, which involved the operation of the Market by a not-for-profit corporation. Once the Operating Agreement is executed by the City and Market Corporation, the old governance model enshrined in Market By-law 10-209 will no longer apply, and as a result, said By-law will need to be repealed.

HISTORICAL BACKGROUND (Chronology of events)

On September 17, 2014 and September 24, 2014, the General Issues Committee and Council respectively approved the incorporation of a not-for-profit corporation for the purpose of operating a farmers' market. At that time, Council also directed staff to negotiate an Operating Agreement with Market Corporation's board of directors, addressing the operational, financial, personnel, reporting and other requirements of the parties and report back to the General Issues Committee with respect to negotiations.

The letters patent for Market Corporation were issued by the Ministry of Government Services on December 16, 2014.

In the spring of 2015, City Council appointed members to Market Corporation's board of directors.

A cross-section of City staff from Finance and Corporate Services, Human Resources, Facilities, IT, Licensing and Legal Services convened to develop a draft Operating Agreement, sorting out the roles and responsibilities of each division in relation to the Market. The draft was submitted to Market Corporation's board of directors for review and discussion, and subsequently, approval.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Upon the execution of the Operating Agreement, Market By-law 10-209 will no longer apply and as a result, said By-law must be repealed.

RELEVANT CONSULTATION

City staff from the following Divisions participated in the development of the Operating Agreement: Finance and Corporate Services, Human Resources, Facilities, IT, Licensing and Legal Services.

Members of Market Corporation's board of directors participated in information sessions with City staff to discuss and negotiate the Operating Agreement.

ANALYSIS AND RATIONALE FOR RECOMMENDATION
(Include Performance Measurement/Benchmarking Data if applicable)

The allocation of responsibilities in the Operating Agreement is based on considerations which include the following:

- the City's desire to bestow operational decisions regarding the Market to Market Corporation
- retention of the Market facility as a City asset
- continued provision of funds by the City to the Market, at least during the transition period
- allocation of risk between the parties
- constraints imposed by labour and employment law, municipal law and other applicable law

The Operating Agreement attached as Appendix "A" to Report CM12009(e) was approved by Market Corporation's board of directors at its meeting of November 2, 2015.

ALTERNATIVES FOR CONSIDERATION

None.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.3 Promote economic opportunities with a focus on Hamilton's downtown core, all downtown areas and waterfronts.
- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

- 2.2 Improve the City's approach to engaging and informing citizens and stakeholders.
- 2.3 Enhance customer service satisfaction.

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

- 3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Operating Agreement between the City of Hamilton and Hamilton Farmers' Market Corporation