




**CITY OF HAMILTON**  
**CITY MANAGER'S OFFICE**  
**Digital, Innovation & Strategic Partnerships**

<b>TO:</b>	Mayor and Members Sole Voting Member of the Hamilton Farmers' Market
<b>COMMITTEE DATE:</b>	January 25, 2021
<b>SUBJECT/REPORT NO:</b>	Hamilton Farmers' Market Corporation Stallholder Agreement Renewal Process (CM21001) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Matthew Grant 905-546-2424 Ext. 2739 Raymond Kessler 905-546-2424 Ext. 7019 Susan Nicholson 905-546-2424 Ext. 4707 Cyrus Tehrani 905-546-2424 Ext. 2261
<b>SUBMITTED BY:</b>	Cyrus Tehrani Chief Digital Officer City Manager's Office
<b>SIGNATURE:</b>	

**COUNCIL DIRECTION**

N/A

**INFORMATION**

The Hamilton Farmers' Market ("Market") is operated by the Hamilton Farmers' Market Corporation (HFMC), an independent corporation solely owned by the City of Hamilton. The HFMC is governed by a board of directors (HFMC Board) comprised of Councillor(s), Citizens members, and Stallholder Members who are responsible for oversight of Market operations, including responsibility for vendor contract management and annual vendor contract renewals. HFMC operates the Market within the City-owned facility at the south-east corner of York Boulevard and James Street within the framework of an operating agreement between HFMC and the City.

Day-to-day operations, including contract management and renewal, is the responsibility of the Market Manager, under the direction of the Board.

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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.

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The HFMC operating agreement requires board operations to adhere to several acts and regulations including the Municipal Act, as well as adhering to several City policies. HFMC also requires City Council approval of any changes to its budget.

The relationship between the HFMC and Stallholders, who are independent businesses, is governed by Stallholder Contracts which are currently renewed annually.

**BACKGROUND:**

The board is responsible for oversight of the Market the contractual relationship between the HFMC and individual Stallholders.

In June 2020, the HFMC Board sought approval from the City to provide a 75% fee reduction to align with the Canada Emergency Commercial Rent Assistance (CECRA) for small businesses program. This was an optional federal program that allowed property owners to apply for rent relief that could then be passed on to their tenants. Municipally owned buildings with tenants unfortunately we not eligible for the CECRA program. HFMC Board, on behalf of Stallholders, requested the City to consider matching the program terms of 25% of rental obligations being paid by occupants, 25% landlord and 50% government (in this case the landlord and government being assumed to be the City).

In July, the HFMC Board approved a 75% fee reduction/abatement for Stallholders for the months of March, April and May. Included in the motion was request that CECRA be matched for future months in alignment with the program which latest six months. Stallholders were subsequently provided with 25% partial payment invoices for the three months above, assuming that the City would approve.

In September, Council adopted a city-wide framework to address COVID-related occupant (tenants/licencees) support. As it relates to commercial entities, the framework permits deferral of rental/fee obligations, but not abatement. Many municipalities have taken a similar approach though implementation has varied.

On the November 23, the Sole Shareholder established that a fee reduction/abatement was not consistent with the Operating Agreement or Municipal Act and that the HFMC Board was directed to abide by the COVID-19 Occupant Support Framework (Framework).

On November 25, 2020 the HFMC Board was informed of the that the Sole Shareholder decision was unable to provide a rent abatement and Board was required adopt the citywide COVID-19 Occupant Support Framework.

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Every December, the Market Manager initiates the Market's renewal process with individual Stallholders, which continues the contractual relationship between the HFMC and the independent businesses who operate in the Market.

The renewal process also provides insight to the HFMC as to the level of revenue it can expect from Stallholder fees, which makes up a significant portion of the HFMCs revenue.

The 2021 renewal process has experienced some delays and dissatisfaction with level of support provided to Stallholders has been voiced. In late December, the Hamilton Farmers Market Stallholders Association sent a letter to Stallholders encouraging them not to sign 2021 contracts as a group. The primary reason cited by the Stallholders Association was in order to challenge the city's decision to not to provide rent abatement.

In a January 11 resignation letter, the former HFMC Board chair indicated that the pandemic had negatively impacted Market operations and that Stallholders, like other small businesses, and that more should be done to assist Stallholders during the pandemic.

Currently, the Municipal Act prevents the City of Hamilton from providing direct subsidies to commercial enterprises such as Stallholders as it is considered bonusing.

The municipality has provided assistance to Stallholders in the form of fee deferrals and has also ensured that Stallholders were made aware of programs offered by levels of government not subject to Ontario's Municipal Act.

**SUPPORTS AVAILABLE TO HFMC AND STALLHOLDERS:**

In September, Council adopted a city-wide approach to address COVID related support framework. As it relates commercial entities, the framework permits deferral of rental/fee obligations, but not abatement. Many municipalities have taken a similar approach though implementation has varied.

Though Stallholder fees vary by frontage (<https://hamiltonfarmersmarket.ca/stall-information/>) for a standard stall fees are approximately \$630/month or \$7,560/year (excluding stall utility usage). A Stallholder opted to utilize the deferral program over the full 10-month period deferral payments would be approximately \$378/month. For a three-month fee deferral payments would be approximately \$189/month.

The initiative did not meet the June 2020 request by the HFMC board, which requested a 75% fee reduction from the municipality to align with the Canada Emergency Commercial Rent Assistance (CECRA) for small business program. The Municipal Act

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prevents both the City and the HFMC board from offering direct fee subsidies to commercial enterprises.

In July, the HFMC Board approved a 75% fee abatement for Stallholders that covered March, April and May 2020. HFMC Stallholder were subsequently provided with 25% partial payment invoices for those months in anticipation of Sole Shareholder approval.

The City, as facility operator, also continued to invest in infrastructure upgrades and other supports outside of the HFMC budgets including:

- \$650,000 investment in HVAC upgrades to the facility completed on Jan 18th.
- \$100,000 approved for additional infrastructure improvements and upgrades
- Approximately \$145,000 in extraordinary COVID related cleaning, security/health screening and supplies cost covered to end of December and to be continued into 2021.

In addition to the CECRA program (which ended in September 2020) a number of other government support programs and resources have been available to Stallholders, including one to replace CECRA, and have been shared on numerous occasions via Stallholder memos or newsletters including:

- Canadian Emergency Rent Subsidy (CERS) – rent subsidy up to 65%
- Canadian Emergency Wage Subsidy (CEWS) – wage subsidy
- Canadian Emergency Business Account (CEBA) – interest free loan up to \$60,000 with up to \$20,000 forgivable
- Various Digital Main Street programs – setup of no cost online selling, etc.
- Hamilton Chamber of Commerce Government Assistance Resources (refer to the website <https://www.hamiltonchamber.ca/covid19/government-assistance-resources/>)
- Relief Within Reach Financial Support for Small and Medium Sized Businesses – A Guide for Business Owners (refer to the website <https://reliefwithinreach.ca/>)

In terms of the status of stall occupation:

- The Market has 55 available stalls – as of December 31, 2020 there were 45 active stallholders
- During 2020, five vendors decided to leave the Market (3 – August, 1 – November, 1 – December)
- Additionally, five vendors have given notice that they will not be returning to the Market in 2021 (1 retirement, 4 due to challenging business conditions)
- During 2020, four new vendors have joined (1 – August, 2 – November, 1 – December,)
- One additional vendor is contracted to join the Market in 2021 (February).

**CONTRACT RENEWAL PROCESS:**

A motion was passed by the HFMC Board on January 4, 2020 requiring Stallholders to sign their 2021 contract by January 21, 2021 in order to do business that day unless there's an extenuating circumstance that prevented them from signing their contract, and that Stallholders are required to have paid their 2020 Q2 Hydro and October rents (unless the October rent was covered by a deferral agreement). Previous years have also required Stallholders to be 60 days or less in arrears with fees in order to be eligible to renew their annual Stallholder contract.

The Stallholder contract outlines the terms and condition under which a stall holder can operate in the Hamilton Farmers Market. The contracts are between the HFMC and individual Stallholders and are typically one-year contracts. The renewal process is typically initiated in December each year and the process has not substantially changed over the past four years.

As part of the renewal process, Stallholders can choose to renew their agreements with the HFMC on an annual basis. The logistics of the renewal process are overseen by the Market Manager.

2021 Stallholder Contracts were distributed during the last week of December. This year's agreement included an optional up to 6-month 2020 interest-free deferral program that allows Stallholders to pay equal installments over a 10-month period from March to December of 2021.

With only 27 per cent of vendor contracts renewed, the Market Manager, with assistance from the City's legal division, provided Stallholders a renewal reminder letting Stallholders know that a failure to renew their contracts by January 22, 2021 would result in their business being out of legal compliance with the Market's operating model.

The Market was closed from January 4, 2021 to January 18, 2021 to facilitate the heating and ventilation capital upgrade project that had been initiated in early 2020. Stallholder fees for January 2021 have been reduced by 58% to reflect the reduced seven operating days for the month.

As of January 18<sup>th</sup>, with only 27% (12 of 45) the Market Manager, with assistance from the City's legal division, provided Stallholders a renewal reminder letting Stallholders know that a failure to renew their contracts by January 22 would result in their business being out of legal compliance with the Market's operating model.

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**CURRENT STATUS:**

As of January 21, 84% (38 of 45) of the Stallholders had decided to renew their 2021 Stallholder Contracts. In addition, 21% (8 out of 38) Stallholders opted to take advantage of the fee deferral program. Seven Stallholders that have recently opened with the past two months or will be opening in 2021 are not eligible for the deferral program. Twenty-seven Stallholders (60%) are fully paid with all their fees up to and including December 2020 and another 6.7% of Stallholder are fully paid with the exception of just December 2020 as allowed by the 60 days arrears policy. 33.3% of Stallholders are between 3-month and 6-month in arrears but some could be considering use of the deferral program.

Vendors who opt to not renew their Stallholder Contracts but continue to operate in the Market present a legal and risk liability to both the HFMC and thus to the Sole Shareholder as the contract includes insurance and indemnification obligations.

**APPENDICES AND SCHEDULES**

N/A