





CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
General Manager's Office
and
PUBLIC WORKS DEPARTMENT
General Manager's Office

TO:	Chair and Members General Issues Committee
COMMITTEE DATE:	December 6, 2023
SUBJECT/REPORT NO:	Art Gallery of Hamilton Energy Billing Approach and Recommendations (PED23258/PW23065) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Carrie Brooks-Joiner (905) 973-0993
SUBMITTED BY: SIGNATURE:	Steve Robichaud Acting General Manager Planning and Economic Development Department 
SUBMITTED BY: SIGNATURE:	Carlyle Khan General Manager Public Works Department 

RECOMMENDATION

- (a) That the General Manager of Public Works be authorized and directed to write-off uncollectable Accounts Receivable 2022 energy charges for the Art Gallery of Hamilton in the amount of \$329,723.94 which includes finance charges in the amount of \$27,714.80 plus any additional finance charges on these past due receivables incurred up to the date of the approval of this report. Write-off amounts are to be funded from the Tax Stabilization Reserve (Account # 110046);

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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- (b) That the General Manager of Public Works be authorized and directed to write-off uncollectable Accounts Receivable 2023 energy charges up to September 30, 2023 for the Art Gallery of Hamilton in the amount of \$244,148.31 which includes finance charges in the amount of \$4,144.18 plus any additional finance charges on these past due receivables incurred up to the date of the approval of this report. Write-off amounts are to be funded from the Tax Stabilization Reserve (Account #110046);
- (c) That the General Manager of Public Works be authorized and directed to write-off uncollectable Accounts Receivable 2023 energy charges for October, November and December 2023 that will result from the difference in billings (2021 energy charges plus the Federal Carbon Tax charge billing versus the current method of metered system billing) for the Art Gallery of Hamilton to an upset limit of \$60,000. Write-off amounts are to be funded from the Tax Stabilization Reserve (Account # 110046);
- (d) That staff be directed to address energy billings for 2024 and beyond as part of discussions regarding a new partnership agreement between the City of Hamilton and Art Gallery of Hamilton;
- (e) That the City of Hamilton Energy Office be directed to perform an energy walkthrough of the Art Gallery of Hamilton building to identify and recommend to Art Gallery of Hamilton staff enhanced efficiency opportunities that will serve both to help reduce future energy costs and align with the City's goal of net zero.

EXECUTIVE SUMMARY

Founded in 1914, the Art Gallery of Hamilton is the oldest and largest art museum in the region with a permanent collection consisting of more than 10,000 Canadian historical, international and contemporary art works. The Art Gallery of Hamilton provides a variety of services and public programs to fulfil its vision to “inspire, connect and strengthen communities through ART”.

Representatives from the Art Gallery of Hamilton delegated to General Issues Committee on September 20, 2023 and shared information about its role in the community, ongoing financial operating challenges, strategic priorities and future capital plans. City staff were directed to “to work with the Art Gallery of Hamilton to review the Art Gallery of Hamilton’s partnership and funding model, based on the unique relationship to the City, in regards to the collection, the land, and the building, and report back to the General Issues Committee with recommendations”.

City and Gallery staff have initiated work on a new partnership agreement with a target to report back to General Issues Committee in mid-2024. Given that energy costs have been a significant pressure on the Art Gallery of Hamilton’s operating budget since 2022, City

staff have also reviewed the change in energy billing methodology and the parties' contractual obligations.

This report addresses the immediate financial pressures faced by the Art Gallery of Hamilton regarding outstanding 2022 and 2023 energy charges and recommends measures to mitigate these pressures while a new partnership agreement is developed for Council's consideration.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The total write-off is up to \$633,872.25: this includes \$329,723.94 (2022), \$244,148.31 (2023 January – September) and up to \$60,000 (estimate for October – December 2023).

Staffing: None.

Legal: Legal Services will continue to provide legal support and opinion to City staff as required.

HISTORICAL BACKGROUND

A change in the energy billing methodology in 2022 resulted in higher energy costs for the Art Gallery of Hamilton and an enhanced operating budget pressure.

The Art Gallery of Hamilton has been a client of the City of Hamilton's Central Energy Plant and the District Energy System since 1984 purchasing both thermal heat and electricity for cooling.

From 1984 to 2021, billing for the services provided by the District Energy System were billed based on a legacy invoicing practice that was heavily subsidized by the City for Operating and Maintenance and Capacity charges.

In 2016, the City of Hamilton sold the Central Utility Plant to Hamilton Community Energy. All user agreements were appended as part of the sale of the physical asset. In consultation with City Staff, Hamilton Community Energy installed sub meters in 2019/2020 to provide more accurate billing to all locations tied to the District Energy System.

In January 2022, Hamilton Community Energy began billing all District Energy System end users (including Art Gallery of Hamilton) based on a metered system that reflects true costs of usage and service. This new billing method resulted in accurate, but higher, costs for Art

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Gallery of Hamilton than the previous invoicing method that was based on a legacy calculation created when the City Owned District Energy System was first installed.

The Art Gallery of Hamilton contacted the Energy Office in February 2022 to express concern that their invoice was higher than expected and that this would negatively impact their in-year operating budget. The Art Gallery of Hamilton also claimed that the billing was not consistent with the 1984 contract between the Art Gallery of Hamilton and the City of Hamilton which governed the City's provision of energy to the Gallery. Art Gallery of Hamilton representatives advised that they would proceed with partial payments and would subsequently communicate with City of Hamilton Senior Management to further address the matter. The unpaid balance for 2022 is \$329,723.94.

Following ongoing discussions with City staff, the Art Gallery of Hamilton agreed to partially pay the outstanding balance from January to June 2023 plus the required Federal Carbon Tax Charges and would continue in this manner for remainder of 2023. The unpaid balance for 2023 is \$304,148.31 which includes a forecasted write-off up to \$60,000 for the months of October – December. The total amount requested for write off over the two years is \$633,872.25.

See below for 2022 and 2023 total invoices, payments and amounts owing.

AGH Summary of 2022 Energy Charges	
2022 Energy charges invoiced	602,009.14
2022 Energy charges paid by AGH	(300,000.00)
Total finance charges up to September 30, 2023 on unpaid 2022 invoices * Additional charges will be applied for October and up to the date of this report	27,714.80
Total Outstanding Accounts Receivables for 2022	329,723.94
AGH Summary of 2023 Energy Charges	
2023 Energy charges invoiced	436,164.26
2023 Energy charges paid by AGH	(196,160.13)
Total finance charges up to September 30, 2023 on unpaid 2023 invoices * Additional charges will be applied for October and up to the date of this report	4,144.18
Forecasted AGH write-off for October - December 2023 (difference between estimated energy charges and estimated payments)	60,000.00
Total Outstanding Accounts Receivables for 2023	304,148.31
Total Outstanding Accounts Receivables for AGH	633,872.25

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In October 2023 a detailed review of the billing process and the terms of the 1984 energy supply contract between the City and Art Gallery of Hamilton was undertaken. Legal staff advised that the 1984 contract remains binding on the City. It was concluded that the current Hamilton Community Energy billing methodology was not necessarily inconsistent with the 1984 contract as suggested by the Art Gallery of Hamilton: it follows the contractual obligations as outlined in the agreement and the agreement allows additional items related to the operations and maintenance of the system to be included in the overall billed costs.

However, as per the contract, the Art Gallery of Hamilton does have the option to exercise an alternative billing method by calculating the market value of energy and operations and maintenance should the Art Gallery of Hamilton procure its energy elsewhere and operate and maintain its own heating, cooling and electricity facilities. In order to calculate the alternative billing option, the City would be required to reissue invoices to the Art Gallery of Hamilton and then the Gallery would need to conduct an extensive process to determine the amounts it would pay under this alternative billing option. As these processes have not been undertaken, it is unknown whether the Art Gallery of Hamilton would realise savings under the alternative billing method than under the Hamilton Community Energy direct billing method. In addition, under the 1984 contract, the parties are able to agree on the insurance, operations and maintenance charges under the contract.

The write off of arrears is supported by the possibility that the 1984 agreement justifies the Art Gallery of Hamilton paying a lower amount under the alternative billing option. In order to address the deficiencies of the 1984 agreement, staff intend to renegotiate the terms of the 1984 agreement as part of the new partnership agreement between the City and Art Gallery of Hamilton.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Not applicable.

RELEVANT CONSULTATION

Director, Corporate Facilities and Energy Management, Public Works
Manager, Energy Initiatives, Public Works
General Manager, Corporate Services
Director, Financial Services Taxation and Corporate Controller
Deputy City Solicitor, Corporate Services
Solicitor, Corporate Services
Acting Director, Tourism and Culture Division, Planning and Economic Development
Director, Government and Community Relations
Special Advisor, City Enrichment Fund
CEO, Art Gallery of Hamilton
Finance Committee Chair, Art Gallery of Hamilton

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The Art Gallery of Hamilton is one of Hamilton's major cultural organizations. A review of financial documents provided by the Art Gallery of Hamilton confirms that the organization has had an operating deficit each year since 2015.

In its 2023 application to the City Enrichment Fund, the Art Gallery of Hamilton requested a grant of \$1.5M which represented an increase of \$500K from the \$1M that has been granted annually since 2006. In the application it was noted "An additional 500,000 from the City Enrichment Fund would allow the Art Gallery of Hamilton to avoid a deficit" and "With additional support from the City Enrichment Fund in the form of a \$1.5M dollar operating contribution the AGH would be in a revenue neutral position (with surplus only from in-kind volunteer support). With CEF standard level of commitment the Art Gallery of Hamilton projects a deficit of \$500,000". The enhancement to the annual grant was not approved by Council.

Art Gallery of Hamilton representatives have identified building costs, inflation, security and insurance as key budget pressures. The Gallery notes that in comparison to other similar galleries, the government contribution is lower and that its highly variable earned revenue as a percentage of expenses is higher. It is stated that the core service of being open and available to the public has a negative impact on cash flow.

The Art Gallery of Hamilton's recent deficit mitigation efforts to date include: closure of the Gallery on Wednesdays; freezing salaries and limiting COLA increases limited to 2%; staffing eliminated and reduced ongoing including CFO position; strategic staffing for grants; and aggressive earned revenue strategies for Wedding and Events, Art Rental and Sales, Retail, Donations, Sponsorships and Grants. Federal COVID subsidies partially offset budget pressures in 2020-2022.

The projected outlook to year end indicates a 2023 year-end deficit even when the outstanding energy charges are excluded.

The Art Gallery of Hamilton expressed concerns that they were not informed of energy increases on a timely basis and did not budget for these increases. They have advised that they are unable to pay in full the energy invoices that have been provided.

ALTERNATIVES FOR CONSIDERATION

Not Applicable.

APPENDICES AND SCHEDULES ATTACHED

Not Applicable.