



Hamilton

Report 11-004

HAMILTON FARMERS' MARKET SUB-COMMITTEE

Wednesday, June 29, 2011

9:30 a.m.

**Council Chambers
Hamilton City Hall**

- Present:** Councillor McHattie, Chair
Councillors J. Farr and R. Pasuta
- Absent with regrets** Councillor L. Ferguson, Vice-Chair, City business
Councillor B. Clark, personal
- Also Present:** G. Hendrey, Director of Social Housing and Homelessness
A. Bradford, Director of Culture
D. Turner, Supervisor, Heritage Facilities
B. Atanas, Manager, Culture
R. Oliphant, Administrative Assistant
E. Filippone and A. Sweedland, Legal Division
I. Bedioui, City Clerk's Office

**THE HAMILTON FARMERS' MARKET SUB-COMMITTEE PRESENTS
REPORT 11-004 TO THE EMERGENCY AND COMMUNITY SERVICES
COMMITTEE AND RESPECTFULLY RECOMMENDS:**

- 1. Delegation request from Mr. Shane Coleman, Hamilton Farmers' Market Inc. (Added Item 4.1)**

That the delegation request from Mr. Shane Coleman, President of the Stallholders' Association to address the Hamilton Farmers' Market Sub-Committee be denied and referred to the Emergency and Community Services Committee for appropriate action.

2. Protocol for Enforcing Compliance with By-Law No. 10-209 being a By-law to Regulate the Hamilton Farmers' Market and Stallholder Contracts (CS11052(a)) (Ward 2)(Outstanding Business List Item) (Item 8.1)

- (a) That the Protocol for Enforcing By-law No. 10-209 being a By-law to Regulate the Hamilton Farmers' Market (Market By-law) and Stallholder Contract Compliance at the Hamilton Farmers' Market, hereto attached as Appendix "A" be approved;
- (b) That a Set Fine Schedule for Market By-law infractions pursuant to the Provincial Offences Act be developed and submitted for approval by a Senior Regional Justice; and,
- (c) That a communications strategy on the Protocol be developed to inform Stallholders.

3. Hamilton Farmers' Market Outstanding Issues Related to the New Location (CS11066) (Ward 2) (Item 8.2)

That Report CS11066 respecting Hamilton Farmers' Market Outstanding Issues Related to the New Location be received.

4. Hamilton Farmers' Market Electrical (CS11065) (Ward 2) (Item 8.3)

That Report CS11065 respecting Hamilton Farmers' Market Electrical be received.

5. Hamilton Farmers' Market Outdoor Seasonal Market (Item 8.4)

- (a) That the Seasonal Outdoor Market at the Hamilton Farmers' Market be put on hold for Summer 2011 and that staff be directed to develop a revised program, in consultation with various stakeholders and the public, for a new 2011 Fall/Winter program that is Holiday specific;
- (b) That staff also be directed to develop a revised program to be implemented in 2012, for the Seasonal Outdoor Market at the Hamilton Farmers' Market, in consultation with various stakeholders and the public with options that may include existing stallholders and report back to the Hamilton Farmers' Market Sub-Committee.

FOR INFORMATION:

(a) CHANGES TO THE AGENDA

The Clerk advised of the following changes to the agenda:

- (i) Added delegation request from Shane Coleman, President of Hamilton Farmers' Market Inc;
- (ii) Added written submission from Shane Coleman, President of Hamilton Farmer's Market Inc. regarding a News Letter from David Turner dated November 8, 2008 which reveals the Association's position with respect to the incorporated name;
- (iii) Added motion respecting Item 8.4, the Hamilton Farmers' Market Outdoor Seasonal Market;
- (iv) Also, staff have prepared a PowerPoint presentation with respect to Item 8.1 if Committee chooses to view it.

The Agenda of the June 29, 2011 Hamilton Farmers Market Sub-Committee meeting was approved as amended.

(b) DECLARATIONS OF INTEREST

There were none declared

(c) APPROVAL OF MINUTES OF THE PREVIOUS MEETING

The Minutes of the May 25, 2011 meeting were approved as presented.

(d) DELEGATION REQUESTS

- (i) Delegation request from Mr. Shane Coleman, President of Hamilton Farmers' Market Inc. (Added Item 4.1)**

Committee noted that the reasons for the delegation request are not within its recently amended Terms of Reference, and the request was denied and referred to the Emergency and Community Services Committee as outlined in Item 1 of this Report.

- (ii) **Copy of Newsletter from David Turner, submitted by Shane Coleman, dated November 8, 2008 which reveals the Stallholders' Association's position with respect to their incorporated name. (Added Item 4.1.1)**

The submission from Shane Coleman was received.

(e) STAFF PRESENTATION

- (i) **Protocol for Enforcing Compliance with By-Law No. 10-209 being a By-law to Regulate the Hamilton Farmers' Market and Stallholder Contracts (CS11052(a)) (Ward 2) (Outstanding Business List Item) (Item 8.1)**

Anna Bradford provided an overview of the staff report with the aid of a PowerPoint presentation and copies of the hand-out were distributed.

Her comments included but were not limited to the following:

- The Issue – to ensure public safety and the preservation of the Market facility as a capital asset;
- Approved tools – municipal by-laws, stallholder contract, rules and policies, applicable provincial legislation;
- Protocol for enforcing compliance;
- Who enforces;
- Enforcement tools;
- The protocol;
- What happens when a breach occurs;
- Considerations – the impact of the breach;
- Actions following a breach;
- Why have financial penalties?
- Appeals;
- Quote from Alberta Agriculture and Rural Development Farmers' Market Manager training manual about the importance of rules.

Staff responded to questions from the Sub-Committee which included but are not limited to the following:

- Why restrict when an appeal can be submitted?
- Who is responsible for an unsafe food infraction?

- How will a breach be handled if a formal complaint is not received?
- When should police be called?
- The details of the communication strategy;
- How many infractions currently exist?

Committee approved the staff recommendation as outlined in Item 2 of this Report.

(f) DISCUSSION ITEMS

(i) Hamilton Farmers' Market Outstanding Issues Related to the New Location (CS11066) (Ward 2) (Item 8.2)

In response to questions from Committee, staff provided information as follows:

- Staff are still working to develop a survey which hopefully will be completed by September;
- Community Services staff are currently working with Communications staff to develop the questions that will obtain appropriate answers;
- Staff are developing surveys for the stallholders and customers;
- Staff have spoken with the Friends of the Market and will provide them with a template of the survey;
- Staff are currently obtaining quotes for the cost for a Market directory and other signage.
- Seeking to install highly visual, easy to comprehend signage;
- The Market court vacancy issues;
- How to fill vacant spaces – Staff are developing guidelines through research with other Markets.

At the request of the Sub-Committee, staff agreed to provide a copy of the Market survey and the Market signage proposals first to the Sub-Committee members by e-mail prior to proceeding with these two initiatives.

The Sub-Committee received the staff report.

**(ii) Hamilton Farmers' Market Electrical (CS11065) (Ward 2)
(Item 8.3)**

The Sub-Committee discussed various issues with staff which included but were not limited to the following:

- The contractor did not install the four electrical plugs in each stall;
- The Café's hydro requirement is in excess of the 60 amps – It needs 400 amps;
- It will take 6 to 8 weeks to install the 400 amps;
- The applicant has requested more than what was originally anticipated for the Café – she wants to bring in more equipment;
- There have been ongoing discussions with staff and hopefully the Café can open with 60 amps;
- What amounts will the vendors face with the hydro chargebacks?
- Staff reviewed and the biggest bill was \$220 for the month of February.

The Sub-Committee received the staff report.

(iv) Hamilton Farmers' Market Outdoor Seasonal Market (Verbal update) (Item 8.4)

Anna Bradford advised that staff have provided weekly updates to Council regarding the status of the outdoor market. She indicated that the City has advertised and has received only one application to date. Staff are recommending that the outdoor market be put on hold for this year and that they develop a revised program for next year, in consultation with various stakeholders and the public and report back to the Sub-Committee. Copies of the staff recommendation were distributed.

Committee discussed the issues and approved a revised motion as outlined in Item 5 of this Report.

(g) GENERAL INFORMATION (Item 11.1)

(i) Outstanding Business List

- (a) The following Item was identified as being completed and was removed from the Outstanding Business List:

Item A: Protocol for enforcing compliance with the Hamilton Farmers' Market By-law and stall holder contracts

(ii) Next meeting date (verbal update)

The Clerk advised that the next meeting of the Hamilton Farmers' Market Sub-Committee will be held on Wednesday, September 28, 2011 at 9:30 a.m. in the Council Chambers.

(iii) Other Issues

The Sub-Committee briefly discussed the following:

- The status of the current Market occupancy;
- The recruitment process for replacing Bill Atanas who will be moving to another position within the Corporation;
- The schedule of the loading dock attendant;
- Suggested future meeting with some Councillors and the Friends of the Market

(h) PRIVATE AND CONFIDENTIAL

(i) Closed Session Minutes of the May 25, 2011 meeting. (Item 12.1)

- (i) The Private and Confidential Minutes of May 25, 2011 were approved.
- (ii) The Private and Confidential Minutes of May 25, 2011 are to remain Private and restricted from public disclosure in accordance with exemptions provided in the Municipal Freedom of Information and Protection of Privacy Act.

(i) ADJOURNMENT

The Hamilton Farmers' Market Transition Sub-committee meeting adjourned at 11:09 a.m.

**Councillor B. McHattie, Chair
Hamilton Farmers' Market Transition
Sub-committee**

**Ida Bedioui, Legislative Assistant,
Hamilton Farmers' Market Sub-Committee
June 29, 2011**

Protocol for Enforcement Hamilton Farmers' Market By-law and Stallholder Contract

Stallholders of the Hamilton Farmers Market are obligated to comply with their stallholder contract, the Market By-law and all other applicable laws.

Stallholders enter into agreements with the City which allow them to occupy space in the Market for the purposes of operating their private business enterprises. The Market By-law provides limited direction on the operation of the Market, as it delegates to the Market Supervisor the responsibility to operate and manage the Market and enforce the Market By-law and stallholder contracts. The relationship between the City and the stallholders is primarily governed by the private stallholder contract; not the Market By-law.

Alleged Violation or Breach

When there is an allegation of a violation of law or breach of contract, the Market Supervisor investigates the allegation. In his/her investigation, the Market Supervisor may inspect the stall, speak with relevant persons and/or take any other action permissible by law or by contract, having regard to the nature of the allegation.

Violation of Law

When the Market Supervisor determines that there has been a violation of a law or breach of contract, (such as failure to maintain a current municipal business licence, improper food handling or theft) or suspects that there has been a violation of a law, the Market Supervisor may do the following:

- contact the relevant authorities, which may include, but are not limited to:
 - Municipal Law Enforcement Officers
 - Public Health Inspectors
 - Building Inspectors
 - Police Officers
- pursue the City's remedies under the stallholder contract (see Breach of Stallholder Contract below)

Nothing in this Protocol shall derogate, affect or alter the rights and obligations of the City or stallholder pursuant to the stallholder contract or applicable law, including but not limited to, the Market By-law. This Protocol is subject to change based upon future amendments to the Market By-law and stallholder contract. In the event of a conflict between the provisions of the Market By-law and stallholder contract, on the one hand, and the provisions of this Protocol, on the other hand, the provisions of the Market By-law and stallholder contract shall prevail and be given effect to.

Where relevant authorities are contacted, enforcement by those relevant authorities applies and the result may be, but is not limited to, the issuance of an order, imposition of a fine, cancellation of municipal business licence, and/or a criminal charge against the offending stallholder.

The stallholder contract requires stallholders to comply with all applicable laws. Therefore, if a stallholder has violated any applicable law or at any time after a charge has been laid, the Market Supervisor may enforce the City's remedies under the stallholder contract, which includes the right to terminate the stallholder contract.

Breach of Stallholder Contract

The stallholder contract defines what constitutes a breach of contract and sets out the remedies available to the City when a breach has occurred. Pursuant to the Market By-law, the Market Supervisor has the authority to enforce the stallholder contracts.

A breach of the stallholder contract includes, but is not limited to:

- failure to pay the monthly stallholder fee;
- failure to carry the prescribed insurance;
- violation of or charge laid under any City by-law or any other law or regulation;
- an assignment or attempt to assign the stallholder contract or sublicense the stall;
- sale of products not listed in the stallholder contract;
- extension of the stall, products or any other thing, beyond the perimeter of the assigned stall (i.e. encroachment outside of the stall line); and,
- failure to keep a clean stall.

When a breach has occurred, the Market Supervisor may take one or more of the following actions:

- give a **verbal notice** indicating the nature of the breach and providing a period of time within which to remedy the breach;
- issue a **written notice** indicating the nature of the breach and providing a period of time within which to remedy the breach;
- require **payment of all fees** and other amounts owing by the stallholder, including payments not yet due;

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- **rectify the breach** and charge the costs of rectification to the stallholder;
- **suspend** the stallholder from the Market, where there has been a breach of the Zero Tolerance Policy for Violence in the Hamilton Farmers' Market;
- **suspend** the stallholder contract in an emergency or where the safety of life is involved;
- **terminate** the stallholder contract, and if the stallholder fails to remove his/her/its products and equipment within 10 days of termination, the Market Supervisor may remove them at the stallholder's expense;
- **waive** the breach;
- **educate** the stallholder with additional information about their obligations; and,
- **renegotiate** the stallholder contract; however, this remedy may only be used if it relates to the business name of the stallholder, the duration of the stallholder agreement, the size of the stall, or the product list of the stallholder. Any renegotiation is strictly at the Market Supervisor's discretion and any agreed upon amendment must be signed by the stallholder and Market Supervisor in order to become effective.

Factors to be Considered by Market Supervisor

When exercising his/her discretion and deciding which of the above actions to take, the Market Supervisor shall have regard to the nature and severity of the breach and other relevant considerations. The following factors shall at least be considered:

- impact of the breach on health and safety;
- impact of the breach on accessibility in the Market;
- impact of the breach on City assets;
- impact of the breach on the City's liability or potential liability;
- impact on Market operations; and,
- commission of the same or different breaches by the same stallholder.

Where a stallholder has committed 2 breaches and remedied them, and the stallholder then commits a 3rd breach (whether or not the breaches are all the same or of a similar or different nature), the Market Supervisor may immediately terminate the stallholder contract on written notice, having regard to at least the above-noted factors.

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Selected Examples of Breach of Contract

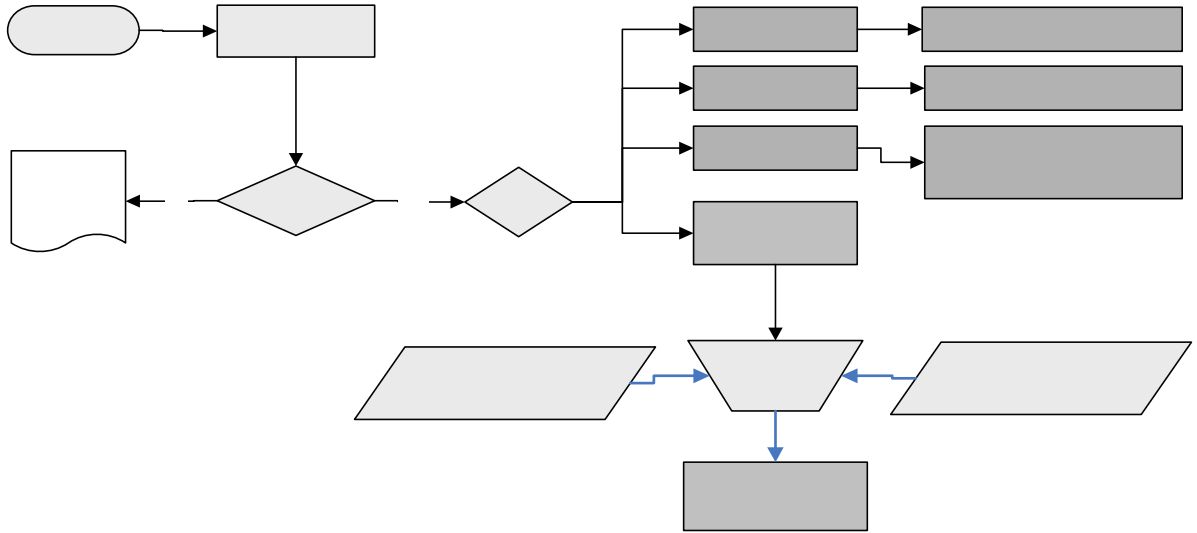
Failure to pay rent is a major breach of contract. The Market Supervisor may give the stallholder written notice to pay all owing rent (e.g. within 5 days). If the stallholder fails to pay, the Market Supervisor may terminate the stallholder contract.

Extension of a stallholder's equipment beyond the perimeter of his/her/its assigned stall may be a minor, moderate or major breach of contract. If the extension impedes accessibility within the Market or causes a safety hazard, the Market Supervisor may give the stallholder written notice to correct the breach (e.g. within 24 hours). If the stallholder fails to comply with the notice and fails to comply with a second written notice, the Market Supervisor may terminate the stallholder contract. However, if the extension does not affect accessibility, safety or otherwise negatively impact the Market or its patrons, and there is marked benefit to the stallholder (such as to fit equipment) the Market Supervisor may renegotiate the stallholder contract such that the width of the stall is increased (and the monthly fee would be increased accordingly).

A violation of a public health law (including but not limited to the *Health Protection and Promotion Act* and its regulations, the *Smoke-Free Ontario Act* and its regulations, Food Premises By-law, and Food Handler By-law) is a major breach of contract. If a stallholder is suspected of violating a public health law, the Market Supervisor would contact Public Health. Public Health would follow its own enforcement procedure with respect to the allegation. If it is found that a violation of public health law has been committed, the Market Supervisor may give the stallholder reasonable opportunity to remedy the breach, may suspend the stallholder contract, or may terminate the stallholder contract, depending in part on Public Health's conclusions.

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Summary Flowchart



Alleged
Violation

Document

Concern /

Complaint

No

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