



CITY OF HAMILTON

COMMUNITY SERVICES DEPARTMENT Recreation Division

TO: Chair and Members Emergency & Community Services Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: April 6, 2011	
SUBJECT/REPORT NO: YWCA Senior Centre Operating Agreement (CS11002) (City Wide)	
SUBMITTED BY: Joe-Anne Priel General Manager Community Services Department	PREPARED BY: Terry Quinn 905-546-2424, ext. 3080
SIGNATURE:	

RECOMMENDATION

- (a) That the Operating Agreement between the City of Hamilton and the Hamilton Young Women's Christian Association for the operation of two senior centres in Hamilton (attached as Appendix A to Report CS11002), be approved.
- (b) That the Mayor and City Clerk be authorized and directed to execute the Operating Agreement between the City of Hamilton and the Hamilton Young Women's Christian Association for the operation of two senior centres in Hamilton (attached as Appendix A to Report CS11002), in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

This report recommends that the City enter into an agreement with the Hamilton Young Women's Christian Association (YWCA) for the operation of two seniors centres in Hamilton.

The YWCA has provided senior citizen programming since 1975 with annual financial support from the City of Hamilton. The City currently provides a grant to the YWCA for the operation of senior centres at 75 MacNab Street and 52 Ottawa Street North in Hamilton, and includes these centres in its Recreation Guide listings of senior centres in Hamilton.

The 1975 Operating Agreement between the City and the YWCA expired in April 2000 and both parties have continued to honour the Agreement since that time. A renewed Operating Agreement (Appendix A to Report CS11002) has been drafted which addresses operational changes and issues that have developed since the 1975 agreement was signed.

Alternatives for Consideration – See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial:

There are no financial implications associated with the recommendations of Report CS11002. Funding levels outlined in the Operating Agreement remain unchanged from historic funding levels and are subject to the City's annual budget review process. Separate from this Agreement, however, staff have committed to bringing a recommendation to Emergency and Community Services Committee for an additional one time grant of \$25,000 for calendar year 2011 while staff reviews funding levels for the YWCA and other organizations funded through the operating grant process and prepares recommendations to Committee later in 2011.

Staffing:

There are no staffing implications associated with the recommendations of Report CS11002.

Legal:

The Operating Agreement (Appendix A to Report CS11002) provides either party, (the City or the YWCA) with an option to terminate the Agreement with twelve months notice. A decision by the City to terminate the Agreement with less notice does not eliminate the obligation to continue funding for the twelve month period.

HISTORICAL BACKGROUND (Chronology of events)

The Hamilton Young Women's Christian Association (YWCA) has provided senior citizen programming since 1975 with annual financial support from the City. The 1975

Operating Agreement between the City and the YWCA expired in April 2000 and both parties have continued to operate without an agreement since that time.

The YWCA currently operates senior centres at 75 MacNab Street and 52 Ottawa Street North in Hamilton. The City includes these centres in its Recreation Guide listings of senior centres in Hamilton with programming available to seniors from across the City. Each of the YWCA centres has a seniors' centre advisory committee which plays an active role in the planning and implementation of programs and activities in collaboration with the YWCA.

The current annual operating grant for both locations totals \$271,920, with no increase having been given since the agreement expired in 2000. In 2010, the YWCA requested an increase of \$25,000 to the annual operating grant to overcome deficits associated with running the program. City Council approved a staff recommendation to provide a one-time additional grant of \$25,000 in 2010 (Report CS10085). Further, staff advised the Emergency and Community Services Committee that they would undertake a review of all operating grants provided by the Recreation Division in 2011 and bring recommendations on funding levels to Committee at that time.

City and YWCA staff have developed a new, multi-year Operating Agreement which will support continued seniors programming at both YWCA locations. This Agreement outlines City requirements and address operating issues that have developed since the expiration of the 1975 Agreement.

POLICY IMPLICATIONS

There are no policy implications associated with Report CS11002.

RELEVANT CONSULTATION

City staff have worked with senior YWCA staff as well as the executive of the seniors' centre advisory committee (Hamilton Active Living Seniors Association) at the MacNab Street centre to review and resolve current operating issues. City staff have also reviewed operating requirements in this Agreement with the seniors' centre advisory committee at the Ottawa Street location.

The following Departments were consulted and support the recommendation in Report CS11002:

- Community Services Department, Strategic Services Division;
- Community Services Department, Recreation Division;
- City Manager's Office, Legal Services; and,

- Corporate Services Department, Budgets and Finance.

ANALYSIS / RATIONALE FOR RECOMMENDATION

The prior operating agreement was written in 1975 and expired in 2000. Changes to staff at both the YWCA and the City since that time have resulted in the loss of familiarity with past practices that evolved over time to address operational needs.

The proposed Operating Agreement (Attachment A to Report CS11002) provides clarity in the following areas:

- Guiding Principles which ensure the dignity and self worth of older adults are respected and they play an important part in the governance of programs and activities at the senior centres;
- Term of the Agreement;
- Amount of programming and activities provided at the centres;
- Facilities and hours of operation;
- Funding and revenue;
- Review process and dispute resolution; and,
- Legal and insurance requirements.

This Agreement will provide City staff and the YWCA with a set of mutually agreed requirements to ensure services are appropriately provided to Hamilton's senior citizens who access these centres.

ALTERNATIVES FOR CONSIDERATION

The proposed Operating Agreement is the result of collaborative efforts on the part of City and YWCA staff. While some elements of the Agreement could be changed at Council direction, not having a signed operating agreement is not an alternative.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Intergovernmental Relationships

- ◆ Maintain effective relationships with other public agencies

Social Development

- ◆ People participate in all aspects of community life without barriers or stigma

Healthy Community

- ◆ An engaged Citizenry

APPENDICES / SCHEDULES

Appendix A to Report CS110002: YWCA Seniors Centre Operating Agreement

**CITY OF HAMILTON
AND
YWCA**

SENIOR CITIZEN PROGRAM OPERATING AGREEMENT

This Agreement is made as of the 1st day of April 2010 (the “Effective Date”)

Between

City of Hamilton (the “**City**”),

and

The Hamilton Young Women’s Christian Association (“YWCA”),
a non-profit organization incorporated in the Province of Ontario

Whereas

- A. The YWCA owns and operates two facilities within Hamilton, located at 75 MacNab Street and 52 Ottawa Street North (individually a “Facility”, and collectively the “Facilities”) providing facilities including an auditorium, fitness room, gymnasium, an indoor swimming pool, women’s housing, meeting rooms and other amenities for the purpose of providing various community programs.
- B. The City currently funds a number of senior recreation centres in the City of Hamilton under various operating and management models, including the Facilities (the “Senior Centres”) and other centres which are not owned, operated or otherwise affiliated with the YWCA.
- C. Senior citizens may purchase senior centre memberships, thereby entitling them to participate at the Senior Centres (such membership holders hereinafter referred to as the “Members”).
- D. The City has provided annual operating grants to the YWCA for the purposes of providing programming and activities for the Members at the Facilities.
- E. The City and YWCA desire to continue taking advantage of the YWCA’s experience in offering recreational, health and fitness programming for and in collaboration with senior citizens.
- F. The parties desire to set forth the terms and conditions of their relationship in this Agreement with the understanding that specific services provided by each party and the operating relationships may change over the course of this Agreement in order to meet community needs.

- G. The City and YWCA commit themselves to work together in a collaborative spirit and to deal with each other with fairness, respect, cooperation, and good faith in the performance of this Agreement.

Now therefore in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Parties to the Agreement

The “City” is the City of Hamilton, 71 Main Street West, Hamilton, Ontario L8P 4Y5, with its principal contact for purposes of this Agreement as follows:

Director, City Wide Services
City of Hamilton Recreation Division
77 James Street North Suite 400
Hamilton, ON L8R 2K3
Phone: 905-546-2424 x-4689
Fax: 905-546-2338

The “YWCA” is The Hamilton Young Women’s Christian Association, 75 MacNab Street South, Hamilton, ON L8P 3C1, with its principal contact for purposes of this Agreement as follows:

Chief Executive Officer, YWCA Hamilton
75 MacNab Street South
Hamilton, ON L8P 3C1
Phone: 905-522-9922 x101
Fax: 905-522-1870

Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing, by facsimile (with transmission confirmation) or by first class mail (postage prepaid) at the above addresses. Each party may change the address set out above by notice to the other in accordance with this section. Notices delivered by personal delivery will be deemed to have been delivered on the date of delivery. Notices delivered by facsimile will be deemed to have been delivered on the date sent, but if the date sent is not a business day, then on the first business day thereafter. Notices delivered by first class mail will be deemed to have been received three business days after mailing thereof.

2. Guiding Principles

Both parties recognize that funding under this Agreement is for the operation of programming and activities for senior adults with a desire to play an active role in the governance, planning and implementation of programs, in collaboration with the YWCA and the City. The YWCA agrees to use the following Principles to guide program development, operation and potential changes as required to meet community needs:

- 2.1 Older adults will play an active role in the governance (decision making), planning and implementation of programs and activities in collaboration with the YWCA. For the purpose of fulfilling this role, older adults will be asked to form a “Senior Centre Advisory Committee” at each Facility. The Senior Centre Advisory Committee that is established at each Facility will serve as the primary method for older adults to take an active role in these efforts.
- 2.2 YWCA will assist the Senior Centre Advisory Committees to create and maintain an environment that affirms the dignity and self worth of older adults and that enhances an atmosphere of wellness through provision of programming, activities and dedicated space for the benefit of and use by older adults.
- 2.3 YWCA will enable and facilitate the participation of older adults in the programs and activities offered. Staff will respect older adults’ right to exercise autonomy and independence, to exercise their unique skills, talents and abilities and to continue to develop their potential as experienced adults, and provide assistance when sought in these endeavours.
- 2.4 Current as well as expanded or new programs and activities will be determined based on a collaborative process with Senior Centre Advisory Committees and to reflect community needs as well as current program participation, subject to the terms of this Agreement.

3. Term

The Agreement will commence on the Effective Date and will terminate on March 31, 2015 (the “Term”), unless earlier terminated by either party as provided in Section 12 of this Agreement. This Agreement may be extended beyond the initial Term if both parties agree in writing to such extension(s).

4. Senior Programming and Activities

- 4.1 YWCA will make available for sale and will sell at the Facilities, senior centre memberships to senior citizens for use at any Senior Centre in the City of Hamilton. With respect to such memberships, YWCA:
 - a. will charge the fee established by the City’s User Fees and Charges By-law;
 - b. abide by such policies and procedures with respect to the sale of senior centre memberships as communicated by the City from time to time;
 - c. agrees that the list comprising the “Senior Centres” will be determined by the City from time to time; and,
 - d. agrees that as at the Effective Date, the number of current valid memberships sold by the YWCA are estimated to be 987, comprised of 617 sold at the MacNab Street location and 370 sold at the Ottawa Street location.

- 4.2 YWCA will provide programming that meets the needs and expressed interests of the Members.
- 4.3 YWCA will provide a minimum of 32 hours of programming per week for the Members at each facility, which will include a mix of health, wellness and physical activities, recreation, arts and crafts, as well as health promotion/education programming.
- 4.4 YWCA will make allowance for special events or activities run by the Senior Centre Advisory Committees, with targeted frequency of not less than 15 per year. YWCA will cause its staff to assist the Senior Centre Advisory Committees with planning and management.
- 4.5 YWCA will cause its staff to provide the set-up and take-down of equipment as may be needed for routine or special events or activities that are scheduled within the standard hours of operation (as defined in Attachments A and B) for the Facilities.
- 4.6 Set-up and take-down for special events or activities scheduled outside of the standard hours of operation (as defined in Attachments A and B) are the responsibility of the Members. YWCA will cause its staff to provide assistance in seeking volunteer support to assist with set-up and take-down. Any honorariums to be paid to volunteers will be the responsibility of the Members and not the responsibility of the City.
- 4.7 For clarity, the City shall in no way be liable for the operation of any programming, special events or activities conducted at the YWCA.

5. Facilities and Hours of Operation

- 5.1 YWCA will provide Members with a space within the Facilities for the gathering and enjoyment of Members as well as to hold programs and activities offered as part of this Agreement. Each Facility will designate Dedicated Space (which will include the spaces set out in Attachments A and B) for primary use by the Members and for programs/activities offered to Members. It is the intent that all programming offered under the terms of this Agreement be provided in this Dedicated Space.
- 5.2 YWCA will be permitted to charge program fees to Members for specialty programs and use of space beyond the scope of this Agreement, such as use of the fitness centre and aquatic programming, which fees will be adjusted from time to time to reflect the costs incurred by the YWCA for room rentals and instructors' costs.
- 5.3 YWCA will be permitted to use any Dedicated Space for its own purposes outside of the standard hours of operation for the Facilities. In addition, YWCA may seek to use the Dedicated Space from time to time during standard hours of operation, and the YWCA will consult with the Senior Centre Advisory Committee and the YWCA's seniors program staff as to availability at such times and provide reasonable notice.

5.4 Dedicated space requirements and hours of operation are outlined in Attachment A (MacNab Street location) and Attachment B (Ottawa Street location) of this Agreement.

6. Operations and Maintenance

6.1. YWCA is responsible for the overall delivery for programs and activities funded under this Agreement and for performance of all duties that are usual and customary and normally associated with running membership-based recreational, physical activity and educational programming for senior citizens.

6.2. YWCA will ensure that routine cleaning is performed daily on the days that the Facilities are open. YWCA will ensure that additional maintenance required to keep the Facilities and equipment therein in a safe, clean and operational manner is completed in a timely and professional fashion.

7. Funding and Revenue

7.1 YWCA will receive the following funding related to services outlined in this Agreement:

- (a) The City will provide an annual operating grant, which payments will be made quarterly, in equal installments, and will be payable quarterly in advance, on April 1st, July 1st, October 1st and January 1st each year during the Term. The amount of the annual operating payments will be determined annually as part of the City budget process and confirmed with the YWCA as an update to Attachment C of this Agreement. These payments are the sole financial obligation of the City under this Agreement.
- (b) All revenue from City of Hamilton senior centre memberships sold at the YWCA locations at the fee established by the City.
- (c) Program registration fees paid by Members for programs and activities conducted at the Facilities.

7.2 The payment of any obligations of the City described in this Agreement and the continued provision of services by the YWCA is subject to the annual City budget approval for said payments by the City Council. This provision does not affect any obligation of the City for payment of funds attributable to a fiscal year for which an annual budget has been approved.

7.3 YWCA will not charge any fees or costs to the Members or the City except as expressly provided in this Agreement.

8. Periodic Reporting and Review

YWCA will provide to the City reports on the operation of the Facilities, including:

- 8.1. The presentation of an annual budget and the prior year's actual financial information related to the operation of the Facilities in a form suitable for the City's requirements and acceptable to the City, to be provided annually in May to the City.
- 8.2. A copy of the YWCA's audited financial statements will be provided to the City annually within ninety (90) days after that year's annual meeting of the members of the YWCA.
- 8.3. A program report highlighting programs with activity levels, membership levels and total registration numbers will be reported twice annually to the City, within 30 days after the conclusion of each of the fall/winter session and the spring/summer session.
- 8.4. Program registration fees/rates will be submitted to the City for review and approval as part of the annual budget review, notwithstanding that the City is not responsible for paying these fees/rates. Fees charged to Members for special events or activities do not require approval by the City and will be based on a cost recovery basis.
- 8.5. Reviews and discussions of program offerings, issues and items related to this Agreement of interest to either party may occur periodically at the call of either the City or YWCA.

9. Legislative Compliance

- 9.1. The parties agree that there will be no discrimination based upon any of the prohibited grounds outlined in the *Human Rights Code*, R.S.O. 1990, c. H.19 in any activity or membership offered pursuant to this Agreement.
- 9.2. YWCA, its directors, officers, employees, agents and volunteers will hold confidential and will not disclose to any person, other than the City, at any time during or following the Term of this Agreement, except where required by law, any information or document that tends to identify any individual in receipt of services without obtaining the written consent of the individual or, if the individual is incapable of consenting to the disclosure, the individual's attorney for personal care or guardian of the person, prior to the release or disclosure of such information or document.
- 9.3. Any information which is collected by City under this Agreement is subject to the rights and safeguards provided for in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56. Any personal health information which is collected by the City or YWCA under this Agreement is subject to the

rights and safeguards provided for in the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3.

9.4 The City and YWCA agree that they and their employees and representatives, if any, will at all times comply with any and all applicable federal, provincial and municipal laws, ordinances, statutes, rules, regulations and orders in respect of the performance of this Agreement.

9.5 A reference to any Act, by-law, rule, regulation or guideline or to a provision thereof will be deemed to include a reference to any Act, by-law, rule, regulation or guideline or provision enacted in substitution therefore or amendment thereof.

10. Insurance and Indemnification

10.1 YWCA will maintain and provide proof of Commercial General Liability Insurance coverage of not less than \$5 million per occurrence, endorsed to show the City of Hamilton as an additional insured party.

10.2 YWCA agrees to defend, indemnify and save harmless the City, its servants, agents and employees against all actions, suits, claims, assessments, costs, damages and any kind whatsoever, including reasonable legal fees, which the City may suffer as a result of any negligent act or omission or willful misconduct of YWCA or those persons authorized to act on its behalf as a result of the performance or non-performance of the terms and conditions of this Agreement or any other thing done in connection with this Agreement.

11. Dispute Resolution

Except as otherwise specifically set forth in this Agreement, any dispute concerning the implementation of this Agreement or the rights and obligations of the parties will be resolved, if possible, by the Recreation Division Manager assigned by the City to administer this Agreement and a representative of the YWCA. For any disputes which cannot be resolved within thirty (30) days by these individuals, either party may request that the Director of Recreation City Wide Services attempt to resolve the dispute with the YWCA CEO.

12. Termination

This Agreement may be terminated in the following manner:

12.1 In the circumstances of a case of serious default, such as an instance of gross misconduct or professional negligence, or where the safety or well-being of individuals will be at risk because of the nature of the default, the non-defaulting party may terminate this Agreement immediately upon written notice to the other party; and/or

12.2 Either party may terminate this Agreement for any reason upon at least twelve (12) months' written notice to the other party.

Until the effective date of any termination, the YWCA will continue to deliver the services required hereunder and the City will continue to make the payments required hereunder without deduction or setoff. In the event of termination of this Agreement, the City and YWCA agree to discuss settlement of resulting costs.

13. General

13.1 The parties acknowledge and agree that the recitals at the outset of this Agreement are true and correct.

13.2 Each of the parties hereto will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement, and will use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent, the provisions of this Agreement.

13.3 This Agreement will be governed by and construed in accordance with the laws in force in the Province of Ontario and the courts of such Province will have exclusive jurisdiction with respect to any dispute arising hereunder.

13.4 All of the terms of the Attachments are incorporated into this Agreement. This Agreement and its Attachments constitute the entire Agreement between the parties with respect to the subject matter herein, and cancels and supersedes any prior understandings and agreements between the parties with respect to the subject matter herein.

13.5 All additions or modifications to this Agreement must be made in writing and must be signed by both parties, except that any amendment to Attachment C will be made by the City in accordance with section 7.1 of this Agreement.

13.6 If any provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will no longer form part of this Agreement.

13.7 No failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver of such right, power or privilege.

13.8 The relationship of the parties is that of independent contractors and not that of employer-employee, principal-agent, joint venture or partner.

13.9 This Agreement may not be assigned by either party without the prior written consent of the other, and will ensure to the benefit of and be binding on the parties, their respective successors and permitted assigns.

13.10 The headings to each section are inserted for convenience of reference only and do not form part of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

THE HAMILTON YOUNG WOMEN'S CHRISTIAN ASSOCIATION

By: _____

Name: _____

Title: _____

I have authority to bind the Corporation.

CITY OF HAMILTON

By: _____

Name: _____

Title: _____

I have authority to bind the City.

ATTACHMENT A

**CITY OF HAMILTON
AND
YWCA**

SENIOR CITIZEN OPERATING AGREEMENT

Space Requirements MacNab Street location

Dedicated space at the MacNab Street location includes the following areas:

- Ground floor reception and central area (SW corner of YWCA building);
- Blue and Green general program rooms;
- Kitchenette;
- Boutique;
- Auditorium to be used as a large multi-purpose space;
- Storage; and,
- Dedicated washrooms.

Standard Hours of Operation

Dedicated space will be kept for primary use by Members during the following standard hours of operation:

- Weekdays 9:00 am – 4:30 pm
- Saturday 9:00 am – 1:00 pm

ATTACHMENT B

**CITY OF HAMILTON
AND
YWCA**

SENIOR CITIZEN OPERATING AGREEMENT

Space Requirements Ottawa Street location:

Dedicated space at the Ottawa Street location includes the following areas:

- Large General Purpose Room
- Small General Purpose Room
- Kitchen
- Library / Lounge
- Computer Lab
- Dedicated Storage
- Shared Washrooms

Standard Hours of Operation:

Dedicated space will be kept for primary use by Members during the following standard hours of operation:

- Weekdays 9:00 am – 4:30 pm

ATTACHMENT C

**CITY OF HAMILTON
AND
YWCA**

SENIOR CITIZEN OPERATING AGREEMENT

Annual Operating Grant

As outlined in Section 7.1 of this Agreement, the City will provide an annual operating grant to the YWCA for the purpose of providing dedicated space and programming for Members at the YWCA's MacNab Street location and Ottawa Street location. The amount of the annual grant will be determined annually as part of the City budget process.

For 2010, the amount of the annual operating payments will be \$271,920 which will be paid quarterly as outlined in the Agreement, commencing on April 1st, 2010. In addition, as approved by Council on October 13, 2010, and outlined in Council Report CS10085, the YWCA will be granted an additional \$25,000 in 2010, bringing total grant funding to \$296,920 for calendar year 2010.

For 2011, the base amount of the annual operating grant will remain unchanged at \$271,920. Staff will bring a request to the Emergency and Community Services Committee of Council for an additional \$25,000 again in calendar year 2011. In addition, Recreation staff will be preparing a Report to the Community Services Committee later in 2011, reviewing funding amounts for all Recreation Programs funded with annual operating grants, recommending changes to the funding amounts where warranted. The YWCA will have opportunity to address the recommendations of the Report at that time. Approved recommendations will be referred to the 2012 budget process.