CITY OF HAMILTON

COMMUNITY SERVICES DEPARTMENT
Culture Division

SUBJECT: Appeal Process for Hamilton Farmers’ Market Stallholders Suspended or Terminated Contracts (ECS08009) (Ward 2)

RECOMMENDATION:

That staff be directed to prepare an amendment to Hamilton Farmers’ Market By-law No. 92-310 to give a stallholder the right to request the Emergency and Community Services Committee to reconsider the General Manager of Community Services’ decision to suspend or terminate the stallholder’s contract, by appearing as a delegation before the Committee.

Joe-Anne Priel
General Manager,
Community Services Department

EXECUTIVE SUMMARY:

Staff was requested to examine an appeal process for Hamilton Farmers’ Market Stallholders whose contracts are suspended or terminated because of violations of By-Law No. 92-310. Currently, the General Manager of Community Services has the delegated authority to suspend or terminate a stallholder’s contract for violation(s) of By-law No. 92-310.

There is no legal requirement that the City provide a stallholder with a right of appeal or reconsideration where his or her contract has been suspended or terminated. Unlike other City departments who may be mandated by statute to provide a hearing to individuals who dispute a City decision, a stallholder does not have that same right to a
hearing because the General Manager of Community Services' decision is not one based on statute.

Although there is no legal requirement or procedure to provide an appeal or reconsideration process in the Farmers' Market By-law, it is recommended that a reconsideration of the decision to suspend or terminate be heard through delegation to the Emergency and Community Services Committee, if requested by the stallholder.

**BACKGROUND:**

At the Emergency and Community Services Committee (the “Committee”) meeting of June 20, 2007, the Committee approved the by-law to amend Hamilton Farmers' Market By-law No. 92-310.

One of the provisions of the amending by-law bestows the right to the General Manager of Community Services to suspend a stallholder's contract for a specified period of time or terminate the contract where the stallholder fails to comply with any provision of the by-law. This right to suspend or terminate the contract had been previously bestowed upon the now defunct Legislation Committee of City Council.

Prior to suspending or terminating a contract and depending on the nature of the breach, the General Manager will want to issue a warning to the stallholder with a corrective action plan.

At the said Committee meeting, the Committee also directed staff to investigate an appeal process for stallholders whose contracts have been suspended or cancelled pursuant to the by-law and who wish to appeal the decision of the General Manager to suspend or cancel such contracts.

Currently, a stallholder may challenge the General Manager’s decision to suspend or terminate his or her contract through the courts.

**ANALYSIS/RATIONALE:**

A well-operated public market has many benefits for a liveable community. Clearly defined expectations for both the stallholders and staff, in the form of by-laws, will contribute to positive business relationships.

Appealing to the Emergency and Community Services Committee provides stallholder's with a right to appeal or require reconsideration of the General Manager's decision to suspend or terminate the contract to the Emergency and Community Services Committee. As a panel of individuals sitting on the Committee, as opposed to the City Clerk who is only one individual hearing and deciding the appeal, fairness to both the stallholder and the General Manager would be more likely. As well, the Committee is already structured to receive and hear delegations at meetings. Furthermore, such
experience and protocol would facilitate implementing an appeal process through Hamilton’s Farmers’ Market By-law.

An appeal to a City committee lies in the Public Market By-law for the City of Kingston, which provides as follows:

“7. If, at any time, the [Building and Licensing] Department determines that the operation of a leased stall does not conform to the requirements of this By-Law or the lease issued under this By-Law, it may terminate the lease.

8. A person whose application for a lease or renewal of a lease has been refused, or a person whose lease has been terminated may, within fifteen days of being notified of the Department’s decision, apply to the Administrative Policies Committee for a review of the decision.

9. A person who has applied for a review of the Department’s decision may make written representations and/or appear before the Administrative Policies Committee when it reviews the matter.

10. The Administrative Policies Committee will review the matter and may affirm the decision of the Department or direct it to issue, renew or reinstate the lease.

11. Decisions of the Administrative Policies Committee are final.”

For an appeal to the Emergency and Community Services Committee to be viable the appeal or reconsideration process must contain: a timeframe within which the appeal must be exercised (for example X days from receiving the notice of contract suspension or ending); a form of appeal notice (which the stallholder will have to complete and submit within the prescribed time); a cost to file the appeal notice; and, any other relevant forms and notices would have to be established. Legal Services will help to determine the forms and notices required. In addition, appeal submissions by the stallholder and response submissions from the General Manager of Community Services could be made in writing or stated verbally, although in this case, the appearance of the stallholder as a delegation before the Committee is recommended.

**ALTERNATIVES FOR CONSIDERATION:**

There are two alternatives for consideration.

**Option #1 - Appeal to the City Clerk**

The City can provide the stallholder with a right to appeal or require reconsideration of the General Manager’s decision to suspend or terminate the contract to the City Clerk. Such an appeal to the City Clerk lies in the Farmers’ Market By-law for the City of Cambridge, which provides as follows:
“14. Any permit may be cancelled at any time for breach of any of the provisions in this by-law, by the Market Clerk(s) or designate at their discretion subject to an appeal to the City Clerk or designate. A written appeal must be received by the City Clerk(s) or designate within seven days of notification of the cancellation.”

From a practical point of view, providing the stallholder with a right to appeal the General Manager’s decision to the City Clerk is not recommended.

The City Clerk is a city official; therefore, allowing an appeal process to the City Clerk would essentially be pitting one city official against another (that is the General Manager of Community Services). If the City Clerk allowed a stallholder’s appeal, the City Clerk would be opposing the General Manager. On the other hand, if the City Clerk did not allow a stallholder’s appeal, the stallholder may argue bias.

Furthermore, it is not within the current mandate of Hamilton’s City Clerk to hear and decide appeals or reconsiderations of decisions of other city officials.

Option #2 - Appeal to Another City Official

Instead of appealing to the City Clerk or to the Emergency and Community Services Committee, there is the final option of having another city official or committee receive and decide the stallholder’s appeal. From a practical point of view, however, allowing an appeal to go to the General Manager, designate or committee from another department whose mandate within the City is unrelated to the Farmers’ Market is not recommended.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial**

There are no financial implications associated with the recommendation of Report ECS08009.

**Staffing**

There are no staffing implications associated with the recommendation of Report ECS08009.

**Legal**

Acceptance of the recommendation will require an amendment to Market By-law No. 92-310, as amended.
POLICIES AFFECTING PROPOSAL:

Not applicable.

RELEVANT CONSULTATION:

Supervisor, Hamilton Farmers’ Market, Culture Division, Community Services Department.

Solicitor, Legal Services Division, Corporate Services Department.

City Clerk, Clerk’s Section, City Clerk Division, Corporate Services Department.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Public services and programs are delivered in an equitable manner, coordinated, efficient, effective and easily accessible to all citizens.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Human health and safety are protected. The Hamilton Farmers’ Market ensures that residents in the City’s core have access to fresh food products at reasonable prices.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported. The Hamilton Farmers’ Market is seen as an important catalyst in downtown renewal. In addition, it fulfils an important destination for the tourist market.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No