CITY OF HAMILTON

COMMUNITY SERVICES DEPARTMENT
Culture Division

TO: Chair and Members
   Emergency & Community Services Committee

WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: October 6, 2010

SUBJECT/REPORT NO:
Busker Program (CS10096) (City Wide)
(Outstanding Business List Item “U”)

SUBMITTED BY:
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General Manager
Community Services Department

PREPARED BY:
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SIGNATURE:

RECOMMENDATION

(a) That staff be directed to develop a City of Hamilton Policy for Street Performance, in consultation with local buskers/street performers, Hamilton Police and related stakeholders, and report back to Emergency and Community Services Committee.

(b) That Item “U”, respecting the Street Buskers, be identified as complete and removed from the Emergency & Community Services Committee’s Outstanding Business List.

EXECUTIVE SUMMARY

In early 2010, local media and social networking coverage of tickets issued to buskers by police in Hamilton’s downtown core has raised awareness of the issues and opinions associated with busking among the public, arts community, buskers and the municipality.
Anecdotally, there are few, if any, full time buskers in Hamilton and the majority of those busking are professional or skilled amateur performers who busk on an occasional basis. Compared to other municipalities, Hamilton has a low level of busking activity. Currently, there has been no need to regulate legitimate busking activity or to address issues such as limiting the number of performers in a specific area or ensuring equitable access to key busking locations.

The few complaints associated with buskers or panhandlers in Hamilton can be addressed within existing legislation or by-laws (e.g. aggressive panhandling, trespassing, blocking sidewalks or roadways and excessive noise).

While implementing a regulatory-based program would provide parameters for performance by approved performers, it would require a level of monitoring and enforcement that is neither necessary, given the scale of busking in Hamilton, nor feasible within the available resources of the City or community stakeholders.

Hamilton has a strong music and performance tradition and areas of the city (e.g. James St.) which are growing as cultural destinations. Street performance is part of the animation of public spaces, such as downtowns, and therefore should be encouraged and promoted. A City of Hamilton Policy for Street Performance, developed in consultation with local buskers, Hamilton Police, and other stakeholders is needed. This policy would include a code of behaviour for both the performers and the public. The policy will be sufficient to address any current issues related to busking at this time.

Alternatives for Consideration – See Page 8

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: There are no financial implications associated with the recommendations in Report CS10096.

Staffing: There are no staffing implications associated with the recommendations in Report CS10096.

Legal: There are no legal implications associated with the recommendations in Report CS10096.

HISTORICAL BACKGROUND

A busker is one who provides entertainment in the public realm typically for a voluntary gratuity from audience members. There have been performances in public places for
gratuities in every major culture in the world, dating back to antiquity\(^1\). A busker includes, but is not limited to musicians, acrobats, jugglers, mimes, magicians and other performers. Other terms for a busker includes street entertainer, street performer, minstrel or troubadour

At its meeting of June 2, 2010, Emergency & Community Services Committee approved the following motion:

**Municipal Best Practices for Working with Street Buskers**

WHEREAS, there have been a series of recent negative interactions between street buskers and Hamilton Police Services, some involving issuing of tickets, and;

WHEREAS, Hamilton Police Services is mandated to enforce the Safe Streets Act, and;

WHEREAS, there has been some public discomfort relating to how the street buskers have been treated by Hamilton Police Services, and;

WHEREAS, in the past there has been an Organized Street Buskers Program (part of the previous “Positively Downtown” program) that involved identifying licensing; and, specific locations for the buskers to work, and;

WHEREAS, it is important for street buskers to work within various requirements, while on the other hand, retaining the “space” for creativity.

THEREFORE BE IT RESOLVED:

That staff be directed to review municipal best practices for working with street buskers and report back to the Emergency & Community Services Committee with recommendations for a “Made in Hamilton” program.

Although busking is a legal activity within Canadian law, buskers are not licensed or regulated in Hamilton. In Hamilton, tickets issued to buskers, by Hamilton Police, are generally issued under the Province of Ontario’s, Safe Streets Act\(^2\) which prohibits “soliciting in an aggressive manner” in public spaces (and other defined spaces). The impetus for the Safe Streets Act was negative public reaction to what the media billed as “squeegee kids”; an individual(s) who swarms a car stopped at an intersection, cleans the windows and requests a donation. While intended to address panhandling, the Safe Streets Act may be, and has been, interpreted to apply to busking given that busking has an intention to solicit donations for performance.


\(^2\) *Safe Streets Act*, R.S.O. 1990, S.O. 1999 c. 8, s. 2 (1).
Although busking and panhandling are inherently different, they share a donation transaction activity. However, the audience’s option to donate in response to enjoyment of performance is the underlying principle of busking. Busking therefore is a two way transaction and the request for donation is passive. On the other hand, panhandling includes an active request for donations without a performance and is a one way transaction. The Ontario Safe Streets Act is meant to address the aggression of the request and not the fact that there is a donation based transaction.

Tickets for busking may also be issued under the Province of Ontario’s Trespass to Property Act by both Hamilton Police and Hamilton By-law Officers. Buskers can be fined when performing on private property (such as in malls) without permission. Bylaw tickets can also be issued in response to issues such as noise.

The City of Hamilton administered a busker inspired program from approximately 1997–2001 as part of the “Positively Downtown” program. Approximately ten entertainers were hired and scheduled to perform at a series of locations in the downtown core. The locations were designated by a painted yellow star on the sidewalk. Identification in the form of a wearable “permit” was provided to the performers. Although not technically buskers as they were contracted by the City, they provided street performances in a busker like manner and were permitted to collect donations. Changes to program priorities in Culture and Recreation during amalgamation resulted in the discontinuation of this program.

As a response to the recent ticketing of two buskers in Hamilton, a segment of the arts community organized two Busker Crawls on James St. North, Friday April 23 and June 25, 2010 which were billed as “an evening of music and entertainment….and protest through a positive celebration”. Performers at both events were asked to sign-in and the first Crawl had 62 registered performers. A Hamilton based Facebook site “Busking is art, not begging” was established in April 2010, and as of early June has over 1,000 members and the site has recorded a range of diverse and lively dialogue on busking. Several pro-busking videos and blogs have been electronically posted.

On May 25, 2010, City of Hamilton Chief of Police Glenn De Caire attended the meeting of the Hamilton Arts Advisory Commission (AAC) to discuss busking. The AAC expressed concerns about the recent incident of ticketing two street artists/buskers in the community. The desirability of a busker permit or program to guide busking activities in public spaces was discussed. The following AAC motions were approved:

**Motion:** THAT the Arts Advisory Commission requests Councillor McHattie to bring a motion forward to the Emergency and Community Services Committee directing Culture Division staff to explore municipal best practices in managing busking activity in public places, and to report back to E&CS on their findings.

(Logan/ Randazzo-Beckett)

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3 *Trespass to Property Act, R.S.O. 1990*
Motion: THAT the AAC seek to continue the dialogue started with Police Chief De Caire about the enforcement of the Safe Streets Act and its impact on street performers by exploring the possibility of holding a meeting between representatives of the Police Service and the busking community.
(Randazzo-Beckett/Lane)

In addition, The Cleanliness & Security in the Downtown Core Task Force discussed buskers at its May and July 2010 meetings and expressed support for animation in the downtown and interest in a licensing program.

Currently the Culture Division, Arts and Events Section receive approximately 30 requests per summer for a busker licence or permit. At present a busker licence or permit is not required to perform within the city and this information is provided in response to the permit request.

POLICY IMPLICATIONS

There are no policy implications associated with the recommendations in Report CS10096.

RELEVANT CONSULTATION

External consultation:

- City of Burlington, Parks and Recreation Department, provided information on the City’s new busker program delivered in partnership with Creative Burlington and shared research on programs of other Canadian municipalities.

- Creative Burlington provided information about the administrative support required for delivery of a modest busker program.

- City of Calgary, Recreation Department, provided background on the cancellation of its municipally regulated busker program and successful shift to a community based self-regulated busker program.

- City of Barrie, Infrastructure, Development & Culture Division, provided details about its new busker program and shared research on programs of other Canadian municipalities.

- Cody Lanktree, community advocate, provided insight into the size and concerns of the Hamilton busker community.
• Efforts to meet with representatives from the Downtown Business Improvement Area (BIA) and International Village BIA were unsuccessful in the timeframe of the development of this report.

Internal consultation:

• Arts Advisory Commission, Citizen Volunteer Committee, was briefed on the staff recommendations and expressed support for the direction and willingness to play a liaison role with the busking community and police.

• Task Force on Cleanliness and Security in the Downtown Core expressed support for busking as part of downtown animation.

• Hamilton Police Services:
  Provided clarification on existing regulatory frameworks, community concerns and expressed support for busking as part of civic animation.

• Arts and Events Section, Culture Division, Community Services Department: Provided background on the former Star program

• Downtown and Community Renewal Division, Planning and Economic Development Department:
  Expressed support for busking as part of downtown animation, provided insight into the concerns of business and was supportive of the staff recommendation.

• Municipal Law Enforcement, Planning and Economic Development Department:
  Provided information on existing regulatory frameworks and expressed support for the staff recommendation.

• Ward 2 Councillor:
  Provided insight into community concerns about busking and panhandling and expressed support for the staff recommendation.

### ANALYSIS / RATIONALE FOR RECOMMENDATION

Busking is part of vibrant areas and contributes to the animation of public spaces. Buskers entertain tourists and members of the general public and as such are using busking as a valid means to earn a living. Given Hamilton’s strong artistic community, and the desire to animate specific areas such as the downtown core, busking should be encouraged and promoted to the public as a positive and welcomed activity in Hamilton. Spectators to a busking performance have the option of providing a donation to the busker, and as such, busking is not equivalent to begging.
The methods and degree to which busking is regulated varies across communities. See Appendix A attached to Report CS10096 for comparison of Busker Programs. Regulation, where in place, is a method to minimize complaints, risk and other problems associated with buskers operating in the public realm. Such programs can also support and validate busking and the right for personal expression. The selling of a related product, such as CDs, may require licensing in some municipalities (in Hamilton this would be required under the Hawker/Peddler licence). However, it is difficult to regulate all busking activities throughout a municipality and transient and casual busking will still occur.

Generally the implementation of regulations and programs appear to be in response to public or business-based complaints which typically include noise, impediments to sidewalk traffic, or the nature or quality of performances. There is also a desire by authorities to minimize risk to the public (e.g. from use of fire or dangerous implements in performance). The busking community (or elements of it) may seek a level of regulation to address competition for desirable performance spaces (such as within the Toronto Transit Commission). Similarly there are buskers who support regulation as a way to distinguish between those who participate in busking as part of a professional performance practice, those who participate in it on an as-needed revenue basis, and those who are panhandlers with no, or minimal, performance element.

A contrary view supports unregulated busking to preserve the spontaneity of the activity and recognizes the difficulties in determining “quality” busking activities. There is also an element of self selection in that “poor” buskers do not engage their audience and do not make money and cease busking and “good” buskers are inherently more successful and continue.

A key Hamilton issue is a perception of busking as begging and a desire to manage panhandling, especially in the downtown core. While a licence-based program would provide a form of identification and legitimacy to approved performers, it would require a level of infrastructure and bureaucracy that is neither necessary given the scale of busking in Hamilton nor feasible within the available resources of the City or community stakeholders.

Developing a Policy for Street Performance in conjunction with a public communication strategy on busking and its role in animating a city will provide awareness of the legitimacy of busking and a distinguish it from panhandling.

The elements of the policy will include but not limited to:

**Glossary of Terms**
- Definitions such as Busker, Street Performer, Performance, Soliciting of funds, Offering for sale Dangerous materials and implements, Circle acts and Walk-by Acts.
Objectives
Example:
• To encourage activities that contribute colour and life to the Municipality
• To minimize complaints, criticism and other problems associated with buskers operating in the Municipality, while supporting the rights of individuals to express themselves in a democratic manner

Principles
Example:
• Buskers may make an important contribution to the cultural life of an area by reflecting styles, values and the issues of society at large.
• Buskers provide entertainment and thought provoking experiences to tourists and members of the general public.
• Busking is a valid means for people to make a living.
• Busking should not unduly interfere with pedestrian traffic, the conduct of business, or contribute to a lack of safety.

Conditions
Example:
• What is and is not considered to be busker activity
• By-laws
• Safety
• Cleanliness

ALTERNATIVES FOR CONSIDERATION

Alternative 1
Development of a Street Performers Licensing Program Administered by the City of Hamilton

This Program would require the development of a by-law, fee structure, program framework, licence requirements, contract, evaluation process, staffing requirements, budget and communications strategy.

Financial: The financial implications associated with Alternative 1 will be determined based on the scope of the Program.

Staffing: The staffing implications associated with Alternative 1 are estimated to be 0.25 – 0.5 FTE depending on the scope of the Program.

Legal: Alternative 1 requires by-law development and approval.
Policy: A Policy for Street Performance would be required.

Alternative 2
Development of a Street Performer Licensing Program Administered by an External Stakeholder
The program elements are the same as Alternative 1.

Financial: This program would be delivered on a fee for service basis estimated to be $15,000 - $25,000 depending on the scope of the Program.

Staffing: There are no staffing implications associated with Alternative 2.

Legal: There are no legal implications associated with Alternative 2.

Policy: A Policy for Street Performance would be required.

CORPORATE STRATEGIC PLAN


Skilled, Innovative & Respectful Organization
• A culture of excellence
• More innovation, greater teamwork, better client focus
• Council and SMT are recognized for their leadership and integrity

Growing Our Economy
• Competitive business environment
• An improved customer service
• A visitor and convention destination

Social Development
• Hamilton residents are optimally employed earning a living wage
• People participate in all aspects of community life without barriers or stigma

Healthy Community
• An engaged Citizenry

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.
Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
APPENDICES / SCHEDULES

Appendix A to Report CS10096 – Comparison of Municipal Busker Programs.
Comparison of Busker Programs

A review of practices in other municipalities illustrates that busker programs have common elements but the approach in the different elements varies dramatically across communities. The common elements addressed in programs include:

**Regulator** – busking programs are administered by various bodies including municipalities (Toronto, Vancouver), agencies (Vancouver Board of Parks and Recreation) service organizations (Calgary Downtown Association, Creative Burlington) or facility/service operators (London Covent Market, Toronto Transit Commission). Regina cancelled their busker approval program and police respond on a complaint basis.

**Licence/Permit/Identification** – related to the regulator function, buskers can be provided with a range of documentation to indicate some level of compliance and approval. The City of Burlington also requires a police check submitted with an application.

**Set Locations/Districts** – Locations for busking within a municipality can be pinpointed (by a sign or marking), a defined street or district, or be open within the municipal boundaries. Facilities, such as public markets, commonly define spots.

**Fees** – some municipalities have no fee (Calgary) while others impose an annual, monthly, or seasonal fee. Rates vary from a token $10 to $150/$200 for desirable locations (Toronto Transit Commission and Yonge Dundas Square in Toronto, Ottawa Byward Market).

**Auditions** – some programs require an in person or electronically submitted audition prior to approval.

**Amplification** – amplification is prohibited (Granville Island, Calgary) limited to portable battery operated amplifiers (Toronto Transit Commission), restricted times (e.g. after 5:00 pm Yonge Dundas Square) or not addressed (Toronto).

**Performance Tools** – dangerous elements such as use of fire or sharp implements in performances can be prohibited (Burlington) or allowed by separate licence (Sydney, Australia).

**Selling** – the ability to sell related products (such as a CD) is addressed in various programs. The City of Burlington allows selling as part of the approval, Yonge Dundas Square requires a separate vendor’s licence, and Victoria prohibits the exchange of any “products”.

<table>
<thead>
<tr>
<th>Community</th>
<th>Regulator</th>
<th>Regulation</th>
<th>Audition</th>
<th>License</th>
<th>Location</th>
<th>Fee</th>
<th>Terminology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vancouver</td>
<td>city</td>
<td>Street Entertainers Guidelines and Bylaws</td>
<td>no</td>
<td>Street Entertainment Permit</td>
<td>Designated no permit areas</td>
<td>36.55/4 mths</td>
<td>Street Entertainer</td>
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<td>Vancouver - Parks</td>
<td>Board of Parks &amp; Recreation</td>
<td>Guidelines</td>
<td>no</td>
<td>no</td>
<td>exclusions</td>
<td>none</td>
<td>Busker</td>
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<tr>
<td>Vancouver</td>
<td>Granville Island Cultural Society</td>
<td>Guidelines</td>
<td>no</td>
<td>Busker Pass</td>
<td>Designated areas</td>
<td>$30/yr</td>
<td>Busker</td>
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<tr>
<td>Granville Island</td>
<td>guides</td>
<td>No</td>
<td>Street Entertainer – Business Licence -no selling</td>
<td>Exclusions identified</td>
<td>$10/year</td>
<td>Street Entertainer</td>
<td></td>
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<tr>
<td>Victoria</td>
<td>city</td>
<td>Street Entertainers Regulation Bylaw 2004 No. 5723</td>
<td>yes</td>
<td>Permit may only sell recording of own performance</td>
<td>Areas and days identified</td>
<td>$20</td>
<td>Street Entertainer</td>
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<tr>
<td>Nanaimo</td>
<td>city</td>
<td>Street Entertainers Regulation Bylaw 2004 No. 5723</td>
<td>yes</td>
<td>Permit may only sell recording of own performance</td>
<td>Areas and days identified</td>
<td>$20</td>
<td>Street Entertainer</td>
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<tr>
<td>Calgary</td>
<td>Calgary Downtown Association</td>
<td>Street Entertainers Regulation Bylaw 2004 No. 5723</td>
<td>no</td>
<td>Busking ID Licence only if selling product</td>
<td>Areas identified</td>
<td>No charge</td>
<td>Busker</td>
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<tr>
<td>Toronto TTC</td>
<td>TTC</td>
<td>TTC By Law</td>
<td>yes</td>
<td>Subway Musicians Licence Agreement</td>
<td>Designated areas</td>
<td>$150/yr (2010)</td>
<td>Subway Musician</td>
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<tr>
<td>Toronto</td>
<td>city</td>
<td>City of Toronto Municipal Code Chapter 313(44.1) (Streets and Sidewalks), Chapter 315 (street vending) and Chapter 241 (Noise)</td>
<td>yes</td>
<td>Sidewalk Artists/Buskers Permit</td>
<td>no</td>
<td>$35.69 (2009)</td>
<td>Sidewalk Artist/Busker</td>
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<td>Regulator</td>
<td>Regulation</td>
<td>Audition</td>
<td>License</td>
<td>Location</td>
<td>Fee</td>
<td>Terminology</td>
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<tr>
<td>Yonge/Dundas Square Toronto</td>
<td>Yonge Dundas Square</td>
<td>Municipal Code Chapter 636 article III and the Square's Performance Policy</td>
<td>yes</td>
<td>Busker Permit Vender permit also if selling</td>
<td>Designated sites</td>
<td>$150/yr OR Visitor's 7 day permit $50</td>
<td>Busker</td>
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<td>Barrie</td>
<td>city</td>
<td>Permit program</td>
<td>yes</td>
<td>permit</td>
<td>Designated sites in downtown</td>
<td>$100 yr 1 dropped to $50 in yr 2</td>
<td>Street performers</td>
</tr>
<tr>
<td>London</td>
<td>Covent Garden Market</td>
<td></td>
<td>yes</td>
<td>application</td>
<td>Within Market</td>
<td>none</td>
<td>Busker</td>
</tr>
<tr>
<td>Kingston</td>
<td>city</td>
<td>By-law No. 2006-213 A By-Law To License, Regulate And Govern Certain Businesses</td>
<td>no</td>
<td>licence</td>
<td>Residential areas excluded</td>
<td>$28/yr (2010)</td>
<td>Street Performer</td>
</tr>
<tr>
<td>Montreal</td>
<td>city</td>
<td>By-law Concerning Special Taxes On Businesses, Occupations And Activities</td>
<td></td>
<td>permit</td>
<td></td>
<td>105/yr</td>
<td>Street musician, street performer</td>
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<tr>
<td>Adelaide, Australia</td>
<td>city</td>
<td>Local Government Act, 1999; By law No.1 – Permits and Penalties; By Law No. 2 – Local Government Land</td>
<td></td>
<td>Busking Permit</td>
<td>Exclusions</td>
<td>Daily or monthly</td>
<td>Busker</td>
</tr>
<tr>
<td>Community</td>
<td>Regulator</td>
<td>Regulation</td>
<td>Audition</td>
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<td>Location</td>
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<tr>
<td>Sydney Australia</td>
<td>city</td>
<td></td>
<td></td>
<td>Busking Permit</td>
<td>Designated sites and exclusions</td>
<td>$40/year $10/3 mths (2007)</td>
<td>Busker</td>
</tr>
</tbody>
</table>

- Standard — not use of dangerous goods
- Special — use of dangerous materials or implements
In addition to ongoing year round or seasonal busker programs as outlined above, many Canadian cities have developed busking festivals in recognition of the cultural, tourism and entertainment value of busking. Examples of busking festival events include:

- Edmonton International Street Performers Festival
- Toronto Buskers Fest
- Halifax Buskers Fest
- Kingston Buskers Rendezvous
- Ottawa's Busker Festival
- Dundas International Buskerfest
- Windsor International Buskers Festival
- Waterloo Busker Carnival