SUBJECT: City Initiative for a Change in Zoning for Lands Located at 11 and 18 Britannia Avenue (Hamilton) (PED08018) (Ward 4)

RECOMMENDATION:

That approval be given to **City Initiative CI-07-O, City of Hamilton, Owner**, for a change in zoning from the “G-3” (Public Parking Lots) District to the “G-3/S-1587” (Public Parking Lots) District, Modified, to permit an open-air market (farmers market) on lands located at 11 and 18 Britannia Avenue (Hamilton), as shown on Appendix “A” to Report PED08018, on the following basis:

(a) That the draft By-law, attached as Appendix “B” to Report PED08018, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

(b) That the proposed change in zoning is in conformity with the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan.

Tim McCabe
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

The purpose of the application is to modify the current zoning to add an open-air market as an additional permitted use.

The proposal has merit and can be supported as the changes in zoning are consistent with the Provincial Policy Statement, and conform to the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan. The proposal is compatible with existing and planned land uses in the surrounding area.

BACKGROUND:

Proposal

On November 14, 2007, City Council authorized and directed the Planning and Economic Development Department to initiate a site-specific Zoning By-law Amendment to permit the relocation of the Centre Mall Farmer’s Market to Hamilton East Municipal Car Parks 2C and 2D at 11 and 18 Britannia Avenue (see Appendix “A”). After 50 years in the current location, the Farmer’s Market has been asked to relocate to make way for the redevelopment of the Centre Mall property. This open-air farmers market consists of approximately 50 stalls (10ft. x 37ft.) with approximately 18 vendors at peak time. The market runs year-round on Fridays and Saturdays, from 7AM until 4PM, with additional time for set up and take down of the stalls. The stalls are temporary shelters (i.e. tarps, tents, etc.) that are either behind or beside their trucks, in which they sell their product out of.

Location: 11 and 18 Britannia Avenue (see Appendix “A”)

Owner/Applicant: City of Hamilton (Owner)

Property Description (total rezoned lands):

11 Britannia Avenue:

Frontage: Approximately 30.48 metres
Depth: Approximately 60.96 metres
Area: Approximately 0.18 ha (0.46 acres)

18 Britannia Avenue:

Frontage: Approximately 18.29 metres
Depth: Approximately 60.96 metres
Area: Approximately 0.10 ha (0.25 acres)
EXISTING LAND USE AND ZONING:

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<td>“D” (Urban Protected Residential – One and Two Family Dwellings, etc.) District and “H” (Community Shopping and Commercial, etc.) District</td>
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<td>West</td>
<td>Retail with Residential units above</td>
<td>“H” (Community Shopping and Commercial, etc.) District</td>
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ANALYSIS/RATIONALE:

1. The proposal has merit and can be supported for the following reasons:

   (i) It is consistent with the Provincial Policy Statement.

   (ii) It conforms to the Hamilton-Wentworth Official Plan.

   (iii) It conforms with the “Commercial” designation of the City of Hamilton Official Plan.

   (iv) It conforms with the “Commercial” designation in the approved Crown Point East Neighbourhood Plan.

   (v) The proposed development is considered to be compatible with the existing development in the immediate area and is an efficient use of the existing property.

2. After discussions with the stall holders of the Centre Mall Farmer's Market, it is anticipated that typical mobile or transient vehicles will be used, and they are not subject to the building code. The Building Code does not apply to typical mobile
or transient vehicles used in open-air markets, thereby eliminating any requirements for public washrooms or fire protection. In this regard, arrangements have been made with the Ottawa Street BIA, to share their washroom facilities with the market vendors and customers. However, if tents were erected, depending on the collective or aggregate size of the tents in the area, each may be subject to the Building Code and/or require washrooms and be required to address fire protection measures. It should be noted that tents less than 60 sq. metres in area would not require a building permit.

3. The parking lots are situated outside of the Ottawa Street BIA boundary, but it is recognized there are benefits and synergies resulting from the close relationship between the market and the BIA.

4. The hours or days of operation for the open-air market will be addressed either through the Licensing of the use or through the leasing agreement. Currently, the market runs year-round on Fridays and Saturdays, from 7:00a.m. – 4:00p.m.

5. There are public watermains and combined storm and sanitary sewers on Edinburgh Avenue, Britannia Avenue and Cannon Street East. As the sewers surrounding the subject lands are combined, the on-site catch basins must be equipped with gos traps as per SEW-304. These traps will be required to be installed prior to the use of the lands for the open-air market.

6. The requested re-zoning is within Carpark #2C and 2D, which is part of the Hamilton Municipal Parking System off-street parking inventory. Carpark 2D and a portion of Carpark 2C (41 of 61 spaces) are currently closed and not used as parking. This is the result of reduced demand for parking in the area. It should be noted that only 20 existing parking spaces will be lost on the Market days. This minimal parking loss has been discussed with the Ottawa Street BIA, which is in support of this rezoning.

7. The amount of traffic that this market will generate is unknown at this time, so it should be noted that some parking demand may exceed existing parking supply on Market days and, therefore, this parking could potentially spill over into the adjacent residential streets.

8. The rezoning is subject to a 6 metre setback from the west side of Car Park 2C (11 Britannia Ave.) in order to allow access to the rear of the businesses fronting onto Edinburgh and Britannia Avenues. This setback is written into the By-law (see Appendix "B").

9. The rezoning is subject to the completion of a License Agreement between the City and the Farmer’s Market or its agent. The subject agreement will have conditions concerning the appropriate lease rate, insurance coverage, duration of agreement, etc., to the satisfaction of the City Solicitor. This lease agreement is
currently being prepared and should be completed prior to the finalization of the rezoning.

10. The following issues may be raised by area residents:

**Noise**

The proposed open-air market will be directly adjacent to the three single detached residential dwellings along the east side of the subject properties. Concerns over proximity and noise may arise from these residents. In order to address this concern, it should be noted that the market stall holders will be parking their trucks against the western property line and setting up their stalls behind (or further west) from the property line. The trucks and their increased distance (approximately 6 metres to the stall) will provide adequate buffering from the existing residential use. Along with this, the existing parking lot contains a visual barrier in the form of a solid (1.8m) wood fence along this eastern edge. Further, the market vendors have advised, through pre-consultation meetings with City staff, that at no time will their trucks be running, other than during the set-up and take down procedures.

**Loss of Parking**

The open-air market location was specifically chosen in that it will not significantly impact the existing public parking facilities for the Ottawa Street area. The market will be located within Municipal Car Parks 2C and 2D, of which the majority is currently closed. The total loss of public parking will be only 20 spaces, however, the Ottawa Street BIA has agreed and acknowledges the synergies that an open-air market will have with the existing businesses. The market will also only occupy these parking lots during the daytime of Friday’s and Saturday’s and will not impact the supply of parking the remainder of the week or on the evenings.

**Traffic**

This market will provide an excellent opportunity for the pedestrians within the area and is convenient to the transit routes in the area, as well as for those neighbourhood individuals who use the Ottawa Street shops. Since the current use of the subject lands are commercial parking lots, the traffic generated by a temporary commercial use such as an open-air market will follow the same traffic patterns of the existing lots. There will also be synergies between the uses along Ottawa Street and the open-air market, whereby pedestrian activity between the uses will be enhanced. It should also be noted that the subject lands are in close proximity to a major arterial roadway (Ottawa Street) that will accommodate any increase in volumes due to the open-air market.
Garbage

The proposed open-air market vendors have acknowledged to City staff that they are very respective of their grounds and currently leave their stalls, at the existing market, cleaner than when they arrived. All garbage will be collected and will return home with the vendors. The License Agreement will also address the cleanliness of the site.

ALTERNATIVES FOR CONSIDERATION:

In the event Council does not support the proposed modification in zoning, the lands will be subject to the existing regulations in the “G-3” (Public Parking Lots) District.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial - The majority of the subject lands have been underutilized and are closed parking areas. City departments have not currently identified a need for the subject lands on the days identified for the open-air market use. Therefore, the municipality will entertain a lease agreement with the Market Association in order to capture all capital and maintenance costs associated with the re-opening of these car parks for the open-air market on Friday’s and Saturday’s. In order for the market to occupy the parking lots and to make them accessible for an open-air market, the City’s Parking Authority has identified that the removal of 54.9 metres of guard rail, at a cost of +/- $2,300, and the upgrading of the existing electrical supply at a cost of +/- $2,000 - $3,000 would be required. These costs will be identified and incorporated into the required licensing agreement.

Staffing - N/A.

Legal - As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a Zoning By-law Amendment.

POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement

The Provincial Policy Statement (PPS) provides policy direction of provincial interest related to land use planning and development. The Planning Act requires that, in exercising any authority that affects planning matters, planning authorities shall be consistent with policy statements issued under the Act.
As the nature of the application is for a change in zoning to allow for an open-air market within a settlement area, the proposal is consistent with the policies of the Provincial Policy Statement.

**Hamilton-Wentworth Official Plan**

The subject lands are designated “Urban” in the *Hamilton-Wentworth Official Plan*. Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas.

As the nature of the application is for a change in zoning to permit an open-air market where full municipal services are available, the proposal is consistent with the policies of the *Hamilton-Wentworth Official Plan*.

**City of Hamilton Official Plan**

The subject properties are designated “Commercial” on Schedule ‘A’ – Land Use Concept and are auxiliary to the Commercial establishments along Ottawa Street, which is an Arterial Roadway. Therefore, the following policies of the City of Hamilton Official Plan, among others, are applicable to the proposed development:

“2.2.14 The EXTENDED COMMERCIAL category applies to existing stretches of individually managed Commercial establishments located along Arterial Roads, serving both pedestrian and automobile borne trade. It consists of:

i) “Ribbon” Commercial uses on smaller lots serving predominantly residents and pedestrians in the vicinity, with some specialized Commercial uses attracting automobile borne traffic from beyond the local area.

2.2.15 Council recognizes EXTENDED COMMERCIAL areas as viable forms of Commercial development that satisfy the needs of certain businesses for visibility and accessibility.”

Based on the foregoing, the proposal conforms with the “Commercial” policies of the Hamilton Official Plan

**Crown Point East Neighbourhood Plan**

The subject lands are designated “Commercial” in the approved Crown Point East Neighbourhood Plan. The proposal conforms to this designation.
The following Departments and Agencies had no comments or objections:

- Budgets & Finance Division, Corporate Services Department.
- Culture and Recreation Division, Community Services Department.
- Water and Wastewater Division, Public Works Department.
- Forestry & Horticulture Section, Operations and Maintenance Division, Public Works Department.
- Open Space Development Section, Capital Planning and Implementation Division, Public Works Department.

Health Protection Division (Public Health Services)

The Health Protection Division of the City’s Public Health Services stated that the current Centre Mall Farmers’ Market is exempt from the specific requirements of the Food Premises Regulation (unlike the Hamilton Farmer’s Market, the majority of vendors are farmers selling their own products). However, it is still routinely inspected by the City’s Public Health Services (under authority by Ontario’s Health Protection and Promotion Act) to ensure that general food and safety standards are in place. The Health Protection Division has no issues with any of the current vendors and, therefore, has no concerns with the market moving to the Ottawa Street location. However, staff suggests that as part of the re-location planning of the market, an approval process for new vendors should be developed to include a review by the City’s Public Health Services.

Traffic Engineering & Operations Section, Operations and Maintenance Division (Public Works Department)

The Traffic Engineering and Operations Section has identified that there may be some additional vehicular traffic on Britannia, Edinburgh and even Campbell between Ottawa Street and London Street or Fraser/Park Row, on market days. However, the vehicular flow of this open-air market is not known at this time. This market will provide an excellent opportunity for the pedestrians within the area and those that use the various transit routes in the area, as well as those who use the Ottawa Street shops.

Hamilton Street Railway (HSR)

HSR operates the #2 Barton, #3 Cannon and the #41 Mohawk (Ottawa Street) bus routes within a 400 metre walk of the subject property. These three routes accommodate approximately 22 buses per hour. Therefore, this new open-air market proposal will be able to attract various transit users from the area.
Public Consultation

On November 14, 2007, a City Council resolution exempted this application from the pre-circulation requirement pursuant to Subsection (a) (iv) (3), Public Participation and Mediation in the Planning Approval Process Policy, adopted by City Council on May 28, 2003, as the application is to add a minor use to an existing non-residential zoning category.

Public Notice signs were posted on the properties in December 2007, and Notice of the Public Meeting was given in accordance with the requirements of the Planning Act.

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
The public are involved in the definition and development of local solutions.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Human health and safety are protected.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

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

TH
Attachs. (2)
Appendix "A" to Report PED08018

Location Map

File Name/Number: CI-07-0
Date: November 5, 2007
Appendix "A" Scale: N.T.S.
Planner/Technician: TH / MB

Subject Property

11 and 18 Britannia Avenue
Change in Zoning from the "G-3" (Public Parking Lots) District to the "G-3/R-1567" (Public Parking Lots) District, Modified.

Ward 4 Key Map N.T.S.
CITY OF HAMILTON

BY-LAW NO. __________

To Amend Zoning By-law No. 6593 (Hamilton), respecting lands located at 11 and 18 Britannia Avenue

WHEREAS the City of Hamilton Act, 1999, Statues of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1st, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as “The Corporation of the City of Hamilton” and is the successor of the former Regional Municipality, namely, “The Regional Municipality of Hamilton-Wentworth”;

AND WHEREAS the City of Hamilton Act, 1999, provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS the Council of The Corporation of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which by-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951, (File No. P.F.C. 3821);

AND WHEREAS the Council of the City of Hamilton, in adopting Section [Section Number] of Report [Report Number] of the Economic Development and Planning Committee at its meeting held on the [Meeting Date], 2008, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Official Plan of the Hamilton Planning Area, approved by the Minister under the Planning Act on June 1, 1982.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:
1. That the “G-3” (Public Parking Lots) District regulations as contained in Section 13C of Zoning By-law No. 6593, applicable to the lands the extent and boundaries of which are shown on Blocks 1 and 2 on a plan hereto annexed as Schedule “A”, are modified to include the following special requirements:

   (a) That notwithstanding Subsection 13C. (1) of Zoning By-law No. 6593, an open-air market shall also be permitted on Blocks 1 and 2.

   (b) In addition to the provisions of Subsection 13C (2) of Zoning By-Law No. 6593, no part of an open-air market on Block 1 shall be located less than 6.0 metres from the westerly property line.

2. No building or structure shall be erected, altered or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the “G-3” District provisions, subject to the special requirements referred to in Section 1 of this By-law.

3. By-law No. 6593 (Hamilton) is amended by adding this by-law to Section 19B as Schedule S-1587.

4. Sheets No. E-53 and E-54 of the District Maps is amended by marking the lands referred in Section 1 of this By-law as S-1587.

5. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this day of , 2008.

_____________________________         _______________________________
Fred Eisenberger            Kevin C. Christenson
MAYOR             CLERK

CI-07-O
Schedule "A"

Map Forming Part of By-Law No. 08-____ to Amend By-law No.6593

Subject Property

Block 1

Block 2

Change in Zoning from the "G-3" (Public Parking Lots) District to the "G-3/S-1567" (Public Parking Lots) District, Modified.

This is Schedule "A" to By-Law No. 08-

Passed the ........... day of ..................., 2008

Clerk

Mayor