Recommendation:

That the revisions to the Shareholders Direction for the Hamilton Entertainment and Convention Facilities Inc., as shown in Appendix A to Report HEC10003, be approved.

Information:

The Hamilton Entertainment and Convention Facilities Inc. (HECFI) Board of Directors, at its regular meeting of January 28, 2010, requested all the amendments to the Shareholders Direction, as recommended by the Governance and Management Resources Committee be forwarded to City’s Audit and Administration Committee for their consideration.

APPENDICES/SCHEDULES

SHAREHOLDER DIRECTION RELATING TO
THE HAMILTON ENTERTAINMENT AND CONVENTION FACILITIES INC.

PREAMBLE

The Hamilton Entertainment and Convention Facilities Inc. (HECFI) is a corporation existing under the City of Hamilton Act, 1985, as amended. The City of Hamilton is the sole shareholder of HECFI and through this Direction establishes certain principles of governance relating to HECFI. The HECFI Board is accountable to the citizens of Hamilton through the Shareholder.

ARTICLE 1 – INTERPRETATION

1.1 Definitions

In this Direction, the following terms have the meanings set out below:

“Auditor” means the auditor of HECFI;

“Authorized Signatory” means those individuals who are authorized to sign a certified minute of Council, or who are otherwise authorized by Council to sign written shareholder approvals or decisions relating to HECFI;

“Board” means the Board of Directors of HECFI;

“Business Plan” means HECFI’s five-year business plan and budget;

“Chair” means the Director of HECFI appointed as Chair of the Board by the Board;

“Citizen” means a Board member or a candidate for such membership who is not a member of Council;

“City” means City of Hamilton;

“Council” means the Council of the City;

“Directors” means a member of the Board;

“Economic Development Strategy” means the strategy guiding the direction of economic development for the City, as approved by Council from time to time;

“Financial Statements” means, for any particular period, audited or unaudited comprehensive financial statements of HECFI consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Auditor (in the case of audited Financial Statements) and such other statements, reports, notes and information prepared in accordance with generally accepted accounting principles (consistently applied) and as are required in accordance with any applicable laws;
“HECFI” means the Hamilton Entertainment and Convention Centre Facilities Inc., a corporation existing under the OBCA;

“Shareholder” means the City, as sole shareholder of HECFI;

“Tourism Strategy” means the strategy guiding the direction of tourism for the City, as approved by Council from time to time.

ARTICLE 2 – OBJECTIVES AND PRINCIPLES

2.1 Purpose of Direction

Subject to the Board’s authority to manage, or supervise the management of, the business and affairs of HECFI, this Direction:

(a) Provides the Board with the Shareholder’s fundamental principles regarding HECFI;
(b) Sets out the accountability, responsibility and relationship between the Board and the Shareholder;
(c) Informs the residents of the City of Hamilton of the Shareholder’s fundamental principles regarding HECFI.

2.2 Shareholder Objectives

The Shareholder’s objectives in holding its interest in HECFI are:

(a) HECFI shall assist the City in achieving the City’s overall priorities in the spheres of Vision 2020, economic development, downtown revitalization, tourism and quality of community life;
(b) HECFI shall maintain, operate, manage and promote the City’s assets as assigned by the City from time to time, including Hamilton Convention Centre, Hamilton Place Theatre and the Copps Coliseum;
(c) HECFI shall protect the City’s assets for long-term sustainability;
(d) HECFI shall work with key stakeholders – departments, agencies and private partners – to maximize the economic development and community potential of the City facilities over which HECFI has been given management responsibility.

2.3 Principles

HECFI is integral to the quality of life and the economic development of the City. The City directs that, in the best interest of HECFI and the community of stakeholders whom HECFI affects, all members of the Board shall cause HECFI to conduct its affairs:

(a) On a commercially prudent basis;
(b) In a manner consistent with the City’s public service mandate and its economic development and tourism strategies;
(c) In accordance with the financial performance and strategic objectives as set out in its business plan.

2.4 No Interference with Legal obligations

In issuing this Shareholder Direction, the Shareholder is in no way attempting to interfere with any Director’s duty to act in the best interests of the Corporation.

ARTICLE 3 – BUSINESS OF HECFI

3.1 Mandate

The purpose of HECFI is to generate economic and tourism activity in the City while providing community benefits through the management of its facilities.

Subject to the ongoing ability of HECFI to meet the objectives of the Shareholder set out in this Direction, and the ability of the Board to demonstrate the same, HECFI may engage in any of the following business activities:

(a) Maintain, operate, manage and promote the City’s assets within its mandate, including Hamilton Convention Centre, Hamilton Place Theatre and the Copps Coliseum;
(b) Engage in partnerships to leverage key market opportunities for the City; and,
(c) Seek to reach financial self-sustainability.

3.2 Operational Decisions

HECFI shall employ its own staff. However, HECFI may seek assistance from City staff resources (e.g., finance, legal, IT, HR) on an occasional basis. These service costs will be tracked under service agreements with the City, at no cost to HECFI.

Subject to the terms of this Direction, the board shall be responsible for the management of the assigned City assets, making all policy and operational decisions, save and except for divestment of the assets, and be held accountable for these decisions through submission to the City of its annual Business Plan and Annual Report. The Board has no authority to bind the City, only to contract for services on behalf of HECFI.
ARTICLE 4 – OPERATION AND CONTROL

4.1 Board Responsibilities

Subject to any matters requiring approval of the Shareholder pursuant to this Direction, the Board shall manage or supervise the management of the business and affairs of HECFI, including:

(a) Establishing annual and long-range strategies and plans consistent with the Shareholder’s Business Planning template and the provisions of this Direction;
(b) Establishing and maintaining appropriate reserves consistent with sound financial principles and the financial performance objectives;
(c) Adopt a budget annually;
(d) Selecting bankers and other financial institutions and establishing all banking authorities; and,
(e) Managing and directing all labour and employee relations matters, including recruiting the CEO and conducting annual performance reviews.

ARTICLE 5 – BOARD OF DIRECTORS

5.1 Criteria for Board Membership

The composition of the Board will be maintained in a manner that provides the best mix of skills, experience and personal attributes to guide the long-term strategy and on-going business operations of HECFI.

In naming Directors to the Board, due consideration must be given to the qualifications of candidates, including:

(a) Experience or knowledge with respect to:
   (i) The general business of HECFI
   (ii) Strategic planning, risk management and board governance
   (iii) Public relations, marketing and communications
   (iv) Economic Development
   (v) Accounting and financial management;
   (vi) Business and legal background;
   (vii) Property management

(b) Independence of judgment; and,

(c) Personal integrity.

5.2 Composition of the Board

The Board shall be composed of nine (9) voting members, including:
3 members of Council, being the Mayor, a member of the Planning and Economic Development Committee, and a member of the Audit and Administration Committee;

6 citizens;

Chairperson of Tourism Hamilton, non-voting ex-officio.

Staff attending shall include the CEO of HECFI, Director of Tourism Hamilton, and any others deemed appropriate by the HECFI Board.

The Directors will annually elect the following officers of the Board: a Chair, Vice-Chair, Treasurer and Secretary.

5.3 Nominating Process

The HECFI Board will appoint its citizen Directors through a Nominating Committee that will be struck annually to:

(a) Review the availability and interest of current Directors;
(b) Identify changes in the marketplace and undertake a needs assessment in light of available expertise among current Directors; and,
(c) Advertise new members based on specified qualifications, established guidelines and succession plans.

The Nominating Committee for the citizens will be composed of the one Council representative on the HECFI Board and two HECFI Board members to be selected by the Board.

The Board will consider the recommendations of the Nominating Committee and then pass their recommendation to the Shareholder for final ratification.

City Council will appoint the members of the Planning and Economic Development and Audit and Administration Committees.

5.4 Vacancies

If a member of the Board ceases to be a Director for any reason, the vacancy will be filled as soon as reasonably possible.

5.5 Terms of Appointment

Council members shall be on the HECFI Board for the term of Council.

Citizen members shall be appointed for a 3-year term with a maximum of two consecutive terms.
The Chair of the Tourism Board of Directors shall be on the HECFI Board for his/her term as Chair.

5.6 Board Performance

The Board will develop and adopt a performance management system.

5.7 Remuneration

HECFI will reimburse Directors for all reasonable expenses incurred during the conduct of HECFI’s business. Members of Council and City employees will receive no additional remuneration as Directors.

5.8 Standing Down the Board

Council may stand down the Board, should it be found to be in breach of the Direction.

5.9 Officers

Annually the Board shall elect its officers.

ARTICLE 6 – CONFLICT OF INTEREST AND CONFIDENTIALITY

6.1 Code of Conduct

The Board shall adopt a Code of Conduct in respect of Directors and employees consistent with the City of Hamilton’s Code of Conduct as it exists from time to time.

6.2 Conflict of Interest

The Board shall adopt a Conflict of Interest Policy and Procedure in respect of Directors consistent with the terms and procedures found in the Municipal Conflict of Interest Act, R.S.O. 1990, CHAPTER M.50, as amended.

6.3 Confidentially

The Board shall adopt a confidentially policy whereby Directors who are in receipt of confidential information including commercial matters, contractual matters, labour relations matters, personnel matters, legal advice, or any other matter confidential to the operations of HECFI shall not disclose any such information, or
ARTICLE 7 – SHAREHOLDER MATTERS

7.1 Approvals and Decisions of the Shareholder

The Board must approve a motion requesting Shareholder approvals or decisions through the Chair to the Chair of the relevant Standing Committee of Council. Such requests must be accompanied by all relevant information and within a reasonable timeframe.

7.2 Matters Requiring Shareholder Approval

The Shareholder must approve any changes by by-laws. HECFI shall not:

(a) Take any action, make any change or enter into any transaction that requires Shareholder approval pursuant to the City of Hamilton Act, 1985, as amended;
(b) Take any action, make any change or enter into any transaction with respect to divestment of the assets;
(c) Alter the corporate structure of HECFI in any way, including establishing subsidiaries;
(d) Take any action regarding a long-term capital plan for HECFI facilities without Shareholder approval; and,
(e) Create any deficits or variances from the approved budget and operating subsidy without reporting to the Shareholder.

ARTICLE 8 – REPORTING

8.1 Business Plan

Not later than 30 days prior to the end of each fiscal year of HECFI, the Board shall approve and submit to the Chair of the relevant Standing Committee of Council, a Business Plan for the next three fiscal years, and the Ten Year Capital Budget Programme is included with the Business plan. HECFI shall carry on its business and operations in accordance with the Business Plan that shall include:

(a) The strategic direction and any new business initiatives which HECFI will undertake;
(b) An operating and capital expenditure budget for the next fiscal year and an operating and capital expenditure projection for each fiscal year thereafter, including the resources necessary to implement the Business Plan;
(c) Recommendations to Council that a long-term capital plan is required for HECFI facilities;
(d) Submission of a facilities rehabilitation plan with costs in order to determine funding source (i.e., establishment of a reserve contribution);
(e) The projected annual revenues and profits for each fiscal year during the term of the Business Plan;
(f) Pro forma consolidated and unconsolidated Financial Statements;
(g) Any material variances in the projected ability to meet or continue to meet the financial or economic development objectives of the Shareholder; and,
(h) Any material variances from the Business Plan then in effect.

8.2 Annual Report and Financial Statements

Within 120 days after the end of each fiscal year of HECFI, the Board shall prepare an annual report and submit this report to Council through the Chair of the relevant Standing Committee of Council. This report shall include:

(a) Audited consolidated and unconsolidated Financial Statements;
(b) Such explanations, notes and information as are required to explain and account for any variances between the actual results from operations and the budgeted amounts set forth in the then current Business plan, and any material variances in the projected ability of any business activity to meet or continue to meet the financial and economic development objectives of the Shareholder;
(c) Information that is likely to materially affect the Shareholder’s financial or economic development objectives;
(d) Information regarding any matter, occurrence or other event which is a material breach of the requirements of this Direction, or a material breach or violation of any law, including major findings of internal and other audits;
(e) Information regarding the performance of HECFI such that the Shareholder can determine that this Shareholder Direction has been respected; and
(f) Any such additional information as the Shareholder may specify from time to time.

Following submission of each report, the Directors shall make themselves available, if requested, to meet with the Shareholder or the appropriate Standing Committee of Council, or both, to discuss the report.

8.3 Annual Operating Subsidy

HECFI may continue to receive financial support from the City as an investment in the community’s quality of life, if necessary and reasonable.

Annually, HECFI must request Council approval for any operating subsidy it requires.

Operating Budget variance reports shall be submitted in accordance with the City’s existing reporting structure.
8.4 Access to Records and Information

The City Auditor (or designate) and any other duly appointed representatives of the Shareholder (as approved by Council from time to time) shall have unrestricted access to the books and records of HECFI during normal business hours. Such representatives shall treat all confidential information of HECFI with the same level of care and confidentiality as any confidential information of the Shareholder.

8.5 Audit

The Auditor will be appointed by the Shareholder. HECFI shall determine the remuneration for the Auditor. The annual consolidated and unconsolidated Financial Statements will be audited by the Auditor. All other audit and review requirements, including internal audits, will be the sole responsibility of the Board.

The City Auditor may audit all or any portion of HECFI records at any time.

8.6 Accounting

HECFI shall use the accounting and purchasing policies and procedures approved by and in accordance with the City of Hamilton. HECFI can make amendments to purchasing and personnel policies and procedures for business reasons specified by management.

ARTICLE 9 – FINANCIAL PERFORMANCE

9.1 Financial Performance Targets

The Board shall use its best efforts to ensure that HECFI meets the financial performance targets set out in each year’s Business Plan.

ARTICLE 10 – AMENDMENTS

10.1 Amendments to Direction

The Shareholder, in its sole discretion, may amend this Direction on written notice to the Board. The amendments shall come into effect six weeks after the Shareholder gives the Board written notice of the amendments, or on such other date as the Shareholder, in its sole discretion, may specify.