



CITY COUNCIL MINUTES

Wednesday, October 26, 2005

7:00 p.m.

**Council Chambers
Hamilton City Hall**

Present: Mayor L. Dilanni

Councillors D. Braden, B. Bratina, P. Bruckler, C. Collins,
M. Ferguson, T. Jackson, B. Kelly, M. McCarthy, B. McHattie,
D. Mitchell, S. Merulla, B. Morelli, M. Pearson, A. Samson,
T. Whitehead

Mayor Dilanni called the meeting to order.

Mayor Dilanni called upon Reverend Peter Wall of Christ's Church Cathedral of James Street North, to lead the Council in prayer.

Mayor Dilanni recognized Chief Brian Mullan and students of Mohawk College who were in attendance.

APPROVAL OF THE AGENDA

The Clerk advised of the following changes to the agenda:

1. The following Communication Items were added:
 - (a) Item 5.5 Member Communication from AMO respecting Private Member's Bill could impose new prescriptive Rules on Municipal government outside of the Municipal Act.
 - (b) Item 5.6 Correspondence from the Association of Municipal Managers, Clerks and Treasurers of Ontario respecting Bill 123, the Transparency in Public Matters Act
 - (c) Item 5.7 Municipal Elections Compliance Audit
 - (d) Item 5.8 Letter from Barbara Laing, expressing concerns with activities at the Wesley Drop-In Centre.

- (e) Item 5.9 Letter from Eric Gillespie, of Cunningham & Gillespie LLP, respecting compliance audit of campaign finances.
- 2. Planning and Economic Development Committee Report 05-022 from the special meeting held on October 24, 2005 was added as Item 6.7.
- 3. The following Motions were added:
 - 7.3 Motion by Councillor Whitehead respecting Stelco Rally
 - 7.4 Motion by Councillor McHattie respecting appointment to the Social Service Downloading Committee
- 4. Two Private and Confidential matters respecting a personnel issue and proposed or pending acquisition of land were added.

(Kelly/Collins)

That the Agenda for the City Council meeting being held on October 26, 2005, as amended, be approved. **CARRIED**

DECLARATIONS OF INTEREST

Corporate Administration Committee Report 05-015:**Item 8.3 Purchasing Policies and Procedures Update (FCS04031(a)) (City Wide)**

Councillor Ferguson declared an interest as his company has business relations with the City which involve the purchasing policies and procedures.

Added Communications**Item 5.7 Municipal Elections Compliance Audit****Item 5.9 Letter from Eric Gillespie, of Cunningham & Gillespie LLP, respecting compliance audit of campaign finances.**

Mayor Dilanni declared an interest as donations to his campaign were audited.

CEREMONIAL ACTIVITIES/ANNOUNCEMENTS
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1. Otijwarongo Mission

Mayor Dilanni welcomed the representatives from the Otijwarongo Mission. Manfred Uxamb, Town Secretary and Acting CEO, Dirk Van Niekerk, of Health Services, and Karl-Heinz Hanssen, of Emergency Services were in attendance.

Mayor Dilanni invited the representatives to the podium. Mr. Manfred Uxamb addressed Council and the Mayor presented them with gifts on behalf of the City of Hamilton.

2. FCM – Sustainable Community Awards

Mayor Dilanni called upon Councillor Whitehead to make the presentations. Councillor Whitehead called Beth Goodger to the podium and she advised Council that Hamilton's Waste Management Master Plan won the top Sustainable Community Award. Councillor Whitehead presented Beth Goodger with plaques on behalf of the Federation of Canadian Municipalities.

3. Library Journal Awards – Outstanding Librarians of 2005

Mayor Dilanni called Mr. Darcy Glidden to the podium and advised that on June 24, 2005, in Chicago, Mr. Glidden received the Library Journal Award for Outstanding Librarians of 2005 as one of the profession's leading "Movers and Shakers". Mr. Glidden was the only Canadian honoured. Mayor Dilanni presented him with a plaque.

4. Trillium Presentation Awards

Mayor Dilanni called upon Janice Brown to present the awards as follows:

Presentation of Mohawk College Bursary Awards

The following Mohawk College Students were presented with bursary awards:

Mionne Taylor for Landscape Design Program
Ted Przybyl for Plant Identification Program (accepted on his behalf by
Jim Lounsbery, the Program Manager)

Presentation of Awards of Excellence

The following properties were presented with Awards of Excellence:

H.G. Hardwick & Sons, Memorials of Distinction
Dofasco Inc. 1330 Burlington St. E., Hamilton
Nethercott GM, 1591 Upper James Street, Hamilton
Flowers by Diane, 9 King Street West, Stoney Creek
Willow Valley Golf Course, 2907 Hwy 6 South, Mount Hope

Pink Trillium Awards Presentation

The following properties were presented with the Pink Trillium Awards:

Ward 1 Margaret & Steven Davidge, 55 Paradise Rd. N.

Ward 2	Sydney Cook, 36 Aberdeen Avenue
Ward 3	Michael & Sheila MacCharles, 26 Glendale Avenue N.
Ward 4	J. Hollis, 352 Cope Street
Ward 5	Warren & Doreen Pitton, 10 Calvert Avenue
Ward 6	Dorothy & Steve Wran, 31 Ridley Drive
Ward 7	Melanie Piano, 290 Upper Wentworth St.
Ward 8	Jerry & Lyn Hladun, 103 West 35 th Street
Ward 9	Carol Carter, 14 Passmore Street
Ward 10	Antonio Doria, 96 Lincoln Road, Stoney Creek
Ward 11	Juanita Bucci, 24 Parkmanor Drive, Stoney Creek
Ward 13	Phil Storer, 8 Dundana Avenue

Red Trillium Awards Presentation

The Red Trillium award was presented to Juanita Bucci, 24 Parkmanor Drive, Stoney Creek.

Launch of the 50th Anniversary of the Trillium Awards Program

Janice Brown called Roberta Harman, Chair of the 50th Anniversary Program to the podium. Roberta Harman announced the launch of the 50th Anniversary of the Trillium Awards and the Mayor unveiled the logo and the Councillors received a pamphlet and a commemorative pin.

APPROVAL OF MINUTES

(Mitchell/Morelli)

That the Minutes of the City Council Meeting held on October 12, 2005, be approved.

CARRIED

COMMUNICATIONS

(Jackson/Kelly)

That the following dispositions for the Council Communications be approved, as amended:

- 5.1 Correspondence from Regional Municipality of Niagara respecting establishment of cost-effective policies and programs that enhance security at the border.

Recommendation: Be received and referred to the General Manager of Planning and Economic Development for report to the Planning and Economic Development Committee.

- 5.2 Petition received from Renee Albrecht on behalf of citizens respecting rehabilitation and recovery of the downtown homeless and addicted people

Recommendation: Be received and referred to the Social and Public Health Services Committee for discussion

- 5.3 Correspondence from Region of Durham requesting council endorse a resolution from the Greater Toronto Area Task Force on OMB Reform

Recommendation: Be referred to the General Manager of Planning and Economic Development for a report to the Planning and Economic Development Committee

(Merulla/Morelli)

- 5.4 Correspondence from Michael Desnoyers and Jack Santa Barbara, Hamiltonians for Progressive Development respecting expansion of the urban boundary and a request for Council to reconsider its decision.

Recommendation: Be received and Mayor Dilanni and Councillors McHattie, Mitchell, and Whitehead will meet with the writers to discuss process.

CARRIED

- 5.5 Member Communication from AMO respecting Private Member's Bill could impose new prescriptive Rules on Municipal government outside of the Municipal Act.

Recommendation: That the resolution submitted by AMO respecting Bill 123 be endorsed

- 5.6 Correspondence from the Association of Municipal Managers, Clerks and Treasurers of Ontario respecting Bill 123, the Transparency in Public Matters Act

Recommendation: Be received.

Mayor Dilanni relinquished the Chair and Deputy-Mayor Jackson assumed the Chair during debate respecting Items 5.7 and 5.9

- 5.7 Municipal Elections Compliance Audit

(Ferguson/Merulla)

That the question with respect to correspondence Item 5.7 respecting Municipal Elections Compliance Audit be called.

CARRIED

Recommendation: That the Municipal Elections Compliance Audit be received and referred to the City Solicitor and City Clerk for response

CARRIED

Councillors Braden and Bratina indicated that they wished to be recorded as OPPOSED to this Item.

5.8 Letter from Barbara Laing, expressing concerns with activities at the Wesley Drop-In Centre.

Recommendation: Be received and referred to the Social and Public Health Services Committee for discussion.

5.9 Letter from Mr. Eric Gillespie of Cunningham and Gillespie, respecting Municipal Elections Compliance Audit.

Recommendation: Be received and referred to the City Solicitor and City Clerk for response

Councillors Braden and Bratina indicated that they wished to be recorded as OPPOSED to this Item.

CARRIED AS AMENDED

(Jackson/Kelly)

That Council move into Committee of the Whole for consideration of the Standing Committee Reports.

CARRIED

<p>PUBLIC WORKS, INFRASTRUCTURE AND ENVIRONMENT COMMITTEE REPORT 05-015</p>
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(Mitchell/McCarthy)

That the FIFTEENTH Report of the Public Works, Infrastructure and Environment Committee be adopted, and the information section received.

CARRIED

<p>PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE REPORT 05-021</p>

8. Minor Revisions to the Pre-Christmas Free Parking Strategy for Business Improvement Areas (BIAs) (PED05142) (Wards 1, 3 & 4) (Item 5.8)

That Item 8 of the Planning and Economic Development Committee Report 05-021 be amended by adding sub-section (c) as follows:

(c) That the amending by-law to provide for the minor revisions to the Pre-Christmas Free Parking Strategy for B.I.A.'s be presented to Council for enactment.

**Amendment CARRIED
Motion as amended CARRIED**

(Whitehead/Pearson)

That the TWENTY-FIRST Report of the Planning and Economic Development Committee be adopted, as amended, and the information section received.

CARRIED

CORPORATE ADMINISTRATION COMMITTEE REPORT 05-015

Item 6. Update: GO Transit and Development Charges Act and By-law; Region of Halton, Region of Peel and City of Mississauga Resolutions (FCS05102) (City Wide) – Corporate Administration Committee Outstanding Business Items F and V; Public Works, Infrastructure and Environment Committee Outstanding Business “HH” (Item 8.2)

(Bruckler/Jackson)

That subsection (c) of Item 6 be amended by adding sub-section (4) as follows:

(4) Community Parkland Acquisition

CARRIED
Motion as AMENDED CARRIED

Item 12 Communication Strategy – August 19th Rainstorm (New Business Item 8.10)

(Merulla/Morelli)

That the following be added as sub-section (b) to Item 12 of Corporate Administration Committee Report 05-015:

(b) That an amount of \$9,200 be utilized from the Legislative Contingency Fund to the Councillor for Ward 4 for the purposes of off-setting ward-specific flood communication costs.

CARRIED
Motion as AMENDED CARRIED

(McCarthy/McHattie)

That Council move In Camera to discuss Item 13 respecting Lease and Lease Renewal – 77 James Street North – Fercan Developments (PED05156/CM05034/ FCS05113/ PW05121)(Item 12.1)

DEFEATED

(Whitehead/Pearson)

That Item 13 in the Corporate Administration Committee Report 05-015 be deleted in its entirety and replaced with the following in lieu thereof:

13. Lease and Lease Renewal – 77 James Street North – Fercan Developments (PED05156/CM05034/FCS05113/PW05121) (Item 12.1)

(a) That the City of Hamilton enter into a lease agreement with Fercan Development Inc. subject to the following terms and conditions as set out in Report PED05156/CM05034/FCS05113/PW05121 for the property known as 77 James Street North, Hamilton, being conditional upon Her

Majesty The Queen In Right Of Canada obtaining final approval by the National Headquarters for the Royal Canadian Mounted Police and the Treasury Board Secretariat by October 31, 2005 for leasing the property known as 777 Highway 8, Stoney Creek, failing which, the proposed lease with Fercan Developments Inc. shall become null and void.

- (i) **Term:** Fifteen (15) year term commencing February 1, 2006, subject to the building (Owner's Work) and tenant improvement renovations being completed in a good workmanlike manner by February 1, 2006, failing which, the commencement date shall be extended accordingly by the renovation completion delay. Said term to terminate on January 31, 2021 subject to any extension reflected by the renovation completion delay.
- (ii) **Property:** 77 James Street North, Hamilton, being part of the Ground Floor of the former Eaton's Department Store shown as Area "C" on the plan attached as Schedule "C" to Report PED05156/CM05034/FCS05113/PW05121, having an approximate area of 19,500 rentable square feet (Planning and Economic Development Department). The final area shall not be determined until the final floor layout plans have been determined, verified and adjusted in accordance with B.O.M.A. 1996 measurement standard.
- (iii) **Rental Rate:** Commencing February 1, 2006, or as extended under sub-section (a)(i) outlined above, to January 31, 2011, \$17.50 per square foot (Modified Gross) \$341,250 per annum, \$28,437.50 per month plus G.S.T.; commencing February 1, 2011 to January 31, 2016, \$18.50 per square foot (Modified Gross), \$360,750 per annum, \$30,062.50 per month plus G.S.T.; commencing February 1, 2016 to January 31, 2021, \$19.50 per square foot (Modified Gross), \$380,250 per annum, \$31,687.50 per month plus G.S.T. All rent and additional operating costs are to be charged to Account #791224-55358 (Rent, Office and Buildings - City Centre).
- (iv) **Operating Costs:** The City to be responsible for its share of the actual operating cost over the 2005 Base Year with any increases thereafter to be charged on a prorated basis, not to exceed escalation greater than the annual increase in the Consumer Price Index. The City shall be responsible for the costs of cleaning and hydro which are estimated at \$2 per square foot or \$39,000 per annum.
- (v) That the Legal Services Division be authorized to prepare a By-law, under Section 110 of the Municipal Act, to propose that this leased area become a City Capital Facility, whereby the City would be exempt from paying realty taxes at this location. Upon passing the By-law and the space becoming exempt from paying realty taxes,

the Landlord shall reduce the City's rent by the amount of realty taxes that would have been paid.

(vi) **Special Conditions:**

- (1) The City shall not be required to demolish the existing tenant improvements at the termination of the lease term.
- (2)
 - (aa) The Landlord shall pay for the cost of retaining the City of Hamilton approved architectural and engineering consultants at a specified amount of \$3.80 P.S.F. These costs are to be paid by the Landlord on demand as the cost is incurred.
 - (bb) As related to sub-section (a)(vi)(2)(aa) outlined above, the Landlord shall retain the services of the space planner, Linda Fielding, at 406 North Service Road East, Suite #1, Oakville, Ontario, in order to complete the Tenant's interior design and specifications and to provide the City with project management throughout the construction of the Landlord's work and the Tenant's Leasehold improvements. As part of the retention of Linda Fielding, this shall include the hiring of an engineering firm to assist in preparing the Tenant's improvement specifications and drawings. These associated costs shall be part of the fee structure stated in sub-section (a)(vi)(2)(aa) outlined above, with any costs incurred over and above the specified rate to be borne by the Tenant.
- (3) The Landlord shall renovate the building and site in accordance with the conditions and specifications contained in Schedule "A" attached to Report PED05156/CM05034/FCS05113/PW05121. Said specifications and conditions shall form part of the final lease agreement.
- (4) The lease shall contain a clause stating that in the event the Landlord is tax arrears during any period of the duration of this lease agreement for the 77 James Street North facility, then the City of Hamilton, as Tenant, shall have the right to direct any outstanding future rent payments to the City of Hamilton, Corporate Services Department (Tax) in an equivalent amount to pay down the said tax arrears.
- (5) The lease shall be prepared by the Landlord in accordance with the terms and conditions contained in the Offer to Lease and shall be subject to the Tenant's solicitor being completely satisfied with the terms and conditions contained therein.

- (6) The Landlord shall provide the Tenant with a capital cost allowance of \$30 P.S.F. to be applied to the project costs at the discretion of the Tenant for the Tenant Scope of Work listed below. Any unassigned portion of these funds remaining as of the completion of the Tenant's work shall be applied to the rent costs.

Tenant's Scope of Work:

- New interior partitions, doors and hardware as per the Tenant's final design plan.
- New lighting enhancements in non core/base building areas.
- Plumbing for lunchroom/coffee service areas.
- All interior tenant finishes, flooring, walls and millwork.
- User electrical, cabling and communications (voice/data).
- Mechanical distribution to suit the Tenant's interior partition plan and our use.
- Leased space security at Tenant's entrance locations and internal motion detectors.

Project Approval Process:

The Tenant and the Tenant's project consultants shall review and approve all the following actions prior to the Landlord proceeding to issue instructions on behalf of the Tenant. Any decisions or directions made without the Tenant's written approval shall be at the cost of the Landlord:

- Specification Issuance
- Tender Issuance and Review for Construction Services and Work
- Review of Costs Prior to Acceptance
- Approval Process Authorization
- Cost Management and Review
- Tenant's Site Project Management

- (7) **Landlord Covenants:** The Landlord warrants and represents that, from and after the Commencement Date and throughout the Term of this lease, including any renewal or extension thereof; the Building shall be free of any defects or errors due to faulty materials, workmanship, or faulty design, including without limitation, any defects or errors relating to the Building's foundations, structure, roof membrane and structure, and building envelope, and the Landlord shall immediately repair and rectify any such defects or errors as aforesaid; and the Landlord further

covenants with the Tenant that it shall, indemnify and save harmless the Tenant from and against all loss, expense, damages, injury, actions, causes of action, suits, interest, claims, liens, costs and demands whatsoever on account of the construction and implementation of the Renovations, or on account of any defects or errors due to faulty workmanship, materials or design as aforesaid, or which may be incurred by reason, or in consequence of the execution or non-execution, or imperfect or negligent execution thereof, and shall pay to the Tenant, on demand, any expense, loss, costs, interest, or damages which may be sustained by the Tenant in consequence of any such action, suits, claim, lien or demand, and any monies paid by it in settlement or in discharge thereof, or on account thereof, and any monies so paid or payable by the Tenant may be deducted from any monies of the Landlord then remaining in the hand of the Tenant on account of this Lease including gross rent hereunder. Such warranty and indemnification shall extend to the entire Landlord's Work as shown on Owner's Scope of Work as contained in the Schedule "A" attached to Report PED05156/CM05034/FCS05113/PW05121 and to tenant improvements and renovations carried out by the Landlord on behalf of the Tenant as shown on the Tenant's Scope of Work on said Schedule "A". The Landlord shall transfer the warranties that it has received for those contracts entered into by the Landlord.

- (8) **Abatement of Rent:** Without restricting any right of set-off given or implied by law, the tenant may set-off against the Rent, or against any other sum payable hereunder by the Tenant to the Landlord, any amount payable by the Landlord to the Tenant hereunder or under any other lease or contract, and without restricting the generality of the foregoing, the Tenant may, when making payment of the Rent or of any other sum, withhold any amount which is then payable to the Tenant by the Landlord under this lease or which, by virtue of the right of set-off, may be retained by the Tenant. The Tenant shall only exercise its right to set-off, under this clause after providing written notice to the Landlord of its intention to do so and if the Landlord fails to cure its default within a period of five (5) days after having received such notice.
- (b) That the Mayor, General Manager, Finance and Corporate Services and City Clerk be authorized and directed to execute the Lease in a form satisfactory to Corporate Counsel.

- (c) That the 2006 Planning and Economic Development Department Tax Operating Budget submission reflect a lease expense pressure incorporating the above terms and conditions.
- (d) That the City of Hamilton renew the lease with Fercan Developments Inc. for the current area occupied by the Public Works Department at 77 James Street North, Hamilton, being Units 319-326 and Units 327-334, subject to the following terms;
- (i) **Term:** Fifteen (15) year term commencing November 1, 2005 and terminating on October 31, 2020.
- (ii) **Property:** 77 James Street North, Hamilton, being part of the Second Level Area "A" shown on the plan attached as Schedule "B" to Report PED05156/CM05034/FCS05113/PW05121, occupied by the Public Works Department; having an area of 30,400 square feet of office space and 4,200 square feet of storage space.
- (iii) **Rental Rate:** Commencing November 1, 2005 to October 31, 2010, \$17.50 per square foot (Modified Gross) \$532,000 per annum, \$44,333.33 per month plus G.S.T., storage - \$7.50 per square foot or \$2,625 per month plus G.S.T.; commencing November 1, 2010 to October 31, 2015, \$18.50 per square foot (Modified Gross) \$562,000 per annum, \$46,866.66 per month plus G.S.T., storage - \$8.50 per square foot or \$2,975 per month plus G.S.T.; commencing November 1, 2015 to October 31, 2020, \$19.50 per square foot (Modified Gross) \$592,800 per annum, \$49,400 per month plus G.S.T., storage - \$9.50 per square foot or \$3,325 per month plus G.S.T. All rent and additional operating costs are to be charged to Account #791224-55358 (Rent, Office and Buildings - City Centre).
- (iv) **Operating Costs:** The City shall be responsible for its share of the actual operating cost over the 2005 Base Year with any increases thereafter to be charged on a prorated basis, not to exceed the cost of Consumer Price Index and subject to sub-section (d)(v) outlined below. The City shall be responsible for the costs of cleaning and hydro which are estimated at \$2 per square foot or \$69,200 per annum.
- (v) That the Legal Services Division be authorized to prepare a By-law, under Section 110 of the Municipal Act, to propose that this leased area become a City Capital Facility, whereby the City would be exempt from paying Realty Taxes at this location. Upon passing the By-law and the space becoming exempt from paying realty taxes, the Landlord shall reduce the City's rent by the amount of realty taxes that would have been paid.

(vi) **Special Conditions:**

- (1) The City shall not be required to demolish the existing tenant improvements at the termination of the lease term.
- (2) The Landlord shall replace the existing roof over the premises with a new roof by no later than July 1, 2006, failing which and after the Tenant has served the Landlord with five (5) days' notice, the Tenant may proceed to have the roof replaced and the rent payable shall be reduced by the cost of the said roof replacement. Alternative, the Tenant may discount its rent payments until the work is completed. Furthermore, the existing roof shall be repaired immediately to eliminate further rain damage to the premises.
- (3) The Landlord shall be responsible for any existing heating and air conditioning equipment previously installed by the Tenant and shall repair and replace said equipment along with any other H.V.A.C systems when and as needed, throughout the term of this lease. All heating and air conditioning shall meet throughout the term of this agreement current to ASHRAE 90.1 standards.
- (4) The lease shall contain a clause stating that in the event the Landlord is tax arrears during any period of the duration of this lease agreement for the 77 James Street North facility, then the City of Hamilton, as Tenant, shall have the right to direct any outstanding future rent payments to the City of Hamilton, Corporate Services Department (Tax) in an equivalent amount to pay down the said tax arrears.
- (5) The lease renewal shall be prepared by the Landlord in accordance with the terms and conditions contained in this report and shall be subject to the Tenant's solicitor being completely satisfied with the terms contained therein.
- (6) **Landlord Covenants:** The Landlord warrants and represents that, from and after the Commencement Date and throughout the Term of this lease, including any renewal or extension thereof; the Building shall be free of any defects or errors due to faulty materials, workmanship, or faulty design, including without limitation, any defects or errors relating to the Building's foundation, structure, roof membrane and structure, and building envelope, and the Landlord shall immediately repair and rectify any such defects or errors as aforesaid; and the Landlord further covenants with the Tenant that it shall, indemnify and save harmless the Tenant from and against all loss, expense, damages, injury, actions,

causes of action, suits, interest, claims, liens, costs and demands whatsoever on account of the construction and implementation of the Renovations, or on account of any defects or errors due to faulty workmanship, materials or design as aforesaid, or which may be incurred by reason, or in consequence of the execution or non-execution, or imperfect or negligent execution thereof, and shall pay to the Tenant, on demand, any expense, loss, costs, interest, or damages which may be sustained by the Tenant in consequence of any such action, suits, claim, lien or demand, and any monies paid by it in settlement or in discharge thereof, or on account thereof, and any monies so paid or payable by the Tenant may be deducted from any monies of the Landlord then remaining in the hand of the Tenant on account of this Lease including gross rent hereunder. Such warranty and indemnification shall extend to tenant improvements and renovations carried out by the Landlord on behalf of the Tenant the Landlord shall transfer the warranties that it has received for those contracts entered into by the Landlord.

- (7) **Abatement of Rent:** Without restricting any right of set-off given or implied by law, the tenant may set-off against the Rent, or against any other sum payable hereunder by the Tenant to the Landlord, any amount payable by the Landlord to the Tenant hereunder or under any other Lease or contract, and without restricting the generality of the foregoing, the Tenant may, when making payment of the Rent or of any other sum, withhold any amount which is then payable to the Tenant by the Landlord under this lease or which, by virtue of the right of set-off, may be retained by the Tenant. The Tenant shall only exercise its right to set-off, under this clause after providing written notice to the Landlord of its intention to do so and if the Landlord fails to cure its default within a period of five (5) days after having received such notice.
- (8) The Landlord shall replace the existing carpet and paint the premises in accordance with the City of Hamilton's specifications at any time during the term at the request of the Tenant. In addition, the Landlord shall, at its own cost, improve the quality of the lighting in the space occupied by the Traffic and Engineering Operations Section. The Tenant shall provide the Landlord with the lighting specifications for said works which are to be commenced no later than November 1, 2005.

- (e) That the Mayor, General Manager, Finance and Corporate Services and City Clerk be authorized and directed to execute the Lease in a form satisfactory to the Corporate Counsel.
- (f) That the 2006 Public Works Department Tax Operating Budget submission reflects a lease expense pressure incorporating the above terms and conditions.
- (g) That the City of Hamilton enter into a lease with Fercan Development Inc. for the property known as 77 James Street North, Hamilton, the lease shall be subject to the following terms; all as set out in Report PED05156/CM05034/ FCS05113/PW05121:
 - (i) **Term:** Fifteen (15) year term commencing October 1, 2006, subject to the building (Owner's Work) and tenant improvement renovations being completed in a good workmanlike manner by October 1, 2006, failing which the commencement date shall be extended accordingly. Said term to terminate on September 30, 2021 subject to any extension affected by any renovation completion delay.
 - (ii) **Property:** 77 James Street North, Hamilton, being part of the Second Level of the former Eaton's Department Store shown as Area "B" on the plan attached as Schedule "B" Report PED05156/CM05034/FCS05113/PW05121, having an approximate area of 11,000 rentable square feet (Operations and Maintenance Division, Public Works Department). The final area shall not be determined until the final floor layout plans have been determined, verified and adjusted in accordance with B.O.M.A. 1996 measurement standard.
 - (iii) **Rental Rate:** Commencing October 1, 2006 or as extended under sub-section (g)(i) outlined above, to September 30, 2011, \$17.50 per square foot (Modified Gross) \$192,500 per annum, \$16,041.66 per month plus G.S.T.; commencing October 1, 2011 to September 30, 2016, \$18.50 per square foot (Modified Gross) \$203,500 per annum, \$16,958.33 per month plus G.S.T.; commencing October 1, 2016 to September 30, 2021, \$19.50 per square foot (Modified Gross) \$214,500 per annum, \$17,875 per month plus G.S.T. All rent and additional operating costs are to be charged to Account #791224-55358 (Rent, Office and Buildings - City Centre).
 - (iv) **Operating Costs:** The City shall be responsible for its share of the actual operating cost over the 2005 Base Year with any increases thereafter to be charged on a prorated basis, not to exceed escalation greater than the annual increase in the Consumer Price Index and subject to sub-section (g)(v) outlined below. The City shall be responsible for the costs of cleaning and hydro which are estimated at \$2 per square foot or \$22,000 per annum.

- (v) That the Legal Services Division be authorized to prepare a By-law, under Section 110 of the Municipal Act, to propose that this leased area become a City Capital Facility, whereby the City would be exempt from paying realty taxes at this location. Upon passing the By-law and the space becoming exempt from paying realty taxes, the Landlord shall reduce the City's rent by the amount of realty taxes that would have been paid.
- (vi) **Special Conditions:**
- (1) The City shall not be required to demolish the existing tenant improvements at the termination of the lease term.
- (2) (aa) The Landlord shall pay for the cost of retaining the City of Hamilton approved architectural and engineering consultants at a specified amount of \$3.80 P.S.F. These costs shall be paid by the Landlord on demand as the cost is incurred.
- (bb) As related to sub-section (g)(vi)(2)(aa) outlined above, the Landlord shall retain the services of the space planner Linda Fielding at 406 North Service Road East, Suite #1, Oakville, Ontario, in order to complete the Tenant's interior design and specifications and to provide the City with project management throughout the construction of the Landlord's work and the Tenant's Leasehold improvements. As part of the retention of Linda Fielding, this shall include the hiring of an engineering firm to assist in preparing the Tenant's improvement specifications and drawings. These associated costs shall form part of the fee structure stated in sub-section (2)(aa) outlined above, and any cost incurred over and above the specified rate set out in sub-section (g)(vi)(2)(aa), to be borne by the Tenant.
- (3) The Landlord shall renovate the building and site in accordance with the conditions and specifications contained in Schedule "A" attached to Report PED05156/CM05034/FCS05113/PW05121. In addition to the Landlord providing the improvements contained in the City's specifications contained in Schedule "A", the Landlord shall provide, at its own cost, a new barrier free glass entrance with side lights for the area having approximately 5,900 square feet and a new barrier free glass entrance door with additional 15 feet of glazing along with 20 feet of glazing on the demising wall from the egress corridor for the area having approximately

4,100 square feet. Said specifications and conditions shall form part of the final lease agreement.

- (4) The lease shall contain a clause to state that if the Landlord is over 30 days in arrears of property taxes for the 77 James Street North facility then the City of Hamilton as Tenant shall have the right to direct any future rent payments to the City of Hamilton, Corporate Services Department (Tax) in an equivalent amount to pay down the said tax arrears.
- (5) The lease shall be prepared by the Landlord in accordance with the terms and conditions contained in the Offer to Lease and shall be subject to the Tenant's solicitor being completely satisfied with the terms contained therein.
- (6) The Landlord shall provide the Tenant with a capital cost allowance of \$30 P.S.F. to be applied to the project costs at the discretion of the Tenant for the Tenant Scope of Work listed below. Any unassigned portion of these funds remaining as of the completion of the Tenant's work shall be applied to the rent costs.

Tenant's Scope of Work:

- New interior partitions, doors and hardware as per the Tenant's final design plan.
- New lighting enhancements in non core/base building areas.
- Plumbing for lunchroom/coffee service areas.
- All interior tenant finishes, flooring, walls and millwork.
- User electrical, cabling and communications (voice/data).
- Mechanical distribution to suit the Tenant's interior partition plan and our use.
- Leased space security at Tenant's entrance locations and internal motion detectors.

Project Approval Process:

The Tenant and the Tenant's project consultants shall review and approve all the following actions prior to the Landlord proceeding to issue instructions on behalf of the Tenant. Any decisions or directions made without the Tenant's written approval shall be at the cost of the Landlord:

- Specification Issuance
- Tender Issuance and Review for Construction Services and Work

- Review of Costs Prior to Acceptance
- Approval Process Authorization
- Cost Management and Review
- Tenant's Site Project Management

- (7) **Landlord Covenants:** The Landlord warrants and represents that, from and after the Commencement Date and throughout the Term of this lease, including any renewal or extension thereof; the Building shall be free of any defects or errors due to faulty materials, workmanship, or faulty design, including without limitation, any defects or errors relating to the Building's foundations, structure, roof membrane and structure, and building envelope, and the Landlord shall immediately repair and rectify any such defects or errors as aforesaid; and the Landlord further covenants with the Tenant that it shall, indemnify and save harmless the Tenant from and against all loss, expense, damages, injury, actions, causes of action, suits, interest, claims, liens, costs and demands whatsoever on account of the construction and implementation of the Renovations, or on account of any defects or errors due to faulty workmanship, materials or design as aforesaid, or which may be incurred by reason, or in consequence of the execution or non-execution, or imperfect or negligent execution thereof, and shall pay to the Tenant, on demand, any expense, loss, costs, interest, or damages which may be sustained by the Tenant in consequence of any such action, suits, claim, lien or demand, and any monies paid by it in settlement or in discharge thereof, or on account thereof, and any monies so paid or payable by the Tenant may be deducted from any monies of the Landlord then remaining in the hand of the Tenant on account of this Lease including gross rent hereunder. Such warranty and indemnification shall extend to the entire Landlord's Work as shown on Owner's Scope of Work as contained in the Schedule "A" attached Report PED05156/CM05034/FCS05113/PW05121 and to tenant improvements and renovations carried out by the Landlord on behalf of the Tenant as shown on the Tenant's Scope of Work on said Schedule "A". The Landlord shall transfer the warranties that it has received for those contracts entered into by the Landlord.
- (8) **Abatement of Rent:** Without restricting any right of set-off given or implied by law, the tenant may set-off against the Rent, or against any other sum payable hereunder by the Tenant to the Landlord, any amount payable by the Landlord to the Tenant hereunder or under any other Lease or contract, and without restricting the generality of the fore-

going, the Tenant may, when making payment of the Rent or of any other sum, withhold any amount which is then payable to the Tenant by the Landlord under this lease or which, by virtue of the right of set-off, may be retained by the Tenant. The Tenant shall only exercise its right to set-off under this clause after providing written notice to the Landlord of its intention to do so and if the Landlord fails to cure its default within a period of five (5) days after having received such notice.

- (h) That the 2006 Public Works Department Tax Operating Budget submission reflects a lease expense pressure incorporating the above terms and conditions.
- (i) That the Mayor, General Manager, Finance and Corporate Services and City Clerk be authorized and directed to execute the Lease in a form satisfactory to the Corporate Counsel.
- (j) That Report PED05156/CM05024/FCS05113/PW050121 be made a public document upon Council approval.

CARRIED
Motion as AMENDED CARRIED

(Braden/Bratina)

That the FIFTEENTH Report of the Corporate Administration Committee be adopted, as amended, and the information section received. **CARRIED**

STRATEGIC PLANNING AND BUDGETS COMMITTEE REPORT 05-012

(Bruckler/Collins)

That the TWELFTH Report of the Strategic Planning and Budgets Committee be adopted, and the information section received. **CARRIED**

SOCIAL AND PUBLIC HEALTH SERVICES COMMITTEE REPORT 05-013
--

(McHattie/Merulla)

That the THIRTEENTH Report of the Social and Public Health Services Committee be adopted, and the information section received. **CARRIED**

COMMITTEE OF THE WHOLE REPORT 05-017

(Merulla/Morelli)

That the following be added as Item 5 to Committee of the Whole Report 05-017:

5. Provincial Residential tax Reduction Program

Whereas, the funding of social services should be transferred from the property tax base;

And whereas, the City of Hamilton has the highest poverty rate in Ontario;

And whereas, Social Services and Housing accounts for approximately 22% of the City of Hamilton's municipal property taxes;

And whereas, the City of Hamilton's residents have a low average income level, relative to the Province's average, that results in a relatively high property tax burden relative to income;

And whereas, the competitiveness of the City's residential and non-residential taxes is a contributing factor to one of the City's strategic goals of "A City of Growth and Opportunity";

And whereas, the City of Hamilton is supportive in the Government of the Province of Ontario's effort to secure a "fair share" of federal funding from the Government of Canada;

Now therefore be it resolved

That until such time as the Government of the Province of Ontario removes the obligation of funding social service and housing programs through the municipal property tax base, the City of Hamilton requests that the Province investigate a Provincial Residential Tax Reduction through the following actions, and that the Ministers of Finance, Municipal Affairs and Housing, Community and Social Services, and Transportation be copied on the following resolutions:

- (a) That the Province allow municipalities to mitigate reassessment tax shifts between property tax classes through tax ratio adjustments;
- (b) That the Province waive levy restrictions due to tax ratio thresholds for mitigated tax shifts;
- (c) That the Province implement assessment averaging to mitigate continued swings in property assessment values;
- (d) That the Province fully mitigate all Ontario Works and Ontario Disability and Support Program enhancements introduced in 2005;
- (e) That the Province develop a long term strategy to remove the funding of social services and housing from the property tax base;
- (f) That for 2005, the Province enhance the City of Hamilton's Ontario Municipal Partnership Fund grant, such that the City of Hamilton's Social Services equivalent tax rate be comparable to GTA municipalities;

- (g) That the Province permit the use of provincial fuel tax revenue to mitigate fare increases;
- (h) That the Province continue the transit vehicle capital subsidy (1/3 funding);
- (i) That the Province reinstate commitment to 50/50 funding for Emergency Medical Services;
- (j) That the Province be requested to provide an appropriate level of Payments in Lieu (PIL), particularly in respect to the Heads & Beds rate allowed in Section 157 of the Municipal Act which has been \$75.00 since 1987.

CARRIED

(Jackson/Kelly)

That the SEVENTEENTH Report of the Committee of the Whole be adopted as amended and the information section received.

CARRIED

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE REPORT 05-022
--

(Whitehead/Pearson)

That the TWENTY-SECOND Report of the Planning and Economic Development Committee be received for information.

CARRIED

MOTIONS

7.1 Volunteer Committees – Addition/Removal of Members

(Braden/Bratina)

That Item 6(a) of Corporate Administration Committee Report 04-008 approved by Council on May 12, 2004, respecting the appointment of citizens to various citizen committees, be amended as follows:

(a) Advisory Committee for Persons with Disabilities

by deleting the following members:

David Binns
Jocelyne Lebel

(b) Status of Women Committee

by deleting the following members:

Patti McNaney
Rehana Khanam

(c) Gay, Lesbian, Bisexual, Transgender Advisory Committee

by adding the following member:

Joe Whelan

With appointment to expire on November 30, 2006.

CARRIED

7.2 STAR Emergency One-Time Request – 2005 Community Partnership Program (GRA05008)(City Wide)

That the one-time emergency request for the STAR program in the amount of \$10,000 be funded through the 2005 Community Partnership unallocated and reserve accounts.

CARRIED

7.3 “Stand Up for Stelco” Rally

(Whitehead/Merulla)

That in an effort to demonstrate the City of Hamilton’s continued support for Stelco, and the current restructuring plan and recognizing the important role Stelco plays in our community, that City Council endorse a “Stand Up for Stelco” Rally to be held at Hamilton City Hall on November 7, 2005 at Noon and urge all citizens to attend to show their support

CARRIED

7.4 Social Service Downloading on the City of Hamilton – Addition of Member

(McHattie/Merulla)

That subsection (d) of Item 7.5, of the September 28, 2005, Council Minutes respecting Social Services Downloading on the City of Hamilton, be amended by adding the words “and a representative from the Hamilton Civic Coalition” before the words “be appointed to the steering committee”

CARRIED

NOTICES OF MOTIONS

Councillor McHattie presented the following Notice of Motion:

Re: Funding for Arts Hamilton (formerly Hamilton and Region Arts Council)

Whereas, Arts Hamilton (formerly Hamilton and Region Arts Council) has functioned as an umbrella organization for all arts disciplines in the City of Hamilton for over 33 years;

Whereas, Arts Hamilton is the only organization that represents all arts disciplines;

Whereas, Arts Hamilton is the largest and oldest art council in Ontario;

Whereas, other arts councils have repeatedly used Arts Hamilton's model, including ArtsBeat, which after many years remains a benchmark for Arts Council publications throughout the province;

Whereas, Arts Hamilton advocates on behalf of all arts disciplines; facilitates communication between arts disciplines, the City of Hamilton, and the community at large; collaborates and coordinates with arts groups so that they can do what they do best; and communicates with City Council and City staff on arts matters city-wide;

Whereas, the Ontario Arts Council grant to Arts Hamilton has been reduced over a period of years from \$32,500 to \$18,000; and

Whereas, Arts Hamilton has just learned that \$50,000 per year previously available through bingo funding will no longer be available to the Arts Hamilton budget;

Whereas, the Arts Hamilton has recently produced a Strategic Plan, covering the four pillars of program, profile, resources, and partnerships;

Therefore:

1. Request City staff investigate a long-term partnership with Arts Hamilton to assist in the delivery of municipal arts and culture policies; and
2. Request 2005 contingency funds in the amount of \$44,500 to assist Arts Hamilton to resume normal operations; implement the Strategic Plan, and explore long-term partnerships with the City of Hamilton.

STATEMENT BY MEMBERS

Members of Council used this opportunity to discuss matters of general interest.

PRIVATE AND CONFIDENTIAL

(Bratina/Braden)

That Council move In Camera to receive information respecting personnel and proposed land acquisition matters. **CARRIED**

(Braden/Collins)

That Council reconvene in Open Session

CARRIED

There was no report with respect to the personnel issue.

Added Item 10.1 Expropriation of 100 Cumberland Ave, Hamilton for park purposes. (Ward 3)**(Morelli/Jackson)**

- (a) That City Solicitor be authorized and directed to proceed with the necessary steps to expropriate the lands currently described and known as Lifesavers Park located as part of 100 Cumberland Avenue, described as part of Lot 10, Concession 3 in the former Geographic Township of Barton as in instrument CD416762, being part of PIN #171130030(LT), Roll Number 251803024103630 for municipal parkland and ancillary uses;
- (b) That all the cost of the expropriation be charged to Hamilton Parkland Acquisition Reserve 104090.
- (c) That the City Solicitor prepare, and the City Clerk sign, an application for approval to expropriate by the City of Hamilton the lands and buildings located as part of 100 Cumberland Avenue for municipal parkland and ancillary uses;
- (d) That the application of the City of Hamilton signed by the City Clerk to expropriate the lands known and currently described as Lifesavers Park located as part of 100 Cumberland Avenue be authorized and that the said application hereby be received and that the City Solicitor be authorized and directed to cause the necessary notices in this application to be served on the registered owners of the lands affected and, for advertisement of the said Notice of Expropriation to be placed in a local newspaper for three consecutive weeks;
- (e) That the City Solicitor be authorized and directed to forward to the Chief Inquiry Officer any Request for Hearings and to report to Council such information;
- (f) That, in the event no requests for hearings are received, the General Manager of Public Works be authorized and directed to introduce the Expropriation By-Law to City Council;
- (g) That the General Manager of Planning and Economic Development be authorized and directed to obtain external appraisals of the lands, if and when necessary, to form the basis of compensation to be offered by the City and that the General Manager of Planning and Economic Development, if and when necessary, be authorized and directed to negotiate compensation with the owner of the expropriated lands on the basis of the appraisal report.

CARRIED

BY-LAWS

(Jackson/Morelli)

That Bill Nos. 05-301 to 05-323 attached hereto be passed, that the corporate seal be affixed thereto and the By-laws be signed by the Mayor and the City Clerk, and numbered as 05-301 to 05-323.

By-law No. **Bill No.**

- 05-301 301** To Incorporate City Land Designated as Parts 6 and 7 on Plan 62R-9859 into Belgraden Avenue
- 05-302 302** To Incorporate City Land Designated as Block 172 on Plan 62M-950 into Watercliff Place
- 05-303 303** To Incorporate City Land Designated as Block 180 on Plan 62M-700 and Part 6 on Plan 62R-11998 into Candlewood Drive
- 05-304 304** To Incorporate City Land Designated as Block 169 on Plan 62M-950 into Cardigan Place
- 05-305 305** To Incorporate City Land Designated as Block 171 on Plan 62M-950 into Delrosa Way
- 05-306 306** To Incorporate City Land Designated as Block 170 on Plan 62M-950 into Gracehill Drive
- 05-307 307** To Incorporate City Land Designated as Blocks 167 and 168 on Plan 62M-950 into Kingspoint Circle
- 05-308 308** To Amend Zoning By-law No. 87-57 (Ancaster), as amended, Respecting Lands Located at 446 and 450 Hamilton Drive
- 05-309 309** To Amend Zoning By-law No. 464 (Glanbrook), Respecting Lands Located at 25 Talbot Lane
- 03-310 310** To Amend Zoning By-law No. 3692-92 (Stoney Creek), Respecting the Property Located at 589 Fifty Road
- 05-311 311** To Amend Zoning By-law No. 6593, Respecting Lands Located at 1201 Upper James Street, Hamilton
- 05-312 312** To Amend Zoning By-law No. 90-145-Z (Flamborough), Respecting Lands Located at 447 and 453 Dundas Street East
- 05-313 313** To Establish a Municipal Heritage Committee and Provide for the Appointment of Members Thereto
- 05-314 314** To Amend By-law No. 01-215, To Regulate Traffic Schedule 5 – Stop Signs
- 05-315 315** To Amend By-law No. 01-218, as amended, To Regulate On-Street Parking
Schedule 8 – No Parking Zones
Schedule 12 – Permit Parking Zones
Schedule 13 – No Stopping Zones
Schedule 14 – Wheelchair Loading Zones
Schedule 15 – Commercial Vehicle Loading Zones

Schedule 16 – Taxi Zones
Schedule 20 – School Bus Loading Zones

- 05-316 316** Respecting Removal of Part Lot Control, Lot 17, Registered Plan No. 62M-1009
- 05-317 317** Respecting Removal of Part Lot Control, Block 10, Registered Plan No. 62M-1030
- 05-318 318** Respecting Removal of Part Lot Control, Block 16, Registered Plan No. 62M-1036
- 05-319 319** Respecting Removal of Part Lot Control, Blocks 86 and 87, Registered Plan No. 62M-1035
- 05-320 320** Respecting Removal of Part Lot Control, Block 16, Registered Plan No. 62M-1030
- 05-321 321** To Amend By-law No. 01-218, as amended, To Regulate On-Street Parking
Section 8, Subsection (3)
- 05-322 322** To Require the Supply of Vital Services
- 05-323 323** To Confirm the Proceedings of City Council

The City Council meeting adjourned at 10:05 p.m.

Respectfully submitted,

Larry Dilanni
Mayor

Kevin Christenson, Clerk
October 26, 2005