



Hamilton

INFORMATION REPORT

**CITY WIDE
IMPLICATIONS**

To:	Chair and Members Planning & Economic Development Committee Outstanding Business Item No. M and Issue: Eligibility for Lottery Licensing of Municipal Museums and Public Libraries PED06185		
From:	Lee Ann Coveyduck General Manager Planning and Economic Development Department	Telephone: Facsimile: E-mail:	905 546-4339 905 546-4364 lcoveydu@hamilton.ca
Date:	May 19, 2006		
Re:	Eligibility for Lottery Licensing of Municipal Museums and Public Libraries (City Wide)		

Council Direction:

Council directed staff to prepare a report respecting the correspondence received from Janet Beckett, Clerk of the Corporation of the City of Port Colborne respecting the eligibility of municipal museums and public libraries for lottery licensing at its meeting of September 14, 2005.

Information:

At its meeting of September 14, 2005, Council reviewed correspondence from Janet Beckett, Clerk of the Corporation of the City of Port Colborne respecting the eligibility of municipal museums and public libraries for lottery licensing. The correspondence, which is included in this report as Appendix A, advised that at its meeting of August 8, 2005, the Council of the Corporation of the City of Port Colborne approved a petition to the "Premier of Ontario, the Minister of Consumer and Business Services and the Registrar of Alcohol and Gaming to support a change to the regulatory framework for charitable gaming in Ontario and Canada to permit the licensing of municipal museums and public libraries and the use of proceeds from lottery schemes to continue and enhance the services they offer". The Council for the City of Hamilton was asked for favourable consideration of the Council of City of Port Colborne's petition and assistance in furthering the object of eligibility of municipal museums and public libraries for lottery licensing.

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This request resulted because of the changes in the new Alcohol and Gaming Commission of Ontario Lottery Licensing Policy Manual (LLPM) issued in the Spring of 2005 that more precisely defined the ineligibility of municipal agencies or bodies for lottery licensing and consequently the direction of lottery proceeds for these purposes.

It is at the discretion of Council as to whether, and in what manner, they choose to support the resolution of the Port Colborne Council to expand the eligibility for lottery proceeds to include museums and libraries. Notwithstanding this decision, this report outlines the process that staff have undertaken to address the direction of lottery proceeds to ineligible (municipal) organizations from eligible organizations in accordance with the LLPM.

There are two aspects to be considered respecting issuance of lottery licenses; the eligibility of the organization applying for the lottery licence to conduct a lottery scheme and the direction or application of the lottery proceeds realized from the proposed lottery scheme.

The Alcohol and Gaming Commission of Ontario Lottery Licensing Policy Manual (LLPM) regulates all municipal lottery licensing in the Province. In order to issue a lottery licence the licensee must meet the eligibility requirements as stated in the LLPM.

Eligibility of the Organization:

Pursuant to Section 2.3.1 of the LLPM elected representative groups including municipal, regional, provincial and federal governments are identified as ineligible groups for lottery licensing.

Section 2.3.2 states that governments are political bodies established for administrative purposes. Their primary mandate is to govern, which is not a charitable object. Services provided by governments may provide a public benefit and, if provided by a charitable organization, may be considered a charitable activity. However, a government is not a charitable organization and is not eligible for lottery licensing.

When reviewing organizations that are associated with governments, licensing officials must determine the extent to which the organization is:

- separate legally, administratively and financially from the government; and,
- controlled by the government.

For example, Conservation Authorities established under the Conservation Authorities Act are not separate legally, administratively and financially from the government. Therefore, typically these types of organizations are not eligible for lottery licensing.

Section 2.3.2 (a) states that a licensing authority must never issue a lottery licence to a municipality or one of its administrative departments. Municipalities derive their powers from the Municipal Act or, in some cases, a constituting act. As entities established primarily for local administration, they are not given the power to carry out charitable objects or to conduct lottery schemes. Therefore, municipalities and their operating

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committees or agencies do not meet the definition of a charitable organization and do not qualify for licensing under section 207(1)(b) of the Criminal Code.

When reviewing organizations associated with a municipality, a licensing official must determine the extent to which the organization is controlled by the municipality and whether the organization is separate legally, administratively and financially from the municipality. Therefore, staff cannot issue a lottery licence to the municipality itself, however, there are a number of organizations throughout the City that are eligible to be licensed to conduct lottery schemes. These organizations operate at arms length from the municipality; however, they do apply to direct the lottery proceeds realized from the lottery schemes to municipal parks and the Conservation Authority for example.

Section 2.3.2 (d) advises that many agencies operate under legislation and receive government funding. To determine the eligibility of these organizations, a licensing official must review the legislation that sets out the organization's mandate and its relationship to government. Whether the organization is separate legally, administratively and financially from government and the degree of control exercised by government over the organization will determine whether the organization is eligible for lottery licensing.

The Alcohol and Gaming Commission of Ontario uses the four charitable classifications set out below. In order to qualify for a lottery licence, an organization must demonstrate that it exists to provide services in one of these charitable classifications:

- a) the Relief of Poverty;
- b) the Advancement of Education;
- c) the Advancement of Religion; and,
- d) Other Charitable Purposes Beneficial to the Community, not falling under a) b) or c).

In addition, an eligible organization must also meet all of the following criteria:

- It must provide a charitable benefit to residents of Ontario.
- It benefits the public at large, not a private group.
 - An organization that is established solely for the benefit of its members is not an eligible organization. It does not have a public benefit.
- It does not restrict access to its benefits.
 - Organizations may direct their charitable works towards specific segments of the community or individuals with a common need, provided that:
 - More than a few individuals benefit.
 - The charitable benefit must be accessible to the public at large.

An organization that otherwise restricts access is not an eligible organization. Organizations that exist to provide service to individuals with a common need may provide services on an individual basis.

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- Its income is not paid to or used for the personal benefit of its members, its members' relatives or anyone who is not at arm's length from the organization.
- An organization that transfers income or assets to its members for their personal benefit is not an eligible organization.
- Projects with a charitable purpose or object are one of its main aims and normal activities.
- An organization that does not have a mandate to provide charitable works and does not provide charitable works on a regular basis is not an eligible organization.

Other Charitable Purposes Beneficial to the Community, not falling under a) b) or c) is the broadest classification and the most difficult to consider. An organization with a charitable purpose that does not fall under one of the first three classifications may be eligible in this classification. The organization's activities must provide a public not private benefit.

The term "Other Charitable Purposes Beneficial to the Community" has been interpreted to include activities that benefit the whole community, without discrimination, so that the purposes have a truly public character. This may include:

- the promotion of arts and cultural activities;
- cultural, ethnic, native, historic or heritage pursuits;
- the improvement of the quality of health through medical research;
- treatment programs and preventative programs;
- youth sporting activities; and,
- community projects undertaken by service organizations.

All organizations licensed by the City undergo an eligibility assessment to ensure that they meet the criteria as outlined in the LLPM. This is an ongoing process as the organizations / licensees may broaden and/or change their mandates to meet the increasing needs of the community.

Direction of Lottery Proceeds:

The LLPM outlines a number of regulations respecting the direction of lottery proceeds and staff must review each application to ensure that the direction of proceeds applied for meets the criteria as set out in the LLPM.

Pursuant to Section 2.4.0 eligible uses of proceeds must be:

- in themselves charitable and advance the charitable purposes or objects of the organization;
- used for the direct delivery of the charitable purposes or objects of the organization; and,
- directed toward specific segments of the Ontario community or residents of Ontario with a common need.

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The same type of eligible charitable organization may also in certain circumstances donate lottery proceeds towards goods or services for use by organizations that in themselves may not be considered charitable in nature, including those that are dependent upon municipal governments. In this instance it must be demonstrated, that:

- the goods or services are not core goods or services historically provided by the recipient organization;
- there is no obligation for the recipient organization to provide the goods and services; and,
- an agreement to protect the lottery proceeds is in place, prior to the transfer of funds.

As a result of information provided by the Alcohol and Gaming Commission at a training seminar, staff have adopted the criteria that on a case by case basis, an eligible organization operating independent of the municipal entity may direct lottery proceeds to an ineligible organization if the item(s) identified for the use of lottery proceeds is not included in the budget of the recipient (ineligible) organization and if the use of proceeds meets the abovementioned criteria. It is important to note that each application will be assessed on its compliance with the regulations as set out in the LLPM and the recipient organization may be required to provide in writing to the Issuer of Licences that the good or service is in fact not included in their budget. In addition, the direction of the proceeds must enhance the goods and services already provided and be offered for the benefit of the public and not a private group. In the case where an asset (capital expenditure) may be realized by the recipient organization the requirements of Section 2.4.1(a)(iii), states:

In some cases, an eligible charitable organization that meets the criteria set out in 2.4.1(a)(i) may purchase or donate funds towards the purchase of a non-core item for another organization. The recipient organization must use the item for a purpose that provides a public, not a private benefit.

Prior to the purchase, the donating and recipient organizations must enter into a trust agreement outlining their respective responsibilities. The agreement must include the following information:

- who will hold title to the item;
- who maintains the item;
- the current value of the item;
- the item's life span and residual value over a period of time;
- who insures the item;
- who decides on disposal of the item;
- what happens to the item's residual value.

This agreement is necessary to ensure:

- that the lottery proceeds are used only for charitable purposes; and
- that the residual value of an item is used to support only those initiatives that have also been approved as eligible.

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Staff has addressed the generous work undertaken by charitable / eligible organizations throughout the City to provide enhanced goods and services to benefit the public while ensuring that each proposal for the direction of the lottery proceeds meets the requirements of the LLPM.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department



CITY OF PORT COLBORNE
66 CHARLOTTE STREET
PORT COLBORNE, ONT. L3K 3C8

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August 23rd, 2005.

Municipalities of Ontario

Dear Councils:

Eligibility for Lottery Licensing Municipal Museums and Public Libraries

At its meeting of August 8th, 2005, the Council of the Corporation of the City of Port Colborne resolved as follows:

"WHEREAS under the present legislation governing gaming in Ontario municipalities and their affiliated (non-independent) committees and boards do not qualify as eligible organizations for lottery licensing;

AND WHEREAS the Port Colborne Historical and Marine Museum Board has asked the Council of the Corporation of the City of Port Colborne to petition the upper levels of government for a change to the legislative framework so as to permit municipal museums and public libraries to be eligible for lottery licensing and to have broad discretion in the use of proceeds from lottery schemes;

AND WHEREAS the Council of the City of Port Colborne supports the request of the Port Colborne Historical and Marine Museum Board and believes that municipal museums and public libraries offer services that provide a direct benefit to Ontario residents and should be eligible to use proceeds from lottery schemes to continue and enhance those services;

THEREFORE BE IT RESOLVED THAT the Council of the Corporation of the City of Port Colborne petition the Premier of Ontario, the Minister of Consumer and Business Services and the Registrar of Alcohol and Gaming to support a change to the regulatory framework for charitable gaming in Ontario and Canada to permit the licensing of municipal museums and public libraries and the use of proceeds from lottery schemes to continue and enhance the services they offer;

AND FURTHER that the Provincial government be asked to petition the Federal Government for the legislative amendments to the Criminal Code that are necessary to provide an exemption for municipal museums and public libraries to the general prohibition on the conduct of lottery schemes.

AND FURTHER that a copy of this resolution be circulated, for support, to municipalities in the Province of Ontario, J. Maloney MP and T. Hudak MPP."

Your favourable consideration of Council's petition and your assistance in furthering the object of eligibility for lottery licensing for municipal museums and public libraries would be greatly appreciated.

Janet Beckett
City Clerk
Corporation of the City of Port Colborne