

Bill No. 299

## CITY OF HAMILTON

### By-law No. 04-299

#### **A BY-LAW TO ESTABLISH PROCEDURES, INCLUDING THE GIVING OF NOTICE TO THE PUBLIC, GOVERNING THE SALE OF LAND OWNED BY THE CITY OF HAMILTON**

**WHEREAS** section 268(1) of the Municipal Act, 2001, S.O. 2001 c. 25, as amended, requires every municipality with authority to sell land to enact a by-law which will establish procedures, including the giving of notice to the public, governing the sale of land owned by a municipality;

**AND WHEREAS** section 268(2) of the Municipal Act, 2001, defines “sale” to include a lease of 21 years or longer;

**AND WHEREAS** pursuant to the City of Hamilton Act, 1999, S.O. 1999, Ch. 14, Schedule “C”, the following municipalities were dissolved on January 1, 2001; The Regional Municipality of Hamilton-Wentworth, the Corporation of the City of Hamilton, the Town of Dundas, the City of Stoney Creek, the Town of Ancaster, the Town of Flamborough, and the Township of Glanbrook (the old municipalities);

**AND WHEREAS** the City of Hamilton stands in the place of the dissolved municipalities for all purposes;

**AND WHEREAS** every by-law of an old municipality that was in force on December 31, 2000, shall be deemed to be a by-law of the City of Hamilton on January 1, 2001 and remains in force until it is repealed;

**AND WHEREAS** Council wishes to repeal the by-laws of the old municipalities which deal with establishing procedures for the sale of real property owned by the municipality and in their place pass one new by-law which establishes procedures to be followed by the City of Hamilton in the sale of its land;

**AND WHEREAS** it is intended in this by-law to adopt procedures to be followed by the City in the sale of its land, and in the Lease of land by the City for a term of 21 years or longer, and therefore this by-law shall apply to the sale of land owned by the City and to all leases of land, to be entered into by the City as Landlord, for a term of 21 years or longer.

**NOW THEREFORE** pursuant to section 268 of the Municipal Act, 2001, the Council of the City of Hamilton enacts as follows:

## **SECTION 1 - INTERPRETATION**

1. In this by-law,
  - (a) **“Council”** means the Council of the City of Hamilton as defined in the City’s Procedural By-law and/or the City Manager and/or the General Manager that has been delegated the authority by Council to approve the disposition or lease of designated classes of, or interests in land, pursuant to a resolution by Council;
  - (b) **“Committee”** means a standing committee of the Council of the City of Hamilton as defined in the City’s Procedural By-law;
  - (c) **“General Manager”** means the General Manager of Planning and Development and includes his or her designate;
  - (d) **“sale”** includes the sale, transfer or conveyance of land by the City and includes leases by the City as landlord of land for a term of 21 years or longer. Sale does not include a Quit Claim Deed made by the City for the purpose of correcting or clarifying title or boundaries of its land or of land not owned by the municipality.
  - (e) **“land”, “property” or “real property”** means lands and premises or any proprietary interest in land which is owned or held by the City in fee simple or otherwise, including, without limiting the generality of the foregoing, all easements, rights-of-way and leasehold interests of the City, and lands owned under agreement of purchase and sale. Land does not include personal property of the City. For greater certainty and not to restrict the generality of the foregoing definition, land includes those lands of the City which are parks, parking lots, water lots, open space, buildings, lands occupied by the Parking Authority and by the Hamilton Entertainment Facilities Centre Inc. and lands laid out or intended to be laid out as highways.

## **SECTION 2 – APPLICATION**

2. Land intended to be sold by the City of Hamilton shall be sold in accordance with the requirements of the Municipal Act, 2001, and the provisions of this by-law.

### **SECTION 3 - CONDITIONS**

3. Before selling any land owned by the City, Council shall;
  - (a) by by-law or resolution declare the land to be surplus;
  - (b) obtain at least one appraisal of the fair market value of the land, unless an appraisal is not required; and
  - (c) give notice to the public of the proposed sale.

### **SECTION 4 - REGISTER**

4. (a) A public register shall (subject to subsection (b) herein) be established and maintained listing and describing the land owned or leased by the municipality.
- (b) The following classes of land need not be listed in the public register:
  1. Land 0.3 metres or less in width acquired in connection with an approval or decision under the Planning Act.
  2. Highways.
  3. Land formerly used for railway lines.

### **SECTION 5 - CERTIFICATE**

5. (a) Where the steps required by section 268 of the Municipal Act, 2001 and this by-law have been complied with for the City's intended sale of its land, the Clerk (or acting Clerk, if necessary) may issue a "Certificate of Compliance" verifying that to the best of his or her knowledge the requirements of section 268 of the Municipal Act, 2001 and of this by-law which apply to the sale of land have been complied with (a copy of this certificate is annexed hereto as Schedule "A").
- (b) A certificate under subsection (a) herein, shall be included in a deed or transfer of land and, unless a person to whom the land is sold has notice to the contrary, shall be deemed to be sufficient proof that the requirements of section 268 of the Municipal Act, 2001 have been complied with.

### **SECTION 6 - EXCLUSION, CERTAIN CLASSES OF LAND**

6. Section 3. (b) does not apply (and therefore an appraisal is not required) to the sale of the following classes of land:
- (a) Land 0.3 metres or less in width acquired in connection with an approval or decision under the Planning Act.
  - (b) Closed highways if sold to an owner of land abutting the closed highways.
  - (c) Land formerly used for railway lines if sold to an owner of land abutting the former railway land.
  - (d) Land that does not have direct access to a highway if sold to the owner of land abutting that land.
  - (e) Land repurchased by an owner in accordance with section 42 of the Expropriations Act.
  - (f) Land **sold** under sections 107 General power to make grants, 108 Small business counselling, and 109 Community development corporations, of the Municipal Act, 2001.
  - (g) Easements granted to public utilities or to telephone companies.

#### **SECTION 7 – EXCLUSION, SALES TO PUBLIC BODIES**

7. Section 3. (b) does not apply (and therefore an appraisal is not required) to the sale of land to the following public bodies:
- (a) A municipality.
  - (b) A local board, including a school board and a conservation authority.
  - (c) The Crown in right of Ontario or Canada and their agencies.

#### **SECTION 8 – EXCLUSION FROM CONDITIONS**

8. Section 3., does not apply to the sale of the following classes of land:
- (a) Land sold under section 110 Agreements for municipal capital facilities, of the Municipal Act, 2001.
  - (b) Land to be used for the establishment and carrying on of industries and industrial operations and incidental uses.

#### **SECTION 9 – EXEMPTIONS**

9. This By-law does not apply to the sale of land under Part XI Sale Of Land For Tax Arrears, of the Municipal Act, 2001.

### **SECTION 10 – SURPLUS LANDS**

10. The following classes of land are hereby declared to be surplus to the needs of the City:
- (a) Land 0.3 metres or less in width acquired in connection with an approval or decision under the Planning Act, is hereby declared surplus to the City's needs, effective upon the fulfillment of the purpose for which it was acquired, as certified by the General Manager, and no further declaration under section 3.(a) above is required.
  - (b) Land acquired by the City for temporary road purposes in connection with an approval or decision under the Planning Act, is hereby declared surplus to the City's needs, effective upon the fulfillment of the purpose for which it was acquired, as certified by the General Manager, and no further declaration under section 3.(a) above is required.
  - (c) Land acquired by the City pursuant to Part XI of the Municipal Act, 2001, which is to be resold within the one year period as set out in the Municipal Act, 2001, is hereby declared surplus to the City's needs and no further declaration under section 3.(a) above is required.
  - (d) Closed highways and/or highways intended to be closed by by-law and/or Judge's Order, are hereby declared to be surplus to the City's needs and no further declaration under section 3.(a) above is required.

### **SECTION 11 – APPRAISALS**

11. An appraisal required under section 3. (b) above includes a written opinion on the appraised fair market value of the land as of a date which is within one year of the date of approval of an intended land sale (or within such other time as is expressly accepted for a particular appraisal, by resolution, by Council), that is prepared by or is an appraisal satisfactory to, the General Manager.

### **SECTION 12 – NOTICE**

12. (a) Notice to the public of the proposed sale of land, required under section 3.(c) above, may consist of one or more of the following types:
- 1. by publication of the notice once in a newspaper having general circulation within the municipality in which the land is located;

2. by listing the land with a broker and/or directly with the Multiple Listing Service of the Metropolitan Hamilton Real Estate Board;
3. by posting on the land proposed to be sold, a "For Sale" sign, for not less than seven (7) days, which sign includes the City's name and telephone number for inquiries;
4. by personal service; registered mail; certified mail; courier or fax;
5. by inclusion of the land sale in a report of a Committee recommending to Council the sale of the land:
6. by inclusion of the land sale on the agenda of the Council meeting at which the intended sale is to be considered by Council;
7. by inclusion of the land sale in a report to the City Manager and/or the General Manager that has been delegated the authority by Council to approve the disposition or lease of designated classes of, or interests in land, pursuant a resolution by Council.

(b) Where land proposed to be sold is within one of the categories listed below, notice to the public, under section 3.(c), above, shall be deemed sufficiently given by following either one of notice type (a) 5., 6., or 7., herein:

1. Land 0.3 metres or less in width acquired in connection with an approval or decision under the Planning Act.
2. Land acquired by the City for temporary road purposes, in connection with an approval or decision under the Planning Act if sold back to the developer;
3. Closed highways if sold to an owner of land abutting the closed highways.
4. Land formerly used for railway lines if sold to an owner of land abutting the former railway land.
5. Land that does not have direct access to a highway if sold to the owner of land abutting that land.
6. Land repurchased by an owner in accordance with section 42 of the Expropriations Act.
7. Land sold under sections 107 General power to make grants, 108 Small business counselling, and 109 Community development corporations, of the Municipal Act, 2001.

8. Easements granted to public utilities or to telephone companies;
  9. Land acquired by the City pursuant to Part XI Sale Of Land For Tax Arrears of the Municipal Act, 2001, but sold for purposes of brownfields redevelopment, within the one year time period as set out in the Municipal Act, 2001.
- (c) Where land is proposed to be sold to the following public bodies, notice to the public, under section 3.(c), above, shall be deemed sufficiently given by following either one of notice type (a) 5., 6., or 7., herein:
1. A municipality
  2. A local board, including a school board and a conservation authority.
  3. The Crown in right of Ontario or Canada and their agencies.
- (d) Notice may be given in one or more of the methods permitted in this by-law, or any other means of communication which in the opinion of Council, acting reasonably and in good faith, is deemed to be appropriate in the circumstances in order to give notice to the public.
- (e) Where land is proposed to be sold by public tender, call for proposals or public auction; advertisement(s) of notice of them shall be deemed to be notice to the public for purposes of this by-law.

### **SECTION 13 – REPEAL**

13. The following by-laws are hereby repealed:
- (a) By-law No. 95-052 respecting procedures for the sales of real property owned by The Regional Municipality of Hamilton-Wentworth, and all amendments thereto:
  - (b) By-law No. 95-049 respecting procedures for the sales of real property owned by The Corporation of the City of Hamilton, and all amendments thereto:
  - (c) By-law No. 4220-95 respecting procedures for the sales of real property owned by The Corporation of the Town of Dundas, and all amendments thereto;
  - (d) By-law No. 4206-95 respecting procedures for the sales of real property owned by The Corporation of the City of Stoney Creek, and all amendments thereto;

- (e) By-law No. 95-56 respecting procedures for the sales of real property owned by The Corporation of the Town of Ancaster, and all amendments thereto;
- (f) By-law No. 95-15-P respecting procedures for the sales of real property owned by The Corporation of the Town of Flamborough, and all amendments thereto;
- (g) By-law No. 531-95 respecting procedures for the sales of real property owned by The Corporation of the Township of Glanbrook.

#### **SECTION 14 - GENERAL**

- 14.1 This By-law shall be administered by the General Manager.
- 14.2 Where the land intended to be sold is owned by the City on behalf of the Hamilton Civic Hospitals, the requirements of this by-law prior to Council's consideration of the intended sale of such land, may be administered by the Hamilton Civic Hospitals.
- 14.3 The short title of this By-law is "Procedural By-law for the Sale of Land".
- 14.4 This by-law shall come into effect on the day of its enactment.

PASSED this 24<sup>th</sup> day of November A.D. 2004

  
\_\_\_\_\_  
CITY CLERK

  
\_\_\_\_\_  
MAYOR



**SCHEDULE "A"**

**TO BY-LAW NO. 04-299**

**CERTIFICATE OF COMPLIANCE**

Certificate of Compliance with section 268 of the Municipal Act, 2001 governing the sale of land described as:

(Description may be attached)

I hereby certify that:

1. The Municipality passed By-law \_\_\_\_\_ on \_\_\_\_\_ . (date)

It is a procedural by-law for the purposes of the sale of land and was in force on the date of the sale of land described above.

2. To the best of my knowledge the requirements of section 268 of the Municipal Act, 2001, and of the by-law in section 1., above, which apply to the sale of land, have been complied with.

\_\_\_\_\_  
Clerk  
Of the City of Hamilton

\_\_\_\_\_  
Date