

Authority: Item 4, Emergency and Community
Services Committee
Report 10-011 (CS10079)
CM: September 15, 2010

Bill No. 209

CITY OF HAMILTON

BY-LAW NO. 10-209

Being a By-law to Regulate the Hamilton Farmers' Market and to Repeal By-law 92-310

WHEREAS section 113 of the Municipal Act, 2001 authorizes the City of Hamilton to establish, maintain and operate a farmers market;

AND WHEREAS section 425 of the Municipal Act, 2001 authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the Municipal Act, 2001 further authorizes the City of Hamilton, amongst other things, to delegate its powers and duties under that Act to a person or body.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

DEFINITIONS

1. This By-law may be referred to as the "Market By-law".
2. In this By-law:

"City" means the municipality of the City of Hamilton;

"City Solicitor" means the City Solicitor for the City of Hamilton or a person designated by him or her to act on behalf of the City Solicitor;

"Council" means the Council of the City of Hamilton:

"Director of Culture" means the Director of Culture of the City of Hamilton or a person designated by him or her to act on behalf of the Director of Culture;

"farmer" means a farmer as defined in the Farming and Food Production Protection Act, 1998;

"General Manager, Community Services" means the General Manager, Community Services of the City of Hamilton or a person designated by him or her to act on behalf of the General Manager, Community Services;

"Hamilton Farmers' Market" or "Market" means the public market of the City of Hamilton located in Lloyd D. Jackson Square;

"holiday" means and includes every:

- (i) Sunday
- (ii) New Year's Day
- (iii) Family Day
- (iv) Good Friday
- (v) Easter Monday
- (vi) Victoria Day
- (vii) Canada Day
- (viii) day appointed as a Civic Holiday by Council
- (ix) Thanksgiving Day
- (x) Labour Day
- (xi) Christmas Day
- (xii) Boxing Day
- (xiii) birthday, or day fixed by proclamation of the Governor General, for the celebration of the birthday of the reigning sovereign
- (xiv) day appointed by proclamation of the Governor General or Lieutenant Governor in Council as a public holiday;

"market day" means any Tuesday, Thursday, Friday or Saturday, which is not a holiday, and includes any other day, which may from time to time be designated by Council as a market day;

"market hours" means the hours during which the Market premises shall be open on a market day, as provided in section 5;

"Market Subcommittee" means the subcommittee of the Emergency and Community Services Committee of the City of Hamilton, or any successor subcommittee or committee having jurisdiction and authority over the Hamilton Farmers' Market;

"Market Supervisor" means an employee of the Culture Division of the Community Services Department of the City of Hamilton who is assigned to manage the Market or a person designated by him or her to act on behalf of the Market Supervisor;

"Medical Officer of Health" means the Medical Officer of Health of the City of Hamilton or a person designated by him or her to act on behalf of the Medical Officer of Health;

"Public Health" means the City of Hamilton's Public Health Services or any successor department having jurisdiction and authority over public health matters within the geographical limits of the City of Hamilton;

"stall" means the area of the Market assigned by the Market Supervisor to a stallholder for the sale of his or her products;

"stallholder" means a farmer or vendor who has entered into a contract with the City and to whom the Market Supervisor has assigned a stall;

"vendor" means a stallholder other than a farmer.

DUTIES OF MARKET SUPERVISOR

3. The Market Supervisor shall administer, manage and supervise the operation of the Market and the enforcement of this By-law, including the following duties:
 - (a) select the persons to whom stalls will be assigned and assign stalls to those persons;
 - (b) approve the terms and conditions of contracts to be entered into with stallholders, in a form which is satisfactory to the City Solicitor and containing a fee established by Council;
 - (c) enter into contracts with those persons who have been selected as stallholders;
 - (d) specify the products, which may be sold by each stallholder;
 - (e) enforce the contracts with stallholders;
 - (f) require the removal of any product(s), which are or appear to be unfit for human consumption;
 - (g) provide for the closing of the Market at closing time;
 - (h) ensure that the Market is cleared and cleaned to his or her satisfaction within a reasonable time after closing time;
 - (i) collect fees payable by stallholders;
 - (j) provide for regular payment of the fees collected to the City Treasurer;
 - (k) provide the City Treasurer with a proper accounting of all receipts and disbursements;

- (l) approve, establish and enforce rules pertaining to the operation of the Market;
- (m) all other duties required for the administration, management and supervision of the Market.

MEDICAL OFFICER OF HEALTH

- 4(1) Every stallholder and every other person shall comply with all requirements of the Medical Officer of Health, including without limitation all requirements under the Health Protection and Promotion Act and its regulations, and all laws relating to food premises.
- 4(2) Every stallholder and every other person shall permit a public health inspector at any reasonable time to inspect their stall.

MARKET DAYS AND HOURS

- 5(1) The market hours for customers shall be as follows:
 - (a) From 7:00 in the morning to 6:00 in the afternoon of the same day on Tuesday and Thursday;
 - (b) From 9:00 in the morning to 6:00 in the afternoon of the same day on Friday; and
 - (c) From 6:00 in the morning to 6:00 in the afternoon of the same day on Saturday.
- 5(2) The market hours for stallholders shall be as follows:
 - (a) Except as provided in paragraphs (b), (c) and (d), from 4:00 in the morning to 6:00 in the afternoon of the same day;
 - (b) On Saturdays from 3:00 in the morning to 6:00 in the afternoon of the same day;
 - (c) From 12:00 midnight on market days immediately preceding a statutory holiday to 6:00 in the afternoon of the same day; and
 - (d) During peak season, for such periods of time as are designated by the Market Supervisor.

APPLICATION FOR A STALL

- 6(1) Any person may apply for a stall.
- 6(2) Every application for a stall shall be made to the Market Supervisor, in a form approved by the Market Supervisor.
- 6(3) Every person who is selected by the Market Supervisor to be a stallholder, shall enter into a contract as described in section 3, before he or she is assigned a stall by the Market Supervisor.
- 6(4) Every contract shall be for a period of no more than twelve months.
- 6(5) Every stallholder shall occupy a stall having a frontage of no more than 24 feet.

COMMUNITY STAND

- 7(1) Registered charities and not-for-profit corporations may apply for space at the Market for fundraising, promotional and/or educational purposes. Such applications shall be submitted to the Market Supervisor at least three weeks prior to the desired date of occupancy and shall include proof of their charitable or not-for-profit status.
- 7(2) Applicants approved pursuant to subsection 7(1) shall sell, offer for sale or expose for sale only products which:
 1. have been approved by the Market Supervisor and Director of Culture;
 2. conform with the requirements of this By-law; and
 3. do not duplicate the products being sold by stallholders of the Market.
- 7(3) Applicants approved pursuant to subsection 7(1) shall enter into an agreement with the City for a duration and upon such other terms and conditions as the Market Supervisor may determine, in a form which is satisfactory to the City Solicitor, and containing a fee of nil.

FEES

- 8(1) Except as provided in subsection 7(3), every stallholder shall pay a fee as established by Council from time to time.
- 8(2) In addition to the fee, every stallholder shall pay for all rates and charges for public utilities used in connection with his or her respective stall(s) or in

connection with the use, operations or activities carried on by the stallholder on the stall(s).

WHAT MAY BE SOLD ON THE MARKET

9(1) No person shall sell, offer for sale or expose for sale anything in the Market except the following:

1. Agricultural products including, but not limited to:

- (a) Fruits and vegetables;
- (b) Legumes;
- (c) Plants, flowers;
- (d) Honey;
- (e) Maple syrup;
- (f) Preserves, jams, sauces;
- (g) Meat, fish, poultry;
- (h) Deli meats;
- (i) Cheese;
- (j) Eggs;
- (k) Dried spices;
- (l) Soaps; and,
- (m) Nuts.

2. Baked goods including, but not limited to:

- (a) Breads, rolls, buns;
- (b) Muffins
- (c) Cookies;
- (d) Fruit pies;
- (e) Cakes;
- (f) Pastries; and,
- (g) Meat pies.

3. Prepared foods including, but not limited to:

- (a) Fresh pasta;
- (b) Sauces;
- (c) Cabbage rolls;
- (d) Perogies;
- (e) Patties;
- (f) Simosas;
- (g) Candy; and,
- (h) Sandwiches.

4. Beverages including, but not limited to:
 - (a) Coffee;
 - (b) Tea; and,
 - (c) Soda pop.

5. Foods for pet consumption, provided that the pet food is:
 - (a) displayed, marketed and sold in dry loose, bulk form only;
 - (b) clearly and conspicuously marked as pet food; and,
 - (c) displayed, marketed and sold as a product incidental to the sale of goods for human consumption.

6. Arts and crafts handmade by the stallholder using his or her own skill and artistry to produce a unique and original product.

7. Any other products approved by the Market Supervisor and Director of Culture for sale.

ZERO TOLERANCE POLICY FOR VIOLENCE

10. Every stallholder and every other person shall comply with the Zero Tolerance Policy for Violence in the Hamilton Farmers' Market, as set out in Schedule "A" annexed hereto.

TERMINATION OF STALLHOLDER CONTRACT

- 11(1) Where a stallholder's contract is terminated in accordance with its terms or otherwise, or where a person's application for a stall has been rejected, the stallholder or person, as the case may be, may, within fifteen (15) days of being notified of the termination or rejection, submit a request to appear as a delegation before the Market Subcommittee for reconsideration of the termination or rejection.

- 11(2) A stallholder or person whose request to appear as a delegation has been approved, may make written representations to the Market Sub-committee in addition to appearing before the Market Sub-committee.

- 11(3) The Market Sub-committee will review the matter and may affirm the termination or rejection or provide other direction on the matter.

- 11(4) Council approved decisions of the Market Sub-committee are final.

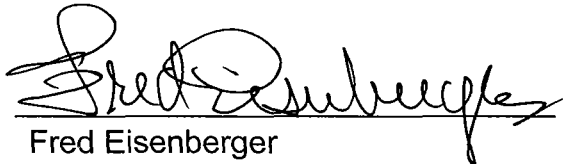
PENALTIES

- 12(1) Every person who contravenes any provision of this By-law is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000.00, exclusive of costs.
- 12(2) Despite subsection 12(1), where the person convicted is a corporation, the maximum fine is \$10,000.00, exclusive of costs.

TRANSITION, REPEAL, COMING INTO FORCE, ETC.

- 13(1) If a court of competent jurisdiction declares any provision or provisions of this By-law invalid, it is the intention of Council that the remainder of this By-law shall continue to be in force.
- 13(2) By-law No. 92-310 is repealed as of the day this By-law comes into force.

PASSED this 15th day of September, 2010.



Fred Eisenberger
Mayor



Rose Caterini
City Clerk

SCHEDULE "A"

To By-law No. 10-209

Zero Tolerance Policy for Violence in the Hamilton Farmers' Market

Policy Statement

All users, stallholders and staff of the Hamilton Farmers' Market have the right to be safe and to feel safe while in the Hamilton Farmers' Market. With this right comes the responsibility to be accountable for actions that put the safety of others at risk.

The purpose of this policy is to ensure that deterrents are in place so that incidents of violence do not occur in the Hamilton Farmers' Market. The focus of this policy is on the behaviour of users and stallholders of the Hamilton Farmers' Market.

The City of Hamilton will not tolerate violence in the Hamilton Farmers' Market and will take appropriate action where necessary to deal with these incidents.

Goal of Policy

To reduce or eliminate violence from the Hamilton Farmers' Market.

Definition of Violence

For the purpose of this policy, violence includes, but is not limited to, the following behaviours:

Category 1:

- verbal abuse towards another individual, which is thought to be aggressive, intimidating, or having the objective of inciting violence
- shouting at another individual
- uttering threats of violence towards another individual
- refusal to exit the Hamilton Farmers' Market when asked by staff
- any activity aimed at intimidating which can be seen as promoting or increasing potential situations

Category 2:

- physical vandalism to building and equipment
- physical striking, throwing of articles in a deliberate or aggressive manner, or any other physical violence towards another individual

Consequences

Category 1 Behaviours: Individuals who engage in any of the behaviours listed in Category 1 will be subject to immediate ejection from the Hamilton Farmers' Market and

First Violation: will be suspended from the Hamilton Farmers' Market for a period of time not to exceed three (3) market days, at the discretion of the Market Supervisor or his or her designate;

Second Violation: will be suspended from the Hamilton Farmers' Market for a period of time not to exceed six (6) market days, at the discretion of the Market Supervisor or his or her designate;

Third Violation: will be suspended from the Hamilton Farmers' Market indefinitely, with the final determination being at the discretion of the Market Supervisor or his or her designate.

Category 2 Behaviours: Individuals who engage in any of the behaviours listed in Category 2 will be subject to immediate ejection from the Hamilton Farmers' Market and

First Violation: will be suspended from the Hamilton Farmers' Market for a period of time not less than thirty (30) market days. Thirty (30) market days is a minimum period only and may be extended by the Market Supervisor or his or her designate;

Second Violation: will be suspended from the Hamilton Farmers' Market for a period of time not less than sixty (60) market days. Sixty (60) market days is a minimum period only and may be extended by the Market Supervisor or his or her designate;

Third Violation: will be suspended from the Hamilton Farmers' Market indefinitely, with the final determination being at the discretion of the Market Supervisor or his or her designate.

In addition to the foregoing consequences for Category 1 and Category 2 behaviours, incidents may be reported to the City of Hamilton Police Service. Criminal charges may follow.

There will be no reconsideration by the City with respect to the length of a suspension. Where new information is available, a suspended individual may request reconsideration of the facts on which the suspension is based. Such request must be addressed to the Director of Culture, who will consider the new information and make his or her decision. ALL SUCH DECISIONS OF THE DIRECTOR ARE FINAL. Those individuals desiring reconsideration must include with their request payment of a non-refundable (unsuccessful) administration fee in the amount of \$250.00. In the event that the applicant is successful, the City will refund the administration fee.

Individuals who engage in vandalism will be subject to the consequences outlined above and will also be required to reimburse the City for the cost of repair, together with an additional administration charge of 100% of such cost.

Nothing in this policy will derogate or limit the rights of the City or its staff pursuant to Market By-law No. 10-209 or any other rights they have in contract or in law.