SUBJECT: Improvements to the Building Permit Inspection and Enforcement Processes (PED09083) (City Wide)

RECOMMENDATION:

(a) That Report PED09083, which summarizes proposed enforcement initiatives and operational protocol to be implemented by the Building Inspection Section of the Building Services Division to deter non-permitted construction of buildings and other designated structures in Hamilton be endorsed.

(b) That the item respecting Building Permit Process be identified as complete and removed from the Economic and Development Planning Committee’s Outstanding Business List.

EXECUTIVE SUMMARY:

Council has directed Building Services Division staff to report back to them “on a mitigating process that can be put in place to ensure that building permits are issued before construction commences on new homes”. In other words, “what changes in procedures are needed to help ensure that builders choose to take out a building permit before construction commences?”

To set a goal to completely eliminate instances where builders and/or homeowners choose to build without the benefit of a permit would be setting up the Building Services Division for failure. Rogue builders who chose to defy the law will always exist.
However, by sending a consistent message through strict enforcement of the need for building permits in advance of construction will significantly impact compliance and builders incentive to comply.

Listed below are the summarized six steps that will be taken to minimize the number of instances of ‘building without a permit’ in Hamilton:

1. Already implemented: Issuance of Orders to Comply for no permit, and other orders such as “Stop Work” or “Orders Not to Cover” as necessary.
2. Ensure surcharges are imposed to their full extent.
3. Prosecute for disobeying Stop Work Orders and apply a progressive enforcement strategy whereby repeat and chronic offenders are prosecuted immediately.
4. Discontinue the practise of inspecting construction work where building permits have not been issued and thereby remove the perception that continued construction without the required permits is condoned. Where permits have not been issued, Inspectors will visit properties to collect evidence only, and not inspect the quality or acceptability of the work underway.
5. Require builders to uncover/demolish to allow proper City inspections. Where uncovering portions of the building is not feasible, require Professional Engineer reviews verifying that all construction that has taken place without inspections meets the requirements of the Ontario Building Code.
6. Public education, such as relevant in-house promotional material, helpful newspaper advertisements and modified Hamilton Home Show instructive material.

It is predicted that success will not be instant. This will be a phase of re-learning for some builders. Increased frequency of applying the above tools will assist in changing attitudes about building in Hamilton. There has been an initial increase in the number of Orders to Comply and Stop Work Orders already, and the number of resulting prosecutions may increase accordingly. As builders and/or homeowners become more familiar with the uncompromising enforcement style of the Building Services Division, they will acquiesce to the Ontario Building Code compliance expectations of the Building Inspectors and Building Services Division staff.

As usual, monitoring of activities is a key component to all enforcement actions to ensure that policies and procedures are adhered to and desired results are achieved. Accordingly, monitoring performance will be an ongoing part of this initiative.

**BACKGROUND:**

Recent media reports have indicated that homes have been built in Hamilton without the required permits. These reports have created a poor public perception of the Building Services Division and its inspection staff. What is generally unknown is that Building Inspectors continued to perform regular inspections of construction to ensure homes were built correctly.
The November 21, 2008 report “Building Permit Issuance and Inspections (PED08313)” was delivered to the Chair and Members of the Economic Development and Planning Committee. The report focused on percentages of Building Permits issued after construction had commenced and the numbers of Order to Comply notices that have been issued. This report outlines changes that are already underway, or to be made, to improve both compliance with obtaining permits prior to construction thereby ensuring compliant construction.

ANALYSIS/RATIONALE:

Listed below are detailed six steps that will be taken to act as deterrents in order to minimize the number of instances of ‘building without a permit’ in Hamilton:

1. **Orders to Comply and Stop Work Orders:**

   The *Ontario Building Code Act* gives certain discretionary power to Building Inspectors when issuing Orders. Via an updated policy, the Chief Building Official has removed that discretionary power, making it normal operating policy that Orders will be issued in every instance of building without a permit in Hamilton. In all cases, if builders disregard Orders, Building Inspectors will follow-up with Stop Work Orders.

   **Example:** A builder is under pressure to build a house under a tight timeline. He commences construction without a permit in order to get his project going. Upon discovering the construction, the Building Inspector issues an Order to Comply indicating a permit must be obtained immediately. If construction re-commences, a Stop Work Order will be issued. If construction continues the next day, (and subsequent days thereafter), Building Inspectors will gather evidence each and every day, and prepare themselves for prosecution in the courts.

2. **Imposing Surcharge fees**

   Reaching specified stages of construction where construction has commenced without a permit triggers surcharge fees. There will be better consistency of applying the surcharge as the result of better tracking and inspection reporting. Surcharges are being maintained to cover the added costs of administration and enforcement against non-compliant builders.

   **Example:** If a permit is issued at one of the advanced stages of construction, (after substantial completion of the superstructure framing for example), a surcharge fee of 50% will be added to the permit fee. This added fee may be as high as $1,000.00, and if charged consistently, would be an additional consideration for those builders that choose to commence construction without a permit.

3. **Prosecutions (Legal Action)**

   The philosophy that “all’s well that ends well” must be abandoned to a new way of thinking and acting. Prosecution of repeat offenders of non-permitted building and Stop
Work Order violations will be the greatest deterrent of all. Fines in the thousands of dollars can be obtained upon conviction of repeat offences. Multiple charges, and fines for repeat offences which can be as high as $200,000.00 per offence or $10,000.00 a day for ignoring a Stop Work Order, will help to convince a builder to take out permits prior to the start of construction.

4. Inspections, Enforcement and Evidence Collection

After consulting with Legal Services regarding liability implications, and taking into consideration the numerous municipalities across the Province that refuse to provide inspection services for construction that is taking place without a permit, it has been determined that it would be prudent to discontinue the practice of inspecting construction where no permit exists, (except to gather evidence such as regular site visits to support the enforcement of a Stop Work Order and Orders to Uncover/Not to Cover). The Ontario Building Code Act does not require that the construction of buildings be inspected for compliance with the regulations when permits have not been issued yet. From the builders perspective this may be a step backward in customer service, but a move in the right direction in tightening up the Ontario Building Code Act enforcement procedures in Hamilton. Refusing to inspect non-permitted construction will also alleviate the perception that because we continue to inspect we are in fact condoning the continued illegal construction. In those cases where construction takes place without a permit, all work that has taken place must be exposed for inspection purposes, or verified as being compliant with the Ontario Building Code by a third party, (such as a Professional Engineer).

Example: A builder commences construction without a permit by constructing footings and foundations of a home, installing a foundation drainage system and backfilling the excavated area. Once the permit is issued, the Building Inspector has the authority to have the backfilled area re-excavated in order to inspect the soil conditions. If compliant, the resulting slow down and added costs to dig up the soil would act as a deterrent in future cases where the builder may be tempted to build without a permit. If the builder is non-compliant, a Stop Work Order would be issued bringing the construction project to a standstill, (or risk inevitable court action). Builders who choose non-compliance will cause themselves to incur additional costs.

5. Professional Engineer reviews

If the builder/constructor refuses to uncover/demolish in order to facilitate inspection, a Professional Engineer will be required to verify that construction work completed without the benefit of a building permit complies with the approved drawings and the Ontario Building Code regulations. P. Eng. reports typically cost in the hundreds of dollars which would be an additional deterrent. Further, by virtue of the reports, liability would be transferred from the Building Services Division to the P. Eng. who authored the report. Failure to facilitate proper inspections or to provide such reports could also result in additional court actions and fines.

Example: A builder commences construction without a permit and the Building Inspector, unsure of the actual footing size, insists that a P. Eng. verifies the foundation
of the building is adequate to carry all anticipated loads. This often necessitates removal of the constructed building and/or excavation to make this verification. The P. Eng. visits the site and prepares a report. This process may take an extended period of time, and will most likely cost the builder hundreds of dollars, again, acting as a deterrent.

6. Public Education Initiatives

Building Services Division currently has an ad hoc approach to public education. There are in-house initiatives wherein customers who visit city hall can view promotional material encouraging citizens and builders to obtain permits for the work they are doing. Secondly, the Building Services Division has recently started to participate in the local Home Show by setting up a booth in order to promote our services. Also, the Building Services Division has placed advertisements in the local newspaper advising citizens of certain, timely reminders, (i.e. requirements to enclose a swimming pool).

These efforts will be stepped up in the following ways:

- larger more prominent in-house signage and public awareness notices are to be utilized, including revisions to current Building Services Division brochures that outline services offered and requirements to obtain permits prior to construction
- development and promotion of a Building Permit Process brochure
- increased event and community presence, (i.e. Annual Home Show event, Hamilton Halton Home Builders Association, etc.)
- more frequent and specific newspaper advertisements focusing on the need for permits when installing a pool, deck, garage, additions, etc. along with warnings of possible fines and legal action that could take place when an Inspector discovers construction has taken place without a permit
- issuing Press Releases highlighting Building Services Division’s court cases that result in significant fines and penalties that will actually prompt builders to stop and think about their profit and loss
- enhanced online presence, (i.e. www.hamilton.ca/building), including tips for home owners/builders and warnings against building without permits

Convictions, fines and inevitable delays in completing construction will be used heavily in public education initiatives.

**ALTERNATIVES FOR CONSIDERATION:**

The alternative would be to maintain the current enforcement philosophy of the Building Services Division. The result would most likely be detrimental to both public safety, (perceived and real), and the image of the City, resulting in unacceptable numbers of homes built without permits and additional negative follow-up news articles in the local print media and more damaging news stories broadcasted on local/national television.
FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: There will be no long term financial impact to this more uncompromising enforcement style. Initially, Inspectors will be called upon to write more Orders to Comply and Stop Work Orders and to attend Court on a more frequent basis, but, once builders change their ‘building without a permit’ habits, it is predicted that time and money spent on enforcement will actually decline.

Staffing: N/A

Legal: Building Services staff conferred with Legal Services staff regarding the issue of the added liability to the City when builder’s inspection requests were refused.

POLICIES AFFECTING PROPOSAL:

Building Inspection operating policies to be revised to reflect enhanced enforcement protocols.

RELEVANT CONSULTATION:

On Wednesday, January 28, 2009, Building Services Division personnel attended a “Lunch and Learn” session at the Blaney McMurtry Barristers and Solicitors LLP head offices in Toronto. The topic of the session focused on what measures can be taken by municipal Building Departments to reduce their exposure to liability and the associated legal actions taken against them by unsatisfied new home owners. One of the salient points made by the presenter was directed towards municipal Building Department enforcement policies pertaining to inspections without permits. Specifically: Building Departments should NOT inspect construction until permits are issued. To do so exposes municipalities to unnecessary liability.

Corporate Services Department, Legal Services Division have advised that the City can face liability for failing to enforce the Ontario Building Code Act, so it at least has to carry out enforcement related work even though it is not obliged to attend at the stages of construction for code related inspection when no permit has been issued.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Public services and programs are delivered in an equitable manner, coordinated, efficient, effective and easily accessible to all citizens.
Environmental Well-Being is enhanced.  ☑ Yes  ☐ No
Without the proper inspections, energy related building materials may not be utilized or may not be constructed properly, as per the requirements of the Ontario Building Code, (such as adequate insulation, vapour and air barrier installation, low flow water closets, energy efficient windows and doors and other energy conservation components of buildings).

Economic Well-Being is enhanced.  ☑ Yes  ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines?  ☑ Yes  ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  ☑ Yes  ☐ No

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