SUBJECT: Faustini Fatality - Implementation of Coroner’s Inquest Recommendations (HUR05021/PW05144) (City Wide)

RECOMMENDATION:
That the Compliance Action Plan described in report HUR0521/PW05144 be endorsed for submission to the Chief Coroner.

EXECUTIVE SUMMARY:
Paolo Faustini, an employee of the City of Hamilton Public Works Department, died of injuries sustained in a construction project accident in July 1997.
As required by the Occupational Health & Safety Act (OHSA) and the Construction Projects Regulation, a Coroner’s Inquest must be held for all fatalities covered by that regulation. The Coroner’s Inquest in this case was held April 2005, eight years post accident, due mainly to the lengthy court proceedings required to resolve charges laid by the Ministry of Labour. The City eventually pled guilty to one charge under the Occupational Health and Safety Act and paid a fine of $200,000 plus a $40,000 victim surcharge.

As a result of the Coroner’s Inquest, the Jury made five (5) recommendations directed to the City and one (1) directed to the Ministry of Labour. Although the incident occurred in the former Roads Division of the Public Works Department, the Jury recommendations are addressed to the City of Hamilton, as a corporate entity, and therefore have been considered in a City wide context. The recommendations have provided the opportunity for the City to review and where appropriate to strengthen its occupational health and safety program.

The City is required to respond to the Chief Coroner by May 2006.

The City of Hamilton’s Occupational Health and Safety program is continuously evolving. A brief listing of occupational health and safety program initiatives is included in the Background section of the report, along with a compliance action plan responsive to the inquest jury recommendations.

**BACKGROUND:**

**Current Status of the City’s Occupational Health & Safety Program**

In considering a response to the Coroner’s Jury recommendations the status and efforts of the City’s Health and Safety Program and changes implemented over the past several years need to be considered:

1. The City of Hamilton has had a formal Health and Safety Program since 1980. The program has been directed and coordinated by the Human Resources Department, Workplace Safety Section.

2. With the municipal amalgamation in 2001, the City/Region approach formed the basis for the “New City” Health and Safety program. City Council in July 2002, approved an Accident Prevention Policy which has two main objectives as outlined in the Policy:

   “The City of Hamilton is vitally interested in the Health and Safety of all of its workers. Protection of all workers from injury or occupational disease is a major continuing objective. The City of Hamilton makes every effort to provide a safe, healthy work environment. All managers, supervisors and workers are dedicated to the continuing objective of reducing injury and risk to health”, and

   “Commitment to the continual improvement of health and safety is an integral part of this organization.”

3. The City’s Health and Safety program is based on the well established and Ministry of Labour endorsed “Internal Responsibility System”, the cornerstone of which is the “Joint Health and Safety Committee”. The City has 28 Joint Health and Safety Committees (JHSCs) representing over 9,000 employees, performing work in a wide variety of disciplines covered by several pieces of health and safety legislation, Industrial, Construction, and Health Care regulations being the most prevalent. These Joint Health and Safety Committees perform monthly “workplace safety audits” of their areas of representation, meet regularly to discuss health and safety issues and make
recommendations to management with respect to improvements to the health and safety programming in the following areas: eliminating workplace hazards; implementation of required training programs; reviewing new pieces of equipment and tools; and regular review of new procedures both corporate and departmental that affect operations under their specific coverage area.

4. Each of the 29 Joint Health and Safety Committees have at a minimum two worker and two management members who participate in extensive training, 5 days minimum, to achieve Certified Member status through the Education Division of the Workplace Safety and Insurance Board. The City has trained over 300 Health and Safety Committee members over the past several years.

5. The City has over the past 4 years, doubled the staffing resources available to promote and coordinate health and safety initiatives from two to four. Public Works and Public Health and Community Services now have their own dedicated Safety Specialists available to respond to occupational health and safety issues as well as the continued availability of two Corporate Occupational Health and Safety Specialists. The City has streamlined its management system to incorporate an Occupational Health and Safety Advisory Group, with representatives from all departments to ensure the proper and efficient processing of information and the direct involvement of the City’s Corporate Management Team in the management of health and safety.

6. The City has committed to implementing the Integrated Management System (IMS) within the Corporate Management Team and the Public Works Department. The IMS process requires a complete, measurable management system for both Environmental (ISO 14000) and Health and Safety (OHSAS 18000) areas affecting the operation, which must adhere to strict certification standards. Some portions of the IMS initiative have also been rolled out in the Public Health and Community Services department with the ultimate goal of making IMS the corporate standard for environment and health and safety throughout the organization.

7. As a part of the IMS initiative in Public Works, Workplace Safety Audits were conducted by the Municipal Health and Safety Association in 2002 and certain recommendations from that audit have been implemented and continue to be implemented. The Public Works Safety Specialist has conducted follow up audits to confirm progress in this area. Similar Municipal Health and Safety Association (MHSA) safety audits are being considered for Hamilton Emergency Services and Public Health and Community Services Departments. Public Health and Community Services also maintains an accreditation process that has a major health and safety component.

8. The Workplace Safety Section has been providing two intensive, in-house training programs:

   • Health and Safety and the Front Line Supervisor course for Directors, Managers, Supervisors and Lead Hands. The program communicates the important knowledge required by front line supervisors in managing their responsibilities under the Occupational Health and Safety Act

   • Accident Investigation program, to allow Supervisors and Joint Health and Safety Committee members to investigate incidents thoroughly and determine root causes to implement proper prevention controls.
9. The City has developed and regularly reviews, in consultation with the Joint Health and Safety Committees, the existing 26 Corporate Accident Prevention Policies and 34 Corporate Accident Prevention Guidelines that are available on the City’s intranet for easy distribution and reference. The City’s health and safety web pages are and continue to be an invaluable resource to all employees.

10. The Human Resources Workplace Safety Section in cooperation with the Employment and Client Services, Staffing Section has developed a “Risk Matrix Job Assessment” review process to allow proper assessment of health and safety requirements for all jobs to assist the Staffing Specialists to properly assess the types of question to be asked of applicants. This ensures that the applicants knowledge and experience in the areas of health and safety related to the job they are applying for is properly assessed.

Inquest Jury Recommendations and Status of Implementation

The Coroner’s Inquest Jury convened to consider this matter made six (6) recommendations, five (5) directed to the City of Hamilton and one (1) directed to the Ministry of Labour. The recommendations have provided the opportunity for the City to review, and where appropriate, to strengthen its occupational health and safety program.

The Coroner’s Inquest Jury recommendations and the City’s compliance action plan and status report follow:

1. Jury Recommendation

“That the City of Hamilton in conjunction with the appropriate joint Health and Safety Committee Members identify all jobs with the city, such as lead hands, crew or team leaders’ etc., that may be “deemed” a Supervisor under the definition of a “Supervisor” in the Occupational Health and Safety Act.”

Current Status:

The Human Resources Department has job descriptions and job evaluation programs currently in place clearly identifying those positions that fall within defined “supervisory”, “foreman/forewoman”, and “lead hand” categories. These programs properly address this recommendation.

Compliance Action Plan:

No further action is required. The City is in full compliance with this recommendation.

2. Jury Recommendation

“That the Corporation of the City of Hamilton in conjunction [with] the appropriate joint Health and Safety Committee Members develop a training program to ensure that all the jobs identified in the previous recommendations as “Supervisor” in the Occupational Health and Safety Act are a “competent person” as defined in the Occupational Health and Safety Act, that the competent person then be issued a record of training and that no worker be used as a Supervisor unless they have a valid record of training.”

Current Status:

The Workplace Safety Section provides a one day, in-house “Health and Safety and the Front Line Manager/Supervisor” training program. Over 500 Directors, Managers and Supervisors have participated in this mandatory program over the past several years.
This in-house training program is a good, basic safety program, covering important information required by supervisory, foreman/forewoman and lead hand personnel to maintain compliance with safety legislation. In addition, employees attend a range of other specialized safety training programs to ensure safety competence as it relates to their job responsibilities.

**Compliance Action Plan:**

While the City's current occupational health & safety training program complies with this recommendation, City employees continue to evaluate health and safety training programs to ensure that they are up-to-date and comprehensive. In addition, alternative delivery and certification options are available that are being explored for their appropriateness to City requirements.

Additionally, an annual “refresher” program is being implemented to ensure that employees who assume “lead hand” responsibilities in the City’s seasonal operations are supported in discharging their responsibilities in accordance with the Occupational Health & Safety Act.

All Departments are aware of their responsibility to ensure that no person be assigned to a supervisor, foreman/forewoman or lead hand role without first having completed the specified training program/s.

The City is in compliance with this recommendation as it relates to the provision of training.

The element of this recommendation relating to ‘record of training’ is addressed under jury recommendation #5.

3. **Jury Recommendation**

“That the Corporation of the City of Hamilton in conjunction with the appropriate joint Health and Safety Committee Members develop a written procedure that allows a competent Supervisor to determine what particular sector regulation under the Occupational Health and Safety Act that a particular work site and/or job activity falls under and that information is properly communicated to the appropriate workplace parties.”

**Current Status:**

The City did not have a procedure for this given that the information is available in the Occupational Health and Safety Act and copies of the Act are posted at every workplace and are readily available on the employee intranet. Furthermore, current training efforts continue to stress and thereby ensure those responsible are competent to make such determinations.

The various operational requirements and processes in the City’s multi-faceted operations are covered under a variety of regulations and the specific sector regulations may vary not only from job to job but from location to location. For example, an office environment clearly falls under the “Industrial Regulation”; however should there be a temporary scaffold operation in that Industrial environment, the scaffold operation would fall under the “Construction Regulations”.

Through current in-house training programs, City supervisors, foremen/women and lead hands are trained to understand these scenarios and implement controls under the relevant Sector
Regulation. If there are similar applicable requirements covered under both regulations, supervisors are trained to apply the stricter of the two.

Notwithstanding its inclusion within the Occupational Health and Safety Act and existing training programs and for ease of reference, the Workplace Safety Section has now prepared and posted a written guideline which includes a checklist taken from the Occupational Health and Safety Act, to assist managers, supervisors, foremen/women and lead hands in determining under which sector regulation their operation would generally fall. The guideline has been incorporated into the materials distributed at the City’s Occupational Health and Safety training programs. Additionally, safety staff are available to assist in making this determination where required.

**Compliance Action Plan:**

With the implementation of this procedure, the City has fully complied with this recommendation.

4. **Jury Recommendation**

“That an audit be undertaken by the City of Hamilton in conjunction with the workplace Joint Health and Safety Committee(s) to identify what hazards exist in the workplace for each classification of work carried out by the City of Hamilton. Remedial training is to be undertaken on a scheduled basis to ensure all workers over which they have authority as an Employer or constructor are trained in all general, specific or required training as determined under the Occupational Health and Safety Act and any applicable regulations to the degree jointly determined as acceptable to the Employer, the joint Health and Safety Committee and Ministry of Labour.”

**Current Status:**

The City conducts workplace audits regularly using the “Internal Responsibility System”, the cornerstone of which is the Joint Health and Safety Committee system, to monitor occupational health and safety issues.

The City has 28 Joint Health and Safety Committees, most with several highly trained ‘certified members’, who perform monthly inspections of their workplaces and make recommendations to management to correct any deficiencies. These inspections are in fact audits of the workplace. Management is required to respond to any such written recommendations from Joint Health and Safety Committees by indicating what corrective action will be taken and when.

Recommendations to management to implement specific required training programs is an integral part of the Joint Health and Safety Committees role under the Occupational Health and Safety Act.

In addition, Workplace Safety Section representatives and department Safety Specialists audit workplaces on a regular basis and make recommendations to the management and Joint Health and Safety Committees for improvements to the program, including any remedial training that may be required.

City Departments have also participated in audits conducted by the Municipal Health and Safety Association in the past and will continue to do so, as described in the status section of this report.
Compliance Action Plan:

The City continues to support the existing Occupational Health and Safety “Internal Responsibility System”, including the Joint Health and Safety Committee inspection program, and will continue to respond to written recommendations from the Joint Health and Safety Committees in a prompt and efficient manner.

As well, priorities for Municipal Health and Safety Association audits of City workplaces are to be determined based on recommendations to Corporate Management Team from the Occupational Health and Safety Advisory Group. This priority list is developed by the Occupational Health & Safety Advisory Group in consultation with the Workplace Safety Section and Joint Health and Safety Committees.

With its continuing efforts as described above, the City is in full compliance with this recommendation.

5. Jury Recommendation

“The Corporation of the City of Hamilton in conjunction with appropriate joint Health and Safety Committee Members implement a central information database tracking the training of Health and Safety Policies and Procedures of all employees of the Corporation and maintained by the Department of Workplace Safety.”

Current Status:

Because of various City operational disciplines, licensing requirements that vary from department to department, the existence of several departmental training positions and resource constraints in Human Resources, centralized health and safety record keeping has not been a priority. Training records are maintained as required within each department. Departments are capable of providing current training data and information for their specific operational training efforts as may be required.

Ministry of Labour Inspectors are most likely to attend at individual department work locations rather than at the Corporate Human Resources office. The availability of such training records at each work site was a determining factor for keeping the training information at department work locations.

Some centralized training records, specifically those for training provided by the Workplace Safety Section and Human Resources Training section are maintained in Human Resources.

Compliance Action Plan:

In order to fully comply with this recommendation, the Training Administration and e-training modules of PeopleSoft will need to be fully implemented with appropriate administrative support. This implementation is tentatively planned for late 2006. Human Resources has made a capital request in the amount of $97,000 in the 2006 submission in support of this objective. The capital request also contemplates the addition of a position in the 2007 operating budget to maintain the City’s training records, including those relating to health & safety.

The implementation of this module of PeopleSoft would address both recommendation #5 (centralized training records) and recommendation #2 (issuance of training records). This would bring the City into full compliance with this recommendation.
6. Jury Recommendation

“The type of spreader in this case is to be equipped with a step that is permanently in the “down” position and has a waist high guard rail installed.”

Current Status:

This Jury recommendation calls for an alteration to the piece of equipment used in the operation the inquest examined. The recommendation was directed to the Ministry of Labour for consideration. It does not have an impact on current City operations, as the City is no longer directly involved with this type of operation.

Compliance Action Plan:

It is the City’s practice and intent to fully comply in all City operations with all relevant Ministry of Labour standards and regulations as are in place and/or may be implemented.

ANALYSIS/RATIONALE:

While there is no legal or regulatory requirement for the City to comply with the Coroner’s Jury recommendations, the City has carefully considered and addressed each recommendation. The recommendations have provided the opportunity for the City to review and where appropriate to strengthen its occupational health and safety program.

ALTERNATIVES FOR CONSIDERATION:

The Coroner’s Jury has made what staff considers to be appropriate, implementable recommendations. Accordingly, no alternatives are provided.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

The City makes a significant ongoing investment in its occupational health and safety programming (i.e. committee time and support, development and implementation of safety policies and procedures, training, inspections and audits, etc.). In addition, many City employees have occupational health and safety responsibilities, and four (4) employees are dedicated, full-time Safety Specialists.

The costs associated with the implementation of jury recommendation #5 will form part of Human Resources 2006 capital ($97,000) and 2007 (i.e. administrative costs) operating budget requests.

The City’s continuing focus on improving its occupational health and safety program reflects a commitment to staff and the public, a “due diligence” approach and ensures compliance with all relevant legislations and regulations.

POLICIES AFFECTING PROPOSAL:

N/A

RELEVANT CONSULTATION:

Consultation with the City’s Unions, the corporate Health and Safety Advisory Committees, Joint Health and Safety Committees and other stakeholders occurs where changes to the City’s Occupational Health and Safety program are contemplated.
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
Ensuring maximum safety in all City operations supports community well being.

Environmental Well-Being is enhanced.  ☑ Yes  ☐ No
Human health and safety are protected.

Economic Well-Being is enhanced.  ☑ Yes  ☐ No
A skilled, innovative and diverse workforce is attracted and retained, where occupational health and safety is an organizational priority.

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
The City’s Human Resources Strategy underscores the City’s commitment to providing a respectful, supportive, healthy, safe, accessible and inclusive workplace.