CITY OF HAMILTON

PUBLIC WORKS DEPARTMENT
Operations and Waste Management Division

TO: Chair and Members
Public Works Committee
WARD(S) AFFECTED: WARD 2

COMMITTEE DATE: September 6, 2011

SUBJECT/REPORT NO:
Proposed Permanent Closure and Sale of a Portion of Public Unassumed Alley Abutting 79 James South, Hamilton (PW11061) - (Ward 2)

SUBMITTED BY:
Gerry Davis, CMA
General Manager
Public Works Department

PREPARED BY:
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SIGNATURE:

RECOMMENDATION
(a) That the public unassumed alley running east/west between 79 James Street South and 1 Hunter Street East, from James Street South and Hughson Street South, Hamilton, be permanently closed and transferred to the owners of 79 James Street South and 1 Hunter Street East, Hamilton, as shown on Appendix "B" attached to Report PW11061, subject to the following conditions:

(i) That the applicant makes an application to a District Court Judge, under Section 88 of the Registry Act, R.S.O. 1990, for an order to permanently close and purchase the subject lands;

(ii) That the General Manager, Public Works or his designate sign the appropriate documentation confirming that no public funds have been expended on the lands to be closed;

(iii) That the documentation regarding the application to the District Court Judge be prepared by the applicant, to the satisfaction of the City Solicitor;

(iv) That the applicant register a reference plan under the Registry Act and that said plan be prepared by an Ontario Land Surveyor to the satisfaction of the Manager, Surveys and Technical Services Section and that the applicant deposit a reproducible copy of said plan with the Manager, Surveys and Technical Services Section;
(b) That provided the Judge's Order to permanently close the lands is granted:

(i) That the City Solicitor be authorized and directed to prepare the by-law to permanently close the highway;

(ii) That the appropriate by-law be introduced and enacted by Council;

(iii) That the Economic Development and Real Estate Division of the Planning and Economic Development Department be authorized and directed to sell this closed highway for fair market value, in accordance with the Procedural By-law for the Sale of Land, By-law No. 04-299;

(iv) That the City Solicitor be authorized and directed to register a certified copy of the by-law permanently closing the highway in the proper land registry office;

(v) That the by-law permanently closing the highway does not take effect until a certified copy of the by-law is registered in the proper land registry office;

(vi) That the Public Works Department publish a notice pursuant to Section 34 of the Municipal Act 2001, S.O. 2001, c. 25, as amended, of the City’s intention to pass the by-law.

**EXECUTIVE SUMMARY**

The owner of 1 Hunter Street East has made an application to permanently close and purchase a portion of public unassumed alley abutting the property. The YMCA at 79 James Street South, also abutting the alley, supports the closure and sale and will purchase the half of alley abutting their property.

There were no negative comments received from the notices sent to property owners within a 400' (121.9m) radius in the neighbourhood. As the alley has been improved by the owner of 1 Hunter Street East and access for deliveries to the properties will remain unimpeded, Operations and Waste Management staff support the application.

**Alternatives for Consideration - See Page 4**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** The owner of 1 Hunter Street East, Hamilton, who submitted the application, has paid a user fee of $319.93. The lands will be transferred to the abutting owners for fair market value, as determined by the Economic Development and Real Estate Division.

**Staffing:** Agreements to purchase the subject lands will be negotiated by the Economic Development and Real Estate Division.

**Legal:** The City Solicitor will prepare the by-law to permanently close the subject lands and will register this by-law in the Registry Office once Council has approved it. The City Solicitor will complete the transfer of the subject lands to the abutting owners, pursuant to an agreement of purchase and
HISTORICAL BACKGROUND

The owner of 1 Hunter Street East has applied to close and purchase the portion of public unassumed alley abutting the property. The YMCA, also abutting the alley at 79 James Street South, has agreed to the closure provided they are given the opportunity to purchase half of the subject alley. Since both land owners abutting this alley agree, Operations and Waste Management staff support the closure and sale of half the alley to each abutting owner.

POLICY IMPLICATIONS

A by-law must be passed to permanently close the lands in accordance with the Municipal Act.

The closure and sale of the lands will fulfil the priorities established in the Public Works Business Plan within “Communities” as it reflects our desire to “establish mutually beneficial charters with external customers”.

RELEVANT CONSULTATION

Notice was circulated to property owners within a 400' (121.9m) radius of the subject property as shown on Appendix “A” attached to Report PW11061. Of the 14 notices sent, 2 respondents were in favour and none were opposed.

The following City staff were consulted on this application and conveyed no negative comments on the proposed alley closure:

- Planning and Economic Development Department: Development Engineering, Building Services, Economic Development and Real Estate and Planning Divisions
- Hamilton Emergency Services
- Corporate Services Department: Budgets and Finance Division
- Ward Councillor

Community Planning staff advised that the closure of the alley in question could affect access to the rear of the existing properties to the south and may limit the development potential of the adjacent sites. Urban Design Staff advised that the closure of the alley in question would affect access and servicing to the rear of the existing properties and,
therefore, they did not support the closure of the alleyway. However, as the alley will be sold to each abutting owner and there are only two owners, access for servicing will be maintained, and therefore these issues have been resolved.

Public utilities including Horizon Utilities, Bell and Union Gas were circulated for comment. Horizon Utilities may require an easement to perform maintenance on an existing plant and Union Gas will require an easement for a gas main within the closure limits.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

The two abutting property owners have agreed to purchase half of the subject alley thus not restricting access for deliveries to either property. There were no negative responses from the notices circulated to the neighbourhood.

**ALTERNATIVES FOR CONSIDERATION**

The alley could remain a public unassumed alley. However, as the applicant has made significant improvements to the alley at no expense to the City and as the City will receive the revenue from the sale of the lands at market value, the transfer of the lands to the abutting owners is the preferred option.

**CORPORATE STRATEGIC PLAN**


**Healthy Community**

- Plan and manage the built environment

**APPENDICES / SCHEDULES**

Appendix “A” - Location Plan
Appendix “B” - Proposed Alley Division
PROPOSED CLOSURE OF PUBLIC UNASSUMED ALLEY AT
79 JAMES STREET SOUTH

LEGEND

To be transferred to 1 Hunter Street East
To be transferred to 79 James Street South