SUBJECT: The Hamilton Street Railway Company (“HSR”) – Corporate Governance Update – Sale and Disposition of Land, the Hiring of Employees and the Procurement of Goods and Services (CL08006) (City Wide)

RECOMMENDATION:

a) That Council, sitting, firstly, as the Board of Directors of The Hamilton Street Railway Company (“HSR”), and, secondly, sitting as representatives of the beneficial Shareholder (City of Hamilton) of the HSR, approve the updated corporate governance of the HSR as set out in Appendices “A” and “B” to Report CL08006.

b) That Council, in its capacities outlined in Recommendation 1 above, ratify and confirm the required documentation in the forms attached as Appendices “A” and “B” to Report CL08006.

EXECUTIVE SUMMARY:

Section 270(2) of the Municipal Act, 2001, requires that a local board adopt and maintain policies with respect to the sale and disposition of land, the hiring of employees and the procurement of goods and services. A local board, as defined by the Municipal Act, 2001, subsections 1(1) and 269(1)) (a), includes a street railway board. In order for the HSR to meet this requirement, it is necessary that the Board of Directors of the HSR meet to pass the corporate by-law attached as Appendix “A”.
In addition, the HSR is a corporation owned and operated by the City of Hamilton. In accordance with subsections 94(1) and 116(2) of the *Business Corporations Act*, to which the HSR is subject, a meeting of the shareholders is required to be held annually and shareholder confirmation is required for by-laws passed by the HSR’s Board of Directors.

The proposed course of action and the ratification of the attached documentation will have the following effect:

(a) the three policies, as required under subsection 270(2) of *Municipal Act, 2001*, will be adopted by way of corporate by-law (Appendix “A” to Report CL08006) passed by the Board of Directors for the HSR;

(b) the corporate by-law referred to herein will be confirmed by way of a Shareholders’ Resolution (Appendix “B” to Report CL08006).

**BACKGROUND:**

The HSR, as a local board defined by the *Municipal Act, 2001*, is required to adopt a sale and disposition of land policy, hiring policy and purchasing policy. The HSR has met this requirement by adopting the city’s policies, with necessary modifications and subject to any applicable provisions of the *Business Corporations Act* or its regulations. Until the recent amendments to the *Municipal Act, 2001*, these provisions were found in three separate sections of the Act.

Amendments to the *Municipal Act, 2001*, have now consolidated the requirement to adopt the three policies under a single subsection, 270(2), and the by-law, attached as Appendix “A”, accordingly updates the HSR’s adoption of the city’s policies as its own.

The HSR, as a corporation subject to the *Business Corporations Act*, is required to have shareholders’ confirmation of the corporate by-laws passed by its Board of Directors. The Board of Directors is comprised of all of the members of Council. The City of Hamilton is the shareholder of the HSR and, as representatives for the City of Hamilton, Council is required to sit, from time to time, as shareholders for the HSR.

**ANALYSIS/RATIONALE:**

The by-law, attached as Appendix “A” to Report CL08006, is recommended in order for the HSR to comply with subsection 270(2) of the *Municipal Act, 2001*.

Under the recommended by-law, the HSR would continue its adoption of the City of Hamilton’s policies respecting the sale and disposition of land, the hiring of employees and the procurement of goods and services, to be compliant with s. 270(2). Formerly, the city complied with s. 268, 270 and 271, of the Act.
A copy of the city's sale and disposition of land policy is attached as Appendix “C” to Report CL08006, and the city's hiring policy is attached as Appendix “D” to Report CL08006. Due to bulk, the policy respecting the procurement of goods and services is available for viewing in the City Clerk's office, or by accessing the city's website. For your information, a copy of HSR By-law HSR07-001 is attached as Appendix “E” to Report CL08006.

**ALTERNATIVES FOR CONSIDERATION:**

n/a – Provincially legislated requirements

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

n/a

**POLICIES AFFECTING PROPOSAL:**

n/a

**RELEVANT CONSULTATION:**

Legal Services

**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

Environmental Well-Being is enhanced. ☐ Yes ☑ No

Economic Well-Being is enhanced. ☐ Yes ☑ No

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
WHEREAS paragraph 270(2) of the Municipal Act, 2001, S.O. 2001, c. 25 provides that a local board of a municipality shall adopt and maintain policies respecting the sale and disposition of land, the hiring of employees and the procurement of goods and services;

NOW THEREFORE the Council of the City of Hamilton, sitting as the Board of Directors for The Hamilton Street Railway Company (the “Company”), hereby enacts as follows:

1. That the policies respecting the sale and disposition of land adopted by the City of Hamilton, any successor policies respecting the sale and disposition of land that may be adopted by the City of Hamilton and any amendments thereto that may from time to time be made shall apply in their entirety to the Company, with necessary modifications.
2. That the policies respecting the hiring of employees adopted by the City of Hamilton, any successor policies respecting the hiring of employees that may be adopted by the City of Hamilton and any amendments thereto that may from time to time be made shall apply in their entirety to the Company, with necessary modifications.

3. That subject to 3 (a) to (d) hereof, the policies for procurement of goods and services adopted by the City of Hamilton, any successor policies for the procurement of goods and services that may be adopted by the City of Hamilton and any amendments thereto that may from time to time be made, including without limiting the foregoing, the Purchasing Policies and the Commodity Price Hedging Agreement Policy, shall apply in their entirety to the Company, with necessary modifications.

   (a) That the signing officers of the Company for the purposes of executing contracts having monetary values of up to and including $250,000.00 (Cdn), including those contracts of said value specifically authorized by City of Hamilton’s Council to be executed by the HSR, shall be the General Manager.

   (b) That the signing officers of the Company for the purposes of executing contracts having monetary values in excess of $250,000.00 (Cdn), including those contracts of said value specifically authorized by City of Hamilton’s Council to be executed by the HSR, shall be the President and Secretary.

   (c) Every contract signed by the General Manager shall be initialled by the Solicitor of the Company before being signed by the General Manager.
(d) Every contract signed by the President and Secretary for the Company shall be initialled by the General Manager and Solicitor of the Company before being signed by the President and Secretary.

PASSED AND ENACTED on this day of , 2008.

____________________________ _______________ ______________
Fred Eisenberger    Kevin C. Christenson
President     Secretary
Shareholders’ Resolution

The Hamilton Street Railway Company

WHEREAS the Council of the City Of Hamilton are sitting as representatives of the beneficial Shareholder (City of Hamilton) for The Hamilton Street Railway Company (the “Corporation”);

WHEREAS by Section 11.9, subsection (1) of the City of Hamilton Act, 1999, S.O. 1999, c.14, the City of Hamilton is authorized to hold the shares in the Corporation and to exercise the rights attributed thereto;

WHEREAS by subsection (2) of the aforesaid subsection of the said Act, the City of Hamilton is mandated to manage the affairs of the Corporation;

NOW THEREFORE the Council of the City of Hamilton, acting in its capacity as representatives of the beneficial Shareholder (City of Hamilton) of the Corporation, RESOLVES AS FOLLOWS:

1. BE IT RESOLVED that By-law No. HSR08-001, being a by-law to adopt and maintain policies respecting the sale and disposition of land, the hiring of employees and the procurement of goods and services, passed by the Board of Directors of The Hamilton Street Railway Company, is hereby confirmed.

2. BE IT RESOLVED that the President and Secretary of the Corporation are hereby authorized and directed to sign this Shareholders’ Resolution in writing formalizing the items contained therein.

RESOLVED at Hamilton, this day of , 2008

______________________
Fred Eisenberger
President

______________________
Kevin C. Christenson
Secretary
21. Consolidation of Routine Real Estate Matters (CS01083) (Item 6.1)

a) That authority to approve the acquisition, disposition or lease of designated classes of, or interests in land; authority to approve and enter into agreements with the abutting landowners and authority to release covenants and conditions be delegated as follows:

i) Acquisitions:

That authority to approve the acquisition of land or any interest in land (except for a leasehold interest) be delegated to the City Manager, General Manager of the relevant department or their designates within the limits set out below and subject to the following conditions:

(1) That sufficient funds are available within the departmental budgets and approved by City Council for a use conforming with the project incorporated in the budget documents presented to Council;

(2) That written notification be given to the Councillor in the respective Ward in which the land acquisition is to take place, prior to entering into a contract;

(3) The acquisition price shall be at or below fair market value;

(4) Fair market value shall be determined by appraisal (in-house, outside, verbal or written);

(5) Acquisition value shall not exceed:

(aa) $60,000 for the General Manager or designate;

(bb) $150,000 for the City Manager or designate;

(6) The acquisition shall be on terms and conditions that are satisfactory to the Legal Services & Corporate Counsel Division.

ii) Dispositions:

That authority to approve the disposition of land or any interest in land (except for a leasehold interest) be delegated to the City Manager, General Manager of the relevant
department or their designates within the limits set out below and subject to the following conditions:

(1) That the departmental circulation process continue to be used for land considered to be surplus to a department;

(2) Such land has been declared surplus by City Council, as appropriate, in accordance with the provisions of the City’s Real Procedural By-law, as may be amended;

(3) The disposition price shall be at or above fair market value;

(4) Fair market value shall be determined by appraisal (in-house, outside, verbal or written);

(5) Disposition value shall not exceed:
   (aa) $60,000 for the General Manager or designate;
   (bb) $150,000 for the City Manager or designate.

(6) That written notification be given to the Councillor in the respective Ward in which the sale of land is to take place, prior to entering into a contract;

(7) Such land is being sold to the public, public utilities, other municipalities, conservation authorities, or the crown;

(8) Such land includes the sale of 0.3 metre (1 foot) reserves or closed or unopened portions of public highways or road allowances;

(9) The disposition shall be on terms and conditions that are satisfactory to the Legal Services & Corporate Counsel Division;

(iii) Leases:

That authority to approve the lease of land by or to the City, including any renewal of existing or expired leases, be delegated to the City Manager, General Manager of the
relevant department, or their designates, within the time limits set out below and subject to the following conditions:

(1) The rent shall be at or below fair market rent for leases to the City and at or above fair market rent for lease by the City;

(2) Fair market rent shall be determined by appraisal (in-house, outside, verbal or written);

(3) Lease value shall not exceed:
   aa) $60,000 annual rental for the General Manager or designate;
   bb) $150,000 annual rental for the City Manager or designate;

(4) The lease shall be on terms and conditions that are satisfactory to the Legal Services & Corporate Counsel Division;

(5) The term of the lease, or any renewal, shall not exceed five (5) years;

(iv) Agreements with Abutting Landowners:

That authority to approve any agreements with abutting landowners and associated discharges thereof, including but not limited to encroachment, easement, landscaping, licence, and parking agreements, be delegated to the department responsible for the land provided that:

(1) The nature of the agreement is minor, as determined and approved by all affected departments and agencies;

(2) The form, terms and conditions of the agreement are satisfactory to the Legal Services & Corporate Counsel Division;

(3) The permit, legal fees and other costs, as determined by the City and amended from time to time, are paid by the applicant;
(v) Roads/Road Widenings:

That authority to approve the extent and receipt of lands to be dedicated to the City for roads or road widenings required as a condition of a Planning Act be delegated to the General Manager of Transportation, Operations and Environment or his designates;

(vi) Release and Discharges:

That authority to approve the preparation and registration on title of releases and discharges of expired and/or fulfilled covenants and conditions for development sales and for properties within the City Industrial Parks be delegated to the Legal Services & Corporate Counsel Division;

b) That the Mayor and City Clerk be authorized and directed to execute any document, approved by the Legal Services & Corporate Counsel Division, in connection with any transactions pursuant to Sections (i) to (vi) of this report;

c) That the Legal Services & Corporate Counsel Division be authorized and directed to electronically register on title any document required in connection with any real estate matter;

d) That a quarterly report be prepared and presented to City Council outlining all real estate transactions, as set out in Sections (i), (ii) and (iii) of this report.
EMPLOYMENT OF RELATIVES POLICY

(Code of Conduct)

POLICY STATEMENT AND PURPOSE
The residents and businesses of the City of Hamilton are entitled to have fair, ethical and accountable local government administration. It is the goal of the City to hire and promote the best candidate available for each vacancy and to be a City of choice for high performance public servants. Accordingly, all employment related matters, including hiring, transfers, promotions, demotions, performance appraisals, discipline, termination and management of staff shall be undertaken in an objective and impartial manner.

The purpose of this policy is to ensure that employment related decisions concerning existing or potential City employees are free from any real or perceived improper influence or conflict of interest based on familial relationships, and to maintain confidence in the integrity of the City’s hiring and employment practices.

SCOPE
This policy applies to all City employees, including but not limited to regular, temporary and contract employees, and to volunteers, students and interns.

PROVISIONS
The City will adhere to the following provisions in all employment related matters:

- No one shall attempt to influence the outcome of the employment process, or to influence any City employee to hire or promote a member of his or her family.

- No employee shall make any decision or participate in the process to hire, transfer, promote, demote, discipline or terminate any member of his or her family.

- If a family member of an employee is an applicant for employment with the City or a candidate for promotion or transfer, the family member will proceed through the usual selection process with no special consideration.

- No employee shall supervise or be supervised by a family member, or be placed in a position of influence over a family member. Employees must declare to their manager/supervisor the existence or formation of a direct or indirect supervisory/subordinate relationship with a family member.

- Management has a responsibility to not knowingly place employees in positions where their duties could create a conflict of interest with a family member.
• No employee shall attempt to use a family relationship for his or her personal benefit or gain.

While this policy applies solely to family members (see definitions), situations may arise where broader familial relationships and other close personal associations cause real or perceived conflicts or the possibility of real or perceived improper influence. As a result, everyone should be sensitive to these concerns and make decisions in keeping with the spirit and intent of this policy.

COMPLIANCE

Any employee who is found to have violated this policy may be disciplined according to the severity of the actions, up to and including dismissal.

DEFINITIONS

Family Member (including but not limited to):

• Spouse, including common-law spouses and same sex partners
• Child, mother, father, sister, brother, grandchild, grandparent, aunt, uncle, niece and nephew
• Mother-in-law, father-in-law, sister-in-law and brother-in-law
• Step-mother, step-father, step-sister, step-brother and step-child
• Child, mother or father in a relationship where the role of parent has been assumed.

Conflict of Interest: A conflict of interest can occur when, in carrying out his or her duties, someone makes a decision or takes action which may be affected, or could be seen by another party to be affected by:

• The individual’s personal, financial or business interests, or

• The personal, financial or business interests of family members, friends or associates.

APPROVAL

Approved by City Council of the City of Hamilton on September 14, 2005.
THE HAMILTON STREET RAILWAY COMPANY

BY-LAW NO. HSR 07-001

Being a By-law to appoint the Officers of the Company for the period commencing December 1, 2006, ending November 30, 2010, to appoint solicitors, to appoint signing authorities, to adopt purchasing policies and to ratify agreements

That the Council of the City Of Hamilton, sitting as the Board of Directors for The Hamilton Street Railway Company, hereby enacts as follows:

1. That the following persons be appointed to the following positions as Officers of the Company concurrent with the term of Council commencing December 1, 2006, ending November 30, 2010:

   President                      Fred Eisenberger
   Vice-President                 Scott Stewart
   Secretary                     Kevin C. Christenson
   General Manager               Don Hull
   Treasurer                     Joseph Rinaldo

2. That the City Solicitor for the City of Hamilton is authorized to act as Solicitor for the Company and, as such, is authorized and directed to prepare and file any and all documents as may be required by the Ministry of Consumer and Business Services and any governing legislation, to give effect to the foregoing.

3. a. That the signing officers of the Company for the purposes of executing contracts having monetary values of up to and including $250,000.00 (Cdn), including, without limiting the foregoing, those contracts of said value specifically authorized by City of Hamilton’s Council to be executed by the HSR, shall be the General Manager.

   b. That the signing officers of the Company for the purposes of executing contracts having monetary values in excess of $250,000.00 (Cdn), including, without limiting the foregoing, those contracts of said value specifically authorized by City of Hamilton’s Council to be executed by the HSR, shall be the President and Secretary.

   c. Every contract signed by the General Manager shall be initialed by the Solicitor of the Company before being signed by the General Manager.

   d. Every contract signed by the President and Secretary for the Company shall be initialed by the General Manager and Solicitor of the Company before being signed by the President and Secretary.

   e. That subject to 3 (a) to (d) hereof, the procurement policies adopted by the Transition Board for the City of Hamilton, any successor procurement policies that may be adopted by the City of Hamilton and any amendments thereto that may from time to time be made, including without limiting the foregoing, the Purchasing Policies and the Commodity Price Hedging Agreement Policy, shall apply in their entirety to the Company, with necessary modifications.

   f. That the City of Hamilton, through its Purchasing Division, be authorized to conduct procurements on behalf of the Company, in accordance with the above-noted policies, except where otherwise provided by resolution of the Board.

   g. That the Manager of Energy Initiatives for the City of Hamilton, be authorized
to conduct procurements of energy commodities on behalf of the Company, in accordance with the above-noted policies, except where otherwise provided by resolution of the Board.

4. That the City Solicitor of the City of Hamilton is authorized and directed to prepare any such corporate minutes, registers, share certificates and any other documentation as may be required to give effect to the foregoing and to create an up-to-date corporate minute book for the Company.

5. That the Secretary of the Company be authorized and directed to maintain the corporate minute book for the Company and to retain the same at the City Clerk’s Office of the City of Hamilton.

6. That the following agreements, executed on behalf of the Company, are hereby confirmed and ratified:

a. GTA Fare System Procurement Governance Agreement, executed by the Mayor and Clerk on May 26, 2005, pursuant to Item 8.1 of the Public Works, Infrastructure and Environment Committee Report 05-007, which was adopted by Council for the City of Hamilton on April 27, 2005;

b. GTA Fare System Operating Agreement, executed by the Mayor and Clerk on September 22, 2006, pursuant to Item 8.1 of the Public Works, Infrastructure and Environment Committee Report 05-007, which was adopted by Council for the City of Hamilton on April 27, 2005.

7. In order to give effect to Recommendation (d) of Report PW04117a (a copy of which is attached hereto as Schedule A), any funding or other agreements and/or documents with the Province of Ontario relating to the GTA Fare System project may be executed by the President and Secretary, pursuant to Item 8.1 of the Public Works, Infrastructure and Environment Committee Report 05-007 which was adopted by Council for the City of Hamilton on April 27, 2005, and following any applicable and/or necessary City of Hamilton Council Resolution for award of any of the aforementioned contracts.

8. In order to give effect to Recommendation (c) of Report PW04117b (a copy of which is attached hereto as Schedule B), all agreements and other documents flowing from, or otherwise relating to, the Joint Procurement RFP entitled “To Procure a Farebox Collection System for the Transit Fleets of Brampton Transit, The Hamilton Street Railway Company (HSR) and Burlington Transit” issued by The Corporation of the City of Brampton on behalf of The Corporation of The City of Brampton (“Brampton”), The Corporation of The City of Burlington (“Burlington”) and The Hamilton Street Railway Company (RFP No. 2007-001) may be executed by the President and Secretary, pursuant to Item 8.1 of the Public Works, Infrastructure and Environment Committee Report 05-007 which was adopted by Council for the City of Hamilton on April 27, 2005, and following any applicable and/or necessary City of Hamilton Council Resolution for award of any of the aforementioned contracts/agreements. Any of the aforementioned documents executed prior to passing of this Resolution of this Board are hereby confirmed and ratified.

9. In order to give effect to Recommendations (a) and (b) of Report (PW07070) (a copy of which is attached hereto as Schedule C), all agreements or other documents relating to the Eastgate Transit Terminal Reconstruction project authorized by City of Hamilton Council are to be executed by the President and Secretary, pursuant to Item (7.2) of the Public Works Committee Report 07-007 which was adopted by Council for the City of Hamilton on May 16, 2007. Any of the aforementioned documents executed prior to passing of this Resolution of this Board are hereby confirmed and ratified.
10. In order to give effect to the Recommendation in Report PW07012 (a copy of which is attached hereto as Schedule D), the Columbia Housing Services Inc. Transportation Agreement is to be executed by the Vice-President of the HSR (General Manager of Public Works for the City of Hamilton), pursuant to Item 5.4 of the Public Works Committee Report 07-001, which was adopted by Council for the City of Hamilton on January 24, 2007.

11. That Items 1, 2, 3, 5, 6, and 7 of By-law HSR05-001 and any amendments thereto are hereby repealed.

PASSED AND ENACTED the 27th day of June, 2007

Fred Eisenberger
President

Kevin C. Christenson
Secretary