TO: Chair and Members Economic Development and Planning Committee
WARD(S) AFFECTED: WARDS 1,2,3,4,6,7,8,9,11,12,13,15

COMMITTEE DATE: March 23, 2010

SUBJECT/REPORT NO: Financial Incentives Programs and Properties with Ontario Building Code, Ontario Fire Code and Property Standard Violations (PED10074)

SUBMITTED BY: Tim McCabe
General Manager Planning and Economic Development Department

PREPARED BY: Hazel Milsome 905-546-2424 ext 2755

SIGNATURE:

RECOMMENDATION:

That the Protocol for Properties with Ontario Building Code, Ontario Fire Code and Property Standard violations being developed/redeveloped with assistance under financial incentive programs offered through the Downtown and Community Renewal Division attached as Appendix “A” to Report PED10074, be approved.

EXECUTIVE SUMMARY

Report PED10074 recommends a protocol for properties with Ontario Building Code, Ontario Fire Code and Property Standard violations that are being developed/redeveloped with assistance under the financial incentive programs offered through the Downtown and Community Renewal Division.

Due diligence is presently undertaken on each application as it is received including obtaining zoning verification. Zoning verifications provide details on the permitted land use and identify outstanding Ontario Building Code and/or Property Standard violations.
on the property. Financial incentives are offered to develop/redevelop a property and, as part of the improvements being undertaken, redress outstanding violations. Prior to releasing final payment under the loan programs, staff ensure there are no outstanding Ontario Building Code or Property Standard violations on the property.

The protocol attached as Appendix “A” to Report PED10074 strengthens the aforementioned process through: obtaining verification from Hamilton Emergency Services (HES) – Fire, Fire Prevention Division on any outstanding Ontario Fire Code violations on a property; discussing the nature of the violation(s) with senior staff from Building Services, HES – Fire, Fire Prevention Division and/or Municipal By-law Enforcement for the purpose of determining the nature of the violation(s), the appropriate action to take; an appropriate timeframe to address the violation(s); requiring a Certification of Compliance if the development/redevelopment has not commenced within one year of approval of the loan/grant commitment; and, incorporating appropriate clauses in the Loan Agreement/Letter of Understanding entered into with the applicant that confirms the appropriate action and the timeframe in which the action is to be undertaken.

Alternatives for Consideration – See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

**Financial:** The protocol recommended in Report PED10074 will have no financial implications. Funding for the financial incentive programs is contained in the Downtown and Community Renewal Division’s Capital and Current Budgets.

**Staffing:** Applications under the financial incentive programs are processed by the Planning and Economic Development Department and the Corporate Services Department. The protocol recommended in Report PED10074 can be accommodated within the existing staff complement.

**Legal:** Section 28 of the Planning Act permits a municipality, in accordance with a Community Improvement plan to make loans and grants which would otherwise be prohibited under Section 106(2) of the Municipal Act, to registered/assessed owners and tenants of lands and buildings. A Community Improvement Plan can only be adopted and come into effect within a designated Community Improvement Project Area. Changes to a Community Improvement Plan or Community Improvement Project Area require formal amendments as dictated by the Planning Act.

The Ontario Building Code Act 1992, S.O., Chapter 23 is the legislative framework governing the construction, renovation and change of use of buildings and, allows a municipality to pass by-laws prescribing standards for the maintenance and occupancy
of property. City Council adopted Property Standards By-law 03-117 on May 14, 2003. Building Inspectors and By-law Enforcement Officers enforce the Ontario Building Code and Property Standards By-law respectively and, if there is any deviation observed from the Code and By-law take the appropriate action.

Ontario Regulation 213/07 is the Ontario Fire Code under the Fire Protection and Prevention Act 1997. Inspection staff from HES – Fire, Fire Prevention Division ensures compliance with the Ontario Fire Code and take appropriate action when a violation is observed.

HISTORICAL BACKGROUND  (Chronology of events)

During discussion at the Committee of the Whole meeting on January 11, 2010 on Report PED10009/FCS10004 that dealt with the Protocol for Deteriorating Loans and Strengthening the Risk Analysis for Financial Incentive Programs, staff was asked to report back to the Economic Development and Planning Committee on financial incentive programs and properties with “violations”. Consequently senior staff from Downtown and Community Renewal, Building Services, Municipal By-law Enforcement and HES – Fire, Fire Prevention Division discussed existing procedures and ways in which the procedures could be strengthened that culminated in the protocol attached as Appendix “A” to Report PED10074.

POLICY IMPLICATIONS

Development/redevelopment proposals that receive loan/grant commitments under the financial incentive programs offered through the Downtown and Community Renewal Division must be in compliance with the new Urban Official Plan, the Downtown Hamilton Secondary Plan, the Downtown and Community Renewal Community Improvement Plan and applicable zoning by-laws.

The Ontario Building Code, the Ontario Fire Code and Property Standards By-law 03-117 provide the municipality with the ability to take appropriate action when a violation has occurred.

RELEVANT CONSULTATION

Staff from the Downtown and Community Renewal Division consulted with Building Services, HES – Fire, Fire Prevention Division, and Municipal Law Enforcement during the preparation of the protocol as detailed in Appendix “A” to Report PED10074.
The City Solicitor’s office was consulted and concurs with the recommendations included in Report PED10074.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The financial incentive programs are geared to developing and redeveloping property within Downtown Hamilton, Community Downtowns, Business Improvement Areas and commercial corridors throughout the City of Hamilton. It is prudent to ensure that, if a property is in violation of the Ontario Building Code, the Ontario Fire Code or Property Standards By-law 03-117, that procedures are in place to address the relevant problem. Appendix “A” to Report PED10074 outlines those procedures.

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

An alternative would be not to approve Report PED10074 however financial assistance should not be provided to property owners who do not address violations under the Ontario Building Code, the Ontario Fire Code or Property Standards By-law 03-117. This alternative is not recommended.

**Financial:** Not applicable

**Staffing:** Not applicable

**Legal:** Not applicable
CORPORATE STRATEGIC PLAN  (Linkage to Desired End Results)


Growing Our Economy
• Investment in Hamilton is enhanced and supported.

Financial Sustainability
• Assessment growth is generated.

Healthy Community
• Partnerships are promoted.

APPENDICES / SCHEDULES

Appendix ‘A’ to Report PED10074 – Protocol for Properties with Ontario Building Code, Ontario Fire Code and Property Standards violations being developed/redeveloped with the assistance of financial incentive programs offered through the Downtown and Community Renewal Division.

HM:vk
PROTOCOL FOR FINANCIAL INCENTIVE PROGRAMS AND PROPERTIES WITH BUILDING CODE/FIRE CODE/PROPERTY STANDARDS VIOLATIONS

Applications received under the financial incentive programs offered by the Downtown and Community Renewal Division will be subject to the following:

1. Verification of outstanding Building Code and Property Standards violations upon receipt of application through a Zoning Verification.

2. Verification of outstanding Fire Code violations upon receipt of application through contact with Hamilton Fire Prevention.

3. Staff from Building Services/Municipal By-law Enforcement/Emergency Services to be consulted on the nature of the violation(s) and the appropriate action to be taken to address the violations, commence construction, or demolish the property and the timeframe in which the action is to be undertaken.

4. Clauses written into the Loan Agreement/Letter of Understanding entered into with the applicant that would:
   a) Confirm the action to be taken to address the violations and timeframe in which the action is to be taken.
   b) Place the responsibility on the applicant to notify the Downtown and Community Renewal Division if, once approved for a loan/grant further violations are filed on the property. The consequence being that the City may cancel the loan/grant. The loan/grant may also be cancelled in the event the applicant fails to notify the Division of a violation.*
   c) Confirm that the loan/grant will be cancelled if, once approved for a loan/grant a violation under the Zoning By-law is evident e.g. demolition of a property after which the land is utilized for a parking lot prior to its development.
   d) The requirement for the applicant to obtain a Certificate of Compliance to determine if the property meets Property Standards one (1) year following approval of the loan/grant if the development/redevelopment has not commenced.

*Note: The Downtown and Community Renewal Division will work with Building Services for the purpose of working towards “flagging” properties on the AMANDA system in order to provide notification to staff of any violations placed on a property once approved for financial assistance.