SUBJECT: Minimum Property Standards for the Maintenance of Heritage Attributes of Designated Heritage Properties Under Parts IV and V of the Ontario Heritage Act (PED07239) (City Wide)

RECOMMENDATION:

(a) That the draft By-law, attached as Appendix A to Report PED07239, amending By-law No. 03-117, Property Standards By-law, as amended, prepared by staff and reviewed by the City of Hamilton LACAC (Municipal Heritage Committee), be approved.

(b) That the draft By-law, attached as Appendix A to Report PED07239, amending By-law No. 03-117, Property Standards By-law, as amended, be prepared in a form satisfactory to the City Solicitor for enactment by City Council.

(c) That notice of the passing of the By-law be published in a newspaper having general circulation in the City of Hamilton.
EXECUTIVE SUMMARY:

The Ontario Heritage Act provides that where a municipality has a Property Standards By-law in place, the municipality may prescribe minimum standards for the maintenance of the heritage attributes of heritage properties designated under Parts IV and V of the Ontario Heritage Act. The objective of these minimum standards is to provide not only a different standard of property maintenance for heritage properties, but also to prevent what has been popularly referred to as “demolition by neglect”. “Demolition by neglect” refers to a situation where the owner or tenant of a designated heritage property, either purposely or unintentionally, allows the buildings and/or structures on the property to deteriorate to the point that they are beyond reasonable repair. In the case of designated heritage properties, the loss of individual heritage attributes and features or demolition of entire structures are not appropriate options for these non-renewable and valued community resources.

The amendments to the Property Standards By-law, attached as Appendix A to PED07239, seek to amend the standard of necessary repairs and maintenance in a manner that ensures important features and elements that are described in the By-law designating such heritage properties are appropriately conserved. A draft consolidated By-law, incorporating the amendments attached as Appendix B to Report PED07239, has been created to assist in the understanding of the proposed amendments and is provided for clarification only.

These By-law amendments do not apply to listed heritage properties or any other heritage properties not designated under the Ontario Heritage Act.

BACKGROUND:

At its meeting of August 24, 2006, the Hamilton LACAC (Municipal Heritage Committee) discussed the general issue of “demolition by neglect” where the owner or tenant of a designated heritage property, either purposely or unintentionally, allows the buildings and/or structures on the property to deteriorate to the point that the structure is beyond reasonable repair and demolition the eventual outcome.

The issue of “demolition by neglect” appears to be particularly prevalent in Toronto where land values are often higher than the associated buildings that occupy them. Where buildings are classed as capital assets, they may have also been depreciated for tax purposes and there is no business case for their continuing care. “Demolition by neglect” has also proven a challenge in some other Ontario communities with recent, high-profile examples involving landmark buildings, e.g., the City of St. Thomas (Alma College) and the City of Kitchener (Forsyth Building).

Within the context of this general concern and the specific example of the Lister Block in Hamilton, the following motion was approved by the Hamilton LACAC (Municipal Heritage Committee) on August 24, 2006. The motion was brought forward to the
WHEREAS many Hamilton heritage buildings are deteriorating, due to lack of proper maintenance and enforcement by Property Standards;

AND WHEREAS such inaction leads to ‘demolition by decay’;

AND WHEREAS the loss of our built heritage weakens the distinctiveness of our community and our sense of attachment to the past;

AND WHEREAS other municipal jurisdictions have By-laws and/or are studying By-laws that would ban demolition through neglect;

THEREFORE BE IT RESOLVED that the Hamilton LACAC (Municipal Heritage Committee) recommends that a By-law to prevent demolition of heritage properties by decay be considered for the City of Hamilton and that Council be advised that staff be directed to conduct the necessary research and analysis with respect to said By-law.

The issue of demolition by neglect was brought up as one of many issues in the most recent review of the Ontario Heritage Act. Subsequent revisions made to that legislation in 2005 contained new provisions that enabled municipalities to set out standards for the maintenance of the heritage attributes of designated heritage properties, above and beyond the requirements typically provided for in property standards By-laws enabled under the Building Code Act.

Part IV of the Ontario Heritage Act, which addresses the designation of individual heritage properties, enables municipalities to pass By-laws as follows:

**Building Standards By-law**

35.3 (1) If a By-law passed under Section 15.1 of the Building Code Act, 1992 setting out standards for the maintenance of property in the municipality is in effect in a municipality, the Council of the municipality may, by By-law,

   (a) Prescribe minimum standards for the maintenance of the heritage attributes of property in the municipality that has been designated by the municipality under Section 29 or by the Minister under Section 34.5; and

   (b) Require property that has been designated under Section 29 or 34.5 and that does not comply with the standards to be repaired and maintained to conform with the standards. 2005, c. 6, s. 27.
Application

(2) Sections 15.2, 15.3, 15.4, 15.5 and 15.8 of the Building Code Act, 1992 apply with necessary modifications to the enforcement of a By-law made under Subsection (1). 2005, c. 6, s. 27.

Part V of the Ontario Heritage Act, which addresses the designation of heritage conservation districts, also enables municipalities to pass By-laws as follows:

Building Standards By-law

45.1 (1) If a By-law passed under Section 15.1 of the Building Code Act, 1992, setting out standards for the maintenance of property in the municipality is in effect in a municipality, the Council of the municipality may, by By-law,

   (a) Prescribe minimum standards for the maintenance of the heritage attributes of property situated in a heritage conservation district designated under this Part; and

   (b) Require property that is situated in a heritage conservation district designated under this Part and that does not comply with the standards to be repaired and maintained to conform with the standards. 2005, c. 6, s. 34.

Section 15(1)(3) of the Building Code Act specifies the following provisions in establishing a property standards By-law:

Standards for maintenance and occupancy

(3) The Council of a municipality may pass a By-law to do the following things if an Official Plan that includes provisions relating to property conditions is in effect in the municipality or if the Council of the municipality has adopted a policy statement as mentioned in Subsection (2):

1. Prescribing standards for the maintenance and occupancy of property within the municipality or within any defined area or areas and for prohibiting the occupancy or use of such property that does not conform with the standards.

2. Requiring property that does not conform with the standards to be repaired and maintained to conform with the standards or the site to be cleared of all buildings, structures, debris or refuse and left in graded and levelled condition. 1997, c. 24, s. 224 (8).

The Building Code Act is quite clear in its provisions respecting municipal property standards By-laws. Property can either be brought up to the established standard or cleared of all buildings and re-graded. A critical area of concern prior to the enactment
of revisions to the Ontario Heritage Act was that enforcement action taken against a property containing a designated heritage building could result in its potential loss through “required” demolition. Prior to 2005, demolition of designated heritage structures and buildings was also permitted “as of right” and could not be effectively prevented.

Amendments to the Ontario Heritage Act in 2005 removed the right to demolish a designated heritage building or structure and demolition is now a regulated activity. Accordingly, municipal property standards across the province can now be enforced on designated heritage properties without the risk that the property owner (or in some cases the municipality) will pursue demolition in an effort to bring the property into conformity.

Recognizing that designated heritage properties are distinguished by cultural heritage attributes that often take the form of special building materials, forms and features, the amended Act also provides for minimum standards for the specific maintenance of the heritage attributes of any designated property. Therefore, in concert with the stricter control of demolition, this amendment enables the municipalities to effectively use property standards as a tool to ensure the conservation of designated heritage properties through adequate and appropriate repair and maintenance.

The enabling provisions in the Ontario Heritage Act do not extend to any other heritage properties, such as those that are listed or otherwise recognized as being of heritage value by a municipality.

**ANALYSIS/RATIONALE:**

Prior to amalgamation all of the former area municipalities had enacted Property Standards By-laws under the Building Code Act. In 2003, the City of Hamilton enacted By-law No. 03-117, which repealed these By-laws and established a consolidated By-law for the entire municipality. Due to limited staff and budget constraints, the current Property Standards By-law is generally implemented on a “complaint-based” system, i.e., it is reactive rather than pro-active. Complaints are typically brought forward to the City by aggrieved property owners that abut or are within the neighbourhood of a sub-standard property.

When an inspection of a property by a City Building Official reveals that the property does not conform to the standards prescribed in the Property Standards By-law, an Order is issued under Section 53.2(2) of the Building Code Act. When an Order has been issued, the property owner or occupant must take action to remedy the situation. When an owner or occupant is not satisfied with the terms and conditions of the Order, they may appeal to the City of Hamilton’s Property Standards Committee. The Committee may confirm, modify or rescind an Order to demolish or repair and may also extend the time period for complying with the Order. Where the owner refuses or is unable to take action, the City is enabled to undertake the required repairs, the costs of
which are then added to the property tax account for the subject property. In certain cases, the owner or the City may demolish all of the buildings on the property in order for the property to comply with the minimum property standards.

In 2005, the Standards and Licensing Section of the Planning and Economic Development Department who administer the Property Standards By-law, received 2,265 property standards complaints. Of these complaints, 576 Orders were issued pursuant to the By-law. In approximately 60 cases, the City proceeded to have the work completed under its direction and added the incurred costs of the repairs and an administration fee to the property tax account for the subject address.

Of the approximately 240 individual properties designated under Part IV and 355 properties contained in heritage conservation districts designated under Part V of the Ontario Heritage Act in the City of Hamilton, none have been subject to an Order under the Building Code Act since municipal amalgamation in 2001. The majority of designated properties are in active residential use and are subject to regular maintenance.

**Designated properties and Property Standards By-law**

In a review of the approximately 600 designated heritage properties in the City of Hamilton, staff has identified ten structures that are currently vacant. Of these ten properties, three structures are vacant but are being actively maintained or have been appropriately “mothballed” as follows:

- St. Mark’s Church, 120 Bay Street South, Hamilton.
- Auchmar, 88 Fennell Avenue West, Hamilton.
- Century Manor (Hamilton Psychiatric Hospital), 100 West 5th Street, Hamilton.

Five other structures are vacant and are subject either to minimal maintenance, undergoing renovation or are subject to a variety of building permit, site plan control or other planning approvals, or are the subject of active fund raising efforts:

- Victoria Hall, 66-70 King Street East, Hamilton.
- Burlington Canal Lighthouse and Keeper’s Cottage, 1155 Beach Boulevard, Hamilton.
- Century/Lyric Theatre, 14 Mary Street, Hamilton.
- Tivoli Theatre (lobby and auditorium), 108-114 James Street North, Hamilton.
- Lister Block, 28-50 James Street North, Hamilton.

Only two structures are vacant and do not appear to be subject to any active building or planning approvals or ongoing maintenance:

- Former Canadian Westinghouse Head Office, 286 Sanford Avenue North.
- Andrew Sloss House, 372 Butter Road, Ancaster.
Accordingly, it appears that of approximately 600 designated heritage properties, 1.67% comprise vacant buildings. Of the 600 properties, only two (or 0.33%) appear to be vacant and may not be subject to any pro-active care or maintenance. It may be concluded that “demolition by neglect” is not as widespread a conservation issue in the City of Hamilton as it may be in other municipalities.

The need for an appropriate heritage approach to property standards

Generally, the purpose of municipal property standards By-laws is to establish standards for occupancy and maintenance so that owners and occupiers provide minimum standards for those who live at, attend or are otherwise affected by the condition of buildings and properties. The City’s Property Standards By-law, as it currently exists, does not contain extensive provisions for the repair and maintenance of non-structural architectural elements. Particularly, the By-law does not address or otherwise protect those specific heritage attributes, features or elements that embody the value or significance of designated heritage properties. Indeed, in the process of standard or typical repairs heritage attributes and features may be damaged in the process of “normal” or routine work.

Of critical concern is that some of the provisions of the current Property Standards By-law have the potential to adversely impact heritage attributes. The provisions related to vacant or underused properties require that the building be boarded up and the utilities disconnected. These actions, in addition to the lack of general maintenance, may result in cumulative harmful effects, such as damage from the lack of proper heating and ventilation.

After a building is boarded up, the internal temperature and humidity levels may fluctuate due to temperature and humidity changes outside the building. Without minimal heat and ventilation, condensation can occur and cause damage to valued interior features including paint, plaster, woodwork and masonry. Over time, persistent excessive moisture conditions and extreme temperature fluctuations can lead to the rotting of wood members, mould growth and the spalling, cracking, disintegration and efflorescence of masonry walls and foundations, which can result in structural damage or increase the cost of future restoration to prohibitive levels.

These unintended harmful effects, while arising from well-intentioned actions, do not constitute sound conservation management of scarce and valued cultural heritage resources. In an effort to address a better and focussed strategy, the following section describes some of those considerations that must be taken into account in formulating any Property Standards By-law amendments.

Property standards By-law in a heritage context

Every property designated under Part IV of the Ontario Heritage Act has either Reasons for Designation (Ontario Heritage Act pre-2003) or a Description of Heritage Attributes...
(Ontario Heritage Act post-2003) contained in the designating By-law and registered on the property’s title. This descriptive portion of the designating By-law serves to identify the property’s attributes and features that contribute to the property’s heritage value or significance. Likewise, the heritage attributes of a heritage conservation district designated under Part V of the Ontario Heritage Act are typically identified in the heritage conservation district study and/or the management plan for the heritage conservation district.

Examples of designated heritage property attributes include roofs, dormers, chimneys, exterior cladding, windows, doors, shutters, soffits, eavestroughs, porches, balconies, stairs, railings, decorative features and trim, and landscape features, such as retaining walls, fences, hedgerows, woodlots, trees, paths, and driveways. In a few cases the designation By-laws refer to interior heritage attributes, such as doorways, mouldings, baseboards, and stairs.

In considering amendments to the Property Standards By-law, the following issues must be addressed:

- The variety of features that may be designated, as well as the differing materials and techniques used in their fabrication.
- The protection of features from loss, displacement or disruption.
- The appropriate repair and conservation.

Experience elsewhere

Currently, several Ontario municipalities have amended, or are considering amendments to, their property standards By-laws to include special provisions for heritage properties designated under the Ontario Heritage Act, including the Cities of Toronto, London, St. Thomas and Mississauga. The City of Toronto Council has recently (March 2007) directed their staff to draft minimum standards to maintain the features of designated heritage buildings. The City of London’s draft By-law has also not yet been enacted and seeks only to regulate the heritage attributes defined in the designating By-law or heritage conservation district plan. The approach of the City of London is generally the approach recommended in this report for the City of Hamilton.

The Cities of St. Thomas and Mississauga have amended their By-laws and each included an extensive list of “heritage attributes” that may be addressed by the By-law. The City of St. Thomas By-law was struck down by the Ontario Superior Court of Justice as being ultra vires to the power conferred upon the municipality by the Ontario Heritage Act. The amended By-law regulated heritage attributes beyond those described in the By-law designating the property.
The proposed Property Standards By-law Amendment

The proposed Property Standards By-law Amendment, attached to Report PED07239 as Appendix A, contains appropriate repair and maintenance standards that seek to ensure that any required work undertaken on the heritage attributes, as defined in the designation By-law, will be completed in a manner and with materials that will maintain the character and integrity of the property. The repair and maintenance of heritage buildings also involves a more specialized approach and, thus conventional heritage conservation principles have been incorporated into the provisions of the amendment wherever possible.

The proposed By-law essentially adopts a two-pronged approach to the issue of demolition by neglect by:

(a) Ensuring the preservation and maintenance of property’s heritage attributes.

(b) Preventing damage to and deterioration of these heritage attributes and the super structure of vacant properties to ensure that they remain viable for future use or adaptive reuse.

The proposed amending By-law includes the following key provisions:

- Requires maintenance of the designated heritage attributes of the property.
- Heritage attributes shall be repaired rather than replaced and the onus is placed on the owner to prove that an attribute cannot be repaired.
- Any replacement materials shall be of the same type as the original material and in keeping with the design, colour, texture and any other distinctive feature as the original and installed in such a manner as to replicate the original.
- Minimal utilities shall be required in vacant and/or damaged heritage buildings as to maintain appropriate heating and ventilation to prevent damage to the building by fluctuating temperatures and humidity.
- Ensures that vacant and/or damaged buildings are secured in a manner that minimizes damage the building fabric and detract from the building’s aesthetics.
- Eliminates the demolition option for heritage buildings, except in accordance with the Ontario Heritage Act.

It is anticipated that only a small number of properties will be affected by the proposed By-law in the City of Hamilton. The proposed property standards provisions are considered to be an important conservation initiative and a valuable tool for the future care and management of designated heritage properties.
Since the proposed amendments to the Property Standards By-law affect private property, notice in a newspaper having general circulation in the City will be provided. No notice requirements or appeal mechanism is required under the Ontario Heritage Act and staff does not believe that addressed notification is required due to the limited affect of this By-law on the use and enjoyment of private property.

**ALTERNATIVES FOR CONSIDERATION:**

The enactment of a By-law prescribing the minimum standards for the maintenance of the heritage attributes of designated heritage properties is a discretionary activity under the Ontario Heritage Act. As the issue of designated heritage property maintenance is not widespread, Council, as advised by Hamilton LACAC (Municipal Heritage Committee), may consider a variety of options to the recommended comprehensive strategy.

Four alternatives are discussed below and are summarized as follows:

- Do nothing to amend the Property Standards By-law;
- Enact an amendment to the Property Standards By-law applying only to vacant buildings;
- Enact an amendment to the Property Standards By-law applying only to non-residential buildings; or,
- Enact an amendment to the Property Standards By-law applying only to properties located with the Downtown Secondary Plan Area (Queen-Hunter-Wellington-Cannon).

Regardless of the chosen alternative, staff recommends that official notice of passing this By-law be published in a newspaper having general circulation in the City of Hamilton.

**Do not amend the Property Standards By-law**

This alternative leaves the current Property Standards By-law unchanged. This alternative does not change the enforcement of property standards and heritage properties may potentially be at risk either through “demolition by neglect” or inappropriate work being undertaken that damages heritage features and materials. Staff does not consider this to be an appropriate alternative.

This alternative would not be a sound conservation management strategy and does not fulfil the intent of provincial and local planning policies. It would not be in keeping with “Triple Bottom Line”.
Apply the Property Standards By-law amendment to vacant buildings only

This alternative would amend the existing Property Standards By-law to incorporate provisions only related to the repair and maintenance of the heritage attributes of vacant buildings designated under the Ontario Heritage Act. This alternative would improve the repair and maintenance of vacant designated properties, but may leave all other designated properties vulnerable to deterioration and inappropriate work being undertaken that damages heritage features and materials.

This alternative is partially in keeping with sound conservation management strategy and partially fulfils the intent of provincial and local planning policies. “Triple Bottom Line” is also partially met as this alternative potentially targets those designated heritage properties that are most at risk.

Apply the Property Standards By-law Amendment to non-residential properties only

This alternative would amend the existing Property Standards By-law to incorporate provisions only related to the repair and maintenance of the heritage attributes of commercial, institutional and industrial properties (i.e. non-residential) designated under the Ontario Heritage Act. In undertaking a preliminary review of the condition of designated buildings and structures within the municipality, staff concluded that the properties presenting the greatest repair and maintenance challenges were larger commercial and institutional properties. Often this type of property cannot be used for a use other than that which it was designed for without extensive redesign and renovation, especially if left vacant for an extended period.

This alternative would target the repair and maintenance of certain types of designated properties. The alternative would leave designated residential properties at risk and vulnerable to deterioration. This alternative is partially in keeping with sound conservation management strategy, partially fulfils the intent of provincial and local planning policies and “Triple Bottom Line”.

Apply the Property Standards By-law Amendment to properties located within the Hamilton Downtown Secondary Plan area only

This alternative would amend the existing Property Standards By-law to incorporate provisions only related to the repair and maintenance of the heritage attributes of properties designated under the Ontario Heritage Act and located in Hamilton Downtown. When staff undertook a preliminary review of the condition of designated buildings and structures within the municipality, it was predominately properties located in the Downtown whose heritage attributes could potentially benefit from an increased level of repair and maintenance.
This alternative would improve the repair and maintenance of designated properties, but would potentially leave designated properties outside of the Downtown vulnerable to deterioration and “demolition by neglect”. This alternative is partially in keeping with sound conservation management strategy, partially fulfils the intent of provincial and local planning policies and “Triple Bottom Line”, but does not address all designated heritage properties.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial:** Due to the limited number of designated heritage properties affected, this amendment is expected to produce few additional complaints and/or enforcement actions. Therefore, the financial impacts are expected to be minimal.

**Staffing:** Due to the limited number of properties affected, this amendment is expected to produce few additional complaints and/or enforcement actions. Therefore, the impact on staffing is expected to be minimal.

**Legal:** Section 15.1 of the Building Code Act enables municipalities to establish minimum standards for the maintenance and occupancy of property. Sections 35.3 and 45.1 of the Ontario Heritage Act enable municipalities to set out standards for the maintenance of the heritage attributes of designated heritage properties. Any proposed amendments would comply with legislative requirements.

**POLICIES AFFECTING PROPOSAL:**

The recommended course of action is consistent with the Official Plan policies of the former Town of Ancaster, Town of Dundas, Town of Flamborough, Township of Glanbrook, City of Hamilton and City of Stoney Creek, as well as the former Regional Municipality of Hamilton-Wentworth.

Sub-section 2.5 – *Heritage Conservation* of the former Town of Ancaster Official Plan has the goal to conserve the heritage of the Town (2.5.1). The stated objectives to fulfil this goal are to identify and conserve sites of architectural, historical, and archaeological value (2.5.1(i)), as well as to encourage the owners of heritage property to conserve those aspects of their property deemed to be of heritage value (2.5.2(iii)). Additional policies supporting this initiative are found in Sub-section 2.1 - *Environment* where the Town commits to encourage, where possible, the preservation, conservation and rehabilitation of structures and lands having historical, archaeological, architectural or scenic interest.

Sub-section 2.4 - *Historic and Architectural Resources* of the former Town of Dundas Official Plan has the goal to promote the preservation, restoration and utilization of the Town’s heritage resources.
Sub-section E.2 - *Heritage Preservation* of the former Town of Flamborough Official Plan commits to the preservation of structures of historical or architectural importance through encouraging the conservation and restoration of heritage features (E.2.1)

Section A.10 - *Heritage Conservation* of the former Township of Glanbrook Official Plan has the goal to encourage the preservation, conservation and rehabilitation of buildings, structures, and/or lands of architectural, historical, and/or archaeological value.

Section C.6 - *Heritage Resources* of the former City of Hamilton Official Plan encourages the preservation, maintenance, reconstruction, restoration and management of property considered to have historic, architectural or aesthetic value (6.1). Section C.7 - *Residential Environment and Housing Policy* further promotes the restoration and/or rehabilitation of housing structures exhibiting architectural or historical merit. Sub-section 2.4.4 – *Respecting Design and Heritage* of the Downtown Secondary Plan promotes the conservation of significant built heritage resources (2.4.4.2) and supports mechanisms for retention, conservation, rehabilitation, restoration and adaptive reuse of designated heritage resources in the Downtown (2.4.4.2(b)).

Sub-section E.5 - *Historic and Architectural Resources* of the former City of Stoney Creek Official Plan has the objective to preserve, enhance and/or rehabilitate, where feasible, those resources of historic and architectural merit (5.1.1).

The Official Plan for the former Regional Municipality of Hamilton-Wentworth was committed to the preservation, maintenance and protection of significant heritage resources (9.2).

**RELEVANT CONSULTATION:**

Heritage staff consulted with staff in the Municipal Law Enforcement Section and the Parking and By-law Services Division to obtain background statistics and determine current policies and procedures with regards to the Property Standards By-law. Staff from Legal Services and Parking and By-law Services Division also reviewed the draft amending By-law contained in Appendix A to Report PED07239 and suggested changes that have been incorporated into the By-law amendment.

A report and draft amending By-law were presented to the City of Hamilton LACAC (Municipal Heritage Committee) at its meeting of May 24, 2007, and was tabled by the Committee to allow the members sufficient time to review the draft By-law. The report and draft amending By-law were brought forward again to the Committee at its June 28, 2007 meeting, and after further discussion, the Committee formed an ad hoc committee to discuss the amending By-law. Legal staff revised the amending By-law based on the discussion at this meeting. The ad hoc committee met on July 23, 2007, and advised on minor text changes which have also been incorporated into the amending By-law.
The City of Hamilton LACAC (Municipal Heritage Committee), at its meeting of July 26, 2007, recommended the enactment of the draft By-law amending the Property Standards By-law No. 03-117. This recommendation is contained within this report. The Committee also requested that staff prepare a summary of the amendments to be made available on the City’s web pages or through mail-outs to the owners of designated heritage properties and to hold workshops for affected City staff.

**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

Arts, culture, archaeological and cultural heritage are supported and enhanced.

This initiative promotes the conservation of Hamilton’s heritage. Protecting cultural heritage strengthens the community’s identity and distinctiveness.

Environmental Well-Being is enhanced. ☑ Yes ☐ No

Human health and safety are protected through the appropriate repair and maintenance of property.

Natural resource consumption and waste is reduced through the reuse of existing infrastructure.

Economic Well-Being is enhanced. ☑ Yes ☐ No

Investment in Hamilton's building stock and skilled labour market is encouraged.

The attractiveness of the City, particularly in the Downtown, is improved through the repair and maintenance of heritage properties.

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

Cultural heritage resources are conserved and enhanced, resulting in less natural resource consumption and strengthened community identity. Investment in Hamilton's building stock and aesthetic improvements are also encouraged throughout the City.

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

This initiative demonstrates the City's commitment to cultural heritage conservation and management.

:MH

Attachs. (2)
CITY OF HAMILTON

BY-LAW NO. __________

To Amend Property Standards By-Law No. 03-117 Respecting:

HERITAGE PROPERTIES DESIGNATED UNDER THE ONTARIO HERITAGE ACT

WHEREAS a by-law passed under section 15.1 of the Building Code Act, 1992 prescribing standards for the maintenance and occupancy of property within the municipality, namely City of Hamilton By-law No. 03-117 (the Property Standards By-law), is in effect in the City of Hamilton;

AND WHEREAS under sections 35.3 and 45.1 of the Ontario Heritage Act, R.S.O. 1990, c.O.18, a by-law may be passed by the Council of the City of Hamilton prescribing minimum standards for the maintenance of heritage attributes of designated properties or properties situated in a heritage conservation district provided that a by-law passed under section 15.1 of the Building Code Act, 1992, S.O. 1992, c.23, is in effect in the City of Hamilton;

AND WHEREAS the Council of the City of Hamilton deems it necessary to amend By-law No. 03-117 to include minimum standard provisions for designated heritage properties pursuant to subsections 35.3 and 45.1 of the Ontario Heritage Act, R.S.O 1990, c. O.18;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. Section 2 of By-law No. 03-117 is amended by deleting the word “and” at the end of paragraphs 2(1)(dd) and 2(1)(ff).

2. Section 2 of By-law No. 03-117 is further amended by adding the phrase “, a Part IV heritage property and a Part V heritage property” after the words “vacant
property” at the end of paragraph 2(1)(u).

3. Section 2 of By-law No. 03-117 is further amended by adding the following paragraphs immediately after paragraph 2(1)(gg):

   (hh) “Part IV heritage property” means real property, including all buildings and structures thereon, which has been designated by the City of Hamilton or any of its former municipalities under section 29 of the Ontario Heritage Act, or which has been designated by the Minister under section 34.5 of the Ontario Heritage Act;

   (ii) “Part V heritage property” means real property, including all buildings and structures thereon, located within a heritage conservation district, which has been designated by the City of Hamilton or any of its former municipalities under Section 41 of the Ontario Heritage Act; and

   (jj) “heritage attribute” means, in relation to real property, and to the buildings on the real property, an attribute of the property, building or structure that contributes to its cultural heritage value or interest and that is defined or described:

      i. in a by-law designating a property passed under section 29, Part IV, of the Ontario Heritage Act and identified as a heritage attribute, reason for designation or otherwise;

      ii. in a Minister’s order made under section 34.5, Part IV, of the Ontario Heritage Act and identified as a heritage attribute or otherwise;

      iii. in a by-law designating a heritage conservation district passed under section 41, Part V, of the Ontario Heritage Act and identified
as a heritage attribute or otherwise; or

iv. in the supporting documentation required for a by-law designating a heritage conservation district, including but not limited to a heritage conservation district plan, assessment or inventory, and identified as heritage attributes or otherwise.

4. Section 3 of By-law No. 03-117 is amended by adding the phrase “provided that no building or structure on a Part IV heritage property or a Part V heritage property shall be altered or cleared, including but not limited to removed, demolished or relocated, except in accordance with the Ontario Heritage Act” after the words “levelled condition” in subsection 3(3).

5. Section 3 of By-law No. 03-117 is further amended by adding the following subsection immediately after subsection 3(4):

3(5) No person, being the owner or occupant of a Part IV heritage property or a Part V heritage property, shall fail to maintain the property in conformity with the standards required in this by-law.

6. By-law No. 03-117 is amended by adding the following section immediately after section 3:

**GENERAL STANDARDS FOR ALL DESIGNATED HERITAGE PROPERTIES**

3a(1) In addition to the standards, obligations and requirements that apply to all property under sections 4 through 34a both inclusive of this by-law, all heritage attributes of Part IV heritage properties, including both interior and exterior heritage attributes, and all heritage attributes of Part V heritage properties shall be:
(a) maintained so as to prevent deterioration; and

(b) repaired of any damage.

3a(2) Subject to any applicable provisions of the Ontario Heritage Act:

(a) where subsection 3a(1) can be complied with by means of repair, notwithstanding any other provision to the contrary, the heritage attribute shall not be replaced and the repair shall be undertaken in a manner that minimizes damage to the heritage attribute;

(b) where subsection 3a(1) cannot be complied with by means of repair, notwithstanding any other provision to the contrary, the heritage attribute shall be replaced with material of the same type as the original material and in keeping with the design, colour, texture and any other distinctive feature as the original material or in such a manner as to replicate the design, colour, texture and any other distinctive feature of the original material.

7. Section 6 of By-law No. 03-117 is amended by adding the following subsections immediately after subsection 6(8):

**VACANT AND/OR DAMAGED DESIGNATED HERITAGE PROPERTIES**

6(9) Notwithstanding subsection 6(4), where a building on a Part IV heritage property or a Part V heritage property remains vacant or unoccupied for a period of more than ninety (90) days, the owner shall ensure that appropriate utilities serving the building are connected as required to provide, maintain and monitor proper heating and ventilation to prevent damage caused to the building by fluctuating temperatures and humidity.
6(10) Notwithstanding subsections 6(2), 6(3), 6(5) and 6(6), where a building on a Part IV heritage property or a Part V heritage property is vacant, unoccupied or damaged by accident, storm, neglect or other causes or intentional damage, the owner shall protect the building against the risks described in subsections 6(1) and 6(5) and shall effectively prevent the entrance of all unauthorized persons by closing and securing openings to the building with boarding:

(a) which completely covers the opening and is properly fitted in a watertight manner within the side jambs, the head jamb and the exterior bottom sill of the door or window opening so the exterior trim and cladding remains uncovered and undamaged by the boarding;

(b) on window openings, which is painted a matte black to resemble window glass;

(c) on door openings, which is painted a colour that matches the colour of the original door;

(d) on an opening other than a window or door opening, which is painted or otherwise treated so that the colour matches the colour of the surrounding exterior of the building; and

(e) which is fastened securely with screws at least 50 mm in length and installed at appropriate intervals on centre.

6(11) Subject to any applicable provisions of the Ontario Heritage Act, where the minimum standard imposed by subsection 6(10) has, more than once, failed to exclude unauthorized entry, and further where the owner’s control, attendance or lack of security measures to protect the Part IV
heritage property or the Part V heritage property suggest that a more secure option be used, then the owner shall supply such measures, including such improved security of closures, as may be required by an officer.

6(12) No window, door or other opening shall be closed or secured in accordance with subsection 6(10) with brick, concrete blocking or any other masonry units and mortar, except where required by an officer under subsection 6(11).

8. Section 37 of By-law No. 03-117 is amended by deleting the subsection 37(3) and replacing it with the following subsection:

37(3) Where the cost of doing the work does not exceed $20,000, a Property Standards Officer is authorized to give immediate effect to any order that is confirmed or modified as final and binding under section 15.3(7) of the Building Code Act, 1992 so as to provide for:

(a) repair of the property; or

(b) clearing of all buildings, structures or debris from the site and the leaving of the site in a graded and levelled condition

provided that no building or structure on a Part IV heritage property or a Part V heritage property shall be altered or cleared, including but not limited to removed, demolished or relocated, except in accordance with the Ontario Heritage Act.

9. Section 39 of By-law No. 03-117 is amended by deleting the subsection 39(2)(b) and replacing it with the following subsection:
(b) stating that the site is to be cleared of all buildings, structures, debris, or refuse and left in a graded and levelled condition, provided that no order in respect of a Part IV heritage property or a Part V heritage property shall state that any building or structure is to be altered or cleared, including but not limited to removed, demolished or relocated;

10. Section 42 of By-law No. 03-117 is amended by adding the following subsection immediately after subsection 42(3):

42(4) Notwithstanding subsection 42(1) no building or structure on a Part IV heritage property or Part V heritage property may be altered or cleared, including but not limited to removed, demolished or relocated, except in accordance with the Ontario Heritage Act.

11. This By-law shall come into force and take effect on the date of its passing and enactment.

PASSED and ENACTED this day of , 2007.

_____________________________     ________________________________
MAYOR                              CLERK
Bill No. 117
THE CITY OF HAMILTON
BY-LAW NO. 03-117
PROPERTY STANDARDS BY-LAW

Being a bylaw to prescribe standards for the maintenance and occupancy of property, to provide for the enforcement of the standards and to appoint a property standards committee.

WHEREAS Council of the City of Hamilton deems it desirable to establish standards for the occupancy and maintenance of certain buildings and properties, so that owners and occupiers provide minimum standards for persons who may live at, attend or otherwise be affected by the condition of buildings and properties;

AND WHEREAS the City of Hamilton Act 1999, Statutes of Ontario, 1999, Chapter 14, Schedule C, did incorporate as of January 1, 2001, the municipality the “City of Hamilton”;

AND WHEREAS the City of Hamilton is successor to the former area municipalities of: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton, and the Corporation of the City of Stoney Creek, which may be referred to in this by-law collectively as the “former area municipalities”;

AND WHEREAS the City of Hamilton Act, 1999 provides that the by-laws of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton, and each of the former area municipalities have official plan policies respecting property conditions and standards, and by-laws establishing property standards;

AND WHEREAS it is intended to repeal and replace the property standards provided in each of the former area municipalities, and enact new minimum standards applicable across the entire City of Hamilton area while providing for the continuation of unsatisfied orders previously issued by the former area municipalities;

AND WHEREAS Section 15.1(3) of the Building Code Act, S.O. 1992, c.23 contains the jurisdiction for Municipalities to pass By-laws prescribing standards for the maintenance and occupancy of property;
AND WHEREAS Section 15.6(1) of the Building Code Act, S.O. 1992, c.23 provides for the establishment of a Property Standards Committee;

AND WHEREAS fees and charges may be imposed under the authority of the Municipal Act, S.O. 2001, c. 25, as amended, section 391, and the Building Code Act, S.O. 1992, c. 23, as amended, in particular section 15.5;

AND WHEREAS it is deemed necessary and expedient to enact a By-law prescribing minimum standards for the maintenance and occupancy of property, to adopt a set of administration procedures and to appoint a Property Standards Committee:

AND WHEREAS Council considers that reasonable notice of the by-law has been given, including notice of and the holding of a meeting on November 21, 2002 for public comment and consultation, pursuant to section 251 of the Municipal Act, S.O. 2001, c. 25, as amended;

NOW THEREFORE, the Council of the City of Hamilton enacts as follows:

SHORT TITLE

1. This by-law may be cited as the “Property Standards By-law”.

DEFINITIONS

2(1) In this by-law:

(a) “basement” shall mean that portion of a building between two floor levels, which is partly underground and which has at least one-half its height from finished floor to the underside of the first floor joists above the average finished grade level adjacent to the exterior walls of the building;

(b) “building” means any structure used or intended to be used for supporting or sheltering any use or occupancy;

(c) “Building Code” means the Building Code Act and any regulations made under that Act;

(d) “cellar” shall mean that portion of a building between two floor levels, which is partly under ground and which has more than one-half its height from finished floor to the underside of the first floor joists below the average finished grade level adjacent to the exterior walls of the building;

(e) “City” means the municipality the “City of Hamilton”, or the geographic boundaries of that municipality, as the context requires;

(f) “committee” means The Property Standards Committee established under this By-law;
(g) “debris” includes but is not limited to garbage, rubbish, refuse, or wrecked, decayed, dilapidated, or inoperative vehicles or machinery, and parts thereof;

(h) “dwelling” means a building, structure, mobile home or recreational vehicle with or without kitchen facilities or a part of such a building or structure, which is, or is intended to be used for the purpose of human habitation, and includes such a building, home or vehicle that would be or would be intended to be used for such purposes, except for its state of disrepair;

(i) “dwelling unit” means a room or a suite of rooms operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and supporting general living conditions and includes cooking, eating, sleeping, and sanitary facilities;

(j) “farm” means an agricultural operation as defined in the Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1, and includes such an operation that is not carried on with the expectation of gain but otherwise meets the definition in that Act;

(k) “guard” means a protective barrier around openings in floors or at the open sides of stairs, landings, balconies, mezzanines, galleries, raised walkways or other locations to prevent accidental falls from one level to another. Such barrier may or may not have openings through it;

(l) “habitable room” means any room in a dwelling or dwelling unit used or intended to be used for living, eating, sleeping, or cooking, and without limiting the foregoing shall include den, library, sunroom or recreational room or any combination thereof;

(m) “heating appliance” means a device to convert fuel into energy and includes all components, controls, wiring, and piping required to be part of the device by the applicable standard referred to in the Building Code;

(n) “inoperative vehicles or machinery” means such items that are unable to operated as a result of being dismantled, broken or incomplete, decayed or dilapidated, and in particular includes vehicles with missing wheels, tires, body components, or windows;

(o) “multiple dwelling” means a building containing three or more dwelling units;

(p) “non-habitable room” means any room or space in a dwelling, or dwelling unit, other than a habitable room and includes a washroom, bathroom, toilet room, laundry, pantry, lobby, communicating corridor, stairway, closet, boiler room, garage, or space for service and maintenance of any building for public use and for access to and vertical travel between stories;
(q) “occupant” means any person or persons over the age of 18 years in possession of the property;

(r) “occupancy” means the use or intended use of a building or part thereof for the shelter or support of persons, animals or property;

(s) “officer” means a property standards officer who has been assigned or appointed by the City as a property standards officer to either administer or enforce this by-law and includes a building inspector and, for the purposes of subsection 34a only, a health inspector for the City;

(t) “owner” includes the owner in trust, a mortgagee in possession, the person for the time being, managing or receiving the rent of the land or premises in connection with which the word is used whether on his own account, or as agent or trustee of any other person, or who would receive the rent if the land and premises were let, and shall also include a lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property;

(u) “property” means a building or structure, or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile structures, mobile buildings, mobile homes, outbuildings, fences, retaining walls, and erections thereon, whether heretofore or hereafter erected, and includes vacant property, a Part IV heritage property and a Part V heritage property;

(v) “protective device” means any mechanical device designed for the purpose of inhibiting movement by latching or automatic engagement or in any other reasonable manner;

(w) “repair” includes the provision of such facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a property conforms with the standards established in this by-law;

(x) “residential property” means any property that is used or is capable of being used as a dwelling, two-unit dwelling or multiple dwelling, and includes any land or buildings that are appurtenant to such establishment including but not limited to all steps, walks, driveways, parking spaces, fences and yards;

(y) “retaining wall” means a structure that holds back soil or loose material to prevent it assuming the natural angle of repose at locations where an abrupt change in ground elevation occurs;

(z) “sanitary sewage” means liquid or water borne waste:

   (i) of industrial or commercial origin, or
(ii) of domestic origin, including human body waste, toilet or other bathroom waste, and shower, tub, culinary, sink and laundry waste;

(aa) “storm sewage” means water that is discharged from a surface as a result of rainfall, snowmelt, snowfall or other precipitation;

(bb) “sewage system” means the City of Hamilton system of storm sewers, sanitary sewers and combined sewers, or a private sewage disposal system approved by the Chief Building Official within the City of Hamilton;

(cc) “suite” means a single room or series of rooms of complementary use, operated under a single ownership or occupancy, and includes dwelling units, individual guest rooms in motels, hotels, boarding houses, rooming houses and dormitories as well as individual store, and individual or complementary rooms for business and personal services occupancies;

(dd) “visual barrier” shall mean a continuous, uninterrupted structure which completely blocks lines of sight when viewed perpendicularly from either of its sides and shall consist of one or more of the following materials: wood, stone, bricks, mortar, fabricated metal or other similarly solid material;

(ee) “yard” means the land within the boundary lines of the property and not occupied by the principal building;

(ff) “pest” means any mouse, rat, bed bug, flea, wasp, hornet or cockroach, but does not include and domesticated mouse or rat;

(gg) “domesticated mouse of rat” means a mouse or rat kept as a pet by the occupants of one dwelling unit, normally in an enclosed cage or container within the unit, which is cared for and fed by the occupants, which care includes clean up and removal of mouse or rat waste and soiled rodent bedding from the dwelling unit and cage or container, and which animal is kept in compliance with animal control laws or by-laws;

(hh) “Part IV heritage property” means real property, including all buildings and structures thereon, which has been designated by the City of Hamilton or any of its former municipalities under section 29 of the Ontario Heritage Act, or which has been designated by the Minister under section 34.5 of the Ontario Heritage Act;

(ii) “Part V heritage property” means real property, including all buildings and structures thereon, located within a heritage conservation district, which has been designated by the City of Hamilton or any of its former municipalities under section 41 of the Ontario Heritage Act; and

(jj) “heritage attribute” means, in relation to real property, and to buildings and structures on real property, an attribute of the property, building or structure that
contributes to its cultural heritage value or interest and that is defined or described:

(i) in a by-law designating a property passed under section 29, Part IV of the Ontario Heritage Act and identified as a heritage attribute, reason for designation or otherwise;

(ii) in a Minister’s order made under section 34.5, Part IV of the Ontario Heritage Act and identified as a heritage attribute or otherwise;

(iii) in a by-law designating a heritage conservation district passed under section 41, Part V of the Ontario Heritage Act and identified as a heritage attribute or otherwise;

(iv) in the supporting documentation required for a by-law designating a heritage conservation district, including but not limited to a heritage conservation district plan, assessment or inventory, and identified as a heritage attribute or otherwise.

2(2) Where this by-law provides both metric and imperial measurement for the same item, the imperial measurement is provided for convenience only and is approximate.

SCOPE

3(1) No owner or occupant of property shall use, occupy, or allow, permit or acquiesce in the use or occupation of the property unless such property conforms to the standards prescribed in this By-law.

3(2) No person, being the owner or occupant of a property, shall fail to maintain the property in conformity with the standards required in this by-law.

3(3) The owner of any property which does not conform to the standards in this by-law shall repair and maintain the property to conform to the standards or shall clear the property of all buildings, structures, debris or refuse and shall leave the property in a graded and levelled condition, provided that no building or structure on a Part IV heritage property or a Part V heritage property shall be altered or cleared, including but not limited to removed, demolished or relocated, except in accordance with the Ontario Heritage Act.

3(4) This by-law does not apply so as to prevent a farm meeting the definition of "agricultural operation" under the Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1, from carrying out a normal farm practice as provided for and defined under that Act.
3(5) No person, being the owner or occupant of a Part IV heritage property or a Part V heritage property, shall fail to maintain the property in conformity with the standards required in this by-law.

**GENERAL STANDARDS FOR ALL DESIGNATED HERITAGE PROPERTIES**

3a(1) In addition to the standards, obligations and requirements that apply to all property under sections 4 through 34a both inclusive of this by-law, all heritage attributes of Part IV heritage properties, including both interior and exterior heritage attributes, and all heritage attributes of Part V heritage properties shall be:

(a) maintained so as to prevent deterioration; and

(b) repaired of any damage.

3a(2) Subject to any applicable provisions of the Ontario Heritage Act:

(a) where subsection 3a(1) can be complied with by means of repair, notwithstanding any other provision to the contrary, the heritage attribute shall not be replaced and the repair shall be undertaken in a manner that minimizes damage to the heritage attribute;

(b) where subsection 3a(1) cannot be complied with by means of repair, notwithstanding any other provision to the contrary, the heritage attribute shall be replaced with material of the same type as the original material and in keeping with the design, colour, texture and any other distinctive feature as the original material or in such a manner as to replicate the design, colour, texture and any other distinctive feature of the original material.

**GENERAL STANDARDS FOR ALL PROPERTIES**

4. Except as may otherwise be specified in the sections, the standards, obligations and requirements in sections 5 through 22 both inclusive apply to all property.

**STRUCTURAL STANDARDS**

5(1) Every part of a property shall be maintained in a structurally sound condition so as to be capable of sustaining safely its own weight and any additional weight that may be put on it through normal or permitted use, and having a factor of safety as required by the Ontario Building Code.

5(2) All exterior surfaces of buildings, structures, fences and retaining walls, including mobile structures and buildings, shall be of materials which resist deterioration by the weather or have resistant coatings applied to them, except that a non-residential farm building or structure may have unprotected wood surfaces.
5(3) The exterior walls, chimneys, roofs and other parts of buildings, structures, fences and retaining walls, including mobile structures and buildings on the property shall be free from loose or insufficiently secured, rotten, warped or broken materials and objects. Such material; and objects shall be removed, repaired or replaced.

**VACANT BUILDINGS**

6(1) Where any building is vacant or unoccupied, the owner shall protect such building against the risk of accident or intentional damage to the property, or such damage as may be caused to other properties, arising from the entry of unauthorized persons to the building, by effectively preventing entrance by unauthorized persons.

6(2) For the purpose of subsection (1) doors, windows, hatches and other openings through which entry may be obtained are required to be kept in good repair and secured from unauthorized entry, or entry shall be prevented by closing and securing the opening with:

(a) boarding which completely covers the opening with at least 12.7mm (0.5 in.) weatherproofed sheet plywood securely fastened to the building;

(b) rigid composite panels, securely fastened to the building;

(c) sheathing boards installed within the reveal of the exterior cladding and securely fastened to the building;

(d) brick and mortar securely fastened to the building; or

(e) concrete blocking and mortar securely fastened to the building.

6(3) The options available in 6(2) shall be considered progressively more secure with (e) being the most secure, and the minimum standard imposed by subsection 6(2) shall be considered not to include the use of a less secure option which has, more than once, failed to exclude unauthorized entry, and further where the owners control, attendance or lack of security measures to protect the property suggest a more secure option be used, then the owner shall supply such measure including such improved security of closures as may be necessary beyond the options listed in subsection 6(2).

6(4) Where a building remains vacant for a period of more than ninety (90) days, the owner shall ensure that all utilities serving the building, which are not required for the safety or security thereof, are properly disconnected or otherwise secured, to prevent accidental or malicious damage to the building or adjacent property.
DAMAGED BUILDINGS

6(5) Where a building is damaged by accident, storm, neglect or other causes or intentional damage, the owner shall protect the building against further risk of further damage, accident or other danger, and shall effectively prevent entrance thereto by all unauthorized persons, by closing and securing opening to the building with:

(a) boarding which completely covers the opening with at least 12.7mm (0.5 in.) weatherproofed sheet plywood securely fastened to the building;

(b) rigid composite panels, securely fastened to the building;

(c) sheathing boards installed within the reveal of the exterior cladding and securely fastened to the building;

(d) brick and mortar securely fastened to the building; or

(e) concrete blocking and mortar securely fastened to the building.

6(6) The options available in 6(5) shall be considered progressively more secure with (e) being the most secure, and the minimum standard imposed by subsection 6(5) shall be considered not to include the use of a less secure option which has more than once failed to exclude unauthorized entry, and further where the owners control, attendance or lack of security measures to protect the property suggest a more secure option be used, then the owner shall supply such measure including such improved security of closures as may be necessary beyond the options listed in subsection 6(5).

6(7) The exterior walls and other surfaces of the building shall have smoke damage or other defacement removed and the surfaces refinished.

6(8) Any such work required under this section and section 7, shall be done in compliance with the Building Code, other applicable codes and by-laws, including but not limiting the generality of the foregoing, in compliance with the requirement for obtaining building or demolition permits, and with the by-laws applicable to demolition and clearing of property.

VACANT AND/OR DAMAGED DESIGNATED HERITAGE PROPERTIES

6(9) Notwithstanding subsection 6(4), where a building on a Part IV heritage property or a Part V heritage property remains vacant or unoccupied for a period of more than ninety (90) days, the owner shall ensure that appropriate utilities serving the building are connected as required to provide, maintain and monitor proper heating and ventilation to prevent damage caused to the building by fluctuating temperatures and humidity.
6(10) Notwithstanding subsections 6(2), 6(3), 6(5) and 6(6), where a building on a Part IV heritage property or a Part V heritage property is vacant, unoccupied or damaged by accident, storm, neglect or other causes or intentional damage, the owner shall protect the building against the risks described in subsections 6(1) and 6(5) and shall effectively prevent the entrance of all unauthorized person by closing and securing openings to the building with boarding:

(a) which completely covers the opening and is properly fitted in a watertight manner within the side jambs, the head jamb and the exterior bottom sill of the door or window opening so the exterior trim and cladding remains uncovered and undamaged by the boarding;

(b) on the window openings, which is painted a matte black to resemble window glass;

(c) on door openings, which is painted a colour that matches the colour of the original door;

(d) on an opening other than a window or door opening, which is painted or otherwise treated so that the colour matches the colour of the surrounding exterior of the building; and

(e) which is fastened securely with screws at least 50 mm in length and installed at appropriate intervals on centre.

6(11) Subject to any applicable provisions of the Ontario Heritage Act, where the minimum standard imposed by subsection 6(10) has, more than once, failed to exclude unauthorized entry, and further where the owner’s control, attendance or lack of security measures to protect the Part IV heritage property or the Part V heritage property suggest that a more secure option be used, then the owner shall supply such measures, including such improved security of closures, as may be required by an officer.

6(12) No window, door or other opening shall be closed or secured in accordance with subsection 6(10) with brick, concrete blocking or any other masonry units and mortar, except where required by an officer under subsection 6(11).

FIRE DAMAGED BUILDINGS

7(1) Subject to subsection (3), fire damaged buildings shall be kept clear of all garbage, refuse and debris and shall have all water, electrical and gas services turned off except those services that are required for the security and maintenance of the property.

7(2) Subject to subsection (3), the owner of the fire-damaged building shall restore the building to meet the requirements of Sections 5, 6, 7, and 8 of the said by-law.
7(3) When the fire-damaged building or part is occupied again for other than the purpose of repair, the condition of the building and property shall be brought into compliance with all applicable sections of this by-law.

**EXTERIOR WALLS AND ROOFS**

8(1) Exterior walls and their components shall be maintained so as to prevent their deterioration and shall be so maintained, by the painting, restoring or repairing of the walls, coping or flashing or by the waterproofing of joints and of the walls themselves.

8(2) Exteriors of buildings shall be:

(a) kept weather resistant through the use of caulking and other appropriate weather resistant materials, and

(b) be maintained to prevent the entry of vermin and birds.

8(3) A roof including the fascia board, soffit, cornice and flashing shall be maintained in a weather-tight condition, and able to prevent the leakage of water into the building.

8(4) All structural components of a roof shall provide adequate support for all design loads, and form a suitable base for the roof covering, and where the roof is subjected to a load for which it may not be adequate the roof shall be cleared of the load to prevent collapse or structural damage.

8(5) Exterior walls and their components shall be repaired of vandalism or other damage, including keeping them free of defacements by paint, inscription or other markings and the repair of broken windows.

8(6) Exterior walls of a building or structure, and their components shall be maintained so as to be free of posters:

(a) which are for the giving of notice for an event that has already occurred, or where the message contained is not readable due to damage or deterioration to the poster or its content, or

(b) which are loosened, dislodged, torn or otherwise in a condition that may permit them to detach and become litter.

8(7) Pursuant to the Municipal Act, S. 0. 2001, c. 25 as amended, the cost of removal of posters by the City is collectable against the owner of the advertising device under the terms of the said Municipal Act notwithstanding the other content of this by-law.
DOORS AND WINDOWS

9(1) Windows, skylights, exterior doors and frames, basement or cellar hatchways and attic access doors shall be maintained in good repair and shall be of such construction so as to minimize drafts and heat losses through the infiltration of outside cold air.

9(2) Rotted or damaged doors, door frames, window frames, sashes and casings, weather-stripping, caulking, broken glass and missing or defective door and window hardware shall be repaired or replaced.

FOUNDATIONS AND BASEMENTS

10(1) The foundation walls and the basement, cellar or crawl space floors shall be maintained in good repair and structurally sound.

10(2) Every basement, cellar and crawl space in a property shall be maintained in a reasonably watertight condition so as to prevent the leakage of water into the building.

10(3) Every building, unless of concrete slab-on-grade design, shall be upon either full foundation walls or piers, and all footings, foundation walls, and piers shall be of concrete, masonry, or other material acceptable for construction under the provisions of the Building Code and shall be sound, reasonably plumb, and adequate to carry the loads imposed on them.

STAIRS, BALCONIES, PORCHES AND OTHER PLATFORMS

11(1) Interior and exterior stairs, landings, balconies, porches and any other means of access shall be maintained so as to be free of holes, cracks and other defects which may constitute possible accident hazards. Treads or risers that show excessive wear or are broken, warped or loose and all supporting structural members that are rotted or deteriorated shall be repaired or replaced.

11(2) Handrails shall be installed and maintained in good repair on all exterior stairs which have more than 3 risers and on all interior stairs within dwelling units which have more than 2 risers.

11(3) Handrails shall be located between 810mm (32 inches) and 920mm (36 inches) measured vertically above a line drawn through the outside edges of stair nosings.

11(4) Handrails will be provided on both sides of stairs when the width of the stairs is greater than 1100 mm (43 inches).

11(5) Every exterior landing, porch and every balcony, mezzanine, gallery, raised walkway and roof to which access is provided for other than for maintenance
purposes, shall be protected by guards on all open sides where the difference in elevation between adjacent levels exceeds 610 mm (24 inches), and every exterior stair with more than six risers shall be protected with guards on all open sides where the difference in elevation between the adjacent ground level and the stair exceeds 610 mm (24 inches).

11(6) Except for existing guards that have been maintained in good condition and are a minimum height of 900 mm (33 inches) all guards, including those that are required to be replaced due to their deteriorated condition or to be installed under subsection (5), shall be constructed in accordance with the Ontario Building Code and all such guards shall be maintained in good repair at all times.

**INTERIOR STRUCTURE & FLOORS**

12(1) In every building all structural components, including but not limited to all joists, beams, studding, and roof rafters, shall be of sound material and adequate for the load to which they are subjected.

12(2) Every cellar and basement shall have a floor of concrete or other material acceptable under the provisions of the Building Code, to ensure water drainage and to guard against the entry of vermin.

12(3) Every floor shall be smooth and level and maintained so as to be free of all loose, warped, protruding, broken or rotted boards that may create an unsafe condition or surface. Such defective floors shall be repaired or replaced.

12(4) Where floors have been covered with sheet or vinyl, floor coverings or other flooring that has become worn or torn so that it retains dirt or may create an unsafe condition, the sheet or other flooring shall be repaired or replaced.

12(5) Every bathroom, kitchen, laundry and shower room shall have a floor covering of water-resistant material.

12(6) Every wall and ceiling shall be maintained in a condition free from holes, open cracks, loose coverings or other substantial defects.

**RUBBISH AND DEBRIS**

13(1) Every property shall be kept free from garbage, rubbish, debris or accumulations of such materials that prevent access to or exit from the property in the case of emergency, or other safety or health hazard.

13(2) Every building shall be provided with sufficient proper receptacles to contain all garbage, debris or rubbish which accumulates on the property, and such materials shall be placed for collection in proper receptacles in compliance with
applicable laws and by-laws, and not allowed to accumulate for longer than ten days.

13(3) Every unenclosed porch or unenclosed balcony, and every exterior or interior hallway, stairway and common area shall be kept free of garbage, debris, furniture or appliances, except furniture which is outdoor grade or made weather and water resistant may be placed for use on balconies or porches.

13(4) Receptacles for garbage shall be:

(a) made of watertight construction

(b) provided with a tight fitting cover, which may be removed only when the receptacle is empty or is being actively loaded;

(c) maintained in good condition without holes or spillage; and

(d) closed, or emptied, rinsed and cleaned when not in use, to prevent the escape of offensive odour or debris.

13(5) Plastic bags shall be considered acceptable receptacle under subsection (4) above provided they are:

(a) adequately secured so as to prevent spillage;

(b) not stored outdoors unless protected from access by animals or vermin; and

(c) otherwise are maintained in compliance with (4) above.

13(6) Paper receptacles are not acceptable under this section, except only where they are placed inside other compliant receptacles or are placed out for collection in compliance with applicable collection by-laws.

13(7) Where commercial or on site garbage containers are visible from a public street or land, or the subject site abuts residential properties, the area where the receptacles are stored shall be enclosed on all sides by wall or solid fence not less than 1.8 meters (6 feet) high, such wall or fence containing an adequate door or gate to allow for the removal of garbage or refuse.

13(8) Where an exterior bulk or roll-off container disposal system is used, it shall:

(a) be equipped with covers or similar devices which shall be readily operable but not left open except when actively being loaded;

(b) be large enough to contain all refuse generated between collections by the occupants served;
13(9) Receptacles for garbage, recyclable materials, and containers for recyclable materials shall not be stored in a front or side yard, except:

(a) proper receptacles may be placed out for collection, provided they are placed out in the time and manner that is incompliance with municipal by-laws; and

(b) commercial properties that maintain receptacles for use by the public entering the property, may have recycling or garbage receptacles in the front yard, if they are regularly emptied into proper containers or receptacles and any spillage is removed.

PLUMBING SYSTEM

14(1) The plumbing system in every building shall be maintained in good working order and free from leaks and defects.

14(2) All water pipes and appurtenances thereto shall be protected from freezing.

14(3) All plumbing fixtures shall be connected to the sewage system through water seal traps.

14(4) Every dwelling and every building to which water is available under pressure through piping shall be provided with:

(a) piping for hot and cold water connected to every kitchen fixture, every washbasin, bathtub, shower, sink and laundry area; and

(b) piping for cold water connected to every toilet and hose bib.

KITCHEN FACILITIES

15. Every kitchen shall contain an area equipped with a sink, served with potable running water, storage facilities, a work area, and space for a stove and refrigerator and all areas and spaces shall be maintained in a good state of repair.

HEATING SYSTEMS

16(1) Except for spaces exempted by the Building Code, a heating system shall be installed that is capable of supplying during normal hours of occupancy of the building sufficient heat to maintain a temperature of not less than 22' Celsius (72' Fahrenheit) at the outside design temperature specified in the Building Code.
16(2) For the purposes of subsection (1) heat shall be provided and maintained so that the room temperature at 1.5 meters (5 feet) above floor level and 1 meter (39 inches) from exterior walls in all habitable space and in any area intended for use by occupants including recreation rooms and laundry rooms but excluding locker rooms and garages, is at least 20' Celsius (68' Fahrenheit).

16(3) The heating system and all mechanical equipment associated with building services shall be operated and maintained:

(a) in good working order;

(b) free from unsafe conditions; and

(c) in accordance with the requirements of the Building Code.

16(4) A heating appliance shall not be located in corridors, hallways or other means of egress.

16(5) Except in the event of an emergency, no occupied building shall be equipped with portable heating equipment as the primary source of heat.

16(6) Any heating system or part thereof or any auxiliary heating system that is designed to burn solid or liquid fuel shall be provided with a properly constructed receptacle for fuel storage or a place for storage located so as to be free from fire or accident hazard.

16(7) Every chimney, smoke pipe and flue shall be maintained so as to prevent gases from leaking into a building and the maintenance shall include cleaning the flue of obstructions, filling open joints and repairing masonry.

16(8) Any fuel burning heating equipment used in a building shall be properly vented to the outside air by means of a Canadian Standards Association approved or Building Code compliant smoke pipe, vent pipe or chimney.

**ELECTRICAL SERVICES**

17. The capacity of the electrical connection to a building and the system of circuits and electrical outlets distributing the electrical supply within the building shall be:

(a) adequate for the intended use; and

(b) maintained at all times,

(i) free from unsafe conditions; and

(ii) in accordance with the requirements of the Ontario Electrical Code.
LIGHTING

18(1) Every stairway, exterior exit and entrance doorway, bathroom, toilet room, kitchen, hall, cellar, basement, laundry, furnace room and non-habitable work room in a suite, dwelling unit or building shall have a permanently installed lighting fixture that shall be maintained in good working order.

18(2) All hallways, stairs, common areas and underground parking areas shall be illuminated so as to provide safe passage.

18(3) Facilities for lighting, including flood lighting required as a condition of site development or redevelopment, shall be maintained in a good state of repair and in accordance with the recommended horizontal illuminance as set out under the I.E.S. Lighting Handbook (2000).

18(4) Subject to subsection 18(5) below, outdoor lighting and indoor lighting that can be seen outdoors shall be placed and maintained, or have barriers or shades placed and maintained so as to prevent or block direct illumination of the interior of a dwelling on adjacent property regardless of whether such dwelling has or may have shades, drapes or other interior window coverings.

18(5) Subsection 18(4) above:

(a) does not apply to lighting located by a road authority,

(b) does not apply to property owned or occupied by a municipal, provincial or federal government. or authority,

(c) does not require light fixtures used in conjunction with commercial, industrial, institutional, agricultural or recreational uses to be turned off at any time the use is actually being conducted, but may require the re-direction, movement or the placing of shades or barriers to comply with the standards in this section,

(d) does not require that an illuminated outdoor advertising sign on the premises of a business to be turned off any time the business is open to the public, but may require the redirection, movement or the placing of shades or barriers to comply with the standards in this section, or

(e) does not require light fixtures used to illuminate any area for emergency, security or public safety purposes to be turned off any time the illumination is necessary for those purposes, but may require the re-direction, movement or the placing of shades or barriers to comply with the standards in this section.
YARDS/ PARKING LOTS/ VACANT PROPERTY

19(1) Yards shall be kept clean and free from rubbish or other debris and from objects or conditions that might create a health, fire or accident hazard or an unsafe condition.

19(2) A well, cistern, cesspool, privy vault, pit or excavation shall be permanently sealed, or secured by a fence, cover or netting, unless it is in active use, in which event it shall be secured by fencing with warning signs until the use has ceased, whereupon they shall be sealed or secured as required above.

19(3) The water in any privately owned swimming pool shall be kept clean and in a sanitary condition free from obnoxious odours and conditions likely to create a breeding environment for insects.

19(4) Storage, salvage, and scrap yards, whether licensed or not, shall be effectively screened from all other property or streets by a visual barrier and materials or matter of any kind stored or located in such yards shall not be piled within 1 meter (39 inches) of such visual barrier, unless such visual barrier is capable of sustaining any horizontal load which may be imposed upon it by the stored materials without collapsing or leaning over adjacent property.

19(5) All yards shall be provided with suitable ground cover to prevent instability and erosion of the soil.

19(6) Grass shall be kept trimmed to no more than 20.32 centimeters (8 inches) in height or the vegetation on lawns and yards otherwise maintained in compliance with section 3 of the Yard Waste and Maintenance By-law of the City of Hamilton, and all other growth, plantings and hedges shall be kept trimmed so as not to encumber or encroach upon public sidewalks, private walks and driveways, and further every yard and vacant property shall be kept free of noxious weeds as provided by the Weed Control Act, R.S.O. 1990, Chapter W.5 and amendments thereto and the regulations or by-laws made thereunder.

19(7) Trees or parts thereof that have expired shall be removed or maintained in a condition which is not hazardous to persons expected to be on or about the property.

19(8) Concrete wheel stops shall be installed where parking spaces are adjacent to a property line to protect fences and neighbouring properties from physical damage.

19(9) Areas used for vehicle traffic and parking shall be paved with bituminous, concrete or equivalent surfacing or shall be surfaced with crushed stone or other suitable and reasonably dust free substance, and shall be maintained in good repair.
19(10) Stone surfaces shall be maintained free of dust and spillover onto sidewalks and grass surfaces.

19(11) Notwithstanding subsections 13(1) and 19(1) above, a farm meeting the definition of “agricultural operation” under the Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1, may store agricultural equipment in a yard provided:

(a) the equipment is stored within a building; or

(b) if the equipment is outdoors, it is:

(i) placed or arranged so as not to create a safety or health hazard to persons on the property, and in particular does not block emergency access to or from the property;

(ii) within an area enclosed by a fence, wall or other solid structure including a hedge at least 2 meters (6.5 feet) high, or some combination of those enclosures, with not more than three access points for entry or exit from the area; and

(iii) set back from the property lines by at least 122 meters (400 feet).

19(12) For the purpose of subsection (11) above, “store” and “stored” in relation to farm equipment means equipment that is not in use, and includes equipment that is not operational or in need of repair.

**WALKS AND SAFE PASSAGE**

20(1) There shall be a walk leading from the principal entrance of every building to the street. Such walks may lead to a driveway or hard surfaced area provided such driveway or area leads to a street.

20(2) The surfaces of steps, walks, driveways, parking spaces and similar areas of the yard shall be maintained so as to afford safe passage under their normal use.

**SEWAGE AND DRAINAGE**

21(1) Sanitary sewage shall be discharged into the municipal sanitary sewer where such a system exists, and where a municipal sanitary sewer does not exist, the sewage shall be disposed of in a manner in accordance with the Building Code requirements for on-site sewage systems.

21(2) Roof drainage or discharge from a sump pump shall not be permitted to discharge on a sidewalk, stairs, neighbouring property, or a street.
21(3) Storm water shall be drained from a yard so as to eliminate recurrent standing water or surface ponding, and such drainage shall be controlled, directed or limited so as to prevent the entrance of water into a basement or cellar on the property or adjoining properties basements or cellars.

21(4) Condensation from air conditioners shall not be permitted to discharge onto the sidewalk or street.

21(5) Eavestroughs and downspouts shall be maintained:

(a) watertight and free from leaks,

(b) in good working order, and free from any obstructions, and

(c) in a stable condition and shall be securely fastened to the structure.

### FENCES, BARRIERS, RETAINING WALLS AND SIGNS

22(1) Fences, barriers, retaining walls and signs shall be kept in good repair, and subject to subsection (6) below shall be maintained in compliance with the requirements of this section.

22(2) Fences, barriers, retaining walls and approved enclosures shall be kept free from posters not in compliance with subsections 8(5) and 8(6) above.

22(3) The owner of any property used for multiple-dwelling, commercial, institutional, or industrial purposes shall install and maintain a visual barrier not less than 1.2 meters (4 feet) and not more than 2.0 meters (78 inches) in height where such property is used for the parking, access, and exiting of vehicles by tenants, employees, or customers or when used for the operation of equipment or when used for the storage (of goods, or when used for any other purpose which may detract from the enjoyment and good appearance of an abutting residential property.

22(4) Despite Section 22(3), no visual barrier shall be required within three meters (117 inches) in distance from a front lot line or in contravention of the applicable zoning by-law.

22(5) Sign faces and their structures shall be maintained without any visible deterioration of the sign or its structure.

22(6) Where a local zoning by-law, site plan or subdivision agreement entered into under the provisions of the Planning Act, R. S. O. 1990, c. P.13 provides for a different maximum height for fencing, the height of the fence may be higher than required in this section provided it is in compliance with such zoning by-law or agreement.
ADDITIONAL RESIDENTIAL STANDARDS

23. The standards, obligations and requirements in sections 24 through 35 both inclusive, apply to all residential property.

WEATHER PROOFING

24. Every exposed ceiling or exterior wall of a residential building when opened or replaced during the course of alterations or renovations shall be insulated, in order to minimize heat loss, air infiltration and moisture condensation on the interior surfaces, in accordance with the Building Code.

SECURITY

25(1) All opening windows shall have hardware so as to be capable of being locked or otherwise secured from the interior of the space.

25(2) All exterior doors and the entrance door to a dwelling unit, shall have hardware so as to be capable of being locked from the outside, and locked or otherwise secured from the interior of the space.

25(3) Every lock on a building that is designed to be unlocked with a key or key and combination shall be maintained in good working order or shall be repaired or replaced.

25(4) The owner of a multiple dwelling, upon the written request of an occupant of the dwelling unit in which children under the age of ten years are occupants, shall subject to subsection (5) below, provide and install a protective device on any window that,

(a) has a moveable sash, and

(b) is more than 1.8 meters (6 feet) above adjacent finished ground level.

25(5) The protective device shall be installed within seven days of the delivery of the written request upon the building owner, the owner's agent or the building's manager or superintendent, provided that such person and the occupant giving notice may agree that the protective device is not required on every such window that meets the requirements of subsection (4) above.

25(6) The protective device shall be installed and secured in such a manner as to prevent opening of the window(s) to any amount greater than 100 millimeters (4 inches).

25(7) The owner of a building containing ten or more dwelling units shall post or display or cause to be posted or displayed and shall maintain or cause to be maintained
a legible and clearly printed copy of this section, conspicuously placed in the building so as to be clearly visible to occupants of the building.

**WATER**

26(1) Every dwelling shall be provided with an approved supply of potable water from at least one of the following sources:

(a) Municipal Water System;

(b) Communal Water System; or

(c) Private Source.

26(2) For the purpose of this By-law, hot water shall be supplied at a temperature of not less than 43° Celsius (100° Fahrenheit).

**TOILET, KITCHEN AND BATHROOM FACILITIES**

27(1) Every dwelling unit shall contain a minimum number and type of working plumbing fixtures, consisting of:

(a) a kitchen sink;

(b) a water closet;

(c) a hand wash basin; and

(d) a bathtub or shower.

27(2) The floor and the walls to a minimum height of .9 meters (3 feet) above the floor or bathtub of every bathroom, shower room and toilet room shall be so maintained as to be water-resistant and readily cleaned.

27(3) All bathrooms and toilet rooms shall be located within and accessible from within the building and all bathrooms and toilet rooms shall be maintained in a good state of repair.

27(4) All bathrooms and toilet rooms shall be fully enclosed and shall have a door capable of being closed so as to provide privacy for the occupant.

27(5) A hand wash basin shall be located in the same room as each toilet or in an adjoining bathroom, provided that no sink in a kitchen shall be considered a hand wash basin for the purpose of this section.
27(6) Where toilet, kitchen or bathroom facilities are shared by the occupants of residential accommodation, an appropriate entrance shall be provided from a common passageway, hallway, corridor or other common space to the room or rooms containing the said facilities. The minimum number of toilets, kitchens or bathrooms required shall be in accordance with the Building Code.

27(7) Every bathroom and every toilet room shall have a permanently installed artificial lighting fixture that shall be maintained in good working order.

27(8) No toilet or urinal shall be located within a habitable room.

**KITCHEN FACILITIES**

28. Every dwelling unit and residential care facility shall be provided with a kitchen with the following:

(a) a sink and a splash back which is water and grease resistant;

(b) a work surface of at least .74 square meters (8 square feet), which shall be impervious to grease and water;

(c) cupboards or pantry for the storage of food, dishes, and cooking utensils, having an interior capacity of at least .8 cubic meters (30 cubic feet), of sufficient design that when loaded the cupboards or pantry will not collapse, and secured in such a manner that when loaded they will not tip or become detached from the wall to which the cupboards or pantry may be secured; and

(d) without affecting the above requirements, space sufficient to accommodate a cooking range or countertop cooking unit, beside or in the countertop and without placing the device in a doorway or a path of egress.

**ELECTRICAL SERVICES**

29(1) Where electrical services are available every suite and dwelling unit, shall be:

(a) connected to an electrical supply system; and

(b) wired to receive electricity.

29(2) An adequate supply of electrical power shall be available in all occupied parts of every dwelling, suite and building.

**VENTILATION**

30(1) Except as provided in subsection (5) below, every habitable room shall have an opening or openings for natural ventilation from outside which shall be maintained in good working order.
30(2) Except as provided in subsection (3) below, every bathroom or room containing a water closet shall be provided with an opening or openings for natural ventilation located in an exterior wall or through openable parts of skylights and all such openings shall have a minimum aggregate unobstructed area of .09 square meters (1 square foot).

30(3) Where a system of mechanical ventilation is provided in accordance with the Ontario Building Code, an opening for natural ventilation from a bathroom or toilet room may be omitted.

30(4) All systems of mechanical ventilation shall be maintained in good working order.

30(5) The natural ventilation requirements prescribed in subsection (1) may be omitted from any room where the equivalent ventilation is provided by mechanical ventilation equipment.

30(6) Every basement, cellar, unheated crawl space and attic shall be vented in accordance with the table following, and such vents shall be designed and maintained to prevent entry of snow, rain, rodents and insects:

**TABLE: Required Venting**

<table>
<thead>
<tr>
<th>Location</th>
<th>Minimum Unobstructed Vent Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attic</td>
<td>0.3% of insulated Ceiling area</td>
</tr>
<tr>
<td>Basement (unfinished), Unheated</td>
<td>0.2% of the floor area</td>
</tr>
<tr>
<td>Crawl space, or Cellar</td>
<td></td>
</tr>
</tbody>
</table>

30(7) All windows in a residential unit designed to be open shall be fitted with screens so as to prevent the entrance of insects and rodents and screens shall be maintained in good repair.

**GARAGES**

31. Garages shall be so maintained as to prevent gas fumes and carbon monoxide from entering the area of the dwelling unit.

**GARBAGE DISPOSAL**

32(1) Subject to subsections (2) and (3) below, every garbage and refuse chute, and every garbage and refuse storage room in a multiple dwelling shall be kept in use and maintained in operation at all times.
32(2) No owner of a multiple dwelling or occupant thereof shall disconnect, shut off, remove, otherwise discontinue, or cause or permit the disconnection, shutting-off, removal, or discontinuance of any garbage and refuse chute or any garbage and refuse storage room except when such action is necessary in order to safely make repair, replacements or alterations thereto, and then only during the reasonable minimum time that such action is necessary.

32(3) Where it is not practical to maintain garbage chutes operational, because compactors are not able to be installed in place of incinerators the garbage and refuse chutes need not be maintained operational at all times if an alternate method readily accessible to all occupants is provided and maintained as follows:

(a) a garbage storage area is provided on each floor of the building,

(b) the occupants are not required to deliver the garbage to the ground floor, basement or parking lot of the building, and

(c) the owner of the building provides a daily collection procedure from each floor and delivers the garbage to the receptacles as required by subsections 13(4) and 13(5).

COMPOSTING

32(4) A residential property may provide for not more than two compost heaps, provided the piles are located in the rear yard and each is no larger than one meter square (10.76 square feet), no higher than 1.8 meters (6 feet), and are each enclosed on all sides by concrete blocks, a lumber structure, a metal frame, or a commercial plastic compost container.

ELEVATORS

33(1) Subject to subsection (3) below, a multiple dwelling more than three (3) stories in height but not more than six (6) stories in height and which has an elevator or elevators for the use of tenants, shall have at least one elevator maintained and operable except for such reasonable time as may be required for repair or replacement.

33(2) Subject to subsection (3), a multiple dwelling more than six (6) stories in height and which has an elevator or elevators for the use of tenants shall have all elevators maintained and operable except for such reasonable time as may be required for repair or replacement.

33(3) In the event of conflict with the Elevating Devices Act, R.S.O. 1990, c. E.8, the regulations passed under such act, both as amended, or an order issued under that act, the act, regulation or order prevails over this by-law to the extent of the conflict.
OCCUPANCY STANDARDS

34(1) No person shall use or permit the use of a non-habitable room for a habitable room purpose.

34(2) Every living room, dining room, kitchen, and bedroom shall have a minimum room height of not less than;

(a) 1.9 meters (6 feet 5 inches) over the required floor area and in any location that would normally be used as a means of egress; or

(b) 2 meters (6 feet 8 inches) over at least fifty per cent (50%) of the required floor area, provided that any part of the floor having a clear height of less than 1.4 meters (4 feet 7 inches) shall not be considered in computing the required floor area.

34(3) A bedroom or sleeping room for one person shall have a floor area of at least 5.6 square meters (60 square feet), and a bedroom or sleeping room for two or more persons shall have a floor area of at least 3.3 square meters (36 square feet) per person, calculated in each case by the measurement of such room from the inside faces of its walls, exclusive of the floor area of any closet or other storage space and subject to subsection (4) below. All bedrooms or sleeping rooms shall have a minimum width of 1.8 meters (6 feet).

34(4) For the purpose of computing the floor area of rooms referred to in subsections (2) and (3) of this section, the floor area of any portion of the room which does not have a clear height of 1.4 meters (4 feet 7 inches) shall be excluded.

PEST CONTROL

34a(1) Every dwelling, multiple dwelling and dwelling unit shall be kept free of infestation by pests.

34a(2) For the purposes of subsection 34a(1) and “infestation” includes the presence of one rat or mouse, and in the case of insects means the presence of more than one such insect, and in the case of wasps or hornets includes the presence of any occupied nest interior or it attached to the exterior of the structure.

SEVERANCE AND CONFLICT

35(1) Should a court of competent jurisdiction declare a part or whole of any provision of this By-law to be invalid or of no force and effect, the provision or part is deemed severable from this By-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under the law so as to protect the public by ensuring a minimum standard for maintenance and occupancy is maintained.
35(2) Where a provision of this By-law conflicts with the provision of another By-law, Act or Regulation in force within the municipality, the provisions that establish the higher standards to protect the health and safety of persons shall prevail.

RESPONSIBILITIES AND COMPLIANCE WITH ORDERS

36(1) The owner or occupant of a property shall:

(a) Comply with all standards prescribed in this By-law.

(b) Not permit any person to use or occupy any property owned, managed or controlled by that person unless such property conforms to the standards prescribed in this By-law.

(c) Comply with any final and binding order of the Property Standards Officer.

(d) Produce documents or things requested by the inspector for inspection as relevant to the property or any part thereof, allow the removal of such documents or things for the purpose of making copies, provide information or assist in the collection of information from other persons concerning a matter related to the property or part thereof, allow entry by the inspector or such persons as needed to carry out an inspection or test or in aid thereof, permit examination, tests, sampling or photographs necessary for the purposes of an inspection or in aid thereof, and provide at their expense when requested, tests and samples as are specified in an order, all as may aid or assist in the carrying out of an inspection and determination of compliance with this by-law and the relevant portions of the Building Code Act.

(e) Ensure, that in complying with this by-law, and in carrying out work required under an order or other obligation under the by-law, that the property and activities shall be kept and carried out in a condition and manner that avoids conditions dangerous to the owner, occupants or visitors to the property or which put at risk of injury or health such persons, and giving adequate warning where such risks cannot be so avoided so as to allow such persons to avoid the danger or risks.

36(2) A person affected by a property standards order may seek to have compliance with an outstanding order determined by supplying such proof as may allow compliance to be determined or permit or arrange for an inspection of the property by an officer, and shall be liable to pay any applicable fees, charges or expenses.

36(3) Where the proof submitted in (2) is insufficient for the officer to determine compliance of the property with the order or part of the order, the person shall, subject to the Building Code, permit or arrange for a reasonable and timely inspection by the officer to determine compliance or that the proof submitted confirms compliance.
36(4) Where an officer determines there is compliance under this by-law with an order issued and registered on the title to a property, the order shall be discharged from the title.

**ADMINISTRATION AND ENFORCEMENT**

37(1) The Chief Building Official appointed pursuant to the Building Code Act, 1992, is hereby assigned the responsibility of administering and enforcing this By-law and the applicable sections of the Building Code Act and may so assign duties to such persons, officers and inspectors as necessary to carry out the provisions of this by-law and applicable provisions of the Building Code Act.

37(2) Persons appointed or assigned for the purposes of enforcing or administering this by-law are property standards officers, and have the authority to carry out the duties assigned to officers under this by-law and the Building Code Act, and may enforce the provisions of this by-law and the applicable sections of the Building Code Act.

37(3) Where the cost of doing the work does not exceed $20,000, a Property Standards Officer is authorized to give immediate effect to any order that is confirmed or modified as final and binding under section 15.3(7) of the Building Code Act, 1992 so as to provide for:

(a) repair of the property; or

(b) clearing of all buildings, structures or debris from the site and the leaving of the site in a graded and levelled condition provided that no building or structure on a Part IV heritage property or a Part V heritage property shall be altered or cleared, including but not limited to removed, demolished or relocated, except in accordance with the Ontario Heritage Act.

37(4) Where the cost of doing the work exceeds $20,000, the Chief Building Official shall seek the authorization from City Council to carry out the requirements of the order.

37(5) Upon completion of the work, repairs or demolition by or behalf of the City, the municipality shall have a lien on the land for the amount spent on the repair or demolition, and the amount shall be deemed to be municipal real property taxes and may be added by the clerk of the municipality to the tax roll and collected in the same manner and with the same priorities as municipal real property taxes as provided for by statute.
RIGHT TO ENTER AND INSPECT

38(1) Where a by-law under Section 15.1 of the Building Code Act, 1992 is in effect, an officer acting under this by-law or any person acting under his or her instructions may, at any reasonable time, and upon producing proper identification, enter upon any property without a warrant for the purpose of inspecting the property to determine:

(a) whether the property conforms with the standards prescribed in the by-law, or

(b) whether an order made under this by-law has been complied with.

38(2) Notwithstanding the above, a Property Standards Officer shall not enter or remain in any room or place actually used as a dwelling without, requesting and obtaining the consent of the occupier, first having informed the occupier that the right of entry may be refused and entry made only under the authority of a warrant issued under the Building Code Act, 1992, S.O. 1992, c. 23.

NOTICE OF VIOLATION

39(1) If, after inspection, an officer is satisfied that in some respect the property does not conform with the standards, he or she may issue an order to the owner and such other persons affected by it as the officer determines and a copy of the order may be posted on the property.

39(2) The order referred to in subsection (1) hereof shall, state the municipal address or the legal description of the property;

(a) give reasonable particulars of the repairs to be made or

(b) stating that the site is to be cleared of all buildings, structures, debris, or refuse and left in a graded and leveled condition, provided that no order in respect of a Part IV heritage property or a Part V heritage property shall state that any building or structure is to be altered or cleared, including but not limited to removed, demolished or relocated;

(c) indicate the time for complying with the terms and conditions of the order and give notice that, if the repair or clearance is not carried out within that time, the municipality may carry out the repair or clearance at the owner’s expense;

(d) indicate the final date for giving notice of appeal from the order; and

(e) be served or caused to be served,

(i) by personal service, or
(ii) by prepaid registered mail sent to the last known address of the person to whom notice is to be given or to that person’s agent for service.

**APPEAL OF ORDER**

40(1) An owner or occupant who has been served with an order made under this by-law, and who is not satisfied with the terms or conditions of the order may appeal to the Property Standards Committee by sending a notice of appeal by registered mail to the secretary of the committee within 14 days after being served with the order.

40(2) An order that is not appealed within the time referred to in subsection (1) above is deemed to be confirmed.

40(3) If an appeal is taken, the Committee shall hear the appeal and shall have all the powers and functions of the officer who made the order and may,

(a) confirm, modify or rescind the order to demolish or repair;

(b) extend the time for complying with the order if, in the committee's opinion, the general intent and purpose of the by-law and of the official plan or policy statement are maintained.

40(4) The city in which the property is situate or any owner or occupant or person affected by a decision under Section 40(3) may appeal to a Judge of the Superior Court of Justice by notifying the clerk of the corporation in writing and by applying to the Superior Court of Justice for an appointment within 14 days after the sending of a copy of the decision.

40(5) A Judge of the Superior Court of Justice shall appoint, in writing, a time and place for the hearing of the appeal and may direct in the appointment the manner in which and upon whom the appointment is to be served.

40(6) On the appeal, the Judge has the same powers and functions as the Committee.

40(7) An order that is deemed to be confirmed or modified by the Committee or Judge, shall be final and binding upon the owner and occupant who shall carry out the repair or demolition within the time and in the manner specified in the order.

**REGISTRATION OF ORDER**

41(1) An order issued pursuant to subsection (1) of Section 39 may be registered in the Land Registry or Land Titles Office and, upon such registration, any person acquiring any interest in the land subsequent to the registration of the order shall be deemed to have been served with the order on the day on which the order was served under section 39.
41(2) When the requirements of the order have been satisfied, the Clerk of the City shall forthwith register in the Land Registry or Land Titles Office a certificate that such requirements have been satisfied, which shall operate as a discharge of such order.

POWER OF CORPORATION TO REPAIR OR DEMOLISH

42(1) If the owner or occupant of a property fails to repair or to demolish the property in accordance with an order as confirmed or modified, the City in addition to all other remedies:

(a) may repair or demolish the property;

(b) may clear the site of all buildings, structures, debris or refuse and leave the site in a graded and leveled condition; or

(c) may make the site safe or impede entry by erecting fences, barricades or barriers.

42(2) For the purposes of subsection (1) a Property Standards Officers and agents employed by the City may from time to time enter in and upon the property.

42(3) Despite Section 31(2) of the Building Code Act, 1992, the City or an officer acting on its behalf shall not be liable to compensate the owner, occupant or any other person having an interest in the property by reason of anything done by or on behalf of the City in the reasonable exercise of its powers under the provisions of this section.

42(4) Notwithstanding subsection 42(1), no building or structure on a Part IV heritage property or a Part V heritage property may be altered or cleared, including but not limited to removed, demolished or relocated, except in accordance with the Ontario Heritage Act.

PROPERTY STANDARDS COMMITTEE

43(1) A committee to be known as The Property Standards Committee of the City of Hamilton is hereby established.

43(2) The Property Standards Committee for the City of Hamilton shall consist of five residents of, or property owners in the City to be appointed by Council, with a 3-year term. The members of the Committee shall hold office until their successors have been appointed. Any vacancy on the Committee shall be filled forthwith.

43(3) The membership of the Property Standards Committee and their term of appointment, which term is subject to (2) above, are attached as Schedule “B” to this By-law.
CERTIFICATE OF COMPLIANCE

44(1) Every property owner may make an application to the City for a certificate of compliance by completing and signing an application on the form available at the offices of the Chief Building Official, and paying the applicable fee.

44(2) Fee for inspection: Where a property standards order has been registered, an owner or occupant may apply for an inspection of the property in respect of the order and shall pay a fee of $225.00 at the time of application, which fee includes the registration of a discharge where compliance with the order is found.

PENALTIES

45(1) Subject to subsection (2), a person who fails to comply with an Order which is final and binding is guilty of an offence and upon conviction shall be liable to a fine of not more than $25,000 for a first offence and to a fine of not more than $50,000 for any subsequent offence.

45(2) If a corporation is convicted of an offence under this By-law, the maximum penalty that may be imposed on the corporation is $50,000 for a first offence and $100,000 for any subsequent offence.

45(3) Every director or officer of a corporation who knowingly concurs in the failure of the corporation to comply with a final and binding order is guilty of an offence, and upon conviction shall be liable to a fine of not more than $25,000 for a first offence and to a fine of not more than $50,000 for any subsequent offence.

PROCEEDINGS CONTINUED

46(1) Any order issued or proceeding being conducted under a property standards by-law of any former area municipality, including the predecessor to by-laws mentioned in section 47 below, shall be deemed to continue under this By-law, and any reference to such by-law in a prior order, notice or proceeding shall be deemed to refer to this By-law.

46(2) In the recovery or enforcement of penalties and forfeitures incurred, or in any other proceeding in relation to matters in respect of a property standards by-law of any former area municipality, including the predecessor to by-laws mentioned in section 47 below, the process may be continued and carried out under this By-law.

REPEAL

47. The following by-laws or the former area municipalities are hereby repealed, all as amended:

(a) By-law No. 98-243 (Hamilton);
(b) By-law No. 79-1 15 (Ancaster);
(c) By-law No. 4478-99 (Dundas);
(d) By-law No. 80-1 1 I -P (Flamborough);
(e) By-law No. 505-94 (Glanbrook); and
(f) By-law No. 4239-95 (Stoney Creek).

48. This By-law comes into force and effect on the date of its passing and enactment.

PASSED AND ENACTED this 14th day of May, 2003