RECOMMENDATION:

The Report AUD10004 respecting the follow up of Audit Report 2007-08, Public Works - Encroachment Agreements, be received.

EXECUTIVE SUMMARY

Audit Report 2007-08, Public Works – Encroachment Agreements, was originally issued in March 2008 and management action plans with implementation timelines were included in the Report. In August, 2009, Internal Audit conducted a follow up exercise to determine that appropriate and timely actions had been taken. Regarding the implementation of the sixteen (16) recommendations made in the original Report and Addendum, eight (8) have been completed, one (1) is in progress, one (1) has been initiated, one (1) is no longer applicable, alternatives have been implemented for two (2) of the recommendations and three (3) are incomplete.

Alternatives for Consideration – Not Applicable
FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: None.
Staffing: None.
Legal: None.

HISTORICAL BACKGROUND (Chronology of events)

Audit Report 2007-08, Public Works – Encroachment Agreements, was originally issued in March, 2008. The report indicated sixteen (16) recommendations identifying areas for improvement with respect to the filing system and documentation, payment processing, policies and procedures and the updating of contracts and the Access database.

It is normal practice for Internal Audit to conduct follow up reviews within a 12-18 month period following the issuance of the original report in order to determine whether action plans committed to by department management have been implemented. In August, 2009, Internal Audit followed up the report to confirm appropriate and timely actions had been taken.

POLICY IMPLICATIONS

None.

RELEVANT CONSULTATION

The results of the follow up were provided to management and staff responsible for the administration of the encroachment agreements in the Public Works Department.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The report attached as Appendix “A” to Report AUD10004 contains the first three columns as originally reported in Audit Report 2007-08 along with an added fourth column indicating Internal Audit’s follow up comments. Three (3) items in the Addendum have also been followed up with the appropriate detail provided.
Eight (8) of the sixteen (16) recommendations have been implemented as follows: the transfer of the position administering the agreements to provide clear management reporting lines and ensure adequate supervision and oversight; the maintenance of a proper, secure and organized filing system; up-to-date tracking of all active and discharged encroachment files including notification and reconciliation with Accounts Receivable and Taxation; the extension of the current bus bench furniture contract by Council; the specification of the initial fee in the encroachment agreement documentation; and the update of the annual recurring fee in the 2009 User Fees schedule.

One (1) recommendation regarding formal policies and procedures is in progress. The recommendation concerning complaints received about bicycle racks, newspaper vending boxes and benches has been initiated without significant progress. One (1) recommendation requesting Council approval of user fees for bus bench and newspaper box agreements is not applicable as such categories are no longer considered user fees.

Two (2) alternatives have been implemented with respect to the processing of payments by Finance and Administration and the provision of copies of the receipts for retention in the application files.

Three (3) recommendations are incomplete. There are no accurate inventories of the newspaper boxes and bicycle racks and proof of insurance specified in the agreements is not available.

**ALTERNATIVES FOR CONSIDERATION:**
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Not Applicable.

**CORPORATE STRATEGIC PLAN** (Linkage to Desired End Results)


**Financial Sustainability**

- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

**APPENDICES / SCHEDULES**

Appendix “A” to Report AUD10004

ap:dt
CITY OF HAMILTON  
INTERNAL AUDIT REPORT 2007– 08  
PUBLIC WORKS – ENCROACHMENT AGREEMENTS  
FOLLOW UP  

<table>
<thead>
<tr>
<th>#</th>
<th>OBSERVATIONS OF EXISTING SYSTEM</th>
<th>RECOMMENDATION FOR STRENGTHENING SYSTEM</th>
<th>MANAGEMENT ACTION PLAN</th>
<th>FOLLOW UP (August 2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. General</td>
<td>The official organizational chart indicates that the position of Road Programming Clerk (RPC) (performs all duties related to Encroachment Agreements) reports to the Supervisor in the Business Services Area of Operations and Maintenance (Public Works). The position, in practice, reports to the Supervisor in Traffic Engineering and Operations (Public Works) who is new to this responsibility and not familiar enough with this area to provide necessary supervision. Formal policies and procedures, as they relate to encroachment agreements, have not been documented. The RPC has been performing her duties since well before amalgamation. Should she leave the organization or be absent for an extended period of time, it would be difficult for a replacement to carry on the duties without some form of guidance provided by written policies and procedures. Files containing personal information from property owners and their lawyers and, even on occasion, cheques from lawyers’ offices for the payment of encroachment agreements are stored on the desk of the RPC during absences and after hours. Therefore, both the personal information and the cheques received from lawyers’ offices are subject to loss or misappropriation as they are not being properly safeguarded.</td>
<td>That clear management reporting lines be established to ensure adequate supervision and oversight.</td>
<td>Agreed. The position is scheduled to be transferred to the Business Services Section from the Traffic Engineering and Operations Section by the end of the 1st quarter 2008. All parties, including the RPC, have been aware of actual reporting lines and therefore, do not agree that this was the cause of inadequate supervision or oversight.</td>
<td>Completed. The position, Road Programming Technician (RPT), has been transferred to the Operations and Maintenance Division, Business Services section. Supervision is provided by the Supervisor of Operations Administration.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>That formal policies and procedures related to encroachment agreements be written and reviewed periodically (once per year).</td>
<td></td>
<td>In Progress. Formal procedures related to encroachment agreements have been implemented with the assistance of the Legal Services Division. The working group (comprised of Legal and Operations staff) are currently developing formal policies for encroachments. Expected completion – 1st quarter 2010.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>That a proper, secure and organized filing system be maintained.</td>
<td></td>
<td>Completed. Documents are secured and filed in a cabinet in alphabetic order of street name. Cheques received by the RPT are secured in a locked desk drawer and forwarded once a week to the Financial Assistant I (FAI) for deposit.</td>
</tr>
</tbody>
</table>
### PUBLIC WORKS – ENCROACHMENT AGREEMENTS
#### FOLLOW UP – AUGUST 2009

<table>
<thead>
<tr>
<th>#</th>
<th>OBSERVATIONS OF EXISTING SYSTEM</th>
<th>RECOMMENDATION FOR STRENGTHENING SYSTEM</th>
<th>MANAGEMENT ACTION PLAN</th>
<th>FOLLOW UP (August 2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Access Database of Encroachment Agreements</td>
<td>That the Access database be updated for all properties with encroachment agreements and be kept up-to-date through regular input as part of the overall process.</td>
<td>Agreed. Regarding new records, a database will be kept up-to-date from this point forward. The steps respecting the maintenance of encroachment agreement records will be developed as part of the agreement management plan currently being developed with the assistance of Legal Services to address the deficiencies. Expected completion (this component) 1st quarter 2008.</td>
<td>Completed. Encroachment agreements processed prior to October 2008 were updated in the database. After October 2008, an Excel spreadsheet was implemented that tracks all active encroachment files. Several encroachment files randomly sampled had been updated in either the database or spreadsheet.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>That the property serial number be added as an identifier to each property in the Access database in order to facilitate the billing of recurring annual fees through AR or Taxation.</td>
<td>Agreed. The property roll number will be added to the database by the end of the 1st quarter 2008.</td>
<td>Data (historical and current) stored in the database and on the spreadsheet referenced above will be transferred to the Hansen system by the 2nd quarter 2010 in order to increase the efficiency of tracking and reporting of active and completed files.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>That a reconciliation be performed between the properties in the Access database and the records of AR and Taxation to ensure that all of the properties are being billed their annual recurring charges either by Taxation or AR.</td>
<td>Agreed. A quarterly reconciliation will be performed by Finance &amp; Administration (F&amp;A) through information supplied by the division. Procedures will be developed and communicated by F&amp;A. Expected completion 2nd quarter 2008. F&amp;A will require a review of available documentation and records to assess the logistics.</td>
<td>Completed. When an agreement is completed, the RPT now notifies Accounts Receivable via an internal memo that the tax role is to be updated.</td>
</tr>
</tbody>
</table>

Agreed. Regarding new records, a database will be kept up-to-date from this point forward. The steps respecting the maintenance of encroachment agreement records will be developed as part of the agreement management plan currently being developed with the assistance of Legal Services to address the deficiencies. Expected completion (this component) 1st quarter 2008.

Regarding past records, this will need to be investigated in terms of feasibility, time and effort (expected completion 4th quarter 2008) and will form part of the agreement management plan currently being developed with the assistance of Legal Services to address the deficiencies.

Agreed. The property roll number will be added to the database by the end of the 1st quarter 2008.

Agreed. A quarterly reconciliation will be performed by Finance & Administration (F&A) through information supplied by the division. Procedures will be developed and communicated by F&A. Expected completion 2nd quarter 2008. F&A will require a review of available documentation and records to assess the logistics.

Completed. Encroachment agreements processed prior to October 2008 were updated in the database. After October 2008, an Excel spreadsheet was implemented that tracks all active encroachment files. Several encroachment files randomly sampled had been updated in either the database or spreadsheet.

Data (historical and current) stored in the database and on the spreadsheet referenced above will be transferred to the Hansen system by the 2nd quarter 2010 in order to increase the efficiency of tracking and reporting of active and completed files.

Completed. When an agreement is completed, the RPT now notifies Accounts Receivable via an internal memo that the tax role is to be updated.

Completed. The new Excel recordkeeping system which began in October 2008 keeps track of all active and discharged encroachments which are reconciled with AR and Taxation prior to property owners being billed.
### Observations of Existing System

<table>
<thead>
<tr>
<th>#</th>
<th>Observations of Existing System</th>
<th>Recommendation for Strengthening System</th>
<th>Management Action Plan</th>
<th>Follow Up (August 2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>Payments</td>
<td>The electronic receipt, produced by the POS system and obtained from the Receptionist in Public Works once she has processed the cheque, be retained as proof of payment by the RPC.</td>
<td>Agreed. Electronic receipts will be kept in the file and information related to the processing of cheques will be kept in the database. This will be effective by the end of the 1st quarter 2008.</td>
<td>Alternative Implemented. F&amp;A now processes payments and provides copies of receipts to the RPT to indicate proof of payments. These copies are retained with the application files.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>That payments go directly to the Receptionist in Public Works who would notify the RPC that payment has been received and processed by way of a POS receipt.</td>
<td>Agreed. A more efficient deposit process will be investigated by the division with assistance from F&amp;A. Expected completion 2nd quarter 2008.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Alternative Implemented. A memorandum is forwarded to F&amp;A with the cheque or journal information. Once processed, copies of the receipt and memo are forwarded to the RPT and retained in the application files.</td>
<td></td>
</tr>
</tbody>
</table>
### Observations of Existing System

<table>
<thead>
<tr>
<th>#</th>
<th>Recommendation for Strengthening System</th>
<th>Management Action Plan</th>
<th>Follow Up (August 2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>Encroachment Agreement - Contracts</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A review of the various encroachment agreement contracts revealed the following:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Newspaper Vending Boxes - The contracts with the newspaper companies for these boxes could not be found. In addition, when billing the vendors, AR must rely on the number and location of boxes provided by the newspaper companies as City staff have not been in the position to physically verify box locations since the fourth quarter of 2000.</td>
<td>Agreed. An agreement management plan is currently being developed with the assistance of Legal Services to address the deficiencies Expected completion (this component) 4th quarter 2008.</td>
<td>Not Completed. Staff were awaiting the outcome of the Bus Bench Furniture Program Review and Street Furniture Request for Proposal (RFP) (deferred by Council to 2016) to address this item. The Business Initiatives Co-ordinator in the Operations and Maintenance Division, Business Services section, will be leading a substitute process to update these agreements which will also provide an accurate inventory of newspaper boxes.</td>
</tr>
<tr>
<td></td>
<td>Bicycle Racks – The contract expired two years ago (January 1, 2006) and has not been replaced. As such the liability issue associated with this contract is uncertain.</td>
<td>Agreed. An agreement management plan is currently being developed with the assistance of Legal Services to address the deficiencies. Expected completion (this component) 4th quarter 2008.</td>
<td>Not Completed. Staff were awaiting the outcome of the Bus Bench Furniture Program Review and Street Furniture Request for Proposal (RFP) (deferred by Council to the 4th quarter of 2014). The Business Initiatives Co-ordinator in the Operations and Maintenance Division, Business Services section, will be leading a working group to provide an accurate inventory of bicycle racks.</td>
</tr>
<tr>
<td></td>
<td>Bus Benches – the contract expired on October 10, 2007. Similar to the newspaper vending boxes above, the number and location of the benches has not been verified by City staff. Therefore, for billing purposes, staff relies on the information provided by the contractor.</td>
<td>Agreed. The bus bench furniture renewal agreement (Report PW08005) was approved at the Public Works Committee on January 14, 2008.</td>
<td>Completed. Council approved Report PW08005 on January 30, 2008 that renewed the bus bench furniture agreement until October 2009. This agreement was subsequently extended by the Public Works Committee to December 31, 2015 with the development of the RFP by the end of 2014.</td>
</tr>
<tr>
<td></td>
<td>The annual fee charged the newspaper companies for the vending boxes and the fee charged the contractor for the bus benches are both less than the User Fee approved by Council for such items.</td>
<td>Agreed, in principle. Fees charged for vending boxes and bus benches are in accordance with signed agreements. Even though fee amounts in the agreements need to reflect user fee schedules, agreement renewal dates do not always align with the annual user fee schedule update process. Refinements to co-ordinate these processes will be investigated by the 4th quarter 2008. Vendors will be informed of the current correct amounts by the 1st quarter 2008, and on an ongoing basis as changes are made.</td>
<td>Not Applicable. The process for aligning user fee schedule rates (once annually) with agreement renewal rates is never in sync and there is no movement to align the processes. Fees charged under the bus bench and newspaper box agreements should not be considered user fees and will be removed from the user fee schedule altogether. They are not fees charged to the general public.</td>
</tr>
<tr>
<td></td>
<td>The RPC has not obtained documentation from the contractors regarding the insurance coverage stipulated in the agreements.</td>
<td>Agreed. An agreement management plan is currently being developed with the assistance of Legal Services to address the deficiencies. Expected completion (this component) 1st quarter 2008.</td>
<td>Not Completed. Even though all new encroachment agreements (commercial properties) stipulate required insurance coverage, a review of sampled files for agreements requiring insurance indicated no evidence of such coverage.</td>
</tr>
</tbody>
</table>
The following items were noted during the course of the audit. Although they do not present internal control deficiencies, they are indicated in this Addendum so management is aware of the issues and can address them as necessary.

1. The RPC indicated that she has become the contact person for the various complaints associated with different encroachment contracts (bicycle racks, newspaper vending boxes and bus benches). Examples of such complaints include trash scattered about the bus benches, newspaper boxes being moved and impeding the flow of pedestrian traffic, etc. Such complaints require the RPC to contact the various contractors so that they may remedy the situation. This makes inefficient use of the RPC’s time as she has no authority to resolve the complaint and simply passes along information to the contractors.

It is recommended:
That complaints regarding bicycle racks, newspaper vending boxes and benches be directed through the Customer Contact Centre who would provide contractor contact information to the complainant.

Management Response:
Agreed. An efficient and effective customer service workflow will be developed and established by the end of the 4th quarter 2008.

Follow Up Comment:
Initiated. The Supervisor of Operations Administration is in the process of collecting data to determine the volume of complaints processed. Misdirected and inappropriate calls coming into the portfolio will be identified. It will also be determined if the Customer Contact Centre staff can field static questions. The expected completion date will be the 4th quarter 2009.

2. Quite often the initial fee charged for the agreement has not been specified on the encroachment agreement itself. This has led to instances where lawyers have submitted incorrect initial fees and requests for additional funds had to be made.

It is recommended:
That the initial fee be specified in all encroachment agreements.

Management Response:
Agreed. Documentation will be updated with the correct information by the end of the 1st quarter 2008.

Follow Up Comment:
Completed. Encroachment agreement documentation has been updated to include a section to specify the initial fee.

3. On many copies of the recent encroachment agreements, the annual recurring fee indicated was $20. This fee is not reflected on the User Fee report that is approved by Council each year. As such, while other User Fees have been increased to keep pace with inflation, this user fee has remained unchanged since at least 2005.

It is recommended:
That the annual recurring fee of $20 that is currently charged for typical encroachments be included in the annual User Fee Report that is approved by Council and be subject to inflationary increases, as appropriate.

Management Response:
Agreed. The fee will be included in the next corporate user fee schedule, expected in the 4th quarter 2008.

Follow Up Comment:
Completed. The annual recurring fee was included in the Council approved (December 10, 2008) 2009 Tax Supported User Fees schedule at a rate of $37.80.