SUBJECT: Amendment to By-Law No. 80-183 To Establish the Hess Village Pedestrian Mall Authority (PED09317) (Ward 2)

RECOMMENDATION:

a) That the By-law amendment to By-law No. 80-183, attached as Appendix “A” to Report PED09317, respecting the establishment of the Hess Village Pedestrian Mall Authority, be enacted by Council.

b) That Item “D” (i) respecting the Hess Village Review be identified as completed and removed from the Economic Development and Planning Committee’s Outstanding Business List.

EXECUTIVE SUMMARY:

Recommendation d) i) of Report PED09127, regarding Hess Village, was presented to Committee of the Whole on May 21, 2009, stated as follows:

“That the Hess Village Pedestrian Mall Authority By-law be amended to transfer responsibility for issuing encroachments on the City road allowance back to the City and that Legal Services Division staff prepare said By-law for enactment by City Council.” Accordingly, the attached By-law amends By-Law 80-183 to transfer responsibility for Encroachment Agreements on the City road allowance back to the City. This completes this matter and it should be removed from the Committee’s Outstanding Business List.
In addition, staff is reviewing the continued existence and future role of the Hess Village Pedestrian Mall Authority (HVPMA), and the potential for a Hess Village Business Improvement Area in consultation with HVPMA and other property/business owners in Hess Village. When this review has been completed, staff will report back to the Committee with appropriate recommendations, if any.

**BACKGROUND:**

*The City of Hamilton Act, 1979* provided legislative authority for the municipality to establish a Pedestrian Mall. The old City of Hamilton passed By-laws 80-179 and 80-183 on June 24, 1980 establishing the Hess Village Pedestrian Mall and the Hess Village Pedestrian Mall Authority. By-law 80-183 granted the Mall Authority jurisdiction to place certain things upon the Pedestrian Mall, which is defined as George Street between Queen Street South and Hess Street South. The items listed included benches, chairs, tables, displays, exhibits and any other things for the convenience, comfort, education, refreshment, amusement or entertainment of pedestrians.

On March 9, 1999, Council approved the Hess Village Pedestrian Mall Authority Outdoor Boulevard Café Agreement, which was based upon the Encroachment Agreement being used by the old City of Hamilton at that time.

Although not required, it appears that at some point in or around June 2001, the Mall Authority started sending these Agreements to the City to approve, issue and register on title for those properties with patios on that portion of George Street under the Mall Authority. Application fees and annual fees continued to be collected by the Mall Authority from those properties under its authority although a moratorium on annual fees existed elsewhere in the City including properties located in Hess Village outside of the Mall Authority. Recent events are such that the City has assumed the responsibility for the Encroachment Agreements and this report is the vehicle together with the attached by-law to implement that direction.

**ANALYSIS/RATIONALE:**

In Report PED09127, the Mall Authority indicated that they are agreeable to the City taking back the process of approving, issuing and registering Encroachment Agreements for those properties within the Mall Authority that encroach on the City road allowance, provided that they are included in the City’s circulation process. This would enable the City to maintain control over all Agreements issued within Hess Village using a uniform application process and Agreement. The required amending By-law is attached as Appendix “A” and recommended for enactment.

The possibility of designating a Hess Village Business Improvement Area (BIA) was raised in Report PED09127. The potential area of the BIA, and role of its Board, would likely overlap that of the Mall Authority; therefore, the continued existence and future role of the Mall Authority is being reviewed. Staff have begun this review in consultation with HVPMA and other property/business owners in Hess Village. When completed, staff will report back to the Committee. We expect to report back in Q1/10.
ALTERNATIVES FOR CONSIDERATION:

An alternative could allow the Mall Authority to administer the encroachment agreements. This is not a recommended alternative as it would result in two processes when one is preferred.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial – There are no financial implications.

Staffing – City Wide Encroachment Agreements are currently processed through the Public Works Department. There are no further staffing requirements.

Legal – The City of Hamilton re-assumes responsibility for Encroachment Agreements with respect to the Hess Village Pedestrian Mall.

RELEVANT CONSULTATION:

Hess Village Pedestrian Mall Authority
Legal Services
Public Works – Operations and Waste Management

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, and 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
Equity amongst the properties within Hess Village regarding the agreements will be achieved.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
The use of the roadway will be managed in a safe manner.

Economic Well-Being is enhanced. ☑ Yes ☐ No
The use of the roadway as allowed by the agreements would support the Entertainment District.

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

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

EM:vk
Attach. (1)
CITY OF HAMILTON

BY-LAW NO. __________

To Amend Old City of Hamilton By-law No. 80-183 To Establish the Hess Village Pedestrian Mall Authority

WHEREAS Council enacted a by-law to establish the Hess Village Pedestrian Mall Authority being old City of Hamilton By-law No. 80-183;

AND WHEREAS under subsection 5(6) of the City Hamilton Act, 1999, old City of Hamilton By-law No. 80-183 remains in force in respect of the old City of Hamilton;

AND WHEREAS this By-law provides for housekeeping and technical amendments to the old City of Hamilton By-law No. 80-183;

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

1. Section 2 of old City of Hamilton By-law No. 80-183 is deleted and replaced with following new section 2:

2.(1) The Hess Village Pedestrian Mall Authority shall consist of at least 3 members as appointed by City of Hamilton Council from time to time, of whom at least one shall be a member of the City of Hamilton Council;

(2) The members of the Hess Village Pedestrian Mall Authority shall hold office until the expiration of the term of the City of Hamilton Council that appointed them.

(3) Notwithstanding subsection (2), the members of the Hess Village Pedestrian
Mall Authority shall hold office until their successors have been appointed.

(4) Where a person ceases to be a member of the Hess Village Pedestrian Mall Authority before the expiration of his or her term, the City of Hamilton Council shall appoint another person for the remainder of his or her term.

2. Section 4 of old City of Hamilton By-law No. 80-183 is deleted and replaced with following new section 4:

4. The Hess Village Pedestrian Mall Authority is authorized to place or authorize the placing in or upon the pedestrian mall or way:

   (a) trees, shrubs, flower beds, plants and any other things that will beautify the pedestrian mall or way;

   (b) benches, chairs, tables, displays, exhibits and any other things for the convenience, comfort, education, refreshment, amusement or entertainment of pedestrians,

   provided that any licence, permit, approval or other type of permission required by the City of Hamilton, including an outdoor patio boulevard encroachment agreement, is first obtained from the City of Hamilton.

3. Sections 5 and 6 of old City of Hamilton By-law No. 80-183 are deleted.

4. This By-law comes into force on the date of its passing.

**PASSED this** day of , 200.

______________________________________________  _______________________________________________________
Fred Eisenberger                           Kevin C. Christenson
MAYOR                                        CLERK