SUBJECT: Improved Inspection Procedures for Vacant and Derelict Buildings and Other Properties that are Potentially Unsafe (PED09031) (City Wide)

RECOMMENDATION:

(a) That the Building Services and the Parking and By-law Services Divisions of the Planning and Economic Development Department adopt a proactive approach to Property Standards enforcement of vacant/derelict buildings as set out in Appendix “A” attached to Report PED09031.

(b) That Parking and By-Law Services continue to monitor workloads associated with this initiative and report back to Committee if this presents any significant impact on work plans or staffing.

(c) That the item related to “improved inspection procedures related to vacant buildings and other properties that are potentially unsafe” be identified as completed and removed from the Committee of the Whole’s Outstanding Business List.
EXECUTIVE SUMMARY:

In order to achieve the City of Hamilton’s Vision: “To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities” part of our efforts should concentrate on ensuring the quality of our neighbourhoods. Vacant and derelict buildings that are not maintained contribute to the decline of our neighbourhoods, have negative effects on property values, and detract further investment. Accordingly, as part of making the City of Hamilton a “best place”, vacant and derelict buildings must be dealt with more proactively. Vacant and derelict buildings are often referred to as ‘blights’ in neighbourhoods because of their unkempt exteriors and their propensity to be accessed by vagrants and other undesirables who may choose to engage in illicit activities on the properties. In the most dangerous examples of deteriorated vacant/derelict buildings, structural deficiencies can develop and progress to severe structural failures resulting in full building collapses. These instances of severe deterioration, although relatively rare, can put in jeopardy the health and safety of nearby residents and the general public at large.

This report focuses on the following:

- Existing methods of various City of Hamilton enforcement agencies in investigating and acting upon vacant and derelict buildings and how processes can be enhanced and improved.
- The compilation of Best Practices of other Ontario Municipalities in dealing with vacant and derelict buildings that confirms that the City of Hamilton’s policies, procedures and by-laws are keeping up with other municipalities.
- A review of the City of Winnipeg’s “Vacant and Derelict Buildings By-law 35/2004” that reveals that this type of stand-alone by-law is not a suitable approach for the City of Hamilton.
- The recommendation that the Property Standards By-Law be used to its fullest extent and aggressive enforcement be implemented, working together and strategically with the Building Services Division.

The report concludes that by improved, regularly scheduled, proactive investigations of vacant/derelict buildings (that are carried through to an acceptable resolution), chronic deterioration can be dealt with in a more effective manner within the City of Hamilton.

BACKGROUND:

As a result of the King William Street building collapse in April of 2008 the Committee of the Whole, in review of the related staff report, requested that staff report back on improved inspection procedures relating to vacant buildings and other properties that are potentially unsafe.

In March 2003, Council approved a coordinated agency approach to address vacant/abandoned buildings. Legislatively, vacant unsecured buildings could be secured utilizing the proposed Property Standards By-law (subsequently enacted). Buildings deemed ‘unsafe’ under the Building Code Act could be secured utilizing the
powers under the *Act* allowing immediate measures to be taken. As a final component to the coordinated approach, buildings secured under the Property Standards By-law or the *Building Code Act* would be monitored for continued security by Hamilton Emergency Services (HES)-Fire.

For the most part, this protocol has been effective in dealing with these concerns. It has, however, become increasingly evident that actions taken to make a building safe or to secure a building against access while addressing safety concerns of the moment do not provide protection against continued deterioration. The results can sometimes be buildings that are secure, (no unsafe conditions), but vacant. These vacant buildings often then deteriorate to conditions where they become unsafe.

The intent of this report is to review existing processes/procedures with a view to identify means to protect vacant and/or damaged buildings from continued deterioration and therefore mitigate the risk of structural failure in the future. Further, the report includes the review of other Municipal Best Practices and the recommendation of a new, proactive inspection protocol for such buildings.

**ANALYSIS/RATIONALE:**

**Buildings Damaged by Fire, Explosion, Wind, Vehicle Impact, etc.**

Currently, when Building Services Division staff (Building Inspectors) respond to and deal with an unsafe building, they take all necessary actions within the authorities of the *Building Code Act* to bring the building to a “safe” condition. Once a building is made safe the file is closed with the assumption that the owner(s) will follow up with their insurance companies and carry out the necessary repairs to remediate the building or, in some more drastic cases, demolish the building.

Although enforcement of the Property Standards By-law is presently only carried out on a complaint basis, in the case of a previously unsafe or partially damaged building a continued and proactive Property Standards investigation would be extremely beneficial. The resulting Property Standards enforcement, (which may include the provision/replacement of a roof or weatherproofing a deteriorated roof and securing/repairing of openings that would otherwise allow the entry of water or snow for example), would address conditions that currently leave a structure open to continued deterioration.

Enforcement of such requirements to the full extent of the Property Standards By-law will result in the protection of the building from the elements and ultimately protect the public from the possibility of future unsafe conditions. Should the owner(s) fail to comply with such an order the City has the authority to undertake the necessary repairs on behalf of the owner(s) or, if conditions warrant, demolish the building. It should be recognized and understood that under the Property Standards By-law the owner(s) (or the City when acting on their behalf) has the option to either carry out the required repairs or to demolish the building and clear and level the site.
Vacant/Abandoned Buildings

Presently within the City of Hamilton, there are numerous buildings that are considered vacant. These buildings may be vacant for several reasons. They may be:

- awaiting conversion to another type of occupancy;
- under renovation but have been abandoned or simply at a stand-still;
- completely abandoned; and,
- in the process of being marketed for the same occupancy as the previous use.

In all cases however, **there is no triggering mechanism that would advise the City when a building becomes vacant.**

In an effort to address vacant buildings, HES-Fire in-service suppression crews monitor approximately 70-75 vacant buildings to ensure they are maintained in a secure condition. The monitoring is conducted at various frequency levels based on the status of the building including previous activity and general fire concerns. The monitoring of these buildings has proven effective in identifying problems immediately. Once buildings are identified as open to trespass, HES-fire notifies Property Standards (MLE) initiating legislative action under the By-law to ensure timely compliance by the owners.

In addition to the monitoring conducted by the HES-Fire, another option would be to maintain a standardized ‘Vacant Buildings’ list between all agencies to allow Building Services Division and Parking and By-law Services Division staff to perform their own proactive inspections to ensure that the buildings are conforming to the Property Standards By-law (with respect to conditions that would contribute to continued deterioration) and the Building Code Act, (with respect to “unsafe” conditions). This would ensure that buildings that are not meeting the minimum requirements of the Property Standards By-law/Building Code Act would be investigated and the deterioration of the buildings would drastically decline as the result of continued, follow-up enforcement processes.

In that all of these subject buildings are vacant/abandoned, access to the interiors is generally not available therefore requiring inspections to be carried out from the exterior only. Although the Building Code Act does contain authorities for entry into buildings to determine if they are unsafe, there must be reasonable grounds identified to believe that a building may be unsafe and that entry into the building or requiring a Professional Engineer’s review will reveal or provide evidence of such a violation. The mere fact that a building is vacant or abandoned does not, in itself, afford such justification. To insist entry be gained for inspection purposes without adequate justification would most likely be considered an abuse of power by the Courts.

In order to address this limitation, the exterior inspections of these buildings will include a thorough assessment of any conditions that would indicate the likelihood or possibility that the structure is unsafe, or, based on the extent of exterior deterioration, that there is a probability that the interior or roof structure is similarly or likely to also be
unmaintained. In these circumstances, the authorities under Section 15.9(1)(a)\textsuperscript{1} and/or 18.(1)(c)\textsuperscript{2} of the Building Code Act can be utilized. These authorities allow for entry into the building to determine if it is unsafe and for requiring a Professional Engineer’s report regarding the structural stability of the building.

When reviewing the vacant building protocols of various municipalities in southern Ontario, the results were conclusive and supportive of the conclusion that; by efficient Property Standards By-law/Ontario Building Code enforcement, the task of dealing with unwanted derelict and vacant buildings can effectively be addressed, (see Table below for comparators).

\textsuperscript{1} 15.9 (1) \textbf{Inspection of Unsafe Buildings}. An inspector may enter upon land and into buildings at any reasonable time without a warrant for the purpose of inspecting a building to determine, (a) whether the building is unsafe;

\textsuperscript{2} 18. (1) \textbf{Powers of Inspector}. For the purposes of an inspection under this Act, an inspector may, (c) require information from any person concerning a matter related to a building or part thereof;
As indicated in the Table, none of the surveyed municipalities engage in proactive inspections of vacant/derelict buildings and none of them have enacted by-laws that specifically deal with vacant/derelict buildings. Also, only half of the municipalities have a formal procedure/policy that address unsafe buildings.
Enforcement

The Building Code Act, (in which the authority of the Property Standards By-law is derived), is a very powerful piece of legislation that gives both Building Inspectors and Property Standards Officers powers. Some of these specific powers, (as they relate to investigating and remedying vacant and derelict building issues), include:

- unrestricted powers of entry of Building Inspectors when investigating buildings that are believed to be unsafe;
- the ability of Building Inspectors to order Professional Reviews and Reports of suspected unsafe buildings;
- the ability of Building Inspectors to order property owners to ‘make safe’ their buildings and properties;
- the generous powers of Property Standards Officers to inspect properties to investigate possible Property Standards infractions;
- the ability of Property Standards Officers to order building owners to secure/repair their damaged buildings;
- the ability of Property Standards Officers to order ‘progressive measures’ to ensure buildings are rendered inaccessible, (‘progressive’ meaning building openings to be sealed off using plywood hoarding on first offences, to steel panels on subsequent offences, to full concrete block window and doorway infills on final offences);
- the ability of Property Standards Officers to order property owners to provide Professional Reviews and Reports, verifying the structural sufficiency of buildings;
- the exceptional powers of Property Standards Officers to cause a non-compliant building to be repaired (if feasible) or completely demolished, (if necessary), all at the expense of the land owner; and,
- the ability for both Officers and Inspectors to lay charges and collect fines under the powerful authority of the Building Code Act.

All these investigative and enforcement tools are already at the disposal of Property Standards Officers/Building Inspectors, (currently buildings are being secured using the ‘progressive measures’ as outlined in the Property Standards By-law). Utilizing these powers and abilities to their full potential needs to be part of any initiative that will deal with vacant and derelict buildings.

At present, Property Standards enforcement in Hamilton is complaint driven only. In some instances, there have been sporadic ‘proactive’ enforcement programmes approved by Council to address various Property Standards issues in selected geographic areas within the City. This investigation/enforcement philosophy means that buildings are only inspected when a member of the public chooses to lodge a complaint with the City regarding the state of those buildings. As a result, many vacant buildings
simply sit and deteriorate, sometimes to a state that is beyond repair, or, in some cases, to conditions that may be considered unsafe. Since Building Inspectors only respond reactively to complaints as well, and are only proactive in extreme cases of building deterioration, (i.e. blatant unsafe conditions), the result can be that many buildings that are vacant/derelict within the City have significant Property Standards and/or Building Code deficiencies that go unnoticed.

Getting these buildings on the “radar” for both enforcement groups is critical in addressing and improving the vacant and derelict buildings situation in the City of Hamilton.

As previously mentioned, HES-Fire maintains a ‘Vacant Buildings’ list of properties within Hamilton and monitors these buildings at regular intervals. Utilizing a common list provides Building Services and Parking and By-law Services Divisions current and accurate information regarding vacant and derelict buildings. Property Standards Officers and Building Inspectors would no longer be dependent on the general public to file complaints regarding vacant building in order to generate investigation inspections. This information sharing would be reciprocal wherein actions taken by any of the three agencies would be shared amongst themselves. The fundamental goal of this arrangement would be to maintain current information on building status between agencies and undertaking appropriate action as necessary.

It would be expected that when vacant buildings are inspected on a regular basis (every three months) building defects (including structural deficiencies), will be observed and acted upon. Since major structural problems and unsafe conditions are rare, most of the follow-up work will rest on the shoulders of the Property Standards Officers who will be called upon to deal with building exterior maintenance issues and open to trespass conditions.

In addition to this ongoing proactive initiative, (which only deals with defect detection), Property Standards enforcement in Hamilton will be required to change. Some of these changes have already begun to take place under the direction of the recently established Management Team of the Parking and By-law Services Division. Historically, non-complied with Property Standard Orders in Hamilton have, for the most part, been left ‘registered on title’ and not fully enforced. This passive enforcement style works only when properties are bought and sold and registered Orders are discovered by the new prospective owner’s lawyers via registry office searches. This leads to a situation where required maintenance work is, in some cases, not performed for many years after orders are issued. Or, in the worst case scenario, when properties never change hands, the required work is never completed. A more aggressive enforcement philosophy is needed within the Parking and By-law Services Division. This has already commenced in 2008. Non-complied Orders must be addressed either by court action or by the City doing the work necessary to bring a building/property into compliance with the minimum standards of the by-law (which includes demolition in extreme cases).
ALTERNATIVES FOR CONSIDERATION:

In order to determine how to improve inspection procedures relating to vacant and derelict buildings, a search was conducted of other Canadian municipalities’ protocols and by-laws relating to this subject. This review of other municipal best practices revealed that the City of Winnipeg recently enacted a by-law entitled: “The Vacant and Derelict Buildings By-law No. 35/2004”, which came into effect on July 1st, 2004. A Building Department representative from Winnipeg was interviewed via telephone and the following, relevant information was communicated:

- The goal of the by-law is to ensure that vacant buildings meet basic standards of maintenance so that they do not detract from neighbourhoods, the City as a whole, and do not pose an undue hazard for firefighters and the general public;
- The by-law requires that buildings that are vacant, (as defined by the by-law), must be kept in a secured condition;
- In the event that buildings are not maintained in a secured condition, they must be boarded up;
- Any vacant building that is boarded up must be done so under the auspices of a permit, issued by the City’s Building Department;
- Board-up permits must be renewed on a half-year basis (residential buildings) or on a yearly basis (commercial building), and each renewed permit fee is exponentially higher than the previous permit fee;
- Permits fees range from a low $10.00 for first-time board-ups of residential buildings, to $800.00 for the third and final board-up of the building;
- Permit fees range from $200.00 for first-time board-ups of commercial buildings to a high of $3,000.00 for the fourth a final board-up;
- These graduated fees, (which are exorbitantly high for the third and fourth board-ups), are meant to be deterrents, encouraging property owners to rehabilitate and occupy their buildings or demolished the buildings rather than pay ongoing permit renewal fees;
- The by-law has been moderately effective; and,
- The by-law receives its authority from the City of Winnipeg Charter, which gives the Municipality special sweeping powers to create and enact various by-laws.

Although this Derelict Buildings By-law seems to be an ideal solution for Hamilton, we do not have a Municipal Charter that would give us the legislative authority to enact such a by-law. However, the Ontario Municipal Act does give municipalities the ability to enact by-laws that relate to “nuisances”. The question then becomes: are vacant and derelict building considered as “nuisances” as defined in the Act? Should vacant buildings be considered to be in the same category as:

- stagnant water;
- long grass and weeds; and,
- garbage and debris.
The Municipal Act also allows municipalities to issue permits and licenses for various things. Board-up permits could therefore be issued. However, according to the Municipal Act, fees collected for these permits cannot be revenue generators. We can only recover our costs as part of permit fees. Therefore, since enforcing this by-law could not be a money making enterprise, the escalating fee schedule could not be utilized. Accordingly, the deterrent factor would not be as compelling or an effective persuasion tool. Although pursuing the idea of creating a stand-alone derelict building by-law has merit, its effectiveness would be somewhat limited and would overall be a poor choice (when compared to the City’s existing by-laws). Simply put, the City of Hamilton’s existing Property Standard By-law contains adequate requirements for progressive stages of securing (boarding-up) of buildings as well as other related minimum standards. If used effectively, in concert with the Building Code Act powers, the Property Standards By-law would address the same goals of the Winnipeg Model.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Financial**
Monitoring and securing vacant buildings under the proposed procedure, will have limited financial impact given that it is the owner's responsibility for securing a building. There is no cost impact to the corporation beyond the staff resources to conduct inspections and proceed to prosecution if and as necessary.

There are some costs associated with completing work on the owner’s behalf under the authorities of the current Property Standards By-law (securing a fire damaged building) and/or the Building Code Act. These costs can however be recovered by applying them to the tax rolls of the property in question.

**Staffing**
There is minimal impact to staffing for either the HES-Fire or the Building Services Division, and a moderate impact to staffing in the Parking and By-law Services Division (Property Standards). As part of the new Community Based Enforcement Priorities approved by City Council on November 26, 2008, Property Standards violations are directly related to public health and safety and therefore are considered a priority. However a more proactive enforcement with the adoption of this new protocol for vacant/derelict buildings may reduce response time to other property standards issues in the community.

**POLICIES AFFECTING PROPOSAL:**

Policies and Procedures under the Building Code Act and Property Standards By-law. Council’s approved “Community Based Enforcement Priorities”

**RELEVANT CONSULTATION:**

This information was compiled through consultation with HES-Fire and various Parking and By-law Services and Building Services 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
The effectiveness of the Division’s service has a direct impact on the quality of life within the City through delivery of services that ensure public safety and protection.

Environmental Well-Being is enhanced.  ☑ Yes ☐ No
Human health and safety are protected.

Economic Well-Being is enhanced.  ☑ Yes ☐ No
Processes and services that support the ongoing maintenance of buildings contribute to the property values of both the subject property and the surrounding neighbourhood.

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

JS:NA:fd
Attach. (1)
Enforcement Protocol for the Protection of Unsafe and Vacant/Abandoned Buildings against Continued Structural Deterioration

BUILDINGS DAMAGED BY FIRE, EXPLOSION, WIND, VEHICLE IMPACT, ETC.

1) Criteria: Unsafe

The Building Code Act defines a building as unsafe if the building is:

(a) structurally inadequate or faulty for the purpose for which it is used; or
(b) in a condition that could be hazardous to the health or safety of a person in the normal use of the building, persons outside the building or persons whose access to the building has not been reasonably prevented.

Some examples of unsafe conditions under the Ontario Building Code include:

- no floor, either it is in a deteriorated condition that will allow someone to fall through or fire, explosion or some other occurrence has caused the unsafe condition.
- vehicle impact or damage to a building causing structural damage.
- missing guards allowing persons to fall from unsafe heights causing immediate danger to persons entering the building.
- roof is collapsed or damaged to the point of structural inadequacy.
- broken windows with glass pieces that may cause injury if left alone (does NOT include a window or door which is open or unlocked, if there are no other deficiencies).

Initial Actions - Securing unsafe buildings:

Building Services Division Inspectors will inspect and take enforcement action as necessary under the Building Code Act to bring the building to a “safe” condition. The process for these actions is covered in the Building Services Division, Construction Section’s Procedural Manual – “Emergency/Unsafe Conditions”. Where applicable, this process includes the requiring of a Professional Engineer’s report regarding the structural stability of the building.

Follow up enforcement actions

Where the actions taken to make the building safe do not include the complete demolition of the building, and where no actions have been taken by the owner(s) to repair, remove or replace the deteriorated structure within 3 months of the building being secured, Building Services Division staff shall:
• Contact the owner(s) to confirm intentions and obtain written timeline for repair, replacement or removal to commence within one month.
• If no contact or commitment is made, a Building Inspector will carry out an inspection to update on current site conditions.
• Building Inspector will issue a Property Standards Order requiring the provision/replacement or repair of a roof and/or walls, and securing/repairing of openings as may be applicable so as to address conditions that would leave the structure open to continued deterioration.

2) Criteria: Not Unsafe

If the building was not considered unsafe as noted above, but sustained damage, then the Parking and By-law Services Division would be notified and initiate enforcement action under the Property Standards By-law as per normal enforcement procedure.

Under the Property Standards By-law, buildings that have sustained damage or are found unsecured and have no signs of any structural deficiencies can be secured against trespass.

Initial actions - Securing buildings that are open to trespass:

Where a building is vacant, unoccupied or open to unauthorized persons, but not unsafe, a Property Standards Officer will inspect and take enforcement action as necessary. This action will utilize the Property Standards By-law to ensure that the building is secured against unauthorized entry.

The provisions of the Property Standards By-law related to Open to Trespass include progressive measures as noted below:

6(2)(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.

Effective immediately, Property Standards (Municipal Law Enforcement) Officers will diligently use the progressive powers to properly and effectively secure buildings where repeat violations continue to occur.

Follow up enforcement actions:

Where the actions taken to secure the building have been completed and where no actions have been taken by the owner(s) to repair, remove or replace the deteriorated
structure within 3 months of the building being secured, Parking and By-Law Services staff (Property Standards Officers) shall:

- Contact the owner(s) to confirm intentions and obtain written timeline for repair, replacement or removal to commence within one month.
- If no contact or commitment is made, the Property Standards Officer will carry out an inspection to update on current site conditions.
- Property Standards Officer will issue a Property Standards Order requiring the provision/replacement or repair of a roof and/or walls, and securing/repairing of openings as may be applicable so as to address conditions that would leave the structure open to continued deterioration.

**VACANT / ABANDONED BUILDINGS**

**Criteria**

If the building has not sustained any sort of damage, and is only considered vacant/abandoned, the Parking and By-Law Services Division would be notified through various sources such as Police, Fire, Building Inspectors and the public and initiate enforcement action under the Property Standards By-law as per normal enforcement procedures.

Under the Property Standards By-law, buildings that are found unsecured and have no signs of any structural deficiencies can be secured against trespass and be required to meet minimum maintenance standards as set out in the Property Standards By-law.

**Actions**

Where a building is vacant, unoccupied or open to unauthorized persons, a Property Standards Officers will inspect and take enforcement action as necessary under the Property Standards By-law to ensure that the building is secured against unauthorized entry.

The provisions of the Property Standards By-law related to Open to Trespass include progressive measures as noted below:

6(2)(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.
Effective immediately, Property Standards (Municipal Law Enforcement) Officers will diligently use the progressive powers to properly and effectively secure buildings where repeat violations continue to occur.

A subsequent Order will include requirements for the provision/replacement or repair of a roof and/or walls, and securing/repairing of openings as may be applicable so as to address conditions that would leave the structure open to continual deterioration.

Note:

If the exterior of the structure indicates excessive deterioration to a point that the interior and/or roof structure would reasonably possess similar structural deficiencies, then a Property Standards Officer would notify Building Services Division and a Building Inspector, under the authority of the Building Code Act would order a property owner to provide Professional Reviews and Reports verifying the structural sufficiency of the building.

CONCLUSION

The foregoing processes will ensure that all remaining openings (i.e. windows and/or doors at all storeys) are secured and that all exterior walls and roof systems are repaired (if required) and brought into compliance with the Property Standards By-law (or alternatively, the building is demolished). These processes will ensure that buildings whether unsafe, vacant, fire damaged, derelict etc are dealt with in a proactive and consistent manner, and that further deterioration of these buildings is mitigated.

All buildings that have been known to be vacant, fire damaged, derelict shall be inspected on a consistent basis (3 months) to ensure the Building Code Act and Property Standards By-law are being complied with. If there is the requirement to perform additional enforcement or reoccurring enforcement on particular properties then the enforcement should be progressively escalating in nature to ensure that more adequate protective measures are in place.