

**AFFECTS
WARD 2**

CITY OF HAMILTON

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Downtown Renewal Division**

Report to: Chair and Members Planning & Economic Development Committee	Submitted by: Lee Ann Coveyduck General Manager Planning and Economic Development Department
Date: October 14, 2005	Prepared by: Ron Marini (905) 546-2424 Ext. 4178

SUBJECT: Establishment of a Right to Enter By-law for Property Maintenance Purposes within Areas Affected by the Downtown Zoning By-law No. 05-200 (PED05165) (Ward 2)

RECOMMENDATION:

- (a) That Council enact a by-law pursuant to Section 132 of the Municipal Act so as to grant reasonable access to private property for the maintenance of property within the area affected by the new Downtown Zoning By-law No. 05-200.
- (b) That the by-law attached to Report PED05165 be forwarded to Council for adoption.

Lee Ann Coveyduck
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Report PED05165 proposes that Council enact a Property Access By-law allowing a property owner to enter a neighbouring property in order to perform necessary repairs, maintenance or alterations on their own property. This recommendation is timely given the efforts by the Province to foster intensification and adaptive reuse of buildings for

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housing. More specifically, with the adoption of the new Downtown Zoning By-law No. 05-200 which provides for zero lot line development, such a by-law is warranted.

BACKGROUND:

The initiative for this report comes from an owner of a downtown property who has successfully transformed a derelict warehouse into an attractive and functioning condominium apartment building. The property developer is denied access for building maintenance purposes over the neighbouring property and for this reason asks for the municipality to enact a by-law to allow reasonable access over abutting property for the purpose of making repairs or alteration of buildings.

The Municipal Act provides the basis for the Council to enact such a by-law and contains stipulations upon which such access is to be granted. Such access shall be granted:

- At a reasonable time
- To the owner of the adjacent property or an authorized employee or agent
- Only to the extent necessary to carry out the repairs or alterations
- Person entering must display, or, on request, produce proper identification
- There is no authority to enter any building
- The owner wishing to enter private lands must give reasonable notice of his intent to enter to the occupier of the adjoining lands
- The lands must be restored as far as practical. The entering party must compensate for any damages caused by the entry

A maintenance access by-law forms part of the City of Toronto's Municipal Code and would be of use in the Downtown of the City of Hamilton for reasons mentioned previously in this report.

Staff surmises that in the vast majority of instances, consent will be given to occupy another person's property with the owner's consent for the purpose of routine maintenance. After all, a well maintained neighbouring property is in everyone's interests. Where there are difficulties relative to gaining access over neighbouring lands for maintenance and repair purposes, then the provisions of the suggested by-law may be relied on to grant such access.

It is proposed that the Building and Licensing Division answer questions related to access and the authority conferred by this by-law. Individual property owners should become aware of this by-law and govern their behaviour accordingly. The public interest of encouraging safe and well maintained properties is the key reason for advancing this initiative.

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ANALYSIS OF ALTERNATIVES:

The alternative is to do nothing and maintain the status quo. We believe that such an action would be inconsistent with the direction of the Downtown Secondary Plan and Zoning By-law 05-200 where built form is the critical component of such documents.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial – None.

Staffing - The existing staff complement of the Building and Licensing Division will answer queries related to this by-law.

Legal - Legal Counsel for the City has approved the attached By-law as to form. Risk Management has approved this initiative.

POLICIES AFFECTING PROPOSAL:

The by-law is intended to apply only to the area affected by Zoning By-law 05-200 and for this purpose, reference is made to the Regional Official Plan which provides that no municipal by-law shall be enacted which is contrary to the Plan. In this regard, the Regional Plan is premised on Vision 2020 and there is a clear thrust to intensify and to use urban lands efficiently. This by-law is consistent with this thrust of the Regional Official Plan and moreover, as the Regional Plan contains policies related to public safety, such a by-law allowing for access over abutting property for maintenance purposes is in keeping with the intent of the Official Plan.

CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:

Legal Services, Risk Management and Building and Licensing Divisions of the Planning and Economic Development Department were consulted in the preparation of this report.

CITY STRATEGIC COMMITMENT:

Community Well-Being is enhanced. Yes No

The initiative contributes to the strategic goal of a great city to live, because well maintained buildings mean we are putting our best face forward.

Environmental Well-Being is enhanced. Yes No

The initiative contributes to the goal of being a healthy, safe and green city by improving building maintenance thereby contributing to safer buildings in the community.


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Economic Well-Being is enhanced. Yes No
Maintenance of properties in Hamilton enhances investment.

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

RM:HM
Attach. (1)


Authority: Item 22, Committee of the Whole
Report
CM: Date 

Bill No. 

CITY OF HAMILTON 

BY-LAW NO. _____ 

 **Adopt a By-law to Allow for the Entry of Adjoining Property for Maintenance Purposes**


 **WHEREAS**, Section 132 of the Ontario Municipal Act provides for the enacting of by-laws to allow for the entering of an adjoining property for maintenance purposes;

AND WHEREAS, the Council of the City of Hamilton enacted Zoning By-law No.05-200 on the 25th day of May, 2005 for an area of the City of Hamilton specified therein and known as the Downtown;

AND WHEREAS , said Zoning By-law No. 05-200 provides for reduced yards or no yards in order to achieve built form objectives appropriate for Downtown locations;

AND WHEREAS, it is desirable to allow for access over adjoining lands where said access is needed to repair, maintain or alter buildings, fences or structures of the owner of property.

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


1.  Within the area depicted on Schedule "A" attached hereto and forming part of this by-law, an owner or occupant of land is hereby authorized to enter adjoining lands for the making of repairs or alterations to a building, fence or other structure on the land of the said owner or occupant, provided said access is only to the extent necessary to carry out the repairs or alterations.

2. The authority to enter adjoining land provided for in paragraph 1 of this by-law is subject to strict compliance with the following terms and conditions:
 - (a) The power of entry conferred herein shall only be exercised by the owner or occupant of adjoining land or the duly authorized agent thereof;
 - (b) A person exercising the power of entry must display proper identification;
 - (c) The person proposing to exercise the power of entry pursuant to paragraph 1 above shall provide reasonable prior written notice of the proposed entry to the occupier of the adjoining lands, which notice shall include a description of the proposed work to be performed and a proposed date of entry and duration of occupancy, which duration shall not exceed that period of time reasonably required to diligently and expeditiously complete the works described in the said notice;
 - (d) The right of entry conferred herein shall only apply to the implementation of the works described in the above written notice;
 - (e) The owner or occupant must restore the property in so far as is practical to its original condition and shall provide compensation for any damages caused by the entry; and
 - (e) Access to the building, fence or structure requiring repair or alteration is not otherwise feasible from the lands of the owner or occupant thereof or from a public street.
3. Nothing in this by-law authorizes entry into a building.

4. Nothing in this by-law in any way relieves the person purporting to exercise the right of entry conferred herein in accordance with the above terms and conditions from any liability for any damage or injury to any person or property caused by, or arising in any way out of, the exercise of the said right of entry or any activity in relation thereto or from the requirement to obtain any permit or approval or comply with any applicable law, by-law or regulation with respect to the proposed works.

PASSED and ENACTED this day of , 2005. 

MAYOR


CLERK 



Hamilton
Planning & Economic
Development Department

Schedule A to By-law No. _____ Property Maintenance Access By-law

Legend

 Boundary

N:\T&C\Downtown Renewal/Downtown zoning/Property Maintenance Access By-law.cdr

