

**Authority:** Item 17, Economic Development  
and Planning Committee  
Report 08- 019 (PED07239(a))  
CM: October 15, 2008

**Bill No. 238**

**CITY OF HAMILTON**

**BY-LAW NO. 08-238**

**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:

To Amend Property Standards By-Law No. 03-117 Respecting Properties Designated  
under the Ontario Heritage Act (Page 2 of 8)

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.

3a(3)

- (a) In addition to the standards, obligations and requirements that apply to all property under Sections 4 through 34a both inclusive of this by-law, a part of a Part IV heritage property or a Part V heritage property, including but not limited to a roof, wall, floor, retaining wall or foundation, that supports or protects a heritage attribute and without which the heritage attribute may be at risk of deteriorating or being damaged shall be structurally sound and maintained in good repair.

- (b) Paragraph 3(a)(3)(a) shall be complied with in a manner that minimizes damage to the heritage attribute.

- 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 50mm 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 suggests 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 15<sup>th</sup> day of October, 2008.



Fred Eisenberger  
Mayor



Rose Caterini  
Acting City Clerk