

REPORT

Planning and Development

To: Mayor Johnstone and Members of Council
Date: June 23, 2025

From: Jackie Teed, Director, Planning and Development
File: #2713667

Item #: 2025-187

Subject: **Update of Section 72 Remedial Action Requirement for 1823 Hamilton Street**

RECOMMENDATION

THAT the next steps outlined in the June 23, 2025 report titled “Update of Section 72 Remedial Action Requirement for 1823 Hamilton Street” be endorsed.

PURPOSE

This report provides an update to Council on the status of the Sections 57 Notice on Title and 72 Remedial Action Requirement that have been applied to the subject property, and seeks Council endorsement for next steps.

SUMMARY

When reasonable efforts to gain compliance from education, cautions, warnings and fines have been exhausted, a Section 57 Notice on Title and Section 72 Remedial Action Requirement may be authorized by Council. In 2019, such instruments were authorized for 1823 Hamilton Street, see Attachments 1 and 2. Since that time, work has been done by the property owner to substantially comply with the remedial action requirements; however, the roof framing was constructed in a manner not consistent with the permit drawings, such changes were not authorized by a registered professional, and the property owner has not provided access to the City to complete necessary inspections so there may be additional non-compliance. The property owner has indicated they do not intend to take steps to seek compliance with regulations at this time. As such, the City anticipates proceeding with the following next steps: 1) close the open building permit files at this address, with a note that they are not complete; 2)

remove the Section 72 Remedial Action Requirement in light of the substantive compliance; and 3) maintain the Section 57 Notice on Title in light of the outstanding issues, toward informing potential buyers and other potentially affected parties that the property may be in breach of bylaws or regulations, especially those related to the BC Building Code. No further action on this file would then be taken, at this time.

BACKGROUND

On September 1, 2019 Council passed a motion imposing a Remedial Action Requirement on the owners of the property. An addendum report was prepared and heard by Council on September 16, 2019. On October 7, 2019 the property owner submitted a request for reconsideration hearing. On November 21, 2019 Council held a Reconsideration Hearing for the property and heard evidence from the property owner. The Remedial Action Requirement was not reconsidered and remained in force.

In 2021, because many items in the Remedial Action Requirement continued to remain unfinished including completion of the roof and siding, removal of scaffolding and confirmation of drainage behind the retaining wall at the street, the City sought to exercise the right to do the work and bill any charges to property taxes for the property; a provision permitted by the remedial action requirement process. Upon the City initiating site visits with a general contractor, the property owner began expediting the work on their own.

Over the next couple of years the owner completed the roof and siding installations and removed scaffolding and construction materials from site. The issue of drainage from the retaining wall running across the sidewalk has not been apparent during site visits at various times in recent years, including that there has been no evidence of staining, icing, etc. to indicate that the retaining wall is causing deleterious impact to the City sidewalk.

However, the City made multiple unsuccessful attempts to complete inspections, and to seek signed and sealed letters from registered professionals regarding the construction work. This includes the required drainage behind the retaining wall, which was backfilled prior to inspection.

DISCUSSION

The Building Department relies on property owners to seek required permits and inspections for work and to ensure that work is performed diligently. There are many reasons a project might be stalled or take additional time or require changes along the way, especially renovations where the property owner is also the general contractor, which is a practice permitted by law. When such delays occur, the City seeks compliance through various voluntary compliance mechanisms and recommends stronger tools only when that fails or there are extenuating circumstances.

Remedial Action Requirement

A Remedial Action Requirement was sought in this instance to give the City a mechanism to complete the work if the homeowner was unable or unwilling to do so. The construction costs borne by the City to do this would be assessed to the property taxes. In this case, the property owner opted to complete the project and, at this time, the City considers that the work has been completed sufficiently to remove the need for the Remedial Action Requirement.

Notice on Title

A Notice on Title was placed to inform potential buyers and other potentially affected parties that the property may be in breach of bylaws or regulations, especially those related to the BC Building Code. This notice does not prevent title from being transferred; it notifies the potential buyer that there might be an issue and they should contact Legislative Services with the City for additional information. The City intends to maintain the notice given that:

- The roof framing was constructed in a manner not consistent with the permit drawings;
- The owner has not provided access to the City to inspect that work, or to confirm the required drainage behind the retaining wall which was backfilled prior to inspection, so there may be additional non-compliance;
- The owner has not provided signed and sealed letters from registered professionals regarding the construction work.

NEXT STEPS

As the property owner has indicated they do not intend to take steps to achieve compliance with regulations at this time, the City would close both the building permits at this address, BP005652 and BP005861 (which have been open since 2007 and 2008, respectively) with annotation that they are not complete. Any future work at this site that requires a building permit would require a new application.

The City will not proceed with any further steps to enforce the Remedial Action Requirement.

The Notice on Title would remain until such time as the City receives signed and sealed plans and schedules from registered professionals indicating that the building has been constructed in general conformance with applicable codes and standards with particular reference to variations from the permitted plans including the roof framing.

No further action on this file would then be taken, at this time.

FINANCIAL IMPLICATIONS

The cost of enforcement of this file is estimated to be in the order of \$77,800 for legal fees and taxes from November 2011 to April 2025, which have been funded through the Planning and Development Department operating budget over the years of enforcement.

INTERDEPARTMENTAL LIAISON

This report was prepared by the Building Division of Planning and Development in consultation with the City solicitor and external counsel.

OPTIONS

1. That the next steps outlined in the June 23, 2025 report titled "Update of Section 72 Remedial Action Requirement for 1823 Hamilton Street" be endorsed.
2. That Council provide other direction.

Staff recommends Option 1.

ATTACHMENTS

Attachment 1: Council Report dated September 16, 2019, 1823 Hamilton Street

Attachment 2: Council Report dated November 21, 2019, 1823 Hamilton Street

APPROVALS

This report was prepared by:
Serena Trachta, Deputy Director, Building

This report was reviewed by:
Craig MacFarlane, City Solicitor
Jackie Teed, Director, Planning and Development

This report was approved by:
Rupinder Basi, Deputy Director, Planning
Lisa Spitale, Chief Administrative Officer