

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Building Services Division

Report to: Economic Development and Planning Committee	Submitted by: Tim McCabe General Manager Planning and Economic Development Department
Date: August 31, 2009	Prepared by: Frank Peter (905) 546-2424 Ext. 2781 Al Fletcher (905) 546-2424 Ext. 5802

SUBJECT: Repeal and Replacement of Demolition Control By-law - Delegated Authority and Technical and Housekeeping Changes (City Wide) (PED09258)

RECOMMENDATION:

- (a) That approval be given to **City Initiative CI-09-G** to permit delegation of authority to issue certain demolition permits for residential properties.
- (b) That the By-law attached as Appendix A to Report PED09258, which repeals and replaces the existing Demolition Control By-law, delegating certain powers of Council under the Planning Act to issue permits for the demolition of residential properties and making technical and housekeeping changes, be enacted.
- (c) That the Chief Building Official, or designate, be required to notify the Ward Councillor upon submission of a residential demolition permit application.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Staff recommends that the process for issuing residential demolition permits be streamlined in the case of routine applications. This would be accomplished by permitting the delegation of Council's authority to issue residential demolition permits to the Chief Building Official or designate for routine applications. Delegating Council's

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authority will substantially reduce the number of applications having to be considered by the Economic Development and Planning Committee and Council and expedite the issuance of residential demolition permits.

Further, since the enactment of the Demolition Control By-law, certain technical issues of interpretation requiring amendment have become apparent. Staff is proposing to clarify the By-law with respect to demolitions which do not require a permit under the Demolition Control Area By-law. This clarification does not change the intent of the By-law. For the ease of use and to avoid any confusion it is recommended that the current Demolition Control By-law 08-226 be repealed and replaced instead of amended.

BACKGROUND:

In September of 2008 City Council passed a Demolition Control By-law for residential properties within the City of Hamilton. This By-law permits the City to exercise its authority under s. 33 Planning Act to require that demolished residential buildings be replaced. The exercise of this authority, absent any delegation, requires each application for a residential demolition permit together with a staff report be presented to the Economic Development and Planning Committee and then Council. Since the enactment of this new By-law, approximately 101 applications have been submitted, with accompanying staff reports, to Committee and Council.

Although applications appear on the "Consent" portion of the Committee Agenda and are usually approved with little or no discussion, the need for Committee and Council approval can result in critical delays for new construction. There has been an increase in the time required to process an application while a report is prepared, Committee and Council approval is given, and then the permit is issued. Delays are more significant in the summer time due to the reduced number Committee and Council meetings. Delegated authority will help limit delays and provide improved customer service.

In addition, since the enactment of the Demolition Control By-law it has become apparent that circumstances when a residential demolition permit is not required under this By-law should be clarified. These include:

- when a mobile home is removed;
- when exempted under any Federal or Provincial statute or regulation; and,
- when a demolition agreement has been executed (typically applies to large lots where the owner enters into an agreement with the City that allows them to live in the existing dwelling while the new one is being constructed).

ANALYSIS/RATIONALE:

Staff recommends that the process for issuing residential demolition permits be streamlined in the case of routine applications. Examples of routine applications include the following:

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- a permit is required for a residential building in an established neighbourhood and standard conditions requiring the construction of a replacement building would automatically be applied;
- a permit is required to facilitate a development under an approved site plan or approved draft plan of subdivision;
- a permit is required for a residential building where another non-residential use is permitted;
- a permit is required to facilitate land assembly for future development;
- a permit is required for a residential dwelling in the Rural Area and would not impact abutting lands, e.g. where a dwelling is demolished on a large rural/agricultural property; or,
- a permit is required for a residential building and the existing zoning permits non-residential uses in addition to a residential building.

The Municipal Act, 2001 permits the delegation of Council's authority to issue residential demolition permits to the Chief Building Official or designate. For the majority of residential demolition permit applications, delegating this authority would eliminate the process of preparing a report and sending the application to Committee and then Council for approval. There will remain circumstances when a report and Committee then Council approval will be required, including the following:

- when the recommendation is that a residential demolition permit be refused;
- when an applicant does not agree to the conditions being imposed; or,
- when a building is designated under the Ontario Heritage Act.

As a note, buildings that are deemed to be unsafe under the Building Code Act are not subject to the Demolition Control By-law.

Staff also recommends that the circumstances under which the Demolition Control Area By-law applies be clarified, with a more comprehensive list included in the By-law.

ALTERNATIVES FOR CONSIDERATION:

Status Quo – Staff can continue to prepare a report for every residential demolition permit application made, with Committee then Council approving the applications prior to demolition occurring. As discussed above, this can create timing problems, especially during the summer months with a limited schedule of meetings. It also requires substantially more City resources than the “delegated authority” alternative.

Delegated Authority – With the delegation of authority, routine applications can be dealt with in an efficient manner with limited delays in issuing the permit. Further, staff time in preparing reports and Committee Consent agendas will be lessened.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: N/A

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Staffing: Eliminating staff reports to Committee and Council will provide efficiencies in staff resources and time for processing applications.

Legal: Section 33 of the Planning Act does not require a Public Meeting to be held.

POLICIES AFFECTING PROPOSAL:

The Planning Act permits the City to enact a By-law that designates a Demolition Control Area to regulate the demolition in whole or part of any residential property. No policy direction is required.

RELEVANT CONSULTATION:

Discussion has been held with Legal Services regarding the implementation of the staff recommendation.

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

Improved customer service with conditions still applicable to ensure neighbourhood stability is protected.

Environmental Well-Being is enhanced. Yes No

Replacement of older building stock with new buildings will often improve the environment.

Economic Well-Being is enhanced. Yes No

The Delegated Authority will allow for a more efficient approval process to issue Demolition Control permits thus allowing for approved new developments to initiate construction quicker.

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

FP:fp
Attach. (1)

Authority: Item , Committee of the Whole
Report (Staff report number)
CM: Date

Bill No.

CITY OF HAMILTON

BY-LAW NO. _____

To Enact a Demolition Control Area By-law and to Repeal and Replace By-law No. 08-226 Entitled “Demolition Control”

WHEREAS section 33 of the Planning Act, R.S.O. 1990, c. P.13, provides that Council of the City of Hamilton may by by-law designate any area within the City of Hamilton as a demolition control area when a property standards by-law under section 15.1 of the Building Code Act, 1992, S.O. 1992, c. 23, is in force in the City of Hamilton;

AND WHEREAS Property Standards By-law No. 03-117 was enacted on May 14, 2003 and is in force in the City of Hamilton;

AND WHEREAS no person shall demolish the whole or any part of any residential property in a demolition control area unless the person has been issued a demolition permit by the Council of the City of Hamilton;

AND WHEREAS under subsections 33(3) and 33(6) of the *Planning Act*, R.S.O. 1990, c. P.13, the Council of the City of Hamilton is the decision-maker in respect of consenting to the demolition of a residential property in an area of demolition control;

AND WHEREAS under sections 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, in accordance with section 23.1 of the *Municipal Act, 2001*, the powers of a municipality under that or any other Act may be delegated to a person or a body subject to the restrictions set in sections 23.2 to 23.5, inclusive, of the *Municipal Act, 2001*;

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

1. In this By-law:

“Chief Building Official” means the City’s Chief Building Official and includes the City’s Deputy Chief Building Officials as directed by the Chief Building Official or in his/her absence;

“City” means the geographical area of the City of Hamilton or the municipal corporation as the context requires;

“Council” means the City’s Council;

“dwelling unit” means any property that is used or designed for use as a domestic establishment in which one or more persons may sleep and prepare and serve meals; and

“residential property” means a building that contains one or more dwelling units, but does not include subordinate or accessory buildings the use of which is incidental to the use of the main building or a building used as a lodging house, residential care facility, retirement home, long term care facility or hotel as defined under the City’s zoning by-laws.

Demolition Control Area

2. All of the lands within the boundaries of the City are designated as a demolition control area.

3. This By-law does not apply when:

(a) the demolition of a part of the residential property does not reduce the number of dwelling units;

(b) the residential property is owned by the City and the demolition is required for the imminent implementation of a City capital works project previously approved by Council, except if the residential property is designated under the Ontario Heritage Act;

(c) the residential property is a mobile home;

(d) the owner of the residential property has entered into a demolition agreement with City;

- (e) the residential property is exempted under any federal or provincial statute or regulation; or
- (f) the residential building has been found to be unsafe under section 15.9 of the Building Code Act, 1992 and an order has been issued under that section.

Delegation of Authority

4. Council delegates to the Chief Building Official power with respect to the issuing of demolition permits for routine applications which was given to Council under subsections 33(3) and 33(6) of the *Planning Act*.
5. For the purposes of section 4, “routine applications” include, but are not limited to, an application to demolish a residential building:
 - in an established neighbourhood when the standard conditions in section 6 would apply;
 - to facilitate a development under an approved site plan or approved draft plan of subdivision;
 - in a zone that does not permit a residential use;
 - when another non-residential use is permitted;
 - to facilitate land assembly for future development;
 - in the Rural Area when abutting lands would not be impacted.
6. A demolition permit issued by the Chief Building Official under section 4 may be subject to the following conditions:
 - (a) that the applicant for the demolition permit has applied for and received a building permit for a replacement building on the property;
 - (b) that the said building permit specifies that if the replacement building is not erected within two years of the demolition of the existing building on the property, the City be paid the sum of \$20,000 which sum:
 - (i) the City Clerk is authorized to enter on the collector’s roll and collect in like manner as municipal taxes; and
 - (ii) is a lien or charge on the property until paid; and
 - (c) that the applicant for the demolition permit has registered on title to the property notice of conditions (a) and (b) in a form satisfactory to the Chief Building Official and the City Solicitor.
7. The delegated power under section 4 does not include the power to:
 - (a) refuse to issue a demolition permit and where the Chief Building Official would refuse to issue a demolition permit, he/she shall so

advise Council which retains all power with respect to issuing or refusing to issue that demolition permit;

- (b) attach conditions as set out in section 6 to a demolition permit with which an owner of residential property is not in agreement and where this is the case, the Chief Building Official shall so advise Council which retains all power with respect to issuing or refusing to issue the demolition permit; or
- (c) issue or refuse to issue a demolition permit for a building designated under the Ontario Heritage Act.

8. The Chief Building Official is authorized to undertake all acts necessary to carry out the delegated power under section 4, including the authority to sign any required documents.

Title, Repeal and Effective Date

- 9. This By-law may be cited as the “Hamilton Demolition Control Area By-law” or the “Demolition Control Area By-law”.
- 10. By-law 08-226 is repealed as of the day on which this By-law comes into force.
- 11. This By-law comes into force on the date of its passing.

PASSED this day of , 200 .

Fred Eisenberger
MAYOR

Kevin C. Christenson
CLERK