

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Building Services Division
Strategic Services – Special Projects Division

Report to: Economic Development and Planning Committee	Submitted by: Tim McCabe General Manager Planning and Economic Development Department
Date: August 13, 2008	Prepared by: Frank Peter (905) 546-2424 Ext. 2781 Al Fletcher (905) 546-2424 Ext. 5802

SUBJECT: City-Wide Demolition Control (City Wide) (PED08188)

RECOMMENDATION:

- (a) That approval be given to **City Initiative CI-08-H** to create a Demolition Control Area, for residential properties, within the boundary limits of the City of Hamilton.
- (b) That the By-law attached as Appendix A to Report PED08188, being a By-law to create a City-Wide Demolition Control Area, be enacted.
- (c) That Council rescind the Council resolution dated July 26, 1994 that stated “appropriate conditions for Demolition Control under Section 33 of The Planning Act be applied to all buildings with a residential component in the Central Area bounded by Victoria Avenue, the Escarpment, Queen Street and the Harbour.”

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

This report reviews the background information on the Demolition Permit Process for residential properties located in the current City of Hamilton. The report recommends establishing the entire urban area of the City of Hamilton as a Demolition Control Area for residential properties. The existing Demolition Control By-laws shall be repealed for the former City of Hamilton, former Town of Dundas and former Town of Ancaster.

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Where a property is designated of heritage significance, a different process is implemented whereby the requirements of the Ontario Heritage Act must be complied with requiring a Heritage Permit prior to a Demolition Permit being issued.

Where a building is deemed unsafe, the Building Code Act overrides the demolition control process without the need for Council approval as it is a matter of public safety.

It is recommended that the Demolition Permit responsibilities relating to the administration, issuance and inspections remain with the Director of Building Services.

BACKGROUND:

Section 33 of The Planning Act states:

When a by-law under section 15.1 of the *Building Code Act, 1992* or a predecessor thereof is in force in a municipality or when a by-law prescribing standards for the maintenance and occupancy of property under any special Act is in force in a municipality, the council of the local municipality may by by-law designate any area within the municipality to which the standards of maintenance and occupancy by-law applies as an area of demolition control and thereafter no person shall demolish the whole or any part of any residential property in the area of demolition control unless the person is the holder of a demolition permit issued by the council under this section.

It is important to note that this process applies to residential properties that contain dwelling units that are used or were designed to be used as such. Therefore even if vacant, unless the use has been changed through re-design, demolition control applies.

What this means in practice is that if there is a Property Standards By-law in force for the municipality, the municipality can pass a by-law which designates all or any part of the City to be a Demolition Control Area. Once the Demolition Control Area has been established, no demolition permits for buildings with a residential component within the Demolition Control Area can be issued without the approval of Council.

Council may issue or refuse to issue the permit and where Council refuses to issue the permit or neglects to make a decision thereon within thirty days, the applicant may appeal to the Ontario Municipal Board and the Board shall either dismiss the same or direct that the demolition permit be issued.

Notwithstanding the foregoing, Council must issue a demolition permit where a building permit has been issued to erect a new building on the site pursuant to Section 33 (6).

Section 33 (7) of The Planning Act gives the Council of a municipality the discretion to impose certain conditions on the issuance of demolition permits within the Demolition Control Area. The conditions that may be imposed are:

- that the applicant for the permit construct and substantially complete the new building by no later than such date as the permit specifies, such date being not less than two years from the day demolition is commenced; and,

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- should the proponent fail to complete the new building within the time specified on the permit, the City Clerk shall be entitled to enter on the collector's roll, to be collected in like manner as municipal taxes, such sum of money as the permit specifies, but not in any case to exceed the sum of \$20,000 for each dwelling unit contained in the residential property and such sum shall, until paid, be a lien or charge upon the land.

The first condition can be imposed without the second condition however the second condition can only be imposed if the first condition is applied. Additionally, Council may also, at its discretion, specify a time period for the reconstruction of more than two years and specify a sum of less than the maximum of \$20,000 as indicated above.

Where the conditions have been imposed and the holder of the demolition permit considers that it is not possible to complete the new building within the time specified in the permit or where the holder of the permit is of the opinion that the construction of the new building has become unfeasible on economic or other grounds, the permit holder may apply to Council for relief from the conditions on which the permit was issued. Council shall consider the application and may grant the same or may extend the time for completion of the new building for such period of time and on such terms and conditions as the council considers appropriate or the council may relieve the person applying from the requirement of constructing the new building.

Where an applicant for a demolition permit is not satisfied as to the conditions on which the demolition permit is proposed to be issued, the applicant may appeal to the Ontario Municipal Board for a variation of the conditions.

Former City of Hamilton:

By-law 74-290 passed December 10, 1974 established the entire former municipality of the City of Hamilton as an area of Demolition Control. City Council passed a resolution on July 26, 1994 regarding Demolition Control and the resolution states that "appropriate conditions for Demolition Control under Section 33 of The Planning Act be applied to all buildings with a residential component in the Central Area bounded by Victoria Avenue, the Escarpment, Queen Street and the Harbour."

As a result of this resolution, staff reports for demolition permits on buildings with a residential component in the Downtown Core Area have consistently included the following recommendations:

"That the Director of Building Services be authorized and directed to issue a demolition permit for the building located at, in accordance with Demolition Control By-Law 74-290 pursuant to the demolition control provisions of Section 33 of The Planning Act, as amended, subject to the following conditions:

- (a) That the applicant has applied for and received a building permit for a replacement building on this property.
- (b) That the said building permit specifies that the replacement building be erected within two years of the demolition of the existing building on this property.

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- (c) That the said building permit for the replacement building specifies if such replacement building is not erected within the said two year time limit, that the City be paid the sum of \$20,000.
- (d) That the applicant be required to register on title to the subject property (prior to issuance of the said demolition permit), notice of these conditions (including the directions to the City Clerk outlined in sub-section (e)) in a form satisfactory to the Director of Building Services and to the City Solicitor; and,
- (e) That if the said replacement building is not erected as required, the City Clerk be authorized to add the said sum, until payment thereof, as a lien or charge upon the property until paid.”

The intent and effect of this resolution was to require a building permit for reconstruction and impose a time limit on such reconstruction. In effect, the Council of the day was saying that as a matter of policy we will impose the discretionary conditions allowed by The Planning Act on all residential demolitions in the Central Area. This policy has been carried on to the present day in the staff report recommendations. Council may choose to waive any or all of these conditions on a case-by-case basis.

Although all of the former City of Hamilton is under Demolition Control, the requirement for reconstruction/imposing of penalties was only recommended in the Downtown Area as a result of the previous Council direction.

Council may however choose to apply these conditions to a building with a residential component that is within any area of Demolition Control and most recently have done so.

Former Town of Dundas:

By-law 3169-80 passed February 4, 1980 established the entire former Town of Dundas as an area of Demolition Control. Furthermore, By-law 3499-84 passed November 5, 1984 adopted a flow chart establishing Demolition Control procedures for residential and non-residential buildings. The Demolition Control procedures illustrated on the flow chart of the By-law are derived from the requirements of Section 33 of The Planning Act as previously outlined in the Background Section of this report.

In effect, the Council of the day in Dundas indicated its intent to apply the discretionary conditions allowed in The Planning Act for residential demolition permits. Therefore, the staff recommendations for re-building and registering conditions on title are the same as for residential demolitions located in the “Central Area” for the former City of Hamilton. As with the Hamilton “Central Area”, Council may choose to waive any or all of these conditions.

Former Town of Ancaster:

By-law 89-35 passed March 13, 1989 established the “Village Core Area” as defined on Schedule “B” of the Ancaster Zoning By-law 87-57, and attached thereto as Schedule “A”

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of the Demolition Control By-law as an area of Demolition Control. Furthermore, the Demolition Control By-law also established certain properties indicated on Schedule "B" to the Demolition Control By-law as properties subject to Demolition Control. Therefore, the staff recommendations for re-building and registering conditions on title are the same as for residential demolitions located in the "Central Area" for the former City of Hamilton. As with the Hamilton "Central Area", Council may choose to waive any or all of these conditions.

Remainder of City of Hamilton:

The areas of the former City of Stoney Creek, former Township of Glanbrook, former Town of Flamborough and the areas outside of the Village Core or other specified properties within the former Town of Ancaster are not subject of Demolition Control. In these areas, should a property owner wish to demolish a residential building, the proponent is required to submit application for a Demolition Permit. Upon receipt of a disconnection of services form, the permit is issued. There is no Council approval required.

Heritage Buildings

Under the Ontario Heritage Act, prior to an issuance of a Demolition Permit for a designated heritage building, the applicant must obtain a Heritage Permit from Council with consideration and advice from the Municipal Heritage Committee, as per the following:

"Demolition or removal of structure

34. (1) No owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal. 2002, c. 18, Sched. F, s. 2 (18); 2005, c. 6, s. 22 (1).

Decision of council

(2) Within 90 days after receipt of an application under subsection (1) or within such longer period as is agreed upon by the owner and the council, the council, after consultation with its municipal heritage committee, if one is established,

- (a) may,
 - (i) consent to the application,
 - (i.1) consent to the application, subject to such terms and conditions as may be specified by the council, or
 - (ii) refuse the application;
 - (b) shall give notice of its decision to the owner and to the Trust; and
 - (c) shall publish its decision in a newspaper having general circulation in the municipality. 2002, c. 18, Sched. F, s. 2 (18); 2005, c. 6, ss. 1, 22 (2).

(3) Repealed: 2005, c. 6, s. 22 (3).

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Deemed consent

(4) If the council fails to notify the owner under clause (2) (b) within the time period mentioned in subsection (2), the council shall be deemed to have consented to the application. 2002, c. 18, Sched. F, s. 2 (18).”

Partial Demolition:

Under Section 33 of the Planning Act, Council may pass a Demolition Control By-law which deals with partial demolition of a residential property. Staff is of the opinion that where demolition is proposed for only part of a residential property which does not reduce the number of residential units on the property, the demolition should not be subject to the Demolition Control process. Experience has been that property owners demolish portions of buildings which are often only small additions, porches or decks. This type of demolition would not change the character of the neighbourhood or reduce the number of dwelling units on the property. As such, Section 1(b) was added to the attached By-law exempting demolition control from partial demolitions.

Administration:

Currently, the Demolition Permit process is administered by the Building Services Division and includes permit issuance and inspections. The Building Services Division sends an inspector to view, photograph and report the type of dwelling and current state of the building. Building Services staff then prepare a report to the Economic Development and Planning Committee and Council for approval. If approval is granted by Council, the Permit can be issued upon receipt of all information (e.g. disconnection of services forms, engineering requirements that may be relevant) and other applicable law (e.g. Niagara Escarpment Commission Development Permit, any Planning Act approval). Inspections are undertaken during the demolition process. Upon the completion of the demolition, including the site being cleared, the inspector signs off on the Permit.

In 2007, there were 175 Residential single family dwelling Demolition Permit applications processed. Of the 175 permits, 75 required Council approval since they were subject to demolition control and the remaining 100 did not require Council approval. Under the new process proposed, all Demolition Permits would require Council approval.

ANALYSIS/RATIONALE:

It is recommended that the entire City of Hamilton be placed under Demolition Control for all residential properties. Currently, there is inconsistency throughout the City as to how Demolition Control is applied with some areas, such as former City of Stoney Creek, former Township of Glanbrook, former Town of Flamborough and large portions of the former Town of Ancaster, not being subject of demolition control. With the areas not being subject of Demolition Control, the City does not have the ability to control demolition or impose any conditions, as set out by The Planning Act.

It is also recommended by staff that the issue of imposing special conditions not be limited to the Central Area of the City of Hamilton and that staff recommend to impose the special conditions, where deemed appropriate, throughout the City of Hamilton.

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These conditions may be applicable in different areas to alleviate issues of demolition creating the “missing tooth” effect in a streetscape, to maintain the character of a neighbourhood or to ensure that the housing units being demolished are replaced. Further there may be instances where the conditions do not need to be applied, for example where a zoning does not require or permit the residential units and permits a variety of additional uses (office, retail, etc.). Imposing conditions for a replacement residential use may unfairly limit the potential redevelopment of the property precluding a variety of permitted uses and proposals for more comprehensive development projects on large parcels of land.

As staff will be required to write a report to Committee and Council for approval of any demolition of a residential property, staff can then recommend where special conditions should be imposed. As in the past, Council may choose to apply any or all of the conditions or to not apply them, as Council deems appropriate.

Currently the Building Services Division administers the Demolition Permit approval process. As the legislation for the issuance of the Demolition Permit is regulated under the Planning Act, the cost of the administration of this approval process can not be included within the Enterprise Model the Building Services Division currently operates. The Enterprise Model is permitted under the Building Code Act and only applies to work being done that is subject to the Building Code Act. Since the demolition process has ties to Building Services functions, such as inspections and construction expertise, it is recommended that the current permit issuance process be maintained. The Building Services Division has established an appropriate fee which will provide for full cost recovery outside of the Enterprise Model.

ALTERNATIVES FOR CONSIDERATION:

Status Quo – Under the existing conditions, Demolition Control will only be required if a residential property is proposed for demolition within the former City of Hamilton, former Town of Dundas and within the Village Core and the specific properties indicated in the Demolition Control By-law in the of the former Town of Ancaster. In this situation, Council will not have any approval authority in the demolition of any residential building outside of the established Demolition Control Areas.

No Demolition Control – Council could choose to not have any demolition control on residential properties which would require the Demolition Control By-laws for former Hamilton, Dundas and Ancaster be repealed. Under this situation, Council approval would not be required and there would be no opportunity to add any special conditions.

City-Wide Demolition Control – Under this situation, as recommended by staff, the entire City would be under Demolition Control and any demolition of a residential property would require Council approval prior to the issuance of a Demolition Permit. With the approval, Council would have the ability to impose special conditions, where appropriate, through the approval by Committee and Council.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: The proposed recommendation would have the Building Services Division continue to administer the Demolition Permit process. As the approval is based on a Planning Act approval, the current Enterprise Model of the Building Services Division could not be used thus requiring approval/permit fees to reflect a cost recovery for the applications.

Staffing: It is anticipated that there will be additional applications received requiring additional staff time to process the approval/permit. It is also anticipated that, at this time, the current Building Services Division staff can accommodate the additional work.

Legal: Legal Services has advised that there is no requirement to hold a public meeting for this by-law.

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**

The recommendations will provide for more control over the demolition and development within existing neighbourhoods and where applicable ensure character is maintained.

Environmental Well-Being is enhanced. **Yes** **No**

Where appropriate, the implementation of special conditions will ensure new buildings are constructed within a 2 year time period thus not leaving a property vacant or not properly cleaned up.

Economic Well-Being is enhanced. **Yes** **No**

While this will be an added process and fee for the proponent of the demolition, where appropriate, special conditions can be applied to ensure that the character of a neighbourhood is maintained which may affect property values. Further, when special conditions are imposed, tax revenue can be generated through the new use of the property versus a parcel of land remaining vacant.

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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

The recommendations provide the opportunity for staff to have additional input on demolition and development on residential properties, where appropriate.

FP:AF:fd
Attach. (1)

Authority: Item, Economic Development
and Planning Committee
Report 08- (PED08188)
CM:

Bill No.

CITY OF HAMILTON

BY-LAW No. _____

Demolition Control

WHEREAS Section 33 of The Planning Act, provides that a municipality may by By-law designate any area within the municipality wherein a By-law prescribing standards of maintenance and occupancy is in force as an area of demolition control;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law 05-200;

AND WHEREAS it was desirable to enact Demolition Control of residential properties for the City;

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

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

1. That for the purpose of this By-law the following shall apply:
 - a. "Residential Property"
 - i. 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; and,
 - ii. for the purpose of this By-law, a residential property shall not include the following uses:

Lodging House
Residential Care Facility
Retirement Home
Long Term Care Facility
Hotel

- b. " 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.
 - c. The demolition of a portion of a building that does not reduce the number of dwelling units within the building shall not be subject to Demolition Control.
- 2. That the area comprising the municipality of the City of Hamilton is hereby designated as an area of demolition control.
 - 3. That the former City of Hamilton By-law 74-290 – "Demolition Control" be repealed.
 - 4. That the former Town of Ancaster By-law 89-35 – "To establish Demolition Control" be repealed.
 - 5. That the former Town of Dundas By-law 3169-80 – "A By-law of the Corporation of the Town of Dundas, being a By-law to establish Demolition Control" and By-law 3499-84 – "A By-law of the Corporation of the Town of Dundas, being a By-law to adopt a flow chart for Demolition Control" be repealed.

PASSED and ENACTED this __ day of _____, 2008.

Fred Eisenberger
Mayor

Kevin C. Christenson
City Clerk

CI-08-H