

Authority: Item X, Planning Committee Report
22-XXX
CM: [date]
Ward: X

Bill No. XXX

**CITY OF HAMILTON
BY-LAW NO. 22-XXX**

A by-law to repeal and replace By-Laws No. 09-208 and 13-185 being the Demolition Control Area By-Law

WHEREAS section 33 of the *Planning Act*, R.S.O. 1990, c. P.13, provides that Council may, by by-law, designate any area within the City 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 and applies to the area within the municipality;

AND WHEREAS Property Standards By-law No. 10-221, as amended, prescribes standards of maintenance and occupancy for properties and is in force in the City;

AND WHEREAS no person shall demolish the whole or any part of any residential property in a demolition control area designated by Council pursuant to section 33 of the *Planning Act*, R.S.O. 1990, c. P .13, unless the person has been issued a demolition permit by Council;

AND WHEREAS under subsections 33(3) and 33(6) of the *Planning Act*, R.S.O. 1990, c. P .13, Council is the decision-maker with respect to 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 23.1 to 23.5, inclusive, of the *Municipal Act*, 2001;

AND WHEREAS Council wishes to: maintain the integrity of residential neighbourhoods; prevent the premature loss of dwelling units and the creation of vacant land; retain existing dwelling units until new uses have been considered; and, prevent the premature loss of municipal assessment;

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 their designate;

"**City**" means the geographical area of the City of Hamilton or the municipal corporation as the context requires;

"Council" means the City's Council;

"Demolition Control Approval" means approval to demolish Residential Property pursuant to this By-Law;

"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;

"Ontario Heritage Act" means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18;

"Planning Act" means the *Planning Act*, R.S.O. 1990, c. P. 13;

"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.

Demolition Control Area

2. All of the lands within the boundaries of the City are designated as a demolition control area.
3. No person shall demolish or otherwise remove the whole or any portion of a Residential Property in the demolition control area unless the person has been issued Demolition Control Approval by the City.
4. 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 implementation of a City capital works project previously approved by Council, except if the Residential Property is designated under the *Ontario Heritage Act* or subject to an agreement, covenant, or easement for the conservation, protection or preservation of property of cultural heritage value or interest;
 - (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;
 - (f) the Residential Property has been found to be unsafe under section 15.9 of the *Building Code Act*, 1992 and an order to demolish has been issued under that section without any option to repair; or,

- (g) an order has been issued under section 15.2 of the *Building Code Act*, 1992 that the Residential Property be demolished without any option to repair.
5. Every applicant seeking Demolition Control Approval shall submit a completed demolition application to the City in the form and with such content as required by the Chief Building Official in their sole discretion. Incomplete applications shall not be accepted by the City and shall not constitute an application for Demolition Control Approval for the purposes of section 33 of the *Planning Act* or this Demolition Control Area By-law.

Delegation of Authority

6. Council delegates to the Chief Building Official its authority to issue Demolition Control Approval pursuant to subsections 33(3) and 33(6) of the *Planning Act* for applications to demolish Residential Property where:
- (a) the erection of a new building is proposed on the site of the Residential Property to be demolished and where the following standard conditions apply:
 - i. that the applicant seeking Demolition Control Approval has applied for and received a building permit for a replacement building on the property;
 - ii. 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 for each Dwelling Unit contained in the Residential Property which sum:
 - 1. the City Clerk is authorized to enter on the collector's roll and collect in like manner as municipal taxes; and
 - 2. is a lien or charge on the property until paid; and
 - iii. that the applicant seeking Demolition Control Approval has registered on title to the property notice of conditions (i) and (ii) in a form satisfactory to the Chief Building Official and the City Solicitor.
 - (b) Final Site Plan Control approval has been granted for redevelopment of the Residential Property to be demolished;
 - (c) Draft Plan of Subdivision approval has been granted for redevelopment of the Residential Property to be demolished, for which the Subdivision Agreement has been registered and the preliminary grading and servicing conditions have been satisfied;
 - (d) demolition of the Residential Property is a condition of an approved Consent to Sever and all other conditions of the approved Consent to Sever have been met; or,

- (e) the Residential Property has been severely damaged by a fire or natural disaster and the demolition has been recommended by a Professional Engineer licensed to practice in Ontario.
7. The delegation of authority set out in this Demolition Control Area By-Law does not include the authority to:
- (a) refuse to issue Demolition Control Approval, and where the Chief Building Official would refuse to issue Demolition Control Approval, they shall so advise Council which retains all power with respect to issuing or refusing to issue Demolition Control Approval;
 - (b) attach conditions to Demolition Control Approval 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 Demolition Control Approval; or,
 - (c) issue or refuse to issue Demolition Control Approval for a Residential Property that is:
 - (i) designated pursuant to Part IV or V of the *Ontario Heritage Act*; or,
 - (ii) subject to an agreement, covenant, or easement for the conservation, protection or preservation of property of cultural heritage value or interest.
8. The Chief Building Official is authorized to undertake all acts necessary to carry out the delegated power under this Demolition Control Area By-Law, including the authority to sign any required documents.

Administration and Enforcement

9. Nothing in this By-Law shall exempt any person from complying with the requirement of any other applicable by-law, or from obtaining any licence, permission, permit, authority or approval required by this or any other by-law of the City or by any other law in force at the time.
10. Every person who demolishes a Residential Property or any portion thereof, without obtaining Demolition Control Approval under this By-law is guilty of an offence under section 33(16) of the *Planning Act* and is liable to a penalty or penalties as set out in section 33(16) of that Act.

Title, Repeal and Effective Date

11. This By-Law may be cited as the "Demolition Control Area By-Law".
12. By-Law No. 09-208 and amending By-Law No. 13-185 are repealed as of the day on which this By-Law comes into force.
13. This By-Law comes into force on the date of its passing.

14. In the event of a conflict between any provision of this By-Law and the *Planning Act*, the *Planning Act* prevails.
15. If a court of competent jurisdiction declares any provision, or any part of a provision, of the By-Law to be invalid, or to be of not force and effect, it is Council's intention in enacting this By-Law, that each and every other provision of this By-Law be applied and enforced in accordance with its terms to the extent possible according to law.

Transition

16. The repeal of By-Laws 09-208 and 13-185 does not:
 - (a) affect the previous operation of those By-Laws;
 - (b) affect a right, privilege, obligation or liability that came into existence under those By-Laws;
 - (c) affect an offence committed under those By-Laws, or any penalty, forfeiture or punishment incurred in connection with the offence; or,
 - (d) affect an investigation, proceeding or remedy in respect of a right, privilege, obligation or liability described in section 16(b), or a penalty, forfeiture or punishment described in section 16(c).
17. An investigation, proceeding or remedy described in section 16(d) may be commenced, continued and enforced as if By-Laws 09-208 and 13-185 had not been repealed or revoked.
18. A penalty, forfeiture or punishment described in section 16(c) may be imposed as if By-Laws 09-208 and 13-185 had not been repealed or revoked.

PASSED this ____ day of _____, 2022.

Fred Eisenberger
Mayor

Andrea Holland
City Clerk