



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	May 31, 2022
SUBJECT/REPORT NO:	Condominium Conversion Policy Review (PED22091) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Melanie Pham (905) 546-2424 Ext. 6685
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Planning Division and Legal Services Division Staff be authorized to consult with stakeholders and the public on:
 - (i) The proposed Official Plan Amendment attached as Appendix “A” to Report PED22091, relating to policies about conversion of rental housing to condominium tenure and demolition of rental housing;
 - (ii) The proposed *Municipal Act* By-law attached as “Appendix “B” to Report PED22091, to regulate the demolition and conversion of rental housing in the City of Hamilton;
- (b) That Planning Division and Legal Services Staff be directed to report back to Planning Committee with final recommendations on the Official Plan Amendment and the Municipal Act By-law, with any modifications based on the results of the stakeholder and public consultation;
- (c) That Item 18H be removed from the Planning Committee Outstanding Business List.

EXECUTIVE SUMMARY

This Report addresses item 18H on the City's Outstanding Business List. In June 2018, a motion at Planning Committee directed staff to review existing criteria for conversions of primary rental housing from rental tenure to condominium within the City's Official Plan, and report back with recommendations on how to strengthen the policies and provide protection for rental housing.

In any community, having an appropriate mix and range of housing, in terms of form, function, tenure, and affordability, is critically important to the health and well-being of residents. Rental housing is a key part of the housing continuum outlined in the City's Official Plan, particularly primary rental housing. Primary rental housing is defined in the City's Official Plan as "buildings or groups of buildings containing six or more dwelling units, owned by a single owner or agency, and built with the intention of being permanently rented" and is an important part of the City's housing supply as a significant contributor to affordable housing options in the City. In the past several decades, very little new primary rental housing has been built, and some existing purpose-built rental housing stock has either been converted to condominium tenure or lost to demolition.

The practice of renovictions has also been raised as a serious issue in the context of impacts to affordable rental housing units. This issue is acknowledged but is outside of the scope of this report, which focuses on preventing negative impacts to Hamilton's existing rental housing stock as a result of conversions to condominium tenure or the demolition of buildings containing six or more rental units.

As part of the preparation of this report, staff undertook a comparison review of policies and practices in other municipalities that relate to protecting rental housing stock and criteria for condominium conversions. Based on this review, staff propose to make adjustments to the Urban Hamilton Official Plan (UHOP) policies and use a tool under the *Municipal Act* which enables municipalities to pass by-laws to regulate the demolition and conversion of rental housing units. The implementation of a *Municipal Act* By-law to regulate conversions or demolitions of rental units has been identified as a key feature which can strengthen the City's strategy to protect existing rental housing, particularly affordable rental housing.

Staff are proposing that public and stakeholder consultation take place to collect input on proposed changes to the framework surrounding conversions to condominium tenure and demolitions. The proposed framework will be comprised of revised Official Plan Policies, attached as Appendix "A" to Report PED22091 and a proposed By-law under the *Municipal Act* to regulate requested conversions or demolitions of rental housing, attached as Appendix "B" to Report PED22091.

The proposed amendment and *Municipal Act* by-law support the goals of the City's Housing and Homelessness Action Plan and the UHOP by helping to ensure that primary rental housing is adequately protected.

Alternatives for Consideration – See Page 19

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Recommended consultation will have minimal budget implications, based on costs for organizing consultation events and/or preparing materials, and notification measures. Consultation costs would be paid for through existing funds in the Community Planning Studies Capital Account No. 8120955900.

If a By-law which regulates demolitions and conversions of rental housing were to be enacted, a reserve fund would need to be established to collect fines and cash-in-lieu payments for replacement units. Fees would also need to be established in the *Municipal Act* By-law to cover the cost of processing permits for demolitions and conversions of rental housing. Fees would be based on a cost-recovery model for the staff resources needed to process the permit, similar to fees for *Planning Act* Applications. Implementation details would be determined following the consultations in Recommendation (a) to Report PED22091.

Staffing: There are no staffing implication with this Report. Staff will be reporting back on the results of the consultation at which staff will report on any staff recommendations relating to the proposed changes in regulatory framework relating to condominium conversions and/or the demolition of rental units.

Legal: Legal staff prepared a draft By-law under the *Municipal Act* to regulate requested conversions or demolitions of rental housing, attached as Appendix “B” to Report PED22091. As stated in Recommendation (b), Legal staff will undertake revisions to the draft by-law in response to feedback received through consultation.

HISTORICAL BACKGROUND

2013: The UHOP was approved by the Ontario Municipal Board (OMB) and became the new official plan for the City, replacing the Official Plans for the former Municipalities. Consistent housing policies, including criteria for conversions to condominium were established for the entire urban area. Policies restricting demolitions of rental housing were also established.

- 2016: *Bill 7, Promoting Affordable Housing Act* received royal assent. The legislation is aimed at increasing access to affordable housing by giving municipalities an option to implement inclusionary zoning that requires affordable housing to be included in residential developments and making secondary suites development less costly and strengthening tenant rights by preventing unnecessary evictions. The enactment of this legislation was an acknowledgement by the province that more options of creating and protecting affordable housing need to be considered beyond growth and planning.
- 2018: Council approves a new Downtown Hamilton Secondary Plan and Zoning By-law which contains policies requiring the replacement of rental units on-site where lands are redeveloped. A holding provision is applied to various properties through the new Zoning, to allow for implementation of this requirement.
- 2018: Provincial government releases “A Plan for the People: Ontario Economic Outlook and Fiscal Review”. This document identifies that the Province will begin rolling out a Housing Supply Action Plan in 2019, aimed at increasing housing supply in Ontario. New legislation exempts all new rental units that are occupied for the first time for residential purposes after November 15, 2018 from rent control.
- 2018: In response to the increase in need for affordable housing units, Housing Services Division commences five-year review of Housing and Homelessness Action Plan.
- 2018: Planning Committee directs staff to review the existing criteria for condominium conversions in the UHOP and report back with recommendations on how to strengthen them.
- 2019: Province closes public consultations for the Housing Supply Action Plan.
- 2019: *Bill 108, More Homes, More Choice Act* receives royal assent. The emphasis of this Act is on increasing supply of affordable housing units by making it easier to create additional residential units (Secondary Dwelling Units), increasing certainty and predictability in the planning system and helping to build housing near transit, including affordable housing.
- 2020: Council endorses a five-year update to Housing and Homelessness Action Plan with a stretch target of creating at least 350 affordable housing units annually to address the community need.

2021: Council approves By-Law Nos. 21-071 to 21-077 to harmonize and permit secondary dwelling units in the City of Hamilton.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Planning Act

The *Planning Act* (the Act) requires municipalities to have regard for matters of Provincial interest in their decisions. Among the Provincial interests listed in the Act is “the adequate provision of a full range of housing, including affordable housing.” The proposed actions outlined in this report support the Provincial interest of providing an appropriate range of housing to support all needs, including rental needs.

Provincial Policy Statement (2020)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS states that healthy, liveable and safe communities are sustained by a number of factors, including “*accommodating an appropriate affordable and market-based range and mix of residential types (1.1.1b)*”. Planning authorities are directed to permit and facilitate “*all housing options required to meet the social, health, economic and well-being requirements of current and future residents, and all types of residential intensification (1.4.3b)*”.

The proposed actions outlined in this report aim to maintain housing types needed to meet the needs of residents, particularly the maintenance of appropriate rental housing.

Growth Plan for the Greater Golden Horseshoe (2020)

The Growth Plan for the Greater Golden Horseshoe (the Growth Plan) builds upon the principles within the PPS and contains policies for municipalities about directing growth and achieving complete communities in the Greater Golden Horseshoe area. One of the guiding principles listed in the Growth Plan is to “*support a range and mix of housing options, including additional residential units and affordable housing, to serve all sizes, incomes, and ages of households (1.2.1)*”. The plan outlines current issues of housing affordability in many urban areas, due to growth and lack of housing supply, and looks to address this challenge through planning for a range and mix of housing options.

Policies 2.2.1.4c) and 2.2.6.1a) also speak about achieving complete communities by providing a diverse range and mix of housing options, including additional residential units and affordable housing, accommodating people at all stages of life, and meeting the needs of all household sizes and incomes. Municipalities are directed to identify mechanisms, including land use planning and financial tools, to implement the housing

policies of the Growth Plan (2.2.6.1b)). This includes implementation through official plan policies and zoning by-laws (2.2.6.1e)).

The actions outlined in this report comply with the policies of the Growth Plan.

Urban Hamilton Official Plan (UHOP)

The UHOP stresses the importance of maintaining a balance of primary rental and ownership housing stock. Rental housing stock is an important component of affordable housing. However, it is recognized that conversion of rental units to condominium ownership may be appropriate in certain circumstances, and can support affordable home ownership. It is also recognized that demolition can be appropriate in some circumstances, because redevelopment can assist in neighbourhood revitalization, replacement of aging housing stock, and residential intensification goals. The following policies detail the UHOP intent and requirements for a conversion from rental to condominium ownership, and for demolitions of rental units.

To protect the adequate provision of a full range of housing, the Official Plan contains limitations on when conversions of rental buildings or groups of buildings comprised of six or more units to condominium are permitted. At least one of three general criteria must be met, as outlined below:

1. All of the following four criteria are met:
 - “i) The rental vacancy rate by dwelling unit and structure type for the City and the respective local housing market zone, as identified on Schedule G – Local Housing Market Zones and based on Canada Mortgage and Housing Corporation (CMHC) data, has been at or above 2.0% for the preceding twenty-four months;
 - ii) The proposed conversion shall not reduce the rental vacancy rate by dwelling unit type (i.e. number of bedrooms) and structure type (i.e. townhouse, multiple dwelling) to below 2.0% for the City and the respective local housing market zone;
 - iii) The existing market rent levels for the units proposed to be converted are not significantly (approximately 10%) below the average market rent levels for the City and the respective local housing market zone for rental units of a similar dwelling unit and structure type and size; and,
 - iv) For vacant rental units, the last market rent levels charged prior to vacancy for the units proposed to be converted were not significantly (approximately 10%) below the average market rent levels at the time for the City and the

respective local housing market zone for rental units of a similar dwelling unit and structure type and size;" or,

2. At least 75% of the current tenants support the conversion to condominium, as demonstrated to the satisfaction of the City; or,
3. The subject building or group of buildings is a *protected heritage property* on the date of Application (Policy B.3.2.5.1).

There is also a permission for the City to allow a conversion where repair or retrofitting is immediately required to meet health and safety standards and the income received from rent and available from government funding programs is not capable of supporting the work required (Policy B.3.2.5.3).

The UHOP also provides direction regarding demolition and redevelopment affecting rental units, as this also can impact rental housing options for residents in the City. Demolition of six or more units is only permitted where the building is determined to be structurally unsound or where the same four criteria listed in (1) above for condominium conversions are met (Policies B.3.2.5.6 and B.3.2.5.7).

Rural Hamilton Official Plan

The Rural Hamilton Official Plan does not contain detailed policies about conversions or demolitions of rental housing.

Downtown Hamilton Secondary Plan

The Downtown Hamilton Secondary Plan contains specific direction regarding demolition and redevelopment affecting rental units, only permitting demolition when rental housing units are replaced on-site. Developers are also required to provide an acceptable tenant relocation and assistance plan, to address tenant displacement issues (Policy B.6.1.4.11, Volume 2).

Downtown Hamilton Zoning By-law

The Downtown Hamilton Zoning provisions apply a holding provision to a number of sites in the Downtown which contain primary rental units. The holding provision prohibits any new development above six storeys unless the owner demonstrates how existing rental housing will be replaced and enters into an agreement with the City to provide the replacement units. The six storey restriction applies where three or more rental units would be removed.

Municipal Act, 2001

Section 99.1 of the *Municipal Act*, 2001, permits a local municipality to regulate the demolition or conversion of residential rental properties. The permissions include the power to pass a by-law to prohibit demolitions or conversions without a permit, and to impose conditions as a requirement of obtaining a permit. Conditions may be imposed requiring an owner to enter into an agreement with the municipality, which may be registered on title to the land to which it applies. These permissions are only applicable where there are six or more rental housing units affected.

RELEVANT CONSULTATION

Internal Consultations

Housing Services Division was consulted on the review of the draft Official Plan Amendment and Municipal Act By-law and the preparation of Report PED22091 and their comments have been incorporated.

Legal Services drafted the *Municipal Act* By-law contained in Appendix “B” attached to Report PED22091 and have provided inputs on the proposed actions and draft Official Plan Amendment contained in this report.

Municipal Law Enforcement (MLE) was engaged on the potential enforcement resources that may be needed if the by-laws were to be enacted. It is not anticipated that additional staff will be needed to track Applications and monitor compliance, since the number of anticipated permit Applications is very low. However operationally, a dedicated person may need to be assigned to ensuring compliance on these Applications.

Public and Stakeholder Consultation

As provided in Recommendation (a) of Report PED22091, it is proposed that a public consultation process will be initiated upon approval of this report at Planning Committee. In addition to legislated notice and public meeting requirements for the proposed Official Plan Amendment, Staff recommend that online public engagement take place, and that potential stakeholders be provided a direct invitation to comment. In person engagement may be considered if conditions exist to allow for in-person consultation.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

Housing Need

Hamilton has a complex and dynamic rental market, with an estimated 68,465 rental households (2016 Census results). The 2016 Census highlighted that of the total 211,600 households in the City (rental and ownership combined), over 30,765 are in core housing need. A household is in core housing need if its housing does not meet one or more standards for housing affordability, adequacy (repair) or suitability (crowding) and if it would have to spend 30% or more of its before-tax income to pay the median rent (including utilities) of appropriately sized alternative local market housing.

Data from the Housing Services Division indicates that over the past ten years, the number of households in need of subsidized housing units has increased by 32%, despite the rate of growth remaining steady between 2011 and 2015. In 2020 alone, only 662 households of the 6,704 households on the Access to Housing (ATH) wait list were housed through the existing 14,000 social housing units in the City.

The housing needs assessment completed during the five-year review of the Housing and Homelessness Action Plan indicated that Hamilton will need an additional 77,800 housing units to accommodate local population growth and housing needs through 2041. The household forecasts in the City's Growth Related Integrated Development Strategy (GRIDS 2) and Municipal Comprehensive Review (MCR) further indicate that between 2021 and 2051, the City will grow by approximately 110,300 additional households. The housing needs assessment concluded that the development of affordable rental housing in the City has not kept pace with demand over the past five years (2015-2020). CMHC's data indicate that over the past ten years only 1,552 primary rental dwelling units were constructed.

Staff believe that the increasing demand for affordable housing requires innovative approaches to not only increase the supply of units but importantly, to also ensure that existing affordable rental units are protected. Accordingly, recommendations (a) and (b) are being brought forward to assist with the preservation of affordable units.

Vacancy Rates

Average market rents have seen a steady increase year over year with no sign of reversing. In 2020, the average market rent (all unit types included) was \$1,118 compared to \$725 in 2010. CMHC data show that overall vacancy rates for primary rental housing were at 3.9% as of October 2020. While a rate above 3.0% is considered to be healthy, the rental market conditions for the most affordable units are much tighter, with vacancy rates fluctuating between 0.5% and 1.0% over the last ten years. This variation in rents for the most affordable units is one of the reasons why

restrictive provisions in the City's Official Plan policies are needed to maintain the remaining limited supply of affordable units.

Condominium Conversion Data

The City's Official Plan recognizes that there are cases in which a conversion from rental units to condominium ownership can meet the City's goal of providing an appropriate range and mix of housing. For example, rental units converted to condominium can sometimes provide an affordable option for home ownership, as converted units typically cost less than newly built units. It is recognized that there needs to be a balance of different types of tenure, and that conversions should not negatively impact the availability of an appropriate range of rental housing options for residents. As such, the City's Official Plan sets out certain criteria which must be met for an Application to convert to condominium ownership.

Over the last 12 years, there have been 14 Applications for condominium conversions submitted to the City. All 14 Applications have been draft approved as the proposals met the tests in the Urban Hamilton Official Plan. Nine of these have completed the process of registering the Condominium Corporation. The 14 Applications represent a total of 1,054 dwelling units. Between 2005 and 2009, prior to the City's current UHOP policies coming into effect, an additional 22 Applications were approved, totalling 1401 units.

In general, many of these units remain as rental units in the short to medium term. Building owners may choose to continue to operate as a rental building since existing tenants have the right to remain in their units, or if the units are sold and become vacant, buyers can choose to rent them out again on the secondary rental market. However, due to current lack of municipal restrictions to maintain tenure as rental, tenure can be lost in the medium to long term if the tenant vacates the unit. It is against this backdrop that actions are being considered which could assist with implementing Official Plan policy and enable the Application of conditions to mitigate potential adverse impacts to tenants.

Why do property owners consider conversion?

There are several reasons why a landlord may consider it advantageous to change their units from rental units to condominium tenure including:

- Conversion can increase the overall value of the property based on the market value of individual units;
- By increasing the value of the property, conversion can increase flexibility in regard to both sales and financing;

- The increase in equity as a result of conversion can provide the financial capability to undertake needed repairs. The majority of purpose built rental buildings are over 30 years old, and aging buildings can require more costly repairs; and,
- Conversions change the property tax class of the building from Multi-Residential to Residential, as the units are assessed as individual dwelling units. The 2021 Multi-Residential tax rate was between 2.47% and 2.73%, whereas the Residential rate was between 1.1% and 1.21%. Historically, this may result in a cost savings for the landowner, depending on the implications of the assessed increase in building value.

Demolition of Rental Housing

Staff reviewed demolition permits affecting multiple dwellings with four or more dwelling units between 2005 and 2021, to assess how many rental units may have been demolished as a result of other development proposals. Demolitions involving CityHousing Hamilton (CHH) developments were excluded from this review. In total, eight demolitions occurred, removing 80 rental units. Two of these were located in the downtown. Two redevelopments included rental units, for a total of 129 rental units, which has offset the number of units lost to demolition. The 123-unit redevelopment at 260 King Street East in downtown (2006) accounts for the majority of the new units.

The Downtown Hamilton Secondary Plan requires that any rental units that are demolished as part of a development proposal must be equivalently replaced on the site. Although there have not been a large number of rental units in the City demolished historically, with the focus of current planning policy on intensifying within existing urban areas, redevelopment pressures have been increasing. Particularly, the potential net loss of affordable rental housing is becoming a growing concern in strategic intensification areas such as downtown or along the City's rapid transit corridor.

Current Official Plan policies provide some protection against the demolition of rental housing, particularly affordable units. However, there are additional policy approaches which could also be appropriate, such as allowing for the creation of replacement units at similar rents where existing units are to be demolished. This additional policy would be beneficial to allow more flexibility for intensification projects. Regulating demolitions through other available tools such as a *Municipal Act* By-law would provide a suitable mechanism to implement Official Plan policy through a permit process where conditions can be applied to ensure the replacement units are created and to mitigate impacts to affected tenants.

Rental Housing Protection Approaches

A broad review of rental protection policies in the Official Plans for 21 Ontario municipalities was completed to identify similarities, differences, trends and potential

best practices. Comparison charts reviewing conversion and demolition policies are attached as Appendices “C” and “D” to Report PED22091. The review found that all municipalities have some restrictions on the conversion of rental housing units to condominium ownership. Many municipalities also have policies addressing demolitions of rental housing. However, the extent of these restrictions differs.

It is necessary to be cautious with policies to preserve existing housing stock, since redevelopment can help meet other planning goals such as intensification, addressing maintenance issues, and rejuvenation of neighbourhoods. The goal is for the restrictions and permissions to be balanced to prevent the loss of too many rental units and to protect affordable units, but not be so restrictive as to deter all redevelopment of housing units. The goal is not to prevent conversions or demolitions in all circumstances, but to establish appropriate limitations to manage change, and to limit negative financial consequences for households, including low-income and marginalized residents who rent.

Staff notes that another issue, termed “renovictions” has also been identified as an issue impacting affordable housing. This term refers to a landlord evicting tenants from a rented unit for renovations, and subsequently charging greatly increased rental rates. Although staff acknowledge that this issue has been raised, this practice is outside of the scope of this report, which focuses on preventing the loss of units from Hamilton’s rental housing stock.

The “renoviction” concerns that tenants have raised have been acknowledged by the Province. On July 21, 2020, the Provincial government passed Bill 184, the “Protecting Tenants and Strengthening Community Housing Act”. The legislative changes made by the Act are aimed at preventing unlawful evictions, including evictions by landlords where landlords renovate and try to increase rental rates. Mandatory one month rent compensation for tenants evicted for repairs or renovations, up to twelve months rent compensation to tenants for “bad faith” evictions, and increased maximum fines for offences were implemented through the Act. In 2021, the City of Hamilton also approved an expansion to the Tenant Defence Fund Pilot Program to provide support to tenants who believe a landlord gave an eviction notice in bad faith and wish to appeal to the Landlord and Tenant Board (LTB).

Comparison Review of Policies for Conversions to Condominium Tenure

The most common criteria used by municipalities for assessing whether a proposed conversion to condominium tenure is appropriate is based on vacancy rates. All municipalities surveyed referenced vacancy rates as a measure for assessing conversion proposals. Fifteen municipalities required a vacancy rate of 3% as a minimum threshold before conversions to condominium tenure can be considered. Sudbury and Barrie required a minimum 3% vacancy rate City-wide, and a minimum of

2% for the type of unit being converted. Guelph has a minimum vacancy rate of 1.5%, but other restrictions on conversions when the rate was between 1.5% and 3%. Brampton requires a minimum 2% vacancy rate. London and Mississauga are the only municipalities surveyed that do not have a specific vacancy rate threshold in Official Plan policy. However, Mississauga has vacancy rates specified in a separate *Municipal Act* By-law which regulates conversions and demolitions of residential rental housing. Many of the vacancy rate policies also state that vacancy rate requirements must be met for a specific length of time, which varies from one year (Mississauga) to four years (Toronto), before a conversion proposal can be considered. Typically, the conversion policies apply only to buildings with six or more units. Other policy approaches used by municipalities include:

- Requiring existing rents to be above average or mid-range market rents, or not more than ten percent below average market rents;
- Requiring a proposal to demonstrate that it will not adversely affect the supply of affordable rental housing;
- Requiring a proposal to demonstrate that the conversion will create affordable home ownership units, limiting conversions to no more than 5% of the existing rental stock over a period of two years;
- Considering the condition of the site, including matters such as public and private infrastructure outdoor areas parking;
- Considering whether a proposal complies with zoning, property standards, urban design guidelines, Crime Prevention through Environmental Design (CPTED), the Fire Code, and safety and security design elements; and,
- Policies to ensure that tenants have the right to continue to lease their units and the right of first refusal for purchasing, in accordance with the *Residential Tenancies Act*.

A few municipalities also have policies which allow conversions where they are needed for immediate health and safety issues to be rectified, or where a building is designated under the *Ontario Heritage Act* and conversion is needed to maintain the viability of the building. Specific building assessment reports (structural, mechanical, electrical, etc) and/or financial statements are required if a conversion is proposed under these circumstances.

Some municipalities like Sudbury and Mississauga allow for consideration of conversions that don't meet the vacancy rate or market rent level criteria if replacement affordable units are provided at a one to one ratio for a specified period of time, or if a financial contribution is made to an affordable housing fund for each affordable unit that is being lost, which can provide for some additional flexibility when considering the merits of each individual Application.

Hamilton's existing policies similarly refer to vacancy rates and rent levels as measures for assessing proposals. Hamilton uses a 2% vacancy rate threshold for two years, and specifies that the vacancy rates must be reviewed based on dwelling unit and structure type, and by local housing market zone. Existing market rents of units cannot be more than 10% below average market rents.

Hamilton also has an additional criterion which allows conversions where at least 75% of tenants are in support. The goal of this policy was to allow conversions where the majority of tenants wished to purchase their unit. Three Applications have been approved using this criterion since it was enacted. Although the intent of the policy is to allow for affordable homeownership which can result in positive outcomes for existing tenants, it is difficult to document support and ensure that tenants have been provided with fulsome information with which to make their decision and have not been pressured to indicate positive support (i.e. through financial incentives or other means). As such, there is potential for misuse of this policy to effectively provide a mechanism for landlords to by-pass the intent and protections of the other policies. No other municipality surveyed had a similar criterion.

Comparison Review of Demolition Policies

Not all municipalities have detailed policies to address demolition in their official plans. In Hamilton, and likely in many other municipalities in southern Ontario (with some exceptions, such as Toronto), there are not many cases of large buildings with six or more residential units being demolished for new development. Most infill development occurs on vacant lands or involves the redevelopment of sites which are used for land uses such as commercial or institutional, or which have less than six rental units.

There have been several examples in Hamilton of larger units within an existing rental building being converted to smaller units, which is a concern from the viewpoint of providing sufficient amounts of rental housing for larger households. This is not a pure demolition, but it is a removal of units of a specific size and type from the rental housing market, which could also have negative effects on the ability of certain households to find adequately sized housing. These cases may require variances at the Committee of Adjustment, and public comment submissions for these Applications have raised concerns about the loss of the larger family sized units. For example, an Application at 192 Hughson Street North and 191 John Street North in 2017 (commonly known as the Greenwin apartments) proposed to eliminate 60 three-bedroom units and convert the space to one bedroom units. In that case, an agreement was ultimately reached between the Beasley Neighbourhood Association and the Applicant to maintain a minimum number of two and three bedroom units on the site.

The following policy approaches relating to protecting rental housing from demolition have been noted in various municipal Official Plans:

- Policies allowing a municipality to enact a demolition control by-law as a means of maintaining the supply of rental housing;
- Prohibiting the demolition of rental housing if it may adversely affect the supply of affordable housing;
- Prohibiting the demolition of rental housing unless certain criteria are met, such as minimum vacancy rates (i.e. 3%) or minimum rental rates for units (i.e. existing rents must be above average market rents);
- Encouraging or requiring replacement units to be built where rental housing will be demolished;
- Controlling rents for replacement units for a set number of years to ensure they remain affordable;
- Requiring relocation plans for tenants needing to move due to a demolition; and,
- Requiring tenant assistance to lessen the hardship for tenants being displaced.

Where Official Plans had policies relating to the demolition of rental housing, in many cases the policies also applied to buildings with six or more units.

Other Tools

Section 99.1 of the *Municipal Act* allows municipalities to pass a by-law to regulate the demolition and conversion of residential rental properties containing six or more units. The additional statutory powers available under the *Act* provide several key benefits. First, it can be used to regulate Applications to demolish rental housing where the City cannot apply its UHOP policies. For example, where a proposal complies with “as of right” zoning, developments can apply for building and demolition permits without needing to satisfy the City’s rental housing policies. Secondly, the demolition control provisions in Section 33 of the *Planning Act, 1990*, require that demolition permits must be approved if a building permit has been issued, whereas a by-law under the section 99.1 of the *Municipal Act, 2001*, would permit the City to refuse an Application to demolish rental housing, even if a building permit has been issued. Third, a by-law could also regulate situations where a building is being renovated or altered to remove units or change the size or mix of units instead of being demolished. Lastly, there is no ability to appeal Council decisions made under the by-law to the Ontario Land Tribunal (OLT). The By-law itself may only be challenged for illegality or bad faith within a year of passing, by an Application to Superior Court.

The municipality of Mississauga has used this tool to control the demolition and conversion of rental units, passing a by-law in 2018, which came into effect on June 1, 2019. The City of Greater Sudbury also includes reference to the use of this tool in their Official Plan policies. The City of Toronto also implemented a process in 2007 that is

substantially the same, under the authority of the *City of Toronto Act*. These processes provide greater control over conversions and demolitions and establish a mechanism for conditions to be applied such as for providing tenant support or requiring replacement units.

Recommended Changes

The City of Hamilton already has numerous policies in place for protecting rental housing. However, staff have identified some measures that could be taken to strengthen our approach to protecting existing rental housing stock:

1. Simplify the Official Plan criteria that need to be met when conversions or demolitions of rental housing are proposed, by removing some of the detailed text about specific vacancy rates and market rent levels. Detailed numbers and requirements would be relocated within a *Municipal Act* By-law instead, which cannot be appealed to the OLT. Official Plan changes should be held in abeyance until a by-law under the *Municipal Act* comes into effect;
2. Add a requirement that the City-wide vacancy rate must be above three percent for the previous consecutive 24 month period, in addition to a vacancy rate of 2% for the unit type and local housing market zone;
3. Eliminate the concurrence criteria in the Official Plan that allows conversions if 75% of tenants are in support, as this is not based on an evaluation of actual rental housing needs and the state of the rental housing market;
4. Add a third criteria regarding demolitions of rental housing in the City, permitting demolitions which don't meet other established criteria if the landowner demonstrates that the rental housing units will be replaced by units of the same type (i.e. with the same number of bedrooms) either on-site, off-site in a comparable location within the same local housing market zone, or through a cash-in-lieu payment. An acceptable tenant relocation and assistance plan would be required in addition to replacement. This would provide an option that allows intensification projects to take place, meeting Provincial and City policy goals for intensification, while still protecting rental housing stock and tenants; and,
5. Enact a by-law under the authority of the *Municipal Act, 2001*, to regulate all conversions and demolitions of six or more rental units. This would be a permit process which augments the current condominium conversion Application process, and also regulates demolitions. Detailed criteria for vacancy rate levels and market rent levels would be established in the by-law to ensure that proposed conversions or demolitions do not adversely impact the City's current stock of affordable rental units.

The by-law would also create a straightforward and consistent implementation process for the policies of the new Downtown Hamilton Secondary Plan that relate to requiring a tenant relocation plan, building replacement units, and offering replacement units to previous tenants at similar rents. If unit replacements are proposed elsewhere in the City, the by-law would also regulate these situations. In addition, the by-law would also apply conversion and demolition criteria to the West Harbour Secondary Plan area, which is subject to non-decision 113 and is not currently part of the City's UHOP. It is staff's opinion that this would provide an appropriate mechanism to regulate both conversions and demolitions in a comprehensive manner City-wide and ensure compliance with the intent of the City's UHOP policies. This tool will also help to ensure that tenants are protected and given appropriate assistance, as tenant assistance matters can be addressed through specific conditions and legal agreements as part of the permit issuing process.

These recommendations align with the first action in the Housing and Homelessness Action Plan to "modernize rules and regulations to minimize the number of private market affordable rental housing units lost to condominium conversions, demolitions, and other redevelopment initiatives". A draft UHOP Amendment and draft *Municipal Act* by-law which would implement these changes are included as Appendices "A" and "B" attached to Report PED22091.

Potential Permit Process for *Municipal Act* By-law

There would be four key steps to the permit process:

1. Formal Consultation

It is anticipated that all preliminary consultation related to this process would be integrated with the Planning Division's existing formal consultation process. Staff will be required to identify all proposals that require permits when reviewing formal consultation Applications and when providing information on condominium conversion Application requirements. A screening form can be provided to proponents to help them confirm if their proposal would require a permit. The main focus of the formal consultation meeting would be for Housing Services Division staff and Planning staff to discuss Application requirements with the proponent and review possible tenant displacement issues related to a proposal. Certain proposals may be exempted from the formal consultation process, depending on the nature of the proposal, and would receive only a written confirmation of submission requirements.

2. Application Submission

The submission requirements would include an Application form, copies of relevant plans or drawings, a record of notice to tenants about the Application, and an Application fee.

3. Application Review

The Development Planning Section would process the Application, and Housing staff would review and comment (similar to current process for condominium conversions). A Recommendation Report would be prepared. Approval can be delegated to the Chief Planner for non-complex Applications, or, where an Application is complex or there are related Planning Applications requiring a public meeting; the permit would be considered by Planning Committee.

4. Permit Issuance

If a proposal meets the requirements for conversion or demolition contained in the *Municipal Act* By-law, a permit will be issued. A permit may be issued with conditions or without conditions. Conditions may include but are not limited to: an agreement to construct replacement units on site and offer them to displaced tenants at similar rents, creation of a satisfactory tenant relocation and assistance plan, compulsory future exchange of rental information (for tracking purposes), and providing notification to tenants.

Other *Municipal Act* By-law Considerations

Transition Period:

A transition period between the By-law's approval and the date that it comes into force and effect will need to be included in the by-law. The transition period will provide time for standard legal agreements to be developed (i.e. for rental replacement requirements), and to allow for staff training and public communication of the changes. It can also allow for Applications that are in process to be completed prior to the new rules coming into effect. Currently, there are no active condominium conversion Applications in progress.

Revocation powers:

The By-law must also include powers for a permit to be revoked if approval was given based on mistaken, false or incorrect information, or if the conditions of a permit are not complied with. As a deterrent, fines would be levied where an Applicant contravenes the terms of a permit. A housing reserve fund would need to be established which

would hold any fines collected, to be used to reinvest in affordable housing initiatives. Cash-in-lieu for replacement units could also be directed to the same reserve fund.

Financial/Staffing Impacts:

An average of 1.4 Applications for condominium conversions have been received annually over the past 10 years. Only four development projects in the last ten years have involved the demolition of six or more rental units. Based on these historical numbers, it is estimated that the total number of annual permit Applications would be approximately 0 to 5 Applications annually, however the number of Applications could exceed this at times depending on vacancy rates and increases in intensification projects in the City. Due to the low number of Applications expected, it is not anticipated that additional staffing would be needed to support this process. Staff review costs would be captured by a permit Application fee. Time spent on Applications would be tracked, similar to other planning Applications, and fees adjusted accordingly.

The current fee for Formal Consultations is \$1,260. The same fee would be applicable to formal consultations for conversion and demolition permits, if required. Fees can be credited towards the cost of a future Application.

A fee structure for the permits has not yet been determined. Different fee categories could be created for routine and complex Applications to reflect the complexity of the work involved. For example, demolitions which require replacement units to be built would require the preparation of legal agreements and would be significantly more complex than a permit issuance with no conditions. The current fee for a condominium conversion Application is \$27,450 and it is anticipated that the fee would be similar, subject to a detailed costing exercise being completed. Some of the Application fees should be directed to the Housing Services Division for cost recovery of staff time needed to review Applications. This would require an amendment to the Fees and Charges By-law.

ALTERNATIVES FOR CONSIDERATION

1. The Committee may choose not to pursue any changes to the City's current Official Plan policies and or the creation of a By-law and permit process under the *Municipal Act*. If no changes are made, the City would continue to rely on its ability under the *Planning Act* and the *Condominium Act* to apply its existing Official Plan policies. However, this option would make it more difficult for staff to control the continued loss of affordable housing units in the primary rental market.
2. The Committee may consider making Official Plan policy changes only. This could provide some strengthening for rental housing protection. However, it does not

provide all the benefits that a *Municipal Act* by-law would. Also, any Official Plan policy changes are appealable to the OLT.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED22091 – Draft Urban Hamilton Official Plan Amendment

Appendix “B” to Report PED22091 – Draft Rental Housing Protection By-law

Appendix “C” to Report PED22091 – Summary of Condominium Conversion Policy
Review

Appendix “D” to Report PED22091 – Summary of Rental Demolition Policy Review

MP:sd