




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	June 18, 2024
SUBJECT/REPORT NO:	Rental Housing Protection Policy Review (PED22091(a)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Melanie Pham (905) 546-2424 Ext. 6685
SUBMITTED BY:	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the Urban Hamilton Official Plan Amendment, attached as Appendix “A” to Report PED22091(a), to revise policies establishing limitations to conversions and demolitions of rental housing, be approved, in accordance with the requirements of the *Planning Act* on the following basis:
 - (i) That the draft Urban Hamilton Official Plan Amendment, attached as Appendix “A” to Report PED22091(a), which has been prepared in a form satisfactory to the City Solicitor, be held in abeyance until the date that the Rental Housing Protection By-law comes into effect, being January 1, 2025;

- (b) That the City of Hamilton Official Plan Amendment (West Harbour Secondary Plan area), attached as Appendix “J” to Report PED22091(a), to establish policies for conversions and demolitions of rental housing consistent with the Urban Hamilton Official Plan, be approved, in accordance with the requirements of the *Planning Act* on the following basis:
 - (i) That the draft City of Hamilton Official Plan Amendment, attached as Appendix “J” to Report PED22091(a), which has been prepared in a form satisfactory to the City Solicitor, be held in abeyance until the date that the

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

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Rental Housing Protection By-law comes into effect, being January 1, 2025;

- (c) That the Rental Housing Protection By-law, attached as Appendix “B” to Report PED22091(a), prepared under the authority of the *Municipal Act*, be enacted, with an effective date of January 1, 2025;
- (d) That the Rental Housing Protection Reserve be established and the Rental Housing Protection Reserve Fund Policy, attached as Appendix “C” to Report PED22091(a), be approved;
- (e) That the amending By-law to By-law No. 12-282 (Tariff of Fees), as amended, attached as Appendix “D” to Report PED22091(a), to establish new fees for a Permit to convert or demolish rental housing, be approved on the following basis:
 - (i) That public notice of a proposal to amend the Tariff of Fees By-law to establish a new fee has been provided in accordance with the City’s Public Notice By-law No. 07-351;
 - (ii) That the draft By-law, attached as Appendix “D” to Report PED22091(a), which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council, with an effective date of January 1, 2025;
- (f) That the amending By-law to By-law No. 22-101 (Demolition Control Area By-law), attached as Appendix “E” to Report PED22091(a), to remove the delegated authority of the Chief Building Official to approve a demolition permit where the Rental Housing Protection By-law applies to a demolition, be approved on the following basis:
 - (i) That the draft By-law, attached as Appendix “E” to Report PED22091(a), which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council, with an effective date of January 1, 2025;
- (g) That the Tenant Relocation and Assistance Guideline, attached as Appendix “F” to Report PED22091(a) be approved, and that the General Manager of the Planning and Economic Development or their designate be granted the authority to make minor modifications to the Guideline if needed;
- (h) That the amending By-law to By-law No. 24-055 (Renovation Licence and Relocation By-law), attached as Appendix “H” to Report PED22091(a), to ensure consistency between the application of the Renovation Licence and Relocation By-law and the Rental Housing Protection By-law, be approved on the following basis:

- (i) That the draft By-law, attached as Appendix “H” to Report PED22091(a), which has been prepared in a form satisfactory to the City Solicitor, be enacted by Council, with an effective date of January 1, 2025;
- (i) That staff be directed to prepare the necessary documents required to implement the permit process prior to the effective date of the Rental Housing Protection By-law, including but not limited to a screening form, an application form, a legal agreement template, report templates and guidance materials for tenant relocation and assistance requirements, as well as any assistive explanatory documents, web page material and template letters;
- (j) That Item 22K on the Planning Committee Outstanding Business List be removed;
- (k) That staff be directed to take any steps necessary to enforce the Rental Housing Protection By-law attached as Appendix “B” to Report PED22091(a), including enforcement actions by Municipal Law Enforcement and the City Solicitor;
- (l) That if regulations are enacted pursuant to Section 99.1 of the *Municipal Act*, staff be directed to report back on the changes and any necessary amendments to the Rental Housing Protection By-law attached as Appendix “B” to Report PED22091(a);
- (m) That staff be directed to monitor the implementation of the Rental Housing Protection By-law and report back in two years on any updates or revisions that may be needed to improve the By-law or the permit process;
- (n) That staff be directed to amend the “Non-profit Affordable Housing Fee Exemption Form” to reflect exemptions from Rental Housing Protection By-law permit fees for non-profit housing, in accordance with the proposed Tariff of Fees By-law attached as Appendix “D” to Report PED22091(a);
- (o) That the costs of any exemptions from Rental Housing Protection By-law permit fees be accommodated through an adjustment to the Planning and Economic Development Department, Planning Division Base Budget, if needed.

EXECUTIVE SUMMARY

Planning Committee previously directed staff in 2018 to review existing criteria in the Official Plan for conversions from rental to condominium tenure, and report back with recommendations on how to strengthen the policies, with the goal of providing greater protections for existing rental housing. Staff completed a review of the policies in the City’s Official Plan which address rental housing protections, both where conversions to

a condominium ownership are proposed, and where demolitions are proposed, and submitted Report PED22091 in May 2022 with several recommendations based on the review.

Staff propose to make various adjustments to the Urban Hamilton Official Plan policies to simplify the Official Plan language about vacancy rates and market rent levels, to add a permission for demolitions if replacement units are being provided, and to eliminate the allowance for conversions if a minimum number of tenants are in support or if a building has heritage status, since these are not based on rental housing needs or market supply.

Secondly, staff propose to use a tool under the *Municipal Act* which enables municipalities to pass by-laws to regulate the demolition and conversion of rental housing units. Detailed criteria about specific vacancy rates and market rent levels would be updated and located within the regulatory By-law instead of the Official Plan policies. The implementation of a 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. This approach has been used in several other municipalities, including the City of Toronto, the City of Mississauga, and the Town of Oakville.

Consultations on the draft changes occurred from September to November 2022, and included a variety of different methods, including a virtual information meeting, stakeholder meetings, an online survey, and the collection of written comments. In response to the comments, revisions have been made to the draft documents, which are outlined in the Analysis and Rationale Section of Report PED22091(a). However, the recommended approach of establishing a Rental Protection By-law remains the same.

The proposed Official Plan Amendment and Rental Housing Protection By-law support the goals of the City's Housing Sustainability and Investment Roadmap, the Housing and Homelessness Action Plan and the Urban Hamilton Official Plan by helping to ensure that primary rental housing is adequately protected, particularly units with the most affordable rent levels, and by ensuring that impacts to tenants are minimized when demolitions of rental housing occur.

Alternatives for Consideration – See Page 26

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: A reserve fund is required to be established to collect potential fines for non-compliance with the proposed Rental Housing Protection By-law, as per Recommendation (d) to Report PED22091(a).

Fees also need to be established in the Rental Housing Protection By-law to cover the cost of processing permits for demolitions and conversions of rental housing. Fees are permitted under S.391 of the *Municipal Act* and would be based on a cost-recovery model for the staff resources needed to process the permit, similar to fees for *Planning Act* applications. This is addressed in Recommendation (e) to Report PED22091(a).

Affordable housing applications from non-profit housing providers are proposed to be exempt from permit fees. The costs of any fee exemptions would need to be accommodated through the Base Budget for the Planning Division. This is addressed in Recommendations (n) and (o) to Report PED22091(a).

Staffing: Some additional staff resources for staff in the Planning Division and Legal Services will be required for the processing of permits. At this time, due to the low volume of permits expected annually, it is anticipated that processing permits would require between 0 and 0.5 of a Planner and Solicitor Full-Time Equivalent respectively and can be accommodated within the existing staff complement. Potential enforcement resources required from Municipal Law Enforcement would also be minimal.

Should application volumes increase beyond the anticipated zero to five applications per year, staffing needs may need to be reviewed. If additional Planning staff are needed in the future to process permits, these positions may be created by the General Manager's delegated authority provided they are funded by application fees.

Legal: As required by the *Planning Act*, Council shall hold at least one public meeting to consider an application for an amendment to the Official Plan.

As required by the *Planning Act* and the City's Official Plan, notice of the proposed Official Plan Amendment has been provided a minimum of 7 days in advance of the required public meeting.

As required by the City's Public Notice By-law No. 07-351, public notice of the proposed amendment to the Tariff of Fees By-law to establish a new fee for Rental Housing Protection permit applications has been provided a minimum of 14 days prior to the public meeting.

HISTORICAL BACKGROUND

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. This direction was added to the City's Outstanding Business List.

In May 2022, the Planning Committee received Report PED22091 on the Condominium Conversion Policy Review. The report contained a draft Official Plan Amendment and *Municipal Act* By-law addressing proposed policy and planning process changes to regulate demolitions and conversions of rental housing. Staff were directed to consult with stakeholders and the public on the draft documents and report back with final recommendations. From September to November 2022, staff engaged with the community to obtain feedback.

On November 28, 2022, Bill 23, the *More Homes Built Faster Act*, received royal assent. Bill 23 made amendments to section 99.1 of the *Municipal Act*, 2001 to provide the Minister with the authority to make regulations imposing limits and conditions on the powers of a local municipality to prohibit and regulate the demolition and conversion of residential rental properties of six or more units.

On April 6, 2023, Bill 97, the *Helping Homebuyers, Protecting Tenants Act*, was released for public comment on the Environmental Registry of Ontario through posting 019-6821, along with additional postings on the Ontario Regulatory Registry for specific changes proposed to the *Municipal Act* and the *Residential Tenancies Act*.

Bill 97 proposed to allow the Minister to set minimum requirements for rental replacement by-laws (by-laws that regulate conversions and demolitions of rental housing under section 99.1 of the *Municipal Act*). As part of this, the Ministry sought feedback through Ontario Regulatory Registry posting 23-MMAH005 on potential regulations that would apply to municipalities that enact by-laws regulating the demolition and conversion of residential rental properties. The posting was open from April 6 until May 21, 2023. Staff provided comments on the Ontario Regulatory Registry posting on behalf of Council as noted in Report PED23145, approved by Planning Committee on June 13, 2023, and Council on June 21, 2023.

On June 8, 2023, Bill 97 received royal assent. Although Bill 23 and Bill 97 enabled the Province to establish requirements and regulations for municipalities that enact by-laws regulating the demolition and conversion of residential rental properties, regulations have not been enacted by the Province at the time of the writing of this report.

On January 24, 2024, the General Issues Committee considered deferred portions of Report PED23072 and Report PED23072(a) regarding Renovictions, Tenant Displacement and Property Standards in Apartment Buildings in the City of Hamilton. On April 10, 2024, Council enacted the Safe Apartment Buildings By-law and the Renovation License and Relocation By-law as part of the new Hamilton Apartment

Rental Program. The Renovation License and Relocation By-law will come into effect on January 1, 2025. The proposed Rental Housing Protection By-law is complementary to the Hamilton Apartment Rental Program as it deals with tenant displacement issues outside of those regulated by the Renovation License and Relocation By-law.

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 provides policy direction on matters of provincial interest related to land use planning and development. The Provincial Policy Statement 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 assist in maintaining housing types needed to meet the needs of residents, particularly the maintenance of appropriate rental housing. The actions outlined in this report are consistent with the Provincial Policy Statement.

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 Provincial Policy Statement 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 assists in addressing the challenge of providing more affordable housing from a land use perspective 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 conform to the policies of the Growth Plan.

Proposed Provincial Planning Statement (not in effect)

The Province released a draft Provincial Planning Statement in April 2023, which remained open for comments until August 4, 2023. A revised version of the document was released on April 10, 2024 and was open for comments until May 12, 2024. The Provincial Planning Statement is a proposed integrated Province-wide land use planning policy document that would replace the Provincial Policy Statement (2020) and Growth Plan for the Greater Golden Horseshoe (2020) that are currently in effect.

Although the Provincial Planning Statement is still a proposed document and not yet in enacted, it has been reviewed to identify potential policy directions that would apply. Providing a sufficient supply of housing with the necessary range and mix of housing options is an important part of the stated vision within the draft Provincial Planning Statement. Municipalities 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 (2.2.1 b) 1.).

The proposed actions outlined in this report aim to maintain housing options needed to meet the needs of residents and would be consistent with the draft Provincial Planning Statement as released in April 2023 and April 2024.

Urban Hamilton Official Plan

The Urban Hamilton Official Plan 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 Urban Hamilton Official Plan 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;”
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 Urban Hamilton Official Plan 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 (Policy B.3.2.5.6). Demolitions of smaller units to create larger units can also occur if vacancy rate criteria are met and the amount of living space is not reduced (Policy B.3.2.5.7).

Any conversions or demolitions of social housing require full replacement of all rent-geared-to-income units.

Rural Hamilton Official Plan

The Rural Hamilton Official Plan does not contain detailed policies about conversions or demolition of primary rental housing, because larger types of residential developments with more than six units are not permitted in the rural area and cannot be adequately serviced via private services. There are a few pre-existing multiple dwellings with six or more units in select rural settlement areas, however redevelopment/intensification of these types of land uses are not supported by the policies of the Rural Hamilton Official Plan.

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 and legally recognized 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.

Former Hamilton Official Plan (West Harbour Secondary Plan)

The West Harbour (Setting Sail) Secondary Plan was approved as part of the former City of Hamilton Official Plan. The lands within the Secondary Plan are subject to Non-decision No. 113 in the Urban Hamilton Official Plan, and do not form part of the Urban Hamilton Official Plan. Accordingly, the policies of the former City of Hamilton Official Plan still apply to the West Harbour Secondary Plan area. The City of Hamilton Official Plan contains policies that restrict conversions and demolitions of rental housing. They

are similar to the Urban Hamilton Official Plan, permitting conversions or demolitions only if vacancy rates for the City and the local housing market zone have been above 2 percent for at least 24 months, if the change will not reduce the vacancy rate below 2 percent, and if existing rent levels are not significantly below average market rent levels. Demolitions are also permitted if a building is determined to be structurally unsound.

The West Harbour Secondary Plan contains policy supportive of providing a range of housing types for a range of incomes. However, the Secondary Plan does not contain specific policies addressing the conversion and demolition of primary rental housing.

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.

Currently, Mississauga and Oakville have by-laws in place regulating conversions and demolitions of rental housing using the powers of Section 99.1 of the *Municipal Act*. The City of Toronto also has a similar by-law in place using Section 111 of the *City of Toronto Act* and Chapter 667 of the *Municipal Code*. Other municipalities, such as Barrie, Brampton and Ottawa are considering implementing by-laws in the future.

RELEVANT CONSULTATION

Internal Consultations

As noted previously in Report PED22091, Legal Services drafted the Rental Housing Protection By-law contained in Appendix “B” attached to Report PED22091 and provided inputs on the proposed actions contained in this report. The Housing Services Division was consulted on the review of the draft Official Plan Amendment and Rental Housing Protection By-law and their comments have been incorporated.

Municipal Law Enforcement was engaged on the potential enforcement resources that may be needed if the By-law were to be enacted. Based on inquiries made to several other municipalities with operating By-laws, no examples of Municipal Law Enforcement involvement being required have been identified. Therefore, little to no impact on Municipal Law Enforcement resources is expected. However operationally, a dedicated person may need to be assigned to ensuring compliance on these applications.

The City's Building Division was also consulted with regards to the recommendations and in particular on the amendments to By-law No. 22-101 (Demolition Control Area By-law), attached as Appendix "E" to Report PED22091(a).

Public Consultations

Promotion and notification for the project occurred through:

- An email notification to a list of potential stakeholders, neighbourhood associations and other relevant organizations on September 26, 2022;
- An email notification to all Indigenous Rights-Holder groups in Hamilton on September 26, 2022;
- A newspaper notice posted in the Hamilton Spectator on September 26, 2022;
- Social media posts on September 26, 2022, and at several points during the commenting period;
- Promotion of the Engage Hamilton project website through the Engage Hamilton platform;
- Inclusion of the notice in the October 14, 2022 "Our Future Hamilton" monthly newsletter that is distributed to a wide range of community members;
- Promotion to youth through the @HamOntYouth Instagram channel and through the Youth newsletter published on October 7, 2022; and,
- Notification to Development Industry Liaison Group members at the October Development Industry Liaison Group meeting on October 17, 2022. Staff also presented information about the Report PED22091 to the Development Industry Liaison Group on June 13, 2022, to inform the group about the draft recommendations.

The stakeholder mailing list included:

- All Neighbourhood Associations;
- Members of the Development Industry Liaison Group who had requested notification after the June 2022 Development Industry Liaison Group meeting;
- Hamilton ACORN;
- West End Home Builders Association;
- Realtors Association of Hamilton-Burlington;
- Social Planning and Research Council Hamilton;
- Federation of Rental Housing Providers of Ontario;
- Hamilton and District Apartment Association;
- Hamilton Housing Help Centre;
- Hamilton is Home;
- Hamilton Community Foundation;
- Indigenous Housing Services Hamilton;

- Ontario Aboriginal Housing Services;
- Hamilton Centre for Civic Inclusion; and,
- Disability Justice Network of Ontario.

Consultation and feedback opportunities included a Virtual Information Meeting held on October 5, 2022, and stakeholder meetings held with Hamilton ACORN (Association of Community Organizations for Reform Now), Hamilton and District Apartment Association, Realtor's Association of Hamilton-Burlington and Effort Trust. It also included an opportunity to provide written feedback and an online survey which was available from September 26, 2022, to November 4, 2022.

Feedback received showed a very diverse mix of opinions on the proposed changes. A detailed feedback report which includes all public feedback received in response to the consultations is included in Appendix "G" attached to Report PED22091(a). In general, comments from the landowner, landlord, and development community had concerns about many of the proposed changes, and comments from the tenant community were supportive, although further changes and additional information was requested.

General themes heard as part of the consultations were:

- A desire to minimize rental housing stock losses;
- A need to protect existing tenants and provide support to mitigate the impacts of demolitions on existing tenants;
- A need to reduce regulations and hurdles for landlords and find a balance between protecting renters and encouraging investment in Hamilton; and,
- An urgent need to also focus on measures that will increase the supply of rental housing, in addition to protecting existing tenants.

Some of the concerns identified were:

- Concern about proposed regulations that would permit only partial replacement of rental units such as allowing cash-in-lieu instead of replacement units, and replacement units on a different site than the demolished units;
- Concerns about different rules applied within and outside the Downtown Secondary Plan;
- Concerns that the proposed changes do not go far enough in protecting rental housing and tenants;
- Concerns about the lack of detail in the current proposal for tenant protections;
- Concern that additional restrictions, requirements and costs will discourage landlords and developers from wanting to operate and invest in Hamilton;
- Cumulative impacts of similar regulations (i.e., short term rentals, vacant home tax);

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- Concerns that conversions may be prohibited in situations where it is needed to finance building improvements and upkeep;
- Concerns about the financial impacts of compensation requirements that exceed the *Residential Tenancies Act*;
- Concern about uncertainty of application outcomes and the need for a clear process and criteria to follow which guarantees approval if all requirements are met; and,
- Concerns about the accuracy and validity of CMHC vacancy rate data and relying on vacancy rates as a criteria.

Key requests included:

- Being able to prevent/regulate proposals where certain types of units are being demolished internally within a building (i.e., demolishing three bedroom units to create one bedroom units), in addition to pure demolitions;
- Having strong requirements in place for tenant assistance (i.e., payment of moving costs, ensuring temporary relocation is maintained at the same rent level until a replacement unit is completed, extra supports for vulnerable tenants);
- Ensuring replacement units have the same number of bedrooms as existing units and are similar in size;
- Requested changes to the vacancy rate criteria, including that vacancy rates not be part of the criteria for demolitions, that vacancy rates requirements be maintained, or that they be increased to 3% or more;
- Having a minimum six-month notice of a move-out date;
- Having strong requirements in place for regular communication with tenants;
- Making translation services available for tenant meetings and written communications to tenants, if needed;
- Notifying the City and tenant rights organizations (i.e., Hamilton Community Legal Clinic, ACORN) of tenant meetings, and allowing representatives from the City and tenant rights organizations to attend meetings if requested;
- A request to implement policy that prevents all conversions to condominium;
- A request for a mechanism to appeal a decision or apply for a variance if vacancy rate criteria are not met;
- A request to consider an alternative requirement that ensures units converted to condominium remain rentals for a specified period of time, instead of meeting vacancy rate and rent level criteria; and,
- A request for clear requirements on approvals that will be delegated to staff.

Feedback from public consultation resulted in several modifications to the draft By-law and the Official Plan Amendment and the creation of a supplementary guideline for tenant relocation and assistance, which are described in the analysis and rationale section of Report PED22091(a). The proposed revisions do not change the overall

approach or the key recommendations that were part of the consultations, and therefore no further consultation is recommended prior to implementing the Rental Housing Protection By-law.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

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 importance of rental housing as a component of housing supply is one of the reasons why many municipalities have restrictive policies around conversions and demolitions of rental housing.

The recommendations in Report PED22091(a) seek to address concerns regarding loss of primary rental units through conversion or demolitions, which is dealt with in Official Plan policy and can also be regulated through S.99.1 of the *Municipal Act*.

Rental housing supply available on the secondary rental market and rentals with less than six units are also important to overall rental supply. However, the powers of the *Municipal Act* available to municipalities to regulate conversions and demolitions through a permit process does not apply to sites with less than six units.

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 to a new tenant instead of allowing the previous tenant to return at the same rate. Staff notes that the Housing Services Division of the Healthy and Safe Communities Department and the Licensing and By-law Services Division of the Planning and Economic Development Department reported to the Emergency and Community Services Committee regarding various actions related to this topic on August 17, 2023, as directed by the Committee (Reports HSC23023(b) and PED23072). The Renovation License and Relocation By-law was subsequently approved by Council on April 10, 2024, and will take effect on January 1, 2025. The actions in this report do not deal directly with renovictions, but similarly support the goal of improving protections for tenants, where conversions or demolitions are proposed.

Previous concerns raised about renovations that convert larger units within a rental building into smaller units are addressed by the proposed Rental Housing Protection By-law. The recommended Rental Housing Protection By-law defines any change to the number of bedrooms in a unit as a demolition, and therefore subject to the requirements of the By-law. As such, these situations would be captured by the proposed permit process.

The overall intent of the proposed Rental Housing Protection By-law and policy changes is to ensure fairness and establish appropriate protections for existing tenants, while also providing clear and consistent standards and requirements for landowners and developers.

Revisions to Official Plan Amendment

Based on the feedback received, the primary concern from the rental community was about ensuring that appropriate protections are in place for existing tenants, where demolitions or conversions of rental units are proposed. The proposed policy amendments included an option for cash-in-lieu instead of physical replacement units. Any funds collected through this option were intended to provide a funding source for future affordable housing development. However, this requirement does not benefit existing tenants, and this option was not supported in public feedback. Staff have removed this option from both the Official Plan Amendment and the Rental Housing Protection By-law.

Staff have also removed the policy criteria which allows automatic approval of an application for conversion to condominium if it is a protected heritage property (i.e., designated), in addition to the previous recommendation to remove the criteria that allowed conversions if 75% of tenants were in support. Both of these were removed because they are not based on an assessment of rental housing needs or market supply. The changes put more focus on maintaining an appropriate supply of rental housing, particularly affordable rental housing, which is a key objective of the rental housing protection policies. There is an allowance in policy that would permit consideration of a conversion where repairs or retrofitting is needed, and income received from rent and government funding is not sufficient to support the work. This type of approval could be granted at the discretion of Council. No conversions have ever been proposed based solely on a building's status as a protected heritage property.

Clarification was also added to policies regarding demolitions to confirm that changes to existing units resulting in a change to the type of unit (i.e., number of bedrooms) is also considered a demolition for the purposes of the policies, regardless of whether a building is physically demolished.

The final recommended Official Plan Amendment is included as Appendix “A” attached to Report PED22091(a).

In addition to the proposed Urban Hamilton Official Plan Amendment, an amendment to the former City of Hamilton Official Plan has also been proposed to mirror the same policy language for rental housing protection contained in the Urban Hamilton Official Plan. This update will ensure that the policy framework applying to the West Harbour Secondary Plan area is consistent with the rest of the City, until such time as the West Harbour Secondary Plan lands are included in the Urban Hamilton Official Plan. The final recommended Official Plan Amendment is included as Appendix “J” attached to Report PED22091(a).

While the Rental Housing Protection By-law will apply to both the urban and rural areas of Hamilton, no policy amendments have been proposed for the Rural Hamilton Official Plan since larger housing developments greater than six units are not permitted by the Plan. Should changes to an existing site with six or more units be proposed, the same permit process would apply as within the urban area.

Revisions to Rental Housing Protection By-law

Revisions were made to the draft by-law to provide clarity and improve language. Specific changes to the criteria and/or circumstances where a permit may be considered are discussed below.

Previously, the City’s Official Plan policies prohibited conversions or demolitions where there were units with rents more than 10% below average market rents. This has been increased to prohibit conversion of any units which are below average market rents (100% of Average Market Rent). This aligns with the current definition of affordability in the City’s Official Plan.

An increase to a vacancy rate of 3% was generally supported by many public comments. Alternatively, more stringent vacancy rate requirements were requested by some respondents, and a removal of the use of vacancy rates was requested by others. It is staff’s opinion that the continued use of vacancy rates as an indicator of the health of the rental market is appropriate, when used in combination with a consideration of the affordability of units. Based on the comparative review of vacancy rates used by other municipalities and general recognition of 3% as a current best practice indicator of a healthy rental market, an increase in the vacancy rate requirement to 3% for the preceding two years is recommended. This vacancy rate would be considered for both the City (City-wide) and the local housing market zone where the proposed conversion or demolition is located.

Previous language about assessing the impact of a conversion on vacancy rates was removed, as this can be difficult to assess. Existing vacancy rates are provided by CMHC and do not require additional calculations or analysis to use. By requiring an increased vacancy rate of 3% before a conversion is permitted, this would offset any minor impacts of a single proposal on vacancy rates.

The language in the by-law has been updated to provide additional clarification that any change to the number of bedrooms in a unit is considered a demolition, and therefore subject to the permit requirements of the By-law. Any internal renovations to a rental building which would change the number of bedrooms within dwelling units (such as converting larger three bedroom units to smaller one bedroom units), would require a permit.

Other criteria in the by-law which allowed conversions to be considered if units were retained as rental units at similar rents for a defined term, or where conversions prioritized purchase of units by pre-conversion tenants, were removed. These have instead been specified as conditions which may be applied to conversions if they already meet other criteria, rather than specific criteria under which a conversion could be permitted. Although facilitating purchases of units by existing tenants would be a positive outcome, the primary consideration should be focused on maintaining affordable rental stock and a healthy rental vacancy rate. It is uncertain whether conversions that give enhanced options for purchase would be beneficial where affordable units exist, because current costs for ownership exceed affordability levels for many tenants that are renting at affordable levels.

Finally, additional revisions were made to allow for a permit to be considered where the number of dwelling units is reduced but not the amount of living space (i.e., creation of larger units), and to allow permits for the demolition or conversion of social housing units when certain requirements are met, including the replacement of all social housing units. These updates align with existing policies in the Official Plan.

A distinction between the Downtown Hamilton Secondary Plan and other areas of the City has been maintained in the by-law, to implement existing policy direction within the Downtown Hamilton Secondary Plan that mandates replacement of all demolished rental units in this area only. Outside of the Downtown Hamilton Secondary Plan area, demolitions may be permitted if all vacancy rate and rent level requirements are met. If these requirements are not met, replacement units would be required.

The final recommended criteria in the Rental Housing Protection By-law are as noted in the Table on pages 19 to 22 of Report PED22091(a).

Type of Proposal	Criteria	Decision-Making
Conversion	<p>a) The rental vacancy rate by dwelling unit and structure type, for the City and the respective local housing market zone (as identified in Volume 1, Schedule G of the Urban Hamilton Official Plan), has been at or above 3.0% for the preceding two years.</p> <p>b) The existing market rent levels for all units proposed to be converted are above 100% of 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</p> <p>c) For all vacant rental units, the last market rent levels charged prior to vacancy for the units proposed to be converted were above 100% of 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.</p>	<p>Shall be approved.</p> <p>Conditions may be applied, such as:</p> <p>Conditions which assist existing tenants to achieve homeownership.</p> <p>Conditions which require units to continue to be rented for a specified period of time.</p>
Conversion	<p>a) Repair or retrofitting is immediately required to meet health and safety standards; and</p> <p>b) Income received from rent and available from government funding programs, including rent increases permitted under Provincial legislation, is not capable of supporting the capital repairs and maintenance work required.</p>	<p>May be approved.</p> <p>Conditions may be applied.</p>
Conversion which is a severance only.	Must not result in the alteration/loss of rental dwelling units.	Shall be approved.

Type of Proposal	Criteria	Decision-Making
<p>Demolition outside of Downtown Hamilton Secondary Plan where units are not being replaced.</p> <p>Includes pure demolitions and internal building demolitions.</p>	<p>a) The rental vacancy rate by dwelling unit and structure type, for the City and the respective local housing market zone (as identified in Volume 1, Schedule G of the Urban Hamilton Official Plan), has been at or above 3.0% for the preceding two years;</p> <p>b) The existing market rent levels for all units proposed to be demolished are above 100% of 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,</p> <p>c) For all vacant rental units, the last market rent levels charged prior to vacancy for the units proposed to be demolished were above 100% of 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.</p>	<p>Shall be approved.</p> <p>Conditions may be applied to address matters of tenant relocation and assistance.</p>
<p>Demolition</p>	<p>Where a building is determined to be structurally unsound.</p>	<p>May be approved. Conditions may be applied.</p>
<p>Internal demolition that reduces the number of units but not the living space (i.e., creation of larger units).</p>	<p>The rental vacancy rate by dwelling unit and structure type, for the City and the respective local housing market zone (as identified in Volume 1, Schedule G of the Urban Hamilton Official Plan), has been at or above 3.0% for the preceding two years.</p>	<p>May be approved.</p> <p>Would require a tenant relocation and assistance plan for eligible tenants.</p> <p>Other conditions may be applied.</p>

Type of Proposal	Criteria	Decision-Making
Demolition Outside of Downtown Hamilton Secondary Plan where units must be replaced.	<p>a) Conditions are imposed requiring rental units to either be replaced on-site or off-site in a comparable location.</p> <p>b) Conditions are imposed requiring an acceptable tenant relocation and assistance plan addressing the right to return to occupy replacement rental units at similar rents, the provision of alternative temporary accommodation at similar rents, and other assistance as appropriate.</p>	<p>May be approved.</p> <p>Would require a tenant relocation and assistance plan for eligible tenants.</p> <p>Other conditions may be applied.</p>
Demolition within Downtown Hamilton Secondary Plan Area.	<p>a) Conditions are imposed requiring rental units to be replaced on-site; and,</p> <p>b) Conditions are imposed requiring an acceptable tenant relocation and assistance plan addressing the right to return to occupy the replacement rental units at similar rents, the provision of alternative temporary accommodation at similar rents, and other assistance as appropriate.</p>	<p>May be approved.</p> <p>Would require a tenant relocation and assistance plan for eligible tenants.</p> <p>Other conditions may be applied.</p>
Demolition or Conversion of Non-profit Rent-Geared to-Income Housing Units.	<p>a) Conditions are imposed requiring full replacement of all rent-geared-to-income units; and,</p> <p>b) Conditions are imposed requiring an acceptable tenant relocation and assistance plan addressing the provision of alternative accommodation for tenants at similar rents, including rent-geared-to-income subsidies, right-of-first refusal to occupy one of the replacement subsidized units, and other assistance to mitigate the potential for hardship.</p>	<p>May be approved.</p> <p>Would require a tenant relocation and assistance plan for eligible tenants.</p> <p>Other conditions may be applied.</p>

Type of Proposal	Criteria	Decision-Making
Demolition or Conversion of Non-profit Rent-Geared to-Income Housing Units. (Continued)	c) The conversion or demolition is consistent with all pertinent provincial legislation.	

Tenant Relocation and Assistance Requirements

One of the key concerns raised by tenant advocates as part of the public consultations was the absence of detailed information on tenant compensation and assistance, particularly when tenants will be displaced by a demolition. This information does not directly form part of the Rental Housing Protection By-law but would be dealt with through required Tenant Relocation and Assistance Plans and permit conditions. Staff are proposing a guideline document in Recommendation (g) to Report PED22091(a) to outline the requirements for Tenant Relocation and Assistance that will be applied consistently across all applications. Matters such as compensation and assistance specified in a Tenant Relocation and Assistance Plan would also form part of the conditions of a permit approval. The following requirements are included as standard requirements for all tenant relocation and assistance plans:

- At least six months’ notice before having to vacate (includes minimum four months’ notice required by *Residential Tenancies Act*);
- A requirement for compensation for moving out and moving back, where tenants are moving back into replacement units;
- Special needs compensation may be requested at the discretion of the City for vulnerable tenants, such as where at least one member of the household is aged 65+ years and/or who has a physical or mental health challenge;
- Financial Compensation equal to three months’ rent (required by *Residential Tenancies Act*);
- A requirement for rent gap payments while tenants are in temporary alternative accommodations (gap payment based on anticipated timeline for construction and intended to cover the difference between a tenant’s current rent and the average market rent for vacant private rental apartments by bedroom type in the same housing market zone);
- A requirement to have a tenant relocation coordinator/leasing agent made available to assist displaced tenants with finding alternative accommodations;
- Tenant communication requirements; and,

- Tenants to be offered a replacement unit of the same number of bedrooms and of similar size, and at similar rent in a new building.

Reserve Fund

The proposed By-law will 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. To enable the collection of fines in this situation, a reserve fund needs to be established as outlined in recommendation (d) to Report PED22019(a) and based on the Reserve Fund Policy contained in Appendix “C” attached to Report PED22091(a). It is intended that if any fines are collected, these would be used to reinvest in affordable housing initiatives.

Demolition Control Area By-law Changes

To ensure that the City’s Demolition Control Area By-law aligns with the Rental Housing Protection By-law, an amendment is needed which states that where a permit is required by the Rental Housing Protection By-Law, the Chief Building Official does not have delegated authority to issue a demolition permit. Demolition permits would require Council approval. An amendment to the Demolition Control Area By-law is included as Recommendation (f) to Report PED22091(a) and is attached as Appendix “E” to Report PED22091(a).

Renovation License and Relocation By-law Changes

To ensure that the Rental Housing Protection By-law aligns with the new Renovation License and Relocation By-law, an amendment is needed to state that where any renovations would have the effect of changing the number of bedrooms within a Rental Housing Unit, this shall be considered a dwelling unit demolition and a Section 99.1 Permit under the *Municipal Act, 2001* shall be required in accordance with the Rental Housing Protection By-law. An amendment to the Renovation License and Relocation By-law is included as Recommendation (h) to Report PED22091(a) and is attached as Appendix “H” to Report PED22091(a).

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 10 years have involved the demolition of six or more rental units. There have been several other applications which proposed to alter rental units internal to a building (i.e., changing from three bedroom units to smaller 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 at this time. Staff review costs would be captured by a permit application fee. Proposed fees are included in the Tariff of Fees By-law attached as Appendix "D" to Report PED22091(a) and are based on an estimate of staff time needed to process applications, and a comparison with the City of Toronto's fees. Several fee levels are proposed to reflect the difference in complexity for different types of demolition and conversion proposals. Since this is a new process, it is intended that time spent on applications would be tracked and fees can be adjusted in the future if needed once the actual staff time required for processing has been confirmed.

If the number of applications exceeds the estimate of 0-5 per year on a continual basis, additional staff resources may be needed for the review and processing of applications, and the maintenance of agreements during development construction. If required, additional staffing enhancements can be considered through a future budget process, if deemed necessary.

Application Process

A process map for permit applications is attached as Appendix "I" to Report PED22091(a) to illustrate the key components of the application process. Where a *Planning Act* application is required for development, such as an Official Plan Amendment, Zoning By-law Amendment, Site Plan Control application, or Plan of Condominium application, potential applications that may require a permit under the Rental Housing Protection By-law would be identified through either a pre-application formal consultation process or the formal application process and would be required to complete a screening form to confirm the applicability of the by-law. The proposed changes to the *Planning Act* through Bill 185 to make Formal Consultation optional may have an impact on this process and when a screening form is submitted.

Where these applications are not required, potential proposals requiring a permit would be flagged by the Building Division through their building permit intake process and be directed to complete the same screening form and submit to Planning staff (i.e., in the case where internal renovations are resulting in the demolition of certain types of units). The screening form will allow staff to formally verify if the Rental Housing Protection By-law applies.

When a permit application is submitted, Planning intake staff would review to confirm whether all required information has been provided, and would issue a notice of complete application once the application is deemed complete. The local Ward Councillor would be provided with a copy of this notice.

Within 60 days of an application being deemed complete, an Information Report would be provided to Planning Committee notifying the Committee of the application and confirming if the application will be referred to Planning Committee for a decision. If there are other related *Planning Act* applications for the property, the permit application would be referred to Planning Committee to be considered in conjunction with those applications. For routine applications which meet certain criteria, approval would be delegated to the Director of Planning and Chief Planner. Notwithstanding this, Council has the authority to request that any application be considered by the Planning Committee, even if the permit approval would normally be delegated to the Director of Planning and Chief Planner.

After an application is received and deemed complete, it would be reviewed and Planning staff would prepare a recommendation report, including a list of any conditions recommended for the permit. Staff would endeavour to process all applications along similar timelines as most *Planning Act* applications.

If the decision is to approve an application, the applicant would be required to fulfil permit conditions prior to the issuance of a permit. This may include the registration of an agreement on title of the property to secure requirements for replacement units. Agreements would be monitored during construction until all replacement units have been completed.

The proposed permit process under the *Municipal Act* does not exempt any proposal from the requirements of the *Planning Act* for any other related applications such as Official Plan Amendments, Zoning By-law Amendments, Site Plan Control applications or Plan of Condominium Conversion applications. Permit applications under the proposed *Municipal Act* By-law can be processed concurrently with other required development applications.

Next Steps

A transition period between the By-law's approval and the date that it comes into force and effect is needed, to provide time for the materials outlined in recommendation (i) to Report PED22091(a) to be developed, and to allow for staff training and public communication of the changes. Staff are recommending that the by-law come into effect on January 1, 2025, to allow for a six month transition period. The following materials must be completed:

- A screening form to assist potential applicants in determining whether a permit would be required for a proposal;
- An explanatory document that provides information about the application process and by-law requirements;
- A permit application form;

- A Notice of Complete/Incomplete Application template;
- A template for legal agreements, for permits where conditions are being applied;
- An Information Report template;
- Circulation letters for commenting;
- Website updates; and,
- Any other templates, letters, and materials as needed to facilitate the process.

Potential Provincial Regulations

Based on the recent changes to the *Municipal Act* from Bill 23 and Bill 97 and the additional posting on the Ontario Regulatory Registry requesting feedback on potential regulations, it is anticipated that the Province will enact regulations in the future that would apply to municipalities with by-laws regulating the demolition and conversion of residential rental properties. It is not known what the regulations may be or when they may be enacted.

If new regulations are enacted, any portions of the by-law that are not consistent with such regulations may become inoperative, and amendments to the by-law may be required. Should this occur, staff will report back to Council on the changes and any resulting amendments needed to the Rental Housing Protection By-law, in accordance with Recommendation (I) to Report PED22091(a).

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 choose to amend the recommended criteria and requirements in the proposed Official Plan Amendment and *Municipal Act* By-law. This is not recommended as the proposed Amendment and By-law have been based on significant internal staff review and public input.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PED22091(a) – Urban Hamilton Official Plan Amendment
Appendix "B" to Report PED22091(a) – Rental Housing Protection By-law
Appendix "C" to Report PED22091(a) – Reserve Fund Policy
Appendix "D" to Report PED22091(a) – Tariff of Fees By-law Amendment

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Appendix "E" to Report PED22091(a) – Demolition Control Area By-law Amendment

Appendix "F" to Report PED22091(a) – Tenant Relocation and Assistance Guideline

Appendix "G" to Report PED22091(a) – Public Feedback Report

Appendix "H" to Report PED22091(a) – Renovation License and Relocation By-law
Amendment

Appendix "I" to Report PED22091(a) – Application Process Map

Appendix "J" to Report PED22091(a) – City of Hamilton Official Plan Amendment (West
Harbour Secondary Plan)

MP:sd