



INFORMATION REPORT

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 16, 2024
SUBJECT/REPORT NO:	Demolition Control Area By-law Process (PED24075) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Jorge M. Caetano (905) 546-2424 Ext. 3931
SUBMITTED BY:	Alan Shaw Director, Building and Chief Building Official Planning and Economic Development Department
SIGNATURE:	

COUNCIL DIRECTION

Questions have been raised regarding our current process as it relates to the Demolition Control Area By-law (By-law No. 22-101). This report has been prepared to provide some background on demolition control and to explain the process.

BACKGROUND

Section 33 of the *Planning Act* is the applicable law that regulates demolition control in the Province of Ontario. Section 33 permits a municipality to designate an area of the city as a demolition control area by by-law such that a residential property cannot be demolished until a demolition permit has been issued. This gives staff an opportunity to obtain necessary information from an applicant and conduct a full review to ensure that the demolition is following the appropriate requirements.

This section of the *Planning Act* also defines the terms “Dwelling Unit”, and “Residential Property” as follows:

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

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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.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

- “Residential Property” means a building that contains one or more dwelling units, but does not include subordinate or accessory buildings the use of which is incidental to the use of the main building.

These definitions have been incorporated into Hamilton’s Demolition Control Area By-law to specify what buildings can and cannot be subject to demolition control.

When a demolition permit is applied for, Council, or their delegate, may issue the permit or refuse to issue the permit. If the permit application is refused or a decision is not made within the specified time frame, the applicant can appeal to the Ontario Land Tribunal. However, if a replacement building permit has been issued to erect a new building on the site of the residential property to be demolished, Council or their delegate, shall issue a demolition permit once they’ve submitted an application. Under these types of applications, Council, or their delegate, may include the condition that the applicant construct and substantially complete the new building by at least two years from the date of the demolition. If the applicant fails to complete the new building within the time specified, municipalities are permitted to place a lien on the property of \$20,000.00 or less for each dwelling unit within the residential property to be demolished. If the applicant is not satisfied with the time requirement condition, they may appeal to the Ontario Land Tribunal for a variation of the condition. The lien or charge is to be collected as municipal property taxes.

If the applicant does not consider it possible to complete the new building within the time specified on the permit or if the permit holder believes that it is no longer economically feasible to construct the new building, the applicant may apply to Council for relief, which could include an extension of the completion date. Applicants are required to apply for relief before there are sixty days or less for the replacement building completion date specified on the permit. Council may also decide to extend the date specified on the permit at any time. The applicant may appeal the decision for relief to the Ontario Land Tribunal.

HAMILTON’S DEMOLITION CONTROL AREA BY-LAW

The City of Hamilton’s current demolition control area by-law (By-law No. 22-101) came into force on April 22, 2022, and allows the City to regulate the demolition of residential buildings. The by-law was revised in 2022 to address concerns about premature demolition and the loss of significant heritage buildings. All the lands within the boundaries of the City have been designated as a demolition control area.

The intent of the demolition control area by-law is to maintain the integrity of residential neighbourhoods, to prevent the premature loss of dwelling units and the creation of vacant land, to retain existing dwelling units until new uses have been considered, and, to prevent the premature loss of municipal assessment.

The demolition control area by-Law does not apply to the following:

1. the demolition of a part of the Residential Property does not reduce the number of Dwelling Units;
2. the Residential Property is owned by the City and the demolition is required for the implementation of a City capital works project previously approved by Council, except if the Residential Property is designated under the *Ontario Heritage Act* or subject to an agreement, covenant, or easement for the conservation, protection or preservation of property of cultural heritage value or interest;
3. the Residential Property is a mobile home;
4. the owner of the Residential Property has entered into a demolition agreement with City;
5. the Residential Property is exempted under any federal or provincial statute or regulation;
6. the Residential Property has been found to be unsafe under section 15.9 of the *Building Code Act* and an order to demolish has been issued under that section without any option to repair; or,
7. an order has been issued under section 15.2 of the *Building Code Act* that the Residential Property be demolished without any option to repair.

Under subsection 33(3) of the *Planning Act* Council has the authority to issue or refuse to issue a demolition control permit. However, subsection 33(6) of the *Planning Act* states that council shall issue a demolition permit, subject to conditions, where a building permit has been issued to erect a new building on the site of the residential property proposed to be demolished.

Since subsection 33(6) of the *Planning Act* requires the issuance of a demolition control permit under specific conditions, Council, under Section 6 of Hamilton's demolition control area by-law, delegated the authority to issue demolition control permits to the Chief Building Official under certain conditions. An excerpt of Section 6 of the Demolition Control Area By-law No. 22-10 is provided below.

- "6. Council delegates to the Chief Building Official its authority to issue Demolition Control Approval pursuant to subsections 33(3) and 33(6) of the Planning Act for applications to demolish Residential Property where:*

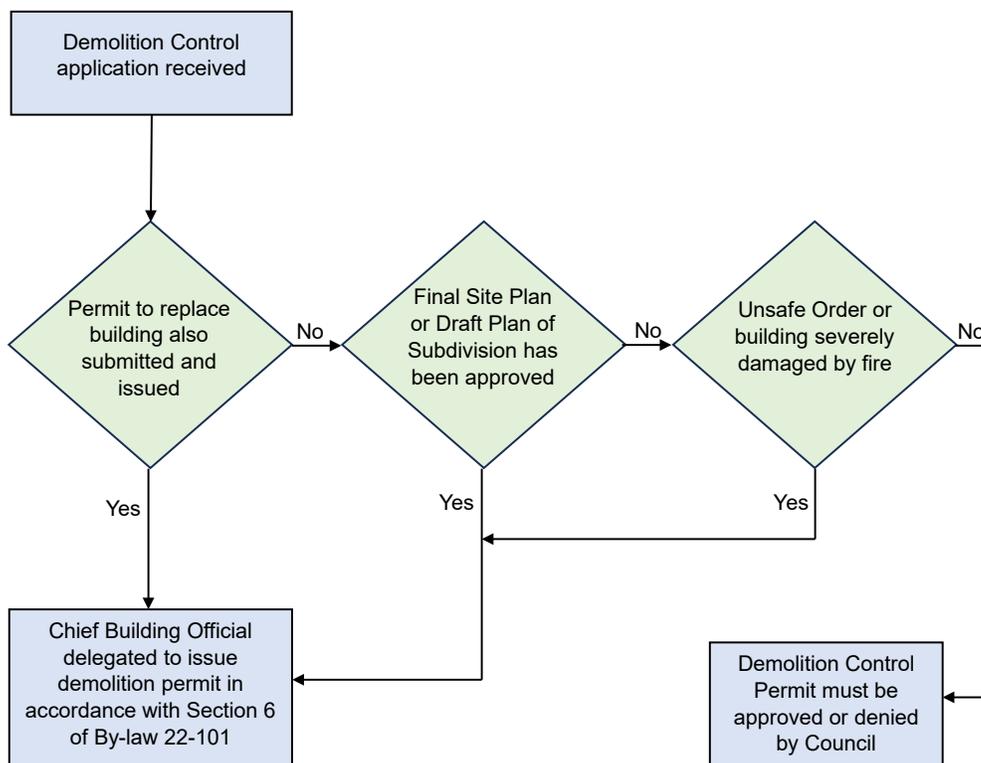
- (a) *the erection of a new building is proposed on the site of the Residential Property to be demolished and where the following standard conditions apply:*
- i. that the applicant seeking Demolition Control Approval has applied for and received a building permit for a replacement building on the property;*
 - ii. that the said building permit specifies that if the replacement building is not erected within two years of the demolition of the existing building on the property, the City be paid the sum of \$20,000 for each Dwelling Unit contained in the Residential Property which sum:*
 - 1. the City Clerk is authorized to enter on the collector's roll and collect in like manner as municipal taxes; and*
 - 2. is a lien or charge on the property until paid; and*
 - iii. that the applicant seeking Demolition Control Approval has registered on title to the property notice of conditions (i) and (ii) in a form satisfactory to the Chief Building Official and the City Solicitor.*
- (b) *Final Site Plan Control approval has been granted for redevelopment of the Residential Property to be demolished;*
- (c) *Draft Plan of Subdivision approval has been granted for redevelopment of the Residential Property to be demolished, for which the Subdivision Agreement has been registered and the preliminary grading and servicing conditions have been satisfied;*
- (d) *demolition of the Residential Property is a condition of an approved Consent to Sever and all other conditions of the approved Consent to Sever have been met; or,*
- (e) *the Residential Property has been severely damaged by a fire or natural disaster and the demolition has been recommended by a Professional Engineer licensed to practice in Ontario.”*

For clarification, subsection 6(b) above even applies if the residential use is legal non-conforming. However, if a Site Plan has been approved for a non-residential building (industrial, commercial, or institutional), this subsection allows a demolition permit to be

issued for the residential building so that the industrial, commercial, or institutional development can proceed.

If an application is made to demolish a residential building and it does not fall under one of the above noted conditions than the demolition control permit has to be approved or denied by Council. This can be done by having staff prepare a report outlining the reasons why an applicant wishes to demolish a residential building without complying with one of the conditions noted above. This report would then have to go before the Planning Committee, and ultimately Council for approval or denial. However, since it can take up to 6 weeks for this process to take place applicants have, on occasion, asked their Ward Councillor to walk on a motion at the Planning Committee in order to speed up the process and attempt to get their demolition control permit without having to comply with the conditions of Section 6 of the demolition control area by-law (excerpt of Section 6 provided above). Applicants can also ask to appear as a delegate at a Planning Committee meeting to present their reasons why they feel a demolition control permit should be issued (see flow chart below).

DEMOLITION CONTROL AREA BY-LAW NO. 22-101 PROCESS FLOW CHART



It should also be noted that an applicant can appeal to the Ontario Land Tribunal if Council refuses to issue a demolition control permit, if Council fails to make a decision on the application for a demolition permit, or if the applicant does not agree with the timeline and fine amount imposed by Council as a condition when it issued the demolition permit.

APPENDICES AND SCHEDULES ATTACHED

Not applicable.

JMC:II