

## A PROCEDURAL BY-LAW FOR HERITAGE

### BY-LAW 2013-141

**A By-Law To Establish Procedures For Processing Permit Applications Under The Ontario Heritage Act, And To Delegate The Power To Consent/Grant Permits For The Alteration Of Designated Heritage Properties To The Director Of Planning & Development Department**

**PASSED:** August 13, 2013

**WHEREAS** clause 23.2(1)(c) of the Municipal Act, 2001, S. O. 2001, c. 25, as amended permits a municipality to delegate certain legislation and quasi-judicial powers to an individual who is an officer, employee or agent of the municipality; and

**WHEREAS** pursuant to subsection 33(15) and 33(16) of the Ontario Heritage Act, R.S.O. 1990, c. 0.18, as amended, the council of a municipality may by by-law delegate the power to consent to alterations to property designated under Part IV to an employee or official of the municipality after having consulted with its municipal heritage committee; and

**WHEREAS** pursuant to subsection 42(16) and 42(17) of the Ontario Heritage Act, the council of a municipality may by by-law delegate the power to grant permits for the alteration of property situated in a heritage conservation district designated under Part V to an employee or official of the municipality after having consulted with its municipal heritage committee; and

**WHEREAS** the Council of the Corporation of the City of Kingston has consulted with its municipal heritage committee;

**NOW THEREFORE** the Council of The Corporation of the City of Kingston **ENACTS** as follows:

#### **PART I – SHORT TITLE**

1. This By-law is the 'Procedural By-law for Heritage'

#### **PART II - DEFINITIONS**

2. For purposes of this By-law, words shall have the meaning set out in the Act and, additionally:

"Act" means the Ontario Heritage Act, R.S.O. 1990, C.O.18, as amended from time to time; and all definitions included therein;

“building” means a permanent or temporary enclosed structure with exterior walls and a roof, and including all attached equipment and fixtures that cannot be removed without cutting into roof or ceiling, floors, or walls.

“City” means the Corporation for the City of Kingston;

“Council” means the municipal Council of the City of Kingston;

“Committee” means the Municipal Heritage Committee for the City;

“Designated Property” for the purpose of this by-law only relates to properties designated under Part IV or Part V of the Act;

“Director” means the Director of Planning and Development Department or his/her designate;

“Heritage Conservation District” means a geographic district established under Part V of the Ontario Heritage Act, R.S. O. 1990, C.O. 18, as amended from time to time;

“Heritage Conservation District Plan” means a plan adopted by Council under Part V of the Ontario Heritage Act to provide direction in the preservation of the heritage defining character elements of a Heritage Conservation District;

“Information” means any information requested by the Director, and includes plans, reports or any other documentation requested by the Director.

“Maintenance” means routine, cyclical, non-destructive actions, necessary to slow the deterioration of Protected Heritage Properties, including the following: periodical inspection, property cleanup; gardening and repair of landscape features; replacement of glass in broken windows, minor exterior repairs, including replacement of individual asphalt shingles where there is little or no change in colour or design; repainting where there is little or no change in colour; re-pointing areas of wall space under 1.5 square metres; caulking and weatherproofing; and any other work defined as maintenance in an individual designation by-law, or in a Heritage Conservation District Plan.

“Permit” means a permit issued under the Ontario Heritage Act which includes the Scope of Work.

“Scope of Work” means a form that summarizes the parameters of the heritage permit

“Structure” means a permanent or temporary framework of identifiable elements (components, entities, framing, parts, steps, etc.) which gives form and stability,

and resists stresses and strains, and includes but is not limited to: fences, walls, and gates, and freestanding structures, such as a windmill or a trellis.

### **PART III – NO APPLICATION REQUIRED**

3. An owner of a designated property does not require a permit for the following:
  - a. All interior work, except where specifically designated by designation by-law or easement passed under the Act;
  - b. Minor alterations as may be described in individual heritage conservation district plans as required by Section 41.1 (5) of the Act;
  - c. Landscaping which does not require heavy machinery and which will not significantly change the appearance of the property; and
  - d. Maintenance as defined in this by-law.

### **PART IV – AUTHORITY FOR DELEGATION AND RELATED PROCESS**

4. Council delegates all of the power that Council has respecting the granting of permits to the Director to approve minor alterations to designated properties. This delegation of authority includes the power to grant approval to an application for an alteration with terms and conditions and is granted in relation to the following topics:
  - a. removal of, or alterations to, signage within the sign's current configuration and building coverage;
  - b. replacement of eaves troughs and downspouts;
  - c. replacement of exterior lights with a similar style and brightness;
  - d. repair and replacement of windows undertaken in conformity with the City's 'Policy on Window Renovations in Heritage Buildings';
  - e. installation or replacement of removable storm windows and doors with historically correct materials;
  - f. replacement of roofing where there is little or no change in colour, materials or design;
  - g. repair of existing features, including wall cladding or siding, dormers, cresting, cupolas, cornices, brackets, columns, balustrades, soffit and fascia, porches and steps, entrances, foundations, and decorative wood, metal,

- stone or brick, provided that the same or historically accurate types of materials are used with details replicating the original, and the repairs relate to small amounts of decay or damage, for example less than 10% of the surface area of the element being repaired;
- h. re-pointing of masonry undertaken in conformity with the City's 'Policy on Masonry Restoration in Heritage Buildings' and limited to 10% of the surface area being repaired;
  - i. repainting part of, or the whole building or structure, in the same colour or a historically-accurate colour;
  - j. installation of mechanical and electrical equipment, and vent stacks and exhaust pipes which penetrate the building envelope, are not visible from the street and are carried out in a manner that does not alter the building's attributes;
  - k. repair of sidewalks and driveways;
  - l. the erection of stand-alone accessory buildings and structures if they are no larger than 10 square metres (108 square feet) and are located in the rear yard;
  - m. repair of fences;
  - n. revisions or amendments to previously approved permits only if proposed alterations involve work for items included in the delegated authority;
  - o. final issuance of grants following completion of work which has been carried out in accordance with provisional approval for an application for alteration;
  - p. when the interior designation of the City Hall are affected, including only the permission of temporary exhibitions and for interpretive material, way-finding signage, civic collection management and for minor reversible renovations that are not significant in nature; and,
  - q. situations requiring emergency repair which are considered to be a health, safety or security issue by the Director, the Chief Building Official or the Fire Chief, and in consultation, if possible, with the Chair or the Vice-Chair of the Municipal Heritage Committee.
5. Council delegates to the Director all of the authority under the Act, to request, receive, review and accept or reject plans, information, reports and any other documentation required to make a decision, when an application is made under the Act:

- a. to alter, erect, demolish or remove any building or structure on a designated property; and,
  - b. to repeal a by-law, or portion thereof, on a designated property.
6. Notwithstanding Section 5, Council retains the authority to request additional plans, information, reports and any other document that it considers necessary that was not requested by the Director.
  7. Council delegates to the Director all of the powers that Council has to process permits in accordance with the terms of this by-law and to establish any policies, guidelines, practices or procedures necessary to enact the permits in accordance with the terms of this by-law and any decision made by Council pursuant to this by-law.
  8. When the Director is absent through illness, vacation or other reason, the Director's delegate shall act in the place of the Director. While so acting, the Director's delegate has all the rights, powers and authority of the Director as delegated by this by-law.
  9. The Director shall prescribe all forms necessary to implement the by-law, and may amend such forms from time to time as the Director deems necessary without amendment to this by-law.
  10. The Director is authorized to undertake all acts incidental to, and necessary to carry out the authority delegated to and vested in the Director under this by-law, including affixing his or her signature to documents.

#### **PART V – PROCESSING OF PERMITS FOR DESIGNATED PROPERTIES**

11. An Owner wishing to alter a designated property shall submit an application for a permit in writing to the Director on a form prescribed by the Director and shall supply the information prescribed in Schedule 'A' of this by-law that is requested by the Director in order to assess the application.
12. An Owner wishing to demolish or remove a building or structure on a designated property shall submit an application for a permit in writing to the Director on a form prescribed by the Director and shall supply the information prescribed in Schedule 'B' of this by-law that is requested by the Director in order to assess the application.
13. Any Owner wishing to repeal all, or a portion of, a designation by-law for a designated property, shall submit an application for a permit in writing to the Director on a form prescribed by the Director, and shall supply the information

prescribed in Schedule 'B' of this by-law that is required by the Director in order to assess the application.

14. For Sections 11, 12, and 13 above, an application shall be deemed complete upon receipt of all information as requested by the Director, and a letter to this effect is provided to the landowner.
15. In evaluating an application for a Permit to alter a designated property, staff of the Heritage and Urban Design Division may obtain advice from heritage experts with respect to the application, and this may take the form of a pre-consultation on complex development proposals where the input of the Committee is necessary in order to evaluate all of the implications of the proposal.
16. For all other applications for alterations to protected heritage properties other than those listed in Section 4, staff will undertake site visits accompanied, where appropriate, by Committee members or heritage experts as per Section 15. Staff will carry out an internal technical circulation to other City departments, as appropriate, and will prepare a report by staff summarizing comments, background information, and recommendations for consideration by the Committee. In these situations, the Committee shall review the merits of the applications, and provide a recommendation to Council. Council shall retain all decision-making power in relation to that application.
17. Approval by the Director, with associated terms and conditions, is required for an application for a permit to alter a building, structure on a designated property.
18. For other than those applications listed in Section 4, final approval authority by Council is retained for the following applications for a permit:
  - a. When consent to approve an application for alteration is not recommended by the Director;
  - b. To demolish or remove a building or structure or material part thereof on a designated property; and
  - c. To repeal all, or a portion of a designating by-law under the Act for a designated property.

**PART VI – PROCESSING AND ISSUANCE OF PERMITS, AND AMENDMENTS THERETO**

19. The following process shall apply to applications brought under this Bylaw:

- a. Permit applications are completed and are submitted to staff. An application may include plans, photographs, and written information as required under Appendix A, including a possible Heritage Impact Statement. Pre-consultation is undertaken with staff, and for major applications, (for example, those which require an Official Plan Amendment or a Zoning By-law Amendment) pre-consultation may be undertaken with the Committee;
- b. When the application is deemed complete pursuant to section 14, a letter shall be issued to the applicant containing the notice of receipt as provided for under the Act;
- c. A technical circulation to those internal departments which have an interest in the matter(s) affected is undertaken for all applications, and a site visit is carried out;
- d. Decisions on delegated matters are presented to Council on a bi-annual basis for information; and
- e. The Director shall issue a permit which includes a scope of work outlining the parameters of the permit.

20. The Director shall issue documentation outlining the parameters of the permit to an owner of the designated property that has made an application under this by-law in the following instances:

- a. Where the Director's approval has been provided for an alteration of a property.
- b. Where Council approval has been provided for the alteration of property, demolition, or removal of a building or structure on a property.
- c. Where Council or the Director is deemed to consent to an application made for a designated property.
- d. Where the Ontario Municipal Board orders that the City consent to a demolition or removal of a building or structure on a property designated under Parts IV or V of the Act.
- e. Where the Ontario Municipal Board directs that a permit is issued for a designated property.

21. The following process shall apply to applications for which approval is not delegated to staff:
  - a. Staff shall conduct a technical circulation, undertake a site visit and prepare a report with recommendations which are added to the agenda for the Committee.
  - b. Committee members will review the application for a permit, and associated plans, drawings etc.
  - c. The City's Code of Conduct for Council and Committee Members applies to members of the Committee. Notwithstanding what is set out in Paragraph 6.5 of the City's Code of Conduct, members of the public who are appointed to the Committee must declare any pecuniary interest in a matter being discussed and must physically leave the room during the deliberation of the matter. They may appear as applicant or agent of the applicant during the presentation of the application and to answer Committee questions. They must physically leave the room during Committee deliberation and voting on the matter. During the Committee's deliberation of the application if the Committee has further questions of the member, the member will be invited to return to the meeting to answer questions, following which they shall again leave the room. They must not otherwise communicate with the Committee members about the matter before, during or after the meeting.
  - d. A recommendation of the Committee will be forwarded to Council for consideration for approval.
  - e. Following a resolution of Council for approval, the Director shall issue a scope of work outlining the parameters of the permit, and this shall be posted on-site in a location which is visible to the public.

## **PART VII – CONDITIONS OF HERITAGE APPROVALS**

22. All permits issued under this by-law shall be subject to the following conditions:
  - a. Applicants must permit a site inspection as part of the review being undertaken prior to the issuance of a permit;
  - b. No work affecting a heritage attribute of the building is to commence until a scope of work has been issued;
  - c. All applications, plans, specifications, documents, and delegated authority approval or resolution of Council form part of the approved permit, and all work must be carried out in accordance with this documentation and any other information that forms the basis upon which the permit is granted;



- d. Any work that deviates from the approved permit is in violation of the permit and is subject to prosecution under the Act;
- e. Any material change to the plans, specifications, documents, reports or other information that forms the basis upon which a permit is issued requires a further permit application;
- f. The permit holder allows City staff to inspect the work done under the permit;
- g. Such other terms and conditions as the Director deems necessary to maintain the heritage character of the property;
- h. Such other terms and conditions as may be required in granting consent to the permit application and issuance of the scope of work; and
- i. All work must be completed within three (3) years of approval of a permit, unless otherwise permitted under e) or f) above. Any work not completed in this allotted time frame requires the submission of a new application for alteration under the heritage legislation.

**PART VIII – COUNCIL RETAINS ULTIMATE AUTHORITY UNDER LEGISLATION**

- 23. Notwithstanding any provision of this By-law to the contrary, Council may, after notifying the Director, exercise any authority that is delegated to the Director.

**PART IX – APPEALS UNDER THE HERITAGE LEGISLATION**

- 24. In the event of an appeal under the Ontario Heritage Act, the Notice of Objection shall be placed on the Council agenda as correspondence.
- 25. This By-Law shall come into force and take effect on the date of its passing.

**GIVEN FIRST AND SECOND READINGS** July 16, 2013

**GIVEN THIRD READING AND PASSED** August 13, 2013

  
KEVIN ARJOON  
ACTING CITY CLERK

  
MARK GERRETSEN  
MAYOR



## **Schedule 'A'**

### **Requirements for a Permit Application**

- 1) The name, address, telephone number, and e-mail address of the Owner or the Owner's authorized representative or agent, if applicable;
- 2) A site plan or sketch showing the location of the proposed work on the property;
- 3) A statement of the proposed work;
- 4) Drawings of the proposed work showing materials, colours, dimensions, massing and extent of the work;
- 5) Written specifications for the proposed work;
- 6) Photographs showing the existing building or landscape condition;
- 7) Documents pertaining to the proposal, including if relevant, archival photographs, pictures or plans of similarly styled buildings in the community;
- 8) A signed statement by the owner authorizing the application, if submitted by an agent;
- 9) As may be required, a Heritage Impact Statement prepared by a qualified heritage professional recognized by the Canadian Association of Heritage Professionals (C.A.H.P.); and
- 10) Any other information related to the application as required by the Director.

## **Schedule 'B'**

### **Requirements for a Permit to Demolish a Protected Heritage Building or**

#### **Remove a Designation By-law**

- 1) The name, address, telephone number, and e-mail address of the owner or the owner's authorized representative or agent;
- 2) A site plan or sketch showing the location of the proposed demolition or removal;
- 3) Photographs showing the existing building or landscape condition including front and side elevations;
- 4) A building condition assessment prepared by a qualified Engineer of the building or structure or material part thereof which is proposed to be demolished or removed;
- 5) A signed statement by the owner authorizing the application, if submitted by an agent;
- 6) As may be required, a Heritage Impact Statement prepared by a qualified profession recognized by the Canadian Association of Heritage Professionals (C.A.H.P.); and
- 7) Any other information related to the application as required by the Director.