



BY-LAW CONCERNING THE DEMOLITION OF IMMOVABLES

NUMBER 1009

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CHAPTER 1 DECLARATORY AND INTERPRETATIVE PROVISIONS

SECTION 1.1 DECLARATORY PROVISIONS

Section 1.1.1 Title of the by-law

This by-law bears the title “By-law concerning the demolition of immovables no. 1009 of the Town of Hampstead”.

Section 1.1.2 Interaction of the by-law

This by-law is an integral part of the urban planning by-laws and is thus interconnected with the other urban planning by-laws adopted by the Town under the *Act respecting land use planning and Development (c. A-19.1)*.

Section 1.1.3 Integrity of the by-law

The title page and preamble are an integral part of the by-law.

Section 1.1.4 Object of the by-law

The present by-law regulates and controls the demolition of immovables in order to protect the building with exceptional architecture and supervise and order the reuse of open area.

Section 1.1.5 Repealing

The present by-law repeals and replaces in its entirety for all intents and purposes, By-law 759 and its amendments, as well as any earlier by-laws and by-law provisions relating to demolition of immovables.

This repeal does not affect proceedings instituted under the authority of the by-laws so repealed, up to final judgement and execution.

This repeal does not affect permits legally issued under the authority of the by-laws so repealed, nor the acquired rights from before the coming into force of this by-law.

Section 1.1.6 Territory affected

The present by-law applies to the territory of the Town of Hampstead.

Section 1.1.7 Person affected

All individuals and corporations under public or private law are subject to this by-law.

Section 1.1.8 Validity

The Council is adopting this by-law in its entirety, chapter by chapter, division by division, section by section, clause by clause, paragraph by paragraph, subparagraph by subparagraph and subsection by subsection, so that should a chapter, division, section, clause, paragraph, subparagraph or subsection of this by-law be declared null and voided by an authorized body, the remainder of the by-law shall continue to apply, insofar as possible.

Section 1.1.9 Laws and by-laws

Nothing in this by-law shall be construed as absolving the obligation to comply with the laws and regulations of the provincial or federal government or other municipal by-laws.

Section 1.1.10 Coming into force

The present by-law shall come into force in accordance with the law.

SECTION 1.2 INTERPRETATIVE PROVISIONS

Section 1.2.1 Interpretation principles

The text of the by-law should be interpreted in light of the provisions of the *Interpretation Act (c. I-16)*. Furthermore, headings, tables, sketches, diagrams, charts, symbols and other forms of expression contained in the by-law aside from the actual text are an integral part of the by-law for all intents and purposes. In the event of a contradiction between the headings, tables, sketches, diagrams, charts, symbols and other forms of expression and the actual text, the text shall prevail.

Section 1.2.2 Interpretation of the text

In the present by-law, the interpretation of the text must respect the following rules, unless otherwise indicated:

- 1. All provisions of the present by-law shall be considered to be in effect at all times and under all circumstances, irrespective of the verb tenses employed herein;
- 2. The verb “must” is used to mean an absolute obligation; the verb “may” is used to indicate option, except in the expression “may not” which means “must not”;
- 3. The singular of words is understood to include the plural and vice-versa, whenever the context so dictates;
- 4. The words “person” and “whoever” or “whomever” refers to any legal or natural person;
- 5. The masculine shall include the feminine unless otherwise indicated by the context;
- 6. The word “Town” refers to the town of Hamsptead.

Section 1.2.3 Incompatibility between provisions

In the event two provisions within this by-law or between this by-law and another by-law are incompatible with each other, the specific provision shall prevail over the general one.

In the event that any restriction or prohibition prescribed by this by-law or by any of its provisions should prove to be incompatible or disagree with any other by-law or with any other provision of this by-law, the most restrictive or prohibitive disposition shall apply unless otherwise indicated.

Section 1.2.4 Terminology

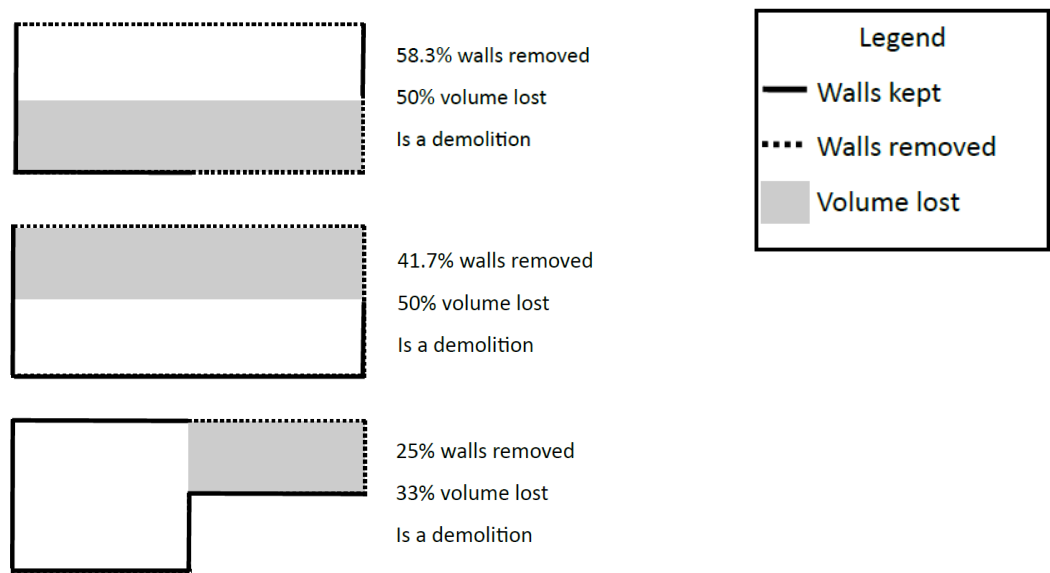
In the present by-law, the following words mean:

“Committee”: the committee created to study applications for demolitions of an immovable;

“Applicant”: the owner of the building or his representative who applies for a certificate of authorization to demolish the building in accordance with the present by-law.

“Demolition”: an intervention that includes the total destruction or substantial modification of a building subject to the provisions of the present by-law. For purposes of the present by-law, the “substantial modification” of a building signifies and includes the removal of 50% or more of the building walls and 33% or more of the building volume. The loss of building volume is calculated by the space between removed adjacent walls. The livable space in roofs counts and is part of the calculations. If either one of the rates are reached, the project is considered a substantial modification. Removing the roof and adding a floor does not count in the calculations. The volume and area of the addition is irrelevant in the calculations.

Figure 1- Example of calculation



(1009-1, Sec.1, 05/29/2018)

“Objection”: any written objection to the granting of a certificate of authorization, filled in accordance with this By-law;

“Preliminary program” means and include plans for the reutilization of land vacated as the result of the proposed demolition of any immovable.

All the words used in the present by-law keep their usual meaning except for those defined in Schedule A of the Permits and Certificates by-law which are applicable for this by-law.

CHAPTER 2 ADMINISTRATIVE PROVISIONS

SECTION 2.1 ADMINISTRATIVE PROVISIONS

Section 2.1.1 Application of the by-law

All person duly authorized by the Council, hereinafter defined as “the Designated Official”, is entrusted with the application of the present by-law. Otherwise, the General Director of the Town shall be responsible.

Section 2.1.2 Powers and responsibilities of the designated official

The powers and responsibilities of the Designated Official are defined in the Permits and Certificates by-law in effect.

Section 2.1.2 Obligations of the owner

The obligations of the owner are defined in the Permits and Certificates by-law in effect.

Section 2.1.3 Infringements and penalties

Anyone who carries out the demolition of an immovable concerned by this By-law or has such an immovable demolished without proper authorization, or in violation of the conditions of the certificate of authorization for demolition, is committing an infraction and shall be liable:

1. In the case of a natural person:
 - a) For a first infraction, to a fine of between \$10,000 and \$75,000;
 - b) For a repeat offence, to a fine of between \$20,000 and \$75,000;
2. In the case of a legal person:
 - a) For a first infraction, to a fine between \$20,000 and \$75,000;
 - b) For a repeat offence, to a fine of between \$40,000 and \$75,000.

In the case of demolition without a certificate of authorization for demolition, in addition to the fine, the offender must pay the cost of the application and the contribution for the purposes of parks, playgrounds and green spaces, as provided in the Subdivision by-law in effect. He will also have to provide the monetary guarantee stipulated in section 5.4.1 to the present by-law.

Should anyone proceed with the demolition of a building concerned by the present by-law or have such a building demolished, without proper authorization or in violation of the conditions of the certificate of authorization for demolition, the offender shall reconstruct the building so demolished, or pay the Town of Hampstead an amount equal to the assessed value of the building that was demolished by the Land Registry’s Office at the latest date before its demolition.

Should the offender not carry out the reconstruction of the building in accordance with the present by-law, the Council carries out the work and recovers the costs for said work in accordance with the law.

Anyone who contravenes any of the provisions of this by-law, other than the present Section, commits an infraction and is liable to a fine. In the event of a first infraction, if the offender is a natural person this fine shall not be less than \$1 000 nor exceed \$2,000. In the event of a first offence, if the offender is a legal person, this fine shall not be less than \$2,000 nor exceed \$4,000. The fines are doubled for a second offence.

Any infraction of any provision of this by-law constitutes a separate and distinct infraction for each and every day it continues.

In order to enforce compliance and bring the situation in conformity with the dispositions of the present by-law, the Town may exercise cumulatively or alternatively, with the means of recourse set out in this by-law, all appropriate recourses of civil and penal nature.

SECTION 2.2 TRANSITORY PROVISIONS

Section 2.2.1 Respect for the by-laws

The issuing of a demolition permit, the approval of drawings and specification, as well as the inspections carried out by the Designated Official or his representatives, in no way releases the owner or the applicant from the obligation to perform the work, or have it performed, in conformity with the requirements of the present by-law and any other applicable by-law.

CHAPTER 3 SCOPE OF APPLICATION

SECTION 3.1 SCOPE OF APPLICATION

Section 3.1.1 Certificate required

No one may demolish a main building unless the owner of said building has previously obtained a certificate of authorization for demolition to this effect.

Section 3.1.2 Exceptions

However, the present by-law shall not apply and a public notice is not required for the following categories:

1. Any building that has 50% or more of its assessment roll value lost to fire or natural disasters and for which a building permit accompanies the application for a demolition;
2. Any building that constitutes a safety hazard and/or is in a dangerous condition. A report from a structural engineer is required;
3. Any building where the work involves only the reconstruction of a roof, preserving its architectural character by keeping the style, volume and slopes of the original roof;
4. Any building whose condition presents an emergency or needs to be demolished for the following reasons:
 - a) Public safety;
 - b) To prevent an obstacle to traffic;
 - c) Other causes or circumstances of the same type.
5. Any building erected in contravention of a municipal by-law, or is required to be demolished according to a municipal by-law, or ordered to be demolished by a judgment of a Court having the required jurisdiction.

CHAPTER 4 DEMOLITION COMMITTEE

SECTION 4.1 ADMINISTRATIVE PROVISIONS

Section 4.1.1 Constitution and composition of the committee

The Demolition Committee of the Town of Hampstead is hereby constituted and composed of three members of the Council, *one substitute member* appointed annually by resolution of Council, for a one-year term. One of them must be named chairman of the Committee.

When the Committee members' terms expire, Council fill the vacant positions. Outgoing members may be appointed for a further term.

A Council member who ceases to be a Committee member (death, resignation or other reason) before the end of his term, who is temporarily incapable of performing his duties or who has a direct or indirect personal interest in a case that the Committee is examining, shall be replaced by another Council member designated by Council for the remainder of his term, or for the period of incapacity, or for the duration of the hearing of the case in which the Committee member has an interest, depending on the case.

Should a Committee member lose his authority as a Council member, he shall cease to sit on the Committee.

(1009-3, Sec. 1, 11/8/2019)

Section 4.1.2 Quorum and right to vote

Two members of the Committee shall constitute a quorum at its public sittings.

Each Committee member has one vote and the decisions are made by a majority vote. In case of a tie, the chairman's vote wins.

Section 4.1.3 Internal rules of procedure

The Committee may adopt such rules of procedure as it may deem necessary or advisable for the execution of its functions.

Section 4.1.4 Proceedings

No member of Committee may be prosecuted for official acts done in good faith under this by-law.

Section 4.1.5 The secretary of the committee

The Official designated by the Council is the secretary of the Committee. Otherwise, the General Director of the Town shall be responsible.

The Secretary of the Committee is not a member of the Committee and does not have the right to vote.

The secretary shall convene the Committee sittings. He prepares the agendas, writes the minutes of Committee sittings, sees to any correspondence and provides follow-up on any files.

SECTION 4.2 DUTIES

Section 4.2.1 Duties of the committee

The Committee is responsible for:

1. Accepting or refusing requests for certificates of authorisation for demolition of immovables subject to the present by-law;
2. Exercising any other power conferred on it by the present by-law.

CHAPTER 5 CERTIFICATE OF AUTHORIZATION FOR DEMOLITION

SECTION 5.1 APPLICATION FOR CERTIFICATE OF AUTHORIZATION FOR DEMOLITION

Section 5.1.1 Application for certificate

The application for a certificate of authorization for demolition shall be made in writing by the owner of the property to be demolished, or by his duly authorized agent, to the Designated Official in compliance with the Permits and Certificates By-law.

Section 5.1.2 Content of the application

The Committee shall not consider an application unless and until the following information and documents are provided:

1. The grounds that justify the application for a certificate of authorization for demolition;
2. A proof of liability insurance specifically issued for this purpose in favour of the applicant;
3. A copy of the notice to lessees of the immovable, as well as proof of its delivery;
4. The planned measures for relocating the tenant should there be any, or the date in which the building became vacant, as the case may be;
5. A preliminary program for the re-utilization of the land released by the demolition, including the following information:
 - a. The locations of the building to be demolished and of the new building;
 - b. The locations and dimensions of any existing structures and features on the site;
 - c. Clear illustrations in color of the proposed building, either in elevations or a 3D rendering.
 - d. The landsite coverage ratings before demolition and after reconstruction;
 - e. The height in metres or in storeys, the floor space index of the building to be demolished and of the new building;
 - d. Trees to be felled and preserved;
 - e. Sidewalks, curb cuts and patios to be built and added;
 - f. The number of dwelling units in the building to be demolished.
6. A report on the condition of the building may be required by the Town. This report must be prepared by a person from the field of expertise specified by the Town.

Section 5.1.3 Fees to accompany the application

The applicant for the certificate of authorization for demolition must accompany his request with the following sums:

1. Payment of the certificate and the application according to Tariff's By-law;
2. The contribution for the purposes of parks, playgrounds and natural spaces required under the Subdivision By-law.

Section 5.1.4 Public notices

As soon as the Committee has been seized of the application, the designated officer shall install a public notice to be posted on the immovable contemplated in the said application.

The Town Clerk's Office shall immediately cause the public notice of the said application to be published in conformity with the law, so as to advise all persons of their right to file with the Town Clerk's Office objections or comments with the respect to the proposed demolition within ten days of the publication of the said notice or, failing such notice, within ten days following the posting of the notice on the immovable concerned.

Section 5.1.5 Opposition

The original of every objection shall be remitted to the Town Clerk.

SECTION 5.2 CONSIDERATION OF AN APPLICATION

Section 5.2.1 Study of the application for demolition

The designated officer ensures that all procedures and other applicable regulatory provisions are respected, examines the file and presents its recommendations to the Demolition Review Committee in regard to the application for a demolition permit and the preliminary program for re-use of the vacated land.

The Committee shall not approve the application for the proposed demolition unless and until:

1. all the procedures established by this by-law governing the application and the preliminary program have been observed;
2. the Committee considered all objections received;
3. the Committee is convinced the proposed demolition is advisable, taking into account the public interest and the interest of the parties, and in particular:
 - a) The condition of the building or buildings contemplated by the application;
 - b) The deterioration of the architectural appearance or aesthetic character of the neighbourhood;
 - c) The cost of restoration;
 - d) The intended use of the vacated land and any other pertinent criteria;
 - e) The prejudice caused to tenants;
 - f) The housing needs in the area;
 - g) The possibility of relocating the tenants;
 - h) The environmental impact.

The Committee may postpone a decision in order to allow an interested party who has requested a delay in order to undertake or proceed with the acquisition of the building and to preserve it as a residential rental property. This delay may not exceed 2 months following the hearing. The Committee may postpone its decision on these grounds only once.

The Committee shall grant the certificate of authorization for demolition if it is of the opinion that the demolition is appropriate taking into account the interest of the public and those of the parties.

During the study of the demolition application, the Committee may adjourn its public sitting as often as it deems necessary or advisable.

Section 5.2.2 Approval of preliminary program

The Committee approves the preliminary program only if it is in accordance with the Town's by-laws.

However, in case where the issuance of the building permit for the proposed preliminary program is suspended by reason of a notice of motion, in which case the Committee shall not approve the said program before the expiration of the suspension or before the coming into force of the amending by-law contemplated in the notice of motion, if such coming into force occurs before the expiration of this suspension; the decision of the Committee shall then be rendered having regard to the by-laws of the Town in force at the time of such decision.

Section 5.2.3 Notification of decision of the committee

The Committee shall state the grounds for its decision. The concerned parties must be notified of the Committee’s decision on the issuance of the certificate of authorisation.

A list of the Committee’s decisions shall be tabled at the Regular Council Meeting following said decisions.

SECTION 5.3 APPEAL TO COUNCIL

Section 5.3.1

Any interested person may, within 30 days of the Committee’s decision, launch an appeal of this decision in writing before the Council. Any member of the Council may sit on the Council to hear an appeal launched by virtue of this section.

Council may confirm, reject or modify the decision of the Committee.

SECTION 5.4 MONETARY GUARANTEE

Section 5.4.1 Monetary guarantee

Should the Committee approve the preliminary program, the Committee, prior to the issuance of the certificate of authorization, require a financial guarantee for carrying out said program; such guarantee shall equal the assessed value of the building to be demolished by the Land Registry’s Office at the date of the decision of the Committee authorizing the demolition.

This financial guarantee payable to the order of the Town of Hampstead, consists, at the discretion of the applicant, of one or the other of the following securities:

1. A letter of guarantee, automatically renewable;
2. Bearer bonds payable issued by the government of Quebec, Canada or by a Quebec’s municipality;
3. A guarantee issued by an insurer duly authorized to carry out insurance operations in Quebec by virtue of the Insurance Act (R.S.Q., c. A-32).
4. A certified check
5. A bank draft

The financial guarantee shall remain in force and may not be lifted until the expiry of a 60-days delay following the inspection from the designated official after the completion of the program for re-utilization of the land released. It shall include a provision obliging the issuer to notify the Designated Official of its cancellation.

SECTION 5.5 ISSUANCE OF THE CERTIFICATE OF AUTHORIZATION FOR DEMOLITION

Section 5.5.1 Issuance of the certificate of authorization

When the Committee grants a certificate of authorization for demolition, the Designated Official shall issue the certificate on behalf of the Committee. The certificate of authorization must, if applicable, stipulate the conditions, which are binding on the applicant.

The conditions in virtue of the by-law on Permits and Certificates must also be respected.

No certificate of authorization shall be issued during the appeal period of 30 days set out in section 5.3.1, nor before the date in which Council has rendered a decision authorising the issuance of such permit, in the event that an appeal is made, nor before the fees due for the issuance of the permits as prescribed by section 5.1.3 of this by-law and the monetary guarantee prescribed by section 5.4.1 of this by-law are paid in full.

SECTION 5.6 IMPOSITION OF CONDITIONS BY THE COMMITTEE AND TIME PERIOD FOR COMPLETION OF WORK

Section 5.6.1 Imposition of conditions

Where the Committee grants the issuance of a permit, it may impose any conditions relating to the demolition of the building or to the reutilization of the vacated land that it deems necessary or advisable.

Section 5.6.2 Time period for completion of work

When the Committee grants the application for a certificate of authorization for demolition, it *must* set the time period within which the demolition work must be undertaken and completed.

The Committee may, with reasonable grounds, modify the set time period, provided a request for a change is made prior to the expiration of said time period.

The construction work for the building must be completed by the expiry date of the timeframe set by the Committee; failing this, the Town will confiscate the monetary guarantee. This work will be considered completed when the following conditions are met:

1. The exterior of the building must be 100% completed;
2. The interior of the building is functional. This means at least a kitchen, a bathroom and a bedroom must be functional and completed.

Should the work not be completed within the set period, the *Town may* complete the said work and recover its costs from the owner, or at the Council's discretion, execute the financial guarantee. Should it not recover these costs from the owner, they shall constitute a prior claim on the property, for the same reasons and with the same status as the claims contemplated in paragraph 5 of Section 2651 of the Quebec Civil Code, and these costs shall be guaranteed by a legal hypothec on the property.

(1009-2, Sec. 1 & 2, 11/8/2019)

Section 5.6.3 Voidance of the certificate

The application for demolition becomes void when the applicant does not collect the certificate of authorisation for demolition within the 6 months following the expiration of the timeframe for the appeal or, in the case of an appeal, following the decision of the municipal council.

The certificate of authorization for demolition becomes void if:

1. The work that it authorizes not be undertaken prior to the expiration of the time period of 6 months;
2. Applicable by-laws or declarations made in the application for the demolition permit were not respected.

In the cases listed above, should the applicant wish to undertake or terminate demolition work, he must provide himself with another permit.

Section 5.6.4 Revocation of the certificate of authorization for demolition

The Committee may revoke a certificate after having advised the holder in writing:

1. Should one of the conditions for issuance of the certificate of authorization for demolition not be respected,

or

2. Should the certificate have been granted in error or based on erroneous information.

The holder of a certificate that has been revoked must return it to the designated officer within 10 days of the notice to this effect.

SECTION 5.7 DISPLAY OF THE CERTIFICATE AND SITE INSPECTION

Section 5.7.1 Displaying the certificate

At all times during the execution of the demolition work, any person in authority on the site must have in his possession a copy of the certificate of authorization for demolition.