

# **PROPERTY MAINTENANCE**

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## HERITAGE PROPERTY

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WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under that or any other Act;

AND WHEREAS section 11(3) 5 of the *Municipal Act, 2001* provides that a municipality may pass by-laws within the culture, parks, recreation and heritage sphere of jurisdiction;

AND WHEREAS section 8(1) of the *Municipal Act, 2001* provides that the powers of a municipality under any Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

AND WHEREAS section 23.1 of the *Municipal Act, 2001* provides that sections 9 and 11 of the *Municipal Act, 2001* authorize a municipality to delegate its powers under the *Municipal Act, 2001* or any Act, subject to certain limitations;

AND WHEREAS sections 33 and 42 of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 provide that Council may delegate its authority to consent to alteration of property designated under Part IV of the *Ontario Heritage Act* and to grant permits for the alteration of property located in a Heritage Conservation District designated under Part V of the *Ontario Heritage Act*;

AND WHEREAS pursuant to sections 33(15) and 42(16) of the *Ontario Heritage Act*, Council of The Corporation of the City of Kitchener has consulted with its municipal heritage committee, Heritage Kitchener, respecting the delegation contained within this Chapter;

## **Article 1 INTERPRETATION**

### **642.1.1 Act - defined**

“Act” shall mean the *Ontario Heritage Act*, R.S.O. 1990, c. O.18.

### **642.1.2 Alter - defined**

“alter” means to change in any manner and includes to restore, renovate, repair, erect, or disturb and “alteration” and “altering” have corresponding meanings.

### **642.1.3 City - defined**

“City” shall mean The Corporation of the City of Kitchener.

### **642.1.4 Coordinator - defined**

“Coordinator” shall mean:

- (a) the City’s Coordinator of Cultural Heritage Planning;
- (b) in the absence or unavailability of the City’s Coordinator of Cultural Heritage Planning shall mean the City’s Manager of Long Range and Policy Planning; and
- (c) in the absence or unavailability of the City’s Coordinator of Cultural Heritage Planning and Manager of Long Range and Policy Planning shall mean the City’s Director of Planning.

### **642.1.5 Council - defined**

“Council” shall mean the Council of the City.

### **642.1.6 Heritage Conservation District - defined**

“Heritage Conservation District” means a heritage conservation district established under Part V of the *Ontario Heritage Act*.

### **642.1.7 Heritage Kitchener - defined**

“Heritage Kitchener” shall mean the City’s municipal heritage committee established pursuant to the Act.

**642.1.8 Heritage planning staff - defined**

“heritage planning staff” shall mean the City’s Heritage Planner, Coordinator of Cultural Heritage Planning, Manager of Long Range and Policy Planning, and Director of Planning.

**642.1.9 Owner - defined**

“owner” shall mean the person registered on title in the proper land registry office as owner.

**642.1.10 Part IV application(s) - defined**

“Part IV application(s)” means an application to obtain consent for an alteration to property designated under Part IV of the Act.

**642.1.11 Part V application(s) - defined**

“Part V application(s)” means a heritage alteration permit application for property located within a Heritage Conservation District.

**642.1.12 Property - defined**

“property” means real property and includes all buildings and structures thereon and includes a cultural heritage landscape.

**642.1.13 Standard condition - defined**

“standard condition” shall mean a condition or conditions acknowledged by resolution of Council for use as a standard condition of approval for a Part IV application or a Part V application.

**Article 2****DELEGATION OF CONSENT TO  
ALTERATIONS ON PART IV APPLICATIONS****642.2.1 Authority - delegated to Coordinator**

Council delegates to the Coordinator all of the power that Council has respecting the granting of consent for Part IV applications including the ability to attach conditions to such consent, subject to the provisions of this Chapter.

**642.2.2 Application - consideration - heritage planning staff**

Upon receipt of a Part IV application, heritage planning staff shall consider the application and may recommend:

- (a) that the application be decided by Council after consultation with Heritage Kitchener;
- (b) refusal of the application;
- (c) consent to the application with no conditions;
- (d) consent to the application with the standard condition and/or other conditions.

**642.2.3 Application - refusal - referred to Heritage Kitchener**

In the circumstances set out in Section 642.2.2(a) or (b), heritage planning staff shall refer the application to Heritage Kitchener for recommendations and Council shall retain decision making power on the Part IV application.

**642.2.4 Application - consented to - conditions - referral**

In the circumstances set out in Section 642.2.2(c) or (d), heritage planning staff shall refer the Part IV application to Heritage Kitchener and:

- (a) where Heritage Kitchener recommends consent to the Part IV application with or without conditions that are the same as recommended by the heritage planning staff or with or without conditions that are agreeable to heritage planning staff, the Coordinator shall consent to the Part IV application and impose any conditions agreed upon by heritage planning staff and Heritage Kitchener; or
- (b) where Heritage Kitchener recommends that a Part IV application be refused, be consented to with condition(s) that in the opinion of heritage planning staff are excessive or insufficient, or be consented to without condition(s) that in the opinion of heritage planning staff are necessary, Council shall retain decision making power on the Part IV application.

**Article 3****DELEGATION OF GRANTING OF PERMITS  
ON PART V APPLICATIONS****642.3.1 Authority - delegated to Coordinator**

Council delegates to the Coordinator all of the power that Council has respecting the granting of permits on Part V applications, including the ability to attach conditions to such permit, subject to the provisions of this Chapter.

**642.3.2 Application - consideration - heritage planning staff**

Upon receipt of a Part V application, heritage planning staff shall consider the application and may:

- (a) refer the application to Heritage Kitchener for review and recommendation in the circumstances set out in Section 642.3.3;
- (b) recommend refusal of the application;
- (c) grant the permit with no conditions; or
- (d) grant the permit with the standard condition and/or other conditions.

**642.3.3 Referral to Heritage Kitchener - conditions**

Heritage planning staff shall refer Part V Applications to Heritage Kitchener for review and recommendation in the following circumstances:

- (a) the application is highly complex, including situations in which a heritage impact assessment, conservation plan or other study is required to be submitted;
- (b) there is no existing City policy to address the proposed work or situation;
- (c) in the opinion of heritage planning staff, there is significant sensitivity or controversy associated with the property or proposed work;
- (d) the proposed work does not meet with good heritage conservation practice;
- (e) the proposed work does not meet the policies or guidelines of the respective Heritage Conservation District plan;
- (f) the application is made for a property identified by Council or in a heritage conservation district study or plan as a Group “A” property or as property of very high cultural heritage value or interest;
- (g) heritage planning staff recommends granting the permit for alteration subject to conditions other than the City’s standard condition; and
- (h) heritage planning staff is of the opinion that the application should be forwarded to Heritage Kitchener for discussion.

**642.3.4 Application refused - referral to Heritage Kitchener**

In the circumstances set out in Section 642.3.2(b), heritage planning staff shall refer the application to Heritage Kitchener for review and recommendations and Council shall retain decision-making power.

## Article 4 GENERAL PROVISIONS

**642.4.1 Retention of delegated authority**

Regardless of any authority delegated to the Coordinator under this Chapter, Council may, after notifying the Coordinator, exercise any authority that it delegated to the Coordinator.

**642.4.2 Referral - to Council - for any reason**

Notwithstanding any other provision of this Chapter, heritage planning staff may refer any Part IV Application and any Part V application to Council at any time.

**642.4.3 Delegation of authority to request information**

Council delegates to the Coordinator all of the power that Council has to request such information as Council may require from the owner respecting a Part IV application and a Part V application.

**Article 5  
SEVERABILITY****642.5.1 Validity**

It is hereby declared that each and every of the foregoing Sections of this Chapter is severable and that, if any provisions of this Chapter should for any reason be declared invalid by any Court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect. By-law 2009-089, 15 June, 2009.