

1998

## c Pr1 City of Kitchener Act, 1998

Ontario

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## CHAPTER Pr1

## An Act respecting The Corporation of the City of Kitchener

*Assented to June 26, 1998*

Preamble	<p>The Corporation of the City of Kitchener has applied for special legislation in respect of the matters set out in this Act.</p> <p>It is appropriate to grant the application.</p> <p>Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:</p>	<p>(3) If the council fails to notify the owner under clause (2) (a), it shall be deemed to have consented to the application.</p> <p>(4) Despite subsection 34 (4) of the <i>Ontario Heritage Act</i>, if a council has under subsection (1) refused an application under subsection 34 (1) of the <i>Ontario Heritage Act</i>, the owner of the property shall not demolish or remove the building or structure or do any work or cause or permit any work to be done in the demolition or removal of the building or structure or any part thereof unless,</p>	<p>Deemed consent</p> <p>Requirements for demolition</p>
Definitions	<p>1. In this Act,</p> <p>“building permit” means a building permit issued under section 8 of the <i>Building Code Act, 1992</i>;</p> <p>“Corporation” means The Corporation of the City of Kitchener;</p> <p>“council” means the council of the Corporation;</p> <p>“designated property” means designated property as defined in section 26 of the <i>Ontario Heritage Act</i> and property that is treated as designated property pursuant to section 30 of the <i>Ontario Heritage Act</i>;</p> <p>“heritage conservation district” means an area designated as such under section 41 of the <i>Ontario Heritage Act</i>;</p> <p>“owner” means the person registered on title in the proper land registry office as owner.</p>	<p>(a) the owner has obtained a building permit to erect a new building on the site of the building or structure sought to be demolished or removed; and</p> <p>(b) 180 days have elapsed from the date of the decision of the council under subsection (1).</p> <p>(5) Despite subsection 34 (4) of the <i>Ontario Heritage Act</i>, if the council has, before the coming into force of this Act, refused an application and prohibited any work to demolish or remove any building or structure on a property for the period of time provided for under clause 34 (2) (b) of that Act, the owner of the property shall not do any work or cause or permit any work to be done after the date this Act comes into force to demolish or remove the building or structure or any part thereof unless,</p>	<p>Same, transitional</p>
Application in respect of designated properties	<p>2. (1) Despite section 34 of the <i>Ontario Heritage Act</i>, in considering an application under subsection 34 (1) of that Act to demolish or remove a building or structure on a designated property, the council may refuse the application and prohibit any work being done to demolish or remove the building or structure or any part thereof.</p>	<p>(a) the owner has obtained a building permit to erect a new building on the site of the building or structure sought to be demolished or removed; and</p> <p>(b) 180 days have elapsed from the date of the refusal by the council of the application under clause 34 (2) (b) of that Act.</p>	
Notice of decision	<p>(2) The council shall within 90 days of receipt of the completed application or such longer period as is mutually agreed upon by the applicant and the council,</p> <p>(a) give notice of its decision under subsection (1) to the owner and to the Ontario Heritage Foundation; and</p> <p>(b) publish its decision in a newspaper having general circulation in the municipality.</p>	<p>(6) Subsection (5) applies even if any work has been commenced on the demolition or removal of a building or structure before the coming into force of this Act.</p> <p>(7) An owner who is refused by the council under subsection (1) or, if before the coming into force of this Act, under clause 34 (2) (b) of the <i>Ontario Heritage Act</i>, and who subsequently demolishes or removes or causes or</p>	<p>If work commenced</p> <p>Requirement respecting new building</p>

permits to be demolished or removed the building or structure or any part thereof in accordance with subsection (4) or (5) shall, within two years of the commencement of the demolition or removal, substantially complete the new building to be erected on the site.

Application respecting buildings in heritage conservation districts

3. (1) Despite sections 42 and 43 and subsection 44 (2) of the *Ontario Heritage Act*, in considering an application under section 43 of that Act to demolish or remove a building or structure within a heritage conservation district, the council may refuse the application and prohibit any work from being done to demolish or remove the building or structure.

Notice of decision

(2) The council shall, within 90 days of receipt of the completed application or such longer period as is mutually agreed upon by the applicant and the council, give notice of its decision under subsection (1) to the owner and, if the council fails to so notify the owner, it shall be deemed to have consented to the application.

Requirements for demolition

(3) Despite clause 42 (c) and subsection 44 (2) of the *Ontario Heritage Act*, if the council has under subsection (1) refused an application under section 43 of the *Ontario Heritage Act* and prohibited any work from being done to demolish or remove a building or structure, no person shall demolish or remove the building or structure or do or cause any work to be done in the demolition or removal of the building or structure or any part thereof unless,

- (a) the person has obtained a building permit to erect a new building on the site of the building or structure sought to be demolished or removed; and
- (b) 180 days have elapsed from the date of the decision of the council under subsection (1).

Same, transitional

(4) Despite section 42 and subsection 44 (2) of the *Ontario Heritage Act*, if the council has, before the coming into force of this Act, refused an application under subsection 43 (2) of that Act, no person shall do any work or cause any work to be done after the date this Act comes into force to demolish or remove the building or structure or any part thereof unless,

- (a) the person has obtained a building permit to erect a new building on the site of the building or structure sought to be demolished or removed; and
- (b) 180 days have elapsed from the date of the refusal by the council of the application under subsection 43 (2) of that Act.

If work commenced

(5) Subsection (4) applies even if any work has been commenced on the demolition or removal of a building or structure before the coming into force of this Act.

(6) A person who is refused by the council under subsection (1) or, if before the coming into force of this Act, under subsection 43 (2) of the *Ontario Heritage Act* and who subsequently demolishes or removes or causes or permits to be demolished or removed the building or structure in accordance with subsection (3) or (4) shall, within two years of the commencement of the demolition or removal, substantially complete the new building to be erected on the site.

Requirement respecting new building

4. (1) A person who has been refused by the council under subsection 2 (1) or 3 (1) of this Act, or under clause 34 (2) (b) or subsection 43 (2) of the *Ontario Heritage Act*, may apply to the council for relief from the requirement imposed by subsection 2 (7) or 3 (6) if that person considers that,

Relief from time restriction

- (a) it is not possible to complete a new building within the two-year period specified in subsection 2 (7) or 3 (6); or
- (b) the construction of a new building has become not feasible on economic or other grounds.

(2) Notice of the application under subsection (1) shall be sent by registered mail to the clerk of the Corporation not less than 45 days before the expiry of the two-year period within which the new building is to be substantially completed.

Notice

(3) If the council extends the time under section 5 for completion of the new building, the applicant may apply for relief from the extended completion time if the applicant considers that,

Relief

- (a) it is not possible to complete a new building in the extended time; or
- (b) the construction of a new building has become not feasible on economic or other grounds.

(4) Notice of the application under subsection (3) shall be sent by registered mail to the clerk of the Corporation not less than 90 days before the expiry of the extended completion time.

Notice

5. (1) The council shall consider an application under section 4 and may,

Council may grant relief

- (a) extend the time for completion of the new building; or
- (b) relieve the applicant from the requirement of constructing the new building.

(2) If time is extended under clause (1) (a), the applicant shall complete the new building within the extended time.

Where time extended

(3) If relief is granted under clause (1) (b), the applicant shall thereafter be deemed not to have contravened this Act by failing to substantially complete the new building.

Where relief granted

Appeal to OMB	6. (1) Any person who has made application under section 4 may appeal to the Ontario Municipal Board,		statement, report or return furnished under this Act and every director or officer of a corporation who knowingly concurs in the contravention is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both.	
	(a) from the decision of the council; or			
	(b) from the refusal or neglect of the council to make a decision within 45 days after the receipt by the clerk of the application.			Same
Same	(2) An appeal under subsection (1) shall be made within 30 days after the mailing of the notice of decision or after the expiration of the 45-day period set out in clause (1) (b) and the Board shall hear the appeal and the Board on the appeal has the same powers as the council has under section 5.		(2) Every person who on designated property or within a heritage conservation district demolishes or removes any building or structure or part thereof or who does any work or causes or permits any work to be done in the demolition or removal of any building or structure or part thereof without that person first obtaining the consent of the council and every director or officer of a corporation who knowingly concurs in the contravention is guilty of an offence and on conviction is liable to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than one year, or to both.	
Decision final	(3) The decision of the Board is final.			
Extension of time	(4) If an appeal has been made to the Board under subsection (1), the two-year period within which the new building is to be substantially completed shall be deemed to be extended to the date of the Board's decision.			
Dismissal of appeal	(5) If the Board dismisses an appeal from a decision of the council under subsection (1), the Board may extend the time for completing the new building for such further period as the Board considers reasonable and the decision of the Board is final.		(3) Every owner who contravenes subsection 2 (4) or (5) or who has an obligation to erect a new building under subsection 2 (7) and who fails to substantially complete the new building within the required two-year time period or within the time period extended under clause 5 (1) (a) or subsection 6 (4) or (5), and every director or officer of a corporation who knowingly concurs in the contravention is guilty of an offence and on conviction is liable to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than one year, or to both.	Same
Where time extended	(6) If the Board has extended the time for completion of the new building under subsection (2) or (5), the applicant shall substantially complete the new building within the extended time.			
Service	7. (1) Any notice required to be given, delivered or served under this Act is sufficiently given, delivered or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at that person's last known address.		(4) Every person who contravenes subsection 3 (3) or (4) or who has an obligation to erect a new building under subsection 3 (6) and who fails to substantially complete the new building within the required two-year time period or within the time period extended under clause 5 (1) (a) or subsection 6 (4) or (5) and every director or officer of a corporation who knowingly concurs in the contravention is guilty of an offence and on conviction is liable to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than one year, or to both.	Same
Same	(2) If service is made by mail, the service shall be deemed to be made on the seventh day after the day of mailing unless the person on whom service is being made establishes that the notice was not received until a later date through absence, accident, illness or other cause beyond that person's control.			
Publication	(3) Any notice required to be published in a newspaper having general circulation in the municipality shall be published in that newspaper once for each of three consecutive weeks.		(5) If a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$50,000 and not as provided in that subsection.	Same, corporation
Offence	8. (1) Subject to subsection (2), every person who knowingly furnishes false information in any application under this Act or in any		9. This Act comes into force on the day it receives Royal Assent.	Commencement
			10. The short title of this Act is the <i>City of Kitchener Act, 1998.</i>	Short title