

By-law 2010-XXX

A By-law to Amend By-law 2005-100

**“BY-LAW FOR PRESCRIBING STANDARDS FOR THE MAINTENANCE AND OCCUPANCY OF PROPERTY
WITHIN THE CITY OF KINGSTON”**

WHEREAS it is a provincial offence to illegally impact cultural heritage resources under a number of Provincial Acts such as the Ontario Heritage Act, the Planning Act, and the Environmental Assessment Act ; and

WHEREAS the City of Kingston has a number of policies concerning the need to protect cultural heritage resources such as the City’s Strategic Plan and the City’s Official Plan; and

WHEREAS the *Municipal Act, 2001* allows a municipality to enact By-laws to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues including heritage; and

WHEREAS sections 35.3 (1) and 45.1 (1) of the *Ontario Heritage Act* allow a municipality to pass a By-law setting out standards for the maintenance of property in the municipality,

THEREFORE, the Council of The Corporation of the City of Kingston hereby enacts as follows:

- 1) That the following definitions be added under Section 1:

“Character defining element” means the heritage attributes (principal features, characteristics, context and appearance) that contribute to the cultural heritage significance of a protected heritage property which are identified in a Designation By-law and/or within a Heritage Conservation District Plan and Guidelines.

“Designated Heritage Property” means a property designated under Part IV or Part V under the *Ontario Heritage Act*.

“Hoarding” means a fence or similar structure used to enclose a property or part thereof which is or intended to be under development, site alteration, or maintenance.

“Maintenance” means routine, cyclical, non-destructive actions necessary to slow the deterioration of a historic place including but not limited to: periodic inspection; general property cleanup; general gardening and repair of landscape features; replacement of glass in broken windows; replacement of asphalt shingles in a same or similar colour; re-pointing of areas under 1.5 square metres; and/or any work defined as maintenance within a Designating By-law.

- 2) That the following section be added under Section 4:

4.50 Properties Protected under the Part IV and Part V of the *Ontario Heritage Act*

In addition to the minimum standards for the maintenance and occupancy of a property in the City as set out in this By-law, the owner or occupant of a protected heritage property shall:

- a) Maintain, conserve, and protect the character defining elements as identified within the property’s Designation By-law and/or as identified within a Heritage Conservation District Plan to maintain the heritage character, visual, and structural integrity of any and all buildings, structures, or constructions located on the real property.
- b) Maintain the property in a manner that will ensure the protection and conservation of the character defining elements.

4.51 Altering Designated Heritage Properties

Despite any other provision of this By-law or the Building Code Act, 1992, no protected heritage property shall be altered except as maintenance pursuant to this by-law or pursuant to approval requirements under the *Ontario Heritage Act*.

4.52 Repair of Character Defining Elements

Despite any other provision in this By-law, where a character defining elements of a designated heritage property can be repaired, the character defining element shall not be replaced and shall be repaired as follows:

- a) In a manner that minimizes damage to the character defining element based upon recognized national and international best practices.
- b) In a manner that maintains the design, colour, texture, grain, or other distinctive feature of the character defining element.
- c) Using the same material as the original and in keeping with the design, colour, texture, grain, and any other distinctive features of the original; and
- d) Where the same types of material as the original are no longer available, using alternative materials that replicate the design, colour, texture, grain, or other distinctive feature, and appearance of the original material.

4.53 Replacement of Character Defining Elements

Despite any other provision in this By-law, where a character defining element of a designated heritage property cannot be repaired as determined by a built heritage specialist who is a member of the Canadian Association of Heritage Professionals and/or a member of the Royal Architectural Institute of Canada with heritage experience, the character defining element shall be replaced as follows:

- a) Using the same types of material as the original;
- b) Where the same types of material as the original are no longer available, using alternative materials that replicate the design, colour, texture, grain, or other distinctive feature, and appearance of the original material;
- c) In such a manner as to replicate the design, colour, texture, grain, and other distinctive feature and appearance of the character defining element; and
- d) The removal of the original material shall be documented by photographs, to-scale drawings, and/or any means identified by heritage staff.

4.54 Vacant and Damaged Designated Heritage Properties

- a) Despite any other provision of this By-law or the *Building Code Act*, 1992, where a designated heritage property is vacant, the owner shall ensure that appropriate utilities serving the property are connected, as required, in order to provide, maintain, and to monitor proper heat and ventilation to prevent damage to the character defining elements caused by environmental conditions.
- b) The owner shall protect the property against risk of fire, storm, inclement weather, neglect, intentional damage, or damage by other causes by effectively preventing entrance to it of all animals and unauthorized persons, and by closing and securing openings to any structures with boarding. The boarding shall be installed in such a way that minimizes damage to any character defining elements, is reversible, and minimizes visual impact.
- c) No opening shall be secured by brick or masonry held in place by mortar unless approved by Council.

- d) If not already in place, an exterior lighting fixture shall be installed and/or maintained in the front porch, veranda, or area adjacent to the front entrance of the building or structure, and must be activated by motion sensors, and shall maintain an average level of illumination of at least 50 lux at ground level.

4.55 Enhanced Standards

In the event the policies relating to a designated heritage property, and any other provision of this By-law, create enhanced standards not in contradiction with the *Building Code Act*, 1992, the provision that establishes the highest standard for the protection of the character defining elements shall prevail.

GIVEN FIRST AND SECOND READINGS

GIVEN THIRD READING AND FINALLY PASSED

CITY CLERK

MAYOR