



PROVINCE DE QUEBEC  
TOWN OF KIRKLAND

## BY-LAW NO : 2007-54

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BY-LAW GOVERNING THE DEMOLITION OF  
IMMOVABLES

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Amendments

2007-54-1, 2007-54-2 & 2007-54-3

**NOTICE**

This consolidation has not been officially adopted by the Municipal Council. It has been compiled on May 5, 2022 in order to facilitate the reading of the texts. The official text is to be found in the text of the original by-law and each of its amendments.

**ADOPTION PROCEDURE**

	D / M / Y
Notice of motion :	10-09-2007
Adoption of by-law :	01-10-2007
Publication :	07-10-2007
Coming into force :	07-10-2007

**THE MUNICIPAL COUNCIL DECREES AS FOLLOWS:****CHAPTER 1 – DECLARATORY AND INTERPRETATIVE PROVISIONS****1. Definitions**

In this by-law, unless the context indicates otherwise, the following words and expressions have the following meaning:

Certificate of authorization: Certificate issued pursuant to the authorization of an application to demolish an immovable, in accordance with the provisions of the present by-law.

Committee: The committee responsible for authorizing applications for demolition of immovables, established in conformity with the *Act Respecting Land Use Planning and Development* (R.S.Q., c. A-19.1).

Council: The municipal Council of the Town of Kirkland.

Demolition: Dismantling or total or partial destruction of an immovable.

Director: The Director of Urban Planning Department of the Town of Kirkland.

Dwelling : A dwelling within the meaning of the *Act respecting the Administrative Housing Tribunal* (chapter T-15.01).

Heritage immovable : A heritage immovable means an immovable recognized in accordance with the *Cultural Heritage Act* (chapter P-9.002), situated on a heritage site recognized in accordance with that Act or registered in an inventory referred to in the first paragraph of section 120 of that Act.

Immovable: The building in which is or was carried out the main use of the lot on which it is erected.

Partial demolition: Dismantling or destruction of:

- more than 50% of the above ground outer gross volume of an immovable;
- more than 50% of the ground plan area of the roof of an immovable;
- more than 50% of the exterior wall area of an immovable;
- a combination of the above-mentioned elements as they exist in a building, where their arithmetic total exceeds 120%.

Secretary: The municipal officer who is responsible for Urban planning at the Town of Kirkland.

**2. Application**

The present by-law shall apply to the entire territory of the Town of Kirkland.

**3. Prohibition**

The demolition of an immovable shall be prohibited, unless the owner has previously obtained from the committee, an authorization to demolish, and the municipal officer responsible for the issuance of permits and certificates for the Town of Kirkland has issued the required certificate of authorization for said demolition.

The present by-law does not apply to demolitions ordered by a Tribunal or demolitions required following a fire that destroyed the immovable.

## CHAPTER 2 – DEMOLITION COMMITTEE

### 4. Establishment of a committee

Is hereby established a committee to authorize applications for demolition and to exercise any other powers conferred on it by chapter V.0.1 of the *Act Respecting Land Use Planning and Development* (R.S.Q., c. A-19.1).

This committee shall be composed of three council members designated by the council for one year. Their mandate is renewable.

### 5. Resource persons

The Director shall attend all sittings of the committee. In his absence or if he is unable to act, he shall be replaced by a person he designates in accordance with the administrative managerial guidelines of the municipality applicable under such circumstances.

The person contemplated in the first paragraph shall act as a resource person without any right to vote.

The secretary of the committee shall attend all sittings of the committee without any right to vote.

### 6. Decisions of the Committee

The sittings of the committee are public and decisions are taken with the majority.

It shall hold a public hearing when the application for authorization relates to a heritage immovable and in any other case where it considers it advisable to do so.

## CHAPTER 3 – PRELIMINARY PROCEDURES

### 7. Application for authorization to demolish

An application for authorization to demolish shall be submitted to the director or to the secretary by the owner of the immovable to be demolished or by his duly authorized representative and must be accompanied by the following documents:

- a) A photograph of each façade of the immovable to be demolished;
- b) A certificate of location or a site plan of the immovable to be demolished;
- c) A report signed by a professional within the meaning of section 1 of the *Professional Code* (chapter C-26), on the condition of the immovable concerned by the application and the cost of its restoration;
- d) At the request of the director, a heritage study signed by a professional within the meaning of section 1 of the *Professional Code* (chapter C-26), on the history of the immovable, its contribution to local history, its degree of authenticity and integrity, its representation of a particular architectural trend and its contribution to a group of immovable to be preserved. This study may be required after the committee has rendered an affirmative decision on the application for authorization to demolish, rather than before the application is considered, in which case, the authorization to

- demolish is conditional on the confirmation, by the committee, of its decision after it has analyzed the document;
- e) When the immovable contains one or more dwellings, a statement by the owner that each lessees has been notified, in writing, of the owner's intention to obtain an authorization to demolish and the terms and conditions for the relocation of the lessees;
  - f) A program for the utilization of the vacated land, prepared in accordance with chapter 4 of the present by-law and accompanied by the required documents. All documents (plans, sketches, visual simulations, report, etc.) must allow a global understanding of the project;
  - g) Such other documents as may be required by the director, committee or council.

#### **8. Payment of the required fees and costs**

Upon submission of an application for authorization to demolish, the applicant shall pay all fees and costs provided for in chapter 6 of the present by-law.

### **CHAPTER 4 – PRELIMINARY PROGRAM FOR THE UTILIZATION OF THE VACATED LAND**

#### **9. Requirement for a program for the utilization of the vacated land**

Before any application for authorization to demolish may be considered, the owner shall submit to the committee for approval, a preliminary program conforming to the by-laws of the municipality for the utilization of the vacated land.

To determine conformity, the committee must consider the municipal by-laws in force at the time the program is submitted for approval, except when the issuance of a building permit for the proposed program is suspended by reason of a notice of motion.

When the issuance of permits is suspended, the committee may not approve the program before the suspension expires or the amending by-law that was the subject of the notice of motion comes into force, if such coming into force occurs before the suspension expires; the decision of the committee is then rendered having regard to the by-laws in force at the time of the decision.

#### **10. Content of the program**

The preliminary program for the utilization of the vacated land is comprised of plans and documents showing the new landscape and/or a new structure in replacement of the immovable to be demolished. Such plans and documents shall be sufficiently clear and explicit so as to allow the committee to determine whether such program conforms to applicable municipal by-laws.

A timetable for the projected works shall also be included.

#### **11. Additional content of the program**

In the case where the program for the utilization of the vacated land proposes a new building, it must include preliminary drawings for the building to be erected on said landsite, showing the approximate dimensions of the structure (width, depth and height), the shape of the roof, wall and roof cladding materials as well as the approximate location of the building on the lot and 3D simulations of the new construction.

Where the program for the utilization of the vacated land proposes a new landscape, it must include landscaping plans prepared by a landscape architect.

In the case of a change in use, increased density or re-qualification, studies demonstrating the feasibility of the program for the utilization of the vacated land must be included.

In all cases, a plan showing the location of all existing mature trees must be included.

## **12. Exception**

The owner of an immovable shall not be obliged to submit to the committee for approval, a preliminary program for the utilization of the vacated land, where the demolition of an immovable was ordered by a Tribunal.

## **CHAPTER 5 - PROCEDURE FOLLOWING THE SUBMISSION OF AN APPLICATION FOR AUTHORIZATION TO DEMOLISH**

### **13. Acknowledgement of receipt and summons**

The secretary shall notify the director of the receipt of an application for authorization to demolish, once he has ascertained that the application is complete and the required fees and costs to study and process said application, have been paid in full.

The secretary of the committee, in consultation with the director and the committee chairman, shall then convene a sitting of the committee to consider the application.

### **14. Publication of an application for authorization to demolish**

On being seized of an application for authorization to demolish, the committee must have a notice of the application, easily visible to passers-by, posted on the immovable referred to in the application, for a period of ten (10) days. Furthermore, it must immediately have published, a public notice of the application containing the following:

- a) The date, time and place of the sitting at which the committee will consider the application for authorization to demolish;
- b) A description of the immovable to be demolished, using the civic number or for lack of, the cadastral number.

Every notice herein referred to must reproduce the first paragraph of section 148.0.7 of the *Act Respecting Land Use Planning and Development* (chapter A-19.1).

If the application relates to a heritage immovable, a copy of the public notice must immediately be sent to the Minister of Culture and Communications.

### **15. Notice to lessees**

The applicant must send a notice of the application for authorization to demolish to each of the lessees of the immovable, where applicable.

The applicant must, before the sitting of the committee, provide the committee with proof of compliance to the requirement outlined in the first paragraph.

The committee may, if it believes that the circumstances justify it, postpone its decision and grant the applicant a period of not more than thirty (30) days to comply with said requirement.

### **16. Opposition to demolition**

A person wishing to oppose the demolition must do so by writing to the clerk of the municipality, giving the reasons for objecting, within ten (10) days of publication of the public notice or, failing such notice, within ten (10) days following the posting of the notice on the immovable concerned.

Before rendering its decision, the committee must consider the objections received. The committee may also hold a public hearing if it considers it advisable.

**17. Request for time to acquire an immovable**

When the immovable that is the subject of the application includes one or more dwellings, a person wishing to acquire that immovable and preserve it as rental housing may, as long as the committee has not rendered its decision, intervene in writing with the clerk to ask for time to undertake or pursue negotiations to acquire the immovable.

Such an intervention may also be made by a person who wishes to acquire a heritage immovable that is the subject of an application for authorization to demolish so as to preserve its heritage character.

**18. Postponement of decision**

The committee shall postpone its decision if it believes that the circumstances justify it, and shall grant the intervener a period of not more than two (2) months from the end of the hearing to terminate the negotiations. The committee may not postpone its decision for that reason more than once.

**19. Authorization to demolish**

The committee shall grant the authorization if it is convinced of the advisability of the demolition, taking into account the public interest and the interest of the parties.

Before deciding on an application for authorization to demolish, the committee must consider:

- a) The condition of the immovable that is the subject of the application;
- b) The deterioration of the architectural appearance, aesthetic character or quality of life of the neighbourhood;
- c) The cost of restoration;
- d) The intended use of the vacated land;
- e) When the immovable includes one or more dwellings, the prejudice to lessees, the possibility of relocating the lessees and the effect on housing needs in the area;
- f) Any objections received by the clerk;
- g) The heritage value of the immovable;
- h) Any other relevant criteria.

**20. Conditions**

If the committee grants the authorization, it may impose conditions for the demolition of the immovable or the utilization of the vacated land. It may, in particular, determine the conditions on which a lessee may be relocated, when the immovable includes one or more dwellings.

**21. Substantiated decision**

The committee's decision concerning the demolition must be substantiated and sent without delay to every party involved, by registered or certified mail.

The decision must be accompanied with a notice explaining the rules that are applicable from among those set out in sections 148.0.19 to 148.0.21 of the *Act Respecting Land Use Planning and Development* (chapter A-19.1).

**22. Rejection of application**

In addition, the committee must reject the application for authorization if the preliminary program for the utilization of the vacated land has not been approved or if the required fees have not been paid.

**23. Demolition schedule**

If the committee grants the authorization, it may set the time within which the demolition work must be undertaken and completed. If the demolition work is not undertaken before the expiry of the time set by the committee, the authorization is without effect.

**24. Financial Guarantee**

To ensure that the program for the utilization of the vacated land is carried out and the conditions imposed under article 20 are complied with, the applicant must provide the Town with a financial guarantee prior to the issuance of a certificate of authorization, as follows:

- a) In the case of the demolition of a residential immovable:
  - i. Total: a financial guarantee equivalent to fifty percent (50%) of the value of the immovable to be demolished as entered on the assessment roll shall apply;
  - ii. Partial: a financial guarantee equivalent to the percentage, determined by the director, of the value of the immovable to be demolished as entered on the assessment roll shall apply.

The financial guaranty must be valid for a period of twenty-four (24) months following the date of approval of the program and be remitted to the director, no later than the thirtieth (30th) day after the date the application is made, in one of the following forms: cash, debit or credit card, certified cheque, bank draft or bank letter of credit.

- b) In the case of the demolition of a commercial, industrial or institutional immovable, the financial guarantee shall consist in a commitment from the owner of the immovable, secured by a first mortgage or other security deemed sufficient by the Town, to pay to the Town:

- 1° at the 1st anniversary of the date of issuance of the certificate of authorization; and
- 2° each year thereafter, for a maximum period of ten (10) years;

an amount equal to the difference between the amount of property taxes payable in respect of the immovable on the day the application is made, increased, each year, by the consumer price index for the Montreal area and the amount of property taxes payable following the demolition. Such amount shall remain payable until the earlier of:

- 1° the completion of all work related to the program for the utilization of the vacated land; or
- 2° the attainment of the amount of property taxes payable in respect of the immovable on the day the application is made increased, each year, by the consumer price index for the Montreal.

The value of any new immovable shall be as determined by the assessor's certificate.

The amount payable annually shall be due and payable within thirty (30) days of the mailing of an invoice issued by the Town for that purpose and shall bear interest at the legal rate from the due date until paid.

The legal fees related to title confirmation, preparation and publication of the mortgage shall be at the owner's expense who shall, prior to the issuance of the certificate of authorization, remit to the Town the amount determined by the clerk.

The financial guarantee may, at the request of the owner, be replaced by another security deemed sufficient by the Town.

**25. Forfeiture and Release of Financial Security**

The work to be carried out under the program for the utilization of the vacated land shall be completed by the end of the period specified by the committee or, if applicable, by the end of any extension thereof.

The financial guarantee provided for in section 24 shall be released to the owner upon completion of the work under the program for the utilization of the vacated land. Failing to meet the deadline, the financial guarantee will be confiscated by the Town.

**26. Extension**

The committee may, for such reason as it deems reasonable, extend the time for completion of the work under the approved program for the utilization of the vacated land, provided that the request is made prior to the expiration of the delay. The decision to extend the time limit shall be made by the committee or the council as the case may be.

**27. Expiry of authorization**

If the demolition work is not undertaken before the expiry of the time set by the committee, the authorization is without effect.

**28. Demolition costs**

If the work is not completed within the time set, the council may have it carried out and recover the costs of the work from the owner. The costs constitute a prior claim on the land where the immovable was situated, of the same nature and with the same rank as the claims described in paragraph 5 of article 2651 of the *Civil Code of Québec*; the costs are secured by a legal hypothec on the land.

**29. Appeal**

Within thirty (30) days of a decision of the committee, a person may appeal the decision to the council.

Every member of the council, including a member of the committee, may sit on the council to hear an appeal made under the first paragraph.

**30. Decision on appeal**

The council may confirm a decision of the committee or make the decision that the committee should have made.

**31. Issuance of a certificate for authorization to demolish**

No certificate authorizing demolition may be issued by the person designated under paragraph 7 of section 119 of the *Act Respecting Land Planning Use and Development* (R.S.Q, c. A-19.1) before the expiry of thirty (30) days as provided in article 29 or, if there has been an appeal under that article, before the council has rendered a decision authorizing the demolition.



**32. Costs**

The fees and expenses due for considering and processing an application for authorization to demolish, the publication of the required public notices and the issuance of a certificate of authorization to demolish, are established in the *By-law establishing tariffs for certain municipal services* adopted each year by the Town.

In addition, to cover the costs of any external study deemed necessary, an additional amount ranging from \$1,000 to \$20,000 may be required by the Town.

**CHAPTER 7 – VIOLATION, PENALTIES AND RECOURSES**

**33. Demolition without authorization**

Without prejudice to any other recourse available to the Town, a person who demolishes an immovable or has it demolished without the committee’s authorization or in contravention of the conditions of the authorization is liable to a fine of not less than ten thousand dollars (\$10,000.00) and not more than two hundred and fifty thousand dollars (\$250,000.00).

However, the maximum fine is one million one hundred and forty thousand dollars (\$1,140,000) in the case of the demolition, by a legal person, of an immovable recognized in accordance with the *Cultural Heritage Act* (chapter P-9.002) or situated on a heritage site recognized pursuant to that Act.

In addition, the Town may require the person to restore the immovable so demolished to its former condition. If the offender fails to restore the immovable in accordance with the by-law, the council may have the work carried out and recover the costs from the offender, in which case section 148.0.17 of the *Act Respecting Land Use Planning and Development* (chapter A-19.1) applies, with the necessary modifications.

**34. Separate offence**

In the case where an offence contemplated by the previous article lasts more than one day, the offence shall constitute a separate offence for each day it lasts and the penalty imposed for each offence may be applied for every day the offence lasts.

**35. Restoration of the immovable**

In addition to the fines and costs that may be imposed by virtue of article 33, anyone who demolishes an immovable or has it demolished without a permit or in contravention of the conditions of the permit, is required to restore the immovable so demolished to its former condition. If the offender fails to restore the immovable in accordance with the by-law, the council may have the work carried out and recover the costs from the offender, in which case article 28 applies, with the necessary modifications.

**36. Coming into force**

The present by-law shall come into force according to law.

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Mayor

\_\_\_\_\_  
Town Clerk