SUBJECT: Implementation of a Vital Services By-law in the City of Hamilton (PD05057(a)) (City Wide) – Referred from Social and Public Health Services Committee on February 9, 2005

RECOMMENDATION:

(a) That the Vital Services By-law attached to Report PD05057(a) as Appendix 'A' be approved.

(b) That the City of Hamilton pay for the restoration of vital services throughout the City to a limit of $1,200 per unit in a multiple dwelling building to a maximum of $200,000 per year.

(c) That a contingency fund, funded from the Tax Stabilization Reserve (Account #110046), be set up for the purposes of costs that may be incurred pursuant to the Vital Services By-law in the amount of $200,000.

(d) That staff be directed to hire an additional full-time Vital Services Officer/Inspector for an 18-month pilot period at a total cost of $115,000 to undertake the administrative and enforcement responsibilities upon enactment of the Vital Services By-law to be funded from the Tax Stabilization Reserve (Account #110046).

(e) That Council delegate the hearing of the Appeal to confirm the amount of the interim certificate as issued by the City Clerk to the Planning and Economic Development Committee, which Committee shall report its recommendations and findings to Council for a final decision.

(f) That staff report on the status of the pilot project at one year.

(g) That the Vital Services By-law item, referred from Social and Public Health Services Committee on February 9, 2005, be identified as completed and removed from the Outstanding Business List.
EXECUTIVE SUMMARY:

This report respecting the implementation of a Vital Services By-law outlines the authorities afforded a municipality by the Tenant Protection Act to restore vital services to rental dwelling units where the landlord / property owner is responsible to pay for the vital services defined in the by-law.

The report identifies the avenues a municipality may take to recover the costs incurred to restore the vital service(s), being fuel, hydro, gas or hot or cold water, and advises of the additional staffing commitment to administer and enforce the proposed By-law.

BACKGROUND:

Each year a number of landlords in the City of Hamilton allow their accounts with suppliers of vital services, being fuel, hydro, gas or hot or cold water, to fall into arrears to such extent that the service is discontinued. Tenants whose rent payment to the landlord includes the cost of utilities may suddenly find themselves without heat, hot water or electricity through no fault of their own because the landlord has not made payment to the respective utility. Utility suppliers in these circumstances will not restore services unless arrears for the entire building are paid and a security deposit may be required to provide for future services.

Currently, Building and Licensing Division staff enforce lack of heat violations pursuant to the City of Hamilton Heat By-law No. 04-091, which requires landlords / property owners to supply adequate and suitable heat for rental residential premises. The authority to enact and enforce a Heat By-law comes from the Municipal Act, and the Hamilton Heat By-law empowers the City through enforcement officers to require landlords / property owners to undertake any repairs to heating systems and heating appliances to achieve compliance with the minimum indoor temperature of 20 degrees centigrade specified in the By-law. This By-law, while useful and effective in causing repairs and replacement of defective heating equipment to be made in a timely manner, does not address the situation where the fuel or electricity service has been discontinued by the supplier due to non-payment and arrears.
In this situation the Tenant Protection Act provides the municipality with the authority to ensure that there is no interruption in any vital services as defined in the By-law, provided the landlord, as part of the rental agreement, is responsible for the supply of this service.

**Vital Services By-law**

The Tenant Protection Act, authorizes Council to pass by-laws requiring landlords of buildings or parts of buildings used as residential dwellings, to provide an adequate supply of vital services being fuel, hydro, or hot or cold water to their buildings at all times, except in cases where tenants have expressly assumed this obligation in their rental agreement. The Act also authorizes the City to arrange for the provision of such services where the landlord fails to do so, and collect the cost of restoring the vital service, together with a 10% administrative fee for the amount spent by the City as a lien, on the real property or through the attornment of rents.

There is an additional provision in the Act that allows a municipality to require a vital service supplier to give notice of an intended discontinuance of a vital service. When a notice from a supplier is received that the vital service will be discontinued on a specific date, the municipality may proceed to investigate the circumstances and determine if the landlord is failing to provide a vital service which he is obligated by rental agreement to provide for, so that arrangements can be made for its reinstatement following the discontinuance of the service.

Staff has reviewed existing Vital Services By-Laws in the Province including the City of London, the City of Cambridge, the City of Cornwall and the City of Toronto. Each of the By-laws has provisions, which:

- Require every landlord to provide adequate and suitable vital services to each of the landlord's rental units.

- Prohibit a supplier from ceasing to provide the vital service until a notice has been given to the municipality.

- Require a supplier to promptly restore the vital service when directed to do so by an official named in the Vital Services By-law.

- Provides that a person, who contravenes or fails to comply with the By-law, is guilty of an offence.

- Authorizes an official named in the By-law to enter into agreements on behalf of the local municipality, with suppliers of vital services to ensure that adequate and suitable services are provided for rental units.

The Tenant Protection Act provides the authority for a municipality to classify buildings or parts of buildings for the purpose of the By-law and designates the classes to which the By-law applies, such as apartment buildings, townhouses, or a lodging home. It
also allows the City to designate specific areas within a municipality to which the By-law applies.

The **Tenant Protection Act** allows a municipality to have the tenant’s rental payment redirected to be paid to the municipality, as opposed to the property owner; in order to recover the amount the municipality has paid to the respective vital service supplier to restore the service in addition to a 10% administration fee. In addition to the redirection of rents, the municipality may also register a lien against the property in order to recover the costs to restore the vital service. The legislation does not, however, allow the municipality to apply the costs to the property tax account.

The City of London was granted special legislation in the mid 1990s prior to the vital services provisions being incorporated in the **Tenant Protection Act**. The special legislation provides the City of London the authority to apply vital services costs plus the 10% administration fee directly to the property tax account of the subject property owner and is not required to undertake a lien. The Cities of Toronto, Cambridge and Cornwall, do not have benefit of special legislation, as is the case with the City of Hamilton, and as a result, are required to register a lien against the property in order to recover the municipality’s cost to restore the vital service and recover the 10% administration fee. The City of Cambridge Vital Services By-law was enacted on September 20, 2004, and the City has not yet had occasion to enforce the By-law. The City of Cornwall enacted their Vital Services By-law in April, 2000.

In order to address costs incurred for the payment of vital services, the City of Toronto has committed $500,000 in their annual budget.

The enforcement and administration of the Vital Services By-law creates both financial and staffing implications. For example, when a municipality chooses to have tenants direct rents to the City until the costs of restoring the vital service is recovered this process would appear to make the municipality a de facto landlord in ensuring that outstanding rents are paid. In addition, there is no guarantee that the monies expended by the municipality to restore utilities will be recouped through a property lien and/or the redirection of rental payments. It is anticipated that the processes to recover costs could be very labour intensive and costly and involve several City Departments to undertake the required administration and enforcement as outlined in the **Act**.

Staff is developing a detailed process to undertake the administration and enforcement of the Vital Services By-law pursuant to the authorities in the **Tenant Protection Act**.

To avoid difficulties experienced in other municipalities respecting the collection of rents and the uncertainty of registering a lien to recover costs expended by the municipality to provide for vital service(s), the Building and Licensing Division is proposing to aggressively pursue every avenue to avoid having the service discontinued. Towards this end, the Vital Service Officer will be advising stakeholders with financial interest in the property of the impending shut off and the consequences of allowing shut off including the City’s authority to redirect rents to and to register a lien on the title of the property.
Contingency Fund

Union Gas has advised that the gas consumption for a high rise apartment annually would be 1,000m$^3$ per apartment for water heating and 1250m$^3$ per apartment for heating. In dollar amounts the cost per year for both hot water and heating would be approximately $850 per year. The cost per apartment during the heating season, defined in the City of Hamilton Heat By-law as of September 30 to April 31, would be approximately $140 per month. Horizon Utilities has advised that the hydro cost for a 308 unit high-rise apartment building is $20,000 per month, which averages to $65 per unit per month. Based on this information, staff recommends that a maximum limit on vital services paid by the City be set at $1,200 per unit. This would allow the City to pay both the Union Gas and hydro utilities for an apartment unit for six months and provide ample time for residents to relocate if the vital services payments are not taken over by the landlord in that time.

To address costs incurred pursuant to the Vital Services By-law the Building and Licensing Division is asking that a $200,000 contingency fund be set up. It is anticipated this money will allow payments to be made to utilities while recovery of costs is being pursued. To date, staff do not have a commitment from Horizon Utilities or Union Gas respecting the payment of arrears incurred by the property owner prior to the shut off of the vital service. In cases where a shut off of the vital service occurs the property owner is required to pay the incurred arrears, a security deposit and a turn on fee. Staff has proposed to the utilities that the City would pay the costs for the restoration of services and the market value cost of the vital service used by the property for each thirty day period of billing after the shut off, however, arrears that have accumulated over the sixty-to-ninety day credit period would not be covered. As of the writing of this report, Horizon Utilities has verbally agreed to this arrangement; however, no formal response on this proposal has been given to the City by Union Gas.

If Council is in a position to be required to exceed the $200,000 limit staff will provide a report to Committee explaining the current financial payout and request the direction of Committee to continue to undertake the vital service(s) costs or to request that residents relocate themselves to other residential accommodations where they are not subject to the inconvenience of possible vital services discontinuance.

Vital Services Officer

Staff recommend that an additional full-time Vital Services Officer/Inspector be hired for an 18-month pilot period to undertake all administrative and enforcement responsibilities that must be implemented and completed as required in the Tenant Protection Act upon enactment of the Vital Services By-law. The Vital Services Officer will provide administrative and enforcement duties related to the required processes and regulations of the Tenant Protection Act and the Vital Services By-law. The duties will include but not be limited to developing all forms, correspondence documents and notifications required throughout the process from the point of notification received respecting the impending discontinuance of the vital service from the utility and / or a complaint received from a member of the public. All written notification / correspondence must be
sent to the City Clerk, Financial Services, the property owner, the utility and the affected tenants. The Officer will be required to liaise continuously throughout the process with the aforementioned parties. In order to undertake the enforcement of the proposed Vital Services By-law, investigation and enforcement will be required by the Officer. Once notification from a utility and/or a complaint from the public is received respecting the discontinuance of the vital service, the Officer must attend at each subject property to verify that the By-law applies.

Based on the information received from Union Gas since April 2005 to date respecting possible utility shut offs, the average number of notifications is 13 per month, however, this has not been during the heating season when consumption costs will be higher and a higher possibility of shut offs due to non-payment.

Horizon Utilities is aware of 264 bulk metered buildings; these are residential buildings that have more than one hydro meter. It is not known if the hydro costs are paid by the property owner or the tenant. Therefore, each notification respecting possible shut off of the hydro utility must be investigated by the Vital Services Officer to determine if it is subject to enforcement of the Vital Services By-law.

If the By-law applies the Officer must notify the property owner, the City Clerk, Financial Services and the utility of the violation in writing. A secondary search of the property title for any individuals and/or organizations that have a financial interest in the property will then be undertaken. The Officer will continue to liaise with all relevant Departments, the property owner and the utility throughout the enforcement process respecting the status of the reconciliation or non-payment of the outstanding amount due to the utility.

The Officer will also be liaising with all affected tenants addressing all of their concerns on site or by telephone. As the process continues, where the utility payment is not reconciled the concerns of the tenants become understandably heightened and attention to the affected tenants becomes a priority. Equally important is the preparation and issuance of all required documents, notices and correspondence with the property owner, financial entities, the City Clerk, Financial Services, the Ministry of Municipal Affairs and Housing and the utility company to ensure that all parties are aware of the status of the investigation. The Officer will be in daily communication with the property owner, property manager/superintendent and the individual(s) and/or organization(s) with a financial interest for each affected property in order to address the reconciliation of the outstanding payment to the utility throughout the 30-day period prior to the actual discontinuance of the service.

Once the vital service is discontinued, the Officer must be in attendance at the subject property to witness the violation of the actual shut off of the vital service pursuant to the By-law. Again all correspondence must be prepared and circulated to the City Clerk, Finance Services, the utility, the property owner and all those with a financial interest in the property. Notification must be hand delivered to each tenant in the dwelling advising each tenant of the attornment of their rents by the City and the process available to them with respect to the Ministry of Municipal Affairs and Housing.
The Act provides an appeal process to the property owner to appeal the cost incurred by the City to restore the vital services. The Vital Services Officer will undertake any required preparation for the Appeal process and undertake charges being laid against the property owner for non-compliance with the By-law, prepare court briefs and attend at court for the hearing(s).

Upon the enactment of the Vital Services By-law, staff will undertake a press release with all departmental partners and representatives from Horizon Utilities and Union Gas in order to provide information to the public respecting the Vital Services By-law. Detailed information, forms and contact numbers at the City will be provided on the City of Hamilton website and correspondence providing the report, By-law and all contact numbers will be forwarded to all Legal Aid offices throughout the City and to the Ministry of Municipal Affairs and Housing.

The enforcement of the Vital Services By-law is not seasonal and will be required throughout the entire year. The provision of vital services such as natural gas and hydro, fuel heat and hot water, household appliances, provide lighting and emergency systems in a multiple dwelling as well as any residential setting that is subject to the discontinuance of a vital due to non-payment at any time of year. The number of notifications that may be received by the City from both Union Gas and Horizon Utilities are based on actual numbers of those residences known to the utilities to have more than one gas meter and/or more than one hydro meter. These numbers are a starting point; both utilities have advised that they are not aware of the number of tenanted single family homes and/or multiple dwellings (i.e., duplexes or tripexes) that are tenanted, have only one gas or hydro meter and subject to the authorities of the Vital Services By-law. Horizon Utilities sends out hundreds of notices per month of possible discontinuance of the hydro service due to non-payment of bills, however, Horizon Utilities is not aware as to whether or not these residential dwellings are tenanted and subject to the Vital Services By-law. Therefore, initially Horizon Utilities will provide notices for all known bulk metered residential dwellings to the City, however, it is anticipated that as members of the public become aware of the existence of the Vital Services By-law in the City through press releases and information on the City website staff will receive far more complaints respecting the discontinuance of vital services at any time of the year. Each complaint will require an inspection to determine whether or not the By-law applies, and in each case where the By-law is applicable the enforcement process will be undertaken. Union Gas and Horizon Utilities will in turn be advised respecting all additional addresses/properties where the Vital Services By-law applies throughout the City, which will be added to their lists of known multiple dwellings in terms of notification to the City regarding any impending shut off of services. Staff will monitor the level of administration and/or enforcement duties required of the Vital Services Officer/Inspector throughout the 18-month pilot project.

The proposed By-law is appended to this report as Appendix “A” for the information of Councillors and to assist discussion.
ANALYSIS OF ALTERNATIVES:

Under previous Council direction, staff has prepared this report and attached By-law to enact a Vital Services By-law to provide the City with the authority to ensure the payment of vital services and avoid the discontinuance of said services to tenanted properties where the tenant is not responsible to undertake the utility payment pursuant to their rental agreement.

If the recommendation to enact this By-law is not accepted, the City would continue to respond to lack of heat complaints but would be unable to require the restoration of service where the utility had discontinued the provision of service due to lack of payment. In these circumstances staff issues an order to the property owner requiring that he/she bring the property into conformance with the Heat By-law. A reasonable time must be given in the Order to allow the owner to come into compliance (usually 48 hours). If the owner does not comply in the allotted time stated on the Order, the property owner is subject to legal action. Without the enactment of the Vital Services By-law, staff would not have the proper mechanism and authority to restore the Vital Service or recover costs incurred.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial

The estimated annual financial costs related to the hiring of a full-time Vital Services Officer are as follows:

- Annual Wages Range from $47,638 to $54,134
- Benefits $11,190 to $12,716
- Cell/Land phones Computer costs $1,200
- Desktop PC $500
- Training $1,200
- City vehicle / fuel $6,680

Total estimated annual cost $68,408 to $76,430

The recommended $200,000 contingency fund should be funded from the Tax Stabilization Reserve (Account #110046). It is anticipated that it will be self-sustaining through collection activity.
The total cost of $115,000 to hire an additional full-time Vital Services Officer/Inspector for an 18-month pilot period should be funded from the Tax Stabilization Reserve (Account #110046).

Staffing

Staff recommends hiring an additional full-time Vital Services Officer to be assigned all duties related to the administration and enforcement of the Vital Services By-law for an 18-month pilot period. The duties of this Officer will include all administrative, investigation and enforcement duties as outlined in the Background section of this report.

Legal

Enactment and much of the content of a Vital Services By-law is provided for in sections 145 to 153 of the Tenant Protection Act, 1997, S. O. 1997, Chapter 24 (the “Act”). Upon enactment, a Vital Services By-law would provide a prohibition for landlords who are responsible for supplies from ending the supply of the listed vital services of fuel, gas, hydro or hot or cold water to one of their rental units, whether by intentional act or by breaching their contract with the supplier of such service. A Vital Services By-law would not apply where the tenant expressly agrees to provide and maintain the vital service, or for temporary periods where it is necessary to alter or repair a rental unit. A Vital Services By-law would require suppliers to give advance notice of the cut off of services, so that the City could investigate and issue warnings to the landlord where the By-law applies. Further, if service is ended, the By-law would allow the City to direct the supplier to promptly restore service, but based upon agreements between the City and the supplier to be negotiated, for the costs of re-supply. A Vital Services By-law would provide for authority for a named official to enter agreements with suppliers on behalf of the City. If Council so directs, the By-law could be limited to certain types of buildings or rental units, such as buildings with at least four rental units, or be made applicable only in certain areas of the City.

The City would control its costs through the content of agreements with suppliers, including prices and length of the agreement. Further, when the City incurs costs for the supply of vital services, it may pursue collection by adding a lien to the property or seeking the collection of rents owed by tenants in the buildings. For this reason the draft By-law submitted for consideration is limited to tenant occupied buildings, so the City will not have to incur costs for unoccupied buildings. The Property Standards By-law has provisions dealing with the cut off of unnecessary services when a building is vacant for more than 90 days. Tenants are not at risk of eviction for the reason they pay their rents to the City, as the Act provides for this payment and protection. Agreements with suppliers would deal with the costs of services supplied and re-connection charges where a service has been cut off, provide for cancellation when someone else has become responsible for the supply of the services, might also ensure the City is refunded where the landlord pays for the same service, and perhaps deal with priority of liens issued by the City or the supplier. Advance discussions with major suppliers may see additional issues or costs raised or terms better clarified.
For cost recovery purposes, a lien would be placed against the property for the amounts incurred plus 10% for administrative costs. Under the Act the City must issue an interim certificate for the amount to owners, mortgagees and other encumbrancers, and Council must provide a hearing in the event such persons appeal the amount of the lien. Council would have the power to hear such appeals, giving the appellant and staff the opportunity to present information on such costs, and to determine the amount of the lien. The lien has no special priority (unlike municipal taxes) so full cost recovery is not a certainty. The City can also direct tenants in the building to pay their rents to the City as a further method of cost recovery. There must be an accounting of payments received and a return of any surplus above costs and the administrative fee. Once again, full recovery is not certain as difficulties may be encountered in collecting rents. The threat of lien and rent collection may result in actions by landlords, property owners and other persons with an interest in the property or rents to take steps to avoid City intervention.

POLICIES AFFECTING PROPOSAL:

The Property Standards By-law and Heat By-law provide staff with the authority to order any necessary repairs to those appliances related to the vital services. The enactment of the proposed Vital Services By-law will provide staff with the ability to ensure that any discontinuance of a vital service due to non-payment by the property owner in a tenanted dwelling is addressed.

CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:

Staff has met with the City Clerk and the Budgets and Finance Division to address the responsibilities of each Department as required by the Tenant Protection Act. A detailed process has been developed including all required notification, documents, correspondence, and enforcement pursuant to the enactment of the proposed Vital Services By-law.

Finance would only become involved when/if the inspector confirms that vital services are being shut off - we would require a request from that department to invoice the landlord. If the landlord becomes delinquent in settling the account then we would have several remedies to pursue collection. Rent attornment as indicated in the By-law would be the preferred option.

Current staff within the Budgets and Finance Division will maintain records of payment activity however internal resources are not available to undertake collection of rents from tenants. A possible solution for this would be for Council to endorse the use of a bailiff to make collections on the City’s behalf for a fee of 10%. This would eliminate the need to hire extra staff considering that the frequency of occurrence is unpredictable.

Water and Waste Water advises that any arrears incurred by a property owner for this service will be assigned to the respective property tax account and, therefore, they do not anticipate that the Vital Services By-law will apply to the provision of water.
The proposed Vital Services By-law will serve to protect the health and safety of the public. The By-law will ensure that living standards are met and maintained to protect the public health and well-being of those members of the community living in rental dwellings. The proposed By-law has a positive impact on the physical health and well-being of the public by ensuring that their residential dwelling meets the requirements imposed by the Vital Services By-law pursuant to the Tenant Protection Act; specifically, ensuring an individual’s quality of life by avoiding the termination of vital services to their rented dwelling unit where the By-law applies.

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Attach. (1)