

Authority: Item 6, Emergency and
Community Services Committee
Report 09-011 (PD05057(d))
CM: September 16, 2009

Bill No. 190

CITY OF HAMILTON

BY-LAW NO. 09-190

Being a By-law To:

Repeal By-law 05-322 and Requiring the Supply of Vital Services

WHEREAS City Council deems it necessary to require the supply of gas, fuel oil, or electricity by landlords and the suppliers of such vital services and to prohibit the cancellation of such vital services to rental units;

AND WHEREAS City Council deems it necessary to repeal and replace By-law No. 05-322 respecting vital services;

AND WHEREAS Part XIII, Sections 215 through 223 of the Residential Tenancies Act, 2006, S.O. 2006 Chapter 17, provides for the enactment and enforcement of a vital services by-law, lien and rent collection rights, and related matters;

AND WHEREAS Section 23.5 of the Municipal Act, 2001 S.O. 2001, Chapter 25 allows City Council to delegate hearings or the opportunity for a hearing to its committees;

AND WHEREAS Section 446 of the Municipal Act, 2001 provides that a by-law passed under any Act directing or requiring a person to do a matter or thing, allows the municipality to provide that in default of the thing or matter being done by the person directed or required to do it, the matter or thing may be done by the City, at the persons expense, and allowing the municipality may for that purpose enter upon lands at any reasonable time;

NOW THEREFORE, the Council of the City of Hamilton enacts as follows:

DEFINITIONS AND INTERPRETATION

- 1(1) In this By-law,
- (a) “**adequate and suitable**” in respect of a vital service, means that the vital service is supplied and available to the rental unit, and for greater certainty includes the provision of such service to an appliance which is serving the rental unit with heat or water;
 - (b) “**City**” means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;
 - (c) “**Director**” means the Director of Municipal Law Enforcement of the City or the Director’s designate;
 - (d) “**Officer**” means, in relation to a person carrying out duties of administration or enforcement under this By-law on behalf of the Director, a person appointed under this or any City by-law as a municipal law enforcement officer or inspector, or any other person assigned administrative duties by the Director for purposes under this By-law; and,
 - (e) “**Residential Tenancies Act, 2006**” means the Residential Tenancies Act, 2006, S. O. 2006, Chapter 17.
- 1(2) For the purposes of interpretation of this By-law, the applicable provisions of sections 2 and 3 of the Residential Tenancies Act, 2006 shall apply, including but not limited to the definitions for landlord, rental unit and vital service, except as specifically limited by this By-law.

SHORT TITLE

- 2 This By-law is named and may be cited as the “Vital Services By-law”.

APPLICATION OF BY-LAW

- 3(1) This By-law shall not apply to a landlord with respect to a rental unit to the extent that the tenant has expressly agreed to obtain and maintain a vital service.
- 3(2) This By-law only applies to residential rental buildings which are tenant occupied or where a tenant has a right to occupy a rental unit.
- 3(3) This By-law applies to residential rental buildings as described in subsection 3(2) whether or not notice of the shut-off of a vital service is required under section 6.

- 3(4) This By-law only applies to vital services which are gas, fuel oil or electricity.

LANDLORDS

Adequate and Suitable Vital Services

- 4(1) Every landlord shall provide adequate and suitable vital services to each of the landlord's rental units, and no landlord shall cease to provide a vital service for a rental unit, excepting only when necessary to alter or repair the rental unit and only for the minimum period of time necessary to effect the alteration or the repair.
- 4(2) A landlord shall be deemed to have caused the cessation of a vital service for a rental unit if the landlord is obligated by the rental agreement to pay for the vital service and fails to do so and as a result of the non-payment the vital service is no longer provided to the rental unit.
- 4(3) For the purposes of this By-law, an adequate and suitable supply is not provided where the electrical supply is restricted by a load limiter added by a supplier as a result of non-payment by the landlord for the electrical supply.
- 4(4) A landlord, for the purpose of restoring the supply of a vital service under this by-law, shall:
- (a) provide the City, its agents or contractors, suppliers or public authorities concerned with the safe restoration of a vital service with such information, building plans and assistance as may be required to safely restore the supply of a vital service to rental units, including arranging for and communicating reasonable times to enter the common or other areas and rental units at the property, and providing information on whether rental units or other dwelling areas are occupied or not;
 - (b) serve notices upon tenants, occupants, superintendent staff or other agents of the landlord to ensure access by the landlord, and arrange for access to the building and its rental units by the landlord to ensure the supply of a vital service can be safely restored, and communicate with the City, a supplier or public authority when the building and its rental units have been checked to allow safe restoration of service;
 - (c) carry out alterations or repairs, including restoring or replacing any connection, equipment or part of the system involved in the supply of a vital service to a rental unit as may be required to safely restore the supply of a vital service, and to do such things in the minimum period necessary to effect the repair or alteration;

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- (d) allow a supplier or public authority to inspect, replace or repair their own equipment installed at the building or any connection to or part of their system of supply needed for safe restoration of vital services;
- (e) provide access to common or other areas of the building needed for the City, its agents and contractors, suppliers, or public authorities for inspection of connections, equipment and systems involved in the supply of a vital service, as may be necessary for the safe restoration of a vital service supply; and,
- (f) not attempt to or actually interfere with, hinder or obstruct the City, its agents or contractors, and suppliers or public authorities involved in the restoration of vital service or related matters under this By-law, where the landlord has failed to carry out the required safe restoration of services themselves.

Director's Notice or Warning

- 5(1) The Director may give notice or warning to a landlord responsible for the cessation of supply of a vital service or to other persons with an interest in the property who may be affected by the City's authority under this By-law including tenants, of the City's intention to take action under this By-law in the event a vital service is discontinued, but the failure of such notice to be given or of it coming to the attention of the landlord or others does not prevent or limit the taking of any action herein.
- 5(2) Notices or warnings under subsection 5(1) may be personally delivered, posted on the property in a prominent place, or mailed to the last known address of persons which address may include the address supplied by tenants used to supply rent payments or to contact the landlord for the purposes of the lease or rental of the units.

SUPPLIERS

Notice to City

- 6(1) Subject to subsection 6(2), no supplier of a vital service shall cease to provide the vital service to a building to which this By-law applies until written notice of the intended discontinuance has been delivered to the City in compliance with this section at least thirty (30) days before the supplier ceases to provide the vital service.
- 6(2) A vital service supplier is required to give notice to the City only if the vital service is to be discontinued for a rental unit or any part or whole of the building containing such rental unit because the landlord or such other person acting on behalf of the landlord has breached a contract with the supplier for the supply of the vital service, and further such notice is only required:

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- (a) in the case of a supplier of natural gas, where there are five or more residential rental units in the building affected by the shut-off;
 - (b) in the case of a supplier of electricity or fuel oil, where there are three or more residential rental units in the building affected by the shut-off; or,
 - (c) where there are any number of residential rental units in the building affected by the shut-off and the supplier is aware that the vital service is supplied under a contract with the landlord.
- 6(3) A supplier shall deliver the notice of shut-off required in this section, marked "URGENT, Notice of Shut-off of Vital Service" to the attention of the Director, Municipal Law Enforcement Section of the City of Hamilton by e-mail to MLE@hamilton.ca, or by facsimile to telephone number (905) 643-1198. In the event the supplier receives written notice from the Director of Municipal Law Enforcement changing the contact information or methods of delivery of notices in this section, then the supplier shall use such new methods until the By-law is further amended.
- 6(4) A supplier shall include the following details in the notice required by this section:
- (a) the municipal address of the property, a list of the units affected by the discontinuance where known, and the type of vital service being discontinued;
 - (b) the name, address and telephone number of the person responsible for payment for the vital service;
 - (c) a statement that the reason for the discontinuance of the vital service is for non-payment, or alternatively indicating without particulars that the vital service is being discontinued for some other breach of the supply contract;
 - (d) the date and approximate time proposed for discontinuance of the vital service;
 - (e) a reference to this By-law by name; and,
 - (f) the name, telephone number, and fax number of the person at the supplier who is responsible for the disconnection and of the person who may be contacted to receive directions to arrange reconnection.
- 6(5) A supplier shall deliver additional written notice to the Director of Municipal Law Enforcement where the details mentioned in subsection 6(4) have changed, and in particular shall deliver immediate notice in the event the disconnection of

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a vital service is cancelled or rescheduled whether by reason of payment of the account or otherwise.

Director's Direction or Request

- 7(1) Upon the direction of the Director, a supplier shall promptly restore or supply a vital service to a building or rental unit.
- 7(2) Upon the request of the Director, a supplier shall provide such written details, invoices or updates as the Director deems necessary to implement the provisions of this By-law, including amounts owing for a vital service supplied to a building or rental unit, and details as set out in subsections 6(4) and 6(5) if not previously included in notices delivered to the Director of Municipal Law Enforcement.

ADMINISTRATION AND ENFORCEMENT

General

- 8(1) Administration and enforcement of this By-law shall be performed by the Director, and by such Officers as are appointed or assigned, except where duties are specified for the City Clerk, and the Director or Clerk may assign such duties or retain such agents or assistance as required, in particular including for the purpose of registering liens and collecting of rents under this By-law.
- 8(2) No person shall hinder, obstruct, or interfere with, or attempt to hinder, obstruct or interfere with the Director, any Officer or other person mentioned in subsection 8(1) while acting on the City's behalf in exercising a power or performing a duty under this By-law or relevant to this By-law.
- 8(3) The Director is authorized to issue or cause to be issued notices and warnings under this By-law and to give directions to restore supplies of vital services.
- 8(4) The Director, any Officer or other person acting under this By-law, may exercise the powers of entry and inspection at all reasonable times in the manner provided for in section 218 of the Residential Tenancies Act, 2006, subject to the limitations and requirements in section 218 that entry to a rental unit shall only be made where the consent of the occupier is obtained after informing the occupant of their right to refuse permission, or under the authority of a warrant.
- 8(5) The Director, any Officer or a person acting under the directions of either may collect information or copies of documents from landlords, tenants and suppliers for determining the application and enforcement of this By-law, including information on costs and copies of any lease and rent payments made there under, and for that purpose may enter the premises at all reasonable times in the manner provided for in section 218 of the Residential

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Tenancies Act, 2006 and subject to the limitations and requirements of such entry in respect of rental units.

- 8(6) The Director, any Officer or person acting under the direction of either may, where the landlord has failed to do a matter or thing required of the landlord under this By-law, do or carry out such matter or thing, including making necessary access the property or parts at reasonable times.
- 8(7) No entry shall be made to a rental unit or other place actually occupied as a dwelling unit under subsection 8(6) above unless the consent of the occupier is obtained after informing the occupier of their right to refuse permission, or unless under authority of a warrant.
- 8(8) Where the City incurs costs under subsection 8(6) above as the result of the landlord's failure to do a matter or thing required under this By-law, other than costs for the supply of vital services, reconnection fees charged by a supplier or the City's own administrative costs, the additionally incurred costs may be collected by action or in a manner like taxes under section 446 of the Municipal Act, 2001, S. O. 2001 c. 25, together with 15% interest per year, calculated from the time the City incurs the cost until the amount is paid.
- 8(9) For greater certainty, costs intended to be recoverable under subsection 8(8) above include those costs invoiced to and incurred by the City as a result of attempted or actual obstruction, interference or hindrance of the City, its contractors or agents, and suppliers or other public authorities involved in the safe restoration of a vital service, and any locksmith costs in obtaining access to an area of the property under control of the landlord or the landlord's contractor or agent for which the landlord has not given reasonable access considering the vital aspect of the service and obligations of the landlord to tenants.

Agreements

- 9(1) The Director is authorized to negotiate and enter into agreements with suppliers to provide for the supply of vital services to buildings and rental units or for the payment of such services, all on behalf of the City.
- 9(2) The Director shall maintain copies of any agreements entered into on behalf of the City of Hamilton with service suppliers in respect of subsection 9(1), and shall account for the amounts spent under such agreements and the amounts collected by the City through voluntary payment, rent collection, lien or otherwise under this By-law.

Liens

- 10(1) The Director is authorized to register or cause to be registered a lien in favour of the City against a property where a landlord does not provide a vital service in accordance with this By-law for an amount spent by the City to restore or provide the vital service plus an administrative fee of 10%.
- 10(2) On behalf of the City Clerk, the Director may issue and mail interim certificates and certificates with respect to a lien under subsection 10(1) as provided for under the Residential Tenancies Act, 2006.
- 10(3) Subject to subsections 10(4) and 10(7), the registered owner of the affected property and persons having registered mortgages or other encumbrances on the title to the property who are sent an interim certificate may appeal the interim certificate to the City by completing and signing an appeal request on the form available at the City Clerks Office, and delivering the written appeal to the Committee Clerk for the Economic Development and Planning Committee in the City Clerk's Office, within fifteen (15) days of the date of mailing of the interim certificate.
- 10(4) The appellant in their appeal request shall:
 - (a) indicate the grounds for appeal of the amount of the interim certificate in accordance with the section 220 of the Residential Tenancies Act, 2006;
 - (b) provide copies of any documents to be relied upon at the hearing, or alternatively, provide such documents no less than ten (10) days prior to the scheduled hearing; and,
 - (c) include an address for service where notices or documents can be served upon the appellant.
- 10(5) City Council delegates the hearing of the appeal to the Economic Development and Planning Committee, which Committee shall afford an appellant who files an appeal request in accordance with the requirements and time limits in this By-law, an opportunity for a hearing of the appeal and shall allow for City staff involved to respond to the appeal.
- 10(6) At the conclusion of a hearing of an appeal by the Economic Development and Planning Committee, the Committee shall supply a written report to City Council summarizing the evidence and arguments presented by the parties, being the appellants and City, the findings of fact made by the Committee and its recommendations if any with reasons on the merits of the appeal, and City Council may upon receipt of the report make a decision in the appeal without holding a further hearing or opportunity for hearing.

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- 10(7) The Committee Clerk for the Economic Development and Planning Committee will:
- (a) where an appeal is received in compliance with this section within the period for an appeal, set the hearing date of the appeal and arrange a hearing before the Committee;
 - (b) mail notice of the date, time and place of the appeal hearing to the appellant at the address provided in the appeal request and to the Director, a minimum of three (3) weeks prior to the date of the appeal; and,
 - (c) after the hearing of an appeal, will send a copy of the Committee's report to the parties and to City Council.
- 10(8) Where more than one person appeals the same interim certificate, the appeals shall be heard together unless the Economic Development and Planning Committee directs otherwise.
- 10(9) The decision of City Council in an appeal is final.
- 10(10) The City Clerk may sign a final certificate in the event an interim certificate is not appealed in accordance with this by-law, or may issue such final certificate as required by the decision of City Council in the event of an appeal.

Rents

- 11(1) Where the City is supplying a vital service under this By-law, the Director may cause to be issued orders or notices to the tenant or tenants of the rental units in the building or property for the payment of any or all rents to the City, and issue cancellation of such directions to pay rent where the City has been fully re-paid as to such amounts and fees due under this By-law, and may give notices for the purpose of advising tenants at a property of the ending of the City's supply of vital service.
- 11(2) The Director shall cause an accounting of rent payments or other collections under this By-law to be provided to the landlord or other person entitled to collect rents at a property, and shall cause a refund the balance of any payment or collection beyond the amount spent by the City and its administrative fees, and arrange for the discharge of any lien where the City has been fully re-paid as to amounts expended and its fees.

OFFENCES AND PENALTIES

- 12 Every person who contravenes a provision of this By-law is guilty of an offence for each day or part of a day on which the offence occurs or continues, and

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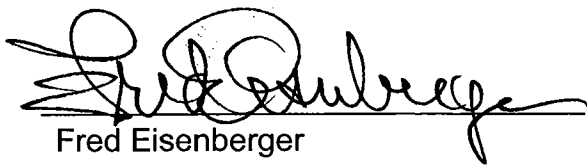
upon conviction is liable to the penalties provided for in section 61 of the Provincial Offences Act, R. S. O. 1990, c. P.33.

- 13 Every director or officer of a corporation convicted of an offence under this By-law who knowingly concurs in the commission of the offence by the corporation is also guilty of an offence, and upon conviction is liable to the penalties provided for in section 61 of the Provincial Offences Act, R. S. O. 1990, c. P.33.
- 14 Sections 431 and 440 of the Municipal Act, 2001, S. O. 2001, c. 25, apply to this By-law, providing respectively, for a court of competent jurisdiction to prohibit the contravention or repetition of an offence, and, upon application of the municipality, for a court to make orders to restrain a contravention, which remedies may be sought in addition to any remedy or penalty imposed under this By-law.

TRANSITION AND ENACTMENT

- 15(1) Any contract entered into for the supply of vital services at the time of enactment of this By-law, and any step taken, notice, lien or certificate issued by the City, or any appeal commenced, all under By-law No. 05-322, shall be deemed to be validly done under this By-law, and this By-law shall apply so far as practicable to such contract, step taken, notice, lien, certificate or appeal.
- 15(2) Amounts spent by the City under By-law No. 05-322 to restore or provide a vital service including an administrative fee of 10% are continued as debts that may be enforced and recovered under this By-law.
- 15(3) Any reference to By-law No. 05-322 shall be deemed to be a reference to this By-law.
- 15(4) If a court declares any provision of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force and effect.
- 15(5) By-law No. 05-322 is repealed.
- 15(6) This By-law comes into force on the date it is passed.

PASSED and ENACTED this 16th day September, 2009.



Fred Eisenberger
Mayor



Kevin C. Christenson
City Clerk