To: Chair and Members
Emergency and Community Services Committee

Outstanding Business Item No. F and Issue: Vital Services By-law
(PD05057(b))

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Re: Vital Services By-law Status Report (PD05057(b)) (City Wide)

Council Direction:

City Council, at its meeting held on February 9, 2005, approved Item 4 of the Social and Public Health Services Committee Report 05-002, as follows:

4. Implementation of a Vital Services By-law in the City of Hamilton (PD05057) (City Wide) (Item 8.2)

(a) That Report PD05057, respecting the implementation of a Vital Services By-law in the City of Hamilton, be received for information.

(b) That staff report back in one month on the administrative, financial, and staffing considerations of enacting the proposed Vital Services By-law.

(c) That staff also be directed to include in the report an education component addressing the methods by which both landlords and tenants can be made aware of the new Vital Services By-law and how it relates directly to them.

A Report was brought back to Social and Public Health Services Committee and at its meeting held on October 26, 2005. City Council approved Item 3 of the Social and Public Health Services Committee Report 05-013, as follows:

3. 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 (Item 8.1)

(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 find, funded from the Tax Stabilization Reserve (Account No. 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 form the Tax Stabilization Reserve (Account No. 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 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.

Information:

As the Chair and Members of the Emergency and Community Services Committee are aware, the report on the status of the 18-month pilot period with a Vital Services Officer/Inspector was due back to Committee in October 2006. In January 2007, an Operational Review of the former Standards and Licensing Section was completed. Also, since January 2007 there has been a complete changeover of management in this section. As a result, much of the previous work and background on many outstanding issues and reports being dealt with by the former management had to be re-evaluated.

Since the new management arrived, they set to work determining the status of a number of outstanding reports and issues and began the process of researching the background and building upon any existing work that had been done where appropriate. Upon investigation of the Vital Services Report, it was found, that a significant number of items on the list had not been addressed. Therefore, over the past several months, new management and staff have been working on procedures and details of the items listed above.

The purpose of Information Report PD05057(b) is to report on the status of the Vital Services By-law items, describe the issues and challenges that have been encountered in the effective implementation of the Vital Services By-law and steps that are being taken currently by staff to address the issues and complete the direction given by City Council.

Background:

On November 1, 2005, the Vital Services By-law 05-322 was enacted. In January 2006, the Standards and Licensing Section\(^1\) of the Planning and Economic Development Department began receiving notices of potential shut-off of vital services of tenants by utility companies. To date, staff have received approximately 428 notices for impending

\(^1\) Standards and Licensing Section has been changed to Municipal Law Enforcement effective June 1, 2007.
shut-off of hydro, gas or fuel oil or tenant complaints where services have already been shut-off.

In 2006, a contingency fund of $200,000, funded from the Tax Stabilization Reserve was set up for the purposes of costs that may be incurred pursuant to the Vital Services By-law. Since January 2006, approximately $1,800 has been paid to five (5) units for monthly utility payments and reconnection fees. However, no funds have been recovered from the landlords since no formal process had been developed for collecting rents or placing liens on the properties. In some cases, it was decided not to recover the funds because the amount paid out was less than the administrative costs it would have taken to recover the costs.

Further, a contingency of $77,000 was set up to pay for a Vital Services Officer/Inspector. While an additional inspector was hired, this position was not designated as a Vital Services Officer/Inspector. The responsibilities for the investigations of Vital Services cases were distributed to all the Inspectors based on their geographic areas and administrative responsibilities were taken on by a Coordinator. For 2008, the Inspector position will continue to be funded 100% from the tax stabilization reserve.

The education component to landlords and tenants regarding the By-law that was to be done by the Vital Services Officer as outlined in the Report PD05057(a) of October 25, 2005 was not completed since no designated position was created.

Since the enactment of the Vital Services By-law, a number of issues and challenges have been identified that have made enforcement and application of the By-law difficult as it is currently written. The following is a list of issues and challenges that staff are currently trying to address.

Issues and Challenges with Vital Services By-law 05-322:

1. **Sharing of Information by Utility Companies** - Union Gas stated they were unable to share information as required in the By-law citing privacy issues. This made enforcement of the By-law by the Inspectors difficult, if not impossible. In order to facilitate the Inspectors’ ability to enforce the By-law, Union Gas agreed to provide a minimal amount of information, although not all information as currently required in the By-law. Further review of the By-law and information requirements is being re-evaluated.

2. **Identification of Multiple Rental Dwellings of Less than Five (5) Units** - Currently, the By-law requires that the supplier notifies the City of impending shut-off of two (2) or more rental units. Due to the set up of meters, Union Gas and Horizon Utilities are not always able to determine if there are fewer than five (5) or three (3) units respectively on the same meter or account. If all notices were to be forwarded, there would be in the 1,000s of notices of impending shut-off each month from each of these utility companies. Staff would have to investigate each address to determine if the By-law requirements apply and this would have significant staffing implications. The City currently relies on complaints issued by tenants who live in duplexes, triplexes or four-plexes, often after the utility has already been shut-off in order to enforce the By-law.

3. **Payment of Arrears** – Council’s direction is to not pay utility bill arrears and to place a limit of $1,200 per unit that the City will pay for utility payments. The intent of the City taking over monthly payments of utilities is to allow time for the
tenant to exercise their rights before the Landlord and Tenant Board and/or relocate. However, once the limit has been reached, if the arrears have not been paid and the tenant has refused to move out, the utility will have the right to shut-off the service once the City has ceased payments. This would leave tenants without service.

4. **Avoidance of Shut-off of Service** – The Residential Tenancies Act, 2006 requires that, in order for a municipality to assume payment, the service must be shut-off. The Act specifies that the landlord is deemed to have caused the loss of service where “…as a result of the (landlord’s) non-payment, the vital service is no longer provided to the rental unit.” Without this shut-off event, the By-law does not apply, so the City cannot ask for service to be restored, lay a charge against the landlord, or collect its costs whether by lien or collecting rents. The fact that shut-off must physically occur presents with a number of issues outlined below in addition to the inconvenience to the tenant.

5. **Safety** – Once the City has agreed to take over payments of the utility, there are cases when the service cannot be restored due to safety issues. In order to be in compliance with Technical Standards and Safety Act (TSSA), utilities can only be reconnected after certain inspections are done and that all relevant appliances and the utility related building structures are up to code. If the building was not up to code, service to the building could not be reconnected until the repairs were made by the landlord, which could run in the $10,000s or more. In the meantime, the tenants will be without the service and would likely require relocation. The larger the building, the more problematic this could be and could place a number of the tenants at risk. Also, when the service cannot be provided due to safety issues, the Vital Services By-law will no longer apply but would fall under Property Standards or Adequate Heat By-laws or the TSSA. Despite inconveniences to the tenants, however, there may be very good reasons to have these safety issues addressed.

6. **Access to Affected Units** – As mentioned, in order for service to be reconnected, certain inspections must be conducted. This would require the utility crews to be permitted access to a number of areas of the building. Vital Services providers have expressed concern over their limited powers of entry. Limited access, either due to tenants/property management not being present or refusing to allow crews to enter could prevent either all or part of the service from being restored.

7. **Prompt Reconnection of Service** – The By-law requires that the utility restore the service promptly once the City has agreed to take over the monthly payments. The utilities have agreed to make every effort to restore the service as quickly as possible. However, it must be noted that there may be cases where prompt reconnection is not possible if the utility is coping with a wide spread or emergency situation either locally or elsewhere where crews have to be redeployed to other regions.

8. **Cost Recovery** – Staff are currently in the process of identifying a procedure for the collection of rent from the tenants of the building where the City has assumed monthly utility payments. Upon initial investigation, a number of issues have been identified not the least of which is that the administrative cost to recover the monies paid could exceed the amount being recovered. There would also be no
guarantee that the tenant would comply with forwarding of rent for fear of reprisals from their landlord, despite the fact that these reprisals would not be legal. In many cases, tenants have provided post-dated cheques to their landlords and would need to have a stop payment placed on their cheques. If a lien were to be put on the property, the successful recovery of costs may be more likely however; it could be years before these costs would be realized. Again, there would be no guarantee of cost recovery especially in situations where the property is in poor condition or heavily financed.

9. **Other Tenant Rights** – Some tenants may have availed themselves of their rights under the Residential Tenancies Act and already vacated the property. This could mean that there would be no one from which to collect rent for units when service has had to be restored to an entire building that is now only partially occupied.

**Next Steps:**

Municipal Law Enforcement (MLE) communicates regularly with the utilities, but has hosted two (2) formal meetings with representatives from the Office of the City Clerk, Fire Prevention, Legal Services, Horizon Utilities and Union Gas. The purpose of these meetings has been to identify issues such as those identified above and attempt to work through as much as possible. In addition to the meetings, staff has had ongoing discussions with utilities to continue to resolve a number of the issues listed above. Some progress has been made through these discussions around communication and prompt reconnection of service.

Staff will continue to work with the utilities and relevant City Departments to attempt to address those issues that can be resolved and to identify potential changes that need to be made to the existing By-law for issues that cannot be resolved any other way. Staff will also need to connect with fuel oil suppliers to ensure they are aware of the Vital Services By-law and the responsibilities required of them under the By-law but this will require contacting individual fuel oil suppliers from phone book listings.

Staff are also continuing to gather information on lessons learned from other municipalities on their Vital Services By-laws as well as reflecting on our own experience since the enactment of our By-law and will present this information in the next report.

As part of the Operational Review of the former Standards and Licensing Section, consultants were hired to investigate best practices and provide recommendations on the number of effective operational approaches. These included whether the Inspectors’ role would be more effective taking on a specialist as opposed to the current generalist function. The direction to have an Inspector specializing in Vital Services is similar to issues with other by-laws, so as per the Operational Review, the decisions being made from the recommendations of the consultant due mid-December 2007, will help determine the direction that MLE needs to take regarding the Vital Services function going to one (1) Inspector or being shared among all the Inspectors.
Staff proposes to report back to the Emergency and Community Services Committee in 2008 after the consultant’s report has been completed and recommendations have been reviewed.

In the short term, staff will continue to apply the By-law as effectively as possible while continuing to address the various issues and challenges previously outlined. Also, the Parking and By-law Services Division will assemble a working group comprised of Planning and Economic Development, Public Health Services, Hamilton Emergency Services and Community Services staff to develop an effective interim Contingency Plan for the 2007/2008 winter season to enable the City to respond to emergency vital service situations until the final plan is in place for the spring season.

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