

Bill No. 091

CITY OF HAMILTON

BY-LAW NO. 04-091

Being a By-law To:

**Require the Supply of Adequate and Suitable Heat for
Rental Residential Premises**

WHEREAS Council deems it necessary to enact a by-law to require the supply of heat to rental residential premises from September 1st of a year until May 31st of the following year;

AND WHEREAS The lack of heat in rental premises during cold weather may put substantial strain on public and charitable resources, particularly shelters;

AND WHEREAS Sections 2, 8 through 11, 125 and 427 of the Municipal Act, S. O. 2001 Chapter 25, as amended, provide for the Council of a Municipality to pass by-laws for purposes which include the provision of services and things necessary and desirable for the municipality and fostering the current and future economic, social and environmental well-being of the municipality, and powers which include the authority to regulate, prohibit and impose requirements on persons, and to differentiate between persons, and specifically to enact by-laws dealing with structures and the use and installation of heating appliances, and for the carrying out of requirements at the expense of the person and collection of such costs through the tax roll or by other means;

AND WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Schedule C, did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

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

SHORT TITLE

1. This By-law may be cited as the “Adequate Heat By-law”.

DEFINITIONS AND INTERPRETATION

2(1) In this By-law,

- (a) **“adequate and suitable heat”** means the maintenance of an air temperature of at least twenty degrees Celsius (20°C) in all habitable spaces, by a safe, operable and permanent heating appliance capable of maintaining that temperature;
- (b) **“City”** means as the context requires, the geographic area of the City of Hamilton or the municipal corporation of that name;
- (c) **“Director”** means the Director of Building and Licensing of the City or the Director’s designate(s);
- (d) **“habitable space”** means any room in a dwelling used or intended to be used for living, eating, sleeping or cooking and without limiting the foregoing shall include a den, library, sunroom, recreational room, washroom or toilet room or a combination of such rooms, but which term shall not include a room or space used solely as a laundry room, pantry, closet, communicating corridor, stairway, boiler room, mechanical room, garage designed for the parking of motor vehicles, elevator shaft or a space reserved for the buildings service or maintenance;
- (e) **“Inspector”** means the persons listed in section 7(1) of this by-law;
- (f) **“Landlord”** includes the person for the time being managing the premises or entitled to receive or receiving rent payments for the land or premises, whether on the person’s own account or as agent or trustee of any other person;
- (g) **“permanent”** in relation to a heating appliance means an appliance other than a temporary heating device;
- (h) **“Property Owner”** means the registered owner of the land;
- (i) **“regulated institution or care premises”** means a hospital, medical or care institution, or a penal or detention facility which includes living accommodation but which is licensed, approved or supervised by a Province of Ontario or Government of Canada authority or agency in respect of the provision of services or care;

- (j) **“rental residential premises”** means any structure rented as a dwelling, boarding or lodging house, or for living accommodation for persons, and including structures with wheels or which may be made mobile by the re-attachment of wheels or other connections, but does not include any regulated institution or care premises;
- (k) **“temporary heating device”** includes an electric heating device which plugs into or is intended to be plugged into an electrical outlet, and any heating device or appliance designed to be portable;
- (l) **“tenancy agreement”** includes a lease or rental agreement; and
- (m) **“Tenant”** includes a lessee or other person occupying premises under a tenancy agreement.

APPLICATION OF BY-LAW

- 2(2) This by-law does not require adequate and suitable heat in spaces which are not habitable spaces.
- 2(3) This by-law shall not be interpreted so as to limit the temperature preference of a Tenant or to require the Tenant to set a thermostat within their dwelling or living accommodation at or above the required temperature, except only as may be reasonably necessary to permit a measurement to be taken or to establish operation of a heating appliance, and further this by-law shall not be interpreted so as to require a Tenant to use temporary heating devices in the premises or part to meet the Property Owners or Landlords obligations under this by-law.

ADEQUATE AND SUITABLE HEAT

- 3. A Property Owner and the Landlord of rental residential premises shall provide a supply of adequate and suitable heat to habitable spaces within the premises or parts thereof and no Property Owner or Landlord shall cause or permit the lack of adequate and suitable heat to habitable spaces within the premises or parts thereof.

EXCEPTIONS

- 4. Section 3 does not apply;
 - (a) between the dates of June 1 and August 31 in a single calendar year, both dates inclusive; or
 - (b) to a lack of heat arising from the failure of a Tenant to pay for a required service which is the cause of the lack of heat, where the Tenant is obligated by a tenancy agreement to pay for the required service.

MEASUREMENT OF TEMPERATURES

- 5(1) For greater certainty the measurement of temperatures to determine compliance with the requirement for adequate and suitable heat, will be a measurement of air temperature at 1.5 meters above floor level and 1 meter from a wall in the space.
- 5(2) For greater certainty the provisions of subsection 2(3) and section 3 mean that measurement of temperature to determine compliance with this by-law shall be taken with the thermostat set at or above the specified temperature, and without the assistance of any temporary heating device.

NOTICE

- 6(1) Notice of Non-Compliance: Where an Inspector is satisfied that a contravention of this by-law has occurred, the Inspector may cause to issue a notice for the purpose of advising the Property Owner or Landlord, and the notice shall set out:
 - (a) the municipal address or the legal description of the land; and
 - (b) reasonable particulars of the contravention and the period within which there must be compliance; and
 - (c) a notice stating that if compliance is not achieved within the period it specifies, the City may have the work done at the expense of the Property Owner or Landlord and be collected as property taxes or by action from such persons.
- 6(2) Service of Notice: An notice made under subsection 6(1) may be served personally, by prepaid ordinary mail to the Property Owners or Landlords last known address, or by placard as provided below, and Council deems such notice to be sufficient, and in the case of service by mail, deemed sufficient five days from the date such notice was mailed.
- 6(3) Placard: A notice or order where placed by placard shall be placed on the premises in a conspicuous place on the land and the Director, an Inspector, or their agents may enter the land for this purpose, which shall be deemed by Council to be sufficient service of the notice.
- 6(4) Work Order: Where the Director is satisfied that a Property Owner or Landlord has failed to supply adequate and suitable heat in the premises within the time specified in a notice, the Director may give or cause to be given reasonable notice to the Property Owner or Landlord that the City intends to have work or repairs carried out to correct the contravention at the Property Owner or Landlords expense.
- 6(5) Service of Work Order: Before the City or its agents enters on land to do the work specified in subsection 6(4), the work order shall be served on such persons required to have notice under the Municipal Act who may be affected by the work or repair on the premises, in the manner or manners specified.

ENFORCEMENT

- 7(1) The administration and enforcement of this by-law shall be performed by the Director, a deputy or acting director, a building inspector or a municipal law enforcement officer appointed under any by-law of the City, as may be employed by the City or assigned to enforce this by-law by the Director.
- 7(2) No person shall hinder or obstruct, or attempt to hinder or obstruct any Inspector or person acting on the City's behalf in exercising a power or performing a duty under this by-law or under the Municipal Act provisions relevant to this by-law, and no person but an Inspector shall remove a notice or order of the City placed on the premises pursuant to this by-law.
- 8(1) If the Property Owner or Landlord fails to do work required under this by-law, in addition to any other action the City may take or other remedy it may have the City or the City's agents may at any reasonable time and at the Property Owner and Landlords expense, in the manner provided for in the Municipal Act, 2001, S.O. 2001, c. 25 including interest at the rate specified there on costs incurred, may carry out repairs or work as are necessary to bring the premises into compliance with the cost of repairs not to exceed twenty thousand dollars (\$20,000.00).
- 8(2) Where the costs of bringing the property into compliance exceed the amount authorized by 8(1), the City may carry out repairs to a greater amount or manner as may be approved by Council.
- 8(3) Costs incurred by the City under this section together with interest accrued or accruing may be collected by action, or be added to the tax roll of property of the Property Owner or Landlord and collected in the same manner as taxes.

PENALTY

9. Every person who contravenes a provision of this by-law is 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.

REPEAL AND ENACTMENT

10. The following By-laws, all as may be amended, of the named former area municipalities are hereby repealed:
 - (a) By-law No. 76-31-H (Flamborough);
 - (b) By-law No. 4234-95 (Stoney Creek); and
 - (c) By-law No. 2838-76 (Dundas).

11. This by-law comes into force and effect upon the date of enactment.

PASSED and ENACTED this 28th day of April, 2004



MAYOR



CLERK