

Authority: Item 3, Social and Public
Health Services Committee
Report 05-013 (PD05057(a))
CM: October 26,2005

Bill No. 322

CITY OF HAMILTON

BY-LAW NO. 05-322

Being a By-law To:

Require the Supply of Vital Services

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

AND WHEREAS Sections 145 through 153 of the Tenant Protection Act, 1997, S. O. 1997 Chapter 24, as amended, provide for the enactment and enforcement of a Vital Services By-law, lien and collection rights, and related matters;

AND WHEREAS Section 252 of the Municipal Act, S.O. 2001, Chapter 25 allows Council to delegate hearings to its committees;

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

SHORT TITLE

1. This By-law is named and may be cited as the "Vital Services By-law".

LANDLORD RESPONSIBILITY

- 2(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 necessary to effect the alteration or the repair.
- 2(2) A landlord shall be deemed to have caused the cessation of a vital service for a rental unit if the landlord is obligated to pay the supplier for the vital service and fails to do so and as a result of the non-payment the vital service is no longer provided for the rental unit.

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 the vital service.
- 3(2) This By-law only applies to buildings which are tenant occupied, and for greater certainty the By-law applies to such buildings regardless of whether advance notice of the shut-off of service is required by section 4 below.
- 3(3) This By-law only applies to vital services which are gas, fuel oil or electricity.

SUPPLIER ,RESPONSIBILITY

- 4(1) Subject to subsection (2) below, no supplier of a vital service shall cease to provide the vital service 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 service.
- 4(2) A supplier is required to give notice to the City only if the vital service is to be discontinued for the rental unit or 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 a vital service, and further such notice is only required from the supplier where there are two or more rental units being supplied on the same meter or account for service with the landlord or such person.
- 4(3) A supplier shall deliver the notice personally to the attention of the Clerk, Office of the City Clerk, City Hall at 71 Main Street West, Hamilton, L8P 4Y5, by facsimile to the Clerk at telephone number (905) 546-2095 where confirmation of receipt is given, or by mail to the Clerk at that address allowing an additional seven (7) additional days for delivery by mail.
- 4(4) A supplier shall include the following details in the notice required by this section:
 - (a) 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) name, address and telephone number of the person responsible for payment for the service and reasons for the discontinuance of service;
 - (c) the date and approximate time proposed for discontinuance of the vital service, and a reference to this By-law by name; and

- (d) 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.
- 4(5) A supplier shall provide additional written notice to the Clerk where the details mentioned in subsection (4) above have changed, and in particular shall provide immediate notice in the event the disconnection of services is canceled or rescheduled whether by reason of payment of the account or otherwise.
- 5(1) Upon the direction of the Director, a supplier shall promptly restore or supply a vital service to a building or rental unit.
- 5(2) Upon the request of the Director the supplier shall provide such written details, invoices or updates of same as may be requested to implement the provisions of this By-law, including amounts owing for vital service usage at the property, and details as required in subsections 4(4) and 4(5) above if not previously supplied, updated or corrected in notices given to the Clerk.
- 6(1) The Director may give notice or warnings to a landlord responsible for the cessation of supply of a vital service or 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, subject only to the requirements of the Tenant Protection Act, 1997 in respect of interim certificates.
- 6(2) Notices or warnings under subsection (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 premises.

ADMINISTRATION AND ENFORCEMENT

- 7(1) The Director is hereby authorized to issue or cause to be issued notices under this By-law, to give directions to restore supplies of vital services, and 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.
- 7(2) The Director shall provide the Clerk of the City with copies of any agreements entered in respect of subsection (1) and provide information or documentation of the amounts spent by the City under such agreements or of amounts collected by City through lien, directions to pay rent, or otherwise under this By-law.

- 7(3) The Clerk of the City may issue and mail such certificates and interim certificates provided for under the Tenant Protection Act, 1997 for amounts spent, together with ten percent (10%) of such amount as an administrative fee, and may provide for an appeal to be heard where an appeal from an interim certificate is received in accordance with such Act in respect of the amount of the interim certificate, such appeal to be heard and decided in the manner of provided in section 8 below, and the Director or a designate shall provide information for the hearing on behalf of the City.
- 8(1) Subject to this subsections (2) and (5) below, the registered owner of the affected property or the mortgagees or other encumbrancers on the title to the property who are served with an interim certificate may appeal the interim certificate to the City by completing and signing an appeal request on the form available the Clerks Office from the Committee Clerk for the Planning and Economic Development Committee, and delivering the written appeal to the Legislative Assistant for the Planning and Economic Development Committee, at the Clerk's Office within fifteen (15) days of the date of mailing of the interim certificate.
- 8(2) The appellant in their appeal request shall indicate the grounds for appeal of the interim certificate and provide copies of the documents relied upon at the hearing, or a list of the documents to be relied upon at the hearing and a contact name and number of a person who can supply the documents in a reasonable time before the hearing of the appeal, and shall provide an address for service for the appellant.
- 8(3) Council of the City of Hamilton hereby delegates the hearing of the appeal to the Planning and Economic Development Committee, which committee shall afford the appellant an opportunity for a hearing of the appeal and for City staff involved in the interim certificate or costs associated therewith to respond to the appeal.
- 8(4) At the conclusion of a hearing of an appeal by the Planning and Economic Development Committee, the Committee shall supply a written report to 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 therefore on the merits of the appeal, and Council may upon receipt of the report make a decision in the appeal without holding a further hearing or opportunity for hearing.
- 8(5) The Committee Clerk for the Planning and Economic Development 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) send reasonable notice of the date, time and place of an appeal hearing to the appellant at the address provided, and to the Director; and
 - (c) after the hearing of an appeal, will send a copy of the Committee's report to the parties.
- 8(6) Where more than one person appeals the same interim certificate, the appeals shall be heard together unless the Planning and Economic Development Committee directs otherwise.
- 8(7) The decision of Council in an appeal is final, and the Clerk will issue any certificate required by the decision, and the Director may cause to be registered a lien against the property as may be allowed by such decision.
- 9(1) Administration and enforcement of this By-law shall be performed by the Director, a deputy or acting director, or such delegate as such Director may specify, and by such inspectors as are appointed or assigned, except where duties are specified for the Clerk of the City, 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.
- 9(2) No person shall hinder, obstruct, or interfere with, or attempt to hinder, obstruct or interfere with the Director, any Inspector or other person mentioned in subsection (1) above 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.
- 9(3) The Director, any inspector or a 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 148 of the Tenant Protection Act, 1997 and subject to the limitations and requirements of such entry in respect of rental units.
- 9(4) The Director, any inspector 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 148 of the Tenant Protection Act, 1997 and subject to the limitations and requirements of such entry in respect of rental units.
- 9(5) Where City is supplying a vital service, 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.

- 9(6) The City may provide an accounting of rent payments or other collections under this By-law to the landlord or other person entitled to collect rents at a property, and the City shall 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 such amounts and fees.

OFFENCES AND PENALTIES

10. 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 upon conviction is liable to the penalties provided for in section 61 of the Provincial Offences Act, R. S. O. 1990, c. P.33.
11. 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.


DEFINITIONS AND INTERPRETATION

- 12(1) In this By-law,
- (a) **“adequate and suitable”** in respect of a vital service, means that the 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 unit with heat or water;
 - (b) **“City”** means as the context requires, the geographic area of the City of Hamilton or the municipal corporation;
 - (c) **“Director”** means the Director of Building and Licensing of the City or the Director’s designate(s);
 - (d) **“Inspector”** means a person appointed under this or any City By-law as a municipal law enforcement officer or inspector, and who may be assigned by the Director to enforce this By-law; and
 - (e) **“Tenant Protection Act, 1997”** means the Tenant Protection Act, 1997, S. O. 1997, chapter 24 as amended.
- 12(2) For the purposes of interpretation of this By-law, the terms defined and interpretation and application provisions of sections 1, 2 and 3 of the Tenant Protection Act, 1997 shall apply, including but not limited to the definitions for landlord, vital service and rental unit, except as specifically limited by this By-law.

ENACTMENT

13. This By-law comes into force and effect on November 1, 2005.

ENACTED and PASSED this 26th day of October, 2005

Mayor 

Clerk 