

Authority: Item 25, Economic Development
and Planning Committee
Report; 10-020 (PED09031(c))
CM: October 13, 2010

Bill No. 260

**CITY OF HAMILTON
BY-LAW NO. 10-260
VACANT BUILDING REGISTRY BY-LAW**

Being a by-law to regulate vacant buildings.

WHEREAS sections 8, 9 and 10 of the Municipal Act, 2001 authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraphs 5, 6, 8 and 10 of subsection 10(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons, the protection of persons and property; and structures;

AND WHEREAS section 425 of the Municipal Act, 2001 authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the Municipal Act, 2001 further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

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

SHORT TITLE

1. This By-law may be referred to as the "Vacant Building Registry By-law" or the "Hamilton Vacant Building Registry By-law".

DEFINITIONS

2. In this By-law:

"building" means all or part of:

- (a) a structure occupying an area greater than 10 m² consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto; or
- (b) a structure occupying an area of 10 m² or less that contains plumbing, including the plumbing appurtenant thereto;

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“business day” means any day from 8:30 a.m. to 4:30 p.m. on which the City of Hamilton’s administration buildings are open for business;

“City” means the municipality of the City of Hamilton or the geographic area of the City of Hamilton as the context requires;

“Director” means the City’s Director of Municipal Law Enforcement and his or her designate or successor;

“farm” means an agricultural operation as defined in the Farming and Food Production Protection Act 1998 and includes such an operation that is not carried with the expectation of gain but otherwise meets the definition in that Act;

“officer” means an individual appointed by the City of Hamilton or assigned by the Director to enforce this By-law;

“owner” includes, but is not limited to:

- (a) the registered owner of the property on which a building is situated;
- (b) the owner of a building;
- (c) the person managing or receiving the rent of the property on which a building is situated or of a building, or who would receive the rent if the property or building were let, whether on the person’s own account or as agent or trustee or receiver of any other person;
- (d) a vendor of a building under an agreement for sale who has paid any municipal taxes on the building after the effective date of the agreement;
- (f) the person for the time being receiving instalments of the purchase price if a building were sold under an agreement for sale;
- (g) a lessee or occupant of the property on which a building is situated who, under the terms of a lease, is required to repair and maintain the building; and
- (h) an owner as defined by the Condominium Act, 1998;

“person” includes, but is not limited to, an individual, sole proprietorship, partnership, association or corporation;

“property” means the land on which a building is situated and includes the building; and,

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“vacant building” means a building that is not completely or not substantially completely occupied by the owner or a person authorized by the owner for more than 90 consecutive days, but does not include a building:

- (a) containing 1, 2 or 3 dwelling units provided that each dwelling unit is fit for an individual or individuals to live in, in accordance with all applicable statutes, regulations and by-laws;
- (b) occupied by the owner or a person authorized by the owner on a seasonal basis;
- (c) a building, except a dwelling unit, on property used as a farm; or
- (d) that is City owned.

REGISTRATION

- 3. Every owner of a vacant building shall register the vacant building with the Director within 30 days of October 13, 2010.
- 4. Every owner of a vacant building that commences to be vacant after October 13, 2010 shall register the vacant building with the Director within 30 days of the date the vacant building commences to be vacant.
- 5. Every registration expires:
 - (a) on the one year anniversary date of the date on which it is issued if the registration is not renewed before its expiry;
 - (b) when the registration is revoked under this By-law;
 - (c) when the vacant building is sold or otherwise transferred to a new owner;
 - (d) when the Director is satisfied, as set out in a written notice from the Director to the owner of the vacant building, that the building is no longer vacant.
- 6. To register or to renew a registration, the owner of a vacant building shall:
 - (a) complete and submit to the Director an application containing such information as the Director may require; and,
 - (b) submit the registration fee.
- 7. Every owner of a vacant building shall notify the Director of any change in circumstances in connection with information given to the Director under section 6 within 10 business days after the change occurs.

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8. The Director shall refuse an application under section 6 when the application is incomplete or contains false or misleading information.

REGULATIONS

9. Every owner of a vacant building shall:
 - (a) ensure that the property complies with all applicable statutes, regulations and by-laws, including but not limited to the Building Code Act, 1992, the Fire Protection and Prevention Act, 1997, the Property Standards By-law and the Yard Maintenance By-law;
 - (b) satisfy the Director that an individual retained by the owner attends at the property to monitor the building condition a minimum of once every 2 weeks or more frequently as required in writing by the Director; and,
 - (c) provide a report from a qualified individual as to the condition of the building as required in writing by the Director.

ADMINISTRATION AND ENFORCEMENT

10. The Director is authorized to administer and enforce this By-law including but not limited to prescribing the format and content of any forms or other documents required under this By-law.
11. Registration and other fees under this By-law shall be as set out and approved by Council from time to time under the User Fees and Charges By-law.
12. An officer may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - (a) this By-law;
 - (b) a direction or order made under this By-law; or,
 - (c) an order made under s. 431 of the Municipal Act, 2001.
13. An officer may, for the purposes of the inspection under section 12:
 - (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

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- (c) require information in writing or otherwise as required by the Officer from any person concerning a matter related to the inspection; or,
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 14. Any cost incurred by the City in exercising its authority to inspect under section 13 including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, shall be paid by the owner of the property where the inspection takes place.
- 15. An officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the *Municipal Act, 2001* where he or she has been prevented or is likely to be prevented from carrying out an inspection under sections 12 and 13.
- 16. If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner of the property on which the contravention occurred to discontinue the contravening activity.
- 17. An order under Section 16 shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and,
 - (b) the date or dates by which there must be compliance with the order.
- 18. If an officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner of the property on which the contravention occurred to do work to correct the contravention.
- 19. An order under section 18 shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred;
 - (b) the work to be completed; and,
 - (c) the date or dates by which the work must be completed.

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20. An order to discontinue contravening activity made under Section 16 or an order to do work made under Section 18 may be served personally or by registered mail to the last known address of:

- (a) the owner of the property where the contravention occurred; and,
- (b) such other persons affected by it as the officer making the order determines.

Service by registered mail shall be deemed to have taken place 5 business days after the date of mailing.

21. In addition to service given in accordance with section 20, an order to discontinue contravening activity made under section 16 or an order to do work made under section 18 may be served by an officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred.

22. Where service cannot be given in accordance with section 20, sufficient service is deemed to have taken place when given in accordance with section 21.

23. Where a person does not comply with a direction, an order or a requirement under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction, order or requirement at the person's expense.

24. The City may recover the costs of doing a matter or thing under section 23 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent per year commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

25. The Director is authorized to give immediate effect to any direction, order or requirement where the costs of carrying out the direction, order or requirement do not exceed \$10,000 and, where the costs do exceed \$10,000, as the City's Council may authorize.

26. Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable:

- (a) on a first conviction, to a fine of not more than \$10,000; and,
- (b) on any subsequent conviction, to a fine of not more than \$25,000.

27. Despite section 26, where the person convicted is a corporation:

- (a) the maximum fine in subsection 26(a) is \$50,000; and,
- (b) the maximum fine in subsection 26(b) is \$100,000.

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28. Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

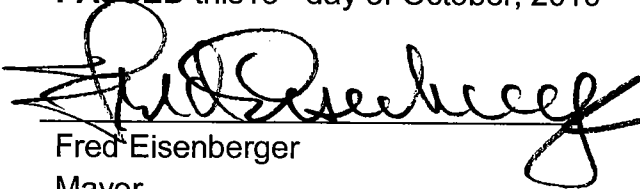
GENERAL PROVISIONS

29. All measurements in this By-law are given in the metric short form.
30. If a court of competent jurisdiction declares any provision or provisions of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

ENACTMENT

31. This By-law comes into force on the date of its passing.

PASSED this 13th day of October, 2010



Fred Eisenberger
Mayor



Rose Caterini
City Clerk