

Authority: Item 8, Planning Committee
Report: 17-011 (PED17108)
CM: June 28, 2017
Ward: City Wide
Bill No. 127

CITY OF HAMILTON

BY LAW NO. 17-127

To Repeal and Replace By-law No. 10-260, 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;

WHEREAS this By-law is one of several City of Hamilton by-laws that ensure buildings and properties are maintained to minimum standards including the Property Standards By-law, the Yard Maintenance By-law and the Vital Services By-law, one or more of which By-laws may apply depending on the condition of the building and/or property;

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 prohibit and regulate with respect to matters that, in the opinion of its Council are or could become public nuisances, 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;

“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 Licensing and By-law Services 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

“street” means any public highway but does not include a provincial highway.

- 3.(1) In this By-law “**vacant building**”, subject to subsections 3(2) and 3(3), means a building that does not appear to be in use and, without limiting this definition, is deemed to be a building:
- (a) that is not protected from the entry of unauthorized persons;
 - (b) that is not protected from the entry of rain, snow, vermin or birds into the interior of the building;
 - (c) where the supply of any one or more of the electricity, gas or water utilities serving the building is discontinued or disconnected;
 - (d) where one or more of the electricity, gas or water utilities serving the building is not being used;
 - (e) if the building contains 1, 2 or 3 dwellings, where one or more dwellings are not fit for an individual or individuals to live in in accordance with the *Building Code Act, 1992* and its regulations, the *Fire Protection and Prevention Act, 1997* and its regulations, the Property Standards By-law, the Vital Services By-law or any other applicable statute, regulation or by-law;
 - (f) where 25% or more of the door and window openings to the building are partially or completely boarded up (for example, if there are 8 door and window openings to a building and 2 or more of the door and window openings are partially or completely boarded up, no matter what the size of each door or window opening); or
 - (g) where an Application for Rebate or Property Taxes for the entire building has been submitted to the City’s Tax Section.
- (2) A vacant building does not include a building where the owner satisfies the Director that:
- (a) a use permitted under the City’s zoning by-laws is occurring;
 - (b) a permit has been issued by the City for construction or demolition of the building and construction or demolition work has been actively undertaken for at least 40 hours during each 90 day period following the issuance of the permit;
 - (c) the building is not a dwelling and is on property used as a farm; or
 - (d) the building is occupied by the owner, or a person authorized by the owner, on a seasonal basis.
- (3) A vacant building does not include a building that is City owned.

REGISTRATION

4. Every owner of a vacant building 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.
8. The Director shall refuse an application under section 7 when the application is incomplete or contains false or misleading information.

REGULATIONS

9. Every owner of a vacant building shall:
 - (a) ensure that the vacant building is registered in accordance with this Bylaw;
 - (b) ensure that the property complies with all applicable statutes, regulations and by-laws, including but not limited to the *Building Code Act, 1992* and its regulations, the *Fire Protection and Prevention Act, 1997* and its regulations, the Property Standards By-law, the Vital Services By-law and the Yard Maintenance By-law;
 - (c) post at least one sign on the vacant building, except a vacant building containing 1, 2 or 3 dwelling units, that:
 - (i) bears the words “for information or inquiries” and the information of the owner, including a name and telephone number, in black letters on a white retro-reflective background as illustrated in the following figure:

<p>FOR INFORMATION OR INQUIRIES CONTACT: NAME: TELEPHONE NUMBER:</p>
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- (ii) is readable from each adjacent street;
- (d) 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
- (e) 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 approved by Council from time to time and then included in 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 11:
 - (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;
 - (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.
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 and every director or officer of a corporation who knowingly concurs in the corporation's contravention of the provision 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.
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.

31. All registrations issued under By-law No. 10-260 which are current and valid on the day this By-law comes into force shall be deemed to be:
- (a) current and valid under this By-law; and
 - (b) subject to all of the applicable provisions of this By-law including but not limited to expiring and being renewable as though they had been issued under this By-law.
32. By-law No. 10-260 is repealed.

ENACTMENT

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

PASSED this 28th day of June, 2017.

D. Skelly
Acting Mayor

J. Pilon
Acting City Clerk