

Report to Civic Works Committee

To: Chair and Members
Civic Works Committee
From: Kelly Scherr, P.Eng., MBA, FEC
Deputy City Manager, Environment & Infrastructure
Subject: By-Law Update: Vital Services By-Law (PH-6)
Date: August 15, 2023

Recommendation

That, on the recommendation of the Deputy City Manager, Environment and Infrastructure, the following actions **BE TAKEN** with respect to the Vital Services By-Law (PH-6):

- a) The proposed by-law amendment attached hereto as Appendix 'A' **BE INTRODUCED** at the Municipal Council Meeting on August 29, 2023, to amend the existing Vital Services By-law (PH-6); and
- b) The Civic Administration **BE AUTHORIZED** to undertake all the administrative acts that are necessary in connection with this proposed by-law amendment.

Executive Summary

The Vital Services By-law (PH-6) is an important City by-law that has been enacted to protect tenants who have utilities and/or services included in their existing lease in the event a landlord ceases payment on a vital service.

This by-law allows the City to make the outstanding payment owed to the vital service provider in order to restore the vital service and apply the payment amount to the tax roll. This report has been prepared to address outdated references as well as minor language updates to ensure the execution and interpretation best represent the spirit of the by-law.

Linkage to the Corporate Strategic Plan

Housing and Homelessness

- 2.2c. Improved quality and safety in social housing – Increase responsiveness to tenant complaints and feedback about housing conditions

Well-Run City

- 2.4b. London's finances are maintained in a transparent, sustainable, and well-planned manner, incorporating intergenerational equity, affordability and environmental, social and governance considerations – Review, update and implement the City's strategic financial principles, policies, and practices.

Analysis

1.0 Background Information

1.1 Previous Reports Related to this Matter.

None.

2.0 Discussion and Considerations

2.1 Background

The Vital Services By-Law is in place to protect tenants with utilities included as a part

of their rent in a lease agreement. Vital services include electricity, gas, water, and heat. Under the provided conditions, should a landlord default on payment to the vital service supplier and the vital service supplier issues a disconnection notice in order to collect arrears, the Vital Services By-Law can be invoked. Under the by-law, the City agrees to pay the outstanding arrears to the vital service supplier in order to resume service to the tenant to ensure tenants are receiving the vital service. The outstanding arrears are then issued on the tax roll of the property to ensure payment.

Generally, the Vital Services By-Law is successful in the restoration of the service and the collection of the arrears from the landlord. During a recent hearing, however, it became evident that there were multiple possible interpretations of the language that was used in the by-law. The Hearings Officer for a recent appeals claim noted that this process is not intended to function as a collection agent for outstanding arrears, but that is, in actuality, the intent of the program as it is the only mechanism to both ensure a tenant receives the vital service and the landlord pays their arrears when the normal collections process – disconnection of the vital service – is not possible.

The purpose of this report and the update to the existing by-law is to ensure that the language used accurately represents the intent of the by-law.

2.2 Discussion

The following sections provide more in-depth discussion around the proposed changes to the Vital Services By-law (PH-6). Appendix 'A' contains the proposed text changes.

By-law Section 4.2 Notice – 15 days before cessation of service

The existing language in the by-law does not define who is responsible for the issuance of disconnection notice for a vital service. Clearly stating the vital service supplier is to give the notice to both the City Clerk and the landlord removes potential for error or miscommunication. Additionally, contact information for both the service supplier and the individual authorized by the supplier to receive a direction to restore service has been updated to require an email address. This increases the ability for the landlord to contact and rectify required payments.

By-law Section 5.4 Lien

The existing wording under this section allows for interpretation of the owed amount as it does not explicitly include the payment of arrears to reinstate the service. The intent of the by-law was to ensure the amount of the lien is the payment amount required to re-establish services, which is the amount outstanding on the account at the time a 15-day service cessation notice is issued. Language updates to Section 5.4 clarify the definition of the amount the City pays on behalf of the landlord, and in turn, the amounts issued on the respective tax roll, ensuring the intent of the by-law is met.

Minor Language Adjustments

Throughout the by-law there are proposed changes that update the by-law with the current and relevant agreements, organizations and Acts as applicable. This includes the update of the included vital service providers, as well as the titles of the most recent versions of the referenced Acts.

Additionally, there are minor housekeeping changes to by-law language related to the use of pronouns. These changes are intended to ensure all people are better represented and included in the by-law.

3.0 Financial Impact/Considerations

There are no changes in financial risk to the City as a result of these updates.

Conclusion

It is recommended that the attached by-law amendments, Appendix 'A,' be authorized and executed for the City of London. With the amendments, the Vital Services By-law (PH-6) will continue to protect tenants and ensure they receive the vital services they have paid for through their rent.

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cc: Audrey Kester – Water Demand Manager, Water Engineering
Aynsley Hovius – Solicitor II, Legal Services
Michael Schulthess – City Clerk, Legal Services
Orest Katolyk – Director, Municipal Compliance

Appendix A

Bill No. []

By-law No. []

A by-law to amend By-law No. PH-6, as amended, being “A by-law concerning the provision of vital services and the maintenance of suitable heat at leased or rented dwellings”.

WHEREAS section 216 of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 permits the council of a local municipality to pass by-laws concerning the provision of adequate and suitable vital services to leased or rented dwelling units.

AND WHEREAS section 446(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that a municipality has the authority under this or any other Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person’s expense,

AND WHEREAS section 446(2) provides that for the purposes of section 446(1) the municipality may enter upon land at any reasonable time.

AND WHEREAS Section 23.1 of the *Municipal Act, 2001* permits a municipality to delegate certain legislative and quasi-judicial powers.

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Section 1.1 of By-law No. PH-6 is amended by deleting and replacing the following definitions

"Act" means the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17.

"Supplier of a vital service" means a person who carries on the business of or whose business includes supplying a vital service to an end user, and includes,

(a) in the case of electricity, London Hydro Inc.

(b) in the case of artificial and natural gas, Enbridge Gas Inc.

(c) in the case of municipal water, the City Engineer; and

(d) in the case of chilled water, hot water and steam, London – Enwave Energy Corporation.

2. Section 2.3 of By-law No. PH-6 is deleted and replaced by the following

2.3 Exception to by-law application

Despite section 2.2, this by-law does not apply to a landlord in respect of a rented residential unit and a vital service to the extent that the tenant has as part of a tenancy agreement expressly agreed to obtain and maintain the supply of the vital service.

3. Section 4.2 of By-law No. PH-6 is deleted in its entirety and replaced by the following

4.2 Notice - 15 days before cessation of service

A notice of disconnection shall be given, in writing, by the supplier, to the City Clerk and to the landlord at least fifteen days before the supplier ceases to provide the vital service and shall contain the following:

- (a) the name, address, telephone number, and e-mail of the supplier.
- (b) the type of vital service being supplied.
- (c) the name, address, and telephone number of the landlord with whom the supplier has a contract for the supply of the vital service and the name of the registered owner if not the same name as the landlord.
- (d) the municipal address of the building at which the vital service is being supplied.
- (e) confirmation that at least one rented residential unit is occupied at the subject site.
- (f) the nature of the landlord's breach of contract with the supplier.
- (g) if the breach in clause (f) is nonpayment of charges for supply of the vital service, the amount of the unpaid charges, any interest and administration charges, and the amount of any disconnection and reconnection charges.
- (h) the date and time when the supplier will cease to provide the vital service; and
- (i) the name, address, telephone number, and e-mail of an individual authorized by the supplier to receive a direction made under section 4.3.
- (j) a reference to the Vital Services By-law and a statement that if the breach of contract is for nonpayment of charges for the supply of vital services, the City of London may act without further notice to pay to the supplier the outstanding charges and add the amount paid to the property owner's taxes in accordance with the provisions of the Vital Services By-law.

4. Section 5.1(d)(i) of the By-law is hereby deleted and replaced with the following

(i) the vital services being provided are currently not adequate or suitable; or

5. Section 5.1(k) of the By-law is hereby deleted and replaced with the following

(k) shall provide the Hearings Officer with sufficient information to enable the Hearings Officer to conduct a hearing described in Section 5.8 if an appeal is made from an interim certificate.

6. Section 5.2 of By-law No. PH-6 is deleted and replaced with the following

5.2 Inspection of occupied unit

Despite clauses 5.1(a) and (b), the Director or the person acting under their instructions shall not enter a place used as a rented residential unit, (a) unless consent has been obtained by the occupier of the unit after informing the occupier that they may refuse permission to enter the unit; or

(b) unless the Director or the person acting under their instruction is authorized to do so by a warrant issued under the Provincial Offences Act.

7. Section 5.3 of By-law No. PH-6 is deleted and replaced with the following

5.3 Effect of rent paid

A payment to the City of any or all the rent by a tenant pursuant to a direction by the Director shall be deemed not to constitute a default in the payment of rent due under a tenancy agreement or a default in the tenant's obligations for the purposes of the Act.

8. Section 5.4 of By-law No. PH-6 is deleted and replaced with the following

5.4 Lien

The City has a lien against the property at which the vital service is to be provided. The lien value is for the amount it spends for a vital service that it arranges to be provided at a rented residential unit under this by-law plus an administration fee of 10 percent of that amount against the property at which the vital service is provided. The amount The City spends for a vital service that it arranges to be provided at a rented residential unit under this by-law is to include all current and outstanding charges existing on the vital service account.

9. Section 5.8 of By-law No. PH-6 is deleted and replaced with the following

5.8 Appeal

(a) The affected owner, mortgagee or other encumbrancer may, within fifteen (15) days after the interim certificate is mailed, appeal the amount shown on it by requesting a hearing by a Hearings Officer. The request shall be made in writing and filed with the City Clerk. The request shall consist of a notice of appeal and must comply with the filing requirements as set out in Schedule 1 of the City's Hearings Officer By-law A.-6653-121 as amended.

(b) The power and authority to conduct hearings of appeals under this by-law are hereby delegated to the Hearings Office.

(c) The provisions of the City's Hearings Officer By-law A.-6653-121, as amended, apply to all hearings conducted by a Hearings Officer.

(d) The decision of the Hearings Officer shall be final.

10. Section 6.7 of By-law No. PH-6 is deleted and replaced with the following

6.7 Hindering authorized acts - prohibited

No person shall hinder, obstruct, or interfere with or attempt to hinder, obstruct, or interfere with the Director or with a person acting under instruction of the Director in the exercise of a power or performance of a duty under the Act or this by-law.

11. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on [insert date].

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First Reading – insert date
Second Reading – insert date
Third Reading – insert date