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## CITY OF KELOWNA

### MEMORANDUM

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DATE: February 28, 2001  
FILE: 3900-20  
TO: City Manager  
FROM: Community Planning Manager  
RE: Minimum Heating Standards Bylaw  
REPORT PREPARED BY: Theresa Eichler

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#### RECOMMENDATION

THAT Council proceed with the necessary steps to enact a minimum heating standards bylaw, in accordance with the model that is attached.

#### PURPOSE:

To recommend that Council consider the adoption of a minimum heating standards by-law.

#### REPORT

The Community Housing Needs Committee and City staff examined the issue of standards for rental dwellings in great detail over several years of research (including public consultation). At this point, it has been determined that the City's work to enforce by-laws and address illegal dwelling situations is an appropriate way to address unacceptable accommodation in the City. Aside from this, ways of providing legal rental accommodation, such as secondary suites, are being augmented in order to help increase the supply of suitable rental accommodation. The 2000 vacancy rate for rentals, issued by CMHC, has decreased to 1.5 percent, which puts pressure on the supply of rental accommodation.

On the issue of standards for rental dwellings, the provincial role was determined to be ensuring that the Residential Tenancy Act (RTA) is working to protect tenants from unacceptable living conditions, while providing appropriate protection for landlords as well. City staff is working on suggesting matters that could be included in the Act to clarify issues surrounding standards for rental accommodation. In the meantime, it is recognized that any changes to Provincial legislation will require a long period of time prior to being enacted. This would be assuming that the Province determines there is a need to change the legislation.

The RTA does not provide specifics dwelling standards, but rather relies on the interpretation of "reasonable". The operative section is Section 10 – Duty to Repair and Keep Clean, which is attached to this report. It states that the landlord must ensure a rental premises "complies with health, safety and housing standards required by law" and is "reasonably suitable for occupation by a reasonable tenant". No health, safety or housing standards are provided as part of the Act.

During this winter, it has come to the attention of staff that some tenants in the City are not being provided with the ability to heat their dwellings adequately. In some buildings, the owner or landlord does not activate the heating systems until he/she determines it is

necessary. In others, the heating system is simply not working properly. Given that heating is essential in order to survive the cold winter months, City staff determined that it would be appropriate for the City to undertake a role in ensuring that tenants in the City are provided with the ability to heat their rental premises. Some tenants have advised that there is an issue with income limitations that prevents them from being able to afford the heating bills to keep their dwellings warm enough. The increase in natural gas prices has certainly accentuated this problem. Although the City has little control over the latter, legislation under the Local Government Act does enable the City to ensure that tenants at least have the opportunity to provide heat to their premises. In this province, no provincial legislation provides specifics on what level of heat is acceptable for residential premises.

Section 694 (1)(n) of the Local Government Act reads as follows:

*694. (1) Subject to the Health Act, the Fire Services Act and the regulations under these Acts, a council may, for the health, safety and protection of persons and property, by bylaw, do one or more of the following:*

*(n) require the maintenance of "residential premises" and "residential property", as defined in the Residential Tenancy Act, that are subject to a "tenancy agreement" as defined in that Act, in accordance with the standards specified in the bylaw, to the extent that the standards do not exceed those established by the building code for British Columbia established by the minister under section 692.*

In this case, staff considers the provision of functional heating systems to rental dwellings an issue of "health, safety and the protection of persons and property", in accordance with Section 694. The provision of a bylaw under subsection (n) above, based on existing models for such bylaws, would be the means of control available to the City to address this issue. A draft by-law has been prepared and is attached to this report for Council's consideration.

This matter was reviewed by the Community Housing Needs Committee at its November meeting. The Committee is recommending that Council proceed with such a by-law subject to a minor change. The original wording, as set by the model by-law, indicated that every room in the dwelling must be capable of being heated to a temperature of 22° Celsius. The Committee members advised that many dwellings in older buildings may not be capable of being evenly heated to this level. The cost of making the necessary alterations to ensure that heating at this level can be provided may threaten the supply of rental dwellings. Therefore, the Committee felt it would be more reasonable to require that a portion of the living quarters is capable of being heated to 22° Celsius. This way, people can at least stay warm without incurring unreasonable renovation costs.

#### SUMMARY

Following the work by the City regarding rental housing issues, consultation with tenants in the community has confirmed that heat is not always available to tenants during the cold weather. Adequate heat is not defined in any provincial legislation. Given that access to adequate heat is considered an issue of "health, safety and protection of persons and property", under Section 694(1) of the Local Government Act, staff and the Community Housing Needs Committee are recommending that Council authorize proceeding with a minimum heating standards by-law for rental accommodation. A draft by-law is attached to this report.

Approved for Inclusion

R.L. (Ron) Mattiussi, ACP, MCIP  
Director of Planning & Development Services

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EXTRACT FROM THE RESIDENTIAL TENANCY ACT

**10. Duty to repair and keep clean**

10.

(1) A landlord must provide and maintain residential premises and residential property in a state of decoration and repair that

(a) complies with health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the residential property, would make it reasonably suitable for occupation by a reasonable tenant who would be willing to rent it.

(2) A landlord's duty under subsection (1) (a) applies even though a tenant knew of a breach by the landlord of that subsection at the time the landlord and tenant entered into the tenancy agreement.

(1) Subsection (1) does not apply to that part of residential premises owned by a tenant.

(2) A tenant must

(a) maintain ordinary health, cleanliness and sanitary standards throughout residential premises and residential property in respect of which he or she has entered into a tenancy agreement, and

(b) take necessary steps to repair damage caused to residential premises and residential property, in respect of which he or she has entered into a tenancy agreement, by the tenant's wilful or negligent act or omission, or that of a person permitted on the residential premises or residential property by the tenant.

(3) A tenant is

(a) not liable for reasonable wear and tear to the residential premises, and

(b) liable for the cleaning of the residential premises and residential property if he or she has contravened subsection (4).

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**CITY OF KELOWNA HEATING SYSTEMS STANDARDS OF MAINTENANCE BYLAW**  
**(APPLICABLE SECTIONS FROM MODEL STANDARDS OF MAINTENANCE BYLAW)**

A bylaw to prescribe standards for the maintenance of heating systems in rental residential premises.

Therefore, the Council of the Corporation of the City of Kelowna pursuant to Section 691(1)(n) of the Local Government Act in open meeting assembly, enacts as follows.

**Part 1 - Title and Interpretation**

**1 - Title**

This bylaw may be cited as the *Rental Premises Heating Systems Standards of Maintenance Bylaw No. \_\_\_\_\_*.

**2 - Definitions**

In this bylaw, unless the context otherwise requires, the definitions in the Local Government Act and Interpretation Act govern, and the following definitions apply:

*Building Inspector* means a person who has been assigned the responsibility for administering bylaws enacted to regulate the construction, alteration, repair or demolition of buildings and structures;

*dwelling unit* means one or more self-contained rooms provided with sleeping, cooking and sanitary facilities, intended for domestic use, and used or intended to be used permanently or semi-permanently as a residence;

*hotel* means a hotel, motel, inn, rooming house and apartment hotel and any prescribed class of premises, but does not include a facility;

(a) owned or operated by a non-profit society incorporated under the Society Act, a municipality, a regional district, a college designated under the College and Institute Act or a university named in the University Act, or

(b) in which the landlord resides and which contains fewer than a total of 5 bedrooms or rooms used as bedrooms;

*housekeeping unit* means a sleeping unit containing a sink and cooking facility;

*landlord* includes lessor, sub-lessor, owner or other person permitting the occupation of residential premises, and his/her heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying the premises, entitled to possession of the residential premises;

*living quarters* includes the areas of the dwelling used for sleeping, as a living room, dining room or kitchen, but does not include the bathroom, porch or hallway of a rental premises;

*municipality* means the City of Kelowna;

*owner* in respect of real property means the registered owner as defined in the Local Government Act;

*person* includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

*rental accommodation* means a residential premises subject to a tenancy agreement

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*residential premises* means a dwelling unit used for residential purposes, and includes, without limiting the above,

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- a manufactured home
  - a manufactured home pad
  - a room or premises in a hotel occupied by a hotel tenant,
  - caretaker's premises, and
  - employment premises,

but does not include premises, under a single lease, occupied for business purposes with a dwelling unit attached;

*tenancy agreement* means an agreement, whether written or oral, express or implied, having a predetermined expiry date or not, between a landlord and tenant respecting possession of residential premises and occupation of a room or premises in a hotel;

*tenant* means a person or persons who have the right of exclusive possession of residential premises under a tenancy agreement

## **Part 2 - Administration and Enforcement**

### **3 - Application**

This bylaw applies to rental accommodation in the City of Kelowna.

### **4 - Responsibility for Administration**

The Building Inspector is authorized to administer this bylaw.

### **5 - Building Inspector's Right of Entry**

The Building Inspector is authorized to enter, at all reasonable times on any property that is subject to this bylaw to ascertain whether the requirements of this bylaw are met. The Building Inspector shall, on request, show proper identification.

### **6 - Notice to Comply to Bylaw Standards**

The Building Inspector may direct an owner whose rental accommodation fails to meet the requirements of this bylaw to remedy the non-compliance within the time stated by the Building Inspector in a written notice to comply delivered to the owner.

### **7 - Penalties**

A person who contravenes this bylaw commits an offence and upon summary conviction, is punishable in accordance with the Offence Act.

### **8 - Owner's Duties and Obligations**

An owner of rental accommodation shall maintain it in accordance with the standards prescribed in this bylaw.

### **9 - Severability**

In the event that any portion of this bylaw is declared ultra vires by a Court of competent jurisdiction, then such portion shall be deemed to be severed from the bylaw to that extent and the remainder of the bylaw shall continue in force and effect.

### **10 - Compliance With Other Bylaws**

Compliance with this bylaw does not excuse an owner or any person from the requirement to comply with all other municipal bylaws and regulations.

## **Part 3 – Heating Maintenance Standards**

### **11 - Heating Systems**

- (4) Heating equipment shall be maintained in a safe and good working condition so as to be capable of safely attaining and maintaining an adequate temperature standard, free from fire and accident hazards, and in all rental accommodation capable of maintaining, at minimum, a portion of the living quarters in each rental premises at a temperature of 22 C (72 F) measured at a point 1.5 meters (5 feet) from the floor, and in the centre of the room.

- (5) Where heating equipment or part of it or any auxiliary heating system burns solid or liquid fuel, a place or receptacle for the storage of such fuel shall be provided and safely maintained in a convenient location and so constructed as to be free from fire or accident hazards.

**Part 4 - Effective Date**

**12 - Effective Date**

This bylaw shall come into effect upon its adoption.

Read a first time this \_\_\_\_\_ day of \_\_\_\_\_, (month), 20\_\_\_\_.

Read a third time this \_\_\_\_\_ day of \_\_\_\_\_, (month), 20\_\_\_\_.

Reconsidered, finally passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, (month), 20\_\_\_\_.

**Draft By-law**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk