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City of Kelowna

MEMORANDUM

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DATE: January 17, 2002  
FILE: 3900-20

TO: City Manager

FROM: Community Planning Manager

RE: Minimum Heating Standards By-law

REPORT PREPARED BY: Theresa Eichler

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RECOMMENDATION:

THAT Council proceed with the necessary steps to enact a minimum heating standards by-law, in accordance with the model that is attached;

THAT the City follow the process outlined in this report to determine the method of enforcement for the proposed heating standards by-law;

AND FURTHER THAT a resolution be prepared for debate by the Okanagan Mainline Municipal Association urging the Provincial Ministry of the Attorney General to address minimum heating standards in the Residential Tenancy Act.

PURPOSE:

This report is intended to address matters that arose during Council's consideration of a previous planning report, dated March 1, 2001, recommending that Council proceed with the necessary steps to adopt a minimum heating standards by-law.

BACKGROUND:

At its meeting of March 6<sup>th</sup>, 2001, Council asked that staff determine how a minimum heating by-law would be enforced through discussions with the Residential Tenancy Office and City By-law Enforcement staff. Staff of the specified offices met on March 13, 2001 and identified problems and issues. Research was also conducted by contacting municipalities where by-laws (standards of maintenance and property standards) containing heating standards for rental dwellings are in use. Municipalities consulted include:

- City of Kitchener (Ontario)
- City of Vancouver
- City of North Vancouver
- Township of Esquimalt
- District of North Vancouver
- Town of Sidney

The information that was collected is summarized for Council's benefit to enable a decision as to how to proceed.

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REPORT

Enforcement Issues:

Role of the Residential Tenancy Branch:

The Residential Tenancy action addresses landlord and tenant issues within the parameters of the Residential Tenancy Act. A problem with the central or primary heating system qualifies as an emergency service under Section 13 of the Act. When a repair to an emergency service is required, Section 13 requires that contact information for the landlord be provided to the tenant. The tenant must try at least twice to contact the landlord. If the landlord fails to respond or conduct the repair, the tenant may take necessary action to make the repair. The landlord must then reimburse the tenant for the repairs, and if he/she fails to do so, the tenant may withhold rent to recuperate his/her costs. If the tenant is unable to conduct the repairs for any reason the issue may go to arbitration. In certain situations, the Residential Tenancy Branch (RTB) can intervene on behalf of the tenant and instruct the landlord to provide heat.

The particular concern is for those tenants who do not have the financial wherewithal or organizational abilities (e.g. persons with disabilities) to undertake repairs as set out under the Act. In such cases, the RTB can intervene with the landlord to ensure that heat is provided, at least through temporary measures. Any repair issue relating to the central or primary heating system that is not adequately resolved by the available procedures under section 13 of the Act may need to be resolved under the arbitration process. RTB staff advises that that a minimum heat standard, adopted under a municipal by-law would be most useful to them in resolving a case that is under arbitration. However, if a tenant contacts the RTB indicating that there is inadequate heat, and there is a municipal minimum heating standards by-law, RTB staff will refer the tenant to the municipality. This is particularly true when the issue is not an emergency repair, but the tenant's claim that heating is insufficient. For example, the City is aware of situations where the landlord simply does not turn on the heating system as soon as the weather gets cold.

City's Role:

The meeting with Residential Tenancy Branch staff confirmed that requests for enforcement of a City heating by-law will definitely be referred to the City for enforcement. Issues around this are identified and addressed, based on the Kelowna scenario and the information collected from other municipalities.

*Illegal Dwellings:*

One of the primary concerns expressed by City-level by-law enforcement staff is that enforcement of any City-level by-law necessitates the application of all other applicable by-laws. It is very likely that dwellings that are inadequately heated may not be legal under the City's zoning by-law. For example, seasonal dwellings intended for agricultural workers (e.g. "pickers' shacks") tend to be rented out illegally year-round for non-agricultural tenants. These buildings are not designed for year-round use, and therefore are likely to lack proper heating. Enforcement of a minimum heat by-law will mean that these dwellings cease to be rented for year round use. Tenants may not have alternative accommodation, due to income limitations, and therefore a worse problem could be created. Similar concerns apply to other illegal dwellings, including illegal secondary suites.

Most by-laws are enforced on a complaint basis. The tenant would be the complainant when dealing with a minimum heating standards by-law. City staff would need to inform the tenant in such a situation that enforcement will also include address the legality of the dwelling. Shutting down an illegal dwelling should be an option that is identified to the tenant.

City and RTB staff agreed that a means of informing people about the possible results of asking the City to act on a minimum heat complaint when the dwelling may be illegal, should be specified in the form of a brochure that can be published by the City and made available through both agencies. The option of asking the RTB to act on a complaint regarding insufficient heat and

exercising tenant's rights under the RTA would be included in the brochure. The RTB does not need to address zoning compliance in resolving a landlord / tenant issue.

*Work Load:*

City-level enforcement staff and City Council were concerned about the increased work load resulting from proceeding with a minimum heating standards by-law. Provided RTB staff and City staff maintain open lines of communication, some cases may be resolved by the RTB, without the need for City involvement. Identifying a minimum heating standard in a City by-law can, in fact, help to hasten the process of addressing complaints through the RTB. Regardless, since it would be a City-level by-law, there would be additional responsibilities incurred by enforcement staff. To assist in estimating the level of activity resulting from such a by-law, other municipalities were asked to give an indication of the number of cases arising out of a minimum heat issue in their jurisdictions. The RTB for Kelowna handles a much larger region, including the City, extending to the Kootenays, north of Kamloops, and south to the border. In the last 12 months, less than 33 complaints for the entire area were related to heating issues in rentals. In the City of Kitchener, Ontario (est. 2000 population of 186,400), minimum heating standards have been enforced by the City for several years as part of its property standards enforcement. Kitchener staff estimated that about 12 complaints per year are received and enforced. In the City of North Vancouver (est. 2000 population of 44,944) enforcement staff were unsure of the number of complaints, but felt that there were less than 12 in a year. The City of Vancouver (est. 2000 population of 565,905 ) deals with a very different scenario than Kelowna due to the number of boarding homes and old hotels that serve as low-income housing. Most of the enforcement of heat standards in Vancouver is for this type of housing. In the Township of Esquimalt (est. 2000 population 16,400), where the standards of maintenance by-law includes minimum heat standards, the by-law enforcement staff could only recall one enforcement complaint that was specific to heating. Every by-law enforcement department that was contacted indicated that compliance by landlords to a minimum heat standard presented little difficulty. Most landlords comply immediately following contact by City staff. In some areas, temporary measures were accepted by the municipality until a permanent solution was developed. Although it is not possible to pre-determine how such a by-law would be received in Kelowna in terms of complaints, other municipalities that are presently enforcing such standards have not experienced significant activity (apart from Vancouver).

*Equipment:*

There have been concerns expressed about the type of equipment necessary to enforce a minimum heat by-law, in terms of accuracy and ease of use. Detailed information on equipment used by Kitchener and Vancouver has been provided. In Kitchener, a Richmond firm by the name of "Instrument Services" supplies the heat readers. Cost was estimated at \$250 per unit. The equipment is described as resembling a hand-held calculator, which needs calibration every year. Each room can be measured at the prescribed height in the centre of the room and a reading is usually available in less than one minute. If staff perceive that windows have been left open or an oven has been turned on, the reading will not be taken and a subsequent visit will be arranged. Vancouver uses similar heat readers, and staff indicates that these thermometers are accurate to within 0.2 degrees C., which is accepted in a court situation. Vancouver indicated that there are two types of heat readers that their staff uses. One is relatively inexpensive, at between \$100 - \$200 per unit. In a dispute situation that ends up in court, a calibrated thermometer at a cost of \$700 is used. The instruments are simple to use and do not require training in order to use them, according to Vancouver staff.

*Process:*

A recommended process for enforcing a minimum heat by-law is needed. Steps are outlined below, based on consultations with the RTO staff, City staff, City of Vancouver and City of Kitchener enforcement staff:

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Prior to enacting the by-law:

- Prepare a brochure for tenants advising of the minimum heat by-law and how it works;
- Determine the amount and type of heat readers needed and obtain these for the City: estimated cost: \$400 - \$2000 (depending on the number and type).

Enforcement Process:

- Receive a telephone, email or written complaint from a tenant who presently resides<sup>1</sup> in the dwelling that is the subject of the complaint, regarding inadequate heat;
- Advise the tenant of the option to contact the Residential Tenancy Office and explain that enforcing the minimum heat by-law means that the City will have to enforce other by-laws if there is any other problem with the dwelling. Give the example of an illegal suite.
- Advise the RTO that a complaint has been received under the minimum heat by-law.
  - If there are other problems with the dwelling, ask the RTO if it is able to handle the heat issue, due to the fact that the City will have to enforce other by-laws.
- If there is strictly a problem with heat, conduct a site visit and obtain a reading, in accordance with the By-law:
  - Re-schedule the visit if there is any indication that windows have been left open or an oven has been turned on.
- If heat is inadequate, phone the landlord and tell him/her to rectify the problem.
  - Request compliance within 24 hours by order.
  - Allow for temporary measures for no more than one month.
- If there are small children or health issues for the tenants, advise the Health Department, by a copy of the order to comply.
- Health Department would order a restoration of service and/or issue an order to have required repairs carried out.
- If there is no compliance within 24 hours, first warn the landlord that fines and court action could be applied:
- Within 48 hours, initiate process as follows:
  - *If it hasn't already been done, contact the Health Department & request that they order a restoration of service and/or issue an order to have the repairs carried out.*
  - *Long Form Information, where the owner is summonsed to Court of the offence (fine \$100 - \$2,000 / day of violation).*
- For repeat offenders, fine immediately (no warning) if there is no compliance within 24 hours, with municipal ticket and proceed with legal action.
- Make sure heat reading equipment is calibrated annually.

Cost of Enforcement:

In 2001, Council had asked questions regarding the cost of implementing a minimum heat by-law. Based on the experiences of other municipalities, staff anticipates that complaints requiring enforcement will be few, estimated at about 12 complaints per year. This would be absorbed as part of the overall costs of enforcement. The reason for proceeding with such a by-law is not the anticipated level of demand, but the fact that no resident should be facing inadequate heat with no workable means of resolving the problem.

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<sup>1</sup> The City does not need to address complaints arising from former tenants who had a dispute with their former landlord, but rather is concerned about residents who are not receiving adequate heat.

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SUMMARY

During the winter of 2000/2001, it came to City staff's attention that there were situations in the City whereby tenants were without adequate heat and seemed unable to resolve the problem. Based on the premise that such conditions are unacceptable, staff has investigated the applicable roles of the Residential Tenancy Office and municipalities in resolving inadequate heat in rental dwellings. A minimum heat by-law is proposed, as attached and enforcement procedures are identified in the report.

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Theresa Eichler, MCIP  
Community Planning Manager

Approved for Inclusion

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

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## CITY OF KELOWNA RENTAL PREMISES HEATING SYSTEMS STANDARDS OF MAINTENANCE BYLAW

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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 694 (1)(n) of the Local Government Act in open meeting assembled, 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 the persons appointed by **City Council** to administer and enforce the provisions of the **City** of Kelowna **Building Bylaw**, 1993, No. 7245 and the **City** of Kelowna Plumbing Regulation Bylaw No. 5968-87.

**'Bylaw Enforcement Officer'** means the officers or employees appointed by **Council** as such.

**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;

**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;

**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

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

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

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- 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 and Bylaw Enforcement Officer are authorized to administer this bylaw.

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

The Building Inspector or By-law Enforcement Officer 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 or By-law Enforcement Officer shall, on request, show proper identification.

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

The Building Inspector or By-law Enforcement Officer 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 or By-law Enforcement Officer 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 Systems**

### **11 - Heating Systems**

Heating equipment shall be maintained in a safe and good working condition, free from fire and accident hazards, so as to be capable of safely attaining and maintaining air temperature at 20 degrees Celsius measured at a point 1.5 metres above the floor, and in the centre of the living

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room, of any rental dwelling unit. A safe and good working condition should be confirmed by a qualified building inspector or engineer.

**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\_\_\_\_.

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Mayor

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Clerk



Form of Registered Letter regarding Heat Complaint:

\_\_\_\_\_ Date \_\_\_\_\_

Dear \_\_\_\_\_:

Re: \_\_\_\_\_ Address \_\_\_\_\_

On date, our Inspection Services reported that the temperature in location of your building at the above location was \_\_\_\_\_°C, in contravention of the *Rental Premises Heating Systems Standards of Maintenance Bylaw No.* \_\_\_\_\_.

Subsection 11 of the By-law states the heat is to be maintained as follows:

Heating equipment shall be maintained in a safe and good working condition, free from fire and accident hazards, so as to be capable of safely attaining and maintaining air temperature at 20 degrees Celsius measured at a point 1.5 metres above the floor, and in the centre of the living room, of any rental dwelling unit. A safe and good working condition should be confirmed by a qualified building inspector or engineer.

For further information, please call \_\_\_\_\_ of this Department at \_\_\_\_\_, between the hours of \_\_\_\_\_ and \_\_\_\_\_ (*identify inspector's working days*).

In accordance with Subsection 6 of the Rental Premises Heating Systems Standards of Maintenance By-law, you are ordered to provide heat and maintain it thereafter, as described above within (24 hours , 48 hours) of the date of this order.

Failure to comply with this order will result in this matter being referred to the City Prosecutor for the laying of charges.

Yours truly,

Al Dixon  
Supervisor Licensing & Bylaw Enforcement

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Cc: Ken Cooper  
Health Department