



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Licensing and By-law Services Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	September 6, 2024
SUBJECT/REPORT NO:	Amending the Property Standards By-law Respecting Air Conditioning Appliances (PED24101) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Gillian Barkovich (905) 546-2424 Ext. 2348
SUBMITTED BY:	Monica Ciriello Director, Licensing and By-law Services Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That the draft by-law attached as Appendix “A” to Report PED24101 to amend City of Hamilton By-law No. 23-162 (the “Property Standards By-law”) by incorporating new language that requires a cooling appliance that is supplied by owners in residential rental units, be capable of cooling a given space to a temperature not exceeding 26°C, where applicable and which has been prepared in a form satisfactory to the City Solicitor, be approved.

EXECUTIVE SUMMARY

The purpose of this report is to respond to the motion passed at the May 12, 2023, meeting of the Public Health Committee. Specifically, this report proposes amending Section 22 “Appliances” of the Property Standards By-law No. 23-162 to expand existing language around the “state of good repair” provision. The amendment will require that where an owner is responsible for providing air conditioning appliances, the appliance must be capable of cooling a given space to a temperature not exceeding 26°C in rental units in the City of Hamilton, where applicable. The amendment will create a more effective enforcement mechanism where an owner is responsible for providing cooling appliances; to ensure spaces are suitably cooled or where a unit is in disrepair.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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The new amendment to the Property Standards By-law proposed in this report is complemented by other existing and pending municipal and provincial initiatives, including:

- The City of Hamilton Community Heat Response Plan and Heat Response Strategy;
- Ontario Works Special Supports Program - Air Conditioner Benefit; and,
- Pending amendments to the *Residential Tenancies Act, 2006* proposed through Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Not applicable.

Staffing: Not applicable.

Legal: Not applicable.

HISTORICAL BACKGROUND

In May 2023, through Report BOH23019 - 2023 Hamilton Community Heat Response Plan, Public Health Services staff indicated it would bring more information regarding a Community Heat Response Strategy for 2024-2027 to the Public Health Committee in Q1 2024. Further, through Report BOH23019, a motion was passed “That staff in the Licensing and By-law Services Division be directed to prepare an Information Report for Q4 2023 identifying the 2024 priorities and timelines for the development of “new” by-laws, including an Adequate Temperature By-law and report back to the Planning Committee”.

In November 2023, through Report PED23238 – 2024 Licensing and By-law Services Division’s Priorities and Timelines for new by-laws, including Adequate Temperature By-law, Licensing and By-law Services staff presented 2024 priorities and timelines for the development of new by-laws, including a possible Adequate Temperature By-law with an estimated Q2 2024 timeframe identified for a report to Planning Committee.

In April 2024, through Report BOH24010 – Heat Response Strategy, Public Health Services staff presented updates to Council on the Heat Response Strategy in the City of Hamilton, including recommendations related to ten specific actions built from the City’s annual Heat Response Plan.

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In June 2024, through Report BOH24010(a) - Expansion of Subsidy for Air-Conditioners to Low Income Households, Council approved a temporary expansion of the Special Supports Air Conditioner Benefit to include low-income households in Hamilton who can provide medical documentation of a severe medical condition that may be worsened by exposure to extreme temperatures. Low-income households City-wide may be eligible for a one-time financial subsidy of \$350 per household to purchase an air conditioner unit administered through Ontario Works.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Staff's review considered the following applicable Municipal and Provincial legislation:

- *Municipal Act, 2001, S.O. 2001, c 25;*
- *Residential Tenancies Act, 2006, S.O. 2006, c. 17;*
- *Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023; and,*
- Municipal By-laws including Adequate Heat, Noise, Property Standards, Vital Services, Safe Apartment Buildings and Administrative Penalty (APS) By-laws.

In developing the proposed amendment, staff considered the scope of Municipal authorities as set out in the *Municipal Act, 2001* which authorizes Municipalities to pass By-laws with respect to the well-being of the Municipality and its inhabitants, as well as the scope and authorities of the *Residential Tenancies Act, 2006*, which outlines the obligations of landlords/owners in Ontario and specifically as it relates to the provision of air conditioning/cooling and vital services requirements. Staff further considered the pending amendments to the *Residential Tenancies Act, 2006* proposed in *Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023* which will permit tenants to install portable air conditioning units and will permit a landlord/owner to increase the rent charged to a tenant, where the tenant installs and uses a window or portable air conditioner in a rental unit to which the landlord/owner is obligated under the tenancy agreement to supply electricity” among other provisions.

RELEVANT CONSULTATION

In preparing the draft By-law appended to this report and crafting the recommendation highlighted herein, the following internal divisions were consulted:

- Corporate Services Department, Legal and Risk Management Services Division, Legal Services Section;
- Planning and Economic Development Department, Licensing & By-law Services Division;
- Planning and Economic Development Department, Climate Change Initiatives Division;
- Healthy and Safe Communities Department, Housing Services Division;

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- Healthy and Safe Communities Department, Healthy Environments Division;
- Healthy and Safe Communities Department, Ontario Works Division;
- City of Toronto, Municipal Licensing & Standards; and,
- City of London, Municipal Compliance.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Across Canada, communities are experiencing the impacts of climate change and extreme temperatures. The City of Hamilton Climate Science Report has predicted that the number of consecutive days with temperatures exceeding 30°C will increase and that heat waves will be more frequent.

There are approximately 72,000 rental households in the City of Hamilton who may experience the impacts of exposure to increased temperatures and lack of regulations to lower temperatures (to a maximum of 26°C). Furthermore, tenants who may have access to air conditioning that is provided by a property owner do not have a municipal lever for enforcement if the unit does not function effectively.

This report proposes amendments to the Property Standards By-law No. 23-162 to expand existing language around the “state of good repair” provision, by requiring that where an owner is responsible for providing air conditioning appliances, the appliance must be capable of cooling a given space to a temperature not exceeding 26°C in rental units in the City of Hamilton, where applicable.

The new amendment proposed in this report is complemented by existing and/or pending municipal and provincial initiatives that help tenants experiencing the impacts of extreme heat, including but not limited to:

- The City of Hamilton Community Heat Response Plan and Heat Response Strategy;
- Ontario Works Special Supports Program - Air Conditioner Benefit and Temporary Expansion of Air Conditioner Benefit to Low Income Households; and,
- Pending amendments to the *Residential Tenancies Act, 2006* proposed through *Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023*.

City of Hamilton Community Heat Response Plan and Heat Response Strategy

The 2024 City of Hamilton Community Heat Response Plan developed by Public Health Services has been updated and presented to Council. The Response Plan brings together several Divisions, community partner agencies and service providers to provide support and information to residents who are most vulnerable to heat related illness. Where Environment Canada has initiated either a Heat Warning and/or

Extended Heat Warning, Public Health Services will amplify the warning and alert the public that hot weather conditions are imminent or occurring and outline services that may be provided to Hamilton residents. Services may include, but are not limited to; identifying cooling stations throughout the City that are available for residents, offering scheduled public swims free of charge, expansion of splash pad operating hours, distribution of water by community groups, and providing free bus tickets to cooling places (where applicable), etc. The partnering agencies and services providers of the Community Heat Response Committee implement the Community Heat Response Plan according to their roles and responsibilities.

The Heat Response Strategy was further developed by Public Health Services and builds on the annual Community Heat Response Plan. The Heat Response Strategy presents ten actions that expand the City's annual Heat Response Plan.

Ontario Works Special Supports Program (Air Conditioner Benefit) and Temporary Expansion Benefit

Through the Ontario Works Division, the Special Supports Program initiative administers funding for a variety of health-related discretionary benefits to recipients of Ontario Works (OW) and the Ontario Disability Support Program (ODSP) who live independently within the community, including an air-conditioner benefit to aid with providing relief from the heat and/or humid weather conditions to persons with a severe medical condition. Medical documentation must be provided to support a severe medical condition where, without an air-conditioner, the symptoms of the medical condition may become worse. It is worth noting that the air conditioner benefit does not cover the cost of air-conditioners for low-income residents (including seniors). Further, additional costs including; hydro, installation and storage are not provided.

However, in June 2024, Council approved a temporary expansion of the air-conditioner subsidy to include low income households. Generally, the temporary expansion allows eligible low-income residents who meet Statistics Canada's Low Income Measure threshold and who can provide medical documentation of a severe medical condition that may worsen as a result of increased temperatures, to make application for a \$350.00 financial subsidy (per household) to purchase an air conditioner to assist with cooling an area within their residence.

Pending Amendments to the *Residential Tenancies Act, 2006* proposed through *Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023*

Section 21 of the *Residential Tenancies Act, 2006* sets out landlord responsibilities with respect to the supply of any vital service. Specifically, tenants must have access to a "vital service" which includes: heat, fuel, gas, electricity and hot or cold water, but does

not include cooling or air conditioning. Landlords *may* be obliged to provide air conditioning where tenancy agreements include air conditioning in the contract. However, in June 2023, the Provincial government passed *Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023*. The Bill introduced amendments to the *Residential Tenancies Act, 2006* specific to air conditioning which will:

- Permit a tenant to install and use a window or portable air conditioner in a rental unit for which the landlord does not supply air conditioning;
- Introduce an exception in prescribed circumstances where a tenant may be prohibited from installing a unit;
- Set out conditions for installation of the units, including but not limited to; written notification prior to installation, mandatory safely and secure installation of the unit, and prohibition of damage to unit or complex caused by the air conditioner;
- Allow reasonable inspection by the landlord for the purpose of determining compliance with the above-noted provisions; and,
- Introduce language around rent collection where a tenant installs and uses a window or portable air conditioner in a rental unit to which the landlord is obligated under the tenancy agreement to supply electricity. Specifically, the landlord may increase the rent charged to the tenant, but the increase shall not exceed the actual cost to the landlord of the electricity supplied for the operation of the air conditioner. A landlord is also required to decrease the rent charged to a tenant who is subject to a rent increase where the tenant ceases to use the air conditioner.

Generally, the changes to the *Residential Tenancies Act, 2006* can be summarized as allowing tenants to choose whether to install their own air conditioning units, while authorizing landlords to impose costs if they are responsible for costs associated with the operation of the unit. The changes to the *Residential Tenancies Act, 2006* that are proposed through *Bill 97* received Royal Assent at the Provincial legislature in June 2023, but have not yet been proclaimed.

Property Standards By-law No. 23-162

Currently, the Property Standards By-law No. 23-162 is the only by-law enforced by Licensing and By-law Services that speaks to air conditioning or cooling. Specifically, Section 22(7) of the Property Standards By-law requires that appliances (including air conditioners) supplied by an owner of a rental unit be maintained in a good state of repair and in a safe operable condition. Complaints received by Licensing and By-law Services typically relate to noisy air conditioner units in nearby units that require repair and are causing nuisance noise concerns for tenants and neighbours. Licensing and By-law Services staff have not historically investigated the overall ability of an appliance to cool effectively to a particular temperature.

The general approach of the proposed amendment is to expand existing language around the “state of good repair” provision, by requiring that where an owner is responsible for providing air conditioning appliances, the appliance must be capable of cooling a given space to a temperature not exceeding 26°C in rental units from May 15th through September 15th. Further, the proposed amendment will put in place a mechanism that will create a municipal lever for enforcement of maximum temperatures in rental units where a property owner is responsible for providing cooling and to provide enforcement where cooling units are removed or inoperable. It is worth highlighting, that if the air conditioner is purchased by the tenant it will remain to be their personal property and they will be required to maintain the air conditioner.

Jurisdictional Scan

Staff completed a jurisdictional scan of municipalities to determine if there are similar programs in operation in other municipalities across Canada. Results determined that both the municipalities of Mississauga and Ajax have developed Adequate Temperature By-laws that prescribe maximum temperatures and the provision of adequate and suitable cooling, but only where an air conditioning unit is present, and a landlord/property owner has agreed to provide the service.

The City of Toronto and City of London are currently working on a feasibility report of options to effectively require that all landlords or owners who control the temperature in leased residential premises to, in part, not exceed a specified temperature.

The City of Mississauga and the City of Ajax have developed Adequate Temperature By-laws that prescribe maximum temperatures and the provision of adequate and suitable cooling, but only where an air conditioning unit is present, and a landlord/property owner has agreed to provide the service. The City of Ajax’s by-law specifically excludes window air conditioning units and only applies to central air conditioning.

Staff’s recommendation is in line with the best practices of municipalities across Canada.

Transition Plan

As with the introduction of any new By-law or program, there is an initial period of preparation, education, and consultation regarding operational regulations, internal administrative organization, and system modifications. If approved, staff will undertake an education campaign to ensure that tenants and property owners are aware of the new requirements.

Enforcement

Complaints specific to the proposed amendment will be investigated on a predominantly reactive enforcement approach where Municipal Law Enforcement Officers will respond to complaints submitted relating to temperature, air conditioning unit operational issues, etc. Utilizing a temperature gauge, officers may issue orders upon observation of a violation of the By-law. If a property owner fails to ensure that compliance with an Order is achieved, subsequent enforcement and addition of fees may take place. Where a contractor is required to attend to bring a property into compliance with an Order, fees will be added to the property tax roll as appropriate.

It is worth noting that where a contractor is required to attend a property to bring it into compliance with an Order, contractors retained by Licensing and By-law Services are already required to have expertise in HVAC and no further process is required to retain HVAC expertise for enforcement of the by-law.

ALTERNATIVES FOR CONSIDERATION

Alternative One – Public Consultation on the Canadian Environmental Law Association’s Adequate Temperature By-law

In place of approving staff’s proposed recommendation, Council may direct staff to conduct extensive city-wide community consultation on the proposition of adopting a by-law similar in type/form to the Adequate Temperature By-law proposed by the Canadian Environmental Law Association (CELA) to the City of Toronto in January 2024 and report back to Planning Committee in 2025 with outcomes and any recommendations for amendments to By-laws or the creation of a new By-law.

It is the opinion of staff that adopting the By-law proposed by CELA would present significant operational and practical challenges, and that the introduction of such a By-law may result in unintended consequences, including:

- negative environmental impacts as a result of, excessive use of energy, challenges to electric grids, etc.; and,
- increases in Noise and/or Property Standards By-law related complaints due to noise from cooling equipment.

Additional challenges in the development of an Adequate Temperature By-law may be further constrained by the pending changes to the *Residential Tenancies Act, 2006*, through *Bill 97, Helping Homebuyers, Protecting Tenants Act, 2023*. In passing *Bill 97*, the intention of the Provincial government appears to have been to provide the authority for tenants to install air conditioning units if they so choose. Municipalities cannot contradict or frustrate the purpose of provincial legislation. Furthermore, the *Residential*

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Tenancies Act, 2006 authorizes landlords to recover cost of cooling, but does not prohibit a landlord from making application for an Above Guideline Increase (AGI) to permanently increase rent above prescribed guidelines, to accommodate for the cost of the capital investment required to install cooling equipment. Generally, the by-law would likely result in costs being downloaded to the tenant, possibly even where tenants would opt not have cooling equipment installed in their unit.

Implementation of a by-law would require a significant transition period to conduct education on the new requirements, consultation regarding operational regulations, internal administrative organization, staff training and system modifications. Further, mandatory installation of cooling equipment in rental units would require significant financial investment by owners. Staff recommend aligning the implementation of such a By-law with the implementation of the Safe Apartment Buildings By-law, to ensure that staffing and resourcing requirements are in place and to provide owners time to accommodate for the required investment.

Staff completed a jurisdictional scan of municipalities to determine if there are similar programs in operation in other municipalities across Canada. Results determined that both the municipalities of Mississauga and Ajax have developed Adequate Temperature By-laws that prescribe maximum temperatures and the provision of adequate and suitable cooling, but only where an air conditioning unit is present, and a landlord/property owner has agreed to provide the service.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED24101 – Draft Amending By-law to amend Property Standards By-law No. 23-162