



Memorandum

Corporate By-law Number BL XX/2022

TO: Office of the City Clerk **FILE: XXXX-2022**

FROM: Gordon Stover
Development & Emergency Services - Licensing & Enforcement

DATE: xx/xx/2022 (*draft dated May 10/22*)

SUBJECT: BL XX/2022 – Minimum Heat By-law

MEETING DATE: City Council – xx/xx/2022 (mm/dd/yyyy)

By-law Description: A By-law to xxxxxxxx

Authorization: Committee of the Whole - xxxxx, xx, 2022

By-law Explanation: The purpose of this By-law is to regulate adequate heat

Schedules and Attachments:

Amended/Repealed By-law Number(s):



THE CORPORATION OF THE CITY OF THUNDER BAY
BY-LAW NUMBER BL XXX/2022

A By-law to authorize the City of Thunder Bay to require Owners of Residential Rental Dwellings to ensure such dwellings are provided with Adequate and Suitable Heat in residential accommodations.

WHEREAS the *Municipal Act*, 2001, S. O. 2001, c. 25, s. 8, provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS the *Municipal Act*, 2001, S. O. 2001, c. 25, s. 9, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

AND WHEREAS the *Municipal Act*, 2001, S. O. 2001 c. 25, s. 10, gives the municipality broad authority to pass by-laws respecting the health, safety, and well-being of persons;

AND WHEREAS,

THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF THUNDER BAY ENACTS AS FOLLOWS:

1. Definitions

“adequate and suitable heat” means that the minimum temperature of the air in the dwelling unit shall be 21 degrees Celsius (21 C), when measured as prescribed.

“City” means the Corporation of the City of Thunder Bay and, where the context allows, shall include its agents and employees.

“dwelling unit” means one or more habitable rooms designed and intended for human habitation.

“order” means a Work Order under Section 6, of this By-law.

2. BY-LAW NAME

This By-law shall be known as the “Minimum Heat By-law”.

3. OWNER(S) RESPONSIBILITY

- (1) Every owner of a dwelling unit which is rented or leased and which is to be heated by or at the expense of the owner, shall provide the dwelling unit with adequate and suitable heat at the owner's expense.
- (2) Every tenant or occupant of a dwelling unit that is claiming that the owner is responsible to the supply and pay for heat, and that it is included in rent, shall provide an officer the original written tenancy agreement for examination and a copy thereof, that is signed and in relation to the dwelling unit for with an exemption to the requirement is claimed.
- (3) Every owner of dwelling unit, that claims that the heating expense is not the responsibility of the owner, shall provide an officer the original written tenancy agreement for examination and a copy thereof, that is signed and in relation to the dwelling unit for with an exemption to the requirement is claimed.
- (4) Every owner of a dwelling unit that fails to produce the required proof of exemption, required in subsection 3(3) above, is deemed to be responsible to supply adequate and suitable heat to that dwelling unit.
- (5) Every owner will ensure that adequate and suitable heat shall be maintained, in habitable space, at a minimum temperature of no less than 21 degrees Celsius (21 C).
- (6) Every owner served with an order pursuant to Section 6 of this By-law, shall comply with the order.

4. MEASURING ADEQUATE AND SUITABLE HEAT

For the purposes of determining a contravention of this by-law, the temperature shall be measured by, or on behalf of, the tenant:

- (1) In every habitable room in the dwelling unit;
- (2) As close to the center of the room as possible; and
- (3) As close to one point two metres (1.2m) above the floor surface of the room.
- (4) Recorded in writing capturing the date, time, room type, location in the room, height from floor, duration of measurement, the actual measurement on two separate thermometers.
- (5) Recorded temperatures must be taken by the tenant, once every two-hours, in each habitable space that is in question, during the hours of 7am and 11pm, and then once between hours of 11pm and 7am, and immediately record and initialed by tester.

- (6) A separate record over 3 days in any 7-day period and must be available for inspection and copying by an officer, when requested.

5. INSPECTION AND ENFORCEMENT POWERS

- (1) Every officer shall be authorized to enforce the provisions of this By-law.
- (2) Every officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether the provisions of this By-law are being complied with.
- (3) Every officer may require information from any person concerning a matter related to the inspection.
- (4) Every officer may, in writing, extend any of the time frames for compliance in this By-law where it is reasonable in the circumstances to do so.
- (5) Officers may also rely on the authorities, if required, of the City's Property Enter By-law and any other authorizing by-law or statute.

6. WORK ORDER

- (1) Where the officer has reasonable grounds to believe that a contravention of this by-law has occurred, the officer may make an order requiring the person who contravened this by-law to do work to correct the contravention.
- (2) An order under subsection 6(1) of this by-law shall set out:
 - a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and,
 - b) the work or remedial action required to be done and the date by which the work or remedial action must be done.
- (3) An order under subsection 6(1) of this by-law may require work or remedial action to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.
- (4) Any person who fails to comply with an order issued under subsection 6(1) of this by-law, is guilty of an offence.

7. SERVICE OF NOTICES/ORDERS

- (1) An order to secure a vacant building against unauthorized entry may be hand delivered to the owner or posted at the site of the vacant building;
- (2) An order may be delivered in person to an owner or occupant, at the address of lands that are subject of the order or left with an inmate therein that is over that apparent age of eighteen years; or
- (3) An order may be sent registered mail to the last known address supplied to the corporation's tax office and shall be deemed to be delivered on the fifth (5th) day after the date mailed; or
- (4) An order may be posted in a conspicuous place on the property or placed in any open mail receptacle in proximity to the main entrance and shall be deemed to be delivered on the seventh (7th) day after being affixed/deposited.

8. GENERAL PROVISIONS

Space heaters shall not be used as a heat source for the purposes of obtaining compliance with the provisions of this By-law, except:

- (1) On a temporary basis as is reasonably necessary; and
- (2) Where solely powered by electricity.

9. REMEDIAL ACTION AND COSTS

If a person fails to do a matter or thing, including to comply with an order issued under this By-law, as directed or required by this by-law, The City may, in default of it being done by the person directed or required to do it, do the matter or thing, and:

- (1) Where the City is required to undertake work to ensure that the minimum required heat in compliance with this By-law, the work will be completed at the expense of the owner.
- (2) If the owner fails to pay the cost of work completed under this By-law within thirty (30) days of the work being completed, the amount shall be added to the tax roll of the subject property and collected in the same manner as property taxes.

10. OBSTRUCTION

- (1) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law.
- (2) A refusal of consent to enter or to remain in a room or place actually used as a dwelling does not constitute hindering or obstruction within the meaning of section 8(1) of this By-law, unless the officer is acting under a warrant under section 439 of the *Municipal Act, 2001*, or in the circumstances described in sections 437(d) or (e) of the *Municipal Act, 2001*.

11. OFFENCE

Every person, including a corporation, who contravenes a provision of this By-law is guilty of an offence and upon conviction, is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended from time to time, or any successor thereof.

12. PENALTIES

- (1) Any person who contravenes a provision of this By-law is also subject to a system of fines set out in section 429 of the *Municipal Act, 2001*, and all contraventions of this by-law are designated as continuing offences for each day they continue.
- (2) Every person, who is convicted of an offence is liable to a minimum fine of three hundred dollars (\$300.00) and a maximum fine of five thousand dollars (\$5,000.00) for the first offence and a maximum fine of ten thousand dollars (\$10,000.00) for any subsequent conviction under the By-law, to the maximum prescribed in the *Municipal Act 2001*.
- (3) In addition to the fine amounts set out in section 12(2), for each day or part of a day that an offence continues, the minimum fine shall be three hundred dollars (\$300) per day or part day for the first conviction, but the total of all daily fines, shall not exceed five thousand dollars (\$5,000) for the first conviction, where the convictions are registered to a person, that is not a corporation.
- (4) Where a corporation is convicted of a second and subsequent conviction, the minimum fine shall not be less than five thousand dollars (\$5,000) for each subsequent conviction to a maximum fine of one hundred thousand dollars (\$100,000).

13. ADDITIONAL COURT ORDER

Additionally, section 431 of the Municipal Act allows, if any by-law of a municipality or by-law of a local board of a municipality under this or any other Act is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order,

(a) prohibiting the continuation or repetition of the offence by the person convicted.

14. COMPLIANCE WITH OTHER BY-LAWS

Compliance with other by-laws shall not relieve any person from compliance with any other City by-law.

15. SEVERABILITY

Each and every of the provisions of this By-law is severable and if any provision of this By-law should for any reason be declared invalid by any court, it is the intention and desire of this Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

16. REPEAL

Upon passing of this By-law, Chapter 831 of the City of Thunder Bay Municipal Code, and by-law 210-1974 as well as any amendments thereto, are hereby repealed.

17. EFFECT

This by-law shall come into force and effect on the date of its final passing.

Enacted and passed this xxx day of XXX, A.D. 2022 as witnessed by the Seal of the Corporation and the hands of its proper Officers.

Mayor

Clerk