

Authority: Item 11, Audit, Finance &
Administration Committee
Report 11-004 (FCS11007)
CM: March 9, 2011

Bill No. 103

CITY OF HAMILTON

BY-LAW NO. 11-103

**A By-law to Amend By-law No. R84-026,
A By-law Respecting the Management and Maintenance of the Waterworks
Systems of the City of Hamilton and the Establishment of Water Rates and
Charges**

WHEREAS on March 20, 1984, the Council of The Regional Municipality of Hamilton-Wentworth passed and enacted Regional By-law No. R84-026, being a by-law respecting the management and maintenance of the waterworks system of The Regional Municipality of Hamilton-Wentworth and the establishment of water rates and charges;

AND WHEREAS pursuant to the *City of Hamilton Act, 1999*, S.O. 1999, c. 14, Schedule "C", The Regional Municipality of Hamilton-Wentworth was dissolved on January 1, 2001 and the City of Hamilton stands in the place of The Regional Municipality of Hamilton-Wentworth for all purposes;

AND WHEREAS pursuant to the *City of Hamilton Act, 1999*, S.O. 1999, c. 14, Schedule "C", every by-law of an old municipality, such as the former Regional Municipality of Hamilton-Wentworth, that is in force on December 31, 2000 shall be deemed to be a by-law of the City of Hamilton until it expires or is repealed or amended to provide otherwise;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes;

AND WHEREAS pursuant to section 391 of the *Municipal Act, 2001*, S.O. 2001, c.25, sections 9 and 10 of the said Act authorize a municipality to pass by-laws imposing fees or charges for services or activities provided or done by or on behalf of the municipality and for the use of the municipality's property, including property under its control;

AND WHEREAS on the 9th day of March, 2011, the Council of the City of Hamilton did approve of Item 11 of Audit, Finance & Administration Committee

Report 11-004 and did authorize the amendments to By-law No. R84-026 set out herein, including but not limited to the fees and charges set out herein;

AND WHEREAS notice of the fees and charges set out herein has been given in accordance with the provisions of the City of Hamilton's Public Notice Policy By-law No. 07-351.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. Section 1 of By-law No. R84-026 is deleted and replaced with the following new section 1:

DEFINITIONS

1. In this By-law, unless the context otherwise requires,

"applicant" means the Owner or his authorized agent who may be required to sign forms supplied by the City of Hamilton authorizing various works described in this By-law;

"approved" means having the approval of the General Manager of Public Works;

"City Council" means the Council of the City of Hamilton;

"City of Hamilton" or "City" means the City of Hamilton as established on January 1, 2001 under the *City of Hamilton Act, 1999*, S.O. 1999, c. 14, Schedule "C" and its geographic area;

"City of Hamilton Water and Wastewater Arrears Policy" means the policy approved by City Council at its meeting of October 24, 2007 as Item 9(a) of Audit and Administration Committee Report 07-012, as amended or re-enacted from time to time, and any successor to such policy. This policy may be found at the Office of the City Clerk for the City of Hamilton;

"City of Hamilton Water Leak Adjustment Policy" means the policy approved by City Council at its meeting of December 12, 2007 as Item 11(a) of Audit and Administration Committee Report 07-015, as amended or re-enacted from time to time, and any successor to such policy. This policy may be found at the Office of the City Clerk for the City of Hamilton;

"City of Hamilton Water and Wastewater Consecutive Estimated Accounts Policy" means the policy approved by City Council at its

meeting of May 13, 2009 as Item 9 of the Audit and Administration Committee Report 09-008, as amended or re-enacted from time to time, and any successor to such policy. This policy may be found at the Office of the City Clerk for the City of Hamilton;

"City Solicitor" means the City Solicitor for the City of Hamilton or such person as is duly authorized to act in his or her stead;

"consumer" means any Owner, tenant or lessee or occupier of lands who may have occasion to make use of any water service connection to a property which he, she or it occupies in the course of his, her or its residence or in the operation of a business;

"General Manager of Finance and Corporate Services" means the General Manager of Finance and Corporate Services for the City of Hamilton or the person duly authorized to act in his or her stead for purposes of this By-law, or successor;

"General Manager of Public Works" means the General Manager of Public Works for the City of Hamilton or the person duly authorized to act in his or her stead for purposes of this By-law, or successor;

"legally established income producing rental property" means,

- (a) a property listed in the Corporate Services Department of the City of Hamilton as a multiple family dwelling; or
- (b) a property in which the Owner registered on title is different from the Occupant; or
- (c) a rental property in which business taxes are paid;

"Municipal Law Enforcement Officer" means any person appointed by City Council, by the General Manager of Public Works, or under this By-law, to administer or enforce this By-law and includes a person employed by the City of Hamilton whose duties are to enforce this By-law, and also includes, for the purposes of exercising any power of entry under this By-law, a police officer;

"Owner" means any registered owner of land or buildings thereon, or any authorized agent, contractor, employee, tenant or servant representing such owner, who is responsible for the continued service of his land with water, which land or buildings are located within the City of Hamilton and which may be serviced with water from the water distribution system of the City of Hamilton;

"Occupant" means any person who has actual or implied use, possession or control of any land or buildings thereon located in the City of Hamilton and which may be serviced with water from the water distribution system of the City of Hamilton and includes any agent, servant or employee of such occupant;

"plumber" means any person, group, owner, firm, company, corporation or contractor who holds himself or themselves out as plumbers, pipefitters, or earthmoving contractors who engage in the work of installing pipes for the purpose of carrying potable water;

"premises" means the building or structure which it services with a water connection from the water distribution system of the City of Hamilton and which is located on publicly or privately owned property within the limits of the City of Hamilton;

"prime user" means the premises for which the service connection was originally installed and which contains the curb stop;

"Private Water Filling Stations" means privately owned and operated water filling stations;

"Public Water Filling Stations" means the water filling stations identified in Schedule "C" to this By-law which are owned by the City of Hamilton;

"service connection" means the service pipe connected to the water distribution system which is designed to carry water from this system to the street line, or from the distribution system to the limit of the Waterworks easement;

"service pipe" means a water pipe connected as described in the definition of service connection;

"shared service" means a water service which supplies water to more than one premises which are connected with the yard service or within a premises and which are controlled by a common curb stop;

"subsequent user" means a premises sharing a yard service with a prime user;

"Universal Metering Program" means the City of Hamilton's program to supply and install new water meters, remote water meter reading receptacles and meter seals on all unmetered properties within the City of Hamilton by June 30, 2004;

“vacant premises” means a premises that is not completely or not substantially occupied by the Owner or an Occupant authorized by the Owner for a period of more than 90 consecutive days, but does not include a premises:

- (a) occupied by the Owner or an Occupant authorized by the Owner on a seasonal basis, or
- (b) on property used as a farm, except for a dwelling unit; or
- (c) owned by the City of Hamilton;

"Waterworks" means the building, structures, plant, machinery, equipment, appurtenances, devices, conduits, intakes, outlets, underground pipelines and installations, and other works designed for the production, treatment, transmission, distribution and storage of water, and includes lands occupied for such purposes and uses;

"yard service" means the service pipe connected to the service connection at the street line or limit of the Waterworks easement, which is designed to carry water from the street line, or the limits of the Waterworks easement, to lands or buildings.

2. Section 3 of By-law No. R84-026 is amended by adding the following subsections 3(4) to (21):

- (4) All Municipal Law Enforcement Officers are authorized to enforce this By-law.
- (5) The General Manager of Public Works is authorized to delegate the responsibility for the administration of this By-law to any employee or agent of the Environment & Sustainable Infrastructure Division of the Public Works Department of the City.
- (6) A Municipal Law Enforcement Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are complied with:
 - 1. this By-law;
 - 2. any direction, requirement or order of the City made under this By-law; or

3. an order made under s. 431 of the *Municipal Act, 2001* in respect of a contravention of this by-law.
- (7) For the purposes of an inspection under subsection 3(6), a Municipal Law Enforcement Officer may,
1. require the production for inspection of documents or things relevant to the inspection;
 2. inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 3. require information in writing or otherwise as required by the Municipal Law Enforcement Officer from any person concerning a matter related to the inspection; and
 4. alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
- (8) A Municipal Law Enforcement Officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001* where he or she has been prevented or is likely to be prevented from carrying out an inspection under subsection 3(6) and 3(7).
- (9) If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened this By-law or who caused or permitted the contravention, or the Owner or Occupant of the property on which the contravention occurred to discontinue the contravening activity.
- (10) An order under subsection 3(9) shall set out:
1. reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 2. the date and time by which there must be compliance with the order, which may be of immediate effect should the Municipal Law Enforcement Officer determine that the circumstances warrant.

- (11) If a Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened this By-law or who caused or permitted the contravention or the Owner or Occupant of the property on which the contravention occurred to do the work to correct the contravention.
- (12) An order under subsection 3(11) shall set out:
1. reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 2. the work to be completed which may include but is not limited to requiring that:
 - (a) prior to performing any work, all necessary permits or other approvals be applied for and obtained;
 - (b) examinations or tests be conducted for the purpose of determining the cause of the contravention and/or the remedial measures that are necessary to correct the contravention, and that such examinations or tests be supplied to the Municipal Law Enforcement Officer together with any accompanying reports required in the order;
 - (c) arrangements be made for the shutting off of the supply of water from the City's water distribution system until the work ordered to be done is completed; and
 3. the date and time by which the work must be completed, which may be of immediate effect should the Municipal Law Enforcement Officer determine that the circumstances warrant.
- (13) An order to discontinue a contravening activity made under subsection 3(10) or an order to do work made under subsection 3(12) may be served personally or by registered mail to the last known address of:
1. the Owner or Occupant of the property where the contravention occurred; and

2. such other persons affected by the order as the Municipal Law Enforcement Officer making the order determines.

Service by registered mail shall be deemed to have taken place five business days after the date of mailing.

- (14) In addition to service given in accordance with subsection 3(13), an order to discontinue a contravening activity made under subsection 3(10) or an order to do work made under subsection 3(12) may be served by a Municipal Law Enforcement Officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred.
- (15) Where service cannot be given in accordance with subsection 3(13), sufficient service is deemed to have taken place when given in accordance with subsection 3(14).
- (16) No person shall remove an order, notice, direction or placard posted on a property indicating that it was posted under this By-law, except a Municipal Law Enforcement Officer.
- (17) Where a time frame is set out in an order for carrying out any action, the Municipal Law Enforcement Officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the Municipal Law Enforcement Officer.
- (18) Where a person does not comply with a direction or a requirement, including an order, under this By-law to do a matter or thing, the General Manager of Public Works, with such assistance by others as may be required, may carry out such direction, requirement or order at the person's expense.
- (19) The City may recover the costs of doing a matter or thing under subsection 3(18) by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 percent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.
- (20) The General Manager of Public Works is authorized to give immediate effect to any direction or requirement where the costs of carrying out the direction or requirement do not exceed \$10,000 and, where the costs do exceed \$10,000, as the City's council may authorize.

- (21) The amount of the City's costs including interest to the date payment is made in full constitutes a lien upon the land, upon the registration of a notice of lien upon the land.
3. Subsections 8(10), (11) and (12) of By-law No. R84-026 are deleted and replaced with the following subsections 8(10), (11), (12) and (13):
- (10) If a seal on a meter by-pass for a non-residential property is opened and/or broken, without the prior written permission of the City or its authorized agent, the Owner or Occupant of the property shall pay an amount equal to up to three times the average daily water consumption for the property during the time period when the valve was opened. If a full year's billing history is not available for the property, the City will estimate the average daily water consumption based on the average daily water consumption of similar customers. Upon the request of the City, the Owner shall install metering equipment on the by-pass valve within 60 days of such request and shall be responsible for all charges and fees associated with it.
- (11) If an existing water meter and/or house piping of a residential property have been altered to by-pass the water meter and to allow for non-metered water to be drawn, without the prior permission of the City or its authorized agent, the Owner or Occupant shall pay an amount equal to up to three times the average daily water consumption for the property during the time period that the alteration occurred and until the 60 day period referred to in subsection (a) has expired. If a full year's billing history is not available for the property, then the City will estimate the average daily water consumption for the property based on the average daily water consumption of similar customers. In such a situation, the Owner shall also:
- (a) within 60 days of a request by the City, restore the water metering equipment or house piping, or both, to current City specifications, at the Owner's cost and expense, including but not limited to the cost of any required permits, the cost to replace any damaged water meter and the cost of any inspections by the City to ensure that the restoration work has been completed to its satisfaction; or
- (b) where the Owner has failed to comply with subsection (a), pay an amount equal to two times the non-metered annual rate set out in Schedule "A" to this By-law, until such time as the Owner complies with subsection (a).

- (12) Fees for the supply and installation of water meters and remote readers are to be paid by the Owner of the premises and are set forth in Section 1 of Schedule “E” to this By-law.
 - (13) No person shall break, damage, destroy, deface or tamper or cause or permit the breaking, damaging, destroying defacing or tampering with:
 - (a) any part of the Waterworks; or
 - (b) any permanent or temporary device installed in a Waterworks or in a yard service, including a water meter, for the purpose of measuring, sampling and testing of the water.
4. Subsection 12(5) of By-law No. R84-026 is deleted and replaced with the following subsection:
- (5) A non-metered residential property may remain non-metered only where, in the opinion of the General Manager of Public Works, it is determined that a water meter cannot be installed on or at the property. In such a case, the Owner or Occupant of the property shall be liable to pay a non-metered annual rate as set forth in Schedule “A” to this By-law.
5. Subsections 12(9) and (10) of By-law No. R84-026 are deleted and replaced with the following subsections:

Rates Where Failure to Comply

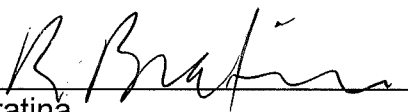
- (9) Where the Owner of a non-residential property has failed to permit the installation of a water meter and remote reading device required under this By-law, the Owner shall pay an amount equal to up to two times the historical average daily water consumption of similar customers until such time as the water meter and remote reading device are installed to the satisfaction of the City of Hamilton.
 - (10) Where the Owner of a residential property has failed to permit the installation of a water meter and remote reading device required under this By-law, the Owner shall pay an amount equal to up to three times the non-metered annual flat rate as set forth in Schedule “A” to this By-law, unless the General Manager of Public Works determines that a water meter cannot be installed.
6. Subsection 12(11) of By-law No. R84-026 is deleted in its entirety and subsections 12(12) and (13) are re-numbered as subsections 12(11) and (12).

7. Subsection 18(4) of By-law No. R84-026 is deleted and replaced with the following subsection:
- (4) (a) Whenever any premises having a water service becomes a vacant premises, the Owner of the vacant premises shall, within 24 hours of the vacancy notify the General Manager of Public Works, in writing, to shut off the water at the street line, and shall pay:
- (i) the fee for turning the water off in the amount set forth in Schedule "E" to this By-law, and when the premises is no longer a vacant premises, the applicable fee is to be paid by the Owner for turning the water on again as set forth in Schedule "E" to this By-law; and
- (ii) the minimum charge portion of the metered water rates as set forth in Schedule "G" to this By-law during the time period that the water is shut off.
- (b) Where the Owner of a vacant premises fails to notify the General Manager of Public Works as set out in subsection (a), the City of Hamilton may, once aware of the vacant premises and upon at least 24 hours of notification to the Owner, shut off the water at the street line. In such event, the City of Hamilton will not be liable for any loss or damages to any equipment, such as boilers, resulting from shutting off the water service. However, the Owner shall pay the fee for such turning water off service as set forth in Schedule "E" to this By-law.
8. Section 22 of By-law No. R84-026 is deleted and replaced with the following section:
22. (a) Any person who contravenes an order made under this By-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$10,000, as provided in the *Municipal Act, 2001*, for each day or part of a day that the offence continues, and despite section 21, the total of all of the daily fines imposed for an offence is not limited by the fine amount permitted under that section.
- (b) Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of

competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

9. This by-law comes into force on the day it is passed.
10. In all other respects, the contents of By-law No. R84-026, as amended, are hereby confirmed as unchanged.

PASSED this 13th day of April, 2011.



R. Bratina
Mayor



R. Caterini
City Clerk