

PROPERTY MAINTENANCE

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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. 11, gives the municipality broad authority to pass by-laws respecting the health, safety, and well-being of persons;*

AND WHEREAS, *the Municipal Act, 2001, S.O. c. 25, s. 128, provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;*

AND WHEREAS, *Council of The Corporation of the City of Kitchener is of the opinion that vacant buildings that are not secured against unauthorized entry constitute public nuisances by attracting vandals and creating various safety hazards.*

Article 1 INTERPRETATION

694.1.1 Building damaged by fire - defined

"building damaged by fire" shall include a building partially or completely damaged by fire to the extent that it will not be inhabited until it has undergone repairs.

694.1.2 Chief Building Official - defined

"Chief Building Official" shall mean the Chief Building Official of the City and shall include a delegate or delegates thereof.

694.1.3 City - defined

"City" shall mean The Corporation of the City of Kitchener and, where the context allows, shall include its agents and employees.

694.1.4 Fire Chief - defined

"Fire Chief" shall mean the Chief of the Kitchener Fire Department and shall include a delegate or delegates thereof.

694.1.5 Fire Department - defined

"Fire Department" shall mean the Kitchener Fire Department.

694.1.6 Officer - defined

“officer” shall mean the Fire Chief, a fire prevention officer, a by-law enforcement officer, or a municipal law enforcement officer of the City.

694.1.7 Owner - defined

“owner” shall include the registered property owner or agent thereof, a person having or appearing to have beneficial ownership or care and control of the property, and an owner as defined by the *Building Code Act, 1992*.

694.1.8 Owner’s representative - defined

“owner’s representative” shall include the insurance company that insures the subject property and a property manager of the subject property.

694.1.9 Secure(d) - defined

“secure(d) against unauthorized entry” may, at the discretion of the City, include boarding of a building.

694.1.10 Vacant building - defined

“vacant building” shall include a partially vacant building and a vacant or partially vacant building that is occupied by unauthorized persons or vagrants.

Article 2

INSPECTION AND ENFORCEMENT POWERS

694.2.1 Officer - enforcement authority

Every officer shall be authorized to enforce the provisions of this Chapter.

694.2.2 Inspection - at any reasonable time

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 Chapter are being complied with.

694.2.3 Inspection - information - requestion

Every officer may require information from any person concerning a matter related to the inspection.

694.2.4 Notice to comply - time frames

Every officer may, in writing, extend any of the time frames for compliance in this Chapter where it is reasonable in the circumstances to do so.

Article 3

VACANT BUILDINGS

694.3.1 Owner responsibility

Every owner shall ensure that a vacant building is secured against unauthorized entry.

694.3.2 Order - issued - officer discretion

An officer who believes a building to be a vacant building, may make an order requiring the building to be secured against unauthorized entry.

694.3.3 Order - set out method(s) of securing

An order may set out particulars on the acceptable method(s) of securing the vacant building including a requirement to board. Where, in the sole discretion of the officer, a specific method of securing the property, such as boarding in part or in whole, is required to ensure that the vacant property remains secured against unauthorized entry, the order shall state this requirement.

694.3.4 Order - deadline to comply - method secured

An order shall set out the deadline by which the vacant building must be secured. The owner shall have a minimum of two business days to secure the vacant building if the order is hand delivered to the owner. The owner shall have a minimum of five business days to secure the vacant building if the order is only posted.

694.3.5 Order - how served

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.

694.3.6 Owner - compliance

Every owner shall comply with an order to secure a vacant building against unauthorized entry.

694.3.7 Owner - non-compliance - done by City

Where an owner:

- (a) expresses an intention not to comply with the order; or
- (b) fails to secure the building to the satisfaction of the City by the deadline set out in the order;

the City may cause the building to be secured against unauthorized entry.

694.3.8 Safety risk - premises secured by City - without notice

Where, in the opinion of the officer, allowing a vacant building to remain unsecured for even a short period of time presents an unacceptable safety risk, the City may cause the building to be secured against unauthorized entry and no prior notice or order to the owner shall be required. Notice of the action taken in these circumstances shall be posted at the subject property or hand delivered to the owner in a reasonable time thereafter.

694.3.9 Measures insufficient - additional requirements

Where an officer finds that measures taken pursuant to an order have been insufficient to keep a vacant building secured against unauthorized entry, subsequent orders may be issued requiring additional measures to be taken by the owner.

Article 4**BUILDINGS DAMAGED BY FIRE****694.4.1 Owner to contact Fire Department - intention to comply**

Every owner of a building damaged by fire shall immediately contact the Fire Chief, or a representative of the Fire Department at the scene of a fire, to inform them of the owner's intention to comply with the requirements of this Chapter.

694.4.2 Compliance by owner - within twenty-four hours

Every owner shall ensure that a building damaged by fire is secured against unauthorized entry within twenty-four hours of release of the relevant property by the authority having jurisdiction or, if the Fire Chief has granted an extension, by the deadline given by the Fire Chief.

694.4.3 Hazard - public safety - building secured immediately

Notwithstanding Section 694.4.2, where, in the opinion of the Fire Chief or the Chief Building Official, a building damaged by fire is in a condition that presents an immediate hazard to public safety, the owner shall ensure that the building damaged by fire is secured against unauthorized entry forthwith after release of the relevant property by the authority having jurisdiction.

694.4.4 Notice - posted on site - by Fire Chief

Where in the opinion of the Fire Chief and the Chief Building Official, Section 694.4.3 is not applicable and the Fire Chief has not informed the owner or the owner's representative of the owner's obligations under this Chapter, the Fire Chief shall post a notice advising of the owner's obligations under this Chapter on the site of the building damaged by fire for at least twenty-four hours prior to causing the building damaged by fire to be secured against unauthorized entry.

694.4.5 Owner - non-compliance - done by City

Where an owner has:

- (a) expressed an intention not to comply with the requirements of this Chapter; or
- (b) failed to secure a building damaged by fire within the relevant time outlined in Sections 694.4.2 and 694.4.3;

the City may cause the building damaged by fire to be secured against unauthorized entry.

Article 5 COST RECOVERY

694.5.1 Work done by City - owner's expense

Where the City causes a building to be secured against unauthorized entry pursuant to this Chapter, the work will be completed at the expense of the owner.

694.5.2 Non-payment by owner - collected as property taxes

If the owner fails to pay the cost of work completed under this Chapter within thirty 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.

Article 6 GENERAL PROVISIONS

694.6.1 Ontario Heritage Act - designated properties

Where a vacant building or a building damaged by fire is also a building that has been designated pursuant to the *Ontario Heritage Act*, it is the responsibility of the owner to bring this to the officer's attention, to ensure compliance with all other laws, by-laws, or easements respecting the property, and to request any necessary extensions of time.

694.6.2 Boarding materials - painted - maintained

Where a vacant building or a building damaged by fire is boarded or required to be boarded, the boarding materials shall be installed and maintained in good repair and, unless inherently resistant to deterioration, boarding materials shall be treated with a protective coating of paint or equivalent weather-resistant material.

Article 7 ENFORCEMENT

694.7.1 Fine - for contravention

Every person who contravenes any provision of this Chapter is guilty of an offence and is liable, upon conviction, to a fine not exceeding Five Thousand Dollars (\$5,000), exclusive of costs, pursuant to the *Provincial Offences Act*.

694.7.2 Severability

Each and every of the provisions of this Chapter is severable and if any provision of this Chapter 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. By-law 2008-71, 7 April, 2008.