



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Court Decision regarding By-law No. 1750-2019 and By-law No. 1121-2019, Provision of Emergency Social Services by Landlords

Date:	December 2, 2022
To:	City Council
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions. This report also contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This report summarizes the decision of the Ontario Superior Court of Justice released on November 9, 2022. This court application addressed By-law No. 1121-2019 to amend Municipal Code Chapter 354, Apartment Buildings as well as section 2 of By-law No. 1750-2019 to amend Municipal Code Chapter 441, Fees and Charges. The confidential portion of this report (Attachment 1) provides confidential information and recommendations regarding this decision.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Attachment 1; and

2. City Council authorize the public release of the Confidential Recommendations if adopted and that the balance of Attachment 1 remain confidential.

FINANCIAL IMPACT

The financial impacts are identified in Attachment 1.

The Deputy City Manager and Chief Financial Officer have reviewed this report and Attachment 1 and agree with the financial impact information.

DECISION HISTORY

Article 3 of Chapter 354, Apartment Buildings was amended by the enactment of By-law No. 1121-2019 on July 18, 2019 following the adoption by City Council on July 16, 2019, without amendments, of Item PH7.9 entitled "Emergency Management and Vital Service Disruption Response in Apartment Buildings".

[Agenda Item History - 2019.PH7.9 \(toronto.ca\)](#)

Schedule 12, Municipal Licensing and Standards, of Appendix C of City of Toronto Municipal Code, Chapter 441, Fees and Charges, was amended by the enactment of By-law No. 1750-2019 on December 18, 2019 following the adoption by City Council on November 26, 2019 of Item PH10.4 entitled "Amendments to Chapter 354, Apartment Buildings, and Progress Update on RentSafe TO", as amended.

[Agenda Item History - 2019.PH10.4 \(toronto.ca\)](#)

ISSUE BACKGROUND

On August 21, 2018, there was a devastating electrical fire at the 22-storey apartment building at 650 Parliament Street, displacing approximately 1500 tenants. The City stepped in to provide immediate emergency social services to tenants who were left homeless by the fire. On January 22, 2019, there was a flood at the 33-storey apartment building at 260 Wellesley Street, leaving over 1000 residents without hydro, heat and water for five days. Once again, the City stepped in to provide emergency social services to tenants during the disruption.

As a result of these events and in an effort to protect tenants affected by future displacement, the City made a number of amendments to its existing regulatory regime governing the relationship between the City and multi-residential landlords, including by enacting By-law No. 1750-2019 and By-law No. 1121-2019.

Specifically, Section 2 of By-law No. 1750-2019 authorizes the City to charge a variable fee to landlords for costs incurred by the City to provide emergency social services to

displaced tenants in the event that a substantial portion of a building becomes uninhabitable.

Similarly, By-law No. 1121-2019 requires landlords to develop and maintain a vital service disruption plan in cases where there is a disruption of a vital service in the building such as hot and cold water, fuel, electricity, natural gas, and heat. The By-law further authorizes the City to take enforcement measures against landlords who fail to develop and maintain such plan, which could result in the imposition of a fine in the case of conviction.

The Greater Toronto Apartment Association (the "GTAA") is a non-profit association that represents the interests of greater Toronto's multifamily rental housing owners, managers and professional service providers. On June 18, 2021, the GTAA commenced a court application against the City challenging the validity of:

1. Section 2 of By-law No. 1750-2019, amending Chapter 441, Fees and Charges, imposing a new variable fee for private property owners for the "cost recovery related to the provision of Emergency Social Services in Apartment Buildings with three or more stories and 10 or more units where a substantial portion of a building becomes uninhabitable because of a disruption and the landlord fails to provide re-housing." (the "Emergency Fee"); and
2. By-law No. 1121-2019, enacting the Vital Service Disruption Plan requirements in Article 3 of Chapter 354, Apartment Buildings to require owners or operators to develop and maintain a vital service disruption plan in a form and manner satisfactory to the Executive Director of Municipal Licensing and Standards (the "VSDP").

GTAA challenged the Emergency Fee on the grounds that:

1. it was an illegal fee for service, because it imposed a user fee on a person that is not receiving the service, contrary to the provisions of the *City of Toronto Act, 2006* S.O. 2006, c. 11, Sched. A.
2. it amounted to an indirect tax which is beyond the legislative competence of City of Toronto.
3. the provision conflicted with the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 and was therefore illegal.

GTAA challenged the VSDP on the grounds that it conflicted with the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 and was therefore illegal.

COMMENTS

The Court decision, released on November 9, 2022, found that Emergency Fee was illegal and quashed section 2 of By-law No. 1750-2019. The Court found that the City had imposed a user fee on the landlord who was not receiving the service, contrary to the provisions of the *City of Toronto Act, 2006* S.O. 2006, c. 11, Sched. A. The Court found

that the City lacked legislative authority to require a landlord to provide emergency social services to tenants.

The Court also quashed the provisions of the VSDP that require an apartment owner or operator to provide emergency social services to tenants (the "VSDP ESS Requirements"). However, the Court held the rest of By-law No. 1121-2019 and the VSDP are legal.

The Court decision is available online at:

[2022 ONSC 6335 \(CanLII\) | Greater Toronto Apartment Association v. City of Toronto | CanLII](#)

The Executive Director, Municipal Licensing and Standards, has been consulted in the preparation of this report.

CONTACT

Amy Murakami, Solicitor, Legal Services, Telephone: 416-338-5805, Fax: 416-397-5624, Email: amy.murakami@toronto.ca

Michele Brady, Solicitor, Legal Services, Telephone: 416-338-5830, Fax: 416-397-5624 Email: michele.brady@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Attachment 1: Confidential Attachment