

Authority: Item 6, Board of Health Committee
Report: 11-002 (BOH0921(b))
CM: March 9, 2011

Bill No. 078

CITY OF HAMILTON

BY-LAW NO. 11-078

Respecting the Registration of Cooling Towers

WHEREAS Council desires to establish a Cooling Tower Registry to facilitate communication with owners with respect to controlling the growth of Legionella bacteria and to improve Public Health Services monitoring of possible sources of exposure to Legionella bacteria;

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 in particular paragraphs 5 through 8 of subsection 10(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; the provision of any service or thing that it considers necessary or desirable for the public; and the protection of persons and property;

AND WHEREAS section 425 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

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

Definitions

1. In this By-law:

“**business day**” means any day on which the City of Hamilton’s administration buildings are open for business;

“**City**” means the geographical area of the City of Hamilton or the municipal corporation as the context requires;

“**Cooling Tower**” means a device for the lowering the temperature of:

- (a) recirculated water by bringing the water into contact with fan-forced or fan-induced atmospheric air; or
- (b) water, a refrigerant or other fluid in a pipe or other container by bringing recirculated water and fan-forced or fan-induced atmospheric air into contact with the pipe or other container;

which may or may not share a common reservoir with one or more other Cooling Towers;

“**Log Book**” means a book, including but not limited to, an electronic database or document, kept in a form satisfactory to the Medical Officer of Health, recording the date and details of all maintenance, including but not limited to any breakdowns and repairs, carried out on the Cooling Tower and all other actions related to the Risk Management Plan or otherwise to the control of Legionella bacteria;

“**Medical Officer of Health**” means the City’s Medical Officer of Health or his or her designate;

“**Officer**” means a Public Health Inspector or other person appointed or employed by the City of Hamilton for the enforcement of this By-law and includes the Medical Officer of Health;

“**operator**” means the owner or the person in control of a Cooling Tower;

“**person**” includes but is not limited to an individual, sole proprietorship, partnership, association or corporation; and

“Risk Management Plan” means a plan:

- (a) prepared in accordance with standards, guidelines or other similar documents with respect to controlling the growth Legionella bacteria in Cooling Towers published by the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE), the Cooling Technology Institute (CTI) or another such organization or by the Cooling Tower manufacturer;
- (b) describing equipment installed and processes implemented to control the growth of Legionella bacteria; and
- (c) including all of the information required by the Cooling Tower Risk Management Plan Template provided by the Medical Officer of Health.

Scope

- 2. This By-law applies to all Cooling Towers.

Registration

- 3. Every owner of a Cooling Tower operating or capable of operating on March 9, 2011 shall register the Cooling Tower with the Medical Officer of Health within 30 days of March 9, 2011.
- 4. Every owner of a Cooling Tower that commences to operate or to be capable of operating after March 9, 2011 shall register the Cooling Tower with the Medical Officer of Health within 30 days of the date the Cooling Tower commences to be in operation or to be capable of operating.
- 5. Every registration expires on May 1 of each year if it is not renewed before that date.
- 6. To register or renew a registration, the owner of a Cooling Tower shall complete and submit to the Medical Officer of Health an application approved by the Medical Officer of Health containing such information as the Medical Officer of Health may require together with the registration fee, if any.
- 7. Every owner shall notify the Medical Officer of Health of any change in circumstances in connection with information given to the Medical Officer of Health under section 6 within 10 business days after the change occurs.

General Prohibitions

8. No person shall operate a Cooling Tower unless the Cooling Tower is registered under this By-law.
9. Every operator shall ensure that there is a Risk Management Plan in respect of each Cooling Tower they operate.
10. Every operator shall ensure that an up-to-date and legible Log Book is kept in respect of each Cooling Tower they operate.
11. No person shall enter inaccurate information in a Log Book or falsify, mutilate or deface a Log Book.

Administration and Enforcement

12. The Medical Officer of Health is authorized to administer and enforce this By-law including but not limited to prescribing the format and content of any forms or other documents required under this By-law, including but not limited to the Cooling Tower Risk Management Plan Template.
13. Registration and other fees under this By-law shall be as set and approved by Council from time to time under the User Fees and Charges By-law.
14. An 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 being complied with:
 - (a) this By-law;
 - (b) a direction or order made under this By-law; or
 - (c) an order made under s. 431 of the *Municipal Act, 2001*.
15. An Officer may, for the purposes of the inspection under Section 14:

- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information in writing or otherwise as required by the Officer from any person concerning a matter related to the inspection; or
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
16. The City may require the operator of a Cooling Tower to pay any costs incurred by the City in exercising its authority to inspect under section 15, including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection.
17. An 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 Sections 14 and 15.
18. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.
19. An order under Section 18 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order.

20. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do work to correct the contravention.
21. An order under Section 20 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - (b) the work to be completed; and
 - (c) the date or dates by which the work must be complete.
22. An order to discontinue contravening activity made under Section 18 or an order to do work made under Section 20 may be served personally or by registered mail to the last known address of:
- (a) the owner or occupier of the property where the contravention occurred; and
 - (b) such other persons affected by it as the Officer making the order determines.
- Service by registered mail shall be deemed to have taken place 5 business days after the date of mailing.
23. In addition to service given in accordance with Section 22, an order to discontinue contravening activity made under Section 18 or an order to do work made under Section 20 may be served by an Officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred.
24. Where service cannot be given in accordance with Section 22, sufficient service is deemed to have taken place when given in accordance with Section 23.
25. Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable:
- (a) on a first conviction, to a fine of not more than \$10,000; and

- (b) on any subsequent conviction, to a fine of not more than \$25,000.
26. Despite section 25, where the person convicted is a corporation:
- (a) the maximum fine in subsection 25(a) is \$50,000; and
- (b) the maximum fine in subsection 25(b) is \$100,000.
27. 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.

General Provisions

28. This By-law may be referred to as the Cooling Tower Registry By-law or the Hamilton Cooling Tower Registry By-law.
29. If a court of competent jurisdiction declares any provision or provisions of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

Enactment

30. This By-law comes into force on the date of its passing.

PASSED this 9th day of March, 2011.



R. Bratina
Mayor



R. Caterini
City Clerk