

Authority: Item 15, Committee of the Whole
Report 03-019 (PD03172/HCS03024)
CM: July 9, 2003

Bill No. 173

CITY OF HAMILTON

BY-LAW No. 03-173

A BY-LAW TO PROHIBIT AND REGULATE THE ACCUMULATION OF STANDING WATER AT SPECIFIED TIMES OF THE YEAR

WHEREAS section 128 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, permits a local municipality to enact by-laws to 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 the opinion of council, if arrived at in good faith, is not subject to review by any court;

AND WHEREAS section 130 of the said Municipal Act, 2001, permits a municipality to enact by-laws to regulate matters not specifically provided for by the said Act or any other Act for purposes related to the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS the City of Hamilton was constituted as a body corporate by the City of Hamilton Act, 1999, S.O. 1999, c.14, Schedule C, and is deemed to be both a "single-tier municipality" and a "local municipality" by the said Municipal Act, 2001;

AND WHEREAS it is the opinion of the Council of the City of Hamilton that the presence of standing bodies of water in urban areas and rural settlement areas is likely to afford a breeding area for various types of insect pests, including mosquitoes, and therefore is likely to interfere with the enjoyment of the use of private properties and public areas by the owners and occupants of private property and by members of the public at large, at those times of the year when individuals wish to be outdoors, and that such bodies of standing water therefore constitute a public nuisance;

AND WHEREAS it is the opinion of the Medical Officer of Health for the City of Hamilton that the presence of bodies of standing water in urban areas and rural settlement areas during periods of the year when the average daily outdoor air temperatures ordinarily exceeds five degrees Celsius is likely to afford a breeding area for those species of mosquitoes which are known to be a vector for the transmission of the virus known as "West Nile virus", which may have serious and severe adverse health consequences for individuals of all ages, including meningitis, encephalitis, death, or prolonged disability;

AND WHEREAS section 427 of the said Municipal Act, 2001, provides that where a municipality has authority by by-law or otherwise to direct or require that a matter or

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thing be done, the municipality may direct that, in default of it being done by the person directed or required to do it, such matter or thing shall be done at the person's expense and the municipality may recover the costs of doing such matter or thing by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

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

1. In this By-law:

- (a) "former municipality" means the City of Hamilton, the Town of Dundas, the City of Stoney Creek, the Town of Ancaster, the Town of Flamborough, and the Township of Glanbrook, which municipalities were dissolved by subsection 5(1) of the **City of Hamilton Act, 1999**, S.O. 1999, c. 14, Schedule C;
- (b) "inspector" means a building inspector employed in the Buildings Division of the Planning and Development Department, a public health inspector employed in the Health Protection Branch of the Public Health and Community Services Department, or any other person appointed by the Director of Building and Licensing or the Director of the Health Protection Branch for the purpose of enforcing this By-law, and includes a municipal law enforcement officer employed by the City of Hamilton whose duties include the enforcement of this By-law;
- (c) "land" includes buildings;
- (d) "occupant" means any person over the age of 18 years who is in the actual possession of land which is subject to this By-law;
- (e) "owner" includes both the owner in trust and the beneficial owner of land;
- (f) "standing water" means any body of water in a liquid state, contained either by natural features or artificial restrictions, which is in excess of 2.5 centimetres in depth at the deepest point within the body of water, and on which there is no discernible movement of water or sustained disturbance of the water surface, when viewed from a horizontal distance of not more than one metre from any point on the perimeter of the body of water.

2.(1) Every owner or occupant of land shall ensure that standing water does not accumulate on the land between April 1 and October 31 of each year.

(2) Subsection (1) does not apply to standing water which is present on:

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- (a) land which is situated outside the Urban Area Boundary in accordance with the Official Plan of the former Regional Municipality of Hamilton-Wentworth, as amended from time to time, as shown on Map No. 1 of the said Official Plan, unless the land is within a Rural Settlement Area which has been designated in accordance with the Official Plan of a former municipality;
 - (b) the roof of a building or other structure;
 - (c) a highway, driveway, parking lot, walkway, or other surface composed of an impermeable material, which is intended to be used for the purposes of parking of vehicles, public assembly, recreation, or transportation, other than a swimming pool, wading pool, or hot tub;
 - (d) land which is situated within or adjacent to the boundaries of an area which has been designated as an Environmentally Significant Area in accordance with the Official Plan of the former Regional Municipality of Hamilton-Wentworth, as amended from time to time, as shown on Map No.4 of the said Official Plan.
- (3) Subsection (1) does not apply to standing water which has been treated in a manner which can reasonably be expected to prevent the breeding of various types of insect pests, including mosquitoes, in a manner acceptable to the Medical Officer of Health.
- (4) Subsection (1) does not apply to standing water which is being agitated on a continuous basis in a manner which can reasonably be expected to prevent the breeding of various types of insect pests, including mosquitoes, in a manner acceptable to the Medical Officer of Health.
- 3.(1) The Director of Building and Licensing or an inspector may issue an order in writing to an owner or occupant requiring the owner or occupant to
- (a) drain the standing water from the property;
 - (b) fill in the area within which the standing water has accumulated;
 - (c) remove the standing water from the property by any other reasonable means;
 - (d) treat the standing water in a manner acceptable to the Medical Officer of Health which can reasonably be expected to prevent the breeding of various types of insect pests, including mosquitoes; or,

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- (e) agitate the standing water on a continuous basis in a manner acceptable to the Medical Officer of Health which can reasonably be expected to prevent the breeding of various types of insect pests, including mosquitoes.
 - (2) An order under subsection (1) shall identify the land and the specific standing water which is the subject of the order.
 - (3) An order under subsection (1) may specify the time or times when or the period or periods within which the person to whom the order is directed must comply with the order.
 - (4) An order under subsection (1) may be personally delivered to the owner or the occupant, or an agent of the owner or occupant, or to a person who apparently is in charge of the land to which the order applies.
 - (5) An order under subsection (1) may be delivered to a person described in the order, and an order is not invalid because a person to whom the order is issued is not named in the order.
 - (6) Notwithstanding subsection (4), an order under subsection (1) may be posted in a conspicuous location on any structure located on the land where standing water is present, and sent by pre-paid regular mail to the last-known address of the owner of the property.
- 4.(1) The Director of Building and Licensing or an inspector may enter and have access to, through and over any land at any reasonable time in order to determine whether there is standing water on the land.
- (2) The Director of Building and Licensing or an inspector may make examinations, investigations, tests and inquiries with respect to any standing water on the land.
 - (3) The Director of Building and Licensing or an inspector may take and remove samples related to an examination, investigation, test or inquiry with respect to standing water on the land.
 - (4) Every owner or occupant, or agent of an owner or occupant, and every person apparently in charge of land on which the Director of Building and Licensing or an inspector suspects there may be standing water, shall permit the Director of Building and Licensing or an inspector to enter and have access to, through and over the land upon the production of identification issued by the City of Hamilton.
- 5.(1) Where the owner or occupant, or the agent of the owner or occupant, or the person apparently in charge of the land does not comply with an order issued under subsection 3(1) within the time specified for compliance, the Director of Building and Licensing or an inspector may drain the standing water from the

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land, fill in the area within which the standing water has accumulated, remove the standing water from the land by any other reasonable means, or treat or agitate the standing water in a manner acceptable to the Medical Officer of Health which can reasonably be expected to prevent the breeding of various types of insect pests, including mosquitoes.

- (2) The City of Hamilton may recover all costs and expenses associated with actions taken and work done to land under this section in a manner as provided by statute, whether by action or as otherwise provided plus interest at the rate of fifteen per cent per annum from the day the City of Hamilton incurs such costs and ending on the day the costs including interest are paid in full.
- (3) The Director of Building and Licensing or an inspector may engage the services of persons to act as agents of the City in Hamilton in carrying out the actions described in subsection (1).
5. No person shall hinder or obstruct an inspector, or any person acting under the direction of the Director of Building and Licensing or an inspector, who is engaged in lawfully carrying out any acts under this By-law.
6. Every person who contravenes a provision of this by-law is guilty of an offence and upon conviction is liable to the penalties under the Provincial Offences Act, R.S.O. 199, c. P. 33, as amended.
7. This By-law may be referred to as "The Standing Water By-law".
8. This By-law comes into force on the date of its enactment.

ENACTED AND PASSED this 9th day of July, 2003.



Mayor



City Clerk