

THE CORPORATION OF THE CITY OF GUELPH

By-Law Number (2009) - 18776

Being a By-law regulating the power of entry onto land.

WHEREAS Section 436, Subsection (1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection;

AND WHEREAS sections 435, 437 and 438 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, set out additional powers and restrictions in regard to the power of entry;

AND WHEREAS The City of Guelph wishes to pass a By-law allowing for the entry on land for the purpose of carrying out an inspection to ensure that its By-laws, directions, orders and conditions of a licence are being complied with;

AND WHEREAS this by-law applies to any City of Guelph by-laws without power of entry provisions passed pursuant to the Municipal Act, 2001, S.O. 2001 c. 25, as amended or its predecessors;

NOW THEREFORE the Council for The Corporation of the City of Guelph hereby ENACTS AS FOLLOWS:

TITLE

This by-law shall be known and may be cited as the "Power of Entry By-law." In the text of the by-law, it is referred to as "this by-law."

1. DEFINITIONS

In this by-law:

- 1.3 "Land" includes buildings, structures and dwellings.
- 1.4 "Officer" means a by-law enforcement officer, police officer, chief fire official or designate, Animal Control Officer employed by the Guelph Humane Society, or any City of Guelph employee authorized by Council to enforce a provision(s) of any City of Guelph By-law, provincial statute or federal statute.
- 1.5 "Occupier" means any person, firm or corporation having control over any portion of the building or property under consideration and includes the persons in the building or property.
- 1.6 "Municipality" means the Corporation of the City of Guelph.

2. ENTRY AND INSPECTION

- 2.1 An Officer may at any time, enter onto land for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - 2.1.1 A by-law of the Municipality passed under the Municipal Act, 2001, S.O. 2001, c. 25, as amended or its predecessor.
 - 2.1.2 A direction or order of the Municipality under the Municipal Act, 2001, S.O. 2001, c. 25, as amended, or made under a by-law of the Municipality passed pursuant to the Municipal Act, 2001, S.O. 2001, c. 25, as amended, or its predecessor.
 - 2.1.3 A condition of a licence issued under a by-law of the municipality passed under the Municipal Act, 2001, S.O. 2001, c. 25, as amended, or its predecessor.

2.1.4 An order made under Section 431 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended.

3. RESTRICTIONS

- 3.1 Every occupier shall permit the Officer to inspect any Land for the purposes as set out in Section 2.1 of this by-law.
- 3.2 Notwithstanding any provision of this by-law, an Officer shall not enter or remain in any room or place actually being used as a dwelling, unless:
- (a) the consent of the occupier is obtained, with the occupier first having been informed that the right of entry may be refused and, if refused, may only be made under the authority of an order issued under Section 438 of the Municipal Act, 2001 S.O. 2001, c. 25., as amended or a warrant issued under Section 439 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended or a warrant under Section 386.3 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended;
 - (b) an order under Section 438 of Municipal Act, 2001 S.O. 2001, c. 25, as amended, is obtained;
 - (c) a warrant issued under Section 439 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended, is obtained;
 - (d) a warrant issued under Section 386.3 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended, is obtained;
 - (e) the delay necessary to obtain an order under Section 438 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended, to obtain a warrant under Section 439 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended, or a warrant under Section 386.3 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended or to obtain the consent of the occupier would result in an immediate danger to the health or safety of any person; or
 - (f) the Municipality has given the occupier of Land notice of its intention to enter as required under Section 435(2) of the Municipal Act, 2001 S.O. 2001, c. 25, as amended, and the entry is authorized under Section 79, 80 or 446 of the Municipal Act, 2001 S.O. 2001, c. 25, as amended.

4. INSPECTION POWERS

- 4.1. For the purposes of an inspection, an Officer may:
- 4.1.1 require the production for inspection of documents or things relevant to the inspection;
 - 4.1.2 inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - 4.1.3 require information from any person concerning a matter related to the inspection; and
 - 4.1.4 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.
- 4.2 A sample taken under Section 4.1.4 shall be divided into two parts, and one part shall be delivered to the person from whom the sample is taken, if the person so requests at the time the sample is taken and provides the necessary facilities.

- 4.3 If a sample is taken under Section 4.1.4 and the sample has not been divided into two parts, a copy of any report on the sample shall be given to the person from whom the sample was taken.
- 4.4 A receipt shall be provided for any document or thing removed under Section 4.1.2 and the document or thing shall be promptly returned after the copies or extracts are made.
- 4.5 Copies of or extracts from documents and things removed under this Section 4 and certified as being true copies of or extracts from the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the originals.

5. OBSTRUCTION

- 5.1 No person shall Obstruct or attempt to Obstruct any Officer or other person, who is exercising a power or performing a duty under this By-law or any other City of Guelph By-law or the Municipal Act, 2001, S.O. 2001, c. 25, as amended or its predecessor.
- 5.2 Without limiting section 5.1, "Obstruct" includes:
- 5.2.1 to hinder or mislead;
- 5.2.2 to knowingly provide false information or make a false claim or statement;
- 5.2.3 to prevent, bar or delay or attempt to prevent, bar or delay entry or inspection by an Officer, or any person under his or her direction;
- 5.2.4 to prevent, bar or delay or attempt to prevent, bar or delay any person, including an Officer, from carrying out his or her duties or exercising his or her powers, including but not limited to the removal of documents or things relevant to the inspection, or the taking of any tests, samples or photographs necessary for the purposes of the inspection;
- 5.2.5 to prevent, bar or delay or attempt to prevent, bar or delay any person, including an Officer, from exercising his or her authority pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended; and
- 5.2.6 to fail to provide, upon request by an Officer, any information, documents or things relevant to an inspection.
- 5.3 Without limiting sections 5.1 and 5.2, every person who is alleged to have contravened any of the provisions of any City of Guelph By-law shall identify themselves to an Officer upon request and failure to do so shall be deemed to have Obstructed the Officer in the execution of his or her duties contrary to Section 5.1 of this By-law.

6. ORDERS AND REMEDIAL ACTIONS

- 6.1 In addition to any other provision of this By-law, and subject to the provisions of the Act, a provincial judge or justice of the peace may issue an order authorizing an Officer and any person under his or her direction to enter onto or into any premises, including a room or place actually being used as a dwelling, for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- 6.1.1 any provision of this By-law;

6.1.2 a direction or order of an Officer or of the

6.1.3 municipality made under this By-law or made under the Act in relation to the subject- matter of this By-law;

6.1.4 a condition of a Licence issued under this By-law; and

6.1.5 an order made under Section 431 of the Act in relation to the subject-matter of this By-law,

and to exercise powers described in Section 4 of this By-law, where the provincial judge or justice of the peace is satisfied by evidence under oath that the inspection is reasonably necessary and the Officer has been prevented or is likely to be prevented from doing anything set out in Section 2.1 or 4.1 of this By-law.

6.2 An Officer named in an order described in Section 6.1, and any person under his or her direction named therein, may, in accordance with the order, enter onto or into the Land described therein including any room or place actually being used as a dwelling, which is described therein, to undertake the said inspection, and may, for that purpose, exercise any power set out in the order.

6.3 If an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an order requiring the person who contravened the By-law to discontinue the contravening activity, known as an Order to Discontinue Activity, requiring the person who contravened the by-law, or who caused or permitted the contravention, or the owner or occupier of the Land on which the contravention occurred, to discontinue the contravention.

6.3.1 An order under subsection 6.3 shall set out,

(a) reasonable particulars of the contravention adequate to identify the contravention and the municipal address on which the contravention occurred;

(b) the date by which there must be compliance with the order; and

(c) the date on which the order expires.

6.3.2 No Person shall fail to comply, in whole or in part, with an order issued under subsection 6.3.

6.4 If an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an order requiring the person who contravened the By-law to do work to correct the contravention, known as a Work Order.

6.4.1 An order under subsection 6.4 shall set out,

(a) reasonable particulars of the contravention adequate to identify the contravention and the municipal address of the property on which the contravention occurred;

(b) the work to be done and the date by which the work must be done; and

(c) the date on which the order expires.

6.4.2 An order under subsection 6.4 may require work to be done even though the facts which constitute the contravention of

the By-law were present before this By-law making them a contravention came into force.

6.4.3 No Person shall fail to comply, in whole or in part, with an order issued under subsection 6.4.

7. PENALTY

- 7.1 Any person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a maximum fine of \$100,000.00.
- 7.2 Upon conviction, in addition to any other remedy and to any penalty imposed by this by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 7.3 Where a person fails to do a matter or thing as directed or required by an Officer or other person pursuant to this by-law or other City of Guelph by-law or the Municipal Act, 2001, S.O. 2001, c. 25, as amended, the matter or thing may be done by the Municipality at that person's expense which associated costs may be added to the tax roll of the person to be collected in the same manner as property taxes.

8. VALIDITY AND SEVERABILITY

Every provision of this by-law is declared to be severable from the remainder and if any provision of this by-law shall be declared invalid by a court of competent jurisdiction such declaration shall not affect the validity of the remainder.

9. CONFLICTS

- 9.1 This By-law shall apply in addition to the provisions of any other City By-law and the Municipal Act, 2001, S.O. 2001 c. 25, as amended, provided that in the event of conflict, the provisions of any other City By-law or the Municipal Act, 2001, S.O. 2001 c. 25, as amended, shall be paramount over this by-law, provided such provisions are not contrary to law.
- 9.2 Nothing in this By-law shall limit any other statutory or common law rights or powers of the Municipality or any Officer to enter on Land.

10. EFFECTIVE DATE

This by-law shall come into full force and take effect on the date of passing.

PASSED this TWENTY- EIGHTH day of APRIL, 2009.

Original Signed by:

KAREN FARBRIDGE - MAYOR

Original Signed by:

LOIS A. GILES - CITY CLERK