

The Corporation of the  
Town of New Tecumseth

## By-law

Number 2020-005

### “Power of Entry By-law”

A By-law to establish the powers and conditions for an officer conducting an inspection and exercising a power of entry onto land in the Town of New Tecumseth (the “Town”)

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**Whereas** Section 425 of the *Municipal Act, 2001 S.O. 2001, c. 25*, as amended, authorizes a municipality to provide offences for a contravention of a By-law;

**And 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** Section 436 of the *Municipal Act, 2001 S.O. 2001, c. 25*, as amended, provides a municipality may pass By-laws authorizing the power of entry of the purpose of inspecting land to determine compliance with a By-law, direction, order, or condition of licence;

**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 Town is desirous of passing 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 Town 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 of The Corporation of the Town of New Tecumseth enacts as follows:

#### 1. Definitions

In this By-law;

- 1.1 “Act” means the *Municipal Act, S.O. 2001, c.25*, as from time-to-time amended, or its predecessor;
- 1.2 “Land” includes any private property, premises, grounds, yards or vacant lot and includes any building, structures and dwellings;
- 1.3 “Municipality” or “Town” means The Corporation of the Town of New Tecumseth;
- 1.4 “Occupier” means any person, firm or corporation having control over any portion of a building or property under consideration and includes a person in a building or property;

1.5 "Officer" means a Police Officer, a Municipal Law Enforcement Officer, a Fire Department Official or designate, the Director of Planning/Development or designate, the Chief Building Official or designate or such other person appointed by By-law to enforce the provision of a By-law of the Municipality, provincial statute or federal statute.

**2. Application of By-law**

2.1 This By-law shall apply to all By-laws of the Municipality passed under the *Municipal Act, 2001 S.O. 2001, c. 25*, as amended, or its predecessor.

**3. Entry and Inspections**

3.1 An Officer may, at any reasonable time, enter onto land for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) A By-law of the Town passed under the *Act*;
- (b) a direction or order of the Town made under the *Act*, or made under a By-law of the Town passed under the *Act*;
- (c) a condition of a licence issued under a By-law of the Town passed under the *Act*; or
- (d) an order made under Section 431 of the *Act*.

**4. Inspection Powers**

4.1 For the purposes of an inspection under Section 3.1, an Officer may,

- (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 from any person concerning a matter related to the inspection; and
- (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.

4.2 A sample taken under Section 4.1(d) shall be divided into two parts, one part of which shall remain with the Town 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, and it is technically feasible to divide the sample.

4.3 If a sample is taken under Section 4.1(d) 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 the Section 4.1(b) 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.

4.6 Every occupier shall permit an Officer to inspect any land for the purposes as set out in Section 3.1 of this By-law. An Officer may be accompanied by a

person under his or her direction.

**5. Restrictions/Conditions**

5.1 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, 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 *Act*, or a warrant issued under Section 439 of the *Act*, or a warrant under Section 386.3 of the *Act*;
- (b) an order issued by a provincial judge or justice of the peace under Section 438 of the *Act* is obtained;
- (c) a warrant issued by a provincial judge or justice of the peace under Section 439 of the *Act* is obtained;
- (d) a warrant issued by a provincial judge or justice of the peace under Section 386.3 of the *Act* is obtained;
- (e) the delay necessary to obtain an order under Section 438 of the *Act*, to obtain a warrant under Section 439 of the *Act*, or a warrant under Section 386.3 of the *Act*, 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 Town has given the occupier of land notice of its intention to enter as required under Section 435(2) of the *Act* and the entry is authorized under Section 79, 80 or 446 of the *Act*.

**6. Obstruction**

6.1 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.

6.2 Without limiting section 6.1 "Obstruct" includes:

- (a) to hinder or mislead;
- (b) to knowingly provide false information or make a false claim or statement;
- (c) 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; or
- (d) 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 made pursuant to the *Act*.

6.3 Without limiting Section 6.1 or 6.2, every person who is alleged to have contravened any of the provisions of the Town By-law shall identify themselves to an Officer upon request. Failure to do so shall be deemed to have obstructed the Officer in the execution of his or her duties contrary to Section 6.1 of this By-law.

**7. Order and Remedial Actions**

7.1 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:

- (a) any provision of this By-law;
- (b) a direction or order of an Officer of the Municipality made under this By-law or made under the *Act* in relation to the subject-matter of this By-law;
- (c) a condition of a Licence issued under this By-law; and
- (d) 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, 3.1 or 4.1 of this By-law.

7.2 An officer named in an order described in Section 7.1, 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.

7.3 If an Officer is satisfied that a contravention of the 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.

7.4 For the purposes of sub-section 7.3, the following apply:

- (1) An order under subsection 7.3 shall set out,
  - (a) reasonable particular of the contravention adequate to identify the contravention and the municipal address on which the contravention occurred;
  - (b) the day by which there must be compliance with the order; and
  - (c) the date on which the order expires.
- (2) An order under subsection 7.3 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.
- (3) Every person shall comply, in whole or in part, with an order issued under subsection 7.3.

## **8. Penalty**

8.1 Any person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a minimum fine of \$250.00 and a maximum fine of \$100,000.00.

8.2 In the case of a continuing offence for each day or a part of a day that the offence continues, the person is liable to a minimum fine of \$250.00 and a maximum fine of \$10,000.00, with a limitation of \$100,000.00 as set out in sub-section 8.1.

8.3 A director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence and

subject to the penalty set out in this Section.

8.4 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.

8.5 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 Town By-laws or the Act, the matter or thing may be done by the Town 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.

**9. Validity and Severability**

9.1 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.

**10. Conflicts**

10.1 This By-law shall apply in addition to the provision of any other Municipal By-law and the Act, provided that in the event of conflict, the provisions of any other Municipal By-law or the Act shall be paramount over this By-law provided such provisions are not contrary to law.

10.2 Nothing in this By-law shall limit any other statutory or common laws rights or powers of the Municipality of any Officer to enter on land.

**11. Effective Date and Coming into Force**

11.1 This provision of the By-law shall come into full force and take effect on the day the By-law is enacted.

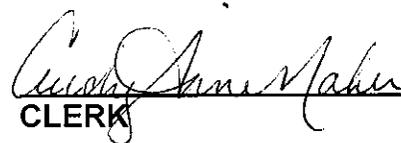
**12. Citation**

12.1 That this By-law shall be cited as the "Power of Entry By-law."

**Read a first, second and third time and finally passed this 27<sup>th</sup> day of January, 2020.**



MAYOR



CLERK