

THE CORPORATION OF THE TOWN OF KINGSVILLE

BY-LAW 92 - 2024

Being a By-law to Provide for Powers of Entry on Land for the Purpose of Carrying Out Inspections

WHEREAS Section 436 of the *Municipal Act, 2001*, SO. 2001, c. 25, as amended ("*Municipal Act*") 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* set out additional powers and restrictions in regard to the power of entry;

AND WHEREAS Section 426 of the *Municipal Act* prohibits any person from hindering or obstructing, or attempting to hinder or obstruct, any person exercising a power or performing a duty under the *Municipal Act* or under a by-law passed under the *Municipal Act*;

AND WHEREAS The Corporation of the Town of Kingsville wishes to pass a by-law allowing for 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;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF KINGSVILLE ENACTS AS FOLLOWS:

1. Definitions

1.1. In this By-law:

"**Authorized Official**" means:

- a) any employee, officer or agent of the Town who is appointed and/or retained to enforce the by-laws of the Town in accordance with the *Community Safety and Policing Act, 2019*, R.S.O. 2019, c. 1, Sched. 1, or the *Municipal Act*;
- b) any employee, officer or agent of the Town who is appointed and/or retained to enforce the provisions of any By-law, or any other by-law related to fire prevention, in accordance with the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4;
- c) any employee, officer or agent of the Town who is appointed and/or retained to enforce the provisions of any By-law, or any other by-law related to building construction standards, in accordance with the *Building Code Act, 1992*, S.O. 1992, c. 23;
- d) the Clerk of the Town of Kingsville; and
- e) any designate appointed by the foregoing.

"**Clerk**" means the Clerk of the Town or their designate.

"**Land**" includes buildings, structures and dwellings.

"**Obstruct**" includes but is not limited to:

- 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 entry or inspection by an Authorized Official, or any person under his or her direction;
- d) to prevent, bar or delay or attempt to prevent, bar or delay any person, including an Authorized Official, 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;
- e) to prevent, bar or delay or attempt to prevent, bar or delay any person, including an Authorized Official, from exercising his or her authority pursuant to an order issued under Section 438 of the Municipal Act; and
- f) to fail to provide, upon request by an Authorized Official, any information, documents or things relevant to an inspection.

“**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.

“**Town**” means The Corporation of the Town of Kingsville.

2. Interpretation

- 2.1. This By-law shall be known as the “Power of Entry By-law.”
- 2.2. If any section, subsection, schedule, appendix or part, or parts of this By-law are declared by any Court of Law to be invalid, illegal or ultra vires, such section, subsection, schedule, appendix or part, or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.
- 2.3. This By-law applies to any by-laws of the Town without power of entry provisions passed pursuant to the Municipal Act or its predecessors.
- 2.4. This By-law shall apply in addition to the provisions of any other by-law of the Town and the Municipal Act, provided that in the event of conflict, the provisions of any other by-law of the Town or the Municipal Act shall be paramount over this By-law, provided such provisions are not contrary to law.
- 2.5. Nothing in this By-law shall limit any statutory or common law rights or powers of the Town or any Authorized Official to enter on Land.
- 2.6. Headings are inserted for ease of reference only, form no part of this By-law, and shall have no affect in any way the meaning or interpretation of the provisions of this By-law.

3. Entry and Inspection

- 3.1. An Authorized Official may at any reasonable time enter on 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 Municipal Act or its predecessor;
 - b) a direction or order of the Town under the Municipal Act or made under a by-law of the Town passed pursuant to the Municipal Act or its predecessor;
 - c) a condition of a licence issued under a by-law of the Town passed under the Municipal Act or its predecessor; or

- d) an order made under Section 431 of the Municipal Act.

4. Restrictions

- 4.1. Every Occupier shall permit an Authorized Official to inspect any Land for the purposes as set out in Section 3.1 of this By-law.
- 4.2. Notwithstanding any provision of this By-law, an Authorized Official 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 or a warrant issued under Section 439 or Section 386.3 of the Municipal Act;
 - b) an order under Section 438 of the Municipal Act is obtained;
 - c) a warrant issued under Section 439 or Section 386.3 of the Municipal Act is obtained;
 - d) the delay necessary to obtain an order under Section 438 of the Municipal Act, to obtain a warrant under Section 439 or Section 386.3 of the Municipal Act, or to obtain the consent of the occupier would result in an immediate danger to the health or safety of any person; or
 - e) the Town has given the Occupier of Land notice of its intention to enter as required under Section 435(2) of the Municipal Act and the entry is authorized under Section 79, 80 or 446 of the Municipal Act.

5. Inspection Powers

- 5.1. For the purposes of an inspection, 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.
- 5.2. A sample taken under Section 5.1 d) 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.
- 5.3. If a sample is taken under Section 5.1 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.
- 5.4. A receipt shall be provided for any document or thing removed under Section 5.1 b) and the document or thing shall be promptly returned after the copies or extracts are made.
- 5.5. Copies of or extracts from documents or things removed under Section 5 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.

6. Obstruction

- 6.1. No person shall Obstruct or attempt to Obstruct any Authorized Official or other person who is exercising a power or performing a duty under any by-law of the Town or the Municipal Act or its predecessor.
- 6.2. Without limiting Section 6.1, every person who is alleged to have contravened any of the provisions of any by-law of the Town shall identify themselves to an Authorized Official 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 6.1 of this By-law.

7. Orders and Remedial Actions

- 7.1. In addition to any other provision of this By-law, and subject to the provisions of the Municipal Act, a provincial judge or justice of the peace may issue an order authorizing an Authorized Official 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 any By-law;
 - b) a direction or order of an Authorized Official or of the Town made under this By-law or made under the Municipal Act in relation to the subject-matter of any by-law;
 - c) a condition of a Licence issued under any by-law; and
 - d) an order made under Section 431 of the Municipal Act in relation to the subject-matter of any by-law, and to exercise powers described in Section 5 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 Authorized Official has been prevented or is likely to be prevented from doing anything set out in Section 3.1 or Section 5.1 of this By-law.
- 7.2. An Authorized Official 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 Authorized Official is satisfied that a contravention of any Town of Kingsville By-law has occurred, the Authorized Official may make an order requiring any 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 has occurred, to discontinue the contravening activity.
- 7.4. An order under Section 7.3 of this By-law 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.
- 7.5. No person shall fail to comply, in whole or in part, with an order issued under Section 7.3 of this By-law.

- 7.6. If an Authorized Official is satisfied that a contravention of any Town of Kingsville By-law has occurred, the Authorized Official may make an order requiring any person who contravened the By-law, or who caused or permitted the contravention, or the owner or occupied of the Land on which the contravention has occurred, to do work to correct the contravention.
- 7.7. An order under Section 7.6 of this By-law 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.
- 7.8. An order under Section 7.6 of this By-law 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.
- 7.9. No person shall fail to comply, in whole or in part, with an order issued under Section 7.6 of this By-law.

8. Penalty

- 8.1. Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, c. P. 33.
- 8.2. Any person who contravenes any of the provisions of this bylaw is guilty of an offence and upon conviction is liable to a maximum fine of \$100,000.00.
- 8.3. 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.
- 8.4. Where a person fails to do a matter or thing as directed or required by an Authorized Official or other person pursuant to this By-law or other by-law of the Town or the Municipal 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. Enactment

- 9.1. This By-law shall come into force and effect upon its final passage.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED this 25TH day of NOVEMBER 2024.

MAYOR, Dennis Rogers

ACTING CLERK, Angela Toole