

# THE CORPORATION OF THE TOWN OF KINGSVILLE

## BY-LAW 20 - 2017

***Being a By-law to Permit Access onto Adjoining Lands for Maintenance  
within the Town of Kingsville  
(Right of Access for Maintenance By-law)***

**WHEREAS** section 132 of the Municipal Act, 2001, S.O., c. 25 as amended provides that a municipality may pass a by-law to authorize the owner or occupant of land to enter adjoining lands, at any reasonable time, for the purpose of making repairs or alterations to any building, fence, or structures situated on the land of the owner or occupant;

**AND WHEREAS** the Council of the Corporation of the Town of Kingsville deems it desirable to allow for access over adjoining lands where said access is needed to repair, maintain or alter buildings, fences or structures of the owner of property;

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

### **Definitions**

1.0 The following words shall have the following meanings in this By-law:

- a) "Adjoining Lands" shall mean lands directly adjacent to the Owner's Lands which the Owner requires access to;
- b) "Adjoining Lands Owner(s)" shall mean the registered owner of the Adjoining Lands according to the title as shown in the Land Registry Office;
- c) "Buildings" shall mean any and all buildings, fences, structures and fixed improvements;
- d) "Owner" includes a lawful owner or occupant of land, including his or her authorized agents or employees, who requires access to the Adjoining Lands to perform Maintenance;
- e) "Owner's Lands" the lands owned or occupied by the Owner directly adjacent to the Adjoining Lands;
- f) "Permitted Access Time" means the hours of 9 a.m. to 5 p.m., Monday through Saturday;
- g) "Maintenance" shall include a) repairs, alterations, maintenance and upkeep and the taking of any action that may be required to ensure that a building, fence or other structure conforms with the standards established in a Town by-law or the Ontario Building Code; and b) a structural change to a building, fence or other structure, but does not include a total replacement of a building or other structure;
- h) "Town" shall mean The Corporation of the Town of Kingsville.

### **Right of Access**

2.0 An Owner may enter Adjoining Lands, at any point during the Permitted Access Time as permitted in accordance with the restrictions contained in this By-law, for the purpose of conducting Maintenance on the Owner's Lands, but only to the extent necessary to carry out the Maintenance:

- a) If the Adjoining Owner has given prior consent for this entry, or
- b) The Owner has complied with the requirements of this By-law.

### **Notice Requirement**

- 3.0 Any Owner wishing to access Adjoining Lands pursuant to this By-law shall provide the Adjoining Lands Owner with at least forty-eight (48) hours' prior written notice of his or her intention to enter the Adjoining Lands to conduct Maintenance. The notice shall include the following: a) when access will be effected; b) the length of time that it will be necessary to enter upon the Adjoining Lands and the hours during which entry will be effected, which time period shall conform with the requirements in Subsection 4.10 and 4.11; c) a Certificate of Insurance from the Owner's insurer confirming that the insurance requirements set out in Subsection 4.1 have been met; d) a description of the intended use of the Adjoining Lands; and e) contain a signed statement by the Owner that he or she covenants and agrees to comply with the requirements contained in this By-law and that his or her entry and use of the Adjoining Lands shall be in accordance with the description of such entry as contained in the notice. In the event that the Owner is an individual, the signature of the Owner on the signed statement in Subsection 3.0 (e) must also be signed by a witness to the Owner's signature.
- 3.1 Notice to the Adjoining Lands Owner to be given under this by-law shall be given by either personal delivery to a person ordinarily residing on the Adjoining Lands or by sending the notice by registered mail to the Adjoining Lands Owner.
- 3.2 Any notice, if personally delivered, shall be deemed to have been received on the date of such delivery and if sent by registered mail, shall be deemed to have been received five days after it was mailed. The 48 hour notice period in Subsection 3.0 shall commence on the date the notice was deemed to have been received pursuant to this section.

### **Requirements during Access**

- 4.0 Any Owner accessing onto Adjoining Lands pursuant to this By-law must display or, upon request, produce proper identification during his or her access onto the Adjoining Lands.
- 4.1 Any Owner entering onto Adjoining Lands pursuant to this By-law shall take out and keep in full force and effect throughout the term of his or her entry onto the Adjoining Owner's Lands Commercial General Liability Insurance underwritten by insurers licensed to conduct business in the Province of Ontario with a limit of liability of not less than one million dollars (\$1,000,000) per occurrence. The policy shall name the Adjoining Lands Owner as an additional insured and shall contain a provision for cross liability in respect of the named insured.

In the event that the Owner retains a contractor to enter the Adjoining Lands pursuant to this By-law, the Owner shall ensure that the contractor takes out and keeps in full force and effect throughout the term of its entry onto the Adjoining Owner's Lands Commercial General Liability Insurance underwritten by insurers licensed to conduct business in the Province of Ontario with a limit of not less than two million dollars (\$2,000,000) per occurrence. The policy shall name the Adjoining Lands Owner as an additional insured and shall contain a provision for cross liability in respect of the named insured.

In the event that the Owner retains a contractor to enter the Adjoining Lands pursuant to this By-law, the Owner shall ensure that the

contractor takes out and keeps in full force and effect throughout the term of its entry onto the Adjoining Lands a valid Clearance Certificate issued by the Workplace Safety and Insurance Board of Ontario applicable to the contractor's business.

- 4.2 Any Owner entering onto Adjoining Lands pursuant to this By-law shall comply with the provisions of all applicable laws, rules and regulations, including without limitation, any applicable federal and provincial legislative enactments, and municipal by-laws with respect to its use of the Adjoining Owner's Lands.
- 4.3 Failure of an Owner to comply with the requirements set out in Section 5.0 will result in the immediate revocation of his or her authorization to enter onto the Adjoining Lands and is a contravention of this By-law.
- 4.4 The Owner or his or her contractors, employees or agents entering onto Adjoining Lands shall not create any hazards or allow any hazards to exist on the Adjoining Lands.
- 4.5 Nothing in this By-law authorizes entry into any Buildings situated on the Adjoining Lands.
- 4.6 Nothing in this By-law authorizes entering on the Adjoining Lands with any vehicles with the exception of any necessary excavation equipment.
- 4.7 Nothing in this By-law authorizes the use of the Adjoining Lands for any other work or activity other than as described in the notice.
- 4.8 Nothing in this By-law authorizes the storage of materials or equipment on the Adjoining Lands unless necessary for the Maintenance.
- 4.9 Nothing in this By-law exempts any person from complying with the Town's other By-laws.
- 4.10 Nothing in this By-law authorizes any person to enter onto Adjoining Lands outside of the Permitted Access Time.
- 4.11 Nothing in this By-law authorizes any person to enter onto Adjoining Lands for a total period of more than thirty (30) business days in each calendar year.
- 4.12 Notwithstanding subsection 4.11 an Owner may request an extension from the Adjoining Lands Owner of up to an additional (30) business days should circumstances beyond the control of the Owner delay completion of the repairs or the extent of the Maintenance requires additional time to complete.

#### **Restoration of Adjoining Lands**

- 5.0 Any Owner who has accessed Adjoining Lands pursuant to this By-law shall, in so far as is practicable, restore the Adjoining Lands to its original condition at the Owner's sole cost and expense within the timeline outlined in Section 4.11 and/or Section 4.12, which shall include repairing any damage to the Adjoining Lands directly or indirectly caused by or directly attributable to the entry by the Owner onto the Adjoining Lands pursuant to this By-law and shall provide compensation for any damages directly or indirectly caused by or directly attributable to the Owner's entry or by anything done by the Owner on the Adjoining Lands.

#### **Responsibility for Claims:**

- 6.0 The Owner shall assume sole risk and responsibility for personal injury or death of any person and damage to any property arising out of or in

any way connected with, or that would not have occurred but for the Owner's entry onto the Adjoining Lands and the Owner shall save harmless the Adjoining Lands Owner from any such claims and damages.

- 6.1 The Adjoining Lands Owner shall have no liability of any nature with respect to the Owner's entry onto the Adjoining Lands, except with respect to claims arising out of or in any way connected, directly or indirectly, to the gross negligence or willful misconduct of the Adjoining Lands Owner or those for whom the Adjoining Lands Owner is responsible for at law.

**Offences**

- 7.0 Every person who contravenes any provision of this by-law is guilty of an offence and is liable, upon conviction to a maximum fine as established pursuant to the Provincial Offenses Act, R.S.O.,1990,c.P.33.
- 7.1 No person shall hinder, obstruct, or attempt to hinder or obstruct, any person who is exercising a right of access under Section 2.0 of this By-law.

**Interpretation**

- 8.0 Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine shall include the feminine.
- 8.1 The headings inserted in this By-law are for convenience only.
- 8.2 The provisions of the Legislation Act, 2006, shall apply to this by-law.

**Severability**

- 9.0 Notwithstanding that any provision of this by-law, may be found by any court of law to be invalid or beyond the power of the Town to enact, such provision or part thereof shall be deemed to be severable, and all other provisions of this by-law or parts thereof are separate and independent therefrom.

**Force and Effect**

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

**READ a FIRST, SECOND and THIRD time and FINALLY PASSED this 13<sup>th</sup> day of February, 2017.**

  
MAYOR, Nelson Santos

  
CLERK, Jennifer Astrologo