

The Corporation of the City of Pickering

By-law No.XXX

Being a by-law authorizing entry upon adjoining lands for the purpose of making repairs or alterations to buildings, fences or other structures.

Whereas under section 132 of the *Municipal Act, 2001*, S.O. 2001, c.25 (the "Act"), the Council of a local municipality may pass a by-law to authorize the owner or occupant of land to enter adjoining land for the purpose of making repairs or alterations to any building, fence or other structures on the land of the owner or occupant but only to the extent necessary to carry out the repairs or alterations.

Now therefore the Council of The Corporation of the City of Pickering hereby enacts as follows:

1. Definitions

In this By-law:

- (a) "alteration" includes, but is not limited to, a structural change to the exterior or interior of an existing building, fence or other structure, but does not include a total replacement of an existing building, fence or other structure;
- (b) "applicant" means the owner or occupant of land who applies for a permit, or any person authorized by the owner or occupant to apply for a permit on the owner's or occupant's behalf;
- (c) "building" means any structure used or intended for supporting or sheltering any use or occupancy;
- (d) "By-law Manager" means the City's Manager, Municipal Law Enforcement Services or their designate;
- (e) "City" means the municipal corporation of the City of Pickering or the geographic area of the City of Pickering as the context requires;
- (f) "high-impact work" means a repair or alteration that requires entry on the adjoining land for the erection of temporary structures, such as scaffolding; the placement of, or access for, any type of heavy equipment; or the distressing of the adjoining land, including the removal of a structure or fence, or the excavation or removal of any landscaping or paving;
- (g) "land" includes buildings, fences and structures;

- (h) “low-impact work” means a repair or alteration that requires entry on the adjoining land to carry out work that does not include the erection of temporary structures, such as scaffolding; the placement of, or access for, any type of heavy equipment; and the distressing of the adjoining land, including the removal of a structure or fence, or the excavation or removal of any landscaping or paving;
- (i) “occupant” means any person or persons over the age of 18 years in possession of the land;
- (j) “officer” means a municipal law enforcement officer employed by the City to enforce municipal by-laws;
- (k) “owner” means the registered owner of the land or a person authorized in writing by the registered owner of the land to act on the owner’s behalf for the purpose of filing an application under this By-law;
- (l) “permit” means a permit issued under this By-law that authorizes right of entry on adjoining lands;
- (m) “permit holder” means the owner or occupant to whom a permit has been issued under this By-law;
- (n) “repair” includes:
 - (i) maintenance and upkeep; and
 - (ii) the provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a building, fence or other structure conforms with the standards established in a by-law or the Act; and
- (o) “structure” means anything installed, constructed or erected with a fixed location on the ground, but does not include an inground swimming pool.

2. Interpretation

When reading and interpreting this By-law:

- (a) unless otherwise specified, references in this By-law to parts, sections, subsections, clauses and schedules are references to parts, sections, subsections, clauses and schedules in this By-law;
- (b) references in this By-law to any statute or statutory provision include references to that statute or statutory provision as it may from time to time be amended, extended or re-enacted;

- (c) this By-law shall be read with all changes in gender or number as the context requires;
- (d) references in this By-law to items in the plural include the singular, and references to the singular include the plural, as applicable; and
- (e) the words “include”, “includes” or “including” are not to be read or interpreted as limiting the words, phrases or descriptions that follow them.

3. Right of Entry on Consent or by Permit

- (1) The owner or occupant of land may enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any building, fence or other structures on the land of the owner or occupant but only to the extent necessary to carry out the repairs or alterations:
 - (a) if the owner of the adjoining land has given prior consent to this entry; or
 - (b) if the By-law Manager has issued a permit for this entry and the entry occurs during the period specified in the permit.
- (2) The power of entry under section 3(1)(b) is subject to compliance with the following conditions:
 - (a) the power of entry may only be exercised by a permit holder or his or her employees or agents and only if they comply with all of the conditions of the permit and the provisions of this By-law;
 - (b) a person exercising the power of entry must display or, on request, produce proper identification;
 - (c) the permit holder shall provide reasonable notice of the proposed entry to the occupant of the adjoining land, as described in section 4(2)(j)(iv);
 - (d) the permit holder, his or her employees or agents, shall not create any hazards or allow any hazards to exist on the adjoining land;
 - (e) the permit holder shall, in so far as is practicable, restore the adjoining land to its original condition and shall provide compensation for any damages caused by the entry or by anything done on the adjoining land; and
 - (f) without limiting the generality of (e) above, restoring the adjoining land to its original condition includes removing any equipment or materials left on the adjoining land as a result of the entry.

- (3) The power of entry under section 3(1)(b) does not authorize:
 - (a) entry into a building on the adjoining land;
 - (b) the use of the adjoining land for any other work or activity other than that described on the permit;
 - (c) the storage of materials or equipment, or the parking of vehicles, on the adjoining land; and
 - (d) an exemption to any person from complying with other City by-laws.
- (4) In the case of entry under the consent of the owner of the adjoining land under section 3(1)(a), the conditions and limitations in sections 3(2) and 3(3) apply to the power of entry, with necessary modifications, unless the owner granting the consent and the owner or occupant exercising the right of entry agree otherwise.
- (5) No person shall fail to permit a right of entry being exercised in accordance with a permit issued under this By-law.
- (6) Any permit issued under this By-law is not transferable.

4. Permit Application

- (1) To obtain a permit, the owner shall file a complete application with the By-law Manager on a form prescribed by the City.
- (2) An application for a permit must include the following:
 - (a) the name, address, and telephone number of all contractors that will carry out the proposed work for which entry is required on the adjoining land;
 - (b) the municipal business licence number of every contractor or trade that is required to be licensed by the City;
 - (c) the insurance type and number of every contractor or trade that is required to be insured in accordance with municipal or provincial regulations;
 - (d) the nature of the proposed work that requires use of the adjoining land and the proposed use of the adjoining land, including what equipment will be used, if and how the adjoining land will be distressed, and whether any nuisances will result from the proposed use of the adjoining land (for example, dust fumes, noise, or restricted access);

-
- (e) the proposed attenuating measures to control each of the nuisances identified under (d) above;
 - (f) an estimate of the time that the proposed work will require use of the adjoining land, as described in (d) above is expected to take;
 - (g) the days and times that entry will be required;
 - (h) the proposed remediation measures required to bring the adjoining land, in so far as practicable, to its original condition;
 - (i) an estimate of the time required to do the remediation work described in (h) above;
 - (j) a signed form acknowledging the permit holder's obligation to:
 - (i) use the adjoining land only to the extent necessary to carry out the work on the adjoining land as outlined in the permit;
 - (ii) not use the adjoining land for any other purpose, including for the storage of materials or equipment and the parking of vehicles;
 - (iii) provide a security deposit and agree to its forfeiture if deemed necessary by the By-law Manager to comply with the permit holder's obligations to restore the adjoining land and provide compensation for damages;
 - (iv) provide at least 24 hours' notice in writing to the occupant of the adjoining land before any contractor enters the adjoining land;
 - (v) systematically mitigate all nuisances with respect to the use of the adjoining land to the extent practicable;
 - (vi) restore the adjoining land to its original condition and provide compensation for any damages caused by the entry or by anything done on the adjoining land to the satisfaction of the By-law Manager; and
 - (vii) without limiting (iv) above, to hold the owner of the adjoining land harmless in the event of any damages to people or property as a result of anything done on the adjoining land to the extent allowable by law;

- (k) proof that the owner of the adjoining land has been included as a named insured in the liability insurance of the owner for the period covering the estimated time of the proposed work on the adjoining land; and
 - (l) the permit application fee set out in the City's current General Municipal Fees By-law.
- (3) The notice required under section 4(2)(j)(iv) may be served personally on the person to whom it is directed or by registered mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.
- (4) The permit application fee is non-refundable.

5. Notice to Adjoining Land Owner

- (1) After receiving a completed application, the By-law Manager shall notify the owner of the adjoining land in writing that a permit has been requested to enter the adjoining land, and the notice shall provide all of the relevant information, set out in section 4(2), as determined by the By-law Manager.
- (2) The owner of the adjoining land may, within 10 business days of the date specified in the notice, make a submission to the By-law Manager to provide details of any circumstances that may be considered by the By-law Manager in establishing the conditions of the permit.
- (3) The By-law Manager may extend the submission time under (2) above for not more than 10 business days.
- (4) The By-law Manager shall provide the owner of the adjoining land with a copy of any permit or renewal of a permit that applies to the adjoining land.

6. Permit Issuance / Renewal / Refusal / Revocation

- (1) The security deposit required under section 7 shall be submitted before a permit is issued.
- (2) A permit issued under this By-law shall indicate the period and times during which the right of entry may be exercised, and this period shall not commence earlier than five business days from the date of issuance.
- (3) The permit shall also set out any additional conditions, as determined by the By-law Manager that reasonably relate to the right of entry (for example, the protection of a particular plant).

- (4) The permit holder or owner, if not the permit holder, may apply to the By-law Manager for a renewal of the permit before the expiry date of the right of entry under the current permit.
- (5) A permit renewal application shall include all the information and other documents required under section 4(2).
- (6) After a complete permit renewal application is received, the By-law Manager shall notify the owner of the adjoining land in writing that a permit renewal application has been requested by the applicant.
- (7) The owner of the adjoining land may, within 10 business days from the date specified in the notice, make a submission to the By-law Manager providing details of any circumstances that may be considered by the By-law Manager in reviewing the permit application renewal.
- (8) If a renewal is granted, it shall deem the existing permit to continue for the period specified in the approval and may provide that the right of entry is subject to any existing conditions or additional conditions as established by the By-law Manager.
- (9) The By-law Manager may revoke a permit or deny the renewal of a permit if there is non-compliance with the permit conditions.
- (10) If a permit is revoked or is not renewed, the permit holder shall, in so far as is practicable, restore the adjoining land to its original condition and provide compensation for any damages caused by the entry or by anything done on the adjoining land, to the satisfaction of the By-law Manager.
- (11) Where the By-law Manager refuses to issue a permit, the applicant shall be informed of this decision in writing and the reasons for the refusal.

7. Security Deposit

- (1) The security deposit for a permit for low-impact work is \$500.00.
- (2) The minimum security deposit for a permit for high-impact work is \$2,000.00.
- (3) The By-law Manager shall determine the amount of the security deposit required for a permit for high-impact work above the minimum amount set out in (2) above and shall base this amount on the information in the permit application, the inspection by officers, any submissions by the owner of the adjoining land, and any other information deemed reasonable by the By-law Manager for this purpose.

- (4) If in his or her submission, under section 5(2), the owner of the adjoining land requests a review of the amount of the security deposit established by the By-law Manager, the submission shall include a detailed estimate in a form acceptable to the By-law Manager.
- (5) The security deposit amount established by the By-law Manager after any review of a submission under section 5(2) shall be deemed final.
- (6) The security deposit for a permit shall be in the form of a certified cheque made payable to the 'City of Pickering'.
- (7) In the case of low-impact work, the City may hold the security deposit for no more than 60 days after the completion of the work requiring entry on the adjoining land, the completion of any remediation work on the adjoining land, and the expiry of the right of entry under the permit, whichever is later, to ensure compliance with the permit holder's obligations under section 3(2)(e).
- (8) Notwithstanding (7) above and to ensure compliance with the permit holder's obligations under section 3(2)(e), including unseen damages, in the case of high-impact work, the security deposit shall be held for one year after the completion of the work requiring entry on the adjoining land and the completion of any remediation work on the adjoining land, whichever is later.
- (9) If within the period in (7) above, or after the period in (8) above, the By-law Manager determines that the permit holder has not complied with the requirements to restore the land and pay compensation for damages as required under section 3(2)(e), the City may provide the owner of the adjoining land with all or part of the security deposit and return any remainder to the permit holder.
- (10) The owner of the adjoining land and the permit holder may on consent authorize the City to provide the owner of the adjoining land with all or part of the security deposit at a date earlier than provided under (7) and (8) above.

8. Emergency Exception

- (1) If a building, fence or other structure on the land poses an immediate danger to the health or safety of any person, the owner or occupant of the land or his or her employee or agent may enter the adjoining land without a permit or prior consent, but only to the extent necessary to terminate the emergency.

- (2) The owner or occupant of the land shall, to the extent possible, notify the owner of the adjoining land of the emergency and the need to enter the adjoining land before entering the adjoining land.
- (3) All work necessary to terminate the emergency and that requires entry on the adjoining land shall be carried out as if a permit had been granted under this By-law and is subject to compliance with the conditions in section 3(2), other than notice, and to any other permit conditions retroactively imposed by the By-law Manager.
- (4) Unless the owner of the adjoining land waives this requirement, the owner or occupant undertaking the work on the adjoining land shall apply for a permit retroactively for the work performed to terminate the emergency as well as for any other work that will require entry on the adjoining land.

9. Inspection

- (1) An officer, other employee, or agent of the City may enter on lands at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-law or a condition of a permit issued under this By-law are being complied with.
- (2) A person carrying out an inspection under (1) above, 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 purpose of the inspection.

10. Enforcement

- (1) This by-law may be enforced by an officer.
- (2) No person shall make a false or intentionally misleading statement of fact, statutory declaration, application or other document required by this By-law.
- (3) No person shall prevent, hinder or obstruct or attempt to prevent, hinder or obstruct an officer in the enforcement of this By-law.

- (4) Where an officer has reasonable grounds to believe that an offence has been committed by a person, the officer may require the name, address, and proof of identity of that person, and no person shall fail to provide the requested information.

11. Orders to Comply

- (1) An officer who finds a contravention of this By-law may make one or more orders requiring discontinuance of the contravening activity or to do work to correct the contravention.
- (2) The order may be served personally on the person to whom it is directed or by registered mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.
- (3) If there is evidence that the occupant of the land is not the registered owner, the notice shall be served on both the registered owner and the occupant of the land.
- (4) If the address of the owner is unknown or the City is unable to effect service on the owner or occupant under (3) above, a placard stating the terms of the order and placed in a conspicuous place upon land on or near the land shall be deemed to be sufficient notice to the owner.
- (5) If the delay necessary to give an order under the preceding subsections would result in an immediate danger to the health or safety of any person, the order may be served personally on the person to whom it is directed or by a placard stating the terms of the order and placed in a conspicuous place upon land on or near the land.

12. Offences and Penalties

- (1) Every person who contravenes any provision of this By-law, and every director or officer of a corporation who concurs in such contravention by the corporation, is guilty of an offence and, subject to (2), upon conviction is liable to a fine not exceeding \$25,000.00.
- (2) Where a corporation is convicted of an offence under (1), the maximum penalty that may be imposed on the corporation is \$100,000.00.

13. Short Title

This By-law may be cited as the "Right of Entry By-law".

14. Force and Effect

This By-law shall come into force and effect on the date it is passed.

ENACTED AND PASSED this day of , 2020.

Kevin Ashe, Deputy Mayor

Susan Cassel, City Clerk

DRAFT