

The Corporation of the Town of Tecumseh

By-Law Number 2023-086

Being a By-law to Permit Access onto Adjoining Lands for Maintenance
within the Town of Tecumseh

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 Tecumseh 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 the property.

Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:

1. Definitions

For the purposes of this by-law, the following definitions are applicable:

- 1.1 **Adjoining Lands** means Property directly adjacent to the Owner's Lands which the Owner requires access to.
- 1.2 **Adjoining Landowner(s)** means the registered owner of the Adjoining Lands according to the title as shown in the Land Registry Office.
- 1.3 **Building(s)** means:
 - a. A structure occupying an area greater than 10 square metres consisting of a wall, roof, and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto;
 - b. A structure occupying an area of 10 square metres or less that contains plumbing, including the plumbing appurtenant thereto;
 - c. Plumbing not located in a structure;
 - d. A sewage system;
 - e. Fences; or
 - f. Structures designated in the building code.
- 1.4 **Council** means the Council for the Town of Tecumseh.

- 1.5 **Officer** means a Town employee whose duties include enforcement of this by-law.
- 1.6 **Owner** includes:
- a. The registered owner of the Owner's Lands for which Work is required to be completed.
 - b. The person for the time being managing or receiving the rent of the Owner's Lands, whether on the person's own account or as agent or trustee of any other person, or who would receive the rent if the Owner's Lands were let; and
 - c. A lessee or occupant of the Owner's Lands who, under the terms of a lease, is required to repair and maintain the Owner's Lands in accordance with the standards for the maintenance and occupancy of the property.
- 1.7 **Owner's Lands** means the Property owned or occupied by the Owner directly adjacent to the Adjoining Lands.
- 1.8 **Permitted Access Time** means the hours of 9:00 a.m. to 5:00 p.m., Monday through Saturday.
- 1.9 **Property** means a Building or part of a Building and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences, and erections thereon whether heretofore or hereafter erected, and includes vacant property.
- 1.10 **Repairs** includes:
- a. Maintenance and upkeep; and
 - b. 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 conforms with the standards established in a by-law or Act.
- 1.11 **Town Property** means any Property owned, leased, or under the control of the Town, including a highway.
- 1.12 **Town** means the Corporation of the Town of Tecumseh or the geographic area of the Corporation of the Town of Tecumseh as the context requires.
- 1.13 **Works** means the repairs, alterations, and/or improvements to be completed by the Owner or his or her employee or agent.

2. Interpretation

- 2.1 In this by-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.
- 2.2 It is declared that if any part or parts hereof be declared by any Court of law to be bad, illegal, or ultra vires, such 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 Nothing in this by-law shall authorized entry into a building.

3. Right of Entry

- 3.1 The Owner is authorized to enter Adjoining Lands, not including adjoining Town Property, at any reasonable point during the Permitted Access Time, for the purpose of making Repairs to the Owner's Lands but only:
 - a. if the Adjoining Landowner has given prior consent for the entry or if the Owner has complied with the requirements of this By-law.
 - b. if the Repairs to the Building or Property cannot be made from the Owner's Lands or from a street adjoining the Owner's Lands.
 - c. to the extent necessary to carry out the Works.
- 3.2 The power of entry may be exercised by an employee or agent of the Owner.
- 3.3 The power of entry is subject to compliance with the conditions set out in Section 4 below.

4. Notice

- 4.1 The Owner shall, at least five (5) days prior to the first day on which access is required, provide Notice to the Town in writing, on the form and manner attached hereto as Appendix A (as may be amended from time to time and which form can be obtained at Town Hall or submitted online on the Town's website), which notice shall include the following:
 - a. Identification and description in detail of the Works to be conducted for which notice is being given, including but not limited to, the day and times entry will be required.
 - b. Description of the Owner's Lands on which the Works is to be done, by a description that will readily identify and locate the building lot as well as the Adjoining Lands.
 - c. State the names, addresses, and contact information of the Owner and the contractor performing the Works.

- d. State the address of the Adjoining Lands upon which entry will be made.
- e. A signed Acknowledgment that:
 - i. the Adjoining Lands will be left in the same condition as prior to entry;
 - ii. entry will be limited to the days and time periods specified in the notice which periods fall within the Permitted Access Time;
 - iii. entry will only be exercised by the Owner or his or her employees or agents;
 - iv. the person(s) exercising the power of entry will display or produce upon request, proper identification; and
 - v. the Owner or his or her employees or agents will save the Adjoining Landowner harmless from claims for injury or damage to the Owner or his or her employees or agents and their equipment as the case may be.
 - vi. a Certificate of Insurance has been attached to the Notice that is in full force and effect throughout the term of the entry onto the Adjoining Lands and includes Commercial General Liability Insurance coverage underwritten by insurers licenced to conduct business in the Province of Ontario with a limit of liability not less than One Million Dollars (\$1,000,000.00) per occurrence. The policy shall name the Adjoining Landowner as an additional insured and shall contain a provision for cross liability in respect of the named insured.

In the event the Owner retains a contractor to enter the Adjoining Lands pursuant to the 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, Commercial General Liability Insurance underwritten by insurers licenced to conduct business in the Province of Ontario with a limit of liability not less than Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall name the Adjoining Landowner as an additional insured and shall contain a provision for cross liability in respect of the named insured.

In the event 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 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.

- f. Where the notifying party is not the Owner, the notice shall be accompanied by written authorization of the Owner.
- 4.2 The Notice to the Town shall be delivered care of the Municipal Clerk in person or by submitting the Notice in writing online on the Town's website.
- 4.3 A copy of the Notice shall also be delivered personally to the Adjoining Landowner or by registered mail to the last known address of the Adjoining Landowner, at least five (5) days prior to the first day on which access is required and in the case of registered mail the notice shall be deemed to have been given on the third (3rd) day after it is mailed.
- 4.4 In the case of an emergency, a Notice that includes the content prescribed herein may be given to the Town and the Adjoining Landowner less than five (5) days before any person enters the Adjoining Lands or as soon as practicable after any person enters the Adjoining Lands in any manner likely to come to the attention of the Adjoining Landowner.

5. Duration

The duration of the entry shall not exceed a period of time reasonably required to complete the Repairs described in the notice.

6. Hazards

The Owner shall ensure that the person exercising the power of entry does not create any hazards or allow any hazards to exist on the Adjoining Lands.

7. Damages to Adjoining Lands

- 7.1 In the event the Adjoining Lands are damaged by the entry or by anything done on the Adjoining Lands as a result of the entry, the Owner or its employee or agents shall restore the Adjoining Lands as close to the original condition in so far as is practicable and shall provide compensation for any damage caused by the entry or anything done to the Adjoining Lands.
- 7.2 No person entering upon Adjoining Lands under this By-law shall fail to leave the Property in the same condition as it was in prior to the entry and to provide compensation for any damage caused by the entry or anything done to the Adjoining Lands.

8. Limits to the Power of Entry

The power of entry does not authorize:

- 8.1 Entry into a Building on the Adjoining Lands;
- 8.2 Entry for any purpose other than conducting the Works described in the Notice;
- 8.3 The storage of materials or equipment, or the parking of vehicles, on the Adjoining Lands; and
- 8.4 An exemption to any person from complying with other applicable federal or provincial legislation or Town by-laws.

9. Inspection

9.1 An Officer of the Town may enter on a Property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- a. This by-law;
- b. A direction or order of the Town made under this by-law or any Town by-law; or
- c. An order made by a court

9.2 The 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 purpose of the inspection.

10. Orders to Comply

10.1 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.

- 10.2 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 (3rd) day after it is mailed.
- 10.3 If there is evidence that the occupant of the land is not the registered Property owner, the notice shall be served on both the registered Property owner and the occupant of the land.
- 10.4 If the address of the owner is unknown or the Town is unable to effect service on the owner or occupant, a placard stating the terms of the order and placed in a conspicuous place upon land on or near the property shall be deemed to be sufficient notice to the owner.
- 10.5 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 Property.

11. Remedial action

- 11.1 If a person fails to comply with an order to do work to correct a contravention of this by-law or any other by-law of the Town, the Officer, or persons acting upon his or her instructions, may enter the Property at any reasonable time for the purposes of doing the things described in the order at the person's expense.
- 11.2 The Town may recover the costs of doing it by action, or the costs may be added to the tax roll and collected in the same manner as property taxes.

12. Offences

- 12.1 Every person who contravenes a provision of this By-law is guilty of an offence.
- 12.2 Every person who contravenes an order as described herein is guilty of an offence.
- 12.3 If this By-law is contravened and a conviction is entered, the Ontario Court of Justice or any court of competent jurisdiction after, may, in addition to any penalty imposed on the person convicted, issue an Order prohibiting the continuation or repetition of the offence by the person convicted.

13. Short Title

This by-law may be referred to as the "Right of Access for Maintenance By-Law".

14. Effective

This by-law shall come into full force on the date of the final passing thereof.

Read a first, second, third time and finally passed this 8th day of August, 2023.

Gary McNamara, Mayor

Robert Auger, Clerk



NOTICE OF ACCESS TO ADJOINING PROPERTY

Use this form for notice to the Town of Tecumseh of your intention to access an adjoining property in order to complete Repairs as defined in By-Law Number 2023-086.

To: Town of Tecumseh

Attention: Town Clerk

The personal information you provide on this form is collected under the authority of Section 132 of the *Municipal Act*, 2001. Details of the proposed entry, as represented on this form, shall be provided by you to the owner (and, if not the same as the owner, the occupant) of the land for which access is sought in order to provide such individual or individuals with an opportunity to address the matter.

For any section on this form, you may use additional sheets if required. In such cases, please be sure to clearly indicate to which section the additional sheets relate.

1) Your Information:

a) Your Name (last, first): _____

b) Your Address: _____

c) Your Daytime Telephone Number and Email Address:

d) Address of Property requiring Repair:

e) Are you the owner of the property being Repaired? Yes No

i) If no, provide name and daytime telephone number of owner:

f) Are you the occupant of the property being Repaired? Yes No

i) If no, provide name and daytime telephone number of occupant, if not the owner.

2) Adjoining Property Information:

a) Address of the property to which access is sought:

b) Name of the owner of the adjoining property, if known:

c) Name of the occupant of the adjoining property, if known:

3) Repairs:

a) Detailed description of the access required and work to be conducted on the adjoining lands:

b) Description of any equipment or materials that will be used on the adjoining lands:

c) Description of how the adjoining land may be distressed as a result of the access (e.g., damaging or removal of topsoil, grass, or other landscaping; removal of fencing; etc.):

d) Description of specific mitigating measures to address the items in No. 3(c) and to return the land back to its original condition:

e) Period of time required to return the land to its original condition (in days):

f) Description of any nuisances that may result for the equipment or materials for the work conducted on the adjoining lands (e.g., dust from sanding, noise from excavation equipment, vibration from jackhammer, etc.):

g) Description of specific mitigating measures to reduce the impact of the nuisances described in 3(f):

h) Proposed start date for the access: _____

i) Period of time over which access will be required (in days): _____

j) Description of the days and times for which access is sought (e.g., Monday to Friday from 9:00 a.m. to 5:00 p.m.) Please note that all work must be carried out in compliance with all applicable by-laws including Noise By-law No. 2002-07 and amendments.

k) Name, address, telephone number of all person and companies (e.g., contractors) and their agents that are proposed to access the adjoining land (this list should include yourself and your representatives, if applicable):

Certification and Agreement

I, the undersigned, being the owner or authorised occupant of the property described in section 1(d) of this form, hereby certify, and agree that this notice is being submitted on my behalf and that all of the information therein is true and accurate.

I further acknowledge and confirm that:

- (a) the adjoining land will be left in the same condition as it was prior to entry;
- (b) entry will be limited to the days and time periods specified herein;
- (c) entry will only be exercised by myself or my employees or agents;
- (d) the person(s) exercising the power of entry will display or produce upon request, proper identification; and
- (e) the owner or his or her employees or agents will save the adjoining owner harmless from claims for injury or damage to the owner or his or her employees or agents and their equipment as the case may be.
- (f) a Certificate of Insurance is attached to this Notice and will be in full force and effect throughout the term of the entry onto the Adjoining Lands, including Commercial General Liability Insurance underwritten by insurers licenced to conduct business in the Province of Ontario with a limit of liability not less than One Million Dollars (\$1,000,000.00) per occurrence and naming the Adjoining Landowner as an additional insured, containing a provision for cross liability in respect of the named insured.

OR

In the event I retain a contractor to enter the Adjoining Lands pursuant to the By-law, I will ensure that the contractor keeps in full force and effect throughout the term of its entry onto the Adjoining Lands, and attaches hereto to this notice proof of Commercial General Liability Insurance underwritten by insurers licenced to conduct business in the Province of Ontario with a limit of liability not less than Two Million Dollars (\$2,000,000.00) per occurrence, naming the Adjoining Landowner as an additional insured and containing a provision for cross liability in respect of the named insured. In addition, I will ensure that the contractor keeps in full force and effect throughout the term of 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.

Signature

Date