

BY-LAW NUMBER 07-035

OF

THE REGIONAL MUNICIPALITY OF WATERLOO

A By-law to Allow The Regional Municipality of Waterloo
to Enter on Land for the Purpose of Carrying Out Inspections

WHEREAS section 436 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 438 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 undertake inspections pursuant to orders as issued under section 438;

AND WHEREAS sections 435 and 437 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, set out certain additional powers and restrictions in regard to the power of entry;

AND WHEREAS The Regional Municipality of Waterloo wishes to pass 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;

The Council of The Regional Municipality of Waterloo enacts as follows:

Part I **Definitions**

1. In this By-law,

- (1) "Officer" means an employee, officer or agent of the Region or a member of The Regional Municipality of Waterloo Police Service;
- (2) "*Municipal Act*" means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, its regulations, and any successor legislation and regulations; and
- (3) "Region" means The Regional Municipality of Waterloo.

Part II **Power of Entry for Inspection**

2. (1) An Officer may enter on land at any reasonable time 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 Region as passed under the *Municipal Act*,
 - (b) a direction or order of the Region made under the *Municipal Act* or made under a by-law of the Region passed under the *Municipal Act*,
 - (c) a condition of a licence issued under a by-law of the Region passed under the *Municipal Act*, or
 - (d) an order made under section 431 of the *Municipal Act*.
- (2) When carrying out an inspection pursuant to subsection (1) of this section, 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.
- (3) A sample taken under subsection (2)(d) of this section 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.
 - (4) If a sample is taken under subsection (2)(d) of this section 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) A receipt shall be provided for any document or thing removed under subsection (2)(b) of this section and the document or thing shall be promptly returned after the copies or extracts are made.
 - (6) Copies of or extracts from documents and things removed under this section 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.

Part III **Inspection Pursuant to an Order**

3. (1) An Officer may enter on lands for the purpose of carrying out an inspection pursuant to an order that is issued under section 438 of the *Municipal Act*.
- (2) An Officer may apply for an order under section 438 of the *Municipal Act* if:
 - (a) an inspection is desired to determine whether or not the following are being complied with:
 - (i) a by-law of the Region as passed under the *Municipal Act*,
 - (ii) a direction or order of the Region made under the *Municipal Act* or made under a by-law of the Region passed under the *Municipal Act*,
 - (iii) a condition of a licence issued under a by-law of the Region passed under the *Municipal Act*, or
 - (iv) an order made under section 431 of the *Municipal Act*,
 - (b) the inspection is reasonably necessary; and
 - (c) the Region has been prevented or is likely to be prevented from doing anything set out in subsection 2 (1) or (2) of this By-law.
- (3) An order under this section shall expire on the date stated in the order or 30 days after the order is issued, which ever is earlier.
- (4) An order under this section may be executed only between 6 a.m. and 9 p.m. unless the order provides otherwise.
- (5) In the case of an order authorizing an inspection of a room or place actually being used as a dwelling, the occupier must be given notice concerning when the inspection will be carried out.
- (6) An order under this section may be issued on application without notice.

Part IV **Conditions Governing Powers of Entry**

4. Unless otherwise provided in the *Municipal Act*, in an order under section 438 of the *Municipal Act* or in a warrant under section 439 of the *Municipal Act*, the following conditions apply to the exercise of a power of entry for the purpose of carrying out an inspection under this By-law:

- (a) the Officer exercising the power must on request display or produce proper identification;
- (b) the Officer exercising the power may be accompanied by a person under his or her direction; and
- (c) the Officer shall restore the land to its original condition in so far as is practicable and the Region shall provide compensation for any damages caused by the entry or by anything done on the land.

Part V Restriction in Regards to Dwellings

- 5. Despite any provision of this By-law, an Officer exercising a power of entry for the purpose of carrying out an inspection under this By-Law shall not enter or remain in any room or place actually being used as a dwelling unless:
 - (1) 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 *Municipal Act* or a warrant issued under section 439 of the *Municipal Act*;
 - (2) an order issued under section 438 of the *Municipal Act* is obtained;
 - (3) a warrant issued under section 439 of the *Municipal Act* is obtained; or
 - (4) the delay necessary to obtain an order under section 438 of the *Municipal Act*, to obtain a warrant under section 439 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.

Part VI Administration

- 6. Nothing in this By-law shall limit any other statutory or common law rights or powers of the Region or any Officer to enter on land.
- 7. If any section or sections of this By-law or parts thereof are found by any court to be illegal or beyond the power of the Council of the Region to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and shall continue in full force and effect unless and until similarly found illegal.
- 8. This By-law may be cited as the "Inspection By-law".
- 9. This By-law shall come into force and effect on May 3, 2007.

By-law read a first, second and third time and finally passed in the Council Chamber in the Regional Municipality of Waterloo this 2nd day of May, A.D., 2007.


REGIONAL CLERK


REGIONAL CHAIR