



THE CORPORATION OF THE TOWNSHIP OF MULMUR

BY-LAW NO. 39-21

BEING A BY-LAW TO REGULATE THE POWER OF ENTRY ONTO LAND

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 435, 437 and 438 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

AND WHEREAS this by-law applies to any Township of Mulmur by-laws without power of entry provisions passed pursuant to the *Municipal Act*, 2001, S.D. 2001 c. 25, as amended or its predecessors;

NOW THEREFORE the Council of the Corporation of the Township of Mulmur hereby enacts as follows:

1. DEFINITIONS

Land means any private property, premises, grounds, yards or vacant lot and includes any building or structure thereon.

By-law means a by-law passed by Council pursuant to the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended.

Council means the Council of the Corporation of the Township Mulmur.

Municipality means the Corporation of the Township of Mulmur.

Officer means a by-law enforcement officer, police officer, chief fire official or designate, NEC compliance specialist, MNR officer, Animal and/or Canine Control Officer employed or contracted by the Township of Mulmur, or any Township of Mulmur employee authorized by a resolution of Council to enforce a provision(s) of any Township of Mulmur By-law, provincial statute or federal statute.

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.

2. POWERS OF ENTRY

2.1 An Officer may at any reasonable time, enter onto 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 Municipality passed under the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended;
- b) A direction or order of the Municipality made under the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended or made under a by-law of the Municipality passed under the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended;
- c) A condition of a licence issued under a by-law of the municipality passed under the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended;
- d) An order made under Section 431 of the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended;
- e) A by-law of the Municipality passed under the Planning Act, R.S.O. 1990 c.P 13, as amended;
- f) Any other by-law of the Municipality.

2.2 When carrying out an inspection pursuant to Section 2.1, 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.

2.3 If the Occupier so requests at the time a sample taken under Section 2.2 (d), the sample shall be divided into two parts, and one part shall be given to the Occupier from whom the sample is taken.

2.4 If a sample is taken under Section 2.2 (d) has not been divided into two parts, a copy of any report on the sample shall be given, upon request, to the Occupier from the lands where the sample was taken.

2.5 A receipt shall be provided for any document or thing removed under Section 2.2 (b) and the document or thing shall be promptly returned after the copies or extracts are made.

2.6 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.

2.7 Unless otherwise provided in the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended, in an order under Section 438 or in a warrant under section 439 of the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended, 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 upon 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 Municipality shall restore the land to its original condition insofar as is practicable and shall provide compensation for any damages caused by the entry except where the entry is under Section 446 of the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended, or is under Part XI of the *Municipal Act*, 2001, S.O. 2001 c. 25, as amended, in which case the Treasurer will register a notice of vesting, in the name of the Municipality, in respect of the land.

3. RESTRICTIONS

- 3.1 Notwithstanding any provision of this by-law, an Officer 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, a warrant issued under Section 439 or a warrant under Section 386.3 of *the Municipal Act*, 2001 S.O. 2001, c. 25, as amended;
 - b) An order under Section 438 of *the Municipal Act*, 2001 5.0. 2001, c. 25, as amended, is obtained;
 - c) A warrant issued under Section 439 or Section 386.3 of *the Municipal Act*, 2001 5.0. 2001, c. 25, as amended, is obtained;
 - d) The delay necessary to obtain an order under Section 438, to obtain a warrant under Section 439 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 Municipality has given notice of its intention to enter to the Occupier of the land as required under Section 435(2) of *the Municipal Act*, 2001 S.O. 2001, c. 25, as amended, and the entry is authorized under Section 79, 80 or 446 of *the Municipal Act*, 2001 S.O. 2001, c. 25, as amended.

4. OBSTRUCTION

- 4.1 No person shall obstruct or attempt to obstruct any Officer or other person, who is exercising a power or performing a duty under this By-law or any other Township of Mulmur By-law or *the Municipal Act*, 2001 5.0. 2001, c. 25, as amended or its predecessor.
- 4.2 Without limiting section 4.1, "Obstruct" includes:
 - 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 Officer, 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 Officer, 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 Officer, from exercising his or her authority pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of *the Municipal Act*, 2001 S.O. 2001, c. 25, as amended; and

f) To fail to provide, upon request by an Officer, any information, documents or things relevant to an inspection.

4.3 Without limiting sections 4.1 and 4.2, every person who is alleged to have contravened any of the provisions of any Township of Mulmur Bylaw shall identify themselves to an Officer 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 4.1 of this By-law.

5. MUNICIPAL ORDERS AND REMEDIAL ACTIONS

5.1 If an Officer is satisfied that a contravention of any Township of Mulmur By-law has occurred, the Officer may make an Order to Discontinue Activity requiring any person who contravened the By-law, or who caused or permitted the contravention, owner or Occupier of the Land on which the contravention has occurred, to discontinue the contravening activity.

5.2 An Order to Discontinue Activity issued under subsection 5.1 shall set out,

a) Reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred; and

b) The date by which there must be compliance with the order.

5.3 If an Officer is satisfied that a contravention of any Township of Mulmur By-law has occurred, the Officer may make a Work 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.

5.4 A Work Order issued under subsection 5.3 shall set out,

a) Reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred;

b) The work to be done; and

c) The date by which the work must be completed.

6. PENALTY

6.1 Any person who contravenes any of the provisions of this bylaw is guilty of an offence and upon conviction is liable to a fine provided for under the Provincial Offences Act, R.S.O., 1990, c.P33., exclusive of costs, and every such fine shall be recoverable under the Provincial Offences Act.

6.2 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.

6.3 Pursuant to Section 446 or *the Municipal Act*, 2001 S.O. 2001, c. 25, as amended, where a person fails to do a matter or thing as directed or required by an Officer or other person pursuant to this by-law or any other Township of Mulmur by-law or *the Municipal Act*, 2001 S.O. 2001, c. 25, as amended, the matter or thing may be done at that person's expense.

6.4 The Municipality may recover costs associated with Section 6.3 by adding the costs to the tax roll and collecting them in the same manner as property taxes.

7. ADMINISTRATION

- 7.1 Every provision of this by-law is declared to be severable from the remainder and if any provision of this by-law shall be declared invalid by a court of competent jurisdiction such declaration shall not affect the validity of the remainder.
- 7.2 This By-law shall apply in addition to the provisions of any other Township of Mulmur By-law and *the Municipal Act*, 2001 S.O. 2001, c. 25, as amended, provided that in the event of conflict, the provisions of any other Township of Mulmur By-law or *the Municipal Act*, 2001 S.O. 2001, c. 25, as amended, shall be paramount over this by-law, provided such provisions are not contrary to law.
- 7.3 Nothing in this By-law shall limit any other statutory or common law rights or powers of the Municipality or any Officer to enter on Land.

8. EFFECTIVE DATE

- 8.1 This By-Law shall take effect and come into force on the passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED on this 7th day of July, 2021.



JANET HORNER, MAYOR



TRACEY ATKINSON, CLERK