

**Being a By-law regulating the power of entry onto land**

**WHEREAS** Section 436, Subsection (1) of the Municipal Act, S.O. 2001, c. 25, 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 to determine whether or not the following are being complied with: (a) A by-law of the municipality passed under this Act, (b) A direction or order of the municipality made under this Act or made under a by-law of the municipality passed under this Act, (c) A condition of a licence issued under a by-law of the municipality passed under this Act, (d) An order made under Section 431 of this Act;

**AND WHEREAS** Section 436, Subsection (2) of the Municipal Act, S.O. 2001, c. 25, provides that by-laws passed under Section 436, Subsection (1) may provide that for the purposes of an inspection the municipality 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, sample or photographs necessary for the purposes of the inspection;

**AND WHEREAS** the intent of this by-law is to provide authority to inspect land for by-laws currently passed by the Corporation of the Township of Tiny pursuant to the Municipal Act, S.O. 2001, c. 25, as well as by-laws passed in the future under the same legislation;

**NOW BE IT ENACTED** as a by-law of this Corporation as follows:

**TITLE**

This bylaw shall be known and may be cited as the "Power of Entry By-law." In the text of the by-law, it is referred to as "this by-law."

**1. DEFINITIONS**

In this by-law:

- 1.1 "Land" includes buildings and structures other than a dwelling unit.
- 1.2 "Officer" means a Municipal Law Enforcement Officer, or Police Officer.
- 1.3 "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.
- 1.4 "Municipality" means the Corporation of the Township of Tiny.

**2. ENTRY AND INSPECTION**

- 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:

- 2.1.1 A by-law of the Municipality passed under the Municipal Act, S.O. 2001, c. 25.

*[Handwritten mark]*

2.1.2 A direction or order of the Municipality under the Municipal Act, S.O. 2001, c. 25, or made under a by-law of the Municipality passed under this Act.

2.1.3 A condition of a licence issued under a by-law of the municipality passed under the Municipal Act, S.O. 2001, c. 25.

2.1.4 An order made by a court under Section 431 of the Municipal Act, S.O. 2001, c. 25.

2.2 Every occupier shall permit the Officer to inspect any land for the purposes as set out in Section 2.1 of this by-law. An officer may be accompanied by a person under his or her direction.

2.3 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:

2.3.1 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, S.O. 2001, c. 25., a warrant issued under Section 439 of the Municipal Act S.O. 2001, c. 25 or a warrant under Section 386.3 of the Municipal Act S.O. 2001, c. 25;

2.3.2 an order issued by a provincial judge or justice of the peace under Section 438 of Municipal Act S.O. 2001, c. 25 is obtained;

2.3.3 a warrant issued by a provincial judge or justice of the peace under Section 439 of the Municipal Act S.O. 2001, c. 25 is obtained;

2.3.4 a warrant issued by a provincial judge or justice of the peace under Section 386.3 of the Municipal Act S.O. 2001, c. 25 is obtained;

2.3.5 the delay necessary to obtain an order under Section 438 of the Municipal Act S.O. 2001, c. 25, to obtain a warrant under Section 439 of the Municipal Act S.O. 2001, c. 25 or to obtain the consent of the occupier would result in an immediate danger to the health or safety of any person; or

2.3.6 the Municipality has given notice of its intention to enter to the occupier of land as required under Section 435(2) of the Municipal Act S.O. 2001, c. 25 and the entry is authorized under Section 79, 80 or 446 of the Municipal Act S.O. 2001, c. 25.

### **3. INSPECTION POWERS**

3.1. For the purposes of an inspection, an Officer may:

3.1.1 require the production for inspection of documents or things relevant to the inspection;

3.1.2 inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

3.1.3 require information from any person concerning a matter related to the inspection; and

3.1.4 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.

3.2. A sample taken under Section 3.1.4 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.

3.3 If a sample is taken under Section 3.1.4 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.

3.4 A receipt shall be provided for any document or thing removed under Section 3.1.2 and the document or thing shall be promptly returned after the copies or extracts are made.

3.5 Copies of or extracts from documents and things removed under this Section 3 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.

#### 4. OBSTRUCTION

4.1 No person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer exercising a power or performing a duty under a by-law of the Municipality passed under the Municipal Act, S.O. 2001, c. 25.

4.2 Any person who has been alleged to have contravened any of the provisions of this bylaw, shall identify themselves to the Officer upon request, failure to do so shall be deemed to have obstructed or hindered the Officer in the execution of his duties.

#### 5. PENALTY

5.1 Any person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Municipal Act, 2001, S.O. 2001, c. 25, as amended.

5.2 Where a section of this by-law has been contravened, a director or officer of a corporation who knowingly concurs in the contravention is guilty of an offence.

5.3 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,

5.3.1 prohibiting the continuation or repetition of the offence by the person convicted.

5.3.2 in the case of a by-law described in Section 135 or 142 of the Municipal Act, S.O. 2001, c. 25, as amended, requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

**6. VALIDITY AND SEVERABILITY**

6.1 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.

6.2 This by-law shall apply to all by-laws of the Municipality passed under the Municipal Act, S.O. 2001, c. 25.

**7. EFFECTIVE DATE**

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

**READ A FIRST AND SECOND TIME THIS 13TH DAY OF NOVEMBER 2007.**

**READ A THIRD TIME AND FINALLY PASSED THIS 13TH DAY OF NOVEMBER 2007.**

**THE CORPORATION OF THE TOWNSHIP OF TINY**



**MAYOR, Peggy Breckenridge**



**ACTING CHIEF ADMINISTRATIVE OFFICER/CLERK, Doug Taylor**