

General

Chapter 405 Entry on Land Authority to Inspect

Chapter Index

Article 1 - Short Title

405.1.1 Citation

Article 2 - Interpretation

405.2.1 Officer - defined

405.2.2 Municipal Act - defined

405.2.3 City - defined

Article 3 - Power Of Entry For Inspection

405.2.1 Entry - any reasonable time - authority set out

405.3.2 Inspection documents - removal of samples

405.3.3 Samples - taken divided provided to person on request

405.3.4 Sample - not divided - copy of report - provided

405.3.5 Receipt provided - all documents - samples removed

405.3.6 Copies - extracts from documents - evidence

Article 4 - Inspection Pursuant To Order

405.4.1 Entry

405.4.2 Application for order - authority

405.4.3 Order - expiry

405.4.4 Order - execution - times permitted

405.4.5 Notice required - dwelling unit

405.4.6 Notice - not required

Article 5 - Conditions Governing Powers of Entry

405.5.1 Identification produced - other

Article 6 - Restriction in Regards to Dwellings

405.6.1 Entry - prohibited - exceptions - set out

Article 7 - Administration

405.7.1 Rights not limited

405.7.2 Validity - severability

Article 8 - Enactment

405.8.1 Effective date

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 City of Woodstock 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.*

Article 1 - Short Title

405.1.1 Citation

This Chapter may be cited as the "Inspection By-law."

Article 2 - Interpretation

405.2.1 Officer - defined

"officer" means an employee, officer or agent of the City or a member of the Oxford Community Police Service.

405.2.2 Municipal Act - defined

"*Municipal Act*" means the *Municipal Act, 2001, S.O. 2001, c. 25, as amended, its regulations, and any successor legislation and regulations.*

405.2.3 City - defined

"City" means the City of Woodstock.

Article 3 - Power of Entry For Inspection

405.3.1 Entry - any reasonable time - authority set out

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 City as passed under the *Municipal Act*;
- b) a direction or order of the City made under the *Municipal Act* or made under a by-law of the City passed under the *Municipal Act*;

- c) a condition of a licence issued under a by-law of the City passed under the *Municipal Act*; or
- d) an order made under section 431 of the *Municipal Act*.

405.3.2 Inspection documents - removal of samples

When carrying out an inspection pursuant to Section 405.3.1, 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.

405.3.3 Samples - taken divided provided to person on request

A sample taken under Section 405.3.2 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.

405.3.4 Sample - not divided - copy of report - provided

If a sample is taken under Section 405.3.2 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.

405.3.5 Receipt provided - all documents - samples removed

A receipt shall be provided for any document or thing removed under Section 405.3.2 (b) and the document or thing shall be promptly returned after the copies or extracts are made.

405.3.6 Copies - extracts from documents - evidence

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.

Article 4 - Inspection Pursuant To Order

405.4.1 Entry

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*.

405.4.2 Application for order - authority

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 City as passed under the *Municipal Act*;
 - (ii) a direction or order of the City made under the *Municipal Act* or made under a by-law of the City passed under the *Municipal Act*;
 - (iii) a condition of a licence issued under a by-law of the City 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 City has been prevented or is likely to be prevented from doing anything set out in Sections 405.3.1 and 405.3.2.

405.4.3 Order - expiry

An order under this Article shall expire on the date stated in the order or thirty days after the order is issued, whichever is earlier.

405.4.4 Order - execution - times permitted

An order under this Article may be executed only between 6 a.m. and 9 p.m. unless the order provides otherwise.

405.4.5 Notice required - dwelling unit

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.

405.4.6 Notice - not required

An order under this Article may be issued on application without notice.

Article 5 - Conditions Governing Powers of Entry

405.5.1 Identification produced - other

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 Chapter:

- 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 City shall provide compensation for any damages caused by the entry or by anything done on the land.

Article 6 - Restriction in Regards to Dwellings

405.6.1 Entry - prohibited - exceptions - set out

Despite any provision of this Chapter, an officer exercising a power of entry for the purpose of carrying out an inspection under this Chapter 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, 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*;
- b) an order issued under section 438 of the *Municipal Act*, is obtained;
- c) a warrant issued under section 439 of the *Municipal Act* is obtained; or
- d) 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.

Article 7 - Administration

405.7.1 Rights not limited

Nothing in this Chapter shall limit any other statutory or common law rights or powers of the City or any officer to enter on land.

405.7.2 Validity - severability

If any Section or Sections of this Chapter or parts thereof are found by any court to be illegal or beyond the power of the Council of the City to enact, such Section or Sections or parts thereof shall be deemed to be severable and all other Sections or parts of this Chapter shall be deemed to be separate and independent therefrom and shall continue in full force and effect unless and until similarly found illegal.

Article 8 - Enactment

405.8.1 Effective date

This Chapter shall come into force on the day of passage of the enabling by-law. By-law 8423-08, February 7, 2008.