

Property Maintenance

Chapter 0710 Entry on Adjoining Land

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WHEREAS section 132 of the *Municipal Act, 2001*, c. 25 allows a local municipality to authorize the owner or occupant of land to enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any building, fence or other structures on the land of the owner or occupant but only to the extent necessary to carry out the repairs or alterations;

AND WHEREAS under section 446 of the *Municipal Act, 2001*, c. 25, if the municipality has the authority by by-law or otherwise under an Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense and may be added to the tax roll and collected in the same manner as property taxes;

AND WHEREAS section 426 of the *Municipal Act, 2001*, c. 25 directs that no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a by-law passed under this Act;

AND WHEREAS under section 391 of the *Municipal Act, 2001*, c. 25, a municipality may pass a by-law imposing fees or charges on persons for services and activities provided or done by or on behalf of it.

Article 1 - Short Title

710.1.1 Citation

This Chapter may be cited as the "Entry on Adjoining Land By-law."

Article 2 - Interpretation

710.2.1 Alteration - defined

"alteration" includes, for example, but is not limited to, a structural change to the exterior or interior of an existing building, fence or other structure, but does not include a total replacement of an existing building, fence or other structure.

710.2.2 Applicant - defined

"applicant" means the owner or occupant of a building or property who applies for a permit, or any person authorized by the owner or occupant to apply for a permit on the owner's or occupant's behalf.

710.2.3 Building - defined

"building" has the same meaning as in section 1 of the *Building Code Act, 1992*, c. 23. [This meaning is noted as follows for reference purposes only]:

- 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; or
- e. structures designated in the building code.

710.2.4 Business day - defined

"business day" shall mean a day when City offices are open during its regular hours of business, other than a Saturday or a Sunday or other holiday.

710.2.5 Chief Building Official - defined

"Chief Building Official" means the Chief Building Official of the City or his/her designate for the purposes of this Chapter.

710.2.6 City - defined

"City" means The Corporation of the City of Woodstock.

710.2.7 High-impact work - defined

"high-impact work" means a repair or alteration that requires entry on the adjoining land for the erection of temporary structures, such as scaffolding; the placement of, or access for, any type of heavy equipment; or the distressing of the adjoining land, including the removal of a structure or fence, or the excavation or removal of any landscaping or paving.

710.2.8 Low-impact work - defined

“low-impact work” means a repair or alteration that requires entry on the adjoining land to carry out work that does not include the erection of temporary structures, such as scaffolding; the placement of, or access for, any type of heavy equipment; and the distressing of the adjoining land, including the removal of a structure or fence, or the excavation or removal of any landscaping or paving.

710.2.9 Occupant - defined

“occupant” means any person or persons over the age of 18 years in possession of the property.

710.2.10 Officer - defined

“officer” means a police officer or by-law enforcement officer.

710.2.11 Owner - defined

“owner” includes:

- a. the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let; and
- b. a lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property.

710.2.12 Permit - defined

“permit” means a permit issued under this Chapter that authorizes right of entry on adjoining lands.

710.2.13 Permit holder - defined

“permit holder” means the owner or occupant to whom a permit has been issued.

710.2.14 Property - defined

“property” means a building or structure or part of a building or structure, 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.

710.2.15 Repair

“repair” 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, fence or other structure conforms with the standards established in a by-law or Act.

Article 3 - Right of Entry on Consent or By Permit

710.3.1 Consent - owner - Chief Building Official

The owner or occupant of land may enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any building, fence or other structures on the land of the owner or occupant but only to the extent necessary to carry out the repairs or alterations:

- a. if the owner of the adjoining land has given prior consent to this entry; or
- b. if the Chief Building Official has issued a permit for this entry and the entry occurs during the period specified in the permit.

710.3.2 Conditions to entry - compliance

The power of entry under Section 710.3.1 (b) is subject to compliance with the following conditions:

- a. the power of entry may only be exercised by a permit holder or his/her employees or agents and only if they comply with all of the conditions of the permit and the provisions of this Chapter;
- b. a person exercising the power of entry must display or, on request, produce proper identification;
- c. the permit holder shall provide reasonable notice of the proposed entry to the occupant of the adjoining land, as described in Section 710.4.2 (h) (iv) of this Chapter;
- d. the permit holder, his/her employees or agents, shall not create any hazards or allow any hazards to exist on the adjoining land;
- e. the permit holder shall, in so far as is practicable, restore the adjoining land to its original condition and shall provide compensation for any damages caused by the entry or by anything done on the adjoining land;
- f. without limiting the generality of Section 710.3.2 (c), restoring the adjoining land to its original condition includes removing any equipment or materials left on the adjoining land as a result of the entry.

710.3.3 Unauthorized uses - prohibited

The power of entry does not authorize:

- a. entry into a building on the adjoining land;
- b. the use of the adjoining land for any other work or activity other than that described on the permit;
- c. the storage of materials or equipment, or the parking of vehicles, on the adjoining land; and
- d. an exemption to any person from complying with other City by-laws.

Article 4 - Permit Application

710.4.1 Form - with Chief Building Official

To obtain a permit, the owner shall file a complete application with the Chief Building Official on a form prescribed by the Chief Building Official.

710.4.2 Information requirements

An application for a permit must include the following:

- a. the name, address, and telephone number of all contractors that will carry out the proposed work for which entry is required on the adjoining land;
- b. the nature of the proposed work that requires use of the adjoining land and the proposed use of the adjoining land, including what equipment will be used, if and how the adjoining land will be distressed, and whether any nuisances will result from the proposed use of the adjoining land (for example, dust, fumes, noise, or restricted access);
- c. the proposed attenuating measures to control each of the nuisances identified under Section 710.4.2 (b);
- d. an estimate of the time that the proposed work will require use of the adjoining land;
- e. the days and times that entry will be required;
- f. the proposed remediation measures required to bring the adjoining land, in so far as is practicable, to its original condition;
- g. an estimate of the time required to do the remediation work described in Section 710.3.2 (f) (which estimate will be considered for purposes of enforcement);
- h. a signed form acknowledging the permit holder's obligation to:
 - i. use the adjoining land only to the extent necessary to carry out the work on the adjoining land as outlined in the permit;
 - ii. not use the adjoining land for any other purpose, including for the storage of materials or equipment and the parking of vehicles;
 - iii. provide a security deposit and agree to its forfeiture if deemed necessary by the Chief Building Official to comply with the owner's obligations to restore the adjoining land and provide compensation for damages;
 - iv. provide at least twenty-four hours' notice in writing to the occupant of the adjoining land before any contractor enters the adjoining land;
 - v. systematically mitigate all nuisances with respect to the use of the adjoining land to the extent practicable;
 - vi. restore the adjoining land to its original condition and provide compensation for any damages caused by the entry or by anything done on the adjoining land to the satisfaction of the Chief Building Official;
 - vii. without limiting Section 710.4.2 (vi), the permit holder shall indemnify and save harmless the City and owner or occupier of adjoining land from any and all damages to people or property as a result of anything done by the permit holder or the permit holder's contractors, employees and agents on the adjoining land to the extent allowable by law; and
 - viii. obtain any other permits required, including building permits, if applicable, and adhere to any other bylaws, including

- but not limited to the Noise Bylaw (City of Woodstock Municipal Code Chapter 825 - Noise); and
- ix. adhere to all other applicable federal, provincial and municipal legislation and regulations that apply;
 - x. maintain, and, if applicable, in the case of a non-commercial permit holder require a contractor to maintain, third party bodily injury and property damage insurance, as described in Section

710.4.3 Insurance – minimum requirements

A certificate of insurance, satisfactory to the Chief Building Official in consultation with the Clerk or designate, for the third party bodily injury and property damage insurance with a limit of not less than \$1,000,000, or as increased under Section 710.4.3, that is applicable throughout the term of the permit; as follows:

- a. from the permit holder;
- b. from a contractor retained by a permit holder, where the permit holder's interest in the property is insured under a personal liability insurance policy, to carry out all or part of the proposed work on the adjoining land;
- c. in the case of a permit holder, where the permit holder's interest in the property cannot be insured under a personal liability insurance policy, and in the case of a contractor as described in Section 710.4.3 (b):
 - i. the insurance policy shall be a commercial general liability insurance policy with a limit of not less than \$1,000,000, per occurrence, or as increased under Section 710.4.3 (d), of third party bodily injury and property damage coverage; and
 - ii. the insurance policy shall include both the City and the owner of the adjoining land, as an additional insured and include a cross liability clause; and
- d. in all cases, the requirement of a minimum limit of \$1,000,000 may be increased for a specific permit, as decided by the Chief Building Official in consultation with the Clerk or designate.

710.4.4 Application fee

The permit application fee shall be \$150.

710.4.5 Notice - served

The notice required under Section 710.4.2 (iv) 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 fifth business day after it is mailed.

710.4.6 Fee - non-refundable

The permit application fee is non-refundable.

Article 5 - Notice To Adjoining Landowner

710.5.1 From Chief Building Official - application complete

After receiving a completed application, the Chief Building Official shall notify the owner of the adjoining land in writing that a permit has been requested to enter the adjoining land, and the notice shall provide all of the relevant information, set out in Section 710.4.2, as determined by the Chief Building Official.

710.5.2 To Chief Building Official - submission of conditions

The owner of the adjoining land may, within ten business days of the date specified in the notice, make a submission to the Chief Building Official to provide details of any circumstances that may be considered by the Chief Building Official in establishing the conditions of the permit.

710.5.3 Submission of conditions to entry - deadline extension

The Chief Building Official may extend the submission time under 710.5.2 for not more than ten business days.

710.5.4 Copy of permit - to adjoining owner - police

The Chief Building Official shall provide the owner of the adjoining land and to the Woodstock Police Service with a copy of any permit or renewal of a permit that applies to the adjoining land.

Article 6 - Permit Issuance - Renewal - Revocation

710.6.1 Security deposit - prior to issue

The security deposit, required under Article 7, shall be submitted before a permit is issued.

710.6.2 Right of entry - times set out

A permit issued under this Chapter shall indicate the period and times during which the right of entry may be exercised, and this period shall not commence earlier than five business days from the date of issuance.

710.6.3 Additional conditions - set out

The permit shall also set out any additional conditions, as determined by the Chief Building Official that reasonably relate to the right of entry (for example the protection of a particular plant).

710.6.4 Renewal of permit - before expiry - application

The permit holder or owner, if not the permit holder, may apply to the Chief Building Official for a renewal of the permit before the expiry date of the right of entry under the current permit.

710.6.5 Application - requested - notice to adjoining owner

After a complete application for a permit or a renewal of a permit is received, the Chief Building Official shall notify the owner of the adjoining land in writing that such an application has been requested by the applicant.

710.6.6 Adjoining owner - submission of candidates

The owner of the adjoining land may, within ten business days from the date specified in the notice, make a submission to the Chief Building Official providing details of any circumstances that may be considered by the Chief Building Official in reviewing the application.

710.6.7 Renewal granted - conditions

If a renewal is granted, it shall deem the existing permit to continue for the period specified in the approval and may provide that the right of entry is subject to any existing conditions or additional conditions as established by the Chief Building Official.

710.6.8 Revocation - for non-compliance

The Chief Building Official may revoke a permit or deny the renewal of a permit if there is non-compliance with any of the permit conditions.

710.6.9 Revocation - restitution requirements

If a permit is revoked or is not renewed, the permit holder shall, in so far as is practicable, restore the adjoining land to its original condition and provide compensation for any damages caused by the entry or by anything done on the adjoining land, to the satisfaction of the Chief Building Official.

Article 7 - Security Deposit

710.7.1 Low-impact work - fee

The security deposit for a permit for low-impact work is \$500.

710.7.2 High impact work - fee minimum

The minimum security deposit for a permit for high-impact work is \$2,000.

710.7.3 Fee - above minimum - determination of

The Chief Building Official shall determine the amount of the security deposit required for a permit for high-impact work above the minimum amount set out in Section 710.7.2 and shall base this amount on the information in the permit application, the inspection by officers, any submissions by the owner of the adjoining land, and any other information deemed reasonable by the Chief Building Official for this purpose.

710.7.4 Adjoining owner - submission - security deposit

If the owner of the adjoining land makes a submission, under Section 710.5.2, that requests a review of the amount of the security deposit established by the

Chief Building Official, the submission shall include a detailed estimate in a form acceptable to the Chief Building Official.

710.7.5 Amount - established - deemed final

The security deposit amount established by the Chief Building Official after any review of a submission under Section 710.5.2, shall be deemed final.

710.7.6 Certified cheque payable to City

The security deposit for a permit shall be in the form of a certified cheque made payable to the City.

710.7.7 Deposit held sixty days - low impact work

In the case of low-impact work, the City may hold the security deposit for no more than sixty days after the completion of the work requiring entry on the adjoining land, the completion of any remediation work on the adjoining land, the expiry of the right of entry under the permit, and the completion of any action by the City, whichever is later, to ensure compliance with the permit holder's obligations.

710.7.8 Deposit held - high impact work

Despite Section 710.7.7, and to ensure compliance with the permit holder's obligations, including, unseen damages, in the case of high-impact work, the security deposit shall be held until the later of:

- a. one year after the completion of the work requiring entry on the adjoining land and the completion of any remediation work on the adjoining land, whichever is later; and
- b. sixty days after the completion of any action by the City.

710.7.9 Non-compliance - funds to adjoining owner

If within the period in Section 710.7.7 or after the period the Chief Building Official determines that the permit holder has not complied with the requirements to restore the land and pay compensation for damages as required under Section 710.3.2 (e), the City may provide the owner of the adjoining land with all or part of the security deposit and return any remainder to the permit holder.

710.7.10 Non-compliance - consent to release funds

The owner of the adjoining land and the permit holder may on consent authorize the City to provide the owner of the adjoining land with all or part of the security deposit at a date earlier than that provided under Sections 710.7.7 and 710.7.8.

Article 8 - Inspection

710.8.1 At all reasonable times - by City

An officer, other employee, or agent of the City may enter on lands 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 condition of a permit issued under this Chapter;
- b. a direction or order of the City made under this Chapter or the *Municipal Act, 2001*.

710.8.2 Information - testing permitted

A person carrying out an inspection under Section 710.8.2 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.

Article 9 - Orders to Comply

710.9.1 Contravention - found

An officer who finds a contravention of this Chapter may make one or more orders requiring discontinuance of the contravening activity.

710.9.2 Served personally - registered mail

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 fifth business day after it is mailed.

710.9.3 Served to occupant and property owner

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.

710.9.4 Address unknown - placard posted - conspicuous

If the address of the owner is unknown or the City is unable to effect service on the owner or occupant under Section 710.9.2, 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.

710.9.5 Health and safety concern - service immediate

If the delay necessary to give an order under the preceding Sections 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.

Article 10 - Remedial Action

710.10.1 Failure to comply - done by City - owner's expense

If a person fails to comply with an order to do work to correct a contravention of this Chapter, the Chief Building Official, or persons acting upon his/her instructions, may enter the lands at any reasonable time for the purposes of doing the things described in the order at the person's expense.

710.10.2 Security deposit - insufficient - cost recovered as taxes

If the security deposit is not sufficient to cover the City's costs, under section 446 of the *Municipal Act, 2001*, c. 25 the City may recover the costs of the remedial work, or the costs may be added to the tax roll and collected in the same manner as property taxes.

Article 11 - Enforcement

710.11.1 Fine - for contravention

Every person who contravenes any of the provisions of this Chapter is guilty of an offence and shall, upon conviction thereof, forfeit and pay a penalty of not more than \$10,000, exclusive of the costs and every such fine is recoverable under the *Municipal Act 2001*, as amended.

710.11.2 Fine - for contravention - terms of conditions

Every person who fails to comply with a term or condition of a permit under this Chapter is guilty of an offence and shall, upon conviction thereof, forfeit and pay a penalty of not more than \$10,000, exclusive of the costs and every such fine is recoverable under the *Municipal Act 2001*, as amended.

710.11.3 Fine - for contravention - failure to permit entry

Any person who does not permit entry by a person under the authority of a permit issued under this Chapter, except in the case of a non-compliance with the conditions in Section 710.3.2 or 710.3.3 or the permit, is guilty of an offence and shall, upon conviction thereof, forfeit and pay a penalty of not more than \$10,000 exclusive of the costs and every such fine is recoverable under the *Municipal Act, 2001*, as amended.

710.11.4 Separate offence - daily

Each day a violation of this Chapter continues shall constitute a separate and distinct offence under this Chapter.

Article 12 - Enactment

710.12.1 Effective date

This Chapter shall become effective as of third and final reading. By-law 8697-11, July 14, 2011.