

City of Markham Ontario



(No Schedule/Attachment)



By-law 2014-116

A By-law to Permit Access onto Adjoining Lands for Maintenance
(Right of Access for Maintenance By-law)

The Council of The Corporation of the City of Markham hereby enacts as follows:

Whereas Section 132 of the Municipal Act, 2001, S.O., c.25, as amended, provides that a municipality may pass a by-law 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 structures situated on the land of the owner or occupant.

Now therefore the Council of The Corporation of the City of Markham hereby enacts as follows:

1.0 Short Title

This by-law may be cited as the “*Right of Access for Maintenance By-law*”.

2.0 Definitions

“Adjoining Lands” means the lands directly adjacent to the Owner’s Lands which the Owner would like access to or has accessed for the purpose of conducting Maintenance on the Owner’s Lands;

“Adjoining Lands Owner” means the registered owner of the Adjoining Lands according to the City’s property tax assessment rolls;

“Buildings” means any and all buildings and structures and fixed improvements;

“Owner” includes a lawful owner or occupant of land, including his or her authorized agents or employees, that is requesting access to the Adjoining Lands or has accessed the Adjoining Lands to perform Maintenance;

“Owner’s Lands” the lands owned or occupied by the Owner directly adjacent to the Adjoining Lands;

“Permitted Access Time” means the hours of 9 a.m. to 5 p.m., Monday through Saturday, Public Holidays excluded;

“Maintenance” shall include (a) maintenance and upkeep; 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 City by-law; and (b) 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 or other structure.

3.0 Right of Entry

3.1 An Owner may enter Adjoining Lands, at any point during the Permitted Access Time as permitted in accordance with the restrictions contained in this By-Law,

for the purpose of conducting Maintenance on the Owner's Lands but only to the extent necessary to carry out the repairs or alterations:

- (a) If the Adjoining Lands Owner has given prior consent for this entry; or
- (b) In accordance with the requirements and conditions of this By-Law.

4.0 Notice Requirement

- 4.1 Any Owner wishing to access Adjoining Lands pursuant to this By-Law shall provide the Adjoining Lands Owner with at least forty-eight (48) hours' prior written notice of his or her intention to enter the Adjoining Lands to conduct Maintenance. The notice shall specify and include the following: (a) when entry will be effected; (b) the length of time that it will be necessary to enter upon the Adjoining Lands and the hours during which entry will be effected, which time period shall conform with the requirements in Subsection 5.11 and 5.12; (c) a Certificate of Insurance from the Owner's insurer confirming that the insurance requirements set out in Subsection 5.2 have been met; (d) a description of the work proposed to be conducted on the Adjoining Lands; and (e) contain a signed statement by the Owner that he or she covenants and agrees to comply with the requirements contained in this By-Law and that his or her entry and work on the Adjoining Lands shall be in accordance with the description of such entry and work as contained in the notice. In the event that the Owner is an individual, the signature of the Owner on the signed statement in Subsection 4.1 (e) must also be signed by a witness to the Owner's signature.
- 4.2 Notice to the Adjoining Lands Owner to be given under this By-Law shall be in writing and shall be given by either personal delivery to a person ordinarily residing at the Adjoining Lands or by sending the notice by registered mail to a mailbox situated on the Adjoining Lands. In the event that the Adjoining Lands are vacant, notice may be delivered by registered mail to the address of the Adjoining Lands Owner as indicated on the City's property tax assessment rolls.
- 4.3 Any notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by registered mail, shall be deemed to have been validly and effectively given and received five days after it was sent. The 48 hour notice period in Subsection 4.1 shall commence on the date the notice was deemed to have been validly and effectively given and received pursuant this Subsection 4.3.

5.0 Requirements During Access

- 5.1 Any Owner accessing onto Adjoining Lands pursuant to this By-Law must display or, upon request, produce proper identification during his or her access onto the Adjoining Lands.
- 5.2 Any Owner entering onto Adjoining Lands pursuant to this By-Law shall take out and keep in full force and effect throughout the term of its entry onto the Adjoining Owner's Lands Commercial General Liability Insurance underwritten by insurers licensed to conduct business in the Province of Ontario with a limit of liability of not less than One Million Dollars (\$1,000,000.00) per occurrence. The policy shall name the Adjoining Lands Owner as an additional insured and shall contain a provision for cross liability in respect of the named insured.

In the event that the Owner retains a contractor to enter the Adjoining Lands pursuant to this By-Law, the Owner shall ensure that the contractor takes out and keeps in full force and effect throughout the term of its entry onto the Adjoining Owner's Lands Commercial General Liability Insurance underwritten by insurers licensed to conduct business in the Province of Ontario with a limit of liability of not less than Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall name the Adjoining Lands Owner as an additional insured and shall contain a provision for cross liability in respect of the named insured.

In the event that the Owner retains a contractor to enter the Adjoining Lands pursuant to this By-Law, the Owner shall ensure that the contractor takes out and keeps in full force and effect throughout the term of its entry onto the Adjoining Lands a valid Clearance Certificate issued by the Workplace Safety and Insurance Board of Ontario applicable to the contractor's business.

- 5.3 Any Owner entering onto Adjoining Lands pursuant to this By-Law shall comply with the provisions of all applicable laws, rules and regulations, including without limitation, any applicable federal and provincial legislative enactments, and municipal by-laws with respect to its use of the Adjoining Owner's Lands.
- 5.4 Failure of an Owner to comply with the requirements set out in Section 5.0 will result in the immediate revocation of its authorization to enter onto the Adjoining Lands and is a contravention of this By-Law.
- 5.5 The Owner or his or her contractors, employees or agents entering onto Adjoining Lands, shall not create any hazards or allow any hazards to exist on the Adjoining Lands.
- 5.6 Nothing in this By-Law authorizes entry into any Buildings situated on the Adjoining Lands.
- 5.7 Nothing in this By-Law authorizes entering onto the Adjoining Lands with any vehicles.
- 5.8 Nothing in this By-Law authorizes the use of the Adjoining Lands for any other work or activity other than as described in the notice.
- 5.9 Nothing in this By-Law authorizes the storage of materials or equipment on the Adjoining Lands.
- 5.10 Nothing in this By-Law exempts any person from complying with the City's other By-Laws.
- 5.11 Nothing in this By-Law authorizes any person to enter onto Adjoining Lands outside of the Permitted Access Time.
- 5.12 Nothing in this By-Law authorizes any person to enter onto Adjoining Lands for a total period of more than five (5) days in each calendar year.
- 5.13 Nothing in this By-Law authorizes entry onto Adjoining Lands by any person under the age of eighteen (18) years

6.0 Restoration of Adjoining Land

- 6.1 Any Owner who has accessed Adjoining Lands pursuant to this By-Law shall, in so far as is practicable, restore the adjoining land to its original condition at the Owner's sole cost and expense, which shall include repairing any damage to the Adjoining Lands directly or indirectly caused by or directly attributable to the entry by the Owner onto the Adjoining Lands pursuant to this By-Law and shall provide compensation for any damages directly or indirectly caused by or directly attributable to the Owner's entry or by anything done by the Owner on the Adjoining Lands.

7.0 Responsibility for Claims

- 7.1 The Owner shall assume sole risk and responsibility for personal injury or death of any person and damage to any property arising out of or in any way connected with, or that would not have occurred but for the Owner's entry onto the Adjoining Lands and the Owner shall hold the Adjoining Lands Owner harmless for any such claims and damages.
- 7.2 The Adjoining Lands Owner shall have no liability of any nature with respect to the Owner's entry onto the Adjoining Lands, except with respect to claims arising out of or in any way connected, directly or indirectly, to the gross negligence or wilful misconduct of the Adjoining Lands Owner or those whom the Adjoining Lands Owner is responsible for at law.

8.0 Offences

- 8.1 Every person who contravenes any provision of this by-law is guilty of an offence and is liable, upon conviction, to a maximum fine as established pursuant to the Provincial Offences Act, R.S.O.,1990, c.P.33.
- 8.2 No person shall hinder, obstruct, or attempt to hinder or obstruct, any person who is exercising a right of entry under Section 3.0 of this By-law.

9.0 Interpretation

- 9.1 Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine.
- 9.2 The headings inserted in this by-law are for convenience only.

10.0 Severability

- 10.1 Notwithstanding that any section or sections of this by-law, or any part, or any part thereof, may be found by any court of law to be invalid or beyond the power of the Council to enact, such clause, Schedule or parts thereof shall be deemed to be severable, and all other clauses and Schedules of this by-law or parts thereof, are separate and independent therefrom and enacted as such.

11.0 Interpretation

- 11.1 The provisions of the Legislation Act, 2006, shall apply to this by-law.

12.0 Force and Effect

- 12.1 This by-law shall come into force and effect on the date of enactment and passage.

Read a first, second, and third time and passed on June 24, 2014.

Kimberley Kitteringham
City Clerk

Frank Scarpitti
Mayor