



City of  
**Peterborough**

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**To:** Members of the General Committee

**From:** David J. Potts, Commissioner, Legislative Services

**Meeting Date:** November 6, 2023

**Report:** Inspection By-law, Report LSMLES23-001

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## **Subject**

A report to recommend that Council pass an Inspection By-law.

## **Recommendation**

That Council approve the recommendation outlined in Report LSMLES23-001, dated November 6, 2023 of the Commissioner, Legislative Services as follows:

That Council pass an Inspection By-law in the form of by-law attached as Appendix A to Report LSMLES23-001.

## **Executive Summary**

- The Municipal Act, 2001 permits municipalities to pass by-laws providing for the entry on land for purposes of inspection. This report recommends an Inspection By-law.

## **Background**

On January 1, 2007, the Municipal Act, 2001 was amended by Bill 130, Municipal Statute Law Amendment Act, 2006 (Bill 130) to repeal and replace Part XIV of the Municipal Act, 2001 dealing with various enforcement matters. Bill 130 carried over certain specifically prescribed powers of entry for purposes of inspection and enacted section 436 of the Municipal Act, 2001 which now grants to municipalities a general 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 municipal by-laws, directions, orders, licence conditions and court orders are being complied with.

Prior to the amendment, a municipality did not have a power to enter property to inspect to determine compliance with a by-law under the Municipal Act, 2001 unless the power was specifically prescribed by that Act. Section 436 only grants the power to pass the by-law. A municipality must pass a by-law granting to itself the powers contemplated by section 436.

The authority to enter on land does not include the authority to enter any room or place actually used as a dwelling unless such entry is pursuant to the consent of an informed occupant or pursuant to other conditions specifically set out in the Municipal Act, 2001. In any event, entry to a dwelling is almost never required for the purpose of an inspection under a Municipal Act, 2001 by-law. Rather, almost all inspections under a Municipal Act, 2001 by-law requiring entry onto land will involve entry onto exterior yards. However, if ever entry to a room or place actually used as a dwelling is relevant, Officers will follow the process prescribed by the Municipal Act, 2001.

It is also proposed that Council's current delegation of authority to appoint municipal law enforcement officers be moved to the proposed Inspection By-law.

Appendix A is a proposed Inspection By-law.

## **Strategic Plan**

The recommendation is consistent with the strategic pillar, Governance and fiscal sustainability, and its strategic priority, supporting the review and update of City By-laws to make them effective and efficient to meet the needs of the growing City of Peterborough.

## **Engagement and Consultation**

Legal Services prepared the draft Inspection By-law.

## **Budget and Financial Implications**

There are no budget or financial implications directly related to the recommendation in this report.

## **Attachments**

Appendix A: Proposed Inspection By-law

Submitted by,

David J. Potts, B.A., LL.B., C.S., Commissioner, Legislative Services,  
City Solicitor

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**Appendix A: Proposed Inspection By-law****The Corporation of the City of Peterborough****By-Law Number 23-XXX**

Being a By-law providing powers of entry for the purpose of inspection

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**Whereas** the **Municipal Act, 2001**, section 436 authorizes a municipality to pass by-laws providing for the entry on land at any reasonable time for the carrying out of an inspection for certain prescribed purposes.

**Now therefore**, The Corporation of the City of Peterborough by its Council hereby enacts as follows:

**Short Title**

1. This By-Law may be referred to as the "Inspection By-law".

**Interpretation**

2. Unless otherwise stated:
  - a) a reference to a statute or regulation refers to a statute or regulation of Ontario as it may be amended or replaced from time to time;
  - b) a reference to a by-law refers to a by-law of the City as it may be amended or replaced from time to time; and
  - c) a reference to a section, paragraph, clause or schedule is a reference to this By-law's section, paragraph, clause or schedule.
3. The headings in this By-law are for convenience only and do not form part of this By-law.
4. If any part of this By-law is determined to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.

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5. In the event of any inconsistency between a provision of this By-law and of any other by-law related to entry and inspection, the provision that more effectively establishes a right to enter and to inspect prevails to the extent of the inconsistency.
  6. This By-law does not restrict the City's or an Officer's rights conferred by the **Municipal Act, 2001** or by any other Act or regulation respecting entry to land, Buildings or Dwellings.
  7. In this By-law:
    - a) "Building" means any structure consisting of a roof supported by walls or columns which is used or capable of being used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment.
    - b) "By-law" means a by-law of the City pursuant to the **Municipal Act, 2001**.
    - c) "City" means The Corporation of the City of Peterborough or the geographic area of the City of Peterborough as the context requires.
    - d) "Council" means the City's Council.
    - e) "Dwelling" means any room, place or part of a Building actually being used as a dwelling by an individual.
    - f) "Manager" means any of the following City employees:
      - i) Chief Building Official;
      - ii) Deputy Chief Building Official;
      - iii) Manager, Municipal Law Enforcement Services;
      - iv) Fire Chief;
      - v) Deputy Fire Chief;
      - vi) Chief Fire Prevention Officer.
    - g) "Officer" means:
      - i) the Manager;
      - ii) each person from time to time appointed as a municipal law enforcement officer to enforce a By-law;
      - iii) each assistant to the Fire Marshal employed by the City; and

- iv) a police officer employed by Peterborough Police Service, the Ontario Provincial Police or the Royal Canadian Mounted Police.

### **Entry and Inspection**

8. Subject to section 9, an Officer may enter on land and into a Building at any reasonable time for the purpose of carrying out an inspection to determine whether or not any of the following is being complied with:
  - a) a By-law;
  - b) a direction or order by or on behalf of the City made under the **Municipal Act, 2001** or made under a By-law;
  - c) a condition of a licence issued under a By-law;
  - d) an order made under sections 431 of the **Municipal Act, 2001**.
9. An Officer exercising a power of entry may not enter or remain in a Dwelling except pursuant to section 437 of **the Municipal Act, 2001**.
10. An Officer exercising a power of entry may:
  - a) require from any person 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 from any person information concerning a matter related to the inspection; and
  - d) alone or in conjunction with a person who, in the Officer's opinion, possesses special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

### **Offences**

11. A person is guilty of an offence in each of the following circumstances:
  - a) The person refuses or neglects to produce for inspection any document or thing required by an Officer pursuant to paragraph 10.a);
  - b) The person refuses or neglects to provide information required by an Officer pursuant to paragraph 10.c).

### **Appointment of Municipal Law Enforcement Officers**

12. The Commissioner, Legislative Services, may pass by-laws appointing or revoking the appointment of municipal law enforcement officers as Officers for the purposes of clause 7.g)ii).
13. Parks and Facilities By-law 19-074 is amended by deleting its section 19.1 provided that any appointment of a municipal law enforcement officer thereunder remains in effect until revoked pursuant to section 12.

### **General**

14. No proceeding for damages or otherwise may be commenced against the City, a member of Council or an officer, employee or agent of the City or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this By-law or for any alleged neglect or default in the performance in good faith of the duty or authority.

By-law passed this 27<sup>th</sup> day of November, 2023.

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Jeff Leal, Mayor

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John Kennedy, City Clerk