

CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE

BY-LAW NO. 767B-08

A BY-LAW TO AMEND BY-LAW 767-77 TO ELIMINATE INFLOW AND INFILTRATION OF STORM WATER INTO THE SANITARY SEWER AND TO ESTABLISH A SYSTEM OF INSPECTIONS AND FINES FOR OFFENCES AND TO EBATE PUBLIC NUISANCES IN REGARD TO STORM WATER INFLOW AND INFILTRATION OF THE SANITARY SEWER OF THE TOWN OF NIAGARA-ON-THE-LAKE.

WHEREAS By-law No. 767-77, as amended by By-law No. 767A-97, prohibits all flows from downspouts, weeping tiles and sump pumps from discharging into the sanitary sewer;

AND WHEREAS Section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under this or any other Act;

AND WHEREAS Section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

AND WHEREAS Subsection 11(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides *inter alia* for spheres of jurisdiction in which upper-tier and lower-tier municipalities may pass by-laws respecting the spheres of sanitary sewage collection, storm water collection and other drainage from land, and drainage and flood control exclusive of storm sewers;

AND WHEREAS Item 4, "Public Utilities" in the Table to Subsection 11(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a lower-tier municipality in the Region of Niagara may pass by-laws respecting matters within the sphere of jurisdiction for sanitary sewage collection;

AND WHEREAS Section 128 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council are or could become public nuisances;

AND WHEREAS in the opinion of the Council of the Corporation of the Town of Niagara-on-the-Lake, the inflow and infiltration of storm water into the sanitary sewer by illegal connections to the sanitary sewer is or could become a public nuisance;

AND WHEREAS the inflow and infiltration of storm water into the sanitary sewer due to illegal connections creates a public nuisance by significantly increasing the flow of storm water in the sanitary sewer. This increased flow may result in surcharging during storm events and which may, in turn cause basement flooding and overflows at pumping stations thereby adversely affecting the environment;

AND WHEREAS Section 425 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits a municipality to pass by-laws providing that a person who contravenes a by-law of the municipality is guilty of an offence;

AND WHEREAS Section 429 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits a municipality to establish a system of fines for offences under a by-law of the municipality passed under this Act;

AND WHEREAS Section 431 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that if any by-law of a municipality is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted and requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate;

AND 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, where land is defined therein to include buildings, at any reasonable time for the purpose of carrying out an inspection to determine whether or not a by-law, direction, order and/or condition are being complied with;

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 Section 439 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a provincial judge or justice of the peace may issue a warrant authorizing a person named in the warrant to enter and search a building, receptacle or place for the evidence specified in the warrant if he or she is satisfied by information on oath that there is reasonable grounds to believe an offence has been committed and entry will afford evidence relevant to the commission of the offence;

AND WHEREAS Section 444 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits a municipality to make an order requiring the person who contravenes a by-law or who caused or permitted the contravention or owner or occupier of the land on which the contravention occurred to discontinue the contriving activity;

AND WHEREAS Section 96 the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits a municipality to exercise powers under the "drainage and flood control" sphere of jurisdiction in relation to flood control in the municipality for the purpose of preventing damage to property in the municipality as a result of flooding;

AND WHEREAS Section 97 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may enter on land, at reasonable times, to inspect the discharge of any matter into a land drainage system of any person and may conduct tests and remove samples for this purpose;

AND WHEREAS the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, regulates and controls the location, construction, repair and renewal, or alteration of plumbing and materials to be used in the construction thereof, and further provides for the inspection of said plumbing works by inspectors duly appointed by municipal by-law;

AND WHEREAS Section 92 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may prohibit or regulate the discharge of any matter into a sewage system and provide in a by-law that a person who contravenes the by-law is guilty of an offence and is liable on first conviction to a fine of not more than \$10,000.00 and on any subsequent conviction, to a fine of not more than \$25,000.00;

AND WHEREAS Section 92 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may prohibit or regulate the discharge of any matter into a sewage system and provide in a by-law that a corporation that contravenes the by-law is guilty of an offence and is liable on first conviction to a fine of not more than \$50,000.00 and on any subsequent conviction, to a fine of not more than \$100,000.00;

AND WHEREAS it is deemed necessary to pass a by-law to abate public nuisances and to give Council the authority to establish a system of fines for offences to be levied against persons who contravene this by-law;

AND WHEREAS in the opinion of the Council of the Town of Niagara-on-the-Lake, the disconnection of downspouts, weeping tiles and sump pumps as set out in By-law 767-77 as amended by By-law 767A-97, have proven to be insufficient for the purpose of locating illegal connections and ensuring compliance.

NOW THEREFORE THE COUNCIL OF THE TOWN OF NIAGARA-ON-THE-LAKE enacts as follows:

1. That the following definitions be added:

“Chief Building Official” means the person appointed by the Corporation of the Town of Niagara-on-the-Lake (the “Town”) to the position of the Chief Building Official, and any employee, agent, contractor, inspector, water operator and/or wastewater operator of the Town who acts at the direction of the Chief Building

Official, in the enforcement of this By-Law and any other statutes referred to in this By-Law, and all persons authorized at the direction of the Chief Building Official for the purposes of exercising the powers and duties of the Chief Building Official.

“Connection” – for the purposes of this By-law shall mean any part or those parts of any drain or system of drains, including foundation drains, leading directly to a sewer work, and includes connections of downspouts, storm water leaders, sump pumps, weeping tiles and catch basins.

“Illegal connection” – for the purposes of this By-law shall mean any connection which allows storm water to enter the sanitary sewer system.

“Owner” – for the purposes of this By-law shall mean the registered owner of the lands in question and any person, firm or corporation, whether alone or with others, that has the right to possess or occupy the lands or actually does possess or occupy the lands including a lessee.

“Person” – for the purposes of this By-law shall include an individual, association, partnership, corporation, municipality, provincial or federal agency, or an agent or employee thereof.

“Sewage” – for the purposes of this By-law shall mean any one, or a combination of domestic sanitary sewage and/or water borne waste, and/or non-domestic sanitary sewage and/or water borne waste, discharged from residences, businesses, recreational facilities, institutions or industry; including the unintentional and/or unauthorized inflow or infiltration of storm water.

“Sewer work” – for the purposes of this By-law shall mean any and all buildings, structures, equipment, appurtenances, devices, conduits, underground pipelines, municipal sewer laterals, outlets, and related installations and other works of the Town, designed for the collection and transmission of sewage and includes lands over which an easement or consent has been granted or lands appropriated for such purpose and use.

“Storm water” - for the purposes of this By-law shall mean surface water, rain water, water from other natural precipitation, water from melting snow and ice, swimming pool drain water, uncontaminated water carried in underground drains and groundwater.

"Study area" – for the purposes of this By-law shall mean properties bounded by the following: Regent Street to Nassau Street and Queen Street to William Street (including Hampton Court).

2. That clauses 7 and 8 be deleted from By-law 767-77 and replaced with the following:

7. **ILLEGAL CONNECTIONS**

The owner of any building or premises which has an illegal connection to the sanitary sewer of the Town shall, at their expense, disconnect such illegal connection from the sanitary sewer within thirty (30) calendar days after the Town has sent notice to the owner by registered mail, to the owner's last known address, to make such disconnection.

8. **REMEDIAL ACTION PLAN**

Provided first that there will be funds available, as provided through the Town's annual budget deliberations, the following financial assistance, may be considered to provide owners in the study area with financial assistance for costs of repairs made to disconnect illegal connections from, and to reduce extraneous flow into the sanitary sewer:

- a. Full (100%) reimbursement to a maximum of \$500.00 funding for the removal of existing sump pump connections from the sanitary sewer; or
- b. Full (100%) reimbursement to a maximum of \$1,500.00 funding for the repair or replacement of a leaking private sewer lateral; or
- c. Full (100%) reimbursement to a maximum of \$2,500.00 funding for the removal of foundation drain connections to the sanitary sewer system.

9. **ACCESS**

The Chief Building Official may, upon production of identification enter in or upon any land, building or premises without a warrant, except buildings or premises being used as dwellings, at all reasonable times, and upon reasonable notice given, to disconnect illegal connections and to carry out such inspections (including camera inspections) and take such tests and samples as are necessary in order to assess whether a connection is an illegal connection.

10. POWER OF ENTRY RE: INSPECTION

- 10.a) The Chief Building Official or a member of the Niagara Regional Police Force 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:
- i. this by-law;
 - ii. a by-law of the Town, passed under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
 - iii. a direction or order of the Town made under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or this or any by-law of the Town passed under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
 - iv. a limitation or condition of access established by the Director of Public Works;
 - v. an order made under section 431 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
- 10.b) When carrying out an inspection pursuant to subsection (a) of this section, an officer or agent of the municipality or a member of the Niagara Regional Police Force may,
- i. require the production for inspection of documents or things relevant to the inspection;
 - ii. inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - iii. require information from any person concerning a matter related to the inspection; and
 - iv. 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 inspection.
- 10.c) A sample taken under subsection b) iv. of this section 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.

- 10.d) If a sample is taken under subsection b) iv. of this section 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.
- 10.e) A receipt shall be provided for any document or thing removed under subsection b) ii. of this section and the document or thing shall be promptly returned after the copies or extracts are made.
- 10.f) 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.

11. **INSPECTION PURSUANT TO AN ORDER**

- 11.a) The Chief Building Official or a member of the Niagara Regional Police Force may enter on lands for the purposes of carrying out an inspection pursuant to an order that is issued under Section 438 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.
- 11.b) An officer or agent of the municipality or a member of the Niagara Regional Police Force may apply for an order under Section 438 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, if:
 - i. an inspection is desired to determine whether or not the following are being complied with:
 - 1. this by-law;
 - 2. a by-law of the Town of Niagara-on-the-Lake, passed under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
 - 3. a direction or order of the Town of Niagara-on-the-Lake made under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or this or any by-law of the Town passed under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
 - 4. a limitation or condition of access established by the Director of Public Works;

5. an order made under section 431 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;
 - ii. the inspection is reasonably necessary; and
 - iii. the Town of Niagara-on-the-Lake has been prevented or is likely to be prevented from doing anything set out in Section 9 of this by-law.
- 11.c) An order under this section shall expire on the date stated in the order or thirty (30) days after the order is issued, whichever is earlier.
- 11.d) An order under this section may be executed only between 6:00 a.m. and 9:00 p.m. unless the order provides otherwise.
- 11.e) 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.
- 11.f) An order under this section may be issued on application without notice.

12. **SEARCH WARRANT AND SEIZURE OF EVIDENCE**

- 12.a) Except under the authority of a search warrant issued under Section 158 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, and/or Section 16 of the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended and/or Sections 439 and/or 386.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, for the purposes of enforcing this By-law, the Chief Building Official shall not enter any place or room actually used as a dwelling without requesting and obtaining the consent of the occupier, first having informed the occupier that the right of entry may be refused and entry made only under the authority of a search warrant.
- 12.b) A provincial judge or justice of the peace may issue a warrant authorizing a person named in the warrant to enter and search a building, receptacle, dwelling or place for the evidence specified in the warrant if he or she is satisfied by information on oath that there is reasonable ground to believe that,

- i. an offence under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or this or any by-law of the Town passed under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, has been committed; and
- ii. the entry into and search of the building, receptacle or place will afford evidence relevant to the commission of the offence.

12.c) In a search warrant, the provincial judge or justice of the peace may authorize the person named in the warrant to seize evidence specified in the warrant that there is reasonable ground to believe will afford evidence relevant to the commission of the offence.

12.d) A person who seizes something under a search warrant shall,

- i. give a receipt for the thing seized to the person from whom it was seized; and
- ii. bring the thing seized before the provincial judge or justice of the peace issuing the warrant or another provincial judge or justice to be dealt with according to law.

12.e) A search warrant may be executed only between 6:00 a.m. and 9:00 p.m. unless it provides otherwise.

12.f) Sections 159 and 160 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33 apply with necessary modifications in respect of any thing seized under this section.

13. **REFUSAL OF ENTRY**

Should any owner refuse entry to the Chief Building Official for the purposes of any compliance inspection, disconnection and/or other corrective action, under the provisions of this by-law, the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, or the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, the Town may, at its sole discretion exercised by the Chief Building Official, on the provision of fifteen (15) calendar days notice, discontinue the supply of water to the owner until such required inspection and corrective action or required work has been completed to the satisfaction of the Town.

14. **PROHIBITIONS AND OFFENCES:**

Every person who:

- a. being an owner, fails to control the discharge of storm water as required by this by-law; or
- b. maintains an illegal connection; or
- c. without a permit or prior authorization, connects or causes to be connected, any pipe or private lateral to any pipe or main or maintenance hole or other appurtenance of the sanitary sewer; or
- d. having been given appropriate and adequate notice, fails to provide access to a building or premises for the purpose of inspecting, maintaining, repairing, modifying or replacing a connection including appurtenances thereof; or
- e. having been given appropriate and adequate notice, fails to provide access to a building or premises for the purposes of inspecting and ensuring compliance with this by-law and taking corrective action as required, including access to a private sewer collection system, or to a private drainage system, and appurtenances thereof; or
- f. willfully hinders or interrupts, or causes to be hindered or interrupted; the Town or any of its officers, agents, workers or contractors, in the exercise of any of the powers or duties conferred by this by-law; or
- g. discharges or causes or permits to be discharged, either directly or indirectly, storm water into the sanitary sewer; or
- h. having been given appropriate and adequate notice, fails to disconnect an illegal connection from the sanitary sewer, within the prescribed number of calendar days;

Is guilty of an offence and upon conviction is liable to a fine, exclusive of costs, to the use of the Town, as set out in this by-law, pursuant to the provisions of the *Municipal Act, 2001*, S.O. 2001, c. 25, and/or the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as applicable.

15. **PENALTIES**

Except as otherwise provided in this by-law, and except as otherwise provided in the *Municipal Act, 2001*, S.O. 2001, c. 25,:

- a. Every person other than a corporation who contravenes any provisions of this by-law is guilty of an offence and on conviction is liable for every day or part thereof upon which such offence occurs and continues, to a fine, exclusive of costs, to the use of the Town, of not more than \$5,000.00 for a first offence and \$10,000.00 for any subsequent conviction.
- b. Every corporation which contravenes any provision of this by-law is guilty of an offence and on conviction is liable for every day or part thereof upon which such offence occurs or continues, to a fine, exclusive of costs, to the use of the Town, of not more than \$25,000.00 for a first offence and \$50,000.00 for any subsequent conviction.
- c. In this by-law, a subsequent conviction means a conviction for an offence which offence occurs after the date of conviction for an earlier offence under this by-law.

16. **ADDITIONAL ORDER TO DISCONTINUE OR REMEDY**

When a person has been convicted of an offence under this by-law the court in which the conviction has been entered or any court of competent jurisdiction thereafter, may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence, as provided for in Section 431 of the *Municipal Act, 2001*, S.O. 2001, c. 25. as amended, and/or the *Provincial Offences Act*, R.S.O. 1990, c.P.33.

17. **COSTS**

Any costs incurred by the Town in conducting inspections and subsequent reporting or in effecting any corrective action, shall be payable to the Town by such owner; and if not paid, the costs shall be added to the tax roll for the property and collected in the same manner and with the same priority as municipal taxes.

18. **FINANCIAL LOSS**

Every person who, by act, offence, default, neglect or omission; occasions any loss, cost, damage or injury to the sanitary sewer, or any part or appurtenance thereof, is liable to the Town for any and all financial losses and costs incurred as a result.

19. **LIABILITY**

Unpaid charges for financial losses and costs invoiced under Section 17, and unpaid costs invoiced for work carried out under this by-law, shall following a ninety (90) calendar day period, at the sole discretion of the Town, be added to the person's next sewer services billing, and shall be treated as a fee or charge for sewer services; or alternatively, at the sole discretion of the Town, such charges and costs may be added to the municipal tax roll of the property upon which or from which the financial losses and costs occurred, and collected in like manner and with the same priority as municipal taxes.

20. **OTHER REMEDIES**

No action or proceeding under provisions of this by-law shall preclude the Town of Niagara-on-the-Lake from the right and power to exercise any other right or remedy available to the Town of Niagara-on-the-Lake.

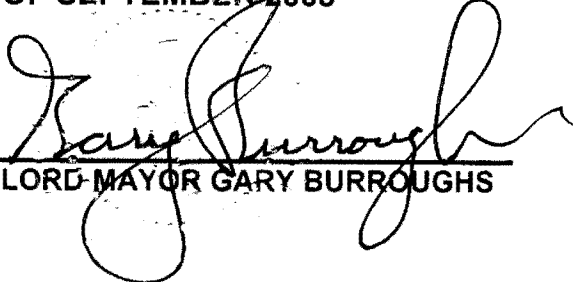
21. **ENFORCEMENT**

The administration and enforcement of this By-law shall be performed by the Chief Building Official. The Chief Building Official shall have all powers necessary to carry out the administration and enforcement of this By-law. Any person authorized or designated to enforce this By-law is authorized to enforce this By-Law pursuant to the provisions hereof, the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended or any successor thereof, the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended or any successor thereof and the *Building Code Act, 1992*, S.O. 1992, c. 23.

22. SEVERABILITY

In the event that any provision or part of this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 15th DAY
OF SEPTEMBER 2008


LORD MAYOR GARY BURROUGHS


TOWN CLERK HOLLY DOWD