

Office Consolidation

CITY OF WHITEHORSE

BYLAW 2009-17

A bylaw to delegate the authority for the City of Whitehorse to enter into easement agreements with property owners

WHEREAS section 265 of the *Municipal Act (R.S.Y. 2002)* provides that Council may pass bylaws for municipal purposes respecting dealings with any real or personal property or any interest in land, buildings or other improvements on land or personal property; and

WHEREAS section 179(1) of the *Municipal Act* provides that Council may by bylaw delegate any of its powers, duties or functions under the *Municipal Act* or any other Act or a bylaw, to a designated municipal officer, unless this or any other Act or bylaw provides otherwise; and

WHEREAS section 186(1) of the *Municipal Act* provides that Council may by bylaw establish one or more designated municipal officer positions and appoint persons to those positions, and delegate powers, duties, and functions to those persons; and

WHEREAS section 186(2) of the *Municipal Act* further provides that a designated municipal officer may delegate to another designated municipal officer or employee of the municipality a power, duty, or function given to the designated municipal officer under a bylaw or this Act or any other Act, unless prohibited by bylaw or this or any other Act.

NOW THEREFORE the Council of the municipality of the City of Whitehorse, in open meeting assembled, hereby ENACTS AS FOLLOWS:

SHORT TITLE

1. This bylaw may be cited as the “**Easement Authority Bylaw**”.
2. This easement authority bylaw shall apply to all land within the boundary of the City of Whitehorse. The said boundary shall be as defined in the *Municipal Act* of the Yukon Territory and may change from time to time, subject to amendment of the said Act.

DEFINITIONS

3. For the purposes of this bylaw, unless the context otherwise requires, certain terms and words are hereby defined as follows:
 - “CITY” means the corporation of the City of Whitehorse;
 - “COUNCIL” means the Council of the City of Whitehorse;
 - “DEVELOPMENT OFFICER” means a City employee appointed by Council to administer the requirements of the Zoning Bylaw or this bylaw;

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“EASEMENT” means a right of use for a particular purpose of a lot or parcel of land or a portion of a lot or parcel of land;

“LOT” means a parcel of land, including Crown land, which is legally defined either by registered plan or description;

“MUNICIPALITY” means the City of Whitehorse;

“PARCEL” means the aggregate of one or more areas of land described in a certificate of title or described in a certificate of title by reference to a plan registered in the Land Titles Office.

EASEMENT AGREEMENT REQUIREMENTS

4. Every easement agreement within the boundaries of the City of Whitehorse shall be made in accordance with the *Municipal Act*, the *Land Titles Act*, the Official Community Plan, the Zoning Bylaw, the Water and Sewer Bylaw and this or any other bylaw of the City.
5. The Development Officer shall obtain the following information in support of each proposed easement agreement:
 - (1) A current copy of the certificate of title for the lot or parcel affected by the easement agreement and copies of documents for any registered charges that may limit or restrict the use of the lot or parcel;
 - (2) A preliminary sketch plan of the proposed easement area which shall show at a suitable scale:
 - (a) a bold line indicating the boundaries of the subject easement and the area thereof;
 - (b) the location, boundaries and dimensions of the subject easement and dimensions of intersecting lot boundaries;
 - (c) the location and dimensions of all buildings on the affected lot or parcel, if any;
 - (d) the location, width and names of all highways on which the proposed easement abuts;
 - (e) the location of all registered easements or rights-of-way that adjoin or cross the lot or parcel;
 - (f) all surface water bodies within the lot or parcel;
 - (g) a symbol indicating north;
 - (h) the scale of the plan; and
 - (i) such other information as may be considered necessary by the Development Officer to determine the suitability of the land for the proposed easement area.

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6. An easement agreement shall not be considered by the Development Officer until all information required by this bylaw has been obtained, unless in the Development Officer's opinion, a decision can be made without all of the information.

ADMINISTRATIVE REVIEW

7. The Development Officer shall forward the easement agreement and supporting information to the departments of the City which are deemed appropriate by the Development Officer, for review and comment.
8. The Development Officer shall forward the easement agreement and supporting information to the Development Review Committee for review and comment.
9. The Development Officer may forward the easement agreement and supporting information to any Government of Yukon or Government of Canada Departments or First Nations that may be interested in matters relative to the land for review and comment.
10. Once the reviews have been completed, all comments shall be forwarded to the Development Officer.
11. The Development Officer shall forward the easement agreement, supporting information and referral comments to the Director of Development Services* and the City Manager for review and comment.
12. The Director of Development Services*, upon review of the easement agreement, supporting information and referral comments, shall make recommendations on the easement agreement to the Development Officer.

EASEMENT AGREEMENT DECISION PROCESS

13. In making a decision on whether to proceed with an easement agreement, the Director of Development Services* may consider any matter or factor which the Director of Development Services* deems relevant to the easement agreement, including, but not limited to the following:
 - (1) the referral comments submitted pursuant to this bylaw;
 - (2) the Official Community Plan and the Zoning Bylaw; and
 - (3) the suitability of the land for the proposed easement agreement, having due regard to:
 - (a) the proposed use;
 - (b) the existing and proposed uses of land in the vicinity of the proposed easement agreement;
 - (c) the topography of the parcel;
 - (d) the characteristics of the soil;
 - (e) the nature of surface and subsurface drainage;

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- (f) any potential hazard from flooding, unstable slopes, erosion and subsidence;
- (g) any potential contamination of air, water, or soil;
- (h) the proposed storage or use of flammable, explosive or radioactive material;
- (i) protection and enhancement of sensitive environmental areas and critical wildlife habitat;
- (j) protection of significant natural, historical and heritage features;
- (k) wildfire risk and fire management plans; and
- (l) any additional information as may be considered necessary by the Development Officer.

APPROVING AUTHORITY

- 14. Authority to make a decision on whether to proceed with an easement agreement is delegated to the Director of Development Services*. The Director of Development Services* may approve, approve with conditions, or refuse the easement agreement.
- 15. In the event that the Director of Development Services* is unwilling or unable to make a decision on whether to proceed with an easement agreement, he or she may refer the easement agreement to Council, and Council may approve, approve with conditions, or refuse the easement agreement.

PROCESS FOLLOWING APPROVAL

- 16. Once the easement agreement is approved, three copies of the Agreement shall be signed by the Mayor and the City Clerk.

REGISTRATION

- 17. Once the easement agreement has been signed it may be submitted by the Director of Development Services* for registration at the Land Titles Office.
- 18. Every easement agreement submitted for registration at the Land Titles Office shall be accompanied by and/or make reference to a plan of survey showing the location and dimensions of the easement area prepared by a Canada Lands Surveyor and registered at the Land Titles Office.

BYLAW SHALL PREVAIL

- 19. Where the provisions of this bylaw conflict with the provisions of any other bylaw of the City, the bylaw with the more stringent provisions shall prevail.

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SEVERABILITY

20. The invalidity of any section, clause, sentence or provision of this bylaw shall not affect the validity of any other part of this bylaw that can be given effect without such invalid part or parts.

COMING INTO FORCE

21. This bylaw shall come into full force and effect upon the final passing hereof.

FIRST and SECOND READING: April 14, 2009

THIRD READING and ADOPTION: April 27, 2009

ORIGINAL BYLAW SIGNED BY:

"Bev Buckway"

Bev Buckway, Mayor

"Robert I. Fendrick"

Robert I. Fendrick, CGA, City Clerk

Note:

Throughout the body of this bylaw, where an asterisk () appears the noted title was changed pursuant to Bylaw 2014-12 passed February 24, 2014.*