

# The Corporation of the Town of Essex

## By-Law Number 2210

Being a by-law to prohibit and regulate fortification and protective elements of land

**WHEREAS** Section 133 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, authorizes a municipality to regulate or prohibit excessive fortification and protective elements in respect of land and land use;

**AND WHEREAS** the excessive fortification of land or excessive protective elements may hinder lawful access by law enforcement officials and emergency services personnel;

**AND WHEREAS** the Council of The Corporation of the Town of Essex deems it necessary to enact a by-law to prohibit and excessive fortification and excessive protective elements being applied to land within the geographical boundaries of the Town of Essex;

**NOW THEREFORE** be it resolved that the Council of The Corporation of the Town of Essex hereby enacts as follows:

### 1.0 INTERPRETATION

- 1.1 This By-Law shall be referred to as the "Fortification By-Law".
- 1.2 References in this By-Law to any legislation or by-law means as may be amended or replaced from time to time and include any regulations thereunder.

### 2.0 DEFINITIONS

- 2.1 "**Appeals Committee**" means the committee that Council has delegated the authority and responsibility to conduct hearings for appeals under this By-Law.
- 2.2 "**Application**" means the erection, installation, extension or material alteration or repair of or application to Land and includes to Construct.
- 2.3 "**Building Code Act**" means the *Building Code Act, 1992, S.O. 1992, c. 23*.
- 2.4 "**Chief Building Official**" means the duly appointed Chief Building Official of The Corporation of the Town of Essex or his or her designate.
- 2.5 "**Construct**" or "**Construction**" means to do anything in the erection, installation, extension or material alteration or repair of a building or structure and includes the installation of a building unit fabricated or moved from elsewhere.
- 2.6 "**Council**" means the Council of The Corporation of the Town of Essex.
- 2.7 "**Emergency Services Personnel**" means any individual employed by a police service, fire service (including volunteer firefighters), or ambulance service in Ontario who is acting in accordance with the obligations imposed upon them (whether by statutory or common law duty) by their position and includes any person who is directed by emergency services personnel to do or refrain from doing anything and who acts on those directions.
- 2.8 "**Excessive Fortification**" means devices, barriers, or materials that are capable of unduly hindering, obstructing, or prohibiting lawful access to or from Land by an Officer or Emergency Services Personnel and includes but is not limited to:
  - a) The Application of steel plates, steel bars, bullet-proof shutters or heavy gauge wire mesh to window and other openings on any and all levels of any structures on Land;

- b) The Application of concrete block, brick, or other masonry or similar product to partially or completely obstruct or seal any doorway, window, or other exterior entrance or egress to Land;
- c) The Application of steel sheeting or plates or other similar products to the interior or exterior walls of Land such as to reinforce walls or create a secondary wall such as to protect against firearms, artillery, explosives, vehicle contact, sock, and the like;
- d) The Application of laminated glass or any other form of break resistant/proof or bullet resistant/proof material to windows or doors;
- e) Armour plated or reinforced doors (exterior or interior) designed to resist against impact of firearms, artillery, explosives, battering rams, shock or vehicle contact;
- f) The Construction of pillars, cones or barriers out of concrete, steel, or any other material that may have the result of obstructing, hindering, restricting, or preventing access onto any Land by conventional means of access or modes of transportation;
- g) The Construction of an observation tower designed to enable to the visual observation of surrounding areas beyond the perimeter of Land whether the tower is occupied by an individual or a surveillance camera or like equipment; and
- h) The Application of steel sheeting or plates or similar products to the interior or exterior, ceilings or roof structure of Land such as to reinforce to protect against firearms, artillery, explosives, shock, and the like.

2.9 **“Excessive Protective Elements”** means devices, objects, material components, or any contrivance and includes but is not limited to:

- a) The Application of perimeter warning devices such as “laser eyes” or other types of advanced warning systems be it electronic or otherwise designed to or having the effect of forewarning of the encroachment onto the perimeter of Land from adjoining Lands or roadways but excluding similar Applications to forewarn of entry into a structure located on Land;
- b) The Application of electrified fencing or any similar perimeter barrier including hidden traps, electrified doors or windows, land mines or other explosive devices or any weapon or thing that may become a weapon when triggered or activated on encroachment to Land whether designed to, or by application in such manner is, likely to cause death or serious injury; and
- c) The Application of visual surveillance equipment, including video cameras, “night vision” systems, or electronic listening devices appearing capable of permitting either stationary or scanned viewing or listening, by an operator or viewer or listener of that equipment, beyond the perimeter of Land actually owned, leased or rented by the occupant.

2.10 **“Land”** means land, including buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, erections, physical barriers, and any other structures on the land or in any structure on the land.

2.11 **“Municipal Act”** means the *Municipal Act, 2001, S.O. 2001, c. 25*.

2.12 **“Officer”** means a by-law enforcement officer employed by The Corporation of the Town of Essex and/or appointed by Council to perform the duties of enforcing the

by-laws of the Town of Essex, and also includes a police officer employed by the Ontario Provincial Police or the municipal police force as the case may be.

- 2.13 **“Person”** means any individual, corporation, partnership, or association.
- 2.14 **“Provincial Offences Act”** means the *Provincial Offences Act, R.S.O. 1990, c. P.33*.
- 2.15 **“Town”** or **“Town of Essex”** means The Corporation of the Town of Essex or the geographical area of the Town of Essex, as the context may suggest.

### **3.0 ADMINISTRATION AND ENFORCEMENT**

- 3.1 The Chief Building Official is assigned the responsibility of the administration and enforcement of this By-Law and shall perform all of the functions conferred upon them by this By-Law.
- 3.2 The Chief Building Official may delegate any responsibilities that are conferred upon them pursuant to this By-Law to an Officer or employee of the Town.

### **4.0 GENERAL PROHIBITIONS**

- 4.1 No Person shall:
  - a) Construct, affix, allow or place or permit the Construction, affixing or placement of Excessive Fortification on Land;
  - b) Construct, affix, allow or place or permit the Construction, affixing or placement of Excessive Protective Elements on Land; or
  - c) In any manner hinder, obstruct, or attempt to hinder or obstruct, any Person exercising a power or performing a duty under this By-Law.

### **5.0 EXEMPTIONS**

- 5.1 The following are exempt from the provisions of this By-Law:
  - a) Financial institutions as identified and listed in Schedules I, II, and III of the *Bank Act, S.C. 1991, c. 46*, as amended from time to time that is zoned for such use or otherwise permitted by law;
  - b) Lands owned or occupied by the Government of Canada or the Government of Ontario;
  - c) Lands owned or occupied by The Corporation of the Town of Essex or The Corporation of the County of Essex;
  - d) Lands specifically exempted from this By-Law; and
  - e) Commercial, industrial, or institutional establishments where the property is made more secure by the installation of steel bars in window or door openings provided the maximum dimensions of such steel bars is 3/8 inch (9.5 mm) and such steel bars are no less than 3 inches (76.2 mm) apart and provided the bars do not extend beyond the window or door frame.
- 5.2 A Person requesting an exemption from the provisions of this By-Law shall provide to the Chief Building Official the following:
  - a) Proof of ownership of the Land and where the Person requesting the exemption is not the owner of the Land, authorization from the owner of the Land to request the exemption;
  - b) Complete details of the location of the Land, including municipal address, legal description, the existing use, and nature of the use (residential,

commercial, industrial or agricultural), and a scaled drawing showing the Land and all structures on the property shall accompany the application;

- c) A detailed explanation shall be included of the exemption(s) requested and the rationale for requesting such an exemption(s). This should include details of proposed fortification or application of protective elements along with an explanation of how that fortification or application of protective elements is rationally connected to the purpose for which the exemption is being sought;
- d) The required non-refundable fee and any further information as may be deemed necessary, which shall be provided at the expense of the applicant, including an acknowledgement that inquiries may be made and input sought from other departments or levels of government including provincial and federal authorities, and police and fire services; and
- e) Any other information or documents as may be required by the Chief Building Official.

5.3 In determining whether to exempt any Land from the provisions of this By-Law, the Chief Building Official may consider:

- a) the reason, necessity and rationale for the exemption requested;
- b) the nature and extent of the specific exemption requested;
- c) the ability of Officers and Emergency Services Personnel to gain access to the Land as may be required; and
- d) whether the application would result in any contravention of any other applicable law including, without limiting the generality of the foregoing, the Building Code Act, the Town's Official Plan and Zoning By-Law.

5.4 The Chief Building Official may revoke an exemption under this By-Law.

5.5 An exemption granted under this By-Law is personal, not assignable, does not run with the Land, and immediately expires upon the sale of the Land or any change in occupancy or corporate control of the tenancy or ownership of the Land.

5.6 The Chief Building Official's decision pursuant to Section 5.3 of this By-Law shall be considered final and is not subject to review.

## **6.0 INSPECTIONS AND ORDERS**

6.1 An Officer may at any reasonable time, enter upon and inspect the Land of any Person to ensure that the provisions of this By-Law are complied with, which may include a dwelling if the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused.

6.2 For the purposes of conducting an inspection under to this By-Law, an Officer 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 purposes of the inspection.

- 6.3 A receipt shall be provided for any document or thing removed under subsection 6.2 b) of this By-Law and the document or thing shall be promptly returned after the copies or extracts are made.
- 6.4 No Person shall prevent, hinder, or obstruct, or attempt to hinder or obstruct, an Officer who is lawfully exercising a power or performing a duty under this By-Law.
- 6.5 An Officer may make a notice or order requiring the Person who contravened this By-Law or who caused or permitted the contravention or the owner or occupier of the Land on which the contravention occurred to discontinue the contravening activity or to do work to correct the contravention.
- 6.6 A notice or order made pursuant to Section 6.5 of this By-Law shall include:
- a) the reasonable particulars of the contravention adequate to identify the contravention and the location of the Land on which the contravention occurred;
  - b) the date by which there must be compliance with the order or the work to be done and the date by which the work must be done; and
  - c) direct that if the thing or matter that is required to be done is not completed by the time set out in the notice or order, the matter or thing will be done by the Town or its agents at the Person's expense and the Town may recover the costs of doing the matter or thing from the Person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
- 6.7 Every Person shall comply with a notice or order made pursuant to Section 6.5 of this By-Law unless the Person has made an appeal in respect of the notice or order to the Appeals Committee to which Council has delegated the authority and responsibility to conduct hearings for such appeals under this By-Law.

## **7.0 PENALTY AND ENFORCEMENT**

- 7.1 Every Person who contravenes any provision of this By-Law, and every director or officer of a corporation who knowingly concurs in such contravention by the corporation, is guilty of an offence and is liable to a fine, including the fines set out in Section 7.2 of this By-Law, and such other penalties as provided for in the Provincial Offences Act and the Municipal Act, as each may be amended.
- 7.2 Any Person who is charged with an offence under this By-Law by the laying of an information under Part III of the Provincial Offences Act and is found guilty of the offence is liable, pursuant to the Municipal Act, to a minimum fine of \$500 and a maximum fine not exceeding \$100,000.

## **8.0 CONFLICT**

- 8.1 Where a provision of this By-Law conflicts with the provision of any other by-law of the Town or any applicable government regulation, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.
- 8.2 Despite Section 35 of the Building Code Act, if there is a conflict between the Building Code under the Building Code Act and this by-law, the provisions of the Building Code shall prevail.

## **9.0 SEVERABILITY**

- 9.1 Should a court of competent jurisdiction declare a part or whole of any provision of this By-Law to be invalid or of no force and effect, the provision or part is

deemed severable from this By-Law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.

**10.0 EXEMPTION LIMITED BY ACT OF LAW**

10.1 Any exemption authorized by this By-Law in any manner shall in no way be construed or interpreted as an exemption, limitation, or excuse from a Person's requirement to abide by and comply with any other federal or provincial legislation or regulation thereunder, or any municipal by-law.

**11.0 REPEAL AND ENACTMENT**

11.1 By-Law Number 476 is hereby repealed upon the final passage of this By-Law.

11.2 This By-Law shall come into full force and effect upon the final passing thereof.

**Read a first and a second time and provisionally adopted on December 19, 2022.**

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Mayor

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Clerk

**Read a third time and finally passed on January 16, 2023.**

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Mayor

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Clerk