



THE CORPORATION OF THE TOWN OF COBOURG

BY-LAW NUMBER 102-2015

**BEING A BY-LAW TO PROHIBIT EXCESSIVE FORTIFICATION OF LAND AND TO PROHIBIT THE APPLICATION OF EXCESSIVE PROTECTIVE ELEMENTS TO LAND WITHIN THE TOWN OF COBOURG.**

**WHEREAS** pursuant to section 133 of the *Municipal Act, S.O. 2001, c.25*, as amended, provides that by-laws be passed by a Council of a Municipality regulating the fortification of land and protective elements applied to land within the municipality;

**AND WHEREAS** pursuant to section 133 of the *Municipal Act, S.O. 2001, c.25*, as amended, provides that by-laws may be passed by Council of a Municipality for the prohibition of excessive fortification of land or excessive protective elements being applied to land in relation to the use of land;

**AND WHEREAS** section 436 (1) of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing for the entry on to land at any reasonable time for the purpose of carrying out an inspection to determine compliance with this by-law;

**AND WHEREAS** section 444 of the *Municipal Act, 2001*, provides that a municipality may make an order to require a Person to discontinue contravening a by-law and to do the work required to correct the contravention;

**AND WHEREAS** section 446 of the *Municipal Act, 2001* provides that a municipality may proceed to do things at a Persons expense which that person is otherwise required to do so under this by-law, but has failed to do so and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

**AND WHEREAS** the Council of the Corporation of the Town of Cobourg deems it necessary for the health, safety and welfare of the inhabitants of the Town of Cobourg to enact a by-law providing for the regulation of fortification of land and the application of protective elements as well as the prohibition of excessive fortification of land and the application of excessive protective elements to land within the Town of Cobourg;

**AND WHEREAS** access to, and exit from land, buildings and structures may be required by municipal and law enforcement officials and/or emergency services personnel;

**AND WHEREAS** the fortification of land protective elements applied to land may restrict, obstruct or impede access to and exit from land, buildings and structures;

**AND WHEREAS** the excessive fortification of land or the application of excessive protective elements to land is likely to pose a serious risk to the health, safety and welfare of municipal and law enforcement officials and/or emergency personnel when confronted with such land when acting in the course of their lawful duties or in response to emergency situations and as well as to occupants of land whose ability to escape an emergency situation is, or may be hindered or prevented;

**AND WHEREAS** the excessive fortification of land or the application of excessive protective elements to land is likely to pose a serious threat to the safety and integrity of abutting land as well as the owners and occupiers thereof by restricting, obstructing, impeding or preventing municipal and law enforcement officials and emergency services personnel from responding to emergency situations effectively and in a timely manner.

**NOW THEREFORE** the Municipal Council of the Corporation of the Town of Cobourg enacts as follows:

## 1. DEFINITIONS

**“Apply or Application”** shall mean the erection, installation, extension or material alteration or repair of or application to land and includes; to construct;

**“Chief of Police”** shall mean the Chief of Police of the Town of Cobourg;

**“Chief Building Official”** shall mean the officer appointed by Council as the Chief Building Official pursuant to the *Building Code Act* S.O. 1992 c.23, as amended, and includes a Building Inspector;

**“Construct”** shall mean the erection, installation, extension, or material alteration of or repair of a building or structure;

**“Council”** shall mean the Council of the Corporation of the Town of Cobourg;

**“Emergency Services Personnel”** shall mean any individual employed by a Police Service, Fire Service (including Volunteer Fire Fighters), or Ambulance Service in Ontario acting in accordance with the obligations imposed upon them (whether by statutory or common law duty) by their position and includes any person acting under the authority and direction of a Law Enforcement Officer;

**“Excessive Fortification of Land and Excessively Fortify”** shall mean the construction or application of devices, barriers, or materials that would hinder, obstruct or prohibit access to, or from land such as, but not limited to:

- i) The application of steel plates, steel bars, bullet-proof shutters or heavy gauge wire mesh to window and other openings on all levels of any structures on land with the sole exclusion of basement windows or openings.
- ii) 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 access to, or from land;
- iii) The application of steel sheeting or plates or other similar products to the interior or exterior walls of buildings or structures as to reinforce walls or create a secondary to protect against firearms, artillery, explosives, vehicle contact, and shock.

- iv) The application of laminated glass or any other form of break resistant/proof or bullet resistant/proof material to windows or doors;
- v) Armor plated or reinforced doors (exterior or interior) designed to resist against impact of firearms, artillery, explosives, battering rams, shock or vehicle contact;
- vi) The construction of pillars, cones, or barriers consisting of concrete, steel or any other building material that are designed to obstruct, hinder, restrict, or deny access onto any land by conventional means of access or modes of transportation;
- vii) The construction of an observation tower designed to enable the visual operation of surrounding areas beyond the perimeter of the land actually owned or leased/rented by the occupant whether the tower is occupied by an individual or a surveillance camera and other surveillance equipment;

**“Excessive Protective Elements”** shall mean devices, objects, material components, or any contrivance applied to land such as, but not limited to:

- 1) Perimeter warning devices such as “laser eyes” or other types of advanced warning systems whether electronic or otherwise designed to forewarn 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;
- 2) 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.
- 3) Visual surveillance equipment, including video cameras, night vision systems, or electronic listening devices capable of permitting either stationary or scanned viewing or listening, by an operator or viewer or listener of that equipment beyond the perimeter of the land actually owned, leased or rented by the occupant;

**“Land”** shall mean land including buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, physical barriers, and any structures on the land or in any structure on the land;

**“Law Enforcement Officer”** shall mean:

- 1) a Police Officer appointed pursuant to the *Police Services Act*, R.S.O. 1990, Chapter P.15, as amended from time to time;
- 2) a Municipal Law Enforcement Officer appointed pursuant to either the *Municipal Act*, 2001, as amended from time to time, or pursuant to *the Police Services Act*. R.S.O. 1990, Chapter P.15, as amended from time to time;
- 3) Chief Building Official appointed or consulted under the *Building Code Act*, 1992, as amended from time to time;
- 4) Building Inspector appointed under the *Building Code Act*, 1992, as amended from time to time;

- 5) Fire Inspector, the Fire Marshal, an assistant to the Fire Marshall or a Fire Chief for the purposes of the *Fire Protection and Prevention Act*, 1997, c.4 as amended from time to time;
- 6) A Property Standards Officer appointed under the *Building Code Act*, 1992, as amended from time to time;

“**Person**” shall include an individual firm, society, joint venture partnership, association or corporation and the legal representation of such;

“**Town**” shall mean the Corporation of the Town of Cobourg.

## 2. GENERAL PROHIBITIONS

### 2.1 No person shall;

- a) Excessively fortify any land as to restrict, obstruct or impede Municipal Law Enforcement Officials and emergency personnel from accessing or exiting any land.
- b) Apply excessive protective elements to land or maintain excessive protective elements applied to land so as to restrict, obstruct or impede Municipal Law Enforcement Officials and emergency personnel from accessing or exiting any land.
- c) Maintain on the site any form of fortification, excessive protective element, partial or complete, whether previously permitted through any provision(s) or exemption of this By-law, shall remove such fortification or element when vacating the land, or when the use of the land changes and the exemption can no longer rationally be proven to be necessary to the Chief Building Official.

## 3.0 ABSOLUTE EXEMPTIONS

### 3.1 Section 2.1 of this by-law shall not apply to:

- a) Financial Institutions as identified and listed in Schedule I, II, III of the *Bank Act* S.C, 1991, C.46, as amended, from time to time that is zoned for such use or otherwise lawfully permitted;
- b) Detention centres operated by or on the behalf of the Government of Canada or Ontario, zoned for such use, or otherwise lawfully permitted;
- c) Lands owned or occupied by any Police service in accordance with the *Ontario Police Services Act*;
- d) Land owned or occupied by the Federal Department of National Defense;
- e) Lands owned or occupied by the Royal Canadian Mounted Police;
- f) Land owned or Occupied by the Town;

#### 4.0 APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

4.1 Any person wishing to make an application for a partial or complete exemption from the provisions of this by-law shall file the following with the Chief Building Official:

- a) An application for partial or complete exemption from any provision(s) of this by-law shall be provided in writing and signed by the applicant and directed to the Chief Building Official;
- b) Complete details of the location of land, including the Municipal address, type, number, and nature (residential, commercial, farm), and a recent survey of the land and structures shall accompany the application;
- c) A detailed explanation of the exemption(s) shall be included and rationale for requesting such and exemption(s). This shall include details of proposed Fortification or Application of Protective Elements being considered 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.

4.2 All applications will be reviewed by the Chief Building Official who may make any further inquiries deemed necessary and relevant and may require the provision of any additional information which shall be provided at the expense of the applicant, including but not limited to:

- a) Requests for further details or documentation from the applicant;
- b) Providing additional documents considered by the Chief Building Official to be necessary or relevant to investigation of the application;
- c) Making inquiries to local, provincial, or federal government departments considered necessary and relevant to the investigation of the applicant;
- d) Making inquiries and requesting input from Local Police Service, Fire Service and Ambulance Services or any other department that may have an interest, issue, or concern with the application;
- e) Provide a survey prepared by a registered Ontario Land Surveyor showing the dimensions of the land and the location and dimensions of all buildings and structures thereon;
- f) A copy of the current deed for the land together with a letter from a solicitor in good standing with the Law Society of Upper Canada certifying that the applicant is the owner of the land; and
- g) Photographs of all buildings and structures on the lands to which the application relates.

#### 5.0 GROUNDS FOR EXEMPTIONS

5.1 Upon review of the documentation required or requested pursuant to Sections 4.1 and 4.2 the Chief Building Official may issue a complete or partial exemption if:

- a) The applicant is a Person, and

b) It can be proved to exist a connection between the necessity and rationale provided for the exemption and the nature and extent of exemption requested, and;

c) The nature and extent of an authorized exemption does not exceed that which is rationally proven to be necessary; and

d) The necessity of access to Emergency Services Personnel and Municipal Law Enforcement Officers is not unreasonably interfered with or limited considering the need, necessity and rationale provided for the exemption.

e) The application would not result in any contravention of any other applicable law including, without limiting the generality of the foregoing, the Official Plan and Zoning By-law of the Municipality.

5.2 An authorized partial or complete exemption provided to a successful applicant will reference this by-law and will be signed by the Chief Building Official.

5.3 A true copy of any authorized exemption issued under section 5.2 shall be forwarded immediately by the Chief Building Official sent to the attention of the Chief of Police, Fire Chief and the County Northumberland Ambulance Services.

## **6.0 APPEAL OF DENIAL FOR EXEMPTION**

6.1 Where the Chief Building Official refuses an application for a complete or partial exemption made pursuant to the provisions of section 5 herein, the Chief Building Official shall notify the applicant in writing of such decision and the said notice shall set out the grounds upon which the applicant for exemption has been refused and shall state that the applicant may appeal such decision to the Council by filing an appeal with the Chief Building Official within twenty (20) days of the date of such decision to refuse the application for exemption by the Chief Building Official.

6.2 Where there has been an appeal under the provisions of section 6.1 herein, Council shall hold a meeting for the consideration of the appeal. The Chief Building Official shall provide to the applicant the date of the Council hearing for an appeal at least fifteen (15) days prior to the date of such hearing. The Chief Building Official shall also provide the notice to such other persons, civic departments, boards, commissions, authorities or agencies that may appear to have an interest in the appeal.

6.3 Council shall conduct a hearing with respect to the appeal and shall consider whether the applicant meets all the requirements of this by-law and whether the applicant is entitled to an exemption in accordance with the provisions of Section 5 and 6 herein.

6.4 During the hearing conducted with respect to the appeal, Council:

a) Shall provide the applicant an opportunity, at the meeting, of making submissions in respect of the matter that is the subject of Council's proceedings:

b) Shall provide any person, civic department, board, commission, authority or agency given notice under section 6.2 herein and in attendance at the meeting, an opportunity to make submissions in respect of the matter that is the subject of the Council's proceeding;

c) May close a portion of the meeting to the affected applicant only for the purposes of receiving confidential legal advice;

- d) May close all or a portion of the meeting to the public if Council is of the opinion that intimate, financial or personal matters may be disclosed of such nature, having regards to the circumstances, that the desirability of avoiding disclosure thereof is in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public;
- e) Shall give due consideration to the submissions made to it;
- f) Shall, by resolution, take such action to either allow the application for exemption and the appeal or to deny the application for exemption and the appeal and may impose such terms and conditions to such decision in accordance with the provisions of this by-law, as Council considers proper in the circumstances;
- g) Shall give written notice of it's decision to the Chief Building Official, the applicant and to any other person, civic department, board, commission, authority or agency in attendance at the meeting, together with the reasons for it's decision.

6.5 The decision of Council herein is final and binding upon the applicant and there is no appeal therefrom.

## 7.0 POWER OF ENTRY

7.1 The Chief Building Official or a Law Enforcement Officer, may at any reasonable time, enter and inspect any land to determine whether this by-law, or an Order made under it is being complied with.

7.2 No person shall exercise a power of entry under this by-law to enter a place, or a part of a place, that is used as a dwelling, unless;

- a) the occupier of the dwelling place consents to entry, having first been informed of his or her right to refuse consent; or
- b) if the occupier refuses to consent, the power to enter is exercised under the authority of a warrant issued under section 158 of the *Provincial Offences Act*.

## 8.0 ORDERS

8.1 If the Chief Building Official or a Municipal Law Enforcement Officer is satisfied that a contravention of this by-law has occurred the Chief Building Official or the Law Enforcement Officer may make an order requiring work to be done to correct the contravention, and the Order shall set out:

- a) the name of the registered owner and municipal address or the legal description of the land;
- b) reasonable particulars of the contravention and the work to be done and the period within which there must be compliance with the order; and
- c) a notice stating that if the work is not done in compliance with the Order within the period is specifies, the Town may have the work done at the expense incurred in doing it by action, or the same may be recovered in like manner as municipal taxes.

**9.0 TIME**

- 9.1 The period described in section 8.1 (b) of this by-law shall not be less than three (3) months if the fortifications or protective elements were present on the land on the day this by-law was passed.
- 9.2 If the work required by an Order under this section is not done within the specific period, the Town, its employees and/or agents may at any reasonable time enter upon the land to do the work.

**10.0 ADMINISTRATION AND ENFORCMENT**

- 10.1 The Chief Building Official shall be responsible for the administration of this by-law, and Municipal Law Enforcement Officer as defined in this by-law shall be responsible for the enforcement of this by-law.

**11.0 PENALTIES**

- 11.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to any penalties imposed in accordance with the Provincial Offences Act, R.S.O 1990, and c.P.33, as amended as well as subject to the set fines set out herein Schedule "A" of this By-Law.
- 11.2 This by-law shall come into force and take effect on the date that the Regional Senior Justice of the Ontario Court of Justice approves each set fine as set out in Schedule "A" for offences under this by-law, and in accordance with the *Provincial Offences Act*, R.S.O 1990 CHAPTER P.33.

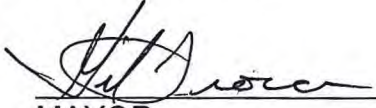
**12.0 SEVERABILITY**

- 12.1 If any section, clause or provision of this By-law, is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or any part thereof other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention of Council for the Town that all remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed, notwithstanding that one or more provisions thereof may have been declared invalid.

**13.0 REPEAL**

- 13.1 The following By-law No. 28-2004 is hereby repealed.

READ a first, second and third time and finally passed in Open Council this 21<sup>st</sup> day of December, 2015.

  
MAYOR

  
MUNICIPAL CLERK



**SCHEDULE "A":**

**The Corporation of the Town of Cobourg By-Law No. 102-2015:  
To prohibit excessive fortification of land and to prohibit the application of  
excessive protective elements to land within the Town of Cobourg**

**Part I Provincial Offences Act**

<b>ITEM</b>	<b>COLUMN 1 Short Form Wording</b>	<b>COLUMN 2 Provisions creating or defining offence</b>	<b>COLUMN 3 Set Fine</b>
1.	Excessively fortify land to impede law enforcement and emergency personnel.	Section 2.1(a)	\$300.00
2.	Apply excessive protective elements to impede law enforcement and emergency personnel.	Section 2.1(b)	\$300.00
3.	Failed to remove fortification when vacated land or land used change.	Section 2.1(c)	\$300.00