

THE CORPORATION OF THE TOWN OF WHITBY

BY-LAW NO. 5870-06

BEING A BY-LAW TO REGULATE THE FORTIFICATION OF LAND IN THE TOWN OF WHITBY

WHEREAS, the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes the Council of a municipality to pass by-laws to regulate in respect of the fortification of and protective elements applied to land in relation to the use of land, and to prohibit the excessive fortification of land or excessive protective elements being applied to land in relation to the use of the land;

AND WHEREAS, the Council of the Corporation of the Town of Whitby deems it appropriate and necessary to enact a by-law to regulate the fortification of land;

NOW THEREFORE, the Council of the Corporation of the Town of Whitby enacts as follows:

**DEFINITIONS**

1. In this by-law,
  - (a) "Corporation" means the Corporation of the Town of Whitby;
  - (b) "emergency services personnel" includes any individual employed by a police service, fire service or ambulance service who is acting in accordance with the obligations imposed upon that person, whether by statutory or common law duty, by their position;
  - (c) "excessively fortify and excessive fortification" includes the installation, application, or maintenance of devices, barriers, or materials in a manner designed to restrict, obstruct, or impede, or having the effect of restricting, obstructing or impeding, access to or from land and includes but is not limited to,

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- (i) an observation tower, whether integrated or not, with a building;
  - (ii) armored or specially reinforced doors or windows designed to resist the impact of firearms, battering rams, explosives or vehicle contact;
  - (iii) grills or bars made of metal or any other material installed on doors, windows and other openings that limit the rapid entrance into or exit from a building or structure in an emergency situation, except for those installed at the basement or cellar level;
  - (iv) masonry, including brick and concrete block over windows or doorways;
  - (v) secondary walls or other obstructions in front of landings, doors or windows; and,
  - (vi) concrete, metal or other material installed as pillars, fences, gates or barriers designed to prohibit, restrict, obstruct or impede access to any land through conventional means or modes of transportation.
- (d) "excessive protective elements" includes any object, material component or any contrivance designed to, or having the effect of restricting, obstructing or impeding access to or from land and included but is not limited to,
- (i) perimeter warning devices such as "laser eyes" or other types of advanced warning systems be it 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;

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- (ii) electrified fencing or any similar barrier including hidden traps, electrified doors or windows, land mines or other explosive devices, or any weapon or things 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,
  - (iii) the installation of 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.
  
- (e) "fortify and fortification", includes the installation, application, or maintenance of devices, barriers, or materials in a manner designed to restrict, obstruct or impede or having the effect of restricting, obstructing, or impeding, access to or from land or structures;
  
- (f) "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;
  
- (g) "law enforcement officer" includes:
  - i) a Police Officer as defined in section 2 of the Police Services Act, R.S.O. 1990, C.P. 15;
  - ii) a municipal law enforcement officer appointed by Council pursuant to subsection 15(1) of the Police Services Act, R.S.O. 1990, C.P. 15;
  - iii) the Chief Building Official;
  - iv) an inspector appointed by Council pursuant to subsection 3(2) of the Building Code Act, 1992, S.O. 1992, c. 23, as amended;

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- v) the "Fire Marshal" as defined in subsection 1(1) of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, as amended;
  - vi) an assistant to the Fire Marshal as defined in subsection 11(1) of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, who is also an employee of the Town;
  - vii) an "officer" as defined in subsection 1(1) of the Building Code Act, 1992, S.O. 1992, c. 23, who is also an employee of the Town; and,
  - viii) a "member" as defined in subsection 2(1) of the Royal Canadian Mounted Police Act, R.S.C. 1985, c.R-10.
- (h) "person" means a natural person, a corporation, partnership or association and their heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law; and,
- (i) "protective elements" includes any object, material components, or any contrivance designed to restrict, obstruct, or impede access to and exit from land, or having the effect or restricting, obstructing, or impeding, access to and exit from land.

**GENERAL**

2. No person shall,

- (a) excessively fortify or barricade any land for the purpose of restricting, obstructing, or impeding lawful access to the land; or,

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- (b) obstruct any land through the application of excessive protective elements so as to restrict, obstruct or impede law enforcement officers and/or emergency services personnel from accessing or exiting the land.

**EXCEPTIONS**

- 3. The provisions of this by-law shall not apply to,
  - (a) financial institutions as identified and listed in the Bank Act, S.C. 1991, c.46, as amended from time to time, that are zoned for such use or otherwise lawfully permitted;
  - (b) detention centres, zoned for such use, or otherwise lawfully permitted;
  - (c) security service businesses, zoned for such use, or otherwise lawfully permitted;
  - (d) lands owned or occupied by the Royal Canadian Mounted Police, the Ontario Provincial Police or the Durham Regional Police Service;
  - (e) lands owned or occupied by the Federal Department of National Defence; and,
  - (f) other commercial, business, industrial, or institutional establishments where the nature of the undertaking necessitates particular elements of fortification or protection and where such use is permitted by the zoning by-laws of the Corporation or provided such use is otherwise lawfully permitted, but only to the extent necessary having consideration for the nature of the undertaking.

**ORDERS**

- 4.(1) If a law enforcement officer is satisfied that a contravention of this by-law has occurred, the officer may make an order requiring remedial work to be performed to correct the contravention and the order shall set out,
- (a) the municipal address or the legal description of the land;
  - (b) reasonable particulars of the contravention and the work to be performed and the period within which there must be compliance with the order; and,
  - (b) a notice stating that if the work is not done in compliance with the order within the period it specifies, the Corporation or its appointed agent may have the work done at the expense of the owner of the land.
- (2) The period described in Subsection 4(1) of this by-law shall not be less than three (3) months if the fortification or protective elements were present on the land on the day this by-law is passed.
- (3) If the work required by an order under this Section is not done within the specified period, the Corporation, its employees, and/or agents, may at any responsible time enter upon the land to do the work.

**PENALTIES**

- 5.(1) Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction thereof is liable to a fine or penalty for each offence, exclusive of costs, as prescribed by the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, or any successor legislation in substitution thereof.

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- (2) The court in which a conviction has been entered or any court of competent jurisdiction may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

**SEVERABILITY**

6. If a court of competent jurisdiction should declare any section of this by-law, or part thereof, to be invalid, such section or part thereof is deemed severable from this by-law and shall not be construed as having influenced Council to pass the remainder of this by-law and it is the intention of Council that the remainder of the by-law shall survive and remain in force.

**SHORT TITLE**


7. This by-law may be referred to as the fortification of land by-law.

**EFFECTIVE DATE**

8. The provisions of this by-law shall come into force and take effect on the day of the final passing thereof.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 23rd DAY OF OCTOBER, A.D., 2006.

  
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Paul Jones, Clerk

  
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Marcel L. Brunelle, Mayor