

BY-LAW NUMBER 146-2003
OF THE CORPORATION OF THE
MUNICIPALITY OF CHATHAM-KENT

Being a By-law to Regulate the Fortification of Land and to Prohibit Excessive Fortification of Land and to Prohibit the Application of Excessive Protective Elements to Land within the Municipality of Chatham-Kent.

WHEREAS Section 133 (1)(a) and (b) of the Municipal Act 2001, S.O. 2001, Chapter 25 as amended, provides that a municipality that is responsible for the enforcement of the Building Code Act, 1992 may:

- (a) regulate in respect of the fortification of and protective elements applied to land in relation to the use of the land; and
- b) prohibit the excessive fortification of land or excessive protective elements being applied to land in relation to the use of the land. 2001. c.25, s. 478 (9).

AND WHEREAS Section 133 (3)(a), (b) and (c) of the Municipal Act, 2001 provides that a by-law under this section:

- a) may exempt land or classes of land, on such conditions as may be specified in the by-law; and
- b) may require the owner of land, at the owner's expense, to perform remedial work in respect of the land so that it is in conformity with the by-law; and
- c) may require remedial work under clause (b) to be done even though the fortifications or protective elements to which the by-law applies were present on the land before the by-law came into force.

AND WHEREAS the Council of the Corporation of the Municipality of Chatham-Kent deems it necessary for the health, safety, and welfare of the inhabitants of the Municipality of Chatham-Kent to enact a by-law providing for 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 Municipality of Chatham-Kent;

AND WHEREAS access to, and/or egress from land or buildings may be required by law enforcement officials in the lawful execution of their duties and/or emergency services personnel in the event of fire or other emergencies;

AND WHEREAS the fortification of land or the application of protective elements to land may hinder or prevent law enforcement officials and/or emergency services personnel, acting in the lawful course of their duties and/or in response to emergency situations, from gaining access to and/or egress from land;

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

AND WHEREAS the fortification of land or the application of protective elements to land is likely to pose a serious threat to the safety and integrity of adjoining and abutting land and as well the owners and occupiers of those lands by restricting, limiting or preventing law enforcement personnel and/or emergency services personnel from responding to emergency situations effectively and in a timely manner;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT enacts as follows:

1.0 SHORT TITLE

- (1) This By-law may be cited as the "Fortification of Land By-law."

2.0 DEFINITIONS AND INTERPRETATION

2.1 In this By-law,

- (1) "Apply or Application" means the erection, installation, extension or material alteration or repair of or application to Land and includes to Construct;
- (2) "Chief Building Official" means the officer or his or her designate, appointed by Council as the Chief Building Official pursuant to Section 3 of the *Building Code Act*, 1992 S.O. 1992, c. 23, as amended from time to time;
- (3) "Construct" means to do anything in the erection, installation, extension or material alteration or repair of a building and includes the installation of a building unit fabricated or moved from elsewhere and "Construction" has a corresponding meaning;
- (4) "Council" means the Municipal Council for the Corporation of the Municipality of Chatham-Kent ;
- (5) "Emergency Services Personnel" means any individual employed by a Police Service, Fire Service (including volunteer Fire fighters), 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 any thing and who acts on those directions;
- (6) "Excessive Fortification and Excessively Fortify" means the Construction of devices, barriers, or materials in a manner designed to hinder, obstruct or prohibit access to or from Land or have the effect of hindering, obstructing or prohibiting access to or from Land and include but is in no manner limited to:
 - (i) 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 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 egress to Land;
 - (iii) 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, shock, and the like;
 - (iv) The application of laminated glass or any other form of break resistant/proof or bullet resistant/proof material to windows or doors;
 - (v) Armour plated or reinforced doors (exterior or interior) designed to resist against impact of fire arms, artillery, explosives, battering rams, shock or vehicle contact;
 - (vi) The Construction of pillars, cones or barriers out 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 observation 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 or like equipment;
- (7) "Excessive Protective Elements" means devices, objects, material components, or any contrivance designed to control, hinder, restrict, or deny access to or from Land or have the effect of controlling, hindering, restricting or denying access to or from the Land and includes but is in no manner limited to:
 - (i) The application of 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.

- (ii) 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;
 - (iii) The application 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;
- (8) "Fortification and Fortify" means the Construction of devices, barriers, or materials in a manner designed to hinder, obstruct or prohibit access to or from Land or have the effect of hindering, obstructing or prohibiting access to or from the Land and includes Excessive Fortification.
 - (9) "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;
 - (10) "Law Enforcement Officer" includes a Police Officer as defined in Section 2 of the *Police Services Act*, R.S.O. 1990, Chapter P.15, as amended from time to time and a Municipal Law Enforcement Officer appointed pursuant to either Section 227 of the *Municipal Act*, 2001, as amended from time to time, or pursuant to Subsection 15(1) of the *Police Services Act*, R.S.O. 1990, Chapter P.13, as amended from time to time, and a "Chief Building Official" appointed or constituted under Sections 3 or 4 of the *Building Code Act*, 1992, as amended from time to time, and a "Building Inspector" appointed under Section 3, 3.1, 4, 32 or 32.1 of the *Building Code Act*, 1992, as amended from time to time, and a "Fire Inspector" including the Fire Marshall, an assistant to the Fire Marshall or a Fire Chief for the purpose of Part VI s.19 (1) of the *Fire Protection and Prevention Act*, 1997, *S.O.* c.4; as amended from time to time and includes a Property Standards Officer.
 - (11) "Person" means any natural person and any corporation incorporated pursuant to the Ontario Business Corporations Act, R.S.O., 1990 , chapter B. 16 and amendments thereto or the Canada Business Corporation Act, R.S.C. 1985, chapter C.44 and amendments thereto.
 - (12) "Property Standards Officer" means an officer appointed pursuant to the *Building Code Act*, 1992, who has been assigned the responsibility of administering and enforcing property standards by-laws passed under section 15.1 of the Building Code Act, 1992, who may, upon producing proper identification, enter upon any land at any reasonable time without a warrant for the purpose of inspecting the Land to determine:
 - (i) whether the Land conforms with the standards prescribed in this by-law; or
 - (ii) whether an order made under Subsection 10.2 of this by-law has been complied with.
 - (13) "Protective Elements" means devices, objects, material components, or any contrivance designed to control, hinder, restrict or deny access to or from Land or have the effect of controlling, hindering, restricting or denying access to or from the Land and includes Excessive Protective Elements.
 - (14) "Municipality" means either The Corporation of the Municipality of Chatham-Kent or the Municipality of Chatham-Kent, whatever the context requires.

3.0 GENERAL PROHIBITIONS

3.1 No person shall:

- (1) Excessively Fortify any Land ;
- (2) Apply Excessive Protective Elements to Land ; or
- (3) In any manner hinder, obstruct, or attempt to hinder or obstruct, any Person including without limiting the generality of the foregoing any Emergency Services Personnel, exercising a power or performing a duty under this By-law.

4.0 ABSOLUTE EXEMPTIONS

4.1 Section 3.0 above does not apply to:

- (1) 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;
- (2) Detention centers zoned for such use or otherwise permitted by law;
- (3) Lands, wherever situated, owned or occupied by the Ontario Provincial Police or an Ontario Municipal Police Service in accordance with the *Ontario Police Services Act*;
- (4) Lands, wherever situated, owned or occupied by the Federal Department of Defence; and
- (5) Lands, wherever situated, owned or occupied by the Royal Canadian Mounted Police.
- (6) Other commercial, business, industrial, or institutional establishments where the nature of the undertaking necessitates particular elements of excessive fortification or excessive protective elements and where such use is permitted by the Zoning By-Law of the City or provided such use is otherwise lawfully permitted but only to the extent necessary having consideration for the nature of the undertaking upon approval granted herein upon application for exemption in accordance in sections 6 , 7 and 8 of this by-law.
- (7) A lawful permitted private dwelling where the nature of the lawful use of the dwelling necessitates particular element of excessive fortification or excessive protective elements, but only to the extent necessary having consideration for the nature of such use upon approval granted herein upon application for exemption in accordance in sections 6 , 7 and 8 of this by-law.

5.0 SCOPE AND LIMITATION OF BY-LAW

5.1 Section 3.0 does not operate to prohibit:

- (1) The use or application of commercially marketed household security devices designed and applied to provide reasonable fortification and protection from theft or other criminal activity against the person or property of an individual;
- (2) The use of protective elements such as "laser eye" or other advanced warning devices on windows or doors of a dwelling house for the purpose of providing a warning to the occupants of that dwelling house or structure or to dispatch Emergency Services Personnel where an actual entry into a dwelling house has occurred;
- (3) Common household alterations or renovations where the location or style of a door or window may be altered for purely aesthetic reasons and

meets local Building Code and Fire Code requirements and have received any permit required to complete such alteration or renovations.

6.0 APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

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

- (1) An application for partial or complete exemption from any provision(s) of this By-law shall be signed and in writing and directed to the Chief Building Official;
- (2) Complete details of the location of the Land, including Municipal address, type, number, and nature (residential, commercial, farm), and a recent survey of the Land and structures shall accompany the application;
- (3) A detailed explanation shall be included of the exemption(s) requested and the rationale for requesting such an 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.

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

- (1) Requests for further details or documentation from applicant,
- (2) Requiring the provision of any further or other documents considered by the Chief Building Official to be necessary or relevant to the investigation of the application,
- (3) Making inquiries of any department of local, Provincial or Federal Government considered necessary and/or relevant to the investigation of the application,
- (4) Making inquiries and requesting input from Local Police, Fire and Ambulance Services or any other department that may have an interest, issue, or concern with the application.

7.0 GROUNDS FOR EXEMPTION

7.1 Upon review of the documentation required or requested pursuant to Sections 6.1 and 6.2, the Chief Building Official may issue a complete or partial exemption if:

- (1) the applicant is a Person, and
- (2) there is proven to exist a rational connection between the necessity and rationale provided for the exemption and the nature and extent of exemption requested, and
- (3) the nature and extent of authorized exemption does not exceed that which is rationally proven to be necessary, and
- (4) the necessity of access to Emergency Services Personnel and/or Law Enforcement Officers is not unreasonably interfered with or limited considering the need, necessity and rationale provided for the exemption.
- (5) 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 .

7.2 An authorized partial or complete exemption provided to a successful applicant will reference this By-law and bear the signature of the Chief Building Official .

- 7.3 A true copy of any authorization issued under Section 7.2 shall be forwarded immediately by the office of the Chief Building Official to the attention of the Chief of Police, the Chief of Fire and the Director of Ambulance Services of the Municipality.

8.0 APPEAL OF DENIAL OF EXEMPTION

- 8.1 Where the Chief Building Official refuses an application for a complete or partial exemption made pursuant to the provisions of section 6 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 application 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 20 days of the date of such decision to refuse the application for exemption by the Chief Building Official.
- 8.2 Where there has been an appeal under the provisions of section 8.1 herein, Council shall hold a meeting for the consideration of the appeal. The Chief Building Official shall provide notice to the applicant of the date of the Council meeting for the hearing of the appeal at least 15 days prior to the date of such Council meeting. The Chief Building Official shall also provide the notice to such other persons, civic departments, boards, commissions, authorities or agencies as appear to have an interest in the appeal.
- 8.3 Council shall conduct a hearing with respect to the appeal and shall consider whether the applicant meets all of the requirements of this by-law and whether the applicant is entitled to an exemption in accordance with the provisions of section 6 and 7 herein.
- 8.4 During the hearing conducted with respect to the appeal, Council :
- (a) shall afford 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 afford any person, civic department, board, commission, authority or agency given notice under section 8.2 herein and in attendance at the meeting, an opportunity to make submissions in respect of the matter that is the subject of Council's proceedings;
 - (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.
- 8.5 The decision of Council herein is final and binding upon the applicant and there is no appeal therefrom.

9.0 POWER OF ENTRY

- 9.1 A Law Enforcement Officer or the Chief Building Official may, at any reasonable time, enter and inspect any Land to determine whether this by-law, or an order under this by-law, is being complied with.

10.0 ORDERS

- 10.1 Where a Law Enforcement Officer or the Chief Building Official is satisfied that a contravention of this by-law has occurred or that Excessive Fortification or Excessive Protective Elements have been established on any Land before this by-law came into force, the officer may make an order requiring work to be done to correct the contravention or to remove such Excessive Fortification or Excessive Protective Elements established before this by-law came into force and the order shall set out:
- (1) The municipal address or the legal description of the Land;
 - (2) Reasonable particulars of the contravention and the work to be done and the period within which there must be compliance with the order; and
 - (3) A notice stating that if the work is not done in compliance with the order within the period it specifies, work done may be at the expense of the owner.
- 10.2 If the work required by an order is not completed within the specified period, a Law Enforcement Officer or the Chief Building Official may, at any reasonable time, enter upon the Land or may make arrangements for municipal employees or a contractor retained for that purpose, to enter upon the Land to do the work at the expense of the owner and the Municipality may recover the expense incurred in doing such work by action or the same may be recovered in like manner as municipal taxes against the Land.
- 10.3 The period described in Section 10.1(2) shall not be less than three months if the Excessive Fortification or Excessive Protective Elements were present on the Land on the day this by-law is passed.

11.0 DWELLINGS

- 11.1 No person shall exercise a power of entry under this by-law to enter a place, or a part of a place, that is being used as a dwelling unless:
- (1) The occupier of the dwelling consents; or
 - (2) If the occupier refuses to consent, a warrant issued pursuant to Section 158 of the *Provincial Offences Act*, R.S.O. 1990, c.P. 33 as amended, is obtained.

12.0 PENALTY AND ENFORCEMENT

- 12.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the penalties specified in accordance with the *Provincial Offences Act*, R.S.O. 1990, c.P.33. as amended or any successor legislation thereto.
- 12.2 The Chief Building Official shall be responsible for the administration of this by-law and persons who are employed or appointed as Law Enforcement Officers, Property Standards Officers, or Building Inspectors, and the Chief Building Official are all deemed appointed and entitled to enforce the provisions of this by-law.

13.0 CONFLICT

- 13.1 Subject to Section 13.2 where a provision of this by-law conflicts with the provision of any other by-law of the Municipality 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.
- 13.2 Notwithstanding Section 13.1 and despite Section 35 of the *Building Code Act*, 1992, if there is a conflict between the Building Code under the *Building Code Act*, 1992 and this by-law, the Building Code prevails.

14.0 SEVERABILITY

14.1 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.


15.0 EXEMPTION LIMITED BY ACT OF LAW

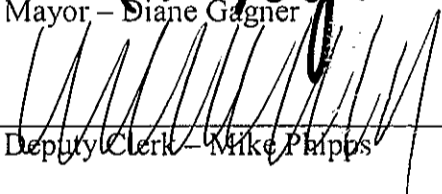
15.1 Any exemption authorized by this by-law in any manner shall in no way be construed or interpreted as an exemption, limitation or excuse from a Person's requirement to abide by or comply with any other Federal, Provincial or Municipal Law.

16.0 ENACTMENT

16.1 This bylaw shall come into force and effect on the date of enactment.

By-law read a first, second and third time, and finally passed at a meeting of the Municipal Council of The Corporation of the Municipality of Chatham-Kent on this 23rd day of June, 2003.



Mayor - Diane Gagner


Deputy Clerk - Mike Phipps