

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 2003-18**

**A By-law respecting the fortification of land**

**WHEREAS** section 133 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that bylaws may be passed by a council of a municipality as follows:

- (a) regulating the fortification of and protective elements applied to land in relation to the use of land; and
- (b) prohibiting the excessive fortification and excessive protective elements being applied to land in relation to the use of land.

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

**AND WHEREAS** the council of The Corporation of the Town of Amherstburg deems it necessary for the health, safety and welfare of the inhabitants of the Town of Amherstburg to enact a by-law providing for the regulation of the fortification of and protective elements being applied to land in relation to the use of the land and to prohibit the excessive fortification of land or excessive protective elements being applied to land in relation to the use of land;

**NOW THEREFORE THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

**PART 1 - DEFINITIONS**

**1.1** In this By-law:

- (a) “Chief Building Official” means the officer appointed by council as the Chief Building Official pursuant to the *Building Code Act, 1992*, S.O. 1992 c. 23, as amended, and includes a Building Inspector.
- (b) “construct” includes doing anything in the erection, installation, extension, or material alteration or repair of a building or structure, and “construction” has a corresponding meaning.
- (c) “emergency services personnel” includes any individual employed by a police service, fire service (including volunteer firefighters) and 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 any emergency services personnel to do or refrain from doing anything and to act on those directions.

- (d) “excessive fortification” means fortification that is excessive and includes but is not limited to:
- (i) protection plaques or plates made of metal or any other material installed inside or outside a building;
  - (ii) an observation tower; whether integrated or not, to a building;
  - (iii) laminated glass or any other type of glass or material that is bullet-proof or difficult to break in the event of a fire, installed in windows or doors, including protection shutters;
  - (iv) armored or specially reinforced doors designed to resist the impact of firearms, battering rams, explosives or vehicle contact;
  - (v) grills or bars made of metal or any other material installed on doors, windows and other openings that limit the rapid exit from a building or structure in an emergency situation, except for those at the basement or cellar level;
  - (vi) masonry, including brick and concrete block over windows or doorways;
  - (vii) secondary walls or other obstructions in front of landings, doors and windows;
  - (viii) concrete, metal or other material installed as pillars or barriers designed to prohibit, restrict, obstruct or impede access to any land through conventional means or modes of transportation; and,
  - (ix) any fence or gate constructed, installed, or maintained or reinforces with metal or similar materials in excess of 3 millimeters in thickness;

and “excessively fortify” has a corresponding meaning.

- (e) “excessive protective elements” means protective elements that are excessive and includes 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 entry 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) electrified fencing or any similar barrier including hidden traps, electrified doors, or windows, land mines or other explosive devices or any weapons or thing that may become a weapon when triggered or activated on entry to land whether designed to, or by application in such manner is likely to cause death or serious injury; and,
  - (iii) visual surveillance equipment, including video cameras, night vision systems, or electronic surveillance devices capable of permitting either stationary or scanned viewing or listening, beyond the perimeter of the land.

- (f) “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 “fortify” has a corresponding meaning.
- (g) “land” means land including buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, erections, physical barriers and any other structure on the land or on or in any structure on the land.
- (h) “maintain” means to allow the continued existence of a device, barrier, structure, or material whether or not repairs are undertaken, and “maintenance” has a corresponding meaning.
- (i) “Municipal Law Enforcement Officer” includes a Municipal Law Enforcement Officer appointed pursuant to subsection 15(1) of the *Police Services Act*, R.S.O. 1990, c.P.15, as amended, from time to time.
- (j) “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.
- (k) “protective elements” includes any object, material component or any contrivance designed for surveillance or to restrict, obstruct, or impede, or having the effect of surveillance or restricting, obstructing, or impeding, access to and exit from land.
- (l) “Town” means the Town of Amherstburg.

## **PART 2 - PROHIBITED MATTERS**

### **2.1 No person shall:**

- (a) excessively fortify any land so as to restrict, obstruct or impede municipal and law enforcement officials and/or emergency personnel from accessing or exiting any land; and/or,
- (b) apply excessive protective elements to land or maintain excessive protective elements applied to land so as to restrict, obstruct or impede municipal and law enforcement officials and/or emergency personnel from accessing or exiting any land.

## **PART 3 - EXEMPTIONS**

### **3.1 Part 2 of this By-law does not apply to:**

- (a) financial institutions as identified and listed in Schedule 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 lawfully permitted;
- (b) detention centres operated by or on behalf the Government of Canada or Ontario, zoned for such use, or otherwise lawfully permitted;
- (c) lands owned or occupied by the Ontario Provincial Police or the Amherstburg Police Service in accordance with the *Police Services Act*, R.S.O. 1990, c.P.15, as amended.
- (d) lands owned or occupied by the Federal Department of National Defence;
- (e) lands owned or occupied by the Royal Canadian Mounted Police;

- (f) lands owned and occupied by the Town;
- (g) 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 Town or provided such use is otherwise lawfully permitted, but only to the extent necessary having consideration of the nature of the undertaking;
- (h) a lawfully permitted private dwelling where the nature of the lawful use of the dwelling necessitates particular elements of excessive fortification or excessive protective elements, but only to the extent necessary having consideration for the nature of such use.
- (i) Section 2.1 of this By-law shall not operate to prohibit:
  - (1) the use of commercially marketed household security devices designed and applied to provide protection to a private dwelling from theft or other criminal activity against the person or property of an individual;
  - (2) common household alterations or renovations where the location or style of a door or window may be altered for purely aesthetic reasons, which alterations or renovations comply with the Building Code and Fire Code requirements and have received the required permits to complete such alterations or renovations;
  - (3) the use of protective elements such as “laser eye” or other advanced warning devices on windows or doors of a private dwelling for the purposes of providing a warning to the occupants of that dwelling or to dispatch emergency services personnel where an actual entry into a dwelling has occurred.

#### **PART 4 - POWER OF ENTRY TO INSPECT**

- 4.1 The Chief Building Official or a Municipal 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.
- 4.2 A person exercising a power of entry under this Part shall not enter or remain in any room or place actually being used as a dwelling unless,
  - (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, may only be made under the authority of a warrant issued pursuant to the *Provincial Offences Act*;
  - (b) a warrant issued pursuant to the *Provincial Offences Act* is obtained; or
  - (c) the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person.

#### **PART 5 - ORDERS**

- 5.1 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 Municipal Law Enforcement Officer may make an Order requiring work to be done to correct the contravention.

- 5.2 If the work required by an Order under this Part is not done within the specified period, the Town, its employees and/or agents may at any reasonable time enter upon the land to do the work at the expense of the owner of the land, and the Town may recover the expense of doing the work by adding the same to the tax roll and collecting the expense in the same manner as taxes.
- 5.3 An Order made pursuant to this By-law shall set out:
- (a) the municipal address or the legal description of the land;
  - (b) reasonable particulars of the contravention and of 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 it specifies, the Town may have the work done at the expense of the owner of the land, and the Town may recover the expense of doing the work by adding the same to the tax roll and collecting the expense in the same manner as taxes.
- 5.4 The period described in section 5.4(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 is passed.
- 5.5 Where the power of entry to do work is exercised under this Part, reasonable notice of the proposed entry shall be given to the occupier of the land by personal service.
- 5.6 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this Part.

#### **PART 6 - ADMINISTRATION AND ENFORCEMENT**

- 6.1 The Chief Building Official shall be responsible for the administration of this By-law and Municipal Law Enforcement Officers of the Town shall be responsible for the enforcement of this By-law.

#### **PART 7 - OFFENCE**

- 7.1 Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to any penalty as provided for in the *Provincial Offences Act*, R.S.O. 1990 c. P.33, as amended.
- 7.2 The court in which a conviction has been entered, and any court of competent jurisdiction thereafter, 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.

#### **PART 8 - SEVERABILITY**

- 8.1 If a court of competent jurisdiction shall 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 this By-law shall survive and remain in force.

**PART 9 - ENACTMENT**

9.1 This By-law comes into force and effect on the day it is passed.

Read a first, second and third time and finally passed this 10<sup>th</sup> day of March, 2003.

  
DEPUTY MAYOR

  
CLERK