

THE CORPORATION OF THE TOWNSHIP OF ESSA

BY-LAW 2012 – 12

A By-law of the Township of Essa 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 Township of Essa.

WHEREAS Section 133 (1)(a) of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended ("*Municipal Act, 2001*"), provides that by-laws may be passed by a Council of a Municipality regulating the fortification of, and protective elements applied to land within the Township of Essa; and

WHEREAS Section 133 (1)(b) of the *Municipal Act, 2001*, provides that by-laws may be passed by a Council of a Municipality for the prohibition of excessive fortification and excessive protective elements; and

WHEREAS Section 133 (3)(a) of the *Municipal Act, 2001*, provides that by-laws may be passed by a Council of the Municipality to exempt land or classes of lands; and

WHEREAS Section 133 (3)(b) and (c) of the *Municipal Act, 2001*, provides that by-laws may be passed requiring the owner of land, at its expense, to perform remedial work in respect of the land so that it is in conformity with the by-law. Such remedial work may be required even if the fortification or protective elements were present on the land before the by-law came into force; and

WHEREAS access to and exit from land, buildings and structures may be required by 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 Council of the Corporation of the Township of Essa deems it necessary for the health, safety and welfare of the inhabitants of the Township of Essa 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 Township of Essa; 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 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 as 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 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/or emergency services personnel from responding to emergency situations effectively and in a timely manner.

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NOW THEREFORE the Council of The Corporation of the Township of Essa enacts as follows:

1.0 DEFINITIONS AND INTERPRETATION

In this by-law, unless the context otherwise requires:

- 1.1 **“Construct and Construction”** includes doing anything in the erection, installation, extension or material alteration or repair of a building or structure;
- 1.2 **“Corporation”** means the Corporation of the Township of Essa;
- 1.3 **“Council”** means the Council of The Corporation of the Township of Essa;
- 1.4 **“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;
- 1.5 **“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:
 - a) protection plaques or plates made of metal or any other material installed inside or outside a building;
 - b) an observation tower, whether integrated to a building or not, designed to enable the visual observation of surrounding areas beyond the perimeter of the land, whether the tower is occupied by an individual or a surveillance camera or like equipment;
 - c) 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;
 - d) armoured or specially reinforced doors designed to resist the impact of firearms, battering rams, explosives or vehicle contact;
 - e) steel plates, steel bars, bullet-proof shutters, heavy gauge wire mesh, 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, with the sole exclusion of those installed at the basement or cellar level;
 - f) masonry, including brick and concrete block over windows or doorways;
 - g) secondary walls or other obstructions in front of landings, doors or windows;

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- h) 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
- i) any fence or gate constructed, installed or maintained or reinforced with metal or similar material in excess of 3 millimetres in thickness.

1.6 ***“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 includes but is not limited to:

- a) 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;
- b) electrified fencing or any similar 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 entry to land whether designed to, or by application in such manner is, likely to cause death or serious injury;
- c) visual surveillance equipment, including video cameras, night vision systems, or electronic surveillance 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; and
- d) chemical or toxic agents placed or used in such a manner as to prevent access or exit from lands or structures.

1.7 ***“Fortification”*** and ***“Fortify”*** includes the installation, application, construction, 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;

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

1.9 ***“Law Enforcement Officer”*** means a Police Officer appointed pursuant to Section 2 of the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended from time to time.

1.10 ***“Maintain”*** and ***“Maintenance”*** means to allow the continued existence of a device, barrier, structure, or material whether or not repairs are undertaken;

1.11 ***“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;

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1.12 *“Protective Elements”* included, but is not limited to, any object, material components, or any contrivance designed for surveillance or to restrict, obstruct or impede access to and exit from land, or having the effect of surveillance of or restricting, obstructing or impeding access to and exit from the land.

2.0 PROHIBITED MATTERS

2.1 No person shall:

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

3.0 EXEMPTIONS

3.1 Section 2 above 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;
- b) detention centres operated by or on behalf of the Government of Canada or Ontario, 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 Ontario Provincial Police or other Police Service with the Ontario Police Services Act;
- e) lands owned or occupied by the Federal Department of National Defence;
- f) lands owned or occupied by the Royal Canadian Mounted Police;
- g) lands owned and occupied by the Corporation of the Township of Essa or by the County of Simcoe;
- h) other commercial, business, industrial or institutional establishments where the nature of the undertaking necessitates particular elements of excessive fortification or excessive protection elements and where such use is permitted by the Zoning By-law 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, to be determined by the Chief Building Official.

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4.0 APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

- 4.1** Upon receipt of an application, the Clerk of the Corporation and Council shall follow the procedure set out in this by-law.
- 4.2** Any person wishing to make a request for partial or complete exemption from the provisions of this by-law shall file with the Clerk of the Corporation the following:
- a) 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 Clerk;
 - b) complete details of the location of the land, including the municipal address, legal description, type, number and nature (residential, commercial, farm) and a recent survey or scaled drawing of the land and structures, and shall accompany this application;
 - c) a detailed explanation shall be included of the exemption(s) requested and rationale for requesting such an exemption(s). This shall include details of proposed excessive fortification or application of excessive protective elements being considered along with an explanation of how that excessive fortification or application of excessive protective elements is rationally connected to the purpose for which the exemption is being sought; and
 - d) proof of ownership of the land or proof of authorization by the owner of the land.
- 4.3** All applications will be reviewed by the Corporation in consultation with the Ontario Provincial Police 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:
- a) request for further details or documentation from the applicant;
 - b) requiring the provision of any further or other documents considered to be necessary or relevant to the investigation of the application;
 - c) making inquiries of any department of local, provincial or federal government considered necessary and/or relevant to the investigation of the application;
 - d) making inquiries and requesting input from local fire, police and ambulance services or any other department that may have an interest, issue or concern with the application.
- 4.4** A report will be prepared for consideration by Council.
- 4.5** After reviewing the report, Council may issue a complete or partial exemption, if:
- a) the applicant is a person;

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- b) there is proven to exist a rational connection between the necessity and rationale provided for the exemption and the nature and extent of the exemption required;
- c) the nature and extent of the authorized exemption does not exceed that which is rationally proven to be necessary;
- d) the necessity of access to emergency services personnel and/or law enforcement officials 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 Corporation.

4.6 Any decision to authorize a partial or complete exemption will be based on the report, the application of the criteria set out in Section 4.5 and will be based on consideration of the guiding principles of this by-law as set out in the preamble.

4.7 An authorized partial or complete exemption provided to a successful applicant will reference this by-law and bear the signature of the Clerk and the seal of the Corporation. Such exemption may be time-limited and/or be granted only to the registered owner and void upon any transfer in ownership or control of the property including under lease and may include such other conditions and restrictions as are reasonable.

4.8 A true copy of any authorization issued under this section shall be forwarded immediately by the office of the Clerk to the attention of the Chief of Police, the Fire Chief and the Director of Ambulance Services.

5.0 SCOPE AND LIMITATION OF BY-LAW

5.1 Section 2 does not operate to prohibit:

- a) 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;
- b) the use of protective elements such as a "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;
- c) 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 renovation.

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- 5.2** Nothing in this by-law shall be interpreted as restricting a normal farm practice carried on as part of an agricultural operation pursuant to the *Farming and Food Protection Act, 1998*, S.O. 1998, c. 1.

6.0 POWERS OF ENTRY

6.1 ENTRY – BY OFFICIALS

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.

6.2 ENTRY – CONSENT/ WARRANT OR IMMEDIATE DANGER

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, R.S.O. 1990, c. P. 33; 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.

7.0 ORDER – CORRECT CONTRAVENTION

- 7.1** If a Law Enforcement Officer is satisfied that a contravention of this by-law has occurred, 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 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 it specifies, the Corporation or its appointed agent may have the work done at the expense of the Owner of the land, and the Corporation may recover the expense incurred in doing it by action, or the same may be recovered in the like manner as municipal taxes.

7.2 TIME – CORRECTION

The period described in this section 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.

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7.3 CORPORATION – WORK DONE

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 reasonable time enter upon the land to do the work.

8.0 ENFORCEMENT

8.1 Persons who are employed or appointed as Law Enforcement Officers are deemed appointed and entitled to enforce the provisions of this by-law.

9.0 PENALTIES

9.1 OFFENCE – PENALTY

Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the maximum penalties specified in accordance with the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, and any amendments thereto or any successor legislation thereto.

9.2 COURT ORDER – PROHIBIT CONTINUED OFFENCE

The court in which a conviction has been entered, and any court of competent jurisdiction therefore, 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.

9.3 SETTING FINES – APPROVED BY THE COURT

Set fines may be established for certain offences contained in this by-law. Such set fines shall be established pursuant to the *Provincial Offences Act* and shall become effective upon the approval of same by the Senior Judge of the Ontario Court of Justice, Provincial Division.

10.0 CONFLICT

10.1 Subject to Section 10.2, where a provision of this by-law conflicts with the provision of any other by-law of the Corporation 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.

10.2 Notwithstanding Section 10.1 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.

11.0 SEVERABILITY

Should a court of competent jurisdiction 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 to pass the remainder of the by-law shall survive and

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12.0 EXEMPTION

12.1 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 Federal, Provincial or Municipal Law.

13.0 ENACTMENT

This by-law shall come into force and effect upon the date of final passing thereof.

READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY PASSED on this the 7th day of March, 2012.



Terry Dowdall, Mayor



Bonnie Sander, Clerk