



THE CORPORATION OF THE TOWN OF INGERSOLL

BY-LAW NO. 10- 4523

A by-law to regulate the fortification of and protective elements applied to land.

WHEREAS Section 133 of the *Municipal Act, S.O. 2001 c.25*, as amended, 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 municipality;

AND WHEREAS section 133 of the *Municipal Act, S.O. 2001 c.25*, as amended, provides that by-laws may be passed by a 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. 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 Town of Ingersoll deems it necessary for the health, safety and welfare of the inhabitants of the Town of Ingersoll 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 Town of Ingersoll;

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/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 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.

THEREFORE the Municipal Council of The Corporation of the Town of Ingersoll enacts as follows:

SHORT TITLE
THE FORTIFICATION OF LAND BY-LAW

1.0 DEFINITIONS AND INTERPRETATIONS

1.1. Definitions and Interpretations in this by-law:

Town – defined

“Town” means the Town of Ingersoll

Apply or Application-defined

“Apply or Application” means the erection, construction, installation, extension or material alteration or repair of or application to Land and includes to Construct.

Chief Building Official – defined

“Chief Building Official” means 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 – defined

“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.

Council-defined

“Council” means the Municipal Council for the Corporation of the Municipality of Ingersoll.

Emergency Services Personnel – defined

“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.

Excessive Fortification and Excessively Fortify - defined

“Excessive fortification and Excessively Fortify” means fortification that is excessive and includes but is not limited to:

- (a) protection plaques, bars or plates made of metal or any other material installed inside or outside a building
- (b) an observation tower, whether integrated or not, to a building;
- (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) 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 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;
- (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 materials in excess of 3 millimetres in thickness;

Excessive Protective Elements – defined

“Excessive protective elements” means protective elements that are excessive and includes but is not limited to:

- (a) 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 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) The application of 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; and
- (c) The application of visual surveillance equipment, including video cameras, ‘night vision’ 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;

Fortification and Fortify – defined

“Fortification and Fortify” means the installation, application, or maintenance of devices, barriers, or materials in a manner designed to hinder, restrict, obstruct or impede, or having the effect of, restricting, obstructing or impeding, access to or from land, and includes Excessive Fortification.

Land – defined

“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.

Maintain-defined

“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.

Municipal Law Enforcement Officer – defined

“Municipal Law Enforcement Officer” includes a Municipal Law Enforcement Officer appointed pursuant to either paragraph 227 of section 207 of the *Municipal Act, R.S.O. 2001, c. M.45*, as amended, from time to time, or pursuant to subsection 15(1) of the *Police Services Act, R.S.O. 2001, c.25*, as amended,

from time to time.

Person – defined

“Person” means any natural person, any 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.

Protective Elements – defined

“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 and includes Excessive Protective Elements.

2.0 GENERAL PROHIBITIONS

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
- (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.
- (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, and 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 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 of 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 any Police service in accordance with the Ontario Police Service Act;
- (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 to excessive fortification or excessive protective elements and where such use is otherwise lawfully 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 for 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.

4.0 SCOPE AND LIMITATION OF BY-LAW

4.1 Section 2 does not operate to prohibit:

- (a) The use or application of commercially marketed household security devices designed and applies to provide reasonable fortification and protect from theft or other criminal activity against the person or property of an individual;
- (b) 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 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 renovations.

5.0 APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

5.1 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 in the following:

- (a) An application for partial or complete exemption from any provision(s) of

the By-law shall be signed and in writing and directed to the Chief Building Official;

- (b) 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:
- (c) A detailed explanation shall be included of the exemption(s) requested and the 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.

5.2 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;

- (a) Requests for further details or documentation from applicant,
- (b) Requiring the provision of any further or other documents considered by the Chief Building Official to be necessary or relevant to 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 applicant
- (d) 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.

6.0 GROUNDS FOR EXEMPTIONS

6.1 Upon review of the documentation required or requested pursuant to Sections 5.1 and 5.2 the Chief Building Official may issue a complete or partial exemption if:

- (a) The applicant is a Person, and
- (b) 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
- (c) The nature and extent of authorized exemption does not exceed that which is rationally proven to be necessary, and

- (d) 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.
- (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.

6.2 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.

6.3 A true copy of any authorized issued under Section 6.2 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 Director of Ambulance Services of the Municipality.

7.0 APPEAL OF DENIAL OF EXEMPTION

7.1 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 20 days of the date of such decision to refuse the application for exemption by the Chief Building Official.

7.2 Where there has been an appeal under the provisions of section 7.1 herein, Council shall hold a meeting for the consideration of the appeal. The Chief building Official shall provide 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.

7.3 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

7.4 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 7.2 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.

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

8.0 POWER OF ENTRY

8.1 ENTRY – BY OFFICIALS

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.

8.2 ENTRY – CONSENT OR WARRANT

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*.

9.0 ORDERS

9.1 ORDER – CORRECT CONTRAVENTION

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 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 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 incurred in doing it by action, or the same may be recovered in like manner as municipal taxes.

9.2 TIME – CORRECTION

The period described in section 9.1(b) of this by-law shall not be less than three months if the fortifications or protective elements were present on the land on the day this by-law is passed.

9.3 TOWN – WORK DONE

If the work required by an Order under this Part of the by-law 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.

10.0 ADMINISTRATION AND ENFORCEMENT

10.1 ENFORCEMENT – CBO & MLEO

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.

11.0 PENALTIES

11.1 OFFENCE – PENALTY

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*.

11.2 COURT ORDER – PROHIBIT CONTINUED OFFENCE

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.

12.0 SEVERABILITY

12.1 UNSEVERED SECTIONS – STILL IN FORCE

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 this by-law shall survive and remain in force.

13.0 ENACTMENT

13.1 This by-law comes into force on the day it is passed.

14.0 By-law No. 04-4146 and any other By-law inconsistent with this By-law shall be rescinded in its entirety.

READ a first and second time in Open Council this 14th day of December, 2009

READ a third time and passed in Open Council this 14th day of December, 2009.

Paul Holbrough, Mayor

Elaine Clark, Clerk/Deputy Administrator