



THE CORPORATION OF THE TOWN OF ORANGEVILLE

BY-LAW NO. 54-2004

**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 TOWN OF ORANGEVILLE**

WHEREAS Section 133(1)(a) and (b) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that:

- (1) 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.

AND WHEREAS Section 133(3)(a), (b) and (c) provides that:

- (3) 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;
 - (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;
 - (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 Town of Orangeville deems it necessary for the health, safety, and welfare of the inhabitants of the Town of Orangeville to enact a by-law providing for regulation of fortification of land and the application of protective devices as well as the prohibition of excessive fortification of land and the application of excessive protective elements to land within the Town of Orangeville;

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 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 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 as well as 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;

BE IT THEREFORE ENACTED by the Municipal Council of the Corporation of the Town of Orangeville as follows:

SHORT TITLE

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

DEFINITIONS AND INTERPRETATION

2. In this By-law;

"apply" or "application" means the erection, installation, extension or material alteration or repair of or application to land and includes to Construct;

"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;

"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;

"Council" means the municipal council for the Corporation of the Town of Orangeville;

"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 an emergency services personnel to do or refrain from doing anything and who acts on those directions;

"excessive fortification" and "excessively fortify" mean the construction of devices, barriers, or materials in a manner designed to hinder, obstruct or prohibit access to or from land and includes, but is in no manner limited to:

- (a) The application of steel plates, steel bars, bullet-resistant/proof shutters or heavy gauge wire mesh to window and other openings on any and all levels of any structure or building on land with the sole exclusion of basement windows or openings;
- (b) 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 a building or land;
- (c) The application of steel sheeting or plates or other similar products to the interior or exterior walls of a structure or building such as to reinforce walls or create a secondary wall such as to protect against firearms artillery, explosives, vehicle contact, shock, and other similar intrusions;
- (d) The application of laminated glass or any other form of break resistant/proof or bullet resistant/proof material to windows or doors;
- (e) Armour plated or reinforced doors (exterior or interior) designed to resist against impact of firearms artillery, explosives, battering rams, shock or vehicle contact;

- (f) The of pillars, cones or barriers out of concrete, steel, or any other building material that are designed to obstruct, hinder, restrict, or deny access into any building or onto any land by conventional means of access or modes of transportation; and
- (g) 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;

“excessive protective elements” means devices, objects, material components, or any contrivance designed to control, hinder, restrict, or deny access to or from and includes, but is in no manner limited to:

- (a) The application of perimeter warning devices such as “laser eyes” or other types of advanced warning systems, be they 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 building or structure located on land;
- (b) The 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; and
- (c) 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;

“fortification” and “fortify” mean the construction of devices, barriers, or materials in a manner designed to hinder, obstruct or prohibit access to or from land and includes excessive fortification;

“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;

“law enforcement officer” includes:

- (a) A Police Officer as defined in Section 2 of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended;
- (b) A Municipal Law Enforcement Officer appointed pursuant to Section 15(1) of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended;
- (c) A Chief Building Official appointed or constituted under Sections 3 or 4 of the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended;
- (d) An Inspector appointed under Section 3(2) of the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended;
- (e) A Fire Inspector, including the Fire Marshall, an assistant to the Fire Marshall or a Fire Chief, appointed under the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c.4, as amended; and
- (f) An Officer appointed pursuant to a by-law under Section 15.1 of the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended;

“Property Standards Officer” means an officer appointed pursuant to a by-law under Section 15.1 of the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, 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:

- (a) whether the land conforms with the standards prescribed in the by-law, or
- (b) whether an order made under section 15.2(2) of the *Building Code Act, 1992*, as amended, has been complied with;

“protective elements” means devices, objects, material components, surveillance equipment or any contrivance designed to control, hinder, restrict or deny access to or from land and includes Excessive Protective Elements;

“town” means the Corporation of the Town of Orangeville;

“person” means any natural person, the heirs, executors, administrators or other legal representatives of the person to whom the context can apply according to law, and any corporation registered pursuant to the *Business Corporations Act, R.S.O. 1990, c. P.15*, as amended, or the *Canada Business Corporations Act, R.S. 1985, c. C-44*, as amended.

GENERAL PROHIBITIONS

- 3. No person shall:
 - (a) Excessively fortify or barricade any land for the purpose of restricting, obstructing or hindering access to that land;
 - (b) Apply excessive protective elements to land such as to restrict, obstruct or hinder any person, including law enforcement officers and emergency services personnel, from accessing and/or exiting in a safe and timely manner, any land;
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.

ABSOLUTE EXEMPTIONS

- 4. Section 3 of this By-law does not apply to:
 - (a) Financial institutions as identified and listed in Schedules I, II, and III of the *Bank Act, S.C. 1991, c. 46*, as amended, that are zoned for such use;
 - (b) Detention centres zoned for such use or otherwise permitted by law;
 - (c) Lands, wherever situated, owned or occupied by the Ontario Provincial Police or an Ontario municipal police service constituted in accordance with the *Police Services Act, R.S.O. 1990, c. P.15*, as amended;
 - (d) Lands, wherever situated, owned or occupied by the Federal Department of National Defence; and
 - (e) Lands, wherever situated, owned or occupied by the Royal Canadian Mounted Police.

SCOPE AND LIMITATION OF BY-LAW

5. Section 3 of this By-law does not operate to prohibit;
 - (a) The use or application of commercially marketed 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 “laser eye” or other advanced warning devices on windows or doors of a dwelling house or structure 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 unauthorized entry into a dwelling house has occurred;
 - (c) Common alterations or renovations to a building or structure 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.

APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

6. Any person wishing to obtain a partial or complete exemption from any of the provisions of this By-law shall file with the Chief Building Official a written application form containing the following information:
 - (a) Date of application;
 - (b) Complete details of the location of the land, including municipal address, legal description, the existing use of the land and the intended use if any change in use is anticipated, and a recent survey of the land and structures;
 - (c) A detailed explanation of the exemption(s) requested and the reasons for requesting such exemption(s). This should include details of proposed fortification or excessive fortification or application of protective elements or excessive protective elements being considered along with an explanation of how the proposal relates to the purpose for which the exemption(s) is/are being sought.
 - (d) Proof of ownership of the land or proof of authorization by the owner of the land.
7. All applications will be reviewed by the office of the Chief Building Official, who may make any further inquiries of any person, agency, board, department, ministry or public body that he or she deems necessary and relevant and may require the provision of any additional information, which shall be provided at the expense of the applicant, including, but not limited to:
 - (a) Details or documentation from the applicant,
 - (b) Any further or other documents considered by the Chief Building Official to be necessary or relevant to the investigation of the application,
 - (c) Input from any department of a Local, Provincial or Federal government considered necessary and/or relevant to the investigation of the application,
 - (d) Input from local police, fire, and ambulance services, or any other department, agency or board that may have an interest, issue, or concern with the application.
8. Once the Chief Building Official’s investigation and review of the application is complete, he or she shall:
 - (a) Prepare a report containing recommendations to be considered by Council;

- (b) Recommend in that report either a partial or complete exemption or denial of the application;
- (c) In the event that a partial or complete exemption is recommended, determine whether and to what extent the approval is to be time limited, or include in the report such other conditions and restrictions as in his or her opinion are appropriate; and
- (d) Base any recommendation to authorize a partial or complete exemption on the results of the inquiries and investigations set out in Section 7 of this By-law as well as on a consideration of the guiding principles of this By-Law as set out in the Preamble.

GROUNDS FOR EXEMPTION

- 9. Upon review of the documentation required or requested pursuant to Sections 6 and 7 of this By-law, the Chief Building Official may recommend a complete or partial exemption if:
 - (a) the applicant is a person;
 - (b) there is, in the opinion of the Chief Building Official, a reasonable connection between the necessity and rationale for the exemption and the nature and extent of exemption requested;
 - (c) the nature and extent of the authorized exemption does not exceed that which is reasonably proven to be necessary, and
 - (d) the necessity of access by 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.
- 10. Upon the recommendation of the Chief Building Official, Council may:
 - (a) Approve the application for exemption in whole or in part, with such restrictions and conditions as Council deems appropriate; or
 - (b) deny the application.
- 11. The decision of Council referred to in Section 10 of this By-law shall be forwarded immediately by the office of the Chief Building Official to the attention of the Chief of Police, the Fire Chief and the Director of Ambulance Services.

POWER OF ENTRY

- 12. A Law Enforcement Officer 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.

ORDERS

- 13. Where 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 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.

14. 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 by the Town, to enter upon the land to do the work.
15. The period described in Section 13 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.

DWELLINGS

16. 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:
 - (a) The occupier of the dwelling consents; or
 - (b) 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.

PENALTY AND ENFORCEMENT

17. 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.
18. 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 are deemed to be appointed and entitled to enforce the provisions of this By-law.

CONFLICT

19. Subject to Section 20 of this By-law, where a provision hereof conflicts with the provision of any other by-law of the Town or any applicable government regulation, the provision that establishes the higher standard of protection regarding the health, safety and welfare of the general public shall prevail.
20. Notwithstanding Section 19 of this By-law and despite Section 35 of the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended, if there is a conflict between the Building Code under the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended, and this By-law, the Building Code prevails.

SEVERABILITY

21. 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 of this By-law shall survive and be applied and enforced in accordance with its terms to the extent possible under law.

EXEMPTION LIMITED BY ACT OF LAW

22. 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 other Federal, Provincial or Municipal Law.

ENACTMENT

23. This by-law shall come into force and effect as of the date of final passage.

READ THREE TIMES AND FINALLY PASSED IN OPEN COUNCIL THIS 7th DAY OF JUNE, 2004.


Drew Brown, Mayor


Cheryl Johns, Clerk