

CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW 2002-119

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 NEWMARKET

WHEREAS Section 217 (1) (a) & (b) of the *Municipal Act*, R.S.O. 1990, Chapter M.45 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. 2001, c.25, s. 478 (9).

AND WHEREAS Section 217 (3) (a), (b) & (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. 2001, c. 25, s. 478 (9).

AND WHEREAS the Council of the Corporation of Town of Newmarket deems it necessary for the health, safety, and welfare of the inhabitants of the Town of Newmarket 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 Newmarket;

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 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;

THEREFORE BE IT ENACTED by the Municipal Council of the Corporation of the Town of Newmarket 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,
 - (a) "**Town**" means the **Corporation of the Town** of Newmarket;
 - (b) "**Apply or Application**" means the erection, installation, extension or material alteration or repair of or application to **Land** and includes to **Construct**;
 - (c) "**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*, S.O. 1992, c. 23, as amended from time to time;
 - (d) "**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;
 - (e) "**Council**" means the Municipal council for the **Corporation of the Town or Newmarket** duly elected in accordance with the provisions of s.29 (5) & (6) of the *Municipal Act* of Ontario R.S.O., 1990, c. M.45.
 - (f) "**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 any thing and who acts on those directions;
 - (g) "**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** and includes **Excessive Fortification**.

- (h) **"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** and includes 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 firearms 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;
- (i) **"Land"** means **land**, including buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, erections, physical barriers and any other structures on the **land**;
- (j) **"Property Standards Officer"** means an officer appointed pursuant to a by-law under s.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 the by-law, or
 - ii) whether an order made under subsection (2) of the Act has been complied with. 1997, c.24, s. 224 (8);

- (k) **"Law Enforcement Officer"** includes a Police Officer appointed pursuant to 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 paragraph 45 of Section 207 of the *Municipal Act*, R.S.O. 1990, Chapter M.45, as amended from time to time, or pursuant to subsection 15(1) of the *Police Services Act*, R.S.O. 1990, Chapter P.15, 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 purposes of Part VI s.18 (1) of the *Fire Protection and Prevention Act, 1997*, c.4; as amended from time to time and includes a **Property Standard Officer**.
- (l) **"Protective Elements"** means devices, objects, material components, or any contrivance designed to control, hinder, restrict or deny access to or from **land** and includes **Excessive Protective Elements**.
- (m) **"Excessive Protective Elements"** means devices, objects, material components, or any contrivance designed to control, hinder, restrict, or deny access to or from **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;
- (n) **"Person"** means any natural person and any corporation registered pursuant to Section 2 (2) of the *Ontario Business Corporations Act*, R.R.O., 1990, Reg. 62 or Section 2 (1) of the *Canada Business Corporations Act*, R.S. 1985.

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**;
 - (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** above 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 from time to time that is 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 in accordance with the *Ontario Police Services Act*;
 - (d) **Lands**, wherever situated, owned or occupied by the Federal Department of Defence; and
 - (e) **Lands**, wherever situated, owned or occupied by the Royal Canadian Mounted Police.

SCOPE AND LIMITATION OF BY-LAW

5. **Section 3** 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 "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.

APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

6. 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:
 - (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 **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 an exemption(s). This should 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.
7. 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 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 Police, Fire, and Ambulance Services, or any other department that may have an interest, issue, or concern with the application.
8. Any decision to authorize a partial or complete exemption will be based on the results of those inquiries and investigations set out in paragraph 7 and will be based on consideration of the guiding principles of this By-Law as set out in the Pre-amble.
9. 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** and the Seal.

10. A true copy of any authorization issued under paragraph 9 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.

GROUND FOR EXEMPTION

11. Upon review of the documentation required or requested pursuant to sections 6 and 7, 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 officials** is not unreasonably interfered with or limited considering the need, necessity and rationale provided for the exemption.

POWER OF ENTRY

12. 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.

ORDERS

13. Where a **Law Enforcement Officer** or the **Chief Building Official** is satisfied that a contravention of this by-law has occurred, 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 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, work done may be 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 for that purpose, to enter upon the **land** to do the work.

15. The period described in **section 13 (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.

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* 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, 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.

CONFLICT

19. Subject to section 20, where a provision of this by-law conflicts with the provision of any other by-law of the Town 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.
20. Notwithstanding section 19, 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.

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 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 on the date of enactment.

ENACTED THIS 30th DAY OF SEPTEMBER, 2002



Tom Taylor, Mayor



Anita Moore Town Clerk