

BY-LAW [insert number]

OF

THE CORPORATION OF THE CITY OF BRANTFORD

*Being a By-law to Regulate in Respect of the Fortification of and Protective Elements
Applied to Land*

AND WHEREAS the Municipality may pass by-laws that protect the public and are in the interests of the health, well-being and safety of its residents, pursuant to s. 10 of the *Municipal Act, 2001*, S.O. 2001 c. 25, as amended (the "*Municipal Act*");

WHEREAS Section 133 of the *Municipal Act*, as amended, provides that a municipality may regulate in respect of the fortification of and protective elements applied to land and prohibit the excessive fortification of land or excessive protective elements being applied to land;

AND WHEREAS concerns have been raised by residents that surveillance equipment is being used to record more activities than is necessary for security of an individual's property;

AND WHEREAS such surveillance equipment can violate the privacy of others when used inappropriately;

AND WHEREAS access to, and exit from, land, buildings and structures may be required by municipal officials, law enforcement officials, and emergency services personnel;

AND WHEREAS the excessive fortification of land or excessive protective elements may hinder lawful access by municipal officials, law enforcement officials, and emergency services personnel;

AND WHEREAS the excessive fortification of land or excessive application of protective elements to land can pose a serious risk to the health, safety and well-being of persons;

AND WHEREAS Part XIV of the *Municipal Act* including sections 425, 429, 435 through 440, 444 through 446, provides for the enforcement of by-laws, including the creation of offences and fines for contravention, powers of entry, inspections, warrants regarding the search of properties, orders to discontinue contravening activities and bring

properties into compliance, and the carrying out of matters or things required under this By-law and the recovery of costs by the City for carrying out such matters or things;

AND WHEREAS the Council of the Corporation of the City of Brantford deems it necessary to enact a by-law to prohibit excessive fortification and excessive protective elements being applied to land within the City of Brantford;

NOW THEREFORE The Council of the Corporation of the City of Brantford ENACTS as follows:

PART I – SHORT TITLE

1.0 This By-law may be cited as the “Fortification By-law”.

PART II – DEFINITIONS

2.0 In this By-law

- (1) “Act” means the *Municipal Act*, 2001, S.O. 2001, c. 25;
- (2) “Apply” or “Application” means the erection, installation, extension or material alteration or repair of or application to Land and includes to construct;
- (3) “Building Code Act” means the *Building Code Act*, 1992, S.O. 1992, c. 23;
- (4) “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*, as amended;
- (5) “City” means The Corporation of the City of Brantford or the geographic area of the City of Brantford, as the context requires;
- (6) “Construct” or “Construction” means to do anything in the erection, installation, extension, or material alteration or repair of a building or structure, and includes the installation of a building or structure fabricated or moved from elsewhere;
- (7) “Council” means the elected Council of the City of Brantford;

- (8) “Emergency Services Personnel” means any individual employed by a police service, fire service (including volunteer firefighters), ambulance service in Ontario, and such other municipal, local, provincial, federal or other emergency responding personnel, who are 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;
- (9) “Excessive Fortification” and “Excessively Fortify” means the use, maintenance or construction of devices, barriers, or materials in a manner designed to hinder, obstruct or prohibit lawful access to or from Land or which have the effect of hindering, obstructing or prohibiting access to or from Land and includes but is not limited to:
- (i) The application of steel plates, steel bars, bullet-proof shutters or heavier than 10 gauge wire mesh to window or other openings of structures on Land, but not including steel bars in basement windows or basement 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, including ceilings or roof structures such as to reinforce walls or create a secondary wall such as to protect against firearms, artillery, explosives, vehicle impact, shock and other similar intrusions;
 - (iv) The application of laminated glass or any other form of break resistant or bullet resistant material to windows or doors that is difficult to break in the event of a fire or emergency;
 - (v) Armour plated or reinforced doors whether exterior or interior, designed to resist against impact of firearms artillery, explosives, battering rams, shock or vehicle impact;
 - (vi) The construction of pillars, cones or barriers out of concrete, steel, or any other material that may have the result of obstructing,

hindering, restricting or preventing access onto any Land by conventional means of access or other modes of transportation at ordinary points of entry;

(vii) The construction of an observation tower designed to enable the visual observation of surrounding areas beyond the perimeter of the Land actually owned, leased, rented, or occupied by the occupant whether the tower is occupied by an individual or a surveillance camera or like equipment.

(10) “Excessive Protective Elements” means the use, maintenance or construction of devices, objects, material components, or any contrivance designed for surveillance or to control, hinder, restrict or deny access to or from Land or which have the effect of controlling, hindering, restricting or denying access to or from Land and includes but is not limited to the following:

- 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 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 entry to Land whether designed to, or by application in such manner is, likely to cause death or serious injury;
- c. The application of surveillance equipment, including video cameras, ‘night vision’ systems, or electronic listening devices capable of permitting either stationary or scanned viewing or listening, designed or operated so as to listen or view persons or Land beyond the Land actually owned, leased, rented or occupied by the occupant, or the use of visual surveillance equipment where the exterior lenses are obstructed from view or which are employed so as to prevent observation of the direction in which they are aimed.

- (11) “Fortification” or “fortify” means the installation, application, maintenance or construction of devices, barriers, or materials in a manner designed to hinder, obstruct, or prohibit access to or from Land or which have the effect of hindering, obstructing or prohibiting access to or from the Land and includes Excessive Fortification;
- (12) “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;
- (13) “Occupier/Occupant” means a person residing on or in immediate possession of Land, or of a part of Land where relevant to notice of entry to the Land or part;
- (14) “Officer” means a municipal law enforcement officer or other person appointed or employed by the City for the enforcement of by-laws, and further includes a police officer;
- (15) “Order” means a direction issued by an Officer pursuant to this Chapter and requiring compliance with the standards prescribed by this Chapter, and “orders” shall have a corresponding meaning;
- (16) “Owner” in relation to land means a registered owner, beneficial owner, lessee or occupant;
- (17) “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;
- (18) “Protective Elements” means any devices, objects, material components or any contrivance designed for surveillance or to control, hinder, restrict or deny access to or from Land of which have the effect of controlling, hindering, restricting or denying access to or from the Land and includes excessive protective elements.

PART III – GENERAL PROHIBITIONS

3.0 No person shall:

- (1) Excessively fortify any Land or cause, permit or maintain the excessive fortification of Land;
- (2) Apply, use, cause, permit or maintain excessive protective elements to or on Land;
- (3) Restrict, obstruct, impede or hinder in any way, an Officer, Emergency Personnel or other persons exercising a power or carrying out a duty under this By-law, including any persons assisting such persons; or
- (4) Fail to perform any remedial work as required by this By-law or an Order.

PART IV – EXEMPTIONS

4.0 Subsections 3(1) and 3(2) of this By-law do not apply to:

- (1) 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 or is otherwise permitted by law;
- (2) Detention centers operated by or on behalf of the Government of Canada or Ontario, zoned for such use or otherwise permitted by law;
- (3) Lands owned or occupied by the Government of Canada or Ontario, or any agency of the Government of Canada or Ontario, or a property that is licensed federally or provincially and is required by law or provincial or federal license to fortify its Land;
- (4) Lands owned or occupied by the City;
- (5) Lands owned or occupied by a “school” as defined in subsection 1(1) of the *Education Act*, R.S.O. 1990, c. E.2;
- (6) Lands owned or occupied by a “private school” as defined in subsection 1(1) of the *Education Act*, R.S.O. 1990, c. E.2;
- (7) Lands owned or occupied by the Royal Canadian Mounted Police, Ontario Provincial Police or Brantford Police Service;

- (8) Lands occupied exclusively as shelters for abused persons, or similar charitable or non-profit aid agencies where the Chief Building Official is satisfied in its sole discretion that security of the occupants is essential to the charitable purpose or aid;
- (9) A “normal farm practice” as defined in the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c.1;
- (10) Land owned or occupied by the Ministry of the Attorney General for Ontario for the purpose of a courthouse;
- (11) Commercial, industrial, or institutional establishments, provided such establishments and fortification or protective elements are in compliance with zoning and otherwise lawfully permitted;
- (12) Land for which an exemption has been granted in accordance with this By-law, provided that there is compliance with any terms and conditions of such exemption;

PART V - APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

5.0 A person requesting a partial or complete exemption from the provisions of this By-law shall provide the following to the Chief Building Official:

- (1) Proof of ownership of the Land, and where the person requesting the exemption is not the Owner, written authorization from the Owner to request the exemption;
- (2) Complete details of the location of the Land, including municipal address, legal description, the existing use, and nature of the use (residential, commercial, industrial or farm), and a scaled drawing showing the Land and all structures on the Land shall accompany the application;
- (3) 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 existing and proposed fortification or application of protective elements 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;

- (4) the required non-refundable fee as set by the City for such applications;
- (5) A consent and contact information necessary to allow City staff and Emergency Services Personnel, as required by City staff, to attend the property and examine existing fortification and protective elements, the placement of the proposed or under construction, and as constructed fortifications or protective elements, to make inquiries, to confirm details of the application and compliance with this By-law and any approval as may be granted;
- (6) An acknowledgement that inquiries may be made and input sought from other departments or levels of government including Provincial and Federal authorities;
- (7) Any further information or documentation as deemed necessary by the Chief Building Official, which shall be at the expense of the applicant.

5.1 An exemption granted under this By-law is personal, not assignable, does not run with the Land, and immediately expires upon the sale of the Land or any change in occupancy or corporate control of the tenancy or ownership of the Land.

PART VI - Grounds for Exemption

6.0 Upon review of the application completed under section 5, the Chief Building Official may issue a partial or complete exemption, with or without additional conditions, as the Chief Building Official deems in their sole discretion to be appropriate to the exemption and content of this By-law, if:

- (1) there is, in the opinion of the Chief Building Official, a reasonable connection between the necessity for the exemption and rationale provided for the exemption and the nature and extent of exemption requested;
- (2) the nature and extent of the exemption requested does not exceed that which is reasonably necessary; and
- (3) access to or escape from the property for Emergency Services Personnel is not unreasonably interfered with or limited.

6.1 Upon completion of investigation and review of the application for exemption, the Chief Building Official shall issue a written decision that:

(1) the application is approved in whole or in part, with such restrictions or conditions as the Chief Building Official deems appropriate; or

(2) the application is denied.

6.2 A true copy of any decisions or authorization under this section may be forwarded by the Chief Building Official to the attention of appropriate Emergency Services Personnel.

Part VII – Scope and Limitation of Bylaw

7.0 Subsections 3(1) and 3(2) of this Bylaw do not apply to:

(1) The use of commercially marketed security devices designed and used to provide reasonable fortification and protection from theft or other criminal activity against a Person or property of a Person, and which do not meet the definition or are not employed so as to meet the definition of excessive protective elements;

(2) The reasonable use of protective elements such as “laser eye” or other advanced warning devices on windows or doors of a building or structure for the purpose of providing a warning to the occupants of that building or structure or to alert Emergency Services Personnel when an entry into a building or structure has occurred;

(3) The use of front-door “doorbell” video cameras used for visitor identification purposes at main entry points to the property; or

(4) Common alterations or renovations where the location or style of a door or window may be altered for purely aesthetic reasons and meets Building Code and Fire Code requirements and have received any permit required to complete such alternation or renovations.

PART VIII – POWER OF ENTRY AND ORDERS

- 8.0 An 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 made under this By-law, is being complied with.
- 8.1. 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:
- (1) The occupier of the dwelling consents to entry, having first been informed of his or her right to refuse consent; or
 - (2) If the occupier refuses to consent:
 - a. a warrant issued pursuant to Section 158 of the *Provincial Offences Act* is obtained;
 - b. A warrant is issued under section 439 of the *Municipal Act*, or
 - c. A court order is issued under section 438 of the *Municipal Act*.
- 8.2 If the Chief Building Official or an Officer is satisfied that a contravention of this By-law has occurred, the Chief Building Official or a municipal 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 and 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) If the work required by an Order is not completed within the specified time period, an Officer may, at any reasonable time, enter upon the Land or may make arrangements for municipal employees or a contractor or agent retained for that purpose, to enter upon the Land to do the work and the cost of such work shall be recoverable from the Owner by the City in like manner as municipal taxes.
- 8.3 (1) An Officer may, for the purposes of an inspection under this By-law:
- (a) require the production for inspection of documents or things relevant to the inspection;

(b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

(c) require information from any person concerning a matter related to the inspection, including requiring expert or other examinations, testing, reports or as constructed plans to be obtained and provided; and

(d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

(2) Any sampling done during an inspection shall be done in accordance with subsections (3) and (4) of section 436 of the *Municipal Act*.

(3) A receipt shall be provided for any document or thing removed under clause (1)(b) and the document or thing shall be promptly returned after copies or extracts are made.

8.4 An order to correct a contravention under section 8.2 of this By-law may be served personally or be posted in a conspicuous place on the Land where the contravention occurred, or sent by prepaid regular or registered mail to the last known address of the person to be served, and service by mail or posting shall be deemed to have taken place five (5) days after the date of mailing or posting.

PART IX – PENALTY AND ENFORCEMENT

9.0 Every 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.

9.1 (1) Subject to subsection (2), any person who contravenes a provision of this By-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of an offence and upon conviction is liable to a fine or penalty as follows:

(a) or a first offence, a maximum of \$20,000.00;

(b) for a second offence, a maximum of \$50,000.00; and

(c) for a third or subsequent offence, a maximum of \$100,000.00.

(2) Any person who contravenes any order made under this By-law, or an officer or director of a corporation who knowingly concurs in such a contravention by the corporation, is guilty of a continuing offence and upon conviction is liable to a daily fine or penalty of a maximum of \$10,000 for each day or part of a day that the offence continues, and despite subsection (1) the total of all the daily fines imposed for an offence is not limited by the maximums listed in subsection (1).

9.2 The Chief Building Official shall be responsible for the administration of this By-law and all Officers are entitled to enforce the provisions of this By-law.

PART X – CONFLICT

10.0 Where a provision of this By-law conflicts with the provision of any other By-law of the City or any applicable government regulation, the provisions that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

PART XI – SEVERABILITY

11.0 If a court of competent jurisdiction declares any portion of this Chapter to be illegal or unenforceable, that portion of this Chapter will be considered to be severed from the balance of the Chapter, which will continue to operate in full force.

PART XII – EXEMPTION LIMITED BY ACT OF LAW

12.0 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.

PART XIII - ENACTMENT

13.0 This By-law shall come into effect immediately upon the passing of the enabling By-law.

READ A FIRST TIME: February 8, 2022

READ A SECOND TIME: February 8, 2022

PASSED: February 8, 2022

MAYOR

CLERK