

The Corporation of the City of Kawartha Lakes

Office Consolidation of By-law 2013-043

Consolidated on April 2, 2019

Passed by Council on March 5, 2013

Amendments:

- 1) By-law 2019-045 March 26, 2019 Sections 7.02

Note: This consolidation is prepared for convenience only. For accurate reference the original by-laws should be reviewed.

The Corporation of The City of Kawartha Lakes

By-Law 2013-043

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 City of Kawartha Lakes

Recitals

1. Section 133 (1)(a) and (b) of the Municipal Act 2001, S.O. 2001, Chapter 25 as amended, provides that 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 protective elements being applied to land in relation to the use of the land. 2001, C.25, s.478(9).
2. 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.
3. The Council of the Corporation of the City of Kawartha Lakes deems it necessary for the health, safety and welfare of the inhabitants of the City of Kawartha Lakes to enact a by-law providing for the relation 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 City of Kawartha Lakes.

4. 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.
5. 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.
6. 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 and 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.
7. 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.

Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2013-043.

Section 1.00: Definitions and Interpretation

1.01 **Definitions:** In this by-law,

“Appeal Committee” means the Committee established pursuant to Section 8.00 of this by-law and the Council members appointed to sit as this Committee shall be the same members as appointed to the Property Standards Committee.

“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 from time to time.

“City”, “City of Kawartha Lakes” or “Kawartha Lakes” or “Municipality” means The Corporation of the City of Kawartha Lakes and includes its entire geographic area.

"City Clerk" means the person appointed by Council to carry out the duties of the clerk described in section 228 of the *Municipal Act, 2001*;

“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” or “City Council” means the municipal council for the City.

“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 emergency services personnel to do or refrain from doing anything and who acts on those directions.

“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 or have the effect of hindering, obstructing or prohibiting access to or from Land and include but is in no manner limited to:

- (a) 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;
- (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 Land;
- (c) 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;
- (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 fire arms, artillery, explosives, battering rams, shock or vehicle contact;

- (f) 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.
- (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 the like equipment;

“Excessive Protective Elements” means devices, objects, material components, or any contrivance designed to control, hinder, restrict, or deny access to or from the Land or have the effect of controlling, hindering, restricting or denying access to or from the Land 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 it electronic or otherwise designed to forewarn of the encroachment onto the perimeter of the 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 encroachment to land whether designed to, or by application in such a manner is, likely to cause death or serious injury.
- (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” means the construction of devices, barriers, or materials in a manner designed to hinder, obstruct or prohibit access to or from land or have the effect of hindering, obstructing or prohibiting access to or from the land and includes excessive fortification.

“Land” means land, including buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, erections, physical barriers and any other structures on the land or on or in any structure on the land.

“Law Enforcement Officer” includes a Police Officer as defined in Section 2 of the *Police Services Act*, R.S.O. 1990, Chapter P15, as

amended from time to time and a Municipal Law Enforcement Officer appointed pursuant to either Section 227 of the *Municipal Act*, 2001, as amended from time to time, or pursuant to subsection 15(1) of the *Police Services Act*, R.S.O. 1990, Chapter P.13, 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 Marshal an assistant to the Fire Marshal or a Fire Chief for the purpose of Part VI s.19(1) of the *Fire Protection and Prevention Act*, 1997, S.O. c.4; as amended from time to time and includes a Property Standards Officer.

"Manager of Municipal Law Enforcement" means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council.

"Person" means any natural person and any corporation incorporated pursuant to the Ontario Business Corporations Act, R.S.O., 1990, chapter B.16 and amendments thereto or the Canada Business Corporation Act, R.S.C. 1985, chapter C.44 and amendments thereto.

"Property Standards Officer" means an officer appointed pursuant to the *Building Code Act*, 1992 who has been assigned the responsibility of administering and enforcing property standards by-laws passed under section 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:

- (a) Whether the land conforms with the standards prescribed in this by-law; or
- (b) Whether an order made under subsection 10.02 of this by-law has been complied with.

"Protective Elements" means devices, objects, material components, or any contrivance designed to control, hinder, restrict, or deny access to or from land or have the effect of controlling, hindering, restricting or denying access to or from the land and includes excessive protective elements.

1.02 **Interpretation Rules:**

- (a) This by-law may be cited as the "Fortification of Land By-law".
- (b) The Schedules attached to this by-law form part of the by-law, and are enforceable as such.

- (c) The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.
- 1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.
- 1.04 **Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

Section 2.00: General Prohibitions

- 2.01 No person shall:
- (a) Excessively fortify any land;
 - (b) Apply excessive protective elements to land; or
 - (c) In any manner hinder, obstruct, or attempt to hinder or obstruct, any person including without limiting the generality of the foregoing any emergency services personnel, exercising a power or performing a duty under this by-law.

Section 3.00: Absolute Exemptions

- 3.01 Section 2.0 above does not apply to:
- (a) Financial institutions as identified and listed in Schedules I, II, and III of the *Bank Act*, S.C. 1990, c.46 as amended from time to time that is zoned for such use or is 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 the Kawartha Lakes 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 City;

- (g) Other commercial, business, industrial, or institutional establishments where the nature of the undertaking necessitates particular elements of excessive fortification or excessive protective elements and where such use is permitted by the Zoning, By-law of the City 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.

Section 4.00: Scope and Limitation of By-law

4.01 Section 2.00 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 renovations.

Section 5:00: Application for Partial or Complete Exemption

5.01 Any person wishing to make application for partial or complete exemption from the provisions of this by-law shall file with the Manager of Municipal Law Enforcement, 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 Manager of Municipal Law Enforcement.
- (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 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.
- 5.02 All applications will be reviewed by the office of the Manager of Municipal Law Enforcement 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 of documentation from applicant.
 - (b) Requiring the provision of any further or other documentation considered by the Manager of Municipal Law Enforcement 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.

Section: 6.00: Grounds for Exemption

- 6.01 Upon review of the documentation required or requested pursuant to Sections 5.01 and 5.02, the Manager of Municipal Law Enforcement 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 provide 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.
- 6.02 An authorized partial or complete exemption provided to a successful applicant will reference this By-law and bear the signature of the Manager of Municipal By-law Enforcement.
- 6.03 A true copy of any authorization issued under Section 6.02 shall be forwarded immediately by the office of the Manager of Municipal Law Enforcement to the attention of the Chief of Police, the Chief of Fire and the Chief of Ambulance Services, the Chief Building Official and the Inspector for the O.P.P, of the Municipality.

Section: 7.00: Appeal Committee Composition

- 7.01 **Appeal Committee:** An Appeal Committee is established consisting of three (3) members of Council. Council will appoint the members of the Appeal Committee for terms of office equivalent to the Council's term of office. The Manager of Municipal Law Enforcement shall ensure that a member of City staff is assigned the role of secretary to the Appeal Committee.
- 7.02 **Duties of the Appeal Committee:** The Appeal Committee is delegated Council's decision making authority, as it applies to the refusal to grant a complete or partial exemption, to conduct a hearing relating to the refusal, and shall be governed by the City's Procedural By-law and the Municipal Law Enforcement By-law Appeals Committee Terms of Reference, as amended from time to time by Council.

By-law 2019-045 effective March 26, 2019

Section: 8.00: Appeal of Denial of Exemption

- 8.01 Where the Manager of Municipal Law Enforcement refuses an application for a complete or partial exemption made pursuant to the provision of Section 5.00 herein, the Manager of Municipal Law Enforcement shall notify the applicant in writing of such decision and the said notice shall set out the grounds upon which the application for exemption has been refused and shall state that the applicant may appeal such decision to the Appeal Committee by filing an appeal with the Manager of Municipal Law Enforcement within 20 days of the date of such decision to refuse the application for exemption by the Manager of Municipal Law Enforcement.
- 8.02 Where there has been an appeal under the provisions of section 8.01 herein the Appeal Committee shall hold a meeting for the consideration of the appeal. The Manager of Municipal Law Enforcement shall provide notice to the applicant of the date of the Appeal Committee meeting for the hearing of the appeal at least 15 days prior to the date of such Appeal Committee meeting. The Manager of Municipal Law Enforcement 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.

- 8.03 The Appeal Committee shall conduct a hearing with respect to the appeal and shall consider whether the applicant meets all of the requirements of this by-law and whether the applicant is entitled to an exemption in accordance with the provisions of Sections 5.00 and 6.00 herein.
- 8.04 During the hearing conducted with respect to the appeal, the Appeal Committee:
- (a) Shall afford the applicant an opportunity, at the meeting, of making submissions in respect of the matter that is the subject of Appeal Committee's proceedings;
 - (b) Shall afford any person, civic department, board, commission, authority or agency given notice under section 8.02 herein and in attendance at the meeting, an opportunity to make submissions in respect of the matter that is the subject of the Appeal Committee's proceedings.
 - (c) May close a portion of the meeting to the affected applicant only for the purposes of receiving confidential advice.
 - (d) May close all or a portion of the meeting to the public if the Appeal Committee is of the opinion that legal, 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 the Appeal Committee considers proper in the circumstances;
 - (g) Shall give written notice of its decision to the Manager of Municipal Law Enforcement, the applicant and to any other person, civic department, board, commission, authority or agency in attendance at the meeting, together with the reasons for its decision.
- 8.05 The decision of the Appeal Committee herein is final and binding upon the applicant and there is no appeal therefrom.

Section 9.00: Power of Entry

- 9.01 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 the 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, Chapter P.33; or
 - (c) In accordance with City of Kawartha Lakes By-law 2008-162, A By-law to Provide for Powers of Entry on Land within the Municipality to Conduct Inspections.

Section: 10.00: Orders

- 10.01 Where a Municipal Law Enforcement Officer or the Chief Building Official is satisfied that a contravention of this by-law has occurred or that Excessive Fortification or Excessive Protective Elements have been established on any land before this by-law came into force, the officer may make an order requiring work to be done to correct the contravention or to remove such Excessive Fortification or Excessive Protective Elements established before this by-law came into force 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 that period it specifies, work done may be at the expense of the owner.
- 10.02 If the work required by an order is not completed within the specified period, a Municipal 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 at the expense of the owner and the Municipality may recover the expense incurred in doing such work by action or the same may be placed on a tax roll in the like manner as municipal taxes against the land.
- 10.03 The period described in Section 10.01(b) 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.

Section 11.00: Penalty and Enforcement

- 11.01 Any person who contravenes any provision of this by-law is guilty of an offence, and upon conviction, is liable to a minimum fine of \$500.00 and a maximum fine of not more than \$100,000.00.
- 11.02. A director or officer of a corporation who knowingly concurs in the violation or contravention by the corporation of any provision of this by-law is guilty of an offence and upon conviction, is liable to a minimum fine of \$500.00 and a maximum fine of not more than \$100,000.00.
- 11.03 The conviction of a person for the contravention or breach of any provision of this by-law shall not operate as a bar to the prosecution against the same person for any subsequent or continued breach or contravention of any provision of this by-law. Each day that the offence continues shall be deemed a separate and distinct offence.

11.04 Where sections 5.01, 8.01 and 10.01 are invoked by administrative fee shall be charged as set out in Consolidated Fees By-law, if not paid, the fee shall be added to the tax roll of the property and shall be collected in a like manner as municipal taxes.”

Section 12.00: Conflict

- 12.01 Subject to Section 12.02 where the provision of this by-law conflicts with the provision of any other by-law of the Municipality 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.
- 12.02 Notwithstanding Section 12.01 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.

Section 13.00: Exemption Limited by Act of Law

- 13.01 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 or comply with any Federal, Provincial or Municipal Law.

Section 14.00: Administration and Effective Date

- 14.01 **Administration of the By-law:** The Manager of Municipal Law Enforcement is responsible for the administration of this by-law.
- 14.02 **Effective Date:** This By-law shall come into force on the date it is finally passed.

By-law read a first, second and third time, and finally passed, this 5th day of March, 2013.

Ric McGee, Mayor

Judy Currins, City Clerk