

**THE CORPORATION OF THE TOWNSHIP OF PUSLINCH
BY-LAW NO. 54/12**

**A BY-LAW TO REGULATE THE FORTIFICATION
OF LAND AND PROTECTIVE ELEMENTS APPLIED
TO LAND AND TO PROHIBIT EXCESSIVE
FORTIFICATION OF LAND AND EXCESSIVE
PROTECTIVE ELEMENTS BEING APPLIED
TO LAND WITHIN THE
TOWNSHIP OF PUSLINCH**

WHEREAS the Council of the Corporation of the Township of Puslinch deems it appropriate to enact a by-law to regulate the fortification of land and protective elements applied to land and to prohibit excessive fortification of land and excessive protective elements being applied to land within the Township of Puslinch pursuant to Section 133 of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended,

AND WHEREAS the Council of the Corporation of the Township of Puslinch deems it appropriate for the health, safety and well-being of the inhabitants of the Township of Puslinch to enact a by-law providing for the regulation of fortification of land and protective elements being applied to land and to prohibit the excessive fortification of land and excessive protective elements being applied to land within the Township of Puslinch,

AND WHEREAS the Council of the Corporation of the Township of Puslinch is responsible for the enforcement of the *Building Code Act, 1992*;

AND WHEREAS Part XIV of the *Municipal Act, 2001*, including sections 425, 429, 435 to 440, and 444 to 446, provides for enforcement of by-laws, including provisions for the creation of offences and fines for contravention, inspections, powers of entry, work orders to bring property into compliance, orders to discontinue contravening activities, warrants regarding inspection or search of properties, the carrying out of matters or things required under by-law and the collection of costs of such works;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF PUSLINCH HEREBY ENACTS AS FOLLOWS:

SECTION 1 – SHORT TITLE

1.1 This By-Law may be cited as the “The Fortification of Land By-Law”.

SECTION 2 – DEFINITIONS AND INTERPRETATION

2.1 In this By-Law,

- (1) **“Apply or Application”** means the erection, installation, extension or material alteration or repair of or application to land and includes to construct;
- (2) **“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;
- (3) **“Construct” or “Construction”** 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;
- (4) **“Corporation”** means The Corporation of the Township of Puslinch;
- (5) **“Council”** means the Council of The Corporation of the Township of Puslinch;
- (6) **“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;

- (7) **“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 access to or from land or which have the effect of hindering, obstructing or prohibiting access to or from land which include but is not limited to:
- (i) The application of steel plates, steel bars or bullet-resistant/proof shutters or heavy gauge wire mesh to windows or other openings on any and all levels of any structure or building 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 required doorway, window, or other exterior entrance or egress to a building or land for other than cosmetic reasons in conformance with the Ontario Building Code regulations;
 - (iii) The application of steel sheeting or plates other similar products to the interior or exterior walls of a structure or building such as to reinforce walls or create a secondary wall intended to protect against firearms artillery, explosives, vehicle contact, shock, and any other similar intrusions;
 - (iv) The application of laminated glass or any other form of break resistant/proof or bullet resistant/proof material to windows or doors;
 - (v) The installation of 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 to any building or land by Emergency Services Personnel or their modes of transportation; and,
 - (vii) The construction of an observation tower specifically 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.
- (8) **“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:
- (i) 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 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; and,
 - (iii) 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, by an operator or viewer or listener of that equipment, beyond the perimeter of the land actually owned, leased or rented by the occupant.

- (10) **“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 which have the effect of hindering, obstructing or prohibiting access to or from the land and includes **Excessive Fortification**;
- (11) **“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;
- (12) **“Law Enforcement Officer”** includes;
- (i) a Police Officer as defined in Section 2 of the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended;
 - (ii) a Municipal Law Enforcement Officer appointed pursuant to subsection 15(1) of the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended;
 - (iii) the Chief Building Official, or designates appointed under subsection 3(2) of the *Building Code Act, 1992*, as amended;
 - (iv) an Inspector appointed under subsection 3(2) of the *Building Code Act, 1992*, as amended,
 - (v) a Fire Inspector, the Fire Marshall, an assistant to the Fire Marshall, or the Fire Chief appointed under the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended;
 - (vi) a Property Standards Officer appointed pursuant to a by-law under section 15.1 *Building Code Act, 1992*, as amended.
- (13) **“Protective Elements”** means **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 the land** and includes Excessive Protective Elements.
- (14) **“Person”** means any natural person and includes a corporation incorporated pursuant to the laws of any jurisdiction, a partnership and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law.
- (15) **“TOWNSHIP”** means the Corporation of the Township of Puslinch;

SECTION 3 – GENERAL PROHIBITIONS

3.1 No person shall:

- (a) excessively fortify any land or cause, permit or maintain the excessive fortification of land;; and/or,
- (b) apply , use , cause , permit or maintain excessive protective elements to or on land; and/or
- (c) Hinder, obstruct or attempt to hinder or construct, a law enforcement officer or other person exercising a power or carrying out a duty under this by-law, or any persons assisting such officers, including without limiting the generality of the foregoing any Emergency Services Personnel.

SECTION 4 – EXEMPTIONS

4.1 Clause 3.1 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;
- (b) detention centres zoned for such use or otherwise permitted by law;

- (c) lands owned or occupied by the Ontario Provincial Police or an Ontario Municipal Police Service in accordance with the *Ontario Police Services Act*;
- (d) lands owned or occupied by the Federal Department of Defence;
- (e) lands owned or occupied by the Royal Canadian Mounted Police.
- (f) lands owned and occupied by the Corporation of the County of Wellington or the Corporation of the Township of Puslinch;
- (g) lands owned and occupied by Her Majesty In Right of Ontario;
- (h) other commercial businesses, industrial or institutional establishments where the nature of the undertaking necessitates particular elements of fortification or protection and where such use is permitted by the Township's Zoning By-Law or provided such use is otherwise lawfully permitted, but only to the extent necessary having consideration for the nature of the undertaking.

SECTION 5 – SCOPE AND LIMITATION OF BY-LAW

5.1 Clause 3.1 does not operate to prohibit:

- (a) The use or application of common 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 a person; or
- (b) The reasonable use of protective elements such as a “laser eye” or other advanced warning devices on windows or doors of a dwelling house or other lawfully permitted commercial, industrial or institutional establishments 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 or building has occurred; or
- (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 the Ontario Building Code and Fire Code requirements and have received any permit required to complete such alteration or renovation.

5.2 Nothing in this by-law shall be interpreted as restricting a normal farm practice carried on as part of an agricultural operation pursuant to the *Farming and Food Protection Act, 1998*.

SECTION 6 – Administration and Enforcement

- 6.1 The Chief Building Official is authorized to administer and enforce this by-law, including the taking of such steps, arranging assistance or work by Township staff or agents, and for the issuance of orders and imposition of conditions as necessary to ensure compliance with this By-Law, for arranging for the obtaining of court orders or warrants as may be required, and for commencing such actions on behalf of the Township to recover costs or restrain contravention of the by-law as deemed necessary.
- 6.2 The Chief Building Official and its designates shall enforce this by-law and shall have the authority to carry out inspections, make directions, orders to discontinue contravening activities or to do work to correct contraventions, to give immediate effect to any order and otherwise enforce this by-law, and the Chief Building Official may assign duties or delegate tasks under this by-law to be carried out in the Chief Building Official's absence or otherwise, and may request police officers assistance for enforcement including obtaining orders for entry as may be required.
- 6.3 In accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001*, including the provision of notice to an occupier when required and production of the Law Enforcement Officer's identification when requested, a Law Enforcement Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - (a) this by-law;

- (b) a direction, authorization, requirement, condition or Order made under this by-law; or
 - (c) an order made under section 431 of the *Municipal Act, 2001* in respect of a contravention of this by-law.
- 6.4 No person shall remove an order, notice or direction posted on land indicating it was posted under this by-law, except a Law Enforcement Officer.
- 6.5 (1) The Chief Building Official 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) 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.
- (3) Any sampling done during an inspection shall be done in accordance with subsections (3) and (4) of section 436 of the *Municipal Act*.
- (4) An inspection requirement, direction or order made to a person under this section may be given verbally, but where the Township intends to act upon such matter at the expense of the person, the requirement, direction or order shall be made in writing and may be served personally, sent by prepaid or registered mail to the last known address of such persons affected by it as the Law Enforcement Officer determines, or posted in a prominent place at the premises. Service by mail shall be deemed to have taken place seven (7) days after the date of mailing.
- 6.6 A Law Enforcement Officer may undertake an inspection pursuant to an order of a Court issued under section 438 of the *Municipal Act, 2001*, provided however that in the case of an order authorizing an inspection of a room or place actually being used as a dwelling, the occupier is given notice concerning when the inspection will be carried out.
- 6.7 (1) If a Law Enforcement Officer is satisfied that a contravention of this by-law has occurred, the Chief Building Officer may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or who is the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.
- (2) An order under this section shall set out:
- (a) reasonable particulars adequate to identify the contravention to be discontinued and the location of the land on which the contravention occurred; and
 - (b) the date by which there must be compliance with the order, subject to subsection 6.8 (3).
- 6.8 (1) If a Law Enforcement Officer is satisfied that a contravention of this by-law has occurred, the Chief Building Officer may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or who is the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.

- (2) An order under this section shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of land on which the contravention occurred;
 - (b) the work to be done, which may include but is not limited to requiring that:
 - (i) prior to performing any work, all necessary permits or other approvals be applied for and obtained, and any information, production, inspection or examination required under section 6.5 be supplied or carried out;
 - (ii) the date by which the work must be done; and
 - (iii) 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 person or the owner of the land.
- (3) An order under this section or section 6.7 to deal with excessive fortification or protective elements may be issued even though the facts which constitute the contravention of this by-law were present on the day this by-law came into force, provided however that in such circumstances the order made in respect of such pre-existing fortifications or protective elements shall provide not less than three (3) months to complete the work.

6.9 An order to discontinue contravening activity made under section 6.7 or an order to do work made under 6.8 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.

SECTION 7 – FAILURE TO COMPLY AND COST RECOVERY

- 7.1 Where a person defaults in complying with a direction, requirement or order under this by-law to do a matter or thing, the Chief Building Official may cause a Law Enforcement Officer or agent on behalf of the Township, with such assistance from others as may be required, to enter the land on which the contravention occurred at any reasonable time, and to carry out such direction, requirement or order at the person's expense.
- 7.2 The Township may recover the costs from the person directed, required or ordered to do a matter or thing under this section, by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes, and such costs shall include an interest at an annual rate of Fifteen percent (15%).
- 7.3 For the purposes of subsection (2) above, interest shall be calculated for the period commencing the day the Township incurs the costs and ending on the day the costs including the interest are paid in full.
- 7.4 The Chief Building Officer may give immediate effect to any direction, requirement or order to be carried out under this section where the costs of carrying out the direction, requirement or order do not exceed Twenty Thousand Dollars (\$20,000.00). Where the estimated costs exceed Twenty Thousand Dollars (\$20,000.00), the work shall be carried out only where directed by a person with the authority to approve such expense, or by Council.
- 7.5 The amount of the Township's costs incurred plus interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

SECTION 8 – OFFENCES AND PENALTY

- 8.1 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) for a first offence, a maximum of Twenty Thousand Dollars (\$20,000.00);
 - (b) for a second offence, a maximum of Fifty Thousand Dollars (\$50,000.00); and
 - (c) for a third or subsequent offence, a maximum of One Hundred Thousand Dollars (\$100,000.00).
- 8.2 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 Ten Thousand Dollars (\$10,000.00) 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).

SECTION 9 – CONFLICT AND SEVERABILITY

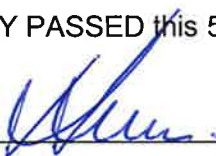
- 9.1 Should a court of competent jurisdiction declare a part of whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.
- 9.2 Nothing in this by-law shall 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.
- 9.3 Subject to Section 9.2, where a provision of this by-law conflicts with the provision of any other by-law of the Township 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.
- 9.4 Notwithstanding Section 9.1, 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 10 – ENACTMENT

- 10.1 This by-law shall come into force and take effect on the date it is passed.

By-law Number 37/12 is hereby repeated.

READ a FIRST, SECOND AND THIRD TIME AND FINALLY PASSED this 5th day of September, 2012



Mayor Dennis Lever



Brenda Law, CAO/Clerk-Treasurer