

THE CORPORATION OF THE TOWN OF WASAGA BEACH

BY-LAW 2020-27

A By-law to regulate the fortification of and protective elements applied to land within the Town of Wasaga Beach.

WHEREAS Section 133(1)(a) of the Municipal Act, 2001, as amended, permits the municipality to regulate the fortification of, and protective elements applied to lands within the Town of Wasaga beach;

AND WHEREAS Section 133(1)(b) of the Municipal Act, 2001, as amended, permits the municipality to prohibit excessive fortification and excessive protective elements;

AND WHEREAS Section 133(6) of the Municipal Act, 2001, as amended, permits the municipality to require the owner of land, at its expense, to perform remedial work in respect of the land so that it is in conformity with the bylaw. Such remedial work may be required even if the fortification or protective elements were present on the land before the bylaw came into force;

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

AND WHEREAS the fortification of and protective elements applied to land may restrict, obstruct or impede access to and exit from land, buildings and structures;

AND WHEREAS Council deems it necessary for the health, safety and welfare of the inhabitants of the Town of Wasaga Beach to enact a by-law providing for regulation 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 Town of Wasaga Beach;

AND WHEREAS the excessive fortification of land or the application of excessive protective elements to land is likely to pose a serious threat to the safety and integrity of abutting land as well as the owners and occupiers thereof by restricting, obstructing, impeding or preventing municipal and law enforcement officials and/or emergency services personnel from responding to emergency situations effectively and in a timely manner.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WASAGA BEACH HEREBY ENACTS AS FOLLOWS:

1) SHORT TITLE

This by-law shall be known as the "Fortification of Land By-law".

2) **DEFINITIONS**

For the purpose of this by-law, the following definitions shall apply:

- a) **“Construct”** and **“Construction”** includes doing anything in the erection, installation, extension or material alteration or repair of a building or structure.
- b) **“Corporation”** means The Corporation of the Town of Wasaga Beach.
- c) **“Council”** means the Council of The Corporation of the Town of Wasaga Beach.
- d) **“Emergency Services Personnel”** includes any individual employed by any police service, fire service (including volunteer firefighters) and 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 any emergency services personnel to do or refrain from doing anything and to act on those directions.
- e) **“Excessively Fortify”** and **“Excessive Fortification”** includes the installation, application or maintenance of devices, barriers or materials in a manner designed to restrict, obstruct or impede, or having the effect of restricting, obstructing or impeding access to or from land and includes but is not limited to:
 - i) protection plaques or plates made of metal or any other material installed inside or outside a building;
 - ii) observation tower, whether integrated or not, to a building;
 - iii) laminated glass or any other type of glass or material that is bullet-proof or difficult to break in the event of a fire, installed in windows or doors, including protection shutters;
 - iv) armoured or specially reinforced doors designed to resist the impact of firearms, battering rams, explosives or vehicle contact;
 - v) grills or bars made of metal or any other material installed on doors, windows and other openings that limit the rapid exit from a building or structure in an emergency situation, except for those installed at the basement or cellar level;
 - vi) masonry, including brick and concrete block over windows or doorways;
 - vii) secondary walls or other obstructions in front of landings, doors or windows;
 - viii) concrete, metal or other material installed as pillars or barriers designed to

prohibit, restrict, obstruct or impede access to any land through conventional means or modes of transportation; and

- ix) any fence or gate constructed, installed or maintained or reinforced with metal or similar material in excess of 3 millimeters in thickness.
- f) **“Excessive Protective Elements”** includes any object, material component or any contrivance designed to, or having the effect of restricting, obstructing or impeding, access to or from land, and includes but is not limited to:
 - i) 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;
 - ii) electrified fencing or any similar 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; and
 - iii) visual surveillance equipment, including video cameras, night vision systems, or electronic surveillance 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.
- g) **“Fortification”** and **“Fortify”** includes the installation, application, or maintenance of devices, barriers or materials in a manner designed to restrict, obstruct, or impede, or having the effect of restricting, obstructing or impeding, access to or from land.
- h) **“Land”** means land including buildings, mobile homes, mobile buildings, mobile structures, outbuilding, fences, erections, physical barriers and other structures on the land or, on or in any structure on the land;
- i) **“Maintain”** and **“Maintenance”** means to allow the continued existence of a device, barrier, structure or material whether or not repairs are undertaken.
- j) **“Officer”** shall mean a Municipal Law Enforcement Officer or an Ontario Provincial Police Officer, and anyone else appointed by Council to administer this By-law;
- k) **“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;

- l) **“Protective Elements”** includes any object, material components, or any contrivance designed for surveillance or to restrict, obstruct or impede access to and exit from land, or having the effect of surveillance of or restricting, obstructing or impeding access to and exit from the land.

3) **PROHIBITIONS**

No person shall:

- a) Excessively fortify any land so as to obstruct or impede officer(s) and/or emergency personnel lawful access to land;
- b) Apply excessive protective elements to land or maintain excessive protective elements applied to land so as to restrict, obstruct or impede officer(s) and/or emergency personnel from accessing or exiting any lands.

4) **EXEMPTIONS**

Section 3 of this By-Law does not apply to:

- a) Financial institutions as identified and listed in Schedule 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, or otherwise lawfully permitted;
- b) Detention centers operated by or on behalf of the Government of Canada that is zoned for such use, or otherwise lawfully permitted;
- c) Security service businesses, zoned for such use, or otherwise lawfully permitted;
- d) Lands owned or occupied by the Ontario Provincial Police in accordance with the *Ontario Police Services Act*, R.S.O., 1990, c.P.15;
- e) Lands owned or occupied by the Federal Department of National Defence;
- f) Lands owned or occupied by the Royal Canadian Mounted Police;
- g) Lands owned and occupied by The Corporation of the Town of Wasaga Beach
- h) Other commercial, business, industrial or institutional establishments where the nature of the undertaking necessitates particular elements of excessive fortification or excessive protection elements and where such use is permitted by the Zoning By-Law of Corporation or provided such use is otherwise lawfully permitted, but only to the extent necessary having consideration for the nature or the undertaking.

5) APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

Upon receipt of an application, the Clerk of the Corporation and Council shall follow the procedure set out in this By-law.

- a) Any person wishing to make a request for partial or complete exemption from the provision of this By-law shall file with the Clerk of the Corporation the following:
 - i) A written request signed by the applicant;
 - ii) Complete details of the location of the land, including the municipal address, legal description, type, number and nature (residential, commercial, farm) and a recent survey or scaled drawing of the land and structures;
 - iii) A detailed explanation of the exemption(s) requested and reasons for requesting such an exemption(s). This should include details of proposed excessive fortification or application of excessive protective elements being considered along with an explanation of how that excessive fortification or application of excessive protective elements is rationally connected to the purpose for which the exemption is being sought; and
 - iv) Proof of ownership of the land or proof of authorization by the owner of the land.
- b) All requests will be reviewed by the Corporation in consultation with the Ontario Provincial Police 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:
 - i) Request for further details or documentation from the applicant;
 - ii) Requiring the provision of any further or other documents considered to be necessary or relevant to the investigation of the application;
 - iii) Making inquiries of any department of local, provincial or federal government considered necessary and/or relevant to the investigation of the application;
 - iv) Making inquiries and requesting input from fire and paramedic services or any other department that may have an interest, issue or concern with the application
- c) A report will be prepared for consideration by Council.

- d) After reviewing the report, Council may issue a complete or partial exemption, if:
- i) The applicant is a person;
 - ii) There is proven to exist a rational connection between the necessity and rationale provided for the exemption and the nature and extent of the exemption required;
 - iii) The nature and extent of the authorized exemption does not exceed that which is rationally proven to be necessary;
 - iv) 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;
 - v) 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 Corporation.
- e) Any decision to authorize a partial or complete exemption will be based on the report, the application of the criteria set out in Section 5 d) and will be based on consideration of the guiding principles of this by-law as set out in the preamble.
- f) An authorized partial or complete exemption provided to a successful applicant will reference this by-law and bear the signature of the Clerk. Such exemption may be time-limited and/or be granted only to the registered owner and void upon any transfer in ownership or control of the property including under lease and may include such other conditions and restrictions as are reasonable.
- g) A true copy of any authorization issued under this section shall be forwarded immediately by the office of the Clerk to the attention of the Ontario Provincial Police, the Fire Chief and the County of Simcoe Paramedic Services.

6) SCOPE AND LIMITATION OF BY-LAW

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;
- d) A normal farm practice carried on as part of an agricultural operation pursuant to the *Farming and Food Protection Act*, 1998, S.O. 1998 c.1.

7) POWERS OF ENTRY

- a) An officer may enter on land at any reasonable time for the purpose of carrying out an inspection for the purpose of enforcing this By-law, including for the purposes of making a determination of whether or not this By-law; a direction, requirement or an order under Section 431 of the Municipal Act, 2001 are being complied with.
- b) 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:
 - i) the occupier of the dwelling place consents to entry, having first been informed of his or her right to refuse consent; or
 - ii) 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, c. P. 33; or
 - iii) the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person

8) ORDER- CORRECT CONTRAVENTION

- a) If an officer 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:
 - i) The municipal address or the legal description of the land;
 - ii) Reasonable particulars of the contravention and the work to be done and the period within which there must be compliance with the Order; and
 - iii) A notice stating that if the work is not done in compliance with the Order within the period it specifies, the Corporation or its appointed agent may have the work done at the expense of the Owner of the land, and the Corporation may recover the expense incurred in doing it by action, or the same may be recovered in the like manner as municipal taxes.

- b) The period described in this section 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.
- c) If the work required by an Order under this Section is not done within the specified period, the Corporation, its employees and/or agents may at any reasonable time enter upon the land to do the work.

9) ENFORCEMENT

This By-Law may be enforced by any person designated as an officer for the purposes of this By-Law.

10) PENALTIES

- a) Every person who contravenes any provisions of this By-law, contravenes the terms and conditions of a permit or an Order issued pursuant to this By-law, or every director or officer of a corporation, who knowingly concurs in the contravention by a corporation is guilty of an offence and upon conviction is liable to:
 - i) a first offence, to a fine not more than \$10,000.00; and,
 - ii) on a second offence and each subsequent offence, to a fine not more than \$50,000.00.
- b) Every person or corporation who contravenes the terms and conditions of a permit is guilty of an offence
- c) Every person who is issued a Part 1 offence notice or summons and is convicted of an offence under this By-law shall be subject to a fine, to a maximum as provided for in the Provincial Offences Act, R.S.O. 1990, C.P.33, as amended.
- d) Upon conviction any penalty imposed under this By-law may be collected under the authority of the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended.
- e) The court in which a conviction has been entered, and any court of competent jurisdiction therefore, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

11) CONFLICT

- a) Subject to Section 11 b), where a provision of this by-law conflicts with the provision of any other by-law of the Corporation 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.

- b) Notwithstanding Section 11 a) 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.

12) SEVERABILITY

If a court of competent jurisdiction should declare any Section of this by-law, or part thereof, to be invalid, such Section or part thereof is deemed severable from this by-law and shall not be construed as having influenced Council to pass the remainder of this by-law and it is the intention of Council to pass the remainder of the by-law shall survive and remain in force.

13) EXEMPTION LIMITED BY ACT OF LAW

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.

14) ENACTMENT

This By-law shall come into force and effect upon the date of final passing thereof.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 26TH DAY OF MARCH, 2020.

THE CORPORATION OF THE TOWN OF WASAGA BEACH

Nina Bifolchi, Mayor

Dina Lundy
Director, Legislative Services and Clerk