

THE CORPORATION OF THE
T O W N O F P E L H A M
BY-LAW NO XXXX (2019)

**Being a by-law to regulate the fortification of
and protective elements applied to land**

WHEREAS Council 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 in relation to the use of land within the Town of Pelham pursuant to Section 133 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended;

AND WHEREAS Part XIV of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended, including Sections 425, 429, 435 through 440 and 444 through 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 properties 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 work;

AND WHEREAS Council deems it appropriate for the health and safety of the inhabitants of the Town of Pelham 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 in relation to the use of land within the Town of Pelham;

**NOW THEREFORE COUNCIL OF THE CORPORATION OF THE
TOWN OF PELHAM ENACTS AS FOLLOWS:**

DEFINITIONS

1. In this By-Law unless contrary intention appears:
 - (a) “Apply” or “Application” means the erection, installation, extension or material alteration or repair of or application of land and includes to construct;
 - (b) “Chief Building Official” means the officer appointed by Council as the Chief Building Official pursuant to the *Building Code Act, 1992*, S.O. 1992, Chapter 23, as amended, and includes a Building Inspector.
 - (c) “Construction” or “Construct” includes doing anything in the erection,

installation, extension, or material alteration or repair of a building or structure;

- (d) “Corporation” means The Corporation of the Town of Pelham;
- (e) “Council” means the Council of the Corporation;
- (f) “Emergency Personal” includes any individual employed by a 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;
- (g) “Excessive Fortification” and “Excessively Fortified” means fortification that is excessive 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. an 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. armored 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;
 - ix. any fence or gate constructed, installed, or maintained or reinforced with metal or similar materials in excess of 3 millimeters in thickness; and
 - x. landscaping, including but not limited to berms and aggregate walls.

- (h) “Excessive Protective Elements” means protective elements that are excessive 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, beyond the perimeter of the land.
- (i) “Fire Chief” means the chief of the fire department appointed by Council pursuant to the *Fire Protection and Prevention Act*, 1997, S.O. 1997 Chapter 4, as amended, or his or her designate;
- (j) “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 “fortify” has a corresponding meaning;
- (k) “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;
- (l) “Law Enforcement Officer” includes:
- i. a Police Officer as defined in the *Police Services Act*, R.S.O. 1990 Chapter P 15, as amended;
 - ii. a Municipal Law Enforcement Officer appointed pursuant to the *Police Services Act*, R.S.O. 1990 Chapter P 15, as amended;
 - iii. the Chief Building Official, or designates;
 - iv. an Inspector appointed pursuant to the *Building Code Act*, 1992, as amended;
 - v. a Fire Inspector, the Fire Marshal, an assistant to the Fire Marshal, or the Fire Chief appointed under the *Fire Protection and Prevention Act*, 1997, S.O. 1997, Chapter 4, as amended;
 - vi. an Officer appointed pursuant to section 15.1 of the *Building Code Act*, 1992, as amended;

- vii. a “member” as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, Chapter R-10.
- (m) “Maintain” means to allow the continued existence of a device, barrier, structure, or material whether or not repairs are undertaken, and “maintenance” has a corresponding meaning;
- (n) “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; and
- (o) “Protective Elements” includes any object, material component or any contrivance designed for surveillance or to restrict, obstruct, or impede, or having the effect of surveillance or restricting, obstructing, or impeding, access to and exit from land.

PROHIBITED MATTERS

2. No person shall:

- (a) Excessively fortify any Land so as to restrict, obstruct or impede municipal and law enforcement officials and/or emergency personnel from accessing or exiting any Land; or
- (b) Apply excessive protective elements to Land or maintain excessive protective elements applied to Land so as to restrict, obstruct or impede municipal and law enforcement officials and/or emergency personnel from accessing or exiting any Land.
- (c) Fail to perform remedial work as required by this by-law or by an order

EXEMPTIONS

3. Section 2 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, Chapter.46*, as amended, that is zoned for such use or 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 Niagara Regional Police Service in accordance with the Ontario Police Service Act;
- (d) lands, wherever situated, owned or occupied by the Federal or Provincial Government or their agents, or a property that is licensed Federally or Provincially and is required by provincial or federal law or provincial or federal license to fortify its' Land;
- (e) lands owned or occupied by the Royal Canadian Mounted Police;
- (f) lands owned and occupied by the Town or the Regionally Municipality of Niagara;
- (g) Electrified fencing used by agricultural operations which have livestock for the purpose of controlling movement of the livestock;
- (h) Electrified fencing used for the purpose of controlling the movement of residential household pets;
- (i) the use or application of commercially marketed security devices designed and applied to provide reasonable protection from theft or other criminal activity against a Person or property of a Person;
- (j) the reasonable use of Protective Elements such as a "laser eye" or other advance warning devices on windows or doors of a dwelling for the purpose of providing a warning to an occupant of the dwelling or of dispatching emergency services personal where an entry into a dwelling has occurred;
- (k) warning or protective devices to detect smoke, carbon dioxide gas, carbon monoxide gas and fire required by the Building Code or Fire Code, or installed in premises to give early notice or response to smoke, gas or fire conditions, or to alert Emergency Services Personnel of such condition; and
- (l) the securing of openings in vacant buildings, or the closing of fire or other accidental structural damage to buildings as required by an order issued under either the *Fire Protection and Prevention Act*, 1997, S.O. 1997 Chapter 4, as amended, or the *Building Code Act*, 1992, S.O. 1992, Chapter 23, as amended.

APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

4. 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) a completed application as set out in Schedule "A" to this By-law for partial or complete exemption from any provision(s) of this by-law that is signed and in writing and directed to the Chief Building Official;
 - (b) complete details of the location of the land, including municipal address, legal description, the existing use and nature (residential, commercial, farm), and a scaled drawing showing the Land and the structures on the property;
 - (c) a detailed explanation of the exemption(s) requested and the rationale

for requesting such an exemption(s). This should include details of the 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; and

- (d) a non-refundable application processing fee as set out in by-law 3728(2016), as amended (the Fees By-law).

5. All applications will be reviewed by the Chief Building Official who may require the provision of any additional information at the expense of the applicant, including, but not limited to:

- (a) Proof of ownership of the Land or proof of authorization by the owner of the Land;
- (b) any further or other documents considered by the Chief Building Official to be necessary or relevant to the investigation of the application, from the applicant or other parties;
- (c) information or input from any department of local, Provincial or Federal Government considered necessary and/or relevant to the investigation of the application, and
- (d) information or input from local Police, Fire, and Ambulance Services, or any other department that may have an interest, issue, or concern with the application.

GROUND'S FOR EXEMPTION

6. Upon review of documentation and information obtained, and based upon the input from parties consulted, the Chief Building Official may issue a complete or partial exemption from the provisions of this by-law if:

- (a) the applicant is a person;
- (b) there is, in the opinion of the Chief Building Official, a bona fide reason, need and rationale for the exemption;
- (c) there is, in the opinion of the Chief Building Official, a reasonable connection between the reason, need and rationale for the exemption and the nature and extent of the specific exemption requested;
- (d) in the opinion of the Chief Building Official, the nature and extent of the exemption request does not exceed that which is reasonable necessary; and
- (e) the ability to access the land by emergency services personnel and law enforcement officers is not unreasonably interfered with or limited considering the need and rationale provided for in the exemption.

7. Upon completion of the investigation and review of the application for

exemption the Chief Building Official shall issue a written decision that:

- (a) approved the application;
- (b) approved the application in part, with restrictions, conditions or modifications as deemed appropriate by the Chief Building Official;
or
- (c) denies the application.

8. A true copy of any decision issued under Section 7 shall be forwarded by the Chief Building Official to the attention of the appropriate Emergency Services Personnel.

9. The Chief Building Official may revoke a permit issued under this by-law:

- (a) if it was issued on mistaken, false or incorrect information;
- (b) if it was issued in error;
- (c) if the applicant is found to have contravened the by-law or is not in compliance with the permit issued;
- (d) if the holder requests in writing that it be revoked, or
- (e) if the explanation provided in the application for partial/complete exemption is found to be no longer applicable.

APPEAL FOR REFUSAL EXEMPTION OR CONDITIONS ADDED

10. Where the Chief Building Official refuses to grant an exemption applied for under Section 4, or adds conditions to the exemption granted, the applicant may either appeal the refusal or appeal the conditions added by the Chief Building Official and have a hearing held as an appeal under this section.

11. The request for an appeal under Section 10 above, shall be filed with the Town's Building Department within fifteen (15) days of the applicant being notified of the decision of the Chief Building Official under Section 7, shall include the grounds for the appeal, as set out in by-law 3728(2016), as amended (the Fees By-law).

12. Where there has been a request for an appeal filed in compliance with the requirements of this section, the shall cause notice of the appeal hearing to

be sent to the parties, being the applicant and the representative of the Building Department of the Town, and such notice shall be either delivered personally, sent by electronic transmission or by a facsimile transmission, or sent by regular or registered mail to the applicant at the address provided, and service by electronic or facsimile means shall be deemed received on the day after it was sent, or if a holiday the next day which is not a holiday, and if sent by mail shall be deemed to have taken place five (5) days after the date of mailing, which such dates of service on the applicant to be at least fifteen (15) days prior to the date of the scheduled hearing.

13. Council shall conduct the appeal hearing.
14. Council at the appeal hearing shall consider whether the applicant meets all of the requirements of this By-law and whether the applicant should be granted the exemption or modification in accordance with the provisions of this By-law on the basis provided for an exemption herein particularly Section 6, with or without additional conditions including any time limit, and make a decision at the conclusion of the appeal whether to allow the appeal and grant an exemption or to modify or remove the conditions added to the exemption by the Chief Building Official, or whether to impose additional conditions, or whether to deny the application for exemption or modification, and may impose such terms and conditions to such decision in accordance with the provisions of this by-law as Council in their sole discretion considers proper in the circumstances.
15. If no appeal is filed under this by-law within the time limits imposed by Section 11, the decision of the Chief Building Official is final and binding on the applicant, or where the appeal is decided by Council at a hearing under Sections 13 and 14 the decision of Council is final and binding upon the applicant, and there is no further appeal from such decision.

POWER OF ENTRY

16. A Law Enforcement Officer 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.
17. 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 to entry, having first been informed of his or her right to refuse consent; or
 - (b) if the occupier refuses to consent, a warrant issued pursuant to Section 158 of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, is obtained.

REMEDIAL WORK

17. An owner of Land shall, at the owner's expense, perform remedial work in respect of the Land so that the Land is in conformity with this by-law even though the Fortification or Protective Elements were present on the Land before this by-law came in effect

ORDERS, FAILURE TO COMPLY AND COST RECOVERY

18. Where a Law Enforcement 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:
- (a) the name of the owner and/or occupier of the land;
 - (b) the municipal address or the legal description of the land;
 - (c) reasonable particulars of the contravention and the work to be done and the period within which there must be compliance with the order; and
 - (d) a notice stating that if the work is not done in compliance with the order within the period it specifies, the work done may be at the expense of the owner.
19. If the work required by an order is not completed within the specified period,

a Law Enforcement 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 Town in like manner as municipal taxes, and such costs shall include an interest at an annual rate of 15 per cent.

20. The period described in Section 18 (c) shall not be less than ninety (90) days from the date of the issuance of the order if the excessive fortification or excessive protective elements were present on the land on the day this by-law is passed.
21. The amount of the Town'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.
22. Any and all damage to municipal property will be billed at full cost recovery in accordance with the by-law 3728(2016), as amended (the Fees By-law).

PENALTY AND ENFORCEMENT

23. 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.
24. Subject to Section 25 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 \$10,000.00; or
 - (b) a second offence, a maximum of \$25,000.00; and
 - (c) for a third or subsequent offence, a maximum of \$100,000.00.

25. 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 the total of all the daily fines imposed for an offence is not limited by the maximums listed in Section 24.
26. The Chief Building Official shall be responsible for the administration and enforcement of this by-law and persons who are employed or appointed as Law Enforcement Officers are all deemed appointed and entitled to enforce the provisions of this By-law.

PARAGRAPHS

27. Paragraph titles are for guidance in locating paragraphs only and are not to be relied on for interpretation of the By-Law.

TITLE

28. The short title of this By-Law is the "Fortification of Land By-Law".

SEVERABILITY

29. If any section or sections of this by-law or parts thereof be found by any court to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-Law shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found and this By-Law shall be enacted as such.

REPEALS

30. This by-law supersedes any corresponding by-laws of the Corporation which, through inadvertence, might not have been repealed.

COMMENCEMENT

31. This By-law shall be effective as of the date it is passed by Council.

READ, ENACTED, SIGNED AND SEALED THIS 23rd DAY OF September, 2019

Mayor, Marvin Junkin

Nancy J. Bozzato, Town Clerk