



**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Building Services Division**

<b>TO:</b> Chair and Members Economic Development and Planning Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> May 18, 2010	
<b>SUBJECT/REPORT NO:</b> By-law to Prohibit and Regulate Fortification and Protective Elements of Land (PED10011(a)) (City Wide) (Outstanding Business List Item)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> John W. Lane 905-546-2424 Ext. 1372
<b>SIGNATURE:</b>	

**RECOMMENDATION:**

- (a) That the Draft By-law, attached as Appendix A to Report PED10011(a), respecting the Prohibition and Regulation of Fortification and Protective Elements of land be enacted; and,
- (b) That a fee be paid to the City with an application for exemption under the Draft By-law in Appendix A to report PED10011(a) and be set at the following rates:
  - \$50.00 for applications pertaining to single family dwellings and properties operated by not-for-profit organizations;
  - \$300.00 for all other applications; and,that the appropriate By-law be enacted to include the fee in the City's 2010 User Fees and Charges By-law.

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- (c) That the “By-law to Prohibit and Regulate Fortification and Protective Elements of Land” be identified as completed and removed from the Economic Development and Planning Committee’s Outstanding Business List.

**EXECUTIVE SUMMARY**

The revised Draft By-law, attached as Appendix “A”, prohibits and regulates the fortification of land by physical strengthening and protective elements like surveillance which are excessive. The draft By-law is the second version, revised subsequent to review of comments and concerns voiced by members of the Economic Development and Planning Committee.

The major revisions include:

- ⇒ the removal of observation towers as an excessive fortification element,
- ⇒ greater clarity respecting the acceptable use of surveillance cameras, perimeter warning devices and steel doors,
- ⇒ clarification of the acceptability of “panic rooms” and
- ⇒ recognition of the need to reduce the fees associated with applications for exemptions for single family dwelling homeowners and not-for-profit organizations.

This report also provides additional explanation of steel door reinforcement limitations, steel bar usage and clarifies how driveway entrance gates and expandable store-front gates are not prohibited by the By-law.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

**Financial:** Limited financial implications. The \$300.00 fee for the exemption application is set on the basis that it will approximate cost recovery for the review process. The reduced fee of \$50.00 for properties that are residential and operated by not-for-profit organizations will not be fully cost recovery, but the anticipated low number of applications will only translate to minimal financial implications.

**Staffing:** No staffing changes included. Council approval of the By-law and its enforcement includes that these will be implemented with existing staff, relying on information received through the building permit process and from emergency services.

**Legal:** The By-law relies on current Municipal Act authority, which requires that the Municipality enacting such a By-law also be responsible for enforcement of the Building Code Act, and which provides authority for enforcement powers and the delegation of minor decisions.

**HISTORICAL BACKGROUND** (Chronology of events)

Report PED10011 respecting the approval of a “By-law to Prohibit and Regulate Fortification and Protective Elements of Land” was presented to the Economic Development and Planning Committee on January 19, 2010. During the debate, a number of issues were raised respecting the overall scope of the By-law as well as some of the specific requirements of the By-law. As a result, staff was directed to report back to the Committee on the following issues:

1. Enforcement expectations;
2. Exemptions and how they are handled;
3. Review by constitutional lawyer;
4. Review of Chatham by-law; and,
5. Level of protection and reinforcement which will be permitted, to balance need for protection expressed by homeowners

In addition to these items, matters were raised by committee members during and after the meeting that have been addressed in this report. These additional items will be dealt with first, followed by the five items listed above.

**POLICY IMPLICATIONS**

Building Inspection operating policies to be revised to reflect the enactment of the By-law.

**RELEVANT CONSULTATION**

Legal Services, Hamilton Emergency Services and Hamilton Police Services have been consulted in the preparation and subsequent revision of the By-law. Hamilton Police Services continue to indicate it will support enforcement where assistance is required.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

**Observation Towers**

The construction of observation towers is considered as an “excessive fortification” or to “excessively fortify” in the Draft By-law. This definition posed a concern for some of the committee members as many existing homes and buildings in Hamilton possess architectural features of “turrets” which were popular in Victorian and Tudor architecture. The concern was the retroactive nature of the By-law would capture these architectural

elements and prohibit them. There are also more recently constructed homes in the Hamilton area where turrets were incorporated in the design.

**Action/Response:** Revise the By-law by removing Section 2. (9) g. The removal of this section will not reduce the overall effectiveness of the By-law in any significant way.

### **Visual Surveillance Cameras**

The proposed By-law clearly states that visual surveillance cameras should be designed and operated so that they cannot view persons or land beyond the land actually owned by the owner/tenant. However, concerns have been raised that it is difficult to determine with some video surveillance cameras in what direction they are actually directed to.

**Action/Response:** Revise Section 2.(10) c. of the proposed By-law to include a requirement that would prohibit “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”.

### **Safe Rooms / Panic Rooms**

A ‘panic room’ is a ‘safe room’ that people can hole up in the event of an emergency. The simplest safe room is merely a closet with the hollow-core door replaced with an exterior-grade solid-core door that has a deadbolt and longer hinge and lock plate screws. Safe rooms in basements can be built with concrete walls, a building technique that is normally not possible on the upper floors of wood framed structures unless there is substantial structural reinforcement to the building.

Although the By-law does not specifically prohibit the inclusion of a safe room in a building, some committee members interpreted the By-law as prohibiting them. Since safe rooms are gaining popularity in some newer, upscale home designs, for greater clarity the proposed By-law should deal with them. Safe rooms should be confined to the interior of buildings, (i.e., no exterior entry points) and should be of a modest size, not to exceed 10 square meters.

**Action/Response:** Revise the Exemptions section of the By-law (Section 5.) to include “safe rooms” as permitted provided they do not exceed 10 square meters, comply with the minimum ventilation requirements of the Ontario Building Code, do not contain any plumbing fixtures, and are confined to the interior spaces only within dwellings.

### **Registry of Fortified Properties**

The suggestion was made that the City maintain a registry of all properties where successful exemption applications have been made to excessively fortify. Maintaining

such a list would only have limited value. However, since other agencies (Fire, Ambulance, and Police) may find this information helpful, some sort of reporting mechanism should be implemented between the Building Services Division and Emergency Services agencies.

**Action/Response:** When exemption applications are received and approved, Building Services Division will, via confidential memorandum, inform Fire, Ambulance and Police Services of the location and specifics of the excessively fortified lands and buildings.

### **Perimeter Warning Devices**

The proposed By-law defines a perimeter warning device as an “excessive protective element”. Such a device would notify a resident/occupant of someone accessing their lands. Since there are certain devices that perform this function to assist persons with disabilities (i.e. a deaf person is automatically notified by a flashing light that someone is at the front door of their home) the definition should be revised to remove this reference.

**Action/Response:** Section 2.(10) a. revised to exclude the reference “encroachment onto the perimeter of land” and confine its intent to consider perimeter warning devices that “forewarn of the approach” of persons from adjoining lands or roadways be an “excessive protective element” only.

### **Steel Doors, Steel Bars, Driveway Entrance Gates and Expandable Store-front Gates**

Domestic/commercial entry doors that meet the requirements of CAN/CSA-O132.2 Series, “Wood Flush Doors”, (as amended) and CAN/CSA-CGSB-82.5-M, “Insulated Steel Doors”, (as amended) are not considered an “excessive fortification”, and would be considered a reasonable method of inhibiting the unwanted access to a property, as outlined in the “Resistance to Forced Entry” Subsection of the Ontario Building Code. However, to modify a door by affixing additional steel plating would be considered an “excessive fortification”. In order to reinforce a wood or steel door with additional steel plating, an application for exemption would need to be made to the Chief Building Official who would review the merits of the application to determine if the request was legitimate or not.

The installation of steel bars at basement window openings is not considered an excessive fortification (provided they meet the requirements of the Ontario Building Code) however, steel bars installed on windows above the basement storey level would be considered an “excessive fortification”. Again, as with the reinforced steel door example above, application for exemption would be required to be made to allow the bars.

Driveway entrance gates are installed as an architectural feature that provides a certain level of security. These gates are typically wrought iron or steel, are manually or remote control operated and are self latching. Concerns were raised that these gates, commonly used in upscale homes and properties, would not be permitted in the By-law. In an emergency situation, Fire Services personnel would be able to open such gates using specialized equipment or tools. Accordingly, driveway entrance gates would not be considered an “excessive fortification”.

Expandable security gates that are drawn across store-fronts afterhours are traditionally light weight steel, and prevent the entry of petty thieves. These commonly used security gates would not be considered as an “excessive fortification” and their use would not be prohibited by the By-law.

### **1. Enforcement expectations**

It is expected that enforcement proceedings related to this By-law will be generated from complaints lodged with the City. Local residents who notice neighbouring property owners/tenants engaged in excessively fortifying their lands and buildings or installing items/devices considered to be excessive protective elements may choose to file a complaint with the Building Services Division. However, it is expected that the majority of complaints will originate from Emergency Services Personnel (Fire, Ambulance and Police) who identify properties in their normal course of duties as being overly fortified.

Once complaints are received and assigned to Building Inspectors, properties will be inspected to determine if any By-law violations exist. If properties do not comply with the By-law, enforcement proceeding will commence until compliance is achieved.

Although difficult to predict, the anticipated number of complaints may be somewhat moderate at first and would be expected to taper off over time.

### **2. Exemptions and how they are handled**

Exemptions to the By-law fall into two categories.

First, those buildings and properties that are clearly listed in the exemptions section of the By-law would be permitted to use excessive protective elements without violating the By-law. In general, properties where security is vital (such as banks, detentions centres, police stations or agricultural properties where the movement of livestock must be controlled via electronic fencing) are exempt. If complaints were to be lodged against any of these properties regarding excessive fortification, upon investigation, the complaints would be considered invalid, and closed off accordingly.

Secondly, those buildings and properties where the owner/tenant has successfully applied for an exemption through a formal exemption application procedure would be

exempt. These properties would generally be agricultural, residential, commercial, industrial or institutional establishments where the owner/tenant has provided adequate information to the Chief Building Official verifying the need to fortify their properties. This information might include documented instances of break-and-enter attempts at the property, or simply a clear statement of the use of the property, and the anticipated reasons why fortifying the lands is necessary (i.e. a jewellery shop where higher levels of security are undoubtedly required for the security of the building's contents).

Concerns have been raised regarding the exemption application fee of \$300.00. In particular, this fee may be a hardship for homeowners and not-for-profit agencies.

**Action/Response:** That the proposed By-law be revised to include a more nominal exemption application fee of \$50.00 for single family dwelling residential property owners and not-for-profit agencies and \$300.00 for all other applications.

### **3. Review by constitutional lawyer**

Because of legal implications, the constitutionality of the proposed By-law should be reviewed in-camera at the discretion of the Economic Development and Planning Committee.

### **4. Review of Chatham By-law**

The Municipality of Chatham-Kent enacted a By-law to Prohibit and Regulate Fortification and Protective Elements of Land on June 23, 2003. There are at least two dozen other municipalities in the Province that have enacted similar By-laws, including Ajax, Burlington, Halton Hills, London, Newmarket, Oshawa, Peterborough, Pickering, Toronto, Vaughan and Windsor. Each of these By-laws was reviewed during the preparation of the proposed City of Hamilton By-law. Although the proposed By-law has been closely aligned with the Chatham-Kent By-law it contains greater enforcement powers which came into effect via changes in Provincial legislation since its 2003 enactment date (which include enhanced powers of entry, the ability to issue orders to discontinue the continuing offence, the ability to carry out work necessary to rectify infractions and the ability to obtain an inspection warrant).

On February 13, 2008 an Ontario court found that the Chatham-Kent Anti-Fortification By-law was constitutional, and should not be quashed, [Bondy v. Chatham-Kent, No. 3670/06, Rogin J. (Ont. S.C.J.)]. The court held that Section 133 of the Municipal Act, 2001 empowered the Municipality to prohibit excessive fortification of land through its power to promote public safety. The courts recognized that the By-law was intended to make the land more accessible to emergency personnel and to suppress crime and improve health and safety which is clearly within the realm of Provincial power.

**5. Level of protection and reinforcement which will be permitted, to balance need for protection expressed by homeowners**

Society continues to change in such a way that many homeowners believe that they must secure their premises in order to isolate and protect themselves from unwanted intruders and trespassers. However, some of these efforts can go horribly wrong when Fire, Ambulance and Police Services personnel make attempts to access their properties in emergency situations. The proposed By-law recognizes the needs of homeowners by permitting them to make reasonable efforts when protecting their homes. Burglar alarm systems, resistance to forced entry devices for domestic use and other normal surveillance systems are permitted. In addition, the proposed By-law also includes a method to make application for an exemption to the By-law requirements in exceptional circumstances. For example, if a homeowner has dealt with multiple break-in attempts and reasonable, domestically sold security devices are no longer providing the measure of desired security needed, application can be made to the Chief Building Official who can allow the installation of 'excessive protective elements' in keeping with the level of additional security needed by the applicant. Fire, Ambulance and Police Services would then be notified so they could be aware that additional efforts may need to be made in order to access the identified property in an emergency situation.

Unfortunately, properties that appear to be traditional, residential homes are used for illicit activities such as marijuana grow-operations and crystal meth laboratories. Such premises are oftentimes overly fortified to restrict the entry of law enforcement personnel. In order to address these properties, a By-law must be created that will deal with all properties in general.

The proposed By-law strikes a sensible balance between the homeowner's need to reasonably protect their properties and homes and the essential need for emergency personnel to access properties in emergency situations.

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Do not enact the proposed By-law as amended, which would result in no staffing or financial implications of significance, but would continue to allow properties within Hamilton that may be excessively fortified, thereby inhibiting access by emergency services and law enforcement officials in emergency situations.

Adjustments to the By-law can be made in the future if the level of permitted fortification needs change.

**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

***Skilled, Innovative & Respectful Organization***

- ◆ A culture of excellence

***Financial Sustainability***

- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

***Intergovernmental Relationships***

- ◆ Maintain effective relationships with other public agencies

***Growing Our Economy***

- ◆ Competitive business environment

***Social Development***

- ◆ People participate in all aspects of community life without barriers or stigma

***Environmental Stewardship***

- ◆ Aspiring to the highest environmental standards

***Healthy Community***

- ◆ An engaged Citizenry

**APPENDICES / SCHEDULES**

Appendix A – Revised Draft Fortification By-law

JS:JWL

**Authority:**

**Bill No.**

**CITY OF HAMILTON**

**BY-LAW NO. 10-\_\_\_\_\_**

**Being a By-law To:**

**Prohibit and Regulate Fortification and Protective Elements of Land**

**WHEREAS** Council of the City of Hamilton deems it in the interest of health, safety and the protection of the public to regulate fortification and protective elements with respect to land, buildings and structures in the City of Hamilton and to prohibit excessive fortification and protection of land, buildings and structures regardless of whether the fortification or protective elements were present on the day this by-law is passed, by means of a by-law limiting the impact on egress from or access to lands in case of emergencies and rescue, including access and egress by Emergency Service Personnel with duties involving emergency response such as for fires, ambulance and police matters;

**AND WHEREAS** access and escape from land, buildings and structures may be required both by emergency service responders for rescues and protection of property in cases of emergencies, and by the public, which access and escape may limit personal danger and property loss during emergencies;

**AND WHEREAS** the City of Hamilton is responsible for the enforcement of the Building Code Act, 1992, and by sections 8, 9, 10 and 133 of the Municipal Act 2001, Chapter 25 as amended, may enact by-laws to deal with fortification and protective elements in respect of land and land use, including by regulation or prohibition;

**AND WHEREAS** Council deems the process herein of considering an exemption under this by-law and the decision reached to be a minor and administrative matter, and wishes to delegate the consideration, refusal or approval of such exemptions to the Chief Building Official and Fire Chief or their deputies and designates pursuant to Part I of the Municipal Act, including particularly sections 23.1, 23.2 and 23.5, and further Council has considered that such exemptions would be limited in their impact on persons particularly emergency services responders given the limited nature of the available exemption, that such exemptions are limited to particular properties, and that the delegation to staff may be revoked by Council at any time;

**AND WHEREAS** Part XIV of the Municipal Act, 2001, 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;

**NOW THEREFORE, THE COUNCIL OF THE CITY OF HAMILTION ENACTS AS FOLLOWS:**

**SHORT TITLE**

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

**DEFINITIONS AND INTERPRETATION**

2. In this By-law,
  - (1) “apply” or “application” where the context requires means the erection, installation, extension or material alteration or repair of or application to land and includes to construct.
  - (2) “Building Code” means Ontario Regulation 350/06 as amended and as passed under the Building Code Act, S. O. 1992, c. 23, or any successor code.
  - (3) “Chief Building Official” means the officer appointed by Council for the City 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, or his or her deputy or designate.
  - (4) “City” means either the municipal corporation of the City of Hamilton or the geographic area of the City of Hamilton as the context requires.
  - (5) “construct” 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 unit fabricated or moved from elsewhere and “construction” has a corresponding meaning.
  - (6) “Council” means the municipal council for the City.
  - (7) “Director” means the City’s Director of Building Services, or his or her designate or deputy.

- (8) “Emergency Services Personnel” means any individual employed by a Police Service, Hamilton Emergency Services - Fire including volunteer fire fighters or persons acting in aid under mutual or automatic aid agreements, or of Hamilton Emergency Services – Emergency Medical Services and such other ambulance and fire services that may respond to emergencies in Hamilton, and such other municipal, local, provincial, federal or other Crown agency’s emergency responding personnel, who respond in cases of specific or general emergency and require access to or egress from land while acting under statutory or common law duty, and includes any person acting under the direction of such personnel.
- (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 access to or from land or which have the effect of hindering, obstruction or prohibiting access to or from land and which are the following:
- a. 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;
  - 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 replace walls or create a secondary wall in a manner to protect against firearms, artillery, explosives, vehicle impact and the like;
  - d. The application of bullet resistant/proof material or glass to windows or doors;
  - e. Armor plated or reinforced doors, both exterior or interior, designed to resist against impact of fire arms, artillery, explosives, battering rams, or vehicle impact; or
  - f. The construction of pillars, cones, barriers out of concrete, steel, or other solid building material that are designed to damage or block access onto any land by conventional motor vehicle at ordinary points of entry for such vehicles so as to prevent reasonable access by Emergency Services Personnel.

- (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 the land and which are the following:
- a. The application of perimeter warning devices such as “laser eyes” or other types of advance warning systems be it electronic or otherwise designed to forewarn of the approach to the land from adjoining lands or roadways but excluding similar applications which only notify of entry onto the land or into a building located on the land;
  - b. The application of electrified fencing or any similar perimeter barrier including hidden traps, electrified doors or windows, explosive devices or any weapon or thing that may become a weapon when triggered or activated on encroachments to land whether designed to, or by application in such manner is, likely to cause death or serious injury; or
  - 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, designed or operated so as to listen or view persons or land beyond the perimeter of the land actually owned, leased or rented 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) “Fire Chief” means the chief of the fire department appointed by Council pursuant to Section 6 of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, as amended from time to time, or his or her deputy or designate.
- (12) “Fire Code” means Ontario Regulation 213/07 as amended as passed under the Fire Protection and Prevention Act, 1997, S. O. 1997, c. 4 or any successor code.
- (13) “fortification” or “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.

- (14) “land” includes buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, erections, physical carriers and any other structures on the land or on or in any structure on the land.
  - (15) “occupier” 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.
  - (16) “Officer” means a Building Inspector appointed under any City By-law, or any other person assigned or appointed by the Director to administer or enforce this By-law, includes a person employed by the City whose duties are to enforce this By-law, and further includes a police officer.
  - (17) “owner” in relation to land means a person who has registered title to the land, and includes the heirs, executors, administrators or successors and assigns or other legal representative of such person.
  - (18) “person” includes a corporation, a partnership, and the heirs, executors, administrators, executors and assigns or other legal representative of a person.
  - (19) “police officer” means an officer sworn or appointed as a member of any police service in Canada and includes a police officer assisting or being directed by the Hamilton Police Service.
  - (20) “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.
3. Nothing in this By-law shall be interpreted to prevent compliance with the requirements of building, fire or electrical safety codes under provincial law which apply to the land.

### **GENERAL PROHIBITIONS**

4. 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; or
- (3) Hinder, obstruct, or attempt to hinder or obstruct, an officer, police 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.

## **EXEMPTIONS**

5. Subsections 4(1) and (2) above 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 from time to time;
  - (2) Detention centers operated by the Crown or an agency of the Crown, zoned for such use or otherwise permitted by law;
  - (3) Lands, wherever situated, owned or occupied by the Ontario Provincial Police or an Ontario Municipal Police Service in accordance with the Ontario Police Services Act, or the Royal Canadian Mounted Police or to the activities of such police services, including specifically and without limiting generally the foregoing, the monitoring carried out by Hamilton Police Services of public lands or streets with City consent;
  - (4) Lands, wherever situated, owned or occupied by any Federal Department or Agency of the Government of Canada;
  - (5) Lands occupied exclusively as shelters for abused persons, or similar charitable or non-profit aid agencies where the Chief Building Official is satisfied in their sole discretion that security of the occupants is essential to the charitable purpose or aid;
  - (6) Electrified fencing used by agricultural operations which have livestock for the purpose of controlling movement of the livestock;
  - (7) The use by public authorities of bollards or similar barriers to motor vehicles to limit access by vehicles on public properties, recreational trails or recreational properties at entrances to such trails or properties;
  - (8) The establishment and use of a single panic room in a residential dwelling unit, provided:

- a. It is interior to the building, without either use of exterior walls or direct access to the exterior of the building;
  - b. The room does not exceed an interior area of 10 square meters; and,
  - c. The room does not contain any fuel fired appliances or plumbing fixtures, and otherwise complies with the ventilation and other requirements of the Ontario Building Code.
- (9) Other agricultural, residential, commercial, industrial, or institutional establishments where an approval has been granted in accordance with sections 7 through 11 of this By-law, provided:
- a. The fortification or protective elements are limited to the extent of their approval;
  - b. Such agricultural, residential, commercial, industrial or institutional establishment and fortification or protective element is in compliance with zoning and otherwise lawfully permitted;
  - c. That conditions imposed on the approval are complied with; and
  - d. The fortification or protective elements are constructed and maintained in accordance with the plans submitted and approved under this by-law.

## **SCOPE AND LIMITATION OF BY-LAW**

6. Subsections 4(1) and (2) do not operate to prohibit:
- (1) The use of commercially marketed security devices, provided their use is as designed, and they are applied to provide reasonable fortification and protection from theft or other criminal activity against the person or property of an individual, and which do not meet the definition or are not employed so as to meet the definition of excessive protective elements particularly clauses (a), (b) and (c) of that definition;
  - (2) The 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 where an actual entry into the building or structure has occurred;

- (3) 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 alteration or renovation;
- (4) 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 conditions; or
- (5) The securing of openings in vacant buildings, or the closing of fire or other accidental structural damage to buildings as required under the City's Property Standard's By-law as amended, or by an order issued under either the Fire Protection and Prevention Act, S.O. 1997, c.4 or the Building Code Act, S.O. 1992, c. 23.

#### **APPLICATION FOR LIMITED EXEMPTION**

7. Any person who is either the owner of land, or an occupant who has the consent of the owner to apply, and who wishes to make application for a limited exemption from the provisions of the By-law shall file with the Building Services Section of the City, the following:
  - (1) An application for the exemption from any provision(s) of this By-law shall be signed and in writing, with the signed consent of the owner and occupant, together with the application fee set by the City for such applications;
  - (2) For the purposes of calculating the fees due under this by-law pursuant to the City's User Fees and Charges By-law, a "single family dwelling" means a residential dwelling unit in any form which is lawfully occupied as a single housekeeping unit, and "property operated by a not-for-profit organization" means a property occupied exclusively by an organization which operates on a not-for-profit basis or by a non-profit corporation, as determined by the Chief Building Official in their sole discretion who may request such material, documents or affidavits to determine the issue.
  - (3) Complete details of the location of the land, including municipal address, zoning nature (agricultural, residential, commercial, industrial or institutional), current use and particularly if a dwelling whether it is occupied, the intended use if a change is proposed, and, if requested a recent survey of the land and structures shall accompany the application;

- (4) A consent and contact information necessary to allow staff of the Building Services Section and Emergency Services Personnel as required by the Building Services Section 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 confirm details of the application and compliance with this By-law and any approval as may be granted;
  - (5) A detailed scaled plan of the design and construction proposed, together with an explanation of the exemption(s) requested and the reasons for requesting such an exemption(s). This shall include details of Fortification or Protective Elements being applied for along with an explanation of how such Fortification or Protective Element is rationally connected to the purpose for which the exemption is being sought; and
  - (6) Such other information as the Chief Building Official may require, with or after submission of the application, as deemed necessary or relevant to this By-law in their sole discretion, and at the expense of the applicant, including but not limited to:
    - a. requests for clarification, further details and documents from the applicant;
    - b. the making of inquiries to, and supplying of responses from the owners or occupants of the land, the suppliers or manufacturers of the materials, equipment or system proposed to be installed, and from local, Provincial or Federal government offices or agencies relevant to the application or consideration of same; and
    - c. signed consent(s) to make inquiries of, collect or obtain information, from such persons or agencies as the Chief Building Official may require, including but not limited to the collection of information from the Hamilton Police Service on the history of break-ins or other security incidents involving the applicant's land, and investigations of same, and departments of Emergency Services Personnel or other potential emergency responding agencies who may have comments or concerns on the application, and covering the provision of information on the application to such persons as is required under this By-law.
8. (1) All applications under section 7 will be reviewed by the Chief Building Official or designate, unless the application is incomplete,

the fee is unpaid, or any information required under this By-law or requested by the Chief Building Official has not been supplied.

- (2) It is a condition of an application under this part, and of any approval of an exemption, that the owner and occupant of the lands affected provide reasonable access to their land and premises for the purpose of inspecting the land and any protective elements or fortifications for the City, provided such access is carried out in accordance with the provisions of the Municipal Act and particularly in respect of a place actually used as a dwelling.
- (3) The following are deemed conditions of any approval of an exemption under this By-law:
  - a. that the fortification or protective elements authorized be built and maintained in accordance with the plans and specifications as approved by the City;
  - b. inspections are allowed as reasonably required to confirm the installation or construction is in compliance with the approval and other provisions of this By-law;
  - c. the approval is specific to the land and is not transferable, but that the applicant advise and provide details to any new owner or occupant of the land about the exemption and features of fortification or protective elements kept on the land;
  - d. the approval expires if there is a change of the primary use of the land to another primary use; and
  - e. an exemption approved under this By-law 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 other Federal or Provincial law or regulation, or other municipal by-law.

## **GROUND'S FOR APPROVING EXEMPTION**

9. (1) Upon review of the application completed under section 7, the Chief Building Official may issue a limited 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:

- a. the nature and extent of the exemption does not exceed that which is rationally proven, to the satisfaction of the Chief Building Official reviewing the application, to be necessary,
  - b. the access to or escape from the property for Emergency Services Personnel is not unreasonably interfered with or limited; and
  - c. the granting of the exemption would not result in any contravention of any other applicable law including, without limiting the generality of the foregoing, the Building Code Act, S. O. 1992, c. 23, the Official Plan and Zoning By-law of the City.
- (2) The Chief Building Official may consider as part of the rationale for their decision in subsection (1), whether existing, previous or proposed fortification or protective elements were or are sufficient or reasonably necessary, and the existing or proposed use of the land and part to which the exemption is to be applied.
10. An authorized exemption provided to an applicant will reference this By-law and bear the signature of the Chief Building Official, and may include such time limit as deemed appropriate by the Chief Building Official, and notice of the granting or refusal of an exemption together with the reasons for the Chief Building Official's decision shall be personally delivered to the applicant, 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.
11. A true copy of any authorization issued under Section 10 and plans or designs approved and information of which they were based, may be forwarded by Building Services Section to the attention of the Chief of Police for Hamilton Police Services or designate, the Fire Chief of Hamilton Emergency Services or designate, and such other agency or department which the Chief Building Official deems appropriate.

#### **APPEAL FOR REFUSAL EXEMPTION OR CONDITIONS ADDED**

12. (1) Where the Chief Building Official refuses to grant an exemption applied for under section 7, or adds conditions to the exemption granted under section 9, the applicant may either appeal the refusal or appeal the conditions added by the Chief Building Official and have a hearing held into the appeal under this section.

- (2) The request for an appeal under subsection 12(1) above, to be accepted and proceeded with by the City, shall be filed with the Building Services Section of the City of Hamilton within fifteen (15) days of the applicant being notified of the decision of the Chief Building Official under section 10 above, shall include the grounds for the appeal, and shall be accompanied by a fee in the same amount as required for the application under section 7.
- (3) Where there has been a request for an appeal filed in compliance with the requirements of this section, the Fire Chief shall cause notice of the appeal hearing to be sent to the parties, being the applicant and the representative of the Building Services Section of the City of Hamilton, 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.
- (4) The Fire Chief shall conduct the appeal, and sections 4 through 18, 20 through 23, 25.0.1, 25.1, 27 and 28 of the Statutory Powers Procedure Act, R.S.O. 1990, c.S.22 apply to the conduct of such hearings.
- (5) The Fire Chief at the 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 9, 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 the Fire Chief in their sole discretion considers proper in the circumstances.
- (6) If no appeal is filed under this By-law within the time limits imposed by this section, the decision of the Chief Building Official is final and binding on the applicant, or where the appeal is decided by the Fire Chief at a hearing under this section the decision of the Fire Chief

is final and binding upon the applicant, and there is no further appeal from such decisions.

- (7) Sections 10 and 11, and subsections 8(2) and 8(3) of this By-law apply, with any necessary modifications, to the decision of the Fire Chief made after an appeal hearing.

## **ADMINISTRATION AND ENFORCEMENT**

13. The Director is authorized to administer and enforce this By-law, including the taking of such steps, arranging assistance or work by City 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 City to recover costs or restrain contravention of the by-law as deemed necessary.
14. The Director may assign Officers to enforce this By-law who 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 Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise, and may request police officers assistance for enforcement including obtaining orders for entry as may be required.
15. 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 Officer's identification when requested, an 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.
16. No person shall remove an order, notice or direction posted on land indicating it was posted under this By-law, except an Officer.
17. (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) 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 City 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 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.
18. An 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.
  19. (1) If an Officer is satisfied that a contravention of this By-law has occurred, the 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 20(3).
20. (1) If an Officer is satisfied that a contravention of this By-law has occurred, the 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 16 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 19 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.
21. An order to discontinue contravening activity made under section 19 or an order to do work made under section 20 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.

## **FAILURE TO COMPLY AND COST RECOVERY**

22. (1) Where a person defaults in complying with a direction, requirement or order under this By-law to do a matter or thing, the Director may cause an Officer or agent on behalf of the City, 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.
- (2) The City 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 rate of 15 per cent.
- (3) For the purposes of subsection (2) above, interest shall be calculated for the period commencing the day the municipality incurs the costs and ending on the day the costs including the interest are paid in full.
- (4) The Director 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 \$20,000. Where the estimated costs exceed \$20,000, the work shall be carried out only where directed by a person with the authority to approve such expense, or by Council.
- (5) The amount of the City'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.

## **OFFENCES AND PENALTY**

23. (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 \$20,000.00;

