

The Corporation of the Municipality of Leamington

By-law 72-19

By-law to provide for the appropriate covering of windows in commercial buildings

Whereas section 11(2) of the Municipal Act, 2001, R.S.O. 2001, c. 25 (herein the “Act”) provides that a lower-tier municipality may pass by-laws respecting the health, safety and well-being of persons.

Whereas section 128 of the Act provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances and the opinion of council under this section, if arrived at in good faith, is not subject to review by any court.

Therefore the Council of The Corporation of the Municipality of Leamington hereby enacts as follows:

Interpretation

1. If any section, subsection, schedule or part of parts of this by-law are declared by any court of law to be bad, illegal or ultra vires, such section, subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.
2. Unless otherwise defined, the words and phrases used in this by-law have their normal and ordinary meaning.
3. This by-law is gender-neutral and, accordingly, any reference to one gender includes the other.
4. References to items in the plural include the singular, as applicable, unless used with a number modifying the term.
5. Headings are inserted for convenience of reference purposes only, form no part of this by-law and shall not affect in any way the meaning or interpretation of the provisions of this by-law.

Intent

6. This by-law is intended to enhance the safety and well-being of the residents of the Municipality and, in particular, those persons who work, shop and patronize Commercial Buildings by regulating the covering of Windows in order to prevent crime and deter behaviours which could become or cause nuisances.

Definitions

7. For the purposes of this by-law:

- a) **“Appeal Committee”** means the committee established by Council to hear appeals from decisions of administrative officials made pursuant to a delegated power or duty;
- b) **“Commercial Building”** means a building or such portion of a building that is used for commercial purposes and under independent control including, but not limited to offices, financial institutions, and the retail buying or selling of commodities, or both, and/or the supply of services including restaurants, but does not include a Home Occupation or a Farm Occupation as defined within the Zoning By-law;
- c) **“Council”** means Council of the Municipality;
- d) **“Fire Code”** means Ontario Regulation 213/07;
- e) **“Flame Resistant”** means complying with the regulations for the flame resistance of textiles pursuant to the Fire Code;
- f) **“Municipality”** shall mean The Corporation of the Municipality of Leamington;
- g) **“Neutral Colour”** shall mean shades of white, grey, beige or brown;
- h) **“Officer”** shall mean a police officer, a provincial offences officer, a municipal law enforcement officer or any other person as may be appointed by Council to enforce this by-law;
- i) **“Person”** means an individual, a partnership, or a corporation and the heirs, executors, administrators or other legal representatives of the person, as the case may be;
- j) **“Shade”** means a window covering consisting of a piece of stiff cloth or fabric that can be pulled down or drawn over a window and includes its structure and mechanisms;
- k) **“Sign By-law”** means By-law 110-11 as amended from time to time or as may be replaced by such by-law regulating the size, use, location and construction of signs within the Municipality;
- l) **“Wall”** means an exterior wall of a Commercial Building;
- m) **“Windows”** includes a window which forms any part of a door;

- n) **“Zoning By-law”** means By-law 890-09 as amended from time to time or such by-law as may be passed by Council pursuant to section 34 of the Planning Act, R.S.O. 1990, c. P.13.

Exemptions

8. This by-law shall not apply to the Municipality, the federal and provincial government and their respective agencies shall be exempt from the provisions of this by-law.

Prohibitions

9. No Person shall cause or permit Windows of a Commercial Building to be covered or obstructed, except:
- a) by a Shade in a Neutral Colour constructed from material that is Flame Resistant and that, when closed, is of sufficient transparency to allow for the interior of the Commercial Building to be viewed from the outside of the Commercial Building.
 - b) by glaze or tint of sufficient transparency to allow for the interior of the Commercial Building to be viewed from the outside of the Commercial Building.
 - c) if such coverage or obstruction equates to no more than thirty percent (30%) of the total area of Windows within each Wall of the Commercial Building and is:
 - i) limited to that portion of the Window that is the furthest from the surface of the ground;
 - ii) a Shade in a Neutral Colour constructed from material that is Flame Resistant; or
 - iii) a sign or signs as defined within the Sign By-law and for which a permit or permits have been issued pursuant to the Sign By-law.
10. No Person shall cause or permit a Shade to be tattered, torn or in disrepair.
11. No Person shall cause or permit a Window to remain covered in filth, dust, dirt or other similar substance.
12. No Person shall cause or permit merchandise, displays, goods, equipment, materials or other such items to be positioned in front of Windows such that activity being carried on within the interior of a Commercial Building cannot be viewed from the outside of the Commercial Building.

Variance

13. The owner or Person in control of a Commercial Building for any reason may apply to the Appeal Committee for a variance from the provisions and regulations of this By-law.
14. The applicant for a variance from this By-law shall provide information to the Appeal Committee that demonstrates that the variance satisfies the general intent of this by-law; is minor in nature and that a strict application of this by-law would constitute an unreasonable hardship for the applicant.
15. If the information provided by the application in accordance with section 14 of this by-law satisfies the Appeal Committee, the Appeal Committee may authorize the variance from the provisions and regulations of this by-law and may attach any conditions to the variance that the Appeal Committee deems appropriate

Enforcement

16. Any Officer may, during apparent business hours, enter into a Commercial Building for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - a) this by-law;
 - b) an order of the Municipality made under this by-law; or
 - c) an order made under section 431 of the Municipal Act.
17. For the purposes of conducting an inspection pursuant to section 16 of this by-law, an Officer may:
 - a) require the production for inspection of documents or things, or copies of any document or thing, 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; 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 purpose of the inspection.
18. Any Officer is hereby authorized to pull down, remove or cause to be removed any covering or obstruction of a Window which is in contravention of this by-law or that constitutes a safety hazard. The Municipality may, pursuant to section 446 of the

Act recover the costs incurred by or on behalf of the Municipality by action or by adding the costs to the tax roll and collecting them in the same manner as taxes. The costs together with interest accruing thereon constitute a lien upon the land upon the registration in the proper land registry office of a notice of lien.

Offence

19. No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person who is exercising a power or performing a duty under this By-law.
20. Every Person who contravenes any section of the by-law is guilty of an offence and, upon conviction, is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, c.P. 33.
21. Notwithstanding section 20 of this by-law, every Person who contravenes any provision of this by-law and every director or officer of a corporation who concurs in such contravention by the corporation is guilty of an offence and on conviction is liable to a fine not exceeding \$25,000.00.
22. Notwithstanding section 20 of this by-law, a corporation that contravenes any provision of this by-law is guilty of an offence and, upon conviction, is liable for a fine not exceeding \$50,000.00.
23. The court in which a conviction has been entered, and any court of competent jurisdiction thereafter, 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 remedy and to any penalty imposed on the person convicted.
24. If the fine remains unpaid the fine shall be deemed to be unpaid taxes for the purposes of section 351 of the Act.

In Force

25. This by-law shall come into full force and effect upon the final passing thereof.

Read a first, second and third time and finally enacted this 26th day of November, 2019.

Hilda MacDonald, Mayor

Brenda M. Percy, Clerk