

THE CORPORATION OF THE TOWN OF SMITHS FALLS
BY-LAW NO. 7166-96
OFFICE CONSOLIDATION (as amended by By-law 8148-2008)

A By-law to regulate privately owned outdoor pools and enclosures.

WHEREAS pursuant to section 210(30) of the Municipal Act, Chapter M.45, R.S.O. 1990 councils of all local municipalities may pass by-laws for requiring owners of privately owned outdoor pools to erect and maintain fences and gates around such pools, for prescribing the height and description of, and the manner of erecting and maintaining such fences and gates; for requiring the production of plans for all such fences and gates, and for the issuing of permits and for authorizing the refusal of any such permit.

NOW THEREFORE the Council of the Corporation of the Town of Smiths Falls enacts as follows:

1.0 TITLE

1.1 This by-law may be cited as the "Pool Enclosure By-law".

2.0 DEFINITIONS

2.1 For the purposes of this by-law the following definitions are included to provide a general understanding of the interpretation of certain words. Reference shall be made to the Town of Smiths Falls Zoning By-law for specific definitions which shall apply to the provisions of this by-law.

CHIEF BUILDING OFFICIAL means the Chief Building Official for the Town as appointed by Council.

DOOR means a door in the side or rear of a house, garage, carport, boathouse or other similar building used as access to an enclosure or part thereof.

ENCLOSURE means a fence, wall or other structure, including doors and gates enclosing a swimming pool and approved under the provisions of this by-law.

FENCE means any barrier or structure other than a building, erected at grade, which is erected for the purpose of screening, safeguarding, encasing property or delineating property lines.

GATE means a swinging or sliding barrier used to fill or close any access in an enclosure.

GRADE means the elevation of the finished surfaces of the ground immediately surrounding the pool or enclosure.

POOL means a privately owned outdoor swimming pool (above-ground or in-ground), Jacuzzi, hot-tub, constructed body of water but shall not include any pool that has a holding capacity of 0.61m (24 inches) and less in depth. Jacuzzi or hot tubs installed within any open porch or immediately adjacent to the main residential structure shall be exempt from the requirements of this by-law provided the top of the Jacuzzi or hot tub completely prohibits access to the enclosed water by way of a solid cover which is capable of being locked by the owner.

POOL ENCLOSURE PERMIT means permission or authorization in writing by the Chief Building Official to erect enclosures around pools as regulated by this by-law.

RESPONSIBLE PERSON means the owner of the premises or other adult person authorized by the owner to supervise the use of the pool on the premises.

TOWN means the Corporation of the Town of Smiths Falls.

3.0 GENERAL

- 3.1 No person shall excavate for or cause or permit excavation for any privately owned outdoor pool, or erect or cause or permit the erection of any privately owned outdoor pool without first obtaining an enclosure permit from the Town.
- 3.2 Notwithstanding subsection 3.1, a permit is not required if an above-ground pool to which a permit had previously been obtained, is dismantled and reconstructed in the previously approved location and in compliance with the by-laws in effect at the time of reconstruction.
- 3.3 Re-installation of an above-ground pool shall be subject to an inspection.
- 3.4 An application for a permit to construct an enclosure around privately owned outdoor pools shall be submitted to the Town, together with plans showing the location of the pool in relation to the property lines and to adjacent buildings and shall provide full details of all required enclosures.
- 3.5 Required enclosures shall be erected in accordance with the Fence By-law of the Town.

4.0 LOCATION

- 4.1 A pool shall not be located within any publicly owned easement nor any closer than;
 - i) 1.5 m to the rear or interior side lot line;
 - ii) 6 m to the front or exterior side lot line; and
 - iii) 1.2m (3.94ft) to a main building or structure.

5.0 ENCLOSURE REQUIREMENTS

- 5.1 Every owner of a pool shall ensure that an enclosure is constructed and maintained according to the provisions of this by-law.
- 5.2 No person shall place water in a pool or allow water to remain in a pool unless an enclosure has been erected in accordance with the provisions of this by-law.
- 5.3 A privately owned outdoor pool while under construction shall be enclosed with a temporary fence in accordance with the requirements of section 6.4 of this by-law except where the permanent enclosure requirements have been satisfied.
- 5.4 The height of an enclosure above grade shall be a minimum of 1.5m (5.0ft) measured at any point along the exterior face of the enclosure.
- 5.5 A space of no more than 100mm (4 inches) shall be permitted below any point in the enclosure or gate.
- 5.6 Every enclosure shall be constructed so as to provide access to the pool, only by the gate(s) or door(s) and shall have no features which may facilitate climbing.
- 5.7 Every owner of a pool shall ensure that every gate and door is securely locked at all times, save and except where the pool is supervised by a responsible person.
- 5.8 No enclosure shall be located closer than 1.2m (4.0ft) to any condition or feature that facilitates the climbing of the enclosure unless alternative measures, satisfactory to the Chief Building Official, are implemented to provide an equivalent level of safety as set out in this by-law.

6.0 FENCES

A fence surrounding a pool shall conform to the following requirements:

6.1 Chain-link Construction

- i) diamond mesh not greater than 50mm (2 inches), consisting of 9 gauge (3.6mm) galvanized steel wire, or of minimum 11 gauge (2.9mm) covered with vinyl coating forming a thickness equivalent to 9 gauge wire;
- ii) 38mm (1 ½ inch) diameter galvanized steel supporting posts spaced at a maximum of 3.0m (10ft) apart. Such posts shall be encased in concrete at least 50mm (2 inches) thick around the post and extending below grade; and
- iii) top and bottom rail shall be firmly fastened to the upright posts and made of 32mm (1 ¼ inch) diameter galvanized steel. A galvanized steel tension rod 5mm may be substituted for the bottom rail.

6.2 Wood Construction

- i) vertical boards attached to supporting horizontal members with a minimum dimension of 19 x 89 mm (1 x 4 inch nominal) and spaced at a maximum of 100mm (4 inches);
- ii) supporting horizontal members shall have a minimum dimension of 38 x 89mm (2 x 4 inch nominal) and shall be spaced a minimum of 1.22m (4ft) apart; and
- iii) horizontal members shall be supported by posts that are a minimum 88mm (4 inches) square and should be spaced a maximum of 3.0m (10ft) apart. The posts should be placed a minimum of 0.50m (2ft) below grade with the portion below grade treated with an approved (CAN/CSA-080.1-m89) wood preservative or equivalent.

6.3 Other Constructions

- i) a fence of any other construction which provides an equivalent or greater degree of strength and safety to that specified in section 6.1 or 6.2 may be approved by the Chief Building Official upon receipt of complete plans and specifications for such fence;
- ii) above-ground pools may have a fence as an integral part of their construction with an effective height of 1.5m (5ft) provided that a suitable ground constructed enclosure surrounds the entrance ladder; spacing of vertical supports attached to the top of the pool edge shall be maximum of 50mm(2 inches) apart;
- iii) no barbed wire, electrical wiring, sharp projections or any other dangerous feature shall form part of an enclosure; and
- iv) Notwithstanding the provisions of 6.3iii) above, barbed wire or electrical wiring may be permitted on such part of an existing fence, located on abutting non-residential property as forms part of the enclosure of the pool, provided that such part of an enclosure securely contains the abutting non-residential property and, save and except for the presence of the barbed wire or electrical wiring, is otherwise in compliance with the provisions of this by-law.

6.4 Temporary Fences

Notwithstanding the provisions of section 6.1, 6.2 or 6.3 of this by-law, during the period of construction of a pool which, for the purposes of this provision may not exceed ten (10) working days, a temporary fence shall be erected and continuously maintained which shall;

- i) consist of snow fencing or 50mm (2 inch) chain link with steel T-bar posts placed a maximum of 3.0m (10ft) apart, with a 9 gauge galvanized steel wire located at the top of such fence or be constructed of material that will provide, in the opinion of the Chief Building Official, an equivalent degree of safety. Plastic mesh shall not be permitted; and
- ii) be of a minimum height of 1.2m (4ft).

7.0 GATES AND ENTRANCES

7.1 Gates which form a part of the enclosure shall be;

- i) of construction and height equivalent to or greater than that of the required enclosure;
- ii) supported on substantial hinges;
- iii) self-closing and equipped with a self-latching device, placed at the top and on the inside; and
- iv) lockable.

7.2 Doors which form part of the enclosure, but which do not lead directly from inside a dwelling unit shall be;

- i) of construction and height equivalent to and greater than that of the required enclosure;
- ii) supported on substantial hinges;
- iii) self-closing and equipped with a self-latching device and knob (handle) placed at least 1.5m (5ft) above the bottom of the door; and
- iv) lockable.

8.0 BACKWASH

8.1 No person shall discharge backwash and drainage of a pool except in accordance with one of the following methods;

- i) drywell-into a hole located on the property on which the pool is located with a minimum size 1.8 X (6 ft x 6ft x 3ft) filled with crushed stone;
- ii) owner's property- discharge onto the property on which the pool is located in such a manner that no nuisance or damage is caused to neighbouring properties;
- iii) sanitary sewer-discharge may be through plumbing system in accordance with the Ontario Building Code.

9.0 **FEEES**

9.1 The fee for an enclosure permit issued under this by-law shall be \$50.00 for each pool that is installed or such fee as is established from time to time by the Council of the Town. Such fee shall be payable upon submission of an application and shall not be refundable.

10. **PENALTIES**

10.1 Every person who contravenes any of the provisions of this by-law is guilty of an offence and on conviction shall be liable to a penalty pursuant to the provisions of the Provincial Offences Act.

10.2 Set fines may be established for certain offences contained in this by-law. Such set fines shall be established pursuant to the Provincial Offences Act and shall become effective upon the approval of same by the Senior Judge of the Ontario Court of Justice, Provincial Division.

11.0 **SEVERABILITY**

11.1 Should any section, subsection, clause or provision of this by-law be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this by-law as a whole or any part thereof, other than the part so declared to be invalid.

12.0 **REPEAL**

12.1 By-law No. 4276-76 as amended is hereby repealed.

13.0 **EFFECTIVE DATE**

13.1 The provisions of this by-law shall come into force and take effect upon the passing thereof.

Read a first and second time this 3rd day of September, 1996.

Read a third time and passed this 16th day of September, 1996.

Mayor

Clerk