

THE CORPORATION OF HALDIMAND COUNTY

By-law No. 989/09

Being a by-law to require and regulate the fencing of privately owned outdoor swimming pools

WHEREAS Section 10(1) of the *Municipal Act, S.O. 2001*, Chapter 25, provides that a single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public.

WHEREAS Section 444(1) of the *Municipal Act, S.O. 2001*, Chapter 25, provides that if a municipality is satisfied that a contravention of a by-law of the municipality passed under this Act has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.

WHEREAS Section 445(1) of the *Municipal Act, S.O. 2001*, Chapter 25, provides that if a municipality is satisfied that a contravention of a by-law of the municipality passed under this or any other Act has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.

WHEREAS Section 445(1) of the *Municipal Act, S.O. 2001*, Chapter 25, provides that if a municipality has the authority under this or any other Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense.

AND WHEREAS it is deemed necessary and expedient to enact a by-law requiring the owners of privately owned outdoor swimming pools to erect and maintain enclosures and gates around such swimming pools and for prescribing the height and description of, and the manner of erecting and maintaining such enclosures and gates.

NOW THEREFORE, the Council of The Corporation of Haldimand County enacts as follows:

PART I - DEFINITIONS

1. In this By-Law,
 - (a) "Above Ground Swimming Pool" shall mean any such constructed or fabricated pool used for swimming, wading, diving or bathing which could, when filled, contain a depth of 450mm (18 inches) or more of water at any point, and the top rim of which rises 600mm (2 feet) or more above the surrounding soil, or other surface upon which it is placed.
 - (b) "By-Law Enforcement Officer" shall mean a person authorized by Council to enforce the by-laws of Haldimand County.

- (c) "Chief Building Official" shall mean the Chief Building Official appointed by the Council under Section 3 of the Building Code Act, S.O. 1992, Chapter 23, as amended, and includes, the Chief Building Official's designate for the purposes of this by-law;
- (d) "Constructed" shall mean the erection, installation or fabrication of a material thing.
- (e) "Council" shall mean the Council of The Corporation of Haldimand County.
- (f) "Deck" shall mean any structure forming an exterior floor system above grade.
- (g) "Double Leaf Gate" shall mean any part of a pool enclosure that contains two gates adjacent to one another; with at least one gate being capable of being permanently affixed and the other being equipped with a self closing device and a self latching device suitable for a locking device.
- (h) "Effective Ground Level" shall mean the highest level of the ground at a particular location taking into consideration the surrounding ground level for a horizontal distance of 1.2 metres (4 feet) of the location being considered.
- (i) "Enclosure" shall mean a fence, wall or other structure or combination thereof, including doors and gates surrounding an outdoor swimming pool to restrict access thereto.
- (j) "Fabricated" shall mean constructed or manufactured.
- (k) "Fence" shall mean a barrier constructed to enclose an outdoor swimming pool. The wall of another structure may be incorporated to complete the enclosure.
- (l) "Gate" shall mean any part of a swimming pool enclosure which opens on hinges to provide access to the swimming pool; excluding a service gate.
- (m) "Grade" shall mean the level of finished ground surrounding an outdoor swimming pool measured at a distance of 900mm (3 feet) from the wetted wall of the swimming pool.
- (n) "In Ground Swimming Pool" shall mean any such constructed or fabricated pool used for swimming, wading, diving or bathing which could, when filled, contain a depth of 450mm (18 inches) or more of water at any point, and the top rim of which rises less than 600mm (2 feet) above the surrounding soil, or other surface upon which it is placed.
- (o) "Locking Device" shall mean a device which prohibits the latch from being actuated. The locking device shall actuated by key, combination or other means approved by the Chief Building Official.
- (p) "Maintain" shall mean to carry out repairs of any or parts of a swimming pool enclosure so that it can properly perform the intended function in accordance with the provisions of this by-law.

- (q) "Municipality" shall mean the Municipality of the Corporation of Haldimand County.
- (r) "Owner" shall include the owner, lessee or tenant in possession of the property, as well as anyone having care and control of the property, on which a privately owned outdoor swimming pool is located.
- (s) "Self Closing Device" shall mean a mechanical device or spring which returns a swimming pool enclosure gate to its closed position after it has been opened.
- (t) "Self Latching Device" shall mean a mechanical device or latch which is engaged each time the swimming pool enclosure gate is secured to its closed position; which will not allow the swimming pool enclosure gate to be reopened by pushing or pulling, and which will ensure the swimming pool enclosure gate remains closed until unlatched by either lifting or turning the device itself directly or by a key.
- (u) "Service Gate" shall mean a secondary gate, comprised of a section of fencing with a width greater than 1.8 metres (6 feet) and its purpose is to allow access to the pool for the purpose of maintenance only and it is to remain locked at all other times.

PART II – SCOPE / APPLICATIONS

2. This by-law shall apply only to privately owned outdoor swimming pools, including temporary and inflatable above ground swimming pools but does not include hot tubs, ornamental ponds, farm ponds and naturally occurring bodies of water.
3. Any owner in possession of a permit for a swimming pool enclosure where the construction of the pool did not occur prior to the final reading of this by-law is hereby exempt from the provisions of this by-law and shall comply with the provisions of the former Town of Dunnville By-law 27-74, former Town of Haldimand By-law 760-89 and the former City of Nanticoke By-law 45-98 and any amendments thereto.
4. Any outdoor swimming pool enclosure existing prior to the passage of this by-law are exempt from the provisions of this by-law provided that said existing enclosure conformed to the requirements of the applicable former municipal by-law in force and that such enclosures maintained in accordance with the provisions of those by-laws.
5. The provisions of this by-law shall apply to all privately owned outdoor swimming pool enclosures erected following the date of passage of this by-law.
6. Where the previously permitted swimming pool enclosure in Sections 3 and 4 is subsequently replaced, the replacement enclosure is instead subject to the requirements of this by-law, including the application for a permit, fee and the requirements and standards specified.
7. Where this by-law provides both metric and imperial measurement for the same item, the imperial measurement is provided for convenience only and is approximate.

PART III - GENERAL PROVISIONS

8. No person shall place, permit or cause excavation for, erection of, construction or placement of a swimming pool and or required swimming pool enclosure without obtaining a swimming pool enclosure permit from the Chief Building Official.
9. Every owner of an outdoor swimming pool shall erect an enclosure completely surrounding such pool in accordance with the provisions of this by-law.
10. All enclosures shall be maintained in such a condition so that the enclosures and gates continue to be in compliance with the provisions of this by-law.
11. No person shall place water or permit the placement of water in a swimming pool, until a swimming pool enclosure has been erected in compliance with the provisions of this by-law and received approval from the By-law Enforcement Officer for such enclosure prior to the placement of water.
12. Every owner of an outdoor swimming pool shall notify the By-Law Enforcement Officer of the completion of a swimming pool enclosure and shall arrange for an inspection of and receive approval for such enclosure prior to the placement of water.
13. The owner and every adult person in control of an outdoor swimming pool shall erect and maintain an enclosure surrounding the entire swimming pool area in conformance with this by-law.
14. Every owner and every adult person in control of an outdoor swimming pool shall ensure that every gate and every door providing access to such outdoor swimming pool shall be kept locked at all times when the pool is not in use or there is more than 450mm (18 inches) of water in the pool and a responsible person is not present and supervising the pool.

PART IV – PERMIT APPLICATION AND APPROVAL

15. (a) Every owner who wishes to construct or erect a swimming pool and/or a swimming pool enclosure shall submit to the Chief Building Official plans showing details of the proposed swimming pool enclosure. All such applications shall be accompanied by the following:
 - i. An estimate of the value of construction of the pool, pool enclosure and any attached construction (e.g. decks, trellises etc),
 - ii. The required fee as set in the applicable Building By-law,
 - iii. Dimensioned, scale plans showing the location(s) of the proposed swimming pool including all swimming pool enclosures, together with full details of each entrance, showing the location of all proposed swimming pool equipment such as filters, slides and heaters; and
 - iv. Plans showing the grading and drainage. If the property is subject to a lot grading plan, conformation of compliance with the original plan must be received from the Engineering Division.

- (b) Upon being satisfied that the items required in sentence 16(a) meet the requirements of this by-law and other applicable laws the Chief Building Official shall prepare and issue a permit.
- (c) Upon completion of the swimming pool enclosure the owner is required to contact the Municipality to request a final inspection.
- (d) A permit is not required in the case of a swimming pool which has been dismantled and is being reconstructed in the exact same manner and in the exact same position, provided a permit was obtained for the original swimming pool enclosure and provided that the enclosure is not being altered in any way.
- (e) Refunds for permit fees will be issued only upon written request as per the building by-law.

PART V – TEMPORARY ENCLOSURES DURING CONSTRUCTION

16. Where it is necessary during construction to permit the entry of construction equipment into the swimming pool enclosure, a portion of the approved swimming pool enclosure may be replaced by temporary fencing provided it meets the following requirements.
- (a) the fencing material must be snow fencing or an approved alternate; and
 - (b) the fencing must be a minimum of 1.2 metres (4 feet) in height and adequately supported; and
 - (c) the fencing must be in good repair with no openings greater than 100mm (4 inches); and
 - (d) the fencing must enclose the swimming pool area whenever the area is not under competent supervision; and
 - (e) the temporary fencing must be replaced by the approved permanent swimming pool enclosure immediately upon completion of the pool.

PART VI – FENCING REQUIREMENT FOR OUTDOOR SWIMMING POOLS

In Ground Swimming pools and above ground swimming pool with fencing

- 17. Sections 18 through 25 refer to in-ground swimming pools or above ground swimming pools where the enclosure is not part of the pool and/or pool decking.
- 18. Every owner of an outdoor swimming pool shall erect and maintain an enclosure with a minimum height of 1.2 metres (4 feet) above grade.
- 19. Any enclosure constructed in accordance with this by-law shall be erected to have no more than a 50mm (2 inch) clearance under the said enclosure.
- 20. Any enclosure constructed in accordance with this by-law shall not have any attachments or bracing on the exterior facing of the enclosure within a height of 1.2 metres (4 feet) of the grade level that may facilitate climbing.

21. Any enclosure constructed in accordance with this by-law shall not be located any closer than 1.2 metres (4 feet) from any building or tree or any other projection, where any of these could facilitate climbing over the swimming pool enclosure.
22. Except for decks, the wetted edges of an in-ground swimming pool shall not be located any closer than 900mm (3 feet) from any enclosure, building or structure.
23. The wall of a building or structure may be used in place of a portion of a required enclosure provided that it meets the height requirements for fences contained herein, does not facilitate climbing and any opening through such wall can be locked in accordance with this by-law.
24. A boundary fence may be used as a part or all of the required enclosure provided for in this by-law provided that it meets the requirements of a swimming pool enclosure.
25. Every owner of an outdoor swimming pool will ensure that no person shall place or store materials against the outside of a swimming pool enclosure.

Above Ground Swimming pools with attached protection

26. Sections 27 through 31 refer to Above Ground Swimming pools where a separate enclosure is not provided as per sections 18 through 25.
27. An above ground swimming pool may have an enclosure attached to such pool provided that the enclosure provides a height of 1.2 metres (4 feet) above the grade level and does not facilitate climbing.
28. Any enclosure constructed as part of an above ground swimming pool in accordance with this by-law shall not have any attachments or bracing on the exterior facing of the enclosure within a height of 1.2 metres (4 feet) of the grade level that may facilitate climbing.
29. All above ground swimming pools having a deck or walkway higher than 600mm (2 feet) above the effective ground level shall have their deck or walkways enclosed with an outer guard conforming to the provisions of this by-law and the Ontario Building Code.
30. Where a deck is erected as part of or around an above ground swimming pool, the deck shall be enclosed and gated and such deck enclosure and gates shall conforming to the provisions of this by-law of the Ontario Building Code and so as not to facilitate climbing from either side.
31. An above ground swimming pool which has its enclosure attached to the pool shall have the wall of the pool structure, attached bracing, attached deck or any other component of the pool or its enclosure at least 1.0 metres (3 feet 3 inches) from a property line, building, or tree, or any other projection where any of these could facilitate climbing onto the attached bracing, attached deck or any other component.
32. Notwithstanding Section 27 of this by-law, an owner of an above-ground outdoor swimming pool is not required to erect a enclosure surrounding said structure provided the following provisions are met:

- a) the wall of the pool structure, provided that there is no deck, is at least 1.2 metres (4 feet) in height above grade,
 - b) The wall of the pool structure, provided that there is no deck is at least 1.0 metre (3 feet 3 inches) from a property line, building or tree or any other projection, where any of these could facilitate climbing into the pool,
 - c) there is no exterior horizontal or vertical or diagonal bracing on the swimming pool structure that may be used as a foothold or handhold and facilitate climbing,
 - d) there are no footholds or handholds which reduce the effective height of the wall to less than 1.2 metres (4 feet),
 - e) where any stair, ramp, walkway or ladder are used to enter the above-ground outdoor swimming pool, an enclosure and gate both of which are at least 1.2 metres (4 feet) in height shall enclose the stair, ramp, walkway or ladder and further any gate shall comply with the requirements contained within this by-law, and
 - f) that any pump or accessory appurtenance or structure shall be located at such a distance and in a manner so as to not facilitate its use as a foothold or handhold or shall be protected in a manner so as to satisfy the enclosure requirements as per Section 9 of this by-law, and
 - g) where a deck is constructed at or near the rim level of the above-ground swimming pool, it shall comply with the provisions of Sections 29, 30 and 31 of this by-law.
33. A swimming pool enclosure shall not:
- (a) Use or incorporate barbed wire or other features designed to cause injury;
 - (b) Be electrified by any means;
 - (c) Restrict access to the main building exit, utility meter or a furnace oil filler pipe or like appurtenance which requires periodic inspection or attendance by utility or service personnel.

PART VII – ACCEPTABLE MATERIALS FOR THE CONSTRUCTION OF FENCING

34. An enclosure erected under this by-law may be of chain link, vertical board, metal picket, vertical rod or angle irons construction or any other material deemed to be acceptable by the Chief Building Official.

PART VIII – REQUIREMENTS FOR CHAIN LINK CONSTRUCTION

35. The mesh of a chain link enclosure shall have no openings greater than 40mm (1-1/2 inch).

36. The chain link enclosure shall be constructed of galvanized wire no less than No. 12 gauge diameter or minimum No. 14 gauge steel wire covered with vinyl or other approved coating forming a total thickness equivalent to No. 12 gauge galvanized wire.
37. The chain link enclosure shall have top and bottom rails firmly fastened to the upright posts, made of minimum 32mm (1 ¼ inches) galvanized steel pipe or steel pipe covered with vinyl or other approved material. A galvanized steel tension rod 6mm (¼ inch) diameter may be substituted for the bottom rail.
38. The chain link enclosure shall be supported on substantial steel posts not more than 3 metres (10 feet) apart and at least 900mm (3 feet) below grade and to be encased in concrete at least 100mm (4 inches) thick all around the post.
39. No material shall be woven through or attached to the mesh so as to render the enclosure climbable.

PART IX – REQUIREMENTS FOR VERTICAL BOARD CONSTRUCTION

40. The vertical boards shall be of not less than 19mm x 64mm (1 inch x 3 inches) and spaced so as to prevent the passage of a spherical object having a diameter of 100mm (4 inches).
41. The vertical boards shall be attached to horizontal members spaced vertically at a distance of no less than 1.2 metres (4 feet) apart so as not to facilitate a handhold or foothold unless said members are on the pool face side of the enclosure and the vertical members have an opening no greater than 40mm (1-1/2 inches).
42. The vertical boards shall be supported on substantial posts placed not more than 2.4 metres (8 feet) apart and installed at least 900mm (3 feet) into the ground and any portion of wood posts below grade shall be treated with a wood preservative or be of a material that naturally resists decay (e.g., cedar).

PART X – REQUIREMENTS FOR VERTICAL METAL RODS OR METAL ANGLE CONSTRUCTION

43. The vertical metal rods or metal angle shall be no less than 13mm (½ inch) in diameter or of equivalent strength.
44. The vertical metal rods or metal angle shall be no less than 1.2 metres (4 feet) in height and the opening between the vertical metal rods or the metal angle is such that it prevents the passage of a spherical object having a diameter of 100 mm (4 inches).
45. The vertical members shall be attached to horizontal members spaced vertically at a distance of no less than 1.2 metres (4 feet) apart so as not to facilitate a handhold or foothold unless said members are spaced so the opening between them is no greater than 40mm (1.5 inches)

PART XI – GATE REQUIREMENTS

46. Every gate erected in an enclosure around an outdoor swimming pool shall conform to the following requirements:

- (a) every gate shall be of construction and height requirements equivalent to that required for the enclosure; and
- (b) every gate shall be supported on substantial hinges that are self-closing; and
- (c) except for a service and the affixed leaf of a double leaf gate, every gate shall be equipped with a self-latching device at the top (at least 1.07m (3 feet 6 inches) from the bottom of the gate) and inside of the enclosure and fitted for a locking device; and
- (d) every gate shall be closed and locked when the outdoor swimming pool is not in use; and
- (e) when an adult person is not present supervising the pool, the gate or gates shall be kept closed and locked; and
- (f) no person shall construct or maintain a double leaf gate as part of a swimming pool enclosure without one of the two gates being able to be permanently affixed and the other having a self closing device and a self latching device fitted for a locking device.

PART XII ORDERS

47. If after an inspection, a By-Law Enforcement Officer is satisfied that in some respect an outdoor swimming pool does not conform to this by-law, he or she may issue and serve an order to the owner and such other persons affected by it as the By-Law Enforcement Officer determines:
- a. requiring the owner or occupier of the land to conform and comply with any provisions of this by-law; or
 - b. requiring the owner or occupier of the land on which the contravention occurred to correct the contravention; and
48. An order under Section 47 shall:
- a. state the municipal address or the legal description of the property; and
 - b. give reasonable particulars of the contravening activity, or the required work or alternatively that the swimming pool be drained or removed and the land left in a graded and leveled condition; and
 - c. indicate the time for complying with the terms and conditions of the order and give notice that, if the repair or clearance is not carried out within that time, the municipality may carry out the repair or clearance at the owner's expense; and
 - d. be served or caused to be served,
 - (i) by personal service; or

- (ii) by prepaid registered mail sent to the last known address of the person to whom notice is to be given or to that person's agent for service.
- 49. If the By-Law Enforcement Officer is unable to effect service under Section 48, he/she shall place a placard containing the terms of the order in a conspicuous place on the property and the placing of the placard shall be deemed as sufficient service of the order on the owner or other persons.
- 50. Where an order has been issued pursuant to this by-law and the owner of the outdoor swimming pool or property owner fails to erect or maintain an enclosure or gate around the swimming pool or places water in the pool, or causes, permits or allows the water to remain in the pool where an enclosure or gate is not erected or maintained, the By-Law Enforcement Officer may immediately at the persons expense;
 - (a) erect or repair a temporary enclosure during construction in accordance with Part VI of this by-law; or
 - (b) erect or repair the swimming pool enclosure; or
 - (c) remove the water to a depth of less than 45 cm (18 inches) from the swimming pool until the required swimming pool enclosure is erected or maintained in accordance with this by-law.
- 51. Haldimand County may recover the expense incurred in doing the work described in Sections 50 and 52 by adding the costs to the tax roll and collecting them in the same manner as property taxes.
- 52. Despite any other provisions of this by-law, if upon inspection of a property, the By-Law Enforcement Officer is satisfied there is non-conformity with the standards prescribed herein to such extent as to pose an immediate danger to the health or safety of any person, the By-Law Enforcement Officer may make an order containing particulars of the non-conformity and requiring remedial repairs or other necessary work to be carried out forthwith to terminate the danger in accordance with this by-law.

PART XIII – ENFORCEMENT

- 53. This by-law shall be enforced by a By-Law Enforcement Officer.
- 54. Every person who contravenes any provision of this by-law, is guilty of an offence and upon conviction is liable to the penalties prescribed under the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended.
- 55. In the event that any of the provisions of this by-law are deemed ultra vires by any Court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.
- 56. A By-Law Enforcement Officer or other appointed agent shall have the right to enter onto any property containing an outdoor swimming pool, during reasonable hours, for the purpose of inspecting the enclosure.

- 57. Each day a violation of this By-law continues shall constitute a separate and distinct offence under this By-law.
- 58. For the purposes of this by-law, persons who are employed or appointed as By-law Enforcement Officers by Haldimand County, or employed as Property Standards Officers or Building Inspectors for Haldimand County, and the Chief Building Official are all deemed appointed and entitled to enforce the provisions of this by-law.
- 59. Every adult person in occupation or control of any land in Haldimand County, on behalf of or with or without the consent of the owner, is subject to all of the obligations of the owner for the purposes of this by-law.

PART XIV -REPEAL

- 60. That the former Town of Dunnville By-law 27-74, former Town of Haldimand By-law 760-89 and the former City of Nanticoke By-law 45-98 and any amendments thereto are hereby repealed in their entirety.

PART XV -ENACTMENT

- 61. This By-law comes into effect and into force on 9th day of March, 2009.
- 62. The short title of this By-law is the Swimming Pool Enclosure By-law.

READ a first and second time this 9th day of March, 2009.

READ a third time and finally passed this 9th day of March, 2009.

MAYOR

CLERK