

THE CORPORATION OF THE TOWN OF WHITCHURCH-STOUFFVILLE

BY-LAW NUMBER 2010-073-RE

**A by-law to require the erection and maintenance of fences and gates around swimming pools and to repeal By-law Number 99-64-RE.**

WHEREAS Section 11 (3) of the *Municipal Act, 2001*, as amended, permits municipalities to pass by-laws respecting structures, including fences and signs.

AND WHEREAS it is deemed advisable to require owners of privately owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools; for prescribing the height and description of and the manner of erecting and maintaining such fences and gates; for prohibiting persons from placing water in such swimming pools or allowing water to remain therein unless the prescribed fences and gates have been erected; for requiring the production of plans of all such fences and gates; for the issuing of approval of such plans; for requiring owners to enter into encroachment agreements for access across Town property; and for authorizing the refusal of permits for any such fences or gates that would be contrary to the provisions of any by-law of the Town.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WHITCHURCH-STOUFFVILLE ENACTS AS FOLLOWS:**

1. **Definitions:**

For the purposes of this By-law the definitions and interpretations given in this section shall govern

- (a) In this By-law the word "**shall**" is mandatory and not directory, words in the singular number include the plural and words in the plural include the singular number, and the word "**used**" includes "**arranged, designed or intended to be used**".
- (b) **ENCLOSURE** means a fence, wall or other structure, including doors and gates, surrounding a privately-owned outdoor swimming pool to restrict access thereto.
- (c) **SWIMMING POOL** means any privately-owned body of water located outdoors above or below finished grade on privately-owned property which is maintained by artificial means, in which the depth of the water at any point can exceed 600 mm (24"), and which is used or capable of being used for the purposes of swimming, diving or bathing, but does not include storm water management ponds and ponds located within rural areas on properties of three (3) acres or more in size.
- (d) **OWNER** includes, without limitation, a lessee or tenant in possession of property on which a swimming pool is located.
- (e) **ENCROACHMENT PERMIT** means a permit issued by the Town to an applicant authorizing an encroachment on municipal property upon which shall be set out certain terms applicable thereto, including location and identification of the encroachment, fees, terms, liability for removal, and indemnification of the Town and its agents.
- (f) **PERSON** means an individual, firm, corporation, association or partnership.
- (g) **ENTRANCE** means a door or other opening in the wall of a building that may be used by a person to enter or exit from such building.

- (h) **REAR YARD** means that area of a lot bounded by:
- (i) the rear lot line,
  - (ii) each side lot line measured from the rear lot line to the points of intersection of the projection line of the rear wall of the main building or structure on the lot along the plane of such wall with the side lot lines, and;
  - (iii) the projection line of the rear wall of the main building or structure on the lot, as described in Subsection 1(h)(ii).
- (i) **SUBSTANTIAL COVER** means a cover capable of holding 200 lbs (90.72 kg) of body weight.
2. No person shall excavate for or construct a privately owned outdoor swimming pool, or construct or erect an enclosure around a privately-owned outdoor swimming pool; until plans for the enclosure have been submitted to the Chief Building Official and a permit signifying approval of such plans has been issued. A permit fee in accordance with the Town's Fees & Charges By-law shall be paid upon application for such permit.
3. No person shall excavate for or construct a privately-owned swimming pool, or construct or erect an enclosure around a privately owned outdoor swimming pool, without an encroachment permit for access across or work on Town property.
4. A permit may be refused if the fences or gates do not comply with any by-law.
5. **Enclosures**
- (a) The owner of a privately-owned swimming pool shall erect and maintain an enclosure surrounding the entire swimming pool area in accordance with the provisions of this by-law, so that such swimming pool is not readily accessible to small children.
  - (b) No person shall place water in a privately-owned outdoor swimming pool or allow water to remain therein unless the enclosure prescribed by this by-law has been erected, or unless the placement of water in the pool forms part of the construction technique, in which case a temporary enclosure shall be erected prior to the addition of any water and maintained until the permanent enclosure is erected and approved.
  - (c) No part of an enclosure surrounding a privately-owned outdoor swimming pool shall consist of barbed wire or any device designed for conducting an electric current through such enclosure, or possess similar dangerous characteristics.
  - (d) When a wall of any building located on the same lot as a swimming pool enclosure forms part of such enclosure, no entrance shall be permitted through such wall unless:
    - (i) Each entrance into the enclosure is protected by a door or gate equipped with a bolt latch or chain latch at least 1500 mm (5'-0") above the inside floor level; and
    - (ii) The care, control and maintenance of each entrance, door, gate and latch described in subsection 5(d)(i) are the responsibility of the owner of the lot.

- (e) All exterior fuel intakes shall be located outside the swimming pool enclosure, with no direct access to these intakes from within the said enclosure.
  - (f) Except as provided in Subsection 6 (c)(i), each enclosure, including its gates shall extend from the ground to a height, measured on the outside of the enclosure, of not less than 1200 mm (4'-0"), and such enclosure shall not, regardless of height, be located less than 1200 mm (4'-0") from anything that contributes to the lessening of these minimum safety requirements by facilitating the climbing of the swimming pool enclosure. The bottom of each enclosure shall not be located more than 100mm (4") above finished grade.
  - (g) Except as provided in Subsection 6(c) (iii), a fence or its equivalent forming part of an enclosure shall be erected at least 1200 mm (4'-0") from the edge of the water contained in the swimming pool.
  - (h) Except as provided in Subsection 6(c) (ii), no enclosure shall have any rails or other horizontal or diagonal bracing or attachments on the outside that would facilitate climbing.
6. (a) A fence or its equivalent forming part of an enclosure:
- (i) shall be of vertically boarded wood construction or chain link construction, or of other materials and construction as provided for in Section 6(c);
  - (ii) if of chain link construction, shall be:
    - (1) constructed of not greater than 40 mm (1½") diamond mesh;
    - (2) constructed of galvanized steel wire of not less than 2.680 mm (12 ga.) diameter, or of minimum 2.032 mm (14 ga.) diameter steel wire covered with a vinyl or other approved coating forming a total thickness equivalent to 2.680 mm (12 ga.) diameter galvanized wire; and
    - (3) supported by at least 38 mm (1 ½") diameter galvanized steel posts each covered by a minimum of 50 mm (2") of concrete from grade to a minimum of 600 mm (24") below grade, such posts to be spaced not more than 3050 mm (10'-0") apart. Top and bottom horizontal rails of 31 mm (1 1/4") minimum diameter galvanized steel shall be provided, except that a 6 mm (1/4") minimum diameter galvanized steel tension rod may be substituted for the bottom horizontal steel rail. A vinyl or other approved coating may be substituted for the galvanized coating.

- (iii) if of wood construction, shall:
- (1) have the vertical boarding attached to supporting members, all of which are arranged in such a manner as not to facilitate climbing from the outside. Such vertical boards shall be not less than 17 mm by 89 mm (1" x 4") in nominal dimension and shall be spaced not more than 40 mm (1 ½") apart; and
  - (2) be supported by minimum 89 mm square (4" x 4") or 89 mm (4") diameter cedar posts (nominal dimensions), spaced not more than 2440 mm (8'-0") apart on centres securely embedded to a minimum of 610 mm (2'-0") below grade. That portion of each wood post that is below grade shall be treated with a wood preservative. Top and bottom horizontal rails of wood at least 38 mm by 89 mm (2" x 4") (nominal dimensions) shall be provided.

(b) If the design or materials used in the construction of a fence are other than as specified in Section 6 (a) such fence shall be:

- (i) constructed so that the rigidity is at least equal to those fences described in Section 6(a) and so that an equivalent degree of safety is maintained; and
- (ii) permitted to have exposed structural or other members or parts thereof that may facilitate climbing the outside of the enclosure, provided that the minimum clear vertical distance between any such members or parts thereof is 1200 mm (4'-0"), and provided, regardless of the location of such members, that the maximum dimension of any opening through such fence is 100 mm (4").

(c) Enclosure not required – above ground pools

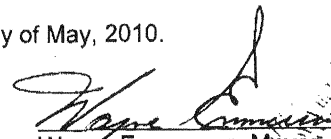
If a swimming pool is constructed in such a manner that the portions of its vertical sides that are situated above the finished grade are used as part of the swimming pool enclosure, the requirements as specified in clauses 6(a) and (b) do not apply, provided that:

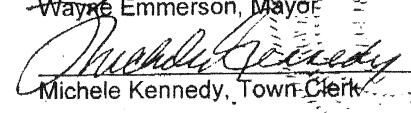
- (i) the swimming pool sides are constructed on the outside so as not to facilitate climbing;
- (ii) the vertical sides of the swimming pool forming part of such enclosure are a minimum of 1200 mm (4'-0") and a maximum of 2440 mm (8'-0") above finished grade;
- (iii) a continuous hand hold or platform is provided along the edges of the pool for the purpose of providing, in an emergency, support for a person in the pool. Where a platform is provided, a railing not less than 900 mm (3'-0") in height shall be constructed and securely anchored to the outer edge of the platform, the design of which shall conform to sections 6(a) or (b).
- (iv) the entrance to the swimming pool area is protected by an enclosure constructed in accordance with sections 6(a) or (b).

- (v) the distance between the swimming pool enclosure and any lot line shall not be less than the height of such enclosure above finished grade.
7. Every gate forming part of an enclosure shall:
- (a) be of construction and height equivalent to that required for the fence;
  - (b) be supported on substantial hinges;
  - (c) be self-closing and equipped with a locking device and self-latching device located at the top and on the inside of the gate. Such self-latching device shall be designed in such a manner that the gate cannot be opened from the outside by small children; and
  - (d) be kept located at all times if there is more than twenty-four inches of water in the pool and a responsible person is not present and supervising the pool.
8. A hot tub, whirlpool or spa, when installed above ground, need not comply with section 2 of this by-law, provided that a substantial cover is permanently fixed to the hot tub, whirlpool or spa and is locked to prevent access when the hot tub, whirlpool or spa is not in use.
9. A privately-owned outdoor swimming pool shall be permitted as an accessory use in any side yard or rear yard, provided that no part of such pool shall be located closer to a lot line or street line than the minimum distance required for an accessory building pursuant to the applicable zoning by-law.
10. No part of any swimming pool pumping, filtering or heating equipment or subsidiary pool equipment shall be located closer to a lot line or street line than the minimum distance required for an accessory building pursuant to the applicable zoning by-law.
11. In the event of a conflict between the provisions of this by-law and those of any other by-law, the provisions of this by-law prevail.
12. The installation of any swimming pool or its enclosure shall not alter in any way the existing grades or drainage pattern of the lot, unless otherwise approved by the Chief Building Official. The finished grade of the lot after the swimming pool is completed shall comply with the approved lot grades or drainage pattern.
13. Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable to a fine as provided for in the Provincial Offences Act, as may be amended from time to time.
14. By-Law Number 99-64-RE is hereby repealed.

READ a first and second time this 18<sup>th</sup> day of May, 2010.

READ a third and passed this 18<sup>th</sup> day of May, 2010.

  
Wayne Emmerson, Mayor

  
Michele Kennedy, Town Clerk

