

THE CORPORATION OF THE TOWN OF WHITCHURCH-STOUFFVILLE BY-LAW
NUMBER 99-64-RE

**A by-law to require the erection and maintenance
of fences and gates around swimming pools.**

WHEREAS Section 210, Paragraph 30 of the Municipal Act, R.S.O. 1990, Chapter m45 authorizes councils of municipalities to pass by-laws requiring the owners of privately-owned outdoor swimming pools to erect and maintain fences and gates around such swimming pool, 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 a permit certifying approval of such plans and for authorizing the refusal of a permit for any such fences or gates that would be contrary to the provisions of any by-law of the municipality.

**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 words and the plural include the singular number, words used in the present and future, 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) **PRIVATELY-OWNED OUTDOOR SWIMMING POOL** means any privately-owned body of water located outdoors above or below finished grade on privately-owned property, maintained by artificial means in which the depth of the water at any point can exceed 600 mm (24") and used or capable of being used for the purposes of swimming, diving or bathing.
- (d) **OWNER** includes a lessee or tenant in possession of property on which a swimming pool is located.
- (e) **PERSON** means an individual, firm, corporation, association or partnership.
- (f) **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.
- (g) **REAR YARDS** 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 along the plane of such wall of a main building or structure with the side lot lines.

(iii) the projection lines as set out in (b) and the rear wall of such building.

(h) **SUBSTANTIAL COVER** means a cover capable of holding 200 lbs (90.72 kg) body weight.

2. No person shall construct or erect an enclosure around a privately-owned outdoor swimming pool until plans for such enclosure have been submitted to the Town Clerk and a permit certifying approval of such plans has been issued. When the application bears the signature of the applicant it will certify that a copy of the by-law has been received by the applicant. A permit fee shall be paid upon application for such permit.

3. No person shall excavate for or erect a privately-owned swimming pool without a certificate that approval of the plans for the fence and gates has been issued.

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 the by-law to make such body of water 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, unless the addition, 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 possess similar dangerous characteristics or any device designed for conducting an electric current through such enclosure.

(d) When a wall of any building located on the same property as the swimming pool enclosure forms part of such enclosure, no entrances shall be permitted through such wall unless:

(i) the entrance permits passage from the pool enclosure to the residential area of the building (which does not include a garage or tool shed)

(ii) the door(s) at such entrance way is equipped with a bolt latch or a chain latch at a minimum height of

1500 mm (5'-0") above the inside floor level.

(iii) the care, control and maintenance of the entrance way, the door(s) as described in (i) and (ii) and the safety latch as described in (ii) of this section is and always shall be the responsibility of the owner, lessee or sublessee when they are in possession of the premises.

- (e) all exterior fuel intakes shall be located outside the swimming pool enclosure with no direct access to these intakes from the swimming pool enclosure area.
- (f) Except as provided in Clause 6(d)(i), such enclosure including gates therein 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 closer than four feet to any condition that contributes to the lessening of these minimum safety requirements by facilitating the climbing of the swimming pool enclosure and that the bottom of the enclosure shall not be located more than 100mm (4") above finished grade.
- (g) Except as provided in Clause 6(d) (iii), a fence or its equivalent, forming part of an enclosure shall be erected 1200 mm (4'-0") or more from the edge of the water contained in the pool.
- (h) Except as provided in Clause 6(d) (ii) such enclosure shall have no 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 such enclosure;

(i) shall be of vertically boarded wood construction, chain link construction or of other materials and construction as provided for in clause 6(c);

(ii) if of chain link construction, shall;

(1) be of not greater than 40 mm (1 ½") diamond mesh;

(2) be constructed of galvanized steel wire 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;

(3) be 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 shall be provided of 31 mm (1 ¼") minimum diameter galvanized steel, except that a 6 mm (¼") 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:

(b) if of wood construction, shall

(1) have the vertical boarding attached to supporting members all of which are arranged in such a manner so as not to facilitate climbing from the outside. Such vertical boards shall be not less than 17 mm by 89 mm (1" x 4") nominal dimensions spaced not more than 40 mm (1 ½") apart;

(2) be supported by a minimum of 89 mm square (4" x 4") or 89 mm (4") diameter cedar posts, nominal dimensions, spaced not more than 2440 mm (8'-0") on centres securely embedded to a minimum of 610 mm (2'-0") below grade. That portion of the wood post below grade shall be treated with a wood preservative. Top and bottom horizontal rails shall be provided of wood 38 mm by 89 mm (2" x 4") minimum nominal dimensions;

(c) if the fence design is other than as specified in (a) or (b) either in material or otherwise such fence shall

(i) be constructed so that the rigidity is equal to those fences described in clauses 6(a) or (b) and provided an equivalent degree of safety is maintained

(ii) be permitted to have exposed structural or other members or part thereof that may facilitate climbing the outside of the enclosure provided the minimum clear vertical distance between any such members or parts thereof is 1200 mm (4'-0") and regardless of the location of such members, where this minimum 1200 mm (4'-0") vertical dimension is maintained the maximum dimension of any opening through such fence is 100 mm (4").

(d) **Enclosure not required - above ground pools**

If of construction, such that the portion of the vertical sides of the swimming pool structure above the finished grade are used as part of the swimming pool enclosure, the requirements as specified in clauses 6(a), (b) or (c) do not apply, provided:

(i) the swimming pool sides are so 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") in

height 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 of 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), (b) or (c).

(iv) the entrance to the swimming pool area is protected by an enclosure as specified in clauses 6(a), (b) or (c) and 7 (a) (b) (c) and (d).

(v) the swimming pool enclosure, shall not be located closer to any lot line than the height of such enclosure above finished grade.

7. Gates forming part of such 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 to be designed in such a manner that the gate cannot be opened from the outside by small children.

(d) be kept locked at all time 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. Structures known as "**HOT TUBS, WHIRLPOOLS AND SPAS**" when installed above ground need not comply with section 2 of this by-law provided that a substantial cover is permanently fixed to the structure and is locked to prevent access when the structure is not in use.

9. A privately-owned outdoor swimming pool as an accessory use in any zone shall be permitted 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 Town of Whitchurch-Stouffville General Zoning By-Law as amended.

10. No swimming pool pumping, filtering or heating equipment, and subsidiary pool equipment shall be located so that no part of subject equipment is closer to a lot line or street line than the minimum distance required for an accessory building pursuant to Town of Whitchurch-Stouffville General Zoning By-Law as amended.

11. Notwithstanding the provisions of any other by-law, the swimming pool enclosure by-law prevails in cases of conflict.

12. The installation of any swimming pool or its enclosure shall not alter in any way the existing grades or drainage pattern of the premises, unless otherwise approved by the Town Engineer. The finished grade of the premises after the /swimming pool is completed shall comply with the approved lot grades or drainage pattern.

13. Every person who contravenes the provisions of this By-law is, upon conviction, guilty of an offence and is liable to a fine as provided for in Section 61 of the Provincial Offences Act.

14. By-Law Numbers 73-47, 74-32, 86-57, 90-93 and 98-26-RE are hereby repealed.

READ a first and second time this 20th day of April, 1999.

READ a third time and passed this 20th day of April, 1999.

Wayne Emmerson - Mayor

Merlin Dewing - Acting Clerk