

# THE CORPORATION OF THE TOWNSHIP OF PERTH EAST

## By-law Number 29-1999

*A by-law to provide for the owners of privately-owned outdoor swimming pools to erect and maintain swimming pool fences.*

**WHEREAS** pursuant to paragraph 30 of section 210 of the *Municipal Act, R.S.O. 1990, c.M. 45*, as amended, a by-law may be passed to issue permits for swimming pools and swimming pool fences and to prescribe safety standards for privately-owned outdoor swimming pools;

**WHEREAS** section 220.1 of the *Municipal Act, R.S.O. 1990, c.M. 45*, as amended, provides that the Council may by by-law impose fees for services and activities provided or done by or on behalf of The Corporation of the Township of Perth East;

**AND WHEREAS** it is expedient to impose fees for certain services;

**NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF PERTH EAST ENACTS AS FOLLOWS;**

### **Part 1 Definitions**

1.1 Definitions in this by-law:

“Chief Building Official” shall mean the person appointed by the Township Council to such position pursuant to the *Building Code Act*.

“Gate” shall mean any part of a swimming pool fence which opens on hinges and includes a door located in the wall of an attached or detached garage or carport which forms part of the swimming pool fence.

“Hydro Massage Pool” shall include those pools commonly referred to as a hot tub, whirlpool, a jacuzzi or a spa.

“Maintain” shall mean to carry out repairs of any part or of parts of a swimming pool fence so that it can properly perform the intended function.

“Replacement” shall mean the construction of a swimming pool and/or swimming pool fence that takes the place of a swimming pool and/or swimming pool fence previously constructed.

“Self-closing device” shall mean a mechanical device or spring which returns a swimming pool fence gate to its closed position within 30 seconds after it has been opened.

“Self-latching device” shall mean a mechanical device or latch which is engaged each time the swimming pool fence gate is secured to its closed position; which will not allow the swimming pool fence gate to be re-opened by pushing or pulling, and which will ensure the swimming pool fence gate remains closed until unlatched by either lifting or turning the device itself directly or by a key.

“Swimming pool” shall mean a structure, basin, chamber or tank containing or capable of containing water, and is designed to be used for swimming or wading,

- a) has a depth of more than 400 millimetres (16.0 inches) at any point; and
- b) has a surface of more than 3 square metres (32.3 square feet); and
- c) is not under the jurisdiction of the Building Code; and
- d) is not completely inside a building; and
- e) is not owned by government or local board or commission constituted under any statute or by-law; and
- f) is not a pond reservoir to be utilized for farming purposes; and
- g) but excludes hydro massage pools; and
- h) excludes storm water management ponds.

“Swimming Pool Fence” shall mean a wall, a structure or a building which encloses a swimming pool.

“Township” shall mean The Corporation of the Township of Perth East.

## **Part 2 General Provisions**

### **2.1 Administration - Chief Building Official**

This by-law shall be administered by the Chief Building Official.

### **2.2 Application of by-law - on or after July 5, 1999**

This by-law shall apply to all swimming pool fences constructed or replaced in the Township on or after July 5, 1999.

### **2.3 Existing swimming pool fences - constructed**

The provisions of this by-law shall not prevent the use of an existing swimming pool fence if such swimming pool fence was constructed and has enclosed a swimming pool from the date of its construction on or before July 4, 1999, and was built in accordance with the regulations of the by-law existing prior to July 5, 1999.

### **2.4 Maintain - swimming pool fencing - compliance with previous by-law**

Where swimming pools exist that were constructed prior to July 5, 1999 and no fencing or partial fencing exists, the provisions of this by-law regarding fencing and self-closing and self-latching gates shall apply. Property owners having swimming pools without fencing, partial fencing and/or fencing that does not meet the requirements set out in Section of this by-law shall apply retroactively.

### **2.5 Replacement - swimming pool fencing - compliance required**

At such time as an entire existing swimming pool fence is replaced the replacement swimming pool fence shall be constructed in accordance with this by-law.

### **2.6 Swimming Pool and Swimming Pool Fence By-law - prevails**

When a swimming pool fence is constructed so that it functions as a boundary fence between two or more adjacent properties, in addition to its function as a swimming pool fence, the provisions of this by-law shall prevail over any other Township by-law that regulates fences.

## **Part 3 Prohibitions**

### **3.1 Construction - without permit**

No person shall construct or cause to be constructed a swimming pool or swimming pool fence without obtaining a swimming pool or swimming pool fence permit from the Chief Building Official.

### **3.2 Swimming pool - not enclosed by fence**

No person shall construct or cause to be constructed a swimming pool which is not completely enclosed by a swimming pool fence, in accordance with this by-law.

### **3.3 Construction - use of a swimming pool - not enclosed by fence**

No person shall use a swimming pool which is not completely enclosed by a swimming pool fence, in accordance with this by-law.

### **3.4 Construction - temporary fencing around swimming pool**

Every person shall, during the construction of a swimming pool, enclose the swimming pool area with temporary fencing, as approved by the Chief Building Official.

### **3.5 Construction - fence - non-conforming**

No person shall construct or cause to be constructed a swimming pool fence that does not conform to the requirements of this by-law.

### **3.6 Gate - without self-closing - self-latching device**

No person shall fail to equip a swimming pool fence gate with a self-closing device and a self-latching device.

### **3.7 Gate - self-latching device -distance above ground**

No person shall construct or maintain a swimming pool fence gate with an outside opening self-latching device less than 122 centimetres (48 inches) above ground level.

### **3.8 Storage of materials - against outside of fence**

No person shall place or store materials against the outside of a swimming pool fence.

### **3.9 Replacement - existing fence - without permit**

No person shall replace a swimming pool fence without having first obtained a swimming pool fence permit from the Chief Building Official.

3.10 Swimming Pool Fence - maintain - in accordance with by-law  
Every person shall maintain a swimming pool fence in accordance with this by-law.

#### **Part 4 Application for Swimming Pool Fence Permits**

4.1 Application to Chief Building Official - in writing - owner

An application for a permit to erect a new swimming pool and swimming pool fence or for the replacement of an existing swimming pool and swimming pool fence shall be made by the owner, or his or her agent, in writing to the Chief Building Official on such forms as may be prescribed.

4.2 Application - documentation to accompany - set out

All such applications shall be accompanied by the following:

- a) plans showing the location of the proposed swimming pool including all enclosing swimming pool fences, together with full details of each entrance and showing the location of all proposed swimming pool equipment such as filters, slides and heaters;
- b) the applicable fee as prescribed in Schedule "A" of this by-law;
- c) an undertaking to repair damage to Township property as required by law.

4.3 Permit - issue - by Chief Building Official - conditions

The Chief Building Official shall issue a permit for a swimming pool and swimming pool fence where the plans submitted appear to comply with all applicable regulations and the requirements of the by-law have been met.

#### **Part 5 Swimming Pool Fence Regulations**

5.1 Height - minimum requirements

Every swimming pool shall be enclosed by a swimming pool fence which shall extend from the ground to a height of not less than 153 centimetres (60 inches).

5.2 Opening - maximum diameter

Except as provided in Section 5.3 of this by-law, every swimming pool fence referred to in section 5.1 of this by-law shall not have any openings that would allow the passage of a spherical object having a diameter greater than 3.8 centimetres (1.5 inches).

5.3 Opening - maximum diameter - exception - conditions

For other than chain link fences, where the vertical distance between each horizontal rail measured from the top of each rail is 1.2 metres (4 feet) or greater, the vertical openings in the fence are permitted to be greater than 3.8 centimetres (1.5 inches) but not greater than that which would allow the passage of a spherical object having a diameter of 10 centimetres (4 inches).

5.4 Ground clearance - maximum

Every swimming pool shall be enclosed by a swimming pool fence which has a clearance from the ground to the underside of the swimming pool fence that would prevent the passage of a spherical object having a diameter of 7.5 centimetres (4 inches).

5.5 Structural members - prevent easy climbing - required

Every swimming pool shall be enclosed by a swimming pool fence which has all its horizontal structural members located inside the enclosure to prevent easy climbing unless the swimming pool fence has no openings greater than 3.8 centimetres (1.5 inches) and the horizontal members are at least 0.6 metres (2 feet) apart.

5.6 Construction - to prevent unauthorized entry

Every swimming pool shall be enclosed by a swimming pool fence which is of sturdy construction, capable of preventing unauthorized entry.

5.7 Height - measurement - from ground level

The height of the swimming pool fence shall be measured from ground level on the outside of the enclosure.

5.8 Gate - self-closing - self-latching - locking device

Every gate on a swimming pool fence shall be equipped with a self-closing device and a self-latching device.

5.9 Gate - self-latching device - requirements

A self-latching device that can be opened without a key from the outside shall not be less than 122 centimetres (48 inches) above ground level.

5.10 Temporary fence - required - during construction

During all phases of construction temporary fencing shall be in places such that unauthorized access is prevented.

5.11 Fence - above ground pool - requirements

All above ground pool fences shall comply with the Comprehensive Zoning By-law for the Corporation of the Township of Perth East, By-law No. 30-1999, and any amendments thereto.

**Part 6 Undertaking to Ensure Repair**

6.1 Boulevard crossing - by vehicles

Every person erecting, altering, repairing or demolishing a swimming pool and/or swimming pool fence within the Township of Perth East who permits the crossing of curbs, sidewalks or paved boulevards by vehicles delivering materials to or removing materials from abutting lands shall provide a completed undertaking to repair any damage to Township property such as any damage to the sidewalks, curbing or paved boulevard or to any water service box or other services therein caused by the crossing of such vehicles.

6.2 Debris on streets - prevention - cleaned - by owner

The owner of any lands on which any swimming pool and or swimming pool fence is being erected, altered, repaired or demolished shall take all necessary steps to prevent building material, waste or soil from being spilled or tracked onto the public streets by vehicles going to or coming from the lands during the course of the erection, alteration, repair or demolition and shall be responsible to the Municipality for the cost of removing such building material, waste or soil and the cost of repairing any damaged curbing, sidewalks, or paved or grassed boulevards.

**Part 7 Enforcement**

7.1 Fine - for contravention

Any person who contravenes any provisions described above shall be guilty of an offence and upon conviction shall be subject to a fine as prescribed in the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended.

7.2 Continuation - repetition - prohibited - by order

The court in which the 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 in addition to any other penalty imposed on the person convicted.

7.3 Default - not remedied - done at owner's expense

Where anything required to be done in accordance with this by-law is not done, the Chief Building Official for The Corporation of the Township of Perth East appointed pursuant to the *Building Code Act*, may, upon such notice as he deems suitable, do such thing at the expense of the person required to do it, and such expense may be recovered by action or in like manner as municipal taxes within the meaning of Section 326 of the *Municipal Act*.

**Part 8 Repeal - Enactment**

8.1 By-law - previous - repealed

By-law Number 1-1997 of The Corporation of the Township of Mornington is hereby repealed. All By-laws dealing with the regulation of fencing of swimming pools in the Former Townships of North Easthope, South Easthope, Ellice and the Village of Milverton are hereby repealed.

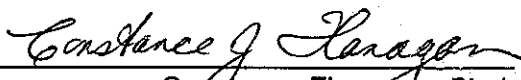
8.2 Effective date

This by-law comes into force and effect on the date of final passage.

READ A FIRST AND SECOND TIME THIS 5<sup>th</sup> DAY OF JULY, 1999.

READ A THIRD TIME AND FINALLY PASSED THIS 5<sup>th</sup> DAY OF JULY, 1999.

  
George Wicke, Mayor

  
Constance Flanagan, Clerk