

CORPORATION OF THE TOWN OF ERIN

BY-LAW NUMBER 09-14

Being a By-Law to regulate pool enclosures within the Town of Erin

WHEREAS the Municipal Act, S.O. 2001, c.25, s. 11, as amended, provides that a municipality may pass bylaws respecting structures, including fences;

AND WHEREAS the Council of the Corporation of the Town of Erin considers it in the best interest of the residents of the municipality to pass a by-law requiring owners of privately owned outdoor swimming pools to erect and maintain fences and gates in a prescribed manner around such swimming pools;

AND WHEREAS Section 130 of the Municipal Act authorizes a municipality to regulate matters related to health, safety and well-being of the inhabitants of the municipality;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF ERIN HEREBY ENACTS AS FOLLOWS:

1. DEFINITIONS

- (a) **CHIEF BUILDING OFFICIAL** shall mean the Chief Building Official of the Town of Erin duly appointed by by-law to administer and enforce the provisions of this by-law.
- (b) **HEIGHT** means the distance measured from the grade where the fence posts are embedded to the top of the fence.
- (c) **HOT TUB** means a hot tub, Jacuzzi, whirlpool, or spa
- (d) **MUNICIPAL LAW ENFORCEMENT OFFICER** shall mean the Municipal Law Enforcement Officer of the Town of Erin duly appointed by by-law to administer and enforce the provisions of this by-law.
- (e) **OWNER** of a property includes the registered owner of the property and any lessee, tenant, mortgagee in possession or person occupying or in charge of the property;
- (g) **PERSON** includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law.
- (h) **POOL** shall mean a body of water located outdoors on privately owned property contained in whole or in part by artificial means, including a hot tub, which is designed to be used or maintained principally for swimming, wading, diving or bathing, in which the depth of water at any point can exceed 2 feet (600 mm), but does not include:
 - i. storm water management pond;
 - ii. a natural or man-made pond, lagoon, water reservoir, streams, lakes, swamps, other natural bodies of water, or a manure storage facility located on lands zoned agricultural in the applicable Zoning Bylaw.
 - iii. a public swimming pool which is subject to the regulations made pursuant to the Building Code Act, S.O. 1992, c.23.
- (i) **POOL ENCLOSURE** shall mean a fence, wall or other structure, or combination thereof, including doors and gates, surrounding a privately owned pool and restricting

access thereto.

- (j) **PROPERTY** means a building or structure or part of a building or structure and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, accessory buildings, fences and erection thereon, and includes vacant property on which there are no structures of any kind.
- (k) **TEMPORARY POOL** means an inflatable pool or other pool which is designed to be removed periodically on a seasonal or more frequent temporary basis which is capable of containing water with a depth in excess of 2 feet (600 mm) at any point.

2. GENERAL PROVISIONS

- (a) No person shall excavate for, install, construct or erect a swimming pool on private property in the Town of Erin without a permit to do so, issued by the Town.
- (b) No person shall install, own or maintain, or cause or permit the installation or maintenance of any privately owned swimming pool within the Town of Erin except in conformity with the provisions of this bylaw.
- (c) No person shall place water, or permit water to be placed or permit water to remain in a privately owned outdoor swimming pool until:
 - i. the swimming pool is surrounded by a fence which is in full compliance with all provisions of this bylaw, and
 - ii. the Building Department has been notified and an inspection passed by the Chief Building Official or designate.
- (d) No person shall remove any part of a pool enclosure without having first obtained a permit from the Town.
- (e) No person shall remove any part of a pool enclosure if the pool is filled with water.
- (f) An owner shall ensure that:
 - i. all gates forming part of the pool enclosure meet the standards of this by-law;
 - ii. all entranceways to a pool enclosure through a wall of a main building meet the standards of this by-law;
 - iii. all gates forming part of a pool enclosure are locked when the area is not in active use;
 - iv. the lockable lid of any hot tub is closed and locked when the pool area is not in active use unless the hot tub is within a locked pool enclosure meeting the requirements of this by-law.
- (g) No person shall place, pile, attach or lean any object or material against or near a pool enclosure so as to facilitate climbing of the pool enclosure, diminish the structural integrity of a pool enclosure or render the pool enclosure in non-conformity with the provisions of this by-law.
- (h) No person shall erect a fence adjacent to an existing pool enclosure that does not comply with the requirements of this by-law.
- (i) In addition to the provisions of this By-Law, no person shall erect or install a swimming pool or fence unless same complies with the Zoning By-Law and amendments thereto for the Town of Erin.

3. SWIMMING POOL PERMIT

- (a) Every person applying for a swimming pool enclosure permit shall provide to the Chief Building Official:

- i) a completed application form as provided by the Town of Erin.
- ii) 2 copies of a site plan identifying the exact location of the proposed construction, showing fence and gate locations, location of all buildings, location of the septic system, existing drainage patterns, slopes and embankments.
- iii) any proposed changes in grading and the construction details of any retaining wall proposed.
- iv) the applicable permit fee as set out in the Town of Erin Building Permit Fee Bylaw 05-62, as amended, or any succeeding bylaw.

4. FENCE SPECIFICATIONS

- (a) No person shall erect, have or maintain a privately owned outdoor swimming pool unless the fence has a height above ground level of not less than 5 feet (1500 mm).
- (b) A fence required by this by-law, shall be located not less than 3 feet (900 mm) from other fences or similar permanent objects that would facilitate climbing, or the fence is increased to a height of 6 feet (1800 mm) for a distance of 3 feet (900 mm) on either side of such objects. Such additional height must adequately prohibit unauthorized entry in the opinion of a person authorized to enforce this by-law.
- (c) No person shall erect, have, permit or maintain on residential property to which this by-law applies, a fence greater than 6 feet (1800 mm) in height, provided that this restriction shall not apply where such property is abutting and such is contiguous to a non-residential property.
- (d) No person shall erect or maintain a fence required by this by-law having an opening greater than 4" (100 mm) beneath such fence. The ground beneath the fence cannot be of loose gravel or other material which can be easily removed so as to afford access under the fence;
- (e) No person shall erect a fence required by this by-law unless such fence design has been approved by the Chief Building Official and is of vertically boarded wood construction, chain link construction or of other materials and construction as provided for in this by-law:
 - i. Chain link construction shall;
 - (1) not be greater than 1 ½ " (40 mm) diamond mesh;
 - (2) be constructed of galvanized steel wire not less than 2.680 mm diameter, or of minimum 2.032 mm diameter steel wire covered with a vinyl or other approved coating forming a total thickness equivalent to 2.680 mm diameter galvanized wire;
 - (3) be supported by at least 1 ½ " (38 mm) diameter galvanized steel posts, such posts to be spaced not more than 10 feet (3050 mm) apart. A top horizontal rail shall be provided of 1 ¼ " (31 mm) minimum diameter galvanized steel, except that a 6 mm minimum diameter galvanized steel tension wire may be substituted for the bottom horizontal steel rail. A vinyl or other approved coating may be substituted for the galvanized coating.
 - ii. Wood construction shall:
 - (1) have the vertical boarding attached to supporting members all of which are arranged in such manner so as not to facilitate climbing from the outside. Such vertical boards shall be not less than ¾ " x

3½" (17 mm x 89 mm) nominal dimensions spaced not more than 2¾" (70 mm) apart;

- (2) be supported by a minimum of 3½" (89 mm) square or 3½" (89 mm) diameter cedar posts, nominal dimensions, spaced not more than 10' on centres securely embedded to a minimum of 32" (810 mm) below grade. That portion of the wood post below grade shall be treated with a wood preservative. Top and bottom horizontal rails shall be constructed of wood 1½" (38 mm) by 3½" (89 mm) minimum dimensions, spaced at least 4 feet (1.2 m) apart vertically.
- iii. Wrought iron or wrought iron style - metal shall:
- (1) have horizontal members a minimum of 4 feet (1.2 m) apart with pickets a maximum of 4" (100 mm) on centre. Steel posts to be a minimum of 2" (50 mm) diameter, 3 feet (0.9 m) in ground with concrete encased. Spacing of posts shall be a maximum of 10 feet (3.05 m) apart.
- (f) The fence may be of construction other than that specified, provided an equivalent degree of safety is maintained and shall be approved by a person authorized to enforce this by-law.
 - (g) There shall be no capability of projecting electric current through any portion of the fence or any appurtenance thereto.
 - (h) There shall be no barbed wire forming any part of the fence or forming any appurtenance thereto.
 - (i) A boundary fence which complies with the provisions of this by-law shall be deemed a sufficient fence provided that abutting fences, grades and structures do not reduce the effective height of the boundary pool enclosure.
 - (j) The fence shall not enclose a utility meter, a furnace oil filler pipe or other utility reading device which requires inspection or attendance by utility or service personnel.
 - (k) No person shall install, erect, construct, have or maintain an outdoor privately owned swimming pool, unless the edge of the water, or any construction around such pool is constructed a minimum of 4 feet (1.2m) from the property line.

5. GATES AND DOORS

- (a) No person shall install, erect, construct, have or maintain an outdoor privately owned swimming pool unless all gates and doors giving access to a privately owned outdoor swimming pool are self closing, self latching and locked at all times except when the fenced-in area is actually being used by the owner or persons duly authorized by the owner.

6. TEMPORARY FENCE DURING CONSTRUCTION

- (a) The owner shall ensure that temporary fencing meeting the requirements of this section is in place during all phases of construction of the pool such that unauthorized access to the site is prevented. Temporary fencing shall be a 4 feet (1.22 m) high snow fence, or such other fencing material with similar visibility, height and rigidity as may be approved by the Chief Building Official in writing, and shall be securely attached at any openings when the area is left unattended.

7. EXISTING POOL ENCLOSURES

- (a) The provisions of this by-law shall not prevent the use of an existing pool enclosure if that pool enclosure was constructed prior to the effective date of this bylaw in accordance with the regulations of By-law 98-04, or any predecessor to that bylaw and has been maintained continuously in accordance with those regulations.
- (b) Where a pool exists on the date of the passing of this By-Law and is not fenced, the owner shall erect fencing in compliance with this By-Law.
- (c) At such time as an existing pool enclosure is replaced or substantially altered, the replacement or altered pool enclosure shall be constructed in accordance with this by-law.

8. ABOVE-GROUND SWIMMING POOLS

- (a) Above ground swimming pools, with vertical sides not less than 6' feet (1800 mm) high which are constructed so as not to facilitate climbing, need not have an enclosing fence around the perimeter, provided access points are fenced and the outside enclosure is equivalent to the standards for fences in this by-law.
 - i. any ladder or stair assembly providing access to the swimming pool or to any deck or other assembly forming part of the swimming pool is hinged and constructed in a manner so as to be latched in an upright position or gated, thereby preventing entry to the swimming pool.

9. TEMPORARY POOLS

- (a) If a pool enclosure permit has been obtained with respect to the pool enclosure for a temporary pool, the temporary pool may be reinstalled and refilled with water without additional permits or inspections provided there have been no alterations to the pool enclosure.

10. HOT TUBS

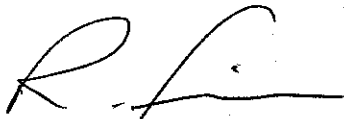
- (a) Notwithstanding Section 4 of this Bylaw, when any swimming pool is a hot tub, the owner of such swimming pool shall ensure that:
 - i. all fence provisions of this by-law are complied with; **or**
 - ii. such hot tub is fitted with a lid or cover that is capable of holding 200 lbs. (90.72 kg) without collapse and such lid or cover is locked in place at all times when the hot tub is not in use.

11. ADMINISTRATION AND ENFORCEMENT

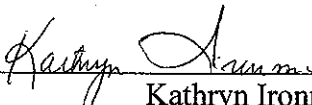
- (a) The administration and enforcement of this By-Law is the responsibility of the Chief Building Official and the Municipal Law Enforcement Officer appointed by the Town of Erin.
- (b) Wherever a standard established by this by-law is different from a standard in relation to the same matter established by any other item of legislation in force in the Town of Erin, the standard which provides the higher degree of protection for the health, safety and welfare of the occupants and of the general public shall prevail.
- (c) Any person who contravenes any section of this By-Law is guilty of an offence and upon conviction is liable to a fine as provided for under the provisions of the Provincial Offences Act, R.S.O. 1990, as amended.

(d) Town of Erin By-Law 98-04 is hereby repealed.

READ three times and finally passed by Council the 21 day of April, 2009.



Rod Finnie, Mayor



Kathryn Ironmonger, Clerk