

THE CORPORATION OF THE TOWNSHIP OF TAY

BY-LAW NO. 2006-23

*A by-law to prescribe the height, description and requirements
for fences around swimming pools and for
requiring fence enclosure permits for swimming pools
within the Township of Tay.*

WHEREAS the Municipal Act, S.O. 2001, c. 25 Section 11(3), authorizes the Council of a local municipality to pass by-laws to regulate fencing;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF TAY HEREBY ENACTS AS FOLLOWS:

SECTION 1 – TITLE

1.1 This by-law may be referred to as the “Swimming Pool Fence By-law”.

SECTION 2 – DEFINITIONS

- 2.1 **CORNER LOT** means a lot situated at the intersection of two streets, of which two adjacent sides, that abut the intersecting streets, contain an angle of not more than 135 degrees; where such adjacent sides are curved, the angle of intersection of the adjacent sides shall be deemed to be the angle formed by the intersection of the tangent of the street lines, drawn through the extremities of the interior lot lines, provided that, in the latter case, the corner of the lot shall be deemed to be that point on the street lines nearest to the point of intersection of the said tangents.
- 2.2 **EXTERIOR FACE** means the side of a fence from which access to a pool is to be prevented.
- 2.3 **OWNER** means the individual, firm or corporation that is the registered owner of the land and includes a lessee, tenant, mortgagee in possession, and the person or persons in charge of land on which a pool is located.
- 2.4 **FENCE** means a structure or partition made of wood, metal or other substance and erected for the purpose of enclosing a piece of land into distinct partitions, and includes doors, gates and other closures.
- 2.5 **FINISHED GRADE** means the elevation of the finished surface of the ground where it abuts a fence or structure.
- 2.6 **POOL** means any privately owned body of water located outdoors above or below finished grade on privately owned property, contained in part or in whole by artificial means in which the depth of water at any point can exceed 450 millimetres (18 inches) and includes hot tubs, whirlpools and spas. Not included in this definition is any swimming pool owned by a public or government body, agency or authority, or any naturally occurring streams, lakes or quarry.
- 2.7 **POOL FENCE** means a fence surrounding a privately owned outdoor swimming pool.
- 2.8 **SIGHT TRIANGLES** means the triangular space formed by the street lines of a corner lot and a line drawn from a point in the other street line, each such point being 6 metres (19 feet 8 inches) from the point of intersection of the street lines measured along the street lines. Where the two street lines do not intersect at a point, the point of intersection of the street lines shall be deemed to be the intersection of the projection of the street lines or the intersection of the tangents to the street lines.
- 2.9 **SWIMMING POOL AREA** means the swimming pool plus any surrounding platforms, walkways, play areas and landscaped areas within the fence enclosing a swimming pool.

SECTION 3 – AUTHORITY

- 3.1 The Chief Building Official duly appointed for the Municipality of the Township of Tay shall administer this By-law. The By-law Enforcement Officer(s) duly appointed for the Township of Tay shall enforce this By-law.

SECTION 4 – GENERAL PROVISIONS**4.1 PERMITS**

No person shall erect, or cause to be erected, any pool or excavate for, or cause to be excavated for, any pool without first obtaining a permit for a swimming pool fence enclosure from the Chief Building Official.

4.1.1 An application for a permit to construct a swimming pool fence around a pool shall be submitted to the Chief Building Official together with fees and plans showing the location of the swimming pool in relation to the property lines and to adjacent buildings and shall provide full details of all required structures.

4.1.2. The location of a swimming pool on the property shall conform to the requirements of the Township of Tay's General Zoning By-law.

4.1.3. Fees for pool fence permits shall be in accordance with Schedule "A" of this by-law.

4.1.4 No permit is required for the construction of a fence that does not form part of a pool fence.

4.2 EXISTING FENCES

This by-law does not apply to a pool fence that was lawfully erected prior to the date of passage of this by-law, except that any changes to such pool fence, after the date of passage of this by-law, shall be subject to the provisions of this by-law. A change in use of a fence to act as a pool fence as a result of a pool installed after the date of passage of this By-law shall require such fence to be constructed in accordance with this By-law.

4.3 SIGHT TRIANGLES

No person shall erect a pool fence within a sight triangle.

5.1 POOL FENCE

No person shall place water in or cause water to be placed in a pool, or allow water to remain therein unless a pool fence completely enclosing the entire swimming pool area has been constructed in accordance with the requirements of this by-law and is being maintained at all times in good condition.

5.2 CONSTRUCTION FENCE

A pool under construction shall be enclosed with a temporary fence as detailed herein except where the permanent pool fence requirements have been satisfied.

5.3 MINIMUM HEIGHT

The height of a pool fence above finished grade, measured at any point along the fence at the exterior face shall be a minimum of:

- a) 1.2 metres (4 feet) in the case of a pool serving a detached, semi-detached, row house or multiple family development or not more than 4 dwelling units; or
- b) 1.52 metres (5 feet) where instead of a separate fence, an extension is added to the top of a wall of an above ground pool; or
- c) 1.8 metres (6 feet) for all other pools.

5.4 FENCE CLEARANCES

- 5.4.1 A maximum space of 50 millimetres (2 inches) is permitted between the bottom of a pool fence and the finished grade
- 5.4.2 A pool fence shall be located not less than 1.2 metres (4 feet) from the nearest inside wetted surface of the swimming pool wall.
- 5.4.3 No pool fence shall be located closer than 1.2 metres (4 feet) to any condition that facilitates the climbing of the enclosure, unless alternative measures are implemented to provide an equivalent level of safety as set out in this by-law.

5.5 CLIMBABILITY

Subject to subsection 5.4, no member or attachment that could facilitate climbing shall be permitted on the exterior face of a pool fence, between 100 millimetre (4 inches) and 1.8 metres (6 feet) from grade.

5.6 LOCKS

The owner of every pool shall ensure that every gate or door providing access to such swimming pool be kept locked at all times when a responsible person is not present and supervising the pool.

5.7 CONSTRUCTION

Every owner shall not construct a swimming pool fence enclosure except in accordance with the appropriate categories detailed under Section 6, Section 7 and Section 8 of this by-law.

SECTION 6 – FENCE CATEGORIES

6.1 TYPES

A fence which encloses a pool shall be of:

- a) chain link construction
- b) vertical board construction
- c) temporary construction
- d) other materials and construction that will provide an equivalent degree of safety satisfactory to the Chief Building Official, or
- e) a combination of (a), (b), (c) and (d).

6.2 CHAIN LINK

A fence of chain link construction shall comprise the following:

- 6.2.1 A mesh not greater than 38 millimetres (1½ inches) consisting of 11 gauge galvanized steel wire, or of 13 gauge steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to 11 gauge wire.
- 6.2.2 Galvanized steel supporting posts spaced at maximum 3.0 metres (10 feet) intervals; and extended at least 0.84 metre (2 feet 9 inches) below grade for a fence not exceeding 1.2 metres (4 feet) high or extended at least 1.2 metres (4 feet) below grade for a fence not exceeding 1.8 metres (6 feet) high.
- 6.2.3. End posts and gate posts of minimum 48 millimetres (1 and 7/8 inches) diameter encased in concrete at least 150 millimetres (6 inches) thick below grade.
- 6.2.4. Intermediate posts of minimum 38 millimetres (1½ inches) diameter encased in concrete at least 150 millimetres (6 inches) thick below grade when more than 15 metres (50 feet) from an end post, a corner post or an intermediate post that is similarly encased.

6.3 VERTICIAL BOARD

A fence of vertical board construction shall:

6.3.1 Have vertical boarding 25 millimetres (1 inch) thick nominal attached to a top and bottom rail in such a manner as to not facilitate climbing from the outside. Such vertical boards must not be less 25 millimetres x 100 millimetres (1 inch x 4 inches) nominal and must be spaced not more than 25 millimetres (1 inches) apart.

6.3.2 Be supported by posts at least 100 millimetres x 100 millimetres (4 inches x 4 inches) nominal, spaced not more than 2.4 metres (8 feet) apart. Such posts shall extend at least 0.9 metre (3 feet) into the ground for a 1.2 metre (4 feet) high fence and 1.2 metre (4 feet) into the ground for a 1.8 metre (6 feet) high fence and be securely embedded therein. The portion below grade shall be treated with an approved wood preservative or be of pressure treated wood.

6.3.3. Have top and bottom rails of at least 50 millimetres x 100 millimetres (2 inches x 4 inches) nominal dimensions and have a minimum horizontal spacing of 0.92 metres (3 feet).

6.4 TEMPORARY FENCE

A temporary fence shall consist of 1.2 metre (4 feet) high plastic mesh fence having a mesh not greater than 50 millimetres (2 inches), with a steel T-bar post every 3 metres (10 feet) maximum and a 9 gauge galvanized steel wire located at the top and bottom of such fence. The plastic mesh fence shall be fastened to the T-bar posts every 450 millimetres (18 inches) A temporary fence shall be permitted during construction of a pool and must be replaced prior to the pool being used.

6.5 OTHER TYPES

Other types of fences including retaining walls and deck guards to serve as pool fences shall be constructed in accordance with the requirements for a vertical board fence as detailed herein. Deck guard or railings required by the Ontario Building Code shall be built as per the requirements of the Section 9.8 of the Ontario Building Code (see Supplementary Guideline #7 OBC.).

SECTION 7 - GATES AND ENTRANCES TO THE SWIMMING POOL AREA

7.1 Gates which form a part of the pool fence shall be:

- a) of construction and height equivalent to or greater than that of the required pool fence;
- b) supported on substantial hinges; and
- c) self-closing and equipped with a finger-latch catch that is capable of being locked.

7.2 All entrances to the swimming pool area which form part of the pool fence, whether they be doors, windows or gates, shall be kept latched at all times except when the swimming pool is being supervised by a responsible adult person.

7.3 When a door or wall or portion thereof, of any building located on the same property as a pool fence forms part of such fence, no access to the pool area shall be permitted through such door or wall. No direct access shall be permitted from the residential unit to the pool area except access may be permitted through a self-closing door or a separate access such as a gate as per this Section.

SECTION 8 - ABOVE GROUND SWIMMING POOLS, HOT TUBS, WHIRLPOOLS AND SPAS

8.1 Above ground swimming pools require the same type of pool fencing as inground pools.

- 8.2 An above ground pool may include a fence enclosure that can be attached to the top of the pool wall to provide a minimum of 1.52 metres (5 feet) clearance between the finished grade and the top of the attached fence enclosure, provided such attached fence enclosure is constructed to provide an equivalent degree of safety as Section 6 herein.
- 8.3 Structures known as “hot tubs”, “whirlpools” and “spas” need not comply with requirements of Section 4 through 8 of this by-law provided that a secure cover of rigid material is placed over the opening, and provided that no person shall leave the hot tub, whirlpool or spa without first locking the cover in place to prevent access when the structure is not in use.
- 8.4 Swimming pools that have manufactured lockable covers need not comply with requirements of Section 4 through 8 of this by-law provided that a secure cover of rigid material is placed over the opening, and provided that no person shall leave the pool without first locking the cover in place to prevent access when the structure is not in use.

SECTION 9 – PENALTIES

- 9.1 Every person who contravenes any of the provisions of this by-law and every director or officer of a corporation, who knowingly concurs in the contravention by the corporation, is guilty of an offence under the provisions of the Municipal Act, 2001, S.O. 2001, c. 25, as amended.
- 9.2 Every person who contravenes the provisions of this by-law and every director or officer of a corporation, who knowingly concurs in the contraventions by the corporation, is guilty of an offence and liable on conviction to a penalty where the minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the Municipal Act 2001, S.O. 2001, c. 25, as amended.
- 9.3 For the purpose of continuous offences, every person who contravenes any provision of this by-law and every director or officer of a corporation who knowingly concurs in the contravention of a by-law of the corporation is guilty of an offence and liable on conviction to a penalty not exceeding \$10,000, exclusive of costs under the provisions of the Municipal Act, 2001, S.O. 2001, c. 25, as amended.
- 9.4 Despite section 9.3 and the provisions of the Municipal Act, 2001, S.O. 2001, c. 25 as amended, the total of all daily fines for the offence is not limited to \$100,000.
- 9.5 For the purpose of multiple offences, every person who contravenes any provision of this by-law and every director or officer of a corporation who knowingly concurs in the contravention of a by-law of the corporation is guilty of an offence and liable on conviction to a penalty not exceeding \$10,000, exclusive of costs under the provisions of the Municipal Act, 2001, S.O. 2001, c. 25, as amended.
- 9.6 Despite section 9.5 and the provisions of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, the total of all daily fines for the offence is not limited to \$100,000.
- 9.7 Every person who fails to comply with a notice made under this By-law is guilty of an offence.
- 9.8 It shall be an offence for a person to hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under the Municipal Act, 2001, as amended, or under a by-law passed under the Municipal Act, 2001, as amended.
- 9.9 Any person who has been alleged to have contravened any of the provisions of a by-law passed under the Municipal Act, 2001, as amended shall identify themselves to the Officer upon request. Failure to do so shall be deemed to have obstructed or hindered the Officer in the execution of the Officer's duties.
- 9.10 Every person who contravenes any section of this by-law under a part 1 ticket, upon conviction shall be liable to a fine as provided for in the Provincial Offences Act, R.S.O 1990, Chapter P.33 as amended.

9.11 Upon conviction any penalty imposed under this By-law may be collected under the authority of the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

SECTION 10 - SEVERABILITY

10.1 Should any section, subsection, clause or provision of this By-law be declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or any part thereof, other than the Part so declared to be invalid.

SECTION 11 - REPEAL

11.1 By-law No. 2001-21 is hereby repealed.

SECTION 12 - EFFECTIVE DATE

12.1 This By-law shall come into force and take effect on the date of passing.

BY-LAW READ A FIRST, SECOND, AND THIRD TIME AND FINALLY PASSED THIS 29TH DAY OF FEBRUARY, 2016.

THE CORPORATION OF THE TOWNSHIP OF TAY

MAYOR, Scott Warnock

CLERK, Alison Thomas

SCHEDULE "A"

RESPECTING

SWIMMING POOL FENCE ENCLOSURES PERMIT FEES

<u>TYPE OF POOL</u>	<u>FEE</u>
IN-GROUND POOL FENCE	\$90.00 FLAT RATE
ABOVE GROUND POOL FENCE	\$90.00 FLAT RATE

**CORPORATION OF THE TOWNSHIP OF TAY
PART 1 PROVINCIAL OFFENCES ACT**

By-Law No. 2006-23

ITEM	Column 1 Short Form Wording	Column 2 Offence Creating Provision	Column 3 Set Fine
1	Erect pool, no swimming pool fence permit	Section 4.1	\$120.00
2	Cause pool to be erected, no swimming pool fence permit	Section 4.1	\$120.00
3	Excavate for pool, no swimming pool fence permit	Section 4.1	\$300.00
4	Erect pool fence within sight triangle	Section 4.3	\$120.00
5	Place water in pool, fence not in accordance with by-law	Section 5.1	\$300.00
6	Cause water to be placed in pool,, fence not in accordance with by-law	Section 5.1	\$300.00
7	Allow water to remain in pool, fence not in accordance with by-law	Section 5.1	\$300.00
8	Place water in pool, fence not in good condition	Section 5.1	\$300.00
9	Cause water to be placed in pool, fence not in good condition	Section 5.1	\$300.00
10	Allow water to remain in pool, fence not in good condition	Section 5.1	\$300.00

Note: The penalty provision(s) for the offences indicated above is Section 9.1 of By-Law No. 2006-23 a certified Copy of which has been filed.