

THE CORPORATION OF TOWN OF GRIMSBY

BY-LAW NO. 08-59

TO PROVIDE FOR THE FENCING OF
PRIVATELY-OWNED OUTDOOR SWIMMING POOLS

WHEREAS Council deems it necessary to provide a single by-law to provide for the fencing of privately owned outdoor swimming pools, requiring permits be obtained for the design and construction of enclosures, so that owners of pools can reasonably prevent unauthorized or accidental entry to their pools, as well as recognizing pool fence permits previously granted under prior municipal by-laws;

AND WHEREAS Section 9 of the Municipal Act, S.O. 2001, Chapter 25, authorizes a municipality to pass by-laws concerning the issuance of permits and related matters;

AND WHEREAS Section 11 of the Municipal Act, S.O. 2001, Chapter 25, authorizes a municipality to pass by-laws to regulate structures including fences;

AND WHEREAS Sections 2, and 8 through 11 of the Municipal Act, S.O. 2001 Chapter 25, as amended, provide for the Council of a Municipality to pass by-laws for purposes which include the provision of services and things necessary and desirable for the municipality and fostering the current and future economic, social and environmental well-being of the municipality, and powers the municipality to regulate structures including fences, and provides for the issuance of permits and related matters;

AND WHEREAS By-law No.79-19 was enacted by the Town of Grimsby on the 7th of May 1979 and is sought to be repealed and replaced with this by-law containing various changes;

NOW THEREFORE, the Council of the Town of Grimsby enacts as follows:

SHORT TITLE

1. This By-law may be cited as "The Swimming Pool Enclosure By-law".

DEFINITIONS AND INTERPRETATION

2. (1) In this By-law,
 - (a) "**building code act**" means the Building Code Act, 1992, S.O. 1992, c. 23, as amended;
 - (b) "**Chief Building Official**" means the Chief Building Official appointed by Council under Section 3 of the Building Code Act, S.O. 1992, Chapter 23, as amended, and includes the Chief Building Official's designate for the purposes of this by-law;
 - (c) "**effective ground Level**" means the highest level of the ground within 1.0m (3 ft 3 in) horizontally in any direction from the point being considered;
 - (d) "**exterior face**" means when used in conjunction with a swimming pool enclosure, the side of the enclosure from which access to the pool is to be prevented;

- (e) **“lot line”** means any boundary of a *lot*, which may consist of one or more lines, straight, curved or both;
- (f) **“lot line, exterior side”** means the *lot line*, on a corner lot, which is a *street line* and not the *front lot line*;
- (g) **“lot line, front”** means a *street line*, provided that
- (i) where the lot abuts street lines of different lengths, the shorter street line shall be the front lot line;
- (ii) where the *lot* abuts *street lines* of equal length, the *street line* facing the principal entrance to the main building shall be the *front lot line*;
- (iii) where the *lot* abuts two streets which do not intersect, either *street line* may be deemed the *front lot line* and the *street line* opposite shall be deemed the *rear lot line*.
- (h) **“lot line, interior side”** means a *lot line* which intersects a *front lot line* and abuts another *lot*;
- (i) **“lot line, rear”** means a *lot line* joining two side *lot lines*, other than a *front lot line*;
- (j) **“officer”** means a Municipal Law Enforcement Officer, a Building Inspector, a *Chief Building Official*, or other *person* appointed or employed by the Town for enforcement of by-laws;
- (k) **“Ontario building code”** means the regulations established through the *Building Code Act* and any amendments and/or alterations made under that Act;
- (l) **“outdoor swimming pool, above ground”** means any *outdoor swimming pool*, other than a *seasonal outdoor swimming pool*, that has a portion of the pool wall above *ground level*;
- (m) **“outdoor swimming pool, in ground”** means any outdoor swimming pool that is constructed with its pool walls below *ground level*;
- (n) **“outdoor swimming pool, seasonal”** means any *outdoor swimming pool* which is intended to be removed and stored during the winter months and/or when not in use.
- (o) **“owner”** means
- (i) the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the *person’s* own account or as an agent or trustee of any other *person*, or who would so receive the rent if such land or premises were let, and
- (ii) a lessee or occupant of the *property* who, under the terms of a lease, is required to repair and maintain the *property*;
- (p) **“permit”** means a permit issued by the *Chief Building Official* certifying approval of plans for the *erection* of an *outdoor swimming pool* and/or a *swimming pool enclosure* required by this by-law;
- (q) **“privately-owned outdoor swimming pool”** means any privately-owned body of water located out of doors which is used or capable of being used for swimming and which is contained wholly or partly by artificial means, but does not include such a pool:

- (i) which is incapable of holding water beyond a maximum depth of 450 mm (18in.);
 - (ii) which is owned by a public or governmental body, agency or authority;
 - (iii) which is designed and used solely for ornamental purposes;
 - (iv) which is a farm pond, which for the purposes of this by-law shall mean a pond which is maintained for agricultural or horticultural uses only; or
 - (v) naturally occurring streams, lakes, swamps or other natural bodies of water;
 - (r) **“property owner”** means the registered owner of a property or a tenant in possession of the property; and
 - (s) **“swimming pool enclosure”** means a fence, wall or structure or a combination thereof, together with any gates or entrances, which completely surround an *outdoor swimming pool*.
 - (t) **“temporary enclosure”** means an enclosure used temporarily for the purpose of enclosing an *outdoor swimming pool* in the course of construction in order to effectively prevent or restrict access thereto by unauthorized *persons*, and to prevent any accident or injury to any *person* in or on a *property*;
 - (u) **“zone”** means an area designated by the Town of Grimsby Zoning By-Law, as amended, and established by that by-law for a specific use;
 - (v) **“zone residential”** means a *zone* in which the use of land, buildings or structures is for the sleeping or habitation of *persons* and without limiting the generality of the foregoing, may include dwellings (detached, semi-detached, multi-unit), apartments and dormitories but shall not include hospitals or care facilities;
- (2) Where this by-law provides both metric and imperial measurement for the same item, the imperial measurement is provided for convenience only and is approximate, and any abbreviation used for a unit of measurement in this by-law shall be as defined in section 1.1.4 of the Ontario Building Code, O. Reg. 403/97 as amended.

EXCAVATION AND FILLING OF POOLS

3. (1) No person shall place water in a privately-owned outdoor swimming pool or cause or permit water to remain in the pool unless the swimming pool enclosure required by (2) is in place.
- (2) The owner of privately-owned outdoor swimming pool or property owner on whose property the pool is located shall erect and maintain in good repair a swimming pool enclosure for the pool in compliance the requirements of this by-law.
4. No person shall excavate or erect, or cause or permit the excavation or erection of a privately-owned outdoor swimming pool until a permit has been issued under this by-law.

APPLICATION FOR PERMIT

5. A person proposing to erect or excavate a privately-owned outdoor swimming pool or the fencing or enclosure for such a pool shall first, make and file and application for a permit for the swimming pool enclosure, including;

- (a) A completed application for permit.
- (b) plot plan together showing the proposed location of the outdoor swimming pool, the location of any swimming pool enclosures including gates and or entrances
- (c) the location of any associated outdoor swimming pool equipment such as but not limited to, pumps, filters and heating equipment.
- (d) Dimension from the outdoor swimming pool and any associated equipment to all lot lines and all other buildings or structures on the lot.
- (e) a plan or plans illustrating the complete details of the swimming pool enclosure including, type of construction, material, and height.
- (f) a swimming pool permit application fee payable at the time of application in accordance with the Fee By-Law.

6. The Chief Building Official may require that a permit applicant file better plans or further information as part of the application, as may be needed to determine compliance with this by-law, and in the event the application is incomplete, the fee is unpaid or the information requested is not supplied the application shall be denied.

7. It is a condition of the application and permit granted, that the property owner shall permit entry and inspection of the site of the pool and swimming pool enclosure at all reasonable times, to determine that the swimming pool enclosure has been constructed in accordance with the approved plans and this by-law.

8. (1) Subject to (2), the Chief Building Official shall issue a permit for a swimming pool enclosure in compliance with the requirements of this by-law, unless the enclosure if erected would be contrary to a by-law of the municipality or the Building Code.

(2) The Chief Building Official may issue the permit under (1) with amendments to plans submitted with the application or by attaching or referring to further requirements, to bring the plans into compliance with the requirements of this by-law, which requirements are conditions of approval of the permit for construction of the swimming pool enclosure.

(3) Where the Chief Building Official cannot issue a permit under (1) the permit shall be denied.

9. The property owner is responsible for and shall construct or cause to be constructed a swimming pool enclosure in compliance with the plans approved by the Chief Building Official, and otherwise in compliance with this by-law in respect of details that may be shown in the plans and specifications.

PREVIOUSLY PERMITTED SWIMMING POOL ENCLOSURES

10. (1) Subject to subsection 10.(2), where a swimming pool enclosure has been constructed under a permit approved by a former area municipality under a pool enclosure by-law previously in force in the former area municipality, or under a permit issued under this by-law prior to the enactment of any amendment to the by-law, the enclosure is deemed to be in compliance with this by-law.

(2) Where the previously permitted swimming pool enclosure in (1) is subsequently replaced, the replacement enclosure is instead subject to the requirements of this by-law, including the application for a permit, fee and the requirements and standards specified.

GENERAL REQUIREMENTS FOR ENCLOSURES

11. Enclosures required under this by-law in addition to the other standards and requirements contained in this by-law shall:

- (a) have a minimum vertical height of 1.5m (4 ft 11 in), measured from the effective ground level on the outside of the enclosure;
- (b) be located at least 1.0m (3 ft 3 in) from any other fence or structure which would facilitate climbing over the swimming pool enclosure unless the height of the enclosure is increased to a height of at least 1.8m (5 ft 11 in) for a distance of at least 1.0 m (3 ft 3 in) beyond such non-conforming fence or structure;
- (g) have a gap no greater than 100 mm (4 in) between the bottom of the swimming pool enclosure and the finish grade;
- (h) be located at least 600 mm (23 5/8 in) from the edge of the water in the swimming pool; and
- (i) be composed of one of the following constructions, namely chain link fence, vertical board fence, wrought iron fence all as specified in this by-law, or such equivalent alternative as may be approved by the Chief Building Official under section 15 upon review of plans and specifications submitted in application for a permit under this by-law.

12. All above ground privately-owned outdoor swimming pools having a walkway higher than 600 mm (23 5/8 in) above the effective ground level shall have their walkways enclosed with an outer guard at least 900 mm (2 ft 11 in) in height measured from the walkway level. The required swimming pool enclosure may form part of the required guards.

13. A swimming pool enclosure shall not:

- (a) use or incorporate barbed wire, electrification, or other features designed to cause injury;
- (b) enclose a utility meter, a furnace oil filter pipe or other utility reading device which requires periodic inspection or attendance by utility or service personnel;
- (c) be composed of the walls of a building unless any openings which could provide a means of ingress directly into the swimming pool area are protected by a door, window or other covering and kept closed and locked at all times when such swimming pool is not under competent supervision; or
- (d) except in the case of that part of a building or wall forming part of the enclosure, the enclosure shall not have attachments to the exterior face of the enclosure such as bracing, horizontal rails or other structures, except to the extent as may be permitted in section 15.

GATES

14. Gates that form a part of the swimming pool enclosure shall:

- (a) be self-closing and self-latching with the latching device at the top of the gate on the pool side of the enclosure;
- (b) operate on hinges sufficient to support the gate either open and unlatched or closed and latched; and
- (c) be of such construction and height that they otherwise comply with the requirements of this by-law for the enclosure.

STANDARDS OF CONSTRUCTION

- 15. (1) Subject to subsection 15.(5) a fence of chain link construction shall:
 - (a) have a mesh with openings not greater than 38 mm (1 1/2 in);

(b) be constructed of wire not less than 12 gauge galvanized steel or if having a vinyl or other coating, not less than 14 gauge steel wire covered with a vinyl or other approved coating which would form a total thickness equivalent to 12 gauge galvanized steel wire;

(c) be supported by minimum 38 mm (1 ½ in) galvanized steel posts spaced not more than 2.5 m (8 ft 2 in) apart, at least 900 mm (2 ft 11 in) below grade, which posts are to be encased in concrete at least 50 mm (2 in) thick all around; and

(d) have top and bottom rails firmly fastened to the upright posts, made of minimum 32 mm (1 ¼ in) galvanized steel pipe, provided only that in place of the bottom rail there may be substituted a galvanized steel tension rod of minimum 9 gauge wire.

(2) Subject to subsection 15.(5) a fence of wood construction shall:

(a) have vertical boarding not less than 19 mm by 89 mm (1 in by 4 in) shall have no openings on the exterior face with a dimension greater than 100 mm (4 in);

(b) be supported by posts at least 89 mm (4 in by 4 in) square, or 89 mm (4 in) in diameter, spaced not more than 2.5 m (8 ft 2 in) apart. Such posts shall extend at least 900 mm (2 ft 11 in) into the ground and that portion of the post below grade shall be treated with a wood preservative; and

(c) have top and bottom rails of at least 38 mm by 89 mm (2 in by 4 in), and spaced to provide a minimum clearance of 1.0 m (3 ft 3 in) between the rails.

(3) Subject to subsection 15.(5) a fence of wrought iron construction or other similar material shall:

(a) be of sufficient strength to provide an effective enclosure;

(b) have no openings of a dimension greater than 100 mm (4 in) between vertical members;

(c) be supported by posts spaced not more than 2.5 m (8 ft 2 in) apart. Such posts shall extend at least 900 mm (2 ft 11 in) into the ground and are to be encased in concrete at least 50 mm (2 in) thick all around; and

(d) have top and bottom rails spaced so that a minimum clear space of 1.0 m (3 ft 3 in) is provided between the rails.

(4) The Chief Building Official may approve plans for the construction of a swimming pool enclosure that is a fence, wall or other structure where it provides an equivalent enclosure to that specified in this by-law.

(5) Notwithstanding the content of subsections 15.(1), (2) and (3) and section 13 above, no enclosure shall be so constructed or maintained as to facilitate climbing by persons.

PLUMBING

16. (1) Any plumbing connections between the *outdoor swimming pool* or *private spa* and any potable water supply shall be equipped with back flow prevention in accordance with the *Ontario Building Code* or any other applicable law.

(2) No overflow or drainage discharge from an *outdoor swimming pool* shall be discharged onto abutting properties, open lands, Town property or a sanitary sewer.

ELECTRICAL

17. (1) All electrical works conducted in association with the installation of an *outdoor swimming pool* or *private spa* shall be installed in accordance with all applicable electrical codes and standards.
- (2) Any applicable *permits* and inspections required as a result of the provisions of article 3.4.1. are the responsibility of the *owner*.
- (3) All lighting fixtures or standards shall be arranged, designed and installed so that light from them is directed downward and deflected away from any adjacent *lots* and abutting *highways*.

INSPECTIONS

18. (1) No *person* shall place water, or cause water to be placed, in an *outdoor swimming pool*, unless the final inspection has been successfully conducted and the installation of the *swimming pool enclosure* is approved by the *Officer* conducting the inspection.
- (2) No *person* shall place water, or cause water to be placed, in a *seasonal outdoor swimming pool*, unless the installation inspection has been successfully conducted and the location of the *seasonal outdoor swimming pool* and presence of the required *swimming pool enclosure* is approved by the *Officer* conducting the inspection.
- (3) The installation inspection required by article 2.2.2 shall be conducted for each erection of the *seasonal outdoor swimming pool*. It shall be the responsibility of the *owner* to schedule the required inspection with the *Town* for each *erection*.

TEMPORARY ENCLOSURES

19. (1) An *outdoor swimming pool*, while under construction, shall be completely enclosed by a *temporary enclosure* as defined herein, except where the *swimming pool enclosure* requirements have been satisfied.
- (2) A *temporary enclosure* shall:
- (a) consist of a 1.5m (5 ft.) high plastic mesh fence having mesh openings not greater than 50mm (2 in.) and supported by steel T-bar posts located a maximum of 2.4m (7.9 ft.) apart with a nine (9) gauge galvanized steel wire located at the top and bottom of such fence; or
- (b) be constructed of material that will provide an equivalent or greater degree of safety and which has been approved by the *Chief Building Official*.

MAINTENANCE

20. (1) The *owner* of any lands on which an *outdoor swimming pool* is located or *erected* shall maintain a *swimming pool enclosure* around the entire *swimming pool area*, in accordance with the provisions of this by-law.
- (2) No *person* shall place water, or cause water to be placed, in an *outdoor swimming pool*, unless the *swimming pool enclosure* prescribed by this by-law is maintained in accordance with the provisions of this by-law.
- (3) Every *swimming pool enclosure*, and *temporary enclosure*, shall be maintained in such a manner and to such an extent as to ensure at all times maximum security and protection against entry to the *outdoor swimming pool* by unauthorized persons.

VALIDITY

21. (1) Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under the law so as to protect the public.
- (2) Where a provision of this by-law conflicts with the provision of another by-law, Act, or Regulation in force within the Town of Grimsby, the provisions that establish the higher standards to protect the health and safety of persons shall prevail.

PENALTY AND ENFORCEMENT

22. (1) Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the penalties specified by the Provincial Offences Act, R.S.O. 1990, Chapter P. 33 as amended.
- (2) Where the owner of the privately-owned outdoor swimming pool or property owner fails to erect or maintain a fence or gate around the swimming pool or places water in the pool, or causes, permits or allows the water to remain in the pool where a fence or gate is not erected or maintained, the Chief Building Official may immediately at the persons expense, direct an employee or agent to,
- (a) erect or repair the swimming pool enclosure; or
- (b) remove all water from the swimming pool until the required swimming pool enclosure is erected or maintained in accordance with this by-law.
- (3) The Town of Grimsby may recover the expense incurred in doing the work described in (2) by action or by adding the costs to the tax roll and collecting the costs in the same manner as municipal taxes.
- (4) For the purposes of this by-law, persons who are employed or appointed as By-law Enforcement Officers by the Town of Grimsby, or employed as Property Standards Officers or Building Inspectors for the Town of Grimsby, and the Chief Building Official are all deemed appointed and entitled to enforce the provisions of this by-law.

REPEAL

23. By-law No. 79-19 of the Town of Grimsby is hereby repealed.
24. This by-law shall come into force and effect on the date of enactment.

READ A FIRST TIME THIS 21ST DAY OF JULY, 2008.

READ A SECOND AND THIRD TIME AND FINALLY PASSED THIS 21ST DAY OF JULY 2008.


MAYOR


TOWN CLERK

PROVINCIAL OFFENCES ACT

Part I

IT IS ORDERED pursuant to the provisions of the *Provincial Offences Act* and the rules for the Ontario Court of Justice, that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 08-59, as amended, for The Corporation of the Town of Grimsby, attached hereto is the set fine for that offence. This Order is to take effect August 24, 2017.

Dated at Hamilton, this 18th day of September, 2017.



Sharon Nicklas
Regional Senior Justice
Central West Region

The Corporation of the Town of Grimsby
 Part I Provincial Offences Act
 Bylaw no. 08-59, as amended by bylaw 17-44: Outdoor Swimming Pools

ITEM #	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating or defining offence	COLUMN 3 Set Fine
1.	cause water to be placed in privately-owned outdoor swimming pool not enclosed	3(1)	205.00
2.	permit water to be placed in privately-owned outdoor swimming pool not enclosed	3(1)	205.00
3.	cause to excavate or erect privately-owned outdoor swimming pool without valid permit	4	205.00
4.	permit to excavate or erect privately-owned outdoor swimming pool without valid permit	4	205.00
5.	fail to constructed a swimming pool enclosure approved by Chief Building Official	9	305.00
6.	fail to constructed a gate as part of the swimming pool enclosure approved by Chief building Official	14	205.00
7.	connection without back flow prevention	16(1)	205.00
8.	overflow or drainage discharge allowed	16(2)	205.00
9.	cause water to be placed in privately-owned outdoor swimming pool prior to final inspection	18(1)	205.00
10.	permit water to be placed in privately-owned outdoor swimming pool prior to final inspection	18(1)	205.00
11.	cause water to be placed in privately-owned seasonal outdoor swimming pool prior to final inspection	18(2)	205.00
12.	permit water to be placed in privately-owned seasonal outdoor swimming pool prior to final inspection	18(2)	205.00
13.	outdoor swimming pool under construction not enclosed	19(1)	205.00
14.	outdoor swimming pool enclosure not maintained	20(1)	305.00
15.	cause water to be placed in unsecured privately-owned outdoor swimming pool	20(2)	305.00
16.	permit water to be placed in unsecured privately-owned outdoor swimming pool	20(2)	305.00

NOTE: the general penalty provision for the offences listed above is Section 22 of the Bylaw 08-59 as amended, a certified copy of which has been filed.

JW
Aug 24/17
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