

THE CORPORATION OF THE TOWN OF GREATER NAPANEE

BY-LAW NO. 2010 – 49

A By-law to Establish Standards for Erecting and Maintaining Fences and Gates Surrounding Outdoor Swimming Pools

WHEREAS subsections 11(2) and (3) of the *Municipal Act, 2001*, S.O. 2001, c.45, as amended (the “Act”), authorizes a municipal Council to pass by-laws with respect to the health, safety and well being of persons as well as with respect to structures, including fences and signs, including by-laws to regulate or prohibit respecting such matter, to require persons to do things, to provide for a systems of permits to impose conditions as a requirement of obtaining a permit;

AND WHEREAS section 446 of the Act provides that where a municipality has the authority by by-law to direct or require that a matter or thing be done, the municipality may direct that, in default of it being done by the person directed or required to do so, such matter or thing shall be done at the person’s expense and the municipality may enter upon land and recover the costs by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS the Council of The Corporation of the Town of Greater Napanee deems it expedient, in the interest of the health, safety and well-being of persons in Greater Napanee to enact a pool fence by-law;

NOW THEREFORE the Council of The Corporation of the Town of Greater Napanee enacts as follows:

SECTION 1 – INTERPRETATION

- 1.1 This by-law may be referred to as the “Pool Fence By-law”.
- 1.2 Wherever a word is used in this By-law with its first letter capitalized, the term is being used as it is defined in this section. Where any word appears in ordinary case, its regularly applied meaning in the English language is intended.
 - 1.2.1 “Chief Building Official” means the Chief Building Official for the Town as appointed by Council under the authority of the *Building Code Act*, S.O. 1992, c.23 as amended, or his or her designate.
 - 1.2.2 “Exterior Face” means the side of a Swimming Pool Enclosure from which access to a pool is to be prevented.
 - 1.2.3 “Grade” means the average elevation of the finished surface of the ground around the perimeter of a building excluding localized depressions such as sunken terraces, stairwells and window wells.

- 1.2.4 “Hot Tub” means a body of water located outdoors contained by artificial means, with mechanisms allowing for the direction and/or adjustment of jets of warm water flowing in a rapidly rotating and circular current, and which produces a depression or cavity in the center, and “hot tub” shall include tubs which are commonly called “spas” or “whirlpools”.
- 1.2.5 “Owner” means the individual, firm or corporation that is the registered owner of the property and includes a lessee, tenant, mortgage in possession, and the person or persons in charge of land on which a Swimming Pool is located.
- 1.2.6 “Self-closing device” means a mechanical device or spring which returns a gate to its closed position within 30 seconds after it has been opened.
- 1.2.7 “Self-latching device” means a mechanical device or latch which is engaged each time the gate is secured to its closed position; which will not allow the gate to be re-opened by pushing or pulling, and which will ensure the gate remains closed until unlatched by either lifting or turning the device itself or by a key.
- 1.2.8 “Swimming Pool” means any body of water located wholly or partially outdoors, contained wholly or partially by artificial means, wholly or partially in-ground or above-ground, and which exceeds 60 cm (24 inches) in depth at any point.
- 1.2.9 “Swimming Pool Area” means the Swimming Pool plus any surrounding platforms, walkways, play areas and landscaped areas which lie within the Swimming Pool Enclosure.
- 1.2.10 “Swimming Pool Enclosure” means a fence or wall or combination thereof, including any doors or gates, surrounding a Swimming Pool and which restricts access to the Swimming Pool.

SECTION 2 – REQUIREMENTS OF SWIMMING POOL ENCLOSURES

- 2.1 The Owner of any lands on which a Swimming Pool is located or erected, or proposed to be located or erected, shall erect and maintain in good order a Swimming Pool Enclosure completely enclosing the entire Swimming Pool Area in accordance with this by-law.
- 2.2 A Swimming Pool under construction shall be enclosed with a temporary fence as detailed in section 3 except where the permanent Swimming Pool Enclosure requirements have been satisfied.
- 2.3 No person shall place water in a pool unless the prescribed Swimming Pool Enclosure conforms with the provisions of this by-law and a final inspection of the Swimming Pool Enclosure has been performed and been passed by the municipality.

2.4 Height Requirements

- 6.4.1 The height of a Swimming Pool Enclosure above grade, measured at any point along the Swimming Pool Enclosure at the Exterior Face shall be a minimum of:
- i) 1.2 metres (4 feet) in the case of a Swimming Pool serving a detached, semi-detached, row house, multiple family development of not more than four (4) dwelling units; or
 - ii) 1.8 metres (6 feet) for all other Swimming Pools.

2.5 Clearances

- 2.5.1 A maximum of 50 millimetres (2 inches) is permitted between the bottom of a Swimming Pool Enclosure and the approved grade.
- 2.5.2 A Swimming Pool Enclosure must be located not less than 1.2 metres (4 feet) from the nearest inside wetted surface of the Swimming Pool wall.
- 2.5.3 No Swimming Pool Enclosure shall be located closer than 1.2 metres (4 feet) to anything that facilitates the climbing of the Swimming Pool Enclosure, unless alternative measures are implemented to provide an equivalent level of safety as set out in the by-law.

2.6 Gates and Entrances to Swimming Pool Areas

- 2.6.1 All entrances to the Swimming Pool Area which form part of the Swimming Pool Enclosure, whether they be doors, windows or gates, shall be equipped with a locking device and be kept locked at all times when a responsible person is not present and supervising the pool.
- 2.6.2 Required locks for doors inside a residential dwelling shall be located a minimum of 1.5 metres (5 feet) above floor level.
- 2.6.3 Gates which form a part of the Swimming Pool Enclosure shall be:
- i) of construction and height equivalent to or greater than that required of the Swimming Pool Enclosure;
 - ii) supported on substantial hinges; and
 - iii) equipped with a Self-closing Device and a Self-latching Device placed at the top and on the inside of the gate.
- 2.6.4 No person shall construct or maintain a double gate as part of a Swimming Pool Enclosure without one of the two gates having a Self-closing Device and a Self-latching Device. A double gate access without a Self-closing Device and Self-latching Device must have a device permanently affixed to the ground or other non-movable object that prevents access through this gate without lifting or removing this device and then releasing the latch.

- 2.6.5 When a wall or portion thereof, of any building located on the same property as a Swimming Pool forms part of the Swimming Pool Enclosure, no entrances to the Swimming Pool Area shall be permitted through such wall, unless such wall is located no closer than 1.2 metres (4 feet) from the nearest inside wetted surface of the Swimming Pool.
- 2.6.6 Where a door forms part of the Swimming Pool Enclosure but does not lead directly from a private dwelling unit, it shall be:
- i) of such height and construction as will provide a degree of safety and rigidity equivalent to or greater than that of a required fence;
 - ii) supported on substantial metal hardware hinges;
 - iii) equipped with a bolt, chain, latch, or a similar device, located at a minimum height of 1.52 metres (5 feet) from the bottom of the door; and
 - iv) be kept locked at any time when the Swimming Pool contains 61 centimetres (24 inches) or more water in depth.

SECTION 3 – TYPES OF SWIMMING POOL ENCLOSURES

- 3.1 A Swimming Pool Enclosure shall be constructed of:
- i) chain link fence construction;
 - ii) vertical board fence construction;
 - iii) temporary construction;
 - iv) other materials and construction that will provide an equivalent degree of safety; or
 - v) any combination of i), ii), iii), or iv),
- and no member or attachment that could facilitate climbing shall be permitted on the Exterior Face of a Swimming Pool Enclosure between 100 mm (4 inches) and 1.8 metres (6 feet) from Grade.

3.2 Chain Link Fence

- A fence of chain link construction shall comprise the following:
- i) a mesh not greater than 38 millimetres (1.5 inches) consisting of 12 gauge galvanized steel wire, or of 14 gauge steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to 12 gauge wire;
 - ii) galvanized steel supporting posts with a minimum diameter measurement of 38 millimetres (1.5 inches) spaced at a maximum of 3 metres (10 foot) intervals and extended at least 0.9 metres (3 feet) 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;
 - iii) end posts and corner posts of a minimum 48 millimetres (1 and 7/8 inches) diameter encased in concrete at least 50 millimetres (2 inches) thick all around below grade;
 - iv) intermediate posts a minimum of 38 millimetres (1.5 inches) diameter encased in concrete at least 50 millimetres (2 inches) thick all around below grade when

- more than 15 metres (50 feet) from an end post, a corner post or an intermediate post that is similarly encased; and
- v) top and bottom rails firmly fastened to the upright posts, made of a minimum 32 millimetres (1 and 1/4 inch) galvanized steel pipe (a galvanized steel tension wire 5 millimetres may be substituted for the bottom rail).

3.3 Vertical Board Fence

A fence of vertical board construction shall:

- i) have a vertical boarding of 25 millimetres (1 inch) thick nominal attached to a top and bottom rail in such a manner so as not to facilitate climbing from the outside. Such vertical boards must not be less than 25 millimetres x 100 millimetres (1 inch x 4 inches) nominal and must be spaced not more than 38 millimetres (1.5 inches) apart;
- ii) 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; and
- iii) be constructed with a horizontal top rail and a horizontal bottom rail of at least 50 millimetres x 100 millimetres (2 inches x 4 inches) nominal dimensions.

3.4 Temporary Fence

3.4.1 A temporary fence shall:

- i) be 1.22 metres (4 feet) in height,
- ii) consist of plastic mesh or vertical wood lath with openings not greater than 38 millimetres (1.5 inches),
- ii) have a steel T-bar post every 3 metres (10 feet) maximum, and
- iii) have a 9 gauge galvanized steel wire located at the top and bottom.

3.4.2 A temporary fence shall be permitted as a Swimming Pool Enclosure during construction of a Swimming Pool and must be replaced prior to the Swimming Pool being filled with water and used. Other types of fencing may be acceptable, as long as the same degree of safety is provided.

3.5 Other Materials

Other materials, including retaining walls and deck guards, that serve as Swimming Pool Enclosures shall be constructed with a degree of safety equivalent to chain link or vertical board fence construction.

3.6 Prohibited Materials

No person shall erect, install, construct or maintain a Swimming Pool Enclosure wholly or partially made of any of the following, on or adjacent to a property zoned as residential:

- i) barbed wire or other barbed material;
- ii) any device for projecting an electric current through the fence; or
- iii) sharp projections or any other objects or materials that would create a danger to the safety of any persons or animals.

SECTION 4 - EXEMPTIONS

- 4.1 The requirements of sections 6 and 7 of this by-law with respect to Swimming Pool Enclosures do not apply for above-ground or portable Swimming Pools if the following requirements have been met:
 - i) the wall height of the Swimming Pool, when measured to the top from above the underlying ground on the exterior side, is 1.2 metres (4 feet);
 - ii) the retaining wall meets all other standards of construction outlined in sections 6 and 7 of this by-law; and
 - iii) a 1.2 metre (4 feet) apron, complete with fence, lips the top of the above ground or portable pool and has the stairs to the pool closed off by a locked gate or the stairs are removable.
- 4.2 This by-law does not apply to Hot Tubs that have a secure cover of rigid material placed over the opening which is locked to prevent access when the Hot Tub is not in use.
- 4.3 This by-law does not apply to Swimming Pool Enclosures that were lawfully erected prior to the date of passage of this by-law, except that any changes to such Swimming Pool Enclosure, after the date of passage of this by-law, shall be subject to the provisions of this by-law. A change in the use of a fence to act as a Swimming Pool Enclosure as a result of a Swimming Pool being installed after the date of passage of this by-law shall require such fence to be constructed in accordance with this by-law.

SECTION 5 – ENFORCEMENT

- 5.1 No person who is an owner or occupant of a property shall use a Swimming Pool, or permit the Swimming Pool to be used, or permit the Swimming Pool to continue to be used if the Swimming Pool Enclosure does not conform to the standards set out in this by-law.
- 5.2 Every person who contravenes this by-law is guilty of an offence and, upon conviction, is liable to payment of a fine.
- 5.3 If an inspection of the Swimming Pool Enclosure by the municipality reveals that the Swimming Pool Enclosure does not conform to the standards prescribed by this by-law,

- 5.8 Any costs incurred by the municipality to enter onto a property and do such work as necessary to make the Swimming Pool Enclosure conform to this by-law, including any costs of storage, together with interest at the rate of 15% per annum calculated from the date on which the cost is incurred to the date of payment in full shall be added to the tax roll of the property and collected in the same manner as taxes.
- 5.9 The Chief Building Official of the municipality shall be responsible for the administration and enforcement of this by-law.
- 5.10 For the purpose of administering and enforcing this by-law, the Chief Building Official may authorize any person who is a building official or provincial offences officer employed by, or acting as an agent of the municipality, to act on behalf of the Chief Building Official.

SECTION 6 - REPEAL OF OTHER BY-LAWS

- 6.1 By-law No. 98-42 of the Town of Greater Napanee or any other by-law which would contravene or conflict with any part of this by-law is hereby repealed.

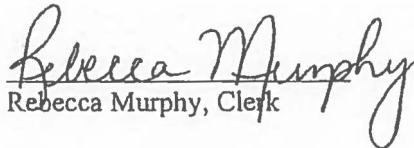
SECTION 7 - EFFECTIVE DATE

- 7.1 This by-law shall come into force and take effect on the date it is finally passed.

Read a first and second time and finally passed this 24th day of August 2010.



Gordon Schermerhorn, Mayor



Rebecca Murphy, Clerk

SECTION 4 GENERAL PROVISIONS
Town of Greater Napanee 4-33
By-Law 02-22

4.37 SWIMMING POOLS

A swimming pool is a permitted structure in association with a permitted residential use. Such swimming pool, and structures required in conjunction with a swimming pool, may be erected and used in the required interior side yard, the required rear yard, but not the required exterior side yard provided:

a) No part of such swimming pool is located closer than 1.2 metres to any rear or interior side lot line;

b) Is not located closer to the front lot line than the dwelling house;

c) No water circulating or treatment equipment such as pumps or filters shall be located closer than 2 metres to any interior side or rear lot line; and

d) No equipment used for the heating of water, such as a gas heater, shall be located within 2.0 metres of the interior side or rear lot line.

A swimming pool shall not be considered as part of the lot coverage provided no part of the pool, excluding its railing, protrudes more than 1.5 metres above the ground level surrounding the swimming pool.