

THE CORPORATION OF THE MUNICIPALITY OF SOUTH DUNDAS

BY-LAW NO. 2020-63

A By-law to regulate the enclosures for privately-owned outdoor swimming pools and spas.

WHEREAS the *Municipal Act, 2001*, as amended, provides that the powers of the municipality shall be exercised by By-law;

AND WHEREAS the *Municipal Act, 2001*, as amended, authorizes a Municipality to pass By-laws respecting the health, safety and wellbeing of persons;

AND WHEREAS the *Municipal Act, 2001*, as amended, authorizes a Municipality to pass By-laws respecting structures, including fences and signs;

AND WHEREAS the *Municipal Act, 2001*, as amended, authorizes a Municipality to regulate or prohibit in respect of matters within their jurisdiction, including fences, and to require persons to obtain permits and provide for a system of obtaining permits in relation to those matters;

AND WHEREAS the *Municipal Act, 2001*, as amended, provides that a Municipality may pass By-laws imposing fees or charges on persons for services or activities provided or done by or on behalf of it including permit fees for pool enclosure permits;

AND WHEREAS the Municipality of South Dundas deems it necessary to require fences and gates be erected and maintained around pools and spas;

NOW THEREFORE the Council of the Corporation of the Municipality of South Dundas enacts as follows:

1. That the rules and regulations as set out in Schedule "A" attached hereto and forming part of this By-law shall be hereby adopted.
2. That this By-law shall come into force and effect on the date of passing.

READ and passed in open Council, signed and sealed this 10th day of August, 2020.



MAYOR



CLERK

Schedule 'A'
To By-law No. 2020-63

1. Definitions

The following definitions apply to this By-law:

"Building" means structures used or intended to be used for supporting or sheltering any use or occupancy;

"Chief Building Official" means the Chief Building Official of the Municipality of South Dundas and/or his/her designate;

"Corporation or Municipality" shall mean the Corporation of the Municipality of South Dundas and its officers or employees appointed to administer the provisions of this By-law;

"Council" means the Council of the Corporation of the Municipality of South Dundas;

"Enclosure" means any combination of fence, wall or other structure, including doors and gates, surrounding a pool, spa or other artificially enclosed body of water to restrict access thereto;

"Fence" means a structure or partition made of wood, metal or other substance, and erected for the purpose of enclosing an area of land or to guard an area against entry onto the lands, and includes doors, gates and other closures. For the purpose of this By-law, a cedar hedge or any other organic material shall not be considered as part of a fence;

"Finished Grade" means the elevation of the average finished surface of the ground adjacent to a fence or structure;

"Gate" means part of a fence that is removable, swinging, sliding or otherwise, used as a barrier to block or restrict access. A gate may include a door;

"Officer" means the Municipal Law Enforcement Officer, Building Inspector or Chief Building Official of the Municipality of South Dundas and/or his/her designate;

"Permit" means written permission or written authorization from the Municipality to erect enclosures around pools as regulated by this By-law. Also known as a Pool Permit;

"Permit holder" means the person to which a Pool Permit has been issued under this By-law, the permit holder's successors or any person to whom the related business has been assigned;

"Pool" or "Swimming Pool" means an artificially enclosed body of water, built either above or in the ground, intended for swimming or other water-based recreation and shall include inflatable pools, spas and hot tubs capable of holding water at a depth in excess of 610mm (24") but shall exclude the following:

- a) A storm water management system;
- b) Facilities or ponds used for water hazards or irrigation at golf courses;
- c) Pools located completely inside a building;
- d) Facilities for the purpose of providing water to livestock;

- e) For irrigation of crops which are associated and located on land devoted to the practice of farming; and
- f) Under the jurisdiction of the Building Code.

"Pool Deck" means an elevated platform that is constructed more than 610mm (24") above grade and is adjacent to a pool or spa, providing direct access;

"Pool Equipment" means a water circulation or treatment system such as pumps, filters, and heaters;

"Owner" means the registered owner of a property, or a person acting as the authorized agent of the owner;

"Self-latching Device" means an automatic latching mechanism attached to a fence, gate or door to which prevents access from the outside;

"Self-closing Gate" means a device or combination of devices capable of returning the enclosure to a closed and latched position after each use. Can include springs and/or hinges;

"Spa" means a hot tub of varied forms, provided with hydro-jets and holds by which compressed air escapes, the water of which is warmed and in continuous movement;

"Storm Water Management System" means any man-made or natural facility designed for the treatment, retention, infiltration or control of storm water, including drainage works and retention ponds;

2. General Provisions

- 2.1 No person shall construct, erect, or alter a Pool, or permit a Pool to be constructed, erected, or altered, without first having obtained a pool permit in accordance with the provisions of this By-law.
- 2.2 No person shall place water in a pool or spa, or allow water to remain in a pool or spa located within the Municipality unless the prescribed enclosure has been erected or installed, and an inspection has been conducted by an Officer to confirm completion and compliance with the provisions of this By-law.
- 2.3 The Municipality reserves the right to remove or drain pools erected without a permit.
- 2.4 The owner or installer is responsible for obtaining the required permit with the Electrical Safety Authority for any electrical connections.
- 2.5 No person shall replace a pool or enclosure without a permit.

3. Procedure for Application

- 3.1 An applicant shall file an application for a Pool Permit in such form and detail as the Chief Building Official may prescribe from time to time, and which application shall include, at the applicant's cost, the following:
 - 3.1.a site plan showing the location and dimensions of the proposed pool, equipment, enclosures, and all relevant

- lot lines and all existing surface features located between the premises and the roadway;
- 3.1.b manufacturer specifications of the proposed pool including dimensions, depth, and accessories;
 - 3.1.c any other pertinent information required by the Chief Building Official to approve the application and determine compliance with this By-law; and,
 - 3.1.d the non-refundable fees in accordance with Fees and Charges By-law, and any amendments thereto.
- 3.2 An approved pool permit remains with the property until such time that modifications are made to the pool and/or enclosure.
- 3.3 At the discretion of the Chief Building Official, a permit may be deemed to have been abandoned and cancelled six (6) months after the date of approval if the work has not been completed.
- 3.4 Where an existing enclosure that was lawfully erected is repaired, a permit is not required.

4. Approval of Applications

- 4.1 The Chief Building Official shall receive, investigate, and consider all requests for pool permits, and refuse approval, or approve a request with such changes and conditions as the Chief Building Official deems necessary in the circumstances to ensure compliance with this By-law.
- 4.2 The Chief Building Official may reject an application for a pool permit based on its potential interference or inconsistency with:
- i. safety of the public or of property,
 - ii. the requirements for access to egress from a property in relation to planned or ongoing development; or,
 - iii. other public uses as defined by the Municipal Zoning By-law.

The applicant shall submit any changes or modification to the pool or enclosure for approval by the Chief Building Official prior to completion of those changes or modifications.

5. Location

- 5.1 No pool, pool deck, or pool equipment shall be installed in a front yard, as defined in the Municipal Zoning By-law.
- 5.2 No pool, pool deck, or pool equipment shall be installed closer than one meter to any side lot line, as defined in the Municipal Zoning By-law.
- 5.3 No pool, pool deck, or equipment shall be installed closer than six meters to any exterior side lot line, as defined in the Municipal Zoning By-law.
- 5.4 A pool shall not be included in the Lot Coverage, as defined in the Municipal Zoning By-law.
- 5.5 No pool, pool deck, or equipment shall be installed closer than 1.5 meters to a septic tank or holding tank, and no closer than five meters to a septic bed.

- 5.6 No person shall permit a pool, pool deck, or equipment including walkways, supporting structures, decking or concrete to encroach upon any swale or drainage easement on any lot.
- 5.7 The Chief Building Official may grant relief from sections 5.1, 5.2, and 5.3.
- 5.8 A spa shall be installed in accordance with the provisions of Sections 5.1, 5.2, and 5.3, except that:
- 5.8.a If a semi-detached dwelling is severed, the common lot line that is shared between the two dwellings is not required to meet the one meter setback provided that the provisions of Sections 6.5 and 6.8 are satisfied.
- 5.9 When the pool's equipment is located within ten (10) meters (33 ft) of a neighbouring habitable dwelling:
- 5.9.a no person shall fail to enclose the equipment to reduce or divert noise away from such habitable dwelling!

6. Enclosures

- 6.1 Every owner of a pool or spa shall have an adequate enclosure erected or installed in accordance with the provisions of this section.
- 6.2 Every enclosure shall:
- 6.2.a be constructed and maintained in structurally sound condition so as to prevent access when the pool or spa is not in use;
- 6.2.b be constructed in a manner as to reasonably deter children from climbing;
- 6.2.c must not have rails or any other horizontal or diagonal supports or exterior fixtures that might facilitate climbing;
- 6.2.d not have openings that could let a spherical object with a diameter of 100mm (4") or more, except that the chain link fences shall be limited to 38mm (1½") per link; and,
- 6.2.e be of close-boarded, chain link or other approved design with maximum openings of 100mm (4") including the space below the fence.
- 6.3 In the case of an in-ground pool, the enclosure shall be at least 1.52 meters (60") in height.
- 6.4 In the case of an above-ground pool, where the walls of the pool are less than 1.22 meters (48") high above grade for a distance of at least 610mm (24") from the wall:
- 6.4.a the enclosure shall be 1.22 meters (48") in height; or,
- 6.4.b the walls of the pool can be extended with an approved manufactured fence for a total height of at least 1.22 meters (48").

- 6.5 In the case of a spa, an enclosure is not required provided that:
- 6.5.a the spa is covered with a rigid, and lockable cover that prevents access to the spa when not in use; and,
 - 6.5.b the cover shall be locked to the spa in a manner that would make it impossible to remove except by the owner of the spa when in use.
- 6.6 Barbed wire or fencing energized by an electric current, sharp projections or any other dangerous characteristics shall not be used as an enclosure for a pool or spa.
- 6.7 The enclosure must be located a minimum of 1.22 meters (48") away from the pool unless approved otherwise by the Chief Building Official.
- 6.8 No enclosure shall be located closer than 1.22 meters (48") to any condition that facilitates climbing of the enclosure unless alternative measures are implemented to provide an equivalent level of safety.
- 6.9 A hedge or bush shall not be considered an enclosure.

7. Maintenance and Storage

- 7.1 Every person shall maintain every part of an outdoor swimming pool enclosure in a structurally sound and upright condition to reasonably deter children from climbing through, over or under to gain access to the enclosed area.
- 7.2 No person shall place or store materials against the outside of a pool enclosure.

8. Gates

- 8.1 Any exterior access in an enclosure leading to a terrace, patio, steps, or deck adjoining a swimming pool or spa shall be protected by a gate.
- 8.2 Gates in an enclosure shall:
- 8.2.a provide protection equivalent to the enclosure;
 - 8.2.b be at least the same height as the enclosure;
 - 8.2.c be equipped with a self-closing and self-latching device, and a lock at the upper inside of the gate;
 - 8.2.d be locked except when the enclosed area is in use and under competent supervision;
 - 8.2.e be of similar construction as the enclosure; and,
 - 8.2.f double leaf gates are required to meet a single leaf.
- 8.3 There shall be no space greater than 100mm (4") where the gate meets the ground or any other surface.
- 8.4 Where an above-ground pool contains a ladder as the only means of access, it will be permitted provided the following requirements are met:

- 8.4.a the ladder and gate are manufactured and designed for above-ground pools;
- 8.4.b the ladder is an A-frame design;
- 8.4.c the ladder can be enclosed by a cover that is lockable; and,
- 8.4.d except for the first step, no steps are exposed.

8.5 No person shall have the wall of an attached or detached accessory building as part of the required enclosure unless the door or entrance in that wall has a self-closing door equipped with a self-latching device (i.e. Lockset) which shall be locked at all times when the pool is not in use and under competent supervision.

9. Pool Decks

9.1 Any deck or platform that is part of an enclosure shall:

- 9.1.a have a guard and handrail that meet the minimum height requirements of the Ontario Building Code;
- 9.1.b be designed in such a manner so as to not create a means of climbing to access the pool or spa;
- 9.1.c have no space greater than 100 mm (4") between any parts of the deck assembly; and,
- 9.1.d where a new deck is being proposed and is attached to a building or is greater than 10 metres squared, a building permit and associated fees will be required in addition to the enclosure permit.

9.2 Guards that meet the minimum height requirements of the Ontario Building Code but fail to meet the minimum height requirement of the enclosure shall be made higher in order to meet the minimum standards of this By-law.

10. Ground Elevation

- 10.1 No person shall install a pool or enclosure that alters in any way the existing or approved stormwater drainage patterns of the lot.
- 10.2 The installation of any pool or spa shall include facilities to effectively conduct backwater wash to a storm sewer, where available, or a drainage ditch, in such a manner so as to prevent damage to adjacent properties.

11. Notice

- 11.1 Where an enclosure is not erected or maintained in accordance with any provision of this By-law, a notice shall be sent by registered mail or by hand to the owner of the land on which the pool or spa is located at their last known address requiring them to make the enclosure conform to the requirements of this By-law and the notice shall specify the time allowed for compliance.
- 11.2 If there is evidence that the person in possession of the property is not the registered property owner, the notice shall be served on both the registered property owner and the person in possession of the property.
- 11.3 Where notice has been sent by the Municipality pursuant to Subsections 14.1 and 14.2 of this By-law and the requirements of the notice have not been complied with, the Municipality may, in

addition to issuing set fines, cause the work to be done, and may recover the expense of such work and administration fees by action or in a like manner as municipal taxes.

11.4 Every person shall comply with a notice immediately.

12. Offence

12.1 Any person who contravenes any provisions of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act., R.S.O. 1990*, and Chapter 33, as amended.

12.2 Where a person is convicted of an offence under this By-law, the Ontario Court of Justice or any court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, make an order prohibiting the continuation or repetition of the offence by the person convicted.

12.3 If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law, and it is hereby declared that the remainder of the By-law shall be valid and shall remain in force.

13. Transition

13.1 Any pool or spa that was lawfully erected or constructed prior to the passing of this By-law, shall be deemed to be in compliance.

13.2 Any pool erected without a pool enclosure must comply with the provision of this By-law.

14. Administration

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

14.2 This By-law shall be enforced by the Chief Building Official.

14.3 This By-law shall be known as the "Pool By-Law".

14.4 In the event of conflict between the provisions of this By-law and any other By-law of the Municipality, the most restrictive provisions shall prevail.