

# THE CORPORATION OF THE CITY OF BELLEVILLE

## BY-LAW NUMBER 2006-65

### A BY-LAW TO PRESCRIBE THE HEIGHT AND DESCRIPTION OF, AND THE MANNER OF ERECTING AND MAINTAINING FENCES AND GATES SURROUNDING PRIVATELY OWNED OUTDOOR SWIMMING POOLS, WITHIN THE CITY OF BELLEVILLE

**WHEREAS** Section 11 of the Municipal Act, 2001, S.O. 2001, c. 25 (hereinafter the "Municipal Act") authorizes a municipality to pass by-laws respecting fences;

**AND WHEREAS** Subsection 9(3) of the Municipal Act authorizes a municipality to regulate or prohibit matters pertaining to fences and as part of that power, to provide for a system of approvals and to impose conditions as requirements of obtaining, continuing to hold or renewing the approval;

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

**AND WHEREAS** Section 427 of the Municipal Act authorizes a municipality to direct a matter or thing to be done under a by-law to be done at the person's expense should the person fails to do so, and to recover the costs of doing the thing or matter by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

**NOW THEREFORE** the Council of The Corporation of the City of Belleville enacts as follows:

#### 1. DEFINITIONS

##### 1.1 *In this By-law:*

**"By-law Enforcement Officer"** means the Chief Building Official or an officer of the Building Division of the City;

**"City"** means the City of Belleville;

**"Chief Building Official"** means the Chief Building Official for the City as appointed by City Council under the authority of the *Building Code Act*, S.O. 1992, c.23 as amended, or his or her designate;

**"closed construction"** means being constructed with vertical boards, bars, pipes, rails or any other materials, which have a separation distance of 38mm (1 1/2 in.) or less in between each piece of the materials, or in the case of a chain-link fence, chain link meshes of 38mm (1 1/2 in.) or less;

**"effective ground level"** means the highest level of the ground within 1.22 m (4 ft. 0 in.) horizontal distance in any direction from the swimming pool enclosure;

**"expenses"** means any and all sums of money actually spent or required to be spent by the City, and shall include but not be limited to all charges, costs, administrative fees, GST, outlays, legal fees and losses;

**"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 centre, and "hot tub" shall include tubs which are commonly called "spas" or "whirlpools";

**"maintain"** means to preserve the condition of the swimming pool enclosure from failure or decline in order to ensure safety and strength;

**"Manager"** means the Chief Building Official, and includes his or her designate;

**"open construction"** means being constructed with vertical boards, bars, pipes, rails or other materials which have a separation distance of greater than 38 mm (1 1/2 in.) but not exceeding 100 mm (4 in.) between any piece of the materials;

**"owner"** means the individual, firm or corporation that is the registered owner of a property, and includes a lessee, tenant, mortgagee in possession, and the person or persons in charge of the land;

**"permit"** means a permit issued by the Chief Building Official of the City of Belleville under this by-law certifying approval to construct a swimming pool enclosure;

**"person"** has the same meaning as in the Interpretation Act and includes a corporation;

**"replace"** or **"replaced"** shall mean the construction of a new swimming pool enclosure which takes the place of a previously constructed swimming pool enclosure;

**"self-closing device"** shall mean a mechanical device or spring which returns a swimming pool enclosure gate to its closed position within 30 seconds after it has been opened;

**"self-latching device"** shall mean a mechanical device or latch which is engaged each time the swimming pool fence gate is secured to its closed position; which will not allow the swimming pool fence gate to be re-opened by pushing or pulling, and which will ensure the swimming pool fence gate remains closed until unlatched by either lifting or turning the device itself or by a key;

**"solid construction"** means being constructed with horizontal boards, bars, pipes, rails or other materials in which no horizontal or vertical separation spaces are created;

"**swimming pool**" means any body of water located outdoors contained wholly or partly by artificial means and which can hold water exceeding 61 cm (24 in.) in depth at any point, but does not include hot tubs which are provided with a rigid lockable lid and any swimming pool owned by a public or governmental body, agency or authority;

"**swimming pool area**" means the swimming pool and any surrounding platforms, walkways, play areas and landscaped areas which lie within the swimming pool enclosure; and

"**swimming pool enclosure**" means a fence or wall or combination thereof, including any doors or gates surrounding a privately-owned outdoor swimming pool and restricting access thereto.

## **2. ADMINISTRATION**

2.1 The Building Division of the City shall be responsible for the administration and enforcement of this By-law

## **3. APPLICATION OF BY-LAW**

3.1 This By-law does not apply to:

- 1) swimming pools located completely inside a building; or
- 2) existing swimming pool enclosures previously approved by the City prior to the date of final passing of this by-law, except as provided for in clause 4.2(5).

## **4. GENERAL PROVISIONS**

4.1 The requirements of this by-law with respect to swimming pool enclosures apply equally to all swimming pools regardless of their designation as in ground, above ground or on ground.

4.2 No person shall:

- 1) locate, construct, erect, replace, or install or cause to be located, constructed, erected, replaced, or installed a swimming pool or swimming pool enclosure unless a permit has been issued by the City pursuant to this by-law; and
- 2) erect or maintain or cause to be erected or maintained a swimming pool enclosure around the entire swimming pool except in accordance with the provisions of this By-law; and

- 3) place, cause or permit water to be placed or to remain in a swimming pool unless a swimming pool enclosure has been erected in accordance with the requirements of this by-law and a Final inspection of the swimming pool enclosure has been performed and been passed by the City and unless the person maintains the swimming pool enclosure in a good state of repair in accordance with the standards of this by-law; and
- 4) use the swimming pool unless a swimming pool enclosure has been erected in accordance with the requirements of this by-law and a Final inspection of the swimming pool enclosure has been performed and been passed by the City and unless the person maintains the swimming pool enclosure in a good state of repair in accordance with the standards of this by-law; and
- 5) allow, cause or permit a swimming pool enclosure to deteriorate such that it no longer complies with the requirements of this by-law.

4.3 Application to Chief Building Official in writing

- 1) An application for a permit with the required fees (as detailed in clause 4.5) to erect a new swimming pool enclosure or for the replacement or alteration of an existing swimming pool enclosure shall be made by the owner or his or her agent, in writing to the Chief Building Official on such forms as may be prescribed by the City.

4.4 Documentation to accompany application

- 1) All such applications shall be accompanied by the following:
  - a) A site plan showing the location of the swimming pool, deck (if applicable), pump, filter and proposed swimming pool enclosure in relation to all existing property lines, and man made structures located on the property, (i.e. Decks, sheds, buildings etc.). This plan shall also show any natural or man-made features, which are located closer than 1.22m (4'-0") from the exterior of the swimming pool enclosure which could facilitate the climbing of the swimming pool enclosure.
  - b) The site plan above shall also include the location and size of all gates, which provide access through the swimming pool enclosure into the swimming pool area.
  - c) Swimming pool enclosure details including exterior elevations of the swimming pool enclosure which details:
    - i) the type of fencing to be installed (ie. Chain Link, Pressure

- Treated Wood etc.),
- ii) the type and size of all members, which comprise the swimming pool enclosure,
- iii) dimensions showing the height of the swimming pool enclosure, as well as spacing of all horizontal and vertical members, and
- iv) details and dimensions showing how the swimming pool enclosure is to be anchored to the ground.

d) Gate details are to be provided for every gate, which forms part of the swimming pool enclosure showing:

- i) all of the information noted in (c) above, and
- ii) the type and location of self closing device, and location and type of self latching device.

#### 4.5 Fees and Deposit

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- 1) The fee required to accompany an application for a swimming pool enclosure permit shall be \$10.00 / \$1,000.00 of construction value of the enclosure with a minimum fee of \$50.00 plus a \$250.00 refundable deposit;
- 2) Once the required inspections have been conducted and it has been determined that the swimming pool enclosure complies with the requirements of the swimming pool enclosure by-law, the deposit noted in clause 4.5 (1) above shall be refunded to the person who initially paid it.”

#### 4.6 Permit Revocation

- 1) The Chief Building Official may revoke a permit where it was issued on mistaken or false information and shall provide written notice to the permit holder of the revocation.

#### 4.7 For the purpose of this By-law:

- 1) The distance between horizontal boards, bars, pipes, rails or other materials used for a swimming pool enclosure shall be measured from the top of the upper horizontal piece of material, to the top of the next lower horizontal piece of material used to construct the swimming pool enclosure.
- 2) The distance between vertical boards, bars, pipes, rails, or other materials are measured from the inside of the boards, bars, pipes, rails, or other materials.

- 3) The short form measurements used in this by-law shall have the following meaning:
- a) "cm" means centimeter;
  - b) "ft." means feet;
  - c) "ga." means gauge;
  - d) "in." means inch;
  - e) "lb" means pound;
  - f) "m" means meter; and
  - g) "mm" means millimeter.

## **5 General Specifications**

### **5.1 No swimming pool enclosure shall:**

- 1) Have any horizontal or diagonal support or brace unless the support or brace is on the inside of the enclosure and the enclosure is of closed construction, or the horizontal rails are separated by a minimum clear vertical distance of 1.22m (48"); or
- 2) be constructed of horizontal boards, bars, pipes, rails or other materials unless the enclosure is of solid construction, such that it does not facilitate climbing from the outside; or
- 3) have a separation distance between vertical boards, bars, pipes, tubes, rails or other materials exceeding 100mm (4 in.), or in the case of a chain link fence, have a chain link mesh exceeding 38mm (1 1/2 in.); or
- 4) have a ground clearance space or gap greater than 100mm (4 in.) at any point under the enclosure between the bottom rail, board, pipe, or other support and the effective ground level; or

**2011-96** 5) be located closer than 1.0 m (3.28ft.) to the waters edge; or

**2007-104** 6) be less than 1.52 m (5 ft.) in height; or

**2007-104** 7) be located closer than 1.2 m (4 ft.) 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.

### **5.2 Hot tubs exempt**

- 1) Except as provided in 5.2(2), a hot tub is exempt from the requirements of this by-law;

- 2) The owner of every hot tub shall keep a secure cover of rigid material locked in place over the opening at all times when the hot tub is not occupied, and no person shall leave a hot tub without first locking the cover in place to prevent access when the hot tub is not occupied.

5.3 Swimming Pool Enclosures of Wooden Construction

- 1) In addition to the requirements of this Part, every swimming pool enclosure of wooden construction shall:
  - a) be supported by vertical wooden posts with a minimum size of 100 mm x 100 mm (4 in. x 4 in.) nominal, spaced not more than 2.44m (8 ft.) apart, securely anchored into the ground.
  - b) be constructed with vertical boards with a minimum nominal dimension of 25mm x 100mm (1x4")
  - c) be constructed with a horizontal top rail and a horizontal bottom rail with a minimum nominal dimension of 50mm x 100mm (2" x 4")

5.4 Swimming Pool Enclosures of Chain Link Construction

- 1) In addition to the requirements of this Part, every swimming pool enclosure of chain link construction shall:
  - a) have a mesh consisting of 12 ga. galvanized steel wires, or of 14 ga. steel wires covered with vinyl or other types of plastic approved by the Manager, yielding a total thickness equivalent to a 12 ga. galvanized steel wire; and
  - b) be supported by galvanized or vinyl coated steel vertical posts with a minimum diameter measurement of 38 mm (1 1/2 in.) spaced not more than 3.043m (10 ft.) apart, installed as per manufacturers instructions; and
  - c) have top and bottom horizontal rails or pipes firmly fastened to the vertical posts made of galvanized steel pipe with a minimum diameter of 32 mm (1.25 in.). A galvanized steel 9-gauge bottom wire may be substituted for the bottom rail or pipe.

5.5 Swimming Pool Enclosures of Other Materials:

- 1) Where a swimming pool enclosure is made of materials or construction other than prescribed by this by-law, it may be approved by the Chief Building Official by the issuance of a permit for the enclosure if s/he

determines that the enclosure would yield an equivalent or greater degree of safety as provided in the requirements under this By-law.

5.6 Prohibited Materials

- 1) No part of a swimming pool enclosure shall contain barbed wire, electrical wiring, sharp projections, or any other objects or materials that would create a danger to the safety of any persons or animals.

5.7 Additional Requirements for Gates, Doors, and Entrances

- 1) Where a gate forms part of a swimming pool enclosure, it shall be:
  - a) Supported on substantial metal hardware hinges; and
  - b) self-closing by means of a self-closing device; and
  - c) self-latching by means of a self-latching device at the top of and on the inside of the gate; and
  - d) a minimum of 1.52m (5 ft) in height; and
  - e) kept locked at all times, when there is not a responsible person present supervising the pool.
- 2) Double swimming pool enclosure gate
  - a) No person shall construct or maintain a double swimming pool fence gate access without one of the two gates having a self-closing device and a self latching device. The gate of this 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.
- 3) Where a door forms part of the swimming pool enclosure but does not lead directly from a private dwelling unit, it shall be:
  - a) of such height and of such construction as will provide a degree of safety and rigidity equivalent to or greater than that of a required fence;
  - b) supported on substantial metal hardware hinges
  - c) equipped with a bolt, chain, latch, or a similar device, located at a minimum height of 1.52m (5 ft.) from the bottom of the door; and

- d) be kept locked at any time when the swimming pool contains 61 cm (24 in.) or more water in depth.
- 4) The wall of a building may form part of a swimming pool enclosure, unless the following would be located within the enclosure:
  - a) a main building entrance; or
  - b) a service entrance to a multiple occupancy building containing more than four (4) dwelling units.

#### 5.8 Construction Fence

- 1) A construction fence shall:
  - a) be 1.22 metres (4 feet) in height.
  - b) consist of vertical wood lath with openings not greater than 38 millimetres (1.5 inches), or of plastic mesh with a mesh not greater than 38 millimetres (1.5 inches).
  - c) have steel T-bar posts at intervals of not more than 3 metres (10 feet).
  - d) have a 9 gauge galvanized steel or vinyl coated wire at both the top and the bottom.
  - e) be permitted only during the construction of a swimming pool and shall be replaced with a permanent swimming pool enclosure that complies with the requirements of this by-law prior to filling the swimming pool with water.

## 6 ENFORCEMENT

- 6.1 A By-law Enforcement Officer may cause a written Order to Comply to be delivered to any person in contravention of this by-law, specifying the nature of the by-law contravention, and directing the person to correct the by-law contravention within a specified time; and
- 6.2 A By-law Enforcement Officer may order any person in contravention of this by-law to drain the swimming pool until such time as an inspection by a By-Law Enforcement Officer has verified that the by-law contravention outlined in the Order to Comply, has been corrected.
- 6.3 If any person fails to comply with an Order under clauses 6.1 or 6.2, within the time prescribed therein, in addition to any other remedies available to it,

the City may do any or all of the following, on behalf of the person:

- 1) remove, replace, and/or repair parts of or the entire swimming pool enclosure; or
  - 2) drain the swimming pool of water.
- 6.4 Any materials or structures removed by the City under clause 6.3 may be deposited on the owner's property or stored at the City for thirty (30) days at the owner's expense. Any item stored by the City and not retrieved by the owner within thirty (30) days may be disposed of by the City in any manner as it deems appropriate.
- 6.5 The City may recover the costs from the owner for the work done by the City on behalf of the owner under clauses 6.3 and 6.4 by action, or by adding the costs to the tax roll and collecting them in the same manner as taxes.
- 6.6 A By-Law Enforcement Officer may enter upon land at any reasonable time for the purpose of administering or enforcing this by-law.

## **7 SERVICE OF DOCUMENTS**

- 7.1 Service of a Notice or Order under this by-law is sufficiently given if delivered personally or sent by registered mail to the owner or owner's agent at the address provided on the permit application submitted under this by-law.
- 7.2 Service by registered mail shall be deemed to be made on the fifth day after mailing.

## **8 PENALTY**

- 8.1 Every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine as provided for under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

## **9. VALIDITY & INTERPRETATION**

- 9.1 If a court of competent jurisdiction declares any provisions or part of a provision of this Bylaw to be invalid or to be of no force and effect, it is the intention of Council in enacting this By-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.
- 9.2 All words importing the singular number shall include the plural, and words

imparting the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the By-law otherwise requires.

10. **REPEAL**

10.1 THAT By-law Numbers 10692 and 9793 (former City of Belleville swimming pool fence by-laws) and By-law Number 3400 (former Township of Thurlow swimming pool fence by-law) and all amendments thereto are hereby rescinded and all by-laws or parts of by-laws inconsistent with the provisions of this by-law are hereby rescinded.

**THIS BY-LAW SHALL COME INTO FORCE AND TAKE EFFECT IMMEDIATELY ON AND AFTER THE PASSING THEREOF.**

Read a first time this 10th day of April 2006.

Read a second time this 10th day of April 2006.

Read a third time and finally passed this 10th day of April 2006.

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MARY-ANN SILLS                      MAYOR

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JULIE ORAM                              CITY CLERK