



By-Law 94-59

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To regulate the protective enclosure of privately owned outdoor swimming pools and to repeal By-law 77-104.

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BY-LAW NUMBER 94-59

A By-law of the Corporation of the City of Barrie to regulate the protective enclosure of privately owned outdoor swimming pools and to repeal By-law 77-104

WHEREAS, Subsection 23 of Section 210 of the Municipal Act, 1990, (Chapter 302 of R.S.O.) permits a by-law to be passed by a municipal council to regulate fences and gates that enclose privately owned outdoor swimming pools and other related matters,

AND WHEREAS, the Council of The Corporation of the City of Barrie deems it expedient to provide such regulations,

AND WHEREAS, the Council of The Corporation of the City of Barrie adopted By-law 77-104,

AND WHEREAS, by resolution 94-G-124, the Council of The Corporation of the City of Barrie deems it expedient to amend the by-law to regulate the protective enclosure of privately owned outdoor swimming pools.

NOW THEREFORE, the Council of the Corporation of the City of Barrie enacts as follows:

1. SHORT TITLE

This By-law may be cited as the "Pool Enclosure By-law".

2. DEFINITIONS

In this By-law:

- (1) "Authority having jurisdiction" means the Chief Building Official and any Building Inspector or Property Standards Officer authorized by the Chief Building Official to administer this by-law.
- (2) "Building Inspector" means an inspector appointed by the Council of the Corporation to inspect buildings and structures pursuant to the Building Code Act.
- (3) "Chief Building Official" means the person appointed by the Council of the Corporation to administer the Building Code pursuant to the Building Code Act.
- (4) "Corporation" means the Corporation of the City of Barrie.
- (5) "Enclosure" means a fence, wall or other structure or thing, including gates and doors, which surrounds the perimeter of a pool which would discourage the entry of a person into the enclosed area.

- (6) "Pool" means a privately-owned outdoor body of water,
- (a) contained in a container that is,
 - (i) artificial, manufactured or assembled;
 - (ii) capable of retaining water measuring more than 460mm (18.1 inches) in depth at any point, and
 - (iii) capable of being used for swimming, bathing, diving or wading,
 - (b) and includes,
 - (i) manufactured swimming pools, both above-ground and in-ground;
 - (ii) custom built pools; and
 - (iii) hot tubs and spas,
 - (c) but does not include,
 - (i) irrigation ponds on farms used for watering livestock or for irrigation;
 - (ii) naturally formed depressions in the ground surfaces
 - (iii) garden or fish ponds used as landscaping features with plant materials grown in and around the pond; and
 - (iv) public swimming pools as defined and regulated by the Ontario Building Code.
- (7) "Property Standards Officer" means an inspector appointed by the Council of the Corporation assigned the duties of enforcing the Corporation's Minimum Property Maintenance and Occupancy Standards By-law.

3. ADMINISTRATION AND ENFORCEMENT

The Chief Building Official shall be responsible for the administration and enforcement of this by-law.

4. POOL ENCLOSURE PERMIT

- (1) No person shall excavate for, erect or install a pool, or cause the excavation for, erection of or installation of a pool unless a permit for the pool enclosure has been issued by the Chief Building Official.
- (2) To obtain a pool enclosure permit, an applicant shall file an application in writing on forms prescribed by and available from the Chief Building Official, and shall supply any other information relating to the application as required by the Chief Building Official.

- (3) Every pool enclosure permit application shall:
- (a) describe the land on which the work is to be done, by a description that will readily identify and locate the site on which the pool will exist;
 - (b) be accompanied by plans, sketches and specifications about the pool enclosure as described in this by-law;
 - (c) be accompanied by the required fees as determined in accordance with Schedule "A";
 - (d) state the names, addresses and telephone numbers of the owner, applicant and the constructor;
 - (e) be signed by the applicant who shall certify as to the truth of the contents of the application.
- (4) The Chief Building Official shall, where the conditions in Subsection 4(3) above have been fulfilled, issue a pool enclosure permit to the applicant unless,
- (a) the proposed pool or pool enclosure will contravene this by-law or any other applicable law;
 - (b) the application for it is incomplete; or
 - (c) any fees due are unpaid.
- (5) Where an application for a permit remains incomplete or inactive for 30 days after it is made, the application may be deemed by the Chief Building Official to have been abandoned, without further notice to the applicant.

5. PLANS AND SPECIFICATIONS

- (1) Every applicant shall furnish,
- (a) sufficient plans, specifications, documents and other information to enable the Chief Building Official to determine whether the proposed pool enclosure conforms to this by-law and any other applicable laws;
 - (b) a site plan referenced to a current plan of survey certified by a registered Ontario Land Surveyor and a copy of such a survey shall be filed with the municipality unless this requirement is waived because the Chief Building Official is able, without having a current plan of survey, to determine whether the proposed pool and pool enclosure conforms to this by-law and any other applicable laws. The site plan shall include,

- (i) lot size and dimensions of the property;
 - (ii) setbacks of the pool and pool enclosure from existing and proposed buildings and property lines;
 - (iii) existing and finished ground levels or grades, and
 - (iv) existing rights of way, easements and municipal services.
- (2) Plans submitted shall be legible and be drawn to scale upon paper or other suitable and durable material to the satisfaction of the Chief Building Official.
- (3) Plans and specifications furnished according to this by-law become the property of the municipality and will be disposed of or retained in accordance with relevant legislation.

6. FEES

- (1) The Chief Building Official shall determine the required fees calculated in accordance with Schedule "A" for the proposed pool enclosure and the applicant shall pay such fees at the time of making an application.
- (2) Upon written request, the Chief Building Official shall determine the amount of fees, if any, that may be refunded in accordance with Schedule "A" in the case of,
- (a) withdrawal of an application,
 - (b) abandonment of an application,
 - (c) denial of a permit, or
 - (d) revoking of a permit.

7. POOL ENCLOSURE COMPLIANCE

- (1) No person shall erect or install or cause to be erected or installed any pool enclosure except in accordance with this by-law.
- (2) No person shall make a material change or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying, filing details with and obtaining the authorization of the Chief Building Official.
- (3) No person shall erect or install or cause to be erected or installed any pool enclosure except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued and any changes to them authorized by the Chief Building Official.

- (4) No person shall place water or allow water to be placed in any pool to a depth of more than 460mm unless the pool is safely enclosed by a pool enclosure that complies with the standards set out in this by-law.
- (5) Every pool shall continue to be enclosed by a pool enclosure that complies with the standards set out in this by-law so long as water remains, or is capable of remaining in the pool to a depth of more than 460mm.

8. POOL ENCLOSURE STANDARDS

- (1) Every pool enclosure shall be designed, constructed and maintained so as to discourage the entry of small children into the pool area.
- (2) The following standards are deemed by the Corporation to satisfy the intent of Article 8.(1) above.
 - (a) **HEIGHT:** Every pool enclosure shall be not less than 1.2 metres (47.23 inches) in height measured from the finished grade and any climbable fixture or feature on the exterior side of the pool enclosure, to the top of the pool enclosure, as determined at the time of the initial pool enclosure approval.
 - (b) **RIGIDITY:** Every pool enclosure shall be constructed and maintained to be rigid and secure, able to resist any reasonable lateral forces that may be applied to the enclosure material within its minimum required height.
 - (c) **OPENINGS:** No openings, spaces or gaps in the enclosure material shall allow the passage of a spherical object having a diameter of 100mm (3.94 inches) within the enclosure's minimum required height.
 - (d) **NON-CLIMBABLE:** Within the enclosure's minimum required height, no horizontal or diagonal components shall be located so as to facilitate the climbing of the enclosure. Horizontal or diagonal members shall be spaced not less than 900mm (35.42 inches) measured between the top edge of adjacent members.
 - (e) **GATES AND DOORS:** All gates and doors of the pool enclosure other than from the property's dwelling unit, shall be kept in a closed, secure and latched position whenever the pool area is unattended by a supervisory adult.

All gates shall be of equivalent construction and height as the minimum requirements of the pool enclosure and shall be supported on substantial hinges.

- (3) Without limiting the generality of the above noted principles, the following situations shall be further regulated within the minimum required height of the enclosure as follows.

(a) **BOARD FENCES**

- (i) All board material shall be of minimum 19mm thickness (1 inch nominal thickness).
- (ii) All horizontal support rails shall be of minimum 39mm x 89mm (nominal 2" x 4") material.
- (iii) All support posts shall be of minimum 89mm x 89mm (nominal 4" x 4") material spaced not more than 2.5m (8.2 feet) apart.

(b) **LATTICE FENCES**

- (i) The openings of any lattice material shall be not greater than 51mm x 51mm (2" x 2") in size.
- (ii) All lattice material shall be laterally supported at all edges and at horizontal and vertical spacing of not more than 1.2 metres (3.94 ft).

(c) **CHAIN LINK FENCES**

- (i) All chain link fences, posts and rails shall be of galvanized or vinyl coated material.
- (ii) All chain link mesh material shall be a minimum of No. 14 gauge wire.
- (iii) The openings of any chain link fencing material shall be not greater than 51mm x 51mm (2 inch x 2 inch) in size.
- (iv) The chain link mesh material shall be supported at the top and bottom by an approved reinforcing cable or a rail.
- (v) Every chain link pool enclosure shall be supported by posts that are not less than 38mm (1.5 inches) in diameter, spaced not more than 2.5 metres (8.20 ft.) apart.

(d) **ABOVE GROUND POOLS**

Only the ladders or stairs providing access to an above ground pool need be enclosed in accordance with this by-law provided the following conditions are maintained:

(i) The sides of an above ground pool shall be not less than 1.2 metres (3.94 ft.) in height measured from the finished grade and any climbable fixture or feature on the exterior face of the pool wall to the top rail of the pool wall, as determined at the time of the initial pool enclosure approval.

(ii) Pumps, air conditioners, heaters, filters or other appliances or equipment shall be located not less than 1.2 metres (3.94 ft.) from the top rail of the pool walls or shall be enclosed in accordance with this by-law.

(e) **SPAS**

Outdoor spas need not be enclosed by a pool enclosure provided they are enclosed by a solid, locked cover that is secured over the entire water surface when the area surrounding the spa is unattended by a supervisory adult.

(f) **OTHER MATERIALS**

(i) Other fencing materials may be approved by the Chief Building Official where it can be demonstrated that the material will perform with an equivalent degree of safety as outlined in Section 8 (2) of this by-law.

(g) **TEMPORARY FENCING**

For a period of not more than two weeks, sections of a pool enclosure can be replaced with temporary fencing material such as plastic mesh to facilitate maintenance or access to the pool area, provided the temporary fence material is;

- (i) at least 1.2 metres (3.94 ft.) in height
- (ii) securely supported by posts spaced not more than 2.0 metres (6.56 ft.) apart, and
- (iii) securely fastened to the remaining sections of the pool enclosure.

(h) **PROHIBITED MATERIALS**

- (i) No barbed wire or anything having similar dangerous characteristics are permitted as a component of a pool enclosure.
- (ii) No electrical current is permitted to be connected to or conducted through any part of a pool enclosure.

9. PENALTIES

- (1) Any person who contravenes any provision of this by-law is guilty of an offence.
- (2) A person who is convicted of an offence is liable to a \$5,000 fine as setout in the Provincial Offences Act and in By-law 90-268.

10. BY-LAW REPEALED

- (1) That By-law 77-104 is hereby repealed.
- (2) This by-law comes into force and has effect on the date of its enactment.

READ a first and second time this 18th day of April, 1994.

READ a third time and finally passed this 18th day of April, 1994.

THE CORPORATION OF THE CITY OF BARRIE

MAYOR

CITY CLERK

**POLICY & PROCEDURE
FOR
POOL FENCE ENCLOSURES**

1. REGULATION

The requirement to safely enclose a pool is a regulatory matter of the City of Barrie administered by the Chief Building Official. The regulations are contained in a municipal by-law.

2. PERMIT APPLICATIONS

- (a) Applications for a pool enclosure permit shall be submitted by the owner or his agent, on prescribed forms, to the office of the Chief Building Official.
- (b) The applications shall be reviewed and discussed with the applicant to confirm thoroughness of information. Fees shall be collected and a receipt issued.
- (c) The application shall be entered into the computer filing system, and a permit number assigned to the application.
- (d) A file folder shall be prepared with supplementary forms and a permit placard.
- (e) The file shall be reviewed for compliance with the municipal zoning by-law and signed by the zoning inspector.
- (f) The file shall be reviewed by any other municipal staff as deemed necessary to confirm compliance of the project with any other municipal regulations.
- (i) The owner shall be notified of any other agency approvals that may be required to be submitted, as soon as they become known.
- (j) Plans describing the type of pool enclosure shall be reviewed for compliance with the pool enclosure by-law.
- (k) The owner shall be notified of any issues that may affect the issuance of a permit forthwith as they arise.

3. PERMIT ISSUANCE

- (a) The permit shall be issued when the application has been reviewed thoroughly and found to be in compliance with all regulatory requirements.
- (b) The applicant shall be notified of the permit issuance and asked to come to the office to pick up the permit documents. The applicant shall be advised of the required inspection notification.

4. INSPECTIONS

- (a) An inspection shall be carried out as soon as possible after receiving notification of the readiness to inspect.
- (b) Notwithstanding the requirement to be notified, an inspection shall be carried out of a property when the permit is more than 4 weeks old and no notification has been received.

(c) When inspecting, the pool enclosure shall be thoroughly inspected to confirm compliance of the enclosure with the requirements of the pool enclosure by-law and of the approved permit drawings.

4. (d) If the pool enclosure is complete and satisfactory, the owner shall be advised that the pool can be filled and that no further inspections will be required.

(e) If the pool enclosure includes any sections of temporary fencing, and such enclosure meets the requirements of the pool enclosure by-law, the owner shall be advised that the pool can be filled, but that the enclosure must be completed with permanent fencing within two weeks, and notification given for a re-inspection.

(f) When reinspection of a pool enclosure is required due to temporary fencing, the inspector shall schedule to return to the property in two weeks time, even if notification is not received.

5. CLOSING FILES

(a) The inspection file for a pool enclosure permit shall be closed as soon as possible following a satisfactory inspection of the completed pool enclosure.

6. ENFORCEMENT

(a) If, during an inspection pursuant to a pool enclosure permit, it is found that the pool enclosure does not meet any item of the by-law regulation, the owner shall be notified of the deficiency and the options available to correct same. The owner shall be asked to notify the office for a re-inspection prior to the placing of any water in the pool.

(b) Notwithstanding the requirement to notify, the inspector shall schedule to return to the property 1 week following the last inspection.

(c) If, upon reinspection, it is found the deficiency has not been satisfactorily resolved, the inspector shall provide the owner with a written order, specifying the deficiency, and requiring compliance and a reinspection of the pool enclosure prior to filling the pool. A maximum of 1 week shall be granted to comply with the by-law.

(d) Unless notified earlier, the inspector shall return to the property 1 week from the last inspection to determine compliance of the pool enclosure. An inspection fee is charged for this inspection.

(e) If, upon reinspection, the pool enclosure remains incomplete, the inspector shall prepare for court charges as per the Provincial Offences Act.

DANGEROUS CONDITIONS

- (f) If, at any time, the inspector discovers any dangerous, unsafe conditions, such conditions shall be brought to the attention of the Chief Building Official to determine what emergency measures are to be taken to protect the public.

WATER IN BEFORE AUTHORIZED

- (g) If, upon inspection of a property, water has been placed in a pool and the pool enclosure does not meet the requirements of the by-law, the inspector shall issue an order to the owner requiring compliance with at least temporary fencing within 24 hours, after which the inspector shall prepare for court charges if the matter is not corrected.

6. NO PERMIT

- (h) If, during the normal course of duties, an inspector finds a pool installed and there is no record of a permit issued for the pool enclosure, the inspector shall notify the owner in writing of the violation of the by-law. The pool enclosure shall be inspected thoroughly forthwith to determine compliance. Any deficiencies found shall be identified in writing to the owner, who shall be given 24 hours to correct any deficiencies with at least temporary fencing, after which the inspector shall prepare for court charges if the matter of the deficiencies are not corrected. The owner shall be granted one week to submit an application for a permit, with appropriate follow up by the inspector.

COMPLAINTS

- (i) Upon receipt of a bona fide complaint, an inspector shall attend to a property where it is alleged that a pool enclosure has not been provided or maintained.
- (j) If, upon inspection, it is found that the pool enclosure does not meet the requirements of the pool enclosure by-law, such deficiencies shall be identified in writing to the owner, who shall be given no more than 1 week to correct the matter.
- (k) Unless notified earlier, the inspector shall return to the property after 1 week to confirm satisfactory compliance of the pool fence enclosure. If the enclosure remains incomplete, the inspector shall prepare for court charges as per the Provincial Offences Act.

PERFORMING WORK

- (l) If for any reason, a pool enclosure is not adequately secured, the inspector may, after reasonable notice, enter upon the lands with a contractor to perform such work as necessary to restore or complete the requirements for a safe pool enclosure. All charges shall be invoiced to the property owner or collected in a like-manner as taxes, as authorized by Section 325 of the Municipal Act.