

# CORPORATION OF THE TOWN OF GANANOQUE

## BYLAW NO. 2011-75

---

### BEING A BY-LAW TO REGULATE FENCES AROUND PRIVATELY OWNED SWIMMING POOL IN THE TOWN OF GANANOQUE

---

WHEREAS Section 11 of the Municipal Act, S.O. 2001, c. 25 as amended, authorizes a municipality to pass by-laws respecting fences;

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

NOW THEREFORE the Corporation of the Town of Gananoque hereby enacts as follows:

1. Definitions

- 1.1. By-law Enforcement Officer shall mean a person or persons appointed by The Corporation of Town of Gananoque to enforce the provisions of this By-Law.
- 1.2. Chief Building Official shall mean the Chief Building Official of the Town of Gananoque or authorized representative.
- 1.3. Enclosure shall mean a fence, wall or other structure, including doors and gates, surrounding a privately-owned outdoor swimming pool to restrict access thereto.
- 1.4. Grade means, with reference to a building, structure or part thereof, the average elevation of the finished grade of the ground immediately surrounding such building or structure.
- 1.5. 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".
- 1.6. Maintain or "maintained" shall mean to preserve the condition of the swimming pool enclosure from failure or decline in order to ensure safety and strength;
- 1.7. Municipality shall mean the Corporation of the Town of Gananoque.
- 1.8. Owner includes a person who is the registered owner of a property, the lessee, tenant or other person that may have management, care or control of the property or a condominium corporation in the case of a property that is a condominium.
- 1.9. Permit means a permit issued by the Chief Building Official for the Town of Gananoque under this by-law certifying approval to construct a swimming pool enclosure;
- 1.10. Person includes an individual, an association, a firm, a partnership or a corporation.
- 1.11. Pool means any artificial body of water that can used for bathing or swimming that can hold 18 inches of water or more, but shall not include facilities for the purposes of providing water to livestock which are associated with and located on land devoted to the practice of farming. This includes in-ground, above-ground, portable, inflatable and hydro-massage pools, hot tubs and spas as well as decorative ponds.
- 1.12. Replace or "replaced" shall mean the construction of a new swimming pool enclosure which takes the place of a previously construct swimming pool enclosure.

- 1.13. 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;
- 1.14. Self-latching device shall mean 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;

2. Administration and Enforcement

The Municipal Law Enforcement Officer and the Chief Building Official for the Corporation of the Town of Gananoque shall be responsible for the administration and enforcement of this By-Law.

3. Application of the By-law

- 3.1. This by-law shall apply to all pool enclosures newly constructed, existing or replaced with the Town of Gananoque subject to the provisions set out in Section 5 of this By-law.

4. General Regulations

- 4.1. Every owner of a privately owned outdoor pool shall ensure that an enclosure around such a pool is constructed and maintained according to the provisions of this by-law.
- 4.2. Every owner of a hot tub shall ensure that the lockable lid is closed and locked when the hot tub is not in use unless the hot tub is within a locked pool enclosure meeting the requirements of this by-law.
- 4.3. No person shall place water in a pool in the Town unless the prescribed enclosures and gates have been erected in accordance with the provisions of this by-law.
- 4.4. No person shall allow water to remain in a pool in the Town unless the prescribed enclosures and gates have been erected in accordance with the provisions of this by-law.
- 4.5. No person shall allow, cause or permit a swimming pool enclosure to deteriorate such that it no longer complies with the requirements of this by-law.
- 4.6. No person shall place, attach, pile or lean any object or material against or near a pool enclosure so as to facilitate climbing of the pool enclosure, diminish the structural integrity of the pool enclosure or render the pool enclosure in non-conformity of this by-law.
- 4.7. A privately owned pool enclosure shall be located in the rear yard only.
- 4.8. No person shall erect a pool on a corner lot less than the required exterior or side yard requirement unless otherwise approved by the Manager of Planning. The Manager of Planning shall consider by-law enacted by the Town, size of the lot, potential hazards that may be incurred due to the location of the pool enclosure.

5. Existing Pool Enclosures

- 5.1. The provisions of this by-law shall not prevent the use of an existing pool if that enclosure was constructed prior to the effective date of this by-law in accordance with previous by-laws.
- 5.2. At such time as an existing pool enclosure is replaced or substantially altered, the replacement or altered pool enclosure shall be constructed according to this by-law.

6. Permit

- 6.1. No person shall construct or place a pool on his or her property in the Town without first obtaining a permit through the Building Department.
- 6.2. Despite Section 3.1 a permit is not required in the case of a pool which has been dismantled and is being reconstructed in the same position and the same manner in which was previously located provided that a permit was obtained for the original construction and the reinstallation meets the requirements of all currently applicable bylaws.

7. Application for Permit

- 7.1. To obtain a permit the owner shall file an application form with the Chief Building Official
- 7.2. The documentation to accompany the application shall include:

- 7.2.1. A site plan showing the location of the swimming pool, deck (if applicable), pump, filter and proposed swimming enclosure in relation to all property lines and structures located on the property.
- 7.2.2. The site plan shall also include the location and size of all gates, which provide access through the swimming pool enclosure into the swimming pool area.
- 7.2.3. Swimming pool enclosure details shall include the type of fencing installed, the height of the swimming pool enclosure and details showing how the swimming pool enclosure is to be anchored to the ground.

8. Fees

- 8.1. The fee for a permit shall be as per the current General Fees and Rates By-law.

9. Pool Enclosures

- 9.1. Every pool shall have an adequate enclosure erected around it.
- 9.2. Every pool enclosure shall be a minimum of 1.2m (4 feet) in height from grade.
- 9.3. Notwithstanding Subsection 9.2, if a pool is 1.2m (4feet) or more in height from grade, an enclosure is not required except at the access to the pool.
- 9.4. Every pool enclosure shall be of a close-boarded, chain link or other approved design by the Chief Building Official.
- 9.5. Every pool enclosure should inhibit climbing to reasonably deter access to the fenced-in area.
- 9.6. A wall of a building may form part of a swimming pool enclosure.
- 9.7. Openings through or under any part of the enclosure shall be of size so as to prevent the passage of an object having a diameter of 100 mm (4”).
- 9.8. No part of a pool enclosure shall contain barbed wired, electrical wiring, sharp projections or any other objects or materials that would create a danger to the safety of any persons or animals.

**10. Fencing:**

- 10.1. For fencing of a chain link construction:
  - 10.1.1. A mesh no greater than 38 mm (1.5")
  - 10.1.2. Constructed of galvanized steel wire not less than No.12 gauge or a minimum 14 gauge steel wire covered with vinyl forming a thickness equivalent to No.12 gauge galvanized wire.
  - 10.1.3. Support posts shall be spaced not more than 10 feet apart with top and bottom horizontal rails.
- 10.2. For fencing of a wood construction:
  - 10.2.1. Vertical boarding attached to a top and bottom rail in a manner not to facilitate climbing from the outside.
  - 10.2.2. Boards must not be spaces more than 4" apart.
  - 10.2.3. Support posts must be a minimum of 4 x 4 not more than 2.4m (8 feet) apart.
- 10.3. Other Types of fencing:
  - 10.3.1. Where a 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 it is determined that the enclosure would be an equivalent or greater degree of safety as provided in the requirements under this by-law.

**10.4. Temporary:**

- 10.4.1. A temporary fence shall be required during construction of a pool and must be replaced prior to the pool being used.
- 10.4.2. The temporary fence shall consist of 1.2m (4 feet) high plastic mesh with a steel t-bar post no more than 3m (10 feet) maximum.

**11. Above ground pools:**

- 11.1. Notwithstanding Section 10, above ground pool may have an enclosure guard, attached, as part of the required pool enclosure provided that the combined height of the pool walls and the enclosure guard is at least 1.2m (4 feet) as measured from grade.
- 11.2. Where an enclosure guard is use the guard and outside face of the pool are constructed in a manner that will not facilitate climbing.
- 11.3. Where an enclosure guard is used the entrance ladder shall be enclosed by a pool enclosure constructed in accordance of the provisions of this by-law.

**12. Hot Tubs:**

- 12.1. For a Hot Tub that is entirely constructed above ground, a prefabricated cover may be considered as the pool enclosure and may be exempt from the specifications provided:
  - 12.1.1. The cover is fitted and locked so as to prevent access when the hot tub is not in use, and no person shall leave a hot tub without first locking the cover in place to prevent access; or
  - 12.1.2. The hot tub is equipped with a guard meeting the requirements of Section 9.8.1 of this by-law.

12.1.3. The Chief Building Official is satisfied that the cover is designed in a way that the cover complies with the above subsection.

13. Additional Requirements for Enclosure Gates, Doors and Entrances:

- 13.1. Shall provide protection to the pool enclosure
- 13.2. Shall be of the height to that required for the fence.
- 13.3. Shall be equipped with a self-closing device and self-latching device located at the top and inside of the gate.
- 13.4. Shall be kept locked at all times, when there is not a responsible person is not present and supervising the pool.
- 13.5. Where a pool is accessed directly from the dwelling unit, a self-closing device shall be located on the inside access of the dwelling unit or a self-closing gate shall be installed at the entrance of pool at 1.2m (4 feet).

14. Permit Revocation

14.1. 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.

15. Penalties and Fines

15.1. Every person who contravenes any provision of this by-law is guilty of an offence and on conviction of his or her first offence is liable under this by-law to pay the set fine as provided for the Provincial Offences Act.

16. Validity

16.1. If any section, clause or provision of this by-law is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the by-law as a whole or any part thereof, other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention that the remaining sections, clauses or provisions of the by-law shall remain in full force and effect until repealed, notwithstanding that one or more provisions thereof shall have been declared to be invalid.

16.2. All words importing the singular number shall include the plural.

17. Short title

17.1. This By-law shall be referred to as the "Pool by-law".

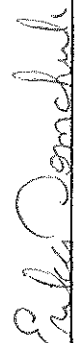
18. By-law Appealed


18.1. Any and all by-laws or portions thereof conflicting with this by-law are hereby repealed.

19. Effective Date


19.1. This by-law shall be in force and take effect immediately upon the passing thereof.

READ A FIRST AND SECOND TIME THIS 16<sup>th</sup> DAY OF AUGUST, 2011.

  
\_\_\_\_\_  
Mayor, Erika Demchuk

  
\_\_\_\_\_  
Clerk, Bonnie Dingwall

READ A THIRD TIME AND FINALLY PASSED THIS 06<sup>th</sup> DAY OF SEPTEMBER, 2011.

  
\_\_\_\_\_  
Mayor, Erika Demchuk

  
\_\_\_\_\_  
Clerk, Bonnie Dingwall