

THE CORPORATION OF THE CITY OF PEMBROKE

BY-LAW NUMBER 2003 - 35

A BY-LAW TO REGULATE FENCES AROUND PRIVATELY OWNED  
SWIMMING POOLS IN THE CITY OF PEMBROKE, ONTARIO

WHEREAS the Council of the Corporation of the City of Pembroke deems it necessary to provide a single by-law to provide for the fencing of privately owned outdoor swimming pools, requiring permits be obtained for the design and construction of enclosures, so that owners of pools can reasonably prevent unauthorized or accidental entry to their pools, as well as recognizing pool fence permits previously granted under prior municipal by-laws;

AND WHEREAS Section 9 of the Municipal Act, S.O. 2001, Chapter 25, authorizes a municipality to pass by-laws concerning the issuance of permits and related matters;

AND WHEREAS Section 11 of the Municipal Act, S.O. 2001, Chapter 25, authorizes a municipality to pass by-laws to regulate structures including fences;

AND WHEREAS Sections 2, and 8 through 11 of the Municipal Act, S.O. 2001 Chapter 25, as amended, provide for the Council of a Municipality to pass by-laws for purposes which include the provision of services and things necessary and desirable for the municipality and fostering the current and future economic, social and environmental well-being of the municipality, and powers the municipality to regulate structures including fences, and provides for the issuance of permits and related matters;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF PEMBROKE ENACTS AS FOLLOWS:

1. TITLE

This by-law shall be known and may be cited as "THE SECURITY OF PRIVATELY OWNED SWIMMING POOL BY-LAW".

2. DEFINITIONS

- (a) "BUILDING INSPECTOR" shall mean the Building Inspector appointed by City Council.
- (b) "CITY" shall mean the Corporation of the City of Pembroke.
- (c) "ENCLOSURE" shall mean a fence, wall or other structure, including doors and gates, surrounding a privately owned outdoor swimming pool to restrict access thereto.
- (d) "PERSON" shall include a Firm, Partnership, Company, Corporation, Contractor or Owner.
- (e) "PRIVATELY OWNED SWIMMING POOL" shall mean a privately owned outdoor body of water contained in part or in whole by artificial means, which hold water in excess of sixty-one (61) millimetres or twenty-four (24) inches in depth at any point.

3. ENCLOSURES

1. No person shall construct or install a privately owned outdoor swimming pool or erect a fence around same without first acquiring the necessary permit or permits from the Building Department. The application for a permit shall include a plot plan and a clear description or drawing of the fence satisfactory to the Building Inspector.
2. No person shall have a privately owned outdoor swimming pool in the City unless the area is completely enclosed by fencing in compliance with the requirements of this by-law:
  - (a) such fencing, including gates therein shall extend from the ground to the height of not less than one-hundred and fifty-two (152) centimetres or sixty (60) inches and shall fulfill the intent of prohibiting unauthorized trespass into the pool area.
  - (b) a fence forming part of such enclosure:
    - (i) shall be vertically boarded wood construction, solid wood, masonry, plastic or metal construction;
    - (ii) shall have no rails or other horizontal or diagonal bracing or attachments on the outside face that may facilitate climbing;
    - (iii) shall have no opening with a horizontal dimension greater than fifty (50) millimetres or two (2) inches; and not more than one-hundred (100) millimetres or four (4) inches apart where rails or horizontal supports are spaced five (5) feet apart;
    - (iv) shall have a ground clearance space no greater than one-hundred (100) millimetres or four (4) inches at any point under the enclosure;
    - (v) shall include no part consisting of barbed wire or have no similar dangerous characteristics such as a device for projecting electric current through the fence.

4. SECURITY

- (a) Gates shall be of the same construction and height to that required for the fence.
- (b) Gates shall be supported on substantial hinges.
- (c) Gates shall be equipped with self-closing and self-latching devices placed at the top and on the pool side of the gate or equipped with a lock.

- (d) The swimming pool area must be secured at all times except when actually used by the owner, his/her family or persons authorized by the owner to use the pool.
- (e) A fence erected on the owner's property which complies with the provisions of this by-law shall be deemed a sufficient fence, if it completely fences in the yard in which the swimming pool is located, but in no case shall the fence be closer to the pool than one-hundred and twenty-two (122) centimetres or four (4) feet.
- (f) A wall or walls of a building or buildings may form part of such fence provided that all doors affording access from a building directly to an enclosed swimming pool area, other than doors located in a dwelling unit, are equipped with a self closing device located not less than one-hundred and twenty-two (122) centimetres or forty-eight (48) inches above the bottom of the door.
- (g) Structures known as "hot tubs", "whirlpools" and "spas" need not comply with section two (2) and four (4) of this by-law provided that a substantial cover is fixed securely to the structure and locked to prevent access when the structure is not attended by a responsible person.

5. ADMINISTRATION AND ENFORCEMENT

- (a) The administration and enforcement of the by-law shall be under the authority of the Building Department of the City of Pembroke.
- (b) The provisions of this by-law shall apply to all installations or alterations of privately owned outdoor swimming pools regardless of the date of construction of such swimming pool.
- (c) Water supply from the municipal water distribution system shall be metered in accordance with the Waterworks By-Law.
- (d) The location of all privately-owned outdoor swimming pools, pool heaters, pool filters, accessory buildings, fences and other related structures are subject to the conditions imposed by the zoning and fence by-laws of the City.

6. OFFENCES AND PENALTIES

- 1. Every person who contravenes any provision of this by-law is guilty of an offence. Pursuant to the provisions of the Provincial Offences Act R.S.O. 1990, c. P. 33 and as amended, upon conviction a person is liable to a fine of not more than \$5,000.00, exclusive of costs.

2. When a person has been convicted of an offence under this by-law,
  - (a) the Ontario Court of Justice; or
  - (b) any court of competent jurisdiction thereafter,may, in addition to any penalty imposed on the person convicted, issue an Order prohibiting the continuation or repetition of the offence by the person convicted.
  
7. This by-law repeals by-law number 76-36.
  
8. This by-law shall come into force and take effect upon the final passing thereof.

READ A FIRST AND SECOND TIME this 19th day of August, 2003.

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Chief Administrative Officer

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Mayor

READ A THIRD TIME AND PASSED this 19th day of August, 2003.

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Chief Administrative Officer

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Mayor