

**As Amended by By-Law 66-2011
By-law 79-2006
of The Corporation of the City of Oshawa**

being a by-law to require the erection and maintenance of fencing around outdoor swimming pools, hydro massage pools, decorative ponds, hot tubs, spas and whirlpools.

Be it enacted and it is hereby enacted as a by-law of The Corporation of the City of Oshawa by the Council as follows:

1. Administration, Interpretation and Enforcement

1.1. Short Title

1.1.1. This By-law may be cited as the “**Pool Enclosure By-law**”.

1.2. Scope

1.2.1. This By-law applies to all property in the City of Oshawa unless otherwise indicated herein.

1.3. Enforcement

1.3.1. Where an Owner fails to comply with any provision set out in this By-law, an Order may be issued to the Owner requiring compliance within the timeframe specified in the Order.

1.3.2. An Officer who finds that a property does not conform with any of the standards prescribed in this By-law may make an Order,

- (a) stating the municipal address or the legal description of the property;
- (b) giving reasonable particulars of the repairs to be made or stating that a Pool Enclosure Permit shall be obtained or that a Pool Enclosure shall be erected; and
- (c) indicating the time for complying with the terms and conditions of the Order and giving notice that, if the Order is not complied with within that time, the municipality may carry out the Order at the owner's expense.

1.3.3. An Order may be personally delivered or served by Registered Mail. Where an Order is mailed, the Order shall be deemed delivered on the earlier of receipt of the Order by the addressee or the fifth (5th) day following the date of mailing, whether actually received or not.

1.3.4. Where an Order has been issued by the City and compliance has not been achieved within the required time period as set out in the Order the City may, through its employees and agents or persons acting on its behalf, enter upon the land to drain, fill in or fence the Pool at the expense of the Owner and any and all expenses incurred may be added to the tax roll and collected from the Owner of the property in the same manner as municipal taxes.

1.3.5. Every Owner shall comply with an Order issued pursuant to Section 1.3 of this By-law and within the timeframe specified therein for compliance.

1.4. Penalty

1.4.1. Every Person who contravenes any of the provisions of this By-law is guilty of an offence and, upon conviction, is liable to the penalties as prescribed by the *Provincial Offences Act*, R.S.O. 1990 c. P.33.

1.5. Severability

1.5.1. If any provision or part of a provision of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

1.6. Compliance with other By-Laws and Regulations

- 1.6.1. This By-law shall not be construed to reduce or mitigate any restrictions or regulations lawfully imposed by the City or by any governmental authority having jurisdiction to make such restrictions or regulations.
- 1.6.2. If there is a conflict between a provision in this By-law and a provision of any other City By-law, the provision that establishes the highest standard to protect the health, safety of the public shall apply.

1.7. Gender and Number

- 1.7.1. In this By-law, unless the contrary intention is indicated, words used in singular shall include the plural and words used in the male gender shall include the female gender and vice versa.

1.8. Measurements

- 1.8.1. Where this By-law provides metric and imperial units of measure, the metric unit of measure shall prevail. For convenience only, approximate imperial measurements have been provided in parentheses but are of no force or effect. The abbreviation “mm” stands for millimeters, “m” stands for metres, “in.” stands for inches and “ft.” stands for feet.

1.9. And/Or

- 1.9.1. The word “and” is an inclusive conjunction, the use of which indicates that all items or phrases in the subsection, article, or list in which it appears are permitted or required, as the case may be. The word “or” is an alternate conjunction, the use of which indicates that alternate or optional items or phrases in the subsection, article or list in which it appears are permitted or required, as the case may be; however, notwithstanding the foregoing, where the context permits, the word “or” may also be an inclusive conjunction having the same meaning as the word “and”.

1.10. Application of this By-Law and Repeal of Existing By-Laws

- 1.10.1. By-laws 55-85, 74-85, 48-87 and 108-97 are hereby repealed. The Standards contained in this By-law supersede prior By-laws herein noted and their regulations.

1.11. Effective Date

- 1.11.1. This By-law shall come into force on the date of passage by Council.

2. Definitions

- 2.1.1. For the purpose of interpreting the provisions set forth in this By-law, the following definitions shall apply.

“Building” means any structure consisting of a roof supported by walls or columns which is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment and includes a carport.

“Building Services” means the Building Services Branch of the City of Oshawa.

“Covering Plate Device” means metal or plexiglass device which attaches to or forms part of a metal or wrought iron gate latching device, and which restricts access to the interior self latching device from the exterior of the gate.

“Decorative Pond” means any body of water (including fishponds, water gardens and water fountains) contained in whole or in part by artificial means in which the depth of the water can exceed 0.6 metres (24 inches) at any point.

“Disrepair” means that the Pool Enclosure does not function for its intended purpose in that it is dilapidated, broken, has missing components, is constructed of materials not approved by this By-law, or is constructed in a manner not approved by this By-law.

“Grade” means the surface of the ground below a Pool Enclosure at each location where a structural support is embedded in the ground.

“Inflatable Pool” means a pool, as defined in this By-law, consisting of an air supported structure which contains or is capable of containing water with a depth in excess of 0.6m (24 inches) at any point.

“Natural Body of Water” means a creek, stream, bog, marsh, fenn, river, pond or lake created by the forces of nature and which contains water and includes ponds maintained on lands where an active Golf Course, Cemetery or Agricultural Use is carried on, whether naturally occurring or manufactured.

“Officer” means a Municipal Law Enforcement Officer appointed by the Council of the City.

“Owner” means lawful owner but also includes a lessee, tenant or occupant who is in care or control of a Property upon which a Pool is located and also includes all persons involved in the installation, excavation or erection of a Pool and Pool Enclosure.

“Permit” or “Pool Enclosure Permit” means a permit issued under this By-law.

“Person” means an Owner who may be a natural person, firm, corporation, partnership or association.

“Pool” means any body of water located outside of a building contained in whole or in part by artificial means in which the depth of water at any point can exceed 0.6 metres (24 inches) and includes swimming pools, hydro massage pools, hot tubs, spas, whirlpools and Decorative Ponds but does not include a Storm Water Management Facility or a Natural Body of Water.

“Pool Enclosure” means a fence, wall or other structure, including doors, gates and hardware used to completely enclose a Pool.

“Self-Closing Device” means a mechanical device or spring which returns a Pool Enclosure gate to its closed position within 30 seconds after it has been opened.

“Self-Latching Device” means a mechanical device or latch which is engaged each time the gate is secured to its closed position, which will not allow the gate to be re-opened by pushing or pulling, and which will ensure the Pool Enclosure gate remains closed until unlatched by either lifting or turning the device itself directly or by a key.

“Standards” means the standards for the construction and maintenance of Pool Enclosures around Pools prescribed by Section 5 of this By-law.

“Storm Water Management Facility” means a facility approved by The Corporation of the City of Oshawa which is designed and constructed to contain storm water run-off from urban areas.

“Substantial Repair” means, with respect to gates, the repair or replacement of 50% or more of the components of the gate and with respect to fences, where any continuous line of fencing between two intersecting angles of any degree undergoes repair or replacement of 50% or more of the components of such line.

3. General Duties and Obligations

3.1. Repair and Workmanship

3.1.1. All repairs and maintenance of a Pool Enclosure required by the provisions of this By-law are the responsibility of the owner and shall be carried out in a manner accepted as good workmanship in the trades concerned, utilizing materials suitable and sufficient for the purpose and carried out in accordance with the industry specifications and requirements.

3.1.2. Any gate or any continuous line of fencing between two intersecting angles of any degree that is 50% or more in Disrepair shall be replaced in its entirety to satisfy the standards contained in this By-law.

4. Pool Enclosure Permit

4.1. Permit Application

4.1.1. A Pool Enclosure Permit shall be obtained for new Pool Enclosures and for Pool Enclosures that undergo Substantial Repair.

- 4.1.2. Notwithstanding the standards and requirements of Section 5 of this By-law, where a Pool Enclosure exists on the date this By-law comes into force, and such Pool Enclosure remains in good repair, that same Pool Enclosure need not comply with Section 5 provided that the Pool Enclosure did comply with the standards in force pursuant to any by-law governing the erection of Pool Enclosures at the time the same Pool Enclosure was erected, and continues to so comply with those previous standards. Nothing in this Article shall permit the replacement or Substantial Repair of a Pool Enclosure contrary to the provisions of Section 5 of this By-law.
- 4.1.3. No Person shall place water or allow water to remain in any Pool unless a Permit has been issued and the Pool Enclosure has been inspected and approved by an Officer and constructed and maintained in compliance with the Standards.
- 4.1.4. The plans submitted with the permit application shall:
- (a) show the proposed location of the Pool in relation to the Pool Enclosure, the property boundary lines and adjacent buildings or structures; and
 - (b) Provide complete details of the Pool Enclosure including the location, type of fence, fencing material, gates and latching devices.
- 4.1.5. Upon issuance of a Pool Enclosure Permit, all work on the Pool Enclosure shall be completed within four (4) months failing which, that Permit shall expire and a new Permit must be obtained for any future work.
- 4.1.6. No Person shall locate an artificial body of water with a depth of 30 centimetres (12 inches) to 60 centimetres (24 inches) anywhere other than in an enclosed side or rear yard that has fencing with a minimum height of 120 centimetres (48 inches).

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5. Standards

5.1. Temporary Pool Enclosures

- 5.1.1. The Owner of a property where a Pool is being installed shall ensure that during Pool installation a temporary Pool Enclosure encircles the Pool once water is placed and maintained in the pool at all times to prevent access to the Pool. The temporary enclosure shall remain in place until the Officer has inspected and approved a permanent pool enclosure. The maximum length of time a Temporary Pool Enclosure may be used and maintained is seven (7) days.
- 5.1.2. A temporary Pool Enclosure shall consist of a 1.5m (5 ft.) high plastic or chain link fence with mesh openings no larger than 38mm (1.5 in.), containing steel embedded T-bar posts a maximum of every 3.0m (10 ft.) apart and utilizing a 9 gauge galvanized steel wire located at the top and bottom of the Temporary Pool Enclosure. Notwithstanding the requirements of 5.1.2, an Officer may permit alternative temporary fencing which provides equivalent standards or exceeds the standards required.

5.2. Permanent Pool Enclosures

- 5.2.1. Pool Enclosures on any property shall extend from the ground to a height, measured from Grade on the outside of the Pool Enclosure, of not less than 1.5 metres (5 feet).
- 5.2.2. The Owner of a Pool shall ensure that any access points forming part of a Pool Enclosure shall be kept latched at all times unless a responsible person is present and supervising the enclosed area.
- 5.2.3. Doors providing access from a Building directly to an enclosed swimming pool area including doors leading from an attached or detached garage but excluding doors located in a Dwelling unit, shall be self-closing and equipped with a self-latching device located not less than 1.5 m (5 ft.) above the bottom of the door.
- 5.2.4. No part of a Pool Enclosure shall consist of barbed wire or similar dangerous devices, including but not limited to, the transmission of an electrical current through the Pool Enclosure.

5.3. Construction of Fencing

- 5.3.1. All Pool Enclosures shall be constructed of wood, metal or chain link fencing.
- 5.3.2. All Pool Enclosures, or such portions thereof, constructed of wood shall comply with Tables 5.2.0.A and 5.2.1.A.
- 5.3.3. All Pool Enclosures, or such portions thereof, constructed of metal shall comply with Tables 5.2.0.A and 5.2.2.A.
- 5.3.4. All Pool Enclosures, or such portions thereof, constructed of chain link shall comply with Tables 5.2.0.A and 5.2.3.A.
- 5.3.5. Notwithstanding the provisions of Section 5, a Pool Enclosure may be built other than as provided in this By-law to standards which are equivalent or exceed the standards and which are acceptable to an Officer.

5.4. Construction of Gates

- 5.4.1. Every gate in a Pool Enclosure shall be supported on hinges substantial enough to hold the weight of the gate and constructed in accordance with the requirements of subsections 5.3.2, 5.3.3, 5.3.4 or 5.3.5 and be Self-Closing and equipped with a lockable Self-Latching device located on the interior face near the top of the gate.
- 5.4.2. Metal gates used in a Pool Enclosure shall be equipped with a Covering Plate Device, a minimum of 0.3 m (12 in.) x 0.3 m (12 in.) size, covering the latching device from the outside of the gate. The covering plate device shall be a minimum thickness of 6.3 mm ($\frac{1}{4}$ " in.).
- 5.4.3. Double gates used in a Pool Enclosure shall have one of the two gates equipped with a Self-Closing and Self-Latching device to provide access. The other gate shall have a securing device permanently affixed to the ground or other non-moveable object, which prevents access through this gate without lifting or removing this device and then releasing the latch. This gate must be securely closed unless open for access and supervised to prevent unauthorized access to the pool area.

Table 5.2.0.A**General Provisions for Pool Enclosures**

Provisions	All Properties
i. Minimum Height of Fences and Gates	1.5 m (5 ft.) or 1.8 m (6 ft.)
ii. Maximum Clearance Between Bottom of Fence and Grade	100 mm (4 in.)
iii. Minimum Distance to Permanent Climbable Condition Adjacent to Fencing on Neighbouring Side	0.9 m (35.4 in.) but not applicable if the fence height is increased to 1.8 m (6 ft.)

Table 5.2.1.A**Wood Fence Construction for Pool Enclosures**

Provisions	All Properties
i. Horizontal Rail Minimum Size	38 mm (1-1/2 in.) x 89 mm (3-1/2 in.)
ii. If Minimum Vertical Spacing between Horizontal Railings	0.9 m (35.4 in.)
iii. Then Maximum Spacing between Vertical Boards	100 mm (4 in.)
iv. If Minimum Vertical Spacing between Horizontal Railings	Less than 0.9 m (35.4 in.)
v. Then Maximum Spacing between Vertical Boards	38 mm (1-1/2 in.)
vi. Vertical Board Minimum Size	19 mm (3/4 in.) x 89 mm (3-1/2 in.)
vii. Fence Post Maximum Spacing	2.4 m (8 ft.)
viii. Minimum Size of Fence Posts	89 mm (3-1/2 in.) x 89 mm (3-1/2 in.)
ix. Minimum Depth Below Grade of Imbedded Fence Posts	1.2 m (4 ft.)

Table 5.2.2.A**Metal and Wrought Iron Fence Construction for Pool Enclosures**

Provisions	All Properties
i. Minimum Vertical Spacing between Horizontal Railing	0.9 m (35.4 in.)
ii. Vertical Railing Maximum Spacing	100 mm (4 in.)
iii. Minimum Depth Below Grade of Imbedded Fence Posts	1.2 m (4 ft.)

Table 5.2.3.A

Chain Link Fence Construction for Pool Enclosures

Provisions	All Properties for Posts Spaced Maximum 2.4 m (8 ft.)	All Properties for Posts Spaced Maximum 3 m (10 ft.)
i. Minimum Vertical Spacing between Horizontal Railings	0.9 m (35.4 in.)	0.9 m (35.4 in.)
ii. Maximum Chain Link Mesh Size for 1.5 m (5 ft.) Fencing	38 mm (1-1/2 in.)	38 mm (1-1/2 in.)
iii. Maximum Chain Link Mesh Size for 1.8 m (6 ft.) Fencing	38 mm (1-1/2 in.) or 50 mm (2 in.)	38 mm (1-1/2 in.) or 50 mm (2 in.)
iv. Minimum Diameter/Gauge of Mesh including Vinyl Covering	2.6 mm diameter (no. 11 gauge) or 2 mm diameter (no. 14 gauge) with vinyl covering forming a total combined thickness of 2.6 mm (no. 11 gauge)	2.6 mm diameter (no. 11 gauge) or 2 mm diameter (no. 14 gauge) with vinyl covering forming a total combined thickness of 2.6 mm (no. 11 gauge)
v. Minimum Diameter Gate and Terminal Posts	47.5 mm (1-7/8 in.)	47.5 mm (1-7/8 in.)
vi. Minimum Depth Below Grade of Imbedded Fence Posts	The steel fence post will be a minimum of 0.76 cm (2 ft. 6 in.) imbedded in a concrete footing which has a diameter of 20.32 cm (8 in.) and a depth of 1.2 m (4 ft.). Note: The top of concrete footing may be below grade level 10.175 cm to 20.35 cm (4 in. to 8 in.)	The steel fence post will be a minimum of 0.76 cm (2 ft. 6 in.) imbedded in a concrete footing which has a diameter of 20.32 cm (8 in.) and a depth of 1.2 m (4 ft.). Note: The top of concrete footing may be below grade level 10.175 cm to 20.35 cm (4 in. to 8 in.)
vii. Minimum Diameter for Intermediate Posts	38 mm (1-1/2 in.)	47.5 mm (1-7/8 in.)
viii. Minimum Diameter Top Rail	32 mm (1-1/4 in.)	41.275 mm (1-5/8 in.)
ix. Minimum Diameter Bottom Wire	3.7 mm (No. 9 gauge)	3.7 mm (No. 9 gauge)
x. Minimum Diameter Gate Frame - Pipe	32 mm (1-1/4 in.)	32 mm (1-1/4 in.)

6. Exceptions

- 6.1.1. Notwithstanding any other provision of this By-law to the contrary, Pools known as “hot tubs”, “whirlpools”, and “spa’s”, need not comply with Sections 4.0 and 5.0 of this By-law provided that a cover, capable of holding 90.72kg (200 Lbs) is provided by the Owner and is not less than two inches thick constructed of a durable material that is permanently fixed and secured to the structure and is locked to prevent access when the structure is not in use.
- 6.1.2. Where there exists a 1.2 metre (4 ft.) high chain link or wood fence or lower height adjacent to a property on the date of passing of this By-law, it is permitted to construct

a 1.5 metre (5 ft.) high Pool Enclosure directly adjacent to that fence as long as it immediately abuts the fence of lower height.

By-law approved this twenty-third day of May, 2006.

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