

Pool Enclosure By-law No. 2013 – 39

This consolidation of By-law Number 2013-39 is provided for reference purposes only. Every effort is made to ensure the accuracy of this consolidation up to and including the last amending by-law. For legal requirements, please refer to copies of the official amending by-laws, which are available upon request from the City Clerk and Solicitor Department.

A by-law of the City of Ottawa to regulate enclosures for privately-owned outdoor pools, and to repeal By-law No. 2001-259.

WHEREAS Section 10 (2), paragraph 6, of the *Municipal Act, 2001*, S.O. 2001, c. 25 (hereinafter the "*Municipal Act 2001*") authorizes a municipality to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS Section 10 (2), paragraph 10, of the *Municipal Act 2001*, authorizes a municipality to pass by-laws respecting structures, including fences and signs;

AND WHEREAS Section 8(3) of the *Municipal Act 2001*, authorizes a municipality to regulate or prohibit in respect of matters within their jurisdiction, including fences, and to require persons to obtain permits and provide for a system of obtaining permits in relation to those matters;

AND WHEREAS Section 391.1 (a) of the *Municipal Act 2001* provides that a municipality may pass by-laws imposing fees or charges on persons for services or activities provided or done by or on behalf of it including permit fees for pool enclosure permits;

AND WHEREAS the Council of the City of Ottawa deems it necessary to regulate enclosures for outdoor pools within the City of Ottawa;

THEREFORE the Council of the City of Ottawa enacts as follows:

PART 1 - DEFINITIONS

1. In this By-law,

"Agent" means a person duly authorized by the Owner in writing to act for or represent an Owner of a property on which a pool is being constructed or is located and contractor or trustee have the same meaning (*représentant*);

"Building" means any structure used or intended for supporting or sheltering any use or occupancy (*bâtiment*);

"City" means the City of Ottawa as established on January 1, 2001 by Section 2 of the City of Ottawa Act, 1999 (*ville*);

"Construct" means to do anything in the erection, installation or removal of a pool or enclosure, and constructed and construction have the same meaning (*construire*);

"Director" means the person in the office of Director of Building Code Services in the Department of Planning and Growth Management, or authorized delegates (*directeur*);

"dwelling" means a building used and occupied as a residence, but may not be a garage or shed (*habitation*);

"enclosure" means any combination of fence, wall, safety cover or other structure, including any permitted door, gate or other opening which surrounds a pool and restricts access to a pool (*enceinte*);

"gate" means a barrier swinging in a vertical axis used to close an access in an enclosure (*barrière*);

"former municipality" means the old municipalities of the City of Cumberland, the City of Gloucester, the Township of Goulbourn, the City of Kanata, the City of Nepean, the Township of Osgoode, the City of Ottawa, the Township of Rideau, the Village of Rockcliffe Park, the City of Vanier and the Township of West Carleton (*ancienne municipalité*);

"Hot tub" means a type of pool which may or may not include a lid or safety cover or jets of water; and shall include tubs which are commonly called 'spas' or 'whirlpools' (*bain tourbillon*); (2014-115)

"Officer" means any person appointed as a municipal law enforcement officer for the purposes of enforcing this by-law, and may be referred to as an inspector, property standards officer or officer, whichever is applicable to enforce this by-law (*officier*);

"Owner" includes:

- a) the registered owner of the land, or occupier of the land, on which a pool is being constructed or is located;
- b) the person for the time being managing or receiving rent of the land on which a pool is being constructed or is located, whether on the person's own account or as Agent for any other person, or who would receive the rent if the land was let; and
- c) any person who takes possession of a property under a charge or mortgage registered on title of the property on which a pool is being constructed or is located (*propriétaire*);

"panel" means a section of an enclosure between two posts (*panneau*);

"permit" means a Permit issued by the Director of Building Code Services under this by-law for the construction of an enclosure (*permis*);

"pool" means an outdoor pool of water for swimming, bathing, wading or reflecting, including any Hot tub, which is capable of retaining a water depth equal to or greater than 600 mm at any point, but shall not include: facilities for the purposes of providing water to livestock, or for irrigation of crops which are associated with and located on land devoted to the practice of farming, and stormwater management ponds, or outdoor pools owned or operated by the City (*piscine*); and

"safety cover" means a rigid cover on a Hot tub, whirlpool or spa, which can be locked (*couvercle de sécurité*).

PART 2 – INTERPRETATION

2. In the event of any conflict between the provisions of this by-law and any provision of By-law No. 2003-462, a by-law of the City of Ottawa respecting the erection, height and maintenance of fences, as amended, the provisions of this by-law shall prevail.
3. Unless otherwise defined, the words and phrases used in this by-law have their normal and ordinary meaning.
4. This by-law includes the schedules annexed hereto and the schedules are hereby declared to form part of this by-law.
5. The headings and subheadings used in this by-law are inserted for convenience of reference only, form no part of this by-law, and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
6. Unless the context requires otherwise, references to items in the plural include the singular unless used with a number modifying the term, and words imparting the masculine gender shall include the feminine.
7. It is declared that if any section, subsection, paragraph or part thereof is declared by any Court to be bad, illegal, or ultra vires, such section, subsection, paragraph part or parts shall be deemed to be severable and all other parts of this by-law are declared to be separate and independent, and enacted as such. (2014-115)

PART 3 - GENERAL PROVISIONS

8. No Owner or their Agent shall construct or permit to be constructed a pool on a property unless they ensure that an enclosure that conforms with the requirements of this by-law surrounds the pool.
9. The replacement of an enclosure shall comply with this by-law.
10. No Owner or their Agent shall place water or allow water to remain in a pool unless an enclosure has been constructed, inspected, and deemed by the Director to be in compliance with the provisions of this by-law, except as provided in Sections 36 to 42.
11. No Owner of a property on which a pool is constructed, or their Agent, shall fail to construct and maintain an enclosure in compliance with the provisions of By-law No. 2003-462, a by-law of the City of Ottawa respecting the erection, height and maintenance of fences, as amended.
12. Nothing in this by-law permits the construction of a pool, deck, platform or other structure in a location which is not permitted under the Zoning By-law 2008-250, as amended.
13. The Director is authorized to administer and enforce the provisions of this by-law.

PART 4 - PERMITS

PERMIT REQUIREMENTS

14. (1) No Owner or their Agent shall commence the construction of a pool, or permit the construction of a pool to be commenced, without first obtaining a Permit from the Director.
 - (2) All pool enclosures, including replacement pool enclosures, shall require a Permit. (2014-115)
 - (3) Despite subsection (1), a Permit is not required in the case of a pool that has been dismantled and is being constructed in the same location and the same manner in which it was previously constructed provided that:

- (a) a Permit was obtained for the original construction, and
- (b) the construction meets the provisions of the applicable by-law that was in effect at the time the Permit was issued.

APPLICATION FOR A PERMIT

15. An application for a Permit for a pool enclosure shall be in the form required by the Director, and shall be accompanied by the fee set out in Schedule ' A ' of this by-law, two (2) sets of fully-dimensional plans, and with supporting documentation:
- (a) identifying and describing in detail the work to be covered by the Permit for which an application is made;
 - (b) describing the property on which the pool is to be constructed;
 - (c) showing the location of the pool, all accessory equipment and proposed landscape features in relation to the enclosure, including but not limited to property lines, buildings and structures (including decks and sheds), rights-of-way, easements, septic beds and tanks, catch basins, swales, wells and retaining walls; (2014-115)
 - (d) describing complete details of the proposed enclosure, including location and type and the specifications of the proposed fence and gate;
 - (e) stating the names, addresses and telephone numbers of the Owner and the Agent performing the work;
 - (f) describing complete details of any existing fence or building proposed to be part of the enclosure, including details of gates, doors and windows;
 - (g) providing the manufacturer's specifications for the safety cover for hot tubs, if applicable; and
 - (h) providing any additional information required by the Director to enable the Director to determine compliance with this by-law.

CANCELLATION AND REVOCATION

16. (1) An application for a Permit will remain active for a period of six (6) months from the date of receipt. After six (6) months, if the Permit is not issued, the application shall be deemed abandoned and the Director shall cancel the application and the application fee shall be forfeited.
- (2) Despite subsection (1), a refund amounting to fifty percent (50%) of the application fee shall be provided to the applicant where the applicant requests in writing within two (2) business days of submitting the application to the City that the application be cancelled.
17. (1) A Permit may be refused or revoked by the Director if:
- (a) the proposed enclosure would contravene this by-law or any other applicable by-law;
 - (b) the Permit was issued in error or on mistaken, false or incorrect information;
 - (c) the required application fee has not been paid; or
 - (d) construction of the enclosure and pool has not commenced within a period of eighteen (18) months from the date the Permit was issued;

- (2) The application fee shall be forfeited in all cases except for in 17(1)(c).
18. A Permit shall be valid for eighteen (18) months from the date the Permit was issued.

PART 5 – INSPECTIONS REQUIRED

19. No Owner of a property on which a pool is being constructed, and an enclosure is being constructed, or their Agent, shall fail to;
- (1) notify the Director of commencement of construction; and,
- (2) schedule an inspection of the enclosure as follows:
- (a) prior to the pool being filled with any water; and
- (b) at the completion of construction of the prescribed enclosure.

PART 6 - ENCLOSURE SPECIFICATIONS

GENERAL SPECIFICATIONS

20. No Owner of a property on which a pool is being constructed, or their Agent, shall fail to construct and maintain an enclosure that complies with the following specifications:
- (a) every enclosure shall be a minimum of 1.5 metres in height;
- (b) openings through or under any part of an enclosure shall be of a size so as to prevent the passage of a spherical object having a diameter of 100 mm;
- (c) an overhead garage door shall not be used as part of the enclosure;
- (d) no enclosure shall be located less than 1 metre from the nearest inside wetted surface of a pool wall;
- (e) any object, material or equipment shall not be placed, piled or attached against or near an enclosure so as to facilitate climbing of the enclosure, or diminish the structural integrity of an enclosure;
- (f) no attachment that can facilitate climbing shall be fixed or placed on the exterior face of an enclosure between 100 mm and 1042 mm, measured from the bottom of the enclosure;
- (g) a hedge or bush shall not be considered an enclosure;
- (h) barbed wire, chicken wire or other barbed or sharp material shall not be used in the construction of an enclosure; and
- (i) an enclosure shall not be used as a conductor of electricity.
21. No Owner of a property on which a pool is being constructed, or their Agent, shall fail to ensure that every gate forming part of an enclosure:
- (a) is constructed in accordance with the provisions prescribed in this by-law;
- (b) is equipped with a self-closing device;
- (c) is equipped with a self-latching device that is located at least 1.35 m above the bottom of the enclosure; and
- (d) is equipped with a lock. (2014-115)

22. No Owner or their Agent shall fail to ensure that where a double gate forms part of the enclosure, one of the two gates shall be affixed to the ground, and the other gate shall be constructed in accordance with Section 21.
23. No Owner shall fail to ensure that every gate in an enclosure is closed and locked at all times, except when the enclosed pool area is in use, and this provision shall apply to every enclosure in the City, regardless of when it was constructed.
24. No Owner shall fail to ensure that every gate in an enclosure that adjoins a space that is accessible to the public, including but not limited to a public park, a golf course, or a highway, is closed and locked at all times, except when the gate is in use for access or egress by the Owner or by anyone who has the property Owner's consent to enter or leave the property, and this provision shall apply to every enclosure in the City, regardless of when it was constructed.
25. No Owner or their Agent shall fail to ensure that every door located in the wall of a building that is not a dwelling, where, the wall of a building is used as part of an enclosure and the building has direct access outside the pool area:
 - (a) is equipped with a self-closing, self-latching and locking device that is located a minimum of 1.35 metres above the door threshold; and,
 - (b) the door is kept closed and locked unless the pool is in use.
26. Sections 20 to 25 do not apply to the doors or windows of a dwelling that form part of an enclosure.
27. The Director may approve plans for the construction of an enclosure that is a fence, wall or other structure that provides an equivalent enclosure to that prescribed in this by-law.

CHAIN LINK CONSTRUCTION SPECIFICATIONS

28. Every enclosure of chain link construction shall:
 - (a) comprise of chain link with a diamond mesh not greater than 38 mm, consisting of either 12 or 14 gauge galvanized steel wire;
 - (b) have galvanized steel support posts spaced at intervals of not more than 3 metres;
 - (c) have every support post securely imbedded in the ground, which shall extend at least 1.2 metres below grade, or be constructed in such a manner as to be non-frost susceptible; and which posts shall be encased in concrete at least 50 mm thick all around;
 - (d) have every end and corner post be a minimum of 48 mm in diameter;
 - (e) have every intermediate post be a minimum of 38 mm in diameter;
 - (f) have a horizontal top rail of galvanized or vinyl coated steel which shall be a minimum of 32 mm in diameter; and
 - (g) have a horizontal bottom rail of galvanized or vinyl coated steel which shall be a minimum of 32 mm in diameter. A minimum 9 gauge vinyl coated galvanized steel tension cable may be substituted for the horizontal bottom rail.

VERTICAL BOARD CONSTRUCTION SPECIFICATIONS

29. Every enclosure of vertical board construction shall:

- (a) have vertical boarding of not less than 25 mm by 100 mm, attached to a top and bottom rail, and the space between vertical boards shall not exceed 38 mm; (2014-115)
- (b) (b) where it is board on board design, have spacing between the boards which does not exceed 100 mm, provided that there is a minimum clear space of 1.2 metres between the rails. (2014-115)
- (c) be supported by posts of not less than 100 mm by 100 mm, spaced at intervals of not more than 2.4 metres;
- (d) have every support post securely imbedded in the ground and shall extend at least 1.2 metres below grade, or be constructed in such a manner as to be non-frost susceptible; and which posts shall be encased in concrete at least 50 mm thick all around;
- (e) for the portion of the posts below grade, be of natural cedar, pressure treated wood, or alternatively, be treated with a wood preservative that is acceptable to the Director; and
- (f) have a top and bottom rail of not less than 50 mm by 100 mm.

WROUGHT IRON, ALUMINUM, OR VINYL TYPE CONSTRUCTION SPECIFICATIONS

30. Every enclosure of wrought iron, aluminum or vinyl type construction shall:
- (a) be of sufficient strength to provide an effective enclosure;
 - (b) have no openings between vertical members of a size so as to allow the passage of a spherical object having a diameter of 100 mm;
 - (c) have every support post spaced not more than 3 metres apart;
 - (d) have every support post extend at least 1.2 metres below grade, or be constructed in such a manner as to be non-frost susceptible; and shall be encased in concrete at least 50 mm thick all around; and
 - (e) have top and bottom rails spaced so that a minimum clear space of 1.2 metres is provided between the rails.

ABOVE GROUND POOLS

31. (1) No Owner of an above ground pool or their Agent shall fail to ensure that an above ground pool is enclosed by an enclosure that meets the provisions of this by-law if the vertical walls of the above ground pool are less than 1.5 metres in height.
- (2) Despite subsection (1), the pool structure shall form the enclosure of the above ground pool where:
- (a) the vertical walls of an above ground pool are at least 1.5 metres in height and do not possess any horizontal members that may facilitate climbing; and
 - (b) the ladder area, or deck, which provides access to the above ground pool, is enclosed by a gated enclosure which complies with the requirements for enclosures set out in this by-law.

HOT TUBS

32. No Owner or their Agent shall fail to construct and maintain an enclosure surrounding a hot tub that complies with this by-law, unless the Hot tub includes a safety cover meeting the requirements of Section 33.

33. A safety cover shall be considered an enclosure in compliance with this by-law where:
- (a) the Hot tub has a substantial, structurally adequate cover that is capable of supporting a 90 kilogram load, or is in compliance with the American Society for Testing and Materials standard ASTM F1346 – 91 for Hot tub and pool safety covers; and,
 - (b) the safety cover is permanently attached to the Hot tub or to its supporting structure.
34. No Owner shall fail to ensure that a Hot tub safety cover is securely fastened and locked to prevent access at all times when the Hot tub is not in use.
35. No Owner or their Agent shall fail to provide an Officer with manufacturer's specifications on a Hot tub that is being constructed with a safety cover, establishing that the safety cover and Hot tub meet the requirements of this by-law.

TEMPORARY ENCLOSURES

36. No Owner or their Agent shall fail to construct a temporary enclosure surrounding a pool when the pool that is being constructed does not have the prescribed enclosure.
37. Every temporary enclosure shall be constructed as follows:
- (a) with steel "T" posts spaced at not more than 2.4 metres centres, and embedded at least 300 mm into the ground, with 38 mm diamond mesh chain link fencing at least 1.5 metres high, that is securely fastened to the posts at 200 mm centres, and horizontally secured at the top and bottom by an eleven-gauge steel lacing cable threaded through the mesh and looped and fastened to each post;
 - (b) every opening in a temporary enclosure shall be closed and locked when the temporary enclosure is not being used for access or egress; and
 - (c) no gap in the temporary enclosure shall allow the passage of a spherical object having a diameter of 100 mm or greater.
38. No Owner or their Agent shall fail to ensure the temporary enclosure is inspected and deemed compliant by the Director prior to filling the pool with any water.
39. No Owner or their Agent shall fail to complete the construction of the prescribed enclosure no later than 14 days after the pool has been filled with water.
40. No Owner or their Agent shall enclose a pool with a temporary enclosure beyond 14 days following the day the pool was filled, except where an Owner or their Agent has obtained an extension in writing from the Director.
41. After the construction of the prescribed enclosure and where the pool has been filled, a gap of one panel with posts spaced at intervals of not more than 3 metres may be removed and replaced by a temporary enclosure for up to 14 days.
42. The Director may approve the construction of other temporary fencing, where it provides an equivalent enclosure to that specified in this by-law.

PART 7 – COMPLIANCE AND OFFENCES AND PENALTY PROVISIONS

COMPLIANCE

43. (1) An Officer may enter onto any lands at any reasonable time for the purposes of determining

compliance with this by-law or with an Order issued pursuant to the by-law.

- (2) An Officer may, for the purposes of an inspection under subsection (1):
 - (a) require the production of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purposes of making copies or extracts; and
 - (c) require information from any person concerning a matter related to the inspection.
- (3) An Officer may be accompanied by such persons as are necessary for conducting the inspection or for carrying out any required work.
- (4) Upon request, an Officer shall produce identification.
- (5) No person shall hinder or obstruct, or attempt to hinder or obstruct an Officer in the discharge of his or her duties under this by-law.

ENFORCEMENT ORDERS

44. Where an Officer determines that a contravention of this by-law has occurred, the Officer may make an Order requiring the Owner of the property on which the contravention occurred, or their Agent, to:
 - (a) discontinue the contravening activity;
 - (b) require the pool to be immediately emptied of water; or
 - (c) carry out such work, and if applicable under such conditions, as may be required to correct the contravention and to bring the enclosure into conformity with the requirements of this by-law.
45. An Order under Section 44 shall set out:
 - (a) reasonable particulars of the contravention sufficient to identify the contravention and the location of the property on which the contravention occurred;
 - (b) the work to be done to restore the enclosure to a condition where it complies with the requirements of this by-law;
 - (c) the requirement to obtain all necessary permits or other approvals prior to performing any work; and
 - (d) the date or dates by which there must be compliance with the Order.
46. No Owner or their Agent shall fail to comply with an Order issued pursuant to Section 44.

SERVICE

47. An Order issued pursuant to Section 44 shall be served personally, be posted in a conspicuous place on the property where the contravention occurred, or be sent by registered mail to the last known address of the person contravening this by-law.
48. Where an Order under Section 44 is served personally, it shall be deemed to have been served on the date of delivery to the person or persons named.
49. The posting of an Order issued pursuant to Section 44 on the affected property shall be deemed

to be sufficient notice of the Order on the person to whom the order is directed on the date it is posted.

50. Where an Order issued pursuant to Section 44 is sent by registered mail, it shall be sent to the last known address of the Owner or their Agent who caused or permitted the contravention, and the Order shall be deemed to have been served on the fifth day after the Order is mailed.
51. Where a person does not comply with an Order issued under this by-law, an Officer, with such assistance of others as may be required, may effect compliance at the expense of the Owner.
52.
 - (1) The City may recover the costs of effecting compliance with an Order under Section 44 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
 - (2) The Director shall deliver to the Owner written notice of the costs to the last registered address of the Owner as identified in the assessment roll.
 - (3) The total cost of effecting compliance with an Order as set out in Section 51 shall include an administration fee in the amount of 15% calculated for the period commencing on the day the City incurs the costs and ending on the day the cost, including the interest, are paid in full.
53. The Director is authorized to give immediate effect to any Order, notice or direction carried out under Section 51 and is authorized to enter upon the property at any reasonable time for that purpose.
54. The amount of the costs as set out in the notice of costs provided under subsection 52 (2), and the applicable interest and the applicable administration fee, that remain unpaid by the Owner after 30 days of the date of the notice of costs may be added to the tax roll and collected in the same manner as property taxes and the amount of the costs, including interest.

OFFENCES AND PENALTIES

55. Every person who contravenes any of the provisions of this by-law is guilty of an offence.
56. A person who is convicted of an offence under this by-law is liable to a minimum fine of \$500, and a maximum fine of \$100,000 as provided for in subsection 429(3), paragraph 1 of the Municipal Act, 2001.
57. Every person who fails to comply with an Order issued pursuant to Section 44 of this by-law is guilty of an offence and the offence is hereby designated a continuing offence as provided for in subsection 429(2) (a) of the Municipal Act, 2001 and the person convicted of a continuing offence under this by-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500 and a maximum fine of \$10,000, and despite Section 56, the total of all daily fines for the offence is not limited to \$100,000 as provided in paragraph 2 of subsection 429(3) of the Municipal Act, 2001.
58. When a person has been convicted of an offence under this by-law, the Superior Court of Justice or any court of competent jurisdiction, in addition to any penalty imposed on the person convicted, may issue an order:
 - (a) prohibiting the continuation or repetition of the offence by the person convicted; and
 - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

PART 8 – REPEAL

59. By-law 2001 – 259 of the City of Ottawa entitled "Pool Enclosure By-law", as amended, is hereby repealed effective March 1, 2013.

PART 9 – TRANSITION

STATUS OF PREVIOUSLY ISSUED OR CONTINUED ENCLOSURE PERMITS

60. With the exception of Sections 23 and 24, enclosure permits issued or continued under the Pool Enclosure By-law 2001 – 259, as amended, are hereby continued and remain in force and shall be deemed to be issued under this by-law for regulatory and enforcement purposes, provided that the enclosure in question was lawfully constructed and in conformity with the provisions of By-law 2001-259 or with a pool enclosure by-law of a former municipality, is maintained in good repair, and used as an enclosure on the date of enactment of this by-law.

TRANSITION AND IN FORCE DATES

61. The implementation of the provisions of this By-law will be made according to the following schedule:
- (a) Sections 32 to 35 shall be in force and take effect upon the enactment of this By-law; and,
 - (b) all other sections of this By-law shall be in force and take effect on March 1, 2013, and shall apply to permits issued as of March 1, 2013.

SHORT TITLE

62. This By-law may be referred to as the "Pool Enclosure By-law".

ENACTED AND PASSED this 13th day of February, 2013.

SCHEDULE "A"

FEE

Pool Enclosure Permit \$205.00