

Authority: Item 8, Committee of the Whole
Report 03-015 (PD03114)
CM: May 28, 2003

Bill No. 125

**THE CITY OF HAMILTON
BY-LAW NO. 03-125**

To Repeal and Replace:

By-law No. 01-264

**Being a By-law to Provide for the Fencing of
Privately-Owned Outdoor Swimming Pools**

WHEREAS Council 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 or permits and related matters;

AND WHEREAS By-law No. 01-264 was enacted by the City of Hamilton on November 13, 2001 and is sought to be repealed and replaced with this by-law containing various changes;

AND WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sched. C, did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to the following former area municipalities: The Corporation of the Town of Ancaster; The Corporation of the Town of Dundas; The Corporation of the Town of Flamborough; The Corporation of the

Township of Glanbrook; The Corporation of the City of Hamilton; and The Corporation of the City of Stoney Creek; (hereinafter referred to collectively as the "former area municipalities" and individually as a "former area municipality");

NOW THEREFORE, the Council of the City of Hamilton enacts as follows:

SHORT TITLE

1. This By-law may be cited as "The Swimming Pool Enclosure By-law".

DEFINITIONS AND INTERPRETATION

2. (1) In this By-law,
 - (a) "**Chief Building Official**" means the **Chief Building Official** appointed by Council under Section 3 of the Building Code Act, S.O. 1992, Chapter 23, as amended, and includes the **Chief Building Official's** designate for the purposes of this by-law;
 - (b) "**effective ground level**" means the highest level of the ground within 1.0 m (3 ft 3 in) horizontally in any direction from the point being considered;
 - (c) "**privately-owned outdoor swimming pool**" means any privately-owned body of water located out of doors which is used or capable of being used for swimming and which is contained wholly or partly by artificial means, but does not include such a pool:
 - (i) which is incapable of holding water beyond a maximum depth of 300 mm (11¾ in), and beyond the volume of 4,550 litres (1000 gallons or 160.5 cubic feet);
 - (ii) which is owned by a public or governmental body, agency or authority;
 - (iii) which is designed and used solely for ornamental purposes;
 - (iv) which is a farm pond, which for the purposes of this by-law shall mean a pond which is maintained for agricultural or horticultural uses only; or
 - (v) naturally occurring streams, lakes, swamps or other natural bodies of water;
 - (d) "**property owner**" means the registered owner of a property or a tenant in possession of the property; and

- (e) **“swimming pool enclosure”** means a fence or wall or combination of a fence and wall, together with any included doors or gates completely surrounding a swimming pool.
- (2) Where this by-law provides both metric and imperial measurement for the same item, the imperial measurement is provided for convenience only and is approximate, and any abbreviation used for a unit of measurement in this by-law shall be as defined in section 1.1.4 of the Ontario Building Code, O. Reg. 403/97 as amended.

EXCAVATION AND FILLING OF POOLS

- 3. (1) No person shall place water in a **privately-owned outdoor swimming pool** or cause or permit water to remain in the pool unless the **swimming pool enclosure** required by (2) is in place.
- (2) The owner of a **privately-owned outdoor swimming pool** or **property owner** on whose property the pool is located shall erect and maintain in good repair a **swimming pool enclosure** for the pool in compliance with the requirements of this by-law.
- 4. No person shall excavate or erect, or cause or permit the excavation or erection of a **privately-owned outdoor swimming pool** until a permit has been issued under this by-law.

APPLICATION FOR PERMIT

- 5. A person proposing to erect or excavate a **privately-owned outdoor swimming pool** or the fencing or enclosure for such a pool shall first make and file an application for a permit for the **swimming pool enclosure**, including:
 - (a) A completed application for permit, together with plans for the enclosure showing fence and gate locations, grades and construction, which material shall be filed with the Building Department; and
 - (b) A fee of \$100.00 payable at the time of application.
- 6. The **Chief Building Official** may require that a permit applicant file better plans or further information as part of the application, as may be needed to determine compliance with this by-law, and in the event the application is incomplete, the fee is unpaid or the information requested is not supplied the application shall be denied.
- 7. It is a condition of the application and permit granted, that the **property owner** shall permit entry and inspection of the site of the pool and **swimming pool enclosure** at all reasonable times, to determine that the **swimming pool**

enclosure has been constructed in accordance with the approved plans and this by-law.

8.
 - (1) Subject to (2), the **Chief Building Official** shall issue a permit for a **swimming pool enclosure** in compliance with the requirements of this by-law, unless the enclosure if erected would be contrary to a by-law of the municipality or the Building Code.
 - (2) The **Chief Building Official** may issue the permit under (1) with amendments to plans submitted with the application or by attaching or referring to further requirements, to bring the plans into compliance with the requirements of this by-law, which requirements are conditions of approval of the permit for construction of the **swimming pool enclosure**.
 - (3) Where the **Chief Building Official** cannot issue a permit under (1) the permit shall be denied.
9. The **property owner** is responsible for and shall construct or cause to be constructed a **swimming pool enclosure** in compliance with the plans approved by the **Chief Building Official**, and otherwise in compliance with this by-law in respect of details that may not be shown in the plans and specifications.

PREVIOUSLY PERMITTED SWIMMING POOL ENCLOSURES

10.
 - (1) Subject to subsection 10.(2), where a **swimming pool enclosure** has been constructed under a permit approved by a former area municipality under a pool enclosure by-law previously in force in the former area municipality, or under a permit issued under this by-law prior to the enactment of any amendment to the by-law, and the enclosure is maintained in good repair, such enclosure is deemed to be in compliance with this by-law.
 - (2) Where the previously permitted **swimming pool enclosure** in (1) is subsequently replaced, the replacement enclosure is instead subject to the requirements of this by-law, including the application for a permit, fee and the requirements and standards specified.

GENERAL REQUIREMENTS FOR ENCLOSURES

11. Enclosures required under this by-law in addition to the other standards and requirements contained in this by-law shall:
 - (a) have a minimum vertical height of 1.5 m (4 ft 11 in), measured from the **effective ground level** on the outside of the enclosure;

- (b) be located at least 1.0 m (3 ft 3 in) from any other fence or structure which would facilitate climbing over the **swimming pool enclosure** unless the height of the enclosure is increased to a height of at least 1.8 m (5 ft 11 in) for a distance of at least 1.0 m (3 ft 3 in) beyond such non-conforming fence or structure;
 - (c) have a gap no greater than 100 mm (4 in) between the bottom of the **swimming pool enclosure** and the finish grade;
 - (d) be located at least 600 mm (23 5/8 in) from the edge of the water in the swimming pool; and
 - (e) be composed of one of the following constructions, namely chain link fence, vertical board fence, wrought iron fence all as specified in this by-law, or such equivalent alternative as may be approved by the **Chief Building Official** under section 15 upon review of plans and specifications submitted in application for a permit under this by-law.
12. All above ground **privately-owned outdoor swimming pools** having a walkway higher than 600 mm (23 5/8 in) above the **effective ground level** shall have their walkways enclosed with an outer guard at least 900 mm (2 ft 11 in) in height measured from the walkway level. The required **swimming pool enclosure** may form part of the required guards.
13. A **swimming pool enclosure** shall not:
- (a) use or incorporate barbed wire, electrification, or other features designed to cause injury;
 - (b) enclose a utility meter, a furnace oil filler pipe or other utility reading device which requires periodic inspection or attendance by utility or service personnel;
 - (c) be composed of the walls of a building unless any openings which could provide a means of ingress directly into the swimming pool area are protected by a door, window or other covering and kept closed and locked at all times when such swimming pool is not under competent supervision; or
 - (d) except in the case of that part of a building or wall forming part of the enclosure, the enclosure shall not have attachments to the exterior face of the enclosure such as bracing, horizontal rails or other structures, except to the extent as may be permitted in section 15.

GATES

14. Gates that form a part of the **swimming pool enclosure** shall:

- (a) be self-closing and self-latching with the latching device at the top of the gate on the inside of the enclosure;
- (b) operate on hinges sufficient to support the gate either open and unlatched or closed and latched; and
- (c) be of such construction and height that they otherwise comply with the requirements of this by-law for the enclosure.

STANDARDS OF CONSTRUCTION

15. (1) Subject to subsection 15.(5) a fence of chain link construction shall:
- (a) have a mesh with openings not greater than 38 mm (1½ in);
 - (b) be constructed of wire not less than 12 gauge galvanized steel or if having a vinyl or other coating, not less than 14 gauge steel wire covered with a vinyl or other approved coating which would form a total thickness equivalent to 12 gauge galvanized steel wire;
 - (c) be supported by minimum 38 mm (1½ in) galvanized steel posts spaced not more than 2.5 m (8 ft 2 in) apart, at least 900 mm (2 ft 11 in) below grade, which posts are to be encased in concrete at least 50 mm (2 in) thick all around; and
 - (d) have top and bottom rails firmly fastened to the upright posts, made of minimum 32 mm (1¼ in) galvanized steel pipe, provided only that in place of the bottom rail there may be substituted a galvanized steel tension rod of minimum 9 gauge wire.
- (2) Subject to subsection 15.(5) a fence of wood construction shall:
- (a) have vertical boarding not less than 19 mm by 89 mm (1 in by 4 in) and shall have no openings on the exterior face with a dimension greater than 100 mm (4 in);
 - (b) be supported by posts at least 89 mm by 89 mm (4 in by 4 in) square, or 89 mm (4 in) in diameter, spaced not more than 2.5 m (8 ft 2 in) apart. Such posts shall extend at least 900 mm (2 ft 11 in) into the ground and that portion of the post below grade shall be treated with a wood preservative; and
 - (c) have top and bottom rails of at least 38 mm by 89 mm (2 in by 4 in), and spaced to provide a minimum clearance of 1.0 m (3 ft 3 in) between the rails.

- (3) Subject to subsection 15.(5) a fence of wrought iron construction or other similar material shall:
 - (a) be of sufficient strength to provide an effective enclosure;
 - (b) have no openings of a dimension greater than 100 mm (4 in) between vertical members;
 - (c) be supported by posts spaced not more than 2.5 m (8 ft 2 in) apart. Such posts shall extend at least 900 mm (2 ft 11 in) into the ground and are to be encased in concrete at least 50 mm (2 in) thick all around; and
 - (d) have top and bottom rails spaced so that a minimum clear space of 1.0 m (3 ft 3 in) is provided between the rails.
- (4) The **Chief Building Official** may approve plans for the construction of a **swimming pool enclosure** that is a fence, wall or other structure where it provides an equivalent enclosure to that specified in this by-law.
- (5) Notwithstanding the content of subsections 15.(1), (2) and (3) and section 13 above, no enclosure shall be so constructed or maintained as to facilitate climbing by persons.

PENALTY AND ENFORCEMENT


16. (1) Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the penalties specified by Section 61 of the Provincial offences Act, R.S.O. 1990, Chapter P. 33.
- (2) Where the owner of the **privately-owned outdoor swimming pool** or **property owner** fails to erect or maintain a fence or gate around the swimming pool or places water in the pool, or causes, permits or allows the water to remain in the pool where a fence or gate is not erected or maintained, the **Chief Building Official** may immediately at the persons expense, direct an employee or agent to,
 - (a) erect or repair the **swimming pool enclosure**; or
 - (b) remove all water from the swimming pool until the required **swimming pool enclosure** is erected or maintained in accordance with this by-law.
- (3) The City of Hamilton may recover the expense incurred in doing the work described in (2) by action or by adding the costs to the tax roll and collecting the costs in the same manner as municipal taxes.

- (4) For the purposes of this by-law, persons who are employed or appointed as By-law Enforcement Officers by the City of Hamilton, or employed as Property Standards Officers or Building Inspectors for the City of Hamilton, and the **Chief Building Official** are all deemed appointed and entitled to enforce the provisions of this by-law.

REPEAL

17. By-law No. 01-264 of the City of Hamilton is hereby repealed.
18. This by-law shall come into force and effect on the date of enactment.

ENACTED AND PASSED this 28th day of May, 2003, A.D.



Mayor



City Clerk