

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH

BY-LAW NUMBER 2018-018

A by-law to regulate enclosures for outdoor swimming pools

WHEREAS Section 11 (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;

WHEREAS Section 11 (3), paragraph 7, of the *Municipal Act 2001*, authorizes a municipality to pass by-laws respecting structures, including fences and signs;

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

WHEREAS the Council for the Corporation of the Township of Puslinch deems it necessary to regulate enclosures for outdoor pools within the Township of Puslinch;

NOW THEREFORE the Council for the Corporation of the Township of Puslinch enacts as follows:

1. DEFINITIONS

In this by-law:

"finished grade" means the level of the proposed or finished ground adjoining the **outdoor swimming pool** or a part of the **outdoor swimming pool enclosure**.

"Officer" means a police officer, municipal law enforcement officer or other person appointed by by-law to enforce the provisions of this By-law.

"outdoor swimming pool" includes a body of water which is:

- (a) located outdoors above ground or in-ground on privately owned property,
- (b) contained in whole or in part by artificial means, and
- (c) designed to contain water to a depth of 600 mm (24 inches) or more,

and does not include a storm water management pond or a pond located on lands zoned agricultural by the applicable zoning by-law.

"outdoor swimming pool enclosure" means a fence, wall, building or other structure, together with any included doors or gates completely surrounding an **outdoor swimming pool**.

"Owner" includes a registered owner of the land and includes a lessee, tenant, mortgagee in possession or the **person** in charge of the land;

"Permit" means a permit issued pursuant to this By-law by the **Township**.

"Person" includes an individual, sole proprietorship, partnership, limited partnership, trust, corporation, and an individual in his or her capacity as a trustee, executor, administrator, or other legal representative;

"Repair" includes the making of additions or alterations or the taking of such action as may be required so that an **outdoor swimming pool enclosure** shall conform to the standards established in this By-law or in accordance with a previously approved permit issued by the **Township**;

“**Township**” means the Corporation of the Township of Puslinch or the land within the geographic limit of the Corporation of the Township of Puslinch as the context requires.

2. GENERAL PROVISIONS

- (1) No **Person** shall own, excavate, install or construct, or cause or permit the excavation, installation or construction of an **outdoor swimming pool** without an **outdoor swimming pool enclosure Permit**.
- (2) No **Person** shall own, place, cause or permit to be placed water in an **outdoor swimming pool** unless a final inspection has been completed under an **outdoor swimming pool enclosure Permit**.
- (3) No **Person** shall own, erect, install, cause or permit to be erected or installed an **outdoor swimming pool enclosure** other than in accordance with this By-law and approved plans.
- (4) The **Owner** of an **outdoor swimming pool** shall maintain an **outdoor swimming pool enclosure** in good **repair** and in compliance with the requirements of this By-law.
- (5) The **Owner** of an **outdoor swimming pool** shall ensure that a gate that forms part of an **outdoor swimming pool enclosure** or a door of a building that forms part of the **outdoor swimming pool enclosure** is locked when the area is not in active use.
- (6) The **Owner** of an **outdoor swimming pool** that is a hot tub, whirlpool or spa shall ensure that the lid is closed and locked when not in active use.

3. PERMIT

- (1) Every **Person** making an application for a **Permit** for an **Outdoor Swimming Pool Enclosure** shall:
 - (a) submit a complete application in the form provided by the **Township**;
 - (b) submit plans showing the location of buildings, structures, septic, well, **outdoor swimming pool**, **outdoor swimming pool enclosure** including gate locations in relation to lot lines;
 - (c) submit conservation authority clearance letter or permit, if applicable;
 - (e) submit a grading plan certified by an Engineer if the lot is within a plan of subdivision or condominium;
 - (f) provide details on materials and height of the **outdoor swimming pool enclosure**;
 - (g) submit any other documents as may be required by the **Township**;
 - (h) submit the required **permit** fee in accordance with the **Township’s** Fee By-law.

4. PREVIOUSLY APPROVED OUTDOOR SWIMMING POOL ENCLOSURE

- (1) An **outdoor swimming pool enclosure** approved by the **Township** by a **Permit** issued prior to the passing of this By-law shall be deemed to be legal

non-complying with this By-law provided the **outdoor swimming pool enclosure** is maintained in good **repair**.

- (2) The replacement of an **outdoor swimming pool enclosure** is subject to the provisions and **Permit** requirements outlined in this By-law.

5. **GENERAL REQUIREMENTS FOR AN OUTDOOR SWIMMING POOL ENCLOSURE**

- (1) An **outdoor swimming pool enclosure** shall:
- (a) Have a minimum vertical height of 1.5 metres (4 feet 11 inches), measured from the **finished grade** on the outside of the **outdoor swimming pool enclosure**;
 - (b) Be located a minimum of 1.0 metre (3 feet 3 inches) from any other fence, wall or structure which may facilitate climbing over the **outdoor swimming pool enclosure**;
 - (c) Have a gap no greater than 100 mm (4 inches) between the bottom of the **outdoor swimming pool enclosure** and the **finished grade**;
 - (d) Be located at least 1.2 metres (3 feet 11 inches) from the edge of the water of the **outdoor swimming pool**; and
 - (e) Be composed of the following construction:
 - i) chain link fence; or
 - ii) vertical board fence; or
 - iii) wrought iron fence; or
 - iv) such other equivalent alternative approved by the **Township**
- (2) Notwithstanding Section 5 (1) (c), (d) and (e), an **outdoor swimming pool enclosure** for an above ground **outdoor swimming pool** may consist of the vertical sides of the above ground **outdoor swimming pool** or any deck or other assembly forming part of the above ground **outdoor swimming pool** provided the requirements of Sections 5 (1) (a) and (b) are met and provided:
- (a) such vertical sides and assemblies are constructed and maintained in such a manner to prevent the climbing thereof; and
 - (b) any ladder or stair assemble providing access to the above ground **outdoor swimming pool** or to any deck of other assembly forming part of the above ground **outdoor swimming pool** is hinged and constructed in a manner so as to be latched in an upright position or gated, thereby preventing entry to the above ground **outdoor swimming pool**.
- (3) An **outdoor swimming pool enclosure** shall not:
- (a) Use or incorporate barbed wire, electrification, or other features designed to cause injury;

- (b) Be directly accessible from a door of a building unless the door is equipped with a lockable device;
- (c) Notwithstanding any other provision of this By-law, an **outdoor swimming pool** that is a hot tub, whirlpool or spa is not required to have an **outdoor swimming pool enclosure** provided the hot tub, whirlpool or spa is equipped with a substantial cover, capable of holding 90.72 kg (200 lbs), which is fitted to the hot tub, whirlpool or spa and is equipped with a lockable cover.

6. GATES

- (1) A gate that forms part of an **outdoor swimming pool enclosure** shall:
 - (a) Be self-closing, and equipped with a self-latching and locking device placed at the top and on the inside of the gate so the device latches when the gate is in the closed position;
 - (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 complies with the **outdoor swimming pool enclosure** requirements of this by-law.

7. STANDARDS OF CONSTRUCTION

- (1) An **outdoor swimming pool enclosure** of chain link construction shall:
 - (a) Have a mesh with openings not greater than 38 millimetres (1 ½ inches);
 - (b) be supported by minimum 38 millimetres (1 ½ inches) galvanized steel posts spaced not more than 2.5 metres (8 feet 2 inches) apart, firmly embedded into the ground; and
 - (c) have top and bottom rails firmly fastened to the upright posts, made of a minimum 32 millimetres (1 ¼ inches) steel pipe, provided that in place of the bottom rail there may be substituted a steel tension rod.
- (2) An **outdoor swimming pool enclosure** of vertical board construction shall:
 - (a) Have vertical boarding not less than 19 millimetres by 89 millimetres (1 inch by 4 inches) and shall have no openings on the exterior face with a dimension greater than 100 millimetres (4 inches);
 - (b) Be supported by posts at least 89 millimetres by 89 millimetres (4 inches by 4 inches) square, or 89 millimetres (4 inches) in diameter, spaced not more than 2.5 metres (8 feet 2 inches) apart. Such posts shall be firmly embedded 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 millimetres by 89 millimetres (2 inches by 4 inches), and spaced to provide a minimum clearance of 1.0 metre (3 feet 3 inches) between the rails.

- (3) For the purpose of this By-law, lumber dimensions are stated in nominal dimensions.
- (4) An **outdoor swimming pool enclosure** of vertical board shadow fence construction shall not have board spacing greater than the board width.
- (5) An **outdoor swimming pool enclosure** of wrought iron or of other approved similar construction shall:
 - (a) Have no openings of a dimension greater than 100 millimetres (4 inches) between vertical members;
 - (b) Be supported by posts spaced not more than 2.5 metres (8 feet 2 inches) apart. Such posts shall be firmly embedded into the ground; and
 - (c) Have top and bottom rails spaced so that a minimum clear space of 1.0 metre (3 feet 3 inches) is provided between the rails.

8. ENFORCEMENT AND PENALTY PROVISIONS

- (1) The enforcement of this By-law shall be conducted by an **Officer**.
- (2) An **Officer** may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the By-law is complied with.
- (3) Every **person** who contravenes any provision of this By-law and every director or officer of a corporation, who knowingly concurs in the contravention by a corporation is guilty of an offence and upon conviction is liable to:
 - (a) on a first offence, to a fine not more than \$50,000.00; and
 - (b) on a second offence and each subsequent offence, to a fine of not more than \$100,000.00
- (4) Every **person** who is issued a Part 1 offence notice or summons and is convicted of an offence under this By-law shall be subject to a fine, to a maximum as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.
- (5) No **person** shall hinder or obstruct, or attempt to hinder or obstruct, any **Officer** exercising a power or performing a duty under this By-law.
- (6) Every **person** who is alleged to have contravened any of the provisions of this By-law, shall identify themselves to an **Officer** upon request, failure to do so shall be deemed to have hindered or obstructed an **Officer** in the execution of his or her duties.
- (7) Upon conviction any penalty imposed under this By-law may be collected under the authority of the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.

9. SEVERABILITY

- (1) If a court of competent jurisdiction declares any section or part of the By-law invalid, it is the intention of Council of the **Township** that the remainder of the By-law shall continue in force unless the court makes an order to the contrary.

10. SINGULAR AND PLURAL USE

- (1) In this By-law, unless the context otherwise requires words importing the singular shall include the plural and use of the masculine shall include the feminine, where applicable.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 21st DAY OF MARCH, 2018.

Dennis Lever, Mayor

Karen M. Landry, CAO/Clerk