

By-law 2016-91

A By-law of the City of Greater Sudbury to Regulate Outdoor Swimming Pool Enclosures

Whereas Section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes a municipality to pass by-laws to provide for a system of permits in the regulation of a matter;

And Whereas Section 11(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides that the municipality may pass by-laws related to the health, safety and well-being of the inhabitants of the municipality;

And Whereas Section 11(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended authorizes a municipality to pass by-laws respecting structures, including fences;

And Whereas Section 391(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides that a municipality may pass by-laws imposing fees or charges for services provided or done by or on behalf of it;

And Whereas the Council of the City of Greater Sudbury deems it desirable for the protection of the public to enact a by-law to regulate pool enclosures around outdoor swimming pools;

Now Therefore the Council of the City of Greater Sudbury enacts as follows:

DEFINITIONS

1. The words and phrases listed below when used in this by-law shall have the following meanings ascribed to them:

“Above Ground Outdoor Swimming Pool” means any Outdoor Swimming Pool, other than a Seasonal Outdoor Swimming Pool, that has a portion of the pool wall above Ground Level;

“CBO” means the Person appointed as the Chief Building Official for Sudbury under the *Building Code Act, 1992*, S.O. 1992, c. 23 as amended and includes his or her authorized representatives;

“City” means the City of Greater Sudbury or the geographical area of the municipality, as the context requires;

"Erect" means to do anything in the construction, erection, installation or removal of an Outdoor Swimming Pool or Swimming Pool Enclosure, and includes excavation in conjunction with the construction, installation or erection of an Outdoor Swimming Pool or Swimming Pool Enclosure and includes the replacement or alteration of an Outdoor Swimming Pool or Swimming Pool Enclosure and 'Erected' and 'Erection' have similar meaning;

"Exterior Face" means, when used in conjunction with a Swimming Pool Enclosure including a wall, the side of the enclosure from which access to the pool is to be prevented;

"Ground Level" means the highest level of the grade at any point around the exterior of the Swimming Pool within 1.5 m measured horizontally from the wall of the Outdoor Swimming Pool;

"In Ground Outdoor Swimming Pool" means any Outdoor Swimming Pool that is constructed with all of its pool walls below Ground Level;

"Lot" means any parcel or tract of land that can be conveyed without contravening the *Planning Act*;

"Municipal Law Enforcement Officer" includes a Building Inspector under the *Building Code Act*, the CBO, or other Person appointed or employed by the City for enforcement of by-laws;

"Ontario Building Code" means the regulation established through the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended;

"Outdoor Swimming Pool" means any artificial body of water located out of doors and capable of holding a depth of 600 mm of water at its deepest point, which was designed and intended for swimming, wading, diving or recreational bathing and includes an Above Ground Outdoor Swimming Pool, an Inground Outdoor Swimming Pool and a Seasonal Outdoor Swimming Pool and includes a Private Spa or Hot Tub deemed to be an Outdoor Swimming Pool pursuant to section 6. For clarity, an Outdoor Swimming Pool does not include a pond which is used only for:

- (a) ornamental purposes;
- (b) agricultural, horticultural or industrial purposes;
- (c) a reservoir for firefighting; or
- (d) a fish hatchery;

"Owner" means a Person who is the legal owner of or who controls the Lot in question;

"Permit" means a Permit Issued by the CBO certifying approval of plans to Erect a Swimming Pool Enclosure required by this By-law;

"Person" includes an individual, firm, corporation association or partnership and includes an occupant or an Owner of a Lot;

"Private Spa or Hot Tub" means a hydro-massage pool on a Lot, containing an artificial body of water that is intended primarily for the therapeutic or recreational use of a single dwelling unit that is not drained, cleaned or refilled before use by each individual and that utilizes hydro-jet circulation, air induction bubbles, current flow or a combination of them over the majority of the pool area;

"Seasonal Outdoor Swimming Pool" means any Outdoor Swimming Pool which is designed and intended to be removed and stored during the winter months and/or when not in use;

"Swimming Pool Area" includes an Outdoor Swimming Pool and any surrounding platforms, walkways, play areas and landscaped area within the Swimming Pool Enclosure;

"Swimming Pool Enclosure" means any combination of fence, building wall or other structure, including any permitted door, gate or other opening which surrounds an Outdoor Swimming Pool and restricts access to an Outdoor Swimming Pool and may include a pool wall of an Above Ground Outdoor Pool, pursuant to subsection 23(3), but does not include a hedge, a bush or an overhead garage door;

"Temporary Enclosure" means an enclosure used temporarily for the purpose of enclosing an Outdoor Swimming Pool in the course of construction of the Outdoor Swimming Pool; and

"Zoning By-law" means the City's Zoning By-law 2010-100Z as amended or replaced.

Interpretation

2.-(1) Whenever this By-law refers to a person or thing with reference to gender or the gender neutral, the intention is to read the By-law with the gender applicable to the circumstances.

(2) References to items in the plural include the singular, as applicable.

(3) The words "include", "including" and "includes" are not to be read as limiting the phrases or descriptions that precede them. Any examples provided are intended to be representative examples and not intended to be an exhaustive list.

(4) Headings are inserted for ease of reference only and are not to be used as interpretation aids.

(5) Specific references to laws in the By-law are printed in italic font and are meant to refer to the current laws applicable with the Province of Ontario as at the time the By-law was enacted, as they are amended, restated or replaced from time to time.

(6) Any reference to periods of time, stated in numbers of days, shall be deemed applicable on the first Business Day after a Sunday or Statutory holiday if the expiration of the time period occurs on a Sunday or Statutory holiday.

(7) The obligations imposed by this By-law are in addition to obligations otherwise imposed by law or contract.

(8) This By-law provides metric units of measure. The abbreviation "mm" stands for millimetres and "m" stands for metres.

(9) Terms with capitals shall be read with the meaning in section 1, and other words shall be given their ordinary meaning.

(10) For the purposes of this By-law, and without limiting the generality of the phrase, every Owner of a Lot on which an Outdoor Swimming Pool or Swimming Pool Enclosure is being or has been Erected is deemed to have caused or authorized the Outdoor Swimming Pool or Swimming Pool Enclosure to be Erected, whether or not the Person was the Owner of the Lot at the time the Outdoor Swimming Pool or Swimming Pool Enclosure was Erected.

Severability / Conflict

3.-(1) If any section, subsection, part or parts of this By-law is declared by any court of law to be bad, illegal or ultra vires, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

(2) Nothing in this By-law relieves any person from complying with any provision of any Federal or Provincial legislation or any other By-law of the City. Without limiting the generality of the foregoing, nothing herein authorizes or permits any contravention of the Zoning By-law, including the construction of an Outdoor Swimming Pool or Swimming Pool Enclosure or any building or structure used in conjunction with either in a location which is not permitted under that by-law.

(3) Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, or any of the provisions of any federal or provincial statute or regulation, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

Administration/ Delegation

4.-(1) The administration of this By-law is assigned to the CBO who is delegated the authority to:

- (a) make all decisions required of the CBO under this By-law;
- (b) perform all administrative functions, conduct all Inspections or Investigations referred to herein and those incidental to and necessary for the due administration and implementation of this By-law; and
- (c) establish and amend from time to time, such forms, documents, and such standards, protocols and procedures as the CBO may determine are required to implement and administer this By-law.

(2) The CBO may delegate the performance of any one or more of his or her functions under this By-law to one or more persons from time to time as the occasion requires and may impose conditions upon such delegation and may revoke any such delegation. The CBO may continue to exercise any function delegated during the delegation.

(3) Unless specifically provided to the contrary in this By-law, the decisions of the CBO are final and not subject to appeal.

Application / Exception – Public Pools

5-(1) This By-law shall apply to every Outdoor Swimming Pool and every Swimming Pool Enclosure Erected in the City after the effective date of this By-law and where provided in this By-law, to Swimming Pool Enclosures Erected prior to this By-law and to Private Spas and Hot Tubs.

(2) Despite subsection 5(1), this By-law shall not apply to any Outdoor Swimming Pool which is owned by the City or other government body or to any public Outdoor Swimming Pool which is subject to regulation under the Ontario Building Code.

Private Spa or Hot Tub – Deemed to be an Outdoor Swimming Pool

6-(1) A Private Spa or Hot Tub located out of doors shall be deemed to be an Outdoor Swimming Pool for all purposes of this By-law unless:

- (a) the Private Spa or Hot Tub has a safety cover which:
 - (i) is a substantial, structurally adequate cover that is capable of supporting a 90 kilogram load; and
 - (ii) is in compliance with the current American Society for Testing and Materials standard ASTM F1346 for Hot tub and pool safety covers; and
- (b) the safety cover is permanently attached to the Private Spa or Hot Tub or to its supporting structure.

(2) The onus shall be on the Person alleging that a Private Spa or Hot Tub is not an Outdoor Swimming Pool to provide evidence satisfactory to the CBO or other Municipal Law Enforcement Officer of compliance with subsection 6(1). Without limiting the generality of the foregoing, the manufacturer's specifications establishing that the safety cover for the Private Spa or Hot Tub meets the requirements for subsection 6(1) may be sufficient.

(3) Every Owner of a Lot on which there is a Private Spa or Hot Tub Erected out of doors, and which is not deemed to be an Outdoor Swimming Pool shall ensure that the safety cover compliant with subsection 6(1) is securely fastened and locked so as to prevent access at all times when the Private Spa or Hot Tub is not in use.

Permit Required

7-(1) After the effective date of this By-law:

- (a) no Person shall Erect or cause or authorize an Outdoor Swimming Pool to be Erected on a Lot without first obtaining a Permit except as provided to the contrary in section 8; and
- (b) no Person shall Erect or cause or authorize a Swimming Pool Enclosure to be Erected on a Lot without first obtaining a Permit.

(2) After the effective date of this By-law, no Person shall alter or replace or cause or authorize a Swimming Pool Enclosure on a Lot to be altered or replaced without first obtaining a Permit, even if the Swimming Pool Enclosure was first Erected prior to the effective date of this By-law.

(3) Every Person required to obtain a Permit under this By-law shall produce the Permit on request of a Municipal Law Enforcement Officer.

Permit Exception – Seasonal Outdoor Pool – Erecting- Subsequent Seasons / Private Spa

8.-(1) A Person Erecting or causing or authorizing a Seasonal Outdoor Swimming Pool to be Erected on a Lot for the first time the Seasonal Outdoor Swimming Pool is Erected on that Lot after the effective date of this By-law, shall be required to obtain a Permit, no matter when the Seasonal Outdoor Swimming Pool was first erected on the Lot, or when the Swimming Pool Enclosure was first Erected on the Lot. However, the second or subsequent time after the effected Date of this By-law that the Person Erects or causes or authorizes the Seasonal Outdoor Swimming Pool on the same Lot, the Person shall not be required to obtain a new Permit provided that:

- (a) a Permit was obtained the first time that the Seasonal Outdoor Swimming Pool is Erected after the effective date of this By-law;
- (b) the Swimming Pool Enclosure authorized under the Permit was inspected and approved by the CBO in accordance with this By-law;
- (c) the Permit has not been revoked or deemed revoked;
- (d) the Seasonal Outdoor Swimming Pool is being Erected in the same location as disclosed in the original application for the Permit;
- (e) the Seasonal Outdoor Swimming Pool being Erected has the same dimensions as the Seasonal Outdoor Swimming Pool described in the application for the Permit; and
- (f) the Swimming Pool Enclosure as Erected continues to meet the provisions of the original Permit and this By-law.

(2) For the purposes of clarity, a Person Erecting or causing or authorizing a Private Spa or Hot Tub to be Erected on a Lot after the effective date of this By-law shall not require a Swimming Pool Enclosure or Permit unless the Private Spa or Hot Tub is deemed to be an Outdoor Swimming Pool pursuant to subsection 6(1).

Swimming Pool Enclosure – Erect in Compliance with By-law

9.-(1) Every Owner of a Lot on which an Outdoor Swimming Pool has been Erected prior to the effective date of this By-law, shall ensure that a Swimming Pool Enclosure has been Erected in accordance with the applicable by-law in effect at the time the Swimming Pool Enclosure was Erected.

(2) Every Person Erecting or causing or authorizing a Swimming Pool Enclosure to be Erected pursuant to a Permit, shall ensure that the Swimming Pool Enclosure is or has been Erected in accordance with the Permit and this By-law.

Requirement – Temporary Enclosure

10.-(1) Unless and until a Swimming Pool Enclosure has been fully Erected and inspected and approved by the CBO, every Person Erecting an Inground Outdoor Swimming Pool or causing or authorizing an Inground Outdoor Swimming Pool to be Erected on a Lot shall:

- (a) Erect, or cause to be Erected, a Temporary Enclosure compliant with subsection 10(2) so as to completely enclose the construction area; and
- (b) maintain or cause the Temporary Enclosure to be maintained in good condition at all times to effectively prevent or restrict access to the construction area by unauthorized Person.

(2) Every Person Erecting a Temporary Enclosure or causing or authorizing a Temporary Enclosure to be Erected shall ensure that the Temporary Enclosure:

- (a) consists of a 1.07 m high plastic mesh fence having mesh openings not greater than 50 mm and supported by steel T-bar posts located a maximum of 2.4 m apart and with a nine (9) gauge galvanized steel wire located at the top and bottom of such fence; or
- (b) is constructed of material that will provide an equivalent or greater degree of safety referred to in paragraph 10(2)(a) above, and which has been approved in advance by the CBO.

Limitation on Placing Water in Pool – Pool or Enclosure Erected after By-law

11.-(1) Where a Permit is required under this By-law, and except as provided to the contrary in subsection 11(2) no Person shall place water or authorize or cause water to be placed in an Outdoor Swimming Pool and no Owner of a Lot on which an Outdoor Swimming Pool has been Erected shall authorize or permit water to remain in that Outdoor Swimming Pool unless:

- (a) the Permit has issued;
- (b) the CBO inspected and approved the Swimming Pool Enclosure as Erected pursuant to the Permit and prior to the first time water is placed in the Outdoor Swimming Pool;
- (c) the Swimming Pool Enclosure is in good condition and state of repair at the time the water is placed in the Outdoor Swimming Pool and otherwise compliant with this By-law; and
- (d) the locking devices required pursuant to section 27 are in good condition and good working order.

(2) Despite subsection 11(1), in the case of an Above Ground Outdoor Swimming Pool up to 0.61 m of water may be added to an Above Ground Outdoor Swimming Pool for the purpose of maintaining structural integrity prior to the inspection and approval under the Permit required under section 27.

Limitation on Placing Water – Swimming Pool Predated By-law

12. Where the Outdoor Swimming Pool and Swimming Pool Enclosure were Erected prior to the effective date of this By-law no Person shall place water or authorize or cause water to be placed in an Outdoor Swimming Pool and no Owner of a Lot on which an Outdoor Swimming Pool has been Erected shall authorize or permit water to remain in that Outdoor Swimming Pool unless:

- (a) the Swimming Pool Enclosure was Erected in compliance with the by-law in effect at the time;
- (b) the Swimming Pool Enclosure is in a good condition and state of repair at the time the water is placed in the Outdoor Swimming Pool; and
- (c) the locking devices required pursuant to section 27 are in good condition and good working order.

Limitation on Placing Water – Private Spa or Hot Tub

13. No Person shall place water or authorize or cause water to be placed in a Private Spa or Hot Tub and no Owner of a Lot on which a Private Spa or Hot Tub has been Erected shall authorize or permit water to remain in that Private Spa or Hot Tub unless:

- (a) where the Private Spa or Hot Tub is deemed to be an Outdoor Swimming Pool under subsection 6(1), there is compliance with section 11 or section 12 as the case may be; and
- (b) where the Private Spa or Hot Tub is not deemed to be an Outdoor Swimming Pool under subsection, 6(1), the Private Spa or Hot Tub is in continuing compliance with subsection 6(3).

Maintenance of Swimming Pool Enclosure

14.-(1) Subsections 14(2) and 14(3) apply whether the Swimming Pool Enclosure was Erected before or after the effective date of this By-law.

(2) Every Owner of a Lot on which a Swimming Pool Enclosure is required, shall maintain the Swimming Pool Enclosure in good repair and condition at all times and in a manner and to

such an extent as to ensure, at all times, maximum security and protection against entry to the Outdoor Swimming Pool by unauthorized Persons.

(3) Every Owner of a Lot on which a Swimming Pool Enclosure is required shall at all times maintain in good repair and in good working condition at all times:

- (a) all gates in the Swimming Pool Enclosure; and
- (b) all locking devices which provide entrance to the Swimming Pool Area.

Locking of Swimming Pool Enclosure

15.-(1) Subsections 15(2) and 15(3) apply whether the Swimming Pool Enclosure was Erected before or after the effective date of this By-law.

(2) Every Owner of a Lot on which a Swimming Pool Enclosure shall ensure that the every gate in the Swimming Pool Enclosure is closed and locked at all times, except when the Outdoor Swimming Pool is under the immediate supervision of a competent individual.

(3) Every Owner of a Lot on which a Swimming Pool Enclosure is required, shall ensure that in addition to the requirements of subsection 15(2) any door from a dwelling unit providing access directly to a Swimming Pool Area is:

- (a) equipped with hardware mounted on either side of the door, at least 1.07 m Above Ground Level, which deactivates the use of the door from the interior of the dwelling unit; and
- (b) kept closed and locked at all times, except when the Outdoor Swimming Pool is under the immediate supervision of a competent individual.

No Action to Diminish Effectiveness of Enclosure

16. No Person shall place, pile, attach or lean or authorize or direct the placing, piling, attaching or leaning or permit the continuing placement, piling, attaching or leaning of any object, material or equipment against or within 0.91 m of the Exterior Face of a Swimming Pool Enclosure which in the opinion of the Municipal Law Enforcement Officer may:

- (a) facilitate climbing of the Swimming Pool Enclosure;
- (b) diminish the structural integrity of the Swimming Pool Enclosure; or
- (c) render the Swimming Pool Enclosure in non-conformity with this By-law.

Application for Permit

17.-(1) Every applicant for a Permit under this By-law shall file with the CBO:

- (a) an application in the form established by the CBO from time to time, bearing the signature of the applicant, certifying the accuracy of the information provided. Where the applicant is a corporation or a partnership, the application shall be signed by a person who has authority to bind the applicant corporation or partnership;
- (b) evidence the applicant is the Owner of the Lot to which the application pertains, or alternatively, the consent in writing of the Owner to the application, and acknowledging the Owner is aware of the Owner's obligations under this By-law;
- (c) identifying the Lot to which the application relates by legal description, and by municipal address;
- (d) a plot plan of the Lot drawn to scale showing:
 - (i) the location or proposed location and where applicable, the dimensions of: the Outdoor Swimming Pool, all accessory equipment such as but not limited to, pumps, filters and heating equipment, the Swimming Pool Enclosure including any gates, any easements, any landscape features and any private sewage system;
 - (ii) the distances in metres from each feature shown on the plot plan to: property lines, to any buildings or structures on the Lot, and to each other feature on the plot plan;
 - (iii) such other information as the CBO may request to assess the application and determine compliance with this By-law;
- (e) a plan or plans illustrating the complete details of the Swimming Pool Enclosure, to be constructed, including complete details of any existing fence or buildings proposed to be part of the Swimming Pool Enclosure including the:
 - (i) type of construction;
 - (ii) materials to be used; and
 - (iii) height;
- (f) the name, address and telephone numbers of the Owner and any Person performing the work on behalf and at the direction of the Owner;
- (g) in the case of an application for the installation of an In Ground Outdoor Swimming Pool and where the CBO in his sole discretion determines that it is appropriate in the circumstances, a Lot Grading Plan bearing the signature and seal of a lot grading professional, as determined by the City's Lot Grading Policy then in effect, certifying that the drainage scheme depicted by the plan is

designed to ensure that water will not accumulate at or near the buildings and will not adversely affect adjacent properties;

- (h) where the CBO in his sole discretion determines that it is appropriate in the circumstances a geotechnical soils report prepared by a qualified professional;
- (i) all applicable fees determined in accordance with By-law 2005-165, A By-law of the City of Greater Sudbury Respecting Construction, Demolition, Change of Use Permits, Inspections and Fees, as amended or replaced; and
- (j) such additional information or documentation as the CBO may require in the circumstances to assess the application.

(2) No application for and no approval of a Permit releases the applicant from responsibility to secure all permits, licences, approvals or other forms of permission associated with Erecting an Outdoor Swimming Pool or Swimming Pool Enclosure or any accessory structure to the Outdoor Swimming Pool, imposed by any federal, provincial or municipal authority.

Application Abandoned

18.-(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 or refused, the application shall be deemed abandoned and the CBO shall cancel the application and the application fee shall be forfeited.

(2) Where an applicant for a Permit submits a written request to cancel the application within two (2) business days of submitting the application to the City, a refund of 50% of the application fee shall be provided to the applicant.

Refusal to Issue Permit

19.-(1) The CBO shall refuse to issue a Permit if:

- (a) Erecting the Swimming Pool Enclosure would be contrary to the provisions of this By-law or any other by-law of the City or any applicable federal or provincial statute, regulation or code, including, without limitation:
 - (i) the location of the Outdoor Swimming Pool or the fence height is not compliant with the Zoning By-law nor been approved by minor variance;
 - (ii) the Swimming Pool Enclosure will not completely enclose the Outdoor Swimming Pool;
 - (iii) the Swimming Pool Enclosure proposed to be Erected would not be compliant with the requirements of this By-law;

- (b) there are any outstanding orders under any applicable by-law or federal or provincial legislation affecting the Lot;
- (c) there remains outstanding:
 - (i) any fee assessed under this By-law or a predecessor of this By-law;
 - (ii) any fine resulting from a contravention of this By-law or a predecessor of this By-law; or
 - (iii) any other amounts owing to the City;
- (d) the CBO in his or her sole discretion, determines, based on his or her review of a geotechnical report, that it is not appropriate in the circumstances to permit an Inground Outdoor Swimming Pool; or
- (e) for any other reason which the CBO considers to be sufficient reason to refuse to issue a Permit.

(2) Where the CBO determines that a Permit should not be issued, the CBO shall notify the applicant for the Permit of the decision and particulars of the reason for the refusal to issue or renew the Permit.

(3) The decision of the CBO shall be final.

Issuing a Permit

20.-(1) The CBO is authorized to issue a Permit in a form established by the CBO from time to time, provided:

- (a) the applicant has complied with the requirements of this By-law;
- (b) the Swimming Pool Enclosure described in the application is compliant with the requirements of this By-law; and
- (c) the issuance of the Permit is not otherwise prohibited under this By-law.

(2) Every Permit issued by the CBO shall specify particulars of:

- (a) the Person to whom it is issued;
- (b) the effective date of the Permit;
- (c) the unique number assigned to the Permit;
- (d) the Lot on which the Swimming Pool Enclosure is to be constructed including the legal description of the Lot and the municipal address assigned to the Lot;
- (e) the type of Swimming Pool Enclosure authorized to be Erected; and
- (f) such conditions or provisions as the CBO determines to be appropriate in the circumstances.

(3) The CBO issues a Permit by dating as of the date of issuance and signing the Permit.

Revocation / Deemed Revocation of Permit

21.-(1) A Permit may be revoked by the CBO:

- (a) if the Permit was issued in error or on mistaken, false or incorrect information;
- (b) if in the opinion of the CBO, the Swimming Pool Enclosure is not Erected in accordance with the approved application for a Permit and this By-law and is not remedied to the satisfaction of the CBO within the period of time specified by the CBO; or
- (c) if, in the opinion of the CBO the Swimming Pool Enclosure is not maintained in accordance with this By-law.

(2) The CBO may give notice of the revocation of a Permit under subsection 21(1) in writing delivered to the applicant named in the application for the Permit, or posted in a conspicuous place on the Lot, or mailed by registered mail to Owner at the address for the Owner in the application for the Permit. Service by registered mail shall be deemed effective on the fifth day after mailing, whether or not it is actually received and service by personal service and posting shall be effectively immediately upon delivery or posting as the case may be.

(3) Where a notice is given pursuant to subsection 21(2), the CBO may, where in the opinion of the CBO it is appropriate to do so, provide the Owner with an opportunity to remedy any deficiency specified in the notice, and provided every such deficiency is remedied to the satisfaction of the CBO within the time specified in the notice, or such later time as may be agreed to by the CBO, the Permit will not be revoked.

(4) A Permit is deemed to be revoked without requirement for notice by the CBO, in the event that the Swimming Pool Enclosure has not been Erected and approved by the CBO within a period of six (6) months from the date the Permit was issued.

(5) A Permit remains the property of the City.

Inspection Required

22.-(1) After the Swimming Pool Enclosure is Erected and prior to placing water in the Outdoor Swimming Pool, except as permitted under subsection 11(2), the Owner shall arrange for such inspections by the CBO as may be required in the circumstances to secure the approval by the CBO of the Swimming Pool Enclosure.

(2) Upon conducting an inspection, the CBO shall notify the Owner in writing:

- (a) that the Swimming Pool Enclosure has been approved; or
- (b) of any deficiency or deficiencies in the Swimming Pool Enclosure and the date by which any deficiency is to be corrected. Where, in the opinion of the CBO, a deficiency raises a life and safety concern, the CBO may require an immediate correction of the deficiency.

(3) The Owner shall correct or cause to be corrected, any deficiencies noted by the CBO during an inspection, and shall schedule such further inspection or inspections by the CBO as may be required from time to time until either the CBO has approved the Swimming Pool Enclosure or the Permit has been deemed revoked, as the case may be.

Enclosure Specifications – General – Special Rules- Pool Wall- Building Wall

23.-(1) This section 23 shall apply to every Swimming Pool Enclosure Erected after the effective date of this By-law

(2) Every Person who is Erecting or causing or authorizing a Swimming Pool Enclosure to be Erected on the Lot, shall ensure that the Swimming Pool Enclosure:

- (a) surrounds or encloses the entire Swimming Pool Area;
- (b) is no less than 1.2 m in height at any point and no higher than permitted pursuant to the Zoning By-law;
- (c) is Erected using only:
 - (i) chain link fencing compliant with the requirements of section 24;
 - (ii) wood construction fencing compliant with the requirements of section 25;
 - (iii) wrought iron or metal construction fencing compliant with the requirements of section 26; or
 - (iv) a material approved by the CBO and compliant with any requirements imposed by the CBO;
- (d) does not have openings under any part of Swimming Pool Enclosure of a size so as to permit the passage of a spherical object having a diameter of 100 mm;
- (e) is not Erected using, in whole or in part, any barbed wire, chicken wire or other barbed or sharp material;
- (f) does not incorporate and is not comprised in whole or in part of, a hedge or bush, or an overhead garage door;
- (g) is not designed or constructed to be used as a conductor of electricity;
- (h) is not designed or constructed in a manner that any part of, or any attachment to, or any opening in the Swimming Pool Enclosure can facilitate climbing;

- (i) does not have any object or thing attached, fixed or placed on the exterior side of the Swimming Pool Enclosure between 0.14 m and 1.2 m, measured from the bottom of the Swimming Pool Enclosure, to facilitate climbing;
- (j) is not constructed using basket weave or lattice material;
- (k) only allows access to the Swimming Pool Area, other than through a dwelling unit, by means of one or more gates or entrances which are compliant with the requirements of section 27; and
- (l) is constructed in accordance with any other by-law of the City which governs fence construction.

(3) No Owner of a Lot on which a Swimming Pool Enclosure for an Above Ground Swimming Pool has been Erected may rely on the wall of the Above Ground Swimming Pool as the Swimming Pool Enclosure unless:

- (a) the vertical walls of the Above Ground Swimming Pool have a height of not less than 1.32 m measured from the Ground Level at all points on the perimeter of the wall of the Above Ground Swimming Pool;
- (b) the walls of the Above Ground Swimming Pool do not possess any horizontal members that may facilitate climbing;
- (c) no pool equipment, pump, filter or other equipment, object or material is attached to or placed or piled within 0.91 m of the Above Ground Swimming Pool so as facilitate climbing or diminish the structural integrity of the walls of the Above Ground Swimming Pool; and
- (d) any steps, ladder or other means of entry to the Above Ground Swimming Pool have a lockable closing mechanism or in the alternative, a gate or entrance way compliant with section 27

(4) No Owner of Lot on which an Outdoor Swimming Pool Enclosure has been Erected may rely on the wall of a building as part of the Swimming Pool Enclosure unless:

- (a) the wall is at least 1.32 m in height as measured from Ground Level at the Exterior Face of the wall;
- (b) any window opening, other than a window located in a dwelling unit, which occurs with the area of the wall forming part of the Swimming Pool Enclosure, is kept securely locked when the pool is not under the immediate supervision of a competent Person; and

- (c) any door providing access directly to a Swimming Pool Area and located within the area of the wall forming part of the Swimming Pool Enclosure, satisfies the requirements of subsection 15(3).

Chain Link Swimming Pool Enclosure

24. For the purposes of section 23, every Person who Erects a Swimming Pool Enclosure or causes or authorizes a Swimming Pool Enclosure to be Erected on the Lot which is comprised in whole or in part of chain link shall ensure that the chain link fence meets all of the following requirements:

- (a) is constructed of chain link with a diamond mesh, with a wire size of not less than twelve (12) gauge in thickness when of galvanized steel material, or with a wire size of not less than fourteen (14) gauge in thickness when of vinyl or other approved coated steel material which would form an overall thickness equivalent to twelve (12) gauge galvanized steel wire;
- (b) has links of diameter of not more than 38mm;
- (c) is supported by capped galvanized steel posts with a minimum 38 mm diameter, spaced not more than 2.4 m apart, and placed at least 1.40 m below Ground Level;
- (d) has a top rail of a minimum 32 mm diameter galvanized steel pipe, securely fastened to the upright galvanized steel posts; and
- (e) has a bottom support of not less than a nine (9) gauge galvanized steel tension wire securely fastened to the upright galvanized steel posts.

Wood Fence Swimming Pool Enclosure

25. For the purposes of section 23, every Person who Erects a Swimming Pool Enclosure or causes or authorizes Swimming Pool Enclosure to be Erected on a Lot, which is comprised in whole or in part of wood construction, shall ensure that the wood fence meets all of the following requirements:

- (a) is constructed of a minimum 16 mm thick boards, placed vertically;
- (b) has 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, unless it is a board on board design whereby it may be 100 mm with a maximum 50 mm opening between the width of the boards;

- (c) is supported by solid wood posts of at least 89 mm x 89 mm or 89 mm in diameter, spaced not greater than 2.4 m apart, and placed at least 1.40 m below Ground Level or be constructed in such a manner as to be non-frost susceptible;
- (d) has top and bottom horizontal rails of a minimum size of 38 mm x 89 mm where the 89 mm dimension is in vertical orientation, securely fastened to the solid wood posts; and
- (e) all wood which is in contact with the ground or to be below Ground Level, is a species resistant to decay by moisture or is treated with an approved substance to resist decay.

Fence of Wrought Iron or Metal Construction

26. For the purposes of section 23, every Person who Erects a Swimming Pool Enclosure or causes or authorizes Swimming Pool Enclosure to be Erected on a Lot which is comprised in whole or in part of wrought iron or metal construction shall ensure that the wrought iron fence meets all of the following requirements:

- (a) is of sufficient strength to provide an effective Swimming Pool Enclosure;
- (b) is supported by posts spaced not greater than 2.4 m apart, and placed at least 1.4 m below Ground Level or be constructed in such a manner as to be non-frost susceptible; and
- (c) has top and bottom rail spaced so that the minimum clear space of 1.2 m is provided between horizontal members;
- (d) has no openings between vertical members of a size so as to allow the passage of a spherical object having a diameter of 100 mm.

Gates and Entrances- General

27.-(1) Every Person who Erects a Swimming Pool Enclosure or causes or authorizes Swimming Pool Enclosure to be Erected on a Lot shall ensure that, at all times, every gate forming part of the Swimming Pool Enclosure:

- (a) is of construction and height equivalent to or greater than that of the Swimming Pool Enclosure which it forms part of;
- (b) is supported on substantial hinges;
- (c) is equipped with a self-closing device capable of placing the gate or entrance in a latched position;

- (d) is equipped with a self-latching device that is located at least 1067 mm above the bottom of the Swimming Pool Enclosure and mounted on the pool side of the gate or entrance; and
- (e) is equipped with a lock.

(2) Every Person who Erects a Swimming Pool Enclosure or causes or authorizes Swimming Pool Enclosure to be Erected on a Lot shall ensure that where a double gate forms part of the Swimming Pool Enclosure, one gate is capable, at all times, of being fixed in a closed and locked position.

Compliance and Offences

Enforcement – No Obstruction Etc.

28-(1) This By-law may be enforced by any Municipal Law Enforcement Officer.

(2) No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person exercising a power or performing a duty under this By-law.

Offence

29-(1) Every Person who contravenes any of the provisions of this By-law and any director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine as provided for in the *Provincial Offences Act*.

(2) For the purposes of subsection 29(1), each day on which a person contravenes any of the provisions of this By-law shall be deemed to constitute a separate offence under this By-law.

(3) The levying and payment of any fine as provided for under the Provincial Offences Act shall not relieve a person from the necessity of compliance with the obligations under this By-law.

(4) The making of a false or intentionally misleading statement or representation in any agreement or request for permission provided for by this By-law shall be deemed to be a violation of the provisions of this By-law.

Right of Entry – Inspection

30.-(1) A Municipal Law Enforcement Officer may enter on a Lot at all reasonable times to ascertain whether there is compliance with:

- (a) the provisions of this By-law; or

- (b) a direction or order or notice given under this By-law.

(2) A Municipal Law Enforcement Officer may, for the purposes of an inspection under subsection 30(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; and
- (d) alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, sample or photographs necessary for the purposes of the inspection.

(3) A Municipal Law Enforcement Officer may be accompanied by such persons as are necessary for conducting the inspection or for carrying out any required work.

(4) Upon request, a Municipal Law Enforcement Office shall produce identification.

(5) A receipt shall be provided for any document or thing removed under paragraph 30(2)(b) and the document or thing shall be promptly returned after the copies or extracts are made.

Enforcement Order

31.-(1) Where the Municipal Law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the Municipal Law Enforcement Officer may make an order requiring the Owner of the Lot on which the contravention occurred to:

- (a) discontinue the contravening activity;
- (b) require the Outdoor Swimming 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 Swimming Pool Enclosure or Temporary Enclosure into conformity with the requirements of this By-law.

(2) Any order made under subsection 31(1) shall set out:

- (a) reasonable particulars of the contravention sufficient to identify the contravention and the location of the Lot on which the contravention is occurring;
- (b) the work to be done to restore or bring the Swimming Pool 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;

- (d) the date or dates by which there must be compliance with the order; and
- (e) provide that if any work specified is not completed by the date specified to the satisfaction of the Municipal Law Enforcement Officer, that the Municipal Law Enforcement Officer may cause the work to be done at the expense of the Owner and that the City may recover the costs by action or by adding the costs to the tax roll and collect them in the same manner as taxes.

Service of Orders

32.-(1) An order under section 31 shall be served by delivering personally, by posting in a conspicuous place on the Lot where the contravention occurred or be sent by registered mail to the Owner of the Lot on which the contravention occurred, at the address recorded for the owner in the assessment roll for the Lot.

(2) Service of an order under section 31 shall be deemed to be effective on the date of personal service; on the date posted on the Lot; or on the fifth day after mailing, whether or not notice of the order is actually received by the Person served.

Compliance with Order

33. Every Person who is served with an order under this By-law shall comply with the requirements of the order within the time period specified in the order.

Remediation by City

34.-(1) Where a Person fails to comply with the requirements of the order under section 31 within the time period specified in the order, the Municipal Law Enforcement Officer, with the assistance of others and using such equipment or machinery as may be required, may cause such work to be done or may take such steps as are necessary to meet the requirements of the order at the expense of the Owner.

(2) The City may recover the costs incurred in undertaking the work in subsection 34(1) including interest thereon at the rate of 15%, from the date the costs were incurred until payment in full, by action or by adding same to the tax rolls for the Lot on which the contravention occurred, and collecting them in the same manner as property taxes.

Prohibition Order

35. When a Person has been convicted of an offence under this By-law, the Ontario Court (Provincial Division), or any court of competent jurisdiction thereafter may, in addition to any

other penalty imposed on the Person convicted, issue an order prohibiting the continuation of the offence or doing of any act or thing by the Person convicted directed towards the continuation of the offence.

Personal Information

36.-(1) The CBO and a Municipal Law Enforcement Officer is authorized to collect personal information for the purposes of administering this By-law.

(2) All information submitted to and collected by the City in accordance with this By-law shall, unless the City Clerk determines otherwise, be available for disclosure to the public in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (MFIPPA).

(3) In the event that any Person in submitting information to the City or to the CBO any form, as required under this By-law, where such information is confidential or proprietary or otherwise may be exempt from disclosure under the MFIPPA, the Person submitting the information shall so identify that information upon its submission to the City or the CBO and shall provide sufficient details as to the reason for its purported exemption from disclosure.

Transition Rules

37. After the date of passage of this By-law, those by-laws identified in section 38:

- (a) shall apply only to those Lots for which an application for a permit has been submitted prior to the date of passing of this By-law and then only to such Lots until such time as the work permitted under any issued Permit for those applications has been completed; and
- (b) shall continue to apply to any Lots in respect of which an order has been given under the said by-law until such order has been completed or any enforcement proceeding in respect of such an order has been concluded.

Repeal

38.-(1) Each of the following By-laws and every By-law amending the following By-laws is hereby repealed:

- (a) By-law 78-70 of the former City of Sudbury;
- (b) By-law 78-42 of the former Town of Capreol;
- (c) By-law 93-17 of the former Town of Nickel Centre;
- (d) By-law 78-11 of the former the Town of Onaping Falls;

- (e) By-law 81-36 as amended by 97-34 of the former Town of Rayside-Balfour;
- (f) By-law 78-28 of the former City of Valley East; and
- (g) By-law 78-42 of the former Town of Walden.

(2) Where a By-law is repealed by this By-law, the repeal does not:

- (a) revive any By-law not in force or existing at the time of which the repeal takes effect;
- b) affect the previous operation of any By-law so repealed;
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing, or incurred under the By-law so repealed; or
- (d) affect any offence committed against any By-law so repealed or any penalty or forfeiture or punishment incurred in respect thereof; or affect any investigation, legal proceeding or remedy in respect of such privilege, obligation, liability, penalty, forfeiture or punishment.


Short Title

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


Effective

40. This By-law shall come into force and take effect upon passage.

Read and Passed in Open Council this 31st day of May, 2016



Mayor



Clerk