

THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2006-071

A by-law to regulate pool enclosures within the Town of Oakville

WHEREAS section 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, (the "*Municipal Act*") authorizes a municipality to pass by-laws respecting fences;

AND WHEREAS section 9(3) of the *Municipal Act* authorizes a municipality to regulate or prohibit matters pertaining to fences and as a part of that power, to provide for a system of approvals and to impose conditions as requirements of obtaining, continuing to hold or renewing the approval;

AND WHEREAS section 130 of the *Municipal Act* authorizes a municipality to regulate matters related to health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS section 427 of the *Municipal Act* authorizes a municipality to direct a matter or thing to be done under a by-law to be done at the person's expense should the person fail to do so, and to recover the costs of doing the thing or matter by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

NOW THEREFORE THE COUNCIL ENACTS AS FOLLOWS:

**PART 1
DEFINITIONS AND INTERPRETATION**

1. In this by-law:
 - (a) **"Director"** means the Director of Development Services of the Town of Oakville, or any successor to that position, or that person's designate(s);
 - (b) **"effective ground level"** at any location means the highest level of the ground within 1.2 metres (4 feet) measured horizontally in any direction from the location under consideration;
 - (c) **"hot tub"** means a hot tub, Jacuzzi, whirlpool, or spa;
 - (d) **"inflatable pool"** means a pool, as defined in this by-law, consisting of an air supported structure which contains or is capable of containing water with a depth in excess of 0.61 m (2 ft.) at any point;

- (e) **“owner”** of a property includes the registered owner of the property and any lessee, tenant, mortgagee in possession, or person occupying or in charge of the property;
- (f) **“permit”** or **“pool enclosure permit”** means a permit issued under this by-law;
- (g) **“pool”** means any body of water, which is:
 - (i) located outdoors on private property;
 - (ii) wholly or partially contained by artificial means; and
 - (iii) capable of holding water in excess of 0.61m (2 feet) in depth at any point,
 - (iv) an open exposed water surface of at least 1m² (10.7 ft²);and includes a hot tub or landscape pond meeting the above criteria, but for purposes of this by-law does not include any pool which is:
 - (1) a pond or reservoir to be utilized for farming purposes or as part of a golf course,
 - (2) a pool owned by any public or governmental body, agency or authority, or
 - (3) an existing natural body of water or stream;
 - (4) a privately owned stormwater management facility;
- (h) **“pool enclosure”** means a fence, wall or other structure, or combination thereof, including any door or gate, surrounding a pool and restricting access thereto;
- (i) **“self-closing device”** means a mechanical device or spring which returns a pool enclosure gate to its closed position within 30 seconds after it has been opened;
- (j) **“self-latching device”** means a mechanical device or latch which is engaged each time the gate is secured to its closed position, which will not allow the gate to be re-opened by pushing or pulling, and which

will ensure the pool enclosure gate remains closed until unlatched by either lifting or turning the device itself directly or by a key;

(k) “**temporary pool**” means an inflatable pool or other pool which is designed to be removed periodically on a seasonal or more frequent temporary basis; and

(l) “**Town**” means The Corporation of the Town of Oakville, or the territory within its jurisdiction as the context may require.

2. The requirements under this by-law are expressed in metric measurements. Any imperial measurement included in this by-law is approximate and is provided for convenience only.

PART 2 GENERAL PROVISIONS

Administration - Director

3. This by-law shall be administered by the Director.

Application of By-Law

4. Subject to Section 7, this by-law shall apply to all pool enclosures constructed, existing or replaced, within the Town of Oakville.
5. Except as noted in Section 6, in the event of any conflict between the provisions of this by-law and any provision of the By-law 2002-034 (the Fence By-law), as may be amended or replaced from time to time, the provisions of this by-law shall prevail.
6. Notwithstanding Section 5,
- (a) no conflict exists between the provisions of this by-law and the provisions of any other by-law or approval if it is possible to comply with both by-laws by choosing an alternate type, design or location for a pool enclosure or pool.

- (b) nothing in this by-law permits the location of a pool, deck, platform or other structure in a location which is not permitted under the Town's Zoning by-law.

Existing Pool Enclosures

- 7. The provisions of this by-law shall not prevent the use of an existing pool enclosure if that pool enclosure was constructed prior to the effective date of this by-law in accordance with the regulations of By-law 1991-20, or any predecessor to that by-law and has been maintained continuously in accordance with those regulations.
- 8. At such time as an existing pool enclosure is replaced or substantially altered, the replacement or altered pool enclosure shall be constructed in accordance with this by-law.
- 9. Where an existing pool enclosure has enclosed a pool in accordance with the regulations that existed prior to the effective date of this by-law, and has been maintained continuously in accordance with those regulations, and that pool enclosure also marks the boundary between abutting properties, the shared portion of the pool enclosure between the abutting properties may form part of a new pool enclosure for a pool on the abutting property which shall be deemed to be in conformity with this by-law. All other portions of the new pool enclosure that enclose the newly constructed pool shall meet the standards set out in this by-law.

**PART 3
PROHIBITIONS**

Prohibitions

- 10. No person shall construct or install a pool, cause a pool to be constructed or installed, commence the construction or installation of a pool without first obtaining a pool enclosure permit from the Director.

11. No person shall construct or install a pool or cause a pool to be constructed or installed which is not completely enclosed by a pool enclosure in accordance with this by-law.
12. No person shall construct or cause to be constructed any pool enclosure which does not conform to the requirements of this by-law, or permit such non-conforming pool enclosure to continue to enclose a pool.
13. No person shall fill a pool with water or cause a pool to be filled with water or allow water to remain in a pool unless:
 - (a) the pool is enclosed by a pool enclosure, other than an approved temporary pool enclosure, meeting the requirements of section 25 of this by-law; and
 - (b) if the pool is a newly constructed pool, the Director has been notified and the pool enclosure has been inspected and approved by the Town.
14. No person shall remove any part of a pool enclosure if the pool is filled with water.
15. No person shall alter or replace a pool enclosure without having first obtained a permit from the Director.
16. No owner shall fail to ensure that:
 - (a) all gates forming part of the pool enclosure meet the standards of this by-law;
 - (b) all entranceways to a pool enclosure through a wall of a main building meet the standards of this by-law;
 - (c) all gates forming part of a pool enclosure are locked when the area is not in active use;
 - (d) the lockable lid of any hot tub is closed and locked when the pool area is not in active use unless the hot tub is within a locked pool enclosure meeting the requirements of this by-law.

17. No person shall place, pile, attach or lean any object or material against or near a pool enclosure so as to facilitate climbing of the pool enclosure, diminish the structural integrity of a pool enclosure or render the pool enclosure in non-conformity with the provisions of this by-law.
18. No person shall erect a fence adjacent to an existing pool enclosure that does not comply with the requirements of this by-law.

**PART 4
APPLICATIONS FOR PERMITS**

19. Every application for a pool enclosure permit shall be in a form specified by the Director and accompanied by:
 - (a) 2 sets of plans showing the location of the pool, all proposed pool equipment (such as filters, slides and heaters) and proposed landscape features in relation to property lines, buildings (including decks and sheds), and any easements;
 - (b) complete details of the proposed pool enclosure, including the location and type of proposed fence and gate; and
 - (c) the permit fee(s) specified in Schedule "A";
 - (d) the proposed access route for construction of the pool from any public right of way to the proposed pool location;
 - (e) if the proposed pool is within an unassumed plan of subdivision, the written approval of the developer/owner of the subdivision.
20. The Director shall issue a permit for a pool enclosure where the plans submitted appear to comply the requirements of this by-law and all applicable regulations and by-laws or approvals. Without limiting the generality of the foregoing, the Director shall not issue the permit for the pool enclosure unless a site alteration permit, if required, has been obtained and the proposed location of the pool and pool enclosure complies with the Zoning By-law and any other applicable regulations, by-laws or approvals.

**PART 5
STANDARDS FOR POOL ENCLOSURES**

21. Every owner of a pool shall ensure that the pool is enclosed by a pool enclosure that satisfies the following standards:
- (a) **Height:** the pool enclosure shall extend from the ground to a height of not less than 1.20 m (4 feet). Height shall be measured from the effective ground level on the outside (not the pool side) of the pool enclosure;
 - (b) **Openings and Materials:**
 - (i) except as provided in (ii) and (iii), the pool enclosure shall not have any openings that would allow the passage of a spherical object having a diameter greater than 38 mm (1.5 inches);
 - (ii) for pool enclosures which are not chain link fences or wood lattice, where the pool enclosure is at least 1.52 m (5 feet) high and the vertical distance between each horizontal rail measured from the top of each rail is at least 1.22 m (4 feet), the openings in the pool enclosure are permitted to be greater than 38 mm (1.5 inches) but not greater than that which would allow the passage of a spherical object having a diameter of 10 cm (4 inches); or
 - (iii) for a pool enclosure which is a chain link fence, if the pool enclosure is at least 1.83 m (6 feet) in height, the openings in the pool enclosure are permitted to be greater than 38 mm (1.5 inches) but not greater than that which would allow the passage of a spherical object having a diameter of 50 mm (2 inches);
 - (iv) for a pool enclosure which is comprised of wood lattice, the wood shall be at least 13 mm (0.5 inches) in thickness, with openings of less than 38 mm (1.5 inches);
 - (c) **Horizontal Louvres:** where a pool enclosure is constructed with horizontal louvres,

- (i) the louvres may not have a separation exceeding 25 mm (1 inch) measured at right angles to the two surfaces,
 - (ii) shall be set at an angle of not less than forty-five degrees to the horizontal; and
 - (iii) shall slope upward toward the inside (pool side) of the enclosure;
- (d) **Ground Clearance:** the space at any point under the pool enclosure must not exceed 50 mm (2 inches) and the ground beneath the enclosure cannot be of loose gravel or other material which can be easily removed so as to afford access under the pool enclosure;
- (e) **Framing and Braces:** all horizontal structural members must be located inside (pool side) of the enclosure to prevent easy climbing; and
- (f) **Location:** subject to section 21(g), the pool enclosure shall be located
- (i) not less than 0.61 m (2 feet) from any enclosure that does not meet the requirements of this by-law; and
 - (ii) for pools other than hot-tubs, on a level surface being not less than .91 m (3 feet) from the water's edge of the pool, provided, if the wall of a building is used as part of the pool enclosure, the wall of the building shall be at least 1.22 m (4 feet) from the water's edge of the pool; and
 - (iii) for hot-tubs, not less than .91 m (3 feet) from the hot-tub, provided if the wall of a building is used as part of the pool enclosure, the hot tub may be placed against the wall.
- (g) **Location (access points):** any gate or entranceway forming part of a pool enclosure shall be at least 1.52 m (5 feet) from the water's edge of the pool.

GATES AND OTHER ACCESS POINTS

Gates

22. Every owner shall ensure that every gate forming part of a pool enclosure:
- (a) is constructed in accordance with the standards prescribed in section 21 of this by-law;
 - (b) is supported on substantial hinges, capable of supporting 90.72 kg (200 lbs) in body weight;
 - (c) is equipped with a self-closing device;
 - (d) is equipped with a self-latching device that is at least 1.22 m (4 feet) above the established grade;
 - (e) is equipped with a lock; and
 - (f) does not have any member on the exterior face of the gate that would facilitate climbing of the gate.
23. If the gate to the pool enclosure is a double gate access, made up of two gates at the same location:
- (a) one of the two gates shall have a self-closing device and self-latching device; and
 - (b) the gate of this double gate access without a self-closing device and a self-latching device shall have a device permanently affixed to the ground or other non-moveable object, that prevents access through this gate without lifting or removing this device and then releasing the latch.

Entrances through Buildings

24. When a wall or portion thereof of any building located on the same property as the pool forms part of the pool enclosure, no entrances to the enclosed pool area are permitted through such wall, unless:

- (a) the entranceway is equipped with doors which are equipped with a bolt or a chain latch at a minimum height of 1.83 m (6 feet) above the inside floor level;
- (b) the care, control and maintenance of any such entranceway and safety latch described in clause (a) of this subsection are provided by the owner; and
- (c) the entranceway is located no closer than 1.20 m (4 feet) from the edge of the water contained in the swimming pool and containing no stairs or steps within.

TEMPORARY FENCE DURING CONSTRUCTION

- 25. The owner shall ensure that temporary fencing meeting the requirements of this section is in place during all phases of construction of the pool such that unauthorized access to the site is prevented. Temporary fencing shall be of 1.22 m (4 foot) high snow fence, or such other fencing material with similar visibility, height and rigidity as may be approved by the Director in writing, and shall be securely attached at any openings when the area is left unattended.
- 26. Notwithstanding Section 13 (a) of this by-law, if a pool enclosure is damaged and requires replacement or repair, water may remain in a pool enclosed by a temporary pool enclosure with the permission in writing of the Director pending the replacement or repair of the pool enclosure, subject to any time limits which may be imposed by the Director.

PART 6 SPECIAL PROVISIONS AND PARTIAL EXEMPTIONS

Temporary Pools

- 27. Notwithstanding Part 3 of this by-law if a pool enclosure permit has been obtained with respect to the pool enclosure for a temporary pool, the temporary

pool may be reinstalled and refilled with water without additional permits or inspections provided there have been no alterations to the pool enclosure.

Hot Tubs

28. Notwithstanding Part 3 of this by-law, no permit or pool enclosure is required for a hot tub which is:
- (a) equipped with a substantial cover, capable of holding 90.72 kg (200 lbs) which is permanently fixed to the structure and which is locked to prevent access when the structure is not in use; or
 - (b) equipped with a guard meeting the requirements of Section 29 of this by-law.

Above Ground Pools and Hot Tubs with Guards

29. The pool enclosure for an above ground pool or hot tub need not comply with Part 5 of this by-law provided:
- (a) the pool is surrounded by a platform or deck at least .61 m (2 feet) in width;
 - (b) a guard of not less than 1 m (3.3 feet) in height, measured from the surface of the platform or deck is provided around any platform or deck;
 - (c) the combined height of the exterior sides of the swimming pool structure and any guard attached thereto is a minimum of 1.8 m. (5.9 feet) and a maximum of 2.5 m (8.2 feet) in height above the effective ground level;
 - (d) the exterior sides of the pool structure and any outside face of any guard are constructed in a manner that will not facilitate climbing; and
 - (e) the outside face of the pool structure, including any attached deck or platform is at least 0.91 m (2.98 feet) from any lot line, or such larger distance as may be required by the Zoning By-law;

- (f) access to the platform or deck is restricted by means of an entrance or gate constructed in accordance with Part 5 of this by-law.

Properties Abutting Lake Ontario

- 30. Where a pool is installed on a property that abuts Lake Ontario and such property has riparian rights, such property need not be enclosed along the Lake provided that land access cannot be gained from any point and the remaining lands surrounding the swimming pool are enclosed in accordance with the requirements of this by-law.

**PART 7
ADMINISTRATION**

Penalties

- 31. Every person who contravenes any provision of this By-law is guilty of an offence, and is liable upon conviction to a fine under the *Provincial Offences Act*, of not more than \$5,000.00 exclusive of costs.

**PART 8
OTHER**

Schedules

- 32. All Schedules referred to and attached to this by-law shall be deemed to be part of this by-law.

Severability

- 33. If a court of competent jurisdiction declares any provisions or part of a provision of this by-law to be invalid or to be of no force and effect, it is the intention of the Council in enacting this by-law that each and every other provision of this By-law authorized by law, be applied and enforce in accordance with its terms to the extent possible according to law.

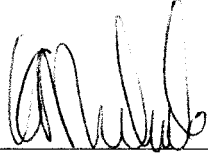
Short Title

34. This by-law may be referred to and cited as the "Pool Enclosure By-law".

Repeal

35. By-law 1991-20, as amended by By-law 1991-205 and By-law 2002-155, is hereby repealed. References in any other by-law, condition of approval, or agreement to By-law 1991-20 shall be deemed to be references to this by-law.

PASSED by the Council this 20th day of March, 2006



Ann Mulvale
MAYOR



Phillip Bouillon
A/ CLERK

SCHEDULE "A"
Permit Fees for Pool Enclosures

	Type of Pool Enclosure	Permit Fee	Notes
1	Inground Pools and landscape ponds (in conjunction with a site alteration permit)	\$100.00	*
2	Above Ground Pool (without a site alteration permit) (in conjunction with a site alteration permit)	\$200.00 \$100.00	*
3	Temporary Pools including Inflatable Pools Application, Plans Review and Permit Inspection (Optional)	\$50.00 \$50.00	** **
4	Hot Tubs (if no lockable cover) (no permit required if equipped with lockable cover)	\$100.00	
5	Replacement/alteration of Pool Enclosure	\$100.00	
	Additional Charges		
	Sign Fee (applicable to all permits)	\$15.00	
	Additional Inspections (applicable if the pool enclosure is not in compliance at time that owner calls for final inspection prior to filling the pool with water)	\$100.00 per inspection	***

NOTES:

* **Site Alteration Permits** - Inground pools, landscape ponds and some above ground pools affect the grading of the property. Applicants are advised that additional permits and additional fees are required under the Site Alteration By-law (2003-021 as may be amended or replaced from time to time). Please note that the fee for the pool enclosure has been discounted to reflect the coordination of inspection activities that is possible when permits are obtained under both by-laws.

** **Fees for Temporary pools** are based on the review and approval of plans submitted by the applicant. An optional on-site inspection to confirm compliance will be available on a fee for service basis but will not be conducted unless requested by the applicant.

*** **Charges for additional inspections** will be charged if the pool enclosure is not in compliance with the provisions of this by-law at the time that the applicant calls for the final inspection. Inspectors will not return to conduct the final inspections and the pool cannot be filled with water unless this fee has been paid.