

TOWN OF MARKHAM

ONTARIO



SWIMMING POOL ENCLOSURES

BY-LAW NO. 59-75

This By-law is printed under and
by authority of the Council of
the Town of Markham

(Consolidated for convenience only
to November 23, 2004)

Amended by:

By-law 83-75 – June 17, 1975

By-law 111-75 – July 22, 1975

By-law 50-77 – March 8, 1977

By-law 94-77 – May 10, 1977

By-law 106-77 – May 24, 1977

By-law 220-86 – June 24, 1986

By-law 2004-311 – November 16, 2004

THE CORPORATION OF THE TOWN OF MARKHAM

SWIMMING POOL ENCLOSURE BY-LAW

Office Consolidation of By-law 59-75, as amended by By-laws #83-75, #111-75, #50-77, #94-77, #106-77, #65-83, #209-86, #220-86, #5-91

WHEREAS pursuant to Section 354(1), Paragraph 24, Chapter 284, R.S.O. 1974, a Municipality is authorized to pass by-laws requiring owners of privately owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools and for prescribing the height and description of, and the manner of erecting and maintaining such fences and gates;

WHEREAS pursuant to Section 38(1) of The Planning Act, R.S.O. 1970, Chapter 349, a Municipality is authorized to pass by-laws for requiring the production of the plans of all buildings, and for charging fees for the inspection and approval of such plans, and fixing the amount of the fees and for issuing of a permit certifying to such approval without which permit no building or structure may be erected, altered or repaired;

THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM
HEREBY ENACTS AS FOLLOWS:

1. Definitions: For the purposes of this By-law the definitions

and interpretations given in this section shall govern.

- (a) In this By-law the word "shall" is mandatory and not directory, words in the singular number include the plural, words in the plural include the singular number, words used in the present future, the word "used" includes "arranged, designed or intended to be used".
- (b) ENCLOSURE means a fence, wall or other structure, including doors and gates, surrounding a privately-owned outdoor swimming pool to restrict access thereto.
- (c) PRIVATELY-OWNED OUTDOOR SWIMMING POOL means any privately-owned body of water located outdoors above or below finished grade on privately owned property, contained by artificial means in which the depth of the water at any point can exceed twenty-four (24) inches and used or capable of being used for the purpose of swimming, diving or bathing.
- (d) OWNER includes a lessee or tenant in possession of property on which a swimming pool is located.

- (e) PERSON means an individual, firm, corporation, association or partnership.
- (f) ENTRANCE means a door or other opening, in the wall of a building, that may be used by a person to enter or exit from such building.
- (g) *deleted*
(Amended by By-law No. 106-77)
- (h) REAR YARDS means that area of a lot bounded by;
 - (a) the rear lot line
 - (b) each side lot line measured from the rear lot line to the points of intersection of the projection line of the rear wall along the plane of such wall of a main building or structure with the side lot lines
 - (c) the projection lines as set out in (b) and the rear wall of such building.

2. Enclosures

- (a) The owner of a privately-owned swimming pool shall erect and maintain an enclosure surrounding the entire swimming pool area in accordance with the provisions of the by-law to make such body of water not readily accessible to small children.
- (b) No person shall place water in a privately-owned outdoor swimming pool or allow water to remain therein, unless the enclosure prescribed by this by-law has been erected, unless the addition of water in the pool forms part of the construction technique, in which case a temporary enclosure shall be erected prior to the addition of any water and maintained until the permanent enclosure is erected and approved.
- (c) No part of an enclosure surrounding a privately-owned outdoor swimming pool shall consist of barbed wire or possess similar dangerous characteristics or any device designed for conducting an electric current through such enclosure.
- (d) When a wall of any building located on the same property as the swimming pool enclosure forms part of such enclosure, no entrances shall be permitted through such wall unless:

- (i) the entrance permits passage from the pool enclosure to the residential area of the building (which does not include a garage or tool shed)
- (ii) the door(s) at such entranceway is equipped with a bolt latch or a chain latch at a minimum height of 5'6" above the inside floor level.
- (iii) the care, control and maintenance of the entranceway, the door(s) as described in (i) and (ii) and the safety latch as described in (ii) of this section is and always shall be the responsibility of the owner, lessee or sublessee when they are in possession of the premises.

(Amended by By-law No. 106-77)

- (e) all exterior fuel intakes shall be located outside the swimming pool enclosure with no direct access to these intakes from the swimming pool enclosure area.

(Amended by By-law 106-77)

- (f) Except as provided in Clause 3(d)(i), such enclosure including gates therein shall extend from the ground to a height, measured on the outside of the enclosure, of not less than four (4) feet and such enclosure shall not, regardless of height, be located closer than four feet to any condition that contributes to the lessening of these minimum safety requirements by facilitating the climbing of the swimming pool enclosure.

- (g) Except as provided in Clause 3(d)(iii), a fence or its equivalent forming part of an enclosure shall be erected four (4) feet or more from the edge of the water contained in the pool.

- (i) Notwithstanding Section 2(g) of this By-law, the pool enclosure located along the northwest property line on Lot 23 of Registered Plan M-1345 (municipally known as 8 Hester Court) may be erected less than four (4) feet from the edge of water contained in the pool subject to the condition that the Owner enter into an agreement with the Town, to the satisfaction of the Town Solicitor, to satisfy the Town's requirements including but not limited to the following:

- a. That a barrier is maintained restricting access to the area of the pool deck which is less than four (4) feet from the edge of the pool to the satisfaction of the Town;

- b. That the enclosure is maintained at a minimum height of six (6) feet and is maintained to the satisfaction of the Town;
- c. That the enclosure comply with all other provisions of the By-law;
- d. That a permit is obtained in accordance with Section 7 of the By-law; and
- e. That the Owner indemnify the Town against any damage or injury associated with the pool.

(Amended by By-law No. 2004-311)

- (h) Except as provided in Clause 3(d)(ii) such enclosure shall have no rails or other horizontal or diagonal bracing or attachments on the outside that would facilitate climbing.

3. A fence or its equivalent surrounding a privately-owned outdoor swimming pool shall;

- (a) if of chain link construction;

- (i) be of not greater than 1½ inch diamond mesh,
- (ii) be constructed of galvanized steel wire not less than No.12 gauge or of minimum 14 gauge steel wire covered with a vinyl forming a total thickness equivalent to No.12 gauge galvanized wire,
- (iii) be supported by at least 12 inch diameter galvanized steel posts encased in a minimum of two (2) inches of concrete from grade to a minimum of two (2) feet below grade, such posts to be spaced not more than ten (10) feet apart. Top and bottom horizontal rails shall be provided at 1¼ inch minimum diameter galvanized steel tension rod may be substituted for the bottom horizontal steel rail.

- (b) is of wood construction;

- (i) have the vertical boarding attached to supporting members all of which are arranged in such a manner so as not to facilitate climbing from the outside. Such vertical boards shall be not less than 1 x 4 inch nominal dimensions spaced not more than 1½ inches apart,
- (ii) be supported by a minimum of four inch square or four inch diameter cedar posts, nominal dimensions, spaced not more

than eight feet on centre securely embedded to a minimum of two feet below grade. That portion of the wood post below grade shall be treated with a wood preservative. Top and bottom horizontal rails shall be provided of wood two inches by four inch minimum nominal dimensions.

- (c) if the fence design is other than as specified in (a) or (b) either in material or otherwise such fence shall:
(Amended by By-law No. 106-77)

- (i) be constructed so that the rigidity is equal to those fences described in clauses 3(a) or (b) and provided an equivalent degree of safety is maintained;
- (ii) be permitted to have exposed structural or other members or part thereof that may facilitate climbing the outside of the enclosure provided the minimum clear vertical distance between any such members or parts thereof is four feet and regardless of the location of such members, where this minimum four foot vertical dimension is maintained the maximum dimension of any opening through such fence is 4 inches.

- (d) Enclosure not required – above ground pools

If of construction, such that the portion of the vertical sides of the swimming pool structure above the finished grade are used as part of the swimming pool enclosure, the requirements as specified in clauses 3(a), (b) or (c) do not apply, provided:

- (i) the swimming pool sides are so constructed on the outside so as not to facilitate climbing;
- (ii) the vertical sides of the swimming pool forming part of such enclosure are a minimum of six feet and a maximum of eight feet in height above finished grade, unless otherwise approved by the Planning Director. In giving such approval, the Planning Director shall consider by-laws enacted by the Municipality affecting the subject property, the size of the subject lot, the potential hazards that may be incurred by reason of the location of the swimming pool enclosure on the subject lot. Any offsets of the swimming pool sides which may provide for a platform at or above the surface of the water are to be included in considering the height.
- (iii) a continuous hand hold or platform is provided along the edges of the pool for the purpose of providing, in an

emergency, support for a person in the pool. Where a platform is provided, a railing of not less than 3 feet in height shall be constructed and securely anchored to the outer edge of the platform, the design of which shall conform to sections 3 (a) (b) or (c).

- (iv) the entrance to the swimming pool area is protected by an enclosure as specified in clauses 3(a), (b), or (c) and 4 (a), (b), (c), and (d).
- (v) the swimming pool enclosure, shall not be located closer to any lot line than the height of such enclosure above finished grade.

4. Gates forming part of such enclosure shall:

- (a) be of construction and height equivalent to that required for the fence;
- (b) be supported on substantial hinges;
- (c) be self-closing and equipped with a locking device and self-latching device located at the top and on the inside of the gate. Such self-latching device to be designed in such a manner that the gate cannot be opened from the outside by small children.
(Amended by By-law 106-77)
- (d) be kept locked at all time if there is more than twenty-four inches of water in the pool and a responsible person is not present and supervising the pool.

5. A privately-owned outdoor swimming pool enclosure shall be located in the rear yard only unless otherwise approved by the Planning Director. In giving such approval, the Planning Director shall consider by-laws enacted by the Municipality affecting the subject property; the size of the subject lot, the potential hazards that may be incurred by reason of the location of the swimming pool enclosure on the subject lot.

6 No person shall erect a swimming pool enclosure on a corner lot at a lesser distance from the street line on which the adjoining residential lots front than the depth of the front yard required for a dwelling on the adjoining lot, unless otherwise approved by the Planning Director. In giving such approval, the Planning Director shall consider by-laws enacted by the Municipality affecting the subject property; the size of the subject lot, the potential hazards that may be incurred by reason of the location of the swimming pool enclosure on the subject lot.

(Amended by By-law 111-75)

7. No person shall construct or erect an enclosure around a privately-owned outdoor swimming pool until plans for such enclosure have been submitted to the Building Director and a permit certifying approval of such plans has been issued. When the application bears the signature of the applicant, it will certify that a copy of the by-law has been received by the applicant. Every application for a permit under this by-law shall be accompanied by the fee listed on Schedule "A" to this by-law.

(Amended by By-law No. 50-77)

8. A permit may be refused if the fences or gates do not comply with any by-law.

9. Deleted.

(Amended by By-law 220-86)

10. The plans referred to in Clause 7 of this By-law shall be approved by the Ontario Hydro Electric Commission or by the Markham Hydro Electric Commission whichever has jurisdiction in the area where the swimming pool is to be erected prior to application for a building permit.

11. Notwithstanding the provisions of any other by-law, the swimming pool enclosure by-law prevails in cases of conflict.

12. By-law Number 70-73 and 81-73 of the Town of Markham are hereby repealed.

13. The installation of any swimming pool or its enclosure shall not alter in any way the existing grades or drainage pattern of the premises, unless otherwise approved by the Town Engineer. The finished grade of the premises after the swimming pool is completed shall comply with the approved lot grades or drainage pattern.

(Amended by By-law No. 83-75)

14. Any person convicted of a breach of any of the provisions of this by-law shall forfeit and pay, at the discretion of the Presiding Justice, a penalty not exceeding, exclusive of costs, the sum of One Thousand Dollars (\$1,000.00) for each offense.

(Amended by By-law No. 94-77)

15. Structures known as "Hot Tubs" are exempt from the provision of this by-law provided that a substantial cover is attached and locked to prevent access, when the tub is not in use.

(Amended by By-law No. 220-86)

SCHEDULE "A"

SCHEDULE OF FEES

A permit fee in the amount of FORTY DOLLARS (\$40.00) shall be paid upon application for a permit.

A fee in the amount of EIGHTY DOLLARS (\$80.00) shall be paid for a Special Inspection.