

# THE CORPORATION OF THE MUNICIPALITY OF LEAMINGTON

## BY-LAW 50-99

Being a by-law to require the owners of privately owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools.

WHEREAS Section 210, Paragraph 30, of the Municipal Act, R.S.O. 1990, Chapter 302, authorizes the passing of a by-law requiring owners of privately owned outdoor swimming pools and for prescribing the height and description of and the manner of erecting and maintaining such fences and gates, for prohibiting persons from placing water to remain therein unless the prescribed fences and gates have been erected, for requiring the production of plans of all such fences and gates, for the issuing of a permit certifying approval of such plans and for authorizing the refusal of a permit for any such fences or gate that would be contrary to the provisions of any by-law of the municipality.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF LEAMINGTON ENACTS AS FOLLOWS:

### PART I

#### DEFINITIONS

In this by-law:

- 1.01 "Chief Building Official" means the Chief Building Official appointed by By-law of the Municipality of Leamington;
- 1.02 "Fence" means any barrier or barricade, constructed of metal, wood or any material having an equivalent degree of strength, that separates or divides any parcel of land or part thereof from any other parcel of land or part thereof.
- 1.03 "Privately owned" means owned by a person other than a public or government body, or agency or authority.
- 1.04 "Self-closing device" means a mechanical device or spring which returns a gate to its closed position.
- 1.05 "Self-latching device" means a mechanical device or latch which is engaged each time the gate it services is closed, and such device holds the gate shut until such time the latch is physically lifted.
- 1.06 "Swimming pool" means, for the purpose of this by-law, any body of water located outdoors on privately owned property designed or used for swimming, wading or bathing purposes in which the depth of water at any point can exceed 30 cm (11.8 inches) including an above-ground swimming pool, but does not include the following:
  - a) wading pool which is normally emptied on a daily or more frequent basis.
  - b) ponds designed for storm water retention, irrigation or other agricultural uses.
  - c) fish cultivation or
  - d) a pond designed for garden or landscaping purposes.

- 1.07 "Swimming pool area" means the swimming pool plus any surrounding platforms, walkways, play areas and landscaped areas which may be within the swimming pool enclosure.
- 1.08 "Swimming pool enclosure" means a fence or wall or any combination thereof including doors or gates surrounding a privately owned outdoor swimming pool and restricting access thereto.
- 1.09 "Wall" means the exterior surface of one or more sides of a building or structure that is firmly secured to the ground, which surface encompasses either in whole or in part, the swimming pool area, and includes any gate or entrance attached to or forming part of a wall.

## PART II

### PROHIBITIONS

- 2.01 No person shall excavate for a privately owned swimming pool, or install, construct or erect a privately owned swimming pool until a permit has been issued therefore by the Chief Building Official for the Municipality of Leamington.
- 2.02 No person shall erect, maintain or have a privately owned swimming pool unless he erects and maintains completely around such swimming pool a swimming pool enclosure in accordance with the provisions of this by-law.
- 2.03 No person shall place water in or allow water to remain in any swimming pool or in an excavation of a swimming pool until such time as fences and gates in accordance with the requirements of this by-law, have been installed around such pool or excavation; 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.
- 2.04 No person shall install or allow the use of any barbed wire, broken glass, electrification or possess similar dangerous characteristics in connection with any swimming pool fencing.
- 2.05 No person shall connect any drain or water supply directly to a swimming pool without first obtaining a Building Permit from the Chief Building Official.

## PART III

### PERMIT APPLICATIONS

- 3.01 The owner of the lands upon which it is intended to construct or erect a swimming pool, or his agent, shall apply to the Chief Building Official for a permit certifying approval of such fences and gates.
- 3.02 An application for a permit to construct an enclosure around a swimming pool shall include:
- (i) drawings or sketches, in duplicate, showing all details of the proposed works, including but not restricted to details of the proposed swimming pool, fences, gates and associated decks and their location with respect to the property lines and existing buildings; and
  - (ii) pay a permit fee in the amount outlined in the Municipality of Leamington fees by-law as amended.
- 3.03 The Chief Building Official may refuse to issue a permit if:

- (i) the application is incomplete or any fees due, are unpaid;
  - (ii) the proposed work would not meet the requirements set out in this by-law;
  - (iii) the erection of such fences would be contrary to any other by-law of the municipality.
- 3.04 Notwithstanding any other provision of this by-law, a permit is not required in the case of an above ground pool which has been dismantled and is being re-erected in the same precise position in which it was previously located provided a permit was obtained for the original installation and provided that the installation meets the requirements of all applicable by-laws of the Municipality of Leamington.

#### PART IV

##### REQUIRED SWIMMING POOL ENCLOSURE

- 4.01 The owner of any lands on which a privately owned outdoor swimming pool is located or erected shall erect and maintain in good order an enclosure around the entire swimming pool area, the purpose of such enclosure being to render the pool area inaccessible to small children acting on their own.
- 4.02 The swimming pool enclosure required under this by-law shall extend from the finished grade outside of the enclosure to a minimum vertical height of 122 cm (4 feet).
- 4.03 The wall of a building may form a part of the required swimming pool enclosure, except where such a provision would result in any of the following being located within said pool enclosure:
- (i) a main building entrance;
  - (ii) a service entrance to a multiple occupancy building containing more than four dwelling units;
- 4.04 The required swimming pool enclosure (except for any building walls which may form part thereof) shall have no attachments on the exterior face which would facilitate climbing.
- 4.05 The swimming pool enclosure shall be located at least 122 cm (4 feet) from any outside object or structure, fence, tree, air conditioning unit, meter, steps, ledges, window sills, etc., which might afford a means whereby the enclosure could be scaled from the outside by a small child; unless the fence is increased in height to 183 cm (6 feet) for a distance of 91 cm (3 feet) on either side of such object or structure where such additional height will adequately prohibit unauthorized entry.
- 4.06 Where a deck or ramp or part thereof is located more than 60.96 cm (2 feet) above grade, a handrail and guards shall be provided and maintained around the outer edge, in accordance to the Ontario Building Code.
- 4.07 Every fence or wall enclosing a swimming pool area, shall be so constructed so that any opening beneath such fence or wall is less than 10.16 cm (4 inches).
- 4.08 Every pool enclosure including a wall forming the pool enclosure shall be located not less than 122 cm (4 feet) from the inside of the pool; except for the wall of the main building it shall be located not less than 183 cm (6 feet).

## PART V

### FENCES AS ENCLOSURES

- 5.01 A fence or its equivalent forming part of such enclosure shall be of vertically boarded wood construction, chain link construction or of other materials and construction as provided for in 5.04.
- 5.02 A fence of chain link construction shall:
- (i) have a diamond mesh not greater than 5.08 cm (2 inches) consisting of no lighter than 2.68 mm (12 ga.) galvanized steel wire or 2.032 mm (14 ga.) steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to at least 12 ga. steel wire;
  - (ii) be supported by galvanized steel posts or equivalent not less than 3.8 cm (1.5 inches) in diameter, spaced not more than 305 cm (10 feet) apart, extending at least 60.96 cm (2 feet) below grade and encased in concrete at least 5.08 cm (2 inches) thick all around below grade; and
  - (iii) have horizontal top and bottom rails, firmly fastened to the upright posts, of no less than 3.17 cm (1 1/4 inch) diameter galvanized steel pipe or equivalent (a galvanized steel tension rod 0.7 cm (1/4 inch) in diameter may be substituted for the bottom rail).
- 5.03 A fence of wood shall:
- (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 not be less than 1.7 cm by 8.9 cm (1 inch by 4 inches) nominal dimensions spaced not more than 10.16 cm (4 inches) apart;
  - (ii) be supported by a minimum of 8.9 cm square (4 inches square) or 8.9 cm (4 inches) diameter posts, nominal dimensions, spaced not more than 244 cm (8 feet) on centers securely embedded in a minimum of 60.96 cm (2 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 3.8 cm x 8.9 cm (2 inches by 4 inches) minimum nominal dimensions.
- 5.04 If the fence design is other than as specified in 5.02 or 5.03 either in material or otherwise, such fence shall be constructed so that the rigidity is equal to those fences described in clauses 5.02 or 5.03 and provided an equivalent degree of safety is maintained. Such fence shall be approved by the Chief Building Official.

## PART VI

### GATES AND ENTRANCES TO THE POOL AREA

- 6.01 Gates which form a part of the swimming pool enclosure shall be:
- (i) of such height and construction as will provide a degree of safety and rigidity equivalent to or greater than that of a required fence;
  - (ii) supported on substantial hinges;

- (iii) self-closing and self-latching with the latching device at the top of the inside of the gate to the intent that all gates will remain securely closed when not in actual use;
  - (iv) equipped with locks and kept locked at all times if there is more than 60.96 cm (2 feet) of water in the pool and a responsible adult person is not present and supervising the pool.
- 6.02 Doors which form a part of the swimming pool enclosure but do not lead directly from the dwelling unit shall be:
- (i) of such height and of such construction as will provide a degree of safety and rigidity equivalent to or greater than that of the required fence;
  - (ii) self-closing;
  - (iii) supported on substantial hinges.

### PART VII

#### ABOVE GROUND POOLS

- 7.01 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 5.02, 5.03 and 5.04 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 122 cm (4 feet) in height above the outside finished grade;
  - (iii) the entrance to the swimming pool area is protected by an enclosure constructed as outlined in clauses 5.02, 5.03 and 5.04;
  - (iv) the gate to the entrance of the pool shall be constructed as outlined in Part VI of this by-law;
  - (v) the swimming pool pump, filter or any other equipment required for the function of such pool shall also be located within an enclosure constructed in the same manner as the enclosure for the pool itself;
  - (vi) where there is a deck associated with the pool, there shall be an enclosure around the outer edge of such deck which is to be at least 122 cm (4 feet) higher than the deck.

### PART VIII

- 8.01 Location of a privately owned outdoor swimming pool:
- (i) shall not be built, placed or erected closer than 1.2 m (4 feet) to any lot lines or existing fences;
  - (ii) shall not be built, placed or erected within 1.8 m (6 feet) of the main building;
  - (iii) shall not have pumps or filters or any other associated equipment within 90 cm (3 feet) of the side or rear lot line;
  - (iv) shall only be permitted in the rear or side yards of the lot.

**PART IX**

**MAINTENANCE**

9.01 The owner of any land upon which a privately owned outdoor swimming pool is located shall maintain at all times, all fences, walls, gates and entrances forming part of a swimming pool enclosure to the standards and specifications set out in this by-law.

**PART X**

**ADMINISTRATION**

10.01 The Chief Building Official shall be responsible for the administration and enforcement of this by-law.

**PART XI**

**ENFORCEMENT**

11.01 Any owner who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine or penalty for each offence, exclusive of costs as prescribed by the Provincial Offences Act, R.S.O. 1990.

11.02 In the event any part or provision of this by-law is held invalid, the remainder of the by-law shall continue in force.

11.03 Where there is a conflict between this by-law and any other by-law of the Municipality, the provisions of this by-law shall prevail.

11.04 That the former Town of Leamington By-law No. 3331 is hereby repealed.

11.05 That Section 5.20.2 (a - f inclusive) of By-law No. 5090 of the former Township of Mersea is hereby repealed.

11.06 This by-law shall take effect as of the day of its final passing.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY ENACTED THIS 10TH DAY OF MAY, 1999.

Signature on file

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Mayor

Signature on file

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Deputy Clerk