

The Corporation of the Municipality of Leamington

By-law 56-26

By-law to Regulate Privately Owned Outdoor Swimming Pools in the Municipality of Leamington

Whereas Section 8(3) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, (the "Municipal Act") authorizes a municipality to regulate or prohibit matters pertaining to pools and pool enclosures and as a part of that power, to provide for a system of approvals and to impose conditions as requirements for obtaining, continuing to hold or renewing the approval;

And Whereas Section 11(2) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, (the "Municipal Act") authorizes municipalities to pass by-laws respecting health, safety and well-being of Persons;

And Whereas Section 11(3) of the Municipal Act authorizes municipalities to pass by-laws respecting structures, including fences and signs;

And Whereas Section 391(1) of the Municipal Act authorizes municipalities to impose fees or charges on persons for services or activities provided or done by or on behalf of it;

And Whereas Section 446 of the Municipal Act authorizes a Municipality, under a by-law, to direct or require a person to do a matter or thing and the municipality may also provide that, in default of it being done by the person director or required to do it, the matter or thing shall be done at the person's expense, and the municipality may recover the costs of doing the matter or thing from the person by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

And Whereas Council considers it in the public interest to enact a by-law to regulate privately owned outdoor swimming pools;

Now therefore the Council for The Corporation of the Municipality of Leamington enacts as follows:

DEFINITIONS

1. For the purpose of this by-law:

"Chief Building Official" means the Chief Building Official of the Municipality of Leamington or his or her designate appointed by the Council of the Municipality of Leamington under Section 3 of the Building Code Act, 1992, S.O. 1992, c.23.

"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.

"Gate" means any part of a Fence that opens on hinges or which is not rigidly fixed in place.

"Legal Non-Conforming Swimming Pool" means a Swimming Pool that was legally installed prior to this by-law coming into force.

"Municipality" means The Corporation of the Municipality of Leamington or geographic area of the Municipality of Leamington as the context suggests.

"Officer" means a police officer, a provincial offences officer, a municipal law enforcement officer or any other Person as may be appointed by Council to enforce this by-law.

"Order" means a direction issued pursuant to section 54 and requiring compliance with the standards prescribed in this by-law.

"Owner" means the registered owner and includes a tenant, occupant or other Person having control over, or possession, of any portion of the building or property under consideration.

"Permit" means a Permit issued by the Chief Building Official pursuant to this by-law.

"Permit Fee" means the fee payable upon an application for a Permit as may be established in the Municipality's Fees and Charges By-law as is in force at the time of application.

"Person" means an individual, a partnership, or a corporation and the heirs executors, administrative or other legal representatives of the Persons, as the case may be.

"Premises" means any land including any and all buildings or other structures thereon.

"Privately Owned" means owned by a Person other than a public or government body, or agency or authority.

"Self-Closing" means a mechanical device or spring which returns a Gate to its closed position.

"Self-Latching" 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.

"Swimming Pool" means any structure, basin, chamber or tank in or above the ground containing or capable of containing water located outdoors on Privately Owned property designated or used for swimming, wading or bathing purposes in which the depth of water at any point can exceed 30cm (11.8 inches), but does not include the following:

- a) wading pool which is normally emptied on a daily or more frequent basis;
- b) ponds designated for storm water retention, irrigation or other agricultural uses;
- c) fish cultivation; or
- d) a pond designated for garden or landscaping purposes.

"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.

"Swimming Pool Enclosure" means a Fence or Wall or any combination thereof including doors or gates surrounding an outdoor Swimming Pool and restricting access thereto but does not include a Swimming Pool Cover.

"Swimming Pool Cover" means a device used to cover a Swimming Pool.

"Temporary Swimming Pool Enclosure" means an enclosure used for the purpose of temporarily enclosing a Swimming Pool or a Swimming Pool excavation.

"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.

INTERPRETATION

2. If any section, subsection, schedule or part of parts of this by-law are declared by any court of law to be bad, illegal or ultra vires, such section, subsection or part or parts shall be deemed to be and all parts hereof are declared to be separate and independent and enacted as such. and all parts hereof are declared to be separate and independent and enacted as such.
3. Unless otherwise defined, the words and phrases used in this by-law have their normal and ordinary meaning.
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5. This by-law is gender neutral and, accordingly, any reference to one gender includes the other.
6. Headings are inserted for convenience of reference purposes only, form no part of this by-law and shall not affect in any way the meaning or interpretation of the provisions of this by-law.

APPLICATION OF BY-LAW

7. This by-law applies to Privately Owned outdoor Swimming Pools and does not include those Swimming Pools owned by public or government body, or agency or authority.
8. Notwithstanding any provision within this by-law, a Legal Non-Conforming Swimming Pool shall continue to be permitted provided that a Permit was issued for the construction of the Swimming Pool and the Swimming Pool is not removed or altered.

ADMINISTRATION

9. Imperial measurements are provided solely for the purpose of convenience. In the event of a conflict between the metric and imperial measurements provided in this by-law, the metric measurements shall prevail.
10. This by-law shall be administered by the Chief Building Official or his or her designate.

PROHIBITIONS

11. No Person shall excavate, install, construct or erect a Swimming Pool, without having first obtained a Permit issued by the Chief Building Official.
12. No Person shall erect, maintain or have a Swimming Pool unless there is a Swimming Pool Enclosure in accordance with this by-law.
13. No Person shall use a Swimming Pool that is in contravention of this by-law or subject to an Order under this by-law.
14. No Person shall place water or cause or permit water to remain in any Swimming Pool for which a Swimming Pool Enclosure has not been installed in accordance with the requirements of this by-law.
15. No Person shall excavate or cause or permit to excavate a Swimming Pool until such time as a Swimming Pool Enclosure has been installed in accordance with the requirements of this by-law.

16. No Person shall place or cause or permit water in a Swimming Pool during the construction of said Swimming Pool without a Temporary Swimming Pool Enclosure being installed.
17. No Person shall install or permit to be installed any barbed wire in connection with any Swimming Pool Enclosure.
18. No Person shall install or permit to be installed any broken glass in connection with a Swimming Pool Enclosure.
19. No Person shall Install or allow to be installed any electrification or possess similar dangerous characteristics in connection with any Swimming Pool Enclosure.
20. 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.
21. No Person shall relocate a rear yard catch basin to accommodate the installation of a Swimming Pool without the prior approval from the Chief Building Official. The relocation must be inspected and is subject to any other Permit, as required.
22. No Person shall construct, erect or permit to be constructed or erected, a Swimming Pool closer than 1.2 metres (4 feet) to any lot lines or existing Fences.
23. No Person shall construct, erect or permit to be constructed or erected, a Swimming Pool within 1.8 metres (6 feet) of the main building.
24. No Person shall have Swimming Pool pumps or filters or any other associated equipment within 90 centimetres (3 feet) of the side or rear lot line.
25. No Person shall construct, erect or permit to be constructed or erected a Swimming Pool in a location other than the rear or side yards of a lot.

PERMITS

26. A Permit shall be required to construct or erect a Swimming Pool in the Municipality.
27. An application for a Permit to construct or erect a Swimming Pool or for the replacement of an existing Swimming Pool Fence shall be made by the Owner or the agent, to the Chief Building Official on such forms as may be prescribed.
28. Every application for a Permit shall include:
 - a) drawings or sketches showing all details of the proposed works, including but not restricted to details of the proposed Swimming Pool, Fences, Gates,

doors, drains and associated decks and their location with respect to the property lines and existing buildings; and

b) the applicable Permit fee.

29. Notwithstanding any other provision of this by-law, a Permit shall not be required in the case of an above ground Swimming Pool which has been dismantled and is being re-erected provided that:

a) the Swimming Pool is re-erected in the same precise location in which it was previously located;

b) a Permit was obtained for the original installation;

c) the Swimming Pool Enclosure has not been altered or changed; and

d) the installation meets the requirements of all applicable by-laws of the Municipality.

GROUND FOR REFUSAL TO ISSUE A PERMIT

30. The Chief Building Official may refuse to issue a Permit if:

a) the application is incomplete or any fees due are unpaid;

b) the proposed work would not meet the requirements set out in this by-law;

c) the erection of such Fences would be contrary to any other by-law of the Municipality;

d) the application or other document provided to the Chief Building Official by or on behalf of the applicant contains a false statement or provides false information.

SWIMMING POOL ENCLOSURE

31. The Owner of any lands on which an outdoor Swimming Pool is located or erected shall erect and maintain in good order a Swimming Pool Enclosure around the entire Swimming Pool Area, the purpose of such enclosure being to render the Swimming Pool Area inaccessible to small children acting on their own.

32. The Swimming Pool Enclosure shall extend from the finished grade outside of the enclosure to a minimum vertical height of 122 centimeters (4 feet).

33. The Wall of a building may form part of the Swimming Pool Enclosure, except where such a provision would result in any of the following being located within the Swimming Pool Enclosure:
 - a) A main building entrance;
 - b) A service entrance to a multiple occupancy building containing more than four dwelling units.
34. The 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.
35. The Swimming Pool Enclosure shall be located at least 122 centimeters (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 centimeters (6 feet) for a distance of 91 centimeters (3 feet) on either side of such object or structure where such additional height will adequately prohibit unauthorized entry
36. Where a deck or ramp or part thereof is located more than 60.96 centimeters (2 feet) above grade, a handrail and guards shall be provided and maintained around the outer edge, in accordance with the Building Code Act, 1992, S.O. 1992, c.23.
37. Every Fence or Wall enclosing a Swimming Pool Area, shall be constructed so that any opening beneath such Fence or Wall is less than 10.16 centimeters (4 inches).
38. Every Swimming Pool Enclosure including a Wall forming part of the Swimming Pool Enclosure shall be located not less than 122 centimeters (4 feet) from the inside of the Swimming Pool; except for the Wall of the main building, it shall be located not less than 183 centimeters (6 feet).

FENCE ENCLOSURE

39. A Fence or its equivalent forming part of the Swimming Pool Enclosure shall be of vertically boarded wood construction, chain link construction, metal, iron or, of other materials and construction as provided for in section 43.
40. A Fence of chain link construction shall:
 - a) have a diamond mesh no greater than 5.08 centimeters (2 inches) consisting of no lighter than 2.68 millimeters (12 gauge) galvanized steel wire or 2.032 millimeters (14 gauge.) steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to at least 12 gauge. steel wire;

- b) be supported by galvanized steel posts or equivalent not less than 3.8 centimeters (1.5 inches) in diameter, spaced not more than 305 centimeters (10 feet) apart, extending at least 60.96 centimeters (2 feet) below grade and encased in concrete at least 5.08 centimeters (2 inches) thick all around below grade; and
 - c) have horizontal top and bottom rails, firmly fastened to the upright posts, of no less than 3.17 centimeters (1 1/4 inch) diameter galvanized steel pipe or equivalent (a galvanized steel tension rod 0.7 centimeters (1/4 inch) in diameter may be substituted for the bottom rail).
41. A Fence of wood construction shall:
- a) 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 centimeters by 8.9 centimeters (1 inch by 4 inches) nominal dimensions spaced not more than 10.16 centimeters (4 inches) apart;
 - b) be supported by a minimum of 8.9 centimeters square (4 inches square) or 8.9 centimeters (4 inches) diameter posts, nominal dimensions, spaced not more than 244 centimeters (8 feet) on centers securely embedded in a minimum of 60.96 centimeters (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 centimeters x 8.9 centimeters (2 inches by 4 inches) minimum nominal dimensions.
42. A Fence of metal, iron or other prefab material such as metal, vinyl, polyvinyl chloride (PVC) or composite shall:
- a) be constructed so the rigidity of the Fence is at least equal to that specified for chain link and vertical board construction. Be sufficient strength to provide an effective enclosure;
 - b) be supported by post spaced not more than 244 centimetres (8 feet) apart and such post shall be securely embedded and extend at least 60.96 centimetres (2 feet) below grade and encased in concrete at least 5.08 centimetres (2 inches) thick all around below grade; and
 - c) have vertical pickets that are spaced not more than 10.16 centimetres (4 inches) apart connected with a top and bottom rail;
 - d) designed in such a manner as not to facilitate climbing.
43. If the Fence design is other than as specified in sections 40, 41, and 42 either in material or otherwise, including a horizontal design, such Fence shall be

constructed so as to not facilitate climbing and that the rigidity is equal to those Fences described in sections 40, 41 and 42 and provided an equivalent degree of safety is maintained. Such Fence is subject to the prior approval by the Chief Building Official.

44. On lots abutting a lake or a cliff that exceeds a 4 foot drop the portion of the lot open to the lake or cliff is permitted to be unfenced provided there is no beach access or gap between the Swimming Pool Enclosure and the lake or cliff.
45. Temporary Swimming Pool Enclosures shall:
 - a) be 1.22 metres (4 feet.) in height;
 - b) consist of vertical wood with openings not greater than 3.8 centimeters (1.5 inches), or of plastic mesh with a mesh not greater than 3.8 centimeters (1.5 inches);
 - c) have steel T-bar posts at intervals of not more than 2.4 metres (8 feet);
 - d) have a 9-gauge galvanized steel or vinyl coated wire at both the top and the bottom;
 - e) be permitted only during the construction of a Swimming Pool and shall be replaced with a permanent Swimming Pool Enclosure that complies with the requirements of this by-law within fourteen (14) days of the pool being filled with water.

GATES AND ENTRANCES TO THE SWIMMING POOL AREA

46. Gates which form part of the Swimming Pool Enclosure shall be:
 - a) of such height and construction as will provide a degree of safety and rigidity equivalent to or greater than that of a required Fence;
 - b) supported on substantial hinges;
 - c) 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;
 - d) equipped with locks, locks requiring a battery source require a back up battery and kept locked at all times if there is more than 60.96 cm (2 feet) of water in the Swimming Pool and a responsible adult person is not present and supervising the Swimming Pool.

47. No Person shall construct or maintain a double Gate access without one (1) of the two (2) Gates having a Self-Closing device and a Self-Latching device. The Gate of this double Gate access without Self-Closing and Self-Latching device shall have a device permanently affixed to the ground or other non-movable object that prevents access through this Gate without lifting or removing this device and then releasing the latch.
48. Doors which form a part of the Swimming Pool Enclosure, including doors providing direct access to the Swimming Pool Area from an attached or detached garage, but do not lead directly from the dwelling unit shall be:
 - a) of such height and construction as will provide a degree of safety and rigidity equivalent to or greater than that of the required Fence;
 - b) Self-Closing;
 - c) Self-Latching; and
 - d) supported on substantial hinges.

ABOVE GROUND POOLS

49. The Swimming Pool Enclosure for an above ground Swimming Pool need not comply with sections 40, 41, 42 of this by-law if:
 - a) the Swimming Pool sides are constructed on the outside so as not to facilitate climbing;
 - b) the vertical sides of the Swimming Pool forming part of such enclosure are a minimum of 122 centimeters (4 feet) in height above the outside finished grade;
 - c) the entrance to the Swimming Pool Area is protected by a Swimming Pool Enclosure constructed in accordance with sections 40, 41 and 42 of this by-law;
 - d) the Gate to the entrance of the Swimming Pool shall be constructed in accordance with sections 46, 47 and 48 of this by-law;
 - e) the Swimming Pool pump, filter or any other equipment required for the function of the Swimming Pool shall be located within an enclosure constructed in the same manner as the Swimming Pool Enclosure;

- f) where there is a deck associated with the Swimming Pool, there shall be an enclosure around the outer edge of such deck which is to be at least 122 centimeters (4 feet) higher than the deck.

MAINTENANCE

- 50. The Owner 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.

INSPECTIONS

- 51. Any Officer may, upon providing proper identification, enter upon any Premises at any reasonable time without a warrant for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
 - a) this by-law;
 - b) an Order made pursuant to section 55 of this by-law;
 - c) an order made under section 431 of the Municipal Act, 2001, S.O. 2001, c.25
- 52. For the purposes of conducting an inspection pursuant to section 51 of this by-law, any Officer may:
 - a) require the production for inspection of documents or things, or copies of any document or thing, relevant to the inspection;
 - b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c) require information from any Person concerning a matter related to the inspection;
 - d) alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.
- 53. No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer who is exercising a power or performing a duty under this by-law.

ORDER TO COMPLY

- 54. Any Officer who finds a contravention of this by-law shall give a written Order to the Owner directing compliance with this by-law within a specified time as determined by the Officer.

55. The Order shall include the following information:
 - a) The municipal address or the legal description of the property;
 - b) The work that needs to be completed;
 - c) The timeline to complete the work.
56. The Order shall be served on the Owner of the property contravening this by-law by:
 - a) personal service; or
 - b) registered mail to the Person's last known address in which case the order shall be deemed to have been served on the fifth day after mailing; or
 - c) posting a copy of the order in a conspicuous location on the property contravening this by-law.

FAILURE TO COMPLY

57. If an Owner fails to comply with an Order under section 54, any Officer may enter upon the Owner's property at any reasonable time for the purpose of:
 - a) removing, replacing and/or repairing parts of or the entire Swimming Pool Enclosure;
 - b) draining the Swimming Pool of water.
58. Costs incurred by the Municipality in removing, replacing and/or repairing parts of or the entire Swimming Pool Enclosure or draining the Swimming Pool of water will be recovered by being added to the tax roll for the property and collected in the same manner as taxes.
59. Notwithstanding any prosecution under this by-law, any contravention of this by-law may be restrained by action of the Municipality pursuant to the applicable law in force at the time of such contravention.

APPEAL AND VARIANCES

60. The Owner or occupant of a Swimming Pool may apply to the Appeal Committee for a variance from sections 22 or 24 of this by-law.
61. The applicant for a variance from this by-law shall provide information to the Appeal Committee that demonstrates that the proposed construction of the Swimming Pool Enclosure satisfies the general intent of this by-law; is minor in

nature and that a strict application of this by-law would constitute an unreasonable hardship for the applicant.

62. If the information provided by the application in accordance with section 61 of this by-law satisfies the Appeal Committee, the Appeal Committee may authorize the variance from the provisions and regulations of this by-law and may attach any conditions to the variance that the Appeal Committee deems appropriate.

ENFORCEMENT PROVISIONS

63. No Person shall obstruct or attempt to obstruct any Officer or any other person having authority for the enforcement or administration of this by-law.
64. Every Person who contravenes any section of the by-law is guilty of an offence and, upon conviction, is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, c.P. 33.
65. Notwithstanding section 64 of this by-law, every Person who contravenes any provision of this by-law and every director or officer of a corporation who concurs in such contravention by the corporation is guilty of an offence and on conviction is liable to a fine not exceeding \$25,000.00.
66. Notwithstanding section 64 of this by-law, a corporation that contravenes any provision of this by-law is guilty of an offence and, upon conviction, is liable for a fine not exceeding \$50,000.00.
67. Every Person, director or officer of a corporation, or corporation that fails to comply with an order issued pursuant to this by-law is guilty of an offence and the offence is hereby designated as a continuing offence as provided for in subsection 429(2)(a) of the Municipal Act, 2001 and is liable for each day or part of a day that the offence continued, to a minimum fine of \$500 and a maximum fine of \$10,000, and notwithstanding sections 53 and 54, the total of all daily fines for the offence is not limited to \$100,000.
68. The court in which a conviction has been entered, and any court of competent jurisdiction, thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other remedy and to any penalty imposed on the person convicted.
69. If the fine remains unpaid the fine shall be deemed to be unpaid taxes for the purposes of section 351 of the Act.
70. Instead of laying a charge under the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, for a contravention of any provision of this By-law, an Officer may issue an Administrative Penalty to the Person who has contravened this By-law, in accordance with the Municipality's Administrative Penalty System By-law 01-26.

71. An Officer has the discretion to either proceed by way of an Administrative Penalty or a charge laid under the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended. If an Administrative Penalty is issued to the Person for a contravention of this By-law, no charge shall be laid against that same Person for the same contravention. The amount of the Administrative Penalty for a contravention of a provision of this By-Law is fixed as set out in Municipality's Administrative Penalty System By-law 01-26, as amended from time to time, or any successor by-law.
72. A Person who is issued an Administrative Penalty shall be subject to the procedures provided for in the Administrative Penalty System By-law 01-26, as amended from time to time, or any successor by-law.
73. An Administrative Penalty imposed on a Person pursuant to this By-law that is not paid within fifteen (15) days after the day it becomes due and payable, constitutes a debt of the Person to the Municipality and may be added to a municipal tax roll and collected in the same manner as municipal taxes.

REPEAL/TRANSITION

74. This by-law shall be known and cited as the "Swimming Pool By-law."
75. That By-law 50-99 is hereby repealed; and
76. This by-law shall come into full force and take effect on the date of its passing.

Read a first, a second and a third time and finally enact on this 26th day of May, 2026.


Hilda MacDonall, Mayor


Roberta Baines, Deputy Clerk

This By-law was approved by Leamington Council on May 26, 2026. Written approval of the by-law was given by Mayoral Decision MD-010-2026 dated May 26, 2026.