

**THE CORPORATION OF THE**  
**TOWNSHIP OF WEST LINCOLN**  
**BY-LAW NO. 99-34**

**A By-law to regulate fences and gates surrounding privately-owned Outdoor Swimming Pools.**

**WHEREAS** Paragraph 30 of Section 210 of the *Municipal Act*, R.S.O. 1990, c.M.45, as amended, provides that by-laws may be passed by the councils of local municipalities requiring and regulating fencing and gates around privately-owned Outdoor Swimming Pools;

**AND WHEREAS** the Council of the Corporation of the Township of West Lincoln deems it desirable for the protection of the public to enact an Outdoor Swimming Pool fence by-law;

**AND WHEREAS** Section 220.1 of the *Municipal Act* provides that a municipality may pass by-laws imposing fees or charges for services or activities provided or done by or on behalf of it;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN ENACTS AS FOLLOWS:**

**SECTION 1            DEFINITIONS**

1.1 In this By-law,

- (a) "Corporation" means the Corporation of the Township of West Lincoln;
- (b) "Chief Building Official" means the Chief Building Official appointed by the Corporation or his or her designate;
- (c) "Owner" means a person, firm, company or corporation and shall include a lessee, tenant or person in possession of a property on which an Outdoor Swimming Pool is located or proposed;
- (d) "Outdoor Swimming Pool" means:
  - (i) an artificially contained body of water located outdoors and capable of holding a water depth of more than .5 m (19 in) to be used for swimming, bathing, wading or any one of such purposes; and
  - (ii) includes, without limiting the meaning of (i) of this paragraph a structure for such purposes that is located at, below or above ground level, but
  - (iii) does not include a natural body of water or stream.
- (e) "Permit" means a permit issued by the Chief Building Official certifying approval of plans for fencing and gates around an Outdoor Swimming Pool required by this By-law.
- (f) "Privately-Owned" means owned, leased, rented, or otherwise in the possession of an Owner.

**SECTION 2**            **APPLICATION**

- 2.1 Nothing in this By-law shall be construed as purporting to permit anything which is otherwise prohibited by any by-law of the Corporation or any other Act or Regulation. In the case of a conflict the more restrictive requirement shall take precedence.
- 2.2 This By-law shall apply to:
- (a) the fencing and gates enclosing all Outdoor Swimming Pools installed or erected prior to the date of the passing of this By-law; and
  - (b) the fencing and gates enclosing all Outdoor Swimming Pools installed or erected after the date of passing of this By-law.

**SECTION 3**            **PROHIBITION**

- 3.1 No Owner, or any person acting on behalf of an Owner, shall place water in an Outdoor Swimming Pool or allow water to remain therein unless there is erected and maintained the fencing and gates required by this By-law.
- 3.2 In the case of an Outdoor Swimming Pool which an Owner proposes to install after the date of enactment of this By-law, no Owner, or any person acting on behalf of the Owner, shall excavate for, or erect, or install any Outdoor Swimming Pool without a Permit from the Chief Building Official certifying approval of plans for fencing and gates.
- 3.3 In the case of an Outdoor Swimming Pool located on an Owner's property on the date of enactment of this By-law,
- (a) the Owner shall make an application for a Permit, and
  - (b) if the fencing and gates surrounding the Outdoor Swimming Pool are found by the Chief Building Official not to comply with the requirements of this By-law, the Owner shall comply with this By-law within such reasonable time as the Chief Building Official directs, on such terms and conditions as may be imposed by the Chief Building Official, including a term and condition that the Outdoor Swimming Pool be drained pending compliance.

**SECTION 4**            **APPLICATION FOR PERMIT**

- 4.1 Every person wishing to obtain a Permit shall make application to the Corporation on forms provided by the Corporation which:
- (a) are signed by the owner or authorized agent;
  - (b) identify the location of the property;
  - (c) identify the owner of the property;
  - (d) show the position of the Outdoor Swimming Pool on the property in relation to lot lines, street lines and all other building structures on the lot;
  - (e) indicate the type of Outdoor Swimming Pool to be installed, or, in the case of an

Outdoor Swimming Pool installed prior to this By-law, the type of Outdoor Swimming Pool on the property.

- 4.2 The application shall be accompanied by details of the fencing and gates to be erected around the Outdoor Swimming Pool, including but not limited to the type of construction of the fence and gates, the height of the fence and gates and the type of closing and locking mechanisms on the gates.
- 4.3 The application shall be accompanied by a fee in the amount of ~~\$50.00~~ to be paid at the time the application is submitted.
- 4.4 The Chief Building Official shall issue a Permit unless:
- (a) the proposed or existing work or construction will not comply with this By-law or any other by-law of the municipality or any other applicable law;
  - (b) the application form therefore is incomplete or the fees are unpaid.
- 4.5 No person shall excavate for or install or erect any Outdoor Swimming Pool or fencing or gate thereto except in accordance with the application on the basis of which a Permit was issued unless any changes have been approved in writing by the Chief Building Official.

## **SECTION 5**                    **RESPONSIBILITY OF THE OWNER**

- 5.1 Every Owner shall comply with the provisions of this By-law on a continuing basis notwithstanding the granting of a Permit.
- 5.2 Every Owner of an Outdoor Swimming Pool within the urban area, hamlets and rural clusters shall enclose the Outdoor Swimming Pool with a fence extending from the ground level at the fence measured vertically to a height of not less than 1.5 m (4.92 ft) and not more than 1.82 m (6 ft), or in respect of an Outdoor Swimming Pool located elsewhere in the Township, to a height of not less than 1.22 m (4 ft) and not more than 1.82 m (6 ft), constructed of:
- (a) chain link wire of a size not less than nine (9) gauge in thickness galvanized or plastic coated wire with links of a diameter of not more than 50 mm (2 in), capped galvanized corner posts with minimum diameter 64 mm (2.5 in), capped galvanized intermediate posts with minimum diameter 38 mm (1.5 in), top rail with minimum diameter 38 mm (1.5 in) rail and having a maximum 76 mm (3 in) space from the ground to the bottom of the fence;
  - (b) wood, plastic or metal panel braced horizontally by a top and bottom rail at least 38 mm x 89 mm (1.5 in x 3.5 in) wood or equivalent material with no opening, other than for a gate, greater than 50 mm (2 in) in width, between 89 mm x 89 mm (3.5 in x 3.5 in) wood posts or equivalent spaced not more than 3 m (9.84 ft) apart and

having a maximum space of 76 mm (3 in) from the ground to the bottom of the fence;

- (c) ornamental metal fence with vertical bars spaced not more than 50 mm (2 in) apart, fastened to top and bottom rails of minimum 25 mm x 25 mm x 3 mm (1 in x 1 in x 1/8 in). Angle iron spacing between minimum 38 mm (1.5 in) solid square posts spaced not more than 2.5 m (8.2 ft) apart and having a maximum space of 76 mm (3 in) from the ground to the bottom of the fence; or
- (d) masonry comprised of brick or concrete block with no opening therein, except for a gate.

5.3 Every Owner shall ensure that the fence and gates described in Section 5.2:

- (a) completely enclose the Outdoor Swimming Pool;
- (b) do not contain barbed wire;
- (c) do not contain any facility for projecting an electrical current;
- (d) do not contain any projections that will facilitate climbing;
- (e) are located at least 1.5 m (4.92 ft) from any structure, tree or other projection which would facilitate climbing over the Outdoor Swimming Pool fence; and
- (f) are located at least 1.5 m (4.92 ft) measured horizontally from the water's edge, and, in respect of gates, every Owner shall ensure that:
  - (g) the height and construction of a gate shall comply with the requirements of this By-law relative to fences, and
  - (h) each gate is equipped with operating self-closing and self-latching devices installed at the top and poolside (inside) of the gate.

5.4 Every gate is to be kept closed and locked at all times when the Outdoor Swimming Pool is not under competent supervision.

5.5 Notwithstanding 5.2 the wall of a building may be considered a part of a fence provided the wall is at least 1.5 m (4.92 ft) in height measured vertically from the ground, provided that if the wall has any doors or windows, such doors or windows are to be kept securely locked when the pool is not under competent supervision.

5.6 The provisions of this By-law requiring the erection and maintenance of a fence that shall completely enclose an Outdoor Swimming Pool shall not apply to an Outdoor Swimming Pool in the urban area, hamlets or rural clusters if the outside wall of the Outdoor Swimming Pool has a height of not less than 1.5 m (4.92 ft) measured from the ground level at all points on the perimeter of such wall provided that any steps, ladder, platform, deck or other means of entry to the Outdoor Swimming Pool are protected by a fence and gate which complies with all of the requirements herein. The perimeter of any platform or deck forming part of the Outdoor Swimming Pool enclosure shall be protected by a continuous

guard or balustrade of not less than 900 mm (36 in) in height from the top of the deck or platform and such guard or balustrade shall be constructed in accordance with Section 5.2 above.

- 5.7 The provisions of this By-law requiring the erection and maintenance of a fence that shall completely enclose an Outdoor Swimming Pool shall not apply to an Outdoor Swimming Pool outside the urban area, hamlets or rural clusters, if the outside wall of the Outdoor Swimming Pool has a height of not less than 1.22 m (4 ft) measured from the ground level at all points on the perimeter of such wall provided that any steps, ladder, platform, deck or other means of entry to the Outdoor Swimming Pool are protected by a fence and gate which complies with all of the requirements herein. The perimeter of any platform or deck forming part of the Outdoor Swimming Pool enclosure shall be protected by a continuous guard or balustrade of not less than 900 mm (36 in) in height from the top of the deck or platform and such guard or balustrade shall be constructed in accordance with Section 5.2 above.

## **SECTION 6**                    **POWERS OF THE AUTHORITY HAVING JURISDICTION**

- 6.1 The enforcement of this By-law shall be under the jurisdiction of the Chief Building Official.
- 6.2 The Chief Building Official may:
- (a) enter upon any property at any reasonable time for the purpose of administering or enforcing this By-law;
  - (b) cause a written notice to be delivered to the owner or any other person in contravention of this By-law directing that person to correct any condition where, in the opinion of the Chief Building Official, that condition constitutes a violation of the By-law. Where such a notice is delivered, the notice shall specify the nature of the violation and provide that same be corrected forthwith or within a specified time period;
  - (c) order the owner or any other person to stop work on the excavation or installation if the notice delivered under subsection (b) above is not complied with.

## **SECTION 7**                    **PENALTY**

- 7.1 Every person who:
- (a) knowingly furnishes false information on any application or Permit under this By-law;
  - (b) fails to comply with any notice, direction or order issued under this By-law; or
  - (c) contravenes any provision of this By-law,
- shall be guilty of an offence and shall be liable to a fine of not more than \$5,000.00.

**SECTION 8            GENERAL PROVISIONS**

8.1     This By-law shall apply to all Privately-Owned Outdoor Swimming Pools within the Township of West Lincoln.

8.2     Every provision of this By-law is deemed to be severable from the remainder and if a Court of competent jurisdiction shall declare any provision invalid, such declaration shall not affect the validity of the remainder thereof.

8.3     The short title of this By-law shall be the "Swimming Pool Fence By-law".

**READ A FIRST TIME THIS 17<sup>th</sup> DAY OF MAY, 1999**

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MAYOR

\_\_\_\_\_  
CLERK

**READ A SECOND AND THIRD TIME AND FINALLY PASSED THIS 17<sup>th</sup> DAY OF MAY, 1999.**

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MAYOR

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CLERK