

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 5155-19**

**A BY-LAW TO REGULATE PRIVATE OUTDOOR SWIMMING
POOLS, HOT TUBS AND SWIMMING POOL ENCLOSURES IN THE
MUNICIPALITY AND TO RESCIND BY-LAW 803-77**

WHEREAS Subsection 11 of the *Municipal Act, 2001* S.O. 2006, c.32, as amended provides that the municipality may pass By-laws relating to the health, safety and well-being of the inhabitants of the municipality, and to pass By-laws respecting structures, including fences and to provide for a system of permits.

WHEREAS Subsections 445.1 and 446 of the *Municipal Act, 2001*, as amended, provides that if a municipality has the authority under this or any other *Act* or under a By-law under this or any other *Act* direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense, and may recover the costs by adding them to the tax roll and collecting them in the same manner as taxes.

NOW THEREFORE the Municipal Council of The Corporation of the Town of Niagara-on-the-Lake hereby enacts as follows:

SECTION 1 GENERAL PROVISIONS

1.1 SHORT TITLE

1.1.1 This By-law shall be known as the "Swimming Pool By-law"

1.2 DEFINITIONS

1.2.1 The following terms are defined for the purposes of this By-law:

"Chief Building Official" means the Chief Building Official appointed by Council under the *Building Code Act, S.O. 1992, c.23*, as amended or his or her designate;

"construct" means to do anything in the erection, installation, extension or material alteration of a swimming pool and includes excavation activities and the installation of a swimming pool fabricated or moved from elsewhere and "construction" has a corresponding meaning;

"effective ground level" means the mean level of the ground within a radius of 1.22 metres (4 feet) of the location being considered;

"exterior face" means, when used in conjunction with a swimming pool enclosure, the side of the enclosure from which access to the swimming pool is to be prevented;

"fence" means and includes a railing, wall, line of posts, wire, gate, boards, pickets, or similar material, used to enclose or divide in whole or in part a yard or other land, or to establish a property boundary, or to provide privacy;

"gate" means a barrier swinging on a vertical axis;

"hot tub" means a hydro-massage pool containing an artificial body of water that is intended primarily for private therapeutic or recreational use of a single dwelling unit that is not drained, cleaned or refilled before use by each individual and that utilizes hydro-jet circulation, air induction bubbles, current flow or a combination of them over the majority of the pool area, but does not include a swimming pool.

“officer” means a municipal law enforcement officer, building inspector, chief building official or any other person appointed or employed by the Town for the enforcement of the By-laws and includes a peace officer;

“owner” means a registered owner, but also includes an occupant, lessee, tenant or any other person in charge of or in control of premises on which a swimming pool is located but does not include any Federal, Provincial or Municipal authority;

“person” includes an owner and may be a natural person, firm, corporation, partnership or association;

“property” means any grounds, yard or vacant, land;

“swimming pool” means a body of water that:

- (a) is located outdoors on private property;
- (b) is wholly or partially contained by artificial means; and
- (c) is capable, at any point, of holding water in excess of 0.6 m in depth;

including but not limited to a hot tub or landscape pond, but not including a body of water that:

- (i) is used for the purposes of, including but not limited to, providing water to livestock or irrigation for crops, which are associated with and located on land being used for farming;
- (ii) is on land zoned as rural or agricultural and is not capable, at any point 2.0 m from an edge, of holding water in excess of 0.6 m in depth;
- (iii) is part of a golf course;
- (iv) is owned by any public or governmental entity, including but not limited to an agency or authority;
- (v) is a river, lake, stream or other natural body of water;
- (vi) is a privately-owned stormwater management facility; or
- (vii) is a rain barrel having a height of at least 1.0 m and with no opening greater than 300 mm².

“swimming pool area” means a swimming pool and includes any surrounding platforms, walkways, play areas and landscape areas within the swimming pool enclosure;

“swimming pool enclosure” means a permanent fence, wall or structure, or combination thereof including doors, gates and hardware used to completely enclose a swimming pool;

“temporary enclosure” means an enclosure used temporarily for the purpose of enclosing a swimming pool in the course of construction in order to effectively prevent or restrict access thereto by unauthorized persons, and to prevent any accident or injury to any person in or on the property;

“Town” means The Corporation of the Town of Niagara-on-the-Lake.

1.3 GENERAL DUTIES AND OBLIGATIONS

1.3.1 The provisions of this By-law shall regulate the enclosure of privately-owned outdoor swimming pools and hot tubs constructed on property within the boundaries of the Town.

1.3.2 The provisions of this By-law, in no way exempt swimming pools or hot tubs from complying with any applicable Federal or Provincial statutes, and regulations thereunder, or any other regional or Town By-law, including the requirement for a permit.

1.3.3 Every owner of land upon which a swimming pool is located shall erect and maintain in good repair such swimming pool enclosures as required, in compliance with the standards in this By-law.

1.3.4 No owner shall place, erect, construct or install or permit to be placed, erected, constructed or have installed any privately-owned swimming pool capable of containing water to a depth of more than 0.60 metres (2 feet) at any point, without first obtaining a swimming pool permit, as required from the Chief Building Official.

1.3.5 No person shall place water or allow water to remain in any swimming pool unless a required swimming pool permit has been issued and the swimming pool enclosure has been inspected and approved by an Officer and constructed and maintained in compliance with this By-law.

1.3.6 Every owner of a swimming pool shall ensure that any gates or covers forming part of a required swimming pool enclosure shall be kept latched or locked as required, at all times unless a responsible person is present and supervising access to the swimming pool area.

1.3.7 Every owner shall comply with an Order issued pursuant to Section 5.0 of this By-law and within the timeframe specified therein for compliance.

SECTION 2 GENERAL PROVISIONS

2.1 PERMITS

2.1.1 No person shall construct or cause or permit construction of any swimming pool or hot tub without first obtaining a permit from the Chief Building Official.

2.1.2 An application for a permit shall contain the following information:

- (1) the location of the property;
- (2) a plot plan showing the location of the swimming pool and or hot tub on the property in relation to lot lines, street lines and all other building structures on the lot;
- (3) a plan showing the complete details of the swimming pool enclosure including the location, type, height, materials, gates and latching devices;
- (4) a plan showing the location of hydro electric poles, and all proposed plumbing and electrical installations;
- (5) a set of plans for the construction of proposed decks or accessory buildings (including change rooms, storage structures) if any.
- (6) a lot grading plan may be required at the discretion of the Chief Building Official.

2.1.3 If the permit is for a hot tub with a locking cover details of the locking cover shall be submitted with the application.

2.1.4 The applicable fee, established by the Council of the Town from time to time, shall accompany an application for a permit and no permit shall be issued unless the fee and applicable deposits have been paid in full.

2.1.4 A permit may be revoked at the discretion of the Chief Building Official if:

- (a) it was issued on mistaken, false or incorrect information;
- (b) after six months after its issuance, construction of the swimming pool enclosure, in the opinion of the Chief Building Official, has not started;

(c) the construction of the swimming pool enclosure is, in the opinion of the Chief Building Official, substantially suspended or discontinued for a period of more than one (1) year;

(d) it was issued in error; or

(e) the permit holder requests in writing that it be revoked.

2.1.5 A permit is not required for a swimming pool which has been dismantled or deflated and is being reconstructed, placed or erected in the exact location in which it was previously constructed, erected or placed provided that a permit was obtained for the original installation, and the required enclosure remains in compliance with this By-law.

2.2 STANDARDS

2.2.1 Swimming pools shall comply with all yard and setback requirements specified in the Town's Zoning By-law.

2.2.2 Hot tubs shall comply with all yard and setback requirements specified in the Town's Zoning By-law, save and except for the distance to a principal building.

2.3 INSPECTIONS

2.3.1 No person shall place water, or cause or permit water to be placed, in a swimming pool, unless:

(1) an Officer has conducted a final inspection; and

(2) an Officer has approved the installation of the swimming pool enclosure.

SECTION 3 SWIMMING POOL CONSTRUCTION

3.1 PLUMBING

3.1.1 Any plumbing connections made between the swimming pool or hot tub and any potable water supply shall be equipped with a backflow prevention device.

3.1.2 No person shall empty, drain or backwash a swimming pool or hot tub into a sanitary sewer system or directly or indirectly onto any neighbouring property.

3.1.3 Overflow or drainage from a swimming pool or hot tub shall be discharged to a storm sewer or natural drainage course. If a storm sewer or natural drainage course is not available, the swimming pool or hot tub shall be drained by mechanical means and transported to a storm sewer outlet or natural drainage course.

3.2 ELECTRICAL

3.2.1 All electrical works conducted in association with the installation of the swimming pool or hot tub shall be installed in accordance with the applicable electrical codes and standards.

3.2.2 Any applicable permits and inspections required as a result of the provisions of subsection 3.2.1 are the sole responsibility of the owner.

3.2.3 All lighting fixtures or standards installed in conjunction with the swimming pool or hot tub shall be arranged, designed and installed so that any light from the fixtures or standards is directed downward and deflected away from any adjacent properties and abutting highways.

SECTION 4 SWIMMING POOL ENCLOSURES

4.1 SWIMMING POOLS

4.1.1 Swimming pools shall be enclosed with a fence not less than 1.52 metres (5 feet) in height and not more than 2.0 metres (6 feet, 7 inches) in height, measured from the effective ground level at the exterior face of the swimming pool enclosure.

4.1.1.1 Exception – If the outside wall of the swimming pool has a height of not less than 1.22 metres (4 feet) measured from effective ground level at all points on the perimeter of such wall, and provided that any steps, ladder or other means of entry to the swimming pool are secured by a fence or gate that comply with all other requirements of this By-law, Section 4.1.1 does not apply.

4.1.2 The wall of a building may be considered to form a part of the swimming pool enclosure provided that:

- (1) the wall is at least 1.52 metres (5 feet) in height, as measured from the effective ground level at the exterior face of the wall;
- (2) where any window opening occurs within the area of the wall forming part of the swimming pool enclosure, such windows are to be kept securely locked when the pool is not under competent and immediate supervision;
- (3) doors providing direct access to a swimming pool area from an attached or detached garage, but excluding doors from a dwelling unit, are to be equipped with a self-closing device and with a self-latching device located not less than 1.52 metres (5 feet) above the bottom of the door and kept securely locked when the swimming pool is not under competent and immediate supervision;
- (4) where any dwelling unit door providing access to a swimming pool area occurs within the area of the wall forming part of the swimming pool enclosure, such door or doors are to be equipped with a self-latching device located not less than 1.52 metres (5 feet) above the bottom of the door and kept securely locked when the swimming pool is not under competent and immediate supervision.
- (5) where any sliding door providing access to a swimming pool area occurs within the area of the wall forming part of the swimming pool enclosure, such door or doors are to be equipped with a locking device located at the top of the door and kept securely locked when the swimming pool is not under competent supervision.
 - i. the locking device may allow the sliding door to be locked to a maximum opening of 100 millimetres (3.94 inches).

4.1.3 All swimming pool enclosures shall be constructed of wood, metal, or chain link fencing unless the Chief Building Official has approved a fence of any other materials and construction which in his or her opinion will yield an equivalent or greater degree of safety to the standards specified in this By-law.

4.1.3.1 Chain Link – A fence of chain link construction shall:

- (1) be supported by galvanized posts having a diameter of not less than 38 millimetres (1.5 inches);
- (2) be set in concrete, spaced not more than 2.44 metres (8 feet) apart;
- (3) such chain link fencing shall be at least 14 gauge with a mesh of diameter not more than 38 millimetres (1.5 inches) measured diagonally together with gates of similar materials and/or equivalent

performance and such design as well to reasonably deter any child or children from climbing over it.

- 4.1.3.2** Wood – A fence of wood construction shall:
- (1) have vertical boarding of 25 millimetres (1 inch) nominal attached to the top and bottom rail in such a manner as not to facilitate climbing from the outside.
 - (2) vertical boards must not be less than 2.5 millimetres x 150 millimetres (1" x 6") nominal and must be spaced not more than 38 millimetres (1.5 inches) apart.
- 4.1.3.3** Wrought iron – a fence of wrought iron or metal construction shall:
- (1) be of sufficient strength to provide an effective swimming pool enclosure;
 - (2) have supports of posts spaced not more than 2.44 metres (8 feet) apart and placed at least 0.914 metres (3 feet) below effective ground level.
 - (3) have horizontal members, including top and bottom rails, that are spaced at least 0.914 metres (3 feet) apart, and vertical members that are spaced no more than 100 millimetres (4 inches) apart on the exterior face of the fence.
- 4.1.3.4** Basket weave or lattice material shall not be used within the required portion of fence serving as a swimming pool enclosure.
- 4.1.3.5** The maximum permitted space between the bottom of the swimming pool enclosure and the ground or surface beneath it, is 76 millimetres (3 inches).
- 4.1.3.6** All swimming pool enclosures shall be set back not less than 1.22 metres (4 feet) from the nearest inside wetted surface of the swimming pool wall.
- 4.1.3.7** No swimming pool enclosure shall have or include barbed wire, electrical wiring, sharp projections or any other dangerous devices on top of, outside or inside the enclosure.
- 4.1.3.8** No swimming pool enclosure shall have any element or attachment which will aid or facilitate climbing the exterior.

4.2 HOT TUBS

4.2.1 A hot tub shall have a cover, capable of holding 90.72 kilograms (200 pounds), constructed of durable material that is fixed and secured to the structure, and that is locked to prevent access when the hot tub is not in use.

4.2.1.1 Alternative – Hot tubs that are not equipped with the required locking cover shall comply with the swimming pool enclosure standards for swimming pools.

4.3 TEMPORARY ENCLOSURES

4.3.1 A swimming pool or hot tub, while under construction, shall be completely enclosed by a temporary enclosure, except where the swimming pool enclosure requirements have been satisfied.

4.3.2 A temporary enclosure shall:

- (1) consist of a 1.22 metre (4 feet) high plastic mesh fence having mesh openings not greater than 50 millimetres (2 inches) and supported by steel

bar posts located a maximum of 2.44 metres (8 feet) apart and with a nine (9) gauge galvanized steel wire threaded through the top and bottom of such fence; or

- (2) be constructed of material that will provide an equivalent or greater degree of safety referred to in article 4.3.2(1) above, and which has been approved by the Chief Building Official.

4.4 GATES AND ENTRANCES

4.4.1 Every gate or entrance is to be kept closed and locked at all times when the swimming pool is not under competent and immediate supervision.

4.4.2 Every swimming pool enclosure shall allow access to the swimming pool area, other than through a dwelling unit, by means of one or more gates or entrances.

4.4.3 Gates or entrances which form part of the swimming pool enclosure shall be:

- (1) of construction and height equivalent to or greater than that of the fence required by this By-law;
- (2) supported on substantial hinges;
- (3) equipped with self-closing hardware capable of placing the gate or entrance in a latched position; and
- (4) equipped with an operable self-latching device located at least 1.22 metres (4 feet) above the effective ground level on the swimming pool side of the gate or entrance. Any thumb latch or release mechanism of any kind that is located on the exterior face of the gate or entrance, and is connected to the self-latching device, shall be located at least 1.52 metres (5 feet) above the effective ground level.

4.5 MAINTENANCE

4.5.1 The owner of any lands on which a swimming pool or hot tub is located or constructed shall maintain a swimming pool enclosure around the entire swimming pool area, in accordance with the provisions of this By-law.

4.5.2 No person shall place water, or cause water to be placed, in a swimming pool or hot tub, unless the swimming pool enclosure described in this By-law is maintained in accordance with the provisions of this By-law.

4.5.3 Every swimming pool enclosure, and temporary enclosure, shall be maintained in such a manner and to such an extent as to ensure, at all times, maximum security and protection against entry to the swimming pool or hot tub area by unauthorized persons.

4.5.4 No person shall keep a swimming pool or hot tub unless it is maintained in good repair and working condition.

4.5.5 No person shall cause or permit a swimming pool or hot hub to contain standing water for a period in excess of three (3) days.

SECTION 5 ADMINISTRATION AND ENFORCEMENT

5.1 ENFORCEMENT

5.1.1 The Chief Building Official, Municipal Law Enforcement Officer or their designate shall enforce the provisions of this By-law and are authorized to enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-law is being complied with.

5.1.2 Where an owner fails to comply with any provision of this By-law, an Order may be issued to the owner requiring compliance. The Order will give reasonable particulars of the repairs to be made or state that a swimming pool permit is required or that a swimming pool enclosure must be erected and indicate the time for complying with the Order and giving notice that, if the Order is not complied with within that time, the Town may carry out the Order at the owner's expense.

5.1.3 An Order may be personally delivered, posted in a conspicuous location on the property or served by Registered Mail. An Order posted on the property is considered served. Where an Order is mailed, the Order shall be deemed delivered on the earlier of receipt of the Order by the addressee or the fifth (5th) day following the date of mailing, whether actually received or not.

5.1.4 Where an Order has been issued and compliance has not been achieved within the required time period as set out in the Order the Town may, through its employees or agents or persons acting on its behalf, enter upon the land to drain, fill in or enclose the swimming pool at the expense of the owner and any and all expenses incurred may be added to the tax roll and collected from the owner of the property in the same manner as municipal taxes.

5.1.5 Where it is required for the Town to have work conducted to remedy a non-conformity as described in article 5.1.4 the Town may charge an administration fee of 15% of such expense which will be added to the expense of the work.

5.2 PENALTIES

5.2.1 Every Person who contravenes any of the provisions of this By-law is guilty of an offence and, upon conviction is liable to the penalties as prescribed by the *Provincial Offences Act*, R.S.O. 1990 c. P.33.

5.2.2 No person shall hinder or obstruct an Officer, from carrying out an inspection of a property for the purpose of confirming compliance with the provisions of this By-law or for compliance with an Order issued for the property.

5.2.3 No person shall hinder or obstruct an Officer, or their agent or agents, from entering onto lands to carry out remedial action on a property whereby an Order has been issued and compliance has not been achieved by the stipulated compliance date.

5.3.1 ADMINISTRATION

5.3.1 The provisions of By-law 803-77 as amended shall continue to apply to any existing swimming pool enclosure in good repair that is in compliance with by-law 803-77 until six (6) months after the passing of this by-law, at which point in time the provisions of this by-law shall apply.

5.3.1.1 Any fence that was in lawful existence prior to the effective date of this By-law shall be deemed to comply with this By-law and may be maintained to the same location, height and dimensions as previously existed; and

5.3.1.2 Where an existing fence is replaced or substantially altered, the replacement and or alteration shall be constructed in accordance with this By-law.

5.3.2 If there is a conflict between a provision of this By-law and a provision of any other Town By-law, the provision that establishes the highest standard to protect the health or safety of the public shall apply.

5.3.3 Where this By-law provides metric and imperial units of measure, the metric unit of measure shall apply. Approximate imperial measurements have been provided for convenience only.

5.3.4 Pursuant to the provisions of Section 23.1 to 23.5 of the *Municipal Act, 2001* the Clerk of the Town of Niagara-on-the-Lake is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the By-law and schedules as may be necessary after the passage of this By-law.

SECTION 6 ENACTMENT AND REPEAL

6.1 By-law No. 803-77 is hereby repealed.

6.2 This By-law shall come into force and effect on the date of passage.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 13th DAY OF MAY 2019

LORD MAYOR BETTY DISERO

TOWN CLERK PETER TODD

SCHEDULE "A"

The Corporation of the Town of Niagara-on-the-Lake
 Part 1 Provincial Offences Act
 Swimming Pool Bylaw No. 5155-19

SECTION 1 SET FINES AND SHORT FORM WORDING**1.1 SET FINES AND SHORT FORM WORDING**

1.1.1 For the purpose of the enforcement of this By-law the short form wording and set fines shall be prescribed in the table below as provided for in the Provincial Offences Act, R.S.O. 1990, c-P-33, as amended.

No.	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1	Erect swimming pool without required permit	2.1.1	\$250
2	Placement of water prior to approval	2.3.1	\$250
3	Failure to provide backflow prevention	3.1.1	\$150
4	Failure to maintain swimming pool enclosure	4.5.1	\$250
5	Permit standing water in excess of 3 days	4.5.5	\$150