

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

OFFICE CONSOLIDATION OF BY-LAW 2005-314

Consolidated on April 19, 2011

Passed by Council on November 29, 2005.

Amendments:

- |                    |                |  |
|--------------------|----------------|--|
| 1) By-law 2006-084 | May 9, 2006    | Schedule A and Section 1.00                          |
| 2) By-law 2011-030 | April 12, 2011 | Schedule A and Sections 1.00, 2.00, 3.00, 6.00, 7.00 |

Note: This consolidation is prepared for convenience only. For accurate reference the original by-laws should be reviewed.

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THE CORPORATION OF THE CITY OF KAWARTHA LAKES

BY-LAW 2005 - 314

**A BY-LAW RESPECTING SWIMMING POOLS AND SWIMMING POOL FENCES**

**Recitals**

1. The *Municipal Act, 2001* authorizes municipal councils to pass by-laws respecting the safety of the residents of the municipality.
2. Council considers it desirable to impose certain requirements respecting the construction of swimming pools and of fences around swimming pools.

**Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2005-314.**

Section 1.00: Definitions and Interpretation

1.01 **Definitions:** In this by-law,

“**abandoned swimming pool**” means a swimming pool that is abandoned whether or not it contains water and whether or not it is being used, or a swimming pool by reason of its state of repair that is incapable of safely being used and may include, but is not limited to, its structure, support structure, and containment liner, deck or state of its being maintained.

2011-030, effective April 12, 2011

“**Building Division**” means the Building Division of the Development Services Department of the City or, in the event of organizational changes, another office designated by Council to carry out the Division’s responsibilities;

“**building inspector**” means an inspector appointed by Council under the *Building Code Act* to enforce the Act within the City of Kawartha Lakes;

“**Chief Building Official**” means the Chief Building Official for the City of Kawartha Lakes or his/her designate.

2011-030, effective April 12, 2011

“**City**”, “**City of Kawartha Lakes**” or “**Kawartha Lakes**” means The Corporation of the City of Kawartha Lakes;

“**Council**” or “**City Council**” means the Council of the City of Kawartha Lakes;

“**exterior face**” means the side of a swimming pool fence facing away from a swimming pool;

“**gate**” means the part of a swimming pool fence that provides access to a swimming pool, but does not include a door or window in the wall of a building;

**“grade”** means the elevation of the ground surface;

**“inside”** means the side of a pool fence facing toward a swimming pool;

**“lawful swimming pool fence”** means a swimming pool fence that complies with the requirements of this by-law, that is maintained in good repair, and that has not become unsafe;

**“municipal law enforcement officer”** means a person appointed by Council under the *Police Services Act* to enforce the by-laws of the City;

**“municipal service centre”** means a designated municipal service centre of the City which provides local government services;

**“owner”** means the owner, tenant, lessee, occupant or other person in care and control of the property on which a swimming pool is situate.  
2011-030, effective April 12, 2011

**“person”** includes a corporation as well as an individual;

**“pool area”** means the total area enclosed by a swimming pool fence;

**“portable swimming pool”** means a swimming pool that by its design or intended use may be collapsed, removed or otherwise stored when not in use.  
2011-030, effective April 12, 2011

**“swimming pool”** or **“pool”** means a privately owned outdoor, artificially created body of water that is intended or that is capable of being used for swimming, bathing or wading, but shall not include ponds.  
2011-030, effective April 12, 2011

**“swimming pool fence”** or **“pool fence”** means an enclosure, including gates, with a minimum height of 1.2m that surrounds a swimming pool intended to restrict access to that pool;  
(2006-084, effective May 9/06)

**“swimming pool permit”** or **“permit”** means a permit authorizing the construction or installation of a swimming pool; and

**“unsafe”** means a swimming pool fence that is structurally inadequate or faulty for the purpose for which it is used or that is in a condition that could be hazardous to the health or safety of persons whose access to the swimming pool has not been reasonably prevented.

1.02 **Interpretation:**

- a) The regulations established by this by-law respecting swimming pools and swimming pool fences apply throughout the City.
- b) The provisions of this by-law requiring swimming pool fences apply to both in-ground and above-ground swimming pools, but not to structures known as hot tubs, whirlpools and spas.
- c) The words “includes” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.

1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.

1.04 **Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

1.05 **Conflicts:** In the event any conflict that arises with any zoning by-law which was in effect in the City of Kawartha Lakes on the date of passage of this by-law, dealing with the installation of swimming pools, the requirements of this by-law shall prevail.

Section 2.00: Swimming Pool Permits

- 2.01 **Swimming Pool and Fence Permit:** No person shall construct or install a swimming pool or cause or permit the construction or installation of a swimming pool without having first obtained a swimming pool and fence permit from the Chief Building Official in accordance with Section 2.02.  
2011-030, effective April 12, 2011
- 2.02 **Permit Required:** A permit referred to in Section 2.01 is required for all in-ground pools and pools in which the water depth at any point is capable of exceeding 1.2 metres.  
2011-030, effective April 12, 2011
- 2.03 **Building Permit:** A permit is not required in the case of a swimming pool for which a permit has been issued under the *Building Code Act*.
- 2.04 **Reinstallation of a Portable Swimming Pool:** A permit is not required in the case of a portable swimming pool which has been dismantled and is being reinstalled in the same manner and position in which it was previously located, provided that:
- a) a permit was obtained for the original installation;
  - b) the reinstallation complies with the requirements of this by-law and all other applicable by-laws, and
  - c) a lawful swimming pool fence is in place.
- 2011-030, effective April 12, 2011
- 2.05 **Applications:** An owner shall apply for a permit by completing the application form provided by the City and by submitting it to the Building Division at any municipal service centre.
- 2.06 **Procedure:** Every application for a permit shall include:
- a) the name, address and telephone number of the owner;
  - b) a fee of \$50.00, payable to the City;
  - c) a description of the work to be undertaken;
  - d) a site plan showing the location of the proposed pool and its pumping, filtration and heating equipment, including dimensions and setbacks;  
2011-030, effective April 12, 2011
  - e) if the grade of the land is to be altered, a description of the remedial measures to be taken to avoid changing existing drainage patterns; and
  - f) any additional information required by the City to determine whether the proposed swimming pool complies with this and any other applicable by-laws.
- 2.07 **Conditions:** A permit issued to an owner by the City may include conditions imposed by the Chief Building Official, at his sole discretion, as a condition of obtaining and holding the permit.  
2011-030, effective April 12, 2011
- 2.08 **Prohibited Locations:** No permit shall be issued for a proposed swimming pool that contravenes any provision of the zoning by-law that applies to the property or of any other applicable by-law.
- 2.09 **Abandoned Swimming Pools:** where a swimming pool is determined by a building inspector or municipal law enforcement officer to be an abandoned swimming pool, the building inspector or municipal law enforcement officer may cause the owner of the swimming pool to make whatever repairs are deemed necessary to gain compliance with this by-law or to remove the swimming pool from the property.  
2011-030, effective April 12, 2011
- 2.10 **Draining:** no person shall drain the water from a swimming pool in a manner that would permit or cause water to drain directly onto adjacent properties, including those owned by the City.

Section 3.00: Fencing Requirements for all Swimming Pools

- 3.01 **Lawful Fence:** The owner of every swimming pool for which a permit is required, shall ensure that the pool is enclosed by a lawful swimming pool fence, regardless of whether or not there is water in the pool.
- 3.02 **Restrictions:** Unless a swimming pool is enclosed by a lawful swimming pool fence, no person shall:
- a) place or cause or permit water to be placed in the swimming pool; or
  - b) cause or permit water to remain in the swimming pool.
- 3.03 **Regulations:** Every swimming pool fence shall be constructed in accordance with Schedule "A" attached to and forming part of this by-law.
- 3.04 **Above-Ground Pools:** Despite section 3.03, the exterior wall of an above-ground swimming pool may constitute a lawful swimming pool fence provided that it is at least 1.2 metres in height and provided that it has no attachments, openings or objects in the immediate vicinity, such as a ladder or pump, that could facilitate climbing of the exterior wall while the pool is not in use or without supervision.
- 3.05 **Building Wall:** Despite section 3.03, the wall of a building may constitute part of a lawful swimming pool fence provided that all doors and windows in the wall are equipped with locks or latching devices, and provided that it would not result in the location of a utility meter or furnace oil filler pipe within the pool area.
- 3.06 **Prohibitions:** No person shall construct a swimming pool fence that contains snow fencing, barbed wire or other dangerous materials or a mechanism that permits an electric current to run through the fence.
- 3.07 **Gates:** Every gate that forms part of a swimming pool fence shall be equipped with a self-closing and self-latching device placed at the top and on the inside of the gate and constructed of chain link, wood, metal materials or pre-cast lightweight concrete panels.
- 3.08 **Entrances:** Every owner of a swimming pool shall ensure that all external means of entering the pool area, including gates, steps and ladders, are kept locked or are removed when the pool is not in use or without supervision.
- 3.09 **Hazards:** every owner of a swimming pool shall ensure that:
- a) nothing is placed or piled adjacent to a swimming pool fence or above ground pool wall acting as a swimming pool fence so as to facilitate climbing; and
  - b) during construction of a swimming pool, the site is enclosed with a temporary swimming pool fence if the permanent swimming pool fence is not complete.

2011-030, effective April 12, 2011

Section 4.00: Requirements for Hot Tubs, Whirlpools and Spas

- 4.01 **Exemption:** The provisions of sections 2.00 and 3.00 of this by-law respecting swimming pool permits and swimming pool fences do not apply to structures known as hot tubs, whirlpools and spas.
- 4.02 **Preventing Access:** Despite section 4.01, the owner of every hot tub, whirlpool or spa shall keep a secure cover of rigid material locked in place over the opening at all times when the structure is not in use, and no person shall leave a hot tub, whirlpool or spa unoccupied without first locking the cover in place.

Section 5.00: Transitional Provisions

- 5.01 **Existing Swimming Pools:** The owner of every swimming pool that was constructed or installed before this by-law came into force and that is not enclosed by a swimming pool fence shall ensure that the pool is enclosed by a lawful swimming pool fence prior to the pool being used in 2006.
- 5.02 **Existing Swimming Pool Fences:** Every swimming pool enclosed by a swimming pool fence that was constructed lawfully before this by-law came into force including the wall of an above ground pool, that is maintained in good repair, and that has not become unsafe shall be deemed to be a lawful swimming pool fence for the purposes of this by-law.
- 5.03 **Replacement Fences:** If a swimming pool fence of the type described in section 5.02 has become unsafe, the owner of the swimming pool shall ensure that it is replaced by a pool fence that complies with the requirements of this by-law.

Section 6.00: Enforcement and Penalties
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- 6.01 **Enforcement:** This by-law may be enforced by every building inspector and by every municipal law enforcement officer.  
2011-030, effective April 12, 2011
- 6.02 **Obstruction:** No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this by-law.
- 6.03 **Offence and Penalty:** It is an offence for a person to contravene any provision of this by-law, and every person who contravenes this by-law is guilty of an offence and, upon conviction, is liable to a fine in accordance with the provisions of the *Provincial Offences Act* and to any other applicable penalty.
- 6.04 **Multiple Offences:** The conviction of a person for the contravention of any provision of this by-law shall not operate as a bar to the prosecution against the same person for any subsequent or continued contravention of this by-law.
- 6.05 **Court Order:** If this by-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

Section 7.00: General Provisions
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- 7.01 **Administration:** The Chief Building Official is responsible for the administration of this by-law.  
2011-030, effective April 12, 2011
- 7.02 **Effective Date:** This by-law comes into force on the date that it receives third reading and is passed.

By-law read a first, second and third time, and finally passed, this 29<sup>th</sup> day of November, 2005.

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Mayor

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Clerk

Schedule "A" to By-law Number 2005-314 (as amended)

**Fence Specifications**

2011-030, effective April 12, 2011

**Prohibition**

No part of any fence or gate shall consist of barbed wire or possess equivalent dangerous characteristics.

**Chain Link Fence**

When the fence is a chain link fence, it shall be constructed in accordance with the following specifications:

- a) the fence shall be constructed of corrosion resistant materials;
- b) the fence shall commence no more than 76mm (3 inches) above finished grade;
- c) the fabric shall be of minimum 12 gauge galvanized material with 38mm (1.5 inch) maximum mesh;
- d) the line posts shall be:
  - a. corrosion resistant
  - b. capped
  - c. a minimum of 27mm (1-1/16 inch) outside diameter, and
  - d. set in concrete to 1067mm (42 inches) below finished grade.
- e) The terminal posts shall be:
  - a. corrosion resistant
  - b. capped
  - c. a minimum of 38mm (1.5 inch) outside diameter, and
  - d. set in concrete to 1067mm (42 inches) below finished grade.
- f) The maximum distance between every post shall be 3 metres (10 feet)
- g) The top rail shall be:
  - a. corrosion resistant, and
  - b. a minimum of 33mm (1-5/16 inches) outside diameter.
- h) The wire along the bottom of the fence shall be:
  - a. corrosion resistant, and
  - b. a minimum of 9 gauge thickness.

**Metal Fence**

When the fence is a metal fence and not a chain link fence, it shall be constructed in accordance with the following specifications:

- a) it shall be constructed of wrought iron, steel, aluminum or other similar metal materials protected with a corrosion resistant finish;
- b) the vertical posts shall be:
  - a. a minimum of 12 gauge in thickness;
  - b. capped;
  - c. a minimum 38mm (1.5 inch);
  - d. set in concrete to a minimum of 1067mm (42 inches) below finished grade, and
  - e. a maximum distance of 2.4 metres (8 feet) apart.
- c) the horizontal bars shall be:
  - a. a minimum of 18 gauge thickness;
  - b. a minimum 25mm (1 inch), and
  - c. bottom rail maximum 140mm (5.5 inches) above grade and top rail minimum 900mm (35 inches) above grade.
- d) the vertical bars shall be:
  - a. a minimum of 18 gauge thickness;
  - b. a minimum 12.7mm (1/2 inch);
  - c. spaced no more than 89mm (3.5 inches) apart, and
  - d. located at no less than 76mm (3 inches) above the finished grade.

**Masonry Materials**

When a fence is constructed of masonry materials, it shall be constructed in accordance with the following specifications:

- a) must be designed by a professional engineer; and
- b) all openings in the masonry panels shall not exceed 89mm (3.5 inches) and placed in a manner as not to facilitate climbing from the outside.

### **Wood Fence**

When the fence is constructed of vertical board construction it shall be constructed in accordance with the following specifications:

- a) have vertical boarding not less than 19mmx89mm (1"x 4" nominal) spaced not more than 38mm (1.5 inch) apart attached to a top and bottom rail in such a manner as not to facilitate climbing from the outside;
- b) be supported by posts not less than 89mmx89mm (4" x 4" nominal) spaced not more than 2.4 metres (8 feet) apart and extended a minimum depth of 1.2 metres (4 feet) below grade;
- c) be treated with a wood preservative below grade or consist of pressure treated wood below grade; and,
- d) have top and bottom rails not less than 38mmx89mm (2" x 4" nominal).