

THE CORPORATION OF LOYALIST TOWNSHIP

BY-LAW NO. 2002-33

A By-law to Prescribe the Height, Description and Requirements for Fences within Loyalist Township

WHEREAS the Municipal Act, R.S.O. 1990, Chapter M.45, Section 210, Subsection 30 authorizes a municipality to pass a by-law for requiring owners of privately-owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools and for prescribing the height and description of, and the manner of erecting and maintaining, such fences and gates;

AND WHEREAS the Municipal Act, R.S.O. 1990, Chapter M.45, Section 25 authorizes a municipality to pass a by-law for prescribing standards for the height and description of lawful fences;

AND WHEREAS the Municipal Act, R.S.O. 1990, Chapter M.45, Section 210, Subsection 28 authorizes a municipality to pass a by-law to require proper and sufficient protection against injury to persons or animals by fences constructed wholly or partly of barbed wire or other barbed material and for prohibiting or regulating the erection of fences made wholly or partly of barbed wire or other barbed material;

AND WHEREAS the Municipal Act, R.S.O. 1990, Chapter M.45, Section 326 authorizes that a Council may, by by-law, direct that in default of any matter or thing being done by the person directed or required to do it, such matter or thing shall be done at the person's expense and the corporation may recover the expense incurred in doing it by action or the same may be recovered in like manner as municipal taxes;

1. DEFINITIONS

- a) Chief Building Official means a chief building official or building inspector appointed or constituted under Section 3 or 4 of the Building Code Act S.O. 1992, as amended, or a Provincial Offences Officer designated under Section 1 (3) of the Provincial Offences Act, R.S.O. 1990, Chapter P.32.
- b) Enclosure means a fence, wall or other structure, including doors and gates, surrounding a privately owned outdoor swimming pool to restrict access thereto.
- c) Fence means a structure or partition made of wood, metal or other substance and erected for the purpose of enclosing a piece of land or to guard an area against entry or to divide a piece of land into distinct partitions, and includes doors, gates and other closures.
- d) Finished Grade means the elevation of the finished surface of the ground where it abuts a fence or structure.
- e) Privately – Owned Outdoor Swimming Pool means any privately owned body of water located outdoors contained in part or in whole by artificial means in which the depth of the water at any point can exceed twenty-four inches and used or capable of being used for swimming, wading, diving or bathing.
- f) Service Entrance means that entrance into a building which is normally used by persons entering such building for the purpose of delivering goods or rendering maintenance service as opposed to the main or principal entrance.
- g) Sight Triangle means the triangular space formed by the street lines or a corner lot and a line drawn from a point in one street line to a point in the other street line, each such point being 9.0 metres (30 feet) from the point of intersection of the street lines measured along the street lines. Where the two street lines do not intersect at a point, the point of intersection of the street lines shall be deemed to be the intersection of the projection of the street lines or the intersection of the tangents to the street lines.

2. SWIMMING POOL FENCES AND ENCLOSURES

- a) The owner of a privately-owned outdoor swimming pool shall erect and maintain an adequate enclosure surrounding the entire swimming pool area and sufficient to make such body of water not readily accessible to small children.
- b) No person shall place any water in a privately owned outdoor swimming pool or maintain such pool filled with water until an enclosure complying with the requirements of this section has been erected around the swimming pool.
- c) Such enclosure, including gates therein, shall extend from the finished grade to a height, measured on the outside of the enclosure, of not less than 1.5 metres (5'-0").
- d) When a wall of a building forms part of such enclosure, no main or service entrance to the building shall be located within the swimming pool area enclosure, except that this requirement shall apply when the main entrance and all exterior service meters and intakes are located outside the enclosure and a sign is erected and maintained directing all service personnel to use the main entrance.
- e) Except as provided in f) vi) (b), such enclosures shall have no rails or other horizontal or diagonal bracing or attachments on the outside that would facilitate climbing.
- f) A fence forming part of such enclosure,
 - i) shall be of vertically boarded wood construction, chain link construction or of other materials and construction as provided in clause (f) (vi);
 - ii) if of chain link construction, shall
 - a) be of not greater than 39 millimetres (1 ½") diamond mesh;
 - b) be constructed of galvanized steel wire not less than No. 12 gauge, or of minimum 14 gauge steel wire covered with a vinyl or other approved coating forming a total thickness equivalent to No. 12 gauge galvanized wire;
 - c) be supported by at least 39 millimetres (1 ½") diameter galvanized steel posts each covered by a minimum of 50 millimetres (2") of concrete from grade to a minimum of 600 millimetres (2' - 0") below grade; such posts to be spaced not more than 3.0 metres (10' - 0") apart. Top and bottom horizontal rail shall be provided of 30 millimetres (1 ¼") minimum diameter galvanized steel, except that a 6 millimetre (¼") minimum diameter galvanized steel tension rod may be substituted for the bottom horizontal steel rail. A vinyl or other approved coating may be substituted for the galvanized coating;
 - iii) if 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 be not less than 1 x 4 inch nominal dimensions spaced not more than 1 ½ inches apart;
 - b) be supported by a minimum of 100 millimetres (4") square or 100 millimetres (4") diameter cedar posts, nominal dimensions, spaced not more than 2.4 metres (8'-0") on centres securely embedded to a minimum of 600 millimetres (2'-0") below grade. That portion of the wood post below grade shall be treated with a wood preservative. Top and bottom horizontal rails shall be provided of wood 38 millimetres x 90 millimetres (2" x 4") minimum nominal dimensions;

- c) Shall not have lattice woodwork incorporated in the fence design from finished grade to a point 1.5 metres above finished grade.
 - iv) shall include no part consisting of barbed wire or having similar or dangerous characteristics and no device for objecting to an electric current through the fence;
 - v) fence location may occur on the property line but in no case closer than 1.2 metres (4'-0") to the pool or any climbable structure.
 - vi) may be of construction other than that specified provided an equivalent degree of safety is maintained and shall
 - a) be constructed so that the rigidity is equal to that specified for those fences described in clauses (i) (ii) or (iii);
 - b) be permitted to have exposed structural or other members or parts thereof that may facilitate climbing the outside of the enclosure provided the minimum clear vertical distance between any lower two (2) members, or parts thereof, is 1.2 metres (4'-0") and regardless of the location of such members, where this minimum 1.2 metres (4'-0") vertical dimension is maintained the least dimension of any opening through such fence may be increased to not more than that required to prevent the passage of a spherical object having a diameter of 100 millimetres (4").
- g) Gates forming part of such enclosure shall
 - i) be of construction and height equivalent to that required for the fence;
 - ii) be supported on substantial hinges, and
 - iii) each be self-closing and equipped with a locking device and with a self-latching device placed at the top and on the inside of the gate.
- h) Subject to the provisions of Paragraph d), doors providing access from a building directly to an enclosed swimming pool area, other than doors located in a dwelling unit or a rooming unit, shall each be self-closing and equipped with a locking device and with a self-latching device located not less than five feet above the bottom of the door.
- i) The owner of every privately-owned outdoor swimming pool shall ensure that every gate and door required by Paragraphs g) and h) to be equipped with a locking device shall be kept locked at all times there is more than 600 millimetres (2'-0") of water in the pool and a responsible person is not present and supervising the pool.
- j) The Chief Building Official for Loyalist Township shall issue a permit certifying approval of the location and design of all fences and pools required to be constructed and maintained around any privately-owned swimming pool and such Inspector may require the production of plans and design data for all such pools and fences before considering any application for approval of a pool and fence.
- k) Without such permit referred to in Clause 2 j) above, no privately-owned outdoor swimming pool may be excavated for or erected and the Chief Building Official may refuse to issue said permit for any such gates or fences that if erected would be contrary to the provisions of this or any by-law of Loyalist Township.
- l) The Chief Building Official may direct that in default of the proper fencing being installed around a pool by the person directed or required to do it, such fencing will be installed at the owner's expense and the municipality may recover the expense incurred in doing it by action or in the like

manner as municipal taxes.

3. MAXIMUM HEIGHT OF FENCES

No person on residentially zoned property shall plant, erect, install, construct or maintain a fence exceeding a maximum height of 2.0 metres (6.5 feet) above the finished grade, except as provided in the following:

- a) a fence may have a higher maximum height measured from the finished grade where such fence is erected for sound attenuation purposes in a manner and height consistent with the recommendations of a noise assessment study for a plan of subdivision or site plan and the conditions related to the fence placement are addressed in a subdivision or site plan agreement.
- b) a fence in a front yard shall not exceed a maximum height of 1.0 metre (3.25 feet) above the finished grade unless the fence is open faced whereby the fence shall not exceed a maximum height of 1.2 metres (4.0 feet).
- c) no person shall erect a fence within a sight triangle to a height greater than 1.0 metre (3.25 feet) above the centre line of the adjacent streets unless the fence is open faced whereby the fence will not exceed a height of 1.2 metres (4.0 feet) above the centre line of the adjacent streets.

4. BARBED-WIRE

No person shall plant, erect, install, construct or maintain a fence constructed wholly or partially of barbed-wire or other barbed material on or adjacent to a property zoned as residential pursuant to Zoning By-law 2001-38, as amended, excluding rural or rural residential zoned property over two acres, without masking or covering with wooden slats or laths or sufficient thickness and breadth over the wires and barbs on the side of the fence next to the street or adjoining property so as to provide proper and sufficient protection against injury to persons or animals. Barbed-wire may be permitted however around any public works, Hydro installation, pipeline valve, chemical and/or explosive storage sites and sludge pits regardless of the abutting zone.

5. EXISTING FENCES

This by-law does not apply to a fence that was lawfully erected prior to the date of passage of this by-law, except that any changes to such fence, after the date of passage of this by-law, shall be subject of the provisions of this By-law. A change in use of a fence to act as a pool fence as a result of a pool installed after the date of passage of this By-law shall require such fence to be constructed in accordance with this By-law.

6. This by-law shall be enforced by the Chief Building Official of the Corporation of Loyalist Township.
7. Any person convicted of a breach of any of the provisions of this by-law is guilty of an offence and, upon conviction, is liable to a fine of not more than Five Thousand Dollars (\$5,000) for each offence committed.
8. If any provision or requirement of this by-law or the application of this by-law to any person, owner or occupant shall to any extent be held to be invalid or unenforceable, shall not be affected thereby and each provision and requirement of the by-law shall be separately valid and enforceable to the fullest extent permitted by law.
9. That By-law 99-70 and any other by-laws or portions thereof conflicting with this by-law are hereby repealed.
10. This By-law may be referred to as the "Fence By-law".
11. This By-law shall come into force and effect on the date of its passing.

ENACTED AND PASSED THIS 22ND DAY OF APRIL 2002.

REEVE

CLERK