

THE CORPORATION OF THE TOWN OF MIDLAND

BY-LAW 99-71

A By-law to require the erection and maintenance of fences and gates around private outdoor swimming pools in the Town of Midland and to repeal By-law 74-41, as amended

WHEREAS Section 210(30) of the Municipal Act, R.S.O. 1990, c.M. 45, as amended, authorizes the council of a local municipality to pass a by-law to require the erection and maintenance of fences and gates around private outdoor swimming pools sufficient to make such pools not readily accessible to small children; and

AND WHEREAS Council passed By-law 74-41, as amended, and known as the Swimming Pool By-law, on the Ninth day of September, 1974; and

AND WHEREAS Council has reviewed the said by-law and now deems it expedient to repeal and replace the by-law to provide for penalties in accordance with the Provincial Offences Act, R.S.O., 1990;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND ENACTS AND BE IT ENACTED AS FOLLOWS:

1.0 Definitions:

- 1.1 “Enclosure” means a fence, wall or other structure, including doors and gates, surrounding a privately owned outdoor swimming pool to restrict access thereto.
- 1.2 “Owner” includes a person in possession of the property on which the swimming pool is located.
- 1.3 “Privately owned outdoor swimming pool” means any body of water located outdoors on privately owned property, contained in whole by artificial means, in which the depth of the water at any point can exceed 60 centimetres (24 inches), and used, or capable of being used for swimming and shall include privately-owned pools belonging to or connected with any type of multiple housing development, motel, hotel, or similar establishment.

2.0 No person shall erect a fence or gate for a privately owned outdoor swimming pool until plans for such fences and gates have been submitted to the Town of Midland and a permit certifying approval of such plans has been issued.

3.0 No person shall excavate for or erect a privately owned outdoor swimming pool without a permit.

- 4.0 No person shall place water in a privately owned outdoor swimming pool, or allow water to remain therein, unless the enclosure prescribed by this by-law has been erected.
- 5.0 Every owner of a privately owned outdoor swimming pool shall ensure that any enclosure complies with every requirement in this by-law.
- 6.0 Enclosures:
- 6.1 Every enclosure shall be erected and maintained to surround the entire swimming pool area and shall be sufficient to make such body of water not readily accessible to small children.
- 6.2 The enclosure, including gates therein, shall extend from the ground to a height, measured on the outside of the enclosure, of not less than 1.2 metres (4 feet).
- 6.3 The enclosure shall be constructed to prevent a spherical object having a diameter of 10 centimetres (4 inches) from passing through or under such enclosure.
- 6.4 The enclosure shall have no rails or other horizontal or diagonal bracing or attachments on the outside that would facilitate climbing.
- 6.5 A fence or its equivalent forming part of such enclosure shall be of vertically boarded wood construction, chain link construction, wrought iron, or other materials and construction as provided for:
- 6.5.1 If chain link construction, shall:
- 6.5.1.1 be not greater than 4 centimetres (1½ inches) diamond mesh; and
- 6.5.1.2 be constructed of galvanized steel wire not less than No. 12 gauge, or minimum No. 14 gauge steel wire covered with a vinyl or other approved coating, forming a total thickness equivalent to No. 12 gauge galvanized wire; and
- 6.5.1.3 be supported by at least 4 centimetres (1½ inches) diameter galvanized steel posts each embedded in concrete to a minimum depth of 1.2 metres (4 feet) below grade, such posts to be spaced no more than 3 metres (10 feet) apart. Top and bottom horizontal rails shall be 4 centimetres (1½ inches) minimum diameter galvanized steel, except that a minimum No. 9 gauge galvanized steel wire may be substituted for the bottom horizontal steel rail. A vinyl or other approved coating may be substituted for the galvanized coating.

6.5.2 If of wood construction shall:

6.5.2.1 have 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 2.5 centimetres (1 inch) by 10 centimetres (4 inches) nominal dimensions spaced not more than 10 centimetres (4 inches) apart; and

6.5.2.2 be supported by a minimum of 10 centimetres (4 inches) square or 10 centimetres (4 inches) diameter posts, nominal dimensions, spaced not more than 2.4 metres (8 feet) on centres embedded in concrete to a minimum of 1.2 metres (4 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 provided of wood, 5 centimetres (2 inches) by 10 centimetres (4 inches) minimum nominal dimensions.

6.5.3 If of wrought iron or other approved metal type fence with no opening between rods greater than 10 centimetres (4 inches), is deemed to be an approved equivalent, provided that such fence is at least 1.5 metres (five feet) in height above grade and provided that horizontal rails are spaced at least 1.2 metres (4 feet) apart measured vertically.

6.5.4 Shall not include barbed wire, devices for projecting an electric current through the fence, or devices having similar dangerous characteristics.

6.5.5 Shall be located not less than 1.2 metres (4 feet) from the swimming pool unless:

6.5.5.1 the required height of said fence as prescribed in this by-law is increased to 1.8 metres (6 feet); and

6.5.5.2 regardless of the height of the fence it shall not be closer than 1.2 metres (4 feet) to any condition on the property that would contribute to the lessening of these minimum safety requirements by facilitating the climbing of swimming pool fence.

6.5.6 May be of construction other than that specified providing that an equivalent degree of safety is maintained and shall be constructed so that the rigidity is equal to that specified for those fences described in this by-law to prevent a spherical object having a diameter of 10 centimetres (4 inches) from passing through or under such enclosure.

- 7.0 Gates forming part of such enclosure shall:
- 7.1 Be of construction and height equivalent to that required for the fence; and
 - 7.2 Be supported on substantial hinges; and
 - 7.3 Be self closing and equipped with a locking device placed at the top and inside of the gate so that the device latches when the gate is in the closed position.
- 8.0 The owner of every privately owned outdoor swimming pool shall ensure that every gate required by this by-law be equipped with a locking device and kept locked at all times if a responsible person is not present.
- 9.0 No swimming pool shall have a direct connection to any water supply or drain.
- 10.0 The permit fee shall be as set out in the Town of Midland's fee schedule by-law, as amended.
- 11.0 This by-law shall be enforced by a Police Officer, Police Cadet, or a Municipal Law Enforcement Officer appointed for the purposes of enforcing the by-laws of the Municipality.
- 12.0 Every person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, as amended.
- 13.0 This By-law shall be administered by the Chief Building Official of the Municipality.
- 14.0 By-laws 74-41, 76-27, 87-9 and 88-52 are hereby repealed.

By-law read a first, second and third time and finally passed at a meeting of Open Council held this Twenty-eighth day of June, 1999.

Mayor

Clerk