

THE CORPORATION OF THE TOWN OF MIDLAND

BY-LAW 2026-27

A By-law to regulate Swimming Pool Enclosures within the Town of Midland and to repeal By-law 99-71.

WHEREAS Sections 8 and 11(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended ("The *Municipal Act*") authorize a municipality to pass by-laws respecting structures, including fences;

AND WHEREAS section 11(2) (6) of the *Municipal Act* authorizes a municipality to regulate matters related to health, safety and wellbeing of the inhabitants of the municipality;

AND WHEREAS section 425 of the *Municipal Act* authorizes a municipality to pass a by-law providing that a person who contravenes a by-law of the municipality is guilty of an offence;

AND WHEREAS the Council of the Corporation of the Town of Midland deems it necessary and desirable to establish a by-law for the purpose of providing uniform standards for the Construction and maintenance of fences and Pool Enclosures within the Town.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND HEREBY ENACTS AS FOLLOWS:

1.0 DEFINITIONS

1.1 In this By-law

"**Chief Building Official**" means the **Chief Building Official** as appointed, on behalf of the Corporation of the **Town** of Midland, or their designate.

"**Construct**" means to build and/or to **Permit** to build or erect, alter, relocate or cause any material alteration to a swimming **Pool** or swimming **Pool Enclosure**. Without limiting the generality of the foregoing **Construction** includes any work in preparation to **Construct**, and **Constructed** has a corresponding meaning.

"**Display Pool**" means a **Pool** used to show or advertise **Pools** for commercial purposes;

"**Existing Pool Enclosure**" means a **Pool Enclosure** that was **Constructed** prior to the effective date of this By-law in accordance with the regulations of By-law 99-71 or any predecessor to that By-law.

"**Hot Tub**" means a **Hot Tub**, Jacuzzi, whirl**Pool**, or spa;

"**Inflatable Pool**" means a **Pool**, as defined in this By-law, consisting of an air supported structure which contains, or is capable of containing, water with a depth in excess of 0.61m (2 feet) at any point;

"**Officer**" means any Municipal Law Enforcement **Officer** appointed by Council, a Building Inspector or **Chief Building Official**

"**Owner**" includes the registered owner, lessee, tenant, or the person in possession of property on which a swimming **Pool** is located;

"**Pool**" means an artificial body of water in which the container is **Constructed** from manufactured materials, and is located outdoors on privately owned property in which the depth of the water at any point can exceed 0.6 metres or 2 feet and is primarily intended for bathing, swimming, and diving, and shall include any accessory deck or support structure, but does not include a natural, dug, **Constructed**, or damned pond that is used for aesthetic, landscape, storm water management, or agricultural purposes.

"**Permit or Pool Enclosure Permit**" means a **Permit** issued by the **Town** of Midland under this By-law authorizing the erection, **Construction**, or placing of a **Pool** and **Pool Enclosure**.

"**Pool Enclosure**" means a fence, wall, lockable lid or other structure or thing, including gates and doors which surround the perimeter of a **Pool** which would discourage the entry of a person into the enclosed area.

"**Self-closing device**" means a mechanical device or spring which returns a **Pool Enclosure** gate to its closed position after it has been opened;

"**Self-Latching Device**" means a mechanical device or latch which is engaged each time the gate is secured to its closed position, which will not allow the gate to be re-opened by pushing or pulling and which will ensure the **Pool Enclosure** gate remains closed until unlatched by either lifting or turning the device itself directly or by a key;

"**Swim Spa**" is a body of water designed for swimming, wading, or bathing, typically using jets or current systems for stationary swimming, and is regulated as a type of **Pool** when it contains or is designed to contain water to a depth of 0.6 m (2 feet) or more.

"**Temporary Pool**" means an **Inflatable Pool** or other **Pool** which is designed to be removed periodically on a seasonal or more frequent temporary basis;

"**Town**" means the Corporation of the **Town** of Midland.

"**Zoning By-law**" means any by-law administered by the **Town** pursuant to section 34 of the Planning Act, or a predecessor or successor thereof, as may be amended from time to time.

- 1.2 The requirements under this By-law are expressed in metric measurements. Any imperial measurement included in this By-law is approximate and is provided for convenience only.

2.0 GENERAL PROVISIONS

- 2.1 This By-law shall be administered by the **Chief Building Official**, Building Inspectors and By-law Enforcement **Officers** of the **Town** or such other person(s) as Council may, by By-law, appoint and be considered Inspectors under the terms of this By-law.

- 2.2 This By-law shall apply to all **Pool Enclosures** newly **Constructed**, existing or replaced within the **Town** of Midland

- 2.3. Nothing in this By-law shall restrict the use of alternative methods, materials or design as pre-approved by the **Chief Building Official** at the time the application for a **Permit** is made and prior to commencement of **Construction** or demolition.

2.4 Existing Pool Enclosures

- (a) The provisions of this By-law shall not prevent the use of an **Existing Pool Enclosure** if that **Pool Enclosure** was **Constructed** prior to the effective date of this By-law in accordance with the regulations of By-law 99-71 or any predecessor to that By-law and has been maintained continuously in accordance with those regulations.
- (b) No person shall **Construct** or cause to be **Constructed** a replacement or altered **Pool Enclosure** unless a **Permit** is issued in accordance with this By-law.
- (c) Where an **Existing Pool Enclosure** was **Constructed** and has been continuously maintained in accordance with the regulations that existed prior to the effective date of this By-law and that **Pool Enclosure** also marks the boundary between abutting properties, the shared portion of the **Pool Enclosure** may form part of a new **Pool Enclosure** for a **Pool** on the abutting property and shall be deemed to be in conformity with this By-law. All other portions of the new **Pool Enclosure** surrounding the newly **Constructed Pool** shall meet the standards as set out in this By-law.

3.0 PROHIBITIONS

- 3.1 No person shall **Construct** or cause to **Construct** a **Pool** unless a **Pool Enclosure Permit** has been issued by the **Chief Building Official** or the **Pool** meets an exemption within this By-law.
- 3.2 No person shall **Construct** or cause to be **Constructed** a **Pool** which is not completely enclosed by a **Pool Enclosure** in accordance with this By-law.

- 3.2 No person shall **Construct** any **Pool Enclosure** which does not conform to the requirements of this By-law, or **Permit** such non-conforming **Pool Enclosure** to continue to enclose a **Pool**.
- 3.4 No person shall fill a **Pool** with water or cause a **Pool** to be filled with water or allow water to remain in a **Pool** unless;
- (a) the **Pool** is enclosed by a **Pool Enclosure** meeting the requirements of Section 5 of this By-law; and
 - (b) the Building Inspector has been notified and the **Pool Enclosure** has been inspected and approved by the **Town**.
- 3.5 No person shall remove any part of a **Pool Enclosure** if the **Pool** is filled with 2 feet of water or more.
- 3.6 No person shall alter or replace a **Pool Enclosure** without having first obtained a **Permit**.
- 3.7 Every owner shall ensure that:
- (a) all gates forming part of the **Pool Enclosure** meet the standards of this By-law;
 - (b) all gates forming part of a **Pool Enclosure** are locked when the area is not in active use;
 - (c) the lockable lid of any **Hot Tub** or **Swim Spa** is closed and locked when not in active use unless the **Hot Tub** or **Swim Spa** is within a locked approved **Pool Enclosure** meeting the requirements of this By-law.
- 3.8 No person shall place, pile, attach or lean any object or material against or near a **Pool Enclosure** so as to facilitate climbing of the **Pool Enclosure**, diminish the structural integrity of a **Pool Enclosure** or render the **Pool Enclosure** in non-conformity with the provisions of this By-law.
- 3.9 No person shall erect a fence adjacent to an **Existing Pool Enclosure** that does not comply with the requirements of this By-law.
- 3.10 No swimming **Pool** shall be erected or **Constructed** on any lands which would interrupt the normal flow of water across said lands.
- 3.11 Any fence or enclosure built in respect of a privately-owned outdoor swimming **Pool** shall be so **Constructed** as to provide an unobstructed view of the swimming **Pool** from the residence located on the same property.
- 3.12 No person shall **Construct**, cause to be **Constructed** or have a swimming

Pool Enclosure which contains barbed or razor wire, electrified wire, sharp projections, or any other unsafe or dangerous feature on either side of the swimming **Pool Enclosure**.

- 3.13 No owner shall **Permit** or cause the discharge or drainage of any water from any privately owned outdoor swimming **Pool** so as to affect any abutting property.
- 3.14 No person shall backwash or drain a **Pool** in a manner that adversely affects any adjacent land or that is directed towards any point of disposal other than a municipal storm sewer system or open ditch with an appropriate extension to prevent flooding erosion or other nuisances to neighboring properties.

4.0 APPLICATIONS FOR PERMITS

- 4.1 To obtain a **Pool Enclosure Permit**, an applicant shall file an application and any supporting material, on forms prescribed by the **Chief Building Official**, and pay the **Permit** fee as outlined in the Building By-law.
- 4.2 Every **Pool Enclosure Permit** application shall include the following:
- (a) Description of the land on which the work is to be done, by including the municipal address for the site on which the **Pool** will exist;
 - (b) Be accompanied by plans, sketches and specifications about the **Pool** enclosure;
 - (c) Be accompanied by the required fees as set out under the Building Fee By-law as amended;
 - (d) State the names, addresses, and telephone number of the owner and Applicant and contractor;
 - (e) Be signed by the applicant who shall certify as to the truth of the contents of the application.
- 4.3 The **Chief Building Official** or a Building Inspector, where the conditions outlined above have been fulfilled, shall issue a **Pool Enclosure Permit** unless:
- (a) the proposed **Pool** or **Pool Enclosure** will contravene this By-law or any other applicable law;
 - (b) the application is incomplete; or
 - (c) any fees due are unpaid.
- 4.4 Where an application for a **Permit** remains incomplete or inactive for more than six (6) months after it is made, the application may be deemed by the

Chief Building Official or their designate to have been abandoned, without further notice to the applicant.

5.0 STANDARDS FOR POOL ENCLOSURES

5.1 In-ground **Pools** shall provide protection around the entire perimeter of said **Pool**. Every fence shall be:

(a) Not less than 1.2 meters (4 feet) in height, measured from grade or any other raised deck outside the enclosure.

(b) Be **Constructed** as to not have openings, holes or gaps larger than 3.8cm (1.5 inches) in its shortest dimension. The space at any point under the **Pool Enclosure** must not exceed 100mm (4 inches)

(c) Fences shall be **Constructed** of the following materials and comply with requirements set out under the **Zoning By-law**, as amended;

i. In the case of a wrought iron fence, pickets shall be a minimum of 1.6cm (5/8 inch) in diameter and a picket spacing shall not exceed 10.16 centimeters (4 inches) on center.

ii. In the case of a chain link fence, chain link is to be a maximum of 38mm (1-1/2 inch) diamond pattern of not less than 11 or 13 gauge steel wire with vinyl or other approved coating. Chain link to be supported by steel line posts at a maximum of 2.4m (8 feet), posts at corners and ends with a minimum of 750mm (30 in) set into concrete within the ground.

iii. Other **Construction** may be **Permitted** provided an equivalent degree of safety is established and maintained as approved by the Building Inspector.

(d) A fence shall be so **Constructed** that all horizontal or diagonal structural members of the fence shall be located in the inside (**Pool** side) of the fence.

(e) All fences shall be so **Constructed** that it cannot be used in a manner not to facilitate climbing.

(f) All fences shall be so **Constructed** as to have the only means of entry by gates or doors.

(g) Gates shall be **Constructed** to;

i. Maintain a minimum height of 1.2 meters (4 feet);

- ii. Shall be self-closing and equipped with **Self-Latching Device** mounted near the top and inside of the gate;
- iii. Shall be equipped with a lockable latch;
- iv. Installed with the intent that all gates or doors will remain securely closed and locked when not in use; and
- v. If the gate to the **Pool Enclosure** is a double gate access, made up of two gates at the same location, one of the two gates shall have a **self-closing device** and **Self-Latching Device**. The gate of this double gate access without a **self-closing device** and a self latching device shall have a device permanently affixed to the ground or other non-movable object that prevents access through this gate without lifting or removing this device and releasing the latch.

(h) All fences shall be set back a minimum of 1.2 meters (4 feet) from the nearest edge of the swimming **Pool**.

5.2 In the case of a **Pool**, including **Swim Spas**, where the sidewalls or retaining wall around the entire perimeter of the **Pool** are a minimum of 1.2 meters (4 feet) in height and are so **Constructed** as to prevent climbing, the **Pool** may be protected by means of:

- (a) A ladder that swings up and can be locked;
- (b) A ladder, which can be removed and stored in a safe location; or
- (c) A hard top **Pool** cover with a lockable lid equipped with a lock.

5.3 **Temporary Fence during Construction**

Temporary fencing shall be a minimum of 1.22m (4 feet) high and rigid and shall be securely attached at any openings when the area is left unattended.

6.0 **SPECIAL PROVISIONS AND PARTIAL EXEMPTIONS**

6.1 **Inflatable Pools**

Notwithstanding Section 3 of this By-law, if a **Pool Enclosure Permit** has been obtained with respect to the **Pool Enclosure** for an **Inflatable Pool**, the **Inflatable Pool** may be reinstalled and refilled with water without additional **Permits** or inspections provided there have been no alterations to the **Pool Enclosure**.

6.2 **Display Pools**

The owner of a **Display Pool** shall erect and maintain around such **Pool** a chain link fence and gates having a mesh of 38mm (1.5 inches) extending from the ground to a height of at least 1.8m (6 feet) or an enclosure of not less than

equivalent strength, height and degree of safety, but nothing in this Section shall prevent the use of an outside wall or walls of a building located on the same property as one or more sides to the fence, provided that such wall shall not contain an entrance therefrom.

6.3 Above Ground **Pools, Swim Spas and Hot Tubs** with Guards

- (a) The **Pool Enclosure** for an above ground **Pool** or **Hot Tub** are exempt from Section 5 of this By-law provided one of the options below are met:
- i. the **Pool** is surrounded by a platform or deck at least 0.61m (2 feet) in width with a guard of not less than 1m (39.5 inches) in height, measured from the surface of the platform or deck is provided around any platform or deck;
 - ii. access to the platform or deck is restricted by means of an entrance or gate **Constructed** in accordance with Section 5.1 g) ii., iii. and iv. of this By-law;
- (b) The combined height of the exterior sides of the swimming **Pool** structure and any guard attached thereto is a minimum of 1.8m (6 feet) and a maximum of 2.5m (8.2 feet) in height above the effective ground level. The exterior sides of the **Pool** structure and any outside face of any guard are **Constructed** in a manner that will not facilitate climbing;
- (c) A **Hot Tub** or **Swim Spa** does not require a **Permit** if it meets all requirements below;
- i) equipped with a lockable lid which is permanently fixed to the structure
 - ii) the lid is locked to prevent access when the **Hot Tub** is not actively in use.
 - iii) The lid is rigid and capable of supporting weight

7.0 MAINTENANCE

7.1 Every person shall:

- (a) maintain their swimming **Pool, Hot Tub** or pond and any necessary parts thereof, including covers, in good repair and working condition;
- (b) maintain the swimming **Pool, Hot Tub**, pond and any covers so that during the **Pool** season, it is free from accumulation of stagnant water, leaves and debris; and
- (c) maintain any deck, swimming **Pool, Hot Tub**, pond, railings, and guards in good repair and structurally sound condition.

- 7.1.1 If the requirements of Section 7.1 are not met, every person shall remove the swimming **Pool, Hot Tub**, pond and any accessories or parts thereof immediately.

- 7.2 The owner of any lands on which a swimming **Pool** is located or **Constructed** shall maintain in good repair a swimming **Pool Enclosure** around the entire swimming **Pool** area in accordance with the applicable provisions of this By-law.
- 7.3 All repairs and maintenance of swimming **Pools, Hot Tubs** and ponds, their enclosures and any accessory or parts thereof, including covers and equipment, shall be carried out with suitable and sufficient materials in a manner acceptable to the **Officer**.

8.0 ENTRY AND INSPECTIONS

- 8.1 An **Officer** may at any reasonable time, enter upon any land and into structures other than a place used as a dwelling without notice for the purpose of carrying out an inspection to determine whether or not the provisions of this by-law are being contravened or to determine if a notice or Order has been complied with or to carry out any remedial action required.

9.0 NOTICES AND ORDERS

- 9.1 If an **Officer** is satisfied that a contravention of this By-law has occurred, the **Officer** may make a notice or Order requiring the Person who contravened the By-law or who cause or **Permitted** the contravention or the Owner of the land on which the contravention occurred to do work to correct the contravention.
- 9.2 The notice or Order shall include:
- (a) Reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred;
 - (b) The work required to correct the contravention;
 - (c) The date by which the work shall be completed.
- 9.3 A notice or Order issued under this By-law may be served personally and/or served by sending it via regular mail, registered mail and/or email to the last known address of:
- (a) The Owner of the Property at the address shown on the municipal tax roll;
 - (b) The Person identified as contravening this By-law;
 - (c) If sent via email, the notice or Order shall be sent to the last known email address of the Person(s) or corporation(s) in which the notice or Order is addressed to.

- 9.4 Where service of a notice or Order is made by regular mail or registered mail, the notice or Order shall be deemed served on the fifth (5th) day after the notice or Order is mailed.
- 9.5 Where service of a notice or Order is made by email, the notice or Order shall be deemed served on the third (3rd) day after the notice or Order was emailed or upon a response from any recipient of the notice or Order.
- 9.6 In addition to service under section 9.4 and 9.5, a notice or Order may also be posted on the Property in a location visible to the public. If an Order is posted on the Property, it shall be deemed served on the same day that the notice or Order is posted.
- 9.8 No Person shall fail to comply with a notice or Order issued under the authority of this By-law.

10 PENALTY

- 10.1 Every person who contravenes any provision of this By-law, and every director or **Officer** of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence and on conviction is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, c. P.33.
- 10.2 Each day on which a person contravenes any provisions of this bylaw shall be deemed to constitute a separate offence under this bylaw as provided for in section 429(2) of the *Municipal Act*, S.O. 2001, c. 25.
- 10.3 Every person who contravenes the provisions of any section of this By-law, is guilty of an offence under the provisions of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended and is liable on conviction to a penalty where the maximum fine shall not exceed \$50,000 exclusive of costs under the provisions of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended.
- 10.4 Every director or **Officer** of a corporation who contravenes any provisions of the By-law is guilty of an offence under the provisions of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended and is liable on conviction to a penalty where the maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended.
- 10.5 If there is a contravention of any provision within this By-law, and the contravention has not been complied with or corrected, the contravention of the provisions shall be designated as a continuous offence for each day or part of a day that the contravention remains uncorrected;
- 10.6 For the purposes of this By-law, if there is an offence respecting two or more acts or omissions, each of which separately constitutes an offence and is a contravention of the same provision of this By-law, then the offence is deemed a

multiple offence.

- 10.7 For the purpose of continuous offences, every person who contravenes any provision of this By-law, and every director or **Officer** of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence and is liable on conviction to a penalty not exceeding \$10,000 per day or part thereof, exclusive of costs, under the provisions of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended.
- 10.8 For the purpose of multiple offences, every person who contravenes any provision of this By-law, and every director or **Officer** of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence and is liable on conviction to a penalty not exceeding \$10,000 per offence, exclusive of costs under the provisions of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended.
- 10.9 Notwithstanding Section 7.7 and 7.8, and in accordance with the provisions of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended, the total of all fines for the continuous offences or multiple offences is not limited to \$100,000.
- 10.10 Every person or owner who contravenes any section of this By-law shall, upon issuance of a penalty notice in accordance with the **Town's** Administrative Monetary Penalty System By-law, be liable to pay the **Town** an Administrative Monetary Penalty.

11 VALIDITY AND SEVERABILITY

- 11.1 If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this By-law and it is hereby declared that the remainder of this By-Law shall be valid and shall remain in force.
- 11.2 Where the provisions of this By-law conflict with the provisions of any other by-law or act, the more restrictive provisions shall apply.

12.0 REPEAL

- 12.1 That By-law 99-71 and all amendments thereto are hereby repealed and replaced with this By-law.

13 EFFECTIVE DATE

This By-law shall come into force and effect on May 20, 2026 at which time By-law 99-71 is hereby repealed.

That this By-law shall come into force and effect on the final passage thereof.

BY-LAW PASSED AND ENACTED THIS 20TH DAY OF MAY 2026.

THE CORPORATION OF THE TOWN OF MIDLAND

BILL GORDON – MAYOR

SHERRI EDGAR – CLERK

Written approval of this By-law was given by Mayoral Decision MDE-2026-9 dated May 20, 2026.

THE CORPORATION OF THE TOWN OF MIDLAND
PART I Provincial Offences Act
By-law 2026-27: Pool Enclosure By-law
Set Fines

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set Fine
1	Erect, cause or permit to be erected a pool without a pool enclosure permit	3.1	\$300.00
2	Erect, cause or permit to be erected a pool without a pool enclosure	3.2	\$300.00
3	Cause or allow a pool to be filled or remain filled with water	3.4	\$150.00
4	Remove any part of a pool enclosure if it is filled with 2 feet of water or more	3.5	\$150.00
5	Ensure gates meet the by-law and are locked while pool is not in use, lockable lid for hot tub or swim spa is in place and locked	3.7 (a)(b) and (c)	\$150.00
6	Draining water from a pool shall be directed to municipal storm or open ditch	3.13	\$150.00

NOTE: The penalty provision for the offences indicated above is section 10 of By-law 2026-27, a certified copy of which has been filed.