

NOTE TO BY-LAW 80-2005

May 7th, 2009

**NOTE: Should include maximum height of fence
to match the fence By-law 66-2009 !**

Guylain Lafleche

CORPORATION OF THE NATION MUNICIPALITY

BY-LAW NUMBER 80-2005

SWIMMING POOL ENCLOSURE BY-LAW

BEING A BY-LAW of the Corporation of The Nation Municipality respecting the enclosure of privately-owned outdoor swimming pools.

WHEREAS Section 11(1) 7. of The Municipal Act, 2001, as amended, provides that the Council of a Municipality may pass by-laws respecting matters within certain spheres of jurisdiction namely, among other things, "7. - Structures, including fences and signs" and,

WHEREAS The Corporation of The Nation Municipality deems it desirable to regulate owners of privately-owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools, for prescribing the height and description of, and the manner of erecting and maintaining, such fences and gates, for prohibiting persons from placing water in privately-owned outdoor swimming pools or allowing water to remain therein unless the prescribed fences and gates have been erected, for requiring the production of plans of all such fences and gates, for the issuing of a permit for any such fences or gates;

THEREFORE the Council of The Nation Municipality enacts as follows:

SHORT TITLE

1. This By-Law may be cited as the "Swimming Pool Enclosure By-Law".

DEFINITIONS

2. In this By-Law:
 - (a) "Municipality" shall mean The Corporation of The Nation Municipality;
 - (b) "Permit" shall mean permission or authorization given in writing by the Chief Building Official to erect enclosures around swimming pools as regulated in this By-Law;

- (c) "Swimming Pool" shall mean any privately-owned outdoor below grade or above ground pool of water for bathing, wading or reflecting and which has a water depth exceeding twenty four (24) inches at any point; but does not include a tub, hot tub, spa, whirl pool, or inflatable self supported pool.
- (d) "Owner" shall mean the registered owner of the land and includes a lessee, mortgagee in possession, and the person in charge of the property;
- (e) "Chief Building Official" shall mean the Chief Building Official appointed by the Council of the Corporation of The Nation Municipality;
- (f) "Corporation" shall mean the Corporation of The Nation Municipality.

GENERAL REQUIREMENTS

- 3. Every owner of a privately-owned outdoor swimming pool shall ensure that an enclosure around such a pool is constructed and maintained according to the provisions of this By-Law.
- 4. No person shall place water in a swimming pool in the Municipality unless the prescribed fences and gates or, for a maximum period of thirty days, a temporary fence as approved by the Chief Building Official has been erected in accordance with the provisions of this By-Law.
- 5. No person shall allow water to remain in a swimming pool in the Municipality unless the prescribed fences and gates or temporary fence has been erected in accordance with the provisions of this By-Law.

PERMITS

- 6. No person shall construct or place a swimming pool on his property in the Municipality without first obtaining a swimming pool enclosure permit.

APPLICATION FOR PERMIT

7. To obtain a permit the owner shall file an application in writing by completing a prescribed form available in the office of the Chief Building Official.
8. Except as otherwise permitted by the Chief Building Official, every applicant shall:
 - (a) identify and describe in detail the work to be covered by the permit for which an application is made,
 - (b) describe the land on which the pool is to be located by a description that will readily identify and locate the building lot,
 - (c) be accompanied by two (2) complete sets of plans showing details of the enclosure and deck as well as their relationship to lot lines, buildings and fences,
 - (d) be accompanied by the fee as prescribed in Section 11 hereof, and
 - (e) state the names, addresses and telephone numbers of the owner and the contractor performing the work.
9. An application for a permit may be deemed to have been abandoned and cancelled six (6) months after the date of filing, unless such application is being seriously proceeded with.
10. Sufficient information shall be submitted with each application for a permit to enable the Chief Building Official to determine whether or not the proposed work will comply with this By-Law or any other applicable law or regulation.
11. The fee for a swimming pool enclosure permit shall be \$100.00.
12. An administration performance deposit of \$100.00 shall accompany an application for a swimming pool enclosure permit. The full amount of the administration performance deposit is to be refunded in whole or in part to the permit holder in accordance with the following provisions:
 - (a) One hundred (100%) per cent of the administration performance deposit is to be refunded if the installation is fully completed within one (1) year of the date of the issuance of the permit.

- (b) Seventy five (75%) per cent of the administration performance deposit is to be refunded if the installation is fully completed within two (2) years of the date of the issuance of the permit.
- (c) Fifty (50%) per cent of the administration performance deposit is to be refunded if the installation is fully completed within three (3) years of the date of the issuance of the permit.
- (d) Twenty five (25%) per cent of the administration performance deposit is to be refunded if the installation is fully completed within four (4) years of the date of the issuance of the permit.
- (e) No refund of the administration deposit will be awarded if the installation is not fully completed within four (4) years. This will not relieve the permit holder and/or contractor of obligations under any provisions of any By-Law, the Building Code Act or regulations made thereunder.
- (f) The refund of the whole or part of the administration performance deposit shall not be deemed to be a waiver of any provisions of any By-Law or requirements of the Building Code Act or regulations made thereunder. Also, the refund should not be construed as a certification or guarantee that the installation for which a permit was issued meets all the requirements of any By-Law, the Building Code Act or regulations made thereunder.

CONDITIONS OF PERMIT ISSUANCE

- 13. (1) Every swimming pool shall have an adequate enclosure erected around it in accordance with the provisions of subsection (2) to subsection (8) hereof inclusive.
- (2) Every enclosure for a swimming pool shall be of a close-boarded, chain link or other approved design with maximum openings of 4" including the space below the fence, to reasonably deter children from climbing it to gain access to the fenced-in area.

- (3) In the case of an in ground pool, the enclosure shall be at least 5 feet in height and in the case of an above ground pool, if the walls of the pool are less than 4' high above the grade for a distance of at least 24 inches from the wall, the enclosure shall be at least 4 feet in height or the walls of the pool can be extended with an approved manufactured fence for a total height of at least 4 feet above the grade.
- (4) Gates in the enclosure shall:
- (a) provide protection equivalent to the enclosure,
 - (b) be at least the same height as the enclosure,
 - (c) be equipped with a self-closing and latching device and lock at the upper inside of the gate, and
 - (d) be locked except when the enclosed area is actually being used and supervised.
- (5) Barbed wire or fencing energized by electrical current shall not be used as an enclosure for the swimming pool.
- (6) Where a wall of a building is used as part of an enclosure, all doors located in the wall of the building shall be equipped with locking devices.
- (7) Equipment or materials cannot be located, stored or kept within 36 inches from the pool to prevent climbing.
- (8) Decks or platforms associated with pools shall comply with the requirements of the Ontario Building Code and the access to such decks or platforms must be adequately enclosed in accordance with subsections (2) to (6) hereof inclusive.
14. There shall be a minimum distance of four (4) feet between the enclosure and any part of an in ground swimming pool unless approved otherwise by the Chief Building Official.
15. When an enclosure is not erected or maintained, in accordance with the provisions of this By-Law, a notice shall be sent by registered mail or by hand to the owner of the land on which the swimming pool is located, at his last known address requiring him to make the enclosure conform to the requirements of this By-Law and the notice shall specify the time allowed for compliance.

16. (1) Where a notice has been sent pursuant to Section 15, and the requirements of the notice have not been complied with, the Chief Building Official may cause the work to be done, or the water to be removed from the swimming pool and the cost of the work or the removal of the water shall be at the expense of the owner.
- (2) When the Chief Building Official causes the work to be done pursuant to subsection (1), the Corporation shall have a lien for any amount expended by or on behalf of the Corporation and for an administrative fee of ten (10%) percent of any amount expended by or on behalf of the Corporation, and the certificate of the Clerk of the Corporation as to the total amount expended shall be admissible in evidence as prima facie proof of the total amount expended and such total amount together with the administrative fee shall be added to the collector's roll of taxes to be collected and shall be subject to the same penalty and interest charges as real property taxes and shall be collected in like manner and with the same remedies as real property taxes.
- (3) Before the certificate of the Clerk of the Corporation is issued under subsection (2), an interim certificate shall be delivered to the owner of the property that is subject to the lien, as well as to all prior mortgagees or other encumbrancers and the affected owner, mortgagees or other encumbrancers shall have two (2) weeks from the date of receipt of the interim certificate to appeal the amount shown thereon to the Council of the Corporation.
17. The provisions of this By-Law also apply to swimming pool enclosures which have been constructed or installed prior to the passing of this By-Law.

PENALTIES

18. Every person who contravenes any of the provisions of this By-Law is guilty of an offence and on conviction thereof shall forfeit, and pay a penalty for each such offence and every such penalty

and pay a penalty for each such offence and every such penalty shall be recoverable under the Provincial Offences Act, R.S.O. 1990, chapter P.33 and amendments thereto.

19. When a person has been convicted of an offence under this By-Law, any court of competent jurisdiction thereafter, may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.
20. The requirements of this By-Law are severable. If any requirements of this By-Law are held invalid, the application of such requirements to other circumstances and the remainder of this By-Law shall not be affected.
21. This By-Law shall come into force on the date of its adoption and shall take effect on that date.
22. That By-Laws # 60-99 as amended; namely by By-Laws #39-2003, & #69-2004 are hereby repealed.

READ A FIRST, SECOND AND DULY PASSED UPON A THIRD
READING THIS 22nd DAY OF AUGUST, 2005.



Denis Pommerville, Mayor



Mary J. McCuaig, Clerk