

Township of Cavan Monaghan

By-law No. 2012-59

Being a by-law to require the owners of privately owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools.

Whereas the Municipal Act, 2001 S.O. 2001, c.25, as amended, authorizes the councils of municipalities to pass by-laws with respect to health and safety, and well being of persons;

And Whereas the Council for the Township of Cavan Monaghan deems it advisable to pass a by-law requiring 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 and 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 certifying approval of such plans which, without permit, no privately owned outdoor swimming pool may be excavated for or erected and for authorizing the refusal of a permit for any such fences or gates that if erected would be contrary to any by-law of the Municipality.

Now Therefore be it enacted as a by-law of the Township of Cavan Monaghan as follows:

Title:

By-law 2012-59 may be referred to as the "Swimming Pool By-law" for privately owned outdoor swimming pools.

Definitions:

In this By-law;

- 2.1 "Authority having jurisdiction" means the By-law Enforcement Officer, the Chief Building Official and any official authorized by Council to administer this by-law;
- 2.2 "Effective ground level" means the highest level of the ground at any particular location taking into consideration the surrounding ground level for a horizontal distance of four feet either side of the location being considered. For the purposes of this definition a floor may be considered as the ground;
- 2.3 "Privately-owned outdoor swimming pool" means any privately-owned body of water located out of doors which is contained wholly or partly by artificial means and which can hold water exceeding 61 cm (24") in depth at any point, and which is used or capable of being used for swimming, wading, diving or bathing. Not included in this definition is any swimming pool owned by a public or governmental body, agency or authority, a farm pond or any other body of water used for water supply or the water supply for livestock.
- 2.4 "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 services as opposed to the main or principal entrance. For the purpose of this By-law any building entrance other than the principal entrance may be considered to be a service entrance.

- 2.5 “Swimming Pool Area” means the swimming pool plus any surrounding platforms, walkways, play areas and landscaped areas which lie within the swimming pool enclosure;
- 2.6 “Swimming Pool Enclosure” means a fence or wall or combination thereof including any doors or gates surrounding a privately-owned outdoor swimming pool and restricting access thereto.
- 2.7 “Built-up area” means an area having not less than fifty percent (50%) of the frontage, for a distance of not less than one hundred and fifty meters (150 meters) on one side of a roadway occupied by dwellings, buildings used for business purposes, schools or churches; or an area having not less than fifty percent (50%) of the frontage upon both sides of the roadway for a distance of not less than one hundred meters (100 meters) occupied by dwellings, buildings used for business purposes, schools or churches.
- 2.8 Any word or words not defined herein shall rely on the definition given that word or words in the Zoning By-law of the Township of Cavan Monaghan.

Authority:

The authority having jurisdiction shall administer this By-law.

Application and Fees:

An application for a permit to construct an enclosure around a privately-owned outdoor swimming pool shall be submitted to the authority having jurisdiction together with drawings in duplicate showing all details of the proposed work including proposed fencing. Permit fees shall be as per User Fee and Charges By-law 2012-10.

Permits:

- 5.1 No person shall excavate for, erect or construct a privately-owned outdoor swimming pool without first obtaining a permit to do so from the authority having jurisdiction.
- 5.2 No person shall erect or construct a privately-owned outdoor swimming pool so as to interfere with the natural drainage of adjacent lands or to adversely affect the operation or effectiveness of any sewage disposal system.
- 5.3 The required clearances between swimming pools and private sewage disposal systems shall be as follows:
 - 5.3.1 The minimum distance between a swimming pool and a septic tank shall be 1.524 meters (5 feet).
 - 5.3.2 The minimum distance between a swimming pool and a leaching bed where the bottom of the distribution pipe is below the level of the lowest part of the pool shall be 3.048 meters (10 feet).
 - 5.3.3 The minimum distance between a swimming pool and a leaching bed where the bottom of the distribution pipe is on the same level or above the lowest part of the pool shall be 7.62 meters (25 feet).

- 5.4 The location of all privately-owned outdoor swimming pools, pool heaters, pool filters, accessory buildings, and other related structures are subject to the requirements of the Comprehensive Zoning By-law.
- 5.5 No person shall install or cause to be installed any overhead or underground electrical wiring related to any privately-owned outdoor swimming pool without a permit being issued by Hydro One.
- 5.6 No outdoor swimming pool shall be constructed closer than 1 meter from the property line.

Required Enclosures:

- 6.1 The owner of any lands on which a privately-owned outdoor swimming pool is located or erected or proposed to be located or erected shall erect and maintain in good order an enclosure around the entire swimming pool area as set out in this By-law. The purpose of such enclosure will be to render the pool area inaccessible to small children acting on their own.
- 6.2 No person shall fill or cause to be filled a privately-owned outdoor swimming pool with water or allow water to remain therein unless the required enclosure prescribed by this By-law has been provided.
- 6.3 Despite the provisions of Subsection 6.2 of this By-law, where by reason of the nature of construction of a privately-owned outdoor swimming pool it is necessary to fill the swimming pool with water during the construction of the swimming pool, the owner, in lieu of a swimming pool enclosure prescribed herein, may erect and maintain, or cause to be erected and maintained, a temporary fence completely around the swimming pool until construction is completed and, upon completion of such construction, the owner shall immediately replace, or cause to be replaced, the temporary fence with a swimming pool enclosure as prescribed in this By-law.
- 6.4 The swimming pool enclosure required under this By-law shall extend from the effective ground level to a minimum vertical height of;
 - 6.4.1 1.22 meters (4 feet) in the case of a privately-owned outdoor swimming pool serving a detached or semi-detached dwelling unit or a multi-family development of not more than four dwelling units;
 - 6.4.2 1.524 meters (5 feet) in the case of a privately-owned outdoor swimming pool serving a multiple family development containing more than four dwelling units or a commercial development, such as a hotel, motel, resort, inn or a swimming pool sales display or a club.
- 6.5 The wall of a building may form part of the required pool enclosure, except where such a provision would result in any of the following being located within said pool enclosure;
 - 6.5.1 a main building entrance;
 - 6.5.2 a service entrance to a multiple occupancy building

containing more than four dwelling units;

6.5.3 a utility meter or furnace oil filler pipe which requires periodic inspection or attendance by utility or service personnel.

6.6 The required swimming pool enclosure (except for any building wall which may form part thereof) shall have no attachments on the exterior face such as horizontal or diagonal bracing, horizontal rails or other members which would facilitate climbing.

6.7 The swimming pool enclosure shall be located at least 4 feet in distance from any outside structure, fence, tree, air conditioning unit, meter, steps, ledges, window sills, etc. which might afford a means whereby the enclosure could be scaled from the outside by a small child.

6.8 The swimming pool enclosure shall be constructed in accordance with Sections 7 and 8 of this By-law.

Fences as Enclosures:

7.1 A fence or its equivalent which is to form a swimming pool enclosure or part thereof shall be of;

7.1.1 chain link construction or;

7.1.2 vertical board construction.

7.2 A fence of chain link construction 1.22 meters (4 feet) high shall;

7.2.1 have a mesh not greater than 3.81 cm (1.5") consisting of 12 gauge galvanized steel wire or of 14 gauge steel wire covered with vinyl or other approved coating which would yield a total thickness equivalent to 12 gauge steel wire;

7.2.2 be supported by a minimum 3.81 cm (1.5") diameter galvanized steel posts spaced not more than 3.048 meters (10 feet) apart. Such posts must extend at least .92 meters (3 feet) below grade and be encased in concrete at least 5.05 cm (2") thick all around;

7.2.3 have top and bottom rails firmly fastened to the upright posts, made of a minimum 3.175 cm (1.25") galvanized steel pipe. A 9 gauge galvanized steel wire or 11 gauge wire with vinyl or other approved coating, forming a total thickness equivalent to 9 gauge galvanized wire, may be substituted for a bottom horizontal rail.

7.3 A fence of chain link construction 1.524 meters (5 feet) high shall;

7.3.1 have a mesh not greater than 3.81 cm (1.5") consisting of 12 gauge galvanized steel wire or of 14 gauge steel wire covered with vinyl or other approved coating which would yield a total thickness equivalent to 12 gauge steel wire;

7.3.2 be supported by a minimum 3.81 cm (1.5") diameter galvanized steel posts spaced not more than 3.048 meters (10 feet) apart. Such posts must extend at least 1.22 meters (4 feet) below grade and be encased in concrete at least 5.05 cm (2") thick all around;

- 7.3.3 have top and bottom rails firmly fastened to upright posts and made of 3.18 cm (1.25") diameter galvanized steel pipe.
- 7.4 A fence of wood construction shall:
 - 7.4.1 have vertical boarding 2.54 cm (1") nominal thickness attached to a top and bottom rail in such a manner as to not facilitate climbing from the outside. Such vertical boards must not be less than 2.54 cm X 10.16 cm (1" X 4") nominal and must be spaced not more than 3.81 cm (1.5") apart;
 - 7.4.2 be supported by posts at least 10.16 cm X 10.16 cm (4" X 4") nominal dimensions spaced not more than 2.44 meters (8 feet) apart. Such posts shall extend at least .92 meters (3 feet) into the ground and be securely embedded therein;
 - 7.4.3 have the entire post treated with an approved wood preservative unless the post is factory "pressure treated";
 - 7.4.4 have top and bottom rails at least 5.08 cm X 10.16 cm (2" X 4") nominal dimensions.
- 7.5 A fence (or its equivalent) of any other construction which yields an equivalent or greater degree of safety to that specified in subsections 7.2, 7.3 and 7.4 of this Section may be approved by the authority having jurisdiction upon receipt of completed plans and specifications for such fence.
- 7.6 Fences (or their equivalents) when forming part of the required swimming pool enclosure shall:
 - 7.6.1 contain no barbed wire, electrical wiring, sharp projections or any other dangerous characteristics either on the outside or the inside;
 - 7.6.2 be located not less than 1.22 meters (4 feet) from the nearest inside wetted surface of the swimming pool wall.

Gates and Entrances to the Pool Area:

- 8.1 Gates which form part of the swimming pool enclosure shall be:
 - 8.1.1 of such height and of such construction as will provide a degree of safety and rigidity equivalent to or greater than that of a required fence;
 - 8.1.2 supported on substantial hinges;
 - 8.1.3 self-closing and self-latching with the latching device at the top of and on the inside of the gate.
- 8.2 Doors which form part of the swimming pool enclosure but which do not lead directly from a private dwelling unit or rooming unit shall be:
 - 8.2.1 of such height and such construction as will provide a degree of safety and rigidity equivalent to or greater than that of a required fence;

8.2.2 supported on substantial hinges;

8.2.3 self-closing and self-latching with the latching device located at least 1.524 meters (5 feet) above the bottom of the door.

8.3 All entrances to the pool area which form part of the swimming pool enclosure, whether they be doors, windows or gates, shall be kept locked at any time when the pool contains 61 cm (24") of water and is not attended by a responsible person;

8.4 The owner of any land upon which a privately-owned outdoor swimming pool is located, shall keep such swimming pool covered except during the season when the pool is actually in use. Such pool cover shall be of durable material and construction and shall be adequately secured in place.

Above Ground Swimming Pools:

9.1 Notwithstanding anything contained herein, an enclosure shall not be required where the outside wall of a pool is elevated at least 1.22 meters (4 feet) above the effective ground level adjacent to the pool and shall be equipped with a 'self locking' entry ladder or have the ladder removed when it is not attended by a responsible person. The outside wall of the pool shall be free of any horizontal members or diagonal bracing which might facilitate climbing by a small child acting on his/her own.

9.2 Inflatable or other 'Above Ground Swimming Pools' which hold more than 24" of water but are not permanently fixed in one location do not require a 'Pool Permit'. However, all safety requirements set out in this By-law for 'Above Ground Pools' apply.

9.3 Certain above ground privately-owned outdoor swimming pools which have as an integral part of their construction a fenced walkway around all or part of the pool shall be deemed to comply with this by-law if;

9.3.1 the fence is a minimum of 91.44 cm (36") in height and

9.3.2 the fence is a minimum of 91.44 cm (36") from the wetted wall of the pool; and

9.3.3 all entrances to the pool and all pool related equipment within 1.524 meters (5 feet) of the pool shall be made so as not to be made accessible or assist in accessing the pool by a small child acting on his/her own.

Built-Up Areas:

10.1 Notwithstanding anything contained herein, any man-made pond, water garden, on-grade fountain pool, wading pool, or other body of water exceeding 61 cm (24") in depth and located in a "built-up area" as defined by this By-law shall comply with all of the requirements of this By-law.

Hot Tubs:

11.1 The fencing provisions of this By-law relating to privately-owned outdoor swimming pools shall not apply to a privately-owned outdoor hot tub, whirlpool or spa provided the owner of the hot tub, whirlpool or spa, as the case may be, has equipped the hot

tub, whirlpool or spa with a secure, rigid cover.

Geothermal or Ground Source Heat Pumps:

- 12.1 Ponds deeper than 24" which are constructed for the purpose of providing water for geothermal or ground source heat pump systems must meet all fencing requirements set out in this by-law for in ground pools.

Exceptions:

- 13.1 The provisions of this By-law relating to the erection of fences and swimming pool enclosures shall not apply to fences and swimming pool enclosures lawfully erected prior to the final passing of this By-law.

Penalties:

- 14.1 Every person who contravenes or causes or permits the contravention of any provision of this By-law is guilty of an offence, pursuant to the provisions of this By-law and the Provincial Offences Act, R.S.O. 1990 c.P33, as amended (or successor legislation thereof) and, upon conviction, is liable to a fine of up to \$5,000.00 or to the maximum fine that may now or hereinafter be applicable pursuant to that legislation.

Effect:

- 15.1 This By-law shall come into force and take effect immediately on the passing hereof and any owner not complying with the regulations herein contained shall drain the privately-owned outdoor swimming pools or body of water and keep it drained until such time as the regulations herein are complied with.

Repealed By-Laws:

- 16.1 By-law 2005-36 is repealed in its entirety immediately subsequent to this By-law coming into full force and effect.

Read a first, second and third time and passed this _____ day of _____ 20_____.

John Fallis
Mayor

Elana Arthurs
Clerk