

AMENDED

By By-Law No. 5869-06,
5927-07
6150-09
6945-15
7177-16
7140-16

THE CORPORATION OF THE TOWN OF WHITBY

BY-LAW 4394-99

BEING A BY-LAW TO PRESCRIBE THE HEIGHT AND DESCRIPTION OF LAWFUL FENCES AND TO REQUIRE THE OWNERS OF PRIVATELY-OWNED OUTDOOR SWIMMING POOLS TO ERECT AND MAINTAIN FENCES AND GATES AROUND SUCH SWIMMING POOLS

WHEREAS, Subsection 210(25) of the Municipal Act, R.S.O. 1990, c. M.45, provides that by-laws may be passed by the councils of local municipalities for prescribing the height and description of lawful fences;

AND WHEREAS, Subsection 210(30) of the Municipal Act, R.S.O. 1990, c. M.45, provides that by-laws may be passed by councils of local municipalities for 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 without which 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;

AND WHEREAS, the Council of the Corporation of the Town of Whitby considers it desirable to pass such a by-law;

NOW THEREFORE, the Council of the Corporation of the Town of Whitby enacts as follows:

DEFINITIONS

1. In this by-law,
 - (a) "Director of Public Works" means the Director of Public Works for the Corporation of the Town of Whitby or his or her designate;

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- (b) "exterior face" when used in conjunction with a swimming pool enclosure means the outer side of the fence by which access to the pool is to be prevented;
- (c) "farming purposes" means land which is either vacant or occupied by a building or buildings in a farming use as permitted within the zoning by-laws of the Town of Whitby.
- (d) "fence" means any structure constructed of posts, boards, palings, rails, wire, masonry or other similar materials or any combination thereof used to define a property boundary or to enclose or partially enclose any outdoor area and includes a hedge.
- (e) "fence height" means the vertical distance between the finished grade of the ground and the top of the fence wherein any fence post or any decorative fence post feature may project a maximum of 200 millimetres above the fence height. The fence gate shall not exceed the maximum permitted height of the fence and any decorative gate feature located above the gate may project a maximum of 500 millimetres above the maximum fence gate height. . The height of the fence shall be measured from the higher adjacent grade where there is a grade difference on each side of the fence.
- (f) "hedge" means a fence of closely planted bushes or shrubs;
- (g) "industrial property" means an industrial use as permitted within the zoning by-laws of the Town of Whitby.
- (h) "main building" means the structure in which is carried on the principle purpose for which the property is used and includes an attached or integral garage;
- (i) "non-residential property" means land primarily used or intended to be primarily used for other than human habitation, but does not include land primarily used for farming purposes.

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- (j) "owner" includes a lessee, tenant or such other person in charge or possession of property;
- (k) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- (l) "privately-owned outdoor swimming pool" means any body of water in or above the ground located outdoors on privately-owned property, contained by artificial means and used and maintained for the purpose of swimming, wading, diving or bathing but does not include an above ground wading pool having a depth of one half (½) metre or less;
- (m) "property line" means the legal boundary of a lot;
- (n) "residential property" means land primarily used or intended to be primarily used for human habitation;
- (o) "swimming pool area" means the area within the swimming pool enclosure and includes the swimming pool plus any surrounding platforms, walkways, play areas and landscaping areas;
- (p) "swimming pool enclosure" means a fence, wall or other structure, including doors and gates and other closures, surrounding a privately-owned outdoor swimming pool;
- (q) "Town" means the Corporation of the Town of Whitby;
- (r) "yard, exterior side" means the side yard of a corner lot, immediately adjoining a public street, which side yard extends from the front yard to the rear property line between the exterior property line and the nearest wall of the main building;

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- (s) "yard, front" means the yard extending across the full width of a property between the front property line and the nearest wall of the main building and where a property has frontage on two or more streets, the front yard means the yard between the shorter property line abutting a street and the nearest wall of the main building. In the case of a vacant residential property, the front yard shall be the yard extending across the full width of the vacant property between the front property line and a line running parallel to and 4.5 metres from the front property line. For the purpose of erecting a fence between two abutting properties where the front yard depths vary, the front yard shall be determined by the abutting property with the greater front yard depth;
- (t) "yard, rear" means the yard extending across the full width of a property commencing at the rear property line and extending to the rear wall of the main building or, in the case of a corner lot, the yard extending from the exterior side yard to the side property line commencing at the rear property line and ending at the rear wall of the main building; and,
- (u) "yard, interior side" means the yard between the side property line and the main building between the front yard and the rear yard.

FENCING ON RESIDENTIAL PROPERTY

2. (1) No person shall erect, have, permit or maintain on any residential property a fence greater than 2 metres in height in an interior side yard, an exterior side yard, or a rear yard, it being understood that this height restriction shall not apply to a fence which is contiguous to an industrial property or a fence which is located a minimum distance of 2 metres from all property lines.

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- (2) No person shall erect, have, permit or maintain on any residential property a fence greater than 1 metre in height in any front yard, except where a rear yard or an exterior side yard of a property abuts the front yard of another property the maximum fence height shall be 2 metres.

Despite this general provisions, where a swimming pool is located in a front, rear, or an exterior side yard of a corner lot, a fence up to a maximum of 2 metres in height may be erected.

- (3) No person shall erect, have, permit or maintain on any residential property a fence located a distance closer than 3 metres to an intersection. For the purposes of this subsection, intersection shall mean the point of intersection of two or more property lines that abut a street.

- (4) No person shall erect, have, permit or maintain on any residential property a fence which has an inferior appearance or quality on that side of the fence which faces adjoining property. For the purposes of this subsection, the fact that the horizontal or vertical fence support members are located on the side of the fence facing the adjoining property shall not in and of itself be deemed to constitute an inferior fence appearance or an inferior fence quality.

- (5) No person shall erect, have, permit or maintain on any residential property a fence constructed wholly or partially of barbed wire or a fence carrying an electrical charge.

- (6) Every person constructing a fence shall ensure that the fence is constructed of structurally sound material and is constructed in accordance with standard building practices.. No person shall construct a fence that creates an unsafe condition.

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- (7) No person shall erect, have, permit or maintain a fence which, by reason of location or design, obstructs the vision of drivers, either when leaving a roadway or when entering a roadway from another roadway or driveway, or which obstructs or detracts from the visibility or effectiveness of any traffic sign or control device on a public street or which, for any other reason, constitutes a hazard.

FENCING OF PRIVATELY-OWNED OUTDOOR SWIMMING POOLS

Swimming Pool Enclosure Permit

3. (1) No person shall excavate for or erect, or cause to be excavated for or erected, a privately-owned outdoor swimming pool unless he or she has first obtained a swimming pool enclosure permit from the Town.
- (2) Every application for a swimming pool enclosure permit shall be made in the form prescribed by the Town and shall be accompanied by the prescribed permit fee, a plan showing the exact location of the swimming pool enclosure in relation to the property lines and buildings on the property, and full details of the nature of construction of the swimming pool enclosure.
- (3) A swimming pool enclosure permit shall not be issued by the Town unless the swimming pool enclosure complies with all relevant provisions of this by-law.

Swimming Pool Enclosure

4. (1) Every owner of a privately-owned outdoor swimming pool shall erect and maintain, or cause to be erected and maintained, a swimming pool enclosure completely around the swimming pool, which enclosure,
- (a) shall not be less than 1.2 metres in height;
- (b) shall be constructed of chain-link or vertical board or a combination thereof as provided in this by-law or such other material, design or construction as will provide an equivalent degree of safety and which is approved, in writing, by the Director of Public Works;
- (c) shall be constructed so that the distance between the finished grade of the ground and the bottom of the fence does not exceed 100 millimetres;

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- (d) may incorporate one or more gates of equivalent material and construction as the swimming pool enclosure and every such gate shall:
 - (i) not be less than 1.2 metres in height;
 - (ii) be supported by substantial hinges and equipped with self-closing, self-latching devices placed at the top and on the inside of the gate; and,
 - (iii) be kept closed and locked at all times when a responsible person is not present and supervising the swimming pool;
- (e) shall be set back a minimum distance of 1 metre from the swimming pool wall;
- (f) may incorporate all or a portion of the wall of a building but no entrance to the pool area shall be permitted through such wall unless the wall is set back a minimum distance of 1 metre from the swimming pool wall;
- (g) if of chain-link construction shall;
 - (i) have mesh not greater than 38 millimetres consisting of 12 gauge galvanized steel wire or 14 gauge steel wire covered with vinyl coating or such other equivalent material;
 - (ii) have galvanized steel supporting posts spaced at no more than 3 metre intervals;
 - (iii) have end posts and corner posts at least 48 millimetres in diameter extended a minimum depth of .9 metres below grade encased in concrete;
 - (iv) have intermediate posts of at least 38 millimetres in diameter extended a minimum depth of .9 metres below grade encased in concrete; and,
 - (v) have top and bottom rails made of galvanized steel pipe having a minimum diameter of 32 millimetres it being understood that a galvanized steel tension rod having a minimum diameter of 5 millimetres may be substituted for the bottom rail.

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- (h) if of vertical board construction shall:
 - (i) have vertical boarding not less than 23 millimetres by 100 millimetres nominal spaced not more than 38 millimetres apart attached to a top and bottom rail in such a manner as not to facilitate climbing from the outside;
 - (ii) be supported by posts not less than 100 millimetres by 100 millimetres nominal spaced not more than 2.4 metres apart and extended a minimum depth of 1.2 metres below grade encased in concrete;
 - (iii) be treated with a wood preservative below grade or consist of pressure treated wood below grade; and,
 - (iv) have top and bottom rails not less than 50 millimetres by 100 millimetres nominal;
- (i) if of construction other than chain-link or vertical board construction shall,
 - (i) be constructed so that the rigidity of the swimming pool enclosure is at least equal to that specified for chain-link and vertical board construction;
 - (ii) be permitted to have exposed structural or other members or parts thereof on the outside of the swimming pool enclosure provided a minimum clear vertical distance between any such members, or parts thereof, of 1.2 metres is maintained; and,
 - (iii) have a maximum opening of 100 millimetres at any point in the swimming pool enclosure.
- (2) The fencing provisions of this by-law relating to privately-owned outdoor swimming pools shall not apply provided the outside wall of the swimming pool is elevated a minimum height of 1.2 metres above the finished grade of the ground and is constructed in such a manner as not to facilitate climbing from the outside of the swimming pool.

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- (3) Despite the provisions of Subsection 4 (2) of this by-law, every owner of an elevated privately-owned outdoor swimming pool shall erect and maintain, or cause to be erected and maintained, at every entrance into such pool a gate at least 1.2 metres in height having self-closing, self-latching devices placed at the top and on the inside of the gate and the owner of the swimming pool shall keep the gate closed and locked at all times when a responsible person is not present and supervising the swimming pool.
- (4) 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 which has been approved, in writing, by the Director of Public Works.
- (5) Every owner of a privately-owned outdoor hot tub, whirlpool or spa, as the case may be, shall keep the hot tub, whirlpool or spa, as the case may be, covered and locked at all times when a responsible person is not present and supervising the hot tub, whirlpool or spa.
- (6) No person shall place water in or cause water to be placed in a privately-owned outdoor swimming pool or allow water to remain therein until such time as the swimming pool enclosure as prescribed by this by-law has been erected completely around the swimming pool.
- (7) Despite the provisions of Subsection 4(6) 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.
- (8) The temporary fence referred to in Subsection 4(7) of this by-law shall,
 - (a) consist of plastic mesh not greater than 38 millimetres;
 - (b) not be less than 1.2 metres in height;
 - (c) be supported by steel T-bar posts spaced at no more than 3 metre intervals;

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- (d) have a 9 gauge galvanized steel wire located at the top and bottom of the fence; and,
- (e) be constructed of such other material that will provide an equivalent degree of safety as approved, in writing, by the Director of Public Works.

FENCING OF NON-RESIDENTIAL PROPERTY

5. (1) No person shall erect, have, permit or maintain on any non-residential property a fence greater than 2 metres in height except for industrial properties where the maximum fence height shall be 3 metres..
- (2) The use of barbed wire on non-residential property shall be limited to property primarily used for industrial purposes and shall be limited to a maximum of three strands above a chain link fence, provided that such barbed wire does not project over any adjacent property.
- (3) The use of any device for projecting an electrical current through a fence in a non-residential property is prohibited.
- (4) For the purpose of determining fence height where a residential property abuts a non-residential property, the less restrictive provision shall apply to the common lot line.
- (5) No person shall erect, have, permit or maintain on any non-residential property a fence located a distance closer than 3 metres to an intersection. For purposes of this subsection, intersection shall mean the point of intersection of two or more property lines that abut a street.
- (6) No person shall construct a fence that creates an unsafe condition.

FENCING OF FARM PROPERTY

6. (1) No person shall erect, have, permit or maintain a fence greater than 2.0 metres in height on land primarily used for farming purposes.

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- (2) The use of barbed wire and electrical fencing shall be permitted for farming purposes.
- (3) No person shall erect, have, permit or maintain on any land primarily used for farm purposes a fence located a distance closer than 3 metres to an intersection. For purposes of this subsection, intersection shall mean the point of intersection of two or more property lines that abut a street.
- (4) No person shall construct a fence that creates an unsafe condition.

EXCEPTIONS

7. (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.
- (2) The provisions of this by-law shall not apply to acoustical fences or other similar fences which may be required by the Region of Durham from time to time.
- (3) Any federal, provincial or municipal fencing shall be exempt from the provisions of this by-law.
- (4) The provisions of this by-law shall not apply to a salvage yard use.

PENALTIES

8. Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction thereof is liable to a fine in the amount provided for by the Provincial Offences Act, R.S.O. 1990, c.P. 33, as may be amended from time to time and any successor legislation in substitution thereof.

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SEVERABILITY

9. If any court of competent jurisdiction finds that any provision of this by-law is ultra vires of the jurisdiction of the Council of the Corporation of the Town of Whitby to pass or is invalid, such provision shall be deemed to be severable and shall not invalidate any of the other provisions of this by-law.

SHORT TITLE

10. This by-law may be referred to as the Fencing By-law.

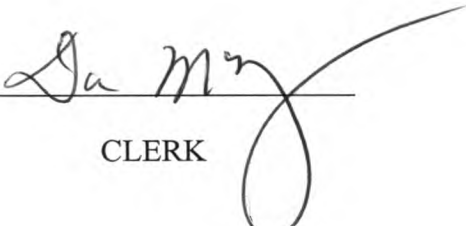
REPEAL OF EXISTING BY-LAWS

11. By-law No. 3288-93 is repealed.

EFFECTIVE DATE

12. This by-law shall come into force and effect when it is finally passed.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS
25TH DAY OF MAY A.D.,1999.


CLERK


MAYOR