

THE CORPORATION OF THE TOWN OF ESPANOLA

BYLAW NO. 1844/05

**BEING A BYLAW TO REQUIRE THE ERECTION AND
MAINTENANCE OF FENCES AND GATES AROUND
PRIVATE OUTDOOR SWIMMING POOLS INCLUDING HOT TUBS**

WHEREAS the Council of the Corporation of the Town of Espanola deems it desirable to enact a bylaw to require owners of privately owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools,

AND WHEREAS Section 311 (1) (7) of the Municipal Act, R.S.O. 2001, as amended, provides authority for passing such a bylaw,

NOW THEREFORE the Council of the Corporation of the Town of Espanola hereby ENACTS AS FOLLOWS:

1. **DEFINITIONS:**

- a. ENCLOSURE means any combination of fence, wall or other structure including doors and gates, surrounding a privately owned outdoor swimming pool to restrict access thereto.
- b. PRIVATELY OWNED OUTDOOR SWIMMING POOL means any body of water located outdoors on privately owned property, contained in part or in whole by artificial means, in which the depth of the water at any point can exceed 0.610 metres (twenty-four (24) inches) and used or capable of being used for swimming, bathing, wading or diving, including a hot tub, whirlpool and spa.
- c. SERVICE ENTRANCE means that entrance into a building which would normally be used by persons entering such building for the purpose of delivering goods or rendering maintenance service.
- d. OWNER includes a person, lessee or tenant in possession of the property on which the swimming pool is located.
- e. PERSON means any firm, corporation, partnership, individual or association.
- f. TOWN means the Corporation of the Town of Espanola.
- g. CHIEF BUILDING OFFICIAL means the Chief Building Official of the Town or his/her designate.

2. **PERMIT REQUIRED:**

- a. No person shall erect a fence or gate for a swimming pool until plans for such fences and gates have been submitted to the Chief Building Official and a permit certifying approval of such plans has been issued. A permit fee in accordance with Schedule A of bylaw No. 1820/05 shall be paid.
- b. No person shall excavate for or erect a privately owned swimming pool without a certificate that approval of the plans for a fence and gates has been issued.
- c. A permit may be refused if the fences or gates do not comply with any bylaw.
- d. No permit shall be issued unless the application is in compliance with applicable municipal bylaws.

3. **PLANS AND SPECIFICATIONS**

Every applicant shall;

- a. submit a completed and signed permit application. The required fee must be submitted with the permit application.

- b. submit a copy of the lot (to scale) showing the location, shape and size of the proposed pool. Indicate pool fence and gate locations.
- c. indicate the distance from the edge of the pool to all property lines.
- d. sketch all accessory structures (decks, sheds, garages) with dimensions
- e. furnish a lot grading plan to include relative elevations, proposed and existing, and surface water drainage patterns.
- f. submit pool specifications – actual square footage of water

4. WATER IN SWIMMING POOLS

No person shall place water in a privately owned outdoor swimming pool or allow water to remain in a pool unless the prescribed fences and gates have been erected in accordance with the provisions of this bylaw.

5. ENCLOSURES

- a. The owner of a privately owned outdoor swimming pool shall erect and maintain an adequate enclosure surrounding the entire swimming pool area and sufficient to make such body of water not readily accessible to small children.
- b. Every pool shall have an adequate enclosure including gates erected around it in accordance with the provisions of subsection 5 a) to f).
- c. Every enclosure for a pool shall be;
 - i. a minimum of at least 1.5 metres (5 feet) in height measured from ground level to the top of the fence; and
 - ii. of wood, chain link, aluminum or other approved design, to reasonably deter children from climbing it to gain access to the fenced in area.
 - iii. include no part consisting of barbed wire or having similar dangerous characteristics and no device for projecting an electric current through the fence;
 - iv. located not less than 1.219 metres (four feet) from the swimming pool unless:
 - a) the required height of said fence, as prescribed in paragraph 5(c), is increased to a minimum of 1.829 metres (six feet), and
 - b) a continuous hand hold is available along the edges of the pool for the purpose of providing, in an emergency, support for a person in the pool, and such fence shall not regardless of height, be located closer than 1.219 metres (4 feet) to any condition of the property that would contribute to the lessening of these minimum safety requirements by facilitating the climbing of the swimming pool fence.
- d. Notwithstanding Section 5(c) of this bylaw, a fence surrounding a swimming pool is not required where the swimming pool is an above-ground swimming pool and where;
 - a. the vertical sides of the swimming pool and any deck or other assembly forming part of the swimming pool are the same minimum height as the fence height requirements pursuant to Section 5 c) i);
 - b. such vertical sides and assemblies are constructed and maintained in such a manner to prevent the climbing thereof; and
 - c. any ladder or stair assembly providing access to the swimming pool or to any deck or other assembly forming part of the swimming pool is hinged and constructed in a manner so as to be latched in an upright position thereby preventing entry to the swimming pool.
- e. No main entrance or service entrance to a building shall be located within the swimming pool area enclosure.
- f. Except as provided in (g) (iv) (2), such enclosure shall have no rails or other horizontal or diagonal bracing or attachments on the outside that would facilitate climbing.
- g. A fence or its equivalent forming part of such enclosure.
 - i. If of chain link construction, shall
 - 1. be of not greater than 38 millimetres (1.5 inch) diamond mesh;

2. be constructed of galvanized steel wire not less than No.12 gauge, or of a minimum 14 gauge steel wire covered with a vinyl, or other approved coating, forming a total thickness equivalent to No.12 gauge galvanized wire;
 3. be supported by at least 38 millimetres (1.5 inch) diameter galvanized steel posts each imbedded in a minimum of 50 millimetres (2 inches) of concrete from grade to minimum of 0.610 metres (2 feet) below grade, such posts to be spaced not more than 3.048 metres (10 feet) apart. Top and bottom horizontal rails shall be provided of 31.8 millimetres (1.25 inch) minimum diameter galvanized steel, except that a 6.4 millimetre (1/4 inch)/minimum diameter galvanized steel tension rod may be substituted for the bottom horizontal steel rail. A vinyl or other approved coating may be substituted for the galvanized coating.
- ii. If of wood construction, shall
1. have the vertical boarding attached to supporting members all of which are arranged in such manner so as not to facilitate climbing from the outside. Such vertical boards shall be not less than one inch by four inch nominal dimensions spaced not more than 101.6 millimetres (4 inches) apart;
- iii. Shall be supported by a minimum of 101.6 millimetres (four inch) square of 101.6 millimetres (four inch) diameter posts nominal dimensions spaced not more than 2.438 metres (8 feet) on centers, securely embedded to a minimum of .610 metres (two 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 50 millimetres (two inch) by 101.6 millimetres (4 inch) minimum nominal dimensions;
- iv. May be of construction other than that specified provided an equivalent degree of safety is maintained and shall
1. be constructed so that the rigidity is equal to that specified for those fences described in clauses (g) (ii) or (iii);
 2. be permitted to have exposed structural or other members or parts thereof that may facilitate climbing the outside of the enclosure provided the minimum clear vertical distance between any such members, or parts thereof, is 1.219 metres (4 feet) and regardless of the location of such members, where this minimum 1.219 metres (4 foot) vertical dimensions is maintained the least dimension of any opening through such fence may be increased to not more than that required to prevent the passage of a spherical object having a diameter of four inches.
- vi. Gates forming part of such enclosure shall
1. be of construction and height equivalent to that required for the fence;
 2. be supported on substantial hinges, and
 3. be self-closing and equipped with a locking device and with a self-latching device placed at the top and on the inside of the gate such that the device latches when the gate is in closed position.
 4. Subject to the provisions of Paragraph 5(e), doors providing access from a building directly to an enclosed swimming pool area, other than door located in a dwelling unit or rooming unit, shall each be self-closing and equipped with locking device and with a self-latching device located not less than 1.524 metres (5 feet) above the bottom of the door.

5. The owner of every privately owned outdoor swimming pool shall ensure that every gate and door required by Paragraphs 5.(g)(vi) 3 and 4 to be equipped with a locking device shall be kept locked at all times if there is more than 0.610 metres (24 inches) of water in the pool and a responsible person is not present and supervising the pool.
6. Discharge piping to a storm sewer shall not be greater than fifty millimeters (2 inches) in diameter unless approved by the Chief Building Official.
7. If a swimming pool is to be filled by means of a hose, a back flow preventer shall be installed at the hose connection to the building piping.

6. HOT TUBS

Notwithstanding Section 5, when any swimming pool is a hot tub, whirlpool or spa, the owner of such swimming pool shall ensure that:

- a. all fence provisions of the bylaw are complied with; or
- b. such hot tub, whirlpool or spa is fitted with a lid and/or cover that withstands human weight without collapse and such lid or cover is locked in place at all times when the hot tub is not in use.

7. NOTIFICATION

Notices for mandatory inspections shall be given by the permit holder to the Chief Building Official at least two business days in advance of the stages of construction specified below:

- a. pool stake out prior to excavation
- b. fencing enclosure for pool, prior to any water being placed in pool
- c. additional inspections as may be required
- d. pool enclosure final inspection

8. OFFENCE

Every person who contravenes any provision of this bylaw is guilty of an offence.

9. PENALTY

Every person who is convicted of an offence under any provision of this bylaw shall be liable to a penalty as set out in the Provincial Offences Act.

10. PRIOR BYLAWS REPEALED

Bylaw No. 595/78 and all amendments hereto are hereby repealed.

Read a First, Second and Third Time and passed in Open Council this 28th day of February 2006.

“Bernie Gagnon”
Mayor

“Joel MacKenzie”
Clerk Treasurer/Administrator