

THE CORPORATION OF THE TOWN OF COBALT

BY-LAW NO. 2022 - 19

Being a By-Law to Provide for the Owners of Privately Owned Outdoor Swimming Pools to Erect and Maintain Fences

Whereas Section 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to pass By-Laws to provide for a system of permits in the regulation of a matter;

AND WHEREAS Section 11(2) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that the municipality may pass By-Laws related to the health, safety, and wellbeing of the inhabitants of the municipality;

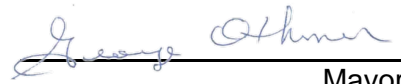
AND WHEREAS Section 11(3) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to pass By-Laws respecting structures, including fences;

AND WHEREAS the Council of the Town of Cobalt deems it desirable for the protection of the public to enact a By-Law to regulate outdoor swimming pools;

Now therefore the Council of the Corporation of the Town of Cobalt hereby enacts as follows:

1. That Council adopts a By-Law to Provide for the Owners of Privately Owned Outdoor Swimming Pools to Erect, and Maintain Fences identified as Schedule "A", attached hereto, and forming part of this By-Law.
2. That the Clerk of the Corporation of the Town of Cobalt is hereby authorized to make minor modifications or corrections of an administrative, numerical, grammatical, or descriptive nature or kind to the By-Law and Schedule as may be deemed necessary after the passage of this By-Law, where such modifications or corrections do not alter the intent of the By-Law.
3. That this By-Law shall come into force and take effect on the date of its final passing and shall be applicable to all existing privately owned swimming pools.

Read a first, second and third time and final passed this 16th day of August 2022.



Mayor



Clerk



**THE CORPORATION OF THE TOWN OF COBALT
SCHEDULE "A" TO BY-LAW NO. 2022-19**

**TO PROVIDE FOR THE OWNERS OF PRIVATELY OWNED OUTDOOR SWIMMING POOLS TO
ERECT AND MAINTAIN FENCES**

**Part 1
General Provisions**

1.1 Short Title

This By-Law shall be cited as the "Swimming Pool Fence Repair"

1.2 Existing swimming pool fences - constructed

The provisions of this By-Law shall not prevent the use of an existing swimming pool fence if such swimming pool fence was constructed and has enclosed a swimming pool from the date of its construction and if it was built in accordance with the current regulations of the By-Law.

1.3 Replacement - swimming pool fencing - compliance - required

When an entire existing swimming pool fence is replaced the replacement swimming pool fence shall be constructed in accordance with this By-Law.

**Part 2
Definitions**

2.1 For the purpose of this By-Law:

- 2.1.1 **"By-Law Enforcement Officer"** shall mean the person appointed by the Town Council to such position pursuant to this By-Law.
- 2.1.2 **"Gate"** shall mean any part of a swimming pool fence which opens on hinges and includes a door located in the wall of an attached or detached garage or carport which forms part of the swimming pool fence, but does not include an overhead garage door, or slide to the side garage door.
- 2.1.3 **"Hydro Massage Pool"** shall include those pools commonly referred to as a hot tub, a whirl pool, a Jacuzzi or a spa.
- 2.1.4 **"Maintain"** shall mean to carry out repairs of any part or parts of a swimming pool fence so that it can properly perform the intended function.
- 2.1.5 **"Overhead garage door"** shall mean any garage door that opens overhead, which is intended to allow for vehicular entry to, and exit from, the garage.
- 2.1.6 **"Replacement"** shall mean the construction of a swimming pool fence that takes the place of a swimming pool fence previously constructed.
- 2.1.7 **"Self-closing device"** shall mean a mechanical device or spring which returns a swimming pool fence gate to its closed position within 30 seconds after it has been opened.
- 2.1.8 **"Self-latching device"** shall mean a mechanical device or latch which is engaged each time the swimming pool fence gate is secured to its closed position; which will not allow the swimming pool fence gate to be re-opened by pushing or pulling, and which will ensure the swimming pool fence gate remains closed until unlatched by either lifting or turning the device itself directly or by a key.
- 2.1.9 **"Slide to the Side garage door"** shall mean any garage door that opens to the side instead of overhead, which is intended to allow for vehicular entry to, and exit from, the garage.

2.1.10 "Swimming pool" shall mean a structure, basin, chamber or tank containing or capable of containing water, and is designed to be used for swimming or wading,

- (a) has a depth of more than 75 centimetres (29.5 inches) at any point; and
- (b) has a surface area of more than 1 square metre (10.8 square feet); and
- (c) is not under the jurisdiction of the Building Code; and
- (d) is not completely inside a building; and
- (e) is not owned by government or a local board or commission constituted under any statute or By-Law; and
- (f) is not a pond or reservoir to be utilized for farming purposes; and
- (g) but excludes hydro massage pools and lap pools if they have a lid that is fitted and secured when not in use; and
- (h) excludes storm water management ponds.

2.1.11 "Swimming Pool Fence" shall mean a wall, a structure or a building which encloses a swimming pool where structures include a fence combined with a deck.

2.1.12 "Town" shall mean the Town of Cobalt.

Part 3 Prohibitions

3.1 Swimming pool - not enclosed by fence

No person shall construct, cause to be constructed, or have a swimming pool which is not completely enclosed by a swimming pool fence, in accordance with this By-Law.

3.2 Have or keep swimming pool – not enclosed by fence

No person shall have or keep a swimming pool that is not completely enclosed by a swimming pool fence, in accordance with this By-Law.

3.3 No construction - without temporary fencing

No person shall fail to enclose a swimming pool with temporary fencing during construction.

3.4 Construction - fence - non-conforming

No person shall construct or cause to be constructed a swimming pool with a swimming pool fence that does not conform to the requirements of this By-Law.

3.5 Gate - without self-closing - self-latching device

No person shall fail to equip a swimming pool fence single gate access with a self-closing device and a self-latching device.

3.6 Gate – self-latching device – distance above ground

No person shall construct, have, keep or maintain a swimming pool fence gate with a self-latching device less than 122 centimetres (48 inches) above ground level, in accordance with this By-Law.

3.7 Storage of materials - against outside of swimming pool fence

No owner of a pool shall place or store materials against the outside of a swimming pool fence.

3.8 Swimming Pool Fence - maintain - in accordance with By-Law

No person shall fail to keep, have or maintain a swimming pool fence in accordance with this By-Law.

3.9 Two gates – self-closing / self-latching device – permanently affixed

No person shall construct or maintain a double swimming pool fence gate access without one of the two gates having a self-closing device and a self-latching device. The gate of this double gate access without a self-closing device and a self-latching device must 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 then releasing the latch.

3.10 Completion of swimming pool fence – filling with water

(a) No person shall place water in a swimming pool or cause or permit water to remain in the swimming pool if the required swimming pool fence is not completely constructed in compliance with the requirements in this By-Law.

3.10.1 Construction of swimming pool — temporary fence – filling with water

(b) Despite subsection 3.10(a), where a person is constructing or causing to be constructed a swimming pool, a person may place water in a swimming pool or cause or permit water to remain in the swimming pool only if all of the following are complied with:

- (i) temporary fencing is in place in compliance with section 4.10 of this By-Law; and
- (ii) the owner or agent notifies the Town on or before the day that water is placed in the pool at the email address cobalt@cobalt.ca; and
- (iii) the temporary fencing is in place for no longer than 120 days after water is first placed in the pool or the Town receives the notification email, whichever occurs sooner.

3.10.2 Existing swimming pool – temporary fence – filling with water

(c) Despite subsection 3.10(a), where a swimming pool is in existence on the date of the passing of this By-Law, a person may place water in a swimming pool or cause or permit water to remain in the swimming pool if there is temporary fencing in place in compliance with section 4.10 of this By-Law, but only where such temporary fencing is in place for no longer than 30 days, or such longer period of time if approved in writing by the By-Law Enforcement Officer.

**Part 4
Swimming Pool Fence Regulation**

4.1 Height - minimum requirements

Every swimming pool shall be enclosed by a swimming pool fence which shall extend from the ground to a height of not less than 153 centimetres (60 inches).

4.2 Opening - maximum diameter

Except as provided in section 3.3 of this By-Law, every swimming pool fence referred to in section 4.1 of this By-Law shall not have any openings that would allow the passage of a spherical object having a diameter greater than 3.8 centimetres (1.5 inches).

4.3 Opening - maximum diameter - exception - conditions

For other than chain link fences, where the vertical distance between each horizontal rail measured from the top of the bottom rail to the top of the next one above it, is 115 centimetres (45 inches) or greater, the openings in the fence are permitted to be greater than 3.8 centimetres (1.5 inches) but not greater than that which would allow the passage of a spherical object having a diameter of 10 centimetres (4 inches).

4.4 Ground clearance - maximum

Every swimming pool shall be enclosed by a swimming pool fence which has a clearance from the ground to the under side of the swimming pool fence than would prevent the passage of a spherical object having a diameter of 10 centimetres (4 inches).

4.5 Structural members - prevent easy climbing - required

Every swimming pool shall be enclosed by a swimming pool fence which has all its horizontal structural members located inside the enclosure to prevent easy climbing unless the swimming pool fence has no openings greater than 3.8 cm (1.5 inches) and the horizontal members are at least 0.6 metres (24 inches) apart.

4.6 Construction - to prevent unauthorized entry

Every swimming pool shall be enclosed by a swimming pool fence which is of sturdy construction, capable of preventing unauthorized entry. Any fence which predominantly consists of horizontal face boards, planks, or panels, installed between any vertical posts, shall not be permitted to have any openings greater than 2 centimetres (.75 inch) between the face boards, planks, or panels, for any portion of the fence below the height of 115 centimetres (45 inches) measured from ground level.

4.7 Height – measurement – from ground level or climbable fixture or feature

The height of the swimming pool fence, including any gates, shall be measured from ground level or from any climbable fixture or feature on the exterior side of the swimming pool fence.

4.8 Gate - self-closing - self-latching - locking device

Every gate on a swimming pool fence shall be equipped with a self-closing device and a self-latching device.

4.9 Gate - self-latching device - requirements

A self-latching device that can be opened without a key from the outside shall not be less than 122 centimetres (48 inches) above ground level.

4.10 Temporary fence - required - during construction

(1) Every person constructing a pool shall maintain temporary fencing surrounding the pool during all phases of construction such that unauthorized access is prevented.

(2) Every person constructing a pool shall ensure that the temporary fencing required in 4.10(1) above complies with all of the following requirements:

- (a) shall be a minimum of 120 centimetres (47 inches) in height;
- (b) if chain link, plastic mesh, or wire fencing; it shall have no openings greater than 5 centimetres (2 inches);
- (c) if other than chain link, plastic mesh, or wire fencing, it shall have no openings greater than 10 centimetres (4 inches);
- (d) shall have vertical support by T bar posts or similar posts at a maximum separation distance between posts of 240 centimetres (95 inches);
- (e) shall have a horizontal support near the top and bottom of the fence, which shall be wood, wire or rope; which will ensure the fence is kept tight between posts; and
- (f) shall not have clearance from the surface below to the underside of the temporary fence of greater than 5 centimetres (2 inches).

4.11 Deck forms swimming pool fence

Where a deck forms part of the swimming pool fence, it shall meet all regulations in Part 4 of this By-Law.

4.12 Overhead and Slide to the Side Garage Door - requirements

Every pool facing an overhead garage door, or pool facing a slide to the side garage door that makes up part of the swimming pool fence shall be equipped with a device that without manual activation, automatically closes the overhead garage door, or slide to the side garage door within one minute of being passed through; and where the garage contains both a front and rear overhead or slide to the side garage door to create a through way, only one of the two doors may remain open following the clearance of a vehicle, object, or person.

**Part 5
Enforcement**

5.1 Fine - for contravention

Any person who contravenes any provision of this By-Law is, upon conviction, guilty of an offence and is liable to any penalty as provided in the Provincial Offences Act.

5.2 Continuation - repetition - prohibited - by order

The court in which the conviction has been entered, and any court of competent jurisdiction, thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

5.3 Default - not remedied - done at owner's expense

Where anything required to be done in accordance with this By-Law is not done, the By-Law Enforcement Officer or persons designated by the By-Law Enforcement Officer for The Corporation of the Town of Cobalt, upon such notice as they deem suitable, do such thing at the expense of the person required to do it and, in so doing, may charge an administration fee of 10% of such expense with a minimum fee of \$80.00; and both the expense and the fee may be recovered by action or in like manner as municipal taxes.