



# The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 149-08

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## BEING A BY-LAW TO REGULATE AND TO REQUIRE THE ENCLOSURE OF PRIVATELY OWNED SWIMMING POOLS AND SPAS IN THE TOWN OF FORT ERIE AND TO REPEAL BY-LAW NO. 61-84, AS AMENDED

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**WHEREAS** Subsection 11 of the *Municipal Act, 2001* S.O. 2006,c.32 as amended provides that the municipality may pass by-laws relating to the health, safety and well being of the inhabitants of the municipality, and to pass by-laws respecting structures, including fences and to provide for a system of permits.

**WHEREAS** Subsections 445.1 and 446 of the *Municipal Act, 2001* as amended, provides that if a municipality has the authority under this or any other *Act* or under a by-law under this or any other *Act* direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the persons expense, and may recover the costs by adding them to the tax roll and collecting them in the same manner as taxes,

**NOW THEREFORE** the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

### 1.0 DEFINITIONS

1.1 The following terms are defined for the purposes of this by-law:

**“Chief Building Official”** means the Chief Building Official for the Town of Fort Erie, as defined in the *Building Code Act, S.O. 1992, c.23*, as amended or his or her designate.

**“effective ground level”** means the mean level of the ground within a radius of 1.25 metres of the location being considered.

**“officer”** means a municipal by-law enforcement officer, building inspector, chief building official or any other person appointed or employed by the Town for the enforcement of the by-laws and includes a peace officer.

**“owner”** means a registered owner, but also includes an occupant, lessee, tenant or any other person in charge of or in control of premises on which a Pool is located but does not include any Federal, Provincial or Municipal authority.

**“person”** includes an Owner and may be a natural person, firm, corporation, partnership or association.

**“pool”** means a Swimming Pool or a Private Spa, but does not include a storm water management pond, a natural body of water, farm pond or an ornamental pond.

**“pool enclosure”** means a fence, wall or other structure, including doors, gates and hardware used to completely enclose a Pool.

**“private spa”** means a hydro-massage pool located or placed outdoors on land privately owned, containing an artificial body of water that is intended primarily for private therapeutic or recreational use that is not drained, cleaned or refilled before use by each individual and that utilizes hydro-jet circulation, air, induction bubbles, current flow or a combination of them over the majority of the pool area, but does not include Swimming Pools. Private Spas include pools commonly referred to as hot tubs, whirlpools and Jacuzzis.

**“swimming pool”** means any body of water located or placed outdoors on land privately owned, contained by artificial means and used or maintained for the purpose of swimming, wading, diving or bathing, and having a minimum depth of 0.60 metres (2’). This also includes but is not limited to inflatable, air supported or soft-sided pools but does not include public pools as defined in the Ontario Building Code.

## 2.0 GENERAL DUTIES AND OBLIGATIONS

2.1 Every Owner of land upon which a Pool is located shall erect and maintain in good repair such Pool Enclosures as required, in compliance with the standards in this By-law.

2.2 No Owner shall place, erect, construct or install or permit to be placed, erected, constructed or have installed any privately owned Pool capable of containing water to a depth of more than 0.60 metres (2’) at any point, without first obtaining a Pool Permit, as required from the Chief Building Official.

2.3 No person shall place water or allow water to remain in any Pool unless a required Pool Permit has been issued and the Pool Enclosure has been inspected and approved by an Officer and constructed and maintained in compliance with this By-law.

2.4 Every Owner of a Pool shall ensure that any gates or covers forming part of a required Pool Enclosure shall be kept latched or locked as required, at all times unless a responsible person is present and supervising access to the Pool area.

2.5 No person shall empty, drain or backwash a Pool into a sanitary sewer system or directly or indirectly onto any neighbouring property. Overflow or drainage from a Pool shall be discharged to a storm sewer or natural drainage course. If a storm sewer or natural drainage course is not available, the pool shall be drained by mechanical means and transported to a storm sewer outlet or natural drainage course.

2.6 Every Owner shall comply with an Order issued pursuant to Section 5.0 of this By-law and within the timeframe specified therein for compliance.

## 3.0 PERMITS

3.1 An application for a permit for a Pool Enclosure shall contain the following information:

- (a) the location of the property;
- (b) a plot plan showing the location of the Pool on the property in relation to lot lines, street lines and all other building structures on the lot;

- (c) a plan showing the complete details of the Pool Enclosure including the location, type, height, materials, gates and latching devices;
- (d) a plan showing the location of hydro electric poles, and all proposed plumbing and electrical installations;
- (e) a set of plans for the construction of proposed decks or accessory buildings (including change rooms, storage structures) if any.
- (f) a lot grading plan may be required at the discretion of the Chief Building Official.

**3.2** The applicable fee, established by the Council of the Town of Fort Erie from time to time, shall accompany an application for a permit and no permit shall be issued unless the fee has been paid in full.

**3.3** A permit may be revoked at the discretion of the Chief Building Official:

- (a) if it was issued on mistaken, false or incorrect information;
- (b) if, after six months after its issuance, construction of the Pool Enclosure, in the opinion of the Chief Building Official, has not been seriously commenced;
- (c) if the construction of the Pool Enclosure is, in the opinion of the Chief Building Official, substantially suspended or discontinued for a period of more than one year;
- (d) if it was issued in error; or
- (e) if the permit holder requests in writing that it be revoked.

**3.4** A permit is not required for a Pool Enclosure for a Private Spa that complies with Section 4.2.1.1 of this By-law by employing the use of a locking cover.

**3.5** A permit is not required for a Pool which has been dismantled or deflated and is being reconstructed, placed or erected in the exact location in which it was previously constructed, erected or placed provided that a permit was obtained for the original installation.

#### **4.0 STANDARDS**

##### **4.1 Location**

**4.1.1** Swimming Pools shall comply with all yard requirements specified in the Town of Fort Erie Zoning By-law.

**4.1.2** Private Spas shall comply with all yard requirements specified in the Town of Fort Erie Zoning By-law, save and except for the distance to a principal building.

**4.2 POOL ENCLOSURES**

**4.2.1 Private Spas**

**4.2.1.1** A Private Spa shall have a cover, capable of holding 90.72 kilograms (200 pounds), constructed of durable material that is fixed and secured to the structure, and that is locked to prevent access when the Private Spa is not in use.

**4.2.1.1.1** Alternative - Private Spas that are not equipped with the required locking cover shall comply with the Pool Enclosure standards for Swimming Pools.

**4.2.2 Swimming Pools**

**4.2.2.1** Swimming pools shall be enclosed with a fence not less than 1.22 metres (4 feet) high and not more than 2.3 metres (7 feet, 6 inches) high, measured from effective ground level at the exterior face of the enclosure.

**4.2.2.1.1** Exception – If the outside wall of the Swimming Pool has a height of not less than 1.22 metres (4 feet) measured from ground level at all points on the perimeter of such wall, and provided that any steps, ladder or other means of entry to the Swimming Pool are secured by a fence or gate that comply with all other requirements of this By-law, Section 4.2.2.1 does not apply.

**4.2.2.2** A dwelling house, accessory building or structure may be used in conjunction with a fence to enclose any Pool.

**4.2.2.3** All Swimming Pool Enclosures shall be constructed of wood, metal, or chain link fencing unless the Chief Building Official has approved a fence of any other materials and construction which in his or her opinion will yield an equivalent or greater degree of safety to the standards specified in this By-law.

**4.2.2.3.1** Chain Link - A fence of chain link construction shall be supported by posts set in concrete, spaced not more than 2.4 metres (8 feet) apart. Such chain link fencing shall be at least 14 gauge with a mesh of diameter not more than 0.51 metres (2 inches) measured diagonally together with gates of similar materials and/or equivalent performance and such design as well to reasonably deter any child or children from climbing over it.

**4.2.2.3.2** Wood - A fence of wood construction shall have vertical boarding of 2.5 centimetres (1 inch) nominal attached to the top and bottom rail in such a manner as not to facilitate climbing from the outside. Such vertical boards must not be less than 2.5 x 10 centimetres (1 x 4 inches) nominal and must be spaced not more than 3.81 centimetres (1.5 inches) apart.

**4.2.2.4** The maximum permitted space between the bottom of the Swimming Pool Enclosure and the ground or surface beneath it, is 8 centimetres (3 inches).

4.2.2.5 All Swimming Pool Enclosures shall be set back not less than 1.22 metres (4 feet) from the nearest inside wetted surface of the swimming pool wall.

4.2.2.6 No Swimming Pool Enclosure shall have or include barbed wire, electrical wiring, sharp projections or any other dangerous devices on top off, outside or inside the enclosure.

4.2.2.7 Gates or entrances which form part of the Swimming Pool Enclosure shall be:

(a) of construction and height equivalent to or greater than that of the fence required by this By-law;

(b) supported on substantial hinges;

(c) self-closing; and

(d) equipped with an operable self-latching device located at least 1.22 metres (4 feet) above the effective ground level on the Pool side of the gate. Any thumb latch or release mechanism of any kind that is located on the exterior face of the gate, and is connected to the self-latching device, shall be located at least 1.5 metres (5 feet) above the effective ground level.

4.2.2.8 Doors providing access from a building directly to the Pool area, other than doors located from a dwelling unit, shall be self-closing and equipped with a self-latching device.

### 4.3 Other Appurtenances

4.3.1 All lighting shall be directed so that light is deflected away from adjacent residential properties.

4.3.2 All connections between the pool and a potable water supply shall be equipped with back flow prevention in accordance with the Ontario Building Code.

4.3.3 All plumbing installations shall comply with the Ontario Building Code.

4.3.4 All electrical installations shall comply with the Ontario Electrical Safety Code.

### 5.0 ENFORCEMENT

5.1 The Chief Building Official, Municipal Law Enforcement Officer or their designate shall enforce the provisions of this By-law and are authorized to enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-law is being complied with.

5.2 Where an Owner fails to comply with any provision of this By-law, an Order may be issued to the Owner requiring compliance. The Order will give reasonable particulars of the repairs to be made or state that a Pool Permit is required or that a Pool Enclosure must be erected and indicate the time for complying with the Order and giving notice that, if the Order is not complied with within that time, the Town may carry out the Order at the Owner's expense.

5.3 An Order may be personally delivered or served by Registered Mail. Where an Order is mailed, the Order shall be deemed delivered on the earlier of receipt of the Order by the addressee or the fifth day following the date of mailing, whether actually received or not.

5.4 Where an Order has been issued and compliance has not been achieved within the required time period as set out in the Order the Town may, through its employees or agents or persons acting on its behalf, enter upon the land to drain, fill in or enclose the Pool at the expense of the Owner and any and all expenses incurred may be added to the tax roll and collected from the Owner of the property in the same manner as municipal taxes.

5.5 Every Person who contravenes any of the provisions of this By-law is guilty of an offence and, upon conviction is liable to the penalties as prescribed by the *Provincial Offences Act*, R.S.O. 1990 c. P.33.

## 6.0 ADMINISTRATION AND INTERPRETATION

6.1 The short title of this By-law is the "Swimming Pool By-law".

6.2 The provisions of By-law 61-84 as amended continue to apply to any existing Pool Enclosure in good repair that is in compliance and continues to comply with the requirements of By-law 61-84 on the date of passing of this By-law, until such time as the existing Pool Enclosure is replaced or undergoes substantial repair.

6.3 If there is a conflict between a provision of this By-law and a provision of any other Town by-law, the provision that establishes the highest standard to protect the health or safety of the public shall apply.

6.4 Where this By-law provides metric and imperial units of measure, the metric unit of measure shall apply. Approximate imperial measurements have been provided for convenience only.

6.5 Pursuant to the provisions of Section 23.1 to 23.5 of the *Municipal Act, 2001* the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the By-law and schedules as may be necessary after the passage of this By-law.

6.6 By-law Nos. 61-84, 56-94, 125-96, 132-03 and 92-05 are hereby repealed.

6.7 This by-law shall come into force and effect on the date of passage.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 27<sup>TH</sup> DAY OF OCTOBER, 2008.

  
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MAYOR

  
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CLERK

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 149-08 of the said Town. Given under my hand and the seal of the said Corporation this day of \_\_\_\_\_, 20 . \_\_\_\_\_