



## **By-law 2024-094**

### **POOL ENCLOSURE BY-LAW**

This By-law printed under and by the authority of the Council of the City of Barrie

**A By-law of the Corporation of the City of Barrie to regulate the protective enclosure of privately owned outdoor swimming pools and to repeal and replace By-law 94-59 as amended.**

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Bill No. 094

**BY-LAW NUMBER 2024-094**

**A By-law of the Corporation of the City of Barrie to regulate the protective enclosure of privately owned outdoor swimming pools and to repeal and replace By-law 94-59 as amended.**

**WHEREAS** Section 8 of the *Municipal Act, 2001, S.O. 2001, c. 25* ("The Municipal Act, 2001") provides a municipality with the broad authority to pass by-laws necessary or desirable for municipal purposes;

**AND WHEREAS** Section 9 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under this or any other Act;

**AND WHEREAS** Subsection 10 (2) of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting matters within the spheres of jurisdiction set out therein;

**AND WHEREAS** Subsection 11 (2) of the Municipal Act, 2001 provides that a municipality may pass by-laws respecting the health, safety and well-being of persons;

**AND WHEREAS** Section 425 of the *Municipal Act, 2001, S.O. 2001, c.25* authorizes the Corporation of the City of Barrie to pass by-laws providing that a person who contravenes a by-law of the Corporation of the City of Barrie passed under that Act is guilty of an offence;

**AND WHEREAS** Section 446 of the *Municipal Act, 2001, S.O. 2001, c.25* authorizes Council to pass a by-law enabling the municipality to do such matter or thing at the person's expense when that person fails to do what they are required or directed to do by by-law or otherwise, and to recover the costs of such action from the person by adding the costs to the tax roll and collecting them in the same manner as taxes;

**AND WHEREAS**, by resolution 24-G-185, the Council of The Corporation of the City of Barrie deems it expedient to amend replace the by-law to regulate the protective enclosure of privately owned outdoor swimming pools.

**NOW THEREFORE**, the Council of the Corporation of the City of Barrie enacts as follows:

**1. SHORT TITLE**

This By-law may be cited as the "Pool Enclosure By-law".

**2. DEFINITIONS**

In this By-law:

- 2.1 "Agent" means a person duly authorized by the Owner in writing to act for or represent the Owner of a property on which a pool is being constructed or is located and contractor or trustee shall mean the same.
- 2.2 "Authority having jurisdiction" means the Chief Building Official and any Building Inspector authorized by the Chief Building Official to administer this by-law.
- 2.3 "Building Inspector" means an inspector appointed by the Chief Building Official to inspect buildings and structures pursuant to the Building Code Act and Designate shall mean the same.
- 2.4 "Chief Building Official" or "CBO" means the person appointed by the Council of the City to administer the Building Code pursuant to the Building Code Act.
- 2.5 "City" means the Corporation of the City of Barrie.
- 2.6 "Enclosure" means a fence, wall or other structure or thing, including gates and doors, which surrounds the perimeter of a pool which would discourage the entry of a person into the enclosed area but shall not include vegetation, trees and/or hedges or the like.

- 2.7 "Gate" means a barrier swinging on the vertical axis used as a means to gain access to the enclosed area.
- 2.8 "Finished Grade" means the highest level of the ground within 1.22m (4'-0") measured horizontally from the outer-most surface of the enclosure or structural support of the pool. "Ground Level" and "Finished Ground Level" and any other similar reference shall mean the same.
- 2.9 "Owner" means a lawful owner of the property upon which the pool enclosure is proposed.
- 2.10 "Permit" means a permit issued under this By-law. "Pool Enclosure Permit" shall mean the same.
- 2.11 "Person" means a natural person, firm, partnership, corporation or association and includes the Owner.
- 2.12 "Pool" or "Swimming Pool" means a privately-owned outdoor body of water,
- (a) contained in a container that is:
    - (i) artificial, manufactured or assembled;
    - (ii) capable of retaining water measuring more than 600mm (23 5/8 inches) in depth at any point, and
    - (iii) capable of being used for swimming, bathing, diving or wading,
  - (b) and includes:
    - (i) manufactured swimming pools, both above-ground and in-ground;
    - (ii) custom built pools;
    - (iii) outdoor pools used for display or commercial purpose; and
    - (iv) temporary pools shall mean an inflatable pool or other pool which is designed to be removed periodically on a seasonal or more frequent temporary basis.
  - (c) but does not include:
    - (i) irrigation ponds on farms used for watering livestock or for irrigation;
    - (ii) naturally formed depressions in the ground;
    - (iii) garden or fishponds used as landscaping features with plant materials grown in and around the pond; and
    - (iv) public swimming pools as defined and regulated by the Ontario Building Code.
- 2.13 "Spa" means hot tubs, spas, whirlpools, swim spas and hydro message pools and other similar spas.

### **3. ADMINISTRATION AND ENFORCEMENT**

- 3.1 The Chief Building Official shall be responsible for the administration and enforcement of this by-law.
- 3.2 That this by-law shall apply to all private pools and pool enclosures not subject to the requirements of the Building Code Act and the Ontario Building Code, Division A, Part 1 Designated Structures:
- a) Sentence 1.3.1.1.(1)(i) outdoor pool, and
  - b) Sentence 1.3.1.1.(1)(ii) outdoor public spa
- 3.3 Conflict with Other By-laws
- (a) Where there is a conflict between this by-law and any other By-law in the City of Barrie regarding the rigidity, climbability and/or height of fences, the provision of this By-law shall prevail.
  - (b) No conflict exists between the provisions of this By-law and the provision of any other by-law, approval and/or permit if it is possible to comply with both by-laws dependent on the proposed type, design or location of the pool enclosure, pool and/or spa.

**4. POOL ENCLOSURE PERMIT**

- 4.1 No person shall excavate for, erect or install a pool, or cause the excavation for, erection of or installation of a pool unless a permit for the pool enclosure has been issued by the Chief Building Official.
- 4.2 To obtain a pool enclosure permit, an applicant shall apply through the City's online portal (APLI) and shall supply any other information relating to the application as required by the Chief Building Official.
- 4.3 Every pool enclosure permit application shall:
  - 4.3.1 describe the land on which the work is to be done, by a description that will readily identify and locate the site on which the pool will exist;
  - 4.3.2 be accompanied by plans, sketches and specifications about the pool enclosure as described in this by-law;
  - 4.3.3 be accompanied by the required fees as determined in accordance with the City of Barrie Fees By-law.
  - 4.3.4 state the name, address, telephone number, and email address of the applicant.
  - 4.3.5 be digitally acknowledged online by the applicant who shall certify as to the truth of the contents of the application.
- 4.4 The Chief Building Official shall, where the conditions in the Subsection 4.3 above have been fulfilled, issue a pool enclosure permit to the applicant unless:
  - 4.4.1 the proposed pool or pool enclosure will contravene this by-law or any other applicable law;
  - 4.4.2 the application for it is incomplete; or
  - 4.4.3 any fees due are unpaid.
- 4.5 An incomplete application or an application awaiting revisions may be deemed to be abandoned and will be cancelled if the applicant has not made satisfactory progress within 30 days of being notified by the Chief Building Official or designate.
- 4.6 Where the subject property is located in an unassumed subdivision, final lot grading certification or written approval from the developer is required prior to permit issuance.
- 4.7 A pool enclosure permit is not required for a swimming 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 pool enclosure permit was obtained for the original installation, and the required swimming pool enclosure remains in compliance with this by-law.

**5. PLANS AND SPECIFICATIONS**

- 5.1 Every applicant shall furnish:
  - 5.1.1 sufficient plans, specifications, documents and other information to enable the Chief Building Official or designate to determine whether the proposed pool enclosure conforms to this by-law and any other applicable laws;
  - 5.1.2 a site plan referenced to a current plan of survey certified by a registered Ontario Land Surveyor and a copy of such a survey shall be filed with the municipality unless this requirement is waived because the Chief Building Official or designate is able, without having a current plan of survey, to determine whether the proposed pool and pool enclosure conforms to this by-law and any other applicable laws. The site plan shall include:
    - 5.1.2.1 lot size and dimensions of the property;
    - 5.1.2.2 setbacks of the pool and pool enclosure from existing and proposed buildings and property lines;

5.1.2.3 existing and finished ground levels or grades, and

5.1.2.4 existing rights of way, easements and municipal services.

5.2 Plans submitted shall be legible and be drawn to scale to the satisfaction of the Chief Building Official or designate.

5.3 Plans and specifications furnished according to this by-law become the property of the municipality and will be disposed of or retained in accordance with relevant legislation.

## 6. FEES AND REFUNDS

6.1 The CBO shall determine the required fees for the work proposed in accordance with the City of Barrie Fees and Charges By-law, Schedule K as amended and the applicant shall pay such fees, in addition to any other fees applicable through other by-laws, regulations and legislation.

6.2 Upon receipt of a written request from the applicant to withdraw an application for a pool enclosure permit, a refund of 50% shall be provided.

6.3 The CBO shall refund 50% of the permit application fee where the application that has been deemed abandoned is being cancelled.

6.4 The CBO shall refund 35% of the permit fee where the permit is being cancelled or has been revoked, and no inspections have been performed.

## 7. POOL ENCLOSURE COMPLIANCE

7.1 No person shall erect or install or cause to be erected or installed any pool enclosure except in accordance with this by-law.

7.2 No person shall make a material change or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying, filing details with and obtaining the authorization of the Chief Building Official.

7.3 No person shall erect or install or cause to be erected or installed any pool enclosure except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued and any changes to them authorized by the Chief Building Official.

7.4 No person shall place water or allow water to be placed in any pool to a depth of more than 600mm (23 5/8 inches) unless the pool is safely enclosed by a pool enclosure that complies with the standards set out in this by-law.

7.5 Every pool shall continue to be enclosed by a pool enclosure that complies with the standards set out in this by-law so long as water remains or is capable of remaining in the pool to a depth of more than 600mm (23 5/8 inches).

7.6 Where a pool is installed on property that abuts Lake Simcoe, or any associated bay, or any public body of water, such property need not be enclosed along the water side provided that land is private and access cannot be gained from any point and the remaining lands surrounding the swimming pool are enclosed in accordance with the requirements of this by-law. Enclosures adjacent to water side to extend to water's edge. During winter months and/or where adjacent body of water is frozen, said pool shall be securely covered or enclosed and/or drained of water to a depth of no more than 600mm (23 5/8 inches).

## 8. POOL ENCLOSURE STANDARDS

8.1 Every pool enclosure shall be designed, constructed and maintained so as to discourage the entry of small children into the pool area.

### 8.2 Enclosure Provisions

The following standards are deemed by the City to satisfy the intent of Article 8.(1) above:

8.2.1 HEIGHT - Every pool enclosure shall be not less than 1.22 metres (4'-0") in height measured from the finished grade or any climbable structure, fixture or feature on the exterior side of the pool enclosure, to the top of the pool enclosure.

- 8.2.2 RIGIDITY - Every pool enclosure shall be constructed and maintained to be rigid and secure, able to resist any reasonable lateral forces that may be applied to the enclosure material within its minimum required height.
- 8.2.3 OPENINGS - Except as required for lattice and chain link fences, no openings, spaces or gaps in the enclosure material shall allow the passage of a spherical object having a diameter of 102mm (4") within the enclosure's minimum required height.
- 8.2.4 NON-CLIMBABLE - Within the enclosure's minimum required height, no horizontal or diagonal components on the exterior side of the pool enclosure shall be located so as to facilitate the climbing of the enclosure. Horizontal or diagonal members shall be tight fitting with no spaces between the components.
- 8.3.1 BOARD FENCES
- 8.3.1.1 All board material shall be of minimum 19mm thickness (1inch nominal thickness).
- 8.3.1.2 All horizontal support rails shall be of minimum 39mm x 89mm (nominal 2x4) material. All support posts shall be of minimum 89mm x 89mm (nominal 4x4) material spaced not more than 2.4 metres (8 feet) apart.
- 8.3.2 LATTICE FENCES
- 8.3.2.1 The openings of any lattice material shall be not greater than 38mm x 38mm (1.5 inches x 1.5 inches) in size. All lattice material shall be laterally supported at all edges and at horizontal and vertical spacing of not more than 1.22 metres (4'-0").
- 8.3.3 CHAIN LINK FENCES
- 8.3.3.1 All chain link fences, posts and rails shall be of galvanized or vinyl coated material.
- 8.3.3.2 All chain link mesh material shall be a minimum of No. 14 gauge wire.
- 8.3.3.3 The openings of any chain link fencing material shall be not greater than 38mm x 38mm (1.5 inches x 1.5 inches) in size.
- 8.3.3.4 The chain link mesh material shall be supported at the top and bottom by an approved reinforcing cable or a rail.
- 8.3.3.5 Every chain link pool enclosure shall be supported by posts that are not less than 38mm (1.5 inches) in diameter, spaced not more than 2.4 metres (8 feet) apart.
- 8.3.4 GATES AND DOORS
- 8.3.4.1 SINGLE GATES: All gates and doors of the pool enclosure other than from the property's dwelling unit, shall be kept in a closed, secure and latched position at all times. All gates shall be of equivalent construction and height as the minimum requirements of the pool enclosure and shall be supported on substantial hinges. Gates and doors shall be equipped with lockable, self-closing hinges and self-latching hardware.
- 8.3.4.2 DOUBLE GATES: Double gates used in a pool enclosure shall have one of the two gates equipped with lockable, self-closing hinges and self-latching hardware. The other gate shall be equipped with a securing device permanently affixed to the ground or other non-moveable object, which will prevent access through this gate without lifting or removing this device and then releasing the hatch. This gate must be kept in a closed, secure and latched position at all times.

### 8.3.5 ABOVE GROUND POOLS

8.3.5.1 Only the ladders or stairs providing access to an above ground pool need be enclosed in accordance with this by-law provided the following conditions are maintained:

8.3.5.2. The sides of an above ground pool shall be not less than 1.22 metres (4 feet) in height measured from the finished grade and any climbable fixture or feature on the exterior face of the pool wall to the top rail of the pool wall, as determined at the time of the initial pool enclosure approval.

8.3.5.3 Pumps, air conditioners, heaters, filters or other appliances or equipment shall be located not less than 1.22 metres (4 feet) from the top rail of the pool walls or shall be enclosed in accordance with this by-law.

8.3.5.4 Above ground pools shall be surrounded by a platform or deck that is not less than 610mm (24 inches) clear width and access to the platform or deck must be restricted by means of a gate in accordance with this By-law.

8.3.5.5 Above ground pools that are surrounded by a platform or deck shall be provided with a guard that is not less than 915mm (3 feet) in height measured from the platform or deck.

- i) Openings through guards shall be of a size that prevents the passage of a spherical object having a diameter of 102mm (4").
- ii) Guards shall be designed so that no member, attachment or opening above the platform or deck will facilitate climbing.

8.3.5.6 Above ground pools that are provided with a removeable ladder must either:

- i) Remove the ladder when the pool is not in use and stored in a secure location not less than 1.22 metres (4 feet) from the side of the pool walls, or,
- ii) The removable pool ladder shall be enclosed in accordance with this by-law and shall be equipped with a gate in accordance with this By-law.

### 8.3.6 SPAS

8.3.5.1 Outdoor spas need not be enclosed by a pool enclosure provided they are enclosed by a solid, locked cover capable of holding not less than 91 kg (200 lbs) that is secured over the entire water surface when not in use.

### 8.3.7 OTHER MATERIALS

8.3.7.1 Other fencing materials may be approved by the Chief Building Official where it can be demonstrated that the material will perform with an equivalent degree of safety as outlined in this by-law.

### 8.3.8 PROHIBITED MATERIALS

8.3.8.1 No barbed wire or anything having similar dangerous characteristics are permitted as a component of a pool enclosure.

8.3.8.2 No electrical current is permitted to be connected to or conducted through any part of a pool enclosure.

### 8.3.9 TEMPORARY FENCING

8.3.9.1 For a period of not more than two weeks, sections of a permitted pool enclosure can be replaced with temporary fencing material such as plastic mesh to facilitate maintenance or access to the pool area, provided the temporary fence mate:

- a) is at least 1.22 metres (4 feet) in height securely supported by posts spaced not more than 1.8m (6 feet) apart;
- b) securely fastened to the remaining sections of the pool enclosure; and
- c) has openings that are not greater than 38mm x 38mm (1.5 inches x 1.5 inches) in size.

#### 8.3.10 EXISTING POOL ENCLOSURES

8.3.10.1 The provisions of this by-law shall not prevent the use of an existing pool and/or pool enclosure if that pool enclosure was constructed prior to the effective date of this by-law in accordance with the regulations of By-law 94-59, or any predecessor to that by-law and has been maintained continuously in accordance with those regulations.

8.3.10.2 At such time as an existing pool enclosure is replaced or proposed to be altered in whole or in part, a permit is required for the replacement or alteration of the pool enclosure and shall be constructed in accordance with this by-law.

8.3.10.3 Where an existing pool enclosure has enclosed a pool in accordance with the regulations that existed prior to the effective date of this by-law, and has been maintained continuously in accordance with those regulations, and that pool enclosure also marks the boundary between abutting properties, the shared portion of the pool enclosure between the abutting properties may form part of a new pool enclosure for a pool on the abutting property which shall be deemed to be in conformity with this by-law. All other portions of the new pool enclosure that enclose the newly constructed pool shall meet the standards set out in this by-law.

8.3.10.4 A permitted pool enclosure constructed in accordance with this by-law shall be maintained in good condition at all times.

### 9. PENALTIES

- 9.1 Any person who contravenes any provision of this by-law is guilty of an offence and is liable to the surcharges as determined in accordance with the City of Barrie Fees By-law.
- 9.2 Where any person contravenes any provision of this by-law, a Notice of Violation will be issued to the person named in the notice requiring compliance within the timeframe specified in the notice.
- 9.3 A Notice of Violation may be registered against the land to which it applies, and the City is entitled to enforce its provisions against the owner and any person acquiring any interest in the land subsequent to the registration of the Notice of Violation.
- 9.4 Where a Notice of Violation has been issued by the City and compliance has not been achieved within the required time period as set out in the Notice of Violation the City may, through its employees and agents or persons acting on its behalf, enter upon the land to carry out the necessary measures to comply with the Notice of Violation or to drain, fill in or fence the pool at the expense of the person and any and all expenses incurred may be added to the tax roll of the subject property and collected from the owner of the subject property in the same manner as municipal taxes, or in any other manner available to the City, including by action.
- 9.5 Every person who contravenes any provisions of this by-law is guilty of an offence and is liable to the penalties as prescribed in City of Barrie Fees and Charges By-law, Schedule K as amended.



- 9.6 The CBO shall determine the required surcharges fees for enforcement services in accordance with the City of Barrie Fees and Charges By-law, Schedule K as amended and the applicant shall pay such fees, in addition to any other fees applicable through other by-laws, regulations and legislation.

**10. BY-LAW REPEALED**

- 10.1 **THAT** By-law 94-59, as amended is hereby repealed.
- 10.2 **THAT** this By-law shall come into force and effect immediately upon final passing thereof.

**READ** a first and second time this 2<sup>nd</sup> day of October, 2024.

**READ** a third time and finally passed this 2<sup>nd</sup> day of October ,2024.

**THE CORPORATION OF THE CITY OF BARRIE**

**“ORIGINAL SIGNED”**

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**MAYOR – ALEX NUTTALL**

**“ORIGINAL SIGNED”**

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**CITY CLERK – WENDY COOKE**