



## CORPORATION OF THE TOWN OF NEWMARKET

### BY-LAW NUMBER 2008-18

A BY-LAW TO REGULATE POOL ENCLOSURES WITHIN THE TOWN OF NEWMARKET.

WHEREAS Sections 8 and 11(3) of the *Municipal Act*, 2001 S.O. 2001, c.25, as amended, (the "*Municipal Act*") authorize a municipality to pass by-laws respecting structures, including fences;

AND WHEREAS it is necessary to repeal By-law Number 1990-80 being A By-law Relating To Privately Owned Outdoor Swimming Pools;

THEREFORE BE IT ENACTED by the Municipal Council of the Corporation of the Town of Newmarket as follows:

#### PART 1 DEFINITIONS

1. In this By-law,

"By-law Enforcement Officer" shall mean the person appointed by the Council of the Corporation of the Town of Newmarket to enforce municipal by-laws;

"display pool" means a pool used to show or advertise pools for commercial purposes;

"hot tub" means a hot tub or Jacuzzi, whirlpool, or spa;

"inflatable pool" means a pool, as defined in this By-law, consisting of an air supported structure which contains, or is capable of containing, water with a depth in excess of 0.61m (2 feet) at any point;

"owner" includes the registered owner, lessee, tenant, or the person in possession of property on which a swimming pool is located;

"pool" means any body of water, which is:

- (a) located outdoors on private property;
- (b) wholly or partially contained by artificial means;
- (c) capable of holding water in excess of 0.61m (2 feet) in depth at any point;
- (d) an open exposed water surface of at least 1m<sup>2</sup> (10.7ft<sup>2</sup>) and includes a hot tub or landscape/decorative pond meeting the above criteria, but for purposes of this By-law does not include any pool which is:
  - (i) a pond or reservoir to be utilized for farming purposes or as part of a golf course,
  - (ii) a pool owned by any public or governmental body, agency or authority,
  - (iii) an existing natural body of water or stream,
  - (iv) a privately owned stormwater management facility;

"permit or pool enclosure permit" means a permit issued under this By-law;

"pool enclosure" means a fence, wall or other structure or combination thereof, including doors or gates, surrounding a pool and restricting access thereto;

"self-closing device" means a mechanical device or spring which returns a pool enclosure gate to its closed position after it has been opened;

"self-latching device" means a mechanical device or latch which is engaged each time the gate is secured to its closed position, which will not allow the gate to be re-opened by pushing or pulling and which will ensure the pool enclosure gate remains closed until unlatched by either lifting or turning the device itself directly or by a key;

"temporary pool" means an inflatable pool or other pool which is designed to be removed periodically on a seasonal or more frequent temporary basis;

"Town" means the Corporation of The Town of Newmarket.

2. The requirements under this By-law are expressed in metric measurements. Any imperial measurement included in this By-law is approximate and is provided for convenience only.

## PART 2 GENERAL PROVISIONS

### Administration

3. This By-law shall be administered by the By-laws Enforcement Officers and By-laws Department.

### Application of By-law

4. This By-law shall apply to all pool enclosures newly constructed, existing or replaced within the Town of Newmarket subject to the provisions as set out in Sections 7 and 8 of this By-law.
5. In the event of any conflict between the provisions of this By-law and any provision of the Fence By-law 2004-63, as may be amended or replaced from time to time, the provisions of this By-law shall prevail over any fence by-law.

### Existing Pool Enclosures

6. The provisions of this By-law shall not prevent the use of an existing 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 1990-80 or any predecessor to that by-law and has been maintained continuously in accordance with those regulations.
7. At such time as an existing pool enclosure is replaced or substantially altered, the replacement or altered pool enclosure shall be constructed in accordance with this By-law.
8. Where an existing pool enclosure was constructed and has been continuously maintained in accordance with the regulations that existed prior to the effective date of this By-law and that pool enclosure also marks the boundary between abutting properties, the shared portion of the pool enclosure may form part of a new pool enclosure for a pool on the abutting property and shall be deemed to be in conformity with this By-law. All other portions of the new pool enclosure surrounding the newly constructed pool shall meet the standards as set out in this By-law.

## PART 3 PROHIBITIONS

9. No person shall construct or install a pool, cause a pool to be constructed or installed, commence the construction or installation of a pool without first obtaining a pool enclosure permit from the By-law Department.
10. No person shall construct or install a pool or cause a pool to be constructed or installed which is not completely enclosed by a pool enclosure in accordance with this By-law.
11. No person shall construct or cause to be constructed any pool enclosure which does not conform to the requirements of this By-law, or permit such non-conforming pool enclosure to continue to enclose a pool.

12. No person shall fill a pool with water or cause a pool to be filled with water or allow water to remain in a pool unless
  - (a) the pool is enclosed by a pool enclosure meeting the requirements of Section 25 of this By-law; and
  - (b) the By-law Enforcement Officer has been notified and the pool enclosure has been inspected and approved by the Town.
13. No person shall remove any part of a pool enclosure if the pool is filled with water.
14. No person shall alter or replace a pool enclosure without having first obtained a permit from the By-law Enforcement Officer.
15. No owner shall fail to ensure that,
  - (a) all gates forming part of the pool enclosure meet the standards of this By-law;
  - (b) all gates forming part of a pool enclosure are locked when the area is not in active use;
  - (c) the lockable lid of any hot tub is closed and locked when the pool area is not in active use unless the hot tub is within a locked approved pool enclosure meeting the requirements of this By-law.
16. No person shall place, pile, attach or lean any object or material against or near a pool enclosure so as to facilitate climbing of the pool enclosure, diminish the structural integrity of a pool enclosure or render the pool enclosure in non-conformity with the provisions of this By-law.
17. No person shall erect a fence adjacent to an existing pool enclosure that does not comply with the requirements of this By-law.
18. No swimming pool shall be erected or constructed on any lands which would interrupt the normal flow of water across said lands.
19. Any fence or enclosure built in respect of a privately-owned outdoor swimming pool shall be so constructed as to provide an unobstructed view of the swimming pool from the residence located on the same property.
20. No part of any fence or enclosure required by this By-law shall consist of barbed wire or possess a danger or injury to a person who comes in contact with the fence, and also any device projecting an electric current through such fence is prohibited.
21. No owner shall discharge or drain or permit any person to discharge or drain any water from any privately owned outdoor swimming pool so as to affect any abutting property.
22. Every owner shall ensure that the draining of any privately owned outdoor swimming pool shall take place at the road where storm sewers or an open ditch are provided.

#### PART 4 APPLICATIONS FOR PERMITS

23. Every application for a pool, hot tub or landscape/decorative pond enclosure permit shall be in a form specified by the By-law Enforcement Officer and accompanied by:
  - (a) two sets of plans showing the location of the pool, all proposed equipment (such as filters and heaters) and proposed pumps, landscape features in relation to property lines, buildings (including decks and sheds), and any easements;

- (i) hot tubs with a lockable lid will need to show location and support of the structure and setbacks
  - (b) complete detailed drawings of the proposed pool enclosure including the location and type of proposed fence, gate and pool equipment and, if a temporary fencing is required, it shall comply with Section 28 of this By-law;
  - (c) the permit fee(s) specified in Schedule "A";
  - (d) the proposed access route for construction of the pool from any public right-of-way to the proposed pool location;
  - (e) if the proposed pool is within an unassumed plan of subdivision, the written approval of the developer/owner of the subdivision.
24. The By-law Officer shall issue a permit for a pool enclosure where the plans submitted appear to comply with the requirements of this By-law and all applicable regulations and by-laws or approvals. Without limiting the generality of the foregoing, the By-law Officer shall not issue the permit for the pool enclosure unless a site alteration permit, if required, has been obtained through the Public Works and Environmental Services Department and the proposed location of the pool and pool enclosure complies with the Zoning By-law and any other applicable regulations, by-laws or approvals.

## PART 5 STANDARDS FOR POOL ENCLOSURES

### Standards For Pool Enclosures

25. Every owner of a pool shall ensure that the pool is enclosed by a pool enclosure that satisfies the following standards:
- (a) Height: The pool enclosure shall extend from the ground to a height of not less than 1.22m (4 feet). Height shall be measured from the effective ground level on the outside (not the pool side) of the pool enclosure;
  - (b) Openings and Materials:
    - (i) Except as provided in (ii), the pool enclosure shall not have any openings that would allow the passage of a spherical object having a diameter greater than 38mm (1.5 inches)
    - (ii) For pool enclosures which are not chain link fences or wood lattice, where the pool enclosure is at least 1.52m (5 feet) high and the vertical distance between each horizontal rail measured from the top of each rail is at least 1.22m (4 feet), the openings in the pool enclosure are permitted to be greater than 38mm (1.5 inches) but not greater than that which would allow the passage of a spherical object having a diameter of 100mm (4 inches);
  - (c) Ground Clearance: The space at any point under the pool enclosure must not exceed 100mm (4 inches) and the ground beneath the enclosure cannot be of a loose gravel or other material which can be easily removed so as to afford access under the pool enclosure;
  - (d) Framing and Braces: All horizontal structural members must be located inside (pool side) of the enclosure to prevent easy climbing;
  - (e) Enclosure: Any gate or fence forming part of a pool enclosure shall be at least 1.22m (4 feet) from the water's edge.

### Gates And Other Access Points

26. Every owner shall ensure that every gate forming part of a pool enclosure
- (a) is constructed in accordance with the standards prescribed in Section 27 of this By-law;

- (b) is equipped with a self-closing device;
  - (c) is equipped with a self-latching device that is at least 1.22m (4 feet) above the established grade, and is not accessible from within the inside of the pool area;
  - (d) is equipped with a lock and, when the pool area is not in active use, shall be kept locked;
  - (e) does not have any member on the exterior face of the gate that would facilitate climbing of the gate.
27. If the gate to the pool enclosure is a double gate access, made up of two gates at the same location,
- (a) one of the two gates shall have a self-closing device and self-latching device;
  - (b) the gate of this double gate access without a self-closing device and a self-latching device shall 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 releasing the latch.

#### Temporary Fence During Construction

28. Temporary fencing shall be a minimum of 1.22m (4 feet) high and rigid and shall be securely attached at any openings when the area is left unattended.

### PART 6 SPECIAL PROVISIONS AND PARTIAL EXEMPTIONS

#### Inflatable Pools

29. Notwithstanding Part 3 of this By-law, if a pool enclosure permit has been obtained with respect to the pool enclosure for an inflatable pool, the temporary pool may be reinstalled and refilled with water without additional permits or inspections provided there have been no alterations to the pool enclosure.

#### Display Pools

30. The owner of a display pool shall erect and maintain around such pool a chain link fence and gates having a mesh of 38mm (1.5 inches) extending from the ground to a height of at least 1.8m (6 feet) or an enclosure of not less than equivalent strength, height and degree of safety, but nothing in this Section shall prevent the use of an outside wall or walls of a building located on the same property as one or more sides to the fence, provided that such wall shall not contain an entrance therefrom.

#### Above Ground Pools and Hot Tubs with Guards

31. The pool enclosure for an above ground pool or hot tub need not comply with Part 5 of this By-law provided:
- (a) the pool is surrounded by a platform or deck at least 0.61m (2 feet) in width;
  - (b) a guard of not less than 1m (3.3 feet) in height, measured from the surface of the platform or deck is provided around any platform or deck;
  - (c) the combined height of the exterior sides of the swimming pool structure and any guard attached thereto is a minimum of 1.8m (6 feet) and a maximum of 2.5m (8.2 feet) in height above the effective ground level;
  - (d) the exterior sides of the pool structure and any outside face of any guard are constructed in a manner that will not facilitate climbing;
  - (e) the outside face of the pool structure, including any attached deck or platform is at least 1.22m (4 feet) from any lot line, or such larger distance as may be required by the Zoning By-law;

- (f) access to the platform or deck is restricted by means of an entrance or gate constructed in accordance with Part 5 of this By-law;
- (g) a hot tub is equipped with a lockable lid which is permanently fixed to the structure and which is locked to prevent access when the hot tub is not actively in use.

#### PART 7 PENALTY PROVISIONS

- 32. Every person who contravenes a provision of this By-law, including an Order issued under this By-law, is guilty of an offence.
- 33. If a pool enclosure has been constructed in contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected.
- 34. If an Order has been issued under this By-law, and the Order has not been complied with, the contravention of the Order shall be deemed to be a continuing offence for each day or part of a day that the Order is not complied with.
- 35. Every person who is guilty of an offence under this By-law shall be subject to the following penalties:
  - (a) Upon a first conviction, the minimum fine shall be \$350.00 and the maximum fine shall be \$100,000.00;
  - (b) Upon a second or subsequent conviction for the same offence, a fine shall be a minimum of \$500.00 and the maximum fine shall be \$100,000.00;
  - (c) Upon conviction for a continuing offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00 for each day or part of a day that the offence continues;
  - (d) Upon conviction of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$500.00 and the maximum fine shall be \$10,000.00.
- 36. For the purposes of this By-law, "multiple offences" means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of a provision of this By-law.
- 37. For the purposes of this By-law, an offence is a second or subsequent offence if the act giving rise to the offence occurred after a conviction had been entered at an earlier date for the same offence.

#### PART 8 OTHER

##### Schedules

- 38. Fees Schedule "A" forms part of this By-law.

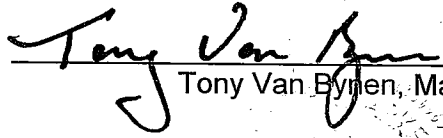
##### Severability

- 39. If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this By-law and it is hereby declared that the remainder of this By-Law shall be valid and shall remain in force.
- 40. Where the provisions of this By-law conflict with the provisions of any other by-law or act, the more restrictive provisions shall apply.

Effective Date

41. This By-law shall come into force and effect on April 1, 2008 at which time By-law 1990-80 is hereby repealed.

ENACTED THIS 25TH DAY OF MARCH, 2008.

  
Tony Van Bynen, Mayor

  
Anita Moore, Town Clerk

SCHEDULE "A" to By-law Number 2008-18  
Permit Fees for Pool Enclosures

<b>Fee Schedule</b>
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Type of Enclosure	Permit Fee
Inground/Onground Pool	\$150.00
Above Ground Pool	\$150.00
Hot Tub	\$150.00
Inflatable Pool	\$150.00
Ponds	\$110.00
Inspection Fee	\$75.00

Notes:

- All applications will receive a safety video
- The Building & By-laws Department will make 2 mandatory inspections. Please allow 24 hours' notice for the following inspections:
  1. Initial on-site inspection after the application is received
  2. When the pool enclosure is complete and prior to occupancy

\*\*\*\* Building and By-laws Department 905-895-5193 X2400

\*\*\*\* Public Works and Environmental Services 905-895-5193 X2500

\*\*\*\* For Locates 1-800-400-2255