

THE COROPORATION OF THE MUICIPALITY OF MARK STAY - WARREN

**BY-LAW NUMBER 2013 – 30**

BEING A BY-LAW TO REGULATE ENCLOSURES AROUND  
PRIVATELY OWNED OUTDOOR SWIMMING POOLS

**WHEREAS** the *Municipal Act 2001*, S.O.2001, c.25, as amended, authorizes a lower-tier municipality to pass by-laws respecting the health, safety and well-being of persons;

**AND WHEREAS** the *Municipal Act*, 2001, as amended, authorizes a lower-tier Municipality to pass by-laws respecting structures, including fences.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF MARKSTAY – WARREN ENACTS AS FOLLOWS:**

**1.0 DEFINITIONS**

In this By-law,

- 1.1 "Above-ground Pool" is a privately owned outdoor swimming pool that is a permanent pool placed on Grade.
- 1.2 "Chief Building Official" means the person duly appointed as such for the Municipality of Markstay – Warren and includes his or her designate.
- 1.3 "Enclosure" means a fence, wall or other structure including gates and doors thereof which surrounds and restricts access to a privately owned outdoor swimming pool.
- 1.4 "In-ground Pool" is a privately owned outdoor swimming pool that is a permanent pool that is physically constructed within the ground.
- 1.5 "On-ground Pool" is a privately owned outdoor swimming pool that is dismantled for the winter season.
- 1.6 "Owner" includes the owner, lessee, tenant or person in possession of the land where the pool is located.
- 1.7 "Person" includes, but is not limited to, an individual, association, firm, partnership, corporation, trust, incorporated company, organization, trustee or agent.
- 1.8 "Pool" means a privately owned outdoor swimming pool.

1.9 "Privately owned outdoor swimming pool" means a body of water located outdoors, contained by artificial means and used for swimming in which the depth of water is 60 centimetres (24") or greater at any point and shall include spas, hot tubs and whirlpools. This definition does not include:

- i) Irrigation ponds on farms used for watering livestock or for use in irrigation; or
- ii) Irrigation ponds on golf course operations used for irrigation, or
- iii) Naturally formed depressions in the ground's surface; or
- iv) A natural body of water; or
- v) Garden ponds, fish ponds, decorative ponds or similar such ponds used as landscaping features; or
- vi) Public pools as defined and regulated by the Building Code Act, 1992, S.O. 1992, c. 23; or
- vii) Storm water management facilities.

1.10 "Temporary enclosure" means an enclosure used for the purpose of temporarily enclosing a pool or pool excavation to effectively prevent access thereto.

1.11 "MUNICIPALITY" means the Corporation of the MUNICIPALITY OF MARKSTAY – WARREN .

## **2.0 GENERAL PROHIBITIONS**

2.1 No person shall implement the use of barbed wire or other barbed or sharp materials in the construction of, or in connection with, a privately owned outdoor swimming pool enclosure.

2.2 No person shall implement the use of electrical current with respect to any privately owned outdoor swimming pool enclosure.

2.3 No person shall excavate for or cause or permit excavation for or erection of, a privately owned outdoor swimming pool without a pool enclosure permit first being obtained from the Town.

2.4 No person shall erect a pool enclosure or any part thereof without a permit.

- 2.5 No person shall place water in or allow water to remain in a privately owned outdoor swimming pool unless the Chief Building Official has inspected the enclosure and confirmed compliance with this By-Law.
- 2.6 Every owner of a privately owned outdoor swimming pool shall ensure that all enclosure requirements specified in this By-Law are complied with.
- 2.7 Notwithstanding the provisions of this By-Law, a pool that is a spa, hot tub or whirlpool and that has a cover that may be locked and that will support a weight of at least 27.2 kg. (60 pounds), is not required to be enclosed by a pool enclosure or temporary enclosure and does not require a permit prior to its installation and use.
- 2.8 The owner of a pool that is a spa, hot tub or whirlpool shall ensure that the cover for such pool remains securely closed and locked at all times when such pool is not in use by the owner, its invitees or licensees.

### **3.0 PERMANENT ENCLOSURE PROVISIONS**

Every owner shall erect and maintain an enclosure around a privately owned outdoor swimming pool that meets the following criteria:

- 3.1 Enclosures shall be a minimum of 1.2 metres (4') in height above grade except that enclosures on multiple residential or non-residential properties shall be a minimum of 1.8 metres (6') above grade. Height measurements shall be taken on the outside of the enclosure.
- 3.2 Enclosures shall be constructed to prevent a spherical object having a diameter of 10 centimetres (4") from passing through the enclosure.
- 3.3 Enclosure components shall not have more than 5 centimetres (2") spacing from grade at any point.
- 3.4 Enclosures shall not be constructed to include a rail or other horizontal or diagonal attachment or bracing on the exterior of the enclosure that would facilitate climbing.
- 3.5 Enclosures shall be constructed whereby a minimum distance of 1.2 metres (4') is maintained between the enclosure and the water's edge and no fixed pool accessories on the pool deck or walking surface shall be closer than 1.2 metres (4') from the pool's edge.
- 3.6 When a wall of a building or other structure forms part of the enclosure, the main entrance or service entrance to the building shall not be located within the swimming pool area unless such entrance is equipped with a self-closing door and equipped with a self-latching device located not less than 1.2

metres (4') above grade including a locking device that must be employed when the pool is unattended. The care, control and maintenance of the entrance way, and the safety latch are and always shall be the responsibility of the owner.

3.7 When a wall of a building or other structure forms part of the enclosure, no window or other opening installed in that wall is permitted unless it is capable of being securely closed and locked.

3.8 A fence enclosure may be of chain link, wood construction, or wrought iron as follows:

(a) A chain link fence must include:

- (i) minimum of 12 gauge galvanized steel wire or 14 gauge vinyl covered steel wire with a maximum of 3.8 centimetre (1.5") mesh;
- (ii) the wire mesh shall be supported by a minimum of 3.8 centimetre (1.5") diameter galvanized steel posts spaced a maximum of 3 metres (10') apart; and
- (iii) top and bottom horizontal rails shall be provided of a minimum 3.8 centimetre (1.5") diameter galvanized steel, except that a minimum 9 gauge wire may be substituted for the bottom horizontal rail.

(b) A wood fence must include:

- (i) minimum of 1.9 centimetre (0.75") by 8.9 centimetre (3.5") vertical boards spaced a minimum of 3.8 centimetres (1.5") apart;
- (ii) vertical boards shall be supported by a top and bottom rail a minimum of 3.8 centimetres (1.5") by 8.9 centimetres (3.5"); and
- (iii) top and bottom rails shall be supported by posts which are a minimum of 8.9 centimetres (3.5") by 8.9 centimetres (3.5") and which are spaced a maximum of 2.44 metres (8') apart.

(c) Wrought iron fences must include:

- (i) minimum 12.5 mm (1/2") by 12.5 mm (1/2") vertical bars spaced to prevent a spherical object having a diameter of 10 centimetres (4") from passing through;
- (ii) vertical bars shall be supported by a top and bottom rail a minimum of 40 mm (1.5") by 40 mm (1.5"); and

(iii) top and bottom rails shall be supported by posts which are a minimum of 63.5 mm (2 ½") by 63.5 mm (2 ½") and which are spaced a maximum of 2.44 metres (8') apart.

(d) Any gate in the fence or wall shall meet the following requirements:

i) shall be of similar chain link fencing or of other material which is not less than the equivalent strength as that of the supporting fence;

ii) have not more than 3.7 (1 ½ inch) centimetre mesh;

iii) have an equivalent degree of safety as the supporting fence;

iv) shall comply with the height requirements for the fence;

v) shall be supported by hinges and be equipped with self-closing self-latching devices on the inside of the gate at a point not less than 1.2 metres (4 feet) in height;

vi) every gate shall be kept closed and latched and/ or locked at all times; and

(vii) no person shall construct or maintain a double swimming pool fence gate without one of the two gates having a self-closing, self-latching device. The gate of the double gate access without a self-closing, 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 moving this device and then releasing the latch.

(e) Enclosures may be constructed of materials other than those specified in Sections 3.8, provided that an equivalent degree of safety is maintained, the enclosure complies with all other provisions of this By-Law and is approved by the Chief Building Official.

3.9 Above ground pools of a minimum height of 1.5 metres (5 feet) above native ground level will not be required to be surrounded by an enclosure, provided the sides of the pool are smooth faced and non-climbable and the step/ladder area provided is enclosed by a fence and gate as per 3.8 of this By-law.

3.10 Where a platform or deck is constructed adjacent to an above ground pool and such platform or deck is higher than 0.6 m (24") above the adjacent grade, a Building Permit is required. The platform or deck and required guard or railing shall conform to the Ontario Building Code.

#### **4.0 TEMPORARY ENCLOSURE PROVISIONS**

Every owner shall erect and maintain a temporary enclosure during all phases of the construction of a privately owned outdoor swimming pool that meets the following criteria:

- 4.1 A temporary enclosure shall be in place prior to commencement of the pool excavation and remain in place until the permanent enclosure has been constructed in compliance with the aforementioned provisions of this By-Law and approved by the Chief Building Official.
- 4.2 A temporary enclosure shall be substantially supported to provide stability, safety and strength.
- 4.3 A temporary enclosure shall consist of a maximum 3.8 centimetre (1.5") plastic mesh supported by steel T-bar posts a maximum of 2.44 metres (8') apart and the mesh shall be reinforced with a minimum 9 gauge galvanized steel wire at both the top and bottom of the enclosure.
- 4.4 A temporary enclosure may be constructed of materials other than those specified in Section 4.3 so long as an equivalent degree of safety is maintained and the enclosure is approved by the Chief Building Official.

#### **5.0 PERMIT APPLICATIONS**

Every person applying for a privately owned outdoor swimming pool enclosure permit shall provide and ensure that:

- (a) An application is completed in its entirety and the following supporting documents and drawings are provided:
  - (i) plans showing the location of all existing structures (including septic system where applicable) on the property in relation to the lot line;
  - (ii) the location of the adjoining street(s);
  - (iii) the location of the proposed pool and enclosure including setbacks to all the lot lines;
  - (iv) pump and filter locations including setbacks to lot lines; and

- (v) location of all gates, labeled as "self-closing" and "self-latching";
- (b) All required permit fees are paid as provided in Schedule A.

## **6.0 SEVERABILITY**

- 6.1 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.
- 6.2 Where the provisions of this By-Law conflict with the provisions of any other By-Law or Act, the more restrictive provisions shall apply.

## **7.0 POWERS OF ENTRY**

- 7.1 The Municipality may enter on a lot at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
  - (a) the provisions of this By-Law;
  - (b) an Order issued under this By-Law; or
  - (c) an Order made under Section 431 of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended.
- 7.2 Where an inspection is conducted by the Municipality , the person conducting the inspection may:
  - (a) require the production for inspection of documents or things relevant to the inspection;
  - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (c) require information from any person concerning a matter related to the inspection including their name, address, phone number and identification; and
  - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 7.3 The Municipality may undertake an inspection pursuant to an Order issued under s. 438 of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended.

7.4 The Municipality's power of entry may be exercised by an employee, officer, or agent of the Municipality or by a member of the ONTARIO PROVINCIAL POLICE force or which has jurisdiction of the policing contract, as well as by any person under his or her direction.

## **8.0 ORDERS AND REMEDIAL ACTION**

8.1 If a person is constructing an enclosure in contravention of any of the provisions of this By-Law, the Municipality may issue an Order to the person and to the owner of the lot on which the enclosure is being constructed, to discontinue the contravening activity. The Order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date by which there must be compliance with the Order.

The Order may be served in accordance with the service provisions contained in this By-Law.

8.2 If a person has contravened a provision of this By-Law, the Municipality may issue a Work Order to the person who contravened or permitted the contravention of this By-law, as well as to the owner of the lot on which the contravention occurred, to do work to correct the contravention. The Order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date by which there must be compliance with the Order. The Order may also provide that if the person or owner fails to correct the contravention, the Municipality may do the work to correct the contravention, including the removal of the enclosure, at the expense of the person and the owner. The Order may be served in accordance with the service provisions contained in this By-Law.

8.3 If the MUNICIPALITY has issued an Order directing or requiring a person or an owner to do a matter or thing to correct a contravention of this By-Law, and the person or the owner has failed to correct a contravention, the Municipality may enter upon the lot between the hours of 8:30 a.m. and 4:30 p.m., Monday to Friday, to do all work necessary to correct the contravention, including the removal of all or part of the enclosure, or the erection of an enclosure, and the Municipality may recover the cost of doing the matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll of the owner and collecting them in the same manner as property taxes.

8.4 An Order issued under this By-Law may be served personally or may be served by registered mail sent to the last known mailing address of the person as indicated on the Town's assessment roll. If an Order is served



on a person by registered mail, it shall be deemed to have been served on the person on the 5<sup>th</sup> day after mailing of the Order, which deemed service may be rebutted by the person proving, on a balance of probabilities, that they did not receive the Order.

## **8.0 PENALTY PROVISIONS**

- 9.1 Every person who contravenes a provision of this By-law, including an Order issued under this By-Law, is guilty of an offence.
- 9.2 If an 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.
- 9.3 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.
- 9.4 Every person who is guilty of an offence under this By-law shall be subject to the following penalties:
- (a) upon a first conviction, to a fine not less than \$100.00 and not more than \$50,000.00;
  - (b) upon a second or subsequent conviction for the same offence, to a fine of not less than \$400.00 and not more than \$100,000.00;
  - (c) upon conviction for a continuing offence, to a fine of not less than \$100.00 and not more than \$10,000.00 for each day or part of a day that the offence continues. The total of the daily fines may exceed \$100,000.00; and
  - (d) upon conviction of a multiple offence, for each offence included in the multiple offence, to a fine of not less than \$100.00 and not more than \$10,000.00. The total of all fines for each included offence is not limited to \$100,000.00.
- 9.5 For the purposes of this By-Law, "multiple offence" means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this By-Law.

9.6 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.

**9.0 ENACTMENT**

This By-Law shall come into force and take effect on the date of its final passing.

READ A FIRST, SECOND AND THIRD ) Donna Flynn  
TIME AND FINALLY PASSED THIS ) MAYOR  
15<sup>th</sup> DAY OF JULY 2013 ) Debra Turner  
CLERK

**SCHEDULE "A" TO BY-LAW 2013- 30**  
**CLASSES OF POOLS AND PERMIT FEES**

ON-GROUND POOLS: FLOOR AREA IN METRES SQUARED X \$ 5.00  
Temporary pools that are dismantled for the winter  
(Including blow-up and tube framed pools)

ABOVE GROUND POOLS: FLOOR AREA IN METRES SQUARED X \$5.00  
Permanent pools constructed with no alteration to  
lot grading and drainage.

IN-GROUND POOLS: FLOOR AREA IN METERS SQUARED X \$5.00 permanent pools  
requiring excavations with no lot grading approvals required

Municipality of Markstay-Warren

PART I Provincial Offences Act

Enclosures around privately owned outdoor swimming pools 2013 - 30

ITEM	Column 1 short form wording	Column 2 Provisions creating or defining offence	Column 3 set fines
1	Excavate for privately owned pool without pool enclosure permit	Section 2.3	\$250
2	Erect a pool enclosure without a permit	Section 2.4	\$100
3	Place water in or allow water to remain in a privately owned swimming pool without inspection by the Chief Building Official	Section 2.5	\$100
4	Fail to maintain a temporary enclosure during construction as specified by by - law	Section 4.0	\$100

- S. 9. Every person who contravenes a provision of the by - law, including an order issued under this by - law, is guilty of an offence, and upon conviction, is liable to a fine to s. 61 of the Provincial Offence Act, R.S.O. 1990, c.P. 33, as Amended.