

Authority: Item 7, Planning Committee
Report 16-006 (PED13126(c))
CM: April 13, 2016

Bill No. 106

CITY OF HAMILTON

BY-LAW NO. 16-

Being a By-law to Regulate Enclosures for Privately-Owned Outdoor Pools, Repealing and Replacing By-law No. 03-125

WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001* authorize the City of Hamilton to pass By-laws necessary or desirable for municipal purposes, and in particular paragraphs 6 and 10 of subsection 10(2) authorize By-laws respecting: the health, safety and well-being of persons; and structures including fences;

AND WHEREAS section 8(3) of the *Municipal Act, 2001*, authorizes the City of Hamilton to regulate or prohibit in respect of matters within its jurisdiction, including fences, and to require persons to obtain permits and provide for a system of obtaining permits in relation to those matters;

AND WHEREAS section 425 of the *Municipal Act, 2001* authorizes the City of Hamilton to pass By-laws providing that a person who contravenes a By-law of the City of Hamilton passed under that Act is guilty of an offence;

AND WHEREAS the *Municipal Act, 2001* authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

DEFINITIONS

1. In this By-law:

“City” means the geographical area of the City of Hamilton or the municipal corporation as the context requires;

“construct”, in all its forms, means to erect, install or materially alter;

“Director” means the Director, Building Division, Planning and Economic Development Department and any successor or his or her delegate;

“effective ground level” means the highest level of the ground within 1.0 m horizontally in any direction from the point being considered;

“enclosure” means any one or more of a fence, wall or structure, including any door, gate or other opening, which surrounds a pool and restricts access to the pool as permitted under sections 13 to 30 of this By-law;

“gate” means a barrier swinging on a vertical axis and includes a door to a structure or building;

“Officer” means the Director, a Building Inspector or a person appointed by Council or by the Director for the enforcement or administration of this By-law and includes a person employed by the City of Hamilton whose duties are to enforce or administer this By-law;

“owner” includes:

- (a) a registered owner of land or the occupier of land on which a pool is being constructed or is located;
- (b) a person for the time being managing or receiving rent for land on which a pool is being constructed or is located, whether on the person’s own account or as agent for any other person, or the person who would receive the rent if the land was let;
- (c) a person who takes possession of land on which a pool is being constructed or is located under a charge or mortgage registered on title; and
- (d) a person authorized in writing by an owner under (a), (b) or (c) to act on their behalf;

“permit”, except where the context requires otherwise, means a permit issued under this By-law; and

“pool” means a body of water that:

- (a) is located outdoors on private property;
- (b) is wholly or partially contained by artificial means; and
- (c) is capable, at any point, of holding water in excess of 0.6 m in depth;

including but not limited to a hot tub or landscape pond, but not including a body of water that:

- (i) is used for the purposes of, including but not limited to, providing water to livestock or irrigation for crops, which are associated with and located on land being used for farming;
- (ii) is on land zoned as rural or agricultural and is not capable, at any point 2.0 m from an edge, of holding water in excess of 0.6 m in depth;
- (iii) is part of a golf course;
- (iv) is owned by any public or governmental entity, including but not limited to an agency or authority;
- (v) is a river, lake, stream or other natural body of water;
- (vi) is a privately-owned stormwater management facility; or

- (vii) is a rain barrel having a height of at least 1.0 mand with no opening greater than 300mm².

APPLICATION AND INTERPRETATION

- 2. Subsections 12(d), 12(f) and 22(b) of this By-law do not apply to an enclosure that was in existence prior to the day of the passing of this By-law. All other provisions of this By-law, as far as they are applicable, apply.
- 3. In the event of a conflict between the provisions of this By-law and the provisions of any other City By-law, the provisions of this By-law prevail.

GENERAL OBLIGATIONS AND PROHIBITIONS

- 4.(1) No person shall construct or permit to be constructed a pool unless a permit has been issued.
- (2) No person shall construct or permit to be constructed a pool or enclosure that is not in compliance with all applicable provisions of:
 - (a) this By-law;
 - (b) other City By-laws, including but not limited to the Site Alteration By-law, the Site Plan Control By-law and the Zoning By-laws;
 - (c) a City development or redevelopment approval, including an approved grading plan;
 - (d) the Ontario Building Code; or
 - (e) any other applicable legislation.
- (3) No person shall place water in a pool or permit water to be placed in a pool unless an enclosure is in place that:
 - (a) has been inspected and approved by an Officer; and
 - (b) is in compliance with all applicable provisions of this By-law.
- (4) Every owner shall apply for a permit under this By-law before constructing or permitting the construction of a pool.
- (5) Every owner shall maintain an enclosure in compliance with all applicable provisions of this By-law and in good repair.

PERMIT PROCESS

Applications

- 5. An owner shall apply for permit before constructing a pool or an enclosure by submitting to the Director a completed permit application form and the application fee.
- 6. The permit application form shall include:

- (a) two sets of scaled and dimensioned plans showing the location of the dwelling, swimming pool, pool pump, filter equipment, the enclosure, all gates and any other openings; and
 - (b) where a pool is to be more than 0.5 m below the effective ground level, two copies of a detailed grading and drainage plan prepared, stamped and signed by a Professional Engineer Licensed in the Province of Ontario, an Ontario Land Surveyor, Architect or Landscape Architect Licensed in the Province of Ontario.
7. To determine compliance with this By-law, the Director may require that the owner:
- (a) submit additional plans or other information as part of the permit application form; or
 - (b) allow an Officer to inspect the land where the pool is being constructed.
8. No permit shall be issued unless:
- (a) the permit application form is complete, including any additional plans or other information if required under subsection 7(a);
 - (b) an inspection is complete if required under subsection 7(b);
 - (c) the pool and enclosure proposed in the completed permit application form is in compliance with all applicable provisions of:
 - (i) this By-law;
 - (ii) other City By-laws including but not limited to the Site Alteration By-law, the Site Plan Control By-law and the Zoning By-laws;
 - (iii) a City development or redevelopment approval, including an approved grading plan;
 - (iv) the Ontario Building Code; and
 - (v) any other applicable legislation.

Permits

9. Where the Director issues a permit, he or she may impose one or more conditions on the permit to ensure that the pool and enclosure are constructed in compliance with all applicable provisions of:
- (a) this By-law;
 - (b) other City By-laws, including but not limited to the Site Alteration By-law, the Site Plan Control By-law and the Zoning By-laws;
 - (c) a City development or redevelopment approval, including an approved grading plan;
 - (d) the Ontario Building Code; and
 - (e) any other applicable legislation.

10. Conditions imposed on a permit by the Director may include but are not limited to requirements that:
 - (a) a temporary enclosure be constructed and maintained, including but not limited to the amount of time it is may be in place;
 - (b) an enclosure be inspected and approved by an Officer before water is placed in the pool.
11. A permit may be revoked by the Director if:
 - (a) the permit was issued in error or on mistaken, false or incorrect information; or
 - (b) construction of the pool and enclosure has not been completed within 12 months from the date the permit was issued.

ENCLOSURES

General

12. Unless otherwise permitted under this By-law, every owner shall construct and maintain an enclosure that:
 - (a) is a minimum of 1.5 m in height measured from the effective ground level on the outside of the enclosure;
 - (b) has no openings when all gates are closed allowing the passage of a spherical object larger than 100 mm in diameter;
 - (c) is located at least 1.0 m from nearest inside pool wall;
 - (d) is located at least 1.2 m from a wall of a building containing doors or windows;
 - (e) has nothing against or near the enclosure that facilitates climbing the enclosure or diminishes the structural integrity of the enclosure; and
 - (f) completely encloses the pool on all sides.
13. Every fence and gate used as part of an enclosure which forms the part of the enclosure that separates the pool from any dwelling on the same property shall be constructed of open mesh chain link fence or equivalent open face construction that does not restrict visibility of the pool from any door or window that is located on the access level of the dwelling, and which has a line of sight to the pool, and the materials used shall comply with the provisions of this By-law.
14. No owner shall construct or maintain an enclosure that is in whole or in part:
 - (a) an overhead garage door;
 - (b) a hedge or other vegetation;
 - (c) barbed wire, chicken wire or any other barbed or sharp material; or
 - (d) a conductor of electricity.

Landscape Ponds

- 15.(1) Despite section 12, an owner may construct and maintain a landscape pond with a securely fastened grate or similar structure:
- (a) capable, at any point, of preventing a person of any size from descending to a depth in excess of 0.6 m;
 - (b) with openings of not more than 38 mm.
- (2) Where a landscape pond cannot or is not constructed and maintained with a grate in accordance with subsection 15(1), the owner shall construct and maintain an enclosure that otherwise complies with this By-law.

Gates

16. Every owner shall construct and maintain any gate to an enclosure with:
- (a) a self-closing device;
 - (b) a self-latching device on the inside of the enclosure that is located at least 1.35 m above the bottom of the enclosure;
 - (c) a lock located on the inside of the enclosure; and
 - (d) be of such construction and height that the gate otherwise complies with the requirements of this By-law for the enclosure.
17. Despite section 16, a secondary gate used occasionally to allow for the passage of vehicles or equipment may be constructed and maintained with a lock located on the inside of the enclosure.
18. Every owner and every adult person in control of a pool shall ensure all gates to an enclosure:
- (a) that are not secondary gates under section 17, are closed and locked at all times except when the owner or a person with the owner's permission is entering, leaving or using the pool; and
 - (b) that are secondary gates under section 17, are closed and locked at all times except when in use to allow for the passage of vehicles or equipment.

Fences

19. Every owner shall construct and maintain a chain link fence that forms all or part of an enclosure with:
- (a) diamond mesh:
 - (i) openings of not more than 38 mm; and
 - (ii) of either 12 gauge galvanized steel wire or 14 gauge galvanized steel wire covered with a vinyl or other approved coating which would give it a total thickness equivalent to 12 gauge galvanized steel wire.
 - (b) support posts:
 - (i) of galvanized steel;

- (ii) at intervals of not more than 3.0 m;
 - (iii) securely imbedded at least 1.2 m below grade or so as not to be frost susceptible;
 - (iv) encased in concrete below grade with at least a 50 mm cover on sides and base;
 - (v) which are end or corner posts, a minimum of 48 mm in diameter; and
 - (vi) which are intermediate posts, a minimum of 38 mm in diameter; and
 - (c) a horizontal top rail and bottom rail of galvanized or vinyl coated steel a minimum of 32 mm in diameter.
20. Every owner shall construct and maintain a vertical board fence that forms all or part of an enclosure with:
- (a) boards:
 - (i) of not less than 19mm by 89mm;
 - (ii) attached to a top and bottom rail; and
 - (ii) spaced at not more than 38 mm or, if a board on board design, at not more than 100mm;
 - (b) support posts:
 - (i) at intervals of not more 2.4 m;
 - (ii) securely imbedded at least 1.2 m below grade or so as not to be frost susceptible;
 - (iii) encased in concrete below grade with at least a 50 mm cover on sides and base;
 - (iv) made, below grade, of natural cedar, pressure-treated wood or treated with a wood preservative that is acceptable to the Director; and
 - (v) a minimum of 89 mm by 89 mmsquare; and
 - (c) a horizontal top rail and bottom rail of not less than 38 mm by 89 mm, and, where the space between the boards is permitted to be greater than 38 mm, the top and bottom rails shall be spaced to provide a minimum clearance of 1.2 m between the rails.
21. Every owner shall construct and maintain a wrought iron, aluminum or vinyl fence that forms all or part of an enclosure with:
- (a) sufficient strength to provide an effective enclosure;
 - (b) no openings allowing the passage of a spherical object larger than 100 mm in diameter;
 - (c) support posts:
 - (i) at intervals of not more 3.0 m;

- (ii) securely imbedded at least 1.2 m below grade or so as not to be frost susceptible; and
 - (iii) encased in concrete below grade at least 50 mm thick; and
- (d) a horizontal top rail and bottom rail at least 1.2 m apart.

Walls

22. Every owner shall construct and maintain a wall of a building or structure that forms all or part of an enclosure with:
- (a) sufficient strength to provide an effective enclosure; and
 - (b) no openings, including no doors or windows, allowing the passage of a spherical object larger than 100 mm in diameter.
23. Despite subsection 22(b), a wall of a building or structure that is accessory to the pool, such as a change room or storage shed, may have walls with openings, including doors or windows, to the pool, if the building or structure has no walls with openings allowing the passage of a spherical object larger than 100 mm in diameter into or out of the enclosure.

Above-Ground Pools

24. Every owner shall construct and maintain their above-ground pool with:
- (a) a total combined height of the above ground pool walls and enclosure guard that:
 - (i) is not less than 1.5 m in height; and
 - (ii) does not facilitate climbing; and
 - (b) any area that provides access to the above-ground pool surrounded by an enclosure which complies with the requirements for enclosures set out in this By-law.
25. Where an above-ground pool cannot or is not constructed and maintained in accordance with section 24, the owner shall construct and maintain an enclosure that otherwise complies with this By-law.

Hot Tubs

- 26.(1) Every owner shall construct and maintain their hot tub with a rigid cover that is capable of supporting a 90 kg load or meets the most up-to-date American Society for Testing and Materials standard for hot tubs.
- (2) Every owner and every adult person in control of a hot tub shall ensure that the rigid cover under subsection 26(1) is securely fastened and locked to prevent access at all times when the hot tub is not in use.

27. Where a hot tub cannot or is not constructed and maintained with a rigid cover in accordance with section 26, the owner shall construct and maintain an enclosure that otherwise complies with this By-law.

Temporary Enclosures

- 28.(1) Every owner shall construct and maintain a temporary enclosure surrounding their pool when the pool does not have, for any reason, an enclosure that otherwise complies with this By-law.
- (2) Unless otherwise authorized by the Director, a temporary enclosure is permitted for not more than 7 consecutive days to allow time for the owner to construct and maintain a permanent enclosure that complies with this By-law.
- 29.(1) Every owner shall construct and maintain a temporary enclosure with:
- (a) diamond mesh fencing:
 - (i) with openings of not more than 38 mm;
 - (ii) of either 12 or 14 gauge galvanized steel wire; and
 - (iii) securely fastened to the support posts at 200 mm centres;
 - (b) "T" support posts:
 - (i) of steel;
 - (ii) at intervals of not more than 2.4 m; and
 - (iii) securely imbedded at least 300 mm below grade;
 - (c) a horizontal top cable and bottom cable:
 - (i) of 11 gauge steel; and
 - (ii) threaded through the diamond mesh fencing and securely fastened to each support post; and
 - (d) no openings, when all openings that provide access are closed, allowing the passage of a spherical object larger than 100 mm in diameter.
- (2) Every owner and every adult person in control of a pool surrounded by a temporary enclosure shall ensure that every opening providing access to the pool is closed and locked at all times except when the owner or a person with the owner's permission is entering or leaving.

ADMINISTRATION AND ENFORCEMENT

General

30. The Director is authorized to administer and enforce this By-law including but not limited to:
- (a) arranging for:
 - (i) the assistance or work of City staff, City agents or the assistance of police

officers;

- (ii) the making of orders or other requirements and the imposition of conditions as authorized under this By-law;
 - (iii) the obtaining of court orders or warrants as may be required;
 - (iv) the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law as deemed necessary; and
- (b) prescribing the format and content of any forms or other documents required under this By-law.
31. The Director may assign Officers to enforce this By-law and Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- (a) carry out inspections;
 - (b) make orders or other requirements as authorized under this By-law; and
 - (c) give immediate effect to any orders or other requirements made under this By-law.
32. The Director may assign duties or delegate tasks under this By-law to be carried out in the Director's absence or otherwise.
33. The Director may approve an enclosure that does not comply with sections 12 to 29 of this By-law where the Director determines that the enclosure would provide an equivalent or greater degree of safety.

Fees

34. All fees referred to in this By-law shall be as set out in the City's User Fees and Charges By-law, or as otherwise set and approved by Council from time to time.

Entry and Inspections

35. An Officer may enter on land at any reasonable time and in accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001* for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) this By-law;
 - (b) a direction or order made under this By-law;
 - (c) a permit issued under this By-law; or
 - (d) an order made under s. 431 of the *Municipal Act, 2001*.
36. An Officer may, for the purposes of the inspection under Section 35 and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*:
- (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 in writing or otherwise as required by the Officer from any person concerning a matter related to the inspection; or
 - (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.
37. An Officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the *Municipal Act, 2001*, in accordance with the conditions set out in that section, where he or she has been prevented or is likely to be prevented from carrying out an inspection under Sections 35 and 36.

Orders including Delivery

38. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.
39. An order under Section 38 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order, which may be of immediate effect should the Officer determine that the circumstances warrant.
40. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do work to correct the contravention.
41. An order under Section 40 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - (b) the work to be completed;
 - (c) the date or dates by which the work must be completed; and
 - (d) notice that if the order is not complied with, then the work may be done at the expense of the owner.
42. Delivery of an order to discontinue a contravening activity made under Section 38 or an order to do work made under Section 40 may be given personally or by registered mail to the last known address of:
- (a) the owner; and

(b) such other persons affected by the order as an Officer determines.

Delivery by registered mail shall be deemed to have taken place five business days after the date of mailing.

43. In addition to delivery in accordance with Section 42, an order to discontinue contravening activity made under Section 38 or an order to do work made under Section 40 may be delivered by an Officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred.
44. Where delivery cannot be given in accordance with Section 42, sufficient delivery is deemed to have taken place when given in accordance with Section 43.
45. Where a time frame is set out in an order for carrying out any action, an Officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the Officer.

City Carrying Out Work

46. Where a person does not comply with a direction or a requirement, including an order, under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction or requirement at the person's expense.
47. Where the costs of doing a matter or thing Section 46 are estimated to be:
 - (a) less than \$10,000, the Director may proceed without further approval and in accordance with the City's Procurement Policy; or
 - (b) \$10,000 or more, the Director may proceed with approval of an authorized person or of Council and in accordance with the City's Procurement Policy.
48. The City may recover the costs of doing a matter or thing under Section 46 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full. The amount of the City's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

Penalties

49. Every person who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is, upon conviction, guilty of an offence and is liable:
 - (a) on a first conviction, to a fine of not more \$10,000; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000.
50. Despite Section 51, where the person convicted is a corporation,
 - (a) the maximum fines in Subsection 49(a) are \$50,000; and
 - (b) the maximum fines in Subsection 49(b) are \$100,000.

51. Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order prohibiting the continuation or repetition of the offence by the person convicted.

GENERAL PROVISIONS

52. By-law No. 03-125 is repealed as of the day on which this By-law comes into force.
53. This By-law may be referred to as the Pool Enclosure By-law or the Hamilton Pool Enclosure By-law.
54. If a court of competent jurisdiction declares any provision of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.
55. This By-law comes into force on January 1, 2017.

PASSED this 13th day of April, 2016.

F. Eisenberger
Mayor

R. Caterini
City Clerk