

THE CORPORATION OF THE TOWNSHIP OF RUSSELL

BY-LAW # 35-2012

Being a by-law to regulate the installation
of swimming pools, spas and other artificial ponds

WHEREAS Section 11 (2) (6) of the *Municipal Act*, 2001, S.O. 2001, Chapter 25, as amended authorizes Council to pass by-laws concerning health, safety and well-being of persons;

AND WHEREAS Section 11 (3) (7) of the *Municipal Act*, 2001, S.O. 2001, Chapter 25, as amended authorizes Council to pass by-laws concerning structures including fences;

AND WHEREAS the Council of the Corporation of the Township of Russell deems it necessary to require fences and gates to be maintained around pools, spas or any other artificial ponds;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF RUSSELL ENACTS AS FOLLOWS:

DEFINITIONS

1. In this by-law, except where a contrary intention appears, the following words have the following meaning:

a) "Council" means the elected member of the Council of the Corporation of the Township of Russell;

b) "Director of Public Safety and Enforcement" means a person in the office of the Director of Public Safety and Enforcement, or authorized assistants;

c) "Enclosure" means any combination of fence, wall or other structure, including doors and gates, surrounding a pool, spa or other pool of water to restrict access thereto. For the purpose of this by-law, a cedar hedge or any other organic material shall not be considered as part of an enclosure;

d) "Fence" means a vertical barrier constructed of chain-link, wood, fiberglass, stone, metal or other material to enclose an area. For the purpose of this by-law, a cedar hedge or any other organic material shall not be considered as part of a fence;

e) "Gate" means a part of a fence that is removable, swinging, sliding or otherwise used as a barrier to block or close an access;

f) "Hot Tub" see definition of spa;

g) "Inflatable Swimming Pool" means a private swimming pool with a depth of water of more than 18 inches (457.2 mm) which the exterior walls are not rigid;

h) "Municipal Law Enforcement Officer" means a Municipal Law Enforcement Officer appointed by the Corporation of the Township of Russell to enforce municipal by-laws;

- i) "Owner" means the registered owner of a property, a lessee, a tenant, mortgagee in possession or person otherwise in charge of any property, acting as the authorized agent of the owner;
- j) "Permit" means a permission or authorization in writing from the Director of Public Safety and Enforcement or its designate to erect or install a pool, spa or other pool of water on a private property;
- k) "Pool" see definition of swimming pool;
- l) "Self-Closing" mean a self-closing hinge or any other type of manufactured device designed to pull a door/gate shut after it has been opened and released;
- m) "Self-Latching Device" means a mechanical device or latch which is engaged each time the swimming pool fence gate is secured to its closed position; which will not allow the swimming pool fence gate to be re-opened by pushing or pulling, and which will ensure the swimming pool fence gate remains closed until unlatched by either lifting or turning the device itself directly or by a key.
- n) "Spa" means a hot tub of varied forms, provided with hydro-jets and holes by which escapes compressed air or water, the water of which is warmed and in movement;
- o) "Swimming Pool" shall mean any privately owned body of water which is contained wholly or in part by artificial means but shall not include any swimming pool that has a holding capacity of 18 inches of water or less in depth, or any pit or quarry contained within a mineral extractive zone, or any body of water created within a agricultural zone for the purpose of providing water to livestock or for irrigation of crops, or any storm water management facility approved by the Township which is constructed or designed to contain storm water run-off from urban areas;
- p) "Township of Russell" means the Corporation of the Township of Russell.

GENERAL REGULATIONS

2. Every owner of a privately-owned outdoor pool or spa shall ensure that the enclosure around such pool is constructed and maintained according to the provision of this by-law.
3. No person shall place water in a pool or spa in the Township of Russell unless the prescribed enclosure has been erected in accordance with the provisions of this by-law.
4. No person shall allow water to remain in a pool or spa in the Township of Russell unless the prescribed enclosure has been erected in accordance with the provisions of this by-law.
5. No person shall drain the water from a swimming pool or spa in a manner that would permit or cause water to drain directly onto adjacent properties.
6. No person shall install swimming pool or spa components or do electrical connections prior to obtaining a permit from the Electrical Safety Authority.
7. No swimming pool or spa or any of its components including walkways, supporting structures, decking or concrete, shall encroach upon any swale on any lot.

PERMIT REQUIREMENTS

8. No person shall excavate for, install, construct or place a pool or spa in the Township of Russell without first obtaining a permit to do so.
9. Despite Section 8, a permit is not required in the case of a swimming pool or spa which has been dismantled and is being reconstructed in the same position, manner and size in which it was previously located provided that:
 - a) a permit was obtained for the original installation, and
 - b) the reinstallation meets the requirements of all currently applicable by-laws.

APPLICATION FOR A PERMIT

10. To obtain a permit, the owner shall file an application in writing by completing the prescribe application at the Township of Russell's office.
11. Except as otherwise permitted by the Director of Public Safety and Enforcement, every application shall:
 - a) identify and describe in detail the work to be covered by the permit for which an application is made,
 - b) describe the land on which the pool or spa is to be located by a description that will readily identify and locate the building lot,
 - c) be accompanied by a plan showing details of the enclosure as well as the exact location of the pool and any equipment listed in Section 15 of this by-law in relationship to the lot lines, buildings and fences. If during the erection of the pool or spa the location differs from the original submitted plan, a new plan shall be submitted,
 - d) be accompanied by the fee as prescribed in the Township of Russell fees by-law, as amended.
 - e) state the names, addresses and telephone numbers of the owner of the property and the contractor performing the work.
12. A permit that has not been completed or that did not have a final inspection of the works within 1 year of its purchase shall be deemed invalid and the owner shall not be entitled to a refund. Furthermore, an application for a new permit shall be made by the owner.
 - a) the owner shall be responsible for the cost of the new permit,
 - b) the owner shall make an appointment with the Director of Public Safety and Enforcement within 1 year of the date of the issuance of the permit to have the property inspected for compliance,
 - c) If during the inspection, it is determined that sections of this by-law are not complied with, the owner shall make the necessary modification within the prescribed time given by the Director of Public Safety and Enforcement,
 - d) If a re-inspection of the property is required, the owner shall be responsible to pay the re-inspection fees prescribed in the Township of Russell fees by-law,
 - e) When it is determined that a property complies with the provisions of this by-law, the Director of Public Safety and Enforcement shall send a letter of compliance to the owner.

ENCLOSURE

13. No person shall install or cause to be installed a pool or spa which is not completely enclosed by an approved enclosure, in accordance with the following:

- a) Any pool that is less than 4 feet (1.2 metres) in height shall be enclosed within a 4 foot (1.2 meters) high enclosure measured from the ground level to the top of the enclosure.
- b) An enclosure with a minimum height of 4 feet (1.2meters) shall be installed around any inflatable pool or any other type of pool that has diagonal wall, bracing or structure attached to the pool that could be used to climb inside the pool regardless of the height of the pool wall.
- c) There shall be no space greater than 4 inches (10 centimeters) where the enclosure meets the ground or any other surface.
- d) There shall be no space greater than 4 inches (10 centimeters) on any parts of what is being considered the enclosure.
- e) Any swimming pool enclosure shall have all its horizontal structural members located inside the enclosure to prevent easy climbing.
- f) Where such an enclosure is chain link, it shall not have a diamond mesh greater than 2 inches (5 centimeters) per link.
- g) All enclosures shall be installed and maintained in a structurally sound condition so as to prevent access to the swimming pool when the swimming pool is not in use.
- h) Notwithstanding Section 13 of this By-Law an enclosure is not required for a spa provided that:
 - i. The spa is covered with a rigid and locking cover that prevents access to the spa when not being used, and
 - ii. The cover shall be locked to the spa in a manner that would make it impossible to remove except by the owner when the spa is not in use.
- i) Barbed wire or fencing energized by electrical current, sharp projections or any other dangerous characteristics shall not be used as an enclosure for the pool.

GATES

14. Every gate that is part of the fence or enclosure shall:
- a) be of at least 4 feet (1.2 meters) in height measured from ground level to the top of the gate,
 - b) be equipped with a self-closing and self-latching device located at the top and inside of the gate,
 - c) be lockable,
 - d) despite paragraph c), every gate in an enclosure for a pool that adjoins a space that is accessible to the public, including but not limited to a public park, pathway, a golf course, or a highway, shall be lockable and locked at all times except when the gate is being used for access or egress by the property owner or by anyone who has the property owner's consent to enter or leave the property.
 - e) there shall be no space greater than 4 inches (10 centimeters) where the gate meets the ground or any other surface,
 - f) a gate that is more than 5 feet (1.5 meters) wide can be installed without a self-closing device providing that a locking system which requires a key or special knowledge to permit its opening is installed,

- g) Where a wall of a building is used as part of an enclosure, all doors or windows located in the wall of the building shall be equipped with self-closing, self-latching and locking devices.

MOTORS, FILTERS AND OTHER MECHANICAL EQUIPMENT

- 15. The location of the motor, filter and any other mechanical equipment in relation to the property lines shall be in conformity with the Township of Russell's Zoning By-law, as amended.
- 16. A motor, filter or any other part of a pool or spa's mechanical system shall be located no less than 3.25 feet (1metre) from the pool wall unless the pool is completely enclosed within a yard regardless of the height of the pool or spa.

DECKS

- 17. Any deck that is part of an enclosure shall:
 - a) have a railing that is a least 4 feet (1.2 metres) high measured from the ground up,
 - b) be designed in such a manner as to not create a mean of climbing to access the pool or spa,
 - c) have a 4 foot (1.2 metre) high gate shall be installed at the bottom or top of the stairs leading to the deck. The gate shall be measured from the last accessible step.
 - d) there shall be no space greater than 4 inches (10 centimeters) between any parts of the deck assembly.
 - e) there shall be no space greater than 4 inches (10 centimeters) where the gate meets the deck or any other surface.

LOCATION OF THE POOL OR SPA

- 18. The location of the pool or spa on a property shall be subject to the guidelines set out in the Township of Russell's Zoning By-law, as amended.

SETBACK FROM THE SEPTIC TREATMENT UNIT

- 19. The distance of the swimming pool or spa to the septic treatment unit or any component of the septic system shall be subject to guidelines given by the South Nation Conservation Authority.
- 20. Any pool installed on a property where there is an existing septic treatment unit shall be subject to inspections by the South Nation Conservation Authority.

DRAINAGE

- 21. No person shall contravene the Township of Russell By-Law # 79-2011, which is known as the Drainage By-Law, as amended.

TRANSITION

- 22. Any pool, spa, fence or enclosure that was lawfully erected prior to the passing of this by-law shall be deemed to be in compliance and may be maintained as erected.

ENFORCEMENT

- 23. This by-law shall be enforced by the Director of Public Safety and Enforcement or its designate.
- 24. When a property does not meet the requirements of this By-law, the Corporation shall send a notice by registered mail or personal service to the owner or occupant at their last known address requiring them to make the

property conform to the requirements of this by-law and the notice shall specify the time allowed for compliance.

25. Where notice has been sent by the Corporation pursuant to Section 24 of this By-law and the requirements of the notice have not been complied with, the Corporation may cause the work to be done and the Corporation may recover the expense, of such work and administration fees by action or in a like manner as municipal taxes.

RIGHT OF ENTRY

26. The Director of Public Safety and Enforcement or its designate shall have the right of entry on any property for the purpose of enforcing this by-law as per the *Municipal Act*.

OFFENCE

27. Every person who contravenes any of the provisions of this by-law shall be guilty of an offence.

PENALTIES

28. Every person who is convicted of an offence is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, Chapter P. 33, as amended.
29. When a person has been convicted of an offence under the provisions of this by-law,
- a) the Ontario Court of Justice; or
 - b) any court of competent jurisdiction thereafter may in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence.

SEVERABILITY

30. Should any section, subsection, clause or provision of this by-law be declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the by-law shall not be affected, and said section, subsection, clause or provision shall be severable from the remainder of the by-law.

REPEAL

31. That By-law Nos. 44-78, 63-95, 105-95, 56-97, 53-98, ~~42-2011~~ ⁴²⁻²⁰⁰¹ and amendments thereto are hereby repealed in their entirety.

BY-LAW IN FORCE


32. This by-law shall come in force and take effect on the day it is duly adopted by Council.

Read a first and second time, this 22nd day of May 2012.

Read a third time and finally passed this 22nd day of May 2012.



Mayor or Acting Mayor



Clerk or Acting Clerk