

**BY-LAW NO. 2008-36
OF THE TOWNSHIP OF LAKE OF BAYS**

**Being a By-law to Regulate Pool Enclosures
within the Township of Lake of Bays**

WHEREAS Section 11 of the Municipal Act, 2001, S.O. 2001, c. 25 as amended, (the "Municipal Act") authorizes a Municipality to pass By-laws respecting fences;

AND WHEREAS section 8(3) of the Municipal Act authorizes a Municipality to regulate or prohibit matters pertaining to fences and as a part of that power, to provide for a system of approvals and to impose conditions as requirements of obtaining, continuing to hold or renewing the approval;

AND WHEREAS section 446 of the Municipal Act authorizes a Municipality to direct a matter or thing to be done under a By-law to be done at the person's expense should the person fail to do so, and to recover the costs of doing the thing or matter by action or by adding the costs to the tax roll and collecting them in the same matter as taxes;

NOW THEREFORE THE COUNCIL ENACTS AS FOLLOWS:

PART 1

DEFINITIONS AND INTERPRETATION

1. In this By-law:
 - (a) **"Chief Building Official"** means the Chief Building Official of the Township, or any successor to that position, or that person's designate(s);
 - (b) **"Council"** shall mean the Council of the Corporation of the Township of Lake of Bays
 - (c) **"effective ground level"** at any location means the highest level of the ground within 4 feet measured horizontally in any direction from the location under consideration;
 - (d) **"hot tub"** means a hot tub, Jacuzzi, whirlpool, or spa;
 - (e) **"inflatable pool"** means a pool, consisting of an air supported structure which contains or is capable of containing water with a depth in excess of 2 feet at any point;
 - (f) **"owner"** of a property includes the registered owner of the property, whether an individual, firm or corporation and any lessee, tenant, mortgagee in possession, or person occupying or in charge of the property;
 - (g) **"permit"** or **"pool enclosure permit"** means a permit issued under this By-law;
 - (h) **"pool"** means any body of water, which is:
 - i. located outdoors on private property;
 - ii. wholly or partially contained by artificial means, and
 - iii. capable of holding water in excess of 2 feet in depth at any point,

and includes a hot tub or pond used for landscaping meeting the above criteria, but for purposes of this By-law does not include any pool which is:

1. a pond or reservoir to be utilized for farming purposes or as part of a golf course,
 2. a pool owned by any public or governmental body, agency or authority, or
 3. an existing natural body of water or stream;
 4. a privately owned storm water management facility with side slopes less than 20% (5 horizontal to 1 vertical);
- (h) "pool enclosure" means a fence, wall or other structure, or combination thereof, including any door or gate, surrounding a pool and restricting access thereto;
- (i) "self-closing device" means a mechanical device or spring which returns a pool enclosure gate to its closed position within 30 seconds after it has been released;
- (j) "self-latching device" means a mechanical device or latch which is engaged each time the gate is allowed to return 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;
- (k) "temporary pool" means an inflatable pool or other pool which is designed to be removed periodically on a seasonal or more frequent temporary basis; and
- (l) "Township" means the Township of Lake of Bays, or the territory within its jurisdiction as the context may require.

PART 2

GENERAL PROVISIONS

Administration – Chief Building Official

2. This By-law shall be administered by the Chief Building Official. Council hereby delegates to the Chief Building Official all of those powers necessary to fully administer and enforce this by-law, except for the legislative decision as to when to enforce this By-law. The delegated powers may be withdrawn at any time.

Application of By-Law

3. Subject to Section 6, this By-law shall apply to all pool enclosures constructed, existing or replaced, within the Township.
4. No conflict exists between the provisions of this By-law and the provisions of any other By-law or approval, if it is possible to comply with both By-laws, by choosing an alternate type, design, or location for a pool enclosure or pool.
5. Nothing in this By-law permits the location of a pool, deck, platform or other structure in a location, which is not permitted under the Township's Development Permit By-law and or Zoning 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 92-40 and has been maintained continuously in accordance with those regulations.

7. At such time as an existing pool enclosure is replaced or altered, the replacement or altered pool enclosure shall be constructed in accordance with this By-law.
8. 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 portions of the new pool enclosures that enclose the newly constructed pool shall meet the standards 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 Chief Building Official.
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 which complies 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 the By-law, or permit such nonconforming 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, to a depth of 24 inches or greater, unless:
 - (a) the pool is enclosed by a pool enclosure, an approved temporary pool enclosure, meeting the requirements of Section 24 of this By-law; and
 - (b) if the pool is a newly constructed pool, the Chief Building Official has been notified and the pool enclosure has been inspected and approved in writing by the Township.
13. No person shall remove any part of a pool enclosure if the pool contains water to a depth of 24 inches or more.
14. No person shall alter or replace a pool enclosure without having first obtained a permit from the Chief Building Official.
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 entranceways to a pool enclosure, through a wall of a main building, meet the standards of the by-law;
 - (c) all gates forming part of a pool enclosure are locked when the area is not in active use;

- (d) the lockable lid of any hot tub is closed and locked when is not in active use unless the hot tub is within a locked pool enclosure meeting the requirements of the 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 nonconformity 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.

PART 4

APPLICATION FOR PERMITS

18. Every application for a pool enclosure permit shall be in a form specified by the Chief Building Official and accompanied by:
- (a) 2 sets of plans showing the location of the pool, all proposed pool equipment (such as filters, slides and heaters) and proposed landscape features in relation to property lines, buildings (including decks and sheds), and any easements;
 - (b) complete details of the proposed pool enclosure, including the locations and type of proposed fence and gate; and
 - (c) the permit fee(s) specified in the Township's User Fee By-Law;
 - (d) details of the proposed access route for construction of the pool from any public highway to the proposed pool location;
 - (e) written irrevocable consent for the Chief Building Official to enter the property and inspect the progress of construction at any time until the enclosure is complete and approved. This right to enter is in addition to those rights set out in the Municipal Act, 2001.
19. The Chief Building Official shall issue a permit for a pool enclosure where the application submitted appears to comply with the requirements of this By-law and all applicable regulations and By-laws and approvals.

PART 5

STANDARDS FOR POOL ENCLOSURES

20. Every pool enclosure shall satisfy the following standards:
- (a) **Height:** The pool enclosure shall extend from the ground to a height of not less than 4 feet above the effective ground level. Height shall be measured from the effective ground level on the outside (not the pool side) of the pool enclosure;
 - (b) **Opening and Materials:**
 - i. except as provided in (ii) and (iii), the pool enclosure shall not have any openings that would allow the passage of a spherical object having a diameter greater than 1.5 inches;
 - ii. for pool enclosures which is not chain link fences or wood lattice, where the pool enclosure is at least 5 feet in height and the vertical distance between each horizontal rail,

- measured from the top of each rail is at least 4 feet, the openings in the pool enclosures are permitted to be greater than 1.5 inches but not greater than that which would allow the passage of a spherical object having a diameter of 4 inches; or
- iii. for a pool enclosure which is a chain link fence, if the pool enclosure is at least 6 feet in height, the openings in the pool enclosure are permitted to be greater than 1.5 inches but not greater than that which would allow the passage of a spherical object having a diameter of 2 inches;
 - iv. for a pool enclosure which is comprised of wood lattice, the wood shall be at least 0.5 inches in thickness, with openings of less than 1.5 inches;
- (c) **Horizontal Louvers:** Where a pool enclosure is constructed with horizontal louvers.
- i. the louvers must not have a separation exceeding 1 inch measured at right angles to the two surfaces,
 - ii. shall be set at an angle of not less than forty-five degrees to the horizontal; and
 - iii. shall slope upward toward the inside (pool side) of the enclosure;
- (d) **Ground Clearance:** The space at any point from the ground to the underside of the pool enclosure must not exceed 2 inches and the ground beneath the enclosure cannot be of loose gravel or other material which can be easily removed so as to afford access under the pool enclosure.
- (e) **Framing and Braces:** All horizontal structural members must be located inside (pool side) of the pool enclosure to prevent easy climbing; and
- (f) **Location:** subject to Section 20(g), the pool enclosure shall be located:
- i. not less than 2 feet from any enclosure situated outside the pool enclosure that does not meet the requirements of this By-law; and
 - ii. for a pool other than hot-tubs, on level surface being not less than 3 feet from the water's edge of the pool, provided, if the wall of a building is used as part of the pool enclosure, the wall of the building shall be at least 4 feet from the water's edge of the pool; and;
 - iii. for hot tubs, not less than 3 feet from the hot tub, provided if the wall of a building is used as part of the pool enclosure, the hot tub may be placed against the wall.
- (g) **Location (access points):** Any gate or entranceway forming part of a pool enclosure shall be at least 5 feet from the water's edge of the pool.
- (h) **Above Ground Pools:** An above ground pools having a minimum wall height of 1.2m (4') above ground, no horizontal or diagonal members to facilitate climbing, and a removable ladder will not require a pool enclosure.

GATES AND OTHER ACCESS POINTS

Gates:

21. Every gate forming part of a pool enclosure must be:
 - a. constructed in accordance with the standards prescribed in Section 20 of this By-law;
 - b. supported on substantial hinges; capable of supporting 200 lbs. in body weight;
 - c. equipped with a self-closing device;
 - d. equipped with a self-latching device that is a least 4 feet above the ground;
 - e. equipped with a lock, and
 - f. have no member on the exterior face of the gate that would facilitate climbing of the gate.

22. 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, and
 - b. the other 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-moveable object, that prevents access through this gate without lifting or removing this device and then releasing the latch.

23. When a wall or portion thereof, of any building located on the same property as the pool, forms part of the pool enclosure; no entrance to the enclosed pool area is permitted through such wall, unless:
 - a. the entranceway is equipped with doors which are equipped with a bolt or a chain latch at a minimum height of 4 feet above the inside floor level;
 - b. the care, control and maintenance of any such entranceway and safety latch described in Clause (a) of this section, are provided by the owner; and
 - c. the entranceway is located no closer than 4 feet from the edge of the water contained in the swimming pool and containing no stairs or steps within 4 feet from the edge of the water.

TEMPORARY FENCE DURING CONSTRUCTION

24. The owner shall ensure that temporary fencing, meeting the requirements of this Section, is in place during all phases of construction of the pool, such that unauthorized access to the site is prevented. Temporary fencing shall be a 4 foot high snow fence, or such other fencing material with similar visibility, height and rigidity as may be approved by the Chief Building Official in writing, and shall be securely attached at any openings when the area is left unattended.

PART 6

SPECIAL PROVISIONS AND PARTIAL EXEMPTIONS

Temporary Pools

25. Despite Part 3 of this By-law, if a pool enclosure permit has been obtained with respect to the pool enclosure for a temporary 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.

Hot Tubs:

26. Despite Part 3 of this By-law, no permit or pool enclosure is required for a hot tub which is:
- a. equipped with a substantial cover, capable of holding 200 lbs. which is permanently fixed to the structure and which is locked to prevent access when the structure is not in use; or
 - b. equipped with a guard meeting the requirements of Section 28 of this By-law.

Above Ground Pools and Hot Tubs with Guards:

27. The pool enclosure for an above ground pool or hot tub need not comply with Part 5 of this By-law [except as in subsection (f)] provided:
- a. the pool access is by way of a platform or deck at least 4 feet in width;
 - b. a guard of not less than 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 pool structure and any guard attached thereto, is a minimum of 6 feet and a maximum of 8 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 3 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 the By-law.

PART 7
ADMINISTRATION

Penalties:

28. Every person who contravenes any provision of this By-law is guilty of an offence, and is liable upon conviction to a fine under the Provincial Offences Act, or not more than \$5,000.00 exclusive of costs.
29. In addition to the penalties contained in section 28, if a person has contravened this by-law, the Chief building Official may issue an Order to Discontinue pursuant to section 444 of the Municipal Act, 2001; or a Work Order pursuant to section 445 of the said Act; or both. If a person fails to comply with any such order within the time set by the Order, the work to be done to correct the situation shall, upon the Chief Building Official issuing a written notice to the person to that effect, be done at the expense of the person, and the costs so incurred, together with interest at the maximum rate permitted by section 446 of the said Act, shall be recovered in the manner permitted by that section.

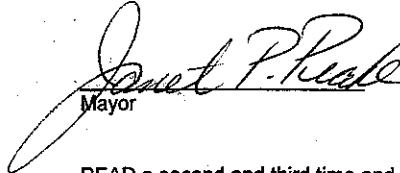
Severability:


30. if a Court of competent jurisdiction declares any provisions or part of a provision of this By-law to be invalid or to be of no force an effect, it is the intention of the Council in enacting this By-law that each and every other provision of this By-law authorized By-law, be applied an enforce in accordance with its terms to the extent possible, according to law.

Short Title:

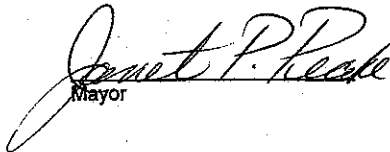
31. This By-law may be referred to and cited as the "Pool Enclosure By-Law".
32. By-law 92-40 is hereby repealed. References in any other By-law, Condition of Approval, or Agreement to By-law 92-40, shall be deemed to be references to this By-law.

READ a first time this 8th day of April, 2008.


Mayor


Clerk

READ a second and third time and finally passed this 8th of April, 2008.


Mayor


Clerk