



THE CORPORATION OF THE CITY OF WATERLOO

BY-LAW NUMBER 2013 - 018

BEING A BY-LAW TO PROVIDE FOR THE REGULATION OF POOL ENCLOSURES WITHIN THE CITY OF WATERLOO

***WHEREAS** section 11(3)(7) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, (the "Municipal Act") authorizes a municipality to pass by-laws respecting structures;*

***AND WHEREAS** section 8(3) of the Municipal Act authorizes a municipality to regulate or prohibit matters pertaining to pool enclosures 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 11(2)(6) of the Municipal Act authorizes a municipality to regulate matters related to health, safety and well-being of the inhabitants of the municipality;*

***AND WHEREAS** section 446 of the Municipal Act authorizes a municipality, under a by-law, to direct or require a person to do a matter or thing and the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense, and the municipality may recover the costs of doing the matter or thing from the person by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;*

***AND WHEREAS** section 425 of the Municipal Act authorizes a municipality to pass a by-law providing that a person who contravenes a by-law of the municipality is guilty of an offence;*

***AND WHEREAS** section 429 of the Municipal Act authorizes a municipality to establish a system of fines for the offences under a by-law;*

**THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE
CITY OF WATERLOO ENACTS AS FOLLOWS:**

1. Definitions

For the purpose of this by-law the following terms shall have the corresponding meanings set out below:

“Building Code Act” means the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended (the “Building Code Act”);

“Building Inspectors” mean inspectors for the City appointed under section 3 of the Building Code Act;

“Chief Building Official” means the Chief Building Official for the City appointed under section 3 or 4 of the Building Code Act;

“City” means The Corporation of the City of Waterloo;

“Director” means the Director of By-law Enforcement of the City, or his or her designate(s);

“Effective Ground Level” at any location means the highest level of the ground within 1.22 metres (4 feet) measured horizontally in any direction from the location under consideration;

“Fees and Charges By-law” means By-law #2012-061, as amended or replaced from time to time;

“Fence” means a protective, enclosing, or visual barrier of posts, wire, boards, rails, pickets, pilings, wood, metal, fiberglass, plastics, masonry, or similar materials or any combination thereof, and includes a wall or partition that is not an integral part of a building, but does not include a trellis or arbor;

“Hot Tub” means a hot tub, 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 0.6 metres (2 feet) at any point;

“Municipal Law Enforcement Officer” means an individual appointed by the Council of the City pursuant to s. 15 of the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended;

“Owner” includes the registered owner of a property and any lessee, tenant, mortgagee in possession, or person occupying or in charge of a property;

“Permit” or “Pool Enclosure Permit” means a permit issued by the Director;

“Person” means an individual, firm, corporation, partnership, association or organization, including a charitable organization;

“Pool” means any body of water:

- (a) located outdoors on private property;
- (b) wholly or partially contained by artificial means;

- (c) capable of holding water in excess of 0.6 metres (2 feet) in depth at any point;
- (d) has an open exposed water surface of at least 1 metres (10.7 square feet); and
- (e) includes a Hot Tub or landscape 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 storm water management pond; or
 - v. a privately owned storm water management facility.

"Pool Enclosure" means a Fence, wall or other structure, or combination thereof, including any door or gate, surrounding a Pool and restricting access thereto;

"Property Standards By-law" means By-law #2010-095, as amended or replaced from time to time;

"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 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 installed temporarily and removed periodically on a seasonal or more frequent temporary basis; and

"Zoning By-law" means City By-law #1108 and City By-law #1418, as amended or replaced from time to time.

2. Administration

- 2.1 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.
- 2.2 This by-law shall be administered by the Director or his or her designate.

3. Permits

- 3.1 A Permit is required for any Pool Enclosure erected or located within the City with the exception of the Pool Enclosures covered by section 7 of this by-law.
- 3.2 The Director may require the following documents for any Permit:
- (a) the written permission of the property Owner;
 - (b) a completed application form as prescribed by the Director;
 - (c) duplicate copies of a current plan of survey certified by a registered Ontario Land Surveyor on which is shown the location of the proposed Pool Enclosure in relation to the Pool, boundaries of the lot, adjacent streets, and any building on the lot;
 - (d) duplicate copies showing the plan, elevation, and cross-section views of the proposed Pool Enclosure and Pool Enclosure structure, including the dimension, design, and material;
 - (e) where applicable, drawings and specifications in duplicate showing the parts of the building to which the proposed Pool Enclosure is to be attached;
 - (f) proof that the Pool Enclosure has been designed appropriately according to the Property Standards By-law; and
 - (g) the appropriate fee as set out in the Fees and Charges By-law.
- 3.3 Documents submitted as part of a Pool Enclosure Permit application shall be submitted on paper no larger than 8 ½ by 14 inches.
- 3.4 The Director shall issue the Permit for a Pool Enclosure if all the provisions of this by-law, and any other applicable law, including the Building Code Act, any by-laws of the Regional Municipality of Waterloo, and any Ontario Provincial guidelines have been complied with.

3.5 Any proposed changes in design or location to a Pool Enclosure subsequent to construction shall require a new Pool Enclosure Permit.

4. Revocation of Permits

4.1 The City may revoke a Permit under any of the following circumstances:

- (a) Where the Permit has been issued in error by the City;
- (b) Where false, mistaken, incorrect or misleading information or undertaking has been provided to the City; or
- (c) Where the Pool Enclosure Permit does not conform to this by-law or any condition of approval under this by-law.

5. Expiry of Permits

5.1 A Permit issued by the City shall expire:

- (a) six months from the date of issuance unless the Pool Enclosure has been erected for its intended purposes; and
- (b) where changes have been made to the Pool Enclosure design or location.

6. Application of By-Law

6.1 Subject to section 7, this by-law shall apply to all Pool Enclosures constructed, existing or replaced within the City.

6.2 Except as noted in section 7, in the event of any conflict between the provisions of this by-law and any provision of the By-law 2013- 017 (the Fence By-law), as may be amended or replaced from time to time, the provisions of this by-law shall prevail.

6.3 Notwithstanding section 7:

- (a) No conflict exists between the provisions of this bylaw 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; and
- (b) Nothing in this by-law permits the location of a Pool, deck, or platform or other structure in a location which is not permitted under the Zoning By-law.

7. Existing Pool Enclosures

- 7.1 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 05-88, or a predecessor to that by-law and has been maintained continuously in accordance with those regulations.
- 7.2 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.
- 7.3 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 where the Pool Enclosure is located between abutting properties, the Pool Enclosure 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 other portions of the new Pool Enclosure that enclose the newly constructed Pool shall meet the standards set out in this by-law.

8. Prohibitions

- 8.1 No Person shall construct or install a Pool, cause a Pool to be constructed or installed, or commence the construction or installation of a Pool, without first obtaining a Pool Enclosure Permit from the Director.
- 8.2 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.
- 8.3 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.
- 8.4 No Person shall fill a Pool with water, 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, other than an approved temporary Pool Enclosure, meeting the requirements of section 13 of this by-law; and,
 - (b) the Pool is a newly constructed, the Director has been notified and the Pool Enclosure has been inspected and approved by the City of Waterloo.
- 8.5 No Person shall remove any part of a Pool Enclosure if the Pool is filled with water.
- 8.6 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 this by-law;
 - (c) all gates forming a part of a Pool Enclosure are locked when the area is not actively in use; and
 - (d) a Hot Tub is fitted with a lockable lid or cover that complies with the American Society of Testing Materials (ASTM) Standard F1346-91 (2010) as amended, clauses 9.1, 9.2, and 9.4.
- 8.7 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 to be in non-conformity with the provisions of this by-law.
- 8.8 No Person shall erect a structure against or near a Pool Enclosure so as to facilitate the climbing of the Pool Enclosure, diminish the structural integrity of a Pool Enclosure or render the Pool Enclosure to be in non-conformity with the provisions of this by-law.
- 8.9 No Person shall erect a Fence adjacent to an existing Pool Enclosure that does not comply with the requirements of this by-law.
- 8.10 No Person shall fail to comply with the terms set out in this by-law.

9. Standards for Pool Enclosures

- 9.1 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 1.52 metres (5 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:** the Pool Enclosure shall not have any opening that would allow the passage of a spherical object having a diameter greater than 38 millimetres (1.5 inches), except:
 - i. for Pool Enclosures that are not chain link fences or wood lattice, where the Pool Enclosure is at least 1.52 metres (5 feet) high, with the vertical distance between each horizontal rail measured from

the top of each rail is at least 1.22 metres (4 feet), the openings in the Pool Enclosure are permitted to be greater than 38 millimetres (1.5 inches) but not greater than that which would allow the passage of a spherical object having a diameter of 10 centimetres (4 inches); and

- ii. for a Pool Enclosure that is a chain link fence, where the Pool Enclosure is at least 1.83 metres (6 feet) in height, the openings in the Pool Enclosure are permitted to be greater than 38 millimetres (1.5) inches but not greater than that which would allow for the passage of a spherical object having a diameter of 50 millimetres (2 inches);

(c) **Lattice:** where a Pool Enclosure is comprised of wood lattice:

- (i) the wood shall be at least 13 millimetres (0.5 inches) in thickness,
- (ii) the supports shall have a vertical brace every 0.6 metres (2 feet) on the Pool side of the property, and
- (iii) the openings are less than 38 millimetres (1.5 inches);

(d) **Horizontal Louvers:** where a Pool Enclosure is constructed with horizontal louvers:

- (i) the louvers may not have a separation exceeding 25 millimetres (1 inch) measured at right angles to the two surfaces,
- (ii) shall be set at an angles of not less than forty-five degrees to the horizontal; and
- (iii) shall slope upward toward the inside (Pool side) of the enclosure;

(e) **Ground Clearance:** the space at any point under the Pool Enclosure must not exceed 50 millimetres (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;

(f) **Framing and Braces:** all horizontal structural members must be located inside (Pool side) of the enclosure to prevent easy climbing;

(g) **Location:** subject to section 7, the Pool Enclosure shall be located:

- (i) not less than 0.6 metres (2 feet) from any Fence or structure;
 - (ii) for Pools, other than Hot Tubs, on a level surface being not less than 0.9 metres (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 1.22 metres (4 feet) from the water's edge of the Pool; and
 - (iii) for Hot Tubs, not less than 0.9 metres (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; and
- (h) **Location (access points):** any gate or entranceway forming part of a Pool Enclosure shall be at least 1.52 metres (5 feet) from the water's edge of the Pool.

10. Gates

10.1 Every Owner shall ensure that every gate forming part of a Pool Enclosure:

- (a) is constructed in accordance with the standards prescribed in section 9 of this by-law;
- (b) is supported on substantial hinges, capable of supporting 90.72 kg (200 lbs) in body weight;
- (c) is equipped with a Self-Closing Device;
- (d) is equipped with a Self-Latching Device that is at least 1.22 metres (4 feet) above the established grade;
- (e) is equipped with a lock; and
- (f) does not have any member on the exterior face of the gate that would facilitate climbing of the gate.

10.2 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 gate of the 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.

11. Entrances Through Buildings

- 11.1 When a wall or portion thereof of any building located on the same property as the Pool forms part of the Pool Enclosure, no entrances to the enclosed Pool area are 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 1.83 metres (6 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 subsection are provided by the Owner; and
 - (c) the entranceway is located no closer than 1.22 metres (4 feet) from the edge of the water contained in the Pool and containing no stairs or steps within.

12. Temporary Fence During Construction

- 12.1 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.
- 12.2 Temporary fencing shall be of 1.52 metres (5 foot) high snow fence, or such other fencing material with similar visibility, height and rigidity as may be approved by the Director in writing, and shall be securely attached at any openings when the area is left unattended.
- 12.3 Notwithstanding section 8.5 of this by-law, if a Pool Enclosure is damaged and requires replacement or repair, water may remain in a Pool enclosed by a temporary Pool Enclosure with the permission in writing of the Director pending the replacement or repair of the Pool Enclosure, subject to any time limits which may be imposed by the Director.

13. Temporary Pools

- 13.1 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.

14. Hot Tubs

14.1 Notwithstanding 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 in accordance section 8.6 (d); or
- (b) equipped with a guard meeting the requirements of section 15 of this by-law.

15. Above Ground Pools and Hot Tubs with Guards

15.1 The Pool Enclosure for an above ground Pool or Hot Tub need not comply with Part 9 of this by-law provided:

- (a) the Pool is surrounded by a platform or deck at least 0.6 metres (2 feet) in width;
- (b) a guard of not less than 1 metre (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 Pool structure and any guard attached thereto is a minimum of 1.83 metres (6 feet) and a maximum of 2.5 metres (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 0.9 metres (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 section 10 of this by-law; and
- (g) if the Pool is constructed without a deck the vertical sides and assemblies are constructed and maintained in such a manner to prevent the climbing thereof and the enclosure is at least 1.52 metres (5 feet) in height.

16. Inspection

16.1 The City may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) this by-law; or

(b) an order made under s. 431 of the Municipal Act.

16.2 For the purposes of conducting an inspection pursuant to s. 16.1 of this by-law, the City may, in accordance with the provisions of s. 436 of the Municipal Act:

(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; 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.

17. Order to Discontinue Activity

17.1 Where the Director has reasonable grounds to believe that a contravention of this by-law has occurred, the Director may make an order requiring the Person who contravened this by-law, or who caused or permitted the contravention, or the Owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity.

17.2 An order under section 17.1 of this by-law shall set out:

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and,

(b) the date by which there must be compliance with the order.

18. Work Order

18.1 Where the Director has reasonable grounds to believe that a contravention of this by-law has occurred, the Director may make an order requiring the Person who contravened this by-law, or who caused or Permitted the contravention, or the Owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.

18.2 An order under section 18 of this by-law shall set out:

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and,

(b) the work to be done and the date by which the work must be done.

18.3 An order under section 18 of this by-law may require work to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.

19. Remedial Action

19.1 If a Person fails to do a matter or thing, including comply with an order under this by-law, as directed or required by this by-law, the City may, in default of it being done by the Person directed or required to do it, do the matter or thing at the Person's expense. In addition to any other remedy, the City may recover the costs of doing a matter or thing from the Person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes.

19.2 The costs outlined in section 19.1 of this by-law shall include interest calculated at a rate of 15 per cent, calculated for the period commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

19.3 The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the City shall register a discharge of the lien in the proper land registry office.

20. Enforcement

20.1 This by-law may be enforced by Municipal Law Enforcement Officers or Building Inspectors.

21. Penalties

21.1 Every Person who contravenes any of the provisions of this by-law is guilty of an offence and shall, upon conviction thereof, forfeit and pay a penalty as set out in this by-law. All contraventions of this by-law are designated as continuing offences.

21.2 Every Person who contravenes an order under sections 17 or 18 of this by-law is guilty of an offence and shall, upon conviction thereof, forfeit and pay a penalty as set out in this by-law.

21.3 Every Person, excluding a corporation, who is convicted of an offence is liable to a minimum fine of Three Hundred and Fifty Dollars (\$350.00) and a maximum

fine of Twenty-Five Thousand Dollars (\$25,000.00) for the first offence and a maximum fine of Fifty Thousand Dollars (\$50,000.00) for a subsequent offence.

- 21.4 Every corporation who is convicted of an offence is liable to a maximum fine of Fifty Thousand Dollars (\$50,000.00) for the first offence and One Hundred Thousand Dollars (\$100,000.00) for a subsequent offence.
- 21.5 In addition to the fine amounts set out in sections 21.3 and 21.4, for each day or part of a day that an offence continues, the minimum fine shall be Three Hundred and Fifty Dollars (\$350.00) and the maximum fine shall be Ten Thousand Dollars (\$10,000.00). The total of all daily fines for the offence is not limited to One Hundred Thousand Dollars (\$100,000.00).

22. Collection of Unpaid Fines

- 22.1 Pursuant to s. 441 of the *Municipal Act*, if any part of a fine for a contravention of this by-law remains unpaid after the fine becomes due and payable under s. 66 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, including any extension of time for payment ordered under that section, the Director may give the Person against whom the fine was imposed a written notice specifying the amount of the fine payable and the final date on which it is payable, which shall be not less than twenty one (21) days after the date of the notice.
- 22.2 If the fine remains unpaid after the final date specified in the notice, the fine shall be deemed to be unpaid taxes for the purposes of s. 351 of the *Municipal Act*.

23. Severability

- 23.1 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 and 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 and enforce in accordance with its terms to the extent possible according to law.

24. Effective Date and Repeal

- 24.1 This by-law comes into force and effect on April 1, 2013.
- 24.2 Except as provided by Section 24.3 hereof, By-law Number 05-88, as amended, is repealed on the date this by-law comes into force and effect.
- 24.3 Notwithstanding Section 24.2, the provisions of By-law Number 05-88, as amended, is deemed to continue in force and effect with respect to any and all orders, appeals or prosecutions issued, filed or commenced under that by-law and any assessment, rate, charge, tax, fee, liability or penalty outstanding under By-law 05-88 may be collected as if such by-law had not been repealed.

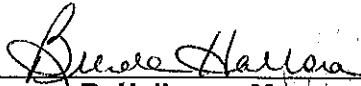
24.4 Provision C-5 of Schedule A, By-law Number 2012-100 and provision C-5 of Schedule A, By-law 2012-061 are hereby repealed.

25. Short Title


25.1 This by-law may be referred to and cited as the "Pool Enclosure By-law".

Enacted this 4th day of March, 2013

Approval	Date	Print Name	Initials
PS	Feb 15	Jim Barry	JB
Legal	Feb 15	P. Krahn	PK
Finance		N/A	



B. Halloran, Mayor



S. Greatrix, City Clerk