

THE CORPORATION OF THE TOWN OF INNISFIL

BY-LAW NO. 052-05

A By-law of the Corporation of the Town of Innisfil prescribing the heights and descriptions of lawful fences in the Town of Innisfil and for the requiring of the owners of privately owned swimming pools to erect and maintain fences and gates around such swimming pools.

WHEREAS Section 11(2) of the *Municipal Act 2001*, S.O. 2001, c. 25, as amended ("*Municipal Act 2001*") allows the Municipality to pass bylaws respecting structures, including fences and signs;

AND WHEREAS it is deemed expedient and necessary to establish fencing restrictions within the Town of Innisfil;

AND WHEREAS under Section 130 of the *Municipal Act 2001* a municipality may regulate matters not specifically provided for by this Act or any other Act for purposes related to the health, safety and well being of the inhabitants of the municipality;

AND WHEREAS under Section 128 of the *Municipal Act 2001*, a local municipality may prohibit and regulate with respect to public nuisances, including matters that in the opinion of council are or could become or cause public nuisances.

AND WHEREAS Section 391(1) of the *Municipal Act 2001* provides that despite any Act, a municipality may pass by-laws imposing fees or charges on any class of persons, for services or activities provided or done by or on behalf of the municipality.

NOW THEREFORE BE IT RESOLVED THAT the Corporation of the Town of Innisfil enacts as follows:

1.0 SHORT TITLE

This by-law shall be known as **The Fence Bylaw**, and shall be applicable to all lands within the corporate limits of the Town of Innisfil.

2.0 DEFINITIONS

In this by-law, the following definitions shall apply:

2.1 "committee" shall mean a Committee of Adjustment or other such committee appointed by Council of the Corporation to hear appeal of this by-law.

2.2 "construct a privately-owned outdoor above-ground or in-ground swimming pool" means to excavate for, construct, build or erect a pool, or to cause or permit another person to excavate for, construct, build or erect a pool.

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- 2.3 “Corporation” means The Corporation of the Town of Innisfil.
- 2.4 “fence” shall mean any fence, wall (other than a wall of a building), gate or other structure or partition made of wood, metal or other substance which is used to enclose, separate, provide privacy or divide, in whole or in part, a yard or other land, or to separate or purport to separate land not under common ownership.
- 2.5 “ground level” shall mean the ground level at the boundary line but where the ground levels are not the same on both sides of the boundary, the higher of such levels shall be considered as ground level for the purposes of the fence.
- 2.6 “ pool”
- (i) means a body of water or an area which is designed to contain a body of water, more than 0.6 metre in depth at any point or more than 500 litres of water, be used for swimming, bathing, wading or ornamental purposes, and shall include man-made water gardens,
 - (ii) includes, without limiting the meaning of sub-paragraph (i) of this paragraph, a structure for such purposes that is located at, below or above ground level, but
 - (iii) does not include a natural body of water or stream.
- 2.7 “permit” means permission or authorization in writing from the Town Official to erect enclosures around pools as regulated by this by-law.
- 2.8 “sight triangle” has the same meaning as in the zoning by-law that applies to the property.
- 2.9 “Town Official” means the officer(s) or employee(s) of the Corporation appointed to administer and enforce this by-law or his or her designate.

3.0 GENERAL PROVISIONS

3.1 Application

- 3.1.1 The requirements of this by-law apply to all properties within the geographic limits of the Corporation, except where otherwise provided.
- 3.1.2 If there is a conflict between a fencing requirement established by another by-law of the Corporation and a fencing requirement of this by-law, the requirement that establishes the higher standard in terms of protecting the health, safety and well-being of the inhabitants of the Corporation prevails to the extent of the conflict.

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- 3.1.3 The requirements of this by-law with respect to pool fences apply equally to both in-ground pools and above-ground pools.
- 3.1.4 The requirements of this by-law do not apply to a fence which is required and approved as a condition of the development or redevelopment of land, and such fence shall be deemed to be in compliance with this by-law.
- 3.1.5 The requirements of this by-law with respect to pool fences do not apply to a pool that is owned by a government or other public agency or authority or a natural occurring body of water or stream, or body of water established by a person and used for watering livestock, irrigation or storm water management.
- 3.1.6 The requirements of this by-law with respect to pool fences do not apply to a pool that was constructed lawfully at a time when no pool fence was required.
- 3.1.7 The requirements of this by-law do not apply to a fence that was constructed lawfully prior to the day on which this by-law came into force. However, the requirements of this by-law become applicable when any change to a fence is made after the day on which this by-law came into force. Additionally, the requirement of this by-law with respect to pool fences apply to a fence whose purpose changes as a result of a pool being constructed after the day on which this by-law comes into force and which now acts as a pool fence.
- 3.1.8 The requirements of this by-law with respect to the height and material used and electrification do not apply to a fence on an agricultural property that is necessary for agricultural purposes.
- 3.1.9 The requirements of this by-law with respect to the height of fences do not apply to a fence surrounding a sports or recreational facility that was constructed lawfully.

3.2 Maximum Height - RESIDENTIAL

No person shall erect, construct or maintain a fence in a residential zone or on a property that's principle use is of a residential nature greater than 1.82 metres (6 feet) in height in the Corporation, notwithstanding a fence within 6.1 metres (20 feet) of the front lot line shall be restricted to not more than .9 metres (3 feet). Both of which shall be measured from ground level to the highest point on the fence.

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3.3 Maximum Height– COMMERCIAL/INDUSTRIAL/INSTITUTIONAL

Subject to the requirements of other applicable By-laws, no person shall erect, construct, or maintain a fence in a commercial or industrial zone or on a property that's principle use is of a commercial, industrial or institutional nature greater than 2.4 metres (8 feet) in height in the Corporation.

3.4 Barbed Wire

Subject to Section 3.4 of this by-law, no person shall erect, construct or maintain a fence composed wholly or partly of barbed wire or other barbed material in the Corporation, unless such barbed wire or other barbed material is cantilevered from the top of such fence in a direction away from adjacent properties, including highways, and is at a height of not less than 2.1 metres (7 feet) above ground level.

3.5 Barbed Wire Exemption

Despite Section 3.3, a person may construct a fence consisting wholly or partly of barbed wire or other barbed material on or around an agricultural property, industrial property, public utility, installation for the generation and distribution of electricity, pipeline values, storage site for chemicals or explosives, sludge pit or other property used for a similar or related purpose.

3.6 Existing Barbed Wire

Section 3.3 of this by-law shall not prohibit an existing barbed wire fence enclosing land assessed for farm/commercial/industrial/institutional purposes at the coming into effect of this by-law and continuing to be so assessed.

3.7 Electrified Wire

No person shall construct a fence consisting wholly or partly of electrified wire material on or around a residential property or on or around a residential property or on or around a non-residential property that adjoins a residential property, highway or public property.

3.8 Electrified Wire Exemption

Despite Section 3.5 a person may construct a fence consisting wholly or partly of electrified wire material on agricultural property, regardless of the use of the adjoining properties.

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3.9 Engineered Designed Fences

Engineered fencing required for the protection of the public adjacent to public lands and constructed for or by the Corporation shall be exempt.

3.10 Maintenance

Every owner shall maintain their fence in good repair and in compliance with the applicable provisions of this by-law.

3.11 Restriction on Municipal Right-of-Way

No person shall, without having statutory authority to do so, erect, construct or maintain in or upon any street in the Corporation any fence, pole, post, pillar or wire or other construction.

3.12 Removal of Restrictions on Municipal Right-of-Way

Any fence, pole, post, pillar or wire or other construction erected, constructed or maintained contrary to the provisions of Section 3.9 of this by-law shall be removed by the person upon whom notice is served in writing. In the event of non-compliance with such notice, the Corporation may cause the same to be removed at the expense of the said owner or occupier and such expense shall be a debt due by such owner or occupier to the Corporation and the same may be recovered in like manner as municipal taxes.

4.0 POOLS

4.1 Permit Requirements

No person is to place water in a privately owned outdoor swimming pool or allow water to remain in such a pool unless there is erected and maintained the fences and gates prescribed by this Section. No person is to construct a privately owned outdoor above-ground or in-ground swimming pool until:

- (a) an application for permit, including plans showing fences and gates are filed with the Town Official , and
- (b) the Town Official issues a permit certifying the approval of such application and plans.

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(as amended by By-law 081-07 – July 25/07)

4.2 Application for a Permit

- (a) To obtain a permit the owner shall file an application in writing by completing the prescribed form ;
- (b) Except as otherwise permitted by the Town Official, every application shall:
 - i) identify and describe in detail the work to be covered by the permit for which an application is made,
 - ii) describe the land on which the pool is to be located by a description that will readily identify and locate the building lot,
 - iii) be accompanied by two (2) complete sets of plans showing details of the enclosure as well as its relationship to lot lines, buildings and fences, wells, septic systems and natural features,
 - iv) be accompanied by the applicable fee, and
 - v) state the names, addresses and telephone numbers of the owner and the contractor performing the work.
- (c) The Town Official may revoke a permit issued:
 - i) if it was issued on mistaken, false or incorrect information;
 - ii) if, after six (6) months after its issuance, the construction in respect of which it was issued has not been seriously commenced;
 - iii) if it was issued in error.

4.3 Conditions of Permit Issuance

4.3.1 Every owner of a privately owned outdoor swimming pool is to enclose such a pool by a fence extending from the ground measured vertically to a height of not less than 1.2 metres (4 feet), constructed of:

- (a) wire of a size not less than twelve (12) gauge galvanized or plastic coated with links of an opening of not more than thirty-eight (38) millimetres (1.5 inches), or
- (b) steel panels or wood materials that are of equivalent strength to the fence described in paragraph 4.3.1 a) of this Section and with no opening therein, other than for a gate, greater than one hundred (100) millimetres (4 inches) in width, or

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(as amended by By-law 036-08 – April 16/08)

- (c) masonry comprised of brick or concrete block with no opening therein from the ground measured vertically to a height of not less than 1.2 metres (4 feet), except for a gate, such fence is to be located so that entry to the swimming pool is only possible by means of one or more gates in such fence.
- (d) a fence shall, if of other materials and construction, be of such character and quality that in the opinion of the Town Official provides and maintains an equivalent degree of safety to the type of fencing specified in Sections 4.3.1(a) through to 4.3.1(c).

Notwithstanding anything contained in this Section a fence is not required to restrict access from the lake of a lakefront property.

4.3.2. The fence described in this Section:

- (a) is to be equipped with a gate or gates, of the same material and height as is described in the above together with locks and self-latching/self-closing devices located and arranged at the top and inside of the gate, so as to prohibit entry by closing and locking when such pool is not under competent supervision, and
- (b) is not to contain barbed wire or any facility for projecting electric current, and
- (c) is not to contain any projections that will facilitate climbing, and
- (d) is to be located more than 1.25 metres (4 feet, 2 inches) from any building or tree or any other projection which would facilitate climbing over the swimming pool fence, and
- (e) is to be setback from the pool by no less than 1.2 metres (4 feet).

4.3.3 Every gate is to be kept closed and locked at all times when the privately owned outdoor swimming pool is not under competent supervision.

4.3.4 The fence enclosing any privately owned outdoor swimming pool may have a wall or wall of a building as part of such fence provided the wall is at least 1.2 metres (4 feet) in height measured vertically from the ground but if the wall has any door or doors, such door or doors are to be kept securely locked when the pool is not under competent supervision.

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4.4 Exemptions – Platform

4.4.1 The provisions of Section 4.3.4 hereof do not apply to a privately owned outdoor swimming pool that has an attached platform if:

- (a) the pool wall has a minimum height of 1.25 metres (4 feet, 2 inches) measured from the abutting grade to the top of the pool wall, and
- (b) the platform is attached to the entire perimeter of the pool at a height of not less than 1.25 metres (4 feet, 2 inches) above grade, and
- (c) the platform deck is a minimum of 1.2 metres (4 feet) around the entire pool; and
- (d) the perimeter of the attached platform is protected by a continuous balustrade of not less than .9 metres (3 feet) in height, and
- (e) the entrance or entrances to such pool have a gate that complies with Section 4.3.2 hereof, but if any structure or other projection is attached or not attached to the wall of the pool that would facilitate climbing, then such structure or projection is to be enclosed by a fence and gates as prescribed in Section 3 hereof.

5.0 HOT TUBS

No person shall install, construct or use any structure commonly known as a “hot tub”, “whirlpool”, or “spa” unless any such structure is provided with a secure cover fully capable of closing the opening thereto and which cover is locked using the manufacture’s recommended lock to prevent access when the structure is not in use. Otherwise, these structures must comply with the respective requirements of Sections 4 of this By-law

6.0 MINOR VARIANCE

6.0.1 Any person may seek an exemption from the requirements of this by-law by applying for a minor variance.

6.0.2 The Committee may grant a minor variance if, in its opinion, the general intent and purpose of the by-law are maintained or if the Committee is satisfied, after allowing input from the applicant and property owners within 30 metres (100 feet), that the variance is appropriate.

6.0.3 The Committee may attach terms and conditions to the minor variance, including the dates for which it is to be in effect. The minor variance shall be invalid if these terms and conditions are contravened.

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- 6.0.4 Where notice is to be provided by the Corporation under this by-law, it will be given by prepaid registered mail or personal service to the last known address of the owner of the property.

7.0 ORDERS

- 7.1 The Town Official may issue Orders under this by-law, directed to an owner or to any person or persons whom he or she believes to have care and control of property on which a fence, swimming pool or swimming pool enclosure is located:

- (a) if a fence or swimming pool enclosure is not constructed or used in accordance with any of the provisions of this by-law or;
- (b) if the construction of a fence or swimming pool enclosure is, in the opinion of such issuer, substantially suspended or discontinued or incomplete, or;
- (c) if a fence or swimming pool enclosure permits, presents, or causes an unsafe condition or hazard to exist.

Such orders issued under this Section shall specify the nature of the contravention, the Section of the by-law contravened and the time allotted for the contravention to be abated.

- 7.2 No person shall hinder or obstruct, or attempt to hinder or obstruct any inspector in the exercise of a power or the performance of a duty under this by-law.

- 7.3 An inspector may enter onto property at any time if the inspector is of the opinion that his or her presence is necessary to address immediate health and safety conditions which appear to present imminent danger or hazards to persons.

7.4 Service of the Order

- (a) The Order shall be served on the owner of the property and such other persons affected by it as the inspector determines and a copy of the order may be posted on the property.
- (b) An Order required by this by-law is to be served personally or by regular mail sent to the known address of the person to whom notice is to be given or to that person's agent for service.
- (c) If the Order is sent by regular mail the service shall be deemed to have been made on the third day after the day of mailing.

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8.0 ENFORCEMENT

- 8.1** The Director of Planning and Development or his/her designate and any Town Official as may be appointed from time to time shall administer this by-law.
- 8.2** This by-law shall be enforced by a Town Official as appointed or his/her designate

9.0 OFFENCES

Every person who contravenes any of the provisions of this by-law is guilty of an offence. For particularity, and not limiting the generality of the foregoing, the owner, lessee and occupant of any property on which a fence is constructed other than in accordance with the provisions of this by-law, with respect to which an offence against this by-law is committed, shall be deemed to have committed an offence.

10.0 PENALTIES

- 10.1** Every person who is convicted of an offence is liable to the maximum fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. 33, as amended.
- 10.2** When a person has been convicted of an offence under this by-law,
- (a) the court in which the conviction has been entered; or
 - (b) any court of competent jurisdiction thereafter, may, in addition to any penalty imposed on the person convicted, issue an Order prohibiting the continuation or repetition of the offence by the person convicted, pursuant to Section 442 of the *Municipal Act*, S.O., 2001, c. 25, as amended from time to time.
- 10.3** If deemed an unsafe situation or an emergency, the Corporation may cause the pool to be temporarily fenced or drained of all water until such time as the required fence has been completed. The cost of such work shall be borne by the property owner and may be collected in a like manner as taxes according to Section 427 (3) of the *Municipal Act*, S.O., 2001, c. 25, as amended from time to time.
- 10.4** Set fines may be established for certain offences contained in this by-law. Such set fines shall be established pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. 33, as amended from time to time, and shall become effective upon the approval of same by the Senior Judge of the Ontario Court of Justice, Provincial Division.

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11.0 LIABILITY

An Owner of a swimming pool and associated pool fence shall be responsible for its upkeep and maintenance and for ensuring compliance with the requirements of this by-law.

12.0 DISPUTES RESPECTING FENCES

12.1 Disputes between property owners regarding fences will be governed by the *Line Fences Act*, R.S.O. 1990, c.L.17. Section 4 of the *Line Fences Act* provides that an owner may request fence-viewers to view and arbitrate the matters in dispute respecting the fence. Following the viewing, the fence-viewers shall make an award respecting the matters in dispute. The award shall state that a fence shall be constructed and maintained and kept up to mark the boundary between adjoining lands, and shall specify the location of the fence, the description of the fence, including the materials to be used, the date by which the construction or reconstruction shall be commenced, and the date by which such work shall be completed, and the proportion of the cost to be paid by each party.

12.2 If the parties involved have a dispute with respect to the location of the fence, the materials being used to construct or reconstruct the fence, maintenance or up keep, the apportionment of the cost of constructing, reconstructing or maintenance of the fence, or other related issues, the owner may notify, in the prescribed form, the Clerk of the Corporation that the owner desires fence-viewers to view and arbitrate the matters in dispute.

12.3 Pursuant to section 10 of the *Line Fences Act* if an owner is dissatisfied with the award the owner may appeal to the referee for the appeals division, within fifteen days of receiving a copy of the award. The decision of the referee is final.

13.0 ENACTMENT

This by-law shall take effect and come into force on and from the date it is passed by Council.

14.0 SEVERABILITY

If a court of competent jurisdiction should declare any Section of this by-law, or part thereof, to be invalid, such Section or part thereof is deemed severable from this by-law and shall not be construed as having influenced Council to pass the remainder of this by-law and it is the intention of Council to pass the remainder of the by-law shall survive and remain in force.

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15.0 REPEAL

By-law # 74-10 and all of its amendments are hereby repealed along with any other by-law passed by the former municipalities of the Township of Innisfil, Village of Cookstown, the Township of West Gwillimbury, the Township of Tecumseth and the Township of Essa.

READ A FIRST AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY PASSED THIS 13th DAY OF JULY, 2005.

Brian H. Jackson, Mayor

Helen E. Cyr, Deputy Clerk