

Authority: Planning and Transportation Committee Report No. 5, Clause No. 9,
as adopted by City of Toronto Council on June 7, 8 and 9, 2000
Enacted by Council: June 8, 2000

CITY OF TORONTO

BY-LAW No. 394-2000

To prescribe the height and description of fences on private property and to require owners of privately owned outdoor swimming pools to erect and maintain fences and gates around the swimming pools.

WHEREAS Council has authority under paragraphs 25, 28 and 30 of section 210 of the *Municipal Act* to pass this by-law;

The Council of the City of Toronto HEREBY ENACTS as follows:

PART 1

1. Definitions

In this by-law:

- (a) CITY means the City of Toronto;
- (b) FENCE means any structure except a structural part of a building used to wholly or partially screen from view, enclose or divide a yard or other land or mark or substantially mark the boundary between adjoining land and includes any hedge or grouping of shrubs used for the same purpose in a front yard or a flankage yard;
- (c) FLANKAGE YARD means the space extended to the rear lot line, between the longer lot line abutting a public highway and the nearest wall of the main building on a corner lot;
- (d) FRONT YARD means the space, extended to the full width of the lot, between the main front wall of a building and the lot line abutting a public highway, but on a corner lot means the space, extended to the full width of the lot, between the shorter lot line abutting a public highway, other than a public lane, and the nearest wall of the building on the lot;
- (e) HEIGHT means vertical distance above grade or, if another reference point is specified, vertical distance above the other reference point;
- (f) MULTIPLE RESIDENTIAL PROPERTY means land other than single residential property that is used for residential purposes only and includes land used for hotels and vacant land abutting multiple residential property;

- (g) **NON-RESIDENTIAL PROPERTY** means land that is used for other than residential purposes and includes land used for both residential and other purposes and vacant land abutting non-residential property;
- (h) **OFFICER** means any City employee assigned responsibility for enforcing this by-law;
- (i) **OUTSIDE**, when used with reference to a swimming pool enclosure, means the side external to the enclosed area in which the pool is located;
- (j) **OWNER** includes the registered owner of any property; the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would so receive the rent if such land and premises were leased; and a lessee or person in charge of the property;
- (k) **PERSON** means an individual, sole proprietorship, partnership, limited partnership, trust or body corporate, or an individual in his or her capacity as a trustee, executor, administrator or other legal representative;
- (l) **SINGLE RESIDENTIAL PROPERTY** means land that is used for not more than two dwelling units in a detached or semi-detached building and vacant land abutting single residential property;
- (m) **SWIMMING POOL** means any outdoor structure or thing located on privately-owned property that is capable of being used for swimming, wading or bathing and in which the water depth at any point can exceed 600 millimetres;
- (n) **SWIMMING POOL ENCLOSURE** means a fence, wall or other structure, including any permitted door, gate or other opening, which surrounds and restricts access to an outdoor swimming pool;

PART 2 - FENCES**2. Prohibited fences**

- (1) No person shall erect, own or maintain, or cause or permit the erection or maintenance of any fence on private property in the City of Toronto that does not comply with this by-law and with any other applicable law.
- (2) No barbed wire, chicken wire or other barbed or sharp material shall be used in any fence unless the fence is permitted by section 3 to exceed 2.5 metres in height and the barbed or sharp material is installed at a height of not less than 2.5 metres on metal brackets inclined towards the enclosed area at an angle of 45 degrees.
- (3) No sheet metal or corrugated metal panels shall be used in any fence.
- (4) No fence or attachment to a fence shall be used as a conductor of electricity unless the fence is located on agricultural land that is in actual use for raising livestock and the fence or attachment:
 - (a) carries electricity of not more than 12 volts;
 - (b) is designed and installed only to contain livestock; and
 - (c) has signs installed at not more than 12 metre intervals along the fence warning that the fence carries electricity.

3. Fence height

- (1) No fence described in the following Table shall, when measured at any point along its length from the highest grade within 1 metre on either side of the fence, exceed the height set out in the Table for the fence.
- (2) Where more than one description in the following Table applies to a fence, each part that corresponds to a single description shall be deemed to be a separate fence for the purpose of determining the maximum height for that part.
- (3) Despite subsection (1), no part of a fence on single residential property that is closer than 1.8 metres to a window located above the basement in a dwelling on abutting single residential property shall exceed a height of 1.2 metres or, subject to subsection (1), the height of the sill of the window, whichever is higher, unless the fence is a chain link fence with open mesh.

SECTION 3 TABLE MAXIMUM HEIGHT OF FENCES			
DESCRIPTION OF FENCE	FENCE ON SINGLE RESIDENTIAL PROPERTY	FENCE ON MULTIPLE RESIDENTIAL PROPERTY	FENCE ON NON-RESIDENTIAL PROPERTY
Fence in front yard within 2.4 metres of front lot line	1.2 metres for open mesh chain link fence and 800 millimetres for any other type	1.2 metres for open mesh chain link fence and 800 millimetres for any other type	1.2 metres for open mesh chain link fence and 800 millimetres for any other type
Fence in front yard not within 2.4 metres of front lot line	1.2 metres	1.2 metres	1.2 metres
Fence in flankage yard within 2.4 metres of side lot line and 2.4 metres of any driveway	2 metres for open mesh chain link fence and 800 millimetres for any other type	2 metres for open mesh chain link fence and 800 millimetres for any other type	2 metres for open mesh chain link fence and 800 millimetres for any other type
Fence in flankage yard not within 2.4 metres of side lot line and 2.4 metres of any driveway	2 metres	2 metres	2.5 metres
Fence on unroofed deck	2 metres above surface of deck	2 metres above surface of deck	2 metres above surface of deck
Fence abutting multiple residential property	2.5 metres	2.5 metres	2.5 metres
Fence abutting non-residential property	2.5 metres	2.5 metres	2.5 metres
Fence not in front yard or flankage yard abutting public highway or public walkway	2.5 metres	2.5 metres	2.5 metres
Fence abutting rapid transit right of way	2.5 metres	2.5 metres	No maximum
Fence for tennis court, baseball diamond or other recreational facility	3 metres	3 metres	No maximum
Any other fence	2 metres	2 metres	2.5 metres

PART 3 SWIMMING POOL ENCLOSURES**4. Enclosure required**

Subject to the exceptions in section 9, every owner of a swimming pool shall erect and maintain a swimming pool enclosure that:

- (a) complies with this by-law;
- (b) completely encloses the area in which the swimming pool is located; and
- (c) has no opening except a door, window or gate that complies with this by-law.

5. Permits and inspections

- (1) No person shall excavate for or erect, or cause or permit excavation for or erection of, a swimming pool without first obtaining a permit from the Chief Building Official for a swimming pool enclosure for the proposed pool.
- (2) An application for a permit for a swimming pool enclosure shall be in the form required by the Chief Building Official and shall be accompanied by plans:
 - (a) showing the location of the swimming pool in relation to lot lines and adjacent buildings;
 - (b) providing complete details of the swimming pool enclosure; and
 - (c) providing any other details and information required by the Chief Building Official for determining compliance with this by-law.
- (3) An application for a permit for a swimming pool enclosure shall be refused if the proposed swimming pool enclosure would contravene this by-law or any other applicable law.
- (4) Every owner of property on which a swimming pool is under construction shall erect and maintain a swimming pool enclosure that complies with this by-law in every respect except that it may consist of temporary fencing if authorized by the Chief Building Official or an Officer.
- (5) Any authorization to erect temporary fencing is granted on the condition that the temporary fencing shall be replaced with a permanent swimming pool enclosure that fully complies with this by-law when an Officer directs replacement or when construction of the swimming pool is substantially complete, whichever occurs first, and in determining whether to direct replacement of temporary fencing, an Officer

shall consider, among other factors, whether construction is proceeding expeditiously, whether temporary fencing is being adequately maintained and whether safety might be compromised without a permanent enclosure.

- (6) Temporary fencing shall be erected in a good, workmanlike manner and shall consist of steel "T" posts spaced at not more than 1.2 metre centres and embedded at least 600 millimetres into the ground with 38 millimetre plastic mesh fencing at least 1.2 metres high that is securely fastened to the posts at 200 millimetre centres and horizontally secured at the top and bottom by an 11 gauge steel lacing cable threaded through the mesh and looped and fastened to each post, or any other fence acceptable to an Officer.
- (7) No person shall fill a swimming pool with water, or permit water to collect or remain in a swimming pool until an Officer has conducted an inspection and confirmed completion of a permanent swimming pool enclosure that fully complies with this by-law.

6. Access protection

- (1) A swimming pool enclosure shall be designed and constructed so that the principal entrance to any main building is located outside the enclosed area.
- (2) Where a wall of a building forms part of a swimming pool enclosure, any entrance to the enclosed area in the wall shall be no closer than 1.2 metres horizontally to the water's edge in the pool and shall be protected by a door that is:
 - (a) kept locked at all times except when the enclosed area is in use; and
 - (b) self-closing and equipped with a lockable, self-latching device installed at least 1.5 metres above floor level if the door leads from any other area than a living area of a building.
- (3) Where a wall of a building forms part of a swimming pool enclosure, any ground floor window in the wall which is less than 1.5 metres above floor level shall not be capable of being opened more than 100 millimetres unless a guard is permanently installed on the window to prevent the passage of a spherical object having a diameter of more than 100 millimetres through the window.
- (4) Every gate in a swimming pool enclosure shall be:
 - (a) constructed in compliance with section 8;
 - (b) supported on substantial hinges;

- (c) self-closing and equipped with a lockable, self-latching device located on the inside near the top of the gate or on the outside at least 1.5 metres above grade; and
- (d) kept locked at all times except when the enclosed area is in use.

7. Enclosure height

- (1) The minimum height of a swimming pool enclosure above the highest outside grade within 1 metre of the enclosure shall comply with the following Table when measured at any point along the enclosure.

SECTION 7 TABLE MINIMUM HEIGHT OF SWIMMING POOL ENCLOSURES			
ENCLOSURE TYPE	POOL ON SINGLE RESIDENTIAL PROPERTY	POOL ON MULTIPLE RESIDENTIAL PROPERTY	POOL ON NON- RESIDENTIAL PROPERTY
Metal picket fence	1.2 metres	1.5 metres	1.5 metres
Any other enclosure type	1.2 metres	1.8 metres	1.8 metres

- (2) The maximum height of any fence used in a swimming pool enclosure shall comply with section 3.

8. Construction standards

- (1) A swimming pool enclosure including any gate forming part of the enclosure shall:
 - (a) be no closer than 1.2 metres horizontally to the water's edge in the pool;
 - (b) be no closer than 1 metre to any external condition that may facilitate
 - (c) have no element or attachment between 100 millimetres and 1.2 metres above grade that may facilitate climbing the outside of the enclosure; and

- (d) have a facing material installed on the outside of the enclosure which extends from no more than 50 millimetres above grade to the required minimum height of the enclosure, but, if a hard surface such as concrete, asphalt, paving stones or patio slabs extends for a distance of 500 millimetres on each side of a gate, the clearance under the gate may be no more than 100 millimetres.
- (2) Every fence and gate used in a swimming pool enclosure shall be constructed to the following standards:
- A. A chain-link fence used in a swimming pool enclosure shall be constructed in a good, workmanlike manner and in compliance with the following Table.

SECTION 8 TABLE MINIMUM STANDARDS FOR CHAIN LINK FENCE CONSTRUCTION		
FENCE COMPONENTS	POOL ON SINGLE RESIDENTIAL PROPERTY	POOL ON MULTIPLE RESIDENTIAL OR NON- RESIDENTIAL PROPERTY
MESH SIZE	38 millimetres maximum	38 millimetres maximum
MESH GAUGE (Galvanized wire)	14 gauge galvanized wire and 2 gauge vinyl for 12 gauge total thickness	11 gauge galvanized wire and 2 gauge vinyl for 9 gauge total thickness
GATE & END (TERMINAL) POSTS:		
(1) Diameter	48 millimetres	60 millimetres
(2) Depth of Embedment	760 millimetres (in 200 millimetre diameter concrete)	760 millimetres (in 200 millimetre diameter concrete)
INTERMEDIATE POSTS:		
(1) Diameter	38 millimetres	48 millimetres
(2) Depth of Embedment	760 millimetres	760 millimetres
TOP RAIL (Diameter)	32 millimetres	32 millimetres
BOTTOM WIRE (Diameter)	9 gauge galvanized, threaded through the mesh and looped and fastened to each post.	9 gauge galvanized, threaded through the mesh and looped and fastened to each post.
GATE FRAME (Diameter)	32 millimetres	32 millimetres
SPACING OF POSTS	2.4 metres maximum	2.4 metres maximum

- B. A wood fence used in a swimming pool enclosure shall be constructed in a good, workmanlike manner as follows:
- (i) vertical boards shall be not less than 19 millimetre by 89 millimetre lumber and shall be spaced not more than 38 millimetres apart where horizontal rails are spaced less than 1.2 metres apart and not more than 100 millimetres apart where horizontal rails are spaced at least 1.2 metres apart; and
 - (ii) vertical boards shall be attached to horizontal rails that are not less than 38 millimetre by 89 millimetre lumber and that are supported on substantial posts with a minimum dimension of 89 millimetres spaced not more than 2.4 metres apart and embedded to a minimum depth of 900 millimetres below grade.
- C. A metal picket fence used in a swimming pool enclosure shall be constructed in a good, workmanlike manner as follows:
- (i) vertical pickets shall be spaced not more than 38 millimetres apart where horizontal rails are spaced less than 1.2 metres apart and not more than 100 millimetres apart where horizontal rails are spaced at least 1.2 metres apart; and
 - (ii) horizontal rails shall be supported on substantial posts spaced not more than 2.4 metres apart and embedded in concrete to a minimum depth of 900 millimetres below grade.

9. Exceptions

- (1) Part 3 of this by-law does not apply to an above-ground pool erected before the day this by-law comes into force if the pool complies with the following standards:
- (a) the pool is not less than 1.2 metres above grade;
 - (b) a guard not less than 1 metre high is provided around any platform or
 - (c) the combined height of the swimming pool structure and any guard is not more than 2.6 metres;
 - (d) the outside of the swimming pool structure and any guard is free of any element or attachment that may facilitate climbing;
 - (e) no part of the swimming pool structure is closer than 1.2 metres to any lot

- line; and
- (f) the point where a user of the above-ground pool gains access to the pool is protected by a gated enclosure which complies with the requirements for swimming pool enclosures set out in sections 5 through 8 inclusive.
- (2) Part 3 of this by-law does not apply to a whirlpool, hot tub or spa if it has a substantial, structurally adequate cover permanently attached to it or to its supporting structure and the cover is securely fastened and locked to prevent access at all times when the whirlpool, hot tub or spa is not in use.

PART 4 GENERAL

10. Offence

Every person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction, is liable to a fine or penalty as provided for in the *Provincial Offences Act*.

11. Exemptions

Where a person is required to erect a specified fence under another City by-law or under an order made under subsections 15.7(1) or 17(1) of the *Building Code Act, 1992*, the fence is exempt from any provision of this by-law with which it does not comply.

12. Conflict

Subject to section 11, where this by-law conflicts with any other by-law, this by-law prevails to the extent of the conflict.

13. Repeal, transition

- (1) Except as provided in subsection (2), the by-laws listed in Schedule “A” to this by-law are repealed.
- (2) Despite subsection (1), where a person is alleged to have contravened a by-law listed in Schedule “A” prior to the date this by-law comes into force, the by-law listed in Schedule “A” shall continue to be in full force and effect for the purposes of any enforcement proceedings brought against such person until the proceedings have been concluded.
- (3) Any fence or swimming pool enclosure that was lawfully erected before the day this by-law comes into force is deemed to comply with this by-law and may be maintained as erected, but when the fence or swimming pool enclosure is replaced, the replacement fence or swimming pool enclosure shall comply with this by-law.

ENACTED AND PASSED this 9th day of June, A.D. 2000.

CASE OOTES,
Deputy Mayor

NOVINA WONG,
City Clerk

(Corporate Seal)

SCHEDULE "A"

1. By-law No. 81-89 of the former Borough of East York, as amended.
2. By-law No. 19-94 of the former Borough of East York, as amended.
3. Article I, Fencing, of Chapter 234, Swimming Pools, of the Municipal Code of the former City of Etobicoke.
4. By-law No. 30901 of the former City of North York, as amended.
5. By-law No. 18439 of the former City of Scarborough, as amended.
6. By-law No. 24945 of the former City of Scarborough, as amended.
7. Article II, Height and Description of Boundary Fences, of Chapter 182, Fences, of the Municipal Code of the former City of Toronto.
8. Chapter 318, Swimming Pools, of the Municipal Code of the former City of Toronto.
9. Chapter 794, Fence - Height - Description, of the Municipal Code of the former City of York.
10. Chapter 796, Fence – Outdoor Swimming Pool, of the Municipal Code of the former City of York.