

Chapter 447

FENCES

ARTICLE I Private Property

§ 447-1. Definitions.

§ 447-2. Restrictions on fences; height.

§ 447-3. Swimming pool enclosures.

§ 447-4. Offences.

§ 447-5. Exemptions.

§ 447-6. Conflicting provisions.

§ 447-7. Transition.

ARTICLE II Fence-Viewers

§ 447-8. Term of office.

§ 447-9. Remuneration.

§ 447-10. Winter months exclusion.

§ 447-11. Fees.

Schedule A to Ch. 447, Art. I, Site
Specific Exemptions

[HISTORY: Adopted by the Council of the City of Toronto as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fencing of construction and demolition sites — See Ch. 363, Art. III.
Development of land — See Ch. 415.

Fees and charges — See Ch. 441.
Ravine protection — See Ch. 658.

ARTICLE I Private Property

[Adopted 2000-07-06 by By-law No. 472-2000¹]

§ 447-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

¹ Editor's Note: This by-law was passed under the authority of paragraphs 25, 28 and 30 of section 210 of the *Municipal Act*, R.S.O. 1990, c. M.45. This by-law also provided as follows: (1) Except as provided in (2), the following by-laws are repealed: By-law No. 81-89 of the former Borough of East York, as amended; By-law No. 19-94 of the former Borough of East York, as amended; Article I, Fencing, of Chapter 234, Swimming Pools, of the Municipal Code of the former City of Etobicoke; By-law No. 30901 of the former City of North York, as amended; By-law No. 18439 of the former City of Scarborough, as amended; By-law No. 24945 of the former City of Scarborough, as amended; Article II, Height and Description of Boundary Fences, of Chapter 182, Fences, of the Municipal Code of the former City of Toronto; Chapter 318, Swimming Pools, of the Municipal Code of the former City of Toronto; Chapter 794, Fence - Height - Description, of the Municipal Code of the former City of York; Chapter 796, Fence - Outdoor Swimming Pool, of the Municipal Code of the former City of York; and By-law No. 394-2000. (2) Despite (1), where a person is alleged to have contravened a by-law listed in (1) prior to the date this article comes into force, the by-law listed in (1) 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.

TORONTO MUNICIPAL CODE
FENCES

§ 447-1

COMMUNITY COUNCIL — As defined in Chapter 27, Council Procedures. **[Added 2008-07-17 by By-law No. 793-2008]**

DRIVEWAY — Any space on private property used or intended to be used by vehicles to park or to access parking. **[Added 2008-07-17 by By-law No. 793-2008]**

FENCE — A barrier, including one for noise attenuation, or any structure, except a structural part of a building, that wholly or partially screens from view, encloses or divides a yard or other land, or marks or substantially marks the boundary between adjoining land, and includes any hedge or shrub that has the same effect. **[Amended 2000-10-05 by By-law No. 869-2000; 2004-06-24 by By-law No. 557-2004; 2008-07-17 by By-law No. 793-2008]**

FLANKAGE YARD — 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. **[Amended 2000-10-05 by By-law No. 869-2000]**

FRONT LOT LINE — The front boundary line between a public highway and any private property measured along the full width of the property. **[Added 2004-05-20 by By-law No. 402-2004]**

FRONT YARD — The space, extended to the full width of the lot, including any side lot lines, between the main front wall of the 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, including any side lot line, between the shorter lot line abutting a public highway, other than a public lane, and the nearest wall of the main building on the lot. **[Amended 2004-05-20 by By-law No. 402-2004]**

GUARD — The same meaning as Chapter 629, Property Standards, which, for reference purposes only, means a protective barrier, with or without openings through it, that is around openings in floors or at the open sides of stairs, landings, balconies, mezzanines, galleries, raised walkways or other locations to prevent accidental falls from one level to another. **[Added 2008-07-17 by By-law No. 793-2008]**

HEIGHT — Vertical distance above grade or, if another reference point is specified, vertical distance above the other reference point.

LOT LINE — A lot line is the boundary line on all sides of a lot that marks the division of properties. **[Added 2004-05-20 by By-law No. 402-2004]**

MULTIPLE RESIDENTIAL PROPERTY — 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.

NON-CLIMBABLE — Describes a 1.2-metre vertical face presented to the exterior of a swimming pool enclosure. For an enclosure of chain link construction, means a

mesh which is no greater than 38 millimetres square for a minimum of 1.2 metres vertically. For all other enclosures, means that there is no horizontal opening or step greater than 38 millimetres in width for 1.2 metres vertically, or where horizontal components are a minimum of 1.2 metres apart there shall be no opening greater than 100 millimetres. **[Added 2010-08-27 by By-law No. 994-2010]**

NON-RESIDENTIAL PROPERTY — 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.

OFFICER — Any City employee assigned responsibility for enforcing this article.

OPEN-FENCE CONSTRUCTION — Fence construction that provides motorists and pedestrians with an unobstructed view of people, vehicles and their movements through the entire length of the fence. **[Added 2008-07-17 by By-law No. 793-2008]**

OUTSIDE — When used with reference to a swimming pool enclosure, means the side external to the enclosed area in which the pool is located.

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.

PARKING LOT — A driveway, not on single residential property, intended for the parking of vehicles. **[Added 2008-07-17 by By-law No. 793-2008]**

PERSON — 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.

PUBLIC HIGHWAY — Any highway and includes any street, road, sidewalk, boulevard, lane or any other portion of a highway. **[Added 2004-05-20 by By-law No. 402-2004]**

SCHOOL — The same meaning as in subsection 1(1) of the *Education Act*.² **[Added 2003-09-24 by By-law No. 985-2003]**

SINGLE RESIDENTIAL PROPERTY — 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.

² Editor's Note: See R.S.O. 1990, c. E.2.

TORONTO MUNICIPAL CODE
FENCES

§ 447-2

SNOW FENCE — Any fence used to force drifting snow to accumulate in a predictable place, and which is usually constructed of plastic mesh, lightweight woodstrip, or wire fencing. **[Added 2007-11-20 by By-law No. 1240-2007]**

SWIMMING POOL — 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.

SWIMMING POOL ENCLOSURE — A fence, wall or other structure, including any permitted door, gate or other opening, which surrounds and restricts access to an outdoor swimming pool.

TIMED SELF-CLOSING DEVICE — A mechanism by which a door or gate is returned to the closed and locked or latched position after a specified period of time. **[Added 2007-11-20 by By-law No. 1240-2007]**

TRIGGERED SELF-CLOSING DEVICE — A mechanism by which a door or gate is returned to its closed and locked or latched position when triggered by a passing vehicle or person and includes, but is not limited to, magnetic loop detectors. **[Added 2007-11-20 by By-law No. 1240-2007]**

§ 447-2. Restrictions on fences; height.

A. 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 article 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 Subsection B 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 twelve-metre intervals along the fence warning that the fence carries electricity.

- (5) No person shall erect, own or maintain, or cause or permit the erection or maintenance of any fence that uses materials not usually intended for use in permanent fencing, unless specifically permitted by this or another by-law. **[Added 2007-11-20 by By-law No. 1240-2007]**
- (6) Notwithstanding Subsection A(5), a snow fence may be used on private property between November 15 and April 15, and shall comply with all corresponding standards in this and other by-laws. **[Added 2007-11-20 by By-law No. 1240-2007]**

B. Fence height.

- (1) No fence described in the following Table shall, when measured at any point along its length from the average grade level measured perpendicular to and one metre away on either side of the fence, exceed the height set out in the Table for the fence. **[Amended 2004-06-24 by By-law No. 557-2004]**
- (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) (Reserved)³
- (4) Despite Subsection B(1), a fence at any school shall not exceed 1.5 metres in height if the fence is adjacent to a public highway or right-of-way. **[Added 2003-09-24 by By-law No. 985-2003]**

**TABLE 1
MAXIMUM HEIGHT OF FENCES
[Amended 2004-06-24 by By-law No. 557-2004; 2008-07-17 by By-law No. 793-2008]**

Description of Fence	Fence on Single or Multiple Residential Property	Fence on Non-Residential Property
Fence in front yard within 2.4 metres of front lot line	1.2 metres	1.2 metres

³ Editor's Note: Former § 447-2B(3), which contained a height exception for fences in front or flankage yards, was repealed 2004-05-20 by By-law No. 402-2004.

TORONTO MUNICIPAL CODE
FENCES

§ 447-2

Description of Fence	Fence on Single or Multiple Residential Property	Fence on Non-Residential Property
Fence in front yard not within 2.4 metres of front lot line	1.2 metres	1.2 metres
Fence in flankage yard within 2.4 metres of side lot line and within 2.4 metres of any driveway	2.0 metres	2.0 metres
Fence in flankage yard not within 2.4 metres of side lot line and within 2.4 metres of any driveway	2 metres	2.5 metres
Fence on unroofed deck and not in a front or flankage yard	2 metres above surface of deck	2 metres above surface of deck
Fence abutting multiple residential property and not in a front or flankage yard	2.5 metres	2.5 metres
Fence abutting non-residential property	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
Fence abutting rapid transit right of way	2.5 metres	No maximum
Fence for tennis court, baseball diamond or other recreational facility	3 metres	No maximum
Any other fence	2 metres	2.5 metres

C. Open-fence construction required. **[Added 2008-07-17 by By-law No. 793-2008]**

Despite Table 1:

- (1) Any fence within 2.4 metres of any driveway shall be an open mesh chain-link fence or of an equivalent open-fence construction for at least 2.4 metres from the lot line at which the driveway begins so as not to obstruct the view of the boulevard or highway; and
- (2) In the case of a parking lot, any fence shall be an open mesh chain-link fence or of an equivalent open-fence construction anywhere it may otherwise restrict the sight lines of vehicular or pedestrian traffic in the parking lot.

C.1. Obstructions prohibited. **[Added 2008-07-17 by By-law No. 793-2008]**

No vegetation shall be permitted to grow or object permitted to be placed in such a way as to obstruct the view through a fence under § 447-2C.

D. Fence to meet guard requirements. **[Added 2008-07-17 by By-law No. 793-2008]**

- (1) Where a fence is used as a guard, it shall be installed and maintained to comply with Chapter 629, Property Standards.
- (2) If the guard forms part of a swimming pool enclosure, it shall also comply with the requirements of § 447-3.
- (3) If more than one by-law provides requirements for the guard, the more restrictive provisions shall apply.

§ 447-3. Swimming pool enclosures.

A. Enclosure required.

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

- (1) Complies with this article;
- (2) Completely encloses the area in which the swimming pool is located; and
- (3) Has no opening except a gate that complies with this article. **[Added 2010-08-27 by By-law No. 994-2010]**

B. 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.

TORONTO MUNICIPAL CODE
FENCES

§ 447-3

- (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 with the non-refundable fee set out in Municipal Code Chapter 441, Fees and Charges, and by plans: **[Amended 2004-06-24 by By-law No. 557-2004]**
 - (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 article.
- (3) The Chief Building Official shall refuse or revoke a permit for a swimming pool enclosure if: **[Amended 2004-06-24 by By-law No. 557-2004]**
 - (a) The proposed swimming pool enclosure would contravene this article or any other applicable law;
 - (b) It was issued in error or on mistaken, false or incorrect information; or
 - (c) The required application fee under Municipal Code Chapter 441, Fees and Charges, has not been paid.
- (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 article 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 article 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 eleven-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 article.
- C. Access protection. [**Amended 2004-06-24 by By-law No. 557-2004; 2007-11-20 by By-law No. 1240-2007; 2008-05-27 by By-law No. 512-2008; 2010-08-27 by By-law No. 994-2010**]
- (1) Subject to Subsection C(1.1), a swimming pool enclosure shall be designed and constructed so that all entrances to any building are located outside the enclosed area.
- (1.1) Subsection C(1) does not apply to any structure that does not provide access to the exterior of the pool enclosure.
- (2) If the wall of any building, or any portion of it, forms part of the pool enclosure, there shall be no access to the enclosed pool area through the wall
- (3) Subsection C(2) applies to pool enclosures for which a pool enclosure permit was issued more than 30 calendar days after the enactment of that subsection on November 20, 2007, and to any existing fence if a substantial portion of it is demolished or removed, or if it is in such a state of disrepair that it is not practical to repair it.
- (3.1) Every owner of a swimming pool shall:
- (a) Take all steps necessary to control any access point to the swimming pool area; and
- (b) Ensure that if the closing mechanism of a gate is electrically powered it includes a back-up system which shall automatically power the closing mechanism in case of a power disruption.
- (4) Every gate in a swimming pool enclosure shall be:
- (a) Constructed in compliance with Subsection E;
- (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.
- (5) (Reserved)
- (6) (Reserved)

TORONTO MUNICIPAL CODE
FENCES

§ 447-3

- (7) (Reserved)
- (8) All automatic closing devices and their power back-up systems shall be in compliance with the applicable product and installation standards of the Canadian Standards Association.

D. Enclosure height.

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

TABLE 2
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 § 447-2B.

E. 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 one metre to any external condition that may facilitate climbing the outside of the enclosure unless the height of the enclosure is at least 1.8 metres for a distance of at least one metre on each side of the condition;
 - (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 non-climbable 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. **[Amended 2010-08-27 by By-law No. 994-2010]**

- (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:

**TABLE 3
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

TORONTO MUNICIPAL CODE
FENCES

§ 447-3

Fence Components	Pool on Single Residential Property	Pool on Multiple Residential or Non-Residential Property
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:
- [1] 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
 - [2] 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:
- [1] 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
 - [2] 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.
- (d) A glass panel fence used in a swimming pool enclosure shall be constructed in a good, workmanlike manner as follows: **[Added 2010-08-27 by By-law No. 994-2010]**
- [1] Glass panels shall be located so there is no opening of more than 38 millimetres between the panel and the post where horizontal

elements are spaced less than 1.2 metres apart, and not more than 100 millimetres apart where horizontal elements are spaced more than 1.2 metres apart; and

- [2] Horizontal elements 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.
 - [3] Glass panels used in swimming pool enclosures shall be:
 - [a] Safety glass of the laminated or tempered type conforming to CAN/CGSB-12.1-M “Tempered or Laminated Safety Glass”;
or
 - [b] Wired glass conforming to CAN/CGSB-12.1-M “Wired Safety Glass.”
- (e) A masonry wall that is not a part of a building and is used in a swimming pool enclosure shall be constructed in a good, workmanlike manner as follows: **[Added 2010-08-27 by By-law No. 994-2010]**
- [1] The wall shall present a minimum 1.2-metre non-climbable surface to the exterior of the enclosed area.
 - [2] It shall be constructed of a minimum double course brick or single course concrete block with a minimum width of 200 millimetres, and securely attached to a minimum 1.2-metre deep concrete foundation.
 - [3] Where the wall abuts a building or gate there shall be no opening between the wall and the building or gate which exceeds 38 millimetres where there are horizontal elements less than 1.2 metres apart, or which exceeds 100 millimetres where there are no horizontal elements or where horizontal elements are in excess of 1.2 metres apart.
 - [4] All components of a masonry wall used as a part of a swimming pool enclosure shall conform with CSA S304.1.
- (3) Every fence and gate used as part of a swimming pool enclosure which forms the part of the enclosure that separates the pool from any residential building on the same property shall be constructed of open mesh chain-link fence or equivalent open fence construction that does not restrict visibility of the pool from any door or window that is located on the access level of the building, and which has a line of sight to the pool, and the materials used must comply with the provisions of this chapter. **[Added 2007-11-20 by By-law No. 1240-2007; amended 2008-05-27 by By-law No. 512-2008]**

TORONTO MUNICIPAL CODE
FENCES

§ 447-3

- (4) Nothing shall be erected, planted or otherwise placed in such a way that the visibility of the pool is restricted from any door or window that is located on the access level of a residential building on the same property, and which has a line of sight to the pool. **[Added 2008-05-27 by By-law No. 512-2008]**
- (5) Subsection E(4) applies only to fences and gates used as part of a swimming pool enclosure which forms the part of the enclosure that separates the pool from any residential building on the same property, as described in Subsection E(3). **[Added 2008-05-27 by By-law No. 512-2008]**

F. Exceptions.

- (1) Subsections A through E do not apply to an above-ground pool erected before the day this article 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 one metre high is provided around any platform or deck;
 - (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 Subsections B through E, inclusive.
- (2) Subsections A through E do 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.
- (3) Subsections C(3), E(3), E(4) and E(5) may apply conditionally to a swimming pool enclosure for which an exemption has been granted by Community Council, and such an exemption shall only be granted if: **[Added 2008-05-27 by By-law No. 512-2008]**
 - (a) The reason for seeking the exemption is because one or more of the standards in Subsections C(3), E(3), E(4) and E(5) are not practicable

because of a disability, as defined in the *Ontarians with Disabilities Act, 2001*,⁴ of an occupant of the building; and

- (b) The applicant for the exemption agrees to comply with any other conditions imposed by Community Council to prevent a young child from gaining access to the pool area.
- (4) Despite Subsection F(3), when the need for which the exemption was sought ceases to exist, the pool enclosure shall be reinstated to comply fully with the provisions in Subsections C(3), E(3), E(4) and E(5). **[Added 2008-05-27 by By-law No. 512-2008]**

§ 447-4. Offences.

Every person who contravenes any of the provisions of this article is guilty of an offence and, upon conviction, is liable to a fine or penalty as provided for in the *Provincial Offences Act*.⁵

§ 447-5. Exemptions.

[Amended 2001-03-08 by By-law No. 170-2001; 2001-06-01 by By-law No. 386-2001; 2001-06-28 by By-law No. 579-2001; 2001-12-06 by By-law No. 998-2001; 2002-02-15 by By-law No. 103-2002; 2002-08-01 by By-law No. 617-2002; 2002-10-03 by By-law No. 651-2002; 2002-10-03 by By-law No. 652-2002; 2002-10-03 by By-law No. 653-2002; 2003-02-07 by By-law No. 16-2003; 2003-02-07 by By-law No. 27-2003; 2003-04-16 by By-law No. 256-2003; 2003-05-23 by By-law No. 366-2003; 2003-06-26 by By-law No. 506-2003; 2003-06-26 by By-law No. 545-2003; 2003-09-24 by By-law No. 812-2003; 2003-09-24 by By-law No. 824-2003; 2003-09-24 by By-law No. 825-2003; 2003-09-24 by By-law No. 861-2003; 2003-09-24 by By-law No. 862-2003; 2003-09-24 by By-law No. 863-2003; 2004-01-29 by By-law No. 59-2004; 2004-03-03 by By-law No. 230-2004; 2004-06-24 by By-law No. 557-2004]

- A. If a person is required to erect a specified fence under a site plan agreement, a subdivision agreement, another City by-law or any law, statute or regulation of a provincial or federal authority having jurisdiction, the fence is exempt from the provisions of this chapter with which it does not comply.
- B. Site specific exemptions to this article are listed in Schedule A, at the end of this chapter.
- C. Fence exemptions. **[Added 2008-07-17 by By-law No. 793-2008]**

⁴ Editor's Note: See S.O. 2001, c. 32.

⁵ Editor's Note: This section was passed under the authority of section 320 of the *Municipal Act*, R.S.O. 1990, c. M.45, and, under section 61 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, a person convicted of an offence is liable to a fine of not more than \$5,000.

TORONTO MUNICIPAL CODE
FENCES

§ 447-6

- (1) A person given notice under this article may request to have the fence considered by Council or community council under delegated authority for a site-specific exemption from any of the requirements of this article on or before the date indicated on the notice of violation.
- (2) The community council in Subsection C(1) shall be the community council for the geographic area in which the fence is located.
- (3) If the fence is located in the geographic area of more than one community council, the matter shall be determined by Council, and notice of the matter will be given to the councillors of the wards in which the fence is located.
- (4) A request for an exemption under Subsection C(1) shall be in writing to the Executive Director of Municipal Licensing and Standards and shall be delivered to the issuing office, as indicated on the notice of violation.
- (5) When a request for an exemption has been received along with the required application fee under Subsection C(4), the Executive Director of Municipal Licensing and Standards, or his or her designate, shall report to Council or community council for consideration, and shall not take action under this article until the matter has been dealt with by Council or community council under delegated authority.
- (6) Council, or community council under delegated authority, may:
 - (a) Grant the exemption, with or without conditions, and cancel the notice; or
 - (b) Confirm the notice and direct that a second notice be given under this article.
- (7) Subsection C(1) does not apply to a second notice given under Subsection C(6).

§ 447-6. Conflicting provisions.

Subject to § 447-5, where this article conflicts with any other by-law, this article prevails to the extent of the conflict.

§ 447-7. Transition.

Any fence or swimming pool enclosure that was lawfully erected before the day this article comes into force is deemed to comply with this article 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 article.

ARTICLE II
Fence-Viewers

[Adopted 2002-04-18 by By-law No. 286-2002⁶]

§ 447-8. Term of office.

Fence-viewers, appointed by Council under the *Line Fences Act*,⁷ shall hold office until the expiration of the term of the Council that appointed them and until their successors are appointed.

§ 447-9. Remuneration.

[Amended 2010-08-27 by By-law No. 994-2010]

The remuneration for each of the three fence-viewers shall be as set out in Chapter 441, Fees and Charges, and shall include costs. Each of the three fence viewers shall be paid at that rate for travel time to and from the fence-viewing, and for any attendance required at an appeal hearing.

§ 447-10. Winter months exclusion.

No arbitration or other proceeding requiring the attendance or reattendance of fence-viewers shall take place between November 1 and March 31 in the next following year.

§ 447-11. Fees.

A. Fees enumerated; reattendances.

- (1) Fees shall be paid to the City in relation to the administration of the *Line Fences Act*⁸ in accordance with Chapter 441, Fees and Charges. [Amended 2006-09-27 by By-law No. 1056-2006]

⁶ Editor's Note: This by-law was passed under the authority of subsections 5(2) and 17(1) of the *Line Fences Act*, R.S.O. 1990, c. L.17. Section 2, Repeal, of this by-law stated: Subject to section 3, the following are repealed: A. former Borough of East York By-law No. 144-96 and By-law No. 139-96; B. former City of Etobicoke By-law No. 1995-26 and Municipal Code Chapter 39; C. former City of North York By-law No. 29830; D. former City of Scarborough By-law No. 21627 and By-law No. 17336; E. Article I, Division Fences, of Chapter 182, Fences, of the former City of Toronto Municipal Code, as amended; F. former City of York By-law No. 2977-95, By-law No. 2993-95, 1694-89, By-law No. 991-86, By-law No. 960-86, By-law No. 984-86, By-law No. 323-84, By-law No. 4403-83, By-law No. 3608-80, By-law No. 843-70 and By-law No. 120-67. Section 3, Transition, of this by-law stated: A. Despite section 2-C, By-law No. 29830 of the former City of North York continues to apply to properties affected by a notice given in accordance with section 3 of By-law No. 29830 before the date of the enactment of this by-law until the matters in dispute have been conclusively resolved; B. Despite section 2-E, Article I of Chapter 182, Fences, of the Municipal Code of the former City of Toronto continues to apply to properties affected by a notice given in accordance with § 182-8A(1) of that chapter before the date of the enactment of this by-law until the matters in dispute have been conclusively resolved. Section 4, Conflict, of this by-law stated: To the extent of any conflict between this by-law and any by-laws of the former municipalities respecting division fences, this by-law prevails. Section 5, In force, of this by-law stated: This by-law came into force on 2002-06-01.

⁷ Editor's Note: See R.S.O. 1990, c. L.17.

⁸ Editor's Note: See R.S.O. 1990, c. L.17.

TORONTO MUNICIPAL CODE
FENCES

§ 447-11

- (2) The three-hour minimum for fence-viewers' fees shall apply only to the initial attendance and not to any reattendance.⁹
- B. Upon and in addition to payment of the basic application fee, the applicant shall pay all additional fees that the City Clerk is able to pre-determine at that time.

⁹ Editor's Note: Former § 447-11A(3), which contained a fee for reattendance, which immediately followed this subsection, was repealed 2010-08-27 by By-law No. 994-2010.