



## **THE CORPORATION OF THE CITY OF MISSISSAUGA SWIMMING POOL ENCLOSURE BY-LAW 191-11**

**WHEREAS** section 11(3)7 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (hereinafter the “*Municipal Act 2001*”) authorizes a municipality to pass by-laws respecting fences;

**AND WHEREAS** section 8(3) of the *Municipal Act 2001*, authorizes a municipality to regulate or prohibit matters pertaining to fences and as 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 2001*, authorizes a municipality to regulate matters related to the health, safety and well-being of the inhabitants of the municipality;

**AND WHEREAS** section 446(1) of the *Municipal Act 2001*, authorizes a municipality to direct a matter or thing to be done under a by-law to be done at the person’s expense should the person fails to do so, and to recover the costs of doing the thing or matter by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

**NOW THEREFORE** the Council of The Corporation of the City of Mississauga ENACTS as follows:

### **PART I - DEFINITIONS**

1. For the purpose of this By-law:

**“Appeal Tribunal”** means the all-citizen Tribunal duly appointed by Council to conduct hearings under this By-law;

**“Certificate of Approval”** means a record of acknowledgement issued by the Manager that the Swimming Pool Enclosure as erected conforms to the specifications contained within this By-law;

**“City”** means The Corporation of the City of Mississauga and for clarification includes the territorial jurisdiction of the City of Mississauga where the context requires;

**“Class-1 Pool”** means a privately-owned outdoor Swimming Pool serving a detached or semi-detached dwelling unit or a multiple family development consisting of not more than five (5) dwelling units;

**“Class-2 Pool”** means a privately-owned outdoor Swimming Pool serving a multiple family development containing six or more dwelling units or a commercial development, including but not limited to a hotel, motel, Swimming Pool sales display, recreational or sports club;

**“Closed Construction”** means a Swimming Pool Enclosure being constructed with vertical boards, bars, pipes, rails or any other materials which have a separation distance of less than 38 millimetres (1½ inch) in between each piece of the materials, or in the case of a chain-link fence, chain link meshes of less than 38 millimetres (1½ inches);

**“Compliance and Licensing Enforcement Section”** means the Compliance and Licensing Enforcement Section of the Enforcement Division of the City, or any successor section or division;

**“Effective Ground Level”** means the highest level of the ground within 1.0 metre (3 feet 3 inches) measured in a horizontal distance in any direction from the Swimming Pool Enclosure;

**“Expenses”** means any and all sums of money actually spent or required to be spent by the City, and shall include but not be limited to all charges, costs, administrative fees, HST, outlays and legal fees;

**“Final Inspection”** means the inspection where approval of the Swimming Pool Enclosure is granted;

**“Hot Tub”** means a body of water located outdoors contained by artificial means, with mechanisms allowing for the direction and adjustment of jets of warm water flowing in a rapidly rotating and circular current, and which produces a depression or cavity in the centre, and “Hot Tub” shall include tubs which are commonly called “spas” or “whirlpools”;

**“Manager”** means the Manager of the Compliance and Licensing Enforcement Section and includes his or her designate;

**“Notice of Contravention”** means a written notice of a contravention of this By-law;

**“Officer”** means a person employed by the City to perform the duties of enforcing By-laws and is appointed by Council as a Municipal Law Enforcement Officer as designated in the City of Mississauga By-law 299-04 (as amended), or its successors;

**“Open Construction”** means a Swimming Pool Enclosure that is constructed with vertical boards, bars, pipes, rails or other materials which have a separation distance of 38 millimetres (1½ inches) or greater but shall not exceed 10 centimetres (4.0 inches) between any two pieces of the materials;

**“Owner”** includes,

- (a) the person who is the registered owner of a property;
- (b) the person for the time being managing or receiving the rent of the property whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the land or premises were let;
- (c) a lessee, occupant or other person that may have management, care or control of the property; and
- (d) a Condominium Corporation in the case of a property that is a condominium.

**“Revocation Order”** means a record of acknowledgement issued by the Manager that the Certificate of Approval is no longer valid;

**“Solid Construction”** means a Swimming Pool Enclosure being constructed with horizontal boards, bars, pipes, rails or other materials in which no horizontal or vertical separation spaces are created;

**“Swimming Pool”** means any body of water located outdoors on private property that is contained wholly or partly by artificial means and which can hold water exceeding 61 centimetres (24 inches) in depth at any point and includes a Hot Tub.

**“Swimming Pool Area”** means the Swimming Pool and any surrounding platforms, walkways, play areas and landscaped areas which lie within the Swimming Pool Enclosure;

**“Swimming Pool Enclosure”** means a fence or wall or combination thereof, including any doors or gates surrounding a privately-owned outdoor Swimming Pool and restricting access thereto.

## **PART II - ADMINISTRATION**

2. The Compliance and Licensing Enforcement Section of the City shall be responsible for the administration and enforcement of this By-law.
3. This By-law does not apply to Swimming Pools located completely inside a building.
4. (1) Where a Swimming Pool Enclosure has been previously approved by the issuance of a Certificate of Approval under a previous by-law, the enclosure shall be exempt from the provisions of this By-law, unless the previously approved enclosure has been altered or reconstructed in which case the requirements of this By-law shall apply to the enclosure.  
(2) A Swimming Pool Enclosure that was in existence at the time this By-law was adopted and did not require a Certificate of Approval under the previous by-law is exempt from the provisions of this By-law, unless the enclosure has been altered or reconstructed in which case the requirements of this By-law shall apply to the enclosure.
5. In the event of any conflict between the provisions of this By-law and any provisions of the City of Mississauga Fence By-law 397-78, as amended, or its successors, or any other City of Mississauga by-laws related to fences, the provisions of this By-law shall prevail.

## **PART III - GENERAL PROVISIONS**

6. Every Owner of a property on which a Swimming Pool is located, constructed, or erected shall erect or cause to be erected a Swimming Pool Enclosure around the entire Swimming Pool in accordance with the provisions of this By-law.
7. Every Owner of a property on which a Swimming Pool is located, constructed, or erected shall ensure that the Swimming Pool is not filled with water and that no water is allowed to remain in the Swimming Pool unless a valid Certificate of Approval has been issued for the Swimming Pool Enclosure.
8. Every Owner of a property on which a Swimming Pool is located, constructed, or erected shall maintain the Swimming Pool Enclosure in compliance with the provisions of this By-law and the City of Mississauga Property Standards By-law 654-98, as amended, or its successors.

## **PART IV - CERTIFICATE OF APPROVAL**

9. (1) The Owner of the property on which a Swimming Pool is to be located must apply for a Certificate of Approval by submitting a completed Swimming Pool Enclosure application form and the application fee as set out in Schedule 1 to this By-law to the Compliance and Licensing Enforcement Section.  
(2) The Swimming Pool Enclosure application will remain active for a period of one year from the date of receipt. After one year, if the Certificate of Approval has not been issued the application shall be deemed abandoned and the City shall retain the application fee.

- (3) If an application is deemed abandoned under subsection 9.(2) an Owner must submit a new Swimming Pool Enclosure application form and the application fee in order to obtain a Certificate of Approval.
  - (4) Where the Manager is satisfied that a Swimming Pool Enclosure conforms to the specifications as provided for in this By-law, a Certificate of Approval shall be issued.
  - (5) The fees required under this by-law are non-refundable.
  - (6) The Manager may require an Owner to produce any information necessary, including a report prepared by a professional engineer licensed to practice in Ontario, that the Manager may require in order to assist him or her in determining whether a Swimming Pool Enclosure meets the requirements of this By-law.
10. The Manager may revoke a Certificate of Approval issued under this By-law, by issuing a Revocation Order to the Owner, if any one or more of the following occur:
- (a) the Certificate of Approval was issued based on mistaken, false or incorrect information as provided by the Owner or his or her agent;
  - (b) the Certificate of Approval was issued in error;
  - (c) the Swimming Pool is removed or filled in; or
  - (d) the Swimming Pool Enclosure is in non compliance with the provisions related to fences of the City of Mississauga Property Standards By-law 654-98, as amended, or any successor by-law.
11. (1) After a decision is made by the Manager to revoke a Certificate of Approval under Section 10, a copy of the Revocation Order shall be given to the Owner advising of the Manager's decision with respect to the certificate.
- (2) The Revocation Order in subsection 11.(1), shall:
- (a) set out the grounds for the decision;
  - (b) give reasonable particulars of the grounds;
  - (c) be signed by the Manager; and
  - (d) state that the Owner is entitled to a hearing by the Appeal Tribunal if the Owner delivers to the Clerk, within seven (7) days after the written notice under subsection 11.(1) is served, a notice in writing requesting a hearing by the Appeal Tribunal and the appeal fee as set out in Schedule 1 of this By-law.
- (3) Where no appeal is registered within the required time period, the decision of the Manager shall be final.
- (4) An application made by the Owner for a hearing by the Appeal Tribunal of a Revocation Order does not act as a stay of the Revocation Order, which shall take effect on the day it is served or deemed served, and shall continue to be effective until the Appeal Tribunal renders a decision indicating otherwise.
- (5) A Revocation Order is served by:
- (a) personal delivery to the Owner; or

- (b) sending it by registered mail to the last known address of the Owner and posting it on the property on which the Swimming Pool is located.
  - (6) Service of a Revocation Order under s.11(5)(b) is deemed to be made on the fifth day after the day of mailing.
12. The Certificate of Approval is revoked on the day that the Owner has been served with the Revocation Order.
13. The Owner of the property on which a Swimming Pool is located and who has been served with a Revocation Order shall forthwith drain and remove all water contained within the Swimming Pool.

#### **PART V - APPEAL TRIBUNAL**

14. (1) The powers and authority to conduct appeal hearings under this By-law are hereby delegated to an all-citizen Appeal Tribunal duly appointed by By-law.
- (2) When the Owner who has been given written notice of the hearing does not attend at the appointed time and place for the hearing, the Appeal Tribunal may proceed with the hearing in his or her absence and the Owner shall not be entitled to any further notice of the proceedings.
- (3) The Appeal Tribunal shall provide its decision with reasons in writing to the Owner and the Manager.

#### **PART VI - TRIBUNAL DECISION FINAL**

15. In making its decision the Appeal Tribunal may uphold or vary the decision of the Manager, or make any decision that the Manager was entitled to make in the first instance.
16. The decision of the Appeal Tribunal issued under this By-law is final.

#### **PART VII - SWIMMING POOL ENCLOSURE SPECIFICATIONS**

17. (1) The distance between horizontal boards, bars, pipes, rails or other materials used for a Swimming Pool Enclosure shall be measured from the top of the top horizontal piece of material to the top of the lower horizontal piece of material used to construct the enclosure.
- (2) The distance between vertical boards, bars, pipes, rails, or other materials used for a Swimming Pool Enclosure shall be measured from the inside of the vertical boards, bars, pipes, rails, or other materials.

#### **PART VIII - GENERAL SPECIFICATIONS**

18. No Swimming Pool Enclosure shall:
- (a) have any horizontal or diagonal support or brace unless there is at least one continuous vertically measured distance of at least 1.22 metres (4 feet) between any two adjacent braces;
  - (b) have any decorative parts or attachments which measure more than 38 millimetres (1½ inches) in width or depth on the external side of the enclosure;
  - (c) be constructed of horizontal boards, bars, pipes, rails or other materials unless the enclosure is of Solid Construction;

- (d) have a separation distance between vertical boards, bars, pipes, tubes, rails or other materials exceeding 10 centimetres (4 inches), or in the case of a chain link fence, have a chain link mesh exceeding 38 millimetres (1½ inches);
  - (e) have any ground clearance space or gap greater than 10 centimetres (4 inches) at any point under the enclosure and the ground level immediately thereunder; and
  - (f) shall be located a distance of at least 1.22 metres (4 feet) from any outside structure, fence, tree, air conditioning units, metre, steps, ledges, window sills, or similar climbable item or object. This sub-section does not apply to a Class-1 Pool where the Swimming Pool Enclosure is 1.83 metres (6 feet) in height or greater.
19. Where a Swimming Pool is located on a property abutting Lake Ontario and such property has riparian rights, no enclosure is required along the Lake, provided that land access cannot be gained from outside the property and the remaining sides of the Swimming Pool Area is surrounded by a Swimming Pool Enclosure in compliance with the specifications of this Bylaw.

#### **PART IX - ADDITIONAL SPECIFICATIONS FOR CLASS-1 POOLS**

20. A Swimming Pool Enclosure for Class-1 Pools shall have a minimum vertical height of 1.22 metres (4 feet) above Effective Ground Level.

#### **PART X - ADDITIONAL SPECIFICATIONS FOR CLASS-2 POOLS**

21. A Swimming Pool Enclosure for Class-2 Pools shall have a minimum vertical height of 1.83 metres (6 feet) above Effective Ground Level.

#### **PART XI - ADDITIONAL REQUIREMENTS FOR IN GROUND POOLS**

22. Where a fibreglass Swimming Pool requires filling with water during installation which for the purposes of this section includes any other liquid, before any water can be placed in the pool the Owner shall comply with all of the following provisions:
- (a) the Owner shall ensure that the Swimming Pool is surrounded by a substantially completed Swimming Pool Enclosure or a temporary enclosure that will restrict any access to the Swimming Pool except for those persons necessary for the Swimming Pool installation;
  - (b) the Owner shall call an Officer for an inspection of the Swimming Pool Enclosure or temporary enclosure;
  - (c) the Owner shall obtain written permission from the Officer to fill the Swimming Pool with water;
  - (d) the Owner shall ensure that after the Swimming Pool is filled with water the Swimming Pool is kept enclosed by the Swimming Pool Enclosure or temporary enclosure so that access is restricted to the Swimming Pool except for those persons necessary for the Swimming Pool installation; and
  - (e) the Owner shall ensure that if at any time the Swimming Pool Enclosure or temporary enclosure is breached for any reason, including any breach for Swimming Pool installation, that the breach is either immediately repaired or the Owner or other person under his or her control is at the property to monitor the Swimming Pool.

## **PART XII - ALTERNATIVES FOR ABOVE GROUND SWIMMING POOLS OR HOT TUBS**

23. (1) For an above ground Swimming Pool an above ground Swimming Pool Enclosure guard may be utilized in place of a Swimming Pool Enclosure provided that the total combined height of the above ground pool walls and the enclosure guard is at least 1.83 metres (6 feet) above the Effective Ground Level.  
  
(2) Where a Swimming Pool Enclosure guard is used for an above ground Swimming Pool the entrance ladder shall be enclosed by a Swimming Pool Enclosure constructed in accordance with the provisions of this By-law.
24. For a Hot Tub that is installed entirely above ground, a prefabricated cover may be considered as a Swimming Pool Enclosure and may be exempted from the specifications in this Part if:
  - (a) the cover is fitted and secured so as to prevent access when the Hot Tub is not in use; and
  - (b) the Manager is satisfied that the cover is designed in a way that the cover complies with subsection 24.(a).

## **PART XIII - SWIMMING POOL ENCLOSURES OF WOODEN CONSTRUCTION**

25. In addition to any other requirements in this By-law, every Swimming Pool Enclosure made of wooden construction shall be supported by vertical wooden posts with a minimum size of 8.8 centimetres x 8.8 centimetres x 1.22 metres (3½ inches x 3 ½ inches x 4 feet), spaced not more than 2.44 metres (8 feet) apart.

## **PART XIV - SWIMMING POOL ENCLOSURES OF ORNAMENTAL METAL CONSTRUCTION**

26. In addition to any other requirements in this By-law, every Swimming Pool Enclosure of metal construction shall be supported by vertical metal posts with a minimum diameter 51 millimetres (2 inches) or dimension measurement of 51 millimetres x 51 millimetres (2 inches x 2 inches), spaced not more than 2.44 metres (8 feet) apart.

## **PART XV - SWIMMING POOL ENCLOSURES OF CHAIN LINK CONSTRUCTION**

27. Every Swimming Pool Enclosure of chain link construction shall:
  - (a) have a mesh consisting of 12 gauge galvanized steel wires, or of 14 gauge steel wires covered with vinyl or other types of plastic approved by the Manager, yielding a total thickness equivalent to a 12 gauge galvanized steel wire;
  - (b) be supported by galvanized steel vertical posts with a minimum diameter measurement of 38 millimetres (1½ inches) spaced not more than 3.043 metres (10 feet) apart; and
  - (c) have top and bottom horizontal rails or pipes firmly fastened to the vertical posts made of galvanized steel pipe with a minimum diameter of 32 millimetres (1.25 inches). A galvanized steel tension rod of 5 millimetres (1/4 inch) in diameter may be substituted for the bottom rail or pipe.

## **PART XVI - SWIMMING POOL ENCLOSURES OF OTHER MATERIAL**

28. Where a Swimming Pool Enclosure is constructed in a manner that does not comply with the prescriptive requirements in this By-law, it may be approved by the Manager through the issuance of a Certificate of Approval if he or she determines that the enclosure would yield an equivalent or greater degree of safety as provided for in the requirements under this By-law.

## **PART XVII - PROHIBITED MATERIAL**

29. No part of a Swimming Pool Enclosure shall contain barbed wire, electrical wiring, sharp projections, or any other objects or materials that would create a danger to the safety of any persons or animals.

## **PART XVIII - ADDITIONAL REQUIREMENTS FOR GATES, DOORS AND ENTRANCES**

30. Where a gate forms part of a Swimming Pool Enclosure, it shall be:
  - (a) supported on metal hardware hinges capable of withstanding 91 kilograms (200 pounds);
  - (b) self-closing with a self-latching hardware device at the top of and on the inside of the gate; and
  - (c) installed with a locked drop bar on the secondary gate where double gates form part of the required enclosure.
31. Where a door forms part of the Swimming Pool Enclosure but does not lead directly from a private dwelling unit, it shall be:
  - (a) of such height and of such construction as will provide a degree of safety and rigidity equivalent to or greater than that of a required fence;
  - (b) supported on metal hardware hinges capable of withstanding 91 kilograms (200 pounds); and
  - (c) equipped with a bolt, chain, latch, or similar locking device, located at a minimum height of 1.52 metres (5 feet) from the bottom of the door; and kept locked at all times.
32. The wall of a building may form part of a Swimming Pool Enclosure, unless it creates a situation where the following would be located within the enclosure:
  - (a) a main building entrance; or
  - (b) a service entrance to a multiple occupancy building containing more than four (4) dwelling units.

## **PART XIX - ENFORCEMENT**

33. An Officer acting under this By-law may, at any reasonable time, enter and inspect any property, including all buildings and structures thereon, to determine whether there is compliance with this By-law or any approval, order or notice made under this By-law or a Revocation Order or a Notice of Contravention.
34. Where an Owner has been served with a Revocation Order and he or she has failed to drain and remove all of the water from the Swimming Pool as required by section 13 of this By-law, the City, through any one or all of its employees, agents or contractors may enter onto the property and drain the Swimming Pool of water.

35. (1) An Officer may issue a Notice of Contravention to an Owner for any contravention of this By-law.
- (2) An owner who is served with a Notice of Contravention shall carry out the work necessary to rectify the contravention specified in the notice within the timeframe specified in the notice.
- (3) A Notice of Contravention shall include:
  - (a) particulars of the contravention;
  - (b) a timeframe in which the contravention must be rectified; and
  - (c) the signature of the Officer.
- (4) If an Owner fails to comply with a Notice of Contravention within the time prescribed therein, the City, through any one or all of its employees, agents or contractors, may enter onto the property and do any or all of the following:
  - (a) remove, replace, or repair parts of, or all of the entire Swimming Pool Enclosure; or
  - (b) drain the Swimming Pool of water.
- (5) Any materials or structures removed by the City under subsection (3) may be deposited on the Owner's property or disposed of as refuse by the City.
- (6) The service provisions that apply to a Revocation Order shall apply, with any necessary modifications, to a Notice of Contravention.

#### **PART XX - RECOVERY OF EXPENSES**

36. Where an Owner of a property fails to do a matter or thing required under this By-law and the City carries out the work required to do the matter or thing, any Expenses incurred by the City in carrying out the work becomes a debt owed by the Owner to the City and shall be paid to the City within thirty (30) days of the billing date. If the Owner owing the Expenses fails to pay the entire amount within thirty (30) days of the billing date the City may recover the Expenses, or any portion not paid, by adding them to the tax roll of the property and collecting them in the same manner as property taxes.

#### **PART XXI - PENALTY**

37. (1) Every Person who contravenes any provision of this By-law, including a contravention of a Notice of Contravention made under section 35 of this By-law, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended and the *Municipal Act, 2001*, as each may be amended from time to time.
- (2) In addition to Subsection 37(1) of this By-law, any person who is charged with an offence under this By-law by the laying of an information under Part III of the *Provincial Offences Act* and is found guilty of the offence is liable, pursuant to the fine provisions of the *Municipal Act, 2001*, to a fine of no more than \$25,000.00.

## **PART XXII - VALIDITY & INTERPRETATION**

38. If a court of competent jurisdiction declares any provision or part of a provision of this Bylaw to be invalid or to be of no force and effect, it is the intention of Council in enacting this By-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.
39. All words importing the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the By-law otherwise requires.

## **PART XXIII - REPEAL**

40. By-law 115-2004, as amended, is hereby repealed.

## **PART XXIV - SHORT TITLE**

41. This By-law shall be known and may be cited as the “Swimming Pool Enclosure By-law”.

**ENACTED AND PASSED this 22<sup>nd</sup> day of June, 2011.**

**Signed by: Hazel McCallion, Mayor and Crystal Greer, City Clerk**

**SCHEDULE “1”**  
**FEES**

Certificate of Approval Swimming Pool Enclosure	\$258.00
Hot Tubs, Spas, and Whirlpools (Equipped with locking covers)	\$258.00
Appeal Tribunal Hearing Fee	\$380.00

- These rates shall automatically increase and be rounded to the nearest dollar on the first day of January in each year by the percentage increase in the All Items Index of the Consumer Price Index (not seasonally adjusted) for the Toronto Census Metropolitan Area, published by Statistics Canada, during the twelve (12) month period ending on October 1 in the year immediately preceding the rate increase date.
- The fees as listed in this schedule will be subject to Provincial Sales Tax (P.S.T), Goods and Services Tax (G.S.T) and/or Harmonized Sales Tax (H.S.T), where applicable.