

SWIMMING POOL ENCLOSURE BY-LAW 115-04

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NOTE: THIS IS NOT PART OF THE BY-LAW - FOR ADMINISTRATION PURPOSES ONLY



**CORPORATION OF THE CITY OF MISSISSAUGA
SWIMMING POOL ENCLOSURE BY-LAW 115-04
(Amended by By-law 224-04, 365-04)**

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

AND WHEREAS section 9(3) of the *Municipal Act* 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 130 of the *Municipal Act* authorizes a municipality to regulate matters related to the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS section 427 of the *Municipal Act* 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:

I. DEFINITIONS

1. In this By-law:

“By-law Enforcement Officer” means the Manager or an officer of the By-law Enforcement Section of the Corporation;

“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 City of Mississauga;

“class-A 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)

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dwelling units;

“class-B 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 being constructed with vertical boards, bars, pipes, rails or any other materials which have a separation distance of less than 38mm (1 ½ in.) in between each piece of the materials, or in the case of a chain-link fence, chain link meshes of less than 38mm (1 ½ in.);

“Corporation” means the Corporation of the City of Mississauga;

“effective ground level” means the highest level of the ground within 1.0 m (3 ft. 3 in.) 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 Corporation, and shall include but not limited to all charges, costs, administrative fees, GST, outlays, legal fees and losses;

“hot tub” means a body of water located outdoors contained by artificial means, with mechanisms allowing for the direction and/or 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 By-law Enforcement Section of the Corporation, and includes his or her designate;

“open construction” means being constructed with vertical boards, bars, pipes, rails or other materials which have a separation distance of 38 mm (1 ½ in.) or greater but not exceeding 92 mm (3.58 in.) between any piece of the materials;

“owner” means the registered owner of a parcel of property as such person is described in the records of the land registry office;

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

“solid construction” means being constructed with horizontal boards, bars, pipes, rails or other materials in which no horizontal or vertical separation spaces are created;

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“swimming pool” means any body of water located outdoors contained wholly or partly by artificial means and which can hold water exceeding 61cm (24 in.) in depth at any point and includes a hot tub, but does not include any swimming pool owned by a public or governmental body, agency or authority;(365-04)

“swimming pool area” means the swimming pool and any surrounding platforms, walkways, play areas and landscaped areas which lie within the swimming pool enclosure; and

“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.

II. ADMINISTRATION

2. The By-law Enforcement Section of the Corporation shall be responsible for the administration and enforcement of this By-law.

III. APPLICATION OF BY-LAW

3.
 - 1) 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 any other City of Mississauga by-laws related to fences, the provisions of this By-law shall prevail.
 - 2) Notwithstanding subsection 1, in the event of any conflict between this By-law and the Property Standards By-law 654-98, as amended, the provisions of the Property Standards By-law shall prevail.
4. This By-law does not apply to:
 - 1) swimming pools located completely inside a building; and
 - 2) class-A pools as defined and regulated under the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended.(224-04)
5. Parts V and VI of this By-law do not apply to swimming pool enclosures previously approved by the passing of a final inspection made under a permit issued by the Corporation provided that the swimming pool enclosure remains the same enclosure as previously approved and

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has not been substantially altered or reconstructed.

IV. GENERAL PROVISIONS

6. Every owner of a property on which a swimming pool is located, constructed, or erected shall:
- 1) erect or cause to be erected a swimming pool enclosure around the entire swimming pool in accordance with the provisions of this By-law; and
 - 2) 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; and
 - 3) 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.

V. CERTIFICATE OF APPROVAL

Application

7. 1) The owner of the property on which a swimming pool enclosure is located or erected may apply for a Certificate of Approval by:
- a) completing all forms as provided by and to the satisfaction of the By-law Enforcement Section; and
 - b) paying the inspection fee to the By-law Enforcement Section as provided in Schedule A of this By-law.
- 2) 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 in the form prescribed in Schedule B of this By-law may be issued.
- 3) The fees required under this by-law are non-refundable.

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Revocation

8. 1) The Manager may revoke a Certificate of Approval issued under this By-law by issuing a Revocation Order to the owner, in the form as prescribed in Schedule C of this By-law, if:
- a) the Certificate of Approval was issued based on mistaken, false or incorrect information as provided by the applicant or his/her agent;
 - b) the Certificate of Approval was issued in error;
 - c) the owner of the property to which a Certificate of Approval has been issued requests in writing that it be revoked;
 - d) the swimming pool is removed or filled in; or
 - e) a section of this By-law is not complied with.
- 2) The Certificate of Approval is considered revoked on the day that the owner has been served with the Revocation Order.
9. 1) 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.
- 2) Service of a Revocation Order under s.10(1)(b) is deemed to be made on the fifth day after the day of mailing, excluding Saturday and Sunday and statutory holidays.
10. 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.

Hearing before the Appeal Committee

11. 1) Where a Revocation Order has been served, the Owner may apply for a hearing to

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appeal the Order to the Appeal Committee within 14 days of being served or deemed served with the Order.

- 2) An application for a hearing under subsection (1) shall be made in writing and delivered to the City Clerk.
12. An application for a hearing submitted under subsection (1) shall be accompanied by the appropriate fee as set out in Schedule A to this By-law.
13. 1) When a hearing date before the Appeal Committee has been fixed and the applicant who has given notice of the hearing does not attend at the appointed time and place, the Appeal Committee may proceed in the absence of the applicant and the applicant will not be entitled to any further notice in the proceedings.
- 2) At the conclusion of a hearing, the Appeal Committee shall, as soon as practicable, make a written report to Council, which report shall:
- a) summarize the evidence and the arguments presented by the parties;
 - b) set out the findings of fact made by the Committee and the recommendation;
and
 - c) set out the reasons for the recommendation on the merits of the application.
- 3) The Appeal Committee may uphold the Revocation Order as issued by the Manager, exempt the owner in whole or in part from the requirements under the Revocation Order, or impose any conditions the Committee deems appropriate.
- 4) Council may uphold or vary the decision of the Appeal Committee or do any act or make any decision that it might have done had it conducted the hearing itself.
- 5) A decision by Council under subsection (4) is final and binding. The owner is not entitled to a further hearing on the matter before Council.
14. An application made by the owner for a hearing under this Part 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 Council renders a decision indicating otherwise.

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VI. SWIMMING POOL ENCLOSURE SPECIFICATIONS

Measurement

15. For the purpose of this By-law:

- 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 piece of material, and the top of the lower piece of material used to construct the enclosure.**
- 2) The distance between vertical boards, bars, pipes, rails, or other materials are measured from the inside of the boards, bars, pipes, rails, or other materials.**
- 3) The short form measurements used in this by-law shall have the following meaning:**
 - a. “cm” means centimeter;**
 - b. “ft.” means feet;**
 - c. “ga.” means gauge;**
 - d. “in.” means inch;**
 - e. “kg” means kilogram;**
 - f. “lb” means pound;**
 - g. “m” means meter; and**
 - h. “mm” means millimeter.**

General Specifications

16. No swimming pool enclosure shall:

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- 1) have any horizontal or diagonal support or brace unless the support or brace is on the inside of the enclosure and the enclosure is of closed construction; or
 - 2) have any decorative parts or attachments which measure more than 38mm (1 ½ in.) in width or depth on the external side of the enclosure; or
 - 3) be constructed of horizontal boards, bars, pipes, rails or other materials unless the enclosure is of solid construction; or
 - 4) have a separation distance between vertical boards, bars, pipes, tubes, rails or other materials exceeding 92mm (3.58 in.), or in the case of a chain link fence, have a chain link mesh exceeding 38mm (1 ½ in.); or
 - 5) have a ground clearance space or gap greater than 10cm (4 in.) at any point under the enclosure between the bottom rail, board, pipe, or other support and the effective ground level.
17. 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 By-law.

Additional Specifications for Class-A Pools

18. A swimming pool enclosure for class-A pools shall have a minimum vertical height of 1.22m (4 ft.) above effective ground level.
19. Where the swimming pool enclosure for a class-A pool is of open construction, it shall have a minimum separation distance of 1.22m (4ft.) between any horizontal boards, bars, pipes, tubes, rails or other materials used for its construction.

Additional Specifications for Class-B Pools

20. A swimming pool enclosure for class-B pools shall have a minimum vertical height of 1.83m (6ft.) above effective ground level.

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21. Where the swimming pool enclosure for a class-B pool is of open construction, it shall have a minimum separation distance of 1.83m (6 ft.) between any horizontal boards, bars, pipes, tubes, rails or other materials used for its construction.

Alternatives for Above Ground Swimming Pools or Hot Tubs

22. For an above ground swimming pool,
- 1) an above ground swimming pool enclosure guard may be utilized in place of a swimming pool enclosure providing that the total combined height of the above ground pool walls and the enclosure guard is at least 1.83m (6 ft.) above the effective ground level;
 - 2) the entrance ladder shall be enclosed by a swimming pool enclosure constructed in accordance with this By-law.
23. 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:
- 1) the cover is fitted and secured so as to prevent access when the hot tub is not in use; and
 - 2) the Manager is satisfied that the cover is designed in a way that the cover complies with subsection (1).

Swimming Pool Enclosures of Wooden Construction

24. In addition to the requirements of this Part, every swimming pool enclosure of wooden construction shall be supported by vertical wooden posts with a minimum size of 8.8 cm x 8.8 cm x 1.22 m (3 ½ in. x 3 ½ in. x 4 ft), spaced not more than 2.44m (8 ft.) apart.

Swimming Pool Enclosures of Ornamental Metal Construction

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25. In addition to the requirements of this Part, every swimming pool enclosure of metal construction shall be supported by vertical metal posts with a minimum diameter 51mm (2 in.) or dimension measurement of 51mm x 51mm (2 in. x 2in.), spaced not more than 2.44m (8 ft.) apart.

Swimming Pool Enclosures of Chain Link Construction

26. In addition to the requirements of this Part, every swimming pool enclosure of chain link construction shall:
- 1) have a mesh consisting of 12 ga. galvanized steel wires, or of 14 ga. steel wires covered with vinyl or other types of plastic approved by the Manager, yielding a total thickness equivalent to a 12 ga. galvanized steel wire; and
 - 2) be supported by galvanized steel vertical posts with a minimum diameter measurement of 38 mm (1 ½ in.) spaced not more than 3.043m (10 ft.) apart; and
 - 3) 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 mm (1.25 in.). A galvanized steel tension rod of 5 mm (1/4 in.) in diameter may be substituted for the bottom rail or pipe.

Swimming Pool Enclosures of Other Materials:

27. Where a swimming pool enclosure is made of materials other than wood, metal, or chain link, it may be approved by the Manager by the issuance of a Certificate of Approval if s/he determines that the enclosure would yield an equivalent or greater degree of safety as provided in the requirements under this By-law.

Prohibited Materials

28. 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.

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Additional Requirements for Gates, Doors, and Entrances

29. Where a gate forms part of a swimming pool enclosure, it shall be:
- 1) supported on metal hardware hinges capable of withstanding 91 kg (200 lbs.); and
 - 2) self-closing with self-latching hardware device at the top of and on the inside of the gate.
30. Where a door forms part of the swimming pool enclosure but does not lead directly from a private dwelling unit, it shall be:
- 1) 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;
 - 2) supported on metal hardware hinges capable of withstanding 91 kg. (200 lbs.);
 - 3) equipped with a bolt, chain, latch, or a similar device, located at a minimum height of 1.52m (5 ft.) from the bottom of the door; and
 - 4) be kept locked at any time when the swimming pool contains 61 cm (24 in.) or more water in depth.
31. The wall of a building may form part of a swimming pool enclosure, unless such creates a situation where the following would be located within the enclosure:
- 1) a main building entrance; or
 - 2) a service entrance to a multiple occupancy building containing more than four (4) dwelling units.

VII. PENALTIES

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32. Every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine as provided for under the *Provincial Offences Act*, R.S.O. 1990, c.P-33, as amended.
33. 1) A By-law Enforcement Officer may issue a Notice of Contravention to an owner for any infractions of the by-law.
- 2) If a Notice of Contravention is not complied with within the time prescribed therein, the Corporation may do any or all of the following, on behalf of the owner:
- a) remove, replace, and/or repair parts of or the entire swimming pool enclosure;
or
- b) drain the swimming pool of water.
- 3) Any materials or structures removed by the Corporation under subsection (2) may be deposited on the owner's property or stored at the Corporation for thirty (30) days at the owner's expense. Any item so stored and not retrieved by the owner within thirty (30) days may be disposed of by the Corporation in any manner as it deems appropriate.
- 4) The Corporation may recover the costs from the owner for the work done by the Corporation on behalf of the owner under subsections (2) and (3).

VIII. VALIDITY & INTERPRETATION

34. If a court of competent jurisdiction declares any provisions or part of a provision of this By-law to be invalid or to be of no force and effect, it is the intention of 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.
35. 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.

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IX. REPEAL

36. By-law 231-94, as amended, is hereby repealed.

X. SHORT TITLE

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

ENACTED and PASSED this 31st day of March, 2004.

Signed by: Hazel Mcallion, Mayor

Crystal Greer, City Clerk

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SCHEDULE “A”

FEES

Certificate of Approval

| | |
|-------------------------|----------|
| Swimming Pool Enclosure | \$250.00 |
|-------------------------|----------|

| | |
|--|----------|
| Hot Tubs, Spas, and Whirlpools (Equipped with locking covers) | \$100.00 |
|--|----------|

Appeal Committee

| | |
|-------------|----------|
| Hearing Fee | \$250.00 |
|-------------|----------|

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SCHEDULE "B"

CERTIFICATE OF APPROVAL



CERTIFICATE OF APPROVAL No. _____

Issued pursuant to City of Mississauga Swimming Pool Enclosure By-law No. _____,
as amended.

Issued To: Name of Property Owner, Address

This certifies that the swimming pool enclosure located at:

MUNICIPAL ADDRESS, LOT, PLAN

has been found to comply with the City of Mississauga Swimming Pool Enclosure By-law No. _____,
as amended on *month/day/year*.

Manager, By-Law Enforcement

Note:
Pursuant to Sub-section 9(3) of the City of Mississauga Swimming Pool Enclosure By-law No. _____, as amended, every owner of a property on which a swimming pool is located, erects, erects or erected shall maintain the swimming pool enclosure in compliance with the provisions of the City of Mississauga Property Standards By-law 654-98, as amended.

Caution:
Every effort is made to ensure that the information contained herein is correct but the City of Mississauga accepts no responsibility for any errors, omissions or inaccuracies. The information in this report does not constitute an opinion or advice on, or representation by, The Corporation of the City of Mississauga of the lawfulness of the use of the property or buildings thereon, nor compliance with any other applicable laws, codes, by-laws and regulations. The requester must satisfy himself or herself with respect to the same.

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SCHEDULE "C"

REVOCATION ORDER

*Corporate Services Department
By-law Enforcement Division*

City of Mississauga
300 City Centre Drive
Mississauga, Ontario
L5B 3C1



**ORDER
TO REVOKE A CERTIFICATE OF APPROVAL
MISSISSAUGA SWIMMING POOL**

**PURSUANT TO THE CITY OF
ENCLOSURE BY-LAW NO. _____, AS**

AMENDED

Date

*Property Owner
Municipal Address*

Re: Address, Lot and Plan No.

WHEREAS, a Certificate of Approval has been issued for the swimming pool enclosure of the property described above, which is owned by you or in which you have an interest;

AND WHEREAS IT HAS BEEN FOUND THAT:

- G the Certificate of Approval was issued based on mistaken, false or incorrect information as provided by the applicant or his/her agent;
- G the Certificate of Approval was issued in error;
- G the owner of the property to which the Certificate of Approval was issued, namely _____, has requested that it be revoked;
- G the swimming pool on this property has been removed/filled in;
- G an inspection of your property revealed that in some aspects, the swimming pool enclosure located on this property does not conform with the standards as prescribed in the City of Mississauga Swimming Pool Enclosure By-law No. _____, as amended, or the Property Standards By-law 654-98, as amended, the particulars of such non-conformity are set out in Schedule "A";

TAKENOTICE THAT pursuant to the provisions of the City of Mississauga Swimming Pool Enclosure By-law No. _____, I, _____, Manager of By-law Enforcement for the City of Mississauga, hereby ORDER THE REVOCATION OF THE CERTIFICATE OF APPROVAL NO. _____ which was issued on _____/_____/_____ for the above referenced property and swimming pool enclosure.
day month year

YOU ARE HEREBY ADVISED that if you are not satisfied with this Order, *you may appeal* to the City of Mississauga Appeal Committee by sending a Notice of Appeal by registered mail to the City Clerk, 300 City Centre Drive, Mississauga, Ontario, L5B 3C1, *within fourteen (14) days after being served with this Order*, stating your grounds for appeal along with a non-refundable appeal fee of \$250.00 payable to the City of Mississauga. You have the right to attend that meeting and be represented by counsel, adduce evidence, and to submit arguments to show cause why the Certificate of Approval No. _____ should not be revoked.

NOTWITHSTANDING that a hearing may have been applied for to appeal this Order, please note that pursuant to sections 10 and 14 of the Swimming Pool Enclosure By-law No. _____, as amended, the owner of the property is responsible to forthwith drain and remove all water contained within the swimming pool. In addition to possible court action, failure to comply will result in the City of Mississauga draining the pool and the costs of such action may be registered as a lien on the land and shall be deemed to be municipal real property taxes and may be added to the assessment roll and collected in the same manner and with the same priorities as municipal real property taxes.

Issued in the City of Mississauga this _____ day of _____, _____.
day month year

Name of Manager

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Manager, By-law Enforcement

Schedule "A" - Particulars of Non-conformity

| <i>Description of non-conformity</i> | <i>Location</i> | <i>Necessary Action</i> | <i>By-law Section</i> |
|--------------------------------------|-----------------|-------------------------|-----------------------|
|--------------------------------------|-----------------|-------------------------|-----------------------|