

# THE CORPORATION OF THE CITY OF ELLIOT LAKE

## BY-LAW NO. 24-28

Being a By-Law Providing for the Regulation of Private Outdoor Swimming Pools in the City of Elliot Lake, and to repeal By-Law 79-70.

**WHEREAS** Section 11 (2) (6) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that the municipality may pass by-laws related to the health, safety, and wellbeing of the inhabitants of the municipality; and

**WHEREAS** Section 11 (3) (7) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to pass by-laws respecting structures, including fences; and

**WHEREAS** Section 391 (1) of the Municipal Act, 2001 provides that a municipality may pass by-laws imposing fees or charges for services or activities or done by or on behalf of it; and

**WHEREAS** Section 7 of the Building Code Act, 1992, S.O. 1992, Chap.23, as amended, empowers Municipal Council to enact certain by-laws respecting construction, demolition, change of use, inspections, and code of conduct for Building Officials, and

**WHEREAS** Council of the City of Elliot Lake deems it expedient for the protection of the public to enact a by-law to regulate outdoor swimming pools.

**NOW THEREFORE** the Council of the Corporation of the City of Elliot Lake **ENACTS AS FOLLOWS:**

### 1. Interpretation

For the purpose of this by-law the following definitions shall apply:

- a) "Backflow Preventer" means a device used in a water supply pipe which:
  - i. Incorporates two or more check valves to prohibit the reverse flow of the water, irrespective of pressure differentials, where the maximum working pressure is not exceeded;
  - ii. Contains integral safeguards to make it fail-safe in the event of a malfunction of one or more of the check valves.
- b) "Chief Building Official" means the person appointed by Council to such position pursuant to the Ontario Building Code Act.
- c) "Deck" means a structure that is accessory to a residential use and used as an outdoor living area, with posts holding it erect and a floor that is above finished grade.

- d) "Enforcement Officer" means any person designated as Municipal Law Enforcement, appointed by the Council of the Corporation of the City of Elliot Lake, for the enforcement of municipal by-laws, including this By-law.
- e) "Enclosure" shall mean a fence, wall or other structure, including doors and gates, completely surrounding a pool.
- f) "Fence" means a structure or partition made of wood, metal or other substance that is constructed for any purpose, such as marking the boundary of a property, enclosing a property, providing privacy, preventing access by people or animals, or dividing a property into sections, and includes every door, gate and other closure that forms part of a fence.
- g) "Gate" shall mean a swinging or sliding barrier used to fill or close an access and includes a door.
- h) "Guard" 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.
- i) "Inspector" means the person appointed by Council to such position pursuant to the Ontario Building Code Act.
- j) "Lot Line, Interior Side" means a lot line, other than a rear lot line that does not abut a public street.
- k) "Lot Line" means a line delineating any boundary of a lot.
- l) "Lot Line, Exterior Side" means the lot line of a corner lot, other than the front lot line, which divides the lot from a street or highway.
- m) "Lot Line, Front" means the lot line that an address is provided for.
- n) "Lot Line, Rear" means the lot line opposite to, and most distant from, the front lot line. For the purpose of this definition, if two side lot lines join at a point, that point shall be deemed as a rear lot line.
- o) "Swimming Pool" means any body of water contained by artificial means located outdoors on privately owned property in which the depth of the water at any point can exceed 0.6 meters and shall include any accessory deck or support structure.

## **2. Permit/Application**

- a) No person shall construct or cause to construct a swimming pool unless a permit has been issued by the Chief Building Official.
- b) An owner or their agent shall file an application for a building permit to construct a swimming pool with the Chief Building Official on the application prescribed by the Chief Building Official.
- c) The application for a permit shall be accompanied by the required fee as prescribed in the Building Permit Fee Structure By-Law (as amended) for the municipality in effect on the day the application is submitted.
- d) The application for the building permit for a swimming pool shall be accompanied by:

- i. A Site Plan showing the location and distance of the swimming pool and fence relation to existing lot lines and structure;
  - ii. A Diagram showing the fence construction and height;
  - iii. A lot grading and drainage plan completed by a qualified person (Professional Engineer or Certified Engineer Technologist “CET”, or other qualifications as deemed appropriate by the Chief Building Official) where an in-ground swimming pool is proposed. It is recommended that an in-ground swimming pool be installed by a professional;
  - iv. Any other information that the Chief Building Official deems necessary to determine whether the proposed construction will comply with this by-law and any other applicable law, including the Ontario Building Code.
- e) The building permit application for a swimming pool that proposes the construction of a deck, floor, platform, structure or any other building as defined and regulated under the Building Code Act, shall be accompanied by separate drawings with sufficient information to enable the Chief Building Official to determine whether or not the proposed construction will conform to the Ontario Building Code and any other applicable law. Where a building permit is required for any deck, floor, platform structure or other building, the pool permit shall include the building permit for the same.
- f) The owner or their agent shall notify the Chief Building Official or Inspector of readiness for inspection and schedule for an inspection for an Inspector, upon completion of the construction of the swimming pool and enclosure, prior to use of the swimming pool.

### **3. Fences/Enclosures – General**

- a) No person shall place water in a privately owned swimming pool or allow water to remain in such swimming pool unless a fence/enclosure complying with the provisions of this by-law has been erected and completely surround such swimming pool.
- b) No person shall construct a privately owned swimming pool unless there is an approved enclosure erected and maintained entirely around such pool.
- c) A wall of building may be considered to provide adequate protection for its length when substituted for any portion of a fence, when all doors located in this wall are equipped with a lock. The building shall be continuously occupied, or all door thereto are to be locked when it is not occupied.
- d) Every fence enclosing a privately owned swimming pool shall be a minimum of 1.5 meters in height and shall be constructed of a close board, chain link, or other suitable product that will reasonably deter individuals from climbing to gain access to the fenced area.
- e) No barbed wire, or device producing electric current shall form part of a fence or gate serving as an enclosure.

- f) Every fence bottom rail shall not be more than 50 mm above finished grade.
- g) A boundary fence on the lot line may be used as a portion of the fence around a pool area provided such parts of the boundary fence used as fencing complies in all respects to the requirements above.
- h) During construction of an in-ground privately owned outdoor swimming pool, a snow fence shall be erected so as to surround the excavation site.

#### **4. Chain Link Fencing**

- a) Chain link fences shall be supported by a minimum 38 mm diameter pre-finished steel posts spaced not more than 2.4 meters apart, placed to frost level.
- b) Chain link shall have a mesh size of 38 mm or less, or other approved design such that it will reasonable deter individuals from climbing to gain access to the fenced area.
- c) A diagram showing the fence construction and height will be required with the application to obtain a swimming pool permit.

#### **5. Close Board Fencing**

- a) Close boarded fences shall be supported by wood, metal, or composite posts at least 89 mm x 89 mm spaced not more than 2.4 meters apart, placed to frost level, or be another approved system.
- b) Where wood posts are used, the portion of the post below ground shall be treated with wood preservative.
- c) Close boarded fences shall be installed vertically as to deter individuals from climbing, to gain access to fences in area.
- d) A diagram showing the fence construction and height will be required with the application to obtain a pool permit.

#### **6. Gates**

- a) Gates in the required fence shall provide protection equivalent to the fence and shall be equipped with self-closing, self-latching, spring loaded devices and a lock located at the top of the gate.
- b) Every privately owned swimming pool shall be secured against entry of the public other than tenants or their guests and no invitation to the public shall be extended.
- c) No person shall leave the gate to a fenced area unlocked except when the area is being used and supervised by the owner of the premises, or another adult person authorized by the owner to supervise the use of the pool.

## **7. Zoning Setbacks and Height Requirements**

- a) Outdoor swimming pools and hot tubs are permitted in the interior side, rear and exterior side yards, provided they are set back a minimum of 1.2 meters from the interior side and rear lot lines and 3.0 meters from the exterior side lot line.
- b) No part of such swimming pool or hot tub, including the associated apron or platform shall be constructed in a front yard.
- c) All pools, aprons and platforms shall meet the minimum requirements of this by-law and as provided in the City of Elliot Lake Zoning By-law.
- d) Setbacks are to be measured from the water's edge of the swimming pool or hot tub to such lot line.
- e) The maximum height of a swimming pool or hot tub is 1.5 meters above grade.
- f) Swimming pool pumps, filters and heaters are permitted in the interior side, rear and exterior side yards, provided they are set back a minimum of 0.6 meters from the interior side and rear lot lines and 1.5 meters from the exterior side lot line.
- g) Swimming pools shall not count towards lot coverage of accessory uses or total lot coverage.

## **8. In-Ground Swimming Pools**

- a) A lot grading and drainage plan completed by a qualified person (Professional Engineer or Certified Engineer Technologist "CET", or other qualifications as deemed appropriate by the Chief Building Official) shall be provided prior to issuing a permit, to allow the installation of an in-ground swimming pool. It is recommended that in-ground swimming pools be installed by a professional.
- b) All equipment such as pumps, filters and heaters shall be situated in a way to deter individuals from climbing to gain access to such pool.
- c) Electrical services to a Pool shall comply with all requirements of the Ontario Electrical Safety Code and the Electrical Safety Authority (ESA). Upon request of an Official, a copy of an ESA Certificate of inspection shall be provided to the Official.
- d) Water in a pool shall be maintained and not become stagnant. Any stagnant water in a pool shall be fully restored to an acceptable standard or removed.

## **9. Above Ground Swimming Pools**

- a) The sidewalls of above ground swimming pools shall be vertical, smooth, have no horizontal projections, or any other projections that will facilitate climbing.
- b) Certain above-ground privately owned outdoor swimming pools have a fence around the top of the pool. This fence is an integral part of their construction and shall be a minimum of 1.5 meters in height from the base of the pool. This system shall be considered an integrally constructed fence being part of the required swimming pool enclosure.
- c) Any ladder providing access to the pool shall be readily removable without the use of tools, or lockable in a non-climbing or upright position.

- d) All equipment such as pumps, filters, and heaters shall be situated in a way to deter individuals from climbing to gain access to such pool.
- e) Electrical services to a Pool shall comply with all requirements of the Ontario Electrical Safety Code and the Electrical Safety Authority (ESA). Upon request of an Official, a copy of an ESA Certificate of inspection shall be provided to the Official.
- f) Water in a pool shall be maintained and not become stagnant. Any stagnant water in a pool shall be fully restored to an acceptable standard or be removed.

#### **10. Backflow Preventer**

- a) Where the orifice of a faucet, spout or distributing pipe supplies water to a privately owned outdoor swimming pool, a back-flow preventer shall be connected to such orifice.
- b) Where a privately owned outdoor swimming pool is supplied either directly or indirectly through devices, with water from a permanent potable water supply line, such permanent water supply line shall be equipped with an operational back-flow preventer.

#### **11. Deck around Pool**

- a) Any deck, floor or platform with a guard system that is adjacent to the pool, and/or provides access to the pool shall have a minimum height of 1.5 meters.
- b) The deck, floor or platform with a guard system shall be considered non-climbable around its entire perimeter with no openings that will allow the passage of a 100 mm diameter sphere.
- c) The deck, floor or platform with a guard system shall be constructed in conformance with the Ontario Building Code.

#### **12. Hot Tubs**

- a) Structured known as “Hot Tubs”, “Whirlpools”, or “Spas” do not require a building permit and need not comply with the enclosure/fence section of this by-law, provided that a substantial cover is fixed securely to the structure and is lockable to prevent access.
- b) No person shall leave a Hot Tub, Whirlpool, or Spa unsecured by a substantial cover fixed securely to the structure and locked, while not attended by a responsible person.
- c) If a person makes the City aware of their Hot Tub, Whirlpool, or Spa that is going on a deck, they must have their deck reviewed by an Engineer to make sure the structure can support it.

#### **13. Severability**

- a) Any section or part of a section of this by-law which may subsequently be held to be invalid, shall be severable from the remainder of the by-law and the invalidity thereof shall not affect the remaining part of this by-law

**14. Enforcement**

- a) This By-law shall be enforced by the Chief Building Official, Inspector, Enforcement Officer, or designate.
- b) The provisions of this by-law shall apply to all installations or alterations of privately owned outdoor swimming pools regardless of the date of construction of such swimming pool.

**15. Penalty/Offences**

- a) 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 pursuant to the provisions of this Provincial Offences Act, R.S.O. 1990, Ch.P.33, as amended. Each day that such offence is committed, or permitted to continue shall constitute a separate offence and may be punishable as such.

**16. Repealed**

- a) That by-law 79-70 is hereby repealed.

17. That this by-law shall come into force immediately on the passing thereof.

**PASSED** this 8<sup>th</sup> day of April, 2024.

CERTIFICATION BY THE CLERK:

I, N. Bray, Clerk of the Corporation of the City of Elliot Lake, do hereby certify that the above is a true certified copy of By-Law-24-28 which was passed in Open Council on the 8<sup>th</sup> day of April, 2024.



N. Bray – City Clerk

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**MAYOR**

**A. WANNAN**

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**DEPUTY CLERK**

**A. LAURENCE**