

**THE CORPORATION OF THE
TOWNSHIP OF SOUTH GLENGARRY
BY-LAW 16-18
FOR THE YEAR 2018**

**BEING A BYLAW TO REGULATE ENCLOSURES FOR PRIVATELY-OWNED
OUTDOOR POOLS WITHIN THE TOWNSHIP OF SOUTH GLENGARRY**

WHEREAS Section 11(3) of the Municipal Act 2001, S.O. 2001, c. 25, as amended, allows the Municipality to pass bylaws respecting structures, including fences and signs;

AND WHEREAS Section 398 (1) of the Municipal Act 2001 provides that despite any Act, a municipality may pass by-laws imposing fees or charges on any class of person, for services or activities provided or done by or on behalf of the municipality.

AND WHEREAS Section 446 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 fail 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 TOWNSHIP OF SOUTH GLENGARRY ENACTS AS FOLLOWS:

SHORT TITLE

THAT this by-law shall be known and cited as the *“Pool Enclosure By-Law“*

PART 1 - DEFINITIONS

1.1 In this By-law:

- 1.1. “Township” means the geographical area of the Township of South Glengarry or the municipal corporation as the context requires;
- 1.2. “Construct”, in all its forms, means to erect, install or materially alter;
- 1.3. "Director" means the person in the office of Director of Development or authorized delegates;
- 1.4. “Effective ground level” means the highest level of the ground within 1.0 m horizontally in any direction from the point being considered;
- 1.5. “Enclosure” means any one or more of a fence, wall or structure, including any door, gate or other opening, which surrounds a pool and restricts access to the pool as permitted under sections 5.1 to 5.21 of this By-law;
- 1.6. “Gate” means a barrier swinging on a vertical axis and includes a door to a structure or building;
- 1.7. “Inflatable Pool” means a pool, as defined in this by-law, consisting of an air supported structure which is capable of containing water with a depth in excess of 0.6 m at any point.
- 1.8. "Officer" means any person appointed as a municipal law enforcement officer for the purposes of enforcing this by-law, and may be referred to as an inspector, property standards officer or officer, whichever is applicable to enforce this by-law;
- 1.9. “Owner” includes:
 - a) a registered owner of land or the occupier of land on which a pool is being constructed or is located;
 - b) a person for the time being managing or receiving rent for land on which a pool is being constructed or is located, whether on the person's own account or as agent for any other person, or the person who would receive the rent if the land was let;
 - c) a person who takes possession of land on which a pool is being constructed or is located under a charge or mortgage registered on title; and

- d) a person authorized in writing by an owner under (a), (b) or (c) to act on their behalf;
- 1.10. "permit", except where the context requires otherwise, means a permit issued under this By-law;
- 1.11. "pool" means a body of water that:
 - a) is located outdoors on private property;
 - b) is wholly or partially contained by artificial means; and
 - c) is capable, at any point, of holding water in excess of 0.6 m in depth; including but not limited to a hot tub or landscape pond, but not including a body of water that:
 - i. is used for the purposes of, including but not limited to, providing water to livestock or irrigation for crops, which are associated with and located on land being used for farming;
 - ii. is on land zoned as rural or agricultural and is not capable, at any point 2.0 m from an edge, of holding water in excess of 0.6 m in depth;
 - iii. is part of a golf course;
 - iv. is owned by any public or governmental entity, including but not limited to an agency or authority;
 - v. is a river, lake, stream or other natural body of water;
 - vi. is a privately-owned stormwater management facility; or
 - vii. is a rain barrel having a height of at least 1.0 m and with no opening greater than 300 mm².
- 1.12. "Temporary Pool" means an Inflatable Pool or other Pool which is designed to be installed temporarily and removed periodically on a seasonal or more frequent basis

PART – 2 APPLICATION AND INTERPRETATION

- 2.1 Despite the provisions of this By-law, an enclosure that was in existence prior to the day of the passing of this By-law and was in compliance with a permit issued under By-law No. 31-10, the Swimming Pool and Enclosure By-law, or a predecessor By-law shall be deemed to comply with this By-law for so long as the enclosure:
 - a) continues to be in compliance with the permit issued under By-law No. 31-10, The Swimming Pool and Enclosure By-law, or the predecessor By-law;
 - b) continues to be in good repair; and
 - c) is not replaced.
- 2.2 Where an enclosure deemed to comply with this By-law under subsection 2.1 no longer meets paragraph 2.1 a),b) or c), this By-law applies to the enclosure or any replacement enclosure.
- 2.3 In the event of a conflict between the provisions of this By-law and the provisions of any other Township By-law, the provisions of this By-law shall prevail.

PART – 3 GENERAL OBLIGATIONS AND PROHIBITIONS

- 3.1 No Owner or their agent shall construct or permit to be constructed a pool on a property unless they ensure that an enclosure that conforms to the requirements of this by-law surrounds the pool and without first obtaining a Permit from the Director.
- 3.2 No person shall construct or permit to be constructed a pool or enclosure that is not in compliance with all applicable provisions of:
 - a) this By-law;
 - b) other Township By-laws, including but not limited to the Site Plan Control By-law and the Zoning By-laws;
 - c) the Ontario Building Code; or
 - d) any other applicable legislation.
- 3.3 No person shall place water in a pool or permit water to be placed in a pool unless an enclosure is in place that:

- a) has been inspected and approved by an Officer; and
- b) is in compliance with all applicable provisions of this By-law.

3.4 Every owner shall apply for a permit under this By-law before constructing or permitting the construction of a pool.

3.5 Every owner shall maintain an enclosure in compliance with all applicable provisions of this By-law and in good repair.

PART – 4 PERMIT PROCESS

Applications

4.1 An application for a Permit for a pool enclosure shall be in the form required by the Director, and shall be accompanied by the fee set out in Schedule ' A' of this by-law, two (2) sets of fully-dimensional plans, and with supporting documentation:

- a) identifying and describing in detail the work to be covered by the Permit for which an application is made;
- b) describing the property on which the pool is to be constructed;
- c) showing the location of the pool, all accessory equipment and proposed landscape features in relation to the enclosure, including but not limited to property lines, buildings and structures (including decks and sheds), rights-of-way, easements, septic beds and tanks, catch basins, swales, wells and retaining walls;
- d) describing complete details of the proposed enclosure, including location and type and the specifications of the proposed fence and gate;
- e) stating the names, addresses and telephone numbers of the Owner and the Agent performing the work;
- f) describing complete details of any existing fence or building proposed to be part of the enclosure, including details of gates, doors and windows;
- g) providing the manufacturer's specifications for the safety cover for hot tubs, if applicable; and providing any additional information

4.2 To determine compliance with this By-law, the Director may require that the owner:

- a) submit additional plans or other information as part of the permit application form; or
- b) allow an Officer to inspect the land where the pool is being constructed.

4.3 No permit shall be issued unless:

- a) the permit application form is complete, including any additional plans or other information if required under subsection 4.2 a);
- b) an inspection is complete if required under subsection 4.2 b);
- c) the pool and enclosure proposed in the completed permit application form is in compliance with all applicable provisions of:
 - i. this By-law;
 - ii. other Township By-laws including but not limited to the Site Alteration By-law, the Site Plan Control By-law and the Zoning By-laws;
 - iii. the Ontario Building Code; and
 - iv. any other applicable legislation.

Permits

4.4 Where the Director issues a permit, he or she may impose one or more conditions on the permit to ensure that the pool and enclosure are constructed in compliance with all applicable provisions of:

- a) this By-law;
- b) other Township By-laws, including but not limited to the Site Alteration By-law, the Site Plan Control By-law and the Zoning By-laws;
- c) the Ontario Building Code; and
- d) any other applicable legislation.

- 4.5** Conditions imposed on a permit by the Director may include but are not limited to requirements that:
- a) a temporary enclosure be constructed and maintained, including but not limited to the amount of time it may be in place;
 - b) an enclosure be inspected and approved by an Officer before water is placed in the pool.
- 4.6** A permit may be revoked by the Director if:
- a) the permit was issued in error or on mistaken, false or incorrect information; or
 - b) construction of the pool and enclosure has not been completed within 6 months from the date the permit was issued.

PART – 5 ENCLOSURES

General

- 5.1** Unless otherwise permitted under this By-law, every owner shall construct and maintain an enclosure that:
- a) is a minimum of 1.5 m in height measured from the effective ground level on the outside of the enclosure;
 - b) has no openings when all gates are closed allowing the passage of a spherical object larger than 100 mm in diameter;
 - c) is located at least 1.0 m from nearest inside pool wall; and
 - d) has nothing against or within 1.0 m of the enclosure that facilitates climbing the enclosure or diminishes the structural integrity of the enclosure;
 - e) totally encloses the pool area
- 5.2** Every fence and gate used as part of an enclosure which forms the part of the enclosure that separates the pool from any dwelling on the same property shall be constructed of open mesh chain link fence or equivalent open face construction that does not restrict visibility of the pool from any door or window that is located on the access level of the dwelling, and which has a line of sight to the pool, and the materials used shall comply with the provisions of this By-law.
- 5.3** No owner shall construct or maintain an enclosure that is in whole or in part:
- a) an overhead garage door;
 - b) a hedge or other vegetation;
 - c) barbed wire, chicken wire or any other barbed or sharp material; or
 - d) a conductor of electricity.

Landscape Ponds

- 5.4** Despite section 5.1, an owner may construct and maintain a landscape pond with a securely fastened grate or similar structure:
- a) capable, at any point, of preventing a person of any size from descending to a depth in excess of 0.6 m;
 - b) with openings of not more than 38 mm.
- 5.5** Where a landscape pond cannot or is not constructed and maintained with a grate in accordance with subsection 5.4, the owner shall construct and maintain an enclosure that otherwise complies with this By-law.

Gates

- 5.6** Every owner shall construct and maintain any gate to an enclosure with:
- a) a self-closing device;
 - b) a self-latching device on the inside of the enclosure that is located at least 1.35 m above the bottom of the enclosure;
 - c) a lock located on the inside of the enclosure; and
 - d) be of such construction and height that the gate otherwise complies with the requirements of this By-law for the enclosure.

- 5.7** Despite section 5.6, a secondary gate used occasionally to allow for the passage of vehicles or equipment may be constructed and maintained with a lock located on the inside of the enclosure.
- 5.8** Every owner and every adult person in control of a pool shall ensure all gates to an enclosure:
- a) that are not secondary gates under section 5.7, are closed and locked at all times except when the owner or a person with the owner's permission is entering, leaving or using the pool; and
 - b) that are secondary gates under section 5.7, are closed and locked at all times except when in use to allow for the passage of vehicles or equipment.

Fence Construction Standards

- 5.9** Every Owner shall construct and maintain all or part of an enclosure surrounding their pool as follows:
- a) Chain link fencing:
 - i. Diamond mesh:
 - a. openings of not more than 38 mm; and
 - b. of either 12 gauge galvanized steel wire or 14 gauge galvanized steel wire covered with a vinyl or other approved coating which would give it a total thickness equivalent to 12 gauge galvanized steel wire.
 - ii. Support posts:
 - a. of galvanized steel;
 - b. at intervals of not more than 3.0 m;
 - c. securely imbedded at least 1.2 m below grade or so as not to be frost susceptible;
 - d. encased in concrete below grade with at least a 50 mm cover on sides and base;
 - e. which are end or corner posts, a minimum of 48 mm in diameter; and
 - f. which are intermediate posts, a minimum of 38 mm in diameter; and
 - g. a horizontal top rail and bottom rail of galvanized or vinyl coated steel a minimum of 32 mm in diameter.
 - b) Vertical board fencing:
 - i. Boards:
 - a. of not less than 19 mm by 89 mm;
 - b. attached to a top and bottom rail; and
 - c. spaced at not more than 38 mm or, if a board on board design, at not more than 100 mm;
 - ii. Support posts:
 - a. at intervals of not more 2.4 m;
 - b. securely imbedded at least 1.2 m below grade or so as not to be frost susceptible;
 - c. encased in concrete below grade with at least a 50 mm cover on sides and base;
 - d. made, below grade, of natural cedar, pressure-treated wood or treated with a wood preservative that is acceptable to the Director; and
 - e. a minimum of 89 mm by 89 mm square; and
 - f. a horizontal top rail and bottom rail of not less than 38 mm by 89 mm, and, where the space between the boards is permitted to be greater than 38 mm, the top and bottom rails shall be spaced to provide a minimum clearance of 1.2 m between the rails.

- c) Wrought iron, aluminum or vinyl fencing:
 - i. With sufficient strength to provide an effective enclosure;
 - ii. With no openings allowing the passage of a spherical object larger than 100 mm in diameter;
 - iii. Support posts:
 - a. at intervals of not more 3.0 m;
 - b. securely imbedded at least 1.2 m below grade or so as not to be frost susceptible; and
 - c. encased in concrete below grade at least 50 mm thick; and
 - d. a horizontal top rail and bottom rail at least 1.2 m apart.

Walls

- 5.10** Every owner shall ensure all openings in a wall of a building or structure which forms all or part of an enclosure, and could provide a means of ingress directly into the swimming pool area, are protected by a door, window or other covering and kept closed and locked at all times when such swimming pool is not under competent supervision.

Above-Ground Pools

- 5.11** Every owner shall construct and maintain their above-ground pool with:
- a) a total combined height of the above ground pool walls and enclosure guard that:
 - i. is not less than 1.5 m in height; and
 - ii. does not facilitate climbing; and
 - iii. any area that provides access to the above-ground pool surrounded by an enclosure which complies with the requirements for enclosures set out in this By-law.
 - b) a fence, gate or other device to prevent climbing of the ladder for the pool.
- 5.12** Where an above-ground pool cannot or is not constructed and maintained in accordance with section 5.13, the owner shall construct and maintain an enclosure that otherwise complies with this By-law.

Temporary Pools

- 5.13** If a permit has been obtained with respect to the Pool Enclosure for a Temporary Pool, the Temporary Pool may be reinstalled and refilled with water without additional permits or inspections provided there have been no alterations to the pool enclosure.

Hot Tubs

- 5.14** Every owner shall construct and maintain their hot tub with a rigid cover that is capable of supporting a 90 kg load or meets the most up-to-date American Society for Testing and Materials standard for hot tubs.
- 5.15** Every owner and every adult person in control of a hot tub shall ensure that the rigid cover under subsection 5.14 is securely fastened and locked to prevent access at all times when the hot tub is not in use.
- 5.16** Where a hot tub cannot or is not constructed and maintained with a rigid cover in accordance with section 5.14, the owner shall construct and maintain an enclosure that otherwise complies with this By-law.

Temporary Enclosures

- 5.17** Every owner shall construct and maintain a temporary enclosure surrounding their pool when the pool does not have, for any reason, an enclosure that otherwise complies with this By-law.

- 5.18** Unless otherwise authorized by the Director, a temporary enclosure is permitted for not more than 7 consecutive days to allow time for the owner to construct and maintain a permanent enclosure that complies with this By-law.
- 5.19** Every owner shall construct and maintain a temporary enclosure with:
- a) plastic mesh fencing (snow fence): and
 - i. securely fastened to the support posts at 200 mm centres;
 - b) “T” support posts:
 - i. of steel;
 - ii. at intervals of not more than 2.4 m; and
 - iii. securely imbedded at least 300 mm below grade;
 - c) a horizontal top cable and bottom cable:
 - i. of 11 gauge steel; and
 - ii. threaded through the plastic mesh fencing and securely fastened to each support post; and
 - d) no openings, when all openings that provide access are closed, allowing the passage of a spherical object larger than 100 mm in diameter.
- 5.20** Every owner and every adult person in control of a pool surrounded by a temporary enclosure shall ensure that every opening providing access to the pool is closed and locked at all times except when the owner or a person with the owner’s permission is entering or leaving.

PART – 6 ADMINISTRATION AND ENFORCEMENT

General

- 6.1** The Director is authorized to administer and enforce this By-law including but not limited to:
- a) arranging for:
 - i. the assistance or work of Township staff, or Township agents;
 - ii. the making of orders or other requirements and the imposition of conditions as authorized under this By-law;
 - iii. the obtaining of court orders or warrants as may be required;
 - iv. the commencement of such actions on behalf of the Township to recover costs or restrain contravention of this By-law as deemed necessary; and
 - b) prescribing the format and content of any forms or other documents required under this By-law.
- 6.2** The Director may assign Officers to enforce this By-law and Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- a) carry out inspections;
 - b) make orders or other requirements as authorized under this By-law; and
 - c) give immediate effect to any orders or other requirements made under this By-law.
- 6.3** The Director may assign duties or delegate tasks under this By-law to be carried out in the Director’s absence or otherwise.
- 6.4** The Director may approve an enclosure that does not comply with sections 5.1 to 5.20 of this By-law where the Director determines that the enclosure would provide an equivalent or greater degree of safety.

Entry and Inspections

- 6.5** An Officer may enter on land at any reasonable time and in accordance with the conditions set out in sections 435 and 437 of the Municipal Act, 2001 for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- a) this By-law;
 - b) a direction or order made under this By-law;
 - c) a permit issued under this By-law; or
 - d) an order made under s. 431 of the *Municipal Act, 2001*.

- 6.6** An Officer may, for the purposes of the inspection under Section 6.5 and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*:
- a) require the production for inspection of documents or things relevant to the inspection;
 - b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c) require information in writing or otherwise as required by the Officer from any person concerning a matter related to the inspection; or
 - d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 6.7** An Officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the *Municipal Act, 2001*, in accordance with the conditions set out in that section, where he or she has been prevented or is likely to be prevented from carrying out an inspection under Sections 6.5 and 6.6.

Orders including Delivery

- 6.8** If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.
- 6.9** An order under Section 6.8 shall set out:
- a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 - b) the date or dates by which there must be compliance with the order, which may be of immediate effect should the Officer determine that the circumstances warrant.
- 6.10** If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do work to correct the contravention.
- 6.11** An order under Section 6.10 shall set out:
- a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - b) the work to be completed;
 - c) the date or dates by which the work must be completed; and
 - d) notice that if the order is not complied with, then the work may be done at the expense of the owner.
- 6.12** Delivery of an order to discontinue a contravening activity made under Section 6.8 or an order to do work made under Section 6.10 may be given personally or by registered mail to the last known address of:
- a) the owner; and
 - b) such other persons affected by the order as an Officer determines.
- Delivery by registered mail shall be deemed to have taken place five business days after the date of mailing.
- 6.13** In addition to delivery in accordance with Section 6.8, an order to discontinue contravening activity made under Section 6.8 or an order to do work made under Section 6.10 may be delivered by an Officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred.

- 6.14** Where delivery cannot be given in accordance with Section 6.12, sufficient delivery is deemed to have taken place when given in accordance with Section 6.13.
- 6.15** Where a time frame is set out in an order for carrying out any action, an Officer may extend the time for compliance beyond the established time frame provided such extension is required and is acceptable to the Officer.

Township Carrying Out Work

- 6.16** Where the owner of the privately-owned outdoor swimming pool or property owner fails to erect or maintain a fence or gate around the swimming pool or places water in the pool, or causes, permits or allows the water to remain in the pool where a fence or gate is not erected or maintained, the Director may immediately at the persons expense, direct an employee or agent to,
- a) erect or repair the swimming pool enclosure; or
 - b) remove all water from the swimming pool until the required swimming pool enclosure is erected or maintained in accordance with this by-law.
- 6.17** The Township may recover the costs of doing a matter or thing under Section 6.16 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an administration fee of 30 per cent (30%). The amount of the Township's costs, including interest to the date payment is made in full, constitutes a lien upon the land, upon the registration of a notice of lien upon the land.

Penalties

- 6.18** Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the penalties specified by Section 61 of the Provincial offences Act, R.S.O. 1990, Chapter P. 33.
- 6.19** Where a provision of this by-law conflicts with the provision of another by-law in force within the Township, the provisions that establish the higher standards to protect the health, safety and welfare of the general public shall prevail.

Part 7 – REPEAL

- 7.1** By-law 31-10 is hereby rescinded.
- 7.2** This By-law 16-18 shall come into force and effect upon the final passing.

READ A FIRST, SECOND AND THIRD TIME IN OPEN COUNCIL THIS 5TH DAY OF MARCH, 2018.

Mayor

Clerk

SCHEDULE "A"

**TOWNSHIP OF SOUTH GLENGARRY
Pool Enclosure Bylaw 16-18**

Schedule of Fees

Item	Description	Fee
1	Pool Enclosure Permit Fee	\$100.00
2	Order. Where the informal notice has not been complied with, for the Order issued in respect to any <i>property</i>	\$ 50.00