



THE CORPORATION OF THE TOWN OF KIRKLAND LAKE

BY-LAW NUMBER 22-055

BEING A BY-LAW TO REGULATE SWIMMING POOLS

WHEREAS the Corporation of the Town of Kirkland Lake deems it desirable to enact the following By-law to require owners of private swimming pools to erect and maintain a fence or guard system around private swimming pools; and for prescribing the height and construction of such fence or guard system; and for prohibiting the placing of water in private swimming pools unless the private swimming pool is protected by an approved fence or guard system; and for requiring the production of plans and documentation relating to the installation of a private swimming pool for the purpose of issuing a permit certifying approval to install such private swimming pool; and to prohibit the installation of private swimming pools without permit approval;

AND WHEREAS section 10(2) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes the municipality to regulate matters related to the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS section 5(3) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by By-law;

AND WHEREAS section 9 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes a municipality to pass By-laws to provide for a system of permits in the regulation of a matter;

AND WHEREAS section 425(1) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that a municipality may pass By-laws providing that a person who contravenes a By-law of a municipality is guilty of an offence;

AND WHEREAS section 445(1) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, authorizes a municipality that is satisfied that a contravention of a By-law has occurred, the municipality 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 land on which the contravention occurred to do work to correct the contravention;

AND WHEREAS pursuant to Section 446(1) of the *Municipal Act* S.O. 2001, c.25, as amended, a municipality may enact a bylaw to require that a matter of thing be done and in default, the matter of thing may be done by the municipality at the person's expense and further that the costs of doing so may be added to the tax rolls and collected in the same manner as taxes;

AND WHEREAS pursuant to Section 391(1) of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, a municipality may impose fees or charges on persons for services or activities provided or done by or on behalf of it;

NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE TOWN OF KIRKLAND LAKE ENACTS AS FOLLOWS:

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PART 1 – GENERAL PROVISIONS

1.1 Short Title

This By-law shall be cited as the “Pool By-law”.

1.2 Scope

The provisions of this By-law shall apply to all property within the geographic limits of the Town, except where otherwise provided. All private swimming pools that are capable of containing a water depth of 762 mm (30 in), and are of a permanent or seasonal installation shall be regulated by this By-law.

1.3 Enforcement

This By-law shall be enforced by a Property Standards Officer, Municipal By-law Enforcement Officer, or an individual designated by the Chief Administrative Officer for the purpose of enforcing this By-law.

1.4 Conflicts with other By-laws

Where provisions of the By-law conflict with a provision of another By-law in force in the Town, the provisions that establish the higher standard in terms of protecting the health, safety and welfare of the general public and the environmental well-being of the municipality, shall prevail to the extent of the conflict.

1.5 Existing Swimming Pools

Private swimming pools installed prior to the passing of this By-law shall be granted legal non-complying status and are considered in compliance with this By-law unless considered unsafe by the Officer.

PART 2 – DEFINITIONS

Definitions of words and phrases used in this By-law that are not included in the list of definitions in this Part shall have the meanings which are commonly assigned to them in the context in which they are used in this By-law.

The words and phrases defined in this section have the following meaning for the purposes of this By-law:

2.1 Building Division

Shall mean the Town of Kirkland Lake's Development Services Department – Building Division.

2.2 Building Inspector

Shall mean the person appointed by Council to such position pursuant to the Building Code Act.

2.3 Chief Building Official

Shall mean the person appointed by Council to such position pursuant to the Building Code Act.

2.4 Exterior Side Yard

Shall mean a yard of a corner lot which extends from the front yard to the rear yard between the exterior lot and the nearest main wall of any building or structure.

2.5 Fence

Shall mean any freestanding structure, wall or barrier other than a building, erected at grade for the purpose of delineating the boundaries of a property, restricting ingress to or egress from a property, providing security or protection to property, and does not include a hedge.

2.6 Front Yard

Shall mean a yard extending across the full width of the lot between the front lot line and the building line, as defined in the Zoning By-law.

2.7 Gate

Shall mean any swinging, sliding, or operable section of a barrier used for the purpose of filling in or closing an access opening in a fence or guard.

2.8 Guard

Shall mean a protective barrier meant to prevent accidental falls. A guard shall be able to withstand the weight of a falling person to prevent accidental access into a swimming pool.

2.9 Height

Shall mean the distance measured vertically from grade to the top of the fence, guard, or pool wall.

2.10 Interior Side Yard

Shall mean a yard extending from a front yard to a rear yard, between a side lot line and a line drawn parallel thereto and through the nearest point of the building.

2.11 Officer

Shall mean a Property Standards Officer, By-law Enforcement Officer, or an individual designated by the Chief Building Official or the Chief Administrative Officer for the purpose of enforcing this By-law.

2.12 Owner

Shall mean and include:

- (a) The registered owner of the property,
- (b) The person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would so receive the rent if such land and premise were let, and
- (c) A lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property.

2.13 Private Swimming Pool

Shall mean a structure, basin, chamber or tank capable of containing water and is designed to be used for the purposes of swimming or wading. A private swimming pool that is capable of containing a water depth of 762 mm (30 in), and is of a permanent or seasonal installation shall be regulated by this By-law.

2.14 Rear Yard

Shall mean a yard extending across the full width of the lot between the rear lot line and a line drawn parallel thereto and through the nearest point of the main building closest to the rear lot line.

2.15 Secure Hot Tub

Shall mean a private outdoor hot tub, whirlpool, hydro massage pool, or spa with a rigid, lockable, and tight fitting cover that will withstand the weight of a person without collapse when secured closed.

2.15 Self-Closing Device

Shall mean a mechanical device or spring which returns the gate to its closed position within 30 seconds after it has been opened.

2.16 Self-Latching Device

Shall mean a mechanical device or latch which is engaged each time the gate is secured to its closed position so as to not allow the gate to be re-opened by pushing or pulling until unlatched either by lifting or turning the mechanical device.

2.17 Town

Shall mean the Corporation of the Town of Kirkland Lake.

PART 3 – REGULATIONS

3.1 Permits and Approvals

- 3.1.1. No person shall commence, or carry out the erection, construction or placing of a private swimming pool without first obtaining a permit pursuant to this By-law.
 - 3.1.1.a. In-ground swimming pools, and permanent above-ground swimming pools require a permit pursuant to this By-law.
 - 3.1.1.b. Temporary and seasonal above-ground swimming pools capable of containing a water depth of 762 mm (30 in) require a permit pursuant to this By-law.
 - 3.1.1.c. Temporary inflatable pools, temporary and seasonal above-ground pools, not capable of containing a water depth of 762 mm (30 in) do not require a permit under this By-law.
- 3.1.2. A swimming pool permit granted under this By-law shall be present on site during the installation or construction process and shall be presented to a Town employee upon request.
- 3.1.3. No permit shall be issued for the installation of a private swimming pool unless a Fence or Guard meeting the requirements of this By-law is similarly approved, or existing on site.
- 3.1.4. Seasonal above-ground swimming pools shall only require one permit for their initial installation. Subsequent seasonal installations are considered pre-approved, provided the seasonal installations continue to follow any conditions or requirements stated in the permit approval.
- 3.1.5. All permit applications shall include the swimming pool application form, a site plan, details of the fence or guard system, the permit fee as specified in the User Fee By-law, and any additional information requested by the Building Division.

3.2 Location

- 3.2.1. All swimming pools shall be clear of property lines, buildings, and other structures by a minimum distance of 1.22 m (4 ft), or the property's zoning setbacks as provided in the Zoning By-law, whichever is greater.
- 3.2.2. Notwithstanding subsection 3.2.1., swimming pools are permitted to be within 1.22 m (4 ft) of decks provided that they are tight fitting to the deck, and the gap between the edge of the deck and side of the swimming pool is not greater than 100 mm (4 in).

3.3 Fences and Guards

- 3.3.1. The owner of a property containing a swimming pool regulated under this By-law shall ensure that the swimming pool is protected by a fence or guard meeting the requirements of this section at all times, whether or not the pool is containing water.
- 3.3.2. The fence or guard system required by subsection 3.3.1. shall protect against unauthorized entry to the area surrounding the pool.
- 3.3.3. No person shall construct a fence more than 1.22 m (4 ft) in height without first obtaining a permit under the Fence By-law.
- 3.3.4. Fences and guards must maintain a minimum height of 1.22 m (4 ft) above grade to be considered adequate protection for a swimming pool.

- 3.3.5. The side wall of an above-ground pool may serve as a guard provided that there are no attachments, openings, or objects in the vicinity, such as a ladder or pump that could facilitate the climbing of the exterior wall while the pool is not in use or is without supervision.
- 3.3.6. The wall of a building may constitute part of a fence system provided all doors and windows in the wall are equipped with locking or latching devices.
- 3.3.7. Fences and guards shall not contain openings larger than 100 mm (4 in) measured in any direction. Gates in fences and guards shall be considered part of the fence or guard and subject to the same requirements for permitted openings.
- 3.3.8. Gates in fences and guards shall be installed with a self-closing device, and a self-latching device.
- 3.3.9. Gates in fences shall be installed in a manner to prevent unauthorized entry to the swimming pool area.

3.4 Removal of Swimming Pool

- 3.4.1. Swimming pools regulated under this By-law do not require the issuance of a permit for removal.
- 3.4.2. Owners shall notify the Building Division following the removal of an in-ground swimming pool, or a permanent above-ground swimming pool.
- 3.4.3. Owners are not required to notify the Building Division of the seasonal removal of a seasonal above-ground swimming pool regulated by this By-law. Owners shall notify the Building Division when the seasonal above-ground pool regulated by this By-law is removed and will not be re-installed in the future.

3.5 Hot Tubs, Whirlpools, Hydro Massage Pools, and Spas

- 3.5.1. The provisions of section 3.3 do not apply to hot tubs, whirlpools, hydro massage pools, or spas.
- 3.5.2. The owner of a hot tub, whirlpool, hydro massage pool, or spa shall ensure a secure cover of rigid material is locked in place over the water opening any time the unit is not in use.
- 3.5.3. The rigid cover referenced in 3.5.2. shall be tight fitting and capable of withstanding the weight of a person without collapse.

PART 4 – ADMINISTRATION AND ENFORCEMENT

4.1 Obstruction

- 4.1.1. No person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer in the lawful exercise of a power or the performance of a duty under this By-law.
- 4.1.2. Any person who is alleged to have contravened any provision of this By-law shall identify themselves to the Officer upon request. Any failure to do so shall be deemed to be an obstruction or hindrance to the Officer in the execution of the Officer's duties.

4.2 Powers of Entry

- 4.2.1. An Officer or any person under their instruction may, upon producing proper identification, enter upon a property at any reasonable time without a warrant for the purpose of inspecting to determine:

- a) whether the property conforms to the standards prescribed in this By-law.
- b) whether an Order made under this By-law has been complied with.

4.2.2. For the of an inspection under this By-law an Officer may:

- a) require the production for inspection of documents or things, including drawings or specifications, that may be relevant to the property or any part thereof;
- b) inspect and remove documents or things relevant to the property or part thereof for the purpose of making copies or extracts;
- c) require information from any person concerning a matter related to a property or part thereof;
- d) be accompanied by a person who has special or expert knowledge in relation to a property or a part thereof;
- e) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take photographs necessary for the purposes of the inspection.

4.3 Informal Notice

4.3.1. An Officer who finds that a property does not conform with any of the standards prescribed in this By-law may issue an informal notice to the owner of the property:

- a) stating the municipal address or legal description of the property containing the non-conformity;
- b) giving reasonable particulars to the corrective steps that need to be made;
- c) indicating the time for complying with the notice, and giving notice that if not complied with an Order may be issued.

4.3.2. An informal notice may be served in-person, by registered mail to the last known mailing address of the owner, or by email to the last known address of the owner.

4.4 Formal Notice & Order

4.4.1. An Officer who finds that an informal notice has not been complied with may issue a formal notice and/or an Order requiring the person who contravened this By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.

4.4.2. An Officer who finds that a property does not comply with any of the standard prescribed in this By-law may, without first issuing an informal notice, issue a formal notice and/or an Order requiring the person who contravened this By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.

4.4.3. The formal letter and/or Order shall contain:

- a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
- b) the work to be done and the date by which the work must be done.

- 4.4.4. An Order shall be served on the appropriate person(s) of subsection 4.4.1. and 4.4.2., as an Officer determines, and a copy of the Order may be posted on the property in a location visible to the public.
- 4.4.5. An Order may be served personally, by email to the last known email address of the person to whom service is requiring to be made, or by registered mail sent to the last known address of the person to whom the notice is given or to that person's agent for service.
- 4.4.6. If a notice or Order is served by registered mail, the service shall be deemed to have been made on the fifth (5th) day after the mailing unless the person to whom the notice or order is given or that person's agent for service establishes that, acting in good faith, through absence, accident, illness or other unintentional cause the notice was not received until a later date.
- 4.4.7. If a notice or Order is served by email, the service is deemed to have been made on the day of sending unless,
- a) the document was sent after 5 p.m., in which case service shall be deemed to have been made on the following day; or
 - b) the person to whom the notice or order is given or that person's agent for service establishes that, acting in good faith, through absence, accident, illness or other unintentional cause, the notice was not received until a later date.
- 4.4.8. An Order may be registered in the proper land registry office, and upon such registration, any person acquiring any interest in the land subsequent to the registration of the Order shall be deemed to have been served with the Order on the day on which the Order was served under section 4.4.1. & 4.4.2. of this By-law and, when the requirements of the Order have been satisfied, a certificate of compliance shall be registered forthwith, which shall operate as a discharge of the Order.

4.5 Failure to Comply with an Order

- 4.5.1. If an Order is not complied as determined by an Officer, the Town may direct or cause the contravention specified in the Order to be corrected, in accordance with section 446 of the *Municipal Act*, 2001, S.O. 2001, c.25.

4.6 Certificate of Compliance

- 4.6.1. An Officer who inspects a property and is of the opinion that the property is in compliance with the standards established by this By-law may issue a certificate of compliance to the owner.
- 4.6.2. Where an owner requests a certificate of compliance and where, having inspected the property, an Officer is of the opinion that the property is in compliance with the standards established by this By-law, the Officer shall issue a certificate to the owner.

4.7 Offences

- 4.7.1. A person who contravenes any of the provisions of this By-law is guilty of an offence, and upon conviction, is liable to a fine in accordance with the provisions of the Provincial Offences Act and to any other applicable penalty.
- 4.7.2. If a provision of this By-law is contravened and a conviction is entered, in addition to any other remedy and to any penalty imposed by this By-law, the court in which the conviction is entered, and any court of competent jurisdiction thereafter, may make an Order prohibiting the continuation or repetition of the offence by the person convicted.

4.8 Fees

- 4.8.1. Every owner shall pay the fees imposed pursuant to the Town’s User Fees By-law which become due and payable upon written notification by an Officer or upon issuance of an invoice by the Town.
- 4.8.2. Where an owner is in default of payment of fees for more than thirty (30) calendar days after due, the Town may add the cost to the tax roll of the subject property and collect the amount in the same manner as property taxes.

4.9 Cost Recovery

- 4.9.1. Where the Town does work or causes work to be done such work shall be done at the expense of the owner.
- 4.9.2. If the Town undertakes the work to correct the contraventions, the owner will be charged one-hundred percent of the cost of any third party invoice plus any costs incurred by the Town.
- 4.9.3. If the owner fails to pay the cost of the work completed under this By-law within thirty (30) days of the work being completed, the amount shall be added to the tax roll of the subject property and collected in the same manner as municipal taxes.

PART 5 – ENACTMENT

5.1 By-law Coming into Force

- 5.1.1. This By-law shall come into force and effect upon passing.

5.2 Repeal

- 5.2.1. Town of Kirkland Lake By-law 07-048 is hereby repealed upon the enactment of this By-law.

SCHEDULES

Schedule “A”	Visual Guide to Swimming Pools Regulated by the Swimming Pool By-law
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READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 12th DAY OF JULY, 2022.

Pat Kiely, Mayor

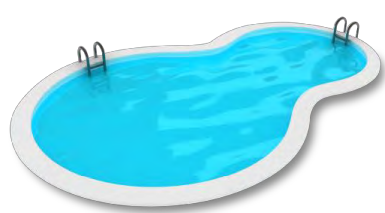
Jennifer Montreuil, Municipal Clerk

SCHEDULE ‘A’ to BY-LAW 22-055

Visual Guide to Swimming Pools Regulated by the Pool By-law

In the event of a conflict between this visual guide, and the pool by-law, the provisions of the pool by-law shall prevail.

Swimming Pools Regulated by the Pool By-law



Permanent In-Ground
Swimming Pools



Permanent Above-Ground
Swimming Pools



Seasonal Above-Ground
Swimming Pools Capable of
Containing a Water Depth of
762 mm (30 in)

Swimming Pools Not Regulated by the Pool By-law



Seasonal Above-Ground
Swimming Pools Not Capable
of Containing a Water Depth of
762 mm (30 in)



Temporary Inflatable
Swimming Pools