

**BY-LAW #93-17**

**BEING A BY-LAW TO REQUIRE THE ERECTION OF  
FENCES AND GATES AROUND PRIVATE OUTDOOR  
SWIMMING POOLS SUFFICIENT TO MAKE SUCH POOLS  
NOT READILY ACCESSIBLE TO SMALL CHILDREN**

WHEREAS the Council of the Corporation of the Town of Nickel Centre deems it desirable to enact a by-law to require owners of privately owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools.

AND WHEREAS c. M.45, s. 210, par. 30 of the Municipal Act, R.S.O. 1990, as amended, provides authority for passing such a by-law.

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWN OF NICKEL CENTRE HEREBY ENACTS AS FOLLOWS:

1. Definitions:
  - a) "Enclosure" means a fence, wall or other structure including doors and gates, surrounding a privately owned outdoor swimming pool to restrict access thereto;
  - b) "Privately Owned Outdoor Swimming Pool" means any body of water located outdoors on privately owned property contained in part or in whole by artificial means, in which the depth of the water at any point can exceed twenty-four (24") and used or capable of being used for swimming;
  - c) "Service Entrance" means that entrance into a building which would normally be used by persons entering such building for the purpose of delivering goods or rendering maintenance service;
  - d) "Owner" includes a person in possession of the property on which the swimming pool is located.
  - e) "person" means any firm, corporation, partnership, individual or association;
  - f) "Region" means The Regional Municipality of Sudbury;
  - g) "Director" means The Director of Building Controls of the Regional Municipality of Sudbury or his designate;
  - h) "Swimming" includes wading, bathing or diving.
2. No person shall erect a fence or gate for a swimming pool until plans for such fences and gates have been submitted to the Director and a permit certifying approval of such plans has been issued.
3. No person shall excavate for or erect a privately owned swimming pool without a certificate that approval of the plans for the fence and gates has been issued.

4. A permit may be refused if the fences or gates do not comply with any by-law.
5. No person shall place water in a privately owned outdoor swimming pool or allow water to remain therein unless the enclosure the enclosure prescribed by this by-law has been erected.
6. Enclosures
  - a) The owner of a privately owned outdoor swimming pool shall erect and maintain an adequate enclosure surrounding the entire swimming pool area and sufficient to make such body of water not readily accessible to small children;
  - b) Except as further provided in clause 6(c), such enclosure, including gates therein shall extend from the ground to a height measured on the outside of the enclosure of not less than four feet (4') nor higher than six feet (6').
  - c) Where a wall of a building forms part of such enclosure, no main or service entrance to the building shall be located within the swimming pool area enclosure, except that this requirement shall not apply when the main entrances and all exterior service meters and intakes located outside the enclosure and a sign is erected and maintained directing all service personnel to use the main entrance;
  - d) Except as provided in (e) (vi) (2), such enclosure shall have no rails or other horizontal or diagonal bracing or attachments on the outside that would facilitate climbing;
  - e) A fence of its equivalent forming part of such enclosure,
    - (i) shall be of vertically boarded wood construction, chain link construction or of other materials and construction as provided for in clause (e) (vi);
    - (ii) if of chain link construction, shall
      1. be of not greater than 1.5 inches diamond mesh;
      2. be constructed of galvanized steel wire not less than 12 gauge or of minimum 14 gauge steel wire covered with a vinyl or other approved coating, forming a total thickness equivalent to 12 gauge galvanized wire;
      3. be supported by at least 1.5 inch diameter galvanized steel posts each covered by a minimum of two inches (2") of concrete from grade to a minimum of two feet (2') below grade, such posts to be spaced not more than ten feet (10') apart. Top and Bottom horizontal rails shall be provided of 1.5 inch minimum diameter galvanized steel, except that a .5 inch minimum diameter galvanized steel tension rod may be substituted for the bottom horizontal steel rail. A vinyl or other approved coating may be substituted for the galvanized coating.

- (iii) if of wood construction, shall
1. have the vertical boarding attached to supporting members all of which are arranged in such a manner so as not to facilitate climbing from the outside. Such vertical boards shall be not less than one inch (1") by four inch (4") nominal dimensions spaced not more than 1.5 inches apart;
  2. be supported by a minimum of four inch (4") square or four inch (4") diameter cedar posts, nominal dimensions spaced not more than eight feet (8') on centres securely embedded to a minimum of two (2') below grade. That portion of the wood post below grade shall be treated with a wood preservative. Top and bottom horizontal rails shall be provided of wood two inch (2") by four inch (4") minimum nominal dimensions;
- (iv) shall include no part consisting of barbed wire or having similar dangerous characteristics and no device for projecting an electric current through the fence;
- (v) shall be located not less than four feet (4') from the swimming pool unless
1. the required height of said fence, as prescribed in paragraph 6(b), is increased to six feet (6') and
  2. a continuous hand hold is available along the edges of the pool for the purpose of providing in an emergency support for a person in the pool, and such fence shall not regardless of height, be located closer than four feet (4') to any condition on the property that would contribute to the lessening of these minimum safety requirements by facilitating the climbing of the swimming pool fence;
- (vi) may be of construction other than that specified provided an equivalent degree of safety is maintained and shall
1. be constructed so that the rigidity is equal to that specified for those fences described in clauses (e) (ii) (iii);
  2. be permitted to have exposed, structural or other members or parts thereof that may facilitate climbing the outside of the enclosure provided the minimum clear vertical distance between any such members, or parts thereof is four feet and, regardless of the location of such members, where this minimum four foot vertical dimension is maintained the least dimension of any opening through such fence may be increased to not more than that required to prevent the passage of a spherical object having a diameter of four inches (4").

- f) Gates forming part of such enclosure shall
- (i) be of construction and height equivalent to that required for the fence;
  - (ii) be supported on substantial hinges, and
  - (iii) be self-closing and equipped with a locking device and with a self-latching device placed at the top and on the inside of the gate such that the device latches when the gate is in the closed position.
- g) Subject to the provisions of paragraph (c), doors providing access from a building directly to an enclosed swimming pool area, other than door located in a dwelling unit or rooming unit, shall each be self-closing and equipped with a locking device and with a self-latching device located not less than five feet (5') above the bottom of the door.
- h) The owner of every privately owned outdoor swimming pool shall ensure that every gate and door required by paragraphs (f) and (g) to be equipped with a locking device shall be kept locked at all times if there is more than twenty-four inches of water in the pool and a responsible person is not present and supervising the pool.

7. Agreement

The Mayor and the Clerk are hereby authorized to execute an agreement or agreements from time to time with the Region authorizing the Region to administer the provision of this by-law.

8. Any person convicted of a breach of any of the provisions of this by-law shall pay a penalty not exceeding, exclusive of costs, the sum of One Thousand Dollars (\$1,000.) for each offence.

READ THREE TIMES AND FINALLY ENACTED AND PASSED IN OPEN COUNCIL THIS 13TH DAY OF SEPTEMBER, 1993.

  
Mayor

  
Clerk