CORPORATION OF THE MUNICIPALITY OF PORT HOPE

BY-LAW NO. 31/2006

A By-law to Require Owners of Privately Owned Outdoor Swimming Pools and Hot Tubs to Erect and Maintain Fences and Gates Around Such Swimming Pools and Hot Tubs.

WHEREAS Section 130 of the Municipal Act S.O. 2001, c. 25 provides that the Council of a municipality may regulate matters related to the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS Section 11 (1) 7 of the Municipal Act S.O. 2001, c.25 provides that a single tier municipality has authority to pass By-laws with respect to structures including fences and signs;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE ENACTS AS FOLLOWS:

1. Short Title:
This By-law may be cited as the "Swimming Pool" By-law.

2. In this By-law:

2.1 "Swimming Pool" means any structure, basin, chamber or tank or any inflatable or temporary structure, basin or tank containing or intended to contain a body of water, located outdoors on privately owned property, in which the depth of water at any point can exceed 0.6 metres (24 inches).

2.2 "Hot tub" shall include any artificially enclosed body of water consisting of water heating units and/or air jets used for bathing or other purposes as intended and shall include a whirlpool or spa or other similar device.

2.3 "Owner" includes a lessee, tenant, mortgagee in possession and the person in charge of any property.

2.4 "Enclosure" means a fence, wall or other structure including doors and gates, and other openings, surrounding a swimming pool or hot tub and restricting access to the outdoor swimming pool or hot tub.

2.5 "Chief Building Official" means the Chief Building Official for the Corporation of the Municipality of Port Hope, or his or her designate.

2.6 "Clerk" means the Clerk for the Municipality of Port Hope.

2.7 "Municipality" means the Corporation of the Municipality of Port Hope.

3.1 The owner of the land upon which a swimming pool is located shall erect an enclosure in accordance with the provisions of this By-law and shall be solely responsible for maintaining the enclosure in accordance with the provisions of this By-law.

3.2 No person shall excavate or cause or permit excavations for a swimming pool or hot tub or construct or cause or permit the construction of a swimming pool or hot tub without first obtaining a permit for an enclosure from the Chief Building Official. The plans submitted with the permit application shall:

3.2.1 show the location of the swimming pool or hot tub in relation to the property lines and to adjoining buildings;

3.2.2 provide complete details of the swimming pool or hot tub enclosure; and

3.2.3 be accompanied by the fee for the permit as it may be established from time to time by the Municipality.

4. No person shall put or place any water in any outdoor swimming pool or hot tub or allow water to remain in any outdoor swimming pool or hot tub until the Chief Building Official has inspected the enclosure for the swimming pool or hot tub and is satisfied that the provisions of this By-law with respect to the construction or erection of a fence around the swimming pool or hot tub have been complied with.

5. Despite the provisions of Section 4 above, temporary fencing as approved by the Chief Building Official may be installed around a swimming pool or hot tub during the excavation for and construction of the swimming pool or hot tub provided that the enclosure required by this By-law is constructed to the satisfaction of the Chief Building Official prior to any water being put or placed in the swimming pool or hot tub.

6.1 The height of every enclosure, including any gate or door located in the enclosure that is erected or constructed around a swimming pool or hot tub shall have a height of not less than 1.5 metres.

6.2 The height of the enclosure shall be measured from the surface of the ground that is adjacent to the exterior face of the enclosure.

6.3 Any fence that forms part of an enclosure shall:

6.3.1 be located not closer than 1.2 metres from the edge of a swimming pool or hot tub;

6.3.2 not have any rails or other horizontal or diagonal bracing or attachments on the exterior that would facilitate climbing; and

6.3.3 not contain in whole or in part any barbed wire or electric wire or any other material that could project an electric current through the fence which would cause physical harm to any person touching the fence.

7.1 If a fence forming part of an enclosure is of chain link construction, the chain link construction shall:

7.1.1 Consist of mesh that is not greater than 2 inch diamond mesh;

7.1.2 Be constructed of galvanized wire or vinyl coated wire that has a diameter of not less than 13 gauge;

7.1.3 Be supported on substantially sound wooden or steel posts located not more than 3 metres apart;

7.1.4 Be supported along the top of fence by a support rail;

7.1.5 Be supported along the bottom of the wire mesh with a minimum 13 gauge wire.

7.2 If a fence forming part of an enclosure is of wood construction, it shall be:

7.2.1 Constructed of vertical boards attached to supporting structures in such a manner so as not to facilitate climbing on the exterior face of the enclosure; and

7.2.2 Be supported on structurally sound posts being not more than 2.4 metres apart which are securely embedded in the ground.

7.3 Enclosures may be constructed with other material provided that any enclosure as constructed shall provide an equivalent degree of safety as a chain link fence or wooden fence as described in this By-law.

7.4 Every gate forming part of an enclosure shall:

7.4.1 Be supported on substantial hinges and constructed in accordance with Section 6 and 7 of this By-law;

7.4.2 Be self-closing;

7.4.3 Be equipped with a lockable self latching device located on the interior face near the top of the gate or on the exterior face provided it is at least 1.5 metres above grade; and

7.4.4 Not have any member or attachment on the exterior of the gate that would facilitate the climbing of the gate.

8. Any door providing access from a building forming part of an enclosure, other than a door located in a dwelling unit or rooming unit, shall be self-closing and equipped with a self-latching device located not less than 1.5 metres above the bottom of the door.

9. Every gate providing access to the swimming pool or hot tub shall be kept locked at all times if a responsible person of 16 years of age is not present.

10. There shall be a minimum of 1.2 metres separation between the fence and the exterior edge of an inground swimming pool.

11. A boundary fence which complies with the provisions of this By-law shall be deemed to be sufficient enclosure.

12.1 Despite anything contained in this By-law, the provisions of this By-law requiring the erection or construction of an enclosure around a swimming pool shall not apply to an above ground swimming pool provided:

12.1.1 The exterior sides of the swimming pool structure have a height of at least 1.5 metres above the surface of the ground abutting the swimming pool walls;

12.1.2 The exterior sides of the swimming pool structure are constructed in a manner that will not facilitate climbing; and

12.1.3 Every entrance to the swimming pool is protected by a gate having a height of at least 1.5 metres above the surface of the ground outside the gate and having self closing and lockable self latching devices.

12.2 No part of the swimming pool or adjoining deck structure shall be located closer to any lot line than otherwise permitted in accordance with the applicable Zoning By-law.

13. Any and all inflatable or temporary swimming pools in which the depth of water at any point can exceed 0.6 metres (24 inches) are not considered above ground pools for the purposes of the exemptions provided for in Section 12 of this By-law.

14.1 Despite the provisions of Sections 6 and 7 of this By-law, an enclosure is not required for a hot tub that is equipped with a hard cover which prevents access to the water in the hot tub and which shall be locked in the closed position when the hot tub is not in use.

14.2 Every owner of the property upon which a hot tub is located shall keep the hot tub covered and locked at all times when not in use and when a responsible person of 16 years of age is not present and supervising its use.

15. It shall be the responsibility of the owner of the property upon which a swimming pool or hot tub is located (and not the Municipality), to maintain every enclosure erected or constructed around a swimming pool or hot tub in a structurally sound condition that complies with the requirements of this By-law.

16. The provisions of this By-law shall apply to all swimming pools and hot tubs regardless of the date of construction. Notwithstanding, any swimming pools or hot tubs existing prior to the date of the passing of this By-law, for which a Building Permit was issued, shall be deemed to comply with the provisions of this By-law as they pertain to the Ontario Building Code.

17.1 No person shall place or put any water in a swimming pool or hot tub or keep any water in any swimming pool or hot but where the enclosure required for the swimming pool or hot tub does not comply with the provisions of this By-law.

17.2 Where an enclosure around the Owner's swimming pool or hot tub does not comply with the provisions of this By-law, the Owner shall forthwith drain all water from the swimming pool or hot tub and take such steps as may be required by the Chief Building Official and provided for in this By-law to secure the swimming pool or hot tub, failing which the Municipality may drain the swimming pool or hot tub and secure the swimming pool or hot tub at the Owner's expense.

17.3 The Municipality may collect any cost incurred by the Municipality in draining and securing a swimming pool or hot tub in accordance with the provisions of Section 17.2 above and such costs may be added by the Clerk of the Municipality to the tax roll and collected in like manner as municipal taxes pursuant to Section 349 and Section 350 of the Municipal Act, 2001 and such amount added to the tax roll, together with interest, shall until payment in full be a lien or charge upon the property in respect of which the expense was incurred.

18. No owner shall drain or permit the drainage of any swimming pool or hot tub in such a manner as to cause flooding to any adjoining property. All drainage shall be directed by means of pipes or hoses directly to the curb at the front of the property and from there to the storm sewer or, where there is no curb or storm sewer, to the drainage ditch at the front of the property. Where water is drained at the curb or drainage ditch, the water flow shall be restricted so as to prevent flooding of the road.

All drainage shall be carried out in such a way as to comply with the Municipality of Port Hope Sewer Use By-law No. 38/81, and as amended from time to time.

19. Measurements listed in the Imperial system are provided for ease of reference only.

20. Should any section, clause, or provision of this By-law be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or any part thereof, other than the part so declared to be invalid.

21. Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction shall be liable to a fine recoverable under the provisions of the Provincial Offences Act, R.S.O. 1990 c.P. 33, as amended.

22. That By-law No. 22/85 for the former Town of Port Hope and By-law No. 1611 for the former Township of Hope, and any other By-laws pertaining to this matter, are hereby repealed.

23. This By-law shall come into full force and effect immediately upon passing.

READ a FIRST, SECOND and THIRD time and FINALLY PASSED in Open Council this 6th day of June, 2006.

Rick Austin

Rick Austin, Mayor

Frances Aird

Frances M. Aird, Clerk