

CITY OF KINGSTON

Ontario

BY-LAW NO. 2003-405

A BY-LAW TO REGULATE FENCES

PASSED: November 4, 2003

As Amended By By-Law No:

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(Office Consolidation)

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**CITY OF KINGSTON
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WHEREAS subsections 9(3) and 11(1) of *Municipal Act, 2001* authorize municipalities to pass by-laws with respect to "structures, including fences and signs", including by-laws to regulate or prohibit respecting such matters, to require persons to do things, to provide for a system of permits and to impose conditions as a requirement of obtaining a permit;

THEREFORE the Council of The Corporation of the City of Kingston enacts as follows:

1. **DEFINITIONS:**

In this by-law,

"agricultural property" means a property that is zoned for agricultural use in the zoning by-law that applies to the property;

"Appeals Committee" and *"Committee"* mean the committee established by the Council Procedure By-Law (No. 98-1, as amended) and includes any successor committee designated by City Council to carry out the committee's responsibilities under this by-law;

"change to a fence" includes the alteration, reconstruction and replacement of an existing fence, but does not include normal maintenance and repair;

"City" and *"City of Kingston"* mean The Corporation of the City of Kingston, as incorporated on January 1, 1998;

"construct a fence" means to construct, erect, build, install, alter, reconstruct or replace a fence, or to cause or permit another person to do so, and *"construct a pool fence"* has a corresponding meaning;

"construct a pool" means to excavate for, construct, build or erect a pool, or to cause or permit another person to excavate for, construct, build or erect a pool;

"Council" and *"City Council"* mean the Council of the City of Kingston;

"exterior face" means the side of a pool fence from which access to the pool is to be prevented;

"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;

"finished grade" means the elevation of the finished surface of the ground where it abuts a fence or other structure; *"height"* means the distance between the finished grade and the top of the fence;

"highway" includes all land between the lateral boundaries of every provincial and municipal highway within the City;

"industrial property" means a property that is zoned for industrial use in the zoning by-law that applies to the property;

"Manager, Building and Licensing" and *"Manager"* mean the Manager, Building and Licensing Division, Department of Planning and Development, his or her designate or, in the event of organizational changes, another employee designated by Council;

"non-residential property" means a property that is zoned for a use other than residential in the zoning by-law that applies to the property;

"owner" means the individual, firm or corporation that is the registered owner of a property, and includes a lessee, tenant, mortgagee in possession, and the person or persons in charge of the land;

"person" has the same meaning as in the *Interpretation Act* and includes a corporation;

"pool" means a privately-owned outdoor body of water, whether above or below the finished grade, used by persons for the purpose of swimming, that is contained in part or in whole by artificial means and in which the depth of water can exceed 60 centimetres (24 inches) at any point, and includes every structure known as a hot tub, whirlpool and spa, but does not include any naturally occurring body of water;

"pool area" means a pool and any surrounding platforms, walkways, play areas and landscaped areas within a pool fence;

"pool fence" means a fence that encloses or results in the enclosure of a pool;

"property" means a parcel of land and any buildings or other structures on the land;

"public property" includes any property to which the public is customarily admitted;

“residential property” means a property that is zoned for residential use in the zoning by-law that applies to the property;

“sight triangle” has the same meaning as in the zoning by-law that applies to the property; and

“zoning by-law” means a by-law under section 34 of the *Planning Act* that restricts the use of land.

2. APPLICATION:

- 2.1 The requirements of this by-law apply to all properties within the geographic limits of the City of Kingston, except where otherwise provided.
- 2.2 If there is a conflict between a fencing requirement established by another by-law of the City and a fencing requirement of this by-law, the requirement that establishes the higher standard in terms of protecting the health, safety and well-being of the inhabitants of the City prevails to the extent of the conflict.

3. ADMINISTRATION:

- 3.1 The Manager, Building and Licensing, is responsible for the administration and enforcement of this by-law.
- 3.2 An application for a permit to construct a pool fence around a pool shall be submitted to the Manager, together with the permit fee and plans showing the location of the pool in relation to the property boundary lines and to the adjacent buildings, and the application shall provide full details of all required structures.
- 3.3 A permit will not be issued unless the permit fee, as set out in section 4.1 of Schedule A, has been paid in full.
- 3.4 Any person may seek an exemption from the requirements of this by-law by applying to the Appeals Committee for a minor variance.
- 3.5 The Committee may grant a minor variance if, in its opinion, the general intent and purpose of the by-law are maintained or if the Committee is satisfied, after allowing input from the applicant and property owners within 30 metres (100 feet), that the variance is appropriate.
- 3.6 The Committee may attach terms and conditions to the minor variance, including the dates for which it is to be in effect.
- 3.7 A minor variance shall be invalid if these terms and conditions are contravened.

- 3.8 Where notice is to be provided by the City under this by-law, it will be given by prepaid registered mail or personal service to the last known address of the owner of the property on which the fence is located.

4. **REGULATIONS:**

- 4.1 Except in the case of a pool fence, no permit is required for the construction of a fence.
- 4.2 No person shall construct a fence that does not comply with the requirements of this by-law, except as provided in Part 5 – Exemptions.
- 4.3 Every person who constructs a fence that does not comply with the requirements of this by-law shall take such action as is necessary to make the fence comply with its requirements by the date specified in the notice given by the City.
- 4.4 If a person who is given notice under section 4.3 fails to take action by the date specified in the notice, the City may do the necessary work at the person's expense by adding the costs incurred by the City in doing the work to the tax roll and collecting them in the same manner as taxes.

Height and Description of Lawful Fences

- 4.5 No person shall construct a fence that is greater than 1.8 metres (6 feet) in height on or around a property.
- 4.6 Despite section 4.5, no person shall construct a fence that is greater than 2.4 metres (8 feet) in height along the rear or exterior side of a property where the rear or exterior side of the property abuts on a highway that is designated as a freeway, expressway or arterial road in the official plan that applies to the area.
- 4.7 Despite section 4.5, no person shall construct a fence that is greater than 2.7 metres (9 feet) in height on or around an industrial property, a public utility, an installation for the generation and distribution of electricity, a pipeline valve, a storage site for chemicals and explosives, a sludge pit or a property used for a similar or related purpose, and the location of every such fence shall comply with the yard and setback requirements of the zoning by-law that applies to the property.
- 4.8 A fence of chain link construction under section 4.7 shall comprise chain link with diamond mesh of not greater than 38 millimetres (1.5 inches), consisting of 12 gauge galvanized steel wire or 14 gauge galvanized steel wire covered with vinyl or another coating that is acceptable to the Manager, Building and Licensing which forms a total thickness equivalent to 12 gauge galvanized steel wire.

Sight Triangles

- 4.9 Despite sections 4.5 to 4.7, no person shall construct a fence on his or her property within a sight triangle that is greater than 1.0 metre (3.3 feet) in height above the centre line of the adjacent streets.

Barbed Wire

- 4.10 No person shall construct a fence consisting wholly or partly of barbed wire or other barbed material on a residential property or on a non-residential property that adjoins a residential property, highway or public property.
- 4.11 Despite section 4.10, a person may construct a fence consisting wholly or partly of barbed wire or other barbed material on a non-residential property that adjoins a residential property, highway or public property, provided that the barbed wire or other barbed material on the side of the fence next to the adjoining residential property, highway or public property shall be masked or covered with wooden slats or laths of a sufficient thickness and breadth to provide protection against injury to persons and animals.
- 4.12 Despite section 4.10, a person may construct a fence consisting wholly or partly of barbed wire or other barbed material on or around an agricultural property, industrial property, public utility, installation for the generation and distribution of electricity, pipeline valve, storage site for chemicals and explosives, sludge pit or other property used for a similar or related purpose, regardless of the use of the adjoining properties.

Electrified Wire

- 4.13 No person shall construct a fence consisting wholly or partly of electrified wire material on or around a residential property or on or around a non-residential property that adjoins a residential property, highway or public property.
- 4.14 Despite section 4.13, a person may construct a fence consisting wholly or partly of electrified wire material on or around an agricultural property, regardless of the use of the adjoining properties.

Requirements for Pool Fences

- 4.15 The requirements of this by-law with respect to pool fences apply equally to both in ground pools and to above ground pools.
- 4.16 The requirements of this by-law with respect to pool fences do not apply to structures known as hot tubs, whirlpools and spas.

- 4.17 The owner of every structure known as a hot tub, whirlpool or spa shall keep a secure cover of rigid material locked in place over the opening at all times when the structure is not occupied, and no person shall leave a hot tub, whirlpool or spa without first locking the cover in place to prevent access when the structure is not occupied.
- 4.18 No person shall construct a pool fence or shall construct a pool unless he or she has obtained a pool fence permit in accordance with section 3.2.
- 4.19 Every person, before constructing a pool, shall enclose the area with a fence that complies with the standards for a temporary pool fence set out in Schedule A of this by-law.
- 4.20 Section 4.19 does not apply to a person who has constructed a fence that complies with the standards for a permanent pool fence set out in Schedule A of this by-law.
- 4.21 No person shall place, cause or permit water to be placed or to remain in a pool unless the person has constructed a fence that complies with the standards for a permanent pool fence set out in Schedule A of this by-law, and unless the person maintains the fence in a good state of repair.
- 4.22 The owner of every pool shall be responsible for ensuring that the requirements of this by-law with respect to pool fences are complied with.

EXEMPTIONS:

- 5.1 A requirement of this by-law does not apply to a fence that has been exempted from that requirement by a minor variance granted by the Appeals Committee under section 3.5, and such fence shall be deemed to be in compliance with this by-law as long as the minor variance remains valid.
- 5.2 The exemption provided by a minor variance is limited to the specific requirement or requirements from which a fence is exempted by the minor variance, and is subject to any attached terms and conditions.
- 5.3 The requirements of this by-law do not apply to a fence which is required and approved as a condition of the development or redevelopment of land, and such fence shall be deemed to be in compliance with this by-law.
- 5.4 The requirements of this by-law with respect to pool fences do not apply to a pool that is owned by a government or other public agency.
- 5.5 The requirements of this by-law with respect to pool fences do not apply to a pool that was constructed lawfully at a time when no pool fence was required.

- 5.6 The requirements of this by-law do not apply to a fence that was constructed lawfully prior to the day on which this by-law came into force.
- 5.7 Despite section 5.6, the requirements of this by-law become applicable when any change to a fence is made after the day on which this by-law came into force.
- 5.8 Despite section 5.6, the requirements of this by-law with respect to pool fences apply to a fence whose purpose changes as a result of a pool being constructed after the day on which this by-law came into force and which now acts as a pool fence.
- 5.9 The requirements of this by-law with respect to the height of fences do not apply to a fence on an agricultural property that is necessary for the raising of certain types of animals or for another agricultural purpose.
- 5.10 The requirements of this by-law with respect to the height of fences do not apply to a chain link fence surrounding a sports or recreational facility that was constructed lawfully.
6. **SCHEDULES:**
- The following schedule is attached to and forms part of this by-law:
- Schedule A Standards for Pool Fences and Permit Fees.
7. **OFFENCE AND PENALTY PROVISIONS:**
- 7.1 Any person who contravenes the provisions of this by-law is guilty of an offence and, upon conviction, is subject to a fine as provided in the *Provincial Offences Act* and to any other applicable penalties.
- 7.2 If this by-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.
8. **VALIDITY:**
- 8.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that each and every provision of this by-law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.

9. COMMENCEMENT:

9.1 This by-law comes into force on the day on which it receives third reading and is passed.

SCHEDULE A: STANDARDS FOR POOL FENCES**1. TEMPORARY POOL FENCES**

- 1.1 A temporary pool fence shall be 1.2 metres (4 feet) in height.
- 1.2 It shall consist of vertical wood lath with openings not greater than 38 millimetres (1.5 inches), or of plastic mesh with a mesh not greater than 38 millimetres (1.5 inches).
- 1.3 It shall have steel T-bar posts at intervals of not more than 3 metres (10 feet).
- 1.4 It shall have a 9 gauge galvanized steel or vinyl coated wire at both the top and the bottom.
- 1.5 It shall be permitted only during the construction of a pool and shall be replaced with a permanent pool fence that complies with the requirements of this by-law prior to filling and/or using the pool by any person.

2. PERMANENT POOL FENCES**Height**

- 2.1 In the case of a pool serving a detached, semi-detached, row house or multiple-family development consisting of not more than 4 dwelling units, a pool fence shall be at least 1.2 metres (4 feet) in height, measured at any point along the exterior face of the fence.
- 2.2 For every other pool, a pool fence shall be 1.8 metres (6 feet) in height, measured at any point along the exterior face of the fence.

Clearances

- 2.3 A space of not more than 50 millimetres (2 inches) shall be permitted at any point between the bottom of a pool fence and the finished grade.
- 2.4 No pool fence shall be located less than 1.2 metres (4 feet) from the nearest inside wetted surface of a pool wall.
- 2.5 No pool fence shall be located closer than 1.2 metres (4 feet) to anything that could facilitate climbing of the fence, unless measures are implemented that, in the opinion of the Manager, Building and Licensing provide a level of safety equivalent to that provided by the standards established in this Schedule.

Aids to Climbing

- 2.6 No member or attachment that could facilitate climbing shall be attached to the exterior face of a pool fence between 100 millimetres (4 inches) and 1.2 metres (4 feet) above the finished grade.

Gates and Entrances

- 2.7 Every gate that forms part of a pool fence shall comply with the height requirements set out in sections 2.1 and 2.2 of this Schedule and with the standards for that type of fence established in this Schedule.
- 2.8 Every gate that forms part of a pool fence shall be supported on substantial hinges, be self-closing, and be equipped with a self-latching device placed at the top and on the inside of the gate, i.e., the side of the gate nearest to the pool.
- 2.9 The owner of every pool shall ensure that all entrances to the pool area, including gates, doors and windows, are kept locked at all times except when a responsible adult is supervising the use of the pool.
- 2.10 Where a wall or portion of a wall of any building that is located on the same property as a pool forms part of the pool enclosure, no entrance to the pool area shall be permitted through that wall unless the wall is located no closer than 1.2 metres (4 feet) from the nearest inside wetted surface of the pool wall.

3. PERMITTED TYPES OF FENCE

- 3.1 A permanent pool fence shall be of: (a) chain link, (b) vertical board, (c) other materials and construction that, in the opinion of the Manager, provide an equivalent degree of safety, or (d) a combination of the materials described in (a), (b) and (c).
- 3.2 Regardless of the type of fence, every fence that is constructed shall comply with the general standards for pool fences established in sections 2.1 to 2.10 of this Schedule and with the specific standards for that type of fence established in sections 3.3 to 3.20 of this Schedule.

Chain Link Fence

- 3.3 A fence of chain link construction shall comprise chain link with a diamond mesh not greater than 38 millimetres (1.5 inches), consisting of 12 gauge galvanized steel wire or 14 gauge galvanized steel wire covered with vinyl or another

plastic that is acceptable to the Manager which forms a total thickness equivalent to 12 gauge galvanized steel wire.

- 3.4 A fence shall have galvanized steel support posts spaced at intervals of not more than 3.0 metres (10 feet).
- 3.5 In the case of a fence that is required to be 1.2 metres (4 feet) in height, the support posts shall be securely imbedded in the ground and shall extend at least 0.9 metres (3 feet) below grade.
- 3.6 In the case of a fence that is required to be 1.8 metres (6 feet) in height, the support posts shall be securely imbedded in the ground and shall extend at least 1.2 metres (4 feet) below grade.
- 3.7 The end and corner posts shall be a minimum of 48 millimetres (1.875 inches) in diameter.
- 3.8 The intermediate posts shall be a minimum of 38 millimetres (1.5 inches) in diameter.
- 3.9 A fence shall have a horizontal top rail of galvanized or vinyl coated steel which shall be a minimum of 32 millimetres (1.25 inches) in diameter.
- 3.10 A fence shall have a horizontal bottom rail of galvanized or vinyl coated steel which shall be a minimum of 32 millimetres (1.25 inches) in diameter.
- 3.11 A minimum 9 gauge vinyl coated galvanized steel tension cable may be substituted for the horizontal bottom rail specified in section 3.10.

Vertical Board Fence

- 3.12 A fence of vertical board construction shall have vertical boarding of not less than 25 by 100 millimetres (1 by 4 inches), nominal dimensions, attached to a top and bottom rail, and the space between vertical boards shall be not more than 38 millimetres (1.5 inches).
- 3.13 Despite section 3.12, if the vertical distance between any two supporting horizontal rails is not less than 1.2 metres (4 feet), the space between vertical boards may be increased, but shall be not more than 100 millimetres (4 inches).
- 3.14 A fence shall be supported by posts of not less than 100 by 100 millimetres (4 by 4 inches), nominal dimensions, spaced at intervals of not more than 2.4 metres (8 feet).

- 3.15 In the case of a fence that is required to be 1.2 metres (4.0 feet) in height, the support posts shall be securely imbedded in the ground and shall extend at least 0.9 metres (3 feet) below grade.
- 3.16 In the case of a fence that is required to be 1.8 metres (6 feet) in height, the support posts shall be securely imbedded in the ground and shall extend at least 1.2 metres (4 feet) below grade.
- 3.17 The portion of the posts below grade shall be of pressure treated wood or, alternatively, shall be treated with a wood preservative that is acceptable to the Manager.
- 3.18 A fence shall have a top and bottom rail of not less than 50 by 100 millimetres (2 by 4 inches), nominal dimensions.

Other Types of Fence

- 3.19 A pool fence constructed of other materials, including retaining walls and deck guards, shall be constructed in compliance with the standards in this Schedule that apply to a vertical board fence.

Combination Fences

- 3.20 A pool fence that is constructed of a combination of chain link, vertical boarding and any other materials shall be constructed in compliance with the specific standards for that type of material established in this Schedule.

4. PERMIT FEES

- 4.1 The fee for a pool fence permit shall be \$12.00 for every \$1,000.00 of the construction value of the pool and pool fence, with a minimum fee of \$35.00.
