



The Corporation of the Town of Pelham

By-law No. 60-2023

Being a By-law to regulate outdoor swimming pools and hot tubs on private property in the Town of Pelham and to repeal By-law No. 3389(2013).

WHEREAS section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*" or "the statute") provides that the powers of a municipality under the statute or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the statute or any other Act;

AND WHEREAS section 11 of the *Municipal Act, 2001* provides that a lower-tier municipality has the authority to pass by-laws respecting the health, safety and well-being of persons, the protection of persons and property and by-laws respecting structures including fences;

AND WHEREAS section 425 of the *Municipal Act, 2001* provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality is guilty of an offence;

AND WHEREAS section 429 of the *Municipal Act, 2001* authorizes a municipality to establish a system of fines for offences under its by-laws;

AND WHEREAS section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws;

AND WHEREAS section 436 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law, direction or order of the municipality;

AND WHEREAS section 444 of the *Municipal Act, 2001* provides that a municipality, if satisfied that a contravention of a by-law of the municipality has occurred, 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 discontinue the contravening activity;

AND WHEREAS section 445 of the *Municipal Act, 2001* provides that a municipality, if satisfied that a contravention of a by-law of the municipality has occurred, 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 section 446 of the *Municipal Act, 2001* provides that if a municipality has authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter of thing shall be done at the person's expense;

AND WHEREAS the Council of The Corporation of the Town of Pelham deems it necessary and desirable to regulate outdoor swimming pools and hot tubs on private property in the Town of Pelham and to enact this By-law for that purpose;

NOW THEREFORE the Council of the Corporation of the Town of Pelham enacts as follows:

1. Purpose

- 1.1. The purpose of this By-law is to regulate the construction, maintenance and enclosure of outdoor swimming pools and hot tubs on private property in the Town of Pelham so as to protect and promote the safety and well-being of persons and property in the municipality.

2. Definitions

- 2.1. In this By-law:

"Above Ground Swimming Pool" means a Swimming Pool designed and installed in such a manner that any portion of the pool wall rises sixty (60) centimetres or more above the surrounding ground or other surface on which the Above Ground Swimming Pool is placed.

"Administrative Monetary Penalty" means a monetary penalty issued pursuant to Town By-law #4353(2022), as amended from time to time.

"Applicable Law" means all applicable by-laws of the Town and/or the Regional Municipality of Niagara and all applicable provincial and federal statutes and regulations.

"By-law Enforcement Officer" means a By-law Enforcement Officer appointed by the Town.

"Construct" means to build, install, erect, alter or relocate any Swimming Pool, Hot Tub, Enclosure, Equipment or Equipment Structure, including any preparatory work, and **"Constructed"** has a corresponding meaning.

"Council" means the Council of the Town.

"Director" means the Director of Fire and By-law Services of the Town or designate.

"Enclosure" means a permanent fence, wall, barrier or structure, or a combination of structures, surrounding a Swimming Pool to control access to it, and includes any Gate, door or entrance providing access to the enclosed area, but does not include berms, ditches, trees, hedges or other similar topographical or landscaping features.

"Equipment" means any mechanical or electrical components required for the operation of a Swimming Pool or Hot Tub and that are external to the Swimming Pool or Hot Tub including but not limited to pumps, filters and heaters.

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"Equipment Structure" means a building or other structure constructed or installed to contain Equipment that is fully enclosed by a roof and walls made of materials that limit the transmission of sound generated by the Equipment contained inside.

"Fees and Charges By-law" means Town By-law #4411(2022), as enacted and amended from time to time.

"Front Lot Line" means the Lot Line along the road on which a Property fronts.

"Gate" means any part of an Enclosure that opens on hinges to provide access to the enclosed area.

"Hot Tub" means any structure, basin, chamber or tank situated outdoors that contains or is capable of containing an artificial body of heated water and is designed or intended primarily for therapeutic or bathing purposes and that may be commonly referred to as a hot tub, Jacuzzi, whirlpool, hydro massage pool, jetted tub or spa.

"In-Ground Swimming Pool" means a Swimming Pool designed and installed in such a manner that the pool wall is situated primarily below ground and rises less than sixty (60) centimetres above the ground surrounding the exterior of the In-Ground Swimming Pool.

"Lot Line" means any boundary of a Property.

"Occupant" means a Person that lawfully occupies a Property and includes Owners and lessees.

"Owner" means the registered owner of Property.

"Person" means an individual, corporation, partnership or association.

"Pool Permit" means a permit issued in accordance with this By-law.

"Property" means any land or premises within the Town.

"Rear Lot Line" means a Lot Line that is more or less parallel to the Front Lot Line and is situated at the rear of a Property.

"Side Lot Line" means a Lot Line that runs from the front to the rear of a Property and is more or less perpendicular to the Front Lot Line and the Rear Lot Line.

"Swimming Pool" means any structure, basin, chamber or tank situated outdoors that contains or is capable of containing an artificial body of water with a depth of sixty (60) centimetres or more and is designed or intended primarily for swimming or wading, and does not include ornamental ponds, ponds used for agricultural purposes, ponds use as reservoirs for firefighting, or any naturally-occurring body of water.

"Town" means The Corporation of the Town of Pelham or the geographic area of the municipality, as the context requires.

3. General Prohibition

- 3.1. No Person shall Construct or operate a Swimming Pool, Hot Tub, Enclosure, Equipment or Equipment Structure except in accordance with this By-law.

4. Swimming Pool Construction and Operation

- 4.1. No Person shall Construct or cause to be Constructed an Above Ground Swimming Pool or an In-Ground Swimming Pool without a Pool Permit.
- 4.2. Any Person may apply for a Pool Permit by making an application in writing to the Director in the form determined by the Town and/or the Director from time to time, which shall include a site sketch or location plan drawn to scale that identifies the location, dimensions and configuration of the Swimming Pool, Equipment and Enclosure.
- 4.3. An application under section 4.2 shall be accompanied by the applicable fee as established by the Fees and Charges By-law, which is non-refundable irrespective of the outcome of the Permit application.
- 4.4. Upon receipt of a complete application and the requisite fee, the Director shall review and determine the application and may impose such terms and conditions on a Pool Permit as the Director considers appropriate.
- 4.5. The Director may refuse to issue a Pool Permit or may revoke a Pool Permit where the Construction does not comply with this By-law or other Applicable Law.
- 4.6. Upon completion of Construction, the holder of the Pool Permit shall have the Swimming Pool and Enclosure inspected and approved by the Town prior to placing water in the Swimming Pool.
- 4.7. No Person shall place water or permit the placement of water in a Swimming Pool without first obtaining the approval of the Town under section 4.6 of this By-law.
- 4.8. No Person shall Construct or cause to be Constructed any Equipment that is not contained in an Equipment Structure or cause or permit any such Equipment to be located less than 3.0 metres from a Side Lot Line or a Rear Lot Line of the Property on which it is situated.
- 4.9. No Person shall Construct or cause to be Constructed any Equipment Structure or cause or permit any Equipment Structure to be located less than 1.2 metres from a Side Lot Line or a Rear Lot Line of the Property on which it is situated.
- 4.10. No Person shall Construct or cause to be Constructed, or cause or permit any Equipment or Equipment Structure to be located closer to the Front Lot Line than the main building or structure on the Property.
- 4.11. Water from a Swimming Pool may be emptied into a storm sewer or drainage ditch at a rate no greater than 300 litres per minute.
- 4.12. No person shall cause or permit water from a Swimming Pool to be emptied into a sanitary sewer.

5. Hot Tub Construction and Operation

- 5.1. No Person shall Construct or cause to be Constructed a Hot Tub unless:

- (a) the Hot Tub has an Enclosure that meets the requirements of this By-law; or
 - (b) the Hot Tub is equipped with a lockable cover that prevents access to the Hot Tub and that is secured in place and locked when the Hot Tub is not in use.
- 5.2. Water from a Hot Tub may be emptied into a storm sewer or drainage ditch at a rate no greater than 300 litres per minute.
- 5.3. No person shall cause or permit water from a Hot Tub to be emptied into a sanitary sewer.

6. Enclosure Requirements

- 6.1. Subject to section 7 of this By-law, the Owner of Property on which a Swimming Pool is located shall ensure that the Swimming Pool is surrounded by an Enclosure in accordance with this By-law.
- 6.2. The Enclosure of a Swimming Pool shall be of sound construction and shall meet the following requirements:
- (a) it has a height of not less than 1.5 metres and not more than 1.82 meters from the surrounding ground or other surface on which the pool is placed;
 - (b) it is constructed of common fencing materials such as chain link, vertical boards, wrought iron, bricks, concrete or similar materials that provide an equal or greater level of safety as determined by the Town;
 - (c) all vertical and horizontal support structures are spaced not more than 2440 millimetres apart;
 - (d) all vertical non-structural support members are spaced not more than 100 millimetres apart;
 - (e) all horizontal non-structural support members are spaced not more than 25 millimetres apart and do not create a climbing advantage; and
 - (f) the clearance between the bottom edge of the Enclosure and the ground does not exceed 100 millimetres.
- 6.3. An Enclosure may include a wall that is part of a building provided that:
- (a) the wall meets the requirements of section 6.2 of this By-law; and
 - (b) any doors in the wall are kept closed and locked when the Swimming Pool is not in use.
- 6.4. For Above Ground Swimming Pools with an outside wall height of more than 1.5 metres from the surrounding ground or other surface on which the pool is placed, the Enclosure may be affixed directly to all entry points such as steps and ladders or may be installed around the perimeter of any platform or deck surrounding the Above Ground Swimming Pool.
- 6.5. For Above Ground Swimming Pools with an outside wall height of less than 1.5 metres and for In-Ground Swimming Pools, the Enclosure shall be located at least 1.5 metres from the water's edge.

- 6.6. Every Enclosure shall allow access to the area in which the Swimming Pool is located by means of one or more Gates, each of which shall meet the following requirements:
- (a) it meets the requirements of section 6.2 of this By-law;
 - (b) it is constructed of materials comparable to the remainder of the Enclosure;
 - (c) it contains no barbed wire or ability to project an electrical current;
 - (d) it is affixed directly to the Enclosure;
 - (e) it is equipped with self-closing and self-latching devices on the side facing the Swimming Pool, which place the Gate in a latched position unless it is actively in use by a Person entering the Enclosure;
 - (f) it is equipped with a locking device on the side facing the Swimming Pool; and
 - (g) where two (2) Gates are immediately adjacent to one another, one Gate must be kept in a locked position and must not affect the operation of self-closing and self-latching devices on the adjacent Gate.
- 6.7. The Occupant of Property on which a Swimming Pool is located shall ensure that every Gate is kept closed and locked when the Swimming Pool is not in use.
- 6.8. The Occupant of Property on which a Swimming Pool is located shall ensure that every door in the Enclosure as described in section 6.3 of this By-law is kept closed and locked when the Swimming Pool is not in use.

7. Special Provisions

- 7.1. Notwithstanding section 6 of this By-law:
- (a) at the Property municipally known as 1363 Effingham Street, the Enclosure on the east side of the Swimming Pool shall be located not less than 1.35 metres from the water's edge;
 - (b) at the Property municipally known as 14 Michaela Crescent, the Enclosure on the west side of the Swimming Pool may be located not less than 1.2 meters from the water's edge;
 - (c) at the Property municipally known as 12 Cherry Ridge Boulevard, the Enclosure along the westerly Side Lot Line shall have a maximum height of 2.15 metres; and
 - (d) for Properties with Rear Lot Lines adjacent to the westerly boundary of Pelham Street from its intersection with Merritt Road to the north side of Welland Road at its intersection with Pelham Street, Enclosures shall have a maximum height of 1.82 metres above the centre line of Pelham Street.

8. Enforcement

- 8.1. This By-law shall be administered and enforced by the Town, the Director or By-law Enforcement Officers.

- 8.2. The Director and By-law Enforcement Officers may, for the purpose of enforcing this By-law, exercise any power, authority or remedy granted to the Town pursuant to the *Municipal Act, 2001*.
- 8.3. The Director and By-law Enforcement Officers may, at all reasonable times, enter upon and inspect any land to determine if this By-law is being complied with.
- 8.4. For the purposes of an inspection under section 8.3 of this By-law, the Director and By-law Enforcement Officers may require the production for inspection of documents or things relevant to the inspection, inspect and remove relevant documents or things for the purpose of making copies or extracts, and/or require information from a Person concerning a matter related to the inspection.
- 8.5. Where the Director or a By-law Enforcement Officer is satisfied that there has been a contravention of this By-law, they may make an Order requiring the Person who contravened the By-law or caused or permitted the contravention and/or the Owner and/or Occupant of Property where the contravention occurred to bring Property into compliance with this By-law.
- 8.6. An Order made under section 8.5 shall set out the municipal address and/or legal description of Property, reasonable particulars of the non-compliance and the date(s) by which there must be compliance with the Order.
- 8.7. An Order made under section 8.5 may be served by regular mail, registered mail or hand delivered to the last known address of the Person to whom it is issued, by email to the last known email address of the Person to whom it is issued, or by posting the Order at Property where the contravention occurred.
- 8.8. Where any Person fails to comply with an Order made under section 8.5 by the prescribed date(s), the Town may do any matter or thing necessary to bring Property into compliance with this By-law at the expense of the Person in default of the Order.
- 8.9. The Town may recover the cost of any matter or thing done pursuant to section 8.8 of this By-law by adding the cost to the tax roll and collecting it in the same manner and with the same priority as municipal taxes.
- 8.10. Where any items, materials or things are removed from Property pursuant to this By-law, the Town may immediately dispose of them or it may store them. Where an item, material or thing has been removed and stored by the Town, its Owner may reclaim it upon payment to the Town of any costs incurred by the Town in so doing. Where an item, material or thing has not been reclaimed within thirty (30) days of its removal, the Town may dispose of it forthwith.
- 8.11. Where any items, materials or things are removed from Property pursuant to this By-law, the Town shall not be liable to compensate the Owner and/or Occupant of Property or any other Person by reason of anything done by or on behalf of the Town in the reasonable exercise of its powers under this By-law.

8.12. No Person shall obstruct or hinder, or attempt to obstruct or hinder, the Director or a By-law Enforcement Officer in the exercise of a power or the performance of a duty under this By-law.

9. Penalty

- 9.1. Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to such penalties as are provided for in the *Municipal Act, 2001* and the *Provincial Offences Act, R.S.O. 1990, c. P.33*.
- 9.2. Administrative Penalty Process By-law #4352(2022), as amended, applies to each Administrative Monetary Penalty issued pursuant to this By-law.
- 9.3. Every Person who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law #4352(2022), be liable to pay to the Town an Administrative Monetary Penalty in the amount of \$250.00 for each day on which the contravention occurs or continues or such other amount as is provided for under that By-law.

10. General

- 10.1. The short title of this By-law is the "Swimming Pool and Hot Tub By-law".
- 10.2. If any provision of this By-law is found by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, the balance of the By-law shall not be affected and shall remain in full force and effect.
- 10.3. If there is a conflict between a provision of this By-law and a provision of any other By-law of the Town, the provision that establishes the higher standard shall prevail.
- 10.4. This By-law shall be read with all changes in number or gender as are required by context.
- 10.5. Any reference to legislation in this By-law includes the legislation and any amendment, replacement, subsequent enactment or consolidation of such legislation.
- 10.6. The Town Clerk is hereby authorized to effect any minor modifications or corrections solely of an administrative, clerical, numerical, grammatical, semantical or descriptive nature or kind to this By-law as are determined to be necessary.

11. Repeal and Enactment

- 11.1. By-law #3389(2013), being a by-law to establish standards, regulations and maintenance requirements for swimming pools, enclosures and equipment, is hereby repealed and replaced.

12. Effective Date

- 12.1. This By-law shall come into force on the date that it is enacted.

Read, enacted, signed and sealed this 01st day of November, 2023.



Marvin Junkin, Mayor



William Tigert, Town Clerk