

## **CITY OF NIAGARA FALLS**

By-law No. 2014-58

A by-law regulating outdoor swimming pools in the City of Niagara Falls.

**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 11(2) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that the municipality may pass by-laws related to the health, safety, and wellbeing of the inhabitants of the municipality;

**AND WHEREAS** Section 11(3) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to pass by-laws respecting structures, including fences;

**AND WHEREAS** Section 391(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may pass by-laws imposing fees or charges for services provided or done by or on behalf of it;

**AND WHEREAS** the Council of the City of Niagara Falls deems it desirable for the protection of the public to enact a by-law to regulate *outdoor swimming pools*;

**THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:**

### **SECTION 1 GENERAL PROVISIONS**

#### **1.1 SHORT TITLE**

1.1.1 This by-law shall be known as the "Swimming Pool By-law".

#### **1.2 DEFINITIONS**

1.2.1 For the purpose of this by-law:

- (1) "*Chief Building Official*" means the *Chief Building Official* appointed by Council under the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended, or the *person* who is appointed to act in that capacity during his or her absence;
- (2) "*City*" means The Corporation of the City of Niagara Falls or the geographical area of the municipality, as the context requires;

- (3) “*erect*” means to conduct any actions involved in the *erection*, installation, construction, extension or material alteration of a *swimming pool enclosure* or an outdoor swimming pool;
- (4) “*exterior face*” means, when used in conjunction with a *swimming pool enclosure*, the side of the enclosure from which access to the pool is to be prevented;
- (5) “*ground level*” means the highest level of the grade at any point around the exterior of the swimming pool within 1.06m [42”] measured horizontally from the wall of the outdoor swimming pool;
- (6) “*lot*” means any parcel of tract of land that can be conveyed without contravening the Planning Act and has frontage on an improved street;
- (7) “*lot line*” means any boundary of a *lot*;
- (8) “*lot line, front*” means, in the case of an interior *lot*, the line dividing the *lot* from the street; where the *lot* is a corner *lot*, the shorter *lot line* abutting a street shall be deemed to be the *front lot line* and the longer *lot line* abutting a street shall be deemed to be an exterior *side lot line*, provided that, where a corner *lot* has the same dimensions on the two streets upon which it abuts, the *lot line* abutting the street upon which the building or structure *erected* or to be *erected* has its principal entrance shall be deemed to be the *front lot line*; where the *lot* is a through *lot*, the *lot line* where the principal access to the *lot* is provided shall be deemed to be the *front lot line*;
- (9) “*lot line, rear*” means the *lot line* farthest from or opposite to the *front lot line*; where the side lot lines intersect, as in the case of a triangular lot, the rear lot line shall be represented by the point of intersection;
- (10) “*lot line, side*” means a *lot line* other than a *front lot line* or a *rear lot line*;
- (11) “*Officer*” means a Municipal By-Law Enforcement *Officer*, a Building Inspector, a *Chief Building Official*, or other *person* appointed or employed by the *City* for enforcement of by-laws;
- (12) “*Ontario Building Code*” means the regulation established through the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended;
- (13) “*outdoor swimming pool*” means any artificial body of water located out of doors, and capable of holding a depth of 305mm [12 in.] of water at any given section but does not include:
  - (a) a pond which is maintained for ornamental purposes only;
  - (b) a pond which is used only for agricultural, horticultural or industrial purposes or is located in an agricultural *zone*;

- (c) a pond which is used as a reservoir for firefighting;
  - (d) natural occurring streams, lakes, swamps or other natural bodies of water; or
  - (e) an *outdoor swimming pool* which is subject to the regulations of the *Ontario Building Code*;
- (14) "*outdoor swimming pool, above ground*" means any *outdoor swimming pool*, other than a *seasonal outdoor swimming pool*, that has a portion of the pool wall *above ground level*;
- (15) "*outdoor swimming pool, in ground*" means any *outdoor swimming pool* that is constructed with its pool walls more than 90% below *ground level*;
- (16) "*outdoor swimming pool, seasonal*" means any *outdoor swimming pool* which is intended to be removed and stored during the winter months and/or when not in use;
- (17) "*owner*" means a *person* or corporation who legally owns or controls the *property* in question;
- (18) "*permit*" means a *permit* issued by the *Chief Building Official* certifying approval of plans for the *erection* of an *outdoor swimming pool* and/or a *swimming pool enclosure* required by this by-law;
- (19) "*person*" means and includes an individual, firm, corporation, association or partnership and includes an occupant or an *owner* of a *property*;
- (20) "*private spa*" means a hydro-massage pool containing an artificial body of water that is intended primarily for the therapeutic or recreational use of a single dwelling unit that is not drained, cleaned or refilled before use by each individual and that utilizes hydro-jet circulation, air induction bubbles, current flow or a combination of them over the majority of the pool area, but does not include an *outdoor swimming pool*;
- (21) "*property*" means any grounds, *yard* or vacant lands;
- (22) "*swimming pool area*" means an *outdoor swimming pool* and includes any surrounding platforms, walkways, play areas and landscaped area within the *swimming pool enclosure*;
- (23) "*swimming pool enclosure*" means a permanent fence, wall or structure or a combination thereof, together with any gates or entrances, which completely surround an *outdoor swimming pool*;

- (24) “*temporary enclosure*” means an enclosure used temporarily for the purpose of enclosing an *outdoor swimming pool* in the course of construction in order to effectively prevent or restrict access thereto by unauthorized *persons*, and to prevent any accident or injury to any *person* in or on the *property*;
- (25) “*yard*” means a space, appurtenant to a building or structure, located on the same *lot* as such building or structure, and which space is open, uncovered and unoccupied from the ground to the sky subject to the specific exceptions contained in the City of Niagara Falls Zoning By-law;
- (26) “*yard, front*” means a *yard* extending across the full width of a *lot* between the *front lot line* of such *lot* and the nearest part of the main building or structure on such *lot*;
- (27) “*zone*” means an area designated by the City of Niagara Falls Zoning By-law, as amended, and established by that by-law for a specific use; and
- (28) “*zone, residential*” means a *zone* in which the use of land, building or structures is for the sleeping or habitation of *persons*.

### **1.3 INTERPRETATION**

- 1.3.1 In this by-law statutory references are to Statutes of Ontario and the regulations made thereunder and shall be deemed to refer to such statutes and regulations as amended, consolidated, re-enacted and in force from time to time.
- 1.3.2 This by-law shall be read with all changes of gender and number required by the context or circumstances.

### **1.4 APPLICATION**

- 1.4.1 The provisions of this by-law shall regulate the location and enclosure of privately owned *outdoor swimming pools* and *private spas erected* on any *property* within the boundaries of the City of Niagara Falls.
- 1.4.2 Notwithstanding article 1.4.1, the provisions of this by-law do not apply to *outdoor swimming pools* which are owned by a public or government body.
- 1.4.3 The provisions of this by-law do not in any way exempt an *outdoor swimming pool* or *private spa* from complying with any and all applicable Federal or Provincial statutes, and regulation thereunder, or any other municipal or regional by-law, including the requirement for a *permit*.

- 1.4.4 The provisions of this by-law shall apply equally to all types of *outdoor swimming pools*, including *above ground, in ground* and *seasonal outdoor swimming pools*, unless otherwise stipulated in this by-law.
- 1.4.5 Save and except section 3 of this by-law, a *private spa* need not comply with the remaining provisions of this by-law, provided that secure cover or rigid material is placed over the entire opening to the *private spa* and is locked in place, in order to prevent access by unauthorized *persons*, when the *private spa* is not in use or under competent and immediate supervision.

## **SECTION 2 GENERAL PROVISIONS**

### **2.1 PERMITS**

- 2.1.1 No *person* shall excavate for, or *erect*, or cause or *permit* excavation for, or *erection* of, any *outdoor swimming pool* and/or *swimming pool enclosure* without first obtaining a *permit* from the *Chief Building Official*.
- 2.1.2 An application for *permit* shall be on forms provided by the *City* for such purposes and shall include the following information:
- (1) the location of the *property*;
  - (2) a plot plan or plot plans of the *lot* showing the following information:
    - (a) the location of the *outdoor swimming pool*;
    - (b) the location of the *swimming pool enclosure* including the location of any gates and/or entrances;
    - (c) the location of any associated *outdoor swimming pool* equipment such as, but not limited to, pumps, filters and heating equipment;
    - (d) dimensions from the *outdoor swimming pool* and any associated equipment to all *lot lines* and all other buildings or structures on the *lot*; and
    - (e) where the application being made is for the installation of an *in ground outdoor swimming pool*, in addition to the items identified above, the application shall be accompanied by a Lot Grading Plan bearing the signature and seal of a practicing Engineer, Landscape Architect, Architect or Ontario Land Surveyor, who certifies thereon that the drainage scheme depicted by the plan is designed to ensure that water will not accumulate at or near the building and will not adversely affect adjacent properties.

- (3) a plan or plans illustrating the complete details of the *swimming pool enclosure* including:
  - (a) type of construction;
  - (b) materials; and
  - (c) height.

2.1.3 The issuance of a *permit* for any application regarding the *erection* of any *outdoor swimming pool* and/or *swimming pool enclosure* shall be denied if the *erection* of the *outdoor swimming pool* and/or *swimming pool enclosure* would be contrary to the provisions of any by-law of the City of Niagara Falls, or any other applicable law or regulation.

2.1.4 Any deck, structure or accessory building such as, but not limited to, an enclosure for pool equipment, change houses and storage buildings are not regulated by this by-law and shall be subject to any and all applicable municipal or regional by-laws, or any other applicable law.

2.1.5 No *permit* for an *outdoor swimming pool* and/or *swimming pool enclosure* shall be issued unless all applicable fees and applicable deposits, as established by the Council of the City of Niagara Falls, have been paid in full.

2.1.6 Once a *permit* has been issued for the *erection* of a *seasonal outdoor swimming pool*, the initial *permit* shall be sufficient to satisfy the requirements of article 2.1.1 for each additional *erection* of the same *seasonal* swimming pool beyond that of the original *erection*. The provisions of article 2.2.2, however, remain in effect and shall be satisfied prior to the placing of water for the original installation.

## **2.2 INSPECTIONS**

2.2.1 No *person* shall place water, or cause or *permit* water to be placed, in an *outdoor swimming pool*, unless the final inspection has been successfully conducted and the installation of the *swimming pool enclosure* is approved by the *Officer* conducting the inspection.

2.2.2 No *person* shall place water, or cause or *permit* water to be placed, in a *seasonal outdoor swimming pool*, unless the final inspection has been successfully conducted and the location of the *seasonal outdoor swimming pool* and presence of the required *swimming pool enclosure* is approved by the *Officer* conducting the inspection.

2.2.3 The installation inspection required by article 2.2.2 shall be required for the initial *erection* of the *seasonal outdoor swimming pool* only. It shall be the responsibility of the *owner* to ensure that the *seasonal outdoor swimming pool* is *erected* in conformance to the applicable requirements of this by-law for all subsequent installations.

## **2.3 PERMIT FEES AND DEPOSITS**

- 2.3.1 Any fee required by or described in this by-law shall be as set out in the Rates and Fees By-law of the City of Niagara Falls, as revised by the Council of the City of Niagara Falls from time to time.
- 2.3.2 Any security deposit required by or described in this by-law shall be as set out in Schedule A to this by-law.

## **SECTION 3 SWIMMING POOL CONSTRUCTION**

### **3.1 LOCATION OF SWIMMING POOLS AND PRIVATE SPAS IN RESIDENTIAL ZONES**

- 3.1.1 An *outdoor swimming pool* or *private spa* shall not be located within any *front yard*.
- 3.1.2 An *outdoor swimming pool* shall have no interior wall surface located within 1.8m [5.9 ft.] of the main wall of any dwelling on such *lot* or on any adjoining *lot*.
- 3.1.3 An *outdoor swimming pool* shall have no interior wall surface located within:
- (1) 1.2m [3.9 ft.] of any building or structure, other than a dwelling or a deck, supported on a foundation that projects below *ground level*;
  - (2) 1.2m [3.9 ft.] of any interior *side lot line*;
  - (3) 1.2m [3.9 ft.] of any exterior *side lot line*; and
  - (4) 1.2m [3.9 ft.] of any *rear lot line*.
- 3.1.4 Every *person* who *erects* or permits the *erection* of an *outdoor swimming pool* shall comply with the requirements of the *City* by-laws and policies concerning drainage or the grading and/or filling of land including, without limiting the generality of the foregoing, any applicable Master Drainage Plan governing the drainage of the land upon which the *outdoor swimming pool* is to be located or is being constructed.
- 3.1.5 A *private spa* shall not be located within 1.2m [3.9 ft.] of:
- (1) any interior *side lot line*;
  - (2) any exterior *side lot line*; and
  - (3) any *rear lot line*.

3.1.6 All associated equipment related to the *outdoor swimming pool* or *private spa* such as, but not limited to, pumps, filters and heating equipment, shall be subject to the provisions of article 3.1.1 and shall not be located within:

- (1) 1.2m [3.9 ft.] of any interior *side lot line*;
- (2) 1.2m [3.9 ft.] of any exterior *side lot line*; and
- (3) 1.2m [3.9 ft.] of any *rear lot line*.

### **3.2 LOCATION OF SWIMMING POOLS - NON RESIDENTIAL ZONES**

3.2.1 An *outdoor swimming pool* shall have no interior wall surface located within 1.8m [5.9 ft.] of the main wall of any primary building on such *lot* or on any adjoining *lot*.

3.2.2 An *outdoor swimming pool* shall have no interior wall surface located within:

- (1) 1.2m [3.9 ft.] of any building or structure, other than the primary building, supported on a foundation that projects below *ground level*;
- (2) 1.2m [3.9 ft.] of any *front lot line*;
- (3) 1.2m [3.9 ft.] of any interior *side lot line*;
- (4) 1.2m [14.76 ft.] of any exterior *side lot line*; and
- (5) 1.2m [3.9 ft.] of any *rear lot line*.

3.2.3 Every *person* who *erects* or permits the *erection* of an *outdoor swimming pool* shall comply with the requirements of the *City* by-laws and policies concerning drainage or the grading and/or filling of land including, without limiting the generality of the foregoing, any applicable Master Drainage Plan governing the drainage of the land upon which the *outdoor swimming pool* is to be located or is being constructed.

3.2.4 All associated equipment related to the *outdoor swimming pool* or *private spa* such as, but not limited to, pumps, filters and heating equipment, shall not be located within:

- (1) 1.2m [3.9 ft.] of any *front lot line*;
- (2) 1.2m [3.9 ft.] of any interior *side lot line*;
- (3) 1.2m [3.9 ft.] of any exterior *side lot line*; and
- (4) 1.2m [3.9 ft.] of any *rear lot line*.



### **3.3 PLUMBING**

- 3.3.1 Any plumbing connections between the *outdoor swimming pool* or *private spa* and any potable water supply shall be equipped with a back flow prevention device.
- 3.3.2 Overflow or drainage discharge from an outdoor swimming pool or *private spa* shall be discharged to a storm sewer or natural drainage course. Where a storm sewer or natural drainage course is not available, the *outdoor swimming pool* shall be drained by mechanical means and transported to a suitable storm sewer outlet or natural drainage course.
- 3.3.3 At no time is overflow or drainage from an *outdoor swimming pool* or *private spa* permitted to discharge onto abutting properties, open lands, *City property* or into the sanitary sewer.
- 3.3.4 *Outdoor swimming pools* or *private spas* being drained shall not discharge to any storm sewer or natural drainage course at a rate greater than 300 liters [66 gals.] per minute and shall be carried out in accordance with the guidelines or regulations concerning the disposal of *outdoor swimming pool* water issued by the Ontario Ministry of the Environment.
- 3.3.5 Where a *lot* is not serviced by a sanitary sewer, an approval from the authority having jurisdiction for administration and enforcement of section 8 of the *Ontario Building Code* shall be obtained, prior to the issuance of any *permit* under subsection 2.1 of this by-law.

### **3.4 ELECTRICAL**

- 3.4.1 All electrical works conducted in association with the installation of an *outdoor swimming pool* or *private spa* shall be installed in accordance with all applicable electrical codes and standards.
- 3.4.2 Any applicable *permits* and inspections required as a result of the provisions of article 3.4.1 are the responsibility of the *owner*.
- 3.4.3 All lighting fixtures or standards installed in conjunction with the *outdoor swimming pool* or *private spa* shall be arranged, designed and installed so that light from them is directed downward and deflected away from any adjacent *lots* and abutting highways.

## **SECTION 4 ENCLOSURE CONSTRUCTION AND MAINTENANCE**

### **4.1 GENERAL ENCLOSURE REQUIREMENTS**

- 4.1.1 The *owner* of any lands on which an *outdoor swimming pool* is located or *erected* shall *erect a swimming pool enclosure* around the entire *swimming pool area*, in accordance with the provisions of this by-law.
- 4.1.2 The height of a *swimming pool enclosure* required by this by-law shall be a minimum of 1.07m [42 in.] in height, as measure from *ground level* at the *exterior face* of the enclosure.
- 4.1.3 The maximum permitted space between the bottom of a *swimming pool enclosure* and the *ground level* is:
- (1) 50mm [2 in.] where the ground is primarily turf grass or bare earth; and/or
  - (2) 100mm [4 in.] where the ground is primarily concrete or asphalt.
- 4.1.4 Every *swimming pool enclosure* shall be constructed in accordance with subsections 4.2 and 4.3 of this by-law, except as may otherwise be provided in this by-law.
- 4.1.5 An *above ground outdoor swimming pool* may have an integrally constructed structure as a component of the required *swimming pool enclosure*, provided that the exterior sides of the *above ground outdoor swimming pool* are a least 1.07m [42 in.] in height, as measured from the *ground level* to the top of the pool wall or the top of the integrally constructed structure.
- 4.1.6 All *swimming pool enclosures* shall be designed and constructed in a manner in which no member, attachment or opening will facilitate climbing.
- 4.1.7 Notwithstanding the requirements of article 4.1.1, where the outside wall of the *outdoor swimming pool* has a height of not less than 1.07m [42 in.] measured from *ground level* at all points on the perimeter of such wall, a *swimming pool enclosure* shall not be required provided that any steps, ladder or other means of entry to the *outdoor swimming pool* are protected by a *swimming pool enclosure* which complies with the requirements contained within the remainder of this section.
- 4.1.8 The wall of a building may be considered to form a part of a *swimming pool enclosure* provided that:
- (1) the wall is at least 1.07m [42 in.] in height, as measured from *ground level* at the *exterior face* of the wall;
  - (2) where any window opening, other than a window located in a dwelling unit, occurs within the area of the wall forming part of the *swimming*

*pool enclosure*, such windows are to be kept securely locked when the pool is not under competent and immediate supervision; and

- (3) where any door providing access directly to a *swimming pool area* occurs within the area of the wall forming part of the *swimming pool enclosure*, such door shall satisfy the provisions of subsection 4.3.

## 4.2 FENCES

4.2.1 A fence which forms a *swimming pool enclosure*, or a part thereof, shall be of chain link construction, wood construction, wrought iron or metal construction or a material otherwise approved by the Chief Building Official.

4.2.2 A fence of chain link construction shall:

- (1) be constructed of chain link with a wire size of not less than twelve [12] gauge in thickness when of galvanized steel material, or with a wire size of not less than fourteen [14] gauge in thickness when of vinyl or other approved coated steel material which would form an overall thickness equivalent to twelve [12] gauge galvanized steel wire;
- (2) have links of diameter of not more than 50mm [2 in.];
- (3) be supported by capped galvanized steel posts with a minimum 38mm [1.5 in.] diameter, spaced not more than 2.4m [7.9 ft.] apart, and placed at least 0.9m [3 ft.] below *ground level*;
- (4) have a top rail of a minimum 32mm [1.25 in.] diameter galvanized steel pipe, securely fastened to the upright galvanized steel posts; and
- (5) have a bottom support of not less than a nine [9] gauge galvanized steel tension wire securely fastened to the upright galvanized steel posts.

4.2.3 A fence of wood construction shall:

- (1) be constructed of a minimum 16mm [0.625 in.] thick boards, placed vertically;
- (2) have:
  - (a) horizontal members, including top and bottom rails, that are spaced at least 0.9m [3 ft.] apart, and vertical boards that are spaced not more than 100mm [4 in.] apart on the *exterior face* of the fence; or
  - (b) horizontal members, including top and bottom rails, that are spaced less than 0.9m [3 ft.] apart, and vertical boards that are spaced not more than 50mm [2 in.] apart on the *exterior face* of the fence;

- (3) be supported by solid wood posts of at least 89mm x 89mm [3.5 in. x 3.5 in.], or 89mm [3.5 in.] in diameter, spaced not greater than 2.4m [7.9 ft.] apart, and placed at least 0.9m [3 ft.] below *ground level*;
- (4) have a top and bottom rail of a minimum size of 38mm x 89mm [1.5 in. x 3.5 in.], where the 89mm [3.5 in.] dimension is in vertical orientation, securely fastened to the solid wood posts; and
- (5) have all wood, which is in contact with the ground or to be below *ground level*, of a species resistant to decay by moisture or treated with an approved substance to resist decay.

4.2.4 A fence of wrought iron or metal construction shall:

- (1) be of sufficient strength to provide an effective *swimming pool enclosure*;
- (2) be supported by posts spaced not greater than 2.4m [7.9 ft.] apart, and placed at least 0.9m [3 ft.] below *ground level*;
- (3) have:
  - (a) horizontal members, including top and bottom rails, that are spaced at least 0.9m [3 ft.] apart, and vertical members that are spaced not more than 100mm [4 in.] apart, on the *exterior face* of the fence; or
  - (b) horizontal members, including top and bottom rails, that are spaced less than 0.9m [3 ft.] apart, and vertical members that are spaced not more than 50mm [2 in.] apart, on the *exterior face* of the fence.

4.2.5 Any fence, or portion thereof, constructed using basket weave or lattice material within the required portion of any *swimming pool enclosure* shall be deemed not in compliance with the requirements of this by-law.

4.2.6 Any fence constructed as a *swimming pool enclosure* must also be constructed in accordance with the City of Niagara Falls Fence By-law, as amended.

4.2.7 Any fence which forms a *swimming pool enclosure*, or part thereof, shall be constructed at a distance of at least 600mm [2 ft.] from the interior wall surface of the *outdoor swimming pool*, except for an integrally constructed structure which shall be constructed in accordance with article 4.1.5.

### **4.3 GATES AND ENTRANCES**

4.3.1 Every gate or entrance is to be kept closed and locked at all times when the *outdoor swimming pool* is not under competent and immediate supervision.

4.3.2 Every *swimming pool enclosure* shall allow access to the *swimming pool area*, other than through a dwelling unit, by means of one or more gates or entrances.

4.3.3 Gates or entrances which form a part of a *swimming pool enclosure* shall be:

- (1) of construction and height equivalent to or greater than that of the *swimming pool enclosure* which it forms a part of;
- (2) supported on substantial hinges;
- (3) equipped with self-closing hardware capable of placing the gate or entrance in a latched position; and
- (4) equipped with self-latching hardware mounted on the pool side of the gate or entrance.

4.3.4 In addition to the provisions of articles 4.3.1, 4.3.2 and 4.3.3, any door providing access directly to a *swimming pool area* shall be equipped with hardware mounted on either side of the door, at least 1.07m [42 in.] *above ground level*, which deactivates the use of the door from either the pool side or the *exterior face* of the door.

4.3.5 Where a double gate forms part of the *swimming pool enclosure*, one gate shall be capable of being fixed in a closed and locked position.

#### **4.4 TEMPORARY ENCLOSURES**

4.4.1 An *outdoor swimming pool*, while under construction, shall be completely enclosed by a *temporary enclosure* as defined herein, except where the *swimming pool enclosure* requirements have been satisfied.

4.4.2 A *temporary enclosure* shall:

- (1) consist of a 1.07m [42 in.] high plastic mesh fence having mesh openings not greater than 50mm [2 in.] and supported by steel T-bar posts located a maximum of 2.4m [7.9 ft.] apart and with a nine [9] gauge galvanized steel wire located at the top and bottom of such fence; or
- (2) be constructed of material that will provide an equivalent or greater degree of safety referred to in article 4.4.2(1) above, and which has been approved by the *Chief Building Official*.

## **4.5 MAINTENANCE**

- 4.5.1 The *owner* of any lands on which an *outdoor swimming pool* is located or *erected* shall maintain a *swimming pool enclosure* around the entire *swimming pool area*, in accordance with the provisions of this by-law.
- 4.5.2 No *person* shall place water, or cause water to be placed, in an *outdoor swimming pool*, unless the *swimming pool enclosure* described by this by-law is maintained in accordance with the provisions of this by-law.
- 4.5.3 Every *swimming pool enclosure*, and *temporary enclosure*, shall be maintained in such a manner and to such an extent as to ensure, at all times, maximum security and protection against entry to the *outdoor swimming pool* by unauthorized *persons*.
- 4.5.4 No *person* shall keep an *outdoor swimming pool* or *private spa* unless it is maintained in good repair and working condition.
- 4.5.5 No *person* shall cause or permit an *outdoor swimming pool* or *private spa* to contain standing water for a period in excess of three (3) days.

## **SECTION 5 ADMINISTRATION AND ENFORCEMENT**

### **5.1 ENFORCEMENT**

- 5.1.1 The *Chief Building Official* or an *Officer* may inspect the *property* for the purpose of determining whether there is compliance with any provision of this by-law.
- 5.1.2 Every *owner* or occupant shall *permit* the *Chief Building Official* or an *Officer* employed by the *City*, upon production of identification and for the purpose of the inspection by the *City*, to inspect the *property* for the purpose of article 5.1.1.
- 5.1.3 Where an *owner* fails to *erect* or maintain the *swimming pool enclosure*, including gates and entrances, in accordance with the provisions of this by-law, or causes or permits water to either remain or be placed in an *outdoor swimming pool* which is not enclosed by a *swimming pool enclosure* maintained in accordance with this by-law, the *Chief Building Official* may immediately, at the expense of the *owner*:
- (1) *erect* or repair the *swimming pool enclosure* in accordance with the provisions of this by-law; or
  - (2) remove all water from the *outdoor swimming pool* until such time as the required *swimming pool enclosure* is *erected* or maintained in accordance with the provisions of this by-law.

5.1.4 Where an *owner* fails to *erect* or maintain a *temporary enclosure* in accordance with the provisions of this by-law, the *Chief Building Official* may immediately, at the expense of the *owner*, *erect* or repair the *temporary enclosure* in accordance with the provisions of this by-law.

5.1.5 The *City* may recover the expenses incurred in undertaking the work described in articles 5.1.3 and 5.1.4 by action or by adding the costs to the tax roll for the *property* and collecting them in the same manner as taxes in accordance with Section 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

## **5.2 NOTICE OF NON-CONFORMITY**

5.2.1 An *Officer* who, upon inspection, finds a condition or conditions that do not conform to the standards as prescribed by this by-law, may issue an Order to the *owner* and such other *persons* as he deems appropriate, identifying the non-conforming condition or conditions and directing that the non-conforming condition or conditions be corrected.

5.2.2 An Order as described in article 5.2.1 shall be served upon the *owner* and any other *person* to whom the Order is directed.

5.2.3 Service of the Order described in article 5.2.1 upon the *owner* or other *person*, shall be by way of personal service or by way of prepaid first class post to the last address known to the *City* for that *owner* or *person*.

5.2.4 An Order as described in article 5.2.1 may be served by posting the Order in a conspicuous place upon the *property* upon which the instance of non-conformity was found by the inspector.

## **5.3 PENALTIES**

5.3.1 Every *person* who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to fines as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, and as set out in Schedule 'A' to this by-law.

5.3.2 No *person* shall hinder or obstruct an *Officer*, appointed under this by-law or employed to enforce this by-law, from carrying out an inspection of the *property*.

## **5.4 VALIDITY**

5.4.1 Should a court of competent jurisdiction declare a portion or the whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under the law so as to protect the public.

5.4.2 Where a provision of this by-law conflicts with the provision of another by-law, Act, or regulation in force with the City of Niagara Falls, the provisions that establish the higher standards to protect the health and safety of *persons* shall prevail.

5.4.3 Notwithstanding the provisions of article 5.4.2, where a provision of this by-law conflicts with the provision of any other City of Niagara Falls by-law relating to fencing, the provisions of this by-law will prevail as they relate to enclosing *outdoor swimming pools*, unless otherwise provided.

**5.5 TRANSITION RULES**

5.5.1 After the date of the passing of this by-law, those by-laws identified under subsection 6.1 shall apply only to those properties in which an application for *permit* has been submitted prior to the date of passing of this by-law, and then only to such properties until such time as the work permitted under any issued *permit* for those applications, has been completed.

**SECTION 6 ENACTMENT AND REPEAL**

**6.1 BY-LAWS TO BE REPEALED**

6.1.1 By-law No. 73-159, 73-186, 79-115, 80-131, 81-65, 1992-254, 1995-276, 1996-238 are hereby repealed.

**6.2 DATE OF ENACTMENT**

6.2.1 This by-law shall come into force and effect on the day after it is passed.

Passed this thirteenth day of May, 2014.

.....  
DEAN IORFIDA, CITY CLERK

.....  
JAMES M. DIODATI, MAYOR

First Reading: May 13, 2014  
Second Reading: May 13, 2014  
Third Reading: May 13, 2014



**'SCHEDULE A'**  
**TO BY-LAW 2014-DRAFT**

**A.1 DEPOSITS**

- A.1.1 A performance / security deposit is collected by the City to provide securities for any potential damage that may occur to municipal property through the course of the permitted outdoor swimming pool installation. Furthermore, the deposit is also held for the assurance that all necessary inspections are completed throughout the duration of the installation and finally to ensure that the permit file can be appropriately closed at the conclusion of the works.
- A.1.2 An applicant shall be required to submit a performance / security deposit of \$750 with each permit application for an In Ground Outdoor Swimming Pool.
- A.1.3 Performance / security deposits shall not be required for the installation of Seasonal Outdoor Swimming Pools or Above Ground Outdoor Swimming Pools.
- A.1.4 Forfeiture of the Performance / Security deposit, due to additional administrative or inspection costs, may result when more than five (5) years has lapsed from the date of the last documented inspection.

**A.2 REFUNDS**

- A.2.1 As the established permit fees are minimum fees based on the review and inspections costs for the administration of the permits, there shall be no available refund of permit fees.
- A.2.2 The deposits identified above shall be held as security by the City until the work for which the permit has been issued has been completed in accordance with the stipulated requirements of the permit to the satisfaction of the Chief Building Official. The applicant shall be responsible for any damage to municipal property or any restriction and associated costs of any such damage or repair may be deducted by the City in addition to any other available remedy or penalty.
- A.2.3 Should the cost of repairs exceed the value of the deposit held, the City shall invoice the applicant for the amount in excess of the deposit, and if such invoice is not paid by the stipulated due date, the City may recover the costs by action or by adding the costs to the tax roll of the property to which the permit relates, and collecting them in the same manner as taxes according to Section s.1 (2.1) of the *Municipal Act*.
- A.2.4 Should the deposit not be required to be called upon during the duration of the project, they will be released as follows upon successful completion of the project in accordance with the approved permit documents which results in a closure of such permit file.