

THE CORPORATION OF THE CITY OF PICKERING

BY-LAW NO. 6943/09

A by-law to regulate fences and swimming pool enclosures

WHEREAS paragraph 7 of subsection 11(3) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting structures including fences; and

WHEREAS the City of Pickering deems it necessary to prescribe limitations on fence height and materials, as well as require the erection of swimming pool enclosures that meet minimum safety standards;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF PICKERING ENACTS AS FOLLOWS:

PART I - INTERPRETATION

Definitions

1. In this by-law,
 - (a) "City" means the geographical area of the City of Pickering or the Corporation of the City of Pickering, as the context requires;
 - (b) "Council" means the Council of the Corporation of the City of Pickering;
 - (c) "erect" includes alter, construct, place, locate, install, relocate and maintain, and cause or permit to be altered, constructed, placed, located, installed, relocated or maintained;
 - (d) "fence" means any structure constructed of posts, boards, rails, wire, masonry or other similar materials or any combination thereof used to define a property boundary or to enclose any outdoor area, but does not include hedges, shrubs, trees or privacy screens;
 - (e) "front wall" means the main façade of a building or structure;
 - (f) "height", as it relates to a fence or privacy screen, means the vertical distance from the ground to the highest point of the fence or privacy screen, except in the case of a fence located on top of a retaining wall, where "height" means the vertical distance between the top of the retaining wall and the highest point of the fence.

- (g) "main building" means the structure used for the principal purpose of the property, and includes an attached garage;
- (h) "owner" means the person or persons identified in the most recent tax rolls as the owner of a property;
- (i) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- (j) "privacy screen" means a visual barrier used to shield any part of a yard from view from any adjacent property or from a highway;
- (k) "property" includes any grounds, yard, lot, vacant land or other parcel of land;
- (l) "swimming pool" means any body of water in or above the ground contained by artificial means, in which the depth of the water at any point can exceed 0.6 m, and is used or is capable of being used for swimming, wading or bathing, but does not include hot tubs or spas, provided they are covered when not in use;
- (m) "swimming pool enclosure" means a fence, wall or other structure, including doors and gates, surrounding a swimming pool that will prevent entry of the general public; and
- (n) "TRCA" means the Toronto and Region Conservation Authority.

2. In this by-law,

- (a) "front yard" means a yard extending across the full width of a property between the front property line and the front wall of any main building on the property for which the yard is required;
- (b) "rear yard" means a yard extending across the full width of a property between the rear property line and the nearest wall of any main building on the property for which the yard is required; and
- (c) "side yard" means a yard extending from the front yard to the rear yard between the side property line and the nearest wall of any building or structure on the property for which the yard is required.

Application

3. This by-law applies to all lands within the City.

References to Legislation

4. In this by-law, reference to any Act, regulation or by-law is reference to that Act, regulation or by-law as it is amended or re-enacted from time to time.

Word Usage

5. This by-law shall be read with all changes in gender or number as the context may require.
6. A grammatical variation of a word or expression defined has a corresponding meaning.

Construction

7. Unless otherwise specified, reference in this by-law to Parts, sections and schedules are to Parts, sections and schedules in this by-law.

Measurements

8. All dimensions in this by-law are in inches, millimetres (mm), centimetres (cm) and metres (m).

Severability

9. Each section of this by-law is an independent section, and the holding of any section or part of any section of this by-law to be void or ineffective for any reason shall not be deemed to affect the validity of any other section or parts of sections of this by-law.

PART II – SWIMMING POOL ENCLOSURES

Definitions

10. In this Part,
 - (a) "Director" means the City's Director, Planning & Development or a designate; and
 - (b) "enclosure permit" means a permit issued under this Part to erect a swimming pool enclosure.

Permit Applications

11. No person shall erect a swimming pool without first obtaining an enclosure permit from the City.
12. An enclosure permit application shall be made by the owner of the property on which the swimming pool is to be located or an authorized representative of such owner.
13. Every enclosure permit application shall be filed with the Director using the City's prescribed form.
14. Every enclosure permit application shall be accompanied by,
 - (a) details of the type of fence and its location in relation to the proposed or existing pool and other structures on the property;
 - (b) where a neighbouring property is required for access, a letter from the neighbouring owner authorizing such access; and
 - (c) the applicable fee set out in Schedule "A".
15. Every enclosure permit application for a property located within the TRCA Screening Area must include TRCA approval in writing.
16. The Director shall not issue an enclosure permit unless the application complies with all relevant provisions of this by-law.
17. The Director may impose any conditions deemed appropriate for an enclosure permit.

Swimming Pool Enclosure Requirements

18. A swimming pool enclosure shall,
 - (a) provide a completely enclosed area for the swimming pool;
 - (b) be a minimum of 1.2 m in height, measured on the outside of the enclosure;
 - (c) be constructed so that the distance between the ground and the bottom of the fence does not exceed 10 cm;
 - (d) be setback a minimum distance of 1 m from the swimming pool wall; and

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- (e) have no rails or other horizontal or diagonal bracing or attachments on the outside that would facilitate climbing.
19. A swimming pool enclosure shall not be required if the outside walls of the swimming pool are elevated a minimum of 1.2 m above the finished grade and are constructed in such a manner as not to facilitate climbing from the outside of the swimming pool, and no access ladders or adjacent objects or equipment are available to facilitate climbing.
20. Gates that form part of a swimming pool enclosure shall be,
- (a) comprised of equivalent material and construction as the rest of the swimming pool enclosure;
 - (b) not less than 1.2 m in height;
 - (c) supported on substantial hinges;
 - (d) self-closing; and
 - (e) equipped with self-latching devices placed on the inside of the gate at or near the top.
21. If a swimming pool enclosure is constructed of chain-link fencing, it shall meet all of the following specifications:
- (a) chain-linking not be greater than 38 mm mesh, consisting of 12 gauge galvanized steel wire or 14 gauge steel wire covered with vinyl coating, or other such equivalent material;
 - (b) galvanized steel supporting posts spaced at no more than 3 m intervals;
 - (c) end posts and corner posts at least 48 mm in diameter extended a minimum depth of 0.9 m below grade encased in concrete;
 - (d) intermediate posts at least 38 mm in diameter extended a minimum depth of 0.9 m below grade encased in concrete; and
 - (e) top and bottom rails made of galvanized steel pipe having a minimum diameter of 32 mm, however a 5 mm galvanized steel tension rod may be substituted for the bottom rail.
22. If a swimming pool enclosure is constructed using vertical board, it shall meet all of the following specifications:

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- (a) vertical boarding not less than 23 mm by 100 mm nominal spaced not more than 38 mm apart, attached to a top and bottom rail in such a manner as not to facilitate climbing from the outside;
 - (b) supporting posts not less than 100 mm by 100 mm nominal spaced not more than 2.4 m apart and extended a minimum depth of 1.2 m below grade encased in concrete;
 - (c) pressure treated wood below grade, or treated with a wood preservative below grade; and
 - (d) top and bottom rails not less than 50 mm by 100 mm.
23. If a swimming pool enclosure is constructed using materials other than chain-link or vertical board, it shall,
- (a) be constructed to provide an equivalent degree of safety to that specified for chain link and vertical board construction, and approved by the issuance of an enclosure permit;
 - (b) be permitted to have exposed structural or other members or parts thereof on the outside of the swimming pool enclosure provided a minimum vertical distance of 1.2 m is maintained between such parts; and
 - (c) have a maximum opening of 100 mm at any point in the swimming pool enclosure.

Offences

24. No person shall erect a swimming pool unless the owner has erected a swimming pool enclosure that meets all of the requirements of this Part.
25. No person shall erect a swimming pool enclosure that does not meet all of the requirements of this Part.
26. No person shall place water in a swimming pool or allow water to remain in a swimming pool unless a swimming pool enclosure has been erected that meets all of the requirements of this Part.
27. No owner of a property on which a swimming pool is located shall permit any gates that form part of a swimming pool enclosure to remain open unless a responsible person is present and supervising the swimming pool.

Ornamental Ponds

28. (1) In this section, "ornamental pond" means a body of water in or above the ground, contained in part or in whole by artificial means, in which the depth of the water at any point can exceed 0.6 m.
- (2) Sections 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 apply with necessary modifications to ornamental ponds and ornamental pond enclosures.

PART III – FENCES ON RESIDENTIAL PROPERTY

Restrictions

29. (1) No person shall erect a fence greater than 2 m in height in any side yard or rear yard.
- (2) This section shall not apply to a privately owned outdoor tennis court if the fence is of chain-link construction.
30. (1) In this section,
- (a) "fence of open construction" means a fence constructed so that at least one third of its vertical surface area is open space, enabling motorists and pedestrians to have a clear view through such fence; and
- (b) "fence of solid type construction" means a fence constructed of solid materials, or a hedge, which limits the ability of motorists and pedestrians to see through the fence.
- (2) No person shall erect a fence of solid type construction that is greater than 1m in height in any front yard.
- (3) No person shall erect a fence of open construction that is greater than 1.5 m in height in any front yard.
- (4) This section shall not apply to fences erected prior to the passage of this by-law that comply with the previous maximum height of 42 inches.
31. Where a rear yard or a side yard of a property abuts the front yard of another property, the maximum fence height shall be 2 m.

32. Where the front yard depths of two abutting properties vary, the front yard shall be determined by the abutting property with the lesser front yard depth.

Exemptions

33. Sections 29, 30, 31 and 32 shall not apply to,
- (a) residential fences that abut property used for industrial, commercial, or institutional purposes or, railway land, where the provisions for non-residential properties (Part IV) apply;
 - (b) noise control barriers erected by or as a requirement of a government agency acting pursuant to statutory authority;
 - (c) fences erected in accordance with an approved site plan;
 - (d) any fencing erected by a federal, provincial or municipal government; and
 - (e) ornamental gateways, garden structures or entranceways used or maintained as a decorative feature that do not require a building permit to be lawfully erected.

Privacy Screens

34. No person shall erect a privacy screen in a front yard.
35. No person shall erect a privacy screen in a side yard or rear yard unless it is,
- (a) located more than 0.6 m from any side yard line or rear property line;
 - (b) less than 2.6 m in height; and
 - (c) less than 8 m in length.
36. (1) Where a privacy screen is located so as to provide a visual barrier between dwelling units divided by a common wall, it may be placed on the side property line if the privacy screen is less than 5 m in length.
- (2) Where a privacy screen is constructed on a raised deck, the maximum combined height of the deck and the privacy screen shall be no more than 3.5 m.

PART IV – FENCES ON NON-RESIDENTIAL PROPERTY

37. No person shall erect a fence that is greater than 2.6 m in height on any non-residential property.
38. No person shall erect a fence on any non-residential property without first having received site plan approval from the City.

PART V – GENERAL FENCE REGULATIONS

Posts

39. No person shall erect a fence post or decorative fence post feature that projects more than 20 cm above the fence height.

Hazardous Materials

40. (1) No person shall erect a fence that contains or is constructed of any hazardous material such as razor wire, barbed wire or any other sharp projections capable of causing physical injury to humans.
- (2) Notwithstanding subsection (1), barbed wire fencing may be authorized on a site plan approved by the City.

Electrical Fences

41. No person shall erect an electrical fence using direct current unless such fence,
- (a) is on property that is being lawfully used for agricultural purposes;
 - (b) has a maximum 12 volt trickle charge;
 - (c) is designed and erected solely to contain animals; and
 - (d) has attached signs at no more than 15 m intervals warning that the fence carries electricity.

Traffic Sightlines or Other Hazards

42. No person shall erect a fence which, by reason of its location or design, obstructs traffic sightlines or for any other reason constitutes a hazard.

Graffiti

43. (1) In this section, "graffiti" has the same meaning as in City By-law 6711/06.
- (2) No person shall place graffiti or cause or permit graffiti to be placed on any fence.
- (3) Every owner shall at all times maintain their fence free of graffiti.

Maintenance

44. (1) In this section, "state of good repair" means,
- (a) complete and maintained in a structurally sound condition and securely anchored;
 - (b) protected by weather resistant materials;
 - (c) components are not broken, rusted, rotten or in a hazardous condition;
 - (d) all stained or painted fences are maintained free of peeling paint or stain; and
 - (e) does not present an unsightly appearance to abutting properties or to the neighbourhood.
- (2) All fences, swimming pool enclosures or privacy screens shall be maintained in a state of good repair by the owners of the property on which they are located.

PART VI – EXEMPTIONS

Definition

45. In this Part,
- (a) "adjoining property owner" means a person who owns property within a 3m radius of the property line of an owner seeking an exemption;
 - (b) "City Clerk" means the City Clerk or a designate; and
 - (c) "Committee" means the City's Property Review Committee.

Exemption Applications

46. An owner may apply for an exemption from the provisions of this by-law.
47. Every exemption application shall be submitted in writing to the City Clerk and shall contain the following information:
 - (a) property survey;
 - (b) site plan showing the location of all structures on the property;
 - (c) a description of the proposed fence, swimming pool enclosure or privacy screen;
 - (d) construction and installation specifications for the proposed fence, swimming pool enclosure or privacy screen;
 - (e) supporting documentation from adjoining property owners, if available;
 - (f) the name, address and telephone number of the owner;
 - (g) if the applicant is not the owner of the property, authorization confirming the applicant is acting on owner's behalf;
 - (h) reference to the section of the by-law from which the exemption is being sought;
 - (i) reasons why the exemption is being sought; and
 - (j) the applicable fee set out in Schedule "A".
48. If supporting documentation filed with the exemption application evidences that all adjoining property owners support the requested exemption and the City Clerk determines the exemption is in keeping with the general intent of this by-law, the City Clerk may approve the exemption.
49. If the exemption application is submitted without support from adjoining property owners, the City Clerk shall refer the application to the Committee for a hearing.
50. The City Clerk shall notify the applicant once a hearing date has been set. The City Clerk shall also notify all adjoining property owners.

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51. If the applicant does not attend the hearing, the Committee may proceed in the absence of the applicant, and the applicant shall not be entitled to further notice.
52. When considering an exemption application, the Committee shall have regard for,
- (a) any special circumstances or conditions referred to in the exemption application;
 - (b) whether strict application of the provisions of this by-law would result in practical difficulties or unnecessary hardship for the applicant;
 - (c) whether the requested exemption is consistent with the general intent and purpose of this by-law; and
 - (d) whether the fence, swimming pool enclosure or privacy screen will alter or otherwise have a negative impact on the essential character of the area.
53. Following a hearing, the Committee shall render its decision.
54. The decision of the Committee shall be final and binding.
55. Notice of the decision shall be given to the applicant and any other person present at the hearing.
56. The Committee's decision shall take effect on the day that it is made.

PART VII – ADMINISTRATION AND ENFORCEMENT

Definitions

57. In this Part,
- (a) "officer" means a municipal law enforcement officer appointed by the City; and
 - (b) "order" means an order issued by an officer under section 60.

Inspections

58. An officer may, at any reasonable time, enter upon any property for the purpose of carrying out an inspection to determine whether or not the provisions of this by-law have been complied with.
59. No person shall prevent, hinder or interfere or attempt to prevent, hinder or interfere with an inspection undertaken by an officer.

Order to Comply

60. Where an officer is satisfied that there has been a contravention of any provision of this by-law, the officer may issue an order requiring the owner of the property on which the contravention has occurred to do work to correct the contravention.
61. An order shall set out,
- (a) reasonable particulars of the contravention;
 - (b) the location of the property;
 - (c) the general nature of the work required to be done to correct the contravention; and
 - (d) the date by which the work must be done.
62. An order may be served by,
- (a) personally delivering it to the owner; or
 - (b) sending it by registered mail to the owner at the address of the owner shown on the last revised assessment roll for the property or the last known address of the owner.
63. Service of an order under this section shall be deemed to have been effected on the date that it is delivered personally or three days after it was mailed, as the case may be.
64. No person shall fail to comply with an order.

Remedial Action

65. Where an order has been issued and compliance has not been achieved by the date specified in the order, the City may cause the work set out in the order to be done.

66. The City may recover the costs of doing any work undertaken pursuant to section 65, together with an administration charge equal to 25% of such costs, from the person required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

Penalties

67. Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine pursuant to the provisions of the *Provincial Offences Act*.

PART VII - GENERAL

Short Title

68. This by-law may be referred to as the "Fence By-law".

Repeal

69. By-law No. 425/76 is repealed.

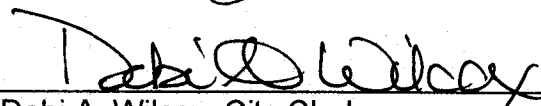
Effective Date

70. This by-law shall come into force on the day of its passing.

By-law read a first, second and third time and finally passed this 20th day of April, 2009.



David Ryan, Mayor



Debi A. Wilcox, City Clerk

SCHEDULE "A"

Swimming Pool Enclosure Permit Application	\$150.00
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Application for exemption from Fence By-law:

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|----------------------------------|----------|
| i) With Supporting Documentation | \$100.00 |
| ii) Contested | \$250.00 |