

**THE CORPORATION OF THE MUNICIPALITY OF/LA CORPORATION DE LA
MUNICIPALITÉ DE
WEST NIPISSING OUEST**

BY-LAW 2005/40

**BEING A BY-LAW REGULATING PRIVATELY-OWNED SWIMMING POOLS
AND REQUIRING THE OWNERS TO FENCE PRIVATELY-OWNED SWIMMING
POOLS IN THE MUNICIPALITY OF WEST NIPISSING**

WHEREAS the *Municipal Act, 2001*, S.O. 2001 s. 11 (7) provides for Council to pass by-laws regulating structures including fences and signs;

AND WHEREAS the Council of the Corporation of the Municipality of West Nipissing deems it advisable and expedient to enact the within by-law regulating the fencing of swimming pools;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING ENACTS AS FOLLOWS:

SECTION 1 - DEFINITIONS

In this By-law:

1. **“Adult”** means a person over eighteen years of age.
2. **“Council”** means the Council of the Municipality of West Nipissing.
3. **“Chief of Police** means the Chief of Police of the West Nipissing Police Services.
4. **“Police Services”** means the West Nipissing Police Services.
5. **“Fence”** means a barrier constructed of chain link metal or of wood, stone, metal or material having an equivalent degree of strength.
6. **“Gate”** means a swimming or sliding barrier used to fill or close an access and includes a door.
7. **“Person”** includes a firm, partnership, company, corporation, contractor or owner, a corporation and the heirs, executors, administrators or other legal representative of a person to whom the context can apply according to law.
8. **“Private Swimming Pool”** shall mean a privately-owned, in-ground or above-ground, indoor or outdoor pool of water, permanent or temporary, of a depth of eighteen inches (18”) or more, capable of being used for swimming, including hot tubs, other than:
 - i) a bathing beach
 - ii) a natural bathing area
 - iii) a wading or reflecting pool containing water

SECTION 2 - GENERAL PROVISIONS

9. This by-law shall be enforced by the West Nipissing Police Services.
10. Subject to section 11 of this by-law, any member of the West Nipissing Police Services or any person designated by the Council or by the Clerk of the Municipality of West Nipissing to enforce this by-law may, at all reasonable times and upon producing proper identification, enter and inspect any property having a private swimming pool.

11. No person shall obstruct, hinder or in any way, interfere with any person designated to enforce this by-law.
12. Before the construction of swimming pools, or fences or gates for the swimming pool or covered swimming pool, a plan of such swimming pool, fences and/or gates shall be submitted to the West Nipissing Planning Department for obtaining a building permit.
13. Without such building permit certifying approval of such plans, no privately-owned swimming pool shall be excavated for or erected.
14.
 - a) No person in the Municipality of West Nipissing shall maintain a privately-owned swimming pool, nor shall place water or allow water to remain therein, unless the prescribed fences and gates have been erected, completely enclosing the area in which the swimming pool is located in compliance with the requirements of this by-law.
 - b) Pursuant to the Zoning By-law, such fencing, including gates thereof, shall extend from the ground to the height at least forty eight inches height (48") and be located at a distance of not less than five feet (5') and not more than sixteen feet (16') from the pool.
 - c) A fence forming part of such enclosure:
 - (i) shall be vertically boarded wood construction, solid wood or basket weave construction, chain-link construction, masonry, plastic or metal construction;
 - (ii) shall have no rails or other horizontal or diagonal bracing or attachments on the outside that may facilitate climbing, provided that this subsection shall not apply to prevent the construction or maintenance of a fence containing horizontal rails or bracing members which are spaced a minimum of thirty-two inches (32") on centre;
 - (iii) shall have no opening with a horizontal dimension greater than three inches (3");
15. Gates forming part of such fencing:
 - a) shall be of the same construction and height to that required for the fence;
 - b) shall be supported on substantial hinges, and
 - c) shall be equipped with self-closing and self-latching devices placed at the top and on the pool side of the gate.
16. The provisions of the by-law requiring the erection of a fence shall not apply if the outside walls of the swimming pool are elevated at least four feet above the grade of the ground abutting such walls provided that the exterior surface of the walls are so constructed so as not to facilitate climbing and each entrance to the pool is protected with a gate complying with the requirements of Section 12.
17. A fence erected on the property lines which complies with the provisions of this by-law shall be deemed a sufficient fence if it completely fences in the yard in which the swimming pool is located.
18. A wall or walls of a building or buildings may form part of such a fence provided that all doors affording access from a building directly to an enclosed swimming pool area, other than doors located in a dwelling unit, are equipped with a self-closing device and a self-latching device located not less than forty eight inches in height above the bottom of the door.

19. Owners of inflatable and/or portable pools that are not fenced in and gated as per the provisions of this by-law shall ensure that the pool is supervised by an adult at all times, or reasonable measures have been taken so as to prohibit access to anyone while not supervised.
20. Existing fencing which is non-conforming will be allowed if an attempt has been made to provide some adequate fencing, provided that there is no threat to public safety.
21. The provisions of this by-law shall apply to all private swimming pools regardless of the date of construction of such swimming pool.
22. Where a determination is made that the construction of fencing, gates, walls or access to a privately-owned swimming pool, does not conform with the requirements of this by-law, following an inspection pursuant to Section 9 of this by-law, the reasons for the lack of the required approval shall be specified, and the Clerk or his designate, shall notify the applicant of all such reasons in a "Stop Work Order."
23. Where requirements have not been met within the time prescribed time as indicated in the Stop Work Order, the Clerk or his designate shall proceed with prosecution pursuant to the Ontario Building Code.
24. Any by-law inconsistent with this by-law is hereby repealed.
25. This by-law shall come into full force and effect on the day of its passing

Section 3 - PENALTY

26. Every person who contravenes any provision of this by-law is guilty of an offence and on conviction, is liable to a fine as provided for the in the Provincial Offences Act.

READ A FIRST TIME AND CONSIDERED READ A SECOND AND PASSED AS SUCH IN OPEN COUNCIL THIS 21ST DAY OF JUNE, 2005.


MAYOR


CLERK

READ A THIRD TIME AND PASSED AS SUCH IN OPEN COUNCIL THIS 21ST DAY OF JUNE, 2005.


MAYOR


CLERK

By-Laws \2005-40Fencingforpools

**THE CORPORATION OF THE MUNICIPALITY OF WEST NIPISSING
PART 1 PROVINCIAL OFFENCES ACT**

By-law 2005/40 Regulating privately-owned swimming pools - fencing

| ITEM | COLUMN 1 SHORT FORM WORDING | COLUMN 2 OFFENCE CREATING PROVISION | COLUMN 3 SET FINE |
|-------------|---|--|------------------------------|
| 1 | Obstruct with person enforcing by-law. | Section 2, Part 11 | \$ 100.00 |
| 2 | Hinder with person enforcing by-law. | Section 2, Part 11 | \$ 100.00 |
| 3 | Interfere with person enforcing by-law. | Section 2, Part 11 | \$ 100.00 |
| 4 | Fail to submit plan of swimming pool to Planning Department. | Section 2, Part 12 | \$ 100.00 |
| 5 | Fail to submit plan of fence for swimming pool to Planning Department. | Section 2, Part 12 | \$ 100.00 |
| 6 | Fail to submit plan of gate swimming pool to Planning Department. | Section 2, Part 12 | \$ 100.00 |
| 7 | Excavate for swimming pool without approval. | Section 2 Part 13 | \$ 100.00 |
| 8 | Erect swimming pool without approval. | Section 2 Part 13 | \$ 100.00 |
| 9 | Maintain swimming pool without erecting prescribed fences/gates. | Section 2, Part 14 a) | \$ 100.00 |
| 10 | Place Water in swimming pool without erecting prescribed fences/gates. | Section 2, Part 14 a) | \$ 100.00 |
| 11 | Allow water to remain in pool without erecting prescribed fences/gates. | Section 2, Part 14 a) | \$ 100.00 |
| 12 | Fail to ensure that fencing is at least forty eight inches in height. | Section 2 Part 14 b) | \$ 100.00 |
| 13 | Fail to ensure that fencing is not less than five feet from pool. | Section 2 Part 14 b) | \$ 100.00 |
| 14 | Fail to ensure that fencing is not more than sixteen feet from the pool. | Section 2 Part 14 b) | \$ 100.00 |
| 15 | Fail to ensure that fencing has no rails on outside to facilitate climbing. | Section 2 Part 14 c) (ii) | \$ 100.00 |
| 16 | Fail to ensure that fencing has no vertical bracing on outside to facilitate climbing. | Section 2 Part 14 c) (ii) | \$ 100.00 |
| 17 | Fail to ensure that fencing has no horizontal bracing on outside to facilitate climbing. | Section 2 Part 14 c) (ii) | \$ 100.00 |
| 18 | Fail to ensure that opening to fence has no horizontal dimension greater than three inches. | Section 2 Part 14 c) (iii) | \$ 100.00 |
| 19 | Fail to ensure that gate is at least forty eight inches in height. | Section 2 Part 15 a) | \$ 100.00 |
| 20 | Fail to ensure that gate is supported on substantial hinges. | Section 2 Part 15 b) | \$ 100.00 |

| ITEM | COLUMN 1 SHORT FORM WORDING | COLUMN 2 OFFENCE CREATING PROVISION | COLUMN 3 SET FINE |
|------|--|---|----------------------|
| 21 | Fail to ensure that gate is equipped with self-closing and self-latching device at top and on pool side of gate. | Section 2 Part 15 c) | \$ 100.00 |
| 22 | Fail to have inflatable pool supervised | Section 2 Part 19 | \$ 100.00 |
| 23 | Fail to take reasonable measures to prohibit access of inflatable/portable pool | Section 2 Part 19 | \$ 100.00 |

NOTE: Penalty provision for the offences indicated above is Section Part 26. of By-Law No. 2005/40, a certified copy of which has been filed.