

**THE CORPORATION OF THE TOWN OF RAINY RIVER
BY-LAW NUMBER 1580-13**

**BEING A BY-LAW TO REGULATE ENCLOSURES AROUND PRIVATELY-OWNED
POOLS IN THE TOWN OF RAINY RIVER**

WHEREAS Section 9 of the Municipal Act, S.O. 2001, Chapter 25, authorizes a municipality to pass by-laws concerning the issuance of permits and related matters;

AND WHEREAS Section 11 of the Municipal Act, S.O. 2001, Chapter 25, authorizes a municipality to pass by-laws to regulate structures including fences;

AND WHEREAS the Council of the Corporation of the Town of Rainy River deems it to be in the public interest to regulate the fencing and enclosure of privately-owned outdoor pools in the town for the purpose of protecting the health, safety and general welfare of the inhabitants of the Town of Rainy River;

NOW THEREFORE BE IT ENACTED BY THE COUNCIL OF THE CORPORATION OF THE TOWN OF RAINY RIVER AS FOLLOWS:

1. Title

(1) This by-law may be referred as the "Pool Fences By-law".

2. Scope and Intent

(1) This by-law shall regulate the location, size, construction, alteration, repair and maintenance of all privately-owned pool enclosures within the corporate limits of the Town of Rainy River.

(2) All privately-owned pools located on public and private property within the corporate limits of the Town of Rainy River are subject to the provisions of this by-law.

(3) This by-law does not apply to irrigation ponds, storm water management ponds, or natural water course.

3. Definitions

(1) "Designated Official" shall mean the Chief Building Official, By-law Enforcement Officer or any other officer of the Municipality who has been assigned the responsibility of administering and enforcing this by-law, or their designate.

(2) "Enclosure" shall mean a fence, wall or other structure, including doors and gates, surrounding a privately owned outdoor pool to restrict access thereto.

(3) "Municipality" shall mean the Town of Rainy River.

(4) "Hot tub" shall mean a container filled with heated water circulated with jets used for communal leisure and/or therapeutic bathing and includes a Jacuzzi, spa, or whirlpool.

(5) "Permit" shall mean a permit issued under this by-law and the Municipality's Building By-law.

(6) "Person" shall mean any individual, company, corporation, partnership, firm, trust, sole proprietorship, government or government agency, authority or entity, however constituted, joint venture, syndicate or any other legal entity, and includes all successors, assigns or other legal representatives of any such entities.

(7) "Pool" shall mean any privately-owned body of water, which is:

a) located outdoors;

b) wholly or partially contained by artificial means;

c) capable of holding water in excess of sixty-one (61) centimetres at any point;

d) an open exposed water surface of at least one (1) square metre and includes a landscape/decorative pond meeting the above criteria, but for purposes of this by-law does not include a:

- i) pond or reservoir to be utilized for farming purposes or as part of a golf course,
 - ii) pool owned by any public or governmental body, agency or authority,
 - iii) natural body of water or stream.
 - iv) publically or privately owned storm water management pond.
 - v) hot tub.
- (8) "Owner" shall include the registered owner, lessee, tenant, or the person in possession of property on which a pool is located.
- (9) "Self-closing Device" shall mean a mechanical device or spring which returns a gate to its closed position after it has been opened.
- (10) "Self-latching Device" shall mean a mechanical device or latch which is engaged each time the gate is secured to its closed position, which will not allow the gate to be re-opened by pushing or pulling and which will ensure a gate remains closed until unlatched by either lifting or turning the device itself directly or by a key.

4. Existing Pool Enclosures

- (1) The provisions of this by-law shall not prevent the use of an existing pool enclosure if said enclosure was constructed prior to the effective date of this by-law and in accordance with the regulations of By-law 987 of The Town of Rainy River.
- (2) At such time as an existing pool enclosure is replaced or substantially altered, the replacement or altered pool enclosure shall be constructed in accordance with this by-law.
- (3) Where an existing pool enclosure was constructed and has been continuously maintained in accordance with the regulations that existed prior to the effective date of this by-law and that pool enclosure also marks the boundary between abutting properties, the shared portion of the pool enclosure may form part of a new pool enclosure for a pool on the abutting property and shall be deemed to be in conformity with this by-law. All other portions of the new pool enclosure surrounding the newly constructed pool shall meet the standards as set out in this by-law.

5. Prohibitions

- (1) No person shall construct or install a pool, cause a pool to be constructed or installed, or commence the construction or installation of a pool without first obtaining the relevant permit from the Municipality.
- (2) No person shall construct or install a pool or cause a pool to be constructed or installed which is not completely enclosed by a pool enclosure in accordance with this by-law.
- (3) No person shall construct or cause to be constructed any pool enclosure which does not conform to the requirements of this by-law, or permit such non-conforming pool enclosure to continue to enclose a pool.
- (4) No person shall fill a pool with water or cause a pool to be filled with water or allow water to remain in a pool unless:
- a) the pool is enclosed by a pool enclosure meeting the requirements of Sections 6 and 7 of this by-law;
 - b) the designated official has been notified and the pool enclosure has been inspected and approved by the Municipality;
- (5) No person shall remove or permit the removal of any part of a pool enclosure if the pool is filled with water.
- (6) No person shall alter or replace or permit the alteration or replacement of a pool enclosure without having first obtained the relevant permit from the Municipality.
- (7) No owner shall fail to ensure that:
- a) all gates and doors forming part of the pool enclosure meet the standards of this by-law;

- b) all gates and doors forming part of a pool enclosure are secure when the area is not in active use;
 - c) the lockable lid of any hot tub is closed and locked when not in active use unless the hot tub is located within a pool enclosure meeting the requirements of this by-law.
- (8) No person shall place, pile, attached or lean any object or material against or near a pool enclosure so as to facilitate climbing of a pool enclosure, diminish the structural integrity of a pool enclosure or render the pool enclosure in non-conformity with the provisions of this by-law.
- (9) No person shall allow or construct any part of any enclosure required by this by-law which consists of barbed wire or which conducts an electric current or which poses a danger of injury to a person who comes in contact with said enclosure.

6. Standards for Pool Enclosures

- (1) Every owner of a pool shall ensure that the pool is enclosed by a pool enclosure that satisfies the following standards:
- a) The pool enclosure shall extend from the ground to the height of not less than one hundred and twenty (120) centimetres and shall fulfill the intent of prohibiting unauthorized trespass to the pool.
 - b) Every pool enclosure shall:
 - i) be constructed of vertically boarded wood construction, solid wood, masonry, plastic, metal, chain link, or wrought iron;
 - ii) have no rails or other horizontal or diagonal bracing or attachments on the outside face that may facilitate climbing;
 - iii) have no opening with a horizontal dimension greater than five (5) centimetres and not more than ten (10) centimetres apart where rails or horizontal supports are spaced one-and-one-half (1.5) metres apart;
 - iv) have a ground clearance space no greater than ten (10) centimetres at any point under the enclosure;
 - v) chain link fence:
 - 1.1 A fence of chain link construction shall comprise chain link with a diamond mesh not greater than 3.8 cm, consisting of 12 gauge galvanized steel wire or 14 gauge galvanized steel wire covered with vinyl or another plastic that is acceptable to the designated official which forms a total thickness equivalent to 12 gauge galvanized steel wire.
 - 1.2 A fence shall have galvanized steel support posts spaced at intervals of not more than 3.0 metres.
 - 1.3 In the case of a fence that is required to be 120 cm in height, the support posts shall be securely imbedded in the ground and shall extend at least 90 cm below grade.
 - 1.4 The end and corner posts shall be a minimum of 4.8 cm in diameter.
 - 1.5 The intermediate posts shall be a minimum of 3.8 cm in diameter.
 - 1.6 A fence shall have a horizontal top rail of galvanized or vinyl coated steel which shall be a minimum of 3.2 cm in diameter.
 - 1.7 A fence shall have a horizontal bottom rail of galvanized or vinyl coated steel which shall be a minimum of 3.2 cm in diameter.
 - vi) wrought iron fence:

shall be erected from the ground to a full height of not less than 120 cm with 3.8 cm round or square tube 16 gauge capped posts, single or

double, with 2.5 cm square tube 18 gauge horizontal bars spaced not less than 100 cm apart with 1.2 cm round or square tube 18 gauge vertical bars with maximum spacing of 10 cm. Vertical bars must be erected at a maximum of 10 cm above ground elevations.

- (2) Notwithstanding Subsection 6(1), the walls of a building may form part of an enclosure.
- (3) An enclosure which complies with the provisions of this by-law shall be deemed sufficient, if it completely encloses the yard in which the pool is located, but said enclosure must be setback a minimum of one-hundred and twenty (120) centimetres from the pool.

7. Standards for Gates & Doors

- (1) Every owner of a pool shall ensure that all gates, doors and access points into the pool enclosure as described in Section 6 satisfies the following standards:
 - a) Gates, doors and access points shall be of the same construction and height to that required for the enclosure.
 - b) Gates, doors and access points shall be equipped with self-closing and self-latching devices placed at the top of the gate and on the pool side of the gate or equipped with a lock.
- (2) When walls of a building form part of an enclosure all doors affording access from a building directly to a pool, other than doors located in a dwelling, shall be equipped with a self-closing device located not less than one-hundred and twenty (120) centimetres above the bottom of the door.

8. Partial Exemption for Hot Tubs

- (1) Hot tubs, need not comply with Sections 6 and 7 of this by-law provided that a substantial cover is fixed securely to the hot tub and locked to prevent access when the hot tub is not in use.

9. Construction Measures

- (1) During the construction of a pool every owner is required to provide, at a minimum, a temporary enclosure which shall be replaced with a permanent enclosure in compliance with Sections 6 and 7 of this by-law when the pool is completed.
- (2) A temporary enclosure shall be a minimum of one-hundred and twenty (120) centimetres high and shall be securely attached to any openings when the pool is unattended.

10. Administration, Enforcement & Penalty

- (1) The designated official will be responsible for the administration and enforcement of this by-law on all public and private property within the limits of the Municipality.
- (2) The designated official may enter upon any property at any reasonable time to inspect a pool and/or pool enclosure for the purpose of determining or affecting its compliance with this by-law.
- (3) Every person who contravenes this by-law is guilty of an offence and upon conviction is liable to a fine or penalty as provided for in the Provincial Offences Act, R.S.O. 1990, c.P. 33.
- (4) The fine for an offence as established by this By-law are hereto annexed and marked as Schedule 'A' to this by-law.
- (5) In addition to the foregoing penalty, failure to comply with the provisions of this by-law may result in the Municipality undertaking to complete the work and any costs associated with the work shall be billed to the registered property owner in a like manner as taxes.
- (6) In the case of an immediate safety hazard, where the designated official has been compelled to remove said hazard, the work and any costs associated with the work shall be billed to the registered property owner in a like manner as taxes.

11. Conflict & Severability

- (1) Where a provision of this by-law conflicts with a provision of any applicable government regulation, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.
- (2) Where a provision of this by-law conflicts with any other by-law, the by-law that carries the higher standard shall prevail.
- (3) In the event that any of the provisions of this by-law are deemed *ultra vires* by any Court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

12. Effective Date & Repeal of Existing By-laws

- (1) This by-law shall come into full force and effect on the date it is approved by Council.
- (2) By-law 987 of Town of Rainy River is hereby repealed.

READ THIS FIRST TIME in open Council this 18th day of June, 2013.

Mayor

Chief Administrative Officer

READ THIS SECOND TIME in open Council 18th day of June, 2013.

Mayor

Chief Administrative Officer

READ THIS THIRD AND FINAL TIME in open Council 18th day of June, 2013.

Mayor

Chief Administrative Officer

**THE CORPORATION OF
THE CORPORATION OF THE TOWN OF RAINY RIVER
BY-LAW NUMBER 1579-13**

**Being a by-law to regulate enclosures around privately-owned pools
in the Town of Rainy River**

SCHEDULE "A"

Part I Provincial Offences Act

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine
1	Failure to obtain a permit for the installation and / or construction of a pool	5(1)	\$100
2	Failure to completely enclose a pool	5(2)	\$100
3	Failure to conform to the pool enclosure requirements	5(3)	\$100
4	Failure to enclose a pool filled with water	5(4) a)	\$100
5	Failure to notify and have the pool and / or pool enclosure inspected and approved by the Municipality	5(4) b)	\$100
6	Permit the removal of any part of a pool enclosure while the pool is filled with water	5(5)	\$100
7	Permit an alternation / replacement of a pool without a permit	5(6)	\$100
8	Failure to ensure that any hot tub is closed and locked when not in active use	5(7) c)	\$100
9	Permit objects or materials to facilitate climbing of a pool enclosure	5(8)	\$100
10	Permit a pool enclosure that may pose a danger or injury to a person	5(9)	\$100
11	Failure to ensure a pool enclosure meets the minimum height requirement	6(1) a)	\$100
12	Failure to ensure a pool enclosure is constructed of permitted materials	6(1) b) i)	\$100
13	Permit a pool enclosure that may facilitate climbing	6(1) b) ii)	\$100
14	Permit a pool enclosure with openings in excess of maximum size permitted	6(1) b) iii)	\$100
15	Permit a pool enclosure with a ground clearance in excess of maximum clearance permitted	6(1) b) iv)	\$100

16	Failure to ensure chain link fence meets permitted construction	6(1) b) v)	\$100
17	Failure to ensure wrought iron fence meets permitted construction	6(1) b) vi)	\$100
18	Failure to ensure gates, doors and access points meets the minimum height requirement	7(1) a)	\$100
19	Failure to ensure that gates, doors and access points are equipped with self-closing / self-latching devices	7(1) b)	\$100
20	Failure to ensure that an access point from a wall enclosing a pool is equipped with a self-closing / self-latching device	7(2)	\$100

“NOTE: THE GENERAL PENALTY PROVISION FOR THE OFFENCES LISTED ABOVE IS SECTION 10(3) OF BY-LAW 1579-13, A CERTIFIED COPY OF WHICH HAS BEEN FILED”.