

CITY OF TIMMINS
BY-LAW NO. 2011-7128

BEING a by-law to repeal By-Law No. 1995-4389 and to regulate fences in the City of Timmins;

WHEREAS Section 8 of the *Municipal Act*, 2001, S.O. 2001, c. 25 conveys the capacity, rights, powers and privileges of a natural person to the municipality, and;

WHEREAS Section 11 of the *Municipal Act*, 2001, S.O. 2001, c. 25, authorizes municipalities to pass by-laws respecting structures, including fences and signs, and;

WHEREAS it is deemed necessary to require owners of privately owned swimming pools to erect and maintain fences and gates around swimming pools;

THEREFORE, the Municipal Council for the Corporation of The City of Timmins enacts as follows;

1. DEFINITIONS

“City” shall mean the Corporation of the City of Timmins;

“Fence” means any structure, except a structural part of a building, used to wholly or partially screen from view, enclose or divide a yard or other land, or mark the boundary between adjoining land;

“Front yard” means the space, extended to the full width of the lot, between the main front wall of a building and the lot line abutting a public highway, but on a corner lot means the space, extended to the full width of the lot, between the shorter lot line abutting a public highway, other than a public lane, and the nearest wall of the main building on the lot;

“Hedge” means a row of closely planted shrubs or trees forming a fence or boundary;

“Height” means the vertical distance above grade or, if another reference point acceptable by the City is specified, vertical distance above the other reference point;

“Owner” means the owner, tenant, lessee or other person in care and control of the property on which the fence is located;

“Rear Yard” means a yard extending across the full width of the lot between the rear lot line and the nearest wall of the main building;

“Side Yard” means a yard extending from the front yard to the rear yard between the side lot line and the nearest main wall of the main building;

“Swimming Pool” means any outdoor structure, object or thing located on privately owned property that is intended to be used for swimming, wading, diving, bathing or soaking (including a hot tub) in which the depth of water at any point can exceed 0.6 metres (2 feet).

2. GENERAL PROVISIONS FOR FENCES

2.1 No fence shall:

2.1.1 Be made of sheet metal or corrugated metal panels or like material;

2.1.2 Encroach onto City-owned lands or fail to comply with the current City of Timmins zoning bylaw

2.1.3 Be erected in such a manner as to obstruct visibility to drivers or pedestrians entering, exiting, crossing or approaching a highway, roadway, laneway or walkway;

2.1.4 Be electrified so as to provide electric shock to humans or animals, other than invisible pet fencing;

2.1.5 Be in excess of the height requirements hereinafter set out;

(i) On any lot, from the front property lot line to the front building line or to the required front yard setback (as set out in the current City of Timmins zoning by-law, as amended) whichever is the lesser;

(a) In a Residential Zone, 0.90 metres (3 feet). Where a fence is constructed of chain link and does not obstruct visibility to drivers or pedestrians entering, exiting, crossing or approaching a highway, roadway, laneway or walkway, 1.5 metres (5 feet);

(b) In Commercial and Industrial Zones, no fence permitted;

(c) In all other Zones, 1.5 metres (5 feet);

(ii) On any lot in between the front building line and the rear lot line including along the rear lot line;

(a) In Industrial Zones, 2.4 metres (8 feet);

(b) In all other Zones, 1.8 metres (6 feet);

(iii) Notwithstanding section 2.1.5(ii), where the rear lot line abuts any highway listed below, 2.4 metres (8 feet);

(a) Highway 629 (Airport Road) from College St. to a point - 315 metres (1035 feet) north of Lonergan Blvd;

(b) Highway 101 from Crawford St. to the east intersection of Highway 101 and Bristol Rd;

(iv) Notwithstanding section 2.1.5(i), on any corner lot, no fence shall be constructed of a height which adversely affects or obstructs the line of sight of the driver of any vehicle approaching or stopped at the intersection;

(v) Where a hedge is being used as a fence, it may exceed height requirements set out in this by-law up to 1.8 metres (6') provided that it does not adversely affect or obstruct the line of sight of the driver of any vehicle approaching or stopped at the intersection and is in compliance with the City of Timmins current Zoning By-Law, as amended and any other applicable City of Timmins bylaw;

2.2 Every fence shall:

2.2.1 Have a surface that is painted, stained, varnished or protected with a similar protective finish, unless the material itself possess characteristics that offer protection against deterioration, such as cedar; and

2.2.2 Be maintained without visible deterioration;

3. GENERAL PROVISIONS FOR SWIMMING POOL ENCLOSURE

3.1 Every owner of a swimming pool shall ensure that a fence is erected and maintained surrounding such pool and the fence shall:

3.1.1 Have a height of not less than 1.2 metres (4 feet) measured from ground level to the top of the fence where the pool is located;

3.1.2 Be located at a distance of not less than 1.5 metres (5 feet) from the swimming pool;

3.1.3 Except in a Residential Low Density (R1, R2, R3) zone, not more than 9.0 metres (29.5 feet) from the swimming pool;

3.1.4 Have a maximum opening of 100 mm (4 inches) between the bottom of the fence and the ground at any point directly below the fence;

3.1.5 Be equipped with a gate that can be locked with the locking mechanism located on the pool side of the gate at least 1 metre (3.3 feet) above ground level and having a maximum opening of 100 mm (4 inches) between the bottom of the gate and the ground at any point directly below the gate;

3.1.6 Be built with materials and maintained in such a manner so as to prevent the climbing thereof;

3.1.7 Where an owner is exempt from the requirement of a fence as a pool enclosure under section 4, ensure that every ladder or other stair assembly providing access to the pool is locked in a position so as to prevent entry to the pool at all times when the pool is not being used;

3.1.8 Where an owner is exempt from the requirement of a fence as a pool enclosure for a hot tub under section 4, ensure that hot tub is adequately secured by a cover and locked and in place over the tub at all times when the tub is not in use;

3.2 Notwithstanding section 3.1, above ground pools equipped with a deck and fence attached to the pool are permitted, provided that access to the pool deck and pool is secured by a gate or similar device that can be locked;

3.3 Hedges or shrubs grown in a yard for the purpose of a fence shall not be considered to be a fence as required to enclose a swimming pool;

4. EXEMPTION FROM REQUIREMENT FOR FENCE AS POOL ENCLOSURE

4.1 In the case of an above-ground swimming pool, a fence is not required where ALL of the following criteria are met:

(a) The vertical sides of the pool and any deck or other assembly forming part of the pool are the same or greater in height than the minimum height of the fence height requirements for pools; and

(b) Such vertical sides and assemblies are constructed and maintained in such a manner to prevent the climbing thereof; and

(c) Any ladder or stair providing access to the swimming pool or to any deck or other assembly forming part of the swimming pool is hinged and constructed in such a manner as to be latched in an upright position and is lockable or is equipped with a roll-down ladder cover or similar device that is lockable, thereby preventing entry to the pool;

4.2 In the case of a hot tub, a fence is not required where the hot tub is adequately secured by a cover equipped with a locking device

5. FENCE VARIANCE

5.1 Applications for variance in the height requirements set out in this bylaw shall be directed to the City of Timmins Committee of Adjustment.

6. ENFORCEMENT

6.1 Any person who contravenes any provision of this by-law is, upon conviction, guilty of an offence and is liable to any penalty as provided in the *Provincial Offences Act*.

6.2 The court in which a conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.

6.3 Where anything required or directed to be done in accordance with this by-law is not done, the City or persons designated by the City may, upon such notice as they deem suitable, carry out such work or take such action and recover the costs of so doing by taking action or by adding the costs to the tax roll for the property on which the work was done or the actions were taken and collecting them in the same manner and with the same priority as municipal taxes.

6.4 Where the City proceeds pursuant to section 6.3 of this by-law, a Municipal Law Enforcement Officer may enter onto the lands accompanied by any person(s) under his or her direction, and with the appropriate equipment as required, to bring the property into compliance with this by-law.

7. ENACTMENT

7.1 This by-law comes into force and effect on the date of passage

READ a first, second and third time and finally passed this

THOMAS B. LAUGHREN, MAYOR

R.J. WATSON, CLERK