

Town of Yarmouth
SWIMMING POOL ENCLOSURE BYLAW

Effective: October 28th, 2020
TOY 31



WHEREAS under Section 172(1)(a) and Section 172(1)(b) of the Municipal Government Act (1998), Council may make Bylaws respecting the health, well-being, safety and protection of persons as well as the safety and protection of property.

AND WHEREAS under Section 172 (1) (L) of the Municipal Government Act (1998), Council may make Bylaws respecting the enforcement of Bylaws under the authority of a statute.

NOW THEREFORE, the Council of the Town of Yarmouth in open meeting assembled, enacts as follows:

1.0 Title

This Bylaw shall be known as Bylaw 31 and may be cited for all purposes as the “Swimming Pool Enclosure Bylaw.”

2.0 Definitions

In this Bylaw:

- a. “Enclosure” means a fence, wall or other structure, including any permitted doors or gates, surrounding and restricts access to an outdoor swimming pool.
- b. “Gate” means any part of a swimming pool fence which is designed to provide access, including sliding doors, and portions of fence which open on hinges. This includes a door located in the wall of an attached or detached garage, carport, or accessory structure which forms part of the swimming pool enclosure.
- c. "Hot tub" means a structure, basin, chamber or tank containing or capable of containing water outside a building which may or may not include jets of water; and shall include tubs which are commonly called hot tubs, whirlpool, hydro massage pools, or spas having a surface area equal to or less than 10 square meters (107 square feet) and containing or is capable of containing a water depth of more than 60.9 cm (24”).
- d. “Self-Closing Mechanisms” means a mechanical device or spring which returns a swimming pool fence gate to its closed position within 30 seconds after it has been opened.
- e. “Self-Latching Mechanisms” means a mechanical device or latch which is engaged each time the swimming pool fence gate is secured to its closed position; which will not allow the swimming pool fence gate to be re-opened by pushing or pulling, and which will ensure the swimming pool fence gate remains closed until unlatched by either lifting or turning the mechanism itself directly or by a key.

- f. "Swimming Pool" means a structure, basin, chamber or tank containing or capable of containing water outside of a building, excluding ponds, having more than 10 square meters (107 square feet) of surface area that is designed or intended to be used for swimming purposes and contains or is capable of containing a water depth of more than 60.9 cm (24").
- g. "Town" means the Town of Yarmouth.

3.0 Administration and Enforcement

The Town's Development Officer(s) shall administer this Bylaw.

- 3.1** The Bylaw Development Officer(s) and Enforcement Officer(s) appointed by the Town shall enforce this Bylaw.
- 3.2** For the purpose of the administration of this Bylaw, the Development Officer, Bylaw Enforcement Officer(s), or an agent or employee of the Town may at any reasonable time enter and inspect any land or premises, other than a dwelling or a room being used as a dwelling to determine compliance with this Bylaw and policies made under this Bylaw, including the right to inspect pools, enclosures, or attached structures.
- 3.3** The Development Officer(s) or the Bylaw Enforcement Officer(s) may, by a directive in writing direct any person to do any act or thing in order to comply with the provisions of this Bylaw or any policy made pursuant to this Bylaw in the manner and within the time specified in the written directive.
- 3.4** Any written directive signed by the Development Officer(s) or Bylaw Enforcement Officer(s), is effective if delivered personally to the person named in such directive or if sent by prepaid post or facsimile or e-mail transmission to the most recent known address of the person named and shall be deemed to have been received by such person, in the case of facsimile or e-mail transmission on the day after it was sent and in the case of prepaid post, on the third day after it was sent unless receipt of same is acknowledged. Where the owner of the land, a building or structure in respect of which a contravention is taking place or has taken place, cannot be reasonably located, notice of the Directive may be posted upon the land, building or structure.
- 3.5** It shall be an offence for any person to fail or refuse to comply with a written directive signed by either the Development Officer(s) or Bylaw Enforcement Officer(s) pursuant to this Bylaw.

4.0 Compliance, Applicability and Existing Pools

- 4.1** It shall be unlawful to construct, maintain, install or enlarge any swimming pool in the Town of Yarmouth except in compliance with all the provisions of this Bylaw.

- 4.2** It shall be unlawful to proceed with the construction, installation, enlargement or alteration of any private residential swimming pool and any accessories thereof within the Town of Yarmouth unless a development permit has been obtained.
- 4.3** In case of conflict between the provisions of this Bylaw and the provisions of the applicable Land Use Bylaw, the provisions of this Bylaw shall prevail except where this Bylaw specifies that the provisions of the Land Use Bylaw apply.
- 4.4** This Bylaw pertains to all swimming pools as defined in section two of this document.
- 4.5** This Bylaw shall have effect, with respect to all existing swimming pools which were not in compliance with the Swimming Pool Bylaw as it existed on the date of enactment of this bylaw.
- 4.6** Development permits issued or continued under the former Swimming Pool By-law, as amended, remain in force and shall be deemed to be issued under this bylaw for regulatory and enforcement purposes, provided that the enclosure in question was lawfully constructed in conformity with the provisions of the former Swimming Pool By-law, and is maintained in good repair. Lawfully constructed swimming pool enclosures which exist at the date of enactment of this Bylaw may be replaced or repaired, and shall be deemed to be in conformance with this bylaw for regulatory and enforcement purposes.

5.0 Pool Location

- 5.1** No portion of a swimming pool, pumps, filters or pool water disinfection equipment installations shall be located closer than 1.2m (4ft) from any side or rear property line.
- 5.2** No portion of a swimming pool, pumps, filters or pool water disinfection equipment installations shall be located closer to any street line less than the distance applicable to the main building as set out in the Land Use Bylaw.
- 5.3** No portion of a swimming pool, pumps, filters or pool water disinfection equipment installations shall be located closer to any watercourse than the distance applicable to a main building or accessory building, whichever is less, as set out in the Land Use Bylaw for the area in which the pool is located.

6.0 Variances Permitted

A development officer may grant a variance to the requirements set out in Section 5.

- 6.2** A variance may not be granted where the:
- a. Variance violates the intent of the Land Use Bylaw;
 - b. Difficulty experienced is general to properties in the area; or
 - c. Difficulty experienced results from an intentional disregard for the requirements of the Land Use Bylaw.

6.3 Such variances are subject to the variance procedures and variance appeals and costs provided in the Municipality Government Act Section 236 and 27 as amended.

7.0 Pool Enclosure Requirements

7.1 All swimming pools shall be completely separated from adjacent properties by an enclosure forming an obstruction such as a fence, building, deck or similar structure.

7.2 Enclosures shall conform with the following requirements:

- a. Enclosures shall be constructed to prevent unauthorized access by providing a solid vertical obstruction having a minimum height of 1.2m (4ft) above grade level with no surface opening exceeding 4.45 cm (1 ¾") in width or height. The enclosure shall be constructed so as not to facilitate or enable climbing, and the bottom of such fence shall not be more than 10 cm (4") above grade
- b. Where enclosures are comprised of vertical members or boarding (such as a picket fence), the surface opening requirements of 7.2(a) may be relaxed to 10 cm (4") between vertical members.
- c. Where applicable, enclosure framing including horizontal rails, are to be on the inside of the enclosure (facing the swimming pool) with a smooth exterior to inhibit climbing.
- d. Above-ground pools sidewalls or pool sidewalls with attached sidewall fencing may form all, or a portion of the minimum vertical enclosure. The ridge of the sidewall (or combination of sidewall and attached fencing) must have a minimum height of 1.2m (4ft) above grade level, form a solid vertical obstruction, and not facilitate or enable climbing. All entryways to the pool, whether by a permanent ladder, removable ladder, or other means must still meet the enclosure requirements of 7.2(a) or 7.2(b) above. The maximum vertical clearance between the ridge of the pool and the bottom of any attached sidewall fencing shall not be more than 10 cm (4").
- e. Except from within a building, all doors or gates into a pool area enclosure shall be equipped with self-closing and self-latching mechanisms and must be latched and closed when the pool area is not under supervision. Self-latching mechanisms must be located a minimum of 1.5 m above the bottom of the door or gate.
- f. No person shall permit or allow any structures, steps, or material to be placed or to remain adjacent to any enclosure which would provide a means of access over the enclosure to the swimming pool.
- g. Manufactured, mechanically operated or manually enclosed horizontal pool covers may be installed without a development, but such covers are not considered as a substitute or replacement for enclosure requirements.

8.0 Hot Tub Enclosure Requirements

8.1 All hot tubs shall be equipped with a locking, rigid safety cover that meets the performance standards of American Society of Testing Materials (ASTM) Standard F1346-91 (2010) as amended, or comply with enclosure requirements for pools.

9.0 Penalty

9.1 Every person who contravenes or fails to comply with any provision of this Bylaw shall for such offence be liable on conviction to a penalty of not less than One Hundred Dollars and not exceeding Five Thousand Dollars, and in default of payment to imprisonment not exceeding 30 days and, in addition may be ordered by the Development Officer demolish and remove, alter or remedy any swimming pool constructed, altered or repaired contrary to the provisions of this Bylaw.

9.2 In addition to any fine or imprisonment imposed pursuant to this section, the Court or judge may order the person convicted to pay all expenses incurred in correcting the contravention of the Bylaw or any damages associated with such contravention.

9.3 Where any person is in contravention of any provision of this Bylaw, the Development Officer may direct in writing that the contravention be remedied by that person in the manner and within the time specified in the written direction.

10.0 Repeal

All other Swimming Pool Bylaws passed by the Council of the Town are hereby repealed.

Clerk’s Annotation for Official Bylaw Book	
Date of First Reading: September 10 th , 2020	
Notice of Intent to Consider: September 19 th & 30 th , 2020	
Date of Adoption: October 8 th , 2020	
Date of Publication: October 28 th , 2020	
I certify that this ‘Swimming Pool Enclosure Bylaw’ was adopted by Council as indicated above.	
Town Clerk:	Date: