

# THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

## BY-LAW NO. 19-41

**BEING** a by-law respecting the enclosure of pools.

**WHEREAS** section 11(2), paragraphs 6 and 10, of the *Municipal Act 2001*, S.O. 2001 c. 25 (hereinafter the "*Municipal Act 2001*"), authorizes a lower tier municipality to pass by-laws respecting health, safety and well-being of persons, and by-laws respecting structures, including fences and signs;

**AND WHEREAS** section 8(3) of the *Municipal Act 2001*, authorizes a municipality to regulate or prohibit in respect of matters within their jurisdiction, and to require persons to obtain permits and provide for a system of obtaining permits in relation to those matters;

**AND WHEREAS** under section 128 of the *Municipal Act 2001*, a local municipality may prohibit and regulate with respect to public nuisances, including matters that in the opinion of council is or could become or cause public nuisances;

**AND WHEREAS** the Council of the Corporation of the Municipality of Mississippi Mills deems it necessary to regulate pools and enclosures for pools;

**THEREFORE** the Council of the Corporation of the Municipality of Mississippi Mills enacts as follows:

### PART I – DEFINITIONS AND INTERPRETATION

#### DEFINITIONS

1. In this by-law,
  - a) "*abandoned pool*" means a *pool* that is abandoned whether or not it contains water and whether or not it is being used, or a *pool* by reason of its state of repair is incapable of safely being used and may include, but is not limited to, its structure, support structure, and containment liner, deck or state of its being maintained;
  - b) "*agent*" means a person duly authorized by the *owner* in writing to act for or represent the *owner* of land on which a *pool* or *enclosure* is to be *constructed* or is located;
  - c) "*Chief Building Official*" means the chief building official appointed by the council of the *municipality*, and for the purposes of administering and enforcing the provisions of this by-law, includes a person authorized to exercise the same powers and duties as the chief building official;

- d) “*construct*” means to do anything in the erection, installation, extension, material alteration, removal or demolition of a *pool* or *enclosure*, or construction of a building as defined and regulated by the *Building Code Act 1992*, S.O. 1992 c. 23, (hereinafter the “*Building Code Act*”), and “construction”, “constructed”, “reconstruction” and “reconstructed” has a corresponding meaning;
- e) “*enclosure*” means any combination of fence, wall, *safety cover*, or other structure, including any permitted door, gate, or other access opening, surrounding a *pool* to restrict access thereto;
- f) “*exterior side lot line*” has the same meaning as “exterior side lot line” or “lot line, exterior side” as defined in the Comprehensive Zoning By-Law of the *municipality*;
- g) “*front lot line*” has the same meaning as “front lot line” or “lot line, front” as defined in the Comprehensive Zoning By-Law of the *municipality*;
- h) “*grade*” means the elevation of the finished surfaces immediately surrounding the *pool* or the *enclosure*;
- i) “*hot tub*” means a type of *pool*, capable of producing and containing hot aerated water, and commonly used for recreation or physical therapy, and includes tubs commonly referred to as “whirlpool” and “spa”;
- j) “*lot line*” has the same meaning as “lot line” as defined in the Comprehensive Zoning By-Law of the *municipality*;
- k) “*municipality*” means the Corporation of the Municipality of Mississippi Mills;
- l) “*occupant*” means a person who is in physical possession of premises, or a person who has responsibility for and control over the condition of premises or the activities carried on, or control over persons allowed to enter the premises, even if there is more than one occupant of the same premises;
- m) “*officer*” means a person appointed by the council of the *municipality* as a municipal by-law enforcement officer for the purposes of enforcing by-laws, and may also be referred to as a by-law officer, peace officer, inspector, or property standards officer;
- n) “*owner*” means a person who is the registered owner of the land on which a *pool* or *enclosure* is to be constructed or is located;

- o) “*permit*” means a permit issued by the *Chief Building Official* as prescribed in this by-law for the *construction* of a *pool* and *enclosure*;
- p) “*pool*” means a pool of water for swimming, bathing, wading or reflecting, including a *hot tub*, which is capable of retaining a water depth equal to or greater the 600 mm (23 5/8 in) at any point, but shall not include facilities for the purposes of providing water to livestock or for irrigation of crops which are associated with and located on land devoted to the practice of farming, or stormwater management ponds;
- q) “*rear lot line*” has the same meaning as “rear lot line” or “lot line, rear” as defined in the Comprehensive Zoning By-Law of the *municipality*;
- r) “*safety cover*” means a rigid cover or lid on a *hot tub* to restrict access thereto;
- s) “*side lot line*” has the same meaning as “side lot line” or “lot line, side” as defined in the Comprehensive Zoning By-Law of the *municipality*; and,
- t) “*stagnant*” means water that is untreated or having no current or flow, often having an unpleasant smell and appearance, can become a breeding location for insects, or pose a hazard to health as a consequence of its condition.

## INTERPRETATION

- 2. In the event of any conflict between the provisions of this by-law and any provision of contained in a by-law of the *municipality* respecting fences, the provisions of this by-law shall prevail.
- 3. Unless otherwise defined, the words and phrases used in this by-law have their normal and ordinary meaning.
- 4. This by-law includes the schedules annexed hereto and the schedules are hereby declared to form part of this by-law.
- 5. The headings and subheadings used in this by-law are inserted for convenience of reference only, form no part of this by-law, and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
- 6. Unless the context requires otherwise, references to items in the plural include the singular unless used with a number modifying the term.
- 7. All distances, areas, weights, or other measurements in this by-law shall be read and enforced as the specified metric units, and other converted units specified in parentheses are inserted for convenience only.

8. It is declared that if any section, subsection, paragraph or part thereof is declared by any Court to be bad, illegal, or ultra vires, such section, subsection, paragraph part or parts shall be deemed to be severable and all other parts of this by-law are declared to be separate and independent, and enacted as such.

## **PART II – GENERAL**

### GENERAL

9. Every owner shall ensure that a *pool* and an *enclosure* is *constructed* and maintained according to the provisions of this by-law.
10. No person shall place water in a *pool*, or allow water to remain in a *pool*, unless the *pool* and prescribed *enclosure* has been *constructed* and maintained in accordance with the provisions of this by-law.
11. No *owner, agent, or occupant* shall allow a *pool* to become an *abandoned pool*.
12. Every *owner, agent, or occupant* shall ensure that all lockable openings and devices prescribed in this by-law serving an *enclosure* are locked and in effect while the *pool* is not in use, other than times when access to the *enclosure* is necessary for other purposes.

## **PART III – PERMITS**

### PERMIT REQUIREMENTS

13. Except as provided in Section 14, no person shall *construct* or cause to *construct* a *pool* unless a *permit* has been issued by the *Chief Building Official*.
14. A *permit* is not required in the case of a *pool* or *enclosure* which is being *reconstructed* provided that,
  - (a) a *permit* was obtained for the original *pool*;
  - (b) the *pool* is *reconstructed* in the same position and the same manner in which it was previously *constructed*; and,
  - (c) the *reconstruction* of the *enclosure* meets the requirements with the provisions of this by-law.

### APPLICATION FOR A PERMIT

15. An *owner* or their *agent* shall file an application for a *permit* to *construct* a *pool* with the *Chief Building Official* on the application form prescribed by the *Chief Building Official*.
16. Every application for a *permit* shall be accompanied by,

- (a) two (2) copies of a site-plan that will identify the location of the *pool*, any buildings or structures, *enclosure* location in relation to the *pool* and buildings or structures, location(s) of any permitted door, gate, or other opening in the *enclosure*, *pool* equipment location, well and septic location (if applicable) and closest measured distance from the *pool* and *enclosure* to each *lot line* of the property it is being installed on;
  - (b) two (2) copies of plans indicating the dimensions of the *pool* (diameter, width, length), the depth of the *pool* (in deep and shallow end if applicable), and height of the *pool* above *grade* if applicable;
  - (c) the payment of the required fee as prescribed in the Fees By-law of the *municipality* in effect on the day the application is made;
  - (d) the information and address of the property that the *pool* will be located, the names, addresses, telephone numbers, and email addresses of the *owner*, their *agent*, and the contractor performing the work, where applicable, on the application form; and,
  - (e) any other information that the *Chief Building Official* deems necessary to determine whether the proposed *construction* will comply with this by-law and any other applicable by-law.
17. Every application for a *pool permit* that proposes the *construction* of a deck, floor, platform, structure, public pool or public spa, or any other building, as defined and regulated under the *Building Code Act*, shall be accompanied by a separate building permit application that complies with all requirements of that application and any building by-law made under the *Building Code Act*.

#### ISSUANCE, CANCELLATION AND REVOCATION

18. The *Chief Building Official* shall inform the *owner* or their *agent* in writing of any reason that a *permit* is refused or cannot be issued if the application or any *construction* proposed in the application does not comply with the provisions of this by-law or any other applicable by-law.
19. Where the application and the *construction* proposed in the application is in general conformance with the provisions of this by-law, the *Chief Building Official* shall issue a *permit* to the *owner* or their *agent* within a reasonable timeframe.
20. The application for a *permit* will remain active for a period of six (6) months from the date of receipt, after which, if the *permit* has not been issued, the application shall be deemed abandoned and the *Chief Building Official* shall cancel the application and, except as provided in Section 21, the *permit* application fee shall be forfeited.
21. Where a *permit* has not been issued, a refund amounting to fifty percent (50%) of the *permit* application fee shall be provided where the *owner* or their *agent*

requests in writing within a period of ten (10) business days from the date of receipt of the application that the application be cancelled.

22. A *permit* shall be valid for an initial period of one (1) year from the date of issuance of the *permit*, after which, if the *permit* has not been deemed complete under Section 28, the *permit* shall be renewed for an additional period of one (1) year for each consecutive year that the *permit* is not complete, including payment of the required annual *permit* renewal fee as prescribed in the Fees By-law of the *municipality* in effect on the day a renewal fee is due.
23. Where a *permit* has been issued, the *owner* or their *agent* may request in writing that the *permit* be cancelled, provided that either no *construction* of the *pool* has taken place, or any *pool* forming part of the *permit* has been removed from the property, and the *permit* application fee shall be forfeited.
24. The *Chief Building Official* may revoke a *permit* that has been issued,
  - (a) if it was issued on mistaken, false or incorrect information;
  - (b) if, one (1) year after its issuance, the *construction* in respect of which it was issued has not, in the opinion of the *Chief Building Official*, been seriously commenced; or
  - (c) if it was issued in error.

#### **PART IV – INSPECTION, COMPLETION AND USE**

25. The *owner* or their *agent* shall notify the *Chief Building Official* of commencement of *construction*.
26. The *owner* or their *agent* shall notify the *Chief Building Official* of readiness for inspection and schedule for an inspection by an *officer* upon completion of *construction* of the *pool* and *enclosure*, prior to use of the *pool*.
27. Upon the inspection required in Section 26, if the *officer* has deemed the *pool* and/or *enclosure* is not in conformance with the provisions of this by-law, the *owner* or their *agent* shall, in addition to complying with Section 10 and 11, remedy the *construction* as necessary, and re-schedule for an inspection by an *officer*, prior to use of the *pool*.
28. Upon the inspection required in Section 26, if the *officer* has deemed the *pool* and *enclosure* to be in conformance with the provisions of this by-law, the *Chief Building Official* or the *officer* shall notify the *owner* or their *agent* of completion of the *permit*.

## PART V – POOL AND ENCLOSURE SPECIFICATIONS

### ENCLOSURE REQUIREMENTS

29. Every *pool* shall be provided with an *enclosure*.
30. Except as permitted in Sections 31, 32, and 34, every *enclosure* shall comply with the following criteria:
  - (a) shall have a minimum height of 1.5 m (4 ft 11 in) above adjacent *grade*;
  - (b) shall have a vertical orientation, and be of a close boarded, chain link, or other suitable design, to reasonably deter children from climbing or gaining access to the *pool*;
  - (c) shall have no openings under or in the *enclosure* that will allow the passage of a 100 mm (4 in) diameter sphere;
  - (d) any door, gate, or other access opening, other than those in the wall of a building that forms part of the *enclosure*, shall be self-closing with lockable and self-latching hardware installed no lower than a height of 1.35 m (4 ft 5 in);
  - (e) any door in the wall of a building that forms part of the *enclosure* shall be lockable from the inside of the building, with the lockable device installed no lower than a height of 1.35 m (4 ft 5 in); and,
  - (f) shall have a minimum horizontal distance of 750 mm (2 ft 5 1/2 in) between any part of the *enclosure* and the nearest wetted surface of the *pool* for a continuous distance of at least fifty percent (50 %) of the perimeter of the *pool*.
31. An *enclosure* is deemed to comply with Section 30 if it complies with the following criteria:
  - (a) the *pool* shall have a sidewall height of at least 1.2 m (3 ft 11 in) above adjacent *grade* around the outside perimeter of the *pool*;
  - (b) the sidewalls in (a) shall be vertical, smooth, and have no horizontal projections, or any other projections that will facilitate climbing;
  - (c) no *pool* equipment or any other climbable surface above adjacent *grade* shall be located within 1.2 m (3 ft 11 in) of the sidewall of the *pool* or any access to the *pool*;
  - (d) any ladder providing access to the *pool* shall be either readily removable without the use of tools, or shall be lockable in a non-climbable or upright position;
  - (e) any deck, floor, or platform that is adjacent to the *pool*, and/or provides access to the *pool*, shall have a minimum height of 1.2 m (3 ft 11 in) that is considered non-climbable around its entire perimeter, with no openings that will allow the passage of a 100 mm (4 in) diameter sphere;
  - (f) any access opening, other than those in the wall of a building that forms part of the *enclosure*, shall have a self-closing gate with a minimum height

- of 1.5 m (4 ft 11 in), and with lockable and self-latching hardware installed no lower than a height of 1.35 m (4 ft 5 in); and,
- (g) any door in the wall of a building that forms part of the *enclosure* shall be lockable from the inside of the building, with the lockable device installed no lower than a height of 1.35 m (4 ft 5 in).
32. An *enclosure* that serves a *hot tub* is deemed to comply with Section 30 if it complies with the following criteria:
- (a) a *safety cover* shall be permanently attached to the *hot tub* and completely cover the top of *hot tub*;
- (b) the *safety cover* shall incorporate a lockable device; and,
- (c) the *safety cover* shall be structurally adequate to resist entry to the *hot tub*.
33. Barbed wire or fencing energized by electrical current, sharp projections or any other dangerous characteristics shall not be used as an *enclosure*.
34. A *pool* need not comply with Sections 30 through 32 where the *pool* is entirely indoors and enclosed within a building, and the building and any access to the *pool* acts as an *enclosure* that, in the opinion of the *Chief Building Official*, meets the same level of performance of the *enclosures* prescribed in Sections 30 through 33.

## POOL REQUIREMENTS

35. Every *pool*, other than a *hot tub*, shall be provided with a least one exit ladder nearest to the deepest part of the *pool*, where the *pool* area does not exceed 56 m<sup>2</sup> (603 ft<sup>2</sup>), with an additional exit ladder to be provided from any other part of the *pool* where the *pool* area exceeds 56 m<sup>2</sup> (603 ft<sup>2</sup>).
36. Electrical services to a *pool*, including surrounding decking and operational equipment, shall comply with all requirements of the Ontario Electrical Safety Code and the Electrical Safety Authority (ESA) as necessary, and upon request of an *official*, a copy of an ESA certificate of inspection shall be provided to the official.
37. Hose bibs servicing a *pool* shall be provided with back flow protection.
38. Water in a *pool* shall be maintained and not become *stagnant*, and any *stagnant* water in a *pool* shall be fully restored to an acceptable standard or be removed.

## ZONING AND SETBACK REQUIREMENTS

39. The nearest wetted surface of any *pool* shall be located no closer than 1.5 m (4 ft 11 in) to any *side lot line* or *rear lot line*, and no closer than that required by the

Comprehensive Zoning By-law of the *municipality* to any *front lot line* and *exterior side lot line* for the zone in which it is located.

40. Water circulating or treatment equipment, such as a pump or filter, that serves a *pool*, shall be located no closer than 1.2 m (3 ft 11 in) to any *side lot line* or *rear lot line*, and no closer than that required by the Comprehensive Zoning By-law of the *municipality* to any *front lot line* and *exterior side lot line* for the zone in which it is located.
41. All *pools* shall comply with setback requirements from municipal drains, natural water courses and environmental protection zones (EP), required by the Comprehensive Zoning By-law of the *municipality*.

## **PART VI – COMPLIANCE, OFFENCES AND PENALTIES**

### **COMPLIANCE**

42. Where an *enclosure* or *pool* is not *constructed* or maintained in accordance with the provisions of this by-law, or where a person is in contravention with this by-law, the *Chief Building Official* or an *officer* may make an order requiring a person to discontinue the contravening activity, and/or requiring the person to carry out such work or *construction* as may be required to bring the *enclosure* and *pool* into conformance with the requirements of this by-law.
43. An order made under Section 42 shall specify the person(s) to which the order is made, the date(s) by which there must be compliance with the order, and the order shall either be served personally to the person(s), or sent to by registered mail to their last known address, and where the order is made on a person who is not the *owner*, a copy of the order shall be served on the *owner*.
44. Where an order made under Section 42 has not been complied with, the *Chief Building Official* may cause the work or *construction* required by the order to be done, and the cost of the work shall be at the expense of the *owner*.
45. The *municipality* may recover the costs of effecting compliance with an order made under Section 42 by action or by adding the costs to the tax roll and collecting them in like manner as municipal taxes.

### **OFFENCES AND PENALTIES**

46. Every person who contravenes any of the provisions of this by-law is guilty of an offence.
47. Every person who is convicted of an offence is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33 as amended.

48. When a person has been convicted of an offence under this by-law, The Ontario Court of Justice or any court of competent jurisdiction thereafter, may, in addition to any penalty imposed on the person convicted, issue an order prohibiting the continuation of repetition of the offence by the person convicted.

#### **PART VII – TRANSITION, REPEAL AND ENACTMENT**

49. A *permit* issued or continued under a previous by-law respecting *pools* and/or *enclosures*, as amended, is hereby continued and remains in force and shall be deemed to be issued under this by-law for regulatory and enforcement purposes, provided that the *enclosure* and/or *pool* in question was lawfully *constructed* in conformity with the provisions of the by-law that was in effect on the day the *permit* was issued, and is maintained in good repair on the date of enactment of this by-law.
50. By-law No. 16-68 is hereby repealed.
51. This By-law may be cited as the Pool By-law.
52. This By-law shall come into force and take effect upon the passing thereof.

**BY-LAW** read, passed, signed and sealed in open Council this 16<sup>th</sup> day of April 2019.

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Christa Lowry, Mayor

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Jeanne Harfield, Clerk