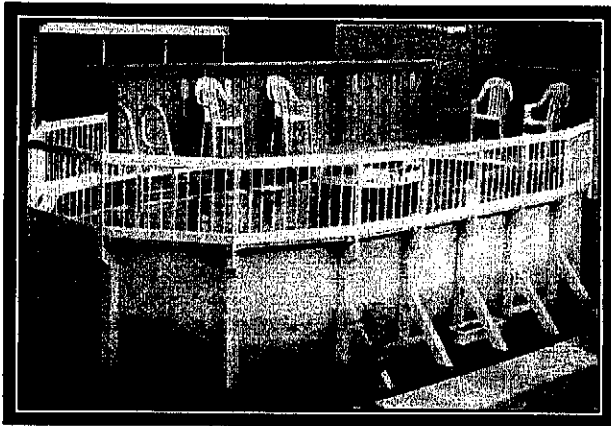
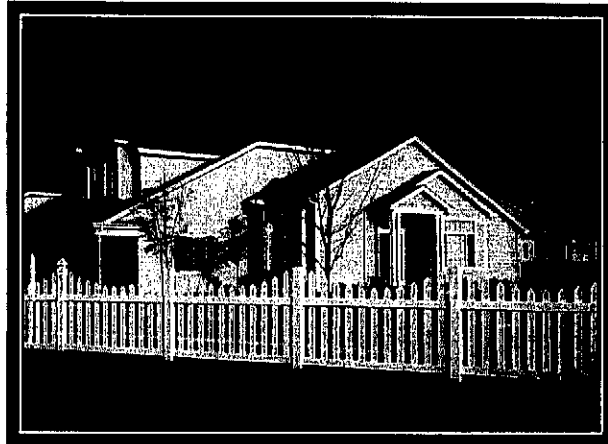




FENCE BY-LAW NO. 040-2008



INCLUDING "SWIMMING POOL ENCLOSURE" REQUIREMENTS



**DEPARTMENT OF PLANNING PARKS AND RECREATION
BUILDING PERMIT & BY-LAW ENFORCEMENT DIVISION
100 WATER STREET EAST 2ND FLOOR
CORNWALL, ONTARIO K6H 6G4
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THE CORPORATION OF THE CITY OF CORNWALL
By-law 040-2008

A By-law for regulating the erection, construction and maintenance of fences and swimming pool enclosures in the City of Cornwall

WHEREAS the Municipal Act, 2001 as amended provides authorization to pass By-laws, under Section 10 for fences and for prescribing the different standards for the height and description of lawful fences in different defined areas of the Municipality, and for requiring owners of privately owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools;

AND, WHEREAS the Corporation of the City of Cornwall deems it advisable to pass such a By-law ;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF CORNWALL ENACTS AS FOLLOWS:

SECTION 1

1.1 This By-law may be referred to as the Fences By-law.

SECTION 2

For the purposes of the By-law the definitions and interpretations given in this section shall govern.

- 2.1 **"CHIEF BUILDING OFFICIAL"** means the Official as appointed from time to time by the Council of the City of Cornwall, or his/her authorized representative.
- 2.2 **"CITY OF CORNWALL"** means the Corporation of the City of Cornwall.
- 2.3 **"COUNCIL"** means the Municipal Council of the City of Cornwall.
- 2.4 **"EFFECTIVE GRADE LEVEL"** means the highest level of ground at a particular location taking into consideration the surrounding ground level for a horizontal distance of 4 feet, measured parallel to the fence, and on either side of the location being considered.
- 2.5 **"FENCE"** means a noise attenuation barrier or 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 or substantially mark the boundary between adjoining land, except as provided herein in the By-law .
- 2.6 **"FRONT YARD"** means the yard located between the lot line abutting a street and the nearest part of building wall containing the main entrance, for a front yard setback as defined in the prevailing City of Cornwall Zoning By-law , and shall extend across the width of the lot except that for corner lots, the width shall be extended only on the side yard abutting the other street.

- 2.7 **"GATE"** means a swinging or sliding barrier used to fill or close an access and includes a door.
- 2.8 **"HEDGE"** means a continuous line of thick shrubs or trees planted in rows in order to create a barrier to vision or access.
- 2.9 **"HEIGHT"** means the vertical distance above the effective grade, or if another reference is specified, to the highest point of the fence or hedge adjacent to the enclosure or hedge and includes any projections above such as posts, caps, or similar components.
- 2.10 **"OUTSIDE"** means when used with reference to a swimming pool enclosure, the side external to the enclosed area in which the pool is located.
- 2.11 **"OWNER"** includes the registered owner of any property; the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would so receive the rent if such land and premises were leased; and a lessee or person in charge of the property.
- 2.12 **"PERSON"** means an individual, sole proprietorship, partnership, limited partnership, trust or body corporate, or an individual in his or her capacity as a trustee, executor, administrator or other legal representative.
- 2.13 **"REAR LOT LINE"** means the lot line farthest from and opposite the front lot line.
- 2.14 **"REAR YARD"** means a yard located between the rear lot line and the nearest part of the main building and extending the full width of the lot.
- 2.15 **"REQUIRED SETBACK"** means the setback as required by the prevailing City of Cornwall Zoning By-law .
- 2.16 **"ROADWAY"** means the part of the street that is improved, designed or ordinarily used by vehicular traffic but does not include the shoulder, and where a street includes two or more separate roadways, the term "roadway" refers to anyone separately and not all of the roadway collectively.
- 2.17 **"SIDE LOT LINE"** means a lot line other than a front or rear lot line:
- 2.18 **"SIDEWALK"** means all such parts of a street or walkway that are set aside by the Corporation for the use of pedestrians and used by the general public for passage of pedestrians.
- 2.19 **"SIDE YARD"** means a yard extending from the front yard to the rear yard and from the side lot line to the nearest wall of the main building on the lot.
- 2.20 **"STREET"** means the entire right-of way of a common and public highway which includes, but not limited to alleys, avenues, bridges, boulevards, circles, courts, crescents, drives, driveways, lanes, parkways, paths, places, roads, squares, trestles and viaducts.

- 2.21 **"SWIMMING POOL"** means any outdoor structure or thing located on privately owned property that is capable of being used for swimming, wading or bathing and in which the water depth at any point can exceed 30 inches (2'-6").
- 2.22 **"SWIMMING POOL ENCLOSURE"** means a fence, wall or other structure, including any permitted door, gate or other opening, which surrounds and restricts access to an outdoor swimming pool.
- 2.23 **"TRANSPORTATION ENGINEER"** means the person as appointed from time to time by the Council of the City of Cornwall, or his/her authorized representative.

SECTION 3 AUTHORITY

- 3.1 The Chief Building Official shall administer this By-law .

SECTION 4 PROHIBITIONS

- 4.1 No person shall erect a fence or swimming pool enclosure or cause or permit the erection of a fence or swimming pool enclosure in the City of Cornwall without first having obtained a permit therefore issued pursuant to this By-law .
- 4.2 No person shall erect or maintain or permit or cause to be erected or maintained a fence or hedge in the City of Cornwall unless it is in compliance with the requirements of this By-law .

SECTION 5 HEIGHT RESTRICTIONS

General:

- 5.1 If sight lines for approaching vehicles and traffic in the front and side yards abutting a street are not adequate, the discretion for height on that basis shall be subject to reduction by the Transportation Engineer.
- 5.2 Any increased heights for fencing and hedges shall be approved on a site specific basis by the Committee of Adjustment.

5.3 Front yards - Interior Lots

Except as provided in Section 5.7, no person shall erect or maintain or permit or cause to be erected or maintained, a fence or hedge higher than 36 inches (3'-0") in a front yard.

5.4 Front Yards - Corner Lots

The maximum height of fences in front yards of corner lots shall not exceed 36 inches (3'-0") in height.

5.5 Rear and Side Yards Abutting a Street

Except as provided in Section 5.7, no person shall erect or maintain or permit or cause to be erected or maintained a fence higher than 60 inches (5'-0") in a rear or side yard abutting a street.

5.6 Rear and Side Yards Not Abutting a Street

Except as provided in Section 5.7, no person shall erect or maintain or permit or cause to be erected or maintained a fence higher than 72 inches (6'-0") in a rear or side yard which does not abut a street. An increased height above the 72 inches (6'-0") standard by adding lattice is possible, subject to the requirements set out in Section 5.8 "Exceptions" to this By-law .

5.7 Side and Rear Yards Abutting a Street - Increased Heights and Other Restrictions.

- a) Where a fence or hedge is erected or maintained or caused or permitted to be erected or maintained within a required side yard that abuts a street, or the extension of the side yard to a front or rear property line that abuts a street, the height may be extended to 60 inches (5'-0") provided that:
 - (i) Any portion of fence or hedge located within 120 inches (10'-0") of the intersection of a driveway and a sidewalk or a street does not exceed 36 inches (3'-0") in height.
- b) Where a fence or hedge is erected or maintained or caused or permitted to be erected or maintained along a rear lot line that abuts a street, the height may be extended to 60 inches (5'-0") provided that:
 - (i) Any portion of fence located within 120 inches (10'-0") of the intersection of a driveway and a sidewalk or a street does not exceed 36 inches (3'-0") in height.

5.8 Exceptions

The maximum height of fences or swimming pool enclosures may be exceeded where:

- a) The property is used for industrial, commercial, or institutional purposes, provided that the portion within the required setbacks abutting the street be of chain link or other see through material and that the height shall not exceed 144 inches (12'-0"); or
- b) A fence located in a rear yard acts as a required sound barrier between a residential property and Highway # 401, a rail line, an industrial property or similar use as determined by the Chief Building Official; or
- c) The fences encloses a public swimming or wading pool used or intended to be used for commercial or multiple family purposes (4 residential apartment units or more); or
- d) The fence is of chain link or lattice construction of 1 inch (1") square minimum lattice opening for a maximum total height of 96 inches (8'-0") for fences not abutting a street; or
- e) The main posts and caps extend above the maximum permitted height by no more than 2 inches (2"), provided a post spacing of not less than 48 inches (4'-0") is maintained; or

- f) Additional screening is permitted for rear yards and side yards not abutting a street provided that the extension is constructed of lattice type material of 1 inch (1") square minimum opening and the total fence height does not exceed 96 inches (8'-0"); or
- g) The fence height is regulated by Site Plan Control Agreement; or
- h) The fence encloses a private or public tennis court provided that the portion above the normal height restriction is of un-obscured chain link or other approved mesh type material with 2 inches (2") square minimum opening.

SECTION 6 LOCATION OF FENCE OR HEDGES

- 6.1 No person shall erect or maintain or permit or cause to be erected or maintained any fence or hedge on or projecting into or over any public roadway, walk, park, boulevard, or other public property in the City of Cornwall.
- 6.2 All persons erecting or causing or permitting a fence to be erected are responsible to ensure that they have a legal right to erect the fence on the proposed location. The City will not be involved in property ownership disputes regarding property line location, private right-of-ways and easements.
- 6.3 No person shall erect or maintain or cause or permit to be erected or maintained a fence within 18 inches (1'-6") of a municipal sidewalk, regardless of property line location.
- 6.4 No person shall erect or maintain or cause or permit to be erected or maintained a fence in such a location as to interfere with Fire Department access to a property and no fence or hedge shall be erected or maintained within 36 inches (3'-0") of a fire hydrant.

SECTION 7 PROHIBITED MATERIALS

- 7.1 No person shall erect, construct, or maintain or cause or permit to be erected or maintained a fence constructed of barbed wire or other barbed or sharp material except:
 - a) Where the property is used for industrial, institutional, or commercial purposes; or
 - b) Where the fence encloses a public or private swimming pool used for commercial, multiple residential units, or park purposes; or
 - c) Where the fences are erected in agricultural or rural zones and used for agricultural purposes as defined in the prevailing City of Cornwall Zoning By-law.
- 7.2 The barbed or sharp material permitted in Section 7.1 (a) (b) and (c) is restricted to installations 72 inches (6'-0") minimum above effective grade and it shall be installed on metal brackets inclined towards the enclosed area at an angle of 45 degrees.

- 7.3 No person shall erect, construct, or maintain or cause or permit to be erected or maintained a fence used as a conductor of electricity unless the fence is located on agricultural land that is in actual use for raising livestock and the fence or attachment:
- a) Carries electricity of not more than 12 volts;
 - b) Is designed and installed only to contain livestock; and
 - c) Has signs installed at not more than 40'-0" intervals along the fence warning that the fence carries electricity.
- 7.4 No person shall erect, construct, or cause or permit to be erected or maintained a fence constructed of sheet metal, corrugated metal, chicken wire or similar type fencing except that corrugated metal or sheet metal can be installed for properties described in 7.1(a).
- 7.5 No person shall erect, construct, or maintain or cause or permit to be erected or maintained any other type of fence which, in the opinion of the Chief Building Official, is likely to cause injury.

**SECTION 8 SPECIAL REQUIREMENTS FOR SWIMMING POOL ENCLOSURES-
PERMITS AND INSPECTIONS.**

- 8.1 No person or owner of any lands on which a privately owned swimming pool is proposed, shall excavate for or erect, or cause or permit excavation for or erection of, a swimming pool without first obtaining a permit from the Chief Building Official for a swimming pool enclosure for the proposed swimming pool.
- 8.2 An application for a permit for swimming pool enclosure shall be in the form required by the Chief Building Official and shall be accompanied with the non-refundable fee as set out in the City of Cornwall Building By-law :
- a) Showing the location of the swimming pool in relation to lot lines and adjacent buildings.
 - b) Providing complete details of the swimming pool enclosure; and
 - c) Providing any other details and information required by the Chief Building Official for determining compliance.
- 8.3 The Chief Building Official shall refuse or revoke a permit for a swimming pool enclosure if:
- a) The proposed swimming pool enclosure would contravene this By-law.
 - b) It was issued in error or on mistaken, false or incorrect information; or
 - c) The required application fee under the Building By-law has not been paid.

- 8.4 Every owner of property on which a swimming pool is under construction shall erect and maintain a swimming pool enclosure that complies with this By-law in every respect except that it may consist of temporary fencing if authorized by the Chief Building Official or his authorized representative.
- 8.5 Any authorization to erect temporary fencing is granted on the condition that the temporary fencing shall be replaced with a permanent swimming pool enclosure that fully complies with this By-law when replacement is directed or when construction of the swimming pool is substantially complete, whichever occurs first, and in determining whether to direct replacement of temporary fencing, it shall be considered, among other factors, whether construction is proceeding expeditiously, whether temporary fencing is being adequately maintained and whether safety might be compromised without a permanent enclosure.
- 8.6 Temporary fencing shall be erected in a good, workmanlike manner and shall consist of steel "T" posts spaced at not more than 48 inches (4'-0") centres and embedded at least 24" inches (2'-0") into the ground with 1½ inches (1½") plastic mesh fencing at least 48 inches (4'-0") high that is securely fastened to the posts at 8 inch (8") centres and horizontally secured at the top and bottom by an eleven-gauge steel lacing cable threaded through the mesh and looped and fastened to each post, or any other fence acceptable to the Chief Building Official.
- 8.7 No person shall fill a swimming pool with water or permit water to collect or remain in a swimming pool until an inspection has been completed and the completion of a permanent swimming pool enclosure confirmed to be in 'full compliance' with this By-law .

SECTION 9 FENCES AS SWIMMING POOL ENCLOSURES

- 9.1 A fence which is to form a swimming pool enclosure or part thereof shall be of:
- a) Chain link construction; or
 - b) Vertical board construction; or
 - c) Metal picket construction; or
 - d) Of such other materials and construction that will provide an equivalent degree of safety as determined by the Chief Building Official; or
 - e) A combination of (a), (b), (c) or (d).
- 9.2 A fence of chain link construction shall:
- a) Have a mesh not greater than 1½ inches (1½") opening consisting of 12 gauge galvanized steel wire, or of 14 gauge steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to 12 gauge wire; and

- b) Be supported by minimum 1½ inches (1½") galvanized steel posts spaced not more than 120 inches (10'-0") apart. Such posts must extend at least 48 inches (4'-0") below grade and be encased in concrete at least 2½ inches (2½") thick all around; and
- c) Have top and bottom rails firmly fastened to the upright posts, made of minimum 1¼ inches (1¼") galvanized steel pipe. A galvanized steel tension rod ¾ inches (¾") in diameter may be substituted for the bottom rail.

9.3 A fence of vertical board construction shall:

- a) Have vertical boarding 1 inch (1") thick nominal attached to a top and bottom rail in such a manner as to not facilitate climbing from the outside. Such vertical boards must not be less than 1 inch x 4 inches nominal and shall be spaced not more than 1½ inches (1½") where the horizontal rails are spaced less than 48 inches (4'-0") apart and not more than 4 inches (4") where the horizontal rails are spaced more than 48 inches (4'-0") apart; and
- b) Be supported by posts at least 4 inches x 4 inches nominal, spaced not more than 96 inches (8'-0") apart. Such posts shall extend at least 48 inches (4'-0") into the ground and be securely embedded with concrete, compacted stone dust or equivalent. Any other supports shall be strictly at the discretion of the Chief Building Official.
- c) Have top and bottom rails of least 2 inches x 4 inches nominal dimensions.

9.4 A fence of metal picket construction shall be constructed in good workmanlike manner as follows:

- a) Vertical pickets shall be spaced not more than 1½ inches (1½") apart where horizontal rails are spaced less than 48 inches (4'-0") apart and not more than 4 inches (4") apart where horizontal rails are spaced at least 48 inches (4'-0") apart; and
- b) Horizontal rails shall be supported on substantial posts spaced not more than 96 inches (8'-0") apart and embedded in concrete to a minimum depth of 48 inches (4'-0") below grade.

9.5 Fences that form part of the required swimming pool enclosure shall:

- a) Extend at least 48 inches (4'-0") in height above effective grade level; and
- b) Have no openings between the fence and grade which exceed 4 inches (4"); and any part of the fence shall not permit the passage of a spherical object exceeding 4 inches (4") in diameter; and
- c) Contain no barbed wire, electrical wiring, sharp projections or any other dangerous characteristics either on the outside or inside; and
- d) Be located not less than 30 inches (2'-6") from the nearest inside wetted surface of the swimming pool wall.

- 9.6 No swimming pool enclosure shall be located closer than 36 inches (3'-0") to any condition that facilitates the climbing of the enclosure unless alternative measures are implemented to provide an equivalent level of safety as set out in this By-law .
- 9.7 Notwithstanding the requirements of Sentence 9.5, on above ground pools only, a pre-manufactured guard or barrier mounted directly on the pool wall system is considered to be an acceptable enclosure provided:
- a) The guard or barrier is designed, constructed and installed in such a manner to provide, in the opinion of the Chief Building Official, adequate rigidity and strength to withstand substantial lateral pressure and also provide an effective barrier preventing access to the swimming pool.
 - b) The owner shall provide information to demonstrate that any pre-manufactured guard or barrier complies with this Section or any other relevant Section. For other than pre-manufactured guards for barriers, the owner shall provide to the Chief Building Official details and or drawings to demonstrate equivalent strength and performance; failing this, such guards or barriers shall not be permitted.
 - c) The total height of the swimming pool wall and the attached guard or barrier is at least 60 inches (5'-0") above effective grade level around the pool wall.
 - d) There are no openings in the guard or barrier and also between the guard and the pool wall or ledge which could allow the passage of a spherical object having 4 inches (4") inches or more in diameter.
 - e) The guard or barrier is designed in a manner that will not facilitate climbing.
 - f) The swimming pool filtering system is located at least 36 inches (3'-0") away, measured horizontally, from the exterior surface or ledge of the swimming pool wall or guard and any part of the filtering system including pipes and hoses; or the swimming pool filtering system may be enclosed with a fence and gate which complies with the relevant sections of this By-law except that such fence or gate does not have to be located 30 inches (2'-6") away from the filtering equipment.
 - g) All access to the above ground pool such as decks, platforms, stairs and ladders shall be restricted by installing a fence and/or gate conforming to the relevant provisions of this By-law.

SECTION 10 GATES AND ENTRANCES TO THE SWIMMING POOL AREA

10.1 Gates which form part of a swimming pool enclosure shall be:

- a) of construction and height equivalent to or greater than that of the required swimming pool enclosure; and
- b) be supported on substantial hinges; and

- c) equipped with a self closing and self latching device mounted 60 inches (5'-0") minimum above grade or for a gate or door of lesser height, a distance down from the inside top of the door to provide equivalent 60 inches (5'-0") reach from outside. If the latching device is less than 60 inches (5'-0") vertically above grade than it shall be mounted on the inside of the fence enclosure. Self-latching device shall release only with a downward movement; and
- d) be equipped with a locking device.
- 10.2 All entrances to the swimming pool area which form part of the swimming pool enclosure, whether they be doors, windows or gates, shall be kept locked at all times except when the swimming pool is being supervised by a responsible adult person.
- 10.3 When a wall or portion thereof, of any building located on the same property as a swimming pool enclosure forms part of such enclosure, no entrances to the pool area shall be permitted through such wall, unless:
- a) any door at the entrance way shall be self closing and equipped with a self latching device in compliance with Section 10.1 as relevant.
- b) be equipped with a locking device.
- c) such wall is located no closer than 30 inches (2'-6") from the nearest inside wetted surface of the swimming pool wall.
- 10.4 Overhead garage doors or similar types shall not be permitted to perform as a gate or door forming part of a swimming pool enclosure.
- 10.5 Every owner of a swimming pool shall be responsible to take all steps necessary to control any access point to the swimming pool area at all times.

SECTION 11 DECKING FOR ABOVE GROUND SWIMMING POOLS

- 11.1 A guard of not less than 36 inches (3'-0") in height shall be provided around platforms and decks which are located more than 24 inches (2'-0") above adjoining grade. Guards and handrails shall conform to the provisions of the prevailing Ontario Building Code.
- 11.2 Any integral platform or deck provided around an above ground swimming pool shall have a minimum clear width of 30 inches (2'-6") measured from the inside wetted wall of the pool.

SECTION 12 PROPERTY LINE SETBACKS

- 12.1 Property line setbacks (distance to property line) to swimming pools, whirlpools, hot tubs and spas shall be as per the prevailing City of Cornwall Zoning By-law .

SECTION 13 HOT TUBS, WHIRLPOOLS AND SPAS

- 13.1 Sections 8 through 11 do not apply to a whirlpool, hot tub or spa if it has a substantial, structurally adequate cover permanently attached to it or to its supporting structure and the cover is securely fastened and locked to prevent access at all times when the whirlpool, hot tub or spa is not in use.

SECTION 14 INSPECTIONS

- 14.1 The Owner is responsible for requesting any required interim inspections and a final inspection when the construction is complete. Said inspection requests shall be made in advance, the period being as per the City of Cornwall Building By-law .

SECTION 15 PERMIT FEES AND EXPIRY

- 15.1 The fee for a permit to erect a fence or a swimming pool enclosure shall be as per The City of Cornwall Building By-law .
- 15.2 A fence or pool enclosure permit shall expire within 2 years of the date of the issuance of the permit where the construction is not substantially complete in such period.

SECTION 16 PENALTY

- 16.1 Every person who contravenes any of the provisions of this By-law is guilty of an offence and, on conviction, is liable to a fine as provided in the Provincial Offences Act.
- 16.2 Should a person or owner not comply with the By-law, the Corporation of the City of Cornwall may cause to have the work done to comply with this By-law and shall recover the amount expended for such work in like manner as Municipal Taxes.

SECTION 17 REPEAL AND TRANSITION

- 17.1 Except as provided by Subsection 17.2 hereof, By-law Number 061-1992 and amendments are hereby repealed.
- 17.2 Notwithstanding sub-section 17.1 hereof, the provisions of By-law Number 142, 1981 and By-law # 061-1992 as amended, continue to apply to any fence or above ground swimming pool legally existing on property on the day of passing of this By-law until such time as the existing fence or above ground swimming pool is substantially repaired or replaced.

SECTION 18 VALIDITY


- 18.1 If any section of this By-law is for any reason held to be invalid, the remaining sections shall remain in effect until repealed;

18.2 Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, the provisions that establish the higher standards to protect the health, safety and welfare of the general public shall prevail.


SECTION 19 EFFECTIVE DATE

19.1 This By-law shall come into force and take effect on May 1, 2008.

Read a first, second and third time, signed and sealed, in open Council, this 25th day of March, 2008.



DENISE LABELLE-GÉLINAS
CITY CLERK



MAYOR BOB KILGER