

## THE MUNICIPALITY OF NORTH PERTH

### BY-LAW NUMBER 75-2008

#### A By-Law to Regulate Swimming Pool Enclosures

**WHEREAS** section 11 (3) 7 of the *Municipal Act*, S.O. 2001, c.25, as amended (the “Act”), provides that a Municipality may pass by-laws with respect to structures, including Fences;

**AND WHEREAS** section 23.1 of the Act allows a Municipality to delegate its powers and duties to a person or body, including the Municipality’s Chief Building Official;

**AND WHEREAS** it is the intention of the Municipality of North Perth (the “Municipality”) to promote safety and to prevent unintentional injury and drowning by requiring that pools within the Municipality be properly enclosed;

**NOW THEREFORE** the Council of the Corporation of the Municipality of North Perth enacts:

#### PART 1 DEFINITIONS AND INTERPRETATION

1. For the purpose of this by-law, the following terms shall have the meanings indicated:
  - (a) “**Building**” means any permanent and/or temporary structure used or intended to be used for shelter, accommodation, or enclosure of persons, animals, or goods, which includes decks and sheds but does not include a fence;
  - (b) “**Chief Building Official**” means the person appointed by the Municipality to such a position pursuant to the *Building Code Act*;
  - (c) “**Fence**” means any barrier or structure constructed of chain link metal, wood, stone, metal, concrete, brick or other similar materials or combination of such materials, which is erected for the purpose of screening, safeguarding, retaining, dividing or enclosing property or delineating property lines;
  - (d) “**Fence By-law**” means By-law 161-AD-1999, being a by-law to regulate fences in the Municipality, as amended or superseded from time to time;
  - (e) “**Fence Height**” means the height measured from the finished floor level or ground level at any point along the length of the fencing to the top of the fence, measured on the outside of the fencing;
  - (f) “**Finished Floor Level**” means a permanent stable surface, such as the top of wood, concrete or brick;
  - (g) “**Ground Level**” means a permanent ground level, such as grass, soil or gravel;
  - (h) “**Four-Sided Fence**” means a fence or building wall that fully restricts access to the swimming pool separate from the house. A four-sided fence that uses a building wall for one of its sides may include a window, but not a door;
  - (i) “**Gate**” means any part of a swimming pool enclosure which opens on hinges.

- (j) **“Hydro-Massage Pool”** or swimming pools commonly referred to as hot tubs, Jacuzzis, whirlpools, spas and other similar products means a swimming pool as defined in this by-law;
- (k) **“Immediate Pool Area”** means the surrounding area that contains items used for swimming pool activities, including swimming pool equipment, changing sheds, patio furniture and similar items used in conjunction with the use of the swimming pool;
- (l) **“Inside of the Swimming Pool Enclosure”** means that side of the fence or gate that faces the swimming pool area;
- (m) **“Isolation Fencing”** means a continuous fence that is effectively the same as a four-sided fence except that all ancillary structures (not related to the function of the swimming pool) are excluded from the pool area. The fence completely separates the swimming pool from the house and the rest of the property;
- (n) **“Maintain”** means to keep a swimming pool enclosure in a condition that meets the requirements of this by-law and to preserve the condition of the swimming pool enclosure from failure or decline in order to ensure safety and strength.
- (o) **“Municipality”** means the Corporation of the Municipality of North Perth;
- (p) **“Outside of the Swimming Pool Enclosure”** means that side of the fence or gate that faces away from the swimming pool area;
- (q) **“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, tenant, mortgagee in possession, or person occupying or in charge of the property;
- (r) **“Permit”** means a permit issued under this by-law for a swimming pool enclosure by the Chief Building Official;
- (s) **“Replacement”** means the construction of a swimming pool and/or swimming pool enclosure that takes the place of a swimming pool and/or swimming pool enclosure previously constructed;
- (t) **“Self-Closing Device”** means a mechanical device or spring that returns a swimming pool enclosure gate to its closed position within 30 seconds after it has been opened;
- (u) **“Self-Latching Device”** means a mechanical device or latch that is engaged each time the gate is secured to its closed position, which will not allow the swimming pool enclosure gate to be re-opened by pushing or pulling, and which will ensure the swimming pool enclosure gate remains closed until unlatched by either lifting or turning the device itself directly or by a key;

(v) **“Swimming Pool”** means an excavation, structure or product, which is:

- (i) located outdoors on private property;
- (ii) intended for the purposes of swimming, wading, paddling or bathing;
- (iii) capable of holding water in excess of 0.76m (2 feet 6 inches) in depth at any point;

and includes a temporary swimming pool and a landscape pond meeting the above criteria, but for the purposes of this by-law does not include:

- (1) hot tubs, Jacuzzis, whirlpools, spas and other similar products;
- (2) a pond or reservoir to be utilized for farming purposes or as part of a golf course;
- (3) a pool owned by any public or governmental body, agency or authority, or is under the jurisdiction of the Ontario Building Code;
- (4) an existing natural body of water or stream; or
- (5) a privately owned stormwater management facility;

(w) **“Swimming Pool Enclosure”** means a permanent four-sided fence, isolation fence or three-sided fence, which includes a self-closing and self-latching gate, and which surrounds a swimming pool with the intention of restricting access from outside the swimming pool enclosure;

(x) **“Temporary Swimming Pool”** means a swimming pool that is designed to be removed periodically on a seasonal or more frequent temporary basis; and

(y) **“Three-Sided Fence”** means a fence that uses a wall or side of a building with a door to enclose the swimming pool area.

(z) **“Zoning By-law”** means By-law 6-ZB-1999, being a by-law to regulate zoning in the Municipality, as amended or superseded from time to time.

- 2. The requirements of this by-law are expressed in metric measurements. Any imperial measurements included in this by-law are approximate and are provided for convenience only.

## **PART 2 GENERAL PROVISIONS**

### **Application of By-Law**

- 3. This by-law shall be administered by the Chief Building Official;
- 4. This by-law shall apply to all swimming pools and swimming pool enclosures constructed or proposed to be constructed, within the Municipality following passage of this by-law;
- 5. When a swimming pool enclosure is constructed so that it functions as a fence between two or more adjacent properties, the provisions of this by-law prevail over the Fence By-law;

6. In the event of any conflict between the provisions of this by-law and any provision of the Fence By-law, the provisions of this by-law shall prevail;
7. Nothing in this by-law permits the location of a pond, deck, platform or other structure in a location that is not otherwise permitted under the Zoning By-law.

### **PART 3 PROHIBITIONS**

8. Every owner of a swimming pool shall erect and maintain a swimming pool enclosure that:
  - (1) Complies with this by-law;
  - (2) Completely encloses the area in which the swimming pool is located; and
  - (3) Has no opening except a door, window or gate that complies with this by-law;
9. No person shall excavate, construct, install, or situate a swimming pool; or cause a swimming pool to be excavated, constructed, installed, or situated; or commence the excavation, construction, installation, placement or replacement of a swimming pool without first obtaining a permit from the Chief Building Official for a swimming pool enclosure;
10. No person shall excavate, construct, install, or situate a swimming pool; or cause a swimming pool to be excavated, constructed, installed, or situated; or commence the excavation, construction, installation, placement or replacement of a swimming pool that is not completely enclosed by a swimming pool enclosure in accordance with this by-law;
11. No person shall construct or cause to be constructed any swimming pool enclosure that does not conform to the requirements of this by-law;
12. No person shall fill a swimming pool with water or cause a swimming pool to be filled with water or allow water to remain in a swimming pool unless the swimming pool is enclosed by a swimming pool enclosure, other than an approved temporary swimming pool enclosure meeting the requirements of Section 25 of this by-law;
13. No person shall remove, alter or replace a swimming pool enclosure or any part thereof without having first obtained a permit to do so from the Chief Building Official;
14. No person shall place, pile, attach or lean any object or material against or near a swimming pool enclosure so as to facilitate climbing of the swimming pool enclosure, diminish the structural integrity of a swimming pool enclosure or render the swimming pool enclosure in non-conformity with the provisions of this by-law;
15. No person shall erect a fence adjacent to an existing swimming pool enclosure that does not comply with the requirements of this by-law;
16. No barbed wire, chicken wire or other barbed or sharp material shall be used in the construction of a swimming pool enclosure;
17. No swimming pool enclosure shall be used as a conductor of electricity.

#### PART 4 APPLICATIONS FOR PERMITS

18. An application for a permit shall be in the form required by the Chief Building Official and accompanied by the applicable fee set out in the Municipality's Fees and Licensing By-law and by two (2) sets of plans:
- a) showing the location of the proposed swimming pool and proposed landscape features in relation to property lines, buildings, and easements, all proposed swimming pool equipment (such as filters, slides and heaters);
  - b) Providing complete details of the proposed swimming pool enclosure, including the location and type of proposed fence and gate; and
  - c) showing the proposed access route for construction of the swimming pool enclosure from any public right-of-way to the proposed swimming pool location;
19. The Chief Building Official may issue a permit for a swimming pool enclosure where the plans submitted comply with the requirements of this by-law and all applicable regulations and by-laws or approvals;
20. The Chief Building Official shall not issue a permit unless:
- a) The permit application is complete;
  - b) A site alteration permit, if required, has been obtained and the proposed location of the swimming pool; and
  - c) The swimming pool enclosure complies with the provisions of this by-law, the Zoning By-law and any other applicable regulations, by-laws or approvals.

#### PART 5 STANDARDS FOR POOL ENCLOSURES

21. A swimming pool enclosure shall meet the following standards:
- a) **Height:** the height of the swimming pool enclosure shall be not less than 1.53m (5 feet) measured from the ground level on the outside (not the pool side) of the pool enclosure (**NOTE:** Inside fence height to comply with the Ontario Building Code);
  - b) **Opening and Materials:**
    - i) where the swimming pool enclosure is constructed of chain link fence, the swimming pool enclosure shall not have any openings that would allow the passage of a spherical object having a diameter exceeding 38 millimetres (1.5 inches);
    - ii) where the swimming pool enclosure is constructed of vertical and horizontal members, if the horizontal structural members are greater than 114.3 centimetres (45 inches) apart, the horizontal members can be located on the outside of the swimming pool enclosure and the spacing between each vertical member shall not exceed 100 millimetres (4 inches);

- iii) where the swimming pool enclosure is constructed of vertical and horizontal members, if the horizontal structural members are less than 114.3 centimetres (45 inches) apart, the horizontal members must be located inside the swimming pool enclosure and the spacing between each vertical member should not exceed 44.45 millimetres (1.75 inches);
- c) **Ground Clearance:** the space at any point between the swimming pool enclosure and the ground level and/or finished floor level must not exceed 100 millimetres (4 inches). The ground beneath the swimming pool enclosure cannot be loose gravel or other material that can be easily removed so as to afford access under the swimming pool enclosure;
- d) **Framing and Braces:** except as otherwise specified in this by-law, all horizontal structural members must be located inside of the swimming pool enclosure so as to prevent easy climbing; and
- e) **Location:** the pool enclosure shall only enclose the immediate swimming pool area and shall be located not less than 0.61 metres (2 feet) from any fence that does not meet the requirements of this by-law;

## GATES AND OTHER ACCESS POINTS

### Gates

23. Every owner shall ensure that every gate forming part of a swimming pool enclosure:

- (a) is constructed in accordance with the standards prescribed in this by-law;
- (b) is supported on substantial hinges, capable of supporting 90.72 kilograms (200 lbs.) in body weight;
- (c) is equipped with a self-closing device;
- (d) is equipped with a self-latching device that is located at least 1.22 metres (4 feet) above the finished floor level and/or finished ground level;
- (e) is equipped with a lock;

24. If the gate to the swimming pool enclosure is a double gate access, made up of two gates at the same location:

- (a) one of the two gates shall have a self-closing device and self-latching device; and
- (b) the gate of this double gate access without a self-closing device and a self-latching device shall have a device permanently affixed to the ground or other non-movable object, which prevents access through this gate without lifting or removing this device and then releasing the latch;

## **TEMPORARY SWIMMING POOL ENCLOSURE**

25. The owner shall ensure that a temporary swimming pool enclosure meeting the requirements of this section is in place during all phases of construction of the swimming pool such that unauthorized access to the site is prevented. A temporary swimming pool enclosure shall consist of a snow fence 1.22 metres (4 feet) in height, or such other fencing material with similar visibility, height and rigidity as may be approved by the Chief Building Official, and shall be securely attached at any opening when the area is left unattended.

## **PART 6 SPECIAL PROVISIONS**

### **Above-Ground Swimming Pools**

26. The vertical walls of an above-ground swimming pool can be used as part of a swimming pool enclosure provided that the vertical walls are at least 1.52 metres (5 feet) in height and do not possess any horizontal members that may facilitate climbing;
27. The ladder area, which provides access to the above-ground swimming pool, must be enclosed by a swimming pool enclosure as defined in this by-law;

### **Temporary Swimming Pools**

28. If a permit has been obtained with respect to the swimming pool enclosure for a temporary swimming pool, the temporary swimming pool may be reinstalled and refilled with water without additional permits or inspections provided there have been no alterations to the swimming pool enclosure.

## **PART 7 UNDERTAKING TO ENSURE REPAIR**

29. Every person erecting, altering, repairing or demolishing a swimming pool and/or swimming pool enclosure within the Municipality who permits the crossing of curbing, sidewalks or paved boulevards by vehicles delivering materials to or removing materials from abutting lands shall deposit with the Chief Building Official with the permit application a signed undertaking to repair any damage to property of the Municipality such as any damage to the sidewalks, curbing or paved boulevard or to any water service box or other service therein caused by the crossing of such vehicles;
30. The owner of any lands on which any swimming pool and/or swimming pool enclosure is being erected, altered, repaired or demolished shall take all necessary steps to prevent building material, waste or soil from being spilled or tracked onto the public streets by vehicles going to or coming from the lands during the course of the erection, alteration, repair or demolition and shall be responsible to the Municipality for the cost of removing such building material, waste or soil and the cost of repairing any damaged curbing, sidewalks, or paved or grassed boulevards.

## **PART 8 ENFORCEMENT**

31. Every person who contravenes any provision of this by-law and is found guilty of an offence and upon conviction shall be subject to a fine as prescribed in the *Provincial Offences Act*, R.S.O. 1990, c.33, as amended.

32. Where anything required to be done in accordance with this by-law is not done, the Chief Building Official may do such thing at the expense of the person required to do it and such expense may be recovered by action or in like manner as municipal taxes within the meaning of Section 446 of the *Municipal Act*, S.O. 2001, c.25, as amended.

**PART 9 REPEAL - ENACTMENT**

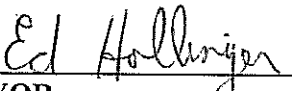
33. By-Law Number 29-ZB-2004, as amended, is hereby repealed.

34. This By-Law comes into force on the date of passing.

**READ A FIRST AND SECOND TIME** this 2<sup>nd</sup> day of June, 2008

**READ A THIRD TIME AND FINALLY PASSED** this 2<sup>nd</sup> day of June, 2008

SEAL

  
MAYOR

  
CLERK



## SAMPLE POOL ENCLOSURE AND OTHER EXPLANATORY DIAGRAMS

### Sample Pool Enclosures

Figure 1: Property Fencing – Three-Sided Fencing

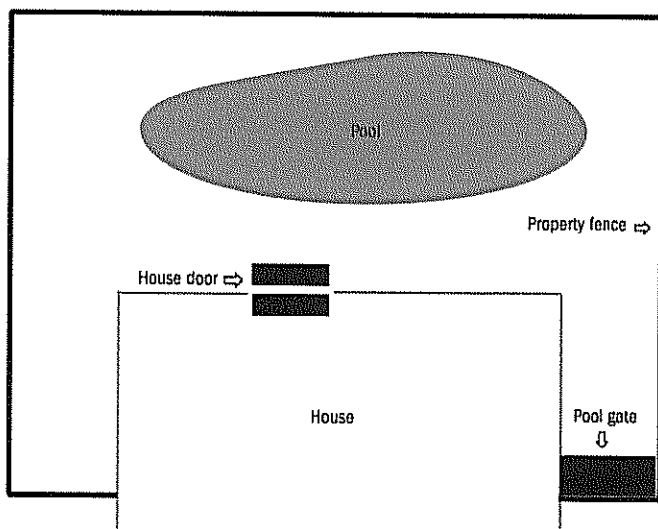
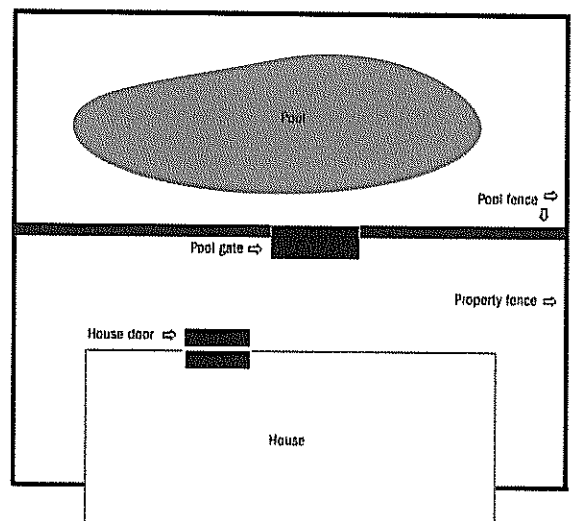


Figure 2: Four-Sided Fencing



### Sample Explanatory Figures

Figure 3: Isolation Fencing

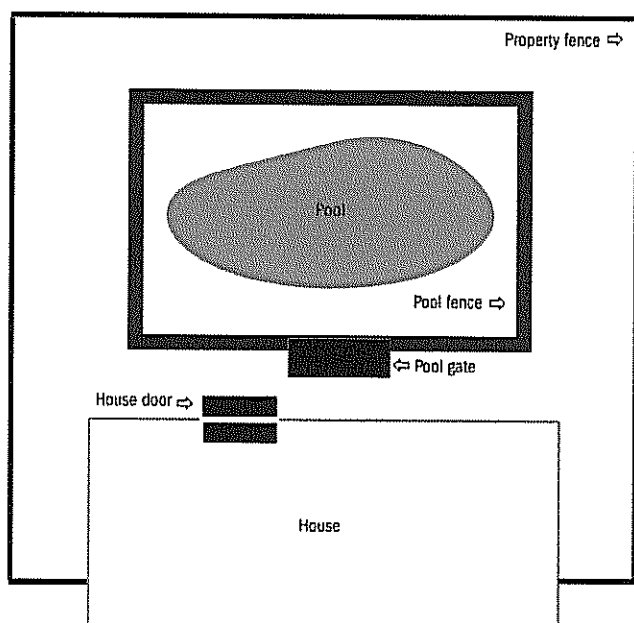
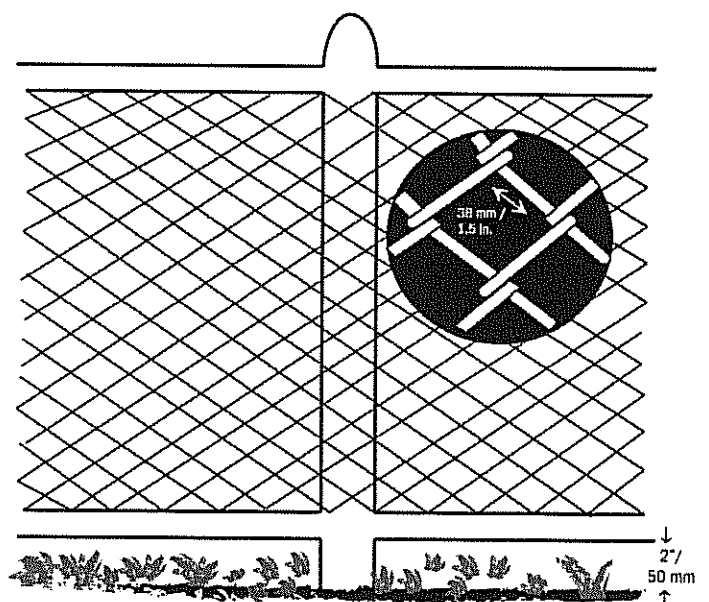


Figure 4: Chain Link Openings



**SAMPLE POOL ENCLOSURE AND OTHER EXPLANATORY DIAGRAMS CONTINUED**

Figure 5: Vertical and horizontal member spacing and ground clearance

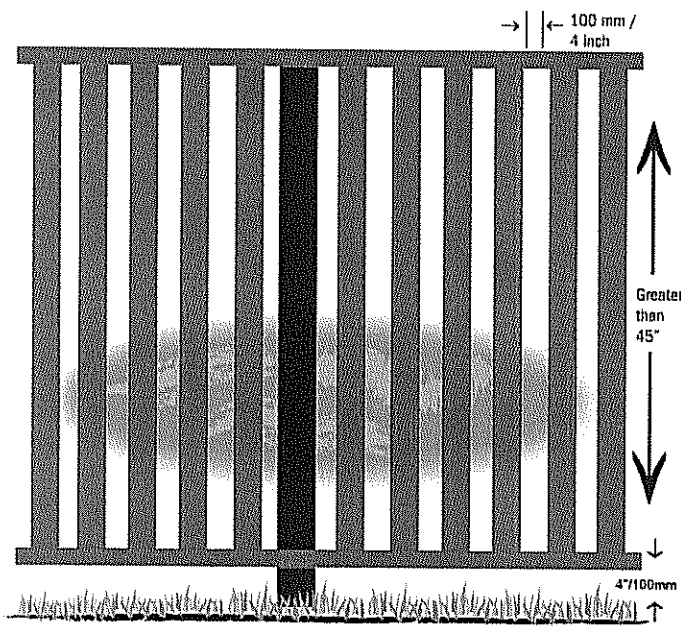


Figure 6: Vertical and horizontal member spacing

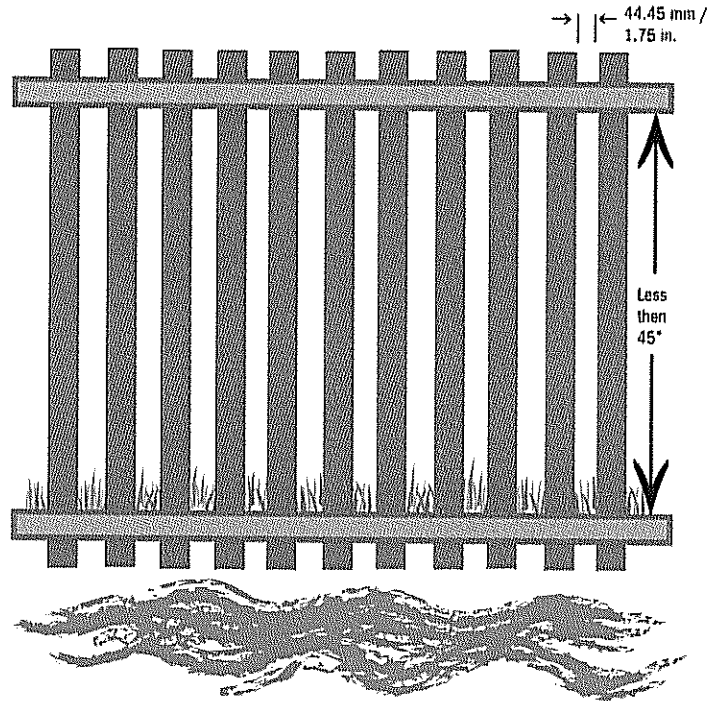


Figure 7: Above-ground pool with fenced ladder area

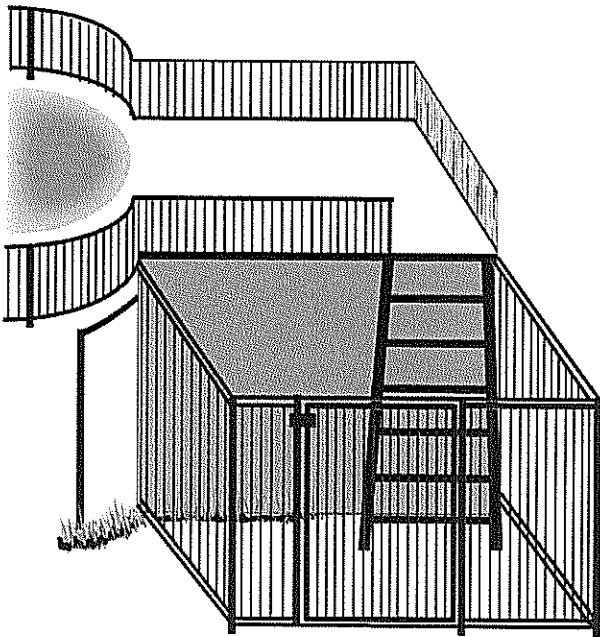


Figure 8: Self-closing and self-latching gate installation

