

The Corporation of the Municipality of South Huron

By-Law 24-2004

A By-Law to regulate swimming pool fences

Office Consolidation of By-Laws 24-2004 and 15-2010

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The Corporation of the Municipality of South Huron

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Being a By-law to regulate swimming pool fences

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Whereas pursuant to paragraph 30 of section 210 of the Municipal Act, R.S.O. 1990, c. M.45, as amended, a by-law may be passed to issue permits for swimming pool fences and to prescribe safety standards for privately owned outdoor swimming pools;

And Whereas section 220.1 of the Municipal Act, R.S.O. 1990, c. M.45, as amended by section 10 of Schedule M of the Savings and Restructuring Act, 1996

provides that the Council may by by-law impose fees for services and activities provided or done by or on behalf of The Corporation of the Municipality of South Huron;

And Whereas it is expedient to impose fees for certain services provided by the Building and Development Department;

Therefore the Municipal Council of The Corporation of the Municipality of South Huron enacts as follows:

Short Title Swimming Pool Fence By-law

Part 1 - Definitions

1.1 Definitions

In this by-law:

Chief Building Official – defined

"Chief Building Official" shall mean the person appointed by the Municipality of South Huron Council to such position pursuant to the Building Code Act.

Gate – defined

"gate" shall mean any part of a swimming pool fence which opens on hinges and includes a door located in the wall of an attached or detached garage or carport, which forms part of the swimming pool fence.

Hydro Massage Pool – defined

"hydro massage pool" shall include those pools commonly referred to as a hot tub, a whirl pool a jacuzzi or a spa.

Maintain – defined

"maintain" shall mean to carry out repairs of any part or parts of a swimming pool fence so that it can properly perform the intended function.

Municipality – defined

shall mean the Corporation of the Municipality of South Huron.

Replacement – defined

"replacement" shall mean the construction of a swimming pool fence that takes the place of a swimming pool fence previously constructed.

Self-closing device – defined

"self-closing device" shall mean a mechanical device or spring which returns a swimming pool fence gate to its closed position within 30 seconds after it has been opened.

Self-latching device – defined

"self-latching device" shall mean 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 device itself directly or by a key.

Swimming pool -defined

"swimming pool" shall mean a structure, basin, chamber or tank containing or capable of containing water, and designed to be used for swimming or wading, and:

- (a) has a water depth of more than 75 centimetres (29.5 inches) at any point; and
- (b) has a surface area of more than 1 square metre (10.8 square feet); and
- (c) is not under the jurisdiction of the Building Code; and
- (d) is not completely inside a building; and
- (e) is not owned by government or a local board or commission constituted under any statute or by-law; and
- (f) is not a pond or reservoir to be utilized for farming purposes; and
- (g) but excludes hydro massage pools; and
- (h) excludes storm water management ponds

Swimming Pool Fence- defined

"swimming pool fence" shall mean a fence, a wall, a structure or a building which encloses a swimming pool. Above ground pools shall also include a combination of pool height and integrally constructed fence provided that a suitable ground constructed enclosure surrounds the entrance ladder and any other equipment such as a heater, filter in accordance with this by-law.

Part 2 - General Provisions**2.1 Administration -Chief Building Official**

This by-law shall be administered by the Chief Building Official.

2.2 Application of by-law -on or after April 19, 2004

This by-law shall apply to all swimming pool fences constructed or replaced in the Municipality of South Huron on or after April 19, 2004.

2.3 Existing swimming pool fences -constructed

The provisions of this by-law shall not prevent the use of an existing swimming pool fence if such swimming pool fence was constructed and has enclosed a swimming pool from the date of its construction on or before April 18, 2004, and was built and maintained in accordance with the regulations of the by-law existing prior to April 19, 2004.

2.4 Maintain -swimming pool fencing - compliance with previous by-law

Where any swimming pool fence was constructed to enclose a swimming pool in accordance with the regulations that existed on or before April 18, 2004, the swimming pool fence may be maintained in accordance with such regulations.

2.5 Replacement- swimming pool fencing -compliance -required

At such time as an entire existing swimming pool fence is replaced the replacement swimming pool fence shall be constructed in accordance with this by-law.

2.6 Swimming Pool Fence By-law -prevails

When a swimming pool fence is constructed so that it functions as a boundary fence between two or more adjacent properties, in addition to its function as a swimming pool fence, the provisions of this by-law prevail over any other Municipality of South Huron by-law that regulates fences.

2.7 Existing Swimming Pool Fences -used by property abutting, portion conforms

Where a swimming pool fence has enclosed a swimming pool in accordance with the regulations that existed on or before April 19, 2004 and that swimming pool fence has been maintained continuously in accordance with those regulations, and which swimming pool fence also marks the boundary between abutting properties, that swimming pool fence shall be deemed to be in conformity should a swimming pool be constructed on any of the abutting properties to the extent of the shared portion of the swimming pool fence between the two abutting properties. All other portions of the swimming pool fence that enclose the newly constructed swimming pool shall meet the standards set out in this by-law.

Part 3 - Prohibitions

3.1 No construction -without permit

No person shall construct or cause to be constructed a swimming pool without having first obtained a swimming pool fence permit from the Chief Building Official.

3.2 Swimming pool - not enclosed by fence

No person shall construct or cause to be constructed a swimming pool which is not completely enclosed by a swimming pool fence, in accordance with this by-law.

- 3.3 No construction - without temporary fencing**
No person shall fail to enclose a swimming pool with temporary fencing during construction.
- 3.4 Construction -fence -non-conforming**
No person shall construct or cause to be constructed a swimming pool with a swimming pool fence that does not conform to the requirements of this by-law.
- 3.5 Gate - without self-closing - self-latching device**
No person shall fail to equip a swimming pool fence single gate access with a self-closing device and a self-latching device.
- 3.6 Gate - self-latching device - distance above ground**
No person shall construct or maintain a swimming pool fence gate with an outside opening self- latching device less than 122 centimetres (48 inches) above ground level.
- 3.7 Storage of materials - against outside of swimming pool fence**
No person shall place or store materials against the outside of a swimming pool fence
- 3.8 Replacement - existing fence - without permit**
No person shall replace a swimming pool fence without having first obtained a swimming pool fence permit from the Chief Building Official.
- 3.9 Swimming Pool Fence- maintain -in accordance with by-law**
No person shall fail to maintain a swimming pool fence in accordance with this by-law.
- 3.10 Two gates -self-closing / self-latching device- permanently affixed**
No person shall construct or maintain a double swimming pool fence gate access without one of the two gates having a self-closing device and a self-latching device. The gate of this double gate access without a self-closing device and a self-latching device must have a device permanently affixed to the ground or other non-movable object that prevents access through this gate without lifting or removing this device and then releasing the latch.
- 3.11 Security of a Hydro Massage Pool**
No person shall install, construct, or use any structure defined as a Hydro Massage pool unless any such structure is provided with a secure cover fully capable of closing the opening thereto and which cover is locked to prevent access when the structure is not in use. Otherwise, these structures must comply with the respective requirements of sections 1 through 8 of this by-law.

Part 4 - Application for Swimming Pool Fence Permits

4.1 Application – to Chief Building Official - in writing - owner

An application for a permit to erect a new swimming pool fence or for the replacement of an existing swimming pool fence shall be made by the owner or his or her agent, in writing to the Chief Building Official on such forms as may be prescribed.

4.2 Application - documentation to accompany - set out

All such swimming pool fence permit applications shall be accompanied by a drawing showing the following:

- 1) The lot, showing size of lot, house location and any other accessory buildings (shed, septic tank, weeping bed etc)
- 2) Existing fence, height of fence, material fence is made of
- 3) Location of pool, pump and filter (show the distance between fence, house, buildings)
- 4) Any proposed or existing deck or accessory buildings (pump house, change room)
- 5) Various dimensions -distance from pool to fence, pool to house, etc.

4.3 Permit - issue - by Chief Building Official - Conditions

The Chief Building Official shall issue a permit for a swimming pool fence where the plans submitted appear to comply with all applicable regulations, and the requirements of the by-law have been met.

Part 5 - Swimming Pool Fence Regulations

5.1 Height - minimum requirements

Every swimming pool shall be enclosed by a swimming pool fence which shall extend from the ground to a height of not less than 153 centimetres (60 inches).

5.2 Opening- maximum diameter

Except as provided in section 5.3 of this by-law, every swimming pool fence referred to in section 5.1 of this by-law shall not have any openings that would allow the passage of a spherical object having a diameter greater than 3.8 centimetres (1.5 inches).

5.3 Amended by By-law 15-2010

Opening - maximum diameter - exception - conditions

For other than chain link fences, where the vertical distance between each horizontal rail measured from the top of each rail is 1.2 metres (4 feet) or greater, the openings in the fence are permitted to be greater than 3.8 cm (1.5 inches) but not greater than that which would allow the passage of a spherical object having a diameter of 10 cm (4 inches).

5.4 Ground clearance -maximum

Every swimming pool shall be enclosed by a swimming pool fence which has a clearance from the ground to the underside of the swimming pool fence that would prevent the passage of a spherical object having a diameter of 10 centimetres (4 inches).

5.5 Structural members - prevent easy climbing - required

Every swimming pool shall be enclosed by a swimming pool fence which has all its horizontal structural members located on inside the enclosure to prevent easy climbing unless the swimming pool fence has no openings greater than 3.8 cm (1.5 inches) and the horizontal members are at least 90 cm (35.5 inches) apart. The swimming pool enclosure shall be located at least 4'0" (1.22 metres) distance from any outside structure, fence, tree, air-conditioning unit, meter, steps, ledges, window sills, etc., which might afford means whereby the enclosure could be scaled from the outside by a small child.

5.6 Construction - to prevent unauthorized entry

Every swimming pool shall be enclosed by a swimming pool fence which is of sturdy construction, capable of preventing unauthorized entry.

5.7 Height - measurement - from ground level

The height of the swimming pool fence shall be measured from ground level on the outside of the enclosure.

5.8 Gate - self-closing - self-latching – locking device

Every gate on a swimming pool fence shall be equipped with a self-closing device and a self-latching device.

5.9 Gate - self-latching device - requirements

A self-latching device that can be opened without a key from the outside shall not be less than 122 centimetres (48 inches) above ground level.

5.10 Temporary fence -required -during construction

During all phases of construction temporary fencing shall be in place such that unauthorized access is prevented.

5.11 Deck forms swimming pool fence

Where a deck forms part of the swimming pool fence, it shall meet all regulations in Part 5 of this by-law.

Part 6 - Undertaking to ensure repair

6.1 Debris on streets - prevention -cleaned - by owner

The owner of any lands on which any swimming pool fence 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 7 - Enforcement

7.1 Amended by By-Law 15-2010

Fine -for contravention

Every person who contravenes any provision of this By-Law is guilty of an offence and on conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P33.

7.2 Continuation -repetition -prohibited -by order

The court in which the 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, and such order shall be in addition to any other penalty imposed on the person convicted.

7.3 Default -not remedied -done at owner's expense

Where anything required to be done in accordance with his by-law is not done within 30 days from the time that the pool is filled with water, the Chief Building Official or persons designated by the Chief Building Official for The Corporation of the Municipality of South Huron, appointed pursuant to the Building Code Act may, upon such notice as he deems suitable, do such thing at the expense of the person required to do it and, in so doing, may charge an administration fee of 15% of such expense with a minimum fee of \$80.00; and both the expense and the fee may be recovered by action or in like manner as municipal taxes.

Part 8 - Repeal – Enactment

8.1 By-law - Previous

Town of Exeter By-law-#17, 1987 passed on April 21, 1987 and all of its amendments are hereby repealed.

Township of Stephen By-law #33, 1990 passed on October 2, 1990 and all of its amendments are hereby repealed.

Township of Usborne By-law #14, 1984 passed on December 18, 1984 and all of its amendments are hereby repealed.

8.2 Effective date

This by-law comes into force on the date of final passing.

Schedule A to By-Law 24-2004

Permit Fees

1. New swimming pool fence permit fee is \$100.00
2. Replacement swimming pool fence permit fee is \$100.00