

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN BY-LAW

NUMBER 98-47

BEING A BY-LAW REQUIRING OWNERS TO FENCE PRIVATELY OWNED SWIMMING POOLS LOCATED IN THE MUNICIPALITY OF WEST ELGIN AND TO PLACE A SECURITY DEPOSIT WITH THE MUNICIPALITY AND TO OBTAIN PERMITS FOR THE CONSTRUCTION OF FENCES AND GATES TO ENCLOSE OUTDOOR SWIMMING POOLS.

WHEREAS The Municipal Act, R.S.O., 1990, C.45 Section 210(30) 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 West Elgin.;

AND WHEREAS the Council of the Municipality of West Elgin considers such legislation to be in the best interest of the general public of the Municipality;

NOW THEREFORE the Council of the Corporation of the Municipality of West Elgin enacts as follows:

SECTION 1 DEFINITIONS

1.1 In this by-law

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

"Municipality" shall mean the Corporation of the Municipality of West Elgin.

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

"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.

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

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

- a) has a 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" shall mean a wall, a structure or a building which encloses a swimming pool.

## SECTION 2 - GENERAL PROVISIONS

- 2.1 This by-law shall be administered by the Chief Building Official.
- 2.2 This by-law shall apply to all swimming pool fences constructed or replaced in the Municipality of West Elgin on or after **November 12th, 1998**.
- 2.3 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 May 5th, 1987 in the former Village of Rodney and August 7th, 1990 in the former Village of West Lorne and was built in accordance with the regulations of the by-laws for the former Village of Rodney and the former Village of West Lorne prior to November 12th, 1998.
- 2.4 Where any swimming pool fence was constructed to enclose a swimming pool in accordance with the regulations that existed on or before May 5th, 1987 in the former Village of Rodney and August 7th, 1990 in the former Village of West Lorne the swimming pool fence may be maintained in accordance with such regulations.

- 2.5 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 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 Municipal by-law that regulates fences.

### SECTION 3 - PROHIBITIONS

- 3.1 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 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 person shall fail to enclose a swimming pool with temporary fencing during construction.
- 3.4 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 No person shall fail to equip a swimming pool fence gate with a self-closing device and a self-latching device.
- 3.6 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 No person shall place or store materials against the outside of a swimming pool fence.
- 3.8 No person shall replace a swimming pool fence without having first obtained a swimming pool fence permit from the Chief Building Official.
- 3.9 No person shall fail to maintain a swimming pool fence in accordance with this by-law.

### SECTION 4 - APPLICATION FOR SWIMMING POOL FENCE PERMITS

- 4.1 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 All such applications shall be accompanied by the following:
- a) plans showing the location of the proposed swimming pool including all enclosing swimming pool fences, together with full details of each entrance and showing the location of all proposed swimming pool equipment such as filters, slides and heaters;

- b) the applicable fee as prescribed in Schedule "A" of this by-law.
  - c) a security deposit in the amount of five hundred dollars (\$500.00) to be held by the Municipality pending final inspection and approval of the fence and gate or gates surrounding such privately owned outdoor swimming pool by the Chief Building Inspector for the Municipality.
  - d) an undertaking to repair damage to Municipal property as required
- 4.3 The Chief Building Official shall issue a permit for a swimming pool fence where the plans submitted appear to comply with all applicable regulations of the by-law have been met.

#### SECTION 5 - SWIMMING POOL FENCE REGULATIONS

- 5.1 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 ( 48 inches)**.
- 5.2 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 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).
- 5.5 Every swimming pool shall be enclosed by a swimming pool fence which as all its horizontal structural members located 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 0.6 metres (2 feet) apart.
- 5.6 Every swimming pool shall be enclosed by a swimming pool fence which is of sturdy construction, capable of preventing unauthorized entry.
- 5.7 The height of the swimming pool fence shall be measured from ground level on the outside of the enclosure.
- 5.8 Every gate on a swimming pool fence shall be equipped with a self-closing device and a self-latching device.
- 5.9 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 During all phases of construction temporary fencing shall be in place such that unauthorized access is prevented.

SECTION 6 - UNDERTAKING TO ENSURE REPAIRS

- 6.1 Every person erecting, altering, repairing or demolishing a swimming pool fence within the Municipality of West Elgin 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 upon application for a swimming pool fence permit and prior to the commencement of any work, deposit a completed undertaking to repair any damage to Municipal property such as any damage to the sidewalks, curbing or paved boulevards or to any water service box or other service therein caused by the crossing of such vehicles.
- 6.2 The owner of any lands on which any swimming pool fence is being erected, altered, repair or demolished shall take all necessary steps to prevent building material, waste or soil from being spilled or tracked onto public streets or roads 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.

SECTION 7 - ENFORCEMENT

- 7.1 Any person who contravenes any provision of this by-law is upon conviction, guilty of an offence and is liable to any penalty as provided in the Provincial Offenses Act.
- 7.2 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 Where anything required to be done in accordance with this by-law is not done, the Chief Building Official for the Corporation of the Municipality of West Elgin 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 such expense may be recovered by action or in like manner as municipal taxes.

READ A FIRST AND SECOND AND THIRD TIME AND FINALLY PASSED THIS 12th DAY OF NOVEMBER, 1998.

"Duncan McPhail"  
Mayor

Rita DeWild  
Clerk