

THE MUNICIPALITY OF SOUTHWEST MIDDLESEX

By-law # 3/2005
Being a by-law to provide for the owners
of privately-owned outdoor swimming pools
to erect and maintain fences.

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WHEREAS pursuant to paragraph 30 of section 9(3) of the *Municipal Act, S.O 2001, c. M.25*, 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;

WHEREAS The Municipality of Southwest Middlesex passed By-Law # 76/2002 being a by-law to establish User Fees and Service Charges.

AND WHEREAS it is expedient to impose fees for certain services provided by the Municipality;

THEREFORE the Municipal Council of The Municipality of Southwest Middlesex 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 Municipal Council to such position pursuant to the *Building Code Act*.

Municipality - defined

"Municipality" shall mean The Municipality of Southwest Middlesex.

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.

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 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 - defined

“swimming pool fence” shall mean a wall, a structure or a building which encloses a swimming pool *where structures include a fence combined with a deck.*

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 January 19, 2005

This by-law shall apply to all swimming pool fences constructed or replaced in the Municipality on or after January 19, 2005.

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 after July 7, 1986, as per attached schedule `D' and was built in accordance with the regulations of the by-law existing prior to January 19, 2005.

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 after July 7, 1986, 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 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 after July 7, 1986 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 portion 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.

5.2 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.

5.2 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.

5.2 Storage of materials – against outside of swimming pool fence

No person shall place or store materials against the outside of a swimming pool fence.

5.2 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.

5.2 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.

Part 4

**APPLICATION FOR
SWIMMING POOL FENCE PERMITS**

5.2 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.

5.2 Application – documentation to accompany – set out

All such applications shall be accompanied by the following:

- 5.□ 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;
- 5.□ the applicable fee as prescribed in Schedule `A' of this by-law;
- 5.□ an undertaking to repair damage to Municipality property as required by-law.

5.2 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

5.2 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 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 under side of the swimming pool fence than 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 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 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 Boulevard crossing - by vehicles - deposit - calculation

Every person erecting, altering, repairing or demolishing a swimming pool fence within the Municipality of Southwest Middlesex 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 Municipality property 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.

6.2 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 Fine - for contravention

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 Offences Act*.

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 this by-law is not done, the Chief Building Official or persons designated by the Chief Building Official for The Municipality of Southwest Middlesex 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 AS PER SCHEDULE `D`

8.1 By-law (s)- previous

By-law 686, being a by-law of the former Municipality of the Corporation Of The Village of Wardsville passed on August 1994 and all of its amendments are hereby repealed as per attached Schedule `D`.

By-law 22-86 being a by-law of the former Municipality of The Corporation Of The Township Of Ekfrid passed on June 2, 1986 and all of its amendments are hereby repealed as per attached Schedule `D`.

By-law 4-92 being a by-law of the former Municipality of The Corporation Of The Village Of Glencoe passed on May 19, 1992 and all of its amendments are hereby repealed as per attached Schedule `D`.

By-law 51/95 being a by-law of the former Municipality of The Corporation Of The Township Of Mosa passed on November 22, 1995 and all of its amendments are hereby repealed as per attached Schedule `D`.

8.2 Effective date

Read a first and second time this 19th day of January, 2005.

.....
Mayor

.....
Administrator/Clerk

Read a third time and finally adopted this 19th day of January, 2005.

.....
Mayor

.....
Administrator/Clerk

BY-LAW NO. 3/2005

SCHEDULE 'A'

SWIMMING POOL FENCE PERMIT FEES

1. New swimming pool fence permit fee is \$9.00 per \$1,000.00 of total swimming pool and fence construction with a minimum fee of \$50.00.

2. Replacement swimming pool fence permit fee is \$9.00 per \$1,000.00 of fence construction value with a minimum fee of \$50.00.

BY-LAW NO.3/2005
SCHEDULE "B"

Undertaking Damage to Municipal Property

To: The Corporation of the Municipality of Southwest Middlesex

Re: _____
Municipal Address

Permit Application Number

In consideration of the issuance of a Permit to _____
(proposed work)

for the above-noted property, _____ hereby undertakes
(Owner Name)

to repair and replace, to the satisfaction of the Municipality, all damage to Municipal property including, without limitation to curbs, sidewalks and boulevards sustained directly or indirectly as a result of works undertaken by the Owner under the Permit.

The Owner agrees to indemnify and save harmless the Corporation of the Municipality of Southwest Middlesex from and against any and all claims, cost damage or injury to any persons or property arising in any way out of the performance of this Undertaking.

Dated this _____ day of _____, in the year ____

Signature of Owner

BY-LAW 3/2005
Schedule "C"
SET FINE

ITEM	COLUMN 1	COLUMN 2 (Including Costs)	Set Fine	COLUMN 3
1.	<u>(Construct/cause to be constructed)</u> swimming pool without a swimming pool fence permit.	3.1	\$125.00	
2.	<u>(Construct/cause to be constructed)</u> swimming pool not enclosed by a swimming pool fence.	3.2	\$125.00	
3.	fail to enclose a swimming pool with temporary fencing during construction.	3.3	\$125.00	
4.	<u>(Construct/cause to be constructed)</u> swimming pool with fence that does not conform to by-law requirements.	3.4	\$125.00	
5.	fail to equip swimming pool fence gate with <u>(self-closing and/or self latching)</u> device.	3.5	\$125.00	
6.	<u>(Construct/maintain)</u> swimming pool fence gate with outside opening self-latching device less than <u>(122 centimetres/ 48 inches)</u> above ground level.	3.6	\$125.00	
7.	<u>(place/store)</u> materials against outside of swimming pool fence.	3.7	\$125.00	
8.	replace swimming pool fence without obtaining a permit.	3.8	\$125.00	
9.	fail to maintain swimming pool fence in accordance with by-law.	3.9	\$125.00	

The penalty provisions for the offences listed above are sections 7.1 and 7.2 of by-law #3/2005, a certified copy of which has been filed.

THE MUNICIPALITY OF SOUTHWEST MIDDLESEX

BY-LAW No. 2008/051

Being a by-law to amend By-law No. 03/2005, the By-law to provide for the owners of privately-owned outdoor swimming pools to erect and maintain fences.

WHEREAS the Municipality of Southwest Middlesex passed By-law No. 03/2005 to regulate the erection and maintenance of swimming pool fences;


AND WHEREAS it is considered desirable to amend By-law No. 3/2005;

NOW THEREFORE the Council for the Municipality of Southwest Middlesex enacts as follows:

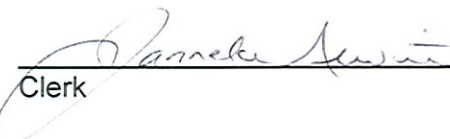
1. That Section 4.2 (b) is amended to read:
“the applicable fee as prescribed in the current Fees and Service Charged By-law for the Municipality (as per Schedule ‘A’ to this By-law)”
2. That Schedule “A” is amended by deleting item #1 and item #2 and replacing them with the following:
“For current permit fees, refer to the Southwest Middlesex Fees and Service Charges By-law in effect at the time of application.”
3. That Part 2 – General Provisions – is amended with the addition of the following:
2.8 **By-law Reference**
This by-law shall be known as the “Swimming Pool Fencing By-law”.

This By-law shall come into force and effect on the final passing thereof.

Read a first and second time this 9th day of July, 2008.

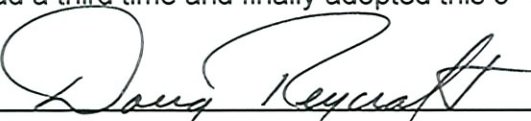


Mayor

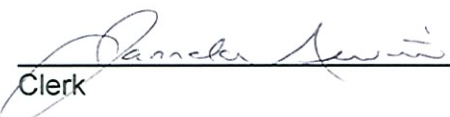


Clerk

Read a third time and finally adopted this 9th day of July, 2008.



Mayor



Clerk