

THE MUNICIPALITY OF SOUTHWEST MIDDLESEX

BY-LAW NO. 2021/062

**A by-law governing fences within the Municipality of Southwest Middlesex
(repealing By-law No. 2015/109 and By-law No. 03/2005)**

WHEREAS subsection 5(3) of the *Municipal Act, 2001, c.25*, as amended provides that a municipal power shall be exercised by by-law;

AND WHEREAS subsection 11 of the *Municipal Act, 2001, c.25*, as amended provides that a Municipality may pass a by-law respecting matters within the spheres of jurisdiction regulating structures, including fences;

AND WHEREAS it is deemed expedient and desirable to pass a by-law to regulate the erection and maintenance of fences within the Municipality of Southwest Middlesex:

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

1. DEFINITIONS

a) For the purposes of this by-law, the following definitions shall apply:

“Chief Building Official” means the Chief Building Official for the Corporation of the Municipality of Southwest Middlesex and/or designate;

“By-law Enforcement Officer” shall mean a By-law Enforcement Officer appointed by the Corporation of the Municipality of Southwest Middlesex;

“Council” means the Council of the Municipality of Southwest Middlesex;

“Driveway” means a vehicle access provided between a street and a parking area/space or a loading space;

“Electrical Fence” means a fence through which electricity passes;

“Erect” includes alter, construct, plant, grow, place and relocate;

“Fence” includes a railing, wall, line of posts, wire, masonry, gate, boards or pickets or other similar substances, used to enclose or divide in whole or in part a yard or other land, or to establish a property boundary, but does not include a retaining wall;

“Fence – open type construction” means a fence constructed so that its vertical surface area is unobstructed, enabling motorists and pedestrians to have a clear view through such fence (e.g. a fence of chain link construction, wrought iron);

“Fence – solid type construction” means a fence constructed so that its vertical surface is obstructed,

preventing motorists and pedestrians from having a clear view through such fence;

“Gate” means any part of a 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;

“Height” is measured from the ground where the fence posts are embedded or other supporting structures are located to the top of the fence;

“Livestock” means goats, cattle, horses, donkeys, ponies, llamas, sheep and swine;

“Lot” means any parcel of land which can be occupied or used or otherwise disposed of separately and apart from any abutting lands, whether or not such parcel is described in a registered deed or shown on a registered plan of subdivision;

“Maintain” means to carry out repairs of any part or parts of a fence so that it can properly perform the intended function;

“Municipality” means the Municipality of Southwest Middlesex;

“Owner” means the person who holds legal title to a piece of property or has an equitable interest in the same;

“Perimeter Fence” means a fence with gates, where necessary, that is located on the outer boundaries of a property and that encloses a property in its entirety;

“Residential Lot” means a lot in a residential zone as identified in the Municipality’s comprehensive zoning by-law and also means a lot in any other zone as identified in the Municipality’s comprehensive zoning by-law where the main use of the lot is currently for residential purposes;

“Self-closing device” means 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” means 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;

“Sight Triangle” means the portion of a corner lot within the triangular area bounded by the front lot line, the exterior side lot line and a line joining the points along said lines nine (9.0) metres (29.5 feet) distant from the point of intersection of the said lines.

“Street” shall mean a public highway which provides the principal means of vehicular access to abutting lots and includes its sidewalks and boulevards;

“Street Line” means the boundary between a street and a lot separating the lot from the abutting street;

“Swimming pool” means 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 0.64 metres (2.1 feet) at any point; and
- b) has 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) excludes storm water management ponds.

“Swimming pool enclosure” means a fence, or wall, structure or a building, or combination which encloses a swimming pool where structures include a fence combined with a deck.

“Urban Area” means those urban centres designated as “Settlement Areas” in the Southwest Middlesex Official Plan, namely Glencoe, Wardsville, Appin, Melbourne, Middlemiss and Pratt Siding.

“Yard” means that part of a lot not covered or occupied by any building;

“Yard, exterior side” means a side yard immediately adjoining a street, extending from a front yard to the rear lot line;

“Yard, front” means a yard that extends across the full width of the lot from the front lot line to the nearest wall of the main building on the lot. Where a lot is a corner lot, for the purposes of this by-law the shortest lot line abutting the street is the front lot line;

“Yard, interior side” means a side yard other than an exterior side yard.

“Yard, rear” means a yard that extends across the full width of the lot from the rear lot line to the nearest wall of the main building on the lot;

“Yard, side” means a yard that extends from the front yard to the rear yard and from the side line of a lot to the nearest wall of the main building on the lot.

“Zoning By-law” means the current comprehensive zoning by-law passed by the Municipality pursuant to the provisions of the *Planning Act*, as may be amended from time to time.

2. GENERAL PROVISIONS

- a) The requirements of this by-law apply to all properties within the Municipality of Southwest Middlesex. Swimming pool enclosure fences require a permit from the Chief Building Official prior to the construction of a pool. Permits are not required for fences unrelated to a swimming pool and that comply with the requirements of this by-law.
- b) No provisions of this by-law shall supersede any provisions of the *Line Fences Act, R.S.O. 1990, c.L.17*.
- c) Fences lawfully erected prior to the passage of this by-law are exempt from the provisions of this by-law unless in the opinion of the municipality they contravene a section of this by-law.

- d) No person shall erect or cause or permit to be erected or maintain a fence unless it is:
- i) reasonably uniform in colour and pattern;
 - ii) constructed of materials that are specifically designed or commonly used for fencing purposes;
 - iii) non-reflective in nature;
- e) No person shall erect or cause or permit to be erected or maintain any fence that is not:
- i) in good repair; and
 - ii) sufficiently sturdy so as not to present a hazard through risk of toppling or collapse or through risk of portions coming loose that could become a hazard.
- f) Notwithstanding any of the regulations set out in this by-law, no person shall erect, construct or permit to be erected or constructed a fence that, in the opinion of the By-Law Enforcement Officer:
- i) obstructs pedestrian or vehicular traffic; or
 - ii) obscures clear visibility of normal approaching pedestrian or vehicular traffic
- g) No person shall attach or cause or permit the attachment of any sign or other advertising device to a fence of open type construction.
- h) All fences constructed on what is, or is planned to be, a temporary basis shall comply with all relevant provisions of this by-law.
- i) 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, and was built in accordance with the regulations of the by-law existing prior to the adoption of this by-law.
- j) If a swimming pool fence is replaced (due to and including but not limited to; age, natural wear, damage etc.), the replacement swimming pool fence shall be constructed in accordance with the provisions of this by-law.

3. RESIDENTIAL FENCES

- a) No person shall erect, cause or permit to be erected a fence on a Residential Lot except in accordance with Sections 3b) through 3e) inclusive.
- b) A fence within a Front Yard shall not exceed a height of 0.91 metres (3 feet) measured from the ground level if a solid type construction or a maximum height of 1.8 metres (6 feet) measured from the ground level if of open type construction
- c) A fence within a Sight Triangle shall not exceed a height of 1 metre (3.2 feet) measured from the

ground.

- d) A fence within any rear yard or side yard shall not exceed a height of 1.8 metres (6 feet) measured from the ground level with the exception of a boundary fence between a Residential Lot in a commercial zone where the abutting property is being used for a commercial purpose, in which case Section 4 may apply.
- e) Despite Section 3b), where a front yard abuts a rear yard of an adjacent corner lot, a fence not exceeding a height of 1.8 metres (6 feet) may be erected along that portion of the lot line between said Lots, having regard to the site triangle requirements of Section 3c).

4. SWIMMING POOL ENCLOSURE FENCES

- a) No person shall keep a privately-owned outdoor swimming pool in the municipality unless such pool or the land or a part of the land on which such pool is located is effectively fenced and/or enclosed in accordance with the following provisions:
 - i. Every fence shall be not less than 1.52 metres (5 feet) in height.
 - ii. Every fence shall be so constructed as not to have openings, holes or gaps larger than four inches in its horizontal dimension, except lattice-type and chain link fences, which openings shall not exceed four square inches.
 - iii. Every fence shall be so constructed that all horizontal or diagonal structural members of the fence shall be located on the inside or pool side of the fence a minimum of 0.76 metres (2.5 feet) apart
 - iv. Every fence shall be so constructed that it cannot be used in a manner similar to a ladder.
 - v. A dwelling, house, building or accessory building may be utilized to effectively enclose any pool.
 - vi. Every fence shall be so constructed so as to have as the only means of entry by gates or doors.
 - vii. With the exception of the door of any dwelling or house which forms a part of the enclosure, all gates or doors shall be equipped with a self-closing device and a self-latching device on the pool side at the top of the gate to the intent that all gates or doors will remain securely closed when not in actual use.
 - viii. All gates shall comply with sections 4.a.i - 4.a .vii.
- b) A boundary fence which complies with the provisions of this section shall be deemed a sufficient fence.
- c) Except for outdoor swimming pools that contain 0.6 metres (2 feet) of water or less, the provisions of this by-law shall apply to all privately-owned outdoor swimming pools regardless of

the date of construction of such swimming pool.

- d) Pools shall be fenced in accordance with the above regulations within seven days of being filled with water.
- e) Every swimming pool shall be enclosed by a temporary fence which is of sturdy construction during installation of the swimming pool so as to be capable of preventing unauthorized entry.
- f) Fences, or their equivalent, when forming part of the required swimming pool enclosure shall contain no barbed wire, electrical wiring, sharp projections, or any other dangerous characteristics either on the outside or the inside.

5. NON-RESIDENTIAL FENCES – COMMERCIAL, INSTITUTIONAL, INDUSTRIAL

- a) No person shall erect, cause or permit to be erected a fence on a non-residential lot within a Commercial, Institutional or Industrial zone as defined in the Zoning By-law except in accordance with Sections 5b) through 5i) inclusive.
- b) A fence within any yard shall not exceed a height of 3 metres (9.8 feet).
- c) A fence to enclose a front yard shall be set back from the front lot line a minimum of 4.6 metres (15 feet).
- d) A fence within a Sight Triangle shall not exceed a height of 1 metre (3.2 feet) measured from the ground level.
- f) The owner of any property used for multiple-dwelling, commercial, institutional, or industrial purposes shall install and maintain a visual barrier not less than 1.2 metres (4 feet) and not more than 2.0 metres (6.6 feet) in height where such property abuts a residential property and is used for the parking, access, and exiting of vehicles by tenants, employees, or customers or when used for the operation of equipment or when used for the storage of goods, or when used for any other purpose which may detract from the enjoyment and good appearance of the abutting residential property unless otherwise considered necessary by the Municipality and provided for in a site plan agreement as per Clause 9(b) of this By-law.
- g) Despite 4. f) no visual barrier shall be required within 3 metres (9.8 feet) in distance from a front lot line or in contravention of the applicable zoning by-law.
- h) Where a local zoning by-law, site plan or subdivision agreement entered into under the provision of the Planning Act, R.S.O. 1990, c.P. 13, provides for no fence or a different maximum height for fencing, the height of the fence may be higher than permitted in this section provided it is in compliance with such zoning by-law or agreement.
- i) Where outside storage is permitted by the Zoning By-law, the owner shall completely enclose such outside storage areas with fencing at least 1.52 metres (5 feet) in height, which fencing shall be constructed in such a fashion as to block the view of items stored. Such fenced

enclosure shall be located at least 6.0 metres from any street and the area exterior thereto shall be landscaped, save and except any adjoining building, driveway, or parking or loading area.

6. NON-RESIDENTIAL FENCES – AGRICULTURAL: LIVESTOCK

- a) No person shall erect, cause or permit to be erected a fence on a non-residential lot within a Agricultural zone as defined in the Zoning By-law except in accordance with Section 6b) inclusive.
- b) Every owner on whose property livestock are being kept shall prevent the livestock from leaving the property at any time by constructing a perimeter fence or other interior enclosure or enclosures which meet or exceed the standards as set out below in subsection one (1) and two (2), and further thereto, such owner shall keep the said perimeter fence or other interior enclosure or enclosures in good repair.

Non-Electric Fence

Minimum Height: i) for cattle, horses, donkeys and ponies: 1.22m (4 feet)

ii) for goats, sheep, llamas and swine: 0.91m (3 feet)

Material: i) page wire: minimum eight (8) wires for cattle, horses, donkeys and ponies; and minimum ten (10) wires for goats, sheep, llamas and swine or;

ii) board wood: minimum three (3) boards

Posts: i) anchor, corner and stretch posts – wood fiberglass or Plastic

ii) line posts – wood, fiberglass or plastic, minimum 0.1m (0.3 feet) top or t-bar steel

Electric Fence

Minimum Height: 1.22 m (4 feet)

Provisions: Refer to Section 8 of this By-law

7. FENCES WITH BARBED WIRE OR OTHER BARBED MATERIAL

- a) No person shall erect or cause to be erected on any Lot used for residential or commercial purposes as identified in the Zoning By-law, a fence which either contains, or is constructed of, barbed wire or other barbed or sharp material.

b) Barbed wire or other barbed or sharp material may be used on the top and to the outside of fences that are erected on a Lot which meet all the following criteria:

- i) the lot is zoned Industrial in the Zoning By-law;
- ii) the barbed wire is located not less than 1.52 metres (5 feet) above ground level;
- iii) the outward projection of the barbed wire does not project onto a neighboring property.

8. ELECTRICAL FENCES

a) Except as provided in Subsection (b) of this Section, no person shall erect or cause to be erected an electrical fence on any lot in the Municipality of Southwest Middlesex.

b) An electrical fence using direct current may be erected on land in Agricultural Zones as defined in the Zoning By-law providing it is being lawfully used for agricultural purposes and on the condition that any person erecting an electric fence for the purpose allowed under this section shall comply with the following.

- i) The fence shall have a controller which meets CSA (Canadian Standards Association) Standard C22.2 No.103-M92.
- ii) The fence is designed and erected solely to contain livestock as defined in the Zoning By-law; and
- iii) The electric fence must have a minimum voltage of 3000 kv; and
- iv) The fence has attached to it, at approximately 15 metre (49.2 feet) intervals, a sign stating that the fence carries electricity.

9. MAINTENANCE OF FENCES

a) An owner or occupant of land, or an employee or agent of the owner or occupant of land, may enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any building, fence or other structure on the land of the owner or occupant provided that:

- i) The owner or occupant enters the adjoining land only to the extent necessary to carry out repairs or alterations;
- ii) The person exercising the power of entry displays, or on request, produces proper identification;
- iii) The owner or occupant provides reasonable notice of the proposed entry to the occupier of the adjoining land; and
- iv) The owner or occupant of land, in so far as is practicable, restores the adjoining land to its original condition and shall provide compensation for any damages caused by the entry or by anything done on the adjoining land.

10. GENERAL

a) In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the feminine gender shall include the masculine and, further, the converse of the foregoing also applies where the context so requires.

- b) Notwithstanding any other provision in this By-law, a fence, which is required and approved as a condition of a site plan agreement for the development or redevelopment of land, shall be deemed to be in conformity with the provisions of this by-law.
- c) Any person may apply to the Committee of Adjustment for a minor variance from the requirements of this by-law. The Committee may grant a minor variance if, in its opinion, the general intent and purpose of the Fence By-law are maintained or if the Committee is satisfied, after allowing input from the applicant and property owners within 60 metres (200 feet), that the variance is appropriate. The Committee may attach terms and conditions to the minor variance. A minor variance shall be invalid if the terms and conditions are contravened.

11. ADMINISTRATION AND ENFORCEMENT

- a) In the event that the Municipality receives complaints regarding a fence, the Bylaw Enforcement Officer shall inspect such fence. If, in the opinion of the Bylaw Enforcement Officer, the fence does not meet provisions of the by-law, the By-law Enforcement Officer shall require, in writing, the owner, agent or person responsible for the fence to comply with the provisions of this by-law. Failure to comply shall be considered a contravention of the by-law which is subject to the penalty set out in Section 11 of this by-law.

Notice in writing is deemed delivered when it has been:

- i) personally served; or
- ii) sent by regular mail to the address of the owner, as shown on the last revised assessment roll, on the seventh day after mailing; and/or
- iii) when posted on the offending fence.

12. PENALTY

Any person who contravenes a provision of this By-law is guilty of an offence and is liable, upon conviction, to the maximum penalty as prescribed by the *Provincial Offences Act*, as amended or revised from time to time, and as set out in Schedule "A" attached hereto. All such fines shall be recovered under the *Provincial Offences Act*.

Schedule "A" being the Set Fine Schedule and attached hereto shall constitute part of this By-law.

13. SEVERABILITY

If a court of competent jurisdiction declares any section or subsection of this bylaw invalid, the remainder of this by-law shall continue in force unless the court makes an order to the contrary.

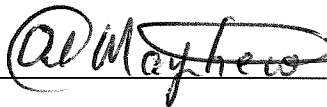
14. TITLE

This By-law shall be referred to as the "Southwest Middlesex Fence By-law".

15. FORCE and EFFECT

1. This by-law hereby repeals By-law No. 3/2005 and By-law No. 2015/109, as amended;
2. This by-law comes into force and effect on the date of passing thereof.

Read a FIRST and SECOND, time this 25th day of August, 2021.

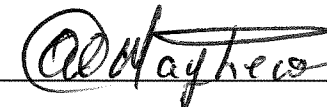


Allan Mayhew, Mayor



per. *Jill Bellchamber-Glazier*, DEPUTY CLERK
Jill Bellchamber-Glazier, CAO-Clerk

Read a THIRD and FINAL, time this 25th day of August, 2021.



Allan Mayhew, Mayor



per. *Jill Bellchamber-Glazier*, DEPUTY CLERK
Jill Bellchamber-Glazier, CAO-Clerk

MUNICIPALITY OF SOUTHWEST MIDDLESEX

PART 1 – Provincial Offences Act

Regulation of Fences within the Municipality of Southwest Middlesex – By-law No. 2021/062

SCHEDULE 'A'

Short Form Wording and Set Fines

Item	Short Form Wording	Provision Creating or Defining Offence	Set Fine
1	Erect a swimming pool fence without a swimming pool fence permit	Section 2 (a)	\$150.00
2	Replace swimming pool fence without obtaining a permit	Section 2 (a)	\$300.00
3	Erect a fence of restricted colour, pattern and/or materials	Section 2 (e)	\$300.00
4	Failure to erect or maintain a fence that is sturdy and in good repair	Section 2 (f) (i)	\$300.00
5	Erect a fence that obstructs pedestrian or vehicular traffic	Section 2 (f) (ii)	\$300.00
6	Attach an advertising device to a fence of open type construction	Section 2 (g)	\$300.00
7	Erect a residential fence in excess of height restrictions	Section 3	\$300.00
8	Erect a swimming pool not enclosed by a swimming pool fence	Section 4 (a)	\$300.00
9	Failure to equip swimming pool fence gate with self-closing/self-latching device	Section 4 (a) (vii)	\$300.00
10	Failure to enclose a swimming pool with temporary fencing during installation	Section 4 (e)	\$300.00
11	Erect a non-residential fence in excess of height restrictions	Section 5	\$300.00
12	Erect a non-residential fence in excess of height restrictions	Section 6	\$300.00
13	Failure to contain livestock within a perimeter fence	Section 6 (b)	\$500.00
14	Erect a fence with barbed material not within provisions of Section 7	Section 7	\$500.00
15	Erect an electric fence not within provisions of Section 8	Section 8	\$500.00

NOTE:

The general penalty provision for the offences listed above is Section 12 of By-law No. 2021/062, a certified copy of which has been filed.