

Swimming Pool Fence By-law

PS-5 – Consolidated May 3, 2010

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London
CANADA

**OFFICE CONSOLIDATION
INCLUDING AMENDMENT PS-5-10004 (May 3, 2010)**

PUBLIC SAFETY

By-law PS-5

A by-law to provide for the owners of privately-owned outdoor swimming pools to erect and maintain fences.

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SCHEDULE

Schedule 'A' - Permit fees

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;

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 City of London;

AND WHEREAS it is expedient to impose fees for certain services provided by the Planning and Development Department;

THEREFORE the Municipal Council of The Corporation of the City of London 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 City Council to such position pursuant to the *Building Code Act*.

City - defined

"City" shall mean The Corporation of the City of London.

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 1, 1993

This by-law shall apply to all swimming pool fences constructed or replaced in the City on or after January 1, 1993.

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 December 31, 1992, and was built in accordance with the regulations of the by-law existing prior to January 1, 1993.

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 December 31, 1992, 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 City 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 December 31, 1992 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.

3.2.1 Have or keep swimming pool – without permit

No person shall have or keep a swimming pool without having a swimming pool fence permit from the Chief Building Official in accordance with this by-law.

3.2.2 Have or keep swimming pool – not enclosed by fence

No person shall have or keep a swimming pool that 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, have, keep or maintain a swimming pool fence gate with a self-latching device less than 122 centimetres (48 inches) above ground level, in accordance with this by-law.

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 keep, have or 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 Use of materials – pool fence

No person shall construct, cause to be constructed, or maintain any pool fence which does not conform to the requirements of Section 2.16 of the Fence By-law PS-1.

3.12 Completion of swimming pool fence – filling with water

(a) No person shall place water in a swimming pool or cause or permit water to remain in the swimming pool if the required swimming pool fence is not completely constructed in compliance with the requirements in this by-law.

Construction of swimming pool – swimming pool fence permit – temporary fence – filling with water

(b) Despite subsection 3.12(a), where a person is constructing or causing to be constructed a swimming pool for which a swimming pool fence permit has been issued, a person may place water in a swimming pool or cause or permit water to remain in the swimming pool if there is temporary fencing in place in compliance with section 5.10 of this by-law, but only where such temporary fencing is in place for no longer than 120 days after the issuance of the swimming pool fence permit.

Existing swimming pool – temporary fence – filling with water

(c) Despite subsection 3.12(a), where a swimming pool is in existence on the date of the passing of this by-law, a person may place water in a swimming pool or cause or permit water to remain in the swimming pool if there is temporary fencing in place in compliance with section 5.10 of this by-law, but only where such temporary fencing is in place for no longer than 30 days, or such longer period of time if approved in writing by the Chief Building Official.

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 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) an undertaking to repair damage to City property as required by-law.

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 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 or climbable fixture or feature

The height of the swimming pool fence, including any gates, shall be measured from ground level or from any climbable fixture or feature on the exterior side of the swimming pool fence.

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

- (1) Every person constructing a pool shall maintain temporary fencing surrounding the pool during all phases of construction such that unauthorized access is prevented.
- (2) Every person constructing a pool shall ensure that the temporary fencing required in (1) above complies with all of the following requirements:
 - (a) shall be a minimum of 1.2 metres in height;
 - (b) if chain link, plastic mesh or wire fencing, it shall have no openings greater than 5 centimetres;
 - (c) if other than chain link, plastic mesh or wire fencing, it shall have no openings greater than 10 centimetres;
 - (d) shall have vertical support by T bar posts or similar posts at a maximum separation distance between posts of 2.4 metres;
 - (e) shall have a horizontal support near the top and bottom of the fence, which shall be wood, wire or rope; which will ensure the fence is kept tight between posts; and
 - (f) shall not have clearance from the surface below to the underside of the temporary fence of greater than 5 centimetres

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 City of London 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 City 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 Corporation of the City of London 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

By-law PS-2 passed on November 15, 1993 and all of its amendments are hereby repealed.

8.2 Effective date

This by-law comes into force on April 7, 1997.

Passed in Open Council on April 7, 1997.

Dianne Haskett
Mayor

Jeff A. Malpass

First Reading - April 7, 1997
Second Reading - April 7, 1997
Third Reading - April 7, 1997

SCHEDULE 'A'
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.