

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2005-21

Being a By-law requiring the owners of privately-owned outdoor swimming pools, within the Town of Amherstburg, to erect and maintain fences around such swimming pools.

WHEREAS section 11 of the *Municipal Act*, 2001, S.O. 2001, c. 25 (hereinafter the “*Municipal Act*”) authorizes a municipality to pass by-laws respecting fences;

AND WHEREAS section 9(3) of the *Municipal Act* authorizes a municipality to regulate or prohibit matters pertaining to fences and as part of that power, to provide for a system of approvals and to impose conditions as requirements of obtaining, continuing to hold or renewing the approval;

AND WHEREAS section 130 of the *Municipal Act* authorizes a municipality to regulate matters related to the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS section 427 of the *Municipal Act* authorizes a municipality to direct a matter or thing to be done under a by-law to be done at the person’s expense should the person fails to do so, and to recover the costs of doing the thing or matter by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF

THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:

1. SHORT TITLE:

This By-law may be cited as the “Swimming Pool Enclosure By-law”.

2. DEFINITIONS:

In this By-law:

- a) “Chief Building Official” means the Chief Building Official appointed by the Town of Amherstburg or his/her designate;
- b) “Corporation” means the Corporation for the Town of Amherstburg.
- c) “Council” means the Council of the Corporation of the Town of Amherstburg;
- d) “Deck” means an open, unroofed porch or platform extending from a house or other structure;

- e) “Effective Ground Level” means, for any point at a particular location, the highest level of the ground within a four metre radius measured horizontally from the point. For the purposes of this definition a floor or pool deck may be considered as the ground.
- f) “Fence” means any barrier or barricade, constructed of chain link metal or of wood, stone, metal or material having an equivalent degree of strength, that is used to enclose and/or define property boundaries and/or to enclose a swimming pool, and includes any gate or entrance attached to and forming part of a fence, but does not include a wall;
- g) “Gate” or “Entrance” means any part of a fence or wall through which access may be gained to a swimming pool area, and includes a swinging or sliding barrier used to fill or close an access, and also includes a door;
- h) “Hydro Massage Pool” includes those pools commonly referred to as a “hot tub”, “whirl pool”, “jacuzzi” or “spa”;
- i) “Maintain” means to carry out repairs of any part or parts of a swimming pool fence so that it can properly perform the intended function, and so that such fence is in accordance with this By-law;
- j) “Owner” means the registered owner of the lands or premises, and includes a lessee or tenant, firm, corporation, club or incorporated society;
- k) “Person” means an individual, business, firm or corporation, association or partnership.
- l) “Premises” means a lot under registered ownership and includes all buildings and structures thereon;
- m) “Private Property” means those buildings, structures, lands and premises within the Town of Amherstburg that are not owned or occupied by the Town;
- n) “Privately-owned” means owned by a person other than a public or government body, agency or authority;
- o) “Property” means a parcel of land having specific boundaries which is capable of legal transfer;
- p) “Public Property” means property, land, or buildings owned by the Town of Amherstburg, or by the Provincial or Federal government(s);

- q) “Self-closing Device” means a mechanical device or spring which returns a swimming pool fence gate to its closed position within thirty (30) seconds after it has been opened;
- r) “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, and 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;
- s) “Swimming Pool”, for the purposes of this By-law, means any body of water located outdoors on privately-owned property, maintained or used, or which may be used, for swimming, wading or bathing:
 - i) which has a depth of more than sixty (60) centimetres at any point; and
 - ii) which has a surface area of more than one (1) square metre; and
 - iii) which is not completely inside of a building; and
 - iv) which is not owned by government or a local board or commission constituted under any statute or by-law; and
 - v) which is not a pond or reservoir to be utilized for farming purposes; and
 - vi) includes an above ground swimming pool, but does not include a portable wading pool which is less than sixty (60) centimetres in depth and is intended to be emptied on a daily or more frequent basis; but
 - vii) excludes hydro massage pools, given that such pool is equipped with a lockable cover; and
 - viii) excludes a wading water not in excess of sixty (60) centimetres in depth;
- t) “Swimming Pool Enclosure” means a fence or wall or any combination thereof, including any doors or gates, surrounding a privately-owned outdoor swimming pool and restricting access thereto;
- u) “Temporary Fencing” means a device that is intended to temporarily perform the functions of a fence, and is subject to the approval of the Chief Building Official;
- v) “Town” means the Corporation of the Town of Amherstburg;
- w) “Wall” means the exterior surface of one or more sides of a building or structure that is firmly secured to the ground, which surface encompasses, either in whole or in part, the swimming pool area, and includes part of a wall;

3. GENERAL PROVISIONS:

- a) No person shall construct or erect or cause to be constructed or erected a swimming pool, in-ground or above, without first obtaining a building permit from the Chief Building Official;
- b) No person shall construct or erect or cause to be constructed or erected a swimming pool, in-ground or above, without first obtaining a swimming pool enclosure permit from the Chief Building Official;
- c) No person shall connect any drain or water supply directly to a swimming pool without first obtaining a Building Permit from the Chief Building Official;
- d) No person shall place water in or allow water to remain in any swimming pool or swimming pool excavation until such time as fences and gates in accordance with the requirements of this By-law have been installed around such pool or excavation.
- e) 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.
- f) No person shall fail to enclose a swimming pool with temporary fencing during construction of such swimming pool.
- g) No person shall construct or cause to be constructed a swimming pool with a swimming pool fence that does not comply with this By-law.
- h) No person shall fail to equip a swimming pool fence with single gate access with a self-closing device and a self-latching device.
- i) No person shall construct or maintain a swimming pool fence gate with an outside opening self-latching device less than one hundred and twenty-two (122) centimeters above ground level.
- j) No person shall place or store materials against the outside of a swimming pool fence.
- k) No person shall fail to maintain or replace a swimming pool fence in accordance with this By-law.

4. SWIMMING POOL FENCE REGULATIONS:

No person shall construct or maintain a privately-owned outdoor swimming pool within the limits of the Town of Amherstburg, unless such pool or the land or part of the land on which such a pool is located is effectively fenced and/or enclosed in accordance with the following provisions:

- a) Every fence shall be not less than 1.22 metres in height measured from the top of the fence to effective ground level;
- b) Every fence shall be so constructed that it cannot be used in a manner similar to that of a ladder;
- c) A dwelling house, building, or accessory building may be utilized to effectively enclose a swimming pool;
- d) Every fence shall be so constructed so as to have as the means of entry by gates or doors, and:
 - i) 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 with the intention that all gates or doors will remain securely closed when not in use;
 - ii) Each gate must be equipped with a lock and each gate must remain locked when the swimming pool is not in use;
 - iii) Section 4(d)(i) shall not apply to the door of any dwelling house that forms part of the swimming pool enclosure.
- e) The use of barbed wire in any manner, or any device for projecting any electric current, in any connection with or through any such perimeter fence is prohibited;
- f) Sundecks or walkways may be utilized to effectively enclose any pool providing that they are constructed in such a manner as to prevent climbing and must be 1.22 metres in height;
- g) The enclosing must be constructed a minimum of 1.22 metres horizontal distance from any outside structure such as a tree, air conditioning unit, pool filtration equipment, steps, window sills, etc., which might afford a means which would allow the enclosure to be climbed or scaled from the outside;
- h) An enclosure is to be increased to a height of 1.83 metres for a distance of 3 feet on each side of any structure which could constitute a climbing hazard;

- i) 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;

5. ABOVE-GROUND SWIMMING POOLS:

- a) For the purposes of this By-law, above-ground privately-owned outdoor swimming pools are considered to require the same enclosures around the entire pool as those for in-ground pools, with the exception that:
 - i) A separate enclosure is not required for above-ground pools which have, as an integral part of their construction, sides which are a minimum of 1.22 metres high measured from effective ground level. Such pool sides are to be constructed in a manner which prevents climbing, and the use of horizontal members which could be used in a manner similar to that of a ladder are prohibited. All equipment such as pool filters and equipment are to be located in a manner which will prevent the use of such equipment in the climbing or scaling of the pool wall. A minimum clear distance of 1 (one) metre will be maintained between any equipment, landscaping, steps, window sills, etc., which might afford a means which would allow the wall to be climbed or scaled;
 - ii) Where pool sides are utilized as an effective enclosure, the access ladder to the pool shall be enclosed in the same manner as that prescribed for in-ground pools and shall be fitted with a self-closing lockable gate. Removable ladders and such devices are acceptable provided they are removed and locked when the pool is not in use. All such enclosures and devices are to be approved by the Chief Building Official;
 - iii) If an above-ground swimming pool has, as an integral part of its construction, a deck which is level with the top of the pool there shall be a fence around the swimming pool area which is at least 914 (nine hundred and fourteen) mm. higher than the deck and at least 914 (nine hundred and fourteen) mm. from the nearest wall of the pool provided that the top of such fence, when measured from ground level, shall not be less than 1.52 metres. Such construction shall be performed in a manner 1.20 metre from any object which may allow for the enclosure to be climbed or scaled from the outside.

- b) No fence shall be required where there is no deck abutting an above-ground swimming pool and the top of the outside wall of such swimming pool is at least 1.22 metres above the level of the ground abutting the wall and which vertical sides are constructed so as not to facilitate climbing, provided access points are fenced in accordance with this By-law and the outside enclosure is equivalent to the standards for fences in this By-law.

6. ADMINISTRATION:

- a) This By-law shall be administered by the Chief Building Official.
- b) The Chief Building Official shall have the right to enter onto any property containing a privately-owned outdoor swimming pool during reasonable hours for the purpose of inspecting the pool fence enclosure.
- c) Where:
 - i) the owner of the land upon which a privately-owned swimming pool is constructed, used or maintained, has not constructed or maintained a fence according to the terms of this By-law; and
 - ii) the owner has been given twenty-four (24) hours notice in writing by personal service or five (5) days notice by registered mail of the default in compliance with the terms of this By-law;
The Chief Building Official may, at the expense of the landowner, undertake such work as is required to remedy the default.
- d) The Town may recover the expenses incurred pursuant to section 4(c) of this By-law by action or in like manner as municipal taxes.
- e) The provisions of this By-law shall apply to all privately-owned swimming pools, regardless of the date of construction of such privately-owned swimming pool.

7. PENALTIES:

- a) Every person who contravenes any provisions of this By-law is guilty of an offence and on conviction shall be liable to a fine as provided for in the *Provincial Offences Act*.
- b) Set fines may be established for certain offences contained in this By-law. Set fines shall be established pursuant to the Provincial Offences Act and shall become effective upon the approval of same by the Senior Judge of the Ontario Court of Justice, Provincial Division.

- c) If deemed an unsafe situation or an emergency, the Town may cause the pool to be temporarily fenced or drained of all water until such time as the required fence has been completed. The cost of such work shall be borne by the property owner and may be collected in a like manner as taxes according to Section 427 of the Municipal Act, as amended.

8. SEVERABILITY:

Should any section, subsection, clause or provision of this By-law be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or any part thereof, other than the part so declared to be invalid.

9. REPEAL

Bylaw 2002-85 is hereby repealed

This By-law shall come into force and take effect on the date of final passage thereof.

Passed this 27th day of June, 2005.

Mayor

Clerk

1st Reading: June 27, 2005
2nd Reading: June 27, 2005
3rd Reading: June 27, 2005

Certified to be a true copy of By-law
No. 2005-21 passed by Council of the
Town of Amherstburg on the 27th
day of June, 2005.

Clerk