



THE CORPORATION OF THE
TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH

BY-LAW NUMBER 61-2002

**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 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 Township of Ashfield-Colborne-Wawanosh;

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

THEREFORE the Municipal Council of The Corporation of the Township of Ashfield-Colborne-Wawanosh 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 Corporation of the Township of Ashfield-Colborne-Wawanosh.

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 whirlpool, 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 designed to be used for swimming or wading, that

- (a) has a depth of more than 60 centimetres (24 inches or 2 feet) at any point; and
- (b) has a surface area of more than 18.5 square metres (200 square feet); and
- (c) is not completely inside a building.
- (d) One piece, inflatable, above ground, backyard swimming pools that come with a cover and are intended to be covered when not in use and have a total surface area of 200 square feet or less and that are set up for use during the summer months and then drained of water and stored without water for the winter months, are exempt from the requirement to obtain a building permit and from the requirements of this by-law.

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

This by-law shall apply to all swimming pool fences constructed or replaced in the Township of Ashfield-Colborne-Wawanosh.

2.3 Existing swimming pool fences – lawfully constructed and maintained

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, and was built in accordance with the regulations of the by-law existing at the time of construction and the swimming pool fence may be maintained in accordance with such regulations.

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 prior to the date of passing of this by-law, the swimming pool fence may be maintained in accordance with such regulations.

2.5 Replacement - swimming pool fencing - compliance - required

Any time a swimming pool fence is replaced, the new fence shall be constructed in accordance with the requirements of 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 Municipal 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 regulations that existed prior to this by-law 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 portions 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 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 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 gate with a self-closing device and a self-latching device.

3.6 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.

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 maintain a swimming pool fence in accordance with this by-law.

Part 4
APPLICATION FOR
SWIMMING POOL FENCE PERMIT

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 in the Building By-Law.

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 the "Building By-Law" for the Township of Ashfield-Colborne-Wawanosh;
- (c) an undertaking to repair damage to Municipal property as required by this 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 that would prevent the passage of a spherical object having a diameter of 10 centimetres (4 inches).

5.5 Structural members – inside enclosure - 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

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 shall be located on the poolside at the top of the gate and shall be locked or latched at all times except when the pool is in use by the owner or the owner's duly authorized agent.

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

Every person erecting, altering, repairing or demolishing a swimming pool fence within the Township of Ashfield-Colborne-Wawanosh 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, a completed undertaking to repair any damage to Municipal 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 a penalty of not more than \$500.00 exclusive of costs for a first offence and a fine of not more than \$1,000.00 exclusive of costs for each subsequent offence; and such fines and costs shall be recoverable pursuant to 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 for The Corporation of the Township of Ashfield-Colborne-Wawanosh appointed pursuant to the *Building Code Act* may, upon such notice as he deems suitable, do such thing(s) 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.

Part 8

REPEAL – ENACTMENT – SEVERABILITY

8.1 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.

8.2 By-law - previous

All previous swimming pool fence By-laws of the former municipalities comprising the Township of Ashfield-Colborne-Wawanosh, are hereby repealed.

8.3 Effective date

This by-law shall take effect on the final passing by the Township of Ashfield-Colborne-Wawanosh.

READ a FIRST, SECOND and THIRD TIME and FINALLY PASSED this 22nd DAY OF AUGUST, 2002.

Original signed by
Reeve, Ben Van Diepenbeek

Original signed by
Administrator/Clerk-Treasurer, Mark Becker