

THE CORPORATION OF THE MUNICIPALITY OF BLUEWATER

BY-LAW NUMBER 6-2020

Being a by-law to require fencing of
privately owned swimming pools

WHEREAS the *Municipal Act*, 2001 S.O., C.25, S.11(3), par. 7, provides that a municipality may pass by-laws requiring owners of privately-owned outdoor swimming pools to erect and maintain fences and gates around swimming pool and for prescribing the height, description and manner of erecting such fences and gates;

AND WHEREAS Section 391 of the *Municipal Act*, 2001, authorizes a municipality to impose fees or charges on persons for services or activities provided or done by or behalf of it;

AND WHEREAS the Council for the Municipality of Bluewater deems it expedient to include provisions that permit laying of set fines under the Provincial Offences Act;

NOW THEREFORE the Council of the Corporation of the Municipality of Bluewater enacts as follows:

This By-law may be referred to as the "Swimming Pool Enclosures" by-law.

1. Definitions

"Chief Building Official" shall mean the person appointed by the Municipality of Bluewater Council to such position pursuant to the Building Code Act.;

"Exterior Face" shall mean the side of the swimming pool enclosure from which access to the pool is to be prevented;

"Fence" shall mean a wall (other than the wall of a building), gate or other barrier constructed of wood, masonry, metal, vinyl, plastic or other manufactured material, or combination thereof, which is continuous throughout its entire length where required, save and except where access areas and lines of sight are required for safety purposes.

Provincial Offences Officer (POO), By-law Enforcement Officer (BLEO), Municipal Law Enforcement Officer (MLEO) shall mean the person appointed, by by-law, by the Municipality of Bluewater for the purposes of administering and enforcing the provisions of this By-law;

"Owner" shall include a lessee, tenant, mortgagor in possession and a person occupying or in charge of any property;

“Swimming Pool” shall mean a structure, basin, chamber or tank containing or capable of containing water and designed to be used for swimming; and any body of water any part of which is contained by artificial means and located outdoors on privately owned property, excluding bubble soft-sided pools, and which is capable of holding water in excess of 0.6 m (24 inches) deep. For clarity, a Swimming Pool does not include a pond which is used only for ornamental purposes; agricultural, horticultural or industrial purposes; a stormwater management pond; a reservoir for firefighting or a fish hatchery;

“Swimming Pool Enclosure” means a fence, wall or other structure, including doors and gates, surrounding a swimming pool restricting access thereto;

“Site Plan” shall mean a plan showing the boundaries of the lot and the exact location of all existing buildings or structures and the proposed pool location with an elevation view of the fence enclosure detailed.

2. Application for a Permit

2.1 No Person shall erect or cause or authorize a swimming pool enclosure to be erected or altered on a property without first obtaining a permit from the Municipality;

2.2 An application for a permit to construct a fence around a swimming pool (“swimming pool enclosure”) shall be submitted to the Chief Building Official together with drawings in duplicate showing all details of the proposed work, together with a fee of \$150.

2.3 A site plan showing the location of the proposed pool should be submitted to the Chief Building Official with each application. The location of the swimming pool on the property shall be in accordance with the Municipality of Bluewater Zoning By-law and all applicable laws.

3. Required Swimming Pool Enclosure and Limitations

Every owner shall comply with the following requirements:

3.1 The owner of any lands on which a privately-owned outdoor swimming pool is located or erected, or proposed to be located or erected, shall install and maintain in good order the enclosure around the entire swimming pool area, the purpose of such enclosure being to render the pool area inaccessible to children acting on their own.

3.2 No person shall fill a privately-owned outdoor swimming pool with water or allow water to remain therein unless the required swimming pool enclosure, prescribed by the by-law, has been inspected and final approval has been obtained from the Chief Building Official.

3.3 The swimming pool enclosure required under this by-law shall extend from the effective ground level to a minimum vertical height of:

- (i) 5'0" (1.52 metres) in the case of a privately-owned outdoor swimming pool serving a detached or semi-detached dwelling unit or a multiple family development or not more than four dwelling units.
- (ii) 6'0" (1.83 metres) in the case of a privately-owned outdoor swimming pool serving a multiple family development containing more than four dwelling units; or a commercial development; such as a hotel, motel, swimming pool sales display or a club.

3.4 The wall of a building may form a part of the required swimming pool enclosure, except where such a provision would result in any of the following being located within said pool enclosure;

- (i) a main building entrance;
- (ii) a service entrance to a multiple occupancy building containing more than four dwelling units; and
- (iii) a utility meter or furnace oil filler pipe which require periodic inspection or attendance by utility or service personnel.

3.5 The required swimming pool enclosure (except for any building walls which may form part thereof) shall have no attachments on the exterior face such as horizontal or diagonal bracing, horizontal rails or other members which would facilitate climbing.

3.6 No person shall place, pile, attach or lean or authorize or direct the placing, piling, attaching or leaning or permit this activity of any object, material or equipment against or within 1.0 metres of the exterior face of a swimming pool enclosure which would facilitate climbing, or diminish the structural integrity of the swimming pool enclosure, or render the swimming pool enclosure in non-conformity with this by-law.

3.7 The swimming pool enclosure shall be located at least 5'0" (1.52 metres) distance from any outside structure, fence, tree, air-conditioning unit, meter, steps, ledges, window sills, etc., which might afford means whereby the enclosure could be scaled from the outside by a child.

3.8 If, due to the type of construction, it is necessary to fill a new pool immediately after installation, the owner shall apply for a permit to erect/install a temporary fence, which must be approved by the Chief Building Official, who will be allowed to grant a permit for a period not longer than thirty (30) days. In any case, no person shall fill the pool before approval is given by the Chief Building Official.

3.9 The swimming pool enclosure shall be constructed in accordance with this by-law.

3.10 No person shall fill a privately-owned outdoor swimming pool with water or allow water to remain therein unless the required swimming pool enclosure was erected pursuant to a swimming pool enclosure permit, or the required swimming pool enclosure is in compliance with this by-law.

4. Fences as Enclosures

Every owner shall comply with the following requirements:

4.1 That the owner of every swimming pool within 48 hours of construction of the swimming pool erect and maintain a permanent fence completely enclosing the pool, the fence shall conform to the following specifications:

4.2 A fence or its equivalent which is to form a swimming pool enclosure or part thereof shall be of:

- (i) chain link construction
- (ii) vertical board construction
- (iii) wrought iron
- (iv) vertical metal panels

4.3 A fence of chain link construction 5'0" (1.52 metres) high shall:

- (i) have a mesh not greater than 2" (50 mm) consisting of 12 gauge Galvanized steel wire, or 14 gauge Steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to 12 gauge Steel wire.
- (ii) be supported by a minimum 1.5" (3.81 cm) galvanized steel posts spaced not more than 10 feet (3.05 metres) apart. Such posts must extend at least three feet below grade and be encased in concrete at least 2" (5 cm) thick all around.
- (iii) have top and bottom rails firmly fastened to the upright posts, made a minimum 1.25" (3.18 cm) galvanized steel pipe. (A galvanized steel tension rod ½" (0.7 cm) diameter may be substituted for the bottom rail).

4.4 A fence of chain link construction 6'0" (1.83 metres) high shall-

- (i) have mesh not greater than 2" (50 mm) consisting of 12 gauge Galvanized steel wire, or 14 ga. Steel wire covered with vinyl or other approved plastic which would yield a total thickness equivalent to 12 gauge Steel wire.
- (ii) be supported by minimum 1.5" (3.81 cm) galvanized steel posts spaced not more than 10'0" (3.05 metres) apart. Such posts must extend at least four feet below grade (1.22 metres) and be encased in concrete at least 2" (5 cm) thick all around.
- (iii) have top and bottom rails firmly fastened to the upright posts, made of 1.25" (3.18 cm) galvanized steel pipe.

4.5 A fence of wood construction shall:

- (i) have vertical boarding 1" thick (2.5 cm) nominal attached to a top and bottom rail in such a manner as to not facilitate climbing from the outside. Such vertical boards must not be less than 1"x4" (2.5 x 10 cm) nominal and must be spaced not more than 1.5" (3.81 cm) apart.
- (ii) be supported by cedar or treated posts at least 4"x4" (10x10 cm) nominal, spaced not more than 8' (2.44 metres) apart. Such posts shall extend at least 3' (91 cm) into the ground for a 5'0" (1.52 metres) high fence.
- (iii) be supported by cedar or treated posts at least 4"x4" (10x10 cm) nominal, spaced not more than 8' (2.44 metres) apart. Such posts shall extend at least 4' (121.9 cm) into the ground for a 6'0" (1.83 metres) high fence.
- (iv) have that portion of the post below the ground level treated with an approved wood preservative.
- (v) have top and bottom rails at least 2" (5 cm) x 4" (10 cm) nominal dimensions.
- (vi) vertical metal panels may be substituted for vertical boarding.

4.6 A fence of any other construction which might yield an equivalent or great degree of safety to that specified above may be approved by the Chief Building Official upon receipt of complete plans and specifications for such fence.

4.7 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.

4.8 A fence of wrought iron construction shall:

- (i) have maximum spacing 4" (100 mm) of vertical members attached to a top and bottom rail with a minimum spacing of 4'0" (1.2 metres) between rails.
- (ii) have construction principles similar to wood fence construction.

4.9 A fence of vertical metal panel construction shall:

- (i) have construction principles similar to wood fence construction.

5. Gates and Entrances to the Pool Area

Every owner shall comply with the following requirements:

5.1 Gates which form a part of the swimming pool enclosures shall be:

- (i) of such height and of such construction as to provide a degree of safety and rigidity equivalent to or greater than that of a required fence.
- (ii) supported on substantial hinges.
- (iii) self-closing and self-latching with the latching device.

5.2 Doors which form a part of the swimming pool enclosure but which do not lead directly from a private dwelling unit or rooming unit shall be:

- (i) of such height and of such construction as to provide a degree of safety and rigidity equivalent to or greater than that of a required fence.
- (ii) supported on substantial hinges.
- (iii) self-closing and self-latching with the latching device located at least 48" above the bottom of the door.

5.3 All entrances to the pool area which form part of the swimming pool enclosure, whether they be doors, windows or gates, shall be kept locked at any time when the pool contains 15" (34 cm) or more of water and is not attended by a responsible person.

6. Maintenance of Swimming Pool Enclosure

The subsections contained herein apply whether the swimming pool enclosure was erected before or after the effective date of this by-law.

6.1 Every Owner of a property on which a swimming pool enclosure is required, shall maintain the swimming pool enclosure in good repair and condition at all times and in a manner and to such an extent as to ensure, at all times, maximum security and protection against entry to the swimming pool by children and unauthorized persons.

6.2 Every Owner of a property on which a swimming pool enclosure is required, shall at all times maintain in good repair and in good working condition at all times:

- i. all gates in the swimming pool enclosure; and,
- ii. all locking devices which provide entrance to the swimming pool area.

7. Above Ground Swimming Pools, Hot Tubs, Whirlpools and Spas

7.1 Certain above-ground privately-owned swimming pools, which have as an integral part of their construction, vertical walls and fencing around the pool that can be used as part of a pool enclosure provided that the vertical walls and fencing are at least 5'0" (1.52 meters) in total height measured from finished grade to the top of the vertical wall and fencing, and also provided that a suitable ground constructed enclosure surrounds the entrance ladder, and any other equipment such as a heater, filter, so as to present an inaccessible pool area incapable of being scaled by a child acting on their own.



7.2 Structures known as "hot tubs", "whirlpools" and "spas" when installed above ground need not comply with Part 3, 4 and 5 of this By-law provided that a substantial cover is permanently fixed to the structure and is locked to prevent access when the structure is not in use.

8. Inspection

Administration of this by-law is assigned to the Chief Building Official who has the authority to do the following:

8.1 Perform all administrative functions, conduct all inspections or investigations referred to herein and those incidental to and necessary for the due administration and implementation to this by-law;

8.2 Delegate the performance of any function under this by-law to a person appointed, by by-law, by the Municipality of Bluewater, such as a Provincial Offences Officer (POO), By-law Enforcement Officer (BLEO), Municipal Law Enforcement Officer (MLEO) for the purposes of administering and enforcing the provisions of this By-law;

8.3 The Chief Building Official or designate may issue a Notice of Non-compliance to an owner for any infraction of the by-law.

8.4 If a Notice of Non-compliance is not complied with within the time prescribed therein, the Municipality may do any or all of the following, on behalf of the owner:

- a) remove, replace and/or repair parts of or the entire swimming pool enclosure; or,
- b) drain the swimming pool of water.

8.5 Any materials or structures removed by the Corporation under subsection 8.4 may be disposed of by the Municipality in any manner as it deems appropriate.

8.6 The Municipality may recover the costs from the owner for the work done by the Municipality on behalf of the owner under subsections 8.4 and 8.5 by action or in like manner as municipal taxes within the meaning of Section 446 of the *Municipal Act*.

9. Penalty

- (i) Every person who contravenes any provision of this by-law is guilty of an offence and shall be liable to a fine as provided for in the *Provincial Offences Act*, and in accordance with Schedule "A" Set Fines Schedule attached hereto.
- (ii) Upon conviction, 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.
- (iii) No person shall provide false information or give a false statement to an officer, employee and/or agent of the Municipality in the lawful exercise of a power or duty under this by-law.
- (iv) No person shall hinder or otherwise obstruct, nor attempt to hinder or obstruct, either directly or indirectly, an officer, employee and/or agent of the Municipality in the lawful exercise of a power or duty under this by-law.
- (v) Every person shall comply with any Order or Notice issued under the authority of this by-law.

10. Effective Date

10.1 This By-law shall come into force on the date of passing thereof.

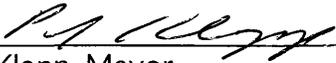
10.2 That By-law 32-2005 is hereby repealed.

11. Schedules

11.1 Schedule "A" (Set Fine Schedule) attached hereto forms part of this By-law.

By-law read a first and second time this 6th day of January, 2020.

By-law read a third time and finally passed this 6th day of January, 2020.



Paul Klopp, Mayor



Chandra Alexander, Clerk

THE CORPORATION OF THE MUNICIPALITY OF BLUEWATER

SCHEDULE 'A' TO BY-LAW NUMBER 6-2020: Swimming Pool Enclosures

PART 1 – Provincial Offences Act
Set Fine Schedule

ITEM	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1.	Construct/cause to be constructed a swimming pool without a swimming pool enclosure permit	Sec. 2.1	\$500.00
2.	Install a swimming pool enclosure that does not conform to by-law requirements.	Sec. 3.1	\$250.00
3.	Fail to maintain a swimming pool enclosure in good order or condition.	Sec. 3.1	\$250.00
4.	Filling a privately-owned outdoor swimming pool with water or allowing water to remain therein prior to a municipal permit being issued	Sec. 3.2	\$500.00
5.	Failure to prevent any attachments to the exterior of the pool enclosure	Sec. 3.5	\$250.00
6.	Place/attach materials against outside of swimming pool enclosure	Sec.3.6	\$250.00
7.	Failure to locate the swimming pool enclosure in accordance with by-law requirements	Sec.3.7	\$250.00
8.	Filling a privately-owned outdoor swimming pool with water or allowing water to remain therein without a temporary fence first being installed.	Sec.3.8	\$250.00
9.	Filling a privately-owned outdoor swimming pool with water or allowing water to remain therein where there is a non-compliant pool enclosure	Sec. 3.10	\$250.00
10.	Failure to enclose swimming pool with fence of at least 5' (1.52 metres) in height	Sec. 4.3	\$250.00
11.	Pool enclosure gate – fail to meet requirements.	Sec. 5.1	\$250.00
12.	Pool enclosure door which does not lead directly from a private dwelling /rooming unit – fail to meet requirements.	Sec. 5.2	\$250.00
13.	Fail to keep all pool enclosure entrances locked and attended as required.	Sec. 5.3	\$250.00
14.	Failure to maintain a pool enclosure in good order or good condition.	Sec. 6.1	\$250.00
15.	Failure to maintain the gates and locking devices of a pool enclosure in good order or good condition that was erected before or after the effective date of the by-law or its amendments.	Sec. 6.2	\$250.00

NOTE: The general penalty provision for the offences listed about is Section 9 of By-law 006-2020, a certified copy of which has been filed.