

Municipality of Central Elgin

BY-LAW NO. 1906

A By-law requiring the fencing of privately owned outdoor swimming pools

WHEREAS the Council of the Corporation of the Municipality of Central Elgin has determined that it is desirable for the safety of persons in the municipality that this by-law be enacted;

AND WHEREAS sections 1 and 8(3)(a)-(c) of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended (hereinafter referred to as the "Municipal Act"), provide that a by-law under section 10 of the *Municipal Act, 2001* respecting a matter, may regulate or prohibit the matter, require persons to do things respecting the matter and provide for a system of licenses and permits respecting the matter;

AND WHEREAS section 10(2) of the *Municipal Act* permits a municipality to pass by-laws respecting structures, including fences and to pass by-laws respecting the health, safety and well being of persons;

AND WHEREAS section 391(1) of the *Municipal Act* authorises a municipality to impose fees or charges on persons for services or activities under section 10 of the *Municipal Act, 2001*, provided or done by, or on behalf of the municipality;

AND WHEREAS section 398(1) of the *Municipal Act* provides that fees and charges imposed by a municipality constitute a debt of the person to the municipality;

AND WHEREAS section 425(1) of the *Municipal Act* authorizes a municipality to pass by-laws providing that a person who contravenes a by-law is guilty of an offence;

AND WHEREAS sections 444 and 445 of the *Municipal Act* provide that where a municipality is satisfied that a contravention of a by-law passed under the *Municipal Act*, has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity and further may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention;

AND WHEREAS section 446 of the *Municipal Act* provides that if a municipality has the authority under a by-law, under the *Municipal Act* or any other Act, to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to

do it, the matter or thing shall be done at the person's expense and that the municipality may recover the costs of doing a matter or thing from the person directed or required to do it, by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

NOW THEREFORE the Council of the Corporation of the Municipality of Central Elgin hereby enacts as follows:

Definitions

1. In this By-law, unless the context otherwise requires:
 - a) "By-law" shall mean this By-Law;
 - b) "Chief Building Official" shall mean the person appointed by Council to such position pursuant to the *Building Code Act*;
 - c) "Engineer" shall mean the person appointed by the Council as Director, Physical Services and Engineer or that person's designate;
 - d) "Fence Height" shall mean the measurement from Grade or Finished Grade to the top of the lowest part of the Swimming Pool Fence;
 - e) "Finished Grade" shall mean the elevation of the ground surface of lands, including any alterations of Grade, and lands upon which soil or paving or other similar material has been deposited, all in accordance with a grading plan, where required, and a permit under this By-law;
 - f) "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, carport or shed which forms part of the Swimming Pool Fence, but shall not include a doorway to the interior of a residence;
 - g) "Grade" shall mean the elevation of the ground surface of lands as it existed prior to any alterations of grading approved under an application for a permit under this By-law;
 - h) "Hydro Massage Pool" shall include those pools commonly referred to as a hot tub, a whirl pool, a Jacuzzi or a spa;
 - i) "Inspector" shall mean the person appointed by Council to such position pursuant to the *Building Code Act*;
 - j) "Maintain" shall mean to carry out repairs of any part or parts of a Swimming Pool Fence or Gate so that Swimming Pool Fence meets the requirements of this By-law;
 - k) "Municipality and Municipal" shall mean the Corporation of the Municipality of Central Elgin;

- l) "Owner" shall include the registered owner of a property, a leasee and/or tenant in possession of the property on which a Swimming Pool is located;
- m) "Replacement" or "Replace" shall mean the construction of a Swimming Pool Fence that takes the place of a previously constructed Swimming Pool Fence;
- n) "Self Closing Device" shall mean a mechanical device or spring that returns a Swimming Pool Fence Gate to its closed position after it has been opened;
- o) "Self Latching Device" shall mean a mechanical device or latch that is engaged each time the Swimming Pool Fence Gate is secured to its closed position, which will not allow the Gate to be reopened by pushing or pulling, and will ensure the Gate remains closed until unlatched by lifting or turning the device directly or by a key;
- p) "Swimming Pool" shall mean an outdoor, or partially outdoor, structure, basin, chamber or tank which :
 - i. contains or is capable of containing water; and
 - ii. is designed for or capable of being used for swimming or wading; and
 - iii. has a depth of more than 60.96 centimeters (24 inches) at any point; and
 - iv. has a surface area of more than 1 square meter (10.8 square feet); and
 - v. is not under the jurisdiction of the Building Code; and
 - vi. is not completely inside a building; and
 - vii. is not owned by government or a local board, school board or commission constituted under any statute or by-law; and
 - viii. includes temporary or inflatable pools; but
 - ix. excludes a pond or reservoir to be used for conservation, sewage treatment or farming purposes; and
 - x. excludes hydro massage pool; and
 - xi. excludes storm water management ponds;
- q) "Swimming Pool Fence" shall mean a wall built of wood, vinyl, plastic, wood substitute, chain link, metal, brick, concrete and/or a structure, deck or a building, or any combination of those, which encloses a Swimming Pool;
- r) "Temporary Fencing" shall mean snow fencing or construction fencing which is constructed and securely fastened to prevent collapse and prevent entry to the Swimming Pool area.

Short Title

- 2. This By-law may be cited as "Swimming Pool Fence By-Law".

Application

3. The provisions of this By-law shall apply within the geographic limits of the Municipality of Central Elgin.
4. Nothing in this By-law shall relieve any person from any obligation to comply with the requirements of any other By-law or other applicable law, or with the requirements to obtain any licence, permit, certificate, authority, approval, consent or variance otherwise required.
5. Where any provision of this By-law conflicts with any provision of any other By-law of the Municipality of Central Elgin, the provision that establishes the higher standard of protection for the health, safety and welfare of the public shall prevail.

General Prohibitions

6. No person shall construct a Swimming Pool or cause a Swimming Pool to be constructed unless a Swimming Pool Fence Permit has been issued by the Chief Building Official.
7. No person shall replace a Swimming Pool Fence without first obtaining a Swimming Pool Fence Permit from the Chief Building Official.
8. No person shall fail to enclose a Swimming Pool with a Swimming Pool Fence or Temporary Fencing during all Swimming Pool construction.
9. No person shall construct a Swimming Pool or cause a Swimming Pool to be constructed with a Swimming Pool Fence that does not comply with this By-law.
10. No person shall construct, have or keep a Swimming Pool which is not completely enclosed by a Swimming Pool Fence in accordance with this By-law.
11. No person shall fail to equip or maintain every Swimming Pool Fence Gate with a Self Closing Device and with a Self Latching Device.
12. No person shall store or place any objects or materials against or near the outside of a Swimming Pool Fence that could facilitate access to the Swimming Pool area.
13. No person shall place water in a Swimming Pool unless the Swimming Pool Fence is completely constructed in accordance with this By-law and an inspection of the Swimming Pool Fence has been completed and approved by an Inspector. The fence required under this provision shall not include a Temporary Fence.

14. No person shall alter in any way the existing Grade or drainage pattern of a property by installation of a Swimming Pool Fence unless a grading plan is approved by the municipal Engineer.

General Standards

15. The Owner of each Swimming Pool within the geographic limits of the Municipality of Central Elgin shall construct and maintain a Swimming Pool Fence around such Swimming Pool in accordance with this By-law.
16. Any Swimming Pool Fence required to be constructed and Maintained pursuant to section 15 must include one or more Gates all of which are constructed and Maintained in accordance with section 20 of this By-law and may include:
 - a) any part of a boundary fence which meets the requirements of this By-law;
 - b) any part of a wall of a building if the part used as part of the Swimming Pool Fence exceeds 1.2 meters (48 inches) in height above Finished Grade on the outside of the Swimming Pool Fence.
17. Every Swimming Pool Fence required to be constructed and Maintained in accordance with section 15 shall be:
 - a) not less than 1.2m (48 inches) in height above Finished Grade at all points on the outside the Swimming Pool Fence;
 - b) constructed so that the shortest dimension of any opening in the Swimming Pool Fence, other than chain link fence, does not exceed 10cm (4 inches);
 - c) constructed so that the maximum diameter of openings in chain link Swimming Pool Fence does not exceed 3.8cm (1.5 inches);
 - d) constructed so that any fence post or other structural members of the Swimming Pool Fence to which any wire, boards, or other fencing materials are attached, are located on the Swimming Pool side of such wire, boards, or other material;
 - e) constructed so that the Swimming Pool Fence cannot be climbed in a manner similar to a ladder;
 - f) constructed so that the only means of ingress and egress from the Swimming Pool area shall be through residential house doors or Gates constructed in accordance with section 20 of this By-law;

18. Ladders that form part of a Swimming Pool Fence for an above ground pool shall be locked or stored in a manner which prevents climbing on such ladders at all times when the Swimming Pool is not in use, or alternatively a fence and Gate around the ladder shall be constructed.
19. Fencing located on top of the Swimming Pool ledge of an above ground pool is acceptable provided a minimum 1.2 meter height is maintained from the Finished Grade to the top of the Swimming Pool Fence.
20. Every Gate included in a Swimming Pool Fence required by section 16 shall be:
 - a) constructed in accordance (a), (b), (c) and (e) of section 17;
 - b) constructed so that any structural member of the Gate to which any wire, board or other fencing materials are attached are located on the Swimming Pool side of such wire, boards, or other materials; and
 - c) equipped with a Self Closing and a Self Latching Device so that, when not in use, the Gate is at all times closed and latched. All Self Latching Devices shall be located at the top of the Gate on the Swimming Pool side of the Swimming Pool Fence.

Undertaking to Ensure Repair

21. Every person who constructs, alters, repairs or demolishes a Swimming Pool Fence or causes a Swimming Pool Fence to be constructed, altered, repaired or demolished and who permits the crossing of municipal owned curbing, sidewalks or paved or grassed boulevards by vehicles delivering or removing materials or performing any construction work, shall:
 - a) submit to the Chief Building Official a signed undertaking, in such form as may be prescribed by the Chief Building Official, whereby the person undertakes to repair any damage caused to municipal property or services, at the Owner's expense; and
 - b) take all necessary steps to prevent building material, waste or soil from being spilled or tracked onto municipal streets by vehicles entering or leaving the property, and all such steps shall be at the Owner's expense and shall be included in the undertaking described in subsection 21(a) above.
22. Any undertaking provided under section 21 above shall not preclude collection of any expenses incurred by the municipality in the manner described in section 34.

Administration

23. This By-law shall be administered by the Chief Building Official or his/her delegate.

24. The occupancy or use of any property within the geographic limits of the Municipality of Central Elgin that does not conform to the standards prescribed in this By-law or the standards referenced in section 28, section 29 or section 32, is prohibited.
25. An application for a permit to construct a Swimming Pool Fence or to replace an existing Swimming Pool Fence shall be made by the Owner or the Owner's authorized agent to the Chief Building Official on such form as may be prescribed by said Official.
26. All applications to construct a Swimming Pool Fence or for Replacement of a Swimming Pool Fence shall include the following:
 - a) site plans showing the location of the existing Swimming Pool and/or proposed Swimming Pool, all existing Swimming Pool Fences and Gates and/or proposed Swimming Pool Fences and Gates, and the location of pool filters and heaters;
 - b) the applicable fee as prescribed in Schedule "A" of this By-law; and
 - c) an undertaking to repair damage to municipal property as required by section 21 of this By-law.
27. The Chief Building Official shall issue a permit for a Swimming Pool Fence where the site plans submitted appear to comply with all applicable regulations and zoning requirements where applicable, the requirements of this By-law have been met and where the applicable fee and the undertaking referred to in section 21 have been provided.
28. 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 in accordance with the regulations and requirements of the applicable By-law which existed prior to the passing of this By-law.
29. Where any Swimming Pool Fence was constructed prior to the passing of this By-Law, the fence may be maintained in accordance with the By-law in force at the time of construction.
30. At such time as a substantial portion of an existing Swimming Pool Fence is replaced, the replacement portion of the Swimming Pool Fence shall be constructed in accordance with this By-law.
31. 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 shall prevail over any other municipal By-law that regulates fencing.
32. Where a Swimming Pool Fence has enclosed a Swimming Pool prior to the passing of this By-Law, that portion of the Swimming Pool Fence shall be deemed to be in conformity should a Swimming Pool be constructed on the abutting properties and some portion of that Swimming

Pool Fence is used to enclose the Swimming Pool on the abutting property provided reasonable modifications are performed to comply with section 17(d) of this By-law.

Enforcement

33. The Chief Building Official or an Inspector may:

- a) enter upon land within the geographic limits of the Municipality of Central Elgin at any reasonable time for the purpose of administering or enforcing this By-law provided that nothing herein authorizes entering a building that is a residence without permission of the occupant; and/or
- b) cause a written Notice to be delivered to the Owner or any other person believed to be in contravention of this By-law, directing that person to correct any condition that constitutes a contravention of this By-law. Where such Notice is delivered it shall specify the nature of the contravention and shall require the condition to be corrected forthwith or within such time as specified, which time may take into consideration any immediate safety concerns or hazard identified by the Official or Inspector; and/or
- c) order the Owner or any other person to stop work relating to the construction, removal or Replacement of a Swimming Pool Fence; and/or
- d) order the Owner to take any remedial action deemed necessary; and/or
- e) order the Owner to drain the pool forthwith.

34. Where the Owner fails to comply with the Notice under section 33(b) or an Order under section 33(c),(d) or (e) of this By-Law, the Chief Building Official or persons designated by the Chief Building Official may, upon such notice as deemed suitable, enter upon the said lands to do such corrective, preventative or remedial work as deemed necessary to ensure compliance with this By-law, in the sole discretion of the Chief Building Official, and at the expense of the Owner. In doing so, the Municipality of Central Elgin, may charge an administration fee of 15% of expenses incurred with a minimum fee of \$100.00, and both the expense and fee may be recovered by the municipality.

35. The fees and expenses recoverable by the Municipality of Central Elgin under this By-law may be recovered by action or be added by the Treasurer of the municipality to the tax roll for the subject property and be collected as property taxes, in the same manner and with the same priorities as property taxes.

Service of Documents

36. Any service required to be given under this By-law is sufficiently given if delivered personally, sent by regular mail to the address shown on the last revised assessment roll or the last known address of the Owner or by posting the notice or order on the affected property.
37. Where service is effected by regular mail, it shall be deemed to be made on the fifth (5) day after the date of mailing. Where service is given personally or by posting on the property, it shall be effective the day served or posted.

Offence and Penalty

38. Every person who contravenes any provision of this By-law or fails to abide by any Order under this By-law is guilty of an offence and, upon conviction, is liable to a fine as provided by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.
39. 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.
40. Any contravention of this By-law is designated as a continuing offence.

Interpretation

41. The captions and headings in this By-law are inserted for convenience of reference only and do not define, limit or enlarge the scope, meaning or intent of any provision.
42. In this By-law, words used in the present tense include the future tense, words in the masculine gender include the feminine and neuter, and the singular number includes the plural and the plural the singular.
43. In this By-law the word "shall" is mandatory and not discretionary.

Validity

44. Should any section, clause or provision of this By-law be held by a court of competent jurisdiction to be invalid, the validity of the remainder of this By-law shall not be affected.

Repeal


1. By-Law No. 204 is hereby repealed.

Enactment

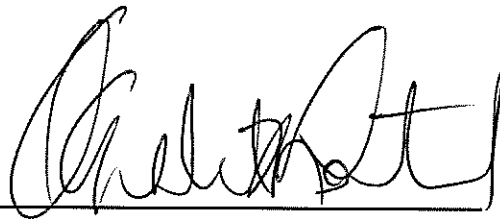
1. NOW THEREFORE the Municipality of Central Elgin enacts Swimming Pool Fence By-Law No. of which shall be in effect on the date of passing.

READ a First and Second time this 14th day of September, 2015

READ a Third time and Finally passed this 14th day of September, 2015.



David Marr
Mayor



Donald N. Leitch
Chief Administrative Officer/ Clerk

SCHEDULE "A"

To By-Law No. 1906

Permit Fees

1. New Swimming Pool Fence permit fee is \$125.00.
2. Replacement of Swimming Pool Fence permit is \$125.00.



SCHEDULE "B"

To By-Law 1906

Municipality of Central Elgin
Building Division
450 Sunset Drive, 1st Floor
St. Thomas, ON, N5R 5V1
Direct Line: 519-631-4860
Fax # 519-631-4036

**UNDERTAKING TO ENSURE REPAIR TO MUNICIPAL PROPERTY
REGARDING SWIMMING POOL FENCE INSTALLATION**

Owner of Property: _____

Address: _____

Other Responsible Person: _____

Municipal Address of the Property: _____

Phone # () _____

Permit # _____

Declaration by Owner or responsible person:

I, _____ have read and understood the Provisions of
(Print Name)

Swimming Pool Fence By-Law _____-2015 as amended, and declare that I will be responsible at my sole expense to repair any damage to municipal property or municipal services services, to take all necessary steps to prevent building material, waste or soil from being spilled or tracked onto municipal streets by vehicles entering or leaving the property and to clean any building material, waste or soil which has been spilled or tracked onto municipal streets, municipal property or adjacent properties during the installation of a Swimming Pool Fence on my property.

Signature of Applicant

Date