

CITY OF ST. THOMAS

BY-LAW NO. 56 – 2011

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

WHEREAS the Council of the Corporation of the City of St. Thomas has determined that it is desirable for the safety of persons in the municipality that a 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 and safety and well being of persons;

AND WHEREAS section 391(1) of the *Municipal Act* authorizes a municipality to impose fees or charges on a person 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 *Municipal Act* authorizes a municipality to pass by-law 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 by 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 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 who which the contravention occurred to do the 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 the municipality may recover costs of doing a matter or a thing from the person directed or required to do it, by action or by adding the cost to the tax roll and collecting them in the same manner as property taxes;

NOW THEREFORE the Council and the Corporation of the City of St. Thomas HEREBY ENACT 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 the City Council to such position pursuant to the *Building Code Act*;
 - c. “City” shall mean The Corporation of the City of St. Thomas
 - d. “City Engineer” shall mean the person appointed by the City Council as Director, Environmental Services and City Engineer or that person’s designate;
 - e. “Fence Height” shall mean the measurement from Grade or Finished Grade to the top of the lowest part of the Swimming Pool Fence
 - f. “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;
 - g. “Gate” shall mean any part of the 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;
 - h. “Grade” shall mean the elevation of the ground surface of lands as it existed prior to any alteration of grading approved under an application for a permit under this By-law;
 - i. “Hydro Massage Pool” shall include those pools commonly referred to as hot tub, a whirl pool, a Jacuzzi or a spa;
 - j. “Inspector” shall mean the person appointed by City Council to such position pursuant to the *Building Code Act* as:
 - i. a building inspector, or
 - ii. a property standards officer; (B/L 162-2020)

- k. "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;
- l. "Owner" shall include the registered owner of a property, a leasee and/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 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 45.72 centimetres (18 inches) at any point; and*
 - iv. *Has a surface area of more than 1 square metre (10.8 square feet); and*
 - v. *Is not completed inside a building; and*
 - vi. *Is not owned by government or a local board, school board or commission constituted under any statute or by-law; and*
 - vii. *Includes temporary or inflatable pools; but*
 - viii. *Excludes a pond or reservoir to be used for conservation, sewage treatment or farming purposes; and*
 - ix. *Excludes hydro massage pool with a lockable lid; and (B/L 162-2020)*
 - x. *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. The By-law shall be cited as "Swimming Pool Fence By-Law"

Application

- 3. The provisions of this By-law shall apply within the geographic limits of the City of St. Thomas
- 4. Nothing in this By-law shall relieve a person from any obligation to comply with the requirements of any other By-law or other application law, or with the requirements to obtain any license, 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 City, 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 contravene any provision of this By-law.
- 7. 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.
- 8. No person shall Replace a Swimming Pool Fence without first obtaining a Swimming Pool Fence Permit from the Chief of Building Official.
- 9. No person shall fail to enclose a Swimming Pool with a Swimming Pool Fence or Temporary Fencing during all Swimming Pool construction.
- 10. 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.
- 11. 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.
- 12. No person shall fail to equip or Maintain every Swimming Pool Fence Gate with a Self Closing Device and with a Self Latching Device
- 13. 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.

14. 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.

15. The installation of any Swimming Pool Fence shall not alter in any way the existing Grade or drainage pattern of the property unless a grading plan is approved by the City Engineer.

General Standards

16. The Owner of each Swimming Pool within the geographic limits of the City of St. Thomas shall construct and Maintain a Swimming Pool Fence around such Swimming Pool in accordance with this By-law.

17. Any Swimming Pool Fence required to be constructed and Maintained pursuant to section 16 must include one or more Gates all of which are constructed and Maintain in accordance with section 21 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.

18. Every Swimming Pool Fence required to be constructed and Maintained in accordance with section 16 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 (4inches);
- c) constructed so that the maximum diameter of opening in the 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 materials;
- 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 21 of the By-law;

19. Ladders that form part of a Swimming Pool Fence or above ground pool shall be locked or stored in an 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.

20. Fencing located on the top of the Swimming Pool ledge of an above ground pool is acceptable provided a minimum 1.2 metre height is maintained from the Finished Grade to the top of the Swimming Pool Fence

21. 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 18;
- b) constructed so that any structural member of the Gate to which any wire, board, or other fencing material are attached are located on the Swimming Pool side of such wire, boards, or other materials; and
- c) equipped with a Self Closing and 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

22. 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 City own curbing, sidewalks or paved or grassed boulevards by vehicles delivering or removing materials or performing any construction work, shall:

- a) submit to the Chief of 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 causes to the City property or services, at the Owner's expense; and
- b) take all necessary steps to prevent building materials, waste or soil from being spilled or tracked onto City 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 22(a) above.

23. Any undertaking provided under section 22 above shall not preclude collection of any expenses incurred by the City in the manner described in section 35.

Administration

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

25. The occupancy or use of any property within the geographic limits of the City of St. Thomas that does not conform to the standards prescribed in this By-Law or the standards referenced in section 29, section 30 or section 33, is prohibited.

26. 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.

27. 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 Gate and/or proposed Swimming Pool Fences and Gate, 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 City property as required by section 22 of this By-law

28. 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 applicable fee and the undertaking referred to in section 22 have been provided.

29. 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

30. 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 the construction.

31. 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

32. Where 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 City By-law that regulates fencing.

33. Where 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 18(d) of this By-law

Enforcement

34. The Chief Building Official or an inspector may:

- a) Enter upon land within the geographic limits of the City of St. Thomas 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 person believed to be in contravention of this By-law, directing that person to correct and 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 correct 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 remedial action deemed necessary; and/or
- e) Order the Owner to drain the pool forthwith.

35. Where the Owner fails to comply with the Notice under section 34(b) or and Order under section 34 (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 City may charge an administrative fee of 15% of expenses incurred with a minimum fee of \$100.00, and both the expense and fee may be recovered by the city.

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

Service of Documents

37. Any service required to be given under this By-law is sufficiently given if delivered personal, 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 orders on the affected property

38. 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

39. Any person who contravenes any provision of this By-law, or fails to abide by an order under this By-law, upon conviction, guilty of an offence and is liable to the maximum penalty as provided in the *Provincial Offence Act, R.S.O 1990, Chapter P.33*

40. The court, in which the conviction has been entered, and any court 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.

41. Any contravention of this By-law is designated as a continuing offence.

Interpretation

42. 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

43. In this By-law, words under in the present tense include future tense, words in the masculine gender include the feminine and neuter, and singular number includes the plural and the plural singular.

44. In this By-law the word "shall" is mandatory and not discretionary

Validity

45. 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.

Effective Date

46. This By-law shall come into full force and effect as of the date of passing hereof

Repeal

47. By-law No 126-92 is hereby repealed

READ a First and Second time this 18th day of April, 2011

READ a Third time and finally passed this 18th day of April, 2011.

Wendell Graves
CAO/Clerk

Heather Jackson-Chapman
Mayor

(Original Signed)