



Municipality of
Dutton Dunwich

By-Law No. 2017-58

**BEING A BY-LAW TO PROVIDE FOR THE OWNERS OF PRIVATELY-OWNED
OUTDOOR SWIMMING POOLS TO ERECT AND MAINTAIN FENCES**

WHEREAS pursuant to Section 11 (2) of the *Municipal Act*, S.O. 2001, c. M.25, as amended, a by-law may be passed respecting matters of Health, Safety and Well Being of Persons.

AND WHEREAS pursuant to Section 11 (3) of the *Municipal Act*, S.O. 2001, c. M.25, as amended, a lower tier municipality may pass by-laws respecting matters within the sphere of jurisdiction of Structures, including Fences and Signs.

AND WHEREAS Council for The Corporation of Dutton Dunwich deems it expedient to pass a by-law to issue permits for swimming pool fences and to prescribe safety standards for privately owned outdoor swimming pools.

NOW THEREFORE the Council of the Corporation of the Municipality of Dutton Dunwich enacts as follows:

1. THAT the attached Swimming Pool Fence Permit Fees, marked as Schedule 'A', forms part of this by-law.
2. THAT the attached Undertaking Damage to Municipal Property form, marked as Schedule 'B', forms part of this by-law.
3. THAT the attached Set Fine Schedule, marked as Schedule 'C', forms part of this by-law.

**SHORT TITLE
SWIMMING POOL FENCE BY-LAW**

**PART 1
DEFINITIONS**

1. DEFINITIONS:

For the purposes of this By-law:

- (a) '**BY-LAW ENFORCEMENT OFFICER**' shall mean the person appointed by the Municipal Council for the purpose of enforcing and carrying out the provisions of Municipal By-laws.
- (b) '**CHIEF BUILDING OFFICIAL**' shall mean the person appointed by the Municipal Council to such position pursuant to the Building Code Act.
- (c) '**MUNICIPALITY**' shall mean the Corporation of the Municipality of Dutton Dunwich.
- (d) '**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.
- (e) '**HYDRO MASSAGE POOL**' shall include those pools commonly referred to as a hot tub, a whirl pool, a Jacuzzi or a spa.
- (f) '**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.
- (g) '**REPLACEMENT**' shall mean the construction of a swimming pool fence that takes the place of a swimming pool fence previously constructed.
- (h) '**SELF-CLOSING DEVICE**' shall mean a mechanical device or spring which returns a swimming pool fence to its closed position within 30 seconds after it has been opened.

- (i) **'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 remains closed until unlatched by either lifting or turning the device directly or by a key.
- (j) **'SWIMMING POOL'** shall mean a structure, basin, chamber or tank containing or capable of containing water, and is designed to be used for swimming or wading, and;
- shall include portable bladder-style pools
 - shall include spas, hot tubs and Jacuzzis
 - has a depth of more than 60 centimetres (24 inches) at any point;
 - is not under the jurisdiction of the Ontario Building Code;
 - is not completely inside a building;
 - is not owned by government or local board or commission constituted under any statute or by-law;
 - is not a pond or reservoir to be utilized for farming purposes;
 - excludes hydro massage pools;
 - excludes storm water management ponds.
- (k) **'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 administrated by the Chief Building Official.
- 2.2 **Application of this by-law on or after September 13, 2017**
This by-law shall apply to all swimming pool fences constructed or replaced in the Municipality on or after September 13, 2017.
- 2.3 **Existing swimming pool fences – constructed**
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 construction on or after June 3, 1975, by-law passed by the former Village of Dutton.
- 2.4 **Maintain - swimming pool fencing – compliance with previous by-law**
Any pool and/or pool fence in existence prior to the passing of this by-law will be subject to an inspection. If any deficiencies are found or repairs are required, a one year grace period will be given to complete all non-compliance issues.
- 2.5 **Replacement - swimming pool fencing – compliance – required**
At such time as an entire existing swimming pool fence is replaced, the replacement swimming pool fence shall be constructed in accordance with 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 the regulations that existed on or after June 3, 1975, 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 portion of the swimming pool fence that encloses the newly constructed swimming pool shall meet the standard set out in this by-law.

PART 3 PROHIBITIONS

- 3.1 **No 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 swimming pool 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 **No 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 single gate access with a self-closing 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 this by-law**
No person shall fail to maintain a swimming pool fence in accordance with this by-law.
- 3.10 **Two gates - self-closing/self-latching device - permanently affixed**
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.

PART 4 APPLICATION FOR SWIMMING POOL FENCE PERMITS

- 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.
- 4.2 **Application – documentation to accompany – set out**
All such applications shall be accompanied by the following:
- 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;
 - The applicable fee as prescribed in Schedule 'A' of this by-law;

- An undertaking to repair damage to Municipal property as required by 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 centimetres (1.5 inches) but not greater than that which would allow the passage of a spherical object having a diameter of 10 centimetres (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 underside of the swimming pool fence than would prevent the passage of a spherical object having a diameter of 10 centimetres (4 inches).

5.5 **Structural members – 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 centimetres (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 – locking device**

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 that can be opened without a key from the outside shall not be less than 122 centimetres (48 inches) above ground level.

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
SCHEDULE 'B'**

- 6.1 **Boulevard crossing – by vehicles – deposit – calculation**
Every person erecting, altering, repairing or demolishing a swimming pool fence within the Municipality of Dutton Dunwich, 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 (attached hereto as Schedule 'B') 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
SCHEDULE 'C'**

- 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 any penalty as provided in 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 designated municipal official appointed by the Municipality of Dutton Dunwich shall, upon such notice as is deemed suitable, do such thing at the expense of the person required to do it and, in so doing, may charge an administration fee of 10% of such expense with a minimum fee of \$150.00; and both the expense and the fee may be recovered by action or in like manner as municipal taxes.

**PART 8
REPEAL – ENACTMENT**

- 8.1 **By-law – previous**
By-law #841, being a by-law of the form Village of Dutton, passed on the 3rd day of June 1975 and all its amendments are hereby repealed.
- 8.2 **Compliance** – Any pool and/or pool fence in existence prior to the passing of this by-law will be subject to an inspection. If any deficiencies are found or repairs are required, a one year grace period will be given to complete all non-compliance issues.

8.2 **Effective date**

This by-law shall come into full force and effect on the day of its final passing thereof.

READ a first and second time this 22nd day of November 2017.

READ a third time and finally passed this 22nd day of November 2017.

Carroll on 11/22/17

Mayor



Chief Administrative Officer/Clerk

SCHEDULE 'A'
to BY-LAW #2017-58

SWIMMING POOL FENCE PERMIT FEES

1. New swimming pool fence permit: \$200.00 flat fee
2. Replacement swimming pool fence permit: \$200.00 flat fee

SCHEDULE 'B'
to BY-LAW #2017-58

UNDERTAKING DAMAGE TO MUNICIPAL PROPERTY

TO: The Corporation of the Municipality of Dutton Dunwich
(the "Municipality")

RE: _____
Municipal Address

Property Owner (please print)

In consideration of the issuance of a Permit to:

For the above noted property, _____ hereby undertakes to repair and replace, to the satisfaction of the Municipality, all damage to municipal property including, without limitation to curbs, sidewalks and boulevards sustained directly or indirectly as a result of works undertaken by the owner under the permit.

The Owner agrees to indemnify and save harmless the Municipality from and against any and all claims, cost damage or injury to any persons or property arising in any way out of the performance of this undertaking.

Dated this _____ day of _____, 2017

Signature of Owner

On behalf of the Municipality:

Received by: _____

Building Permit No. _____

SCHEDULE 'C'
to BY-LAW #2017-58
SWIMMING POOL FENCE BY-LAW

PART I PROVINCIAL OFFENCES ACT
SET FINE SCHEDULE

ITEM	COLUMN 1	COLUMN 2	COLUMN 3
	Short Form Wording	Provision Creating or Defining Offence	Set Fines
1	Construct/cause to be constructed a swimming pool without a swimming pool fence permit	Section 3.1	\$250.00
2	Construct/cause to be constructed a swimming pool not enclosed by a swimming pool fence	Section 3.2	\$250.00
3	Fail to enclose a swimming pool with temporary fencing during construction	Section 3.3	\$250.00
4	Construct/cause to be constructed a swimming pool fence that does not conform to by-law requirements	Section 3.4	\$250.00
5	Fail to equip swimming pool fence gate with self-closing and/or self-latching device	Section 3.5	\$250.00
6	Construct/maintain swimming pool fence gate with outside opening self-latching device less than 122 centimetres (48 inches) above ground level	Section 3.6	\$250.00
7	Place/store materials against outside of swimming pool fence	Section 3.7	\$250.00
8	Replace swimming pool fence without obtaining a permit	Section 3.8	\$250.00
9	Fail to enclose swimming pool with fence of 153 centimetres (60 inches) in height or greater	Section 5.1	\$250.00
10	Fail to enclose swimming pool with fence having openings 3.8 centimetres (1.5 inches) or smaller	Section 5.2	\$250.00
11	Fail to enclose swimming pool with other than chain link fence having openings 10 centimetres (4 inches) or smaller	Section 5.3	\$250.00
12	Fail to enclose swimming pool with fence having clearance from ground to the underside of the fence 4 inches or less	Section 5.4	\$250.00
13	Fail to construct a swimming pool fence to prevent easy climbing	Section 5.5	\$250.00
14	Fail to construct a swimming pool fence to prevent unauthorized entry	Section 5.6	\$250.00
15	Fail to equip swimming pool fence with self-closing and self-latching device	Section 5.8	\$250.00
16	Fail to install self-latching device 122 centimetres (48 inches) above ground level	Section 5.9	\$250.00
17	Fail to provide temporary fencing during construction	Section 5.10	\$250.00
18	Deck, as part of swimming pool fence, fails to meet regulations of Part 5 of By-law #2017-58	Section 5.11	\$250.00

NOTE: The penalty provision for the offences listed above are Section 7.1 and 7.2 of By-law #2017-58, a certified copy of which has been filed.

ONTARIO COURT OF JUSTICE
PROVINCIAL OFFENCES ACT
PART 1

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice, that the amount set opposite each of the offences in the schedule of the offences under the Provincial Statutes and Regulations thereunder and the Municipal By-law #2017-58, of the Municipality of Dutton Dunwich, attached hereto is the set fine for that offence. This Order is to take effect December 18, 2017.

Dated at London this 18th day of December, 2017.

Stephen J. Fuerth
Regional Senior Justice
West Region