

CORPORATION OF THE MUNICIPALITY OF BROOKE-ALVINSTON

By-law No. 28 of 2011

**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 it is deemed expedient to pass a by-law to issue permits for swimming pool fences and to prescribe safety standards for privately owned outdoor swimming pools.

THEREFORE the Council of the Corporation of the Municipality of Brooke-Alvinston enacts as follows:

**SHORT TITLE
SWIMMING POOL FENCE BY-LAW
PART 1
DEFINITIONS**

1.1 DEFINITIONS

In this by-law:

BY-LAW ENFORCEMENT OFFICER – defined

“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.

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 Municipality of Brooke-Alvinston.

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 whirl pool, 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 remains closed until unlatched by either lifting or turning the device 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 is designed to be used for swimming or wading, and;

- (a) has a depth of more than 60 centimetres (24 inches) at any point;
- (b) is not under the jurisdiction of the Ontario Building Code;
- (c) is not completely inside a building;
- (d) is not owned by government or local board or commission constituted under any statute or by-law;
- (e) is not a pond or reservoir to be utilized for farming purposes;
- (f) excludes hydro massage pools;
- (g) excludes storm water management ponds.

SWIMMING POOL FENCES – 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 on or after July 14, 2011
This by-law shall apply to all swimming pool fences constructed or replaced in the Municipality on or after July 14, 2011.
- 2.3 Existing swimming pool fences – lawfully constructed
- 2.4 Maintain – swimming pool fencing – compliance with previous by-law(s)
- 2.5 Replacement – swimming pool fencing – compliance – required
- 2.6 Swimming Pool Fence By-laws – prevails
- 2.7 Existing Swimming Pool Fences – used by property abutting, portion conforms

PART 3
PROHIBITIONS

- 3.1 No construction – without permit
- 3.2 Swimming pool – not enclosed by swimming pool fence
- 3.3 No construction – without temporary fencing
- 3.4 Construction – fence – non-conforming
- 3.5 Gate – without self-closing – self-latching device
- 3.6 Gate – self-latching device – distance above ground
- 3.7 Storage of materials – against outside of swimming pool fence
- 3.8 Replacement – existing fence – without permit
- 3.9 Swimming Pool Fence – maintain – in accordance with by-law
- 3.10 Two gates – self closing/self-latching device – permanently affixed

PART 4
APPLICATION FOR
SWIMMING POOL FENCE PERMITS

- 4.1 Application – to Chief Building Official – in writing – owner
- 4.2 Application – documentation to accompany – set out
- 4.3 Permit – issue – by Chief Building Official – conditions

PART 5
SWIMMING POOL FENCE REGULATIONS

- 5.1 Height – minimum requirements
- 5.2 Opening – maximum diameter
- 5.3 Opening – maximum diameter – exception – conditions
- 5.4 Ground clearance – maximum
- 5.5 Structural members – prevent easy climbing – required
- 5.6 Construction – to prevent unauthorized entry
- 5.7 Height – measurement – from ground level
- 5.8 Gate – self-closing – self-latching – locking device
- 5.9 Gate – self-latching device – requirements
- 5.10 Temporary fence – required – during construction
- 5.11 Deck forms swimming pool fence

PART 6
UNDERTAKING TO ENSURE REPAIR
Schedule “B”

- 6.1 Boulevard crossing – by vehicles – deposit – calculation
- 6.2 Debris on streets – prevention – cleaned – by owner

PART 7
ENFORCEMENT
Schedule “C”

- 7.1 Fine – for contravention
- 7.2 Continuation – repetition – prohibited – by order
- 7.3 Default – not remedied – done at owner’s expense

PART 8
REPEAL – ENACTMENT

- 8.1 By-law – previous
- 8.2 Effective date

SCHEDULE

Schedule “A” – Permit Fees

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 and Safety and Well Being of persons.

AND WHEREAS it is expedient to pass a by-law to issue permits for swimming pool fences and to prescribe safety standards for privately owned outdoor swimming pools.

THEREFORE the Council of the Corporation of the Municipality of Brookston 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 Municipality of Brookston.

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 whirl pool, 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” 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 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 is designed to be used for swimming or wading,

- (a) has a depth of more than 60 centimetres (24 inches) at any point; and
- (b) is not under the jurisdiction of the Building Code; and
- (c) is not completely inside a building; and
- (d) is not owned by government or a local board or commission constituted under any statute or by-law; and
- (e) is not a pond or reservoir to be utilized for farming purposes; and
- (f) but excludes hydro massage pools; and
- (g) excludes storm water management ponds

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 – on or after July 14, 2011**

This by-law shall apply to all swimming pool fences constructed or replaced in the Municipality on or after July 14, 2011.

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 August 8, 1978, by-law passed by the former Village of Alvinston and March 25, 1993, by-law passed by the former Township of Brooke or was built in accordance with the regulations of Brooke-Alvinston By-law No. 26 of 2007 which was repealed on July 29, 2010.

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 on or after August 8, 1978, March 25, 1993, or June 28, 2007 the swimming pool fence may be maintained in accordance with such regulations.

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 August 8, 1978, March 25, 1993 or June 28, 2007, and that swimming pool fence has been maintained continuously in accordance with those regulations, and which swimming pool fence also marking 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 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 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.
- 3.10 **Two gate – 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 under side 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

6.1

Boulevard crossing – by vehicles – deposit – calculation

Every person erecting, altering, repairing or demolishing a swimming pool fence within the Municipality of Brooke-Alvinston 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

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 Chief Building Official or persons designated by the Chief Building Official for the Municipality of Brooke-Alvinston appointed pursuant to the Building Code Act may, upon such notice as he deems-suitable, do such thing at the expense of the person required to do it and, in so doing, may charge an administration fee of 15% of such expense with a minimum fee of \$80.00; 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(s) – repealed**

By-law 6 of 1978, being a by-law of the former Village of Alvinston passed on the 1st day of August, 1978 and all its amendments and

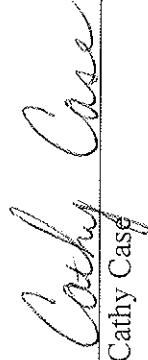
By-law 14 of 1993, being a by-law of the former Township of Brooke passed on the 25th day of March, 1993 and all its amendments are hereby repealed.

8.2 **Effective date**

Read a first and second time this 14 day of July, 2011

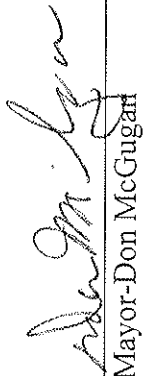


Mayor-Don McGugan

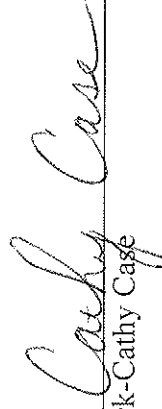


Clerk-Cathy Case

Read a third time and finally passed this 14 day of July, 2011.



Mayor-Don McGugan



Clerk-Cathy Case

BY-LAW No. 28 OF 2011

SCHEDULE "A"

SWIMMING POOL FENCE PERMIT FEES

1. New swimming pool fence permit fee is the same fee as adopted for a residential addition in the building permit fee structure for the Municipality of Brooke-Alvinston.
2. Replacement swimming pool fence permit fee is the same fee as adopted for a residential addition in the building permit fee structure for the Municipality of Brooke-Alvinston.

BY-LAW No. 28 OF 2011

SCHEDULE "B"

UNDERTAKING DAMAGE TO MUNICIPAL PROPERTY

TO: The Corporation of the Municipality of Brooke-Alvinston
(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 _____, 20_____.

Signature of Owner

On behalf of the Municipality:

Received by: _____

Building Permit No.: _____

**ONTARIO COURT OF JUSTICE
PROVINCIAL OFFENCES ACT**

PART I

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 offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 28 of 2011, of the Township of Brooke-Alvinston, attached hereto are the set fines for those offences. This Order is to take effect March 29, 2012.

Dated at London this 29th day of March 2012.



Kathleen E. McGowan
Regional Senior Justice
West Region

MUNICIPALITY OF BROOKE-ALVINSTON
SCHEDULE 'C'
to By-law No. 28 of 2011
SWIMMING POOL FENCE BY-LAW
PART 1 Provincial Offences Act

ITEM	COLUMN 1	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine
Short Form Wording			
1.	Construct/cause to be constructed a swimming pool without a swimming pool fence permit.	3.1	\$125.00
2.	Construct/cause to be constructed a swimming pool not enclosed by a swimming pool fence.	3.2	\$125.00
3.	Fail to enclose a swimming pool with temporary fencing during construction.	3.3	\$125.00
4.	Construct/cause to be constructed a swimming pool with fence that does not conform to by-law requirements.	3.4	\$125.00
5.	Fail to equip swimming pool fence gate with (self-closing and/or self latching) device.	3.5	\$125.00
6.	Construct/maintain swimming pool fence gate with outside opening self-latching device less than 122 centimetres (48 inches) above ground level.	3.6	\$125.00
7.	Place/store materials against outside of swimming pool fence.	3.7	\$125.00
8.	Replace swimming pool fence without obtaining a permit.	3.8	\$125.00
9.	Fail to enclose swimming pool with fence of 153 centimetres (60 inches) in height or greater.	5.1	\$125.00

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine
10.	Fail to enclose swimming pool with fence having openings 3.8 centimetres (1.5 inches) or smaller.	5.2	\$125.00
11.	Fail to enclose swimming pool with other than chain link fence having openings 10 centimetres (4 inches) or smaller.	5.3	\$125.00
12.	Fail to enclose swimming pool with fence having clearance from ground to the underside of the fence 4 inches or less.	5.4	\$125.00
13.	Fail to construct a swimming pool fence to prevent easy climbing.	5.5	\$125.00
14.	Fail to construct a swimming pool fence to prevent unauthorized entry.	5.6	\$125.00
15.	Fail to equip swimming pool fence with self-closing and self-latching device.	5.8	\$125.00
16.	Fail to install self-latching device 122 centimetres (48 inches) above ground level.	5.9	\$125.00
17.	Fail to provide temporary fencing during construction.	5.10	\$125.00
18.	Deck, as part of swimming pool fence, fails to meet regulations of Part 5 of By-law No. 28 of 2011.	5.11	\$125.00

The penalty provisions for the offences listed above are sections 7.1 and 7.2 of By-law No. 28 of 2011, a certified copy of which has been filed.