

BY-LAW 74-2005

AMENDED BY BY-LAW(S):

- 43-2008 Amendment to: s. 2.1.5 (swimming pool definition); s.5.1.6 (wrought or other metal fencing); s.8.6.6 (hot tubs); s.16.1.2 (enforcement); Appendiix A
- 5-2012 New Appendix A – Permit Fee Schedule

THE CORPORATION OF THE CITY OF BURLINGTON

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A by-law to require the owners of privately owned swimming pools to erect and maintain fences and gates around such swimming pools.

File: 110-04-1 (CD-198-05)

WHEREAS Section 8 of the *Municipal Act*, 2001, S.O. 2001, c. 25 conveys the capacity, rights, powers and privileges of a natural person to the municipality, and

WHEREAS Section 11 of the *Municipal Act*, 2001, S.O. 2001, c. 25, authorizes municipalities to pass by-laws respecting structures, including fences and signs, and

WHEREAS it is deemed necessary to require owners of privately owned swimming pools to erect and maintain fences and gates around swimming pools,

NOW, THEREFORE, THE COUNCIL OF THE CORPORATION OF THE CITY OF BURLINGTON HEREBY ENACTS AS FOLLOWS:

1. SHORT TITLE

1.1 This by-law shall be known as “The Municipal Pool By-law”.

2. DEFINITIONS

2.1 For the purpose of this by-law:

2.1.1 “Corporation” means The Corporation of the City of Burlington;

2.1.2 “Chief Building Official” means the Chief Building Official of the City of Burlington.

2.1.3 “Hydro-massage pool” includes those pools commonly referred to as hot tub, whirlpool, jacuzzi or spa.

2.1.4 “Owner” includes a lessee or tenant in possession of property on which a swimming pool as defined herein is located;

2.1.5 “Swimming Pool” means any privately owned outdoor tank or body of water used or which is intended to be used and maintained for swimming or display purposes and is capable of holding water in excess of 600 mm other than an existing natural body of water or stream. It shall not include a hydro-massage pool having a water surface area that is less than 8m².

2.1.6 “Temporary Pool” means an inflatable pool or other pool, which is designed to be removed periodically on a seasonal or more frequent basis and is capable of holding water in excess of 600 mm.

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3. For the purposes of this by-law, privately owned shall mean ownership other than a public or government body, agency or authority.
4. Every owner of land upon which a swimming pool is located or erected shall erect and maintain around such pool, fences and gates in accordance with this by-law.
5. FENCING REQUIREMENTS – SINGLE FAMILY OR SEMI-DETACHED RESIDENTIAL
 - 5.1 Every swimming pool located on lands used for, or in connection with, single family or semi-detached residential purposes, shall be enclosed with fencing, including gates, in accordance with one or more of the following specifications:
 - 5.1.1 Chain link fencing, with links not exceeding 38mm. Such fencing shall extend from the ground for a height of not less than 1.2 m and not more than 2.0 m.
 - 5.1.2 Chain link fencing, with links not exceeding 50mm, provided such fencing extends from the ground for a height of not less than 1.8 m and not more than 2.0 m.
 - 5.1.3 All chain link fencing shall have a top rail securely fastened to the upright posts and a tension wire securing bottom of fencing.
 - 5.1.4 Fencing of solid panels, vertical boards or vertical pickets, being at least 1.2m in height to a maximum 2.0 m in height and having the horizontal rails LESS than 1.2 m apart measured vertically from the top of the bottom horizontal rail to the top of the upper horizontal rail, may have openings between the panels, vertical boards or pickets not exceeding 38 mm. Such panels, boards or pickets must be constructed on the outside face of the fence.
 - 5.1.5 Fencing of solid panels, vertical boards or vertical pickets being at least 1.2 m in height to a maximum of 2.0 m in height and having the horizontal rails MORE than 1.2 m apart measured vertically from the top of the bottom horizontal rail to the top of the upper horizontal rail, may have openings between the panels, vertical boards or pickets not exceeding 100 mm on the outside or inside face of the fence provided the horizontal rails are measured as described in this sub-section to be more than 1.2 m .
 - 5.1.6 Wrought iron or other metal type fencing shall extend from the ground for a height of not less than 1.5 m and not more than 2.0 m. Such fencing shall have the horizontal rails more than 1.2 m apart measured vertically from the top of the bottom horizontal rail to the top of the upper horizontal rail, and have openings between the vertical members not exceeding 100 mm.

5.1.7 A wall or one or more walls of a building, provided said wall is at least 1.2 m in height and has no ledge or step closer than 1.2 m above the ground, measured vertically, and that if the said wall of a building contains any opening which could provide a means of ingress directly into the swimming pool area such openings are to be kept locked at all times when such swimming pool is not under competent supervision.

6. FENCING REQUIREMENTS – OTHER THAN SINGLE FAMILY OR SEMI-DETACHED RESIDENTIAL

6.1 Every swimming pool located on lands used other than for or in connection with single family or semi-detached residential purposes shall be enclosed with fencing, including gates, in accordance with one or more of the following specifications:

6.1.1 Chain link fencing, with links not exceeding 50 mm provided such fencing extends from ground to a height of not less than 1.8 m and not more than 2.0 m. Fencing shall have a top rail firmly fastened to the upright posts and a tension wire securing the bottom of the fence.

6.1.2 A wrought iron or other metal-type fencing or fencing of solid panels or vertical pickets or vertical boards, provided that such fencing shall extend from ground to a height of 2.0 m and provided that openings between pickets, boards or panels shall not exceed 100 mm and that horizontal rails are spaced at least 1.2 m apart measured vertically between the top of the bottom horizontal rail to the top of the upper horizontal rail.

6.1.3 A wall, or one or more walls, of a building provided said wall is at least 2.0 m in height and has no ledge or step closer than 1.2 m above the ground, measured vertically and that if said wall of a building contains any opening which could provide ingress directly into the swimming pool area, that such openings are to be kept locked at all times when such pool is not under competent supervision.

7. GATES

7.1 Every gate shall meet the construction detailed in Section 5 and be supported by substantial hinges and be equipped with self-closing and self-latching hardware as approved by the Chief Building Official or his designate. The self-latching hardware is to be installed at the top and on the inside of the gate. Every gate shall be kept closed and locked at all times when the pool is not under competent supervision. Thumb-latch latching hardware does not constitute an approved self-latching device.

7.2 Where double gates are used, both sections shall be supported by substantial hinges and one section equipped with approved self-closing and self-latching hardware, having the self-latching hardware located on the top inside of the gate. The

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remaining section of the gate is to be equipped with a ground pin and lock to mechanically secure that section of the gate. Both sections of the gate to be locked at all times when the pool is not under competent supervision.

- 7.3 The maximum spacing between panels, vertical boards or vertical pickets on the outside face of a gate or fence or part thereof having a diagonal member shall not exceed 38 mm. Where a diagonal member exists, vertical panels, boards or pickets must be placed on the outside face of a gate or fence or part thereof.

8. GENERAL PROVISIONS

- 8.1 Every fence enclosing a swimming pool area shall be located not less than 1.2 m from the inside edge of the pool, except that this condition shall be deemed to be met where:
- 8.1.1 The total height of the pool wall above grade, plus a fence extension above the pool wall meeting the construction detailed in Section 5, totals at least 2.0 m above grade OR,
- 8.1.2 An approved pool fence enclosing a swimming pool area is located at least 1.2 m from any other existing fence other than fences located on adjacent property or property lines other than property lines that are in common with the property on which the swimming pool is located.
- 8.2 Where steps or ladder, fixed or movable, are installed in conjunction with an above ground swimming pool, such facility shall be fenced at grade with fencing and gates meeting the construction detailed in Section 5.
- 8.3 Where a pool deck or ramp or part thereof is located a distance greater than 1.8 m above grade, a handrail or balustrade shall be provided and maintained around the outer edge, having a height of at least 1070 mm above such deck or ramp.
- 8.4 Where a pool deck or ramp or part thereof is located a distance not more than 1.8 m above grade, a handrail or balustrade shall be provided and maintained around the outer edge, a height of at least 900 mm above such deck or ramp.
- 8.5 There shall be no space greater than 100 mm between the bottom of any fencing and/or gates and the finished grade beneath such fencing and/or gates(s).
- 8.6 For the purpose of this by-law where:
- 8.6.1 A Subdivision Agreement within the meaning of the *Planning Act* 1990, p.13, as amended, is registered on title against land upon which a swimming pool is located, and

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8.6.2 the said Subdivision Agreement includes specifications for the erection of fencing, and

8.6.3 said fencing has been erected in accordance with the said specifications, then such fencing shall be deemed to comply with the intent of specifications for the type, height and location of fencing as set out in Section 5.

8.6.4 Swimming pool permits in un-assumed subdivisions will not be issued until the homeowner obtains a clearance letter from the developer or engineer stating that the developer or engineer is in agreement with the proposed works. Notwithstanding this requirement, the Chief Building Official may waive this requirement in extenuating circumstances, such as the developer or engineer cannot be located.

8.6.5 Where swimming pool permits in assumed subdivisions will involve works associated with the swimming pool (ie. alteration of grade, retaining walls, etc.) within 0.5 m of the property line, a Site Alteration permit will be required in addition to a pool permit.

9. The owner of any land upon which an outdoor swimming pool is located shall keep such swimming pool covered except during seasons when the pool is actually in use. Such pool cover shall be of durable material and construction and shall be adequately secured in place.

10. PLACEMENT OF WATER IN POOL

10.1 No person shall place water in or allow water to remain in any swimming pool until such time as fences and gates have been installed and approved in accordance with the requirements of this By-law.

10.2 Temporary fencing as approved by the Chief Building Official or his designate shall be used until the basic construction of the swimming pool has been completed, at which time permanent approved fencing shall be erected in accordance with this By-law prior to water being placed in the pool.

11. No person shall install or allow the use of any barbed wire, broken glass or electrification in connection with any swimming pool fencing.

12. PERMITS

12.1 The owner of lands upon which it is intended to construct or erect a swimming pool, or his agent, shall apply to the Chief Building Official for a permit certifying approval of such fences and gates. Plans for all such fences and gates shall be submitted with the application, and no permit shall be issued

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unless the fences and gates shown on such plans comply with the provisions of all applicable by-laws of the City of Burlington.

12.1.1 No permit shall be issued unless the pool location is in compliance with all provisions of relevant municipal zoning by-laws and agreements of the City of Burlington, and unless approvals have been obtained from various other agencies or government authorities where required.

12.2 Permit Fees Schedule

12.2.1 The applicant shall pay a fee in accordance with Appendix "A". The fee pursuant to this By-law shall be payable upon application for the permit. The Chief Building Official shall verify the applicant's valuation or determine a value on the work and the applicant shall pay the fee or balance of the fee in accordance with Appendix "A" before the permit is issued.

12.2.2 The value shall consist of the total cost of the pool installation or erection including the total value of all work, services and materials in respect of its construction and of all professional and related services with exception of professional landscaping services. The value includes but is not limited to:

- a) materials and the supplying or furnishing and placing thereof;
- b) equipment and the furnishing or supplying thereof;
- c) the doing of any work and services for the purpose of the construction;
- d) professional and other services related to the proposed construction.

12.3 Notice of Change

12.3.1 No person shall make a change or cause a change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying the Chief Building Official or his designate, and filing details of such change with him for the purpose of obtaining his authorization.

12.4 Revocation of Permit

12.4.1 The Chief Building Official may revoke a permit,

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12.4.1.1 where it was issued on mistaken or false information;

12.4.1.2 where, after six months after its issuance, the construction or erection in respect of which it was issued has not, in the opinion of the Chief Building Official been seriously commenced; or

12.4.1.3 where the construction or erection of the swimming pool is, in the opinion of the Chief Building Official, substantially suspended or discontinued for a period of more than one year.

12.4.2 Prior to revoking a permit in accordance with this by-law, the Chief Building Official may give written notice of intention to revoke to the permit holder at their last known address and if, on the expiration of thirty (30) days from the date of such notice, the ground for revocation continues to exist, the permit shall be revoked without further notice and all submitted plans and other information may be disposed of or, at the request of the permit holder, returned as directed.

12.5 Permit Expiry and Renewal

12.5.1 A permit issued pursuant to this by-law shall be valid for a period of six months from date of issue and shall remain valid so long as the work covered by the permit is commenced before the expiry of the six month period and so long as the work is carried on at a reasonable rate to completion.

12.5.2 A permit may be renewed once for a further six month period without the need for re-submitting the documents referred to in Section 12 upon submitting a written request for renewal and payment of a \$50.00 fee to the Chief Building Official before the expiry of the initial six month period and provided such permit would still be issuable.

12.5.3 Where no written request for renewal is submitted to the Chief Building Official before the expiry of the six month period or where a permit has been renewed once with work not being commenced before the expiry of the six month period, the permit shall automatically lapse and a new application shall be required along with fees applicable at that time.

12.6 Transfer of Permit

12.6.1 Permits are transferable only upon the completion of a permit application form by the new owner or his agent in accordance with Section 12.1 and subject to approval by the Chief Building Official who may attach any conditions thereto.

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12.7 Permit Refunds

12.7.1 Where a permit has not been acted upon and the holder of the permit returns it for cancellation prior to the commencement of the project, before such permit has expired or been revoked, the holder of the permit shall be entitled to a refund not to exceed one-half of the permit fee paid, provided, however, that no refund shall be made which shall result in the retention by the Corporation of the City of Burlington, of a sum less than the minimum fee payable.

12.7.2 Where the applicant for a permit cancels the application prior to the issuance of the permit, the Chief Building Official may retain an amount of not less than one quarter of the permit fee payable, as is in his opinion appropriate, having regard for the stage to which the application has been processed, and the balance of the fees actually paid will be refunded to the applicant, provided that no refund will be made which shall result in the retention by the Corporation of the City of Burlington, of a sum less than the minimum fee payable.

13. No swimming pool may be excavated, constructed or erected until a Permit referred to in Section 12 of this by-law has been applied for and issued.

14. The owner of lands upon which it is intended to install any swimming pool heating equipment, or his agent, is required to apply to the Chief Building Official for and obtain from him a heating permit before any such heating equipment is installed.

15. The owner of lands upon which it is intended to construct or erect a swimming pool or upon which a swimming pool is located, or his agent, shall apply to the Chief Building Official for and obtain from him, a plumbing permit before any direct connection between a swimming pool and any water supply and a swimming pool and any drain is installed.

16. ENFORCEMENT AND PENALTY

16.1 Enforcement of this By-law shall be under the jurisdiction of the Chief Building Official.

16.1.1 Every person who contravenes any provision of this by-law is guilty of an offence and is liable upon conviction to a penalty not exceeding \$5,000.00 exclusive of the costs. Such fine shall be recoverable under the *Provincial Offences Act*.

16.1.2 Where the owner of a pool fails to erect a fence and gates around such pool in accordance with the provisions of this by-law and allows water to be placed and remain therein, the Council may, by by-law, direct that such pool be drained at the owner's expense and the Corporation may recover the expense

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incurred in doing so by action, or in a like manner as municipal taxes, or the expense incurred by it with interest shall be payable by such owner in annual instalments not exceeding ten years as Council may determine.

16.1.3 Where an offence under this By-law is a continuing offence, charges may be laid for each day during which the offence continues.

16.1.4 Where a Court declares any section or part thereof of this By-law invalid, the remainder of this by-law shall continue in full force and effect.

17. By-law 131-2004 is hereby repealed.

ENACTED AND PASSED THIS 17th day of October, 2005.

MAYOR
Robert S. Maclsaac

CITY CLERK
Kim Phillips

APPENDIX "A"

Permit Fees Schedule

I. Pool Permit (to construct or erect)

Above ground pool (to construct or erect)	\$150.00
On ground pool (to construct or erect)	\$300.00
In ground pool (to construct or erect)	\$300.00
Temporary pool (to construct or erect)	\$75.00

Note: "Above Ground Pools" are built with the base of the pool at grade (ground) level, "On Ground Pools" are built below grade with the top of the pool elevation a minimum of 150mm above grade level, and "In Ground Pools" are built with the top elevation of the pool at grade level.

II. Plumbing Permit (to connect a swimming pool to any water supply and/or any drain if not covered in main permit application).

Basic fee	\$150.00
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