



**The Corporation of the Municipality of West Grey
Bylaw No. 2023-058**

A bylaw to require the owners of privately owned outdoor swimming pools to erect and maintain swimming pool enclosures.

WHEREAS section 8(3) of the Municipal Act, S.O. 2001, c.25, as amended (the "Act"), authorizes a municipality to regulate or prohibit matters pertaining to pool enclosures and as a part of that power, to provide for a system of approvals and to impose conditions as requirements of obtaining, continuing to hold, or renewing the approval; and

WHEREAS section 11 (2)(6) of the Act authorizes a municipality to regulate matters related to health, safety, and well-being of the inhabitants of the municipality; and

WHEREAS section 11(3)(7) of the Act provides that a bylaw may be passed respecting structures, including fences; and

WHEREAS section 425 of the Act authorizes a municipality to pass a bylaw providing that a person who contravenes a bylaw of the municipality is guilty of an offence; and

WHEREAS section 429 of the Act authorizes a municipality to establish a system of fines for the offences under a bylaw; and

WHEREAS section 446 of the Act authorizes a municipality, under a bylaw, to direct or require a person to do a matter or thing and 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 the costs of doing the matter or thing from the person by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

WHEREAS it is the intention of the Municipality of West Grey to prevent unintentional injury and drowning caused by the failure of property owners to provide and erect approved and acceptable swimming pool enclosures;

NOW THEREFORE be it resolved that the council of the Corporation of the Municipality of West Grey hereby enacts as follows:

Section 1 – Short Title

- 1.1. This bylaw may be cited as the Municipality of West Grey Pool Enclosure Bylaw.

Section 2 – Definitions and Interpretation

- 2.1. In this bylaw, the following definitions shall apply:

- 2.1.1. "Boundary or Property Fence" means any barrier or structure constructed of chain link metal, wood, stone, metal, concrete, brick or other similar materials or combination of such materials, which is erected for the purpose of screening, safeguarding, retaining or enclosing property or delineating property lines (see schedule A figure 1, appended hereto, and forming part of this bylaw).

- 2.1.2. "Building" means any permanent and/or temporary structure used or intended to be used for shelter, accommodation, or enclosure of persons, animals, or goods, but shall not include a lawful boundary fence.
- 2.1.3. "Chief Building Official" means the person appointed by the Municipality of West Grey to such a position pursuant to the Building Code Act.
- 2.1.4. "Fence Height" means the height measured from the finished floor level or ground level at any point along the length of the fencing to the top of the fence, measured on the outside of the fencing.
- 2.1.5. "Finished Floor Level" means a permanent stable surface, such as the top of wood, concrete or brick.
- 2.1.6. "Finished Ground Level" means a permanent ground level, such as grass, soil or gravel.
- 2.1.7. "Four-Sided Fence" means a fence or building wall that fully restricts access to the pool separate from the house. (see schedule A figure 2, appended hereto, and forming part of this bylaw).
- 2.1.8. "Gate" means any part of a swimming pool fence which opens on hinges.
- 2.1.9. "Guard" means a protective barrier, with or without openings through it, that is around openings in floors or at the open sides of stairs, landings, balconies, mezzanines, galleries, raised walkways or other locations to prevent accidental falls from one level to another.
- 2.1.10. "Hydro-Massage Pool" or pools commonly referred to as hot tubs, Jacuzzis, whirlpools, spas and other similar products means a pool as defined in this bylaw.
- 2.1.11. "Immediate Pool Area" means the surrounding area that contains items used for pool activities, including pool equipment, changing sheds, patio furniture and similar items used in conjunction with the use of the pool.
- 2.1.12. "Inside of the Pool Enclosure" means that side of the fence or gate that faces the pool area.
- 2.1.13. "Isolation Fencing" means a continuous fence that is effectively the same as a four-sided fence except that all ancillary structures (not related to the function of the swimming pool) are excluded from the pool area. The fence completely separates the pool from the house and the rest of the property (see schedule A, figure 3, appended hereto, and forming part of this bylaw).
- 2.1.14. "Maintain" means to keep a pool enclosure in a condition that meets the requirements of this bylaw and to preserve the condition of the pool enclosure from failure or decline in order to ensure safety and strength.
- 2.1.15. "Outside of the Pool Enclosure" means that side of the fence or gate that faces away from the pool area.

- 2.1.16. "Owner" includes the registered owner of any property; the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would so receive the rent if such land and premises were leased, and a lessee, tenant, mortgagee in possession, or person occupying or in charge of the property.
- 2.1.17. "Pool Enclosure" means a permanent four-sided fence, isolation fence or three-sided fence, which includes a self-closing and self-latching gate, and which surrounds a pool with the intention of restricting access from outside the pool enclosure.
- 2.1.18. "Permit" or "Pool Enclosure Permit" means a permit issued under this bylaw by the Chief Building Official.
- 2.1.19. "Replacement" means the construction of a swimming pool and/or swimming pool fence that takes the place of a swimming pool and/or swimming pool fence previously constructed.
- 2.1.20. "Self-Closing Device" means a mechanical device or spring that returns a swimming pool enclosure gate to its closed position immediately after it has been opened.
- 2.1.21. "Self-Latching Device" means a mechanical device or latch that is engaged each time the gate is returned to its closed position, which will not allow the swimming pool enclosure gate to be re-opened by pushing or pulling, and which will ensure the swimming pool enclosure gate remains closed until unlatched by either lifting or turning the device itself directly or by a key.
- 2.1.22. "Swimming Pool" or "Pool" means an excavation, structure or product, which is:
- 2.1.22.1. located outdoors on private property;
 - 2.1.22.2. capable of being used for the purposes of swimming, wading, paddling or bathing and;
 - 2.1.22.3. capable of holding water in excess of 73.6cm (2 feet 5 inches) in depth at any point;
 - 2.1.22.4. and includes a hot tub and or spa pool without a lockable hard cover, and a landscape pond meeting the above criteria, but for the purposes of this bylaw does not include any pool which is:
 - a) a pond or reservoir located on lands designated as agricultural in any of the Municipality of west Grey's zoning bylaws or as part of a golf course;
 - b) a pool owned by any public or governmental body, agency or authority, or is under the jurisdiction of the Ontario Building Code;
 - c) an existing natural body of water or stream; or
 - d) a privately owned storm water management facility.

2.1.23. "Temporary Pool" means a swimming pool that is designed to be removed periodically on a seasonal or more frequent temporary basis.

2.1.24. "Three-Sided Fence" means a fence that uses a wall or side of a building to enclose the pool area. (see schedule A, figure 1, appended hereto, and forming part of this bylaw).

2.2. The requirements of this bylaw are expressed in metric measurements. Any imperial measurements included in this bylaw are approximate and are provided for convenience only.

Section 3 – General Provisions

Application of Bylaw

- 3.1. This bylaw shall be administered by the Chief Building Official or designate.
- 3.2. This bylaw shall apply to all pool enclosures constructed, or replaced, within the Municipality of West Grey; as of the passage of this bylaw.
- 3.3. 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 bylaw prevail over any other Municipality bylaw that regulates fences.
- 3.4. In the event of any conflict between the provisions of this bylaw and any provision of the Fence Bylaw, as may be amended or replaced from time to time, the provisions of this bylaw shall prevail
- 3.5. Notwithstanding Section 5,
 - 3.5.1. no conflict exists between the provisions of this bylaw and the provisions of any other bylaw or approval if it is possible to comply with both bylaws by choosing an alternate type, design or location for a pool enclosure or pool.
 - 3.5.2. nothing in this bylaw permits the location of a pond, deck, platform or other structure in a location that is not permitted under the municipality of West Grey's Zoning bylaw.

Section 4 – Prohibitions

Application of Bylaw

- 4.1. No person shall excavate, construct, install, or situate a pool; or cause a pool to be excavated, constructed, installed, or situated; or commence the excavation, construction, installation, placement or replacement of a pool without first obtaining a pool enclosure permit from the Chief Building Official.
- 4.2. No person shall excavate, construct, install, or situate a pool; or cause a pool to be excavated, constructed, installed, or situated; or commence the excavation, construction, installation, placement or replacement of a pool that is not completely enclosed by a pool enclosure in accordance with this bylaw.

- 4.3. No person shall construct or cause to be constructed any pool enclosure that does not conform to the requirements of this bylaw, or permit such non-conforming pool enclosure to continue to enclose a pool.
- 4.4. No person shall fill a pool with water or cause a pool to be filled with water or allow water to remain in a pool unless:
 - 4.4.1. the pool is enclosed by a pool enclosure, other than an approved temporary pool enclosure, meeting the requirements of section 6 of this bylaw; and
 - 4.4.2. if the pool is a newly constructed pool, the Chief Building Official has been notified and the pool enclosure has been inspected and approved.
- 4.5. No person shall remove, alter or replace a pool enclosure or any part thereof without having first obtained a permit to do so from the Chief Building Official.
- 4.6. No owner shall fail to ensure that:
 - 4.6.1. all gates forming part of the pool enclosure meet the standards of this bylaw;
 - 4.6.2. all entranceways to a pool enclosure through a wall of a building meet the standards of this bylaw; and
 - 4.6.3. all gates forming part of a pool enclosure are locked when the area is not in active use.
- 4.7. No person shall place, pile, attach or lean any object or material against or near a pool enclosure so as to facilitate climbing of the pool enclosure, diminish the structural integrity of a pool enclosure or render the pool enclosure in non-conformity with the provisions of this bylaw.
- 4.8. No person shall erect a fence adjacent to an existing pool enclosure that does not comply with the requirements of this bylaw.
- 4.9. Prohibited Fences
 - 4.9.1. No barbed wire, chicken wire or other barbed or sharp material shall be used in the construction of a pool enclosure.
 - 4.9.2. No pool enclosure shall be used as a conductor of electricity.

Section 5 – Permit Applications

- 5.1. Every application for a pool enclosure permit shall be in a form specified by the Chief Building Official and accompanied by:
 - 5.1.1. a set of plans showing the location of the pool, all proposed pool equipment (such as filters, slides and heaters) and proposed landscape features in relation to property lines, buildings (including decks and shed), and easements;
 - 5.1.2. complete details of the proposed pool enclosure, including the location and type of proposed fence and gate;

- 5.1.3. the permit fee(s) specified in the Municipality of West Grey's Fees and Charges Bylaw as amended from time to time;
 - 5.1.4. the proposed access route for construction of the pool from any public right of way to the proposed pool location; and
 - 5.1.5. if the proposed pool is within an unassumed plan of subdivision, the written approval of the developer/owner of the subdivision.
- 5.2. The Chief Building Official shall issue a permit for a pool enclosure where the plans submitted comply with the requirements of this bylaw and all applicable regulations and bylaws or approvals. Without limiting the generality of the foregoing, the Chief Building Official shall not issue the permit for the pool enclosure unless the proposed location of the pool and pool enclosure complies with the Zoning Bylaw and any other applicable regulations, bylaws or approvals.

Section 6 – Standards for Pool Enclosures

- 6.1. Enclosure: The owner of a privately-owned outdoor pool shall erect and maintain a pool enclosure that is designed to prevent climbing, restrict access and satisfies the following standards:
- 6.1.1. **Height:** the pool enclosure shall extend from the ground to a height of not less than 1.53m (5 feet). Height shall be measured from the finished ground level on the outside (not the pool side) of the pool enclosure, Inside fence height to comply with the Ontario Building Code; when the fence is used as part of a guard attached to a deck surrounding the pool;
 - 6.1.2. **Opening and Materials:**
 - 6.1.2.1. where the pool enclosure is constructed of chain link fence, the pool enclosure shall not have any openings that would allow the passage of a spherical object having a diameter exceeding 38 mm (1.5 inches) (see schedule A, figure 4, appended hereto, and forming part of this bylaw);
 - 6.1.2.2. where the pool enclosure is constructed of vertical and horizontal members, if the horizontal structural members are greater than 114.3 cm (45 inches) apart, the horizontal members can be located on the outside of the pool enclosure and the spacing between each vertical member shall not exceed 100 mm (4 inches) (see schedule A, figure 5, appended hereto, and forming part of this bylaw);
 - 6.1.2.3. where the pool enclosure is constructed of vertical and horizontal members, if the horizontal structural members are less than 114.3cm (45 inches) apart, the horizontal members must be located inside the pool enclosure and the spacing between each vertical member should not exceed 44.45 mm (1.75 inches) (see schedule A, figure 6, appended hereto, and forming part of this bylaw);
 - 6.1.3. **Ground Clearance:** the space at any point between the pool enclosure and the finished ground level and/or finished floor level must not exceed 100 mm (4 inches) 50mm (2") for chain link fencing and the ground beneath the pool enclosure cannot be loose gravel or other material that can be easily removed so as to afford access under the pool enclosure (see schedule A, figure 4 and figure 5, appended hereto, and forming part of this bylaw);

- 6.1.4. **Framing and Braces:** except as specified in Section 6.1.2.2. all horizontal structural members must be located inside of the pool enclosure as to prevent easy climbing; and
- 6.1.5. **Location:** the pool enclosure may be a boundary fence which complies with the provisions of this bylaw provided the fence is no closer than 1.2m (4ft.) from the water's edge and located not less 0.61m (2ft.) from any fence or structure that does not meet the requirements of this bylaw.
- 6.2. **Gates:** Every owner shall ensure that every gate forming part of a pool enclosure:
- 6.2.1. is constructed in accordance with the standards prescribed in section 6 of this bylaw;
 - 6.2.2. is supported on substantial hinges, capable of supporting 90.72kg (200 lbs.) in body weight;
 - 6.2.3. is equipped with a self-closing device;
 - 6.2.4. is equipped with a self-latching device that is located at least 1.22m (4 feet) above the finished floor level and/or finished ground level (see schedule A, figure 7, appended hereto, and forming part of this bylaw); and
 - 6.2.5. is equipped with a lock;
- 6.3. If the gate to the pool enclosure is a double gate access, made up of two gates at the same location:
- 6.3.1. one of the two gates shall have a self-closing device and self-latching device; and
 - 6.3.2. the gate of this double gate access without a self-closing device and a self-latching device shall have a device permanently affixed to the ground or other non-movable object, which prevents access through this gate without lifting or removing this device and then releasing the latch.
 - 6.3.3. **TEMPORARY FENCE DURING CONSTRUCTION** The owner shall ensure that temporary fencing meeting the requirements of this section is in place during all phases of construction of the pool such that unauthorized access to the site is prevented. Temporary fencing shall be of 1.22m (4 feet) high snow fence, or such other fencing material with similar visibility, height and rigidity as may be approved by the Chief Building Official and shall be securely attached at any opening when the area is left unattended.

Section 7 – Special Provisions

7.1. Above-Ground Pools

- 7.1.1. The vertical walls of an above-ground pool can be used as part of a pool enclosure provided that the vertical walls are at least 1.52m (5 feet) in height and do not possess any horizontal members that may facilitate climbing.
- 7.1.2. The ladder area, which provides access to the above-ground pool, must be enclosed by a pool enclosure as defined in this bylaw (see schedule A, figure 6, appended hereto, and forming part of this bylaw).

- 7.1.3. Above ground pools with decks installed around the pool must meet the provisions of the Ontario Building Code and allow minimum of 1.2 m (4ft.) between the waters edge and the guard/ fence.

7.2. Temporary Pools

- 7.2.1. If a pool enclosure permit has been obtained with respect to the pool enclosure for a temporary pool, the temporary pool may be reinstalled and refilled with water without additional permits or inspections provided there have been no alterations to the pool enclosure.

Section 8 – Undertaking to Ensure Repair

- 8.1. Every person erecting, altering, repairing or demolishing a swimming pool and/or swimming pool fence within the Municipality of West Grey 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 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.
- 8.2. The owner of any lands on which any swimming pool and/or 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.

Section 9 – Enforcement

- 9.1. Every person who contravenes any provision of this bylaw and is found guilty of an offence, and upon conviction shall be subject to a fine as prescribed in the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended.
- 9.2. Where anything required to be done in accordance with this bylaw is not done, the Chief Building Official for the Corporation of the Municipality of West Grey may, upon such notice as they deem suitable, do such thing at the expense of the person required to do it and such expense may be recovered by action or in like manner as municipal taxes within the meaning of section 446 of the Municipal Act, S.O. 2001, c. 25., as amended.

Section 10 – Severability

- 10.1. If a court of competent jurisdiction declares any provisions or part of a provision of this bylaw to be invalid or to be of no force and effect, it is the intention of the council in enacting this bylaw that each and every other provision of this bylaw authorized by law, be applied and enforce in accordance with its terms to the extent possible according to law.

Section 10 – Repeal Clause and Effective Date

- 11.1. Bylaw No. 43-2011 and any other bylaws enacted by the municipality that are inconsistent with the terms of this bylaw are hereby repealed.

11.2. This bylaw shall come into full force on the date it was passed, at which time all bylaws, policies and resolutions that are inconsistent with the provisions of this bylaw are hereby amended or repealed insofar as it is necessary to give effect to the provisions of this bylaw.

Read a first, second and third time and finally passed this 6th day of June, 2023.

Signature on file

Mayor Kevin Eccles

Signature on file

Jamie M. Eckenswiller, Clerk

**Bylaw 2023-058
Schedule A – Figures**

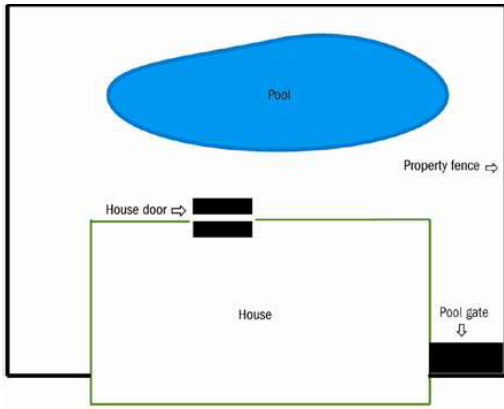


Figure 1 – Boundary or property fence

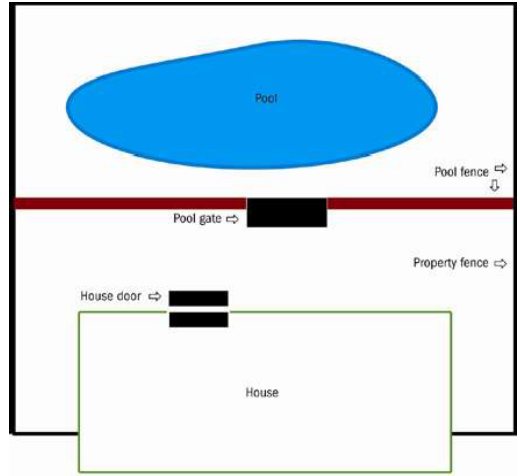


Figure 2 – Four-sided fence

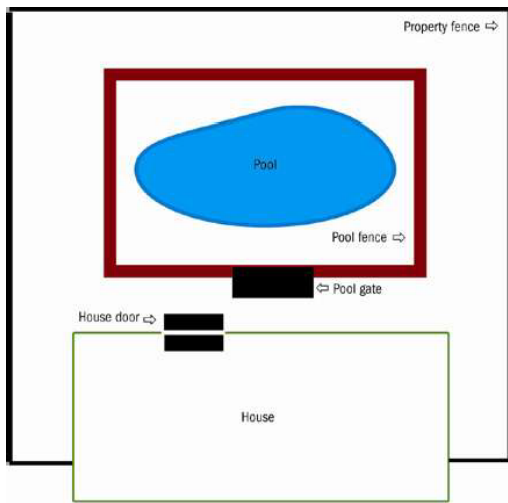


Figure 3 – Isolation fencing

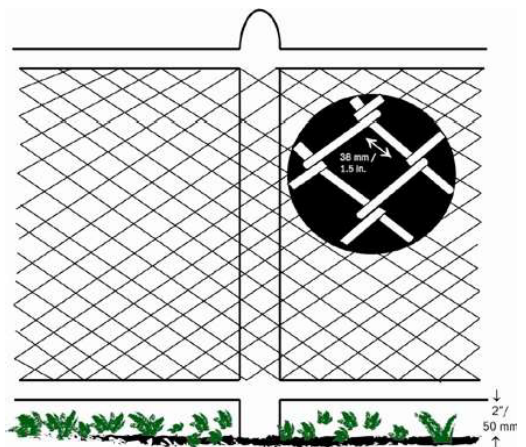


Figure 4 – Chain link fence

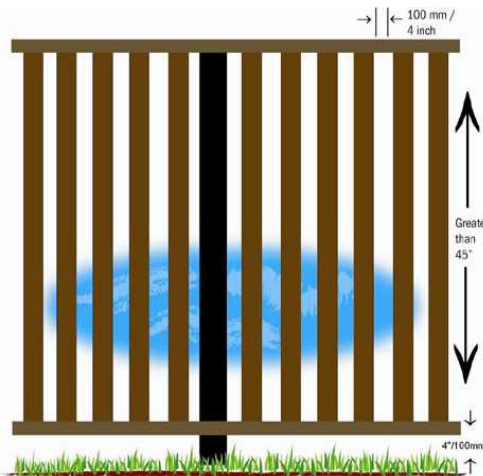


Figure 5 – Horizontal member spacing

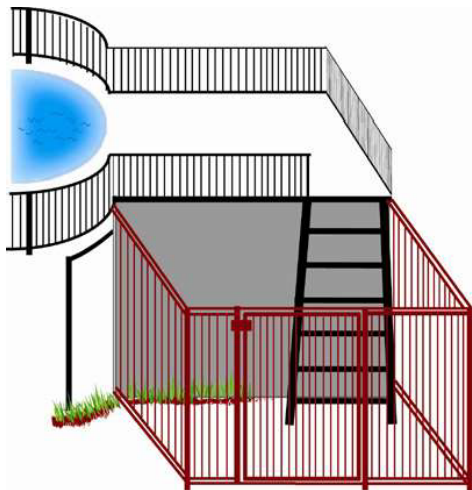


Figure 6 – Ladder area

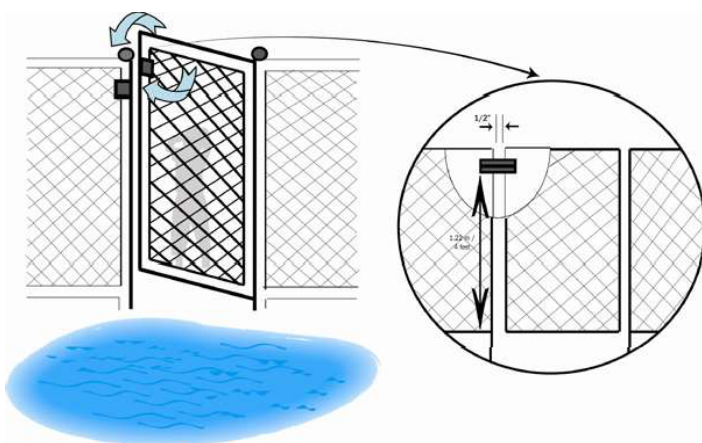


Figure 7 – Gate with self-latching device