

CITY OF ST. CATHARINES

BY-LAW NO. 2014-68

A By-law to regulate Fences and Swimming Pool Enclosures on private property within the City of St. Catharines.

WHEREAS Section 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended from time to time, provides that a municipal power shall be exercised by by-law;

AND WHEREAS Section 11(2) 6 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended from time to time, authorizes a lower tier municipality to pass a by-law respecting the health, safety and well-being of persons;

AND WHEREAS Section 11(3) 7 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended from time to time, authorizes a lower tier municipality to pass a by-law respecting matters relating to structures, including fences;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ST. CATHARINES enacts as follows:

**SECTION 1      TITLE**

This by-law shall be known as the "Fence By-law" of The Corporation of the City of St. Catharines.

**SECTION 2      DEFINITIONS**

In this by-law:

**Chief Building Official:** means the Chief Building Official for The Corporation of the City of St. Catharines as defined by the *Building Code Act*, S.O. 1992, c.23, as amended, and/or his or her designate.

**City:** means The Corporation of the City of St. Catharines.

**Corner Lot:** means a Lot situated at the intersection of two (2) or more Public Roads or at the intersection of two (2) parts of the same Public Road meeting at an angle of not more than 135 degrees.

**Council:** means the Council for The Corporation of the City of St. Catharines.

**Erect:** means to Erect, cause to be Erected, maintain, grow or allow to grow and includes alter, construct, plant, place, relocate; and “Erected” and “Erection” have a corresponding meaning.

**Fence:** means

- a) a railing, wall, structure, line of posts, wire, gate, boards, pickets, latticework, brick, stone, cement, masonry, or any other similar materials, or a combination thereof, used for the purposes of enclosing or dividing, in whole or in part, a Yard or Lot, establishing a Lot Line or providing privacy; and
- b) includes a wall that is not an integral part of a building, but does not include an arbour or trellis; and
- c) any plant material, including but not limited to, a hedge or grouping of three (3) or more trees or shrubs used for the purposes listed in subsection a) above located in a Corner Lot Sight Triangle or a Driveway Sight Triangle or in a Required Front Yard within 3.0 metres of a street line.

**Fence, Open Type Construction:** means any Fence which is visually unobstructed throughout its length and Height except for necessary line posts, corner posts, top rails, and other normal accessories.

**Grade:** means the elevation of the finished level of the ground adjoining the Fence exclusive of any artificial embankments or berms, and for the purposes of this definition, the top of a retaining wall, and a floor, will be the same as the ground.

**Height:** means the vertical distance of a Fence from Grade.

**Hydro-Massage Pools:** means the type of pools commonly referred to as hot tub, whirlpool, Jacuzzi or spa.

**Land:** means any estate or interest in land and any right or easement affecting them.

**Lot:** means a contiguous parcel of Land under one (1) ownership.

**Lot Line:** means any line that makes up the legally defined boundaries of a Lot.

**Lot Line, Exterior Side:** means the longest Lot Line along a Public Road where a Lot has two (2) or more Lot Lines along a Public Road.

**Lot Line, Front:** means the shortest Lot Line along a Public Road.

**Lot Line, Interior Side:** means a Lot Line that extends from a Front Lot Line to a Rear Lot Line and does not front on a Public Road.

**Lot Line, Rear:** means a Lot Line which is opposite to the Front Lot Line.

**Non-Residential Property:** means Land that is zoned other than Residential R1, R2, R3 or R4 or Mixed Use M1, M2 or M3 in the Zoning By-law.

**Officer:** means a By-law Enforcement Officer for The Corporation of the City of St. Catharines, and includes the Chief Building Official.

**Outdoor Storage Area:** means the keeping in an unroofed area of any goods, junk, material, merchandise or vehicles in the same place for more than 24 hours, but does not include a Salvage Yard.

**Outdoor Swimming Pool:** means any structure, basin, chamber or tank containing or capable of containing water that is designed to be used for swimming or wading, and:

- a) has a depth of 0.6 metres or more;
- b) is not completely enclosed inside a building;
- c) is not a pond which is maintained for ornamental purposes only;
- d) is not a pond or reservoir to be utilized for farming purposes, and located in an agricultural zone in the Zoning By-law, or a reservoir for fire fighting purpose;
- e) is not a Hydro-Massage Pool;
- f) is not a storm water management pond;
- g) is not a naturally occurring stream, lake, swamp or other natural body of water.

**Owner:** includes the registered Owner of any property, the Person for the time being managing or receiving the rent of the Land or premises, 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 or premises were leased; and includes a lessee, tenant, mortgagee in possession or Person in care and control of the property.

**Person:** means an individual, sole proprietorship, partnership, limited partnership, trust or body corporate, or an individual in his or her capacity as a trustee, executor, public

administrator or other legal representative.

**Public Road:** means a road or highway under government jurisdiction that is open and maintained year round.

**Residential Property:** means any Land zoned Residential R1, R2, R3, R4 or Mixed Use M1, M2 or M3 in the Zoning By-law, or used primarily for residential purposes in an Agriculture zone in the Zoning By-law.

**Salvage Yard:** means an outdoor area where wrecked motor vehicles are stored, or where used motor vehicles are wrecked and disassembled, or where any other used material and salvage are collected, sorted, stored, baled, packed, disassembled or handled.

**Sight Triangle, Corner Lot:** means an unobstructed triangular area where the Front Lot Line and Exterior Side Lot Line meet on a Corner Lot. The area of the site triangle shall be determined by measuring a prescribed distance along each of the two (2) Lot Lines from the point of intersection, and a third line joining the terminal points of the two (2) measured lines. The prescribed distance to be measured along each Lot Line in a Residential zone shall be 6.0 meters, and in all other zones shall be 7.5 metres.

**Sight Triangle, Driveway:** means an unobstructed triangular area formed at the intersection of a Lot Line and the lateral limit of a driveway. The area of the triangle shall be determined by measuring from the point of intersection of the Lot Line and the lateral limit of the travelled portion of the driveway, a distance of 4.5 metres along the Lot Line and the lateral limit of the driveway, and a third line joining the terminal points of the two (2) measured lines.

Where applicable, a Driveway Sight Triangle is required abutting a driveway located on an adjacent property.

**Swimming Pool Area:** means an Outdoor Swimming Pool and includes any surrounding platforms, walkways, play areas, landscaped areas or structures within the Swimming Pool Enclosure.

**Swimming Pool Enclosure:** means a permanent Fence or wall or combination of a Fence and wall, together with any gates or entrances, which completely surrounds a Swimming Pool Area.

**Temporary Enclosure:** means a temporary enclosure used for the purpose of enclosing an Outdoor Swimming Pool in the course of construction in order to effectively prevent or restrict access thereto by unauthorized Persons, and to prevent any accident or injury to any Person in or on a property.

**Yard:** means any area on a Lot other than in a Required Front Yard.

**Yard, Required Front:** means that portion of a Lot between the Front Lot Line and the specified distance to where buildings or structures may be located, extending from Interior Side Lot Lines, or an Exterior Side Lot Line and an Interior Side Lot Line.

**Zoning By-law:** means the City of St. Catharines Comprehensive Zoning By-law No. 2013-283.

## **SECTION 3 GENERAL PROHIBITION**

### **3.1 GENERAL**

No Person shall Erect, own, maintain or cause or permit the Erection or maintenance of a Fence or Swimming Pool Enclosure on private property located within the City, other than a Fence or Swimming Pool Enclosure which complies with this by-law and any other applicable law.

### **3.2 EXEMPTION**

Fences may be exempt in whole or in part from the provisions of this by-law, where the Fence:

- i) is Erected with the approval of the City under an Agreement;
- ii) is subject to regulation or a requirement of a public body, agency, utility or authority;
- iii) a variance is granted under Section 11 of this by-law.

## **SECTION 4 EXISTING FENCES AND SWIMMING POOL ENCLOSURES**

Notwithstanding the provisions of this by-law, any Fence or Swimming Pool Enclosure that was in existence prior to the date on which this by-law comes into force and was lawfully Erected shall be deemed to be in compliance with this by-law, for so long as

such Fence or Swimming Pool Enclosure continues to be the same Height, length, width and comprised of the same materials, and may be maintained as Erected including any repair work that may be required from time to time.

## **SECTION 5 GENERAL PROVISIONS**

No person shall Erect a Fence or Swimming Pool Enclosure in the City of St. Catharines unless the Fence or Swimming Pool Enclosure is:

- i) Stable;
- ii) Vertical;
- iii) Constructed of good quality materials designed or intended for use in a permanent Fence or Swimming Pool Enclosure;
- iv) Not an obstruction to the visibility of pedestrians or motorists;
- v) Maintained in good repair and free from unsightly markings, stains and defacements;
- vi) Maintained in a safe and structurally sound condition;
- vii) Free from accident hazards;
- viii) Protected by paint, preservative or other weather resistant material, except for wooden Fences made of cedar, redwood or treated wood.

## **SECTION 6 RESTRICTIONS ON MATERIALS**

### **6.1 GENERAL**

No Person shall Erect a Fence or Swimming Pool Enclosure:

- i) which contains or is constructed, in whole or in part, of any hazardous material, chicken wire, barbed wire, other barbed or sharp material or projection, or is an electrified Fence which contains a device for projecting or transmitting an electric current;
- ii) that is comprised of sheet metal or corrugated metal panels on a Lot other than in an Employment zone as set out in the Zoning By-law;
- iii) in a manner that renders an existing Fence or Swimming Pool Enclosure into non-conformity with the requirements of this by-law.

## **6.2 BARBED WIRE**

Notwithstanding Section 6.1 above, a Fence comprised of barbed wire is permitted:

- i) on a farm in a Agriculture zone as set out in the Zoning By-law that is used as part of an enclosure for the keeping of livestock or the protection of livestock and crops from animals; or
- ii) on a Non-Residential Property where required for the safety or protection of property, the portion of a Fence above 2 metres may be wholly or partially constructed of barbed wire provided the barbed wire does not project past the exterior face of the Fence.

## **6.3 ELECTRIC FENCE**

Notwithstanding Section 6.1 above, an electric Fence is permitted on a farm in an Agriculture zone as set out in the Zoning By-law that is used as part of an enclosure for the keeping of livestock or the protection of livestock or crops from other animals, provided the Fence meets all applicable Canadian standards.

## **SECTION 7 CALCULATION OF HEIGHT**

The Height of a Fence or Swimming Pool Enclosure shall be measured vertically from Grade at the base of the Fence or Swimming Pool Enclosure to the top of the Fence or Swimming Pool Enclosure, exclusive of decorative post caps, provided that:

- i) Where changes in Grade contours along the Fence line or Swimming Pool Enclosure line result in changes in Height of the Fence or Swimming Pool Enclosure, the Height of the Fence or Swimming Pool Enclosure is deemed to be the average Height at the midpoint between supporting posts;
- ii) Where Grade elevations between adjacent Lots differ at the boundary between the Lots, the Height of any Fence or Swimming Pool Enclosure located on or within 0.6 metres of a Lot Line shall be measured from the mean Grade elevation between the two (2) Lots;
- iii) Notwithstanding i) and ii) above, no part of a Swimming Pool Enclosure will be less than 1.5 metres in Height measured from Grade.

## **SECTION 8 FENCE AND SWIMMING POOL ENCLOSURE REQUIREMENTS**

### **8.1 SIGHT TRIANGLES**

- i) No Person shall Erect a Fence on any property within a Corner Lot Sight Triangle that is greater than 1 metre in Height;
- ii) No Person shall Erect a Fence on any property within a Driveway Sight Triangle that is greater than 1 metre in Height;
- iii) Every Fence Erected within a Corner Lot or Driveway Sight Triangle shall be constructed in such a manner and of such material that it does not obstruct the visibility of motorists and pedestrians;
- iv) A Swimming Pool Enclosure is not permitted within a Corner Lot Sight Triangle or Driveway Sight Triangle.

### **8.2 HEIGHT RESTRICTIONS - RESIDENTIAL PROPERTY**

- i) No Person shall Erect a Fence in a Required Front Yard on a Residential Property that is greater than 1 metre in Height;
- ii) No Person shall Erect a Fence or Swimming Pool Enclosure in any Yard on a Residential Property that is greater than 2 metres in Height.

### **8.3 HEIGHT RESTRICTIONS - NON-RESIDENTIAL PROPERTY**

No Person shall Erect a Fence or Swimming Pool Enclosure on a Non-Residential Property that is greater than 3 metres in Height, and:

- i) a Fence need not be subject to Section 8.1 ii) of this by-law provided it is setback a distance of 6 metres from the subject Lot Line, or is an Open Type Construction Fence.

### **8.4 RECREATIONAL FENCE**

A Fence may be Erected to enclose a tennis court or other recreational facility provided that the Fence is of chain link construction, does not exceed a Height of 3.65 metres, and is not located in a Required Front Yard. A recreational Fence does not include a Swimming Pool Enclosure.

### **8.5 DRIVEWAY GATE / ARCHWAY**

- i) A driveway gate or archway forming part of an entranceway or exit must be a minimum 3 metres in width;
- ii) An archway forming part of an entranceway or exit may exceed the Height limits as set out in Section 8.2 or 8.3 of this by-law, to a maximum Height of 4.5 metres, provided the archway is setback a minimum 7.62 metres from the subject Lot Line.

### **8.6 SALVAGE YARDS**

- i) The whole of a Salvage Yard shall be enclosed by a Fence surrounding the Salvage Yard having the following specifications:
  - a) minimum of 2.5 metres in Height;
  - b) maximum of 5 metres in Height;
  - c) constructed of solid materials, uniform construction, and shall not be an Open Type Construction Fence.
- ii) The said Fence shall be located no closer than 6 metres from a Lot Line and the Land between the Fence and the Lot Line not required for entrance and exit driveways shall be used for no other purpose than landscaping.
- iii) No salvage or materials shall be piled higher than the Height of the Fence, and not closer to the Fence than 3 metres.

### **8.7 OUTDOOR STORAGE AREA**

The whole of an Outdoor Storage Area in an Employment zone as set out in the Zoning By-law or where permitted elsewhere, shall be enclosed by a Fence surrounding the Outdoor Storage Area save and except for entrance and exit driveways, and subject to the provisions of Section 8.3 of this by-law.

## **SECTION 9 SWIMMING POOL ENCLOSURE**

### **9.1 PERMITS**

- i) No Person shall excavate for or Erect, or cause or permit excavation for or Erection of, any Outdoor Swimming Pool and/or Swimming Pool Enclosure without first obtaining a permit from the Chief Building Official for the Swimming Pool Enclosure.
- ii) An application for a permit for a Swimming Pool Enclosure shall contain the following information:
  - a) the location of the property;
  - b) plans showing the location of the Outdoor Swimming Pool on the property in relation to Lot Lines, street lines and all other building structures on the Lot;
  - c) plans showing the complete details of the Swimming Pool Enclosure including, but not limited to, the type, Height, materials and location of the proposed enclosure and gates or entrances;
  - d) plans showing the location of the swimming pool pump, heater and filter; and,
  - e) plans showing the construction of any deck and guards in the case of an above-ground Outdoor Swimming Pool.
- iii) No permit for a Swimming Pool Enclosure shall be issued unless the application is in compliance with all applicable Federal and Provincial statutes, and regulations thereunder, and Municipal By-laws.
- iv) No permit for a Swimming Pool Enclosure shall be issued unless all applicable fees, as established by Council from time to time, have been paid in full.

### **9.2 GENERAL ENCLOSURE REQUIREMENTS**

- i) The Owner of any Lands on which an Outdoor Swimming Pool is located or Erected shall Erect and maintain a Swimming Pool Enclosure around the entire Swimming Pool Area, in accordance with the provisions of this by-law.

- ii) No Person shall place water, or cause water to be placed, in an Outdoor Swimming Pool, or allow water to remain therein, unless the Swimming Pool Enclosure prescribed by this by-law is Erected and maintained in accordance with the provisions of this by-law.
- iii) An Outdoor Swimming Pool, while under construction, shall be completely enclosed by a Temporary Enclosure as set out in Section 9.2 iv) and viii) below, except where the permanent Swimming Pool Enclosure requirements have been satisfied.
- iv) A Temporary Enclosure shall consist of a 1.5 metre high plastic mesh Fence having mesh openings not greater than 50 millimetres and supported by steel T-bar posts located a maximum of 2.4 metres apart and with a 9 gauge galvanized steel wire located at the top and bottom of such Fence; or, be constructed of material that will provide an equivalent or greater degree of safety and which has been approved by the Chief Building Official.
- v) The Height of the Swimming Pool Enclosure required by this by-law shall be a minimum of 1.5 metres in Height, as measured from Grade.
- vi) The maximum permitted space between the bottom of a Swimming Pool Enclosure and Grade is:
  - (a) 50 millimetres where the ground is primarily grass or earth; and/or,
  - (b) 100 millimetres where the ground is primarily concrete or asphalt.
- vii) Every Swimming Pool Enclosure shall be constructed in accordance with the provisions of Sections 9.2, 9.3 and 9.4 of this by-law, except as otherwise provided.
- viii) Every Swimming Pool Enclosure, and Temporary Enclosure, shall be maintained in such a manner and to such an extent as to ensure at all times maximum security and protection against entry to the Outdoor Swimming Pool by unauthorized Persons.
- ix) Where material of a Swimming Pool Enclosure is structurally inadequate, broken or in a state of decay, it shall be replaced with equivalent or better material.
- x) Fence post spikes shall not be used as part of a replacement of posts used as part of a Swimming Pool Enclosure.

### 9.3 FENCES AS SWIMMING POOL ENCLOSURES

- i) A Fence which forms a Swimming Pool Enclosure, or part thereof, shall be made of:
  - a) chain link construction;
  - b) vertical board construction;
  - c) wrought iron construction; or
  - d) of such other materials and construction that will provide an equivalent or greater degree of safety, as determined by the Chief Building Official.
- ii) A Fence of chain link construction shall:
  - a) have a mesh with openings not greater than 38 millimetres;
  - b) be constructed of wire not less than 12 gauge galvanized steel or if having a vinyl or other coating, not less than 14 gauge steel wire covered with a vinyl or other approved coating which would form a total thickness equivalent to 12 gauge galvanized steel wire;
  - c) be supported by 38 millimetres diameter galvanized steel posts spaced not more than 2.4 metres apart, and shall be securely embedded and extend at least 0.9 metres into the ground below Grade;
  - d) have top rails securely fastened to the upright posts, which at minimum are made of 32 millimetres diameter galvanized steel pipe, and have at the bottom a 9 gauge galvanized steel tension wire fastened securely to the upright posts.
- iii) A Fence of vertical board construction shall:
  - a) be constructed board on board;
  - b) have vertical boards which are not less than 19 millimetres by 89 millimetres;
  - c) be supported by posts at least 89 millimetres by 89 millimetres square, or 89 millimetres in diameter, and such posts shall not be spaced more than 2.4 metres apart. Such posts shall extend at least 0.9 metres into the ground below Grade and that part of the post below Grade shall be securely embedded and treated with a wood preservative;

- d) have top and bottom rails which are at least 38 millimetres by 89 millimetres (with the 89 millimetre dimension in vertical plane);
- e) have either:
  - I) horizontal members, including top and bottom rails, that are spaced at least 1.2 metres apart, and vertical boards that are spaced not more than 100 millimetres apart on both faces of the horizontal members of the Fence; or
  - II) horizontal members, including top and bottom rails, that are spaced less than 1.2 metres apart and vertical boards that are spaced not more than 50 millimetres apart on both faces of the horizontal members of the Fence.
- iv) A Fence of wrought iron construction shall:
  - a) be of sufficient strength to provide an effective enclosure;
  - b) be supported by posts spaced not more than 2.4 metres apart and such posts shall be securely embedded and extend at least 0.9 metres into the ground below Grade;
  - c) have either:
    - I) horizontal members, including top and bottom rails, that are spaced at least 1.2 metres apart, and vertical pickets that are spaced not more than 100 millimetres apart; or
    - II) horizontal members, including top and bottom rails, that are spaced less than 1.2 metres apart and vertical pickets that are spaced not more than 50 millimetres apart.
- v) A Fence which forms a Swimming Pool Enclosure, or part thereof, shall be constructed at a distance of at least 0.6 metres from the Outdoor Swimming Pool.

#### **9.4 GATES AND ENTRANCES**

- i) Gates or entrances which form a part of the Swimming Pool Enclosure shall be:

- a) of construction and Height equivalent to or greater than that of the Swimming Pool Enclosure required by this by-law;
  - b) supported on substantial hinges;
  - c) self-closing; and,
  - d) equipped with a self-latching device located at least 1.2 metres above the Grade and on the Outdoor Swimming Pool side of the gate. No thumb latch or release mechanism of any kind that is located on the exterior face of the gate, and is connected to the self-latching device, shall be located less than 1.5 metres above the Grade.
- ii) Doors providing access from a building directly to the Swimming Pool Area, other than doors located in a dwelling unit, shall each be self-closing and equipped with a self-latching device located at least 1.5 metres above the Grade.
- iii) Where a double gate forms part of the Swimming Pool Enclosure, one (1) gate must be fixed and locked in the closed position.

#### **9.5 ABOVE GROUND SWIMMING POOLS**

- i) For the purposes of this by-law, above-ground Outdoor Swimming Pools are considered to be the same as in-ground Outdoor Swimming Pools, and require the same Swimming Pool Enclosures, except as provided in Sections 9.5 ii) and iii) below.
- ii) Above-ground Outdoor Swimming Pools may have an integrally constructed Fence as part of the required Swimming Pool Enclosure, provided that the exterior sides of the Outdoor Swimming Pool are at least 1.5 metres in Height, as measured from Grade.
- iii) Any gate or entrance to an above-ground Swimming Pool Enclosure shall be constructed in accordance with Section 9.4 of this by-law except where the Chief Building Official grants approval for an alternative that provides an equivalent or greater degree of safety and protection against entry by unauthorized Persons, subject to such conditions as the Chief Building Official considers appropriate.

## **SECTION 10 HYDRO-MASSAGE POOLS**

Hydro-Massage Pools need not comply with requirements of Section 9 of this by-law, provided that when not in use, a secure cover of rigid material is placed over the entire opening to the Hydro-Massage Pool and is locked in place in order to prevent access by unauthorized Persons.

## **SECTION 11 VARIANCES**

- i) Any Owner may apply in writing to the Chief Building Official for a variance from the provisions of this by-law, excepting the provisions of Section 9 and 10 of this by-law.
- ii) The requested variance will be considered by Council, who may grant the variance in full or in part, place certain terms and conditions on the approval, or deny the variance.
- iii) In considering whether to grant a variance, Council may have regard for such matters, including but not limited to, the following:
  - a) Any special circumstances or conditions applying to the Fence in question;
  - b) Whether strict application of the provisions of this by-law would result in practical difficulties or unnecessary hardship to the property Owner;
  - c) Whether the Fence may affect surrounding sight lines and create or potentially create a hazardous condition for pedestrians or motorists; and
  - d) Whether the Fence has or may have an adverse impact on neighbouring properties.
- iv) The fee for an application for variance to cover the processing of the application shall be as set by the Rates and Fees By-law for the City, as amended from time to time. The variance application fee is non-refundable.

## **SECTION 12 ADMINISTRATION AND ENFORCEMENT**

### **12.1 ENFORCEMENT**

This by-law shall be enforced by any Officer of the City.

## **12.2 INSPECTIONS**

- i) An Officer, and any Person under his or her direction, may enter on Land at any reasonable time without prior notice for the purpose of carrying out an inspection to determine whether the provisions of this by-law have been complied with.
- ii) For the purposes of an inspection, an Officer may:
  - a) Require the production of documents relevant to the inspection;
  - b) Inspect and remove documents or things relevant to the inspection for the purpose of making copies;
  - c) Require information from any Person concerning a matter related to the inspection;
  - d) Make examinations or take photographs necessary for the purposes of the inspection, alone or in conjunction with any Person possessing special or expert knowledge.

## **12.3 HINDER OR OBSTRUCT**

No Person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty, which is authorized under this by-law.

## **12.4 REMEDIAL ACTION**

- i) If, in the opinion of an Officer, a Fence, Swimming Pool Enclosure or Hydro-Massage Pool does not comply with the provisions of this by-law, the Officer or designate, shall provide written notice to the Owner of the requirement to bring the Fence, Swimming Pool Enclosure or Hydro-Massage Pool into compliance with the provisions of this by-law.
- ii) The Owner shall comply with the provisions of the notice within the time frame specified.
- iii) In the event that the Owner fails to comply with notice given pursuant to Section 12.4 i) of this by-law, the Chief Building Official may immediately cause the Fence to be removed or brought into conformance with the provisions of this by-law at the expense of the Owner and such expense shall be recoverable by action or by adding the costs to the tax roll for the property and collecting them in

the same manner as taxes in accordance with Section 427 of the *Municipal Act*, S.O. 2001, c.25, as amended.

- iv) In the case of a Swimming Pool Enclosure or Hydro-Massage Pool where an Owner fails to comply with notice given pursuant to Section 12.4 i) of this by-law, the Chief Building Official may, in addition to any other remedy provided herein, remove or cause to be removed, all water from the Outdoor Swimming Pool or Hydro-Massage Pool until such time as the required Swimming Pool Enclosure or Hydro-Massage Pool is Erected or maintained in accordance with the provisions of this by-law and such expense shall be recoverable by action or by adding the costs to the tax roll for the property and collecting them in the same manner as taxes in accordance with Section 427 of the *Municipal Act*, S.O. 2001, c.25, as amended.

#### **12.5 OFFENCE**

Any Person who contravenes any provisions of this by-law is guilty of an offence.

#### **12.6 PENALTY**

Every Person who is convicted of an offence under this by-law is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, P. 33, as amended from time to time, or any replacement legislation.

#### **12.7 PROHIBITION ORDER**

Where a conviction is entered for a violation of this by-law, in addition to any other remedy and to any penalty imposed under this by-law, the court in which the conviction has been entered and any court of competent jurisdiction may make an order prohibiting the continuation or repetition of the offence by the Person convicted and requiring the Person convicted to correct the contravention.

#### **12.8 SEVERABILITY**

Each provision of this by-law is independent of all other provisions, and if any provision is declared invalid for any reason by a court of competent jurisdiction, all other

provisions of this by-law remain valid and enforceable.

**12.9 BY-LAWS REPEALED**

This by-law shall repeal the following by-laws:

- i) By-law 5275;
- ii) Sections 12.1(a)(i)(ii)(iii) of By-law 6756, as amended;
- iii) Sections 9(a)(i)(ii)(iii) of By-law 6609, as amended;
- iv) Sections 3.18(a)(i)(ii)(iii) of By-law 62-86, as amended;
- v) Sections 3.18(a)(i)(ii)(iii) of By-law 64-207, as amended;
- vi) Sections 3.18(a)(i)(ii)(iii) of By-law 64-270, as amended;
- vii) Sections 3.11(a)(i)(ii)(iii) of By-law 66-165, as amended;
- viii) Sections 3.11(a)(i)(ii)(iii) of By-law 68-121, as amended;
- ix) Sections 3.12(a)(b)(c) of By-law 71-224, as amended;
- x) Sections 4.22, 5.14(a)(b)(c)(d) of By-law 83-211, as amended;
- xi) Sections 5.12(a)(b)(c)(d) of By-law 84-119, as amended;
- xii) Sections 4.29, 4.30, 5.13 of By-law 88-72, as amended;
- ii) By-law 2006-26.

**12.10 DATE OF EFFECT**

This by-law comes into force and takes effect on the date that it is passed.

Read a first time this 14 day of APRIL 2014.  
 Read a second time this 14 day of APRIL 2014.  
 Read a third time and passed this 14 day of APRIL 2014.



CLERK



MAYOR

CITY OF ST. CATHARINES

BY-LAW NO. 2014-214.

A By-law to amend By-law No. 2014-68 entitled "A By-law to regulate Fences and Swimming Pool Enclosures on private property within the City of St. Catharines."

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF ST. CATHARINES enacts as follows:

1. That By-law No. 2014-68 is hereby amended by adding the following definition to Section 2 - Definitions:

**Director:** means the Director of Planning and Development Services and his or her designate.

2. That By-law No. 2014-68 is hereby further amended by deleting Section 11 - Variances and replacing it with the following:

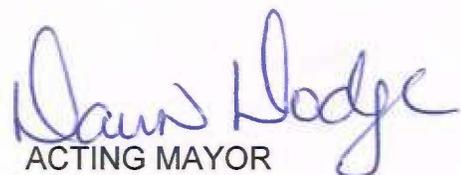
**SECTION 11 VARIANCES**

- i) Any Owner may apply in writing to the Director for a variance from the provisions of this by-law, excepting the provisions of Section 9 and 10 of this by-law.
- ii) The requested variance will be considered by the Director who may grant the variance in full or in part, place certain terms and conditions on the approval, or deny the variance.
- iii) In considering whether to grant a variance, the Director may have regard for such matters, including but not limited to, the following:
  - a) Any special circumstances or conditions applying to the Fence in question;
  - b) Whether strict application of the provisions of this by-law would result in practical difficulties or unnecessary hardship to the property Owner;

- c) Whether the Fence may affect surrounding sight lines and create or potentially create a hazardous condition for pedestrians or motorists; and
- d) Whether the Fence has or may have an adverse impact on neighbouring properties.
- iv) Where an Owner disagrees with a decision of the Director made under Section 11 (ii) of this by-law, the Owner may appeal such decision to Council.
- v) Where an appeal has been made to Council under Section 11(iv) of this by-law, Council shall have the same powers as the Director pursuant to Section 11 (ii) of this by-law and Council may have regard to the same factors as set out in Section 11(iii) of this by-law in determining whether an exemption shall be granted.
- vi) Decisions of Council under Section 11 (v) are final.
- vii) The fee for an application for variance to cover the processing of the application shall be as set by the Rates and Fees By-law for the City, as amended from time to time. The variance application fee is non-refundable.

Read a first time this 25<sup>th</sup> day of August 2014.  
Read a second time this 25<sup>th</sup> day of August 2014.  
Read a third time and passed this 25<sup>th</sup> day of August 2014.

  
CLERK

  
ACTING MAYOR