This is an office consolidation of By-Law 134-23 and amendments thereto. For accurate reference you should consult the original by-laws that are retained by the Clerk

BY-LAW NUMBER 134- 23 (As amended by By-law 55-25 & 119-26)

- of –

THE CORPORATION OF THE COUNTY OF BRANT

A by-Law to regulate swimming pool enclosures on privately owned lands and to repeal and replace By-law 54-03, as amended.

WHEREAS Sections 8, 9, and 10 of *the Municipal Act, 2001, S.O. 2001, c.25* authorize a municipality to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 6 of Subsection 10(2) authorizes by-laws respecting the health, safety and well-being of *person* and paragraph 10 of Subsection 10(2) authorizes by-law respecting fences;

AND WHEREAS Pursuant to Subsection 8(3) of *the Municipal Act, 2001, S.O. 2001, c.25* the by-laws of a municipality may (a) regulate or prohibit regarding a certain matter; (b) require a *person* to do certain things respecting such matter; (c) provide for a system of licenses respecting the matter.

AND WHEREAS Section 132 of *the Municipal Act, 2001, S.O. 2001, c.25* authorizes council to pass a by-law to authorize the *owner* or occupant of land to enter adjoining land, at any reasonable time, for the purpose of making repairs or alterations to any building, fence or other structures on the land of the *owner* or occupant but only to the extent necessary to carry out the repairs or alterations;

AND WHEREAS Section 425 of *the Municipal Act, 2001, S.O. 2001, c.25* authorizes the *County* of Brant to pass by-laws providing that a *person* who contravenes a by-law of the *County* Brant passed under that *Act* is guilty of an offence;

AND WHEREAS subsection 434.1 of the Municipal Act, 2001 provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that a person has failed to comply with a by-law of the municipality passed under the Municipal Act;

AND WHEREAS subsection 434.2(1) of the Municipal Act, 2001 provides that an administrative penalty imposed by a municipality on a person constitutes a debt of the person to the municipality

AND WHEREAS Section 446 of *the Municipal Act, 2001, S.O. 2001, c.25* authorizes Council to pass a by-law enabling the municipality to do such matter or thing at the *person's* expense when that *person* fails to do what they are required or directed to do by by-law or otherwise, and to recover the costs of such action from the *person* by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS Subsection 391(1) of *the Municipal Act, 2001, S.O. 2001, c.25*

provides that a municipality may impose fees and charges on *persons*, (a) for services or activities provided or done by or on behalf of it; (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and (c) for the use of its *property* including *property* under its control;

AND WHEREAS Council deems it necessary to require *owners* of privately owned *swimming pools* to erect and maintain a *swimming pool enclosure*.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE COUNTY OF BRANT HEREBY ENACTS as follows:

1. **Short Title**

1.1 This By-law shall be known as the "Municipal Swimming Pool Enclosure By-Law."

2. **Definitions**

2.1. For the purpose of this By-Law:

2.1.2 ***"*Building*"*** means any permanent structure used or intended to be used for the shelter, accommodation or enclosure of *persons*, animals, or goods, but shall not include a lawful boundary wall or *fence*.

2.1.3 **"Construct"** means to do anything in the erection, installation, extension, or material alteration of a *swimming pool* and includes excavation activities and the installation of a *swimming pool* fabricated or moved from elsewhere and "*Construct*ion" has a corresponding meaning.

2.1.4 **"County"** means the Corporation of the *County* of Brant and includes the geographic area contained within the *County* of Brant.

2.1.5 **"Effective Ground Level"** at any location means the highest level of the ground within 1.22 metres (4 feet) measured horizontally in any direction from the location under consideration.

2.1.6 **"Exterior Face"** means when used in conjunction with a *swimming pool enclosure* the side of the *swimming pool enclosure* from which access to the *swimming pool* is to be prevented.

2.1.7 **"Gate"** means a barrier swinging on a vertical axis.

2.1.8 **"Height"** means the vertical *distance* measured from the *effective ground level* at any point along the length of the *swimming pool enclosure* to the top of the *swimming pool enclosure* measured on the *exterior face*.

2.1.9 **"Hydro Massage Pool"** means any privately *owned* outdoor tank or body of water maintained or used or which may be used for swimming, wading, bathing commonly referred to as a hot tub, whirlpool, jacuzzi, spa, or swim spa, having a water surface area that is less than 8.01 square metres and a lockable cover which can hold up to 90.72 kilogram in weight.

2.1.10 **"Municipal Law Enforcement Officer"** shall mean any *person* appointed as such by the Corporation of the *County* of Brant to enforce municipal by-laws.

2.1.11 **"Owner"** means a registered *owner*, but also includes an occupant, lessee, tenant, or any other *person* in charge of or in control of premises on which a *swimming pool* is located, and does not include any Federal, Provincial or Municipal authority.

2.1.12 **"Person"** means a natural *person*, partnership, or corporation, and includes the heirs, executors, administrators or other legal representatives to whom the context can apply according to law.

2.1.13 "**Property"** means any grounds, yard, or vacant land.

2.1.14 **"Swimming Pool"** means any privately *owned* outdoor tank or body of water maintained or used or which may be used for swimming, wading, diving, bathing, capable of containing or containing a depth of 600 mm (23.5 inches) or more of water, excluding existing natural bodies of water or stream, manmade fishponds or ornamental ponds, and hydro massage pools. Privately *owned* outdoor *swimming pool*s accessory to multiple residential development, motel, hotel, or similar establishments and a privately-*owned* outdoor *swimming pool* used for display or commercial purposes shall be subject to regulations set out within this By-Law.

2.1.15 **"Swimming Pool Area"** means a *swimming pool* and includes any surrounding platforms, walkways, play areas and landscape areas within the *swimming pool enclosure.*

2.1.16 **"Swimming Pool Enclosure"** means a fence, wall or other structure or combination thereof, including doors and *gate*s surrounding an outdoor *swimming pool* to restrict access thereto.

2.1.17 **"Swimming Pool Equipment"** means water circulation or treatment equipment such as but not limited to heaters, pumps, and filters.

2.1.18 **"Temporary Swimming Pool Enclosure"** means a *swimming pool enclosure* used temporarily for the purpose of enclosing a *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 the *property.*

3. **General Provisions**

3.1. The provisions of this by-law shall regulate the *swimming pool requirements* of privately-*owned* outdoor *swimming pools* c*onstructed* on *property* within the boundaries of the *County*.

3.2. Every *owner* of land upon which a *swimming pool* is located shall erect and maintain in good repair such *swimming pool enclosure*s as required, in compliance with the standards in this By-Law.

3.3. No *owner* shall place, erect, *construct,* or install or permit to be placed, erected, *constructed,* or have installed any *swimming pool* without first obtaining a Swimming Pool Permit, as required from the *County*.

3.4. An application for Swimming Pool Permit shall contain the following information:

3.4.1. A site plan showing the location of the *swimming pool enclosure*, *swimming pool* and *swimming pool equipment* on the *property* in relation to the location of *property* lines, street lines, sewage system and all other *buildings* or structures on the *property*;

3.4.2. A detailed drawing showing the details of the *swimming pool enclosure,* including the type, *height*, materials, *gate*(s), and latching materials; and,

3.4.3. A lot grading plan completed and stamped by a Professional Engineer, an Ontario Land Surveyor, or a Landscape Architect at the discretion of the *County*.

3.5. The applicant shall pay a fee in accordance with the *County's* Fees and Charges By-law. The fee pursuant to the *County* Fees and Charges By-law shall be payable upon application for the Swimming Pool Permit.

3.6. The provisions of this By-Law in no way exempts *swimming pools* from complying with any applicable Federal or Provincial statutes, and regulations thereunder, or any other regional or municipal by-laws, including the requirement for a permit.

3.7. No *person* shall place water or allow water to remain in any *swimming pool* unless a Swimming Pool Permit has been issued and the *swimming pool enclosure* has been *constructed*, inspected, approved, and maintained in compliance with this By-Law.

3.8. No *person* shall permit any *gate* or door forming part of a *swimming pool enclosure* to be unlocked when the *swimming pool* is not under competent supervision.

3.9. No *person* shall install or allow the use of any barbed wire, or electrification in connection with any *swimming pool enclosure.*

3.10. A Swimming Pool Permit is not required for a *swimming pool* which has been dismantled or deflated and is being reconstructed, placed, or erected in the exact location in which it was previously *constructed*, erected or placed provided that a Swimming Pool Permit was obtained for the original installation, and the required *swimming pool enclosure* remains in compliance with this By-Law.

3.11. *Swimming pools* shall comply with all yard and setback requirements specified in the *County* of Brant Comprehensive Zoning By-law.

3.12. No *person* shall fail to lock a *hydro-massage* pool cover when not under competent supervision.

4. **Swimming Pool Enclosure Requirements**

4.1 *Swimming pools* shall be enclosed with a *swimming pool enclosure* of 1.53m minimum in *height* and not exceeding the maximum permitted *height* in the *County's* Fence By-law, measured from the *effective ground level* at the *exterior face* of the *swimming pool enclosure*.

4.1.1 If the outside wall of the *swimming pool* is made of rigid material, has a minimum *height* of 1.22 m (4 feet) measured from *effective ground level* at all points on the perimeter of such wall, and a secured entry in the form of a lockable ladder, removable steps, fence, or *gate* that comply with all other requirements of this By-Law, Section 4.1 of this By-Law shall not apply.

4.2 All *swimming pool enclosure*s shall be c*onstruct*ed of wood, metal, or chain link fencing unless the *Municipal Law Enforcement Officer* has approved a *fence* of any other materials and c*onstruct*ion which in their opinion will yield an equivalent or greater degree of safety to the standards specified in this By-Law.

4.3 **Chain Link –** A fence of chain link *construction* shall:

4.3.1 Be supported by galvanized posts having a diameter of not less than 38.01mm;

4.3.2 Be spaced not more than 2.44m apart; and

4.3.3 Such chain link fencing shall be at least 14 gauge with a mesh of diameter not more than 38.01mm, having a top rail securely fastened to the upright posts and a bottom rail or a tension wire securing the bottom of *fencing* to the posts.

4.4 **Wood –** A fence of wood *construction* shall:

4.4.1 Be supported by posts that measure a minimum of 100.01mm x 100.01mm, spaced not more than 2.44m apart. Such posts shall extend at least 0.92m into the ground;

4.4.2 Be *construct*ed of solid panels, vertical boards, or vertical pickets having horizontal rails not less than 1.22m apart measured vertically from the top of the bottom horizontal rail to the top of the upper horizontal rail; and

4.4.3 Have openings between the panels, vertical boards, or pickets not exceeding 38.01mm.

4.5 **Wrought iron or other metal type –** a fence of wrought iron or metal *construction* shall:

4.5.1 Be of sufficient strength to provide an effective *swimming pool enclosure*;

4.5.2 Have supports of posts spaced not more than 2.44m apart and placed at least 0.92m below grade or sufficiently anchored to a suitable surface; and

4.5.3 Have horizontal members, including top and bottom rails, that are spaced at least 1.22m apart, and vertical members that are spaced no more than 100.01mm apart on the *exterior face* of the fence.

4.6 The *swimming pool enclosure* shall be located a minimum distance of 1.22m from any other *building*, *pool equipment*, *fence*, tree, air conditioning unit, utility meter, steps, ledge, windowsill, or other object that might afford a means whereby, in the opinion of the *Municipal Law Enforcement Officer*, the safety of the *swimming pool enclosure* is compromised.

4.7 The maximum permitted space between the bottom of the *swimming pool enclosure* and the ground or surface beneath it shall not exceed 76.01mm.

4.8 All *swimming pool enclosure*s shall be set back a minimum of 1.22m from the nearest inside wetted surface of the *swimming pool* wall.

4.9 No *swimming pool enclosure* shall have any element or attachment which will aid or facilitate climbing the exterior and allowing access.

4.10 The wall of a *building* may form a part of the required *swimming pool enclosure* provided that any entrances on the wall, leading to the *swimming pool area,* are kept locked when the *swimming pool* is not supervised.

5. **Gates and Entrances**

5.1. *Gate*s of entrances which form part of the *swimming pool enclosure* shall be:

5.1.1. Of *construct*ion and *height* equivalent to or greater than that of the *swimming pool enclosure* as described in Section 4 of this By-Law;

5.1.2. Supported on substantial hinges;

5.1.3. Equipped with self-closing hardware capable of placing the *gate* or entrance in a latched position; and

5.1.4. Equipped with an operable self-latching device located at least 1.22m above the *effective ground level* on the *swimming pool* side of the *gate* or entrance. Any thumb latch or release mechanism of any kind that is located on the *exterior face* of the *gate* or entrance, and is connected to the self-latching device, shall be located at least 1.52m above the *effective ground level.*

5.2. 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 remaining section of the *gate* is to be equipped with a ground pin and lock to mechanically secure that section of the *gate*. Ground pin and locks shall be located on the inside of the *gate*. Both sections of the *gate* shall be locked at all times when the *swimming pool* is not under competent supervision. Ground locks are to be located on the inside of the *swimming pool enclosure* to prevent access.

5.3. Doors providing direct access to a *swimming pool area* from an attached or detached garage, excluding doors from a dwelling unit, are to be equipped with a self-closing device, with a self-latching device located not less than1.52m above the bottom of the door, and kept securely locked when the *swimming pool* is not under competent and immediate supervision.

6. **Temporary Swimming Pool Enclosure**

6.1. While under construction a *swimming pool* shall be completely enclosed by a *temporary swimming pool enclosure*, except where the *swimming pool enclosure* requirements have been approved by a *Municipal Law Enforcement Officer.*

6.2. A *temporary swimming pool enclosure* shall:

6.2.1 Consists of a 1.22m high plastic mesh fence, having maximum openings of 50.01mm in size, supported by steel bar posts located a maximum of 2.44m apart, with a nine (9) gauge galvanized steel wire threaded through the top and bottom of such fence; or

6.2.2 be *construct*ed of material that will provide an equivalent or greater degree of safety referred to in article 6.2.1 above, approved by a *Municipal Law Enforcement Officer.*

7. **Maintenance**

7.1. The *owner* of any land on which a *swimming pool* is located or *construct*ed shall maintain a *swimming pool enclosure* around the entire *swimming pool area*, in accordance with the provisions of this By-Law.

7.2. No *person* shall place water, or cause water to be placed, in a *swimming pool*, unless a *swimming pool enclosure* has been installed in accordance with this By-Law.

7.3. Where an existing *swimming pool enclosure* is replaced or substantially altered, the replacement and or alteration shall be *construct*ed in accordance with this By-Law.

7.4. Any *owner* may enter adjoining land, at any reasonable time during daytime hours, for the purpose of maintenance (i.e., repairs or alterations) to any fence on the land of the *owner* provided that:

7.4.1. The *owner* enters the adjoining land only to the extent necessary to carry out maintenance;

7.4.2. The *person* exercising the power of entry displays or, on request, produces proper identification;

7.4.3. The *owner* provides reasonable notice of the proposed entry to the adjoining *owner*; and

7.4.4. The *owner* restores the adjoining land to its original condition and shall provide compensation for any damage caused by the entry or maintenance.

8. **Revocation of Swimming Pool Permit**

8.1. The *County* may revoke a Swimming Pool Permit immediately:

8.1.1. Where it was issued on mistaken or false information;

8.1.2. It was issued in error; or

8.1.3. The permit holder requests in writing that it be revoked.

8.2. The *County* may revoke a Swimming Pool Permit:

8.2.1. If after six (6) months after its issuance, *construct*ion of the *swimming pool enclosure*, in the opinion of a *Municipal Law Enforcement Officer*, has not started; or

8.2.2. Where the *construction* or erection of the *swimming pool enclosure*, in the opinion of a *Municipal Law Enforcement Officer,* has not commenced, has been suspended, or discontinued for a period of more than one (1) year.

8.3. Prior to revoking a Swimming Pool Permit as described in Section 8.2 of this By-Law, a *Municipal Law Enforcement Officer* shall give written notice of intention to revoke the Swimming Pool Permit and rationale of revocation to the permit holder at their last known address.

8.4. If, on the expiration of fifteen (15) days from the date of such notice, if the ground for revocation continues to exist, the *Swimming Pool* Permit shall be revoked without further notice, and all submitted plans and other information shall be disposed of in accordance with the *County* of Brant Records and Retention By-law.

9. **Swimming Pool Permit Refunds**

9.1. Where an applicant requests, in writing, the cancellation of a Swimming Pool Permit to the *County*, and is no longer commencing with the project, the applicant of the Swimming Pool Permit shall be entitled to a refund not to exceed fifty (50%) percent of the fee paid.

10. **Enforcement Provisions**

10.1 A *Municipal Law Enforcement Officer* or their designate shall enforce the provisions of this By-Law and are authorized to enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with this By-Law or compliance with an order issued under this By-Law.

10.2 Pursuant to section 444, 445 and 446 of the Municipal Act, 2001, where an *owner* fails to comply with any provision of this By-Law, an order may be issued requiring compliance indicating a deadline to comply and outlining provisions for the *County* to carry out the order at the *owner's* expense should the deadline not be met.

10.3 An order may be personally delivered, posted in a conspicuous location on the *property,* or served by Registered Mail. An order posted on the *property* is considered served. Where an order is mailed, the order shall be deemed delivered earlier of receipt of the order by the addressee or the fifth (5th) day following the date of mailing, whether actually received or not.

10.4 Where an order has been issued and compliance has not been achieved within the required time period as set out the *County* may, through its employees or agents or *persons* acting on its behalf, enter upon the land to drain, fill in, or enclose the *swimming pool* at the expense of the *owner* and any and all expenses incurred including interest calculated at a rate of fifteen percent (15%) from the date the costs were incurred, until the date the costs including interest are paid in full, may be recovered in the same manner as property taxes and may be registered as a lien upon the land.

10.5 No person shall fail to comply with an Order issued pursuant to this By-law.

11. **Penalties**

11.1. Every *person* who contravenes any of the provisions of this By-Law is guilty of an offence and, upon conviction is liable to the penalties as prescribed by *the Provincial Offences Act, R.S.O. 1990 c. P.33*.

11.2. A *person* convicted under this By-Law is liable to a maximum fine of $25,000.00 upon a first conviction and a maximum fine of $100,000.00 for any subsequent conviction.

Despite Section 11.2 of this By-Law where the person convicted is a corporation, the corporation is liable to a maximum fine of $50,000.00 upon a first conviction and a maximum fine of $100,000.00 for any subsequent conviction.

11.3. Each offence is designated as a continuing offence, subject to a fine for each day or part of a day that the offence continues, to a maximum of $10,000 per day. Despite subsection 11.2, the total daily fines imposed for each offence may exceed $100,000.

11.4. No *person* shall hinder or obstruct a *Municipal Law Enforcement Officer*, from carrying out an inspection of a *property* for the purpose of confirming compliance with this By-Law or for compliance with an order issued for the *property*.

11.5. No *person* shall hinder or obstruct a *Municipal Law Enforcement Officer*, or their agent or agents, from entering onto lands to carry out remedial action on a *property* whereby an order has been issued and compliance has not been achieved by the stipulated deadline.

11.6. No *person* shall hinder or obstruct a *Municipal Law Enforcement Officer* who is exercising a power or performing a duty under this By-Law, including refusing to identify themselves when requested to do so by a *Municipal Law Enforcement Officer*.

12. **Administration**

12.1 If there is a conflict between a provision of this By-Law and a provision of any other municipal by-law, the provision that establishes the highest standard to protect the health or safety of the public shall apply.

12.2 Pursuant to the provisions of Sections 23.1 through 23.5 of *the Municipal Act, 2001, S.O. 2001, c.25* the Clerk of the Corporation of the *County* of Brant is hereby authorized to affect any minor modifications or corrections of an administrative, numerical, grammatical, semantical, or descriptive nature or kind to this By-Law and schedules as may be necessary after the passage of this By-Law.

13. **Severability**

13.1. If any provision or part of this By-Law is declared by any Court or Tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative circumstances, the balance of this By-Law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

13.2. If there is a conflict between a provision of this By-Law and a provision of any other municipal by-law or piece of legislation, then the more restrictive provision shall apply.

14. **Transition**

14.1. Any *swimming pool enclosure* that was in lawful existence prior to the effective date of this By-Law shall be deemed to comply with this By-Law and may be maintained to the same location, *height,* and dimensions as previously permitted.

14.2. After the date of the passing of this By-Law, by-law 54-03 as described in Section 15.1 of this By-Law, shall apply only to those properties in which an application for a *swimming pool enclosure* permit has been submitted prior to the date of passing, and then only to such properties until such time as the work permitted under any issued permit for those applications has been completed for a period not exceeding twelve (12) months from the application date.

15. **Enactment**

15.1. That this by-Law come into force and effect on January 1st, 2024, to allow for implementation of revised fees and charges through the *County* of Brants Fees and Charges By-Law.

15.2. By-Law 54-03 as amended, is hereby repealed upon this By-law coming into force and effect.

READ a first and second time, this 19th day of December 2023.

READ a third time and finally passed in Council, this 19th day of December 2023.

THE CORPORATION OF THE COUNTY OF BRANT

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David Bailey, Mayor

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Alysha Dyjach, Clerk