

Review of the Pool Enclosure By-law

Background

Ottawa's current Pool Enclosure By-law 2001-259

(http://ottawa.ca/residents/building_code/pool_enclosure/index_en.html) was adopted in 2001 to provide uniform regulations regarding private pool enclosures throughout the new City of Ottawa. Significantly, it grandfathered at that time, all pool enclosure permits issued by the former municipalities. The Building Code Services Branch has undertaken a review of the by-law provisions with a view to improving its effectiveness and public safety.

The primary focus of the current pool enclosure by-law is to require fencing that prevents young children outside the property from gaining unsupervised access to the private pool area. Of greatest concern are children under five years old, as they are attracted to water, but lack a sense of danger, and the skills and coordination necessary to swim.

Pools are defined to include any privately owned outdoor body of water used for swimming, bathing, wading or reflecting that is capable of retaining a water depth equal to or greater than 600 mm (24") at any point. This includes in-ground and above ground pools, inflatable pools, portable pools, and hot tubs. A pool enclosure is required whether or not a hot tub is equipped with a self-closing and lockable lid.

The City's pool enclosure by-law currently allows the wall of a dwelling on a property to form part of the enclosure, regardless of whether or not those walls contain doors that lead to the pool area. However, a recent report by Ontario's Chief Coroner recommends discontinuation of this policy, and that all municipalities adopt a requirement for four-sided enclosures among other safety measures. These measures, which are outlined in more detail below, are based on the Coroner's report and best practices for the regulation of pool enclosures.

Specific Proposals

The following are the proposed changes to the Pool Enclosure By-law:

1. Introducing Four-sided Pool Enclosures

All new pool enclosures must include four-sided fencing that completely separates the pool area from the dwelling and detached garage. If the wall of a building forms part of the pool enclosure, there can be no door from the building to the pool area. Windows of any wall forming part of a pool enclosure must be secured with a child-resistant mechanism that prevents the window from opening more than 100mm (4 inches).

The City's current By-law, which allows the pool enclosure to include the wall of the dwelling or garage as part of the enclosure, has been effective in preventing young children living outside the property from accessing a private pool. However, where a pool enclosure includes a wall of the dwelling or garage with direct access to the pool area, such access represents a significant hazard for unsupervised young children living in the dwelling, or visiting the dwelling.

The objective of four-sided fencing is to create a passive barrier between the door, or window openings of the building(s), and a pool area, which if installed and maintained to specification, will help prevent an

unsupervised young child from within the dwelling from accessing the pool area. If the building does not have a door leading to the pool area, then the building wall remains an effective barrier, as long as all windows are equipped to prevent children from gaining access to the pool area.

The proposal to mandate four-sided pool enclosures is not new. In 2008, the Planning Committee considered a motion to introduce the requirement for four-sided pool enclosures. The decision not to proceed was based on the potential impact on property owners and the need for in-depth review and consultation prior to imposing a new standard.

More recently, the Chief Coroner of Ontario undertook an extensive review of recent deaths of children who drowned in private pools and released a report recommending a number of changes. Of significance is the recommendation that all Ontario municipalities mandate four-sided pool enclosures. The City of Toronto changed its by-law in 2007 to require four-sided pool enclosures; these requirements have been in place for over four years now and are working well.

The Chief Coroner of Ontario further counselled that to be effective, a four-sided pool enclosure should:

- Be *at minimum* 1.2 metres (4 feet) high, four-sided and with a self-closing, self-latching gate
- Be constructed in a way that makes it difficult for young children to climb
- Completely separate the pool from the dwelling

The proposed amendments to the City's Pool Enclosure By-law are in line with the recommendations of the Chief Coroner, although pool enclosures in Ottawa will continue to be a minimum of 1.5 metres (five feet) in height, which was the standard adopted in 2001. This will ensure consistency between old and new enclosures, particularly where the four-sided pool enclosure does not also serve as a perimeter fence.

To require four-sided fencing around all new private pools will change the focus of the City's Pool Enclosure By-law. In addition to preventing young children outside a property from gaining access to a private pool; a passive barrier would now be required to keep unsupervised young children living within, or visiting the dwelling on the property, from accessing the pool area. The four-sided pool enclosure would be required whether the property was fenced at its perimeter.

CHEO, the Canadian Red Cross, Safe Kids Canada, The Lifesaving Society and World Health Organization also endorse four-sided pool enclosures. In addition to the City of Toronto, the Province of Quebec, France, New Zealand and Australia have all mandated four-sided fencing for pool enclosures.

2. Making Four-sided Pool Enclosures More Effective

Inhibit Climbing

The pool enclosure must be constructed in such a way, and of material, that will make it difficult for young children to climb over the enclosure.

It is desirable to enhance specifications which deter climbing by young children. This will include reducing the size of possible footholds and encouraging vertical fence designs with minimal gaps. Specifically, in addition to the height requirement of 1.5 metres (5 feet), pool enclosures will be required to be:

- Built of a closed board design, chain link with a maximum 38 mm (1.5 in.) opening, or other material or construction that is installed and maintained to deter children from climbing.
- Free of any horizontal cross members between 100 mm (4 in.) above grade and the top of the fence, which would facilitate climbing.

Gates

Standards for gates in a pool enclosure have been clarified. The By-law presently requires gates be lockable only and equipped with a self-closing and latching device located at the top and inside of the gate.

It is proposed that pool enclosure gates be closed, latched and locked at all times, except to provide access or egress from the pool area. These new standards will improve the effectiveness of the enclosure.

Location

The pool enclosure must be located so that no feature on the outside of the fence can facilitate climbing into the pool area by young children.

Because features outside the pool area in close proximity to the pool enclosure, such as trees, play structures, utility boxes or even the grading of the land, could be used by a child to enter the pool area, the location of a pool enclosure must take into consideration these features or structures to minimize the risks. It is proposed that no climbable feature be allowed to be located within one metre of the outside of the pool enclosure.

Also, pool enclosure permit applicants will be required to submit additional information to enable staff to evaluate the possible impact of all features and structures in close proximity to the pool enclosure. The following information will be required, in addition to existing submission requirements of providing details of the enclosure and its relationship to lot lines, buildings and fences, a description of the lot and proposed fence design: the location of all easements, rights-of-way, landscaping features, location of septic beds and tanks, where applicable, and retaining walls, and the proposed location of pool equipment such as the filter, heater or pump.

3. Requirement for Temporary Fencing When a Pool is Under Construction

Every person who constructs a swimming pool must erect a temporary four-sided pool enclosure which must be replaced with a permanent pool enclosure once the pool installation is substantially complete, and before the pool is filled with water, or when directed to do so by City staff.

Pools under construction often lack adequate temporary fencing, or new pools are often filled with water before the permanent enclosure has been installed and approved by the City. This poses a safety hazard for young children. It is proposed that temporary fencing consist of steel "T" posts spaced at not more than 1.2 metre centres and embedded at least 600 mm (2 feet) into the ground with 38 millimetre plastic mesh fencing at least 1.5 metres high. It must be fastened to the post at 200 millimetre centres and horizontally secured at the top and bottom by an eleven-gauge steel lacing cable threaded through mesh and looped and fastened to each post, or an existing permanent fence that meets the Pool Enclosure By-law.

It is also proposed that the temporary fencing specifications be followed to fill in any gaps in a permanent pool enclosure where part of the permanent pool enclosure has been removed to provide access to the pool area for construction, repair or maintenance work to the pool or pool enclosure.

4. Replacing an Existing Pool Enclosure

Where an existing pool enclosure needs to be fully or substantially replaced, or is in such a state of disrepair that it is not practical to repair it; a new pool enclosure permit will be required and the new by-law standards, including a four-sided fence pool enclosure, will apply.

It is not proposed to require current pool owners to immediately retrofit their pool enclosures as recommended by the Ontario Coroner. However, when a pool enclosure is in significant disrepair, and requires significant work, or is being replaced by a new pool enclosure; it is proposed that the new enclosure meet the newer standards and that a pool enclosure permit be required. The requirement for

obtaining a new permit will ensure the new four-sided pool enclosure is designed and installed in compliance with the By-law. The related fee will ensure cost recovery as the fee is a fee for service. This approach will ensure that the four-sided pool enclosures will be adopted by private pool owner's over time.

5. Exemption of Hot Tubs, Whirlpools and Spas with lockable lids and backyard ponds.

The four-sided pool enclosure standard will not apply to hot tubs, whirlpools or spas with a lockable lid and backyard ponds.

Hot tubs, whirlpools and spas with lockable lids will be exempted from the By-law if the hot tub, whirlpool or spa has a substantial, structurally adequate cover permanently attached to it or to its supporting structure and the cover is securely fastened and locked to prevent access at all times when the whirlpool, hot tub or spa is not in use.

These provide a higher level of security and have not presented the same level of hazard as in-ground and above ground pools.

Ponds with their sloped sides may not present a hazard to children as compared to in-ground or above ground pools.

6. Requirements for Above Ground Pools

The four-sided pool enclosure standard will not apply to above ground pools that are a minimum of 1.5m (5 feet) in height. However, a 1.5 metre fence with a self-closing and self-latching gate will be required around the ladder entrance to the above ground pool.

The wall of an above ground pool is a sufficient barrier to access by young children. All that will be required then is a 1.5 m (5 foot) fence with self-closing and self-latching gate to be installed around the ladder area leading to the above ground pool to serve as a passive barrier for young children. The 1.5 m fence will be required to cover all access points to above ground pools that are attached to decks or raised patios. The above ground pool must be positioned in such a way that there are no structures in close proximity that can be used by a child to gain access to the pool. The gate will be required to be closed, latched and locked at all times, except to provide access or egress from the pool area.

7. Pool Enclosure Gates Adjoining Public Spaces

Consideration will be given to requiring all existing pool enclosure gates that abut a publicly used space to retrofit their gates so that they are lockable and locked at all times.

In September 2009, City Council amended the Pool Enclosure By-law to require all new pool enclosure gates that adjoin any publicly used space, such as a City park, golf course, or that back onto a street; be lockable and locked at all times, with the exception of when the property owner, or someone with the owner's permission, is entering or exiting the gate.

Council requested that City staff determine whether there was community support to require those who installed pool enclosures prior to 2009, and had a gate adjoining public land, be required to retrofit their gates to meet the new standard.

8. Administrative Changes

A number of administrative changes to the Pool Enclosure By-law are proposed to enhance clarity of language and standards.

Administrative changes also include a procedure for cancelling dormant applications and abandoned or stale permits, and providing permit holders the ability to request an extension if the installation or construction has been delayed due to unforeseen circumstances.

Currently, an application for a permit may be deemed to have been abandoned and cancelled without notice six (6) months after the date of filing, if it has not been acted on. Staff are proposing to provide notice of the intent to cancel the application and provide the applicant an opportunity to request an extension. Written notice and the ability to request an extension will benefit the applicant and provide clarity to the cancellation process. Currently, the By-law provides for a refund of up to 50% of the fee where no inspection has been undertaken. This will be discontinued as prior to cancelling an application, an inspection is undertaken to confirm whether construction proceeded without a permit, or not, in every instance; as in the past, there have been incidents where construction has proceeded without a permit. The pre-cancellation inspection is now standard operating procedure and with a minimum fee of \$160, a partial refund would result in the program operating at a loss rather than break-even.

Pool enclosure permit holders will be given one year from the date of issue, instead of the current six months, to commence a project. The expanded period of time to commence construction is in recognition that such projects can be delayed due to weather, availability of materials and supplies especially where landscaping is part of the project, etc. Where there has been a lapse of one year from the date of issue, the permit holder will be notified in writing of the intent to revoke a permit. The permit holder will be allowed an opportunity to request an extension, failing which the permit will be revoked. There will be no provision to refund the fee for the same reasons noted above.