



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Building Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 5, 2016
SUBJECT/REPORT NO:	Pool Enclosure By-law (PED13126(c)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Jorge M. Caetano (905) 546-2424 Ext. 3931
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That the By-law respecting the Pool Enclosure By-law, attached as Appendix “A” to Report PED13126(c), be enacted.
- (b) That the item respecting the Pool Enclosure By-law be identified as completed and removed from the Planning Committee Outstanding Business List.

EXECUTIVE SUMMARY

On November 17, 2015, the Planning Committee referred Report PED13126(b) back to staff to investigate the use of aerial photography to determine whether a swimming pool fence was in existence prior to the day of the passing of a new Pool Enclosure By-law. Additionally, staff was directed to carry out additional public consultation and bring the findings back to the Planning Committee. Based on this direction staff have revised the proposed Pool Enclosure By-law making it clear that the new four-sided fence requirement would not apply to an enclosure that was in existence prior to the day of the passing of the proposed By-law. This determination would be made from the Building Division records and/or aerial photographs. Staff also carried out the requested public consultation and held a public meeting on February 10, 2016.

Based on this review, on recommendations from the Office of the Chief Coroner for Ontario in their Drowning Review Report from 2011, and on the study provided by a research group from McMaster University, staff is proposing a new Pool Enclosure By-law attached as Appendix “A” to this Report.

Alternatives for Consideration – See Page 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Since the costs associated with enforcement of the Swimming Pool Enclosure By-law are already covered through the existing Permit Fee structure, there would be no financial implications.

Staffing: Not applicable.

Legal: The Recommendation has no legal implications.

HISTORICAL BACKGROUND

On July 9, 2013 (Report PED13126), the Building Division presented an Information Report to the Planning Committee stating that the Division was currently in the process of reviewing and updating the entire Swimming Pool Enclosure By-law (By-law No. 03-125) in order to address the following recommendations from the Office of the Chief Coroner for Ontario in their Drowning Review Report from 2011:

- “1. All municipalities in the Province of Ontario should pass pool enclosure municipal bylaws that mandate barrier safety requirements for new pools including in-ground, above-ground, portable, inflatable and hydro-massage pools, hot tubs and spas as well as decorative ponds such that when they are installed;*
 - they are surrounded by 4-sided fencing that completely encloses the pool area;*
 - the pool enclosure bylaw applies to all structures with a water depth of at least 0.6 m (2 feet);*
 - they allow entry and exit through a self-closing and self-latching gate only;*
 - the 4-sided fencing be a minimum height of 1.22 m (4 feet);*
 - the bylaw specifies that fence construction should inhibit climbing;*
 - the home should never open into a pool area.*

- 2. All municipalities in the Province of Ontario should pass pool enclosure municipal bylaws that mandate retrofitting for existing pools as defined by 2015 to the standards as in recommendation #1 above.”*

On March 18, 2014, staff presented Report PED13126(a) to the Planning Committee proposing a new Pool Enclosure By-law which incorporated most of the recommendations contained in the Office of the Chief Coroner for Ontario Report referenced above. The only recommendation within the Report that was not included in the proposed Pool Enclosure By-law was the second recommendation regarding retrofitting of all existing pools. Staff was of the opinion that this would result in an undue hardship to homeowners who obtained permits for pool enclosures under the existing Swimming Pool Enclosure By-law (By-law No. 03-125). It was felt that as long as an existing fence around a pool had been installed and approved under a permit, then the fence would not have to be retrofitted to meet the requirements of the new proposed Pool Enclosure By-law provided the fence and gates are maintained in good repair. This decision was made on the fact that the construction requirements for fences under the existing Swimming Pool Enclosure By-law are almost identical to the new proposed By-law except for the new proposed requirement that a wall containing an opening (doors or windows) cannot form part of the pool enclosure.

The Planning Committee at the March 18, 2014 meeting referred Report PED13126(a) back to staff for further information including the cost to enforce and inspect, a review of the fines and penalties, as well as to hold public consultation and a public meeting. Staff carried out the public consultation and held a public meeting on May 27, 2015. Staff also reviewed the cost to enforce and inspect pool enclosures together with a review of fines and penalties.

Report PED13126(b) was presented to the Planning Committee on November 17, 2015 with the updated information on the cost to enforce and inspect pool enclosures together with a summary of the public consultation. The Planning Committee then directed staff to carry out additional public consultation and report back on the use of aerial photography in order to determine the existence of pool enclosures on the date of the passing of the proposed by-law. Based on this direction staff have revised the proposed Pool Enclosure By-law making it clear that the new four-sided fence requirement would not apply to an enclosure that was in existence prior to the day of the passing of the proposed By-law. This determination would be made from the Building Division records and / or aerial photographs. Staff also carried out the requested public consultation and held a public meeting on February 10, 2016. A summary of the comments and concerns received as part of the public consultation is provided in the Analysis and Rationale Section of this Report.

Based on this review and consultation staff are proposing a new Pool Enclosure By-law (attached as Appendix "A" to this Report) that incorporates most of the recommendations contained in the Office of the Chief Coroner for Ontario Report except for the second recommendation regarding retrofitting of all existing pools as noted above. Staff is also recommending that the proposed By-law come into effect on January 1, 2017 since the pool shopping season for 2016 is already in progress.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The proposed By-law does not affect or contravene an established City Policy.

RELEVANT CONSULTATION

Legal Services Division has been consulted and they have reviewed and provided feedback on the proposed By-law.

Public Meetings were held on May 27, 2015 and February 10, 2016.

A research group from McMaster University provided Hamilton drowning data from January 1, 2004 to December 31, 2013.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Office of the Chief Coroner for Ontario

In June of 2011 the Office of the Chief Coroner for Ontario released their Drowning Review Report which made 12 recommendations in the area of public safety and drowning prevention. The first two recommendations, noted above in the Historical Background Section of this Report, were directed at municipalities in order to address areas of concerns, related to enclosures around swimming pools, including decorative (landscape) ponds. These recommendations were developed following a review of all accidental drowning deaths in Ontario from May 1 to September 30 of 2010.

Public Meetings

Staff held two public meetings at City Hall, the first on May 27, 2015, and the second on February 10, 2016. The majority of those in attendance were pool installers. Most of the comments received were opposed to the four-sided fence requirement contained in the proposed Pool Enclosure By-law. They were concerned that this would restrict the installation of pools in smaller yards. There was also concern raised about increase costs to the homeowner together with the possible restriction on pool size.

A representative from the Pool and Hot Tub Council of Canada also made a short presentation at both public meetings and stated that while a four-sided fence is an option for pool safety they felt that a better approach would be a layered approach and an increase in public awareness of backyard pool safety. The representative provided examples of ads (bus ads, television, etc.) from the City of London and Ottawa explaining the importance of pool safety. They feel that public education is the way to approach pool safety. The Pool and Hot Tub Council of Canada also provided samples of signage that could be provided by pool installers to homeowners who install a pool. The Pool and Hot Tub Council of Canada also stated that they would be willing to share in the cost of advertising pool safety with the City of Hamilton.

Apart from the four-sided fence issue, there were no other concerns raised regarding the rest of the proposed Pool Enclosure By-law.

Public Consultation

Staff has received numerous phone calls and e-mails from pool installers and the general public regarding the proposed new Pool Enclosure By-law. The majority of inquiries were concerning the proposed requirement for a four-sided fence and whether this requirement would apply to existing pool enclosure fences. Most of the phone calls and e-mails received had the same concerns / comments. A representative summary of the comments received are given below:

- *“To prevent children from getting out of the house unnoticed and drowning, I would suggest considering less invasive preventative measures such as patio door locks and alarms.”*
- *“What about those who don’t have children? How is this by-law fair? The current proposed changes offer no reasonable alternatives if you don’t have children or for making adjustments years after your children have grown. They also don’t address the fact that developers are building houses on smaller parcels of land, leaving less room for the aforementioned fencing without being a complete hindrance to the very lifestyle desired by ‘would-be’ pool owners.”*
- *“What about education, safety training, and yes, devoted adult supervision? Don’t those potential solutions have a role to play? Understandably these solutions will not fall under the scope of the Building Division; however they play a role in the big picture.”*

While most were against having the proposed four-sided fence requirement, staff did receive a couple of phone calls and e-mails in support of the four-sided fence requirement including one from a research group from McMaster University.

There were also several inquiries on ponds and whether the proposed requirements would apply to ponds used for agricultural purposes.

Apart from the four-sided fence issue, and ponds in agricultural areas, there were no other concerns raised regarding the rest of the proposed Pool Enclosure By-law.

McMaster University Study

A research group from McMaster University also provided staff with a study prepared by Candice Cybulskie, BMSc, of the Michael G. DeGroot School of Medicine, and Dr. A. J. Kam, MD, MScPH, FRCPC, from the Department of Paediatrics, McMaster University. Their study is entitled “The need for safer pool fencing: a retrospective study of drownings in the paediatric population”.

Some of the data given to staff by this research group included the following:

- *“Drowning is the second leading cause of injury-related death for Canadian children.*
- *For every child who dies from drowning, another 5 children will receive emergency care for nonfatal drowning injuries.*
- *Research estimates that for each child brought to the emergency department for drowning-related injury, another 10 children were “near misses” (unintentionally submerged, but rescued rapidly).*
- *Nonfatal drowning injuries can result in permanent brain impairment leading to problems with memory, learning disabilities and other loss of functioning.*
- *Privately owned pools are the number one location where children under the age of 5 drown, and drowning of young children is often due to an accidental fall into the pool.*
- *Safer pool fencing requirements are aimed at reducing the incidence of avoidable drownings by reducing unintended access to swimming pools, especially in younger children.”*

The study also provided the following drowning data from three academic hospitals in Hamilton collected from January 1, 2004 to December 31, 2013 for children under the age of 18:

- *“Of the total 61 drowning incidents during this time period, the majority of drownings occurred in a private pool setting (44%).*
- *70% of private pool drownings occurred in children between the ages of 1 to 4.*
- *5 of the private pool drowning incidents resulted in death (occurring in pools with no 4-sided pool fencing or self-closing, self-latching gate).*
- *The majority of private pool drowning incidents in Hamilton occurred when the child was unsupervised or sub-optimally supervised.”*

The McMaster study makes the following conclusion:

- *“The 1-4 age group is a vulnerable population with regard to drowning.*
- *Private pools offer a focal point for prevention.*

- *Findings support previous recommendations of the Office of the Chief Coroner, as 4-sided pool fencing is a passive environmental intervention that would prevent this high risk demographic from accessing the pool without supervision and prevent drownings.”*

Conclusion

Based on this review, and consultation, staff is proposing a new Pool Enclosure By-law (attached as Appendix “A” to this Report) to replace the City’s existing Swimming Pool Enclosure By-law (By-law 03-125). The proposed By-law would incorporate the four-sided fence recommended by both the Office of the Chief Coroner for Ontario and the research group from McMaster University.

While staff understand the concerns expressed by homeowners and pool installers against the four-sided fence, most of their recommendations involved either installing a cover on the pool or providing an alarm or lock (at a height that could not be reached by a child) on any door that opened into the pool area. The main concern with these recommendations is that they are dependent on the homeowner taking some sort of action such as making sure the cover is on when they go back into their home, or ensuring the alarm is working or that it has not been deactivated. As for the lock at a height that a child cannot reach this could lead to an dangerous situation in case of a fire since the lock could prevent a child, or someone in a wheelchair, from getting out of the building. A four-sided fence provides a passive barrier between the home and the pool and, as the research indicates, would reduce the number of deaths and drowning incidents in children under the age of five.

The proposed changes in the new By-law are outlined below.

Definition of “Pool”

The definition of “pool” now includes any body of water that is capable, at any point, of holding water in excess of 0.6 m in depth. The previous By-law only regulated a body of water capable of holding water to a depth of 0.3 m and more than 4,550 litres (1,000 gallons). This is in line with the recommendation of the Office of the Chief Coroner for Ontario. This will also address the concern about inflatable pools that are less than 4,550 litres, but can hold water in excess of 0.6 m in depth.

The definition of “pool” will now include a landscape pond with the same 0.6 m depth restriction noted above. The previous By-law exempted these types of ponds. However, the proposed Pool Enclosure By-law would exempt the following:

- A body of water used for the purposes of providing water to livestock or irrigation for crops, which are associated with and located on land being used for farming.
- A body of water on land zoned as rural or agricultural and which is not capable, at any point 2.0 m from an edge, of holding water in excess of 0.6 m in depth.
- A body of water that is part of a golf course.

- A body of water owned by any public or governmental entity, including but not limited to an agency or authority.
- A river, lake, stream or other natural body of water.
- A privately-owned stormwater management facility.
- A rain barrel having a height of at least 1.0 m and with no opening greater than 300 mm².

Landscape Ponds (Ornamental or Decorative Ponds)

As noted above in the definition of “pool” landscape ponds (ornamental or decorative ponds) would be considered a “pool” and they would be regulated under the proposed Pool Enclosure By-law if they are capable of holding water in excess of 0.6 m in depth. This means that they would require a pool enclosure conforming to the By-law. However, this requirement would not apply to landscape ponds in lands zoned rural or agricultural provided that the depth of the water within 2.0 m of the edge of the pond does not exceed 0.6 m. Additionally, a landscape pond would not require an enclosure if a grate or similar structure, with openings of not more than 38 mm, is securely installed preventing a person from descending to a depth of more than 0.6 m.

Pool Enclosure (Fence)

The proposed Pool Enclosure By-law would now require a pool to be enclosed on all sides and would not allow openings from a building, such as doors or windows, into the pool area. The current By-law does not have this restriction. This would mean that a pool enclosure (fence), with a self-closing and self-latching gate, would be required between a wall of a building containing a door or window and the actual pool area. Additionally, the fence between the building and the pool would have to be constructed of open mesh chain link fence or equivalent open face construction so as not to restrict visibility between the pool and any door or window on the access level of the building. This would be in compliance with the recommendation of the Office of the Chief Coroner for Ontario that a pool be surrounded by four-sided fencing that completely encloses the pool area and that a home should never open into a pool area. The four-sided fencing is also supported by the study conducted by the research group from McMaster University. This would reduce the risk of a child being able to access a pool directly from a home.

Enclosure Height and Climability

The minimum height of the enclosure would remain at 1.5 m as per the existing Swimming Pool Enclosure By-law which exceeds the minimum height of 1.22 m recommended by the Office of the Chief Coroner.

Hot Tubs

Under the proposed Pool Enclosure By-law hot tubs would require an enclosure if the depth of the water exceeds 0.6 m. While this requirement is the same as the existing

Pool Enclosure By-law, an exception has been added that an enclosure would not be required for a hot tub where the hot tub has a rigid cover that is capable of supporting 90 kg. Additionally, the owner or any other person in control of the hot tub would have to ensure that this rigid cover is securely fastened and locked to prevent access at all times when the hot tub is not in use.

Other Changes

In addition to the above noted changes, staff has also made several housekeeping changes in order to update the content of the By-law and in order to clarify the intent of several sections of the Pool Enclosure By-law.

ALTERNATIVES FOR CONSIDERATION

- (a) One alternative would be to maintain the current Swimming Pool Enclosure By-Law which would leave the City with a By-law that does not address landscape ponds or the recommendations from the Office of the Chief Coroner for Ontario in their Drowning Review Report from 2011.
- (b) Another alternative would be to amend the proposed Pool Enclosure By-law to remove the four-sided fence requirement and only require a fence around the backyard as per the current pool enclosure by-law. This would allow the remaining content of the existing Pool Enclosure By-law to be updated.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” – Proposed Pool Enclosure By-law

JMC:jmc