

From: Tim Golden [mailto:timgolden@lathampool.com]
Sent: Tuesday, May 03, 2016 8:35 AM
To: Office of the Mayor
Cc: Robert Wood
Subject: Fence Within a Fence By-Law
Importance: High

His Worship Mayor Fred Eisenberger,
Hamilton City Hall
2nd Floor – 71 Main Street West
Hamilton, Ontario
L8P-4Y5

Mayor Eisenberger,

Please find attached a letter providing some additional input and feedback for consideration of the council with regard to the 'Fence within a Fence' by-law currently under consideration. I understand a vote on the measure is forthcoming and felt this information might assist the council in achieving the desired results for the residents of Hamilton.

Please find attached the following:

- **Letter** - From Latham Pool Products, Canada's largest manufacturer of residential swimming pools
- **Legislation Template** – for municipalities considering adoption of the 2015 International Pool & Spa Code
- **Automatic Pool Safety Covers** - Two documents regarding the use of automatic pool safety covers with regard to safety and the environment

You and your council may be interested to learn that the following U.S. states have adopted the ICC's ISPCS as mandatory state wide. This means that in these states...state wide...an ASTM pool cover is an exception to having a fence.

Also...The most up to date list of cities, counties and municipalities that have adopted the ICC 2012 or newer code in the United States are at the link below. Cities can adopt ICC codes individually, which has always been the norm...the work we are doing is to unify the codes and make them adoptable state wide and country wide. As an industry we are making progress as the first standardized pool codes were only created and adopted in 2012. Adding the city of Hamilton to the list would be a great step toward the adoption of the ICC code throughout North America.

If you want to see which cities, states and municipalities that are using the ISPCS code...they can be found on the link below:

<http://www.apsp.org/standards/international-swimming-pool-spa-code.aspx>

I sincerely hope this information finds its way to your council. I apologize for providing this information later on in the process, but through my own fault, I only recently became aware of the proposed by-law and the deliberations of your council.

If I or Latham Pool Products can be of any further assistance, please do not hesitate to contact me directly or through Robert Wood, the Executive Director of the Pool & Hot Tub Council of Canada.

Sincerely,



Tim Golden
President

1231 Kamato Road, Mississauga, ON L4W 2M2

Email: timgolden@lathampool.com

Office Telephone: 1-519-756-3442 Ext#: 4010

Cell Phone: 1-905-424-4341

Toll Free Can. Tel: 1-800-832-6664

Private Fax: 1-905-624-6318



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To: Hamilton City Councilors

Re: Planning Committee Resolution on Swimming Pool Fencing Requirements

Latham Pool Products is Canada's largest producer of pre-engineered residential swimming pools. Latham has manufacturing locations in Mississauga, Ontario, Ajax, Ontario, Terrebonne, Quebec and a state of the art manufacturing location in Brantford, Ontario. Latham employs ~300 people in the manufacturing segment of the residential swimming pool industry. Latham manufactures steel and polymer pool wall systems, fiberglass swimming pools, pool steps, vinyl liners, winter safety covers and automatic pool safety covers.

Latham has been, and will continue to be, an industry leader in swimming safety. In 2010, Latham assigned all rights to our 'Feet First' campaign, which was developed by Latham with regard to the safe way to enter swimming pools, to the industry and the APSP (Association of Pool & Spa Professionals). We did this because Latham is an industry champion for pool safety, and we wanted this critical information on the safe use of all residential swimming pools in everyone's' hands. Safety and the safe use of our products is a core concern for Latham.

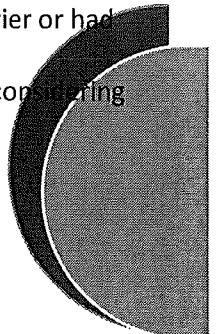
Latham's executives have testified before the U.S. Congress with regard to pool safety. We currently have an executive who was the chief architect and worked with the APSP on the ICC's (International Code Council) approved swimming pool barrier code 305.1 (attached), and he currently sits on the ICC's International Swimming Pool and Spa Code Committee, as well as being asked to sit on IAPMO's Uniform Swimming Pool, Spa & Hot Tub Technical Committee.

We mention all of this because we and other industry leaders have together expended incredible resources in actively vetting barrier options for the ICC, ANSI, and IAPMO barrier code committees.

We recently become aware of the Planning Committee's April 5th, 5 to 4 vote, to proceed with a 4 sided fence by-law and would like to lend our support to the planning committee and offer safety barrier additions or alternatives to the by-law that can be as, or more effective, than a 4-sided fence.

We ask that before taking action and actually implementing the 4-sided fence by-law, you take the following into consideration:

1. Please read the vetted verbiage that was created for both the ICC and IAPMO Barrier Codes (see attached 305.1 "Exception 2". Basically it states that a "Powered Pool Cover" that complies with ASTM F 1346 is an exception to having a fence. An ASTM certified powered pool cover has been vetted and proven to be as, or more effective, than a fence because it seals the pool water completely from view and access by a child and is in effect a horizontal barrier.
2. There is no evidence we can find that 4 sided fencing reduces the number of drowning accidents and deaths. The statistics support this conclusion, including those here in Canada where 70% (5 of 7) of the drowning incidents in 2010 occurred in pools that were either aboveground and had a 5' barrier or had a 4 sided fence.
3. A 2015 report from Australia, where the 4 sided fence rule was imposed, indicates that they are considering repealing the law due to its ineffectiveness.





4. Simply stated, there is no direct evidence that we can find that 4 sided fences yield a reduction in drowning accidents or deaths, and we are asking that alternatives be considered or exceptions added as the ICC code has done in the ISPC International Swimming Pool & Spa Code 305.1 exception 2.
5. In addition to what I have stated above, the by-law which is targeted at new swimming pools only, and the protection of toddlers, does not take into account two realities:
 - a. That existing pools with inadequate fencing, non-self-closing and non-self-latching gates pose a significant risk to toddlers. We feel that this should be looked at and possibly added into the By-Law as well.
 - b. That the majority of new pool installations are for homes where there are no toddlers present. Having an ASTM certified cover is a great alternative for households with no children.

As one of the local communities significant employers and a company with a proven commitment to residential pool safety, we urge the Hamilton City Council to defeat the current by-law and undertake in cooperation with the Pool & Hot Tub Council of Canada and other relevant contributors to write an alternative by-law based on the Residential Pool Enclosure by-law for Canadian Municipalities which includes:

1. 3 sided fencing for all new and existing pools
2. Self-closing and self-latching gates
3. Additional physical barriers of entry for residents with children 6 years of age and under
4. Alternative or exemptions such as the already vetted ASTM certified powered pool covers

The best thinking around preventing drowning accidents and deaths, centers on multiple layers of protection, including adult vigilance, barriers, warnings, preparedness, rules of use and education. These too should be part of an effective approach to the safe use of residential swimming pools. We feel strongly that this approach will both promote swimming and backyard recreation and achieve the results you seek for the residents of Hamilton.

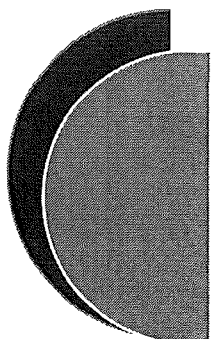
Please find along with this correspondence several relevant articles which the council may find helpful in in the discourse and deliberation of this by-law.

If I and or Latham Pool Products can be of any assistance to the Hamilton City Council in this endeavor, please do not hesitate to contact me directly.

Sincerely,
Latham Pool Products

Tim Golden
President

Cc: Robert Wood – Executive Director - PHTCC



LEGISLATION

Jurisdictions wishing to adopt the 2015 *International Swimming Pool and Spa Code* as an enforceable regulation governing swimming pools, spas, hot tubs, aquatic facilities and related equipment should ensure that certain factual information is included in the adopting legislation at the time adoption is being considered by the appropriate governmental body. The following sample adoption legislation addresses several key elements, including the information required for insertion into the code text.

SAMPLE LEGISLATION FOR ADOPTION OF THE INTERNATIONAL SWIMMING POOL AND SPA CODE ORDINANCE NO. _____

A[N] [ORDINANCE/STATUTE/REGULATION] of the [JURISDICTION] adopting the 2015 edition of the *International Swimming Pool and Spa Code*, regulating and governing the design, construction, alteration, movement, renovation, replacement, repair and maintenance of swimming pools, spas, hot tubs, aquatic facilities and related equipment in the [JURISDICTION]; providing for the issuance of permits and collection of fees therefore; repealing [ORDINANCE/STATUTE/REGULATION] No. _____ of the [JURISDICTION] and all other ordinances or parts of laws in conflict therewith.

The [GOVERNING BODY] of the [JURISDICTION] does ordain as follows:

Section 1. That a certain document, three (3) copies of which are on file in the office of the [TITLE OF JURISDICTION'S KEEPER OF RECORDS] of [NAME OF JURISDICTION], being marked and designated as the *International Swimming Pool and Spa Code*, 2015 edition, as published by the International Code Council, be and is hereby adopted as the Pool and Spa Code of the [JURISDICTION], in the State of [STATE NAME] regulating and governing the design, construction, alteration, movement, renovation, replacement, repair and maintenance of swimming pools, spas, hot tubs, aquatic facilities and related equipment as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said Pool and Spa Code on file in the office of the [JURISDICTION] are hereby referred to, adopted, and made a part hereof, as if fully set out in this legislation, with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this ordinance.

Section 2. The following sections are hereby revised:

- Section 101.1. Insert: [NAME OF JURISDICTION]
- Section 105.6.2. Insert: [APPROPRIATE SCHEDULE]
- Section 105.6.3: [PERCENTAGE IN TWO LOCATIONS]
- Section 107.4. Insert: [OFFENSE]
- Section 107.4. Insert: [DOLLAR AMOUNT]
- Section 107.4. Insert: [NUMBER OF DAYS]
- Section 107.5. Insert: [DOLLAR AMOUNT IN TWO LOCATIONS]

Section 3. That [ORDINANCE/STATUTE/REGULATION] No. _____ of [JURISDICTION] entitled [FILL IN HERE THE COMPLETE TITLE OF THE LEGISLATION OR LAWS IN EFFECT AT THE PRESENT TIME SO THAT THEY WILL BE REPEALED BY DEFINITE MENTION] and all other ordinances or parts of laws in conflict herewith are hereby repealed.

Section 4. That if any section, subsection, sentence, clause or phrase of this legislation is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The [GOVERNING BODY] hereby declares that it would have passed this law, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 5. That nothing in this legislation or in the Pool and Spa Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 3 of this law; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this legislation.

Section 6. That the [JURISDICTION'S KEEPER OF RECORDS] is hereby ordered and directed to cause this legislation to be published. (An additional provision may be required to direct the number of times the legislation is to be published and to specify that it is to be in a newspaper in general circulation. Posting may also be required.)

Section 7. That this law and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect [TIME PERIOD] from and after the date of its final passage and adoption.

Permanent residential spas shall be controlled in accordance with the requirements of APSP 15.

SECTION 304 FLOOD HAZARD AREAS

304.1 General. The provisions of Section 304 shall control the design and construction of pools and spas installed in flood hazard areas.

[BS] 304.2 Determination of impacts based on location. Pools and spas located in flood hazard areas indicated within the *International Building Code* or the *International Residential Code* shall comply with Section 304.2.1 or 304.2.2.

Exception: Pools and spas located in riverine flood hazard areas that are outside of designated floodways and pools and spas located in flood hazard areas where the source of flooding is tides, storm surges or coastal storms.

[BS] 304.2.1 Pools and spas located in designated floodways. Where pools and spas are located in designated floodways, documentation shall be submitted to the code official that demonstrates that the construction of the pools and spas will not increase the design flood elevation at any point within the jurisdiction.

[BS] 304.2.2 Pools and spas located where floodways have not been designated. Where pools and spas are located where design flood elevations are specified but floodways have not been designated, the applicant shall provide a floodway analysis that demonstrates that the proposed pool or spa and any associated grading and filling, will not increase the design flood elevation more than 1 foot (305 mm) at any point within the jurisdiction.

[BS] 304.3 Pools and spas in coastal high-hazard areas. Pools and spas installed in coastal hazard areas shall be designed and constructed in accordance with ASCE 24.

[BS] 304.4 Protection of equipment. Equipment shall be elevated to or above the design flood elevation or be anchored to prevent flotation and protected to prevent water from entering or accumulating within the components during conditions of flooding.

304.5 GFCI protection. Electrical equipment installed below the design flood elevation shall be supplied by branch circuits that have ground-fault circuit interrupter protection or personnel.

SECTION 305 BARRIER REQUIREMENTS

305.1 General. The provisions of this section shall apply to the design of barriers for pools and spas. These design controls are intended to provide protection against the potential drowning and near drowning by restricting access to such pools or spas. These requirements provide an integrated level of protection against potential drowning through the use of physical barriers and warning devices.

Exceptions:

1. Spas and hot tubs with a lockable safety cover that complies with ASTM F 1346.

2. Swimming pools with a powered safety cover that complies with ASTM F 1346.

305.2 Outdoor swimming pools and spas. Outdoor pools and spas and indoor swimming pools shall be surrounded by a barrier that complies with Sections 305.2.1 through 305.7.

305.2.1 Barrier height and clearances. Barrier heights and clearances shall be in accordance with all of the following:

1. The top of the barrier shall be not less than 48 inches (1219 mm) above grade where measured on the side of the barrier that faces away from the pool or spa. Such height shall exist around the entire perimeter of the barrier and for a distance of 3 feet (914 mm) measured horizontally from the outside of the required barrier.
2. The vertical clearance between grade and the bottom of the barrier shall not exceed 2 inches (51 mm) for grade surfaces that are not solid, such as grass or gravel, where measured on the side of the barrier that faces away from the pool or spa.
3. The vertical clearance between a surface below the barrier to a solid surface, such as concrete, and the bottom of the required barrier shall not exceed 4 inches (102 mm) where measured on the side of the required barrier that faces away from the pool or spa.
4. Where the top of the pool or spa structure is above grade, the barrier shall be installed on grade or shall be mounted on top of the pool or spa structure. Where the barrier is mounted on the top of the pool or spa, the vertical clearance between the top of the pool or spa and the bottom of the barrier shall not exceed 4 inches (102 mm).

305.2.2 Openings. Openings in the barrier shall not allow passage of a 4-inch-diameter (102 mm) sphere.

305.2.3 Solid barrier surfaces. Solid barriers that do not have openings shall not contain indentations or protrusions that form handholds and footholds, except for normal construction tolerances and tooled masonry joints.

305.2.4 Mesh fence as a barrier. Mesh fences, other than chain link fences in accordance with Section 305.2.7, shall be installed in accordance with the manufacturer's instructions and shall comply with the following:

1. The bottom of the mesh fence shall be not more than 1 inch (25 mm) above the deck or installed surface or grade.
2. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not permit the fence to be lifted more than 4 inches (102 mm) from grade or decking.
3. The fence shall be designed and constructed so that it does not allow passage of a 4-inch (102 mm) sphere under any mesh panel. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not be more than 4 inches (102 mm) from grade or decking.

GENERAL COMPLIANCE

SECTION 301 GENERAL

301.1 Scope. The provisions of this chapter shall govern the general design and construction of public and *residential* pools and spas and related piping, equipment, and materials. Provisions that are unique to a specific type of pool or spa are located in Chapters 4 through 10.

301.1.1 Application of Chapters 4 through 10. Where differences occur between the provisions of this chapter and the provisions of Chapters 4 through 10, the provisions of Chapters 4 through 10 shall apply.

SECTION 302 ELECTRICAL, PLUMBING, MECHANICAL AND FUEL GAS REQUIREMENTS

302.1 Electrical. Electrical requirements for aquatic facilities shall be in accordance with NFPA 70 or the *International Residential Code*, as applicable in accordance with Section 102.7.1.

Exception: Internal wiring for portable *residential* spas and portable *residential* exercise spas.

302.2 Water service and drainage. Piping and fittings used for water service, makeup and drainage piping for pools and spas shall comply with the *International Plumbing Code*. Fittings shall be *approved* for installation with the piping installed.

302.3 Pipe, fittings and components. Pipe, fittings and components shall be *listed* and *labeled* in accordance with NSF 50 or NSF 14. Plastic jets, fittings, and outlets used in public spas shall be *listed* and *labeled* in accordance with NSF 50.

1. Portable *residential* spas and portable *residential* exercise spas *listed* and *labeled* in accordance with UL 1563 or CSA C22.2 No. 218.1.
2. *Onground storable pools* supplied by the pool manufacturer as a kit that includes all pipe, fittings and components.

302.4 Concealed piping inspection. Piping, including process piping, that is installed in trenches, shall be inspected prior to backfilling.

302.5 Backflow protection. Water supplies for pools and spas shall be protected against backflow in accordance with the *International Plumbing Code* or the *International Residential Code*, as applicable in accordance with Section 102.7.1.

302.6 Waste-water discharge. Where waste water from pools and spas, backwash from filters and water from deck drains discharge to the building drainage system, such installation shall be in accordance with the *International Plumbing Code* or the *International Residential Code*, as applicable in accordance with Section 102.7.1.

302.7 Tests. Tests on water piping systems constructed plastic piping shall not use compressed air for the test.

302.8 Maintenance. Pools and spas shall be maintained clean and sanitary condition, and in good repair.

302.8.1 Manuals. An operating and maintenance manual in accordance with industry-accepted standards shall be provided for each piece of equipment requiring maintenance.

SECTION 303 ENERGY

303.1 Energy consumption of pools and permanent spas. The energy consumption of pools and permanent spas shall be controlled by the requirements in Sections 303.1.1 through 303.1.3.

303.1.1 Heaters. The electric power to heaters shall be controlled by a readily accessible on-off switch that is an integral part of the heater, mounted on the exterior of the heater or external to and within 3 feet (914 mm) of the heater. Operation of such switch shall not change the setting of the heater thermostat. Such switches shall be in addition to a circuit breaker for the power to the heater. Gas-fired heaters shall not be equipped with continuous burning ignition pilots.

303.1.2 Time switches. Time switches or other control methods that can automatically turn off and on heaters and pump motors according to a preset schedule shall be installed for heaters and pump motors. Heaters and pump motors that have built-in time switches shall be in accordance with this section.

Exceptions:

1. Where public health standards require 24-hour pump operation.
2. Pumps that operate solar- or waste-heat recovery pool heating systems.

303.1.3 Covers. Outdoor heated pools and outdoor permanent spas shall be provided with a vapor-retardant cover or other *approved* vapor-retardant means in accordance with Section 104.11.

Exception: Where more than 70 percent of the energy for heating, computed over an operating season, is from site-recovered energy such as from a heat pump or solar energy source, covers or other vapor-retardant means shall not be required.

303.2 Portable spas. The energy consumption of electric powered portable spas shall be controlled by the requirements of APSP 14.

303.3 Residential pools and permanent residential pools. The energy consumption of *residential* swimming pools