

Committee of the Whole (1) Report

DATE: Tuesday, December 01, 2020

WARD(S): ALL

**TITLE: FENCE BY-LAW AMENDMENTS RELATED TO SWIMMING
POOL ENCLOSURES**

FROM:

Gus Michaels, Acting Deputy City Manager, Community Services

ACTION: DECISION

Purpose

This report seeks Council approval for various amendments to the Fence By-law with respect to Swimming Pool Enclosures, such as additional details on safety-related design requirements, two lower-cost Swimming Pool Enclosure permits and creating additional tools to encourage timely compliance.

Report Highlights

- This report proposes expanding Swimming Pool Enclosure regulations to address a wider range of materials and designs, to enact additional provisions to support compliance and to introduce lower-cost Swimming Pool Enclosure permits for above-ground and temporary and seasonal pools.
- These amendments are intended to give residents greater options and accessibility with respect to having swimming pools at their homes.

Recommendations

1. THAT the amendments to the Fence By-law and Fees and Charges By-law, as substantially provided in Attachment 1 of this report, be approved; and
2. THAT staff be authorized to undertake any other actions required to implement the recommendations of this report, including any consequential amendments to other by-laws.

Background

In line with the Council-authorized By-law Strategy, By-law and Compliance, Licensing and Permit Services (BCLPS) staff have further reviewed the Fence By-law to ensure it continues to be relevant and applicable, and are proposing additional amendments, such as to address increasingly popular types of Swimming Pool Enclosures (SPE), to introduce a lower cost SPE permits for above-ground and temporary pools, and to expand tools to encourage compliance.

Swimming Pool Enclosure Material, Design and Regulations

Staff have noted a number of new SPE materials and designs requested by residents, and regulated by other municipalities, including use of horizontal boards designed as to be similarly non-climbable as the currently regulated SPEs. Based on a jurisdictional scan of Ontario cities, staff have drafted some recommendations with respect to design, materials and regulations, drawing on examples such as the following:

- **Toronto**, which provides standards for glass SPE based on Canadian General Standards Board standards and regulations with respect to the distance of SPEs from climbable structures;
- **Ottawa**, which provides regulations for SPEs and use of temporary swimming pools, and that advises an SPE permit is only required once if the pool is kept in the same location and same manner if taken down and put up again;
- **Hamilton**, which requires that any hot tubs or other swimming pools which have rigid covers must be securely fastened when not in use; and
- **St. Catharines**, which speaks to the requirement for a temporary fence to be erected when an SPE is being constructed for safety, such as to prevent someone from falling in accidentally.

Recommendations are provided in the Analysis and Options section.

In addition, because of the myriad of materials and designs that are emerging for SPEs, staff also suggest expanding the current Fence Height Exemption process to include criteria aside from height, such as material; this expansion will ensure that the current regulations and processes enable staff to address new types of fences and enclosures as materials and designs evolve.

Greater Interest in Home Pool Use During the COVID State of Emergency

During the COVID-19 state of emergency and the closure of public swimming pools, staff have noted an increase in interest by residents of having home swimming pools, both the permanent and temporary structures.

A quick online scan of permanent inground swimming pools shows costs that start from \$15,000 to \$50,000, while temporary pools can be purchased for prices as low as a few hundred dollars. The current SPE permit fee is \$650, so a cost that may be greater than the cost of a temporary pool, which residents have expressed makes the cost of having a home pool unaffordable for them.

Development Engineering (DE) staff have expressed that the process for inspecting above ground and temporary ground pool draws on fewer staff resources, such as not requiring a Zoning inspection in most instances, and as such, suggest that the cost of the SPE permit for above ground and temporary pools should be reconsidered.

Maintaining the Condition of the Public Realm and Established Grades

At present, the Fence By-law allows persons to be charged under the Provincial Offences Act for non-compliance with the by-law. In the construction of SPEs and their accompanying swimming pools, there have been some instances of damage to city infrastructure such as roads, curbs and sidewalks.

In addition, staff have noted that many residents delay calling for their final inspection, leaving a significant amount of permits open for more than a year, for which staff perform many multiple follow ups.

In order to provide a greater deterrent non-compliance, a greater incentive for persons to contact the City for final inspections, and to better ensure the City can recoup costs for any remedial actions required, staff suggest enabling additional regulatory tools, such as:

- allowing charges under the Administrative Monetary Penalties program of \$250 per infraction;
- requiring a fully refundable deposit of \$5,000 be required with the SPE Permit application if excavation will be required; and
- having permits expire after one-year from issuance unless a permit extension fee is paid.

The amount of \$5,000 for the deposit was chosen to drive compliance, and is intended to be an incentive for permit holders to build what is approved, to request final inspection in a timely manner and, as well, to be drawn upon in the event of any damage to City infrastructure. This amount is in line with what other municipalities in the Greater Toronto Area apply.

Swimming Pool Covers

A number of municipalities are now beginning to address Swimming Pool covers, used for both Swimming Pools and hot tubs. Research shows there are a variety of covers on the market with varying purposes, such as to protect debris and in some case, to prevent someone from falling in when the cover is closed and locked; because of the varying purposes, varying extent to which covers are designs to prevent someone from falling in, staff do not believe that they are a suitable alternative to SPE to ensure safety.

With that said, staff recognize that if a lockable cover is present, it can serve as an additional tool in ensuring better pool safety when the pool is not in use.

Previous Reports/Authority

[Fence By-law Review](#) - Item 17, Report No. 17, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on May 14, 2019.

Analysis and Options

Staff propose the following recommendations:

No.	Current Regulation	Recommendation	Benefit
1	The current regulation does not differentiate between Permanent and Seasonal/Temporary pools. In 2020, the SPE Permit fee is \$650.	To create two additional lower-cost Swimming Pool Enclosure Permit categories in line with the amount of staff effort required for inspection and review, so that there are three in total, with the following 2021/2022 fees: • In-Ground - \$670/\$690 • Permanent Above-Ground - \$500/\$515 • Seasonal/Temporary - \$350/\$360	This will make having a safe, above-ground or temporary swimming pool more affordable for residents.
2	The current regulation does not address climbable objects which are near to	To include requirements for Swimming Pools and Swimming Pool Enclosures to have a minimum distance from easily climbable structures.	This will expand upon the existing provisions to enhance pool safety.

No.	Current Regulation	Recommendation	Benefit
	Swimming Pool Enclosures.		
3	The current regulation allows for Fence Height exemptions, but not exemptions in other areas.	Change the Fence Height Exemption process to the “Fence By-law Exemption” process, to allow for consideration of other factors, such as material and design of SPEs.	This will provide staff with the ability to address innovation in fencing and enclosures as they arise.
4	The current regulation does not address SPE Permit deposits.	To require a SPE Permit deposit of \$5000 if excavation will be taking place, which will be fully refundable upon inspection by staff and confirmation that there are no damages and no remedial work is needed.	To recover costs as a result of damages to the public road allowance and/or to discourage unauthorized yard grading changes, both occurring as a result of SPE enclosure construction.
5	The current regulation does not address Swimming Pool Covers.	If a Swimming Pool has a lockable cover, it must be closed and locked when the Pool area is not in active use.	In addition to all Swimming Pools requiring an SPE, this will add an additional measure of safety.
6	The current regulation allows charges to be laid under the Provincial Offences Act, however not Administrative Monetary Penalties (AMPS).	To allow an Administrative Monetary Penalty of \$250 for instances of non-compliance with the by-law.	This will provide staff with an additional enforcement tool for non-compliance, and also allow the public to have access to the streamlined AMPS adjudication process if they are in disagreement.

No.	Current Regulation	Recommendation	Benefit
7	Current fees related to Fence permits, appeals and inspections are located in both the Fees and Charges By-law and the Fence By-law.	To move all Fence-related fees into a table into the Fees and Charges By-law.	To provide members of the public with more accessible and easy-to-find information with respect to permit, appeal, inspection and re-inspection fees.
8	Swimming Pool Enclosure Permits can remain open indefinitely, and as such a significant number of residents don't contact the City for final inspection.	To make Swimming Pool Enclosure permits expire after one year from issuance, unless a \$150 permit extension fee is paid.	To provide an additional incentive for persons to complete construction and arrange the final inspection within a timely manner.

Financial Impact

The proposed changes are expected to significantly improve the ability of City staff to recover costs for remedial work related to restoration of the public land due to SPE-related damages.

Broader Regional Impacts/Considerations

The expansion of SPE regulations will likely enable residents to have greater aesthetic flexibility, while keeping safety a priority.

Conclusion

This report was developed in consultation with staff from Development Engineering and Legal Services. The proposed recommendations support the Term of Council Strategic Priority for Good Governance, support transparency in regulation and fiscal responsibility, as well as the Strategic Priority of Active, Safe and Diverse Communities, enabling a broadening of safety-related regulation.

For more information, please contact Gus Michaels, Director and Chief Licensing Officer, By-law and Compliance, Licensing and Permit Services, ext. 8735

Attachments

1. Proposed amendments

Prepared by

Carol Ramchuram, Regulatory Policy Analyst, ext. 8783

Approved by

A handwritten signature in blue ink, appearing to read "Gus Michaels".

Gus Michaels, Acting Deputy
City Manager, Community
Services

Reviewed by

A handwritten signature in black ink, appearing to read "Jim Harnum".

Jim Harnum, City Manager