

REVIEW OF THE POOL ENCLOSURE BY- LAW, 2001-259

RÉVISION DU RÈGLEMENT SUR LES ENCEINTES DE PISCINES, 2001-259

COMMITTEE RECOMMENDATIONS

That Council:

- 1. Repeal the By-law of the City of Ottawa Respecting the Enclosure for Privately Owned Outdoor Pools, By-law 2001-259; and replace it with a new By-law, substantially in the form of Document 1; and**
- 2. Direct staff to bring forward a report in January 2013, including timeframes and resource requirements, on a proposed public awareness and education campaign on pool safety and Pool Enclosure By-law requirements.**

RECOMMANDATIONS DU COMITÉ

Que le Conseil :

- 1. Abroge le Règlement 2001-259 de la Ville d'Ottawa en matière d'enceintes de piscines extérieures privées, et le remplacer par un nouveau règlement, essentiellement dans la forme du document 1; et**
- 2. Charge le personnel de soumettre en janvier 2013 un rapport faisant état du calendrier et des besoins en ressources sur une proposition de plan de campagne et de sensibilisation du public sur la sécurité en matière de piscines et sur les exigences relatives au Règlement sur les enceintes de piscines.**

DOCUMENTATION / DOCUMENTATION

- 1. Deputy City Manager's report, Planning and Infrastructure, dated 4 October 2012 (ACS2012-PAI-PGM-0114).
Rapport de la Directrice municipale adjointe, Urbanisme et Infrastructure, le 4 octobre 2012 (ACS2012-PAI-PGM-0114).**

2. Extract of Draft Minute, Planning Committee, 23 October 2012.
Extrait de l'ébauche du procès-verbal du Comité de l'urbanisme, le
23 octobre 2012.

3. Extract of Draft Minute, Agriculture and Rural Affairs Committee, 1 November
2012.
Extrait de l'ébauche du procès-verbal du Comité de l'agriculture et des affaires
rurales, le 1 novembre 2012.

Report to/Rapport au :

Planning Committee
Comité de l'urbanisme

and / et

Agriculture and Rural Affairs Committee
Comité de l'agriculture et des affaires rurales

and Council / et au Conseil

October 4, 2012
4 octobre 2012

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CITY WIDE / À L'ÉCHELLE DE LA VILLE

Ref N°: ACS2012-PAI-PGM-0114

SUBJECT: REVIEW OF THE POOL ENCLOSURE BY- LAW, 2001-259

OBJET : RÉVISION DU RÈGLEMENT SUR LES ENCEINTES DE PISCINES,
2001-259

REPORT RECOMMENDATIONS

That the Planning Committee and Agriculture and Rural Affairs Committee
recommend that Council:

1. Repeal the By-law of the City of Ottawa Respecting the Enclosure for
Privately Owned Outdoor Pools, By-law 2001-259; and replace it with a new
By-law, substantially in the form of Document 1; and

2. **Direct staff to bring forward a report in January 2013, including timeframes and resource requirements, on a proposed public awareness and education campaign on pool safety and Pool Enclosure By-law requirements.**

RECOMMANDATIONS DU RAPPORT

Que le Comité de l'urbanisme et le Comité de l'agriculture et des affaires rurales recommandent ce qui suit au Conseil :

1. **Abroger le Règlement 2001-259 de la Ville d'Ottawa en matière d'enceintes de piscines extérieures privées, et le remplacer par un nouveau règlement, essentiellement dans la forme du document 1; et**
2. **Charger le personnel de soumettre en janvier 2013 un rapport faisant état du calendrier et des besoins en ressources sur une proposition de plan de campagne et de sensibilisation du public sur la sécurité en matière de piscines et sur les exigences relatives au Règlement sur les enceintes de piscines.**

Executive Summary

Assumptions and Analysis:

Ottawa's current Pool Enclosure By-law, 2001-259, was adopted on July 11, 2001 to provide uniform regulations regarding outdoor private pool enclosures throughout Ottawa. Pool enclosure By-laws are enacted by municipalities to provide for a minimum safety standard for the public, and particularly for the protection of young children who do not comprehend the risk presented by pools.

The By-law requires updating to ensure clarity, improve standards and to address a 2009 Council direction to staff to review the feasibility of retroactively requiring all pool enclosure gates that adjoin any publicly used space to be locked at all times when not being used for access or egress. Also, some administrative sections of the By-law require updating to reflect recent amendments to the *Municipal Act*.

A review of the By-law included both the consideration of submissions by safety organizations, and a report by the Office of the Chief Coroner of Ontario related to drowning incidents of young children in Ontario in 2010. The coroner's report recommended the installation of four-sided fences around private pools, which would typically mean the installation of a fence between the rear egress point of a dwelling and a pool.

Improving the effectiveness of pool enclosure gates was also considered. Research studies, reports and municipal best practices highlight that pool enclosures became

ineffective the moment gates failed to bar access to pools when they are left open, unlocked or in disrepair.

Also of importance is vigilance by parents/adults of children in and around pools and children learning to swim. There is a particular concern with inflatable pools and hot tubs that can be purchased off the shelf and installed without consideration for safety or compliance with the Pool Enclosure By-law. Increased public awareness in such cases may be more effective in improving the safety of children.

Hence, this report sets out an approach that entails a combination of higher standards for gates, clear minimum standards for all enclosures and greater public education as an effective means to improving public safety in lieu of simply requiring all pools to be enclosed by four-sided fences.

The following are the significant regulatory changes proposed.

- All pool enclosure gates must be locked (instead of simply lockable) except when the enclosed area is in use or in the case of a gate leading to a public space, at all times when the gate is not being used for access or egress. Locked gates provide a higher level of security.
- Temporary pool enclosures that are solid and well-anchored to the ground, will now be mandated during the installation of an in-ground or semi in-ground pool. This measure is to safeguard young children after the pool has been filled (completely or partially) with water, and before the permanent enclosure has been fully installed.
- New pool enclosure fence and gate specifications (i.e. size of chain link openings and vertical wood construction) will be established to enhance the effectiveness of the fence and gates.
- Hot tubs with permanent substantial, structurally adequate lockable lids will no longer be required to be enclosed by a gated fence, these lids are considered secure pool enclosures if they meet the required standards of a safety cover and are kept locked when the hot tub is not in use.
- Updated administrative provisions that provide permit holders more time to complete a pool enclosure installation before the permit expires.

Implementation and enforcement of the new regulations will be phased in to permit a period of familiarization and voluntary compliance.

Financial Implications

There are no direct financial implications.

Public Consultation/Input

The majority of the feedback received from industry stakeholders and the public were primarily objections to the proposal for four-sided fences, and that alternative safety measures be considered. Exempting hot tubs with permanent substantial lockable lids received modest feedback with the majority of respondents supporting the requirement. There was little feedback on the requirement to lock all pool enclosure gates when the pool was not in use; however it seemed logical to those who commented on the proposal. Some indicated that they thought it was a requirement already.

In view of the feedback from public consultation and the findings of the review, a different approach is being proposed to increase public safety; that of enacting a new By-law with higher standards for fences, and undertaking an enhanced public education campaign starting in 2013 to improve awareness of pool safety and the By-law requirements.

Résumé

Hypothèses et analyse

L'actuel Règlement 2001-259 sur les enceintes de piscines de la Ville d'Ottawa a été adopté le 11 juillet 2001 en vue de fournir une réglementation uniforme sur les enceintes de piscines extérieures privées sur tout le territoire d'Ottawa. Les règlements sur les enceintes de piscines sont promulgués par les municipalités dans le but de garantir au public des normes de sécurité minimales, et plus particulièrement de protéger les jeunes enfants, qui ne sont pas conscients du risque lié aux piscines.

Le Règlement doit être mis à jour pour assurer sa clarté, améliorer les normes et tenir compte d'une directive de 2009 du Conseil qui enjoignait le personnel d'examiner la possibilité d'exiger rétroactivement que tous les portails d'enceinte de piscine jouxtant un espace public soient verrouillés en tout temps lorsqu'ils ne sont pas utilisés pour l'entrée ou la sortie des utilisateurs. De plus, certains passages administratifs du règlement doivent être actualisés afin de tenir compte des récentes modifications apportées à la *Loi sur les municipalités*.

La révision du règlement devait tenir compte des présentations faites par les organismes de sécurité et d'un rapport du Bureau du coroner en chef de l'Ontario concernant les noyades de jeunes enfants survenues en Ontario en 2010. Le rapport du coroner en chef a recommandé l'installation d'enceintes sur toute la circonférence des piscines privées, qui implique habituellement l'installation d'une clôture entre la porte arrière d'une habitation et une piscine.

L'amélioration de l'efficacité des portails d'enceintes a également été prise en compte. Des études, des rapports et des pratiques exemplaires de municipalités ont révélé que

les enceintes de piscines devenaient inefficaces lorsque le portail n'empêchait plus l'accès à la piscine (laissé ouvert, non verrouillé ou en mauvais état).

La vigilance des parents ou des adultes surveillant les enfants dans les piscines ou aux alentours, ou les enfants apprenant à nager, est un autre point important à prendre en compte. Les piscines gonflables et les spas que l'on peut se procurer directement dans les commerces et installer sans tenir compte des exigences du Règlement sur les enceintes de piscines, suscitent également des préoccupations. Une plus grande sensibilisation du public à cet égard pourrait s'avérer plus efficace pour améliorer la sécurité des enfants.

Ainsi, ce rapport propose une approche impliquant une combinaison de normes plus strictes pour les portails, de normes minimales claires pour toutes les enceintes et de mesures accrues de sensibilisation du public pour améliorer efficacement la sécurité du public, plutôt que de simplement exiger que toutes les piscines soient clôturées sur toute leur circonférence.

Voici les changements les plus importants proposés au règlement :

- Tous les portails d'enceintes de piscines doivent être verrouillés (plutôt que simplement munis d'un verrou), sauf si l'espace clôturé est utilisé ou dans le cas d'un portail menant à un espace public, en tout temps lorsqu'ils ne sont pas utilisés pour entrer ou sortir. Le verrouillage des portails assure un niveau de sécurité plus élevé.
- Des clôtures temporaires solides et fixées solidement dans le sol seront désormais obligatoires pendant l'installation d'une piscine creusée ou semi-creusée. Cette mesure vise à protéger les jeunes enfants après le remplissage (complet ou partiel) de la piscine et avant que l'enceinte permanente ait été complètement installée.
- De nouvelles spécifications sur les enceintes et les portails de piscines (portant sur la taille des mailles losangées et les enceintes en bois vertical) seront établies afin d'accroître leur efficacité.
- Les spas munis d'un couvercle permanent avec verrou et à la structure adéquate n'auront plus à être clôturés par une enceinte avec portail, car ces couvercles sont considérés comme étant sécurisés s'ils répondent aux normes en la matière et s'ils recouvrent le spa lorsqu'il n'est pas utilisé.
- Des dispositions administratives actualisées, qui donnent aux titulaires de permis plus de temps pour terminer leur enceinte de piscine avant l'expiration de leur permis.

La mise en œuvre et la mise en application des nouvelles dispositions seront progressives afin de permettre à tous de se familiariser et de s'y conformer sur une base volontaire.

Répercussions financières

Il n'y a aucune répercussion financière directe.

Consultation / commentaires du public

La majorité des commentaires reçus des intervenants de l'industrie et des membres du public s'objectaient à la proposition d'enceintes sur toute la circonférence des piscines, et demandaient que d'autres mesures soient prises en compte. L'exemption touchant les propriétaires de spas munis d'un couvercle permanent avec verrou a fait l'objet de peu de commentaires, essentiellement en faveur de cette exigence. Peu de commentaires ont concerné l'exigence de verrouiller tous les portails d'enceintes de piscines lorsque celle-ci n'était pas utilisée; elle a toutefois semblé logique pour ceux qui ont émis des commentaires à ce propos. Certaines personnes ont indiqué qu'elles croyaient que cette exigence était déjà imposée.

À la lumière des commentaires reçus lors de la consultation des membres du public et des conclusions de l'examen effectué, une approche différente est proposée afin d'améliorer la sécurité du public : la promulgation d'un nouveau règlement imposant des normes plus élevées et la mise sur pied d'une vaste campagne de sensibilisation, lancée en 2013, destinée à sensibiliser la population à la sécurité relative aux piscines et aux exigences du règlement.

BACKGROUND

According to SafeKids Canada, drowning is the leading cause of injury-related death of Canadian children, and swimming pools are the site of nearly half of all drowning incidents for children 14 years of age and under. Near drowning is also a significant concern. For every drowning of a young child, there are approximately four near-drowning incidents. Near-drowning incidents can result in survivors suffering significant neurological impairment.

The Lifesaving Society's comprehensive *Drowning Report: A profile of Ontario drowning and water-related injuries, 1987-2004*, indicates that children between the ages two and four years of age are at most risk of drowning, accounting for 79 per cent of drowning incidents among children less than five-years of age. The *Report* indicates that private outdoor pools present the greatest danger for young children in this age group. Because most jurisdictions require yards with pools to be fenced, many of these victims gain access to the pool from the dwelling, not when they wander into the yard of a neighbouring property.

SafeKids Canada and the Canadian Red Cross indicate that the drowning of young children often occurs when the child is walking or playing near water, not when they are swimming or intending to go in the water. Most happen when the child gets near water during a momentary lapse in adult supervision. Young children under five years old are often attracted to water, yet lack a sense of caution and have not developed the coordination and strength to swim.

The majority of pool related accidents involving young children are avoidable with proper safeguards. Those safeguards involve both constant supervision and regulations to minimize the ability of a pool enclosure to be compromised. Therefore, it is important that the City remains vigilant and ensures that pool enclosure regulations are up-to-date.

Best practice mandates the implementation of drowning prevention strategies in order to reduce the number of drowning and near drowning incidents. Essential interventions include strategies aimed at constant supervision, remaining "Within Arm's Reach", and increased access to swimming skill building opportunities. Legislation is another key strategy targeted at ensuring that effective barriers are in place to prevent unintentional access to water, of which four-sided pool fencing is cited as being best practice. Lastly, enforcement of legislation and emergency response provide key support in preventing drowning and near drowning incidents.

Legislative Basis for Pool Enclosure By-law

The *Municipal Act* gives municipalities the powers to pass By-laws for the health, safety and well-being of persons, and to regulate fences in general.

On July 11, 2001, Council passed the current Pool Enclosure By-law, 2001-259, which defined pools 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 at any point. This includes in-ground, semi in-ground and above ground pools, inflatable pools, portable pools, decorative ponds and hot tubs. The former municipalities all had similar pool enclosure By-laws prior to amalgamation that varied slightly from one another. Pool enclosure By-laws only regulate outdoor, private residential pools.

Purpose of Pool Enclosure By-laws

Pool enclosure By-laws are established primarily to protect young children, particularly those less than five years old, from gaining access to a private pool during a lapse in supervision. Pools located in yards of residential properties often present a different hazard than most natural water features. They are often situated in close proximity to a number of dwellings, usually do not have the sloped edges that provide for gradual entry or exit, and are a hazard not anticipated in a location where there is an expectation of security and safety (the home). A properly functioning pool enclosure can impede unsupervised access by young children.

The main objective of the current City of Ottawa regulations, like those of the former municipalities, was to completely surround each pool with an enclosure to prevent young children, from abutting properties, accessing the pool area. On the general assumption that young children who reside or are visitors to the dwelling, and could access the pool area through a door in the dwelling, would be supervised. No regulations were put in place to hinder access from the residence.

The most common pool enclosure solution to meet the By-law requirements has comprised of a three-sided perimeter gated fence; usually demarcating the rear and side yard boundaries of the property, with the dwelling itself comprising the main part of the enclosure which prevents access to the pool from the front of the property. Other pool enclosure types to comply with the By-law are possible, but are less favoured by pool owners; including a four-sided gated fence directly around the pool itself, or a three-sided perimeter fence with an additional gated fence between the pool and the dwelling.

Comparison with Former and Other Municipalities

A comparison of the current Pool Enclosure By-law to that of the former municipalities in the Ottawa area, and other municipalities in Ontario, indicates there are a number of differences as described below.

i) Locked Gates vs. Lockable Gates

Ottawa's current Pool Enclosure By-law only requires that gates be lockable, meaning they don't actually have to be locked. The exception to this is an amendment to the By-law in September 2009, when Council passed a motion requiring that all new pool enclosure gates that adjoin any publicly used space be locked at all times when not being used for access or egress. This new requirement applied only to new enclosures approved after that date.

A review of all the pool enclosure By-laws of the former municipalities revealed that all required gates to be locked except for Vanier, Gloucester and West Carleton. West Carleton only required the gates to be locked if the latch was on the outside of the pool area; otherwise it only had to be closed. Many other Ontario municipalities have enacted the requirement that pool gates be locked when the pool is not in use as a best practice including: Toronto, Brampton, Oakville, Guelph, Mississauga, Kingston, Kitchener, Halton Hills, Aurora, Newmarket, Peterborough, Whitby and Windsor.

ii) Gate and Fence Specifications

While the current By-law indicates that gates must provide protection to the enclosure and fences must deter children from climbing, it does not provide the

detailed fence and gate specifications found in the pool enclosure By-laws of other Ontario municipalities. For example, the current By-law allows chain link fences. However, it is silent on the size of the links. Many municipalities have adopted 38 mm as the maximum links size while our By-law currently permits the more climbable 89 mm links.

iii) Temporary Pool Enclosures

With respect to temporary pool enclosures, the current By-law does not specify that a fence must surround an in-ground or semi in-ground pool during construction. While most pool installers do set up a temporary pool enclosure, there are no established specifications or standards they must follow. The requirement for a temporary pool enclosure has become a standard requirement in other major municipalities in Ontario including: Toronto, London, Barrie, Oshawa, Halton Hills, Milton, Mississauga, Cornwall, St. Catherine's and Kingston.

iv) Hot Tubs, Whirlpools and Spas

Hot tubs, whirlpools and spas can be equipped with substantial, permanently attached, lids capable of supporting a 90 kilogram load or are in compliance with the American Society for Testing and Materials standard (ASTM F1346 – 91) for hot tub and pool safety covers. These lids, which are equipped with locks, create an effective pool enclosure. A number of Ontario municipalities have exempted hot tubs with substantial lockable lids from the requirements of surrounding hot tubs with an enclosure, including Toronto, Guelph, Kingston, Laurentian Valley, London, Mississauga, Waterloo and Windsor. Currently, it is a requirement in Ottawa to erect a pool enclosure around a hot tub, whirlpool or spa regardless of what type of lid it has.

v) Four-sided Fences

Four sided fences have been identified as best practice in pool safety in residential settings. This means having an additional side or section of fencing which will prohibit direct access to a pool from the doors or windows of a dwelling (usually rear patio doors). The most significant change to regulations regarding pool safety in residential settings would be the introduction of four-sided fences. This has never been a requirement in Ottawa or a former municipality. On August 28, 2008, City Council considered a motion to study the matter, but it was decided not to proceed with a review at that time. Toronto is the only municipality in Ontario to adopt such a regulation so far, being implemented for new pool installations after 2007. Québec mandated four-sided fences for all new pools province-wide through provincial regulations on new pool enclosures in 2010.

The World Health Organization, Canadian Red Cross, Safe Kids Canada and the Ottawa Drowning Prevention Coalition all support legislative changes to make four-sided fencing a requirement. Internationally, Australia, France and New Zealand have also adopted this requirement. The Australian state of Queensland has made it a mandatory requirement for all current pool owners to register their pool with the state government and adopt the regulation retroactively by 2015.

A number of safety organizations and studies on pool fencing claim that four-sided fencing would prevent between 50 to 80 per cent of drowning incidents among children less than five years old. One influential Australian study, *Childhood Drowning: Barriers Surrounding Private Swimming Pools* studied the drowning of 50 children less than five years old in private pools in Western Australia over a 12-year period (1988-2000). The study found that:

- 70 per cent of the drowning cases occurred in pools with three-sided fencing
- 30 per cent of the drowning cases, occurred in pools with four-sided fencing

This study also indicated that four-sided fencing alone does not guarantee safety as 15 of the 50 studied drownings occurred where four-sided fencing was in place; but where pool enclosure gates were left open, or the self-latching mechanisms were not functioning properly, which allowed four-sided pool enclosure to become compromised. In fact, all of the drowning incidents in private pools with four-sided pool enclosures in the Western Australian study were the result of either the gate being left propped open, or the self-closing and/or self-latching mechanism not working properly.

Local Considerations on Four-sided Fencing

There are a number of issues identified by stakeholders during the recent public consultation that were considered while determining readiness in Ottawa for four-sided fences:

a) Difficulty Imposing Retroactivity

There are thousands of pool enclosures in the city, with over 5 700 pool enclosure permits issued since 2006 alone. None of these were required to install a gated-fence between their pool and dwelling when planning the location of their pool and landscaping their properties. With their pool installation and landscaping completed, it would be a hardship to require a pool owner to alter their property, patios and/or decks, sometimes dramatically and at great cost, to accommodate an additional side of fencing. As a result, even if this regulation were adopted, realistically it would only apply to new pool enclosures. Despite mandating four-sided fences, the vast majority of pool enclosures would remain three-sided for the foreseeable future.

b) Yard Size

Typical yards in Ottawa are getting smaller. Many single detached dwellings in new subdivisions with in-ground or semi in-ground pools have backyards that are as little as 6 to 7.5 metres in depth. An in-ground or semi in-ground pool must be setback at least 1.2 metres, and an above ground pool up to 1.5 meters from the side and rear lot lines. In addition, with the exception of a hot tub, a pool cannot be closer than 1.2 metres from the dwelling. Yards also have swales and catch basins for storm water management and these additionally reduce the space available for the placement of pools. Requiring a fourth side of fencing between the pool and dwelling would further limit the area available for a pool installation or eliminate the potential amenity for many new homeowners.

c) Aesthetics and Cost

Many pool owners like to view their pool from within their home without a fence as a visual barrier. They often spend as much money, or more, landscaping their yard as they do on the pool installation. Requiring pool owners to install fencing between the pool and the dwelling may obstruct the view and/or reduce the visual appeal of the pool and landscaping. Fencing options that may be more visually appealing such as reinforced glass or wrought iron are far more expensive than chain link or wood fencing. The visual impairment and cost may be particularly onerous on pool owners who do not have young children and feel that securing the perimeter of their property with a pool enclosure is sufficient.

d) Layers of Protection

The Pool and Hot Tub Council of Canada, which represents the pool and hot tub industry in Canada, and many safety organizations such as the Lifesaving Society, suggest that there are a number of measures that can assist in securing access points from the dwelling leading to the pool area. They point out that, despite best intentions of parents or caregivers, human error can result in a gate and/or door being left open or a lock unsecured. Additional layers of protection could be voluntarily adopted by pool owners with young children. These measures include: installing self-closing and self-latching doors providing access to the residence, door and pool alarms, and pool covers to name a few. While none of these measures are foolproof, combined they add extra layers of protection for young children living within, or visiting the dwelling.

Other Considerations in Pool Safety

a) Parental/Adult Supervision

The Lifesaving Society points out that the biggest risk factor for young children is the lack of direct supervision from parents or caregivers and that pools present the greatest danger for children under five. A lapse in attention may only be a few moments however, it is long enough to prove fatal if the child has no barriers

preventing unintended access to a pool. They indicate that the majority of children less than five years of age that drowned in the 2000-2004 period were alone. While pool enclosures are an essential measure that can help protect children, the Lifesaving Society, Ontario Medical Association, American Academy of Pediatrics and numerous other safety organizations advocate that parents and caregivers must remain in very close proximity (“Within Arms Reach” or “touch supervision”) of their children at all times whenever their children are near water. This includes not only pools but ponds, bath tubs, and pails of water. They recommend that adults must remain focused on their children and not be distracted by activities such as socializing or chores.

b) The Value of Public Education

The Lifesaving Society of Canada has indicated that public education was highly effective in substantially reducing the number of drowning incidents across Canada between 1987 and 2004. The Society’s Water Smart® public education campaign, launched in 1987, coincides with the beginning of this reduction. Significantly, the number of drowning incidents among children less than five years dropped by more than half, from 2.7 per 100,000 in 1990 -1994, to 1.1 per 100,000 during the period 2000-2004; indicating that public education is an effective complement to minimum pool enclosure regulations. More recent statistics compiled by the Lifesaving Society in their 2011 and 2012 Drowning Report updates indicate that the lower drowning rate for children less than five years old remained stable at this lower level for the period 2005-2009.

c) Coroner’s Inquest

The Office of the Chief Coroner published a report on the review of drowning deaths in Ontario from May 1st to September 30th 2010, as a result of a statistical increase in drowning incidents among children in 2010. One key recommendation includes enforcing municipal pool enclosure By-laws that mandate barrier safety requirements for new pools, and which includes the addition of four-sided fencing. It was recently announced that a Coroner’s inquest will be held into the drowning of a young child in a private outdoor pool in Ottawa in 2010. Ottawa’s current Pool Enclosure By-law, and the By-law regarding pool enclosures of the former municipality of Cumberland, will be reviewed as part of the inquiry and recommendations may be made by the Coroner with respect to pool enclosures in the City of Ottawa. Of note is that only one child under the age of five drowned in Ontario in 2011.

DISCUSSION

This report recommends improving public safety for young children by combining clear minimum standards for pool enclosures with effective public education targeted at parents and caregivers, the child care network and youth. The objective of a pool enclosure will continue to be protecting children living outside the property, while the public education would be aimed at protecting all children, particularly those living within, or visiting, a dwelling with a pool.

Recommendation 1

The following regulatory changes to improve pool safety and the effectiveness of the By-law provisions are proposed for the new Pool Enclosure By-law:

Requirement for Gates to be Locked

It is recommended that all gates in a pool enclosure be locked at all times, regardless of when the enclosure was installed, except when:

- i. the enclosed pool area is actually in use; or
- ii. the gate adjoins public land such as a park, golf course or highway, and is actually being used for access or egress.

It is recommended the requirement to lock all pool enclosure gates take effect January 1, 2013, but that enforcement of these provisions commence April 15, 2013 in order to give residents with existing pools time to ensure their gates and locks comply with the new requirement.

Pool enclosures are intended to form a protective barrier around the entire pool. Unsecured gates, however, are the achilles' heel of pool enclosures. Studies indicate the protective barrier is compromised when gates are not maintained properly or are not properly closed and latched.

Canadian safety organizations such as the Canadian Red Cross, SafeKids Canada and the Lifesaving Society all recognize that unsecured or inadequate pool enclosure gates are a significant danger to young children as they can fail to prevent an unsupervised child from accessing the pool area. The only way to completely secure a pool enclosure is by ensuring the gate is locked when the pool is not in use.

Aside from the September 23, 2009 amendment to the current By-law that required new pool enclosure gates that adjoin a public space be locked at all times except when being used for access or egress; the current By-law only specifies that gates be lockable, not locked.

In Ottawa, a gate will be considered locked when the self-latching mechanism is secured with a device, such as a key or combination pad lock. Because it has been a

requirement of the current By-law to have a lockable gate, pool enclosure permit holders will be able to become compliant with the new requirement simply by purchasing a pad lock which costs as little as \$8.50. Most pool enclosures installed prior to 2001 with permits from the former municipalities will already have a lock for their gate or have a lockable gate. There is the possibility that some pool enclosure gates approved prior to 2001 in the former municipalities of Vanier and West Carleton will require the pool owner to purchase new hardware. A self-latching device combined with a pad lock is easy for a pool owner to install and can be purchased for as little as \$12.50.

Given the importance of secured gates to the integrity of all pool enclosures and the security of young children, it is recommended that the requirement to lock all pool enclosure gates be imposed retroactively.

Measures to Make Pool Enclosures More Secure

It is recommended that:

- i. New minimum standards are defined to ensure pool enclosures are constructed in such a way, and of materials, that will make the enclosures more secure.

It is recommended that these new standards take effect January 1, 2013 for new pool enclosures.

Minimum standards to deter climbing by young children will be clarified and enhanced.

This will include reducing the size of possible footholds in chain link fences by specifying that the links can be no greater than 38 mm; and, requiring wood fences to be of vertical wood fence construction, rather than the closed board construction to clarify boards must be vertical, not horizontal. The By-law will also set minimum standards for other fence materials that have become more popular including wrought iron, aluminum and vinyl.

The By-law will maintain the requirement that the pool enclosure can have no gap in or under the fence or gate that would allow the passage of a spherical object having a diameter of 100 mm.

It will now be a requirement that fence posts, including those supporting the gate, be installed to ensure they are non-frost susceptible to reduce fence and gate damage through frost heaving.

The By-law will clarify that a garage door cannot be used as part of a pool enclosure.

It will also specify that if the pool enclosure has a double gate which could be used to allow a vehicle, boat, recreational vehicle or trailer to be stored in a back or side yard; one of the gates must have a self-closing and self-latching device and a lock. Further,

the second gate must have a device permanently affixed to the ground or non-movable object, which prevents access through this gate without lifting or removing this device and then releasing the latch.

Finally, to ensure that new requirements are adopted over time, a replacement pool enclosure must comply with the requirements of the new By-law and in these situations, it will be requirement to obtain a permit for the replacement.

Requirement for Temporary Fencing When a Pool is Under Construction

It is recommended that:

- i. Every person who is constructing an in-ground or semi in-ground pool in a yard without a compliant permanent pool enclosure must erect a temporary pool enclosure that completely surrounds the construction site;
- ii. With the exception of one 3 metre fence/enclosure panel, the temporary pool enclosure must be replaced with a permanent pool enclosure within 14 days of the in-ground or semi in-ground pool being filled with water; and
- iii. A temporary pool enclosure be required to fill in any gaps in a permanent pool enclosure, when part of the permanent pool enclosure is being removed to provide access to the pool area for construction, landscaping, repair or maintenance work to the pool and/or pool enclosure.

It is recommended that these new standards take effect January 1, 2013 but that any enforcement of these provisions commence April 15, 2013 for new pool enclosures.

In-ground or semi in-ground pools account for about 55 per cent of the pool enclosure permits issued since 2006. The current Pool Enclosure By-law does not specifically require the installation of a temporary pool enclosure for the duration of the installation of the in-ground pool or semi in-ground pool. However, it does specifically state that “no person shall place water in, or allow water to remain in a pool in the City unless the prescribed fences and gates have been erected”.

The existing restriction has caused problems for pool installers who complete construction of an in-ground or semi in-ground pool before the full permanent pool enclosure has been installed, by another contractor in many cases. Once the construction of a pool is complete, pool installers need to immediately fill the pool with water to set the lining and to test the pumps. Often the permanent enclosure cannot be installed until the landscaping of the yard is completed which can only be completed once the pool has been installed. If the pool is filled before the full permanent pool enclosure has been constructed, it would contravene the current By-law and pose a hazard to young children in the vicinity if they gained access to the pool area.

While most pool installers do voluntarily install some form of temporary fencing directly around the pool during the construction of an in-ground or semi in-ground pool (typically fencing that can be re-used for other pool installations); the new By-law will now make this a requirement and set standards that will be stringent enough to provide a degree of security, and allow pool installers to be able to fill newly installed in-ground and semi in-ground pools, test the pump and filter equipment, etc., before the permanent pool enclosure is installed.

The property owner or contractor will be required to contact Building Code Services to arrange for an inspection of the completed temporary pool enclosure to ensure it complies with the By-law before the pool can be filled with water. The completed permanent pool enclosure must be installed and inspected within 14 days of the pool being filled with water.

In addition, to account for the sequencing of the work, one 3 metre panel of the permanent pool enclosure may remain as a temporary fence beyond 14 days, to provide access to the yard for landscapers and landscaping equipment if necessary.

At a future point in time, pool owners may want to upgrade landscaping, make repairs to the in-ground or semi in-ground pool, or repair or replace their pool enclosure. In these instances, any breach in the permanent pool enclosure will be required to be filled with a temporary pool enclosure. With the exception of one 3 metre panel, the permanent enclosure must be restored within 14 days.

On large landscaping projects, it may be necessary to have more than one panel of the temporary pool enclosure open for more than 14 days. An extension may be granted on a case by case basis by the Director of Building Code Services or authorized delegate.

Exemption of Requirement to Construct a Pool Enclosure for Hot Tubs, Whirlpools and Spas with Structurally Adequate and Lockable Lids

It is recommended that the installation of hot tub, whirlpool or spa with a substantial, structurally adequate cover, capable of holding a 90 kilogram load, or in compliance with the American Society for Testing and Materials standard ASTM F1346 – 91 for hot tub and pool safety covers, and which is permanently attached to the hot tub, whirlpool or spa, or to its supporting structure; not require a separate pool enclosure, as long as the cover can be securely fastened and locked to prevent access at all times when the hot tub, whirlpool or spa is not in use. A pool enclosure permit will continue to be required prior to installation.

It is recommended that these new standards come into force upon enactment of the By-law for new installations.

Hot tubs, whirlpools and spas with the capacity of holding more than 600 mm of water are considered pools and under the current By-law must be surrounded by a pool

enclosure (gated-fence). Hot tubs, whirlpools and spas currently account for 10 per cent of pool enclosure permits.

However, some hot tubs, whirlpools and spas come equipped with permanently affixed, substantial lockable lids that can withstand the weight of an adult. These lids present a formidable challenge for a young child to lift and open. Some of these lids can hold a load of 90 kilograms or greater, and others are in compliance with the American Society of Testing and Materials, standard ASTM F1346 – 91, which has established standard performance specifications for safety covers for hot tubs and pools.

If kept locked when not in use and installed in accordance to the manufacturer's specifications, hot tub covers that meet either of the two recommended standards, will reduce the risk of drowning by inhibiting the access of children less than five years of age to the water. Owners are also motivated to keep the insulating lid closed when not in use because of the cost of keeping water in a hot tub heated. The Children's Hospital of Eastern Ontario (CHEO) has not reported a drowning or near drowning incident of a young child in a hot tub in Ottawa.

Because hot tub safety covers meeting these standards can be considered a pool enclosure, the property owner will not be required to install a separate enclosure in addition to the safety cover. A pool enclosure permit will still be required to ensure compliance. Owners of safety covers meeting these standards will be required to provide to the City the manufacturer's specifications establishing that the hot tub safety cover meets these standards. Hot tubs, whirlpools and spas without such covers will remain subject to the fence and gate requirements of the new Pool Enclosure By-law.

Administration

Proposed administrative improvements include:

- i. A procedure for the applicant of a pool enclosure permit to cancel their application and receive a partial refund based on the timeliness of the request.
- ii. Providing pool enclosure permit holders a maximum period of 18 months, instead of the current six months, to commence the installation or construction of their pool enclosure before the permit expires.

It is recommended that these new standards for permits come into force upon enactment of the By-law for permits issued after this date.

Currently, an application for a pool enclosure permit that has not been completed by an applicant within six months of submission may be deemed to have been abandoned and cancelled.

a) Cancellation of application by the applicant

On some occasions, the applicant will have purchased a pool (most often an inflatable pool or hot tub) before consulting with the City as to the requirements regarding zoning, grading, location of easements and utilities, and will reconsider their purchase. If the request to cancel the application is received within two business days of the submission date, work completed on the application will account for an average of 50 per cent of the costs typically incurred to review the application, installation plans, review of zoning and grading, etc. Beyond two business days, the reviews will either be fully completed or well on their way to completion and any refund will result in a negative operating budget pressure.

b) Expiry of Pool Enclosure permits

It is recommended that the By-law specify that pool enclosure permits are valid for 18 months from the date of issue, instead of the current six months. The expanded period of time to commence construction is in recognition that such projects can be delayed due to weather and the availability of materials and supplies, especially where extensive landscaping is part of the project. Where there has been a lapse of 18 months from the date of issue, and work has not commenced as confirmed by an inspection; the permit will be revoked, the fees forfeited and the file closed.

Enforcement Tools

Because the enabling legislation for the new Pool Enclosure By-law is the *Municipal Act*, the Building Code Services Branch is able to take advantage of the new enforcement tools provided for in this legislation, such as the ability of staff to issue an Order to discontinue an activity or to do work to require a pool enclosure be made compliant with the By-law. The Order will replace the current Notice of Violation that requires Council approval for any action to be taken to achieve compliance.

The penalty provisions for new offences will be created for this By-law through the *Provincial Offences Act*. Set fines will be established for offences and pool owners will be ticketed if their pool enclosure is found not to comply with the provisions of the new Pool Enclosure By-law. Failure to comply with an Order will also be an offence with penalties provided for in the *Municipal Act*.

Recommendation 2

It is recommended that staff, with the assistance of the Ottawa Drowning Prevention Coalition, be directed to develop a focused public awareness and education campaign on pool safety and the Pool Enclosure By-law requirements; and to bring forward a report January 2013 on the campaign plan, including timeframes and resource requirements.

Drowning prevention messages are provided by many stakeholders in Ottawa. The Ottawa Drowning Prevention Coalition was formed 13 years ago in response to higher than usual local rates of drowning. It is currently chaired by the City's Parks, Recreation and Cultural Services Department, and includes members from Ottawa Public Health, Ottawa Police Services, Ottawa Paramedic Services, Ottawa Fire Services, Dovercourt Recreational Centre, Boys and Girls Club, Ottawa Chapter of Canadian Red Cross, Lifesaving Society, Children's Hospital of Eastern Ontario (CHEO) and most recently, Building Code Services.

The Coalition provides community leadership through seasonal drowning prevention media awareness events that reach various media outlets including local news channels, community newspapers and social media dissemination routes. Since 2002, the Coalition has provided significant commitment to the promotion of active supervision of children through the "Within Arms Reach" campaign targeting parents, caregivers and the child care network (licensed, municipal home child care, and other registered agencies).

While the media awareness events do bring safety messaging to the forefront each spring/early summer, there is a need for a focused and on-going public education campaign using a variety of media products and organized events to promote drowning prevention and inform residents of the By-law requirements/standards.

One significant focus of the campaign would be to inform the public about the requirement for a pool enclosure for portable and inflatable pools. Since 2006 there have been 5,246 pool enclosure permits issued in Ottawa; averaging 874 per year. The vast majority of these have been for in-ground or semi in-ground pools, above ground pools and hot tubs. There is a concern regarding the popularity of inexpensive portable and inflatable pools that can be easily purchased at many home centres or hardware stores and quickly set up by a home owner, without the knowledge or understanding that a pool enclosure fence (and permit) is required for these types of pools. Even though they appear innocuous, these small pools, many of which hold 600 mm or more of water, present a hazard to young children if set up in an unfenced, or improperly fenced yard and left unattended. This is particularly problematic in new subdivisions when families, many with young children, move into their new homes; and there is a time-lag before neighbours can organize themselves to install perimeter fencing.

Another significant focus of the campaign is informing current pool owners of the new requirement to lock gates that is retroactive.

The Pool and Hot Tub Council of Canada (PHTCC), which represents the pool and hot tub industry in Canada, has also expressed an interest in partnering with the City on promoting pool safety. The PHTCC has experience contributing to municipal pool safety campaigns as they have been partnering with Middlesex-London Health Unit on their annual pool safety public education campaigns since 2010.

Staff will work the Ottawa Drowning Prevention Coalition and the PHTCC and will bring forward the report on the campaign plan in January 2013 so as to implement the plan prior to the next pool season.

Conclusion

The measures proposed for the new Pool Enclosure By-law will contribute to enhance public safety at limited additional cost and disruption to pool owners and industry. Even the most stringent regulations, such as mandating four-sided fences, can be undermined simply by someone leaving a gate propped open or not repairing a broken self-closing or self-latching device in a timely manner.

The recommended By-law provisions and proposal to develop and undertake an annual focused public education campaign are intended to effectively improve public safety. The proposed strategies also recognize that ensuring the safety of young children is best maintained through direct supervision from a parent or guardian. While effective regulations may reduce the hazard private pools present, no safety regulation is foolproof.

RURAL IMPLICATIONS

Because the City of Ottawa is comprised of extensive rural lands with many naturally occurring bodies of water and bodies of water used for agricultural purposes, it is not feasible or desirable to apply the Pool Enclosure By-law in these situations. Therefore, these bodies of water are not regulated by this By-law. This applies to naturally occurring bodies of water in urban areas as well.

CONSULTATION

The proposals, which were posted on the City's web site, were distributed to industry stakeholders, safety organizations and community associations. A public service announcement was issued advising the media of the proposals and some articles did appear in local newspapers as a result.

Most of the feedback received from industry stakeholders and the public focused on a concern for the original proposal for four-sided fences, suggesting that alternative safety measures should be considered. Industry pointed out there are additional layers of protection pool owners could add to their pool enclosure, including door and/or pool alarms, patio door locking mechanisms, and mechanical pool covers. The most common criticisms focused on concern about the visual impact the added fence would have on the pool and surrounding landscaping, the added cost that adding a fourth-side would entail, concern that backyards in new subdivisions were too small to add the necessary fencing, and the unfairness of imposing this requirement on pool owners without young children.

Most other proposals received only moderate attention in comparison, though there was public support for exempting hot tubs with permanent substantial lockable lids from the requirement for a pool enclosure fence. The requirement to lock all pool enclosure gates when not in use seemed logical to most who commented on the proposal. Many respondents had thought that there already existed a requirement to maintain locked gates.

Comments from industry on the requirement and specifications for temporary pool enclosures were mixed. Most supported a more stringent standard of fencing if given the ability to fill the pool with water prior to the installation of the permanent enclosure, but were concerned about the time limit of 14 days between adding water to the pool and having the permanent pool enclosure installed. Some pool installers and landscapers indicated that it was not feasible to impose a 14 day limit on pool installations with elaborate landscaping. They also pointed out that many in-ground and semi in-ground pools require the pool to be filled completely with water, not just 600 mm, before the area around the pool is backfilled to prevent the walls of the pool from buckling. This could occur before a permanent pool enclosure has been installed.

Those safety organizations that provided comments were supportive of any enhancement to the By-law that might improve safety.

COMMENTS BY THE WARD COUNCILLORS

This is a City-wide issue – not applicable.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations of this report.

RISK MANAGEMENT IMPLICATIONS

There are risk implications. These risks have been identified and explained in the report and are being managed.

FINANCIAL IMPLICATIONS

There are no direct financial implications.

ACCESSIBILITY IMPACTS

Building Code Services Branch has considered accessibility issues while reviewing the requirements of the Pool Enclosure By-law. There are no accessibility implications associated with the report recommendations.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with the report recommendations.

TECHNOLOGY IMPLICATIONS

There are no technology implications associated with this report.

TERM OF COUNCIL PRIORITIES

The changes to the Pool Enclosure By-law support Council's Strategic Priority – Healthy and Caring Communities: "Help all residents enjoy a high quality of life and contribute to community well-being through healthy, safe, secure, accessible and inclusive places". However, there are no specific Strategic Objectives for healthy and caring communities, that have been approved for this term of Council, that directly relate to the recommendations in this report.

SUPPORTING DOCUMENTATION

Document 1 Pool Enclosure By-law

DISPOSITION

Upon approval, the Building Code Services Branch together with the City Clerk and Solicitor's Department to bring forward the new By-law before Council for enactment.

City Operations, Emergency and Protective Services Department, By-law and Regulatory Services Branch will apply for set fines in relation to the offences created by the new By-law.

Planning and Growth Management, Building Code Services Branch will work with the Drowning Prevention Coalition and Corporate Communications to develop the public awareness campaign and report back to Committee and Council.

PROPOSED POOL ENCLOSURE BY-LAW

DOCUMENT 1

BY-LAW NO. 2012 –

A by-law of the City of Ottawa respecting the enclosure for privately-owned outdoor pools.

WHEREAS Section 10 (2), paragraph 6, of the *Municipal Act*, 2001, S.O. 2001, c. 25 (hereinafter the "*Municipal Act 2001*") authorizes a municipality to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS Section 10 (2), paragraph 10, of the *Municipal Act 2001*, authorizes a municipality to pass by-laws respecting structures, including fences and signs;

AND WHEREAS Section 8(3) of the *Municipal Act 2001*, authorizes a municipality to regulate or prohibit in respect of matters within their jurisdiction, including fences, and to require persons to obtain permits and provide for a system of obtaining permits in relation to those matters;

AND WHEREAS Section 391.1 (a) of the *Municipal Act 2001* provides that a municipality may pass by-laws imposing fees or charges on persons for services or activities provided or done by or on behalf of it including permit fees for pool enclosure permits;

AND WHEREAS the Council of the City of Ottawa deems it necessary to regulate enclosures for outdoor pools within the City of Ottawa;

THEREFORE the Council of the City of Ottawa enacts as follows:

PART 1 - DEFINITIONS

1. In this By-law,

"Agent" means a person duly authorized by the Owner in writing to act for or represent an Owner of a property on which a pool is being constructed or is located and contractor or trustee have the same meaning;

"building" means any structure used or intended for supporting or sheltering any use or occupancy;

"City" means the City of Ottawa as established on January 1, 2001 by Section 2 of the
City of Ottawa Act, 1999;

“construct” means to do anything in the erection, installation or removal of a pool or enclosure, and constructed and construction have the same meaning;

“Director” means the person in the office of Director of Building Code Services in the Department of Planning and Growth Management, or authorized delegates;

“dwelling” means a building used and occupied as a residence, but may not be a garage or shed;

“enclosure” means any combination of fence, wall, safety cover or other structure, including any permitted door, gate or other opening which surrounds a pool and restricts access to a pool;

“gate” means a barrier swinging in a vertical axis used to close an access in an enclosure;

“former municipality” means the old municipalities of the City of Cumberland, the City of Gloucester, the Township of Goulbourn, the City of Kanata, the City of Nepean, the Township of Osgoode, the City of Ottawa, the Township of Rideau, the Village of Rockcliffe Park, the City of Vanier and the Township of West Carleton;

“hot tub” means a very large tub filled with water, which may or may not include a lid or jets of water; and shall include tubs which are commonly called “spas” or “whirlpools”;

“Officer” means any person appointed as a municipal law enforcement officer for the purposes of enforcing this by-law, and may be referred to as an inspector, property standards officer or officer, whichever is applicable to enforce this by-law;

“Owner” includes:

- a) the registered owner of the land, or occupier of the land, on which a pool is being constructed or is located;
- b) the person for the time being managing or receiving rent of the land on which a pool is being constructed or is located, whether on the person’s own account or as Agent for any other person, or who would receive the rent if the land was let; and
- c) any person who takes possession of a property under a charge or mortgage registered on title of the property on which a pool is being constructed or is located;

“panel” means a section of an enclosure between two posts;

“permit” means a permit issued by the Director of Building Code Services under this by-law for the construction of an enclosure;

"pool" means an outdoor pool of water for swimming, bathing, wading or reflecting, including any hot tub, which is capable of retaining a water depth equal to or greater than 600 mm at any point, but shall not include: facilities for the purposes of providing water to livestock, or for irrigation of crops which are associated with and located on land devoted to the practice of farming, and stormwater management ponds; and

“safety cover” means a rigid cover on a hot tub, whirlpool or spa, which can be locked.

PART 2 – INTERPRETATION

2. In the event of any conflict between the provisions of this by-law and any provision of By-law No. 2003-462, a by-law of the City of Ottawa respecting the erection, height and maintenance of fences, as may be amended, the provisions of this by-law shall prevail.
3. Unless otherwise defined, the words and phrases used in this by-law have their normal and ordinary meaning.
4. This by-law includes the schedules annexed hereto and the schedules are hereby declared to form part of this by-law.
5. The headings and subheadings used in this by-law are inserted for convenience of reference only, form no part of this by-law, and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
6. Unless the context requires otherwise, references to items in the plural include the singular unless used with a number modifying the term, and words imparting the masculine gender shall include the feminine.
7. It is declared that if any section, subsection, paragraph or part thereof is declared by and Court to be bad, illegal, or ultra virus, such section, subsection, paragraph part or parts shall be deemed to be severable and all other parts of this by-law are declared to be separate and independent, and enacted as such.

PART 3 - GENERAL PROVISIONS

8. No Owner or their Agent shall construct or permit to be constructed a pool on a property unless they ensure that an enclosure that conforms with the requirements of this by-law surrounds the pool.

9. The replacement of an enclosure shall comply with this by-law.
10. No Owner or their Agent shall place water or allow water to remain in a pool unless an enclosure has been constructed, inspected, and deemed by the Director to be in compliance with the provisions of this by-law, except as provided in Sections 36 to 42.
11. No Owner of a property on which a pool is constructed, or their Agent, shall fail to construct and maintain an enclosure in compliance with the provisions of By-law No. 2003-462, a by-law of the City of Ottawa respecting the erection, height and maintenance of fences, as amended.
12. Nothing in this by-law permits the construction of a pool, deck, platform or other structure in a location which is not permitted under the Zoning By-law 2008-250, as amended.
13. The Director is authorized to administer and enforce the provisions of this by-law.

PART 4 - PERMITS

PERMIT REQUIRMENTS

14. (1) No Owner or their Agent shall commence the construction of a pool, or permit the construction of a pool to be commenced, without first obtaining a permit from the Director.

(2) Despite subsection (1), a permit is not required in the case of a pool that has been dismantled and is being constructed in the same location and the same manner in which it was previously constructed provided that:
 - (a) a permit was obtained for the original construction, and
 - (b) the construction meets the provisions of the applicable by-law that was in effect at the time the permit was issued.

APPLICATION FOR A PERMIT

15. An application for a permit for a pool enclosure shall be in the form required by the Director, and shall be accompanied by the fee set out in Schedule ' A ' of this by-law, two (2) sets of fully-dimensional plans, and with supporting documentation:
 - (a) identifying and describing in detail the work to be covered by the permit for which an application is made;
 - (b) describing the property on which the pool is to be constructed;
 - (c) showing the location of the pool, all accessory equipment and proposed landscape features in relation to the enclosure, including

- but not limited to property lines, buildings and structures (including decks and sheds), rights-of-way, easements, septic beds and tanks, catch basins, swales and retaining walls;
- (d) describing complete details of the proposed enclosure, including location and type and the specifications of the proposed fence and gate;
 - (e) stating the names, addresses and telephone numbers of the Owner and the Agent performing the work;
 - (f) describing complete details of any existing fence or building proposed to be part of the enclosure, including details of gates, doors and windows;
 - (g) providing the manufacturer's specifications for the safety cover for hot tubs, if applicable; and
 - (h) providing any additional information required by the Director to enable the Director to determine compliance with this by-law.

CANCELLATION AND REVOCATION

16. (1) An application for a permit will remain active for a period of six (6) months from the date of receipt. After six (6) months, if the permit is not issued, the application shall be deemed abandoned and the Director shall cancel the application and the application fee shall be forfeited.
- (2) Despite subsection (1), a refund amounting to fifty percent (50%) of the application fee shall be provided to the applicant where the applicant requests in writing within two (2) business days of submitting the application to the City that the application be cancelled.
17. (1) A permit may be refused or revoked by the Director if:
- (a) the proposed enclosure would contravene this by-law or any other applicable by-law;
 - (b) the permit was issued in error or on mistaken, false or incorrect information;
 - (c) the required application fee has not been paid; or
 - (d) construction of the enclosure and pool has not commenced within a period of eighteen (18) months from the date the permit was issued;
- (2) The application fee shall be forfeited in all cases except for in 17(1)(c).
18. A permit shall be valid for eighteen (18) months from the date the permit was issued.

PART 5 – INSPECTIONS REQUIRED

19. No Owner of a property on which a pool is being constructed, and an enclosure is being constructed, or their Agent, shall fail to;
- (1) notify the Director of commencement of construction; and,
 - (2) schedule an inspection of the enclosure as follows:
 - (a) prior to the pool being filled with any water; and
 - (b) at the completion of construction of the prescribed enclosure.

PART 6 - ENCLOSURE SPECIFICATIONS

GENERAL SPECIFICATIONS

20. No Owner of a property on which a pool is being constructed, or their Agent, shall fail to construct and maintain an enclosure that complies with the following specifications:
- (a) every enclosure shall be a minimum of 1.5 metres in height;
 - (b) openings through or under any part of an enclosure shall be of a size so as to prevent the passage of a spherical object having a diameter of 100 mm;
 - (c) an overhead garage door shall not be used as part of the enclosure;
 - (d) no enclosure shall be located less than 1 metre from the nearest inside wetted surface of a pool wall;
 - (e) any object, material or equipment shall not be placed, piled or attached against or near an enclosure so as to facilitate climbing of the enclosure, or diminish the structural integrity of an enclosure;
 - (f) no attachment that can facilitate climbing shall be fixed or placed on the exterior face of an enclosure between 100 mm and 1042 mm, measured from the bottom of the enclosure;
 - (g) a hedge or bush shall not be considered an enclosure;
 - (h) barbed wire, chicken wire or other barbed or sharp material shall not be used in the construction of an enclosure; and
 - (i) an enclosure shall not be used as a conductor of electricity.
21. No Owner of a property on which a pool is being constructed, or their Agent, shall fail to ensure that every gate forming part of an enclosure:
- (a) is constructed in accordance with the provisions prescribed in this by-law;
 - (b) is equipped with a self-closing device;
 - (c) is equipped with a self-latching device that is located at least 1.35 m above the bottom of the enclosure; and
 - (d) is equipped with a lock located on the inside of the enclosure.
22. No Owner or their Agent shall fail to ensure that where a double gate forms part of the enclosure, one of the two gates shall be affixed to the ground, and the other gate shall be constructed in accordance with Section 21.
23. No Owner shall fail to ensure that every gate in an enclosure is locked at all times, except when the enclosed pool area is in use, and this provision shall apply to every enclosure in the City, regardless of when it was constructed.
24. No Owner shall fail to ensure that every gate in an enclosure that adjoins a space that is accessible to the public, including but not limited to a public park, a golf course, or a highway, is locked at all times, except when the gate is in use for

access or egress by the Owner or by anyone who has the property Owner's consent to enter or leave the property, and this provision shall apply to every enclosure in the City, regardless of when it was constructed.

25. No Owner or their Agent shall fail to ensure that every door located in the wall of a building that is not a dwelling, where, the wall of a building is used as part of an enclosure and the building has direct access outside the pool area:
 - (a) is equipped with a self-closing, self-latching and locking device that is located a minimum of 1.35 metres above the door threshold; and,
 - (b) the door is kept locked unless the pool is in use.
26. Sections 20 to 25 do not apply to the doors or windows of a dwelling that form part of an enclosure.
27. The Director may approve plans for the construction of an enclosure that is a fence, wall or other structure that provides an equivalent enclosure to that prescribed in this by-law.

CHAIN LINK CONSTRUCTION SPECIFICATIONS

28. Every enclosure of chain link construction shall:
 - (a) comprise of chain link with a diamond mesh not greater than 38 mm, consisting of either 12 or 14 gauge galvanized steel wire;
 - (b) have galvanized steel support posts spaced at intervals of not more than 3 metres;
 - (c) have every support post securely imbedded in the ground, which shall extend at least 1.2 metres below grade, or be constructed in such a manner as to be non-frost susceptible; and which posts shall be encased in concrete at least 50 mm thick all around;
 - (d) have every end and corner post be a minimum of 48 mm in diameter;
 - (e) have every intermediate post be a minimum of 38 mm in diameter;
 - (f) have a horizontal top rail of galvanized or vinyl coated steel which shall be a minimum of 32 mm in diameter; and
 - (g) have a horizontal bottom rail of galvanized or vinyl coated steel which shall be a minimum of 32 mm in diameter. A minimum 9 gauge vinyl coated galvanized steel tension cable may be substituted for the horizontal bottom rail.

VERTICAL BOARD CONSTRUCTION SPECIFICATIONS

29. Every enclosure of vertical board construction shall:
 - (a) have vertical boarding of not less than 25 mm by 100 mm, attached to a top and bottom rail, and the space between vertical boards shall not exceed 38 mm, unless it is a board on board design whereby it may be 100 mm;

- (b) be supported by posts of not less than 100 mm by 100 mm, spaced at intervals of not more than 2.4 metres;
- (c) have every support post securely imbedded in the ground and shall extend at least 1.2 metres below grade, or be constructed in such a manner as to be non-frost susceptible; and which posts shall be encased in concrete at least 50 mm thick all around;
- (d) for the portion of the posts below grade, be of natural cedar, pressure treated wood, or alternatively, be treated with a wood preservative that is acceptable to the Director; and
- (e) have a top and bottom rail of not less than 50 mm by 100 mm.

WROUGHT IRON, ALUMINUM, OR VINYL TYPE CONSTRUCTION SPECIFICATIONS

30. Every enclosure of wrought iron, aluminum or vinyl type construction shall:
- (a) be of sufficient strength to provide an effective enclosure;
 - (b) have no openings between vertical members of a size so as to allow the passage of a spherical object having a diameter of 100 mm;
 - (c) have every support post spaced not more than 3 metres apart;
 - (d) have every support post extend at least 1.2 metres below grade, or be constructed in such a manner as to be non-frost susceptible; and shall be encased in concrete at least 50 mm thick all around; and
 - (e) have top and bottom rails spaced so that a minimum clear space of 1.2 metres is provided between the rails.

ABOVE GROUND POOLS

31. (1) No Owner of an above ground pool or their Agent shall fail to ensure that an above ground pool is enclosed by an enclosure that meets the provisions of this by-law if the vertical walls of the above ground pool are less than 1.5 metres in height.
- (2) Despite subsection (1), the pool structure shall form the enclosure of the above ground pool where:
- (a) the vertical walls of an above ground pool are at least 1.5 metres in height and do not possess any horizontal members that may facilitate climbing; and
 - (b) the ladder area, or deck, which provides access to the above ground pool, is enclosed by a gated enclosure which complies with the requirements for enclosures set out in this by-law.

HOT TUBS

32. No Owner or their Agent shall fail to construct and maintain an enclosure surrounding a hot tub that complies with this by-law, unless the hot tub includes a safety cover meeting the requirements of Section 33.
33. A safety cover shall be considered an enclosure in compliance with this by-law where:
 - (a) the hot tub has a substantial, structurally adequate cover that is capable of supporting a 90 kilogram load, or is in compliance with the American Society for Testing and Materials standard ASTM F1346 – 91 for hot tub and pool safety covers; and,
 - (b) the safety cover is permanently attached to the hot tub or to its supporting structure.
34. No Owner shall fail to ensure that a hot tub safety cover is securely fastened and locked to prevent access at all times when the hot tub is not in use.
35. No Owner or their Agent shall fail to provide an Officer with manufacturer's specifications on a hot tub that is being constructed with a safety cover, establishing that the safety cover and hot tub meet the requirements of this by-law.

TEMPORARY ENCLOSURES

36. No Owner or their Agent shall fail to construct a temporary enclosure surrounding a pool when the pool that is being constructed does not have the prescribed enclosure.
37. Every temporary enclosure shall be constructed as follows:
 - (a) with steel "T" posts spaced at not more than 2.4 metres centres, and embedded at least 300 mm into the ground, with 38 mm diamond mesh chain link fencing at least 1.5 metres high, that is securely fastened to the posts at 200 mm centres, and horizontally secured at the top and bottom by an eleven-gauge steel lacing cable threaded through the mesh and looped and fastened to each post;
 - (b) every opening in a temporary enclosure shall be closed and locked when the temporary enclosure is not being used for access or egress; and
 - (c) no gap in the temporary enclosure shall allow the passage of a spherical object having a diameter of 100 mm or greater.
38. No Owner or their Agent shall fail to ensure the temporary enclosure is inspected and deemed compliant by the Director prior to filling the pool with any water.

39. No Owner or their Agent shall fail to complete the construction of the prescribed enclosure no later than 14 days after the pool has been filled with water.
40. No Owner or their Agent shall enclose a pool with a temporary enclosure beyond 14 days following the day the pool was filled, except where an Owner or their Agent has obtained an extension from the Director.
41. After the construction of the prescribed enclosure and where the pool has been filled, a gap of one panel with posts spaced at intervals of not more than 3 metres may be removed and replaced by a temporary enclosure for up to 14 days.
42. The Director may approve the construction of other temporary fencing, where it provides an equivalent enclosure to that specified in this by-law.

PART 7 – COMPLIANCE AND OFFENCES AND PENALTY PROVISIONS

COMPLIANCE

43. (1) An Officer may enter onto any lands at any reasonable time for the purposes of determining compliance with this by-law or with an Order issued pursuant to the by-law.
- (2) An Officer may, for the purposes of an inspection under subsection (1):
 - (a) require the production of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purposes of making copies or extracts; and
 - (c) require information from any person concerning a matter related to the inspection.
- (3) An Officer may be accompanied by such persons as are necessary for conducting the inspection or for carrying out any required work.
- (4) Upon request, an Officer shall produce identification.
- (5) No person shall hinder or obstruct, or attempt to hinder or obstruct an Officer in the discharge of his or her duties under this by-law.

ENFORCEMENT ORDERS

44. Where an Officer determines that a contravention of this by-law has occurred, the Officer may make an Order requiring the Owner of the property on which the contravention occurred, or their Agent, to:
 - (a) discontinue the contravening activity;
 - (b) require the pool to be immediately emptied of water; or

- (c) carry out such work, and if applicable under such conditions, as may be required to correct the contravention and to bring the enclosure into conformity with the requirements of this by-law.
45. An order under Section 44 shall set out:
- (a) reasonable particulars of the contravention sufficient to identify the contravention and the location of the property on which the contravention occurred;
 - (b) the work to be done to restore the enclosure to a condition where it complies with the requirements of this by-law;
 - (c) the requirement to obtain all necessary permits or other approvals prior to performing any work; and
 - (d) the date or dates by which there must be compliance with the Order.
46. No Owner or their Agent shall fail to comply with an Order issued pursuant to Section 44.

SERVICE

47. An Order issued pursuant to Section 44 shall be served personally, be posted in a conspicuous place on the property where the contravention occurred, or be sent by registered mail to the last known address of the person contravening this by-law.
48. Where an Order under Section 44 is served personally, it shall be deemed to have been served on the date of delivery to the person or persons named.
49. The posting of an Order issued pursuant to Section 44 on the affected property shall be deemed to be sufficient notice of the Order on the person to whom the order is directed on the date it is posted.
50. Where an Order issued pursuant to Section 44 is sent by registered mail, it shall be sent to the last known address of the Owner or their Agent who caused or permitted the contravention, and the order shall be deemed to have been served on the fifth day after the order is mailed.
51. Where a person does not comply with an Order issued under this by-law, an Officer, with such assistance of others as may be required, may effect compliance at the expense of the Owner.
52. (1) The City may recover the costs of effecting compliance with an order under Section 44 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

(2) The Director shall deliver to the Owner written notice of the costs to the last registered address of the Owner as identified in the assessment roll.

(3) The total cost of effecting compliance with an Order as set out in Section 51 shall include an administration fee in the amount of 15% calculated for the period commencing on the day the City incurs the costs and ending on the day the cost, including the interest, are paid in full.

53. The Director is authorized to give immediate effect to any Order, notice or direction carried out under Section 51 and is authorized to enter upon the property at any reasonable time for that purpose.

54. The amount of the costs, including interest, as set out in the notice of costs provided under subsection 52 (2) that remain unpaid by the Owner after 30 days of the date of the notice of costs may be added to the tax roll and collected in the same manner as property taxes and the amount of the costs, including interest.

OFFENCES AND PENALTIES

55. Every person who contravenes any of the provisions of this by-law is guilty of an offence.

56. A person who is convicted of an offence under this by-law is liable to a minimum fine of \$500, and a maximum fine of \$100,000 as provided for in subsection 429(3), paragraph 1 of the *Municipal Act 2001*.

57. Every person who fails to comply with an order issued pursuant to Section 44 of this by-law is guilty of an offence and the offence is hereby designated a continuing offence as provided for in subsection 429(2) (a) of the *Municipal Act 2001*.

58. When a person has been convicted of an offence under this by-law, the Superior Court of Justice or any court of competent jurisdiction, in addition to any penalty imposed on the person convicted, may issue an order:

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

PART 9 – REPEAL

59. By-law 2001 – 259 of the City of Ottawa entitled “Pool Enclosure By-law”, as amended, is hereby repealed effective January 1, 2013.

PART 10 – TRANSITION

STATUS OF PREVIOUSLY ISSUED OR CONTINUED ENCLOSURE PERMITS

60. With the exception of Sections 23 and 24, enclosure permits issued or continued under the Pool Enclosure By-law 2001 – 259, as amended, are hereby continued and remain in force and shall be deemed to be issued under this by-law for regulatory and enforcement purposes, provided that the enclosure in question was lawfully constructed and in conformity with the provisions of By-law 2001-259 or with a pool enclosure by-law of a former municipality, is maintained in good repair, and used as an enclosure on the date of enactment of this by-law.

TRANSITION AND IN FORCE DATES

61. The implementation of the provisions of this By-law will be made according to the following schedule:
- (a) Sections 32 to 35 shall be in force and take effect upon the enactment of this By-law; and,
 - (b) all other sections of this By-law shall be in force and take effect on January 1, 2013, and shall apply to permits issued as of January 1, 2013.

SHORT TITLE

This By-law may be referred to as the “Pool Enclosure By-law”.

ENACTED AND PASSED this ____ day of ____ 2012.

CITY CLERK

MAYOR

SCHEDULE "A"

FEE

Pool Enclosure Permit

\$160.00