

Report to Community and Protective Services Committee

To: CHAIR AND MEMBERS
COMMUNITY & PROTECTIVE SERVICES COMMITTEE

From: GEORGE KOTSIFAS, P, ENG.
MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES &
CHIEF BUILDING OFFICIAL

Subject: SWIMMING POOL FENCE BY-LAW - PROPOSED AMENDMENTS
PUBLIC PARTICIPATION MEETING

Date: APRIL 20, 2021

Recommendation

That, on the recommendation of the Managing Director, Development and Compliance Services and Chief Building Official:

- a) The attached proposed by-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting held on May 4th, 2021 to amend By-law No. PS-5, Swimming Pool Fence By-law.

Executive Summary

Prepare amendments to the Swimming Pool Fence By-law to modernize the regulations and enhance public safety.

Linkage to the Corporate Strategic Plan

Analysis

1.0 Background Information

Municipal Council, at its meeting held on March 2, 2020 resolved:

that, on the recommendation of the Managing Director, Development and Compliance Services and Chief Building Official, the following actions be taken with respect to the staff report dated February 19, 2020 related to proposed amendments to the Swimming Pool Fence By-law:

- a) the Civic Administration **BE DIRECTED** to prepare amendments to the Swimming Pool Fence By-law to modernize the regulations and enhance public safety. A public participation meeting at a future meeting of the Community and Protective Services Committee; (CPSC) and,
- b) the above-noted staff report **BE RECEIVED**. (2020-P01) (2.9/3/CPSC)

2.0 Consultation and Municipal Comparisons

Civic Administration met with the President of the Pool and Hot Tub Council of Western Ontario. Western Ontario chapter includes London, Stratford, Sarnia, Leamington, and surrounding region. There was consensus that amendments to the Swimming Pool Fence By-law are timely, given a decade has passed since the by-law was last updated. Both municipal staff, and the industry leads agree that in many cases backyard landscape projects, housing build/designs, and pool enclosures have all evolved, and changed further supporting by-law review.

Although Civic Administration, and the Industry reviewed all potential amendments as noted in the previous information report, the focus of the discussion included garage doors (overhead vehicle doors) providing direct access to the pool area, a specific type of wrought iron fence often used by developers in new subdivisions, and regarding lot grading and drainage alterations when pools are installed, and the potential impacts.

Overhead Vehicle/Garage Doors

Regarding access to pool areas, specifically focussed on overhead vehicle doors, a municipal comparison of many municipalities, including the Cities of Waterloo, Windsor, Toronto, and Mississauga confirmed similarities within their by-laws around gate, entry, and access requirements. The City of Ottawa however specifically regulates that an overhead garage door shall not be used as part of a pool enclosure.

Currently London's Swimming Pool Fence By-law, although not specially mentioned, sees an overhead garage door that provides access to the pool area, by definition, as a gate and therefore requires that it self-close automatically within 30 seconds after being used to provide access.

To date Civic Administration and the industry have found no such automatic closing device that can fulfil that requirement, and therefore overhead garage doors should not be providing direct access to a pool area.

The alternatives would be to go forward as Ottawa has done and specifically regulate that overhead vehicle doors would not make up part of the enclosure; or add a new specific provision for such doors to be equipped with an automatic closure that is available on the market, whereby the automatic closure setting is one minute. Currently there is at least one garage door opener, under the Lift Master name, on the market that does close automatically within one minute of being passed through. Civic administration is recommending the addition of new regulations that continue to allow an overhead garage door to provide access to a back yard pool area, with enhanced safety measures.

Wrought Iron Fence and similar fence types

Since 2005 or thereabouts, a variation of the classic two horizontal cross member (top and bottom) type wrought iron fence has been on the market. This more modern version is widely used as it offers more stability with a double top horizontal, and it is often chosen as it is somewhat more decorative and aesthetically pleasing. The more modern version wrought iron is often the fence of choice of developers of new subdivisions as an upgraded option to the standard chain link fence that is required under the Subdivision Agreement. The minimum required fence height of 1.5 m remains in place.

The more modern double top horizontal version has its middle horizontal just slightly lower than the required 1.2 m separation that is set out within the existing regulations. Civic Administration is recommending that for other than chain link fences, the minimum separation distance between the two rails be reduced from 1.2 m to 1.15 m, with the overall height requirement remaining at 1.5 m, and the maximum vertical picket distancing remaining at not greater than 10 cm. The result would not be seen to impact the intent of the fence. This change would permit property owners to install a swimming pool without having to replace most fences erected at the time of subdivision development. Further, this allows for the aesthetic consistency that the development agreement around fencing is intended to accomplish.

Drainage

Municipal comparisons were undertaken in relation to in-ground or on-ground swimming pool installations, lot grading and drainage. The findings are included in the chart below.

Municipality	By-law	Regulation Summary
Ottawa	Site Alteration By-law 2018-164 Pool Enclosure By-law No. 2013-39	A grading plan is required for all pool enclosure permit applications, both in rural and urban areas where the proposed pool and surrounding apron is within 1.2 m of the property line. The plan must include both the existing and proposed drainage pattern, as well as the pool and accessory equipment locations, proposed landscape features, buildings/structures, decks, rights-of-way, easements, septic beds/tanks, catch basins, wells, swales, retaining walls, and property lines.

Municipality	By-law	Regulation Summary
Mississauga	Site Alteration By-law 2018-164 Pool Enclosure By-law No. 2013-39	A grading plan is required for all pool enclosure permit applications, both in rural and urban areas where the proposed pool and surrounding apron is within 1.2 m of the property line. The plan must include both the existing and proposed drainage pattern, as well as the pool and accessory equipment locations, proposed landscape features, buildings/structures, decks, rights-of-way, easements, septic beds/tanks, catch basins, wells, swales, retaining walls, and property lines.
Peterborough	Chapter 591 Fences – Swimming Pools	A site plan upon permit application must include grades and drainage arrows indicating how the surface drainage is directed, in order that grading complies with the subdivision agreement.
Burlington	Site Alteration By-law 64-2014	A swimming pool fence permit application must also include a Site Alteration permit application which requires a Control Plan certified by a Professional Engineer or other qualified person.
Kitchener	Property Maintenance Chapter 630.11.1	Declaration of Owner upon Pool enclosure Application. Owner agrees that the granting of a permit, nor the approval of the drawings/specifications, nor inspection made by those having jurisdiction over pool enclosures shall in any way relieve them from their full responsibility for ensuring that perimeter grades are not altered, that the construction will not impact the drainage on adjacent properties, remedying any future drainage concerns resulting from this construction. Further, if the final grading has not been completed and approved at the time of permit issuance, the owner understands that they are proceeding with construction at their own risk. Within newer subdivisions where there is an infiltration gallery, if uncovered or damaged when installing a pool the property owner is responsible for repairs and/or relocation as required.
Greater Sudbury	Swimming Pool Fence Enclosure By-law 2016-91	The permit application process for in-ground pools includes the requirement of a Commitment Certificate from a lot grading Professional. Additionally, the applicant is required to submit an as-built lot grading survey of the property, to the satisfaction of the Roads & Drainage service area under Development Approvals, prior to the final inspection and closing of the permit.
Tillsonburg	Swimming Pool Enclosures By-law 4008	Permit application will include a site plan/survey of the proposed swimming pool, existing/proposed fencing, and all other proposed accessory structures, locations and setbacks, as well as a lot grading plan designed by a Registered Professional Engineer, or Ontario Land Surveyor for all semi in-ground, and in-ground pools.

Civic Administration also engaged representatives of the Environmental and Engineering Services Division (EESD) to discuss matters of grade change, and drainage which may result in impacts to surrounding properties. EESD fully supports addressing lot grading and draining from within the Swimming Pool Fence By-law. EESD representatives provided input on the desired requirements of lot grading and drainage specifications at time of permit application, and the following information:

- Middlesex-London has declared a Climate Emergency. The City has experienced a range of extreme weather events, including intense precipitation, which has led to flooding, snow squalls and ice storms. Climate change is expected to further increase the frequency, duration, intensity, and spatial extent of these extreme weather events. Adapting to this Climate Emergency to reduce flooding situations is paramount in maintaining a sustainable city. The proposed changes to the Swimming Pool Fence By-law support the Climate Emergency directive by protecting overland flow routes which may have otherwise been impacted by improper pool and hard scape installs. These changes protect both the homeowner and neighbouring properties from backyard alterations by ensuring safe conveyance of surface water to the intended outlet.

Conclusion

Civic administration would like to acknowledge all internal, and external contributions that were put forth in an effort to modernize the by-law and maintain community safety around back yard pools.

Following the completion of municipal comparisons, industry and internal consultations, Civic Administration is recommending the attached draft amendments be introduced following public participation on the matter of swimming pool and swimming pool fence installations, should no matters of major impact require further consideration.

**Submitted By: HEATHER CHAPMAN, MLEO (C)
MANAGER, MUNICIPAL LAW ENFORCEMENT SERVICES**

**Reviewed and
Concurred By: OREST KATOLYK, MLEO (C)
CHIEF MUNICIPAL LAW ENFORCEMENT OFFICER**

**Recommended by: GEORGE KOTSIFAS, P. ENG.
MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE
SERVICES & CHIEF BUILDING OFFICIAL**

Appendix “A”

Bill No.
2021

By-law No. PS-5-

A By-law to amend By-law PS-5 entitled “A by-law to provide for the owners of privately-owned outdoor swimming pools to erect and maintain fences.”

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (“*Municipal Act, 2001*”) provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001* or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 6. Health, safety, and well-being of persons; in paragraph 8. Protection of persons and property; in paragraph 10. Structures, including fences and signs;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. By-law PS-5 is amended by deleting the Title and replacing it with the following new Title: “A by-law to provide for the owners of privately-owned outdoor swimming pools to erect and maintain fences and to provide a pool grading and drainage plan”.
2. By-law PS-5 is amended by deleting the Short Title and replacing it with the following new Short Title: “Swimming Pool Fence and Swimming Pool Regulation By-law”.
3. By-law PS-5 is amended in section 1.1 by:
 - (i) repealing and replacing the definition for “Gate” as follows:

"Gate" shall mean any part of a swimming pool fence which opens on hinges and includes a door located in the wall of an attached or detached garage or carport which forms part of the swimming pool fence, but does not include an overhead garage door, or slide to the side garage door."
 - (ii) adding a new definition for “Overhead garage door” as follows:

"Overhead Garage Door" shall mean any garage door that opens overhead, which is intended to allow for vehicular entry to, and exit from, the garage."
 - (iii) adding a new definition for “Slide to the Side garage door” as follows:

“Slide to the Side garage door” shall mean any garage door that opens to the side instead of overhead, which is intended to allow for vehicular entry to, and exit from, the garage.”

- (iv) in the definition of “swimming pool”, repealing subsection (g) and replacing it with the following new subsection (g):

“(g) but excludes hydro massage pool and lap pools if they have a lid that is fitted and secured when not in use; and”

4. By-law PS-5 is amended by inserting a new section 2.8 as follows:

“2.8 Metric / Imperial

Imperial measurements are provided solely for the purpose of convenience. In the event of a conflict between the metric and imperial measurements provided in this by-law, the metric measurements shall prevail.”

5. By-law PS-5 is amended by repealing section 3.7 and replacing it with the following new section 3.7:

“3.7 Storage of materials – against outside of swimming pool fence

No owner of a pool shall place or store materials against the outside of a swimming pool fence.”

6. Subsection 3.12(b) of By-law PS-5 is repealed and replaced with the following new subsection 3.12(b):

“Construction of swimming pool – swimming pool fence permit – temporary fence – filling with water

(b) Despite subsection 3.12(a), where a person is constructing or causing to be constructed a swimming pool for which a swimming pool fence permit has been issued, a person may place water in a swimming pool or cause or permit water to remain in the swimming pool only if all of the following are complied with:

- (i) temporary fencing is in place in compliance with section 5.10 of this by-law; and
(ii) the owner or agent notifies the City on or before the day that water is placed in the pool at the email address pfinspection@london.ca; and
(ii) the temporary fencing is in place for no longer than 120 days after water is first placed in the pool or the City receives the notification email, whichever occurs sooner.”

7. Section 4.2 of By-law PS-5 is repealed and replaced by the following new section 4.2:

“4.2 Application - documentation to accompany - set out

All such applications shall be accompanied by the following:

- (a) plans showing the location of the proposed swimming pool including all enclosing swimming pool fences, together with full details of each entrance and showing the location of all proposed swimming pool equipment such as filters, slides and heaters;
(b) the applicable fee as prescribed in Schedule ‘A’ of this by-law;
(c) an undertaking to repair damage to City property as required by-law; and

- (d) for swimming pools located all or partially in ground, a pool grading and drainage plan approved by a Professional Engineer, Ontario Land Surveyor, Architect, Landscape Architect, or drainage contractor licensed in the Province of Ontario, showing compliance with zoning by-law minimum set-back requirements, and showing that drainage to neighbouring properties is not affected.

An application for a permit shall be deemed to be denied if the applicant has not submitted all of the required documents and fees as required in this section within 90 days of submitting the application.”

- 8. Section 4.3 of By-law PS-5 is amended by adding the following sentence at the end of the paragraph:

“Any permit issued by the chief building official on or after May 4th, 2021 shall expire 18 months after issuance.”

- 9. Section 5.1 of By-law PS-5 is amended by adding the phrase “but not greater than the height allowed in the Fence By-law” after the phrase “not less than 153 centimetres (60 inches).”

- 10. By-law PS-5 is amended by repealing section 5.3 and replacing it with a new section 5.3 as follows:

“5.3 Opening - maximum diameter - exception – conditions

For other than chain link fences, where the vertical distance between each horizontal rail measured from the top of the bottom rail, to the top of the next one above it, is 1.15 metres or greater, the openings in the fence are permitted to be greater than 3.8 cm but not greater than that which would allow the passage of a spherical object having a diameter of 10 cm.”

- 11. By-law PS-5 is amended by repealing section 5.6 and replacing it with a new section 5.6 as follows:

“5.6 Construction - to prevent unauthorized entry

Every swimming pool shall be enclosed by a swimming pool fence which is of sturdy construction, capable of preventing unauthorized entry. Any fence which predominantly consists of horizontal face boards, planks, or panels, installed between any vertical posts, shall not be permitted to have any openings greater than 2 cm between the face boards, planks, or panels, for any portion of the fence below the height of 1.15 m measured from ground level.”

- 12. By-law PS-5 is amended by inserting a new section 5.10 as follows:

“5.10 Overhead and Slide to the Side Garage Door – requirements

Every pool facing overhead garage door, or pool facing slide to the side garage door that makes up part of the swimming pool fence shall be equipped with a device that without manual activation, automatically closes the overhead garage door, or slide to the side garage door within one minute of being passed through; and where the garage contains both a front and rear overhead or slide to the side garage door to create a through way, only one of the two doors may remain open following the clearance of a vehicle, object, or person.”

- 13. This by-law shall come into force on the day it is passed.

PASSED in Open Council on

, 2021

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading – ,2021

Second reading – ,2021

Third reading – ,2021