



STAFF REPORT ACTION REQUIRED

Amendments to Municipal Code Chapter 447, Fences

To recommend amendments to Toronto Municipal Code Chapter 447, Fences with respect to automatic closing devices for swimming pool gates, four-sided pool fencing, and the use of temporary fencing for permanent line fences.

Date:	October 18, 2007
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	2959

SUMMARY

This report includes recommendations to amend Toronto Municipal Code Chapter 447, Fences to address pool enclosure gates that use timed self-closing devices, four-sided fencing requirements, and the inappropriate use of temporary fencing materials in the construction of permanent fences. The current bylaw does not include provisions to deal with these matters.

The recommendations are guided by the bylaw's safety objectives. The recommendations have been informed by a review of bylaws in other Ontario municipalities and discussions with Safe Kids Canada, which is the national injury prevention program of The Hospital for Sick Children. The report's conclusions are that self-closing gates should meet strict safety standards, four-sided fencing should be employed in all new swimming pools, and the use of temporary fencing materials in the construction and erection of permanent line fences should be prohibited, except where explicitly permitted under the bylaw.

The City Solicitor and the Chief Building Official were consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director of Municipal Licensing and Standards recommends that:

1. Council adopt the proposed bylaw amendments to Municipal Code Chapter 447, Fences, in accordance with the report recommendations and Appendix A, subject to any necessary minor substantive or stylistic refinements as may be identified by the Executive Director , Municipal Licensing and Standards and the City Solicitor; and
2. Council direct the City Solicitor to make the necessary amendments to Municipal Code Chapter 447, Fences.

Implementation Points

Toronto Building issues permits for pool enclosures. Municipal Licensing and Standards inspects the enclosures and enforces the standards. Both Divisions will ensure that the issuing protocol, reflects the proposed changes to Municipal Code Chapter 447.

Financial Impact

There are no financial implications as a result of the adoption of the recommendations of this report.

DECISION HISTORY

This report is staff initiated and has not been received by any decision bodies to date. Its recommendations to amend Toronto Municipal Code Chapter 447, Fences have arisen out of issues identified by staff over the course of the past year.

The report additionally addresses the motion from the Licensing and Standards Committee to review and make recommendations on four-sided fencing for swimming pools:

<http://www.toronto.ca/legdocs/mmis/2007/ls/bgrd/backgroundfile-6411.pdf>

ISSUE BACKGROUND

The current provisions respecting pool enclosure gate systems under Toronto Municipal Code Chapter 447, Fences, require that every gate in a swimming pool: be built to the specified standard; be supported on hinges; be self-closing and have a lockable, self-latching device; and, be locked at all times except when the enclosed area is in use.

The current provisions do not take into account the use of gates that use timed self-closing devices. Municipal Standards Officers have recently come across such gates and require specific regulations and standards to determine the adequacy of the gates and the closing devices being used.

Additionally, a review of pool enclosure safety, including discussions with Safe Kids Canada, has led staff to conclude that current standards may not provide a sufficiently high level of safety for young children.

Finally, a lack of specific provisions currently makes it possible for property owners to use materials intended for the use in temporary fences to be utilised in the construction and erection of permanent fence structures. The unintended use of such materials, however, may result in unsafe conditions as these materials are not meant for long-term use and wear.

COMMENTS

This report addresses the regulation of automatic closing devices for swimming pool enclosure gates, the requirement of four-sided pool fencing, and the prohibition of inappropriate usage of temporary fencing materials. The recommendations from staff pertaining to pool enclosures in particular are guided by the bylaw's safety objectives; mainly to prevent young children from gaining unsupervised access to swimming pools.

Automatic Closing Devices for Swimming Pool Enclosure Gates

Gates using timed self-closing devices are usually used when property perimeter fencing is integrated with the pool enclosure. Under these circumstances the gate may also be used as a means of entry and egress for vehicles. Such gates are automatic, usually opening at the touch of a button, or some other similar trigger, and closing behind the vehicle after a pre-set time. Time elapsed before the gate returns to its closed position can vary from 30 to 90 seconds.

The main problem with the use of these devices is that, as a vehicle drives away, a gate may be left open and unattended for up to a minute. This may provide time for a child to enter the property and gain access to the pool. The intent of the bylaw is to eliminate this type of scenario. To that extent, clause 447-3C(4)(d) explicitly requires that pool enclosure gates be "kept locked at all times except when the enclosed area is in use." An automatic gate that provides access to a pool is technically in violation of this provision if the gate is left open, to close by itself, while unattended.

Staff recognise the use of such gates and believe that they may still be used without compromising the safety of children, which is the ultimate purpose of the pool enclosure provisions of the bylaw.

The City of London and the Municipality of South Huron both have bylaw provisions that specify the elapsed time before a pool enclosure gate must return to the closed position. Both jurisdictions use an elapsed time of 30 seconds.

There are basically two types of mechanisms used in automatic gates. The first, and perhaps the most common one, is the timed self-closing device; the gate returns to the closed position after a pre-set time. The second is a triggered self-closing device; a mechanism that uses a magnetic loop or other system to detect the passage of a vehicle, triggering the immediate closure of the gate.

Staff-recommended amendments require that all gates that provide access to a pool using an automatic closing device be of the triggered, self-closing type and that they return the gate to the closed position immediately upon passage of a vehicle or person. Staff further recommend that all existing gates that provide access to a pool that use a timer system be programmed to close after no more than 30 seconds. Such gates will not be allowed in the future and all existing gates, if replaced or if their mechanism is replaced, must adhere to the new standards.

Finally, staff recommend that all automatic gates be equipped with a back-up system, in case of a power outage, to ensure the closing of the gate. Such a system may comprise of a back-up power supply or a manual override.

Four-sided Pool Fencing

A number of systematic reviews both in Canada and the United States have concluded that safer pool fencing is the best strategy for reducing the drowning risk for young children in home swimming pools. According to Safe Kids Canada, although three-sided fencing has been shown to reduce drowning due to trespassing, it is not effective in protecting children who live in or are visiting a home in which they may gain access to the pool directly from the house. As a result, in Quebec, *l'Institut National de Santé Publique* has made detailed recommendations for mandatory four-sided fencing for all home pools. Australia, New Zealand and France already mandate four-sided pool fencing.

Although, ideally, four-sided fencing should apply to all pool in the City, staff recommend that the new standard apply to all new swimming pool enclosures, including any replacement enclosures. All fencing otherwise in compliance within the current provisions of the bylaw will be 'grandfathered' from the new provisions.

Use of Temporary Fencing for Line Fences

The current provisions in Chapter 447, Fences do not explicitly prohibit the use of temporary fencing for line fences. Section 447-2 of Chapter 447 prohibits the use of chicken wire and corrugated metal, but it does not prohibit temporary fencing materials such as the brightly coloured mesh, often used for snow fences, from being utilised as permanent fencing. The use of temporary fencing as permanent can result in structural

unsoundness, excessive and expedited wear and tear and general unsightliness. For this reason, staff consider its prohibition desirable.

CONTACT

Rudi Czekalla, Senior Policy Research Officer
Municipal Licensing and Standards
City Hall, East Tower, 17th Floor
100 Queen Street West, Toronto, Ontario M5H 2N2
Tel.: (416) 392-9352 Fax: (416) 392-0797
E-mail: rczekal@toronto.ca

SIGNATURE

Lenna Bradburn, Executive Director
Municipal Licensing and Standards

ATTACHMENTS

Appendix A: Proposed By-law Amendments to Toronto Municipal Code Chapter 447,
Fences

Appendix A

Proposed By-law Amendments to Toronto Municipal Code Chapter 447 Fences

Add the following definitions to 447-1:

SNOW FENCE – Any fence used to force drifting snow to accumulate in a predictable place, and which is usually constructed of plastic mesh, lightweight woodstrip, or wire fencing.

TIMED SELF-CLOSING DEVICE – A mechanism by which a door or gate is returned to the closed and locked or latched position after a specified period of time.

TRIGGERED SELF-CLOSING DEVICE – A mechanism by which a door or gate is returned to its closed and locked or latched position when triggered by a passing vehicle or person and includes, but is not limited to, magnetic loop detectors.

Add the following clauses to 447-2A:

- (5) No person shall erect, own or maintain, or cause or permit the erection or maintenance of any fence that uses materials not usually intended for use in permanent fencing, unless specifically permitted by this or another bylaw.
- (6) Notwithstanding (5), a snow fence may be used on private property between November 15 and April 15 and shall comply with all corresponding standards in this and other bylaws.

Amend clause 447-3C(3) to read:

If the wall of any building, or portion thereof, forms part of the pool enclosure:

- (a) no entrance shall be permitted to the enclosed pool area through the said wall;
- (b) no window in the wall which is less than 1.5 metres above floor level shall be capable of being opened more than 100 millimetres unless a guard is permanently installed on the window to prevent the passage of a spherical object having a diameter of more than 100 millimetres through the window.

Add the following clause to 447-3C:

- (3.1) Clause 447-3C(3)(a), applies only to pool enclosures for which a pool enclosure permit was issued more than 30 calendar days after the enactment of this clause.

Renumber clause 447-3C(3.1) to 447-3C(3.2) and amend to read:

Every owner of a swimming pool shall be responsible to take all steps necessary to control any access point to the swimming pool area, including the provision and operation of a gate back-up system in case of a power disruption.

Add the following clauses to 447-3C:

- (5) Where the gate to gain vehicular access to a driveway also forms part of a swimming pool enclosure, the gate shall use a triggered self-closing device.
- (6) Despite clause 447-3C(5), where a gate to gain vehicular access to a driveway that also forms part of a swimming pool enclosure has been fully erected up to 30 calendar days after the enactment of clause 447-3C(5) and this clause, and where the gate uses a timed self-closing device, no said gate shall be programmed or otherwise set to maintain the gate in the open position for more than 30 seconds.
- (7) Any gate subject to clause 447-3C(6), shall be brought into compliance with clause 447-3C(5) if the gate or its closing mechanism is replaced.
- (8) All automatic closing devices and their power back-up systems shall be in compliance with the applicable product and installation standards of the Canadian Standards Association.