



STAFF REPORT ACTION REQUIRED

Amendments to Toronto Municipal Code Chapter 447 Including the Use of Tempered Glass in a Swimming Pool Enclosure

Date:	July 29, 2010
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2010\Cluster B\MLS\LS10026

SUMMARY

The purpose of this report is to recommend amendments to the swimming pool enclosure requirements of Toronto Municipal Code, Chapter 447, Fences, regarding additional fencing materials for use in a swimming pool enclosure. The proposed amendments will reduce the necessity for reports regarding fence exemption applications to the various Community Councils.

A full review of Chapter 447, Fences, was conducted and it was noted that there are provisions within the Chapter that create operational ambiguities. Therefore, in addition to the recommended amendments regarding pool enclosures a number of other amendments are recommended in order to eliminate the operational ambiguities within the Chapter. The proposed amendments will assist field staff with the interpretation and enforcement of the bylaw.

This report also recommends further amendments to the City of Toronto Municipal Code, Chapter 447, Fences, regarding the prescribed fees relating to fences as they are now included in Municipal Code Chapter 441, Fees and Charges.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

- 1) the City of Toronto Municipal Code, Chapter 447, Fences, be amended in accordance with Appendix “A” to this report, subject to any necessary minor substantive or stylistic refinements as may be identified by the Executive Director of Municipal Licensing and Standards or the City Solicitor; and
- 2) the appropriate City officials be authorized and directed to take the necessary actions to give effect thereto, including submitting the appropriate by-laws.

Implementation Points

Toronto Building issues permits for pool enclosures, as per subsection 447-3B(1) of Toronto Municipal Code, Chapter 447, Fences, and staff of Municipal Licensing and Standards (MLS) inspect the enclosures for compliance with the standards. Both Divisions will ensure that the issuing and inspection protocols reflect any changes to Municipal Code Chapter 447, Fences, as adopted by City Council.

Financial Impact

There are no financial impacts arising from this report beyond what has already been approved in the current year’s budget.

DECISION HISTORY

City staff initiated this report in order to address the various materials which were the subject of frequent request for exemptions to the provisions regarding pool fence enclosures and interpretational and operational ambiguities in the bylaw.

The Licensing and Standards Committee at its meeting of May 27, 2010, considered a request from North York Community Council, Item NY34.35 (see the link below) to consider the matter of using tempered glass as a swimming pool enclosure.

<http://www.toronto.ca/legdocs/mmis/2010/ls/bgrd/backgroundfile-30602.pdf>

The Licensing and Standards Committee decision is as follows:

The Licensing and Standards Committee adopted the request from North York Community Council (Item NY34.35) to consider the matter of using tempered glass as a swimming pool enclosure and in so doing, requested the Executive Director, Municipal Licensing and Standards to submit a report to the June 25, 2010 meeting of the Committee proposing by-law amendments that will allow for the use of tempered safety glass as an acceptable material for swimming pool enclosures along with other necessary amendments. The Committee also requested that a public hearing be scheduled for this item.

The licensing and Standards Committee also adopted the following motion:

That a public hearing be scheduled at the next meeting of the Licensing and Standards Committee and staff be requested to bring forward to that meeting a by-law amendment that will allow for the use of tempered safety glass as an acceptable material for swimming pool enclosures along with other necessary amendments that are consistent with a safe swimming pool enclosure that uses tempered safety glass.

Further to this the Licensing and Standards Committee at its meeting of June 25, 2010, considered a report from the Executive Director, Municipal Licensing and Standards, dated June 9, 2010, (see link below).

<http://www.toronto.ca/legdocs/mmis/2010/ls/bgrd/backgroundfile-31436.pdf>

Also at its meeting of June 25, 2010, the Licensing and Standards Committee adopted the following motion:

That the matter be referred to the August 13, 2010 meeting of the Licensing and Standards Committee and in the interim, the Executive Director, Municipal Licensing and Standards be requested to review other fence material exemptions granted by North York Community Council at their meeting held on June 22, 2010 to determine if other changes are warranted.

ISSUE BACKGROUND

A number of amendments respecting automatic gates and four-sided pool enclosures were adopted by Council between 2005 and 2008. The amendments created some ambiguity as to the interpretation of the standards in the bylaw. In reviewing the requirements staff identified the problematic provisions which included but were not necessarily limited to:

- Latching devices contained inside homes were often bypassed to provide easier access to the pool area.
- Difficulty in obtaining access into a dwelling to inspect interior latching and locking devices on windows and doors.
- Concern regarding the reliability of automatically closing vehicle access gates.
- Concerns regarding access into the enclosed area through detached garages, garden sheds and cabanas, which were not addressed in the chapter.

Also, due to requests for exemptions for the use of different types of fencing materials as components of swimming pool enclosures, Municipal Licensing and Standards (MLS) were requested to report to the Community Councils regarding a number of exemptions for the use of various fencing materials.

Given these exemption requests, it is recommended that the City of Toronto Municipal Code, Chapter 447, Fences, be amended to include additional types of fencing materials in order to reduce the necessity of reporting to the various Community Councils on swimming pool enclosure exemptions, while maintaining the safety requirements currently contained in the chapter.

COMMENTS

Amendments to Municipal Code Chapter 447, Fences

The recommended amendments to the City of Toronto Municipal Code Chapter 447, Fences, will address the current reality regarding the types of materials and construction being utilized as swimming pool enclosures in order to reduce the requirement for MLS to report to Community Councils on swimming pool enclosure exemptions, while addressing the safety issues relative to swimming pools in the City of Toronto. The proposed amendments include a definition of the term “non-climbable” and a provision to allow two alternate types of fencing materials that provides the standard of construction and protection required by the chapter.

Including a definition for the term “non climbable” will assist home owners, contractors, and officers, in interpreting not only the letter of the law but also the intent. The primary objective of any swimming pool enclosure is to prevent small children accessing the enclosed area, this is achieved by prescribing a minimum height, and a maximum ground clearance and construction standards.

Exemption Requests for Various Fencing Materials

The fencing material exemptions that were the subject of reports to North York Community Council on June 22, 2010, included, tempered glass, horizontal wood fencing, double gates, wood pickets, lattice and cedar hedges. While all of the above noted materials were evaluated for use by staff only tempered glass was considered able to uniformly provide the necessary level of protection. In addition to tempered glass other fencing materials were considered and approved by North York Community Council.

At its meeting of June 22, 2010, the North York Community Council considered six reports regarding exemptions for swimming pool enclosures from the District Manager, Municipal Licensing & Standards, North York District, which dealt with various types of fencing materials.

Item NY35.13 (see link below) was a report dealing with a request for an exemption for wood pickets, wood lattice and cedar trees.

<http://www.toronto.ca/legdocs/mmis/2010/ny/bgrd/backgroundfile-30937.pdf>

This report did not recommend the requested exemption for these materials as there were concerns regarding the ability of persons to access the pool area, but an exemption was granted by the Community Council.

Item NY35.14 (see link below) was a report dealing with a request for an exemption for horizontal wood fencing surrounding the patio.

<http://www.toronto.ca/legdocs/mmis/2010/ny/bgrd/backgroundfile-31004.pdf>

This report did not recommend the requested exemption for these materials as there were concerns regarding the ability of persons to access the pool area, but an exemption was granted by the Community Council.

Item NY35.15 (see link below) was a report dealing with a request for an exemption for double gates and windows in a garage used as a wall in the pool enclosure.

<http://www.toronto.ca/legdocs/mmis/2010/ny/bgrd/backgroundfile-31025.pdf>

This report did not recommend the requested exemption for these materials as there were concerns regarding the ability of persons to access the pool area, but it was approved by the Community Council with conditions maintaining the safety features required in the chapter.

Item NY35.17 (see link below) was a report dealing with a request for an exemption for glass panel barriers for use as a pool enclosure.

<http://www.toronto.ca/legdocs/mmis/2010/ny/bgrd/backgroundfile-31009.pdf>

This report did not recommend the requested exemption for these materials as there were concerns regarding the ability of persons to access the pool area, but an exemption was granted by the Community Council.

Item NY35.20 (see link below) was a report dealing with a request for an exemption for tempered safety glass for use as a pool enclosure.

<http://www.toronto.ca/legdocs/mmis/2010/ny/bgrd/backgroundfile-30833.pdf>

This report did not recommend the requested exemption for these materials as there were concerns regarding the ability of persons to access the pool area, but an exemption was granted by the Community Council.

Item NY35.22 (see link below) was a report dealing with a request for an exemption for tempered safety glass and horizontal wood fencing with 0.57 cm openings.

<http://www.toronto.ca/legdocs/mmis/2010/ny/bgrd/backgroundfile-30936.pdf>

This report did not recommend the requested exemption for these materials as there were concerns regarding the ability of persons to access the pool area in the case of the horizontal wood fencing, but an exemption was granted by the Community Council.

The issue of tempered safety glass for use as a portion of a pool enclosure was not recommended by the District Manager, North York, due to the fact that it is not specifically addressed in the chapter. Tempered safety glass does not pose any safety problems as a permitted material for pool enclosures and its inclusion in the chapter will prevent the need for future exemption reports while maintaining the safety standards for pool enclosures.

Alternate Fencing Materials Recommended for Inclusion in Chapter

Tempered Glass Partitions

The inclusion in the Municipal Code of tempered glass for use in the construction of a swimming pool enclosure will, ensure the structural stability of these enclosures while maintaining the necessary level of safety to prevent mishaps regarding swimming pools. Glass panels used in swimming pool enclosures shall be safety glass of the laminated, tempered or wired glass type.

Masonry Walls

MLS staff identified masonry walls as another material, which if properly constructed and maintained, does not pose a safety risk as a portion of a pool enclosure, but is currently not permitted by the chapter. Therefore this report recommends amendments to the Municipal Code to permit this type of material while setting out proper construction standards for masonry walls. The inclusion in the Municipal Code of masonry walls for use in the construction of a swimming pool enclosure will ensure the structural stability of these enclosures while maintaining the necessary level of safety to prevent mishaps regarding swimming pools.

All components of a masonry wall used as a part of a swimming pool enclosure shall conform to CSA S304.1.

Fencing Materials Not Permitted

The inclusion of a definition of the term “non climbable” will assist home owners and pool contractors in selecting materials for use as pool enclosures regarding the safety of such materials. This will also allow any future reports to the Community Councils regarding exemptions for materials for use as a swimming pool enclosure to object to their use for safety reasons and not only because they are not permitted in the chapter.

Any other materials proposed for use as a swimming pool enclosure will still be subject to the exemption process at Community Council.

Amendments Regarding Swimming Pool Enclosure Fees

All fees associated with fences have been transferred to Municipal Code Chapter 441, Fees and Charges in compliance with By-law No. 472-2010.

This report was prepared in consultation with the City Solicitor and the Chief Building Official.

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ATTACHMENTS

Appendix A: Details of Proposed Amendments to Municipal Code Chapter 447,
Fences

Appendix “A”

The City of Toronto Municipal Code Chapter 447 be amended as follows:

1. That the following definition be added to 447-1 Definitions:

“NON-CLIMBABLE – Describes a 1.2 metre vertical face presented to the exterior of a swimming pool enclosure. For an enclosure of chain link construction shall mean a mesh which is no greater than 38 millimetres square for a minimum of 1.2 metres vertically. For all other enclosures shall mean that there is no horizontal opening or step greater than 38 millimetres in width for 1.2 metres vertically, or where horizontal components are a minimum of 1.2 metres apart there shall be no opening greater than 100 millimetres.

2. That section 447-3A(3) be amended by deleting the words “door, window” so the section reads:

(3) Has no opening except a gate that complies with this article.

3. That section 447-3C(1) be amended by deleting the word “principle” and replacing it with the word “all”, changing “entrance” to “entrances” and deleting the word “is” and replacing it with the word “are”, and adding a new section 3C(1.1) so it reads:

(1) Subject to Subsection C(1.1), a swimming pool enclosure shall be designed and constructed so that all entrances to any building are located outside the enclosed area.

(1.1) Subsection C(1) does not apply to any structure that does not provide access to the exterior of the pool enclosure.

4. That the following section 447-3C(2) be deleted:

(2) Where a wall of a building forms part of a swimming pool enclosure, any access point to the enclosed area in the wall shall:

- (a) Be no closer than 1.2 metres horizontally to the water’s edge in the pool; and
- (b) Where the entrance is a door leading from a garage into the swimming pool area, be supported on substantial hinges, be self-closing and equipped with a lockable, self-latching device located not less than 1.5 metres above grade and be kept locked at all times except when the enclosed area is in use.

5. That section 447-3C(3) be deleted and replaced with the following:

“(3) If the wall of any building, or any portion of it, forms part of the pool enclosure, there shall be no access to the enclosed pool area through the wall.”

6. That section 447-3C(3.1) be deleted and replaced with the following:

(3.1) Subsection C(3)(2) applies to pool enclosures for which a pool enclosure permit was issued more than 30 calendar days after the enactment of that subsection on November 20, 2007, and to any existing fence if a substantial portion of it is demolished or removed, or if it is in such a state of disrepair that it is not practical to repair it.

7. That section 447-3C(3.2) be deleted and replaced with the following:

(3.2) Every owner of a swimming pool shall:

- (a) take all steps necessary to control any access point to the swimming pool area; and
- (b) ensure that if the closing mechanism of a gate is electrically powered it includes a back-up system which shall automatically power the closing mechanism in case of a power disruption.

8. That as sections 447-3C(5), (6) and (7) refer to access into the enclosed swimming pool area through a vehicular access gate, and as the requirement is for a pool to be enclosed on all four sides, it is recommended that these sections be deleted.

9. That section 447-3E(1)(d) be amended by adding the words “a non-climbable” so it reads:

“Have a non-climbable facing material installed on the outside of the enclosure which extends from no more than 50 millimetres above grade to the required minimum height of the enclosure, but, if a hard surface such as concrete, asphalt, paving stones or patio slabs extends for a distance of 500 millimetres on each side of a gate, the clearance under the gate may be no more than 100 millimetres.”

10. That the following be added as section 447-3E(2)(d):

A glass panel fence used in a swimming pool enclosure shall be constructed in a good, workmanlike manner as follows:

[1] Glass Panels shall be located so there is no opening of more than 38 millimetres between the panel and the post where horizontal elements are spaced less than 1.2 metres apart and not more than 100 millimetres apart where horizontal elements are spaced more than 1.2 metres apart; and

[2] Horizontal elements shall be supported on substantial posts spaced not more than 2.4 metres apart and embedded in concrete to a minimum depth of 900 millimetres below grade.

[3] Glass Panels used in swimming pool enclosures shall be:

(a) Safety glass of the laminated or tempered type conforming to CAN/CGSB-12.1-M, “Tempered or Laminated Safety Glass”; or

(b) Wired glass conforming to CAN/CGSB-12.11-M, "Wired Safety Glass."

11. That the following be added as section 447-3E(2)(e):

A masonry wall that is not a part of a building and is used in a swimming pool enclosure shall be constructed in a good, workmanlike manner as follows:

[1] The wall shall present a minimum 1.2 metre Non-climbable surface to the exterior of the enclosed area.

[2] It shall be constructed of a minimum double course brick or single course concrete block with a minimum width of 200 millimetres, and securely attached to a minimum 1.2 metre deep concrete foundation.

[3] Where the wall abuts a building or gate there shall be no opening between the wall and the building or gate which exceeds 38 millimetres where there are horizontal elements less than 1.2 metres apart, or which exceeds 100 millimetres where there are no horizontal elements or where horizontal elements are in excess of 1.2 metres apart.

[4] All components of a masonry wall used as a part of a swimming pool enclosure shall conform with CSA S304.1.

12. That section 447-9 be amended by deleting the words "\$30 per hour" and replacing them with "as set out in Chapter 441, Fees and Charges, and shall include" and deleting the word "is" and replacing it with "that" so the section reads:

"The remuneration for each of the three fence-viewers shall be as set out in Chapter 441, Fees and Charges, and shall include costs. Each of the three fence viewers shall be paid at that rate for travel time to and from the fence-viewing, and for any attendance required at an appeal hearing."

13. That paragraph 447-11(3) be deleted as the reference for payment has been transferred to Chapter 441 Fees and Charges.

14. Staff be directed to take any necessary actions to implement and otherwise put into effect the above recommendations, including the re-numbering of the appropriate sections of Chapter 447.