

REPORT

Council

Meeting Date: March 24, 2025

FROM: Municipal Enforcement Services Department

DATE: March 11, 2025

SUBJECT: Teo's Law – Request to consider a Pool Safety By-law and amendments to the Pool Enclosure By-law

LOCATION: Town-wide

WARD: Town-wide

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RECOMMENDATION:

That the report dated March 11, 2025, from Municipal Enforcement Services, be received.

KEY FACTS:

- At the Council meeting on August 15, 2023, Council requested that staff report back on the feasibility of implementing a by-law for additional regulations regarding pool safety.
- The proposal (Teo's Law) seeks to regulate the use of swimming pools, including the following:
 - All private/residential swimming pools shall be required to have a dedicated fence separating the immediate pool area from the remainder of the rear yard, akin to City of Toronto requirements.
 - An owner of a private/residential property with a swimming pool shall ensure that a licensed lifeguard is in attendance for the duration of a social gathering (pool party).
 - If the homeowner fails to adhere to relevant by-laws, they will be liable for negligence for any injury or death that has occurred in their pool.
- The Town of Oakville Pool Enclosure By-law 2006-071 regulates private pool enclosures within the municipality.
- The Town has no requirement that a certified lifeguard shall be in attendance for social gatherings at a private/residential swimming pool.
- The Town of Oakville Licensing By-law 2015-075 does not license lifeguards.

- The Town does not and cannot set guidelines associated with criminal or civil liability.

BACKGROUND:

Teodor Petrisca

The proposal (Teo's Law) arises from the tragic death of a 3-year-old that occurred on May 27, 2023, during a private pool party.

Purpose

This report is in response to Council's request that staff comment on the feasibility of implementing a by-law for pool safety when hosting guests at their home where there is an unsecured pool present, including mandating licensed lifeguards for private pool parties and additional requirements under the Pool Enclosure By-law. Council requests that staff explore the options proposed and evaluate their necessity and feasibility. This exploration is in the interest of mitigating the inherent safety risks associated with private swimming pools, with particular emphasis to their heightened impact on toddlers.

Legislative Overview

Town of Oakville Pool Enclosure By-law (2006-071)

The Pool Enclosure By-law regulates all pool enclosures constructed, existing or replaced within the town. Swimming pools are required to be fully enclosed by a pool enclosure, with the By-law setting minimums for height, distance from water's edge and requirements for locking gates and entranceways.

Section 24 – When a wall or portion thereof of any building located on the same property as the pool forms part of the pool enclosure, no entrances to the enclosed pool area are permitted through such wall, unless

- (a) the entranceway is equipped with doors which are equipped with a bolt or a chain latch at a minimum height of 1.83 metres (6 feet) above the inside floor level;
- (b) the care, control and maintenance of any such entranceway and safety latch described in clause (a) of this subsection are provided by the owner; and
- (c) the entranceway is located no closer than 1.20 metres (4 feet) from the edge of the water contained in the swimming pool and containing no stairs or steps within.

Section 16(c) – No owner shall fail to ensure that all gates forming part of a pool enclosure are locked when the area is not in active use.

Section 7 – The provisions of this by-law shall not prevent the use of an existing pool enclosure if that pool enclosure was constructed prior to the effective date of this by-law in accordance with the regulations of By-law 1991-20, or any predecessor to that by-law and has been maintained continuously in accordance with those regulations.

City of Toronto Municipal Code Chapter 447 – Fences

Section 1.3 C(1): Subject to Subsection C(2), a swimming pool enclosure shall be designed and constructed so that all entrances to any building are located outside the enclosed area.

Section 1.3 C(6)(c)[2]: Every gate in a swimming pool enclosure shall, if it is a single gate, be kept locked at all times except when the enclosed area is in use.

Health Protection and Promotion Act, R.R.O. 1990, Regulation 565 Public Pools

Section 17(6) – Every lifeguard shall

- (a) be at least 15 years of age; and
- (b) be the holder of a current lifeguard certificate that is dated not more than two years prior to the date on which he or she is acting as a lifeguard.

Section 17(8) – “lifeguard certificate” means a lifeguard certificate issued by the Lifesaving Society, Canadian Red Cross or another organization that provides equivalent training in lifeguarding and that is approved by the Minister for the purpose.

O. Reg. 109/23, s. 1 (2) (Proposal 23-HLTC038 – April 13, 2023, effective date June 2, 2023) – “... the proposed amendment would lower the legal age requirement for lifeguards, assistant lifeguards and aquatic instructors/coaches to be fifteen (15) years of age. This change is intended to address staffing shortages and retention issues in the aquatic sector.”

Occupier's Liability Act

Occupier's duty

3(1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.

Risks willingly assumed

4(1) The duty of care provided for in subsection 3(1) does not apply in respect of risks willingly assumed by the person who enters on the premises, but in that case the occupier owes a duty to the person to not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person or his or her property.

COMMENT/OPTIONS:

Amendment to the Pool Enclosure By-law

Considerations

The Town of Oakville Pool Enclosure By-law explicitly outlines provisions for entrances to the interior of a pool enclosure through a building. Staff recognize the safety concern associated with an exterior door exiting to the interior of a pool enclosure and have therefore included provisions that require the door to meet a heightened safety standard that is consistent with those established for the remainder of the enclosure. The approach adopted by the City of Toronto requires a pool enclosure to separate the pool area from an exterior door, while the Town of Oakville has opted to subject the exterior door itself to the pool enclosure requirements.

Similar to the City of Toronto, in Oakville, pool enclosure gates are not required to be locked when the pool area is in active use.

The Town of Oakville awards legal non-conforming status to those enclosures that predate the by-law with the requirement that the enclosure be maintained in accordance with the provisions of the applicable by-law during the time it was constructed.

Assessment

The Town of Oakville and the City of Toronto have each addressed the safety concern associated with an exterior door of a building that enters to the interior of a pool enclosure. The parameters under each by-law limit accessibility to a swimming pool in a manner consistent with municipal by-laws throughout the province. In the

event that a property owner in Oakville was to elect to forgo the by-law requirements for the exterior door, under the existing Pool Enclosure By-law, an enclosure and gate separated from the dwelling would be required, just as it would be with the City of Toronto.

Regardless of the prescribed enclosure characteristics for either municipality, enclosure gates are not required to be locked when the swimming pool area is actively in use, thereby continuing to subject all those in the pool's vicinity to its inherent risks.

An amendment to the Pool Enclosure By-law may be subject to legal non-conforming status. Given the abundance of properties with swimming pools in Oakville, legal non-conforming status would limit the adoption of the proposed change. If such status was removed, there may be a substantial strain on various staff and resources in order to facilitate retrofits for all existing pool enclosures. In this instance, residents and property owners with private pools would incur the costs and associated responsibility to ensure the proper modification of existing enclosures to comply with a new by-law.

New pool and enclosure installations under the proposed amendment will be subject to substantially increased setbacks, acting in a prohibitive manner to prospective pool owners based on property size and dimensions.

Recommendations

Staff recommend that the Pool Enclosure By-law be maintained in its current form with regards to the matters proposed. Instituting a requirement that would either be inapplicable to an abundance of properties or would present an overwhelming strain on Town and public resources, to address a safety concern already addressed in the current version of the By-law, would not assist in substantially mitigating the inherent safety risks associated with swimming pools.

Required Licensed Lifeguard(s)

Considerations

The Province of Ontario recognizes the Lifesaving Society, the Canadian Red Cross and similar organizations as the authority for the training and issuance associated with lifeguard certifications. Additionally, the Province lowered the minimum age for a lifeguard in 2023 to address lifeguard shortages and retention issues.

Assessment

Given that the Province of Ontario has recognized the shortages and difficulties with retention in relation to staffing for lifeguards at public pools, the institution of a municipal by-law that is reliant upon an infrastructure of lifeguards that may not exist may be considered unreasonable to expect residents to comply.

Further, qualifications for lifeguards are determined through organizations recognized by the Province. The institution of a municipal licensing program may present redundancy, may limit residents' options for lifeguards, and would further present a hurdle for lifeguards to qualify to work in Oakville. Increasing the requirements for workers within an already strained industry would see the increase of disparity between the supply and the prospective spike in demand.

The service requests for staff for a matter of this nature may see highly concentrated spikes (i.e., an abundance of service requests for Municipal Enforcement Services during summer weekends), potentially causing major strain on resources during already resource-tightened times (i.e., Canada Day). In addition to concerns related to a concentrated volume of service requests, Municipal Enforcement Services would be presented with a number of enforcement-related challenges, including managing large groups of people, accounting for patrons, identification of individuals, dealing with minors.

A prospective lack in lifeguard access/availability as well as associated costs for services may act as a prohibition for property owners and residents seeking to utilize their own private swimming pool as they choose, particularly in instances of spontaneity.

Negligence

Ontario municipalities do not have the authority to set parameters for matters of criminal or civil liability.

Recommendation

Public education can play a key role in preventing accidents and ensuring a safe environment for swimmers of all ages. Drowning can happen quickly and silently, making it critical to promote supervision, proper barriers, and water safety education. Raising awareness about pool safety and promoting cardiopulmonary resuscitation training and emergency preparedness supports accident prevention and empowers residents to respond effectively in case of an incident. By reinforcing these safety measures, communities can enjoy pools responsibly while minimizing hazards.

Conclusion

Recognizing the importance of pool safety staff recommend that the Town promote backyard pool safety through social media in the spring and summer months. However, staff do not recommend the implementation of added regulations considering the barriers to compliance for residents, implementation and enforcement challenges and the potential impact to the reasonable use of private property.

CONSIDERATIONS:

(A) PUBLIC
NA

(B) FINANCIAL
There is no financial impact as a result of this report.

(C) IMPACT ON OTHER DEPARTMENTS & USERS
There is no impact on Town of Oakville staff or its partners. Existing resources and infrastructure will continue to manage the processes surrounding pool enclosures and pool safety.

(D) COUNCIL STRATEGIC PRIORITIES
This report supports the strategic priority of Accountable Government, with a focus on service delivery and responsible management of resources.

(E) CLIMATE CHANGE/ACTION
N/A

APPENDICES:

N/A

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