

To: City of the Village of Douglas City Council
Date: June 17, 2024
From: Sean Homyen, Planning & Zoning Administrator
RE: Zoning Text Amendment –16.16(3)(a) & 16.16(3)(c) –
Swimming Pools



The Village of Friendliness – Since 1870

BACKGROUND

Recent applications for pools within the City have revealed some outdated language in the Zoning Ordinance pertaining to the requirements for fencing. As you know, swimming pool installation requires a zoning permit and a building permit before construction can begin. The Zoning Ordinance and building codes both have the intent to prioritize safety. The building codes can change more frequently as technology and building materials evolve for more efficiency and safety. The Zoning Ordinance should usually reflect this type of change as well, as the two codes tend to work in unison. The Zoning Ordinance can be *more restrictive* than building codes, but cannot be *less restrictive* as zoning codes mainly regulate land use, and building code regulations are mainly for ensuring safety with any structure or appurtenance that humans will occupy or use. In 2015, the Michigan Residential Code made some changes to the barrier requirements for swimming pools and spas which would provide exceptions to the requirement to install a fence, and for the safety of building walls to serve as a barrier.

Michigan Township Services building inspectors administer the 2015 International Swimming Pool and Spa Code 2015, which perhaps may be more comprehensive than the requirements within the Michigan Residential Code. Sections from the 2015 International Swimming Pool and Spa Code are shown below for the Planning Commission's reference.

305.2.1 Barrier height and clearances.

Barrier heights and clearances shall be in accordance with all of the following:

- 1. The top of the barrier shall be not less than 48 inches (1219 mm) above grade where measured on the side of the barrier that faces away from the pool or spa. Such height shall exist around the entire perimeter of the barrier and for a distance of 3 feet (914 mm) measured horizontally from the outside of the required barrier.*
- 2. The vertical clearance between grade and the bottom of the barrier shall not exceed 2 inches (51 mm) for grade surfaces that are not solid, such as grass or gravel, where measured on the side of the barrier that faces away from the pool or spa.*
- 3. The vertical clearance between a surface below the barrier to a solid surface, such as concrete, and the bottom of the required barrier shall not exceed 4 inches (102 mm) where measured on the side of the required barrier that faces away from the pool or spa.*

4. *Where the top of the pool or spa structure is above grade, the barrier shall be installed on grade or shall be mounted on top of the pool or spa structure. Where the barrier is mounted on the top of the pool or spa, the vertical clearance between the top of the pool or spa and the bottom of the barrier shall not exceed 4 inches (102 mm).*

305.4 Structure wall as a barrier.

Where a wall of a dwelling or structure serves as part of the barrier and where doors or windows provide direct access to the pool or spa through that wall, one of the following shall be required:

1. *Operable windows having a sill height of less than 48 inches (1219 mm) above the indoor finished floor and doors shall have an alarm that produces an audible warning when the window, door or their screens are opened. The alarm shall be listed and labeled as a water hazard entrance alarm in accordance with UL 2017.*

In dwellings or structures not required to be Accessible units, Type A units or Type B units, the operable parts of the alarm deactivation switches shall be located 54 inches (1372 mm) or more above the finished floor. In dwellings or structures required to be Accessible units, Type A units or Type B units, the operable parts of the alarm deactivation switches shall be located not greater than 54 inches (1372 mm) and not less than 48 inches (1219 mm) above the finished floor.

2. *A safety cover that is listed and labeled in accordance with ASTM F 1346 is installed for the pools and spas.*
3. *An approved means of protection, such as self-closing doors with self-latching devices, is provided. Such means of protection shall provide a degree of protection that is not less than the protection afforded by Item 1 or 2.*

The current ordinance language does not permit a building wall to serve as a barrier if it has windows or doors. Building codes have changed to require the alarms on doors and windows so that it is known when a door to the pool area is opening. The Zoning Ordinance amendment proposes to remove language that allows a building wall to serve as a barrier if doors or windows are not present. The amendment also proposes to change the minimum fencing height to 4' instead of 5' to both match the applicable building codes, and eliminate any special ordering of fence panels, since most standard fence panels come in 4' and 6' in height.

Proposed Amendment. Based on discussions held at the April 11, 2024 Planning Commission meeting, there seemed to be a consensus regarding on *keeping* the fence requirement, regardless of the applicable building code's exception to fencing when a power safety cover is installed. We have made the practical changes to the ordinance, as noted above, that have had an impact on recent applications for swimming pools. At the May 9, 2024 meeting, the Planning Commission made the recommendation to remove the option of providing a power safety cover instead of fencing.

The proposed amendment is below with the language that is proposed for removal shown as highlighted and stricken to make the changes clear along with the removal of the optional power safety cover as recommended by the Planning Commission.

Section 16.16 Swimming Pools:

- 3) Fencing: Yard areas with pools are to be fenced to discourage unsupervised access.
 - a. Such fencing is to be a minimum of ~~five (5)~~ four (4) feet high and equipped with a self-closing and self-latching gate/door.
 - b. Latching devices are to be located at a minimum height of four feet above the ground.
 - c. Such fencing may be omitted where building walls ~~without doorways or windows~~ abut the pool area, provided that the entire perimeter of the pool area is secured.

Procedures. Section 28.02 provides procedures for the review and approval of amendments. The Planning Commission forwarded a favorable recommendation to City Council on the May 9, 2024 meeting.

At the June 3, 2024 meeting, the City Council is tasked with the final approval of the proposed ordinance amendment, and will hold a first reading. The second reading will be held on June 17, 2024 meeting. An ordinance to amend the zoning ordinance has been drafted for the City Council's reference in its review of the proposed zoning ordinance amendment. The Planning and Zoning Administrator's report to the Planning Commission dated April 19, 2024 is also included for your reference in the Council packet for review of the amendment procedures, analysis of the amendment criteria, and original proposed amendment.

Please feel free to reach out with any questions