To Chair and Members
Committee of the Whole – Community Development

From Paul Moore, General Manager
Community Development

1.0 Type of Report

Consent Item [ ]
Item For Consideration [X]

2.0 Topic Fence Requirements for Hot Tubs [Financial Impact - $250] (2019-109)

3.0 Recommendation

A. THAT Report No.2019-109 pertaining to Fence Requirements for Hot Tubs, BE RECEIVED; and

B. THAT the necessary by-law to amend Chapter 437 of the City of Brantford Municipal Code to include the following as Section 437.5.8 BE PRESENTED to City Council for adoption:

“437.5.8 Hot tubs

Notwithstanding Section 437.5.1 of this Chapter, when any swimming pool is a hot tub, the owner of such swimming pool shall ensure that:

1. All fencing provisions of this By-law are complied with; or
2. Such hot tub is fitted with a tight fitted rigid cover that is capable of supporting a 90 kg load or meets the American Society for Testing and Materials standard for hot tubs, and such cover is securely fastened and locked in place at all times when the hot tub is not in use.”

C. THAT the necessary by-law to amend Schedule 14 of the City of Brantford Fees and Charges By-law to add the following new fee BE PRESENTED to City Council for adoption:

Swimming pool (hot tub with locked cover) $105

4.0 Purpose and Overview

The purpose of this report is to respond to a resolution adopted by City Council, at its meeting held on June 26th, 2018 requesting staff to review the provisions of the Swimming Pools – Regulation and Use By-law as it relates to fencing enclosures required for the protection of hot tubs on residential properties.

5.0 Background

City Council, at its meeting held on June 26th, 2018 adopted the following resolution:

WHEREAS Chapter 437 of the City of Brantford Municipal Code outlines rules and regulations pertaining to swimming pools; and

WHEREAS the regulations require fences surrounding properties with hot tubs and swimming pools; and

WHEREAS other municipalities exempt hot tubs from requiring fencing instead requiring a lockable cover on hot tubs;

NOW THEREFORE BE IT RESOLVED THAT staff BE DIRECTED to undertake a review of the current Swimming Pool Fence Enclosure By-law, being Chapter 437 of the City of Brantford Municipal Code, to review current regulations specifically regarding hot tubs; and

THAT Staff BE DIRECTED to review other municipal by-laws and REPORT BACK on standard regulations on hot tub enclosures with recommendations regarding the continuing regulation of hot tubs in the City of Brantford.
6.0 Corporate Policy Context

This Report was reviewed within the context of the Municipal Strategic Plan. Goal #2 – Long Term Desired Outcomes, states that Brantford will be recognized as a safe, healthy community – one that promotes and enables the well-being of its citizens.

7.0 Input From Other Sources

A best practices approach was used by reviewing the swimming pool fence enclosure by-laws of several comparator municipalities, including Barrie, Brampton, Brant County, Cambridge, Guelph, Hamilton, Kitchener, London, Mississauga, Niagara Falls, Niagara on the Lake, St. Catharines, Waterloo, Windsor and Woodstock.

In addition, both this report and all proposed by-law amendments have been reviewed by the Legal and Real Estate Services Department.

8.0 Analysis

8.1 INTRODUCTION

The purpose of Chapter 437 of the City of Brantford Municipal Code is to prescribe requirements for owners of privately owned swimming pools to erect and maintain fences and gates around such swimming pools. The fencing provides a level of protection around the pool to ensure that the safety of the general public, and in particular young children, is being promoted.

Non-climbable fencing, complete with a self-closing lockable gate is an effective safeguard for this protection, in that when operated correctly, is permanently in place not requiring the actions of an owner of a property to activate.

A hot tub is a substantially different structure than a swimming pool, however, in accordance with the by-law definition; “an outdoor tank of water maintained for bathing purposes” a hot tub meets the definition of a swimming pool. For this reason, hot tub permit applications are reviewed for compliance with the pool enclosure by-law in the exact same manner as a swimming pool.
For reference purposes, in 2016 a total of 88 permits were issued for new swimming pools, of which five were for the installation of a hot tub. In 2017, a total of 79 permits were issued for new swimming pools, of which nine were for the installation of a hot tub. This past year, in 2018 a total of 96 permits were issued for new swimming pools, of which seventeen were for the installation of a hot tub.

8.2 HOT TUBS: CURRENT REGULATIONS

The current fencing requirements for a swimming pool as outlined in the Swimming Pool – Regulation and Use By-law provide the homeowner with several options. With respect to a chain link style fence, the by-law allows for a minimum four foot height where 1.5” link fence is used, or a minimum five foot height where a 2” link fence is being provided. Wood fences are also permissible, provided the fence is a minimum four feet in height, with vertical boards installed with a maximum opening not exceeding 1.5”. In this style of fence, all horizontal rails must be installed on the pool side of the fence. The By-law also allows for a five foot high wrought iron or metal type fencing, provided the maximum spacing regulations for vertical metal pickets are being met.

In addition to the fence, any gate access into the yard must be such that the gate also complies with the fencing regulations, and that the gate be self-closing, and locked when not under homeowner supervision.

8.3 OTHER MUNICIPAL POOL BY-LAW REVIEW

A survey was conducted amongst several comparative Municipalities, which generated fifteen replies. The contributing Municipalities are listed in Section 7.0 of this report - Input From Other Sources. Of the fifteen responses, it was shown that fourteen of the Municipalities allow a property owner the option of a fenced enclosure or a fitted locked cover. Niagara on the Lake was the only Municipality that replied that requires a fence enclosure as the only available option.

8.4 HOT TUBS: PROPOSED BY-LAW AMENDMENTS

In order to bring the City of Brantford pool enclosure by-law in line with similar geographically close Municipalities, it is proposed that a locked hard cover top on the hot tub be acceptable as an alternative to providing a fenced enclosure.
Recommendation 1

Chapter 437 of the City of Brantford Municipal Code be amended as follows:

437.5.8 Hot tubs

Notwithstanding Section 437.5.1 of this Chapter, when any swimming pool is a hot tub, the owner of such swimming pool shall ensure that:

1. All fencing provisions of this By-law are complied with; or

2. Such hot tub is fitted with a tight fitted rigid cover that is capable of supporting a 90 kg load or meets the American Society for Testing and Materials standard for hot tubs, and such cover is securely fastened and locked in place at all times when the hot tub is not in use.

Where a property owner elects the option of a tightly fitted cover, they will be required to indicate that option on the permit application plans. Although a permit is still required, this option will reduce the amount of inspection time that is typically required to approve a fenced enclosure. As such, it is proposed that where a tight fitted cover is being installed a reduced permit fee be introduced. The current permit fee for a swimming pool is $155.00, and this is to remain unchanged, however, where a hot tub has a locked fitted cover, the fee would be reduced to $105.00.

Recommendation 2

Schedule 14 of the current consolidated City of Brantford Fees and Charges By-law be amended by adding the following fee:

Swimming pool (hot tub with locked cover) $105

9.0 Financial Implications

Over the past three years the number of permits issued for hot tubs has varied from five in 2016 to nineteen in 2018. However, the average of these three years is ten hot tub permits per year. It is unknown how many property owners will select the locked cover option, as some property owners may still prefer the security and privacy of a fenced enclosure. Staff would anticipate that approximately 50% of the applicants would select the locked cover option. This would result in an approximate $250 reduction in permit fees collected.
10.0 Conclusion

Based on the information provided in this report, it is recommended that Council approve the noted recommendations to amend Chapter 437 of the City of Brantford Municipal Code and Schedule 14 of the Fees and Charges By-law.

Russ Thomson, MAATO, CBCO
Director of Building Services
Community Development

Paul Moore, MCIP, RPP
General Manager
Community Development

Attachments (if applicable)

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required [X] yes  [ ] no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk  [ ] yes  [X] no

Is the necessary by-law or agreement being sent concurrently to Council?  [X] yes  [ ] no
BY-LAW NUMBER ________ -19

OF

THE CORPORATION OF THE CITY OF BRANTFORD

Being a By-law to amend Chapter 437 of the City of Brantford Municipal Code and Schedule 14 of the City of Brantford Fees and Charges By-law

THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF BRANTFORD HEREBY ENACTS AS FOLLOWS:

1. Chapter 437 of the City of Brantford Municipal Code is hereby amended by adding subsection 437.5.8:

437.5.8 Hot Tubs

Notwithstanding Section 437.5.1 of this Chapter, when any swimming pool is a hot tub, the owner of such swimming pool shall ensure that:

1. All fencing provisions of this By-law are complied with; or
2. Such hot tub is fitted with a tight fitted rigid cover that is capable of supporting a 90 kg load or meets the American Society for Testing and Materials standard for hot tubs, and such cover is securely fastened and locked in place at all times when the hot tub is not in use.

2. Schedule 14 of the current City of Brantford Fees and Charges By-law is hereby amended by adding the following charge:

Swimming pool (hot tub with locked cover) $105

3. This By-law shall come into effect immediately.

READ A FIRST TIME: March ________, 2019
READ A SECOND TIME: March ________, 2019
PASSED: March ________, 2019