ADMINISTRATIVE REPORT

TO: Planning & Development Committee
FROM: B. Newell, Chief Administrative Officer
DATE: January 10, 2013
RE: Requirement for Fencing around Swimming Pools - Building Bylaw Section 22.0

Recommendations:
1. THAT the Regional District enforce the Building Bylaw past the receipt of an occupancy permit.
2. THAT the requirement for a fence around a swimming pool in a large holdings zone be the same as the requirement in a high-density area.

Reference:
Building Bylaw #2333, 2005 section 22.3 through 22.5 states:

22.3 Pools must be enclosed by fencing or an equivalent method of enclosure not less than 1.2 metres in height with no opening through or under which a spherical object with a diameter of 10 centimetres may pass

22.4 Access to a pool, other than through a dwelling, must be equipped with a self-closing gate or door designed to return to a closed position when not in use, and secured by a spring lock on the pool side of the enclosure at least 90 centimetres above grade.

22.5 Access to pools located above ground and having vertical sides at least 1.2 metres in height may be restricted by removal of the access ladder or stair when the pool is not in use, or by enclosing the ladder or stair in the manner described in sections 22.3 and 22.4

History:
All completed building permits issued to-date have complied with the pool fencing requirement at the time of final inspection. The Regional District has now been notified that a property owner removed the swimming pool fence subsequent to receiving the occupancy permit for a property. It has been past practice to enforce building bylaw infractions only up to the occupancy permit stage; there being nothing that would trigger an inspection once a permit was issued other than a citizen complaint.

A pool is described as any artificial body of water intended for recreational use and having a surface area exceeding 12 m² (130 sq ft) in which the depth of the water could attain at least 60 centimetres (24 inches).

Further amendments to the bylaw could be made to restrict climbability of the pool fencing and requirements for the enclosure of ladders for above-ground pools.
Analysis:

The BC Building Code does not address the issue of fencing around swimming pools. Local Governments are not authorized to create laws that reduce the requirements of the Code but they may exceed them if the bylaw “holds paramount the safety, health and welfare of the public, protection of the environment and promotion of health and safety”.

Statistics from the Canadian Red Cross Lifesaving Society’s 2011 National Drowning Report state:

- In Canada close to 500 people die every year in water-related incidents
- There are more drownings among young adults (18-34 – typically open water, boating incidents)
- Drowning is the second leading cause of preventable death for children under 10 years of age
- 7% per cent of all drowning deaths occurred in private pools
- 65% of children under the age of 5 were alone near water when they drowned
- Of all preschoolers who drown, 70% are in the care of one or both parents at the time of the drowning and 75% are missing from sight for five minutes or less

The intent of swimming pool fencing can be seen as multipurpose. Protection for adjacent property owners, as well as protection for occupants of the dwelling, from accidental drowning or near drowning, protection from liability for accidental death; as well as protection from property damage. The current fencing requirement often leaves the pool accessible to the occupants of the home where the pool is located.

Currently, in Quebec, more rigorous requirements have been introduced to reduce the number of non-intentional drownings in private residential swimming pools. These requirements include installation of four-sided isolation fencing with self-closing and self-latching gates. The isolation fencing completely surrounds swimming pools or spas and prevents direct access from a house or yard. Door alarms, pool alarms and automatic pool covers, when used correctly, can add an extra level of protection but would not replace the pool fencing. Statistics demonstrate that installation of a four-sided isolation fence alone could prevent 50 to 90 percent of childhood residential swimming pool drownings and near drownings.

The following table sets out the requirements throughout the Okanagan and Similkameen Valley with respect to swimming pool enclosures.

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Pool fencing requirements</th>
<th>Exemption for large property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summerland</td>
<td>1.22 m fence&lt;br&gt;Self-closing and latching, pool side&lt;br&gt;No openings greater than 100 mm</td>
<td>No</td>
</tr>
<tr>
<td>Princeton</td>
<td>No requirement for pool permits</td>
<td>N/A</td>
</tr>
<tr>
<td>Keremeos</td>
<td>No requirement for pool permits</td>
<td>N/A</td>
</tr>
<tr>
<td>Oliver</td>
<td>1.1 m fence&lt;br&gt;Self-closing and latching, pool side&lt;br&gt;Non-climbable chain link fence</td>
<td>No</td>
</tr>
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<td>Municipality</td>
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<td>-----------------</td>
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</tbody>
</table>
| Osoyoos         | 1.2 m fence  
Self-closing and latching, pool side  
No openings greater than 10 cm  
Non-climbable                                           | No                          |
| Peachland       | 1.2 m chain link fence  
Self-closing and latching, pool side  
No openings greater than 100 mm  
Non-climbable                                           | No                          |
| Kelowna         | 1.07 m fence  
Self-closing and latching, pool side  
No openings greater than 100 mm  
Non-climbable                                           | Fences not required on properties zoned AG or RR where the pool is located 45 m from the nearest property line |
| Central Okanagan| 1.2 m fence  
Self-closing and latching, pool side  
No openings greater than 100 mm  
Non-climbable                                           | No                          |
| Vernon          | 1.2 m fence  
Self-closing and latching, pool side  
No openings greater than 100 mm  
Non-climbable                                           | No                          |
| Lake Country    | 1.07 m fence  
Self-closing and latching, pool side  
No openings greater than 100 mm  
Non-climbable                                           | No                          |
| Kamloops        | 1.5 m fence  
Self-closing and latching, pool side  
No openings greater than 100 mm  
Non-climbable                                           | No                          |
| Thompson Nicola | No swimming pool regulations – covered by insurance companies                             | No                          |
| Penticton       | 1.2 m fence  
Self-closing and latching                                                               | No                          |
**Alternatives:**

<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
</table>
| 1      | Current bylaw provisions (installation of a fence not less than 1.2 m in height, with not spacing larger than 100 mm and a self-closing, self-latching gate installed on the pool side at a height not less than 90 cm above grade) | • Consistent with member municipalities and regional districts  
• Promotes a level of safety to adjacent properties  
• Promotes a measure of security from adjacent properties  
• Allows for fencing of yard to act as pool fence | • Doesn’t take into account large properties  
• Doesn’t fully protect occupants |
| 2      | Exempt large properties from fencing requirements (similar to City of Kelowna which exempts fences where the pool is located 45 m or more from the nearest property line on Agricultural or Rural Residential zoned properties) | • Consideration for large rural lots which have a reduced need to restrict access to adjacent properties | • Increases safety risk to adjacent property owners  
• Increased risk of property damage  
• Doesn’t take into account land use changes (higher density in area over time)  
• May be increased liability to RDOS? |
| 3      | Exempt large properties from fencing requirements with additional safety requirements to protect occupants (pool covers, pool perimeter alarms, door alarms and self-closing hinges on exterior doors) | • Consideration for large rural lots which have a reduced need to restrict access to adjacent properties (with alternative requirements)  
• Provides a measure of protection to occupants and adjacent property owners | • Increases safety risk to adjacent property owners  
• Increased risk of property damage  
• Increases risk due to misuse by “operator” or “human error”  
• Doesn’t take into account land use changes (higher density in area over time)  
• May be increased liability to RDOS? |
| 4      | Other devices in addition to current bylaw provisions (isolation fencing, pool covers, pool perimeter alarms, door alarms and self-closing hinges on exterior doors) | • More restrictive requirements  
• Reduces liability to RDOS | • Increased level of safety to occupants of dwelling |
Discussion:

It is recognized that there are rural lots, where due to topography and property size that the pool safety risk to neighbors is reduced. If the requirement for pool fencing was removed for larger residential properties the issue of protection for the occupants of the dwelling would still remain.

A Building Bylaw needs very clear provisions and it would not be practical or feasible to provide for a case-by-case review of each site. There is also no opportunity for a variance.

Respectfully submitted:

“Laura Walton”

L. Walton, Building Official