

**UNION COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: September 5, 2006

Action Agenda Item No. 7
(Central Admin. use only)

SUBJECT: Swimming Pool Barrier Ordinance

DEPARTMENT: Legal

PUBLIC HEARING: No

ATTACHMENT(S):
Ordinance

INFORMATION CONTACT:
Roger Lane
Mike Shalati
Jeff Crook

TELEPHONE NUMBERS:

704-283-3673

DEPARTMENT'S RECOMMENDED ACTION:

BACKGROUND: As requested by the Chairman, we have prepared the attached Ordinance that would require barriers to obstruct entry into new residential swimming pools, the term "barrier" defined to include a fence, wall, building wall and, in the case of above-ground pools, the walls of the pool itself. (I have attached illustrations that I believe will assist the Board in picturing the type of fencing required by the Ordinance.) The barrier requirements placed in the Ordinance are derived primarily from swimming pool barrier guidelines that comprise an appendix to the North Carolina State Building Code. Pursuant to Section 104.4 of Volume 1-A of the Code, the appendices are not enforceable unless adopted by local ordinance. In developing the Ordinance, we have worked with Donald Moore, Director of Inspections, and he is prepared to enforce the Ordinance following adoption by the Board of Commissioners. Mr. Moore indicates that of the 593 residential swimming pool permits issued by his office for the period from May 25, 2004, through August 25, 2006, 311 pools (more than one half) were located within municipalities. Pursuant to G.S. 153A-122, the jurisdiction of this Ordinance will be that part of Union County outside municipal limits, unless the governing body of one or more municipalities requests that the Ordinance be applicable within its limits. The Board may want to consider directing the Clerk to forward the Ordinance to all municipalities to determine whether they would like to authorize enforcement of the Ordinance in this manner.

FINANCIAL IMPACT:

Legal Dept. Comments if applicable: _____

Finance Dept. Comments if applicable: _____

Manager Recommendation: _____

DRAFT

SWIMMING POOL BARRIER ORDINANCE

WHEREAS, according to information and estimates published by the U.S. Consumer Protection Safety Commission, the U.S. Center for Disease Control and Prevention, and the National Safety Council:

- Drowning is the second-leading cause of injury related death for all children under the age of 15 and is the leading cause of death nationally for children under the age of five.
- Of the nearly 5,000 children under age 15 who are admitted to hospitals every year for drowning or near-drowning incidents, 15% will die and another 20% will suffer severe, permanent brain damage.
- In 2005, over 2,000 children under the age of five were treated for pool submersion injuries, most of which occurred in residential swimming pools.
- Approximately 300 children under the age of five will drown each year in swimming pools.

WHEREAS, based on the foregoing, the Union County Board of Commissioners has determined that swimming pools which are easily accessible pose a significant danger to young children, and that barriers and gates which obstruct access to swimming pools by children are therefore necessary to protect the public health and safety; and

WHEREAS, Union County has broad authority under N.C.G.S. § 153A-121 to regulate, prohibit, and abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens; and

WHEREAS, pursuant to N.C.G.S. § 153A-140, the Union County Board of Commissioners may order the removal of a swimming pool upon a finding that it is dangerous or prejudicial to public health or safety; and

WHEREAS, N.C.G.S. § 153A-123 authorizes Union County to enforce its ordinance through a variety of mechanisms including civil, criminal, and injunctive remedies; and

WHEREAS, pursuant to N.C.G.S. § 153A-363, the Union County Inspection Department may deny a certificate of compliance for any project that fails to comply with all State and local laws and local ordinances and regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE UNION COUNTY BOARD OF COMMISSIONERS that access to swimming pools be protected as follows:

Section 1: Definitions

As used in this Ordinance, the following terms shall have the meanings set forth below.

Barrier means a fence, wall, building wall, or combination thereof that completely surrounds and obstructs access to a swimming pool.

Swimming Pool means an outdoor artificial structure intended for swimming or recreational bathing which contains water over 24 inches deep at any point and which is fitted with a filter for clarifying the pool water or is designed to be fitted with a filter, whether installed or not. This term does not include public swimming pools (which are regulated under N.C.G.S. § 130A-280, et seq. and 15A N.C.A.C. § 18A.2500), hot tubs, or spas.

Section 2: Requirements for In-Ground Swimming Pools

- A. Barriers. It shall be the responsibility of any person owning or maintaining an in-ground swimming pool to ensure that the pool is completely surrounded by barriers that conform to the requirements set forth below:
1. The top of the barrier shall be at least forty-eight (48) inches above grade measured on the side of the barrier that faces away from the swimming pool.
 2. The maximum vertical clearance between the bottom of the barrier and grade shall be two (2) inches measured on the side of the barrier that faces away from the swimming pool.
 3. Openings in the barrier shall not allow passage of a sphere that is four (4) or more inches in diameter.
 4. Solid barriers which do not have openings, such as masonry or stone walls, shall not contain indentations or protrusions (except for normal construction tolerances and tooled masonry joints) that could be used to climb such barriers.
 5. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on the swimming pool side of the barrier. Spacing between vertical members shall not exceed one and three-quarter (1.75) inches in width. Where there are decorative cutouts

within vertical members, spacing within the cutouts shall not exceed one and three-quarter (1.75) inches in width.

6. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is forty-five (45) inches or more, spacing between vertical members shall not exceed four (4) inches. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed one and three-quarter (1.75) inches in width.
 7. Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall not be more than 1.75 inches.
 8. Maximum mesh size for chain link fences shall be a one and one-quarter (1.25) inch square unless the barrier is provided with slats fastened at the top or the bottom which reduce the openings to not more than one and three-quarter (1.75) inches.
 9. Barriers shall be located so as to prohibit permanent structures, equipment, or similar objects from being used to climb the barriers.
- B. Gates. It shall be the responsibility of any person owning or maintaining an in-ground swimming pool to ensure that any gate through which access to the pool may be gained complies with all of the requirements set forth in Section 2, above, and also complies with the following:
1. Access gates shall be equipped to accommodate a locking device.
 2. Access gates shall open outward away from the pool, be self-closing, and have a self-latching device.
 3. Where the release mechanism of a self-latching device is located less than fifty-four (54) inches from the bottom of the gate, the release mechanism and openings shall comply with the following:
 - a. The release mechanism shall be located on the pool side of the gate at least three (3) inches below the top of the gate; and
 - b. The gate and barrier shall have no opening greater than one-half (.5) inch within eighteen (18) inches of the release mechanism.

Section 3: Requirements for Above-Ground Swimming Pools

- A. Barriers. The outer walls of an above-ground swimming pool shall serve as barriers preventing access to the pool. It shall be the responsibility of any person

owning or maintaining an above-ground swimming pool to ensure that no permanent structures, equipment, or other objects, other than the ladder, steps, or other intended means of gaining access to the pool, are located near the pool such that they could be used to climb over the pool walls.

- B. Gates. Any means of access to an above-ground swimming pool, such as a ladder or steps, shall be capable of being secured, locked or removed to prevent access, or the ladder, steps, or other access shall be surrounded by a barrier which meets the requirements of Section 2 of this Ordinance. When the ladder, steps, or other access are secured, locked or removed to prevent access, any opening created shall not allow the passage of a sphere four (4) or more inches in diameter.

Section 4: Penalties and Remedies for Violations or Failure to Comply

- A. Denial of Certificate of Compliance or Other Final Approval. Failure to comply with this Ordinance shall constitute grounds for the Union County Inspection Department to deny a certificate of compliance or other final inspection approval.

- B. Civil Penalties. Violations of this Ordinance or failure to comply with any of its requirements shall be subject to the following civil penalties for each offense:

Warning Citation:	10 Days to Correct Violation
First Citation:	\$50.00
Second Citation:	\$200.00
Third & Subsequent Citations:	\$500.00

- C. Equitable Relief from a Court of Law. Union County may seek equitable relief from a court of competent jurisdiction pursuant to N.C.G.S. § 152A-123, which relief may include but is not limited to a mandatory or prohibitory injunction and order of abatement commanding the offender to correct the unlawful condition upon or cease the unlawful use of the subject premises.

- D. Removal by Order of the Board. The Union County Board of Commissioners may order the removal of a swimming pool and its appurtenances upon adequate notice, the right to a hearing, and the right to appeal, in accordance with N.C.G.S. § 153A-140. The expense of any such action shall be paid by the person in default and if not paid, shall be a lien upon the land or premises upon which the pool is located, and shall be collected as unpaid taxes

- E. Criminal Penalties. Violations of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor punishable by a fine of up to five hundred dollars (\$500.00) or up to thirty (30) days imprisonment.

- F. Continuing Violations. Each day that any violation continues after notification of such violation by, or on behalf of, the Union County Inspection Department may

be considered a separate violation for purposes of the penalties and remedies set forth in this Section.

- G. Combination of Penalties. Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

Section 5: Statutory Amendment

References in the Ordinance to a particular section of the North Carolina General Statutes are intended to refer to such section as it may have been amended and as it may be amended in the future or to any successor statute. Therefore, if any section referenced herein is amended or superseded after adoption of this Ordinance, this Ordinance shall be deemed to refer to the amended section or to the section that most closely corresponds to the superseded section.

Section 6: Effective Date

This Effective Date of this Ordinance shall be the day following adoption by the Union County Board of Commissioners. The provisions of this Ordinance shall not apply to swimming pools for which a general permit has been issued by the Union County Inspections Department prior to the Effective Date.

Adopted this ___ day of _____, 2006.

The Swimming Pool Barrier Guidelines

How to Prevent a Child from Getting OVER a Pool Barrier

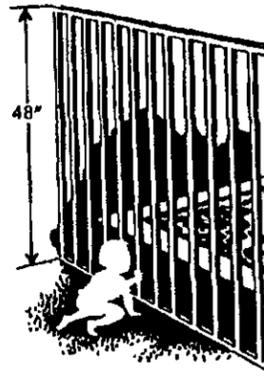
This section explains the CPSC swimming pool barrier guidelines with illustrated descriptions of pool barriers. Definitions of terms used in the guidelines are provided on page 6.

The definition of pool includes spas and hot tubs; the swimming pool barrier guidelines therefore apply to these structures as well as to conventional swimming pools.

A successful pool barrier prevents a child from getting OVER, UNDER, or THROUGH and keeps the child from gaining access to the pool except when supervising adults are present.

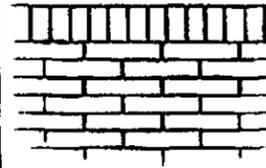
A young child can get over a pool barrier if the barrier is too low or if the barrier has handholds or footholds for a child to use when climbing.

The guidelines recommend that the top of a pool barrier be at least 48 inches above grade, measured on the side of the barrier which faces away from the swimming pool.



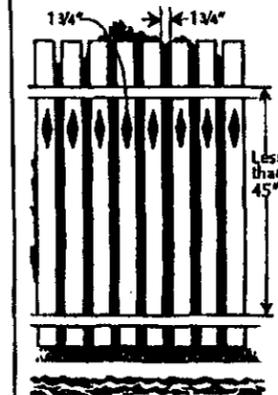
Guidelines recommend eliminating handholds and footholds and minimizing the size of openings in a barrier's construction.

For a Solid Barrier:
No indentations or protrusions should be present, other than normal construction tolerances and masonry joints.

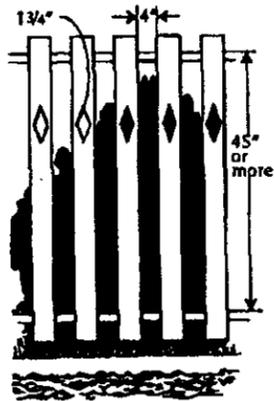


For a Barrier (Fence) Made Up of Horizontal and Vertical Members:

If the distance between the tops of the horizontal members is less than 45 inches, the horizontal members should be on the swimming pool side of the fence. The spacing of the vertical members should not exceed 1-3/4 inches. This size is based on the foot width of a young child and is intended to reduce the potential for a child to gain a foothold. If there are any decorative cutouts in the fence, the space within the cutouts should not exceed 1-3/4 inches.

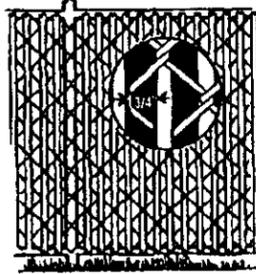
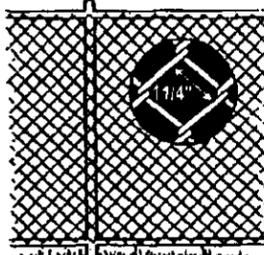


If the distance between the tops of the horizontal members is more than 45 inches, the horizontal members can be on the side of the fence facing away from the pool. The spacing between vertical members should not exceed 4 inches. This size is based on the head breadth and chest depth of a young child and is intended to prevent a child from passing through an opening. Again, if there are any decorative cutouts in the fence, the space within the cutouts should not exceed 1-3/4 inches.



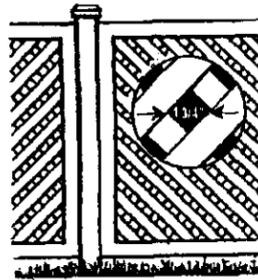
For a Chain Link Fence:

The mesh size should not exceed 1-1/4 inches square unless slats, fastened at the top or bottom of the fence, are used to reduce mesh openings to no more than 1-3/4 inches.

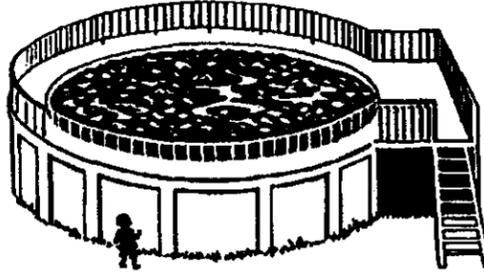


For a Fence Made Up of Diagonal Members (Latticework):

The maximum opening in the lattice should not exceed 1-3/4 inches.



For Aboveground Pools:



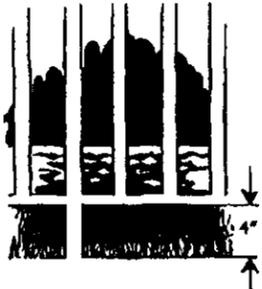
Aboveground pools should have barriers. The pool structure itself serves as a barrier or a barrier is mounted on top of the pool structure.

Then, there are two possible ways to prevent young children from climbing up into an aboveground pool. The steps or ladder can be designed to be secured, locked or removed to prevent access, or the steps or ladder can be surrounded by a barrier such as those described above.



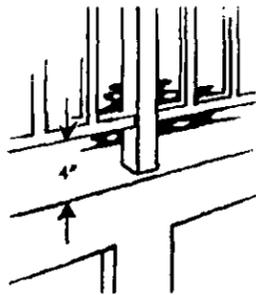
**How to Prevent
a Child from
Getting UNDER
a Pool Barrier**

For any pool barrier, the maximum clearance at the bottom of the barrier should not exceed 4 inches above grade, when the measurement is done on the side of the barrier facing away from the pool.



**Aboveground Pool with
Barrier on Top of Pool:**

If an aboveground pool has a barrier on the top of the pool, the maximum vertical clearance between the top of the pool and the bottom of the barrier should not exceed 4 inches.



**How to Prevent a Child from Getting
THROUGH a Pool Barrier**

Preventing a child from getting through a pool barrier can be done by restricting the sizes of openings in a barrier and by using self-closing and self-latching gates.

To prevent a young child from getting through a fence or other barrier, all openings should be small enough so that a 4-inch diameter sphere cannot pass through. This size is based on the head breadth and chest depth of a young child.



Gates:

There are two kinds of gates which might be found on a residential property. Both can play a part in the design of a swimming pool barrier.

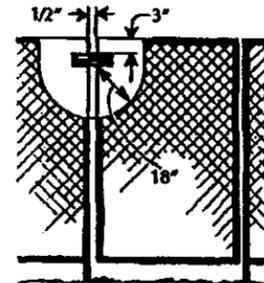
Pedestrian Gates:

These are the gates people walk through. Swimming pool barriers should be equipped with a gate or gates which restrict access to the pool. A locking device should be included in the gate design. Gates should open out from the pool and should be self-closing and self-latching. If a gate is properly designed, even if the gate is not completely latched, a young child pushing on the gate in order to enter the pool area will at least close the gate and may actually engage the latch.



When the release mechanism of the self-latching device is less than 54 inches from the bottom of the gate, the release mechanism for the gate should be at least 3 inches below the top of the gate on the side facing the pool.

Placing the release mechanism at this height prevents a young child from reaching over the top of a gate and releasing the latch.



Also, the gate and barrier should have no opening greater than 1/2 inch within 18 inches of the latch release mechanism. This prevents a young child from reaching through the gate and releasing the latch.

**All Other Gates (Vehicle
Entrances, Etc.):**

Other gates should be equipped with self-latching devices. The self-latching devices should be installed as described for pedestrian gates.