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Office of the City Administrator

PUBLIC WELFARE COMMITTEE

Tuesday, February 8, 2022

5:45 PM

Lower Conference Room

Agenda

- 1) Call to Order, Roll Call
- 2) Approval of Meeting Minutes
Action requested: review and approve
 - a. January Meeting Minutes
- 3) Ordinances
Action requested: review and recommend approval
 - a. **ORDINANCE 2022-1618** An Ordinance Creating Section 10-26 of the Mequon Municipal Code, Related to Residential Swimming Pools
- 4) Work Calendar
 - a. Work Calendar
- 5) Adjourn

Dated: February 8, 2022

/s/ Mark Gierl, Chair

Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting.

Persons with disabilities requiring accommodations for attendance at this meeting should contact the City Clerk's Office at 262-236-2914, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the City Administrator's Office at 262-236-2941, Monday through Friday, 8:00 AM – 4:30 PM



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PUBLIC WELFARE COMMITTEE

Tuesday, January 11, 2022

5:30 PM

Lower Conference Room

Minutes

1) Call to Order, Roll Call

Committee Chair Gierl reminded those in attendance to follow the rules, raise your hand when wanting to speak, and to limit your comments to 5 minutes to ensure a smooth and efficient meeting.

Present:

Chair Mark Gierl
Alderman Glenn Bushee
Alderman Kathleen Schneider

Also Present: Assistant City Administrator Schoenemann, City Attorney Sajdak, Fire Chief Bialk, Deputy Fire Chief Zellmann, Battalion Chief Boettcher, Assistant Community Development Director Zader, Building Inspections Supervisor Hadley, Alderman Mayr, Executive Assistant Enea, and Resident Schroeder.

2) Approval of Meeting Minutes

a. December Meeting Minutes

RESULT: **Approved by Voice Acclamation [Unanimous]**

MOVED BY: Alderman Schneider

SECONDED BY: Alderman Bushee

AYES: Gierl, Bushee, Schneider

3) Ordinances

Action requested: review and recommend approval

a. Pool Fence

City Attorney Sajdak provided the Committee with a new version due to some language changes. He pointed out where the changes had been made. Committee Chair Gierl then shared his research on the topic of pool covers and stated how the state statute existed before this new technology and that forward thinking communities have been updating their codes accordingly. He named numerous positives for pool covers and believed enforcement of the new ordinance could continue to be complaint-driven as pool gates that do not close are. He does not believe in maintaining the status quo and wants to make things better for residents.

Alderwoman Schneider stated that several residents are worried about fencing requirements going away because of the protection they offer to children. She inquired about the manpower needed for enforcement. Pools are inspected when they are put in, but will the city need to keep a record of every pool in Mequon? Assistant Community Development Director Zader stated that depending on when complaints are received, the enforcement officer might not get there until the next day. Also, some insurance companies will not write a policy for a pool without a fence. A discussion regarding enforceable language then ensued and the topics discussed were how far away a person supervising needed to be, what age the person supervising should be, and when the pool cover needed to be closed if not in use. Committee Chair Gierl requested City Attorney Sajdak to work on the language for February's meeting and place the ordinance on the Council's agenda for the first reading.

b. Review of City of Mequon Burning Ordinance

Fire Chief Bialk began the conversation regarding the Mequon Burning Ordinance by stating that it was created a long time ago to deal with open burning. He then turned over the conversation to Battalion Chief Boettcher who had researched other area ordinances on the topic. The Fire Department presented an updated ordinance with grills being allowed at 10 feet from a structure and patio hearths/outdoor fireplaces to be allowed at 20 feet from a structure. The Committee decided to change the Fire Department's camp fire suggestion of 3 feet to 4 feet since fire pits that can be purchased have a standard size of 4 feet.

RESULT: Approved as Amended [Unanimous]

MOVED BY: Alderman Schneider

SECONDED BY: Alderman Bushee

AYES: Gierl, Bushee, Schneider

4) Discussion Items

a. Arch Board Membership

The Architectural Board currently has 23 members. It was recommended by Mayor Wirth and Community Director Tollefson to decrease it to 7 members and 2 alternates. No more than 2 members can be from the same aldermanic district. The Committee voted on this change. Staff will come back for further discussion on other changes.

RESULT: Approved by Voice Acclamation [Unanimous]

MOVED BY: Alderman Schneider

SECONDED BY: Alderman Gierl

AYES: Gierl, Bushee, Schneider

5) Information Items

a. Work Calendar

Next month, pool fencing will be further discussed.

6) Next Meeting Date and Time

February 8, 2022 at 5:30 P.M.

7) Adjourn

Alderman moved to adjourn at 6:43 P.M. and Committee Chair Gierl seconded.

Respectfully Submitted,

Carrie Enea
Executive Assistant



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Office of Community Development

TO: Public Welfare Committee
FROM: Kim Tollefson, Director of Community Development
DATE: February 8, 2022
SUBJECT: ORDINANCE 2022-1618 An Ordinance Creating Section 10-26 of the Mequon Municipal Code, Related to Residential Swimming Pools

Background

The City presently adopts the Uniform Building Code with respect to the installation of swimming pools. The State Code presently requires fences for all non-temporary pool installations. Recently, a resident approached the Public Welfare Committee to request that the City consider amending the Municipal Code to allow for automatic pool covers in lieu of fences for residential pools. Following discussion at its December meeting, the Committee requested the preparation of proposed ordinance amendments to allow for these covers to be used as an alternative to a fence.

Discussion

According to the Centers for Disease Control and Prevention (CDC), drowning is the leading cause of unintentional death for 1- to 4-year-old children. Each year, nearly 300 children under age 5 drown in swimming pools. Many of these young victims could be saved if homeowners fenced in their pools completely and installed gates with self-closing and self-latching devices. For childproofing pools, the CDC follows the guidelines of the U.S. Consumer and Product Safety Commission (CPSC).¹

The CPSC published Safety Barrier Guidelines for Residential Pools, a set of guidelines written to prevent injuries and deaths around pools.² These guidelines center on keeping children from entering the pool area when unaccompanied by a supervising adult. The CPSC concludes that fences provide the best level of protection. When it considered pool covers, the CPSC notes that they would be beneficial for adding an additional layer of protection.

Notwithstanding the CPSC's recommendation, the International Code Council (ICC) and the Association of Pool & Spa Professionals (APSP) developed a set of swimming pool-related building codes called the International Swimming Pool and Spa Code (ISPSC). The 2015 version of the ISPSC allows for an automatic pool cover in lieu of a fence for all inground pools and spas.³ As of 2019, 10 states have adopted the ISPSC for use state-wide and 10 states have adopted the ISPSC for use as determined by local authorities.⁴ Wisconsin has not adopted the

¹ <https://www.cdc.gov/nceh/publications/books/housing/cha14.htm>

² <https://www.poolsafely.gov/wp-content/uploads/2017/08/Safety-Barrier-Guidelines-Pub-2017.pdf>

³ <https://codes.iccsafe.org/content/ISPSC2015/chapter-3-general-compliance>

⁴ <https://www.iccsafe.org/wp-content/uploads/April-2019-APSP-ISPSC-Adoption-Sheet-Map-002.pdf>

ISPSC in any capacity for state-wide use. With that said, there are a handful of municipalities across the state of Wisconsin that have allowed for automatic pool covers.

To be clear, staff's recommendation is that pool covers alone should not be allowed. The available data shows that fences provide the best level of safety in all circumstances. Further, enforcement becomes a challenge. With a fence, it is easy to determine whether the fence is solid and without gaps, whether the gate has closed and/or whether the latch is working. With pool covers, there is significant grey area. Certainly, it can be determined whether the cover is operation or not, just as you can determine whether the latch works. However, the latch is required to be self-locking – it works automatically. A pool cover does not close automatically. It needs to be operated by the physical controls. Accordingly, staff cannot ensure that the cover is actually used. An owner could install the cover and then proceed to leave it open 24-7, which provides zero protection from drownings. The proposed ordinance includes the requirement of additional safety measures when using a cover, but these safety measures are designed to be secondary to physical access restrictions like a fence.

Attempts to include operational requirements are also difficult to enforce. For example, the City could require the cover to be closed when there is no adult present to supervise the pool. Or establish a time threshold — it needs to be closed when there is no use of the pool for more than 15 minutes. But each of these restrictions is impossible to enforce. If a neighbor calls and says there is no adult present, staff would need to physically observe the lack of an adult before a citation could be issued. Between the time of the call and the time staff could arrive, the presence of an adult would likely change. Or what if the owner of the pool says they are supervising by watching from inside the house through a window.

One part of the discussion from December's meeting addressed situations where a pool has a fence on three sides but uses the wall of the residence for the fourth enclosing side. One of the purposes of regulating pool safety is to prevent neighboring children from drowning by being drawn to an unattended pool (the so-called attractive nuisance). However, recognize that one CPSC study found that some 75% of incidents involve pools owned by the victim's family. Accordingly, the proposed ordinance also includes language addressing this circumstance and requires additional safety features to address the risk posed in these circumstances.

The CPSC acknowledges that “[b]arriers are not childproof, but barriers do provide layers of protection for a child when there is a lapse in adult supervision.” Therefore, the City's Code should ensure that there are appropriate levels of protection surrounding a pool for children. Because fences appear to provide the best protection, the proposed ordinance defaults to requiring a fence. However, it also provides the opportunity to utilize a powered pool cover provided that the pool is also equipped with an alarm and one additional safety measure. Lastly, irrespective of any local codes, remember that subdivision covenants and homeowner's/liability insurance requirements may dictate more stringent protection than Mequon's Municipal Code requirements.

Update - February

Following the Public Welfare Committee meeting in January, the proposed ordinance reflects the two changes that were highlighted during the meeting. First, the proposed ordinance now has the standard form of an ordinance instead of having just specific code language for review.

Second, with respect to pool covers (Section (d)(3) of the proposed ordinance), a change was made to require the cover to be closed when the pool is not actively in use by swimmers or, if not actively in use, where there is a responsible individual within 15 feet of the pool. This would address situations raised by the Committee where either (a) there are teenage children using the pool without adult supervision and (b) where the pool is being “used” for aesthetic or other purposes (e.g., where a party is being held on the property, but nobody is actively swimming because they are eating, sunbathing, relaxing, etc.) but is still supervised. As discussed before the Committee, this language creates difficulty when it comes to enforcement. Identifying whether a “responsible individual” is present at any specific point in time is virtually impossible, which makes the requirement effectively aspirational as opposed to something that can be enforced. Staff continues to believe that fencing is the best alternative.

Recommendation

A recommendation is forthcoming from the Public Welfare Committee on February 8, 2022.

COMMON COUNCIL
OF THE
CITY OF MEQUON

ORDINANCE 2022-1618

An Ordinance Creating Section 10-26 of the Mequon Municipal Code, Related to Residential Swimming Pools

RECITALS

A. The Common Council previously adopted the Wisconsin Uniform Building Code which, among other things, regulates the installation of swimming pools.

B. According to the Centers for Disease Control and Prevention (CDC), drowning is the leading cause of unintentional death for 1- to 4-year-old children - each year, nearly 300 children under age 5 drown in swimming pools.

C. The Common Council, having reviewed the regulations related to such installations, has determined that the City should adopt specific standards related to the installation of residential swimming pools to allow for the use of automatic safety covers in lieu of fences.

D. The regulation of the installation of residential swimming pools furthers the health, safety and welfare of the community.

BASED UPON THE FOREGOING RECITALS, the Common Council of the City of Mequon, Wisconsin, do ordain as follows:

SECTION I

Section 10-26 of the Mequon Municipal Code is created to read as follows:

10-26 - Residential Swimming Pools.

No person shall construct, install or enlarge a residential swimming pool not enclosed in a permanent building within the city except in accordance with the following regulations.

(a) Definitions.

(1) "Swimming pool" means any depression in the ground, either temporary or permanent, or a container of water, either temporary or permanent and either above or below the ground, in which water more than 18 inches deep is contained and which is used primarily for the purpose of bathing or swimming. "Swimming pool" includes a spa, hot tub, and

temporary pool unless otherwise specifically excluded within this section.

(2) "Temporary pool" means any swimming pool that has a surface area of less than 314.159 square feet (20-foot diameter) which is installed for any length of time less than four (4) months, and which is installed after May 1 and removed by September 30 in the same year.

(3) "Power safety cover" means a barrier which can be placed over the water area of a pool and removed with a motorized mechanism actuated by a suitable control mechanism that provides a high level of safety for children under the age of five by inhibiting their access to the water and is certified to meet the standards of American Society for Testing and Materials (ASTM) specification 1346-91.

(4) "Decorative" as applied to fences means that a fence is made of PVC, wrought iron, or aluminum pickets, or is a painted or stained shadow-box or board-on-board type fence, or similar design as approved by the Department of Community Development. Decorative shall not include chain link, snow or other temporary fencing.

(5) "Responsible individual" means a person that is at least 15 years of age.

(b) Permit.

(1) Required. No person shall construct, install, enlarge or alter any private swimming pool unless a permit therefore has first been obtained from the Building Inspector. A temporary pool shall be exempt from this permit requirement.

(2) Application. The following information shall be required:

- a. Survey or accurate drawing of the property, in duplicate, showing all existing structures, proposed swimming pool or spa location, fencing if required, and overhead or underground electrical wiring.
- b. Type of pool installation, above ground or in-ground.
- c. Pool height above highest point of grade if above ground installations.
- d. Type and height of fence, if proposed.
- e. Type and support of decking, if proposed.
- f. Type and location of safety features to be installed, if proposed.

- g. Overall size and locations of the above in regard to existing buildings and lot lines for property survey reference.
- h. Any change in finished grade near pool.
- i. County Health Department approval for properties using a private septic system, where applicable.
- j. Site inspection letter from a local wiring utility.
- k. Two (2) copies of brochure which shows the type, style, etc. of the swimming pool and safety features to be installed.

(c) Construction Requirements.

- (1) No swimming pool shall be located, erected, constructed or maintained within any front yard or closer to any side or rear lot line than allowed by Chapter 58 for permitted accessory structures, and the waterline of any swimming pool shall not be less than 4 feet from any lot line, wall, fence, structure or building.
- (2) No connection shall be made to the sanitary sewer or septic system.
- (3) Gaseous chlorination systems shall not be used for disinfecting swimming pool waters.
- (4) Swimming pools shall be located from well and septic systems in accordance with the Wisconsin State Plumbing Code, Wis. Admin. Code § SPS 383.

(d) Fences or Other Safety Measures.

- (1) All non-temporary swimming pools not enclosed within a permanent building shall be completely enclosed by a decorative fence of sufficient strength to prevent access to the swimming pool, not less than four (4) feet in height and so constructed as not to have voids, holes or openings larger than four (4) inches in one dimension. No fence shall be located, erected, constructed or maintained closer than four (4) feet to a swimming pool. Gates or doors shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use. Latches shall be located at least three (3) feet above the ground, accessible deck or stairs. Temporary non-decorative fencing may be approved by the Department of Community Development for a period not to exceed 30 days where necessitated by construction and or

safety concerns.

(2) The wall of the house or building facing a swimming pool may be incorporated as a portion of the fence required under paragraph (1) above provided that the swimming pool is equipped with at least one of the following:

- a. Removable mesh fencing that meets the standards of ASTM Specification F2286 in conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.
- b. Exit alarms on all doors within a residence that provide direct access to the swimming pool or spa. The exit alarm may cause either an alarm noise or a verbal warning, such as a repeating notification that “the door to the pool is open.”
- c. A self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor on all doors of a residence providing direct access to the swimming pool or spa.

(3) In lieu of a fence under paragraph (1) above, a swimming pool may utilize a power safety cover provided that such cover is in working order, is closed at all times where the pool is not in use by swimmers or not under the supervision of a responsible individual that is outside and within fifteen (15) feet of the pool, and that the pool is also equipped with:

- a. An alarm that, when placed in a swimming pool or spa, will sound upon detection of accidental or unauthorized entrance into the water. The alarm shall meet and be independently certified to the ASTM Standard F2208 “Standard Safety Specification for Residential Pool Alarms,” which includes surface motion, pressure, sonar, laser, and infrared type alarms. A swimming protection alarm feature designed for individual use, including an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water, is not a qualifying drowning prevention safety feature.
- b. And at least one of the following:
 - i. Removable mesh fencing that meets the standards of ASTM Specification F2286 in conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.
 - ii. Exit alarms on all doors within a residence that provide direct access to the swimming pool or spa. The exit alarm may cause

either an alarm noise or a verbal warning, such as a repeating notification that “the door to the pool is open.”

- iii. A self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor on all doors of a residence providing direct access to the swimming pool or spa.

(4) Above ground swimming pools with platforms and railings that are four (4) feet or more in height above ground and temporary pools are not required to be enclosed as provided in paragraph (1) above; however, all ladders and stairways providing access to such swimming pools shall be removed from the swimming pool or shall be adequately fenced and fitted with gates or folded up and locked to prevent entry when the swimming pool is not in use.

(5) Spas and hot tubs are exempt from the fence requirement under paragraph (a) above provided that such spa or hot tub has a locking safety cover which is certified to meet ASTM specification 1346-91 and which shall be in place and locked when the hot tub or spa is not in use.

(e) Electrical Requirements. All electrical installations shall require separate permits and shall be governed by the City or State Electrical Code.

(f) Pool Lights. If overhead flood or other artificial lights are used to illuminate the swimming pool at night, such lights shall be shielded to direct light only on the swimming pool.

(g) Swimming Pool Decks. All decks shall be constructed in accordance with the Uniform Building Code. Decking shall be considered an integral part of the swimming pool and shall comply with the applicable setback dimensions per the local zoning code.

(h) Drainage. In no case shall any swimming pool be drained onto lands of property owners other than the owner of the swimming pool. Drainage from said lot shall be in accordance with city code.

(i) Use of Swimming Pool. No swimming pool shall be so operated as to create a nuisance, a hazard or an eyesore or otherwise to result in a substantial adverse effect on neighboring properties.

SECTION II

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION III

All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION IV

This Ordinance shall become effective the day after its publication as provided by law.

Approved by: John Wirth, Mayor

Date Approved: February 8, 2022

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on February 8, 2022.

Caroline Fochs, City Clerk

Published: _____



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Office of Administration

TO: Public Welfare Committee
FROM: Justin Schoenemann, Assistant City Administrator
DATE: October 6, 2021
SUBJECT: Work Calendar

Month	Agenda Topics
January	• Pool Fencing • Firepit Distance / Burn Ordinance • Architectural Board Review
February	• Pool Fencing
March	• Bee City Designation • Bird City Designation • Tree City Designation

Future Agenda Topics

• Architectural Board Review • Composting Plan (Continued) • Chapter II, Article IV Review (Continued) • Adopt-A-Median Program • Community Outreach Initiatives • Home Program Review/Renewal	• Nuisance Ordinance Review • Logo Redesign/Branding • Home Irrigation Systems (Fall 22)
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2021 - 2022 Completed Items

• Firepit Distance Requirements from a Structure • Architectural Board Membership • Electronic Meetings Ordinance • Polling Sites • Home Irrigation Systems • Redistricting	• Tree Trimming & Wood Retention • Chapter II Article II • Subdivision Ordinance Amendments • Political Signs Ordinance • Chickens Ordinance
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