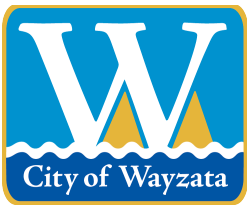




**Wayzata City Council Workshop Meeting Agenda
Wayzata City Hall Community Room, 600 Rice Street
TUESDAY, JANUARY 7, 2020**

WORKSHOP TOPICS FOR DISCUSSION:

1. Discuss Wayzata City Code § 810.05 Regarding Swimming Pool Safety Covers and Fences **(6:15 p.m.)**
2. **Discuss Lake Effect/Panoway on Wayzata Bay Phasing and Logistics Plan (6:30 p.m.)**



City Council Workshop City Council Agenda Report

MEETING DATE: January 7, 2020	WORKSHOP AGENDA ITEM: 1.
TITLE: Discuss Wayzata City Code § 810.05 Regarding Swimming Pool Safety Covers and Fences (<u>6:15 p.m.</u>)	
PREPARED BY: Nick Kieser, Assistant Planner	
REVIEWED BY: Emily Goellner, Community Development Director, Jeff Dahl, City Manager	

DISCUSSION OBJECTIVE:

Staff is looking for direction on the three options below:

1. Make no changes to the code;
2. Add an option to allow pool covers that meets the American Society for Testing and Material; or
3. Add a condition that all properties need a pool fence, except properties zoned R-1A, which have the option to utilize a pool cover in place of a pool fence.

Ultimately, if the Council wants to pursue code amendments, it will need to follow the appropriate approval process.

BACKGROUND:

Byron Hixon, property owner at 236 Central Avenue South, presented a request at the November 19, 2019 City Council meeting to consider an amendment to Wayzata City Code § 810.05. The proposed change would allow a safety pool cover to surround a residential pool instead of (or in addition to) the current requirement for a five-foot tall safety fence. Mr. Hixon presented research of different communities that allow a pool cover instead of a pool fence and Council decided to discuss this option at a subsequent workshop.

Many of the communities that Mr. Hixon listed in his request are rural communities that provide the option to either use a pool cover or fencing. Attached to this report is a more detailed summary about the requirements of these communities. Staff also completed research of the requirements of more nearby communities with a more suburban character, which is also attached. Cities such as Plymouth, Maple Grove, Minnetonka, Golden Valley, Shorewood, Excelsior, Tonka Bay, and Hopkins require pools to be enclosed in at least a four-foot tall fence with self-latching gates. These cities listed have similar wording in their Code for the fence requirement. From this research, there appears to be a slight correlation between the average residential lot size in and this safety requirement. The rural or exurban communities with larger lots provided the option for a pool cover, most likely because the lack of close proximity to one's neighbor can reduce the risk of accidents. The suburban communities studied have neighborhoods with a variety of lot sizes, but most of these communities include historic neighborhoods with lots less than 10,000 square feet in size.

The communities that allow the option for a pool cover state that the covers must meet the standards of the American Society for Testing and Materials (ASTM). ASTM is a third-party international organization that develops various standards, such as, pool cover safety standards. All the communities that allow pool covers use the ASTM safety standards. The ASTM pool cover safety standards are based on weight support, pool cover pass-through test, and a surface drainage test. These tests ensure that the pool cover can support the weight of multiple people, objects and people cannot pass through the pool cover, and that large amounts of water do not collect on the pool cover.

The discussion of allowing a pool cover has been addressed in different communities around the nation. A

court case involving the City of North Oaks, MN was reviewed by the Minnesota Court of Appeals (Gregory Frandsen, et al. v. City of North Oaks, 2013). Three residents of North Oaks wanted the option to have a pool cover instead of a pool fence for their safety requirements. The Court found that the City's requirement for a pool fence while excluding the option for a pool cover was a rational decision. The issues of a pool cover that were brought up in this case included mechanical failures, human errors, and enforcement issues. The pool cover could malfunction or the owners could forget to cover the pool when it is not in use. Covering the pool when not in use would be difficult for staff to enforce.

Mr. Hixon was issued a permit for the pool on his property on May 3, 2018. He is currently in violation of this Section of Code. City staff initially provided additional time for Mr. Hixon to comply with Code as he researched fencing options. Mr. Hixon is aware that if the Code is not amended, City staff will begin the Code enforcement process in early 2020.

ATTACHMENTS:

1. Pool Fence Research
2. Mr. Hixon's Request Packet

Nearby Community's Fence Requirements

Plymouth:

Requires five-foot tall fence with self-latching gates.

Maple Grove:

Requires four-foot tall fence with self-latching gate.

Minnetonka:

Requires five-foot tall fence with self-latching gate.

Golden Valley:

Requires four-foot tall fence with self-latching gate.

Mound:

Requires five-foot tall fence with locked gates or automatic pool cover that meets standards of ASTM F1346-91.

Shorewood:

Requires four-foot tall fence.

Eden Prairie:

Requires four-foot tall fence with self-latching gates.

Excelsior:

Requires four-foot tall fence with self-latching gates.

Tonka Bay:

Requires four-foot tall fence with self-latching gates.

Hopkins:

Requires four-foot tall fence with self-latching gates

Carver:

Requires five-foot tall fence.

Mr. Hixon Community Research

Afton

Fencing at least five feet in height shall completely enclose all pools

Bayport R1 only

Only in R1 can a pool cover be used, all other residential areas need a fence.

Belle Plain Twp

Requires a four-foot tall fence or pool cover.

Belgrade

Not found.

Buffalo

Above ground pools need a four-foot tall fence. For below ground pools, an ASTM certified pool cover can be used.

Cedar Lake Twp

Follows Scott County requirements. Required to have an automatic pool cover or four-foot tall fence.

Credit River Twp

Follows Scott County requirements. Required to have an automatic pool cover or four-foot tall fence.

Dahlgren Twp

Not found.

Deephaven

Must have a six-foot tall fence or natural screening that is 50% closed around the pool.

Dover

Not found.

Empire Twp

Requires a five-foot tall fence with self-latching gates with an exception for the Agricultural Preservation Zoning District where you can have an automatic pool cover.

Elko New Market

No requirements for single-family residences. "Adequate screening" shall be used for multi-family residences.

Faribault

Requires a four-foot tall fence or a lockable pool cover.

Foley

Requires “fencing that prohibits unauthorized entry”.

Gilman

Requires “fencing that prohibits unauthorized entry”.

Grant Twp

Not found.

Greenfield

Requires a four-foot tall fence or automatic pool cover.

Hanover

Requires a four-foot tall fence or automatic pool cover.

Helena Twp

Follows Scott County requirements. Required to have an automatic pool cover or four-foot tall fence.

Holdingford

Not found.

Hudson Twp

Not found.

Independence

Requires a four-foot tall fence or automatic pool cover.

Inver Grove Heights

Requires a four-foot tall fence or automatic pool cover.

Jackson Twp

Follows Scott County requirements. Required to have an automatic pool cover or four-foot tall fence.

Louisville Twp

Follows Scott County requirements. Required to have an automatic pool cover or four-foot tall fence.

May Twp

Requires a five-foot tall fence or pool cover.

Medina

Requires a four-foot tall fence or pool cover.

Minnetrista

Requires a four-foot tall fence or pool cover.

Minnetonka Beach

Requires a four-foot tall fence or pool cover.

Mound

Requires a five-foot tall fence or pool cover.

New Market Twp

Follows Scott County requirements. Required to have an automatic pool cover or four-foot tall fence.

Northfields

Requires a four-foot tall fence or pool cover.

Oakgrove

Not found.

Orono

Not found.

Randolph Twp

Requires a fence or pool cover.

Rice

Not found.

Rochester

Requires a five-foot tall fence or pool cover.

Rockford

Requires a four-foot tall fence or pool cover.

Rogers

Requires a four-foot tall fence or pool cover.

Sand Creek Twp

Follows Scott County requirements. Required to have an automatic pool cover or four-foot tall fence.

Sartell

Requires a four-foot tall fence or pool cover.

Scandia

Requires a four-foot tall fence or pool cover.

Spring Lake Twp

Follows Scott County requirements. Required to have an automatic pool cover or four-foot tall fence.

St. Augusta

Requires “fencing, screening, or other enclosure of sufficient density as to be impenetrable”.

St. Croix Falls

Requires a six-foot tall fence or pool cover.

St. Lawrence Twp

Follows Scott County requirements. Required to have an automatic pool cover or four-foot tall fence.

Stillwater Twp

Requires a fence or pool cover.

West Lakeland

Requires a fence or pool cover.

Proposal & Request for Amendment

of

Wayzata City Code 810.05

by

Byron Hixon
236 Central Ave. S
Wayzata

Esteemed members of Wayzata City Council,

Allow me to introduce myself. My name is Byron (Bo) Hixon. I'm a new resident of Wayzata as of last October, having recently moved into a new home on Central Avenue South. We moved in late last fall and have really enjoyed the city and our location within it.

We were lucky enough to build next door to some of our great friends, and share all that the area has to offer. As we finished off the home and moved in this past summer, we had the opportunity to put in a pool. Through the course of that adventure, I've become driven to request a review of one of the city codes. If you'll indulge me with a few moments to explain, I think you'll have a better picture of why I'm coming to you and why I feel some changes should be considered.

My situation is dealing specifically with the requirement for fencing around a private pool. Ours was finished last year, when the ground had frozen. We were unable to get a fence installed and decided to wait till the spring. As I got bids, we began to receive conflating information with regard to what was actually required. Complication was added to this based on the layout of our backyard and it's retaining walls (i've attached pictures to clarify). We weren't terribly worried about safety at that point as not only was everything frozen shortly after completion of the project, but we had also installed an in-ground cover, completely sealing the pool. As I longingly stared out my back window at my as yet unused pool, I started asking myself some questions and thinking through my spring landscaping plan. One of the biggest questions that came to mind was why we were required to build a fence when we have what is a proven safety device with the built in cover?

We've worked with Performance Pools, a company with a long and extensive pool building resume. On Previous pools I'd owned, we had always used a similar system, commonly referred to as an "auto cover." Performance Pools also installs many of these, choosing to use Coverstar products. These covers are highly regarded and respected as they are UL certified, and meet ASTM (American Society for Testing and Materials) standards for pool covers. While I

could easily delve into the depths of what this means, I'm sure that the terms "UL" and "ASTM" are familiar to you with the work you do. Just in case, you'd like more information on the specifics of these covers, it can be found at this link: [Coverstar ASTM standards](#).

What do all these ratings and standards mean? The takeaway from all these government and society approvals is this. The covers are very strong and nearly impossible to get through without a key. They leave no openings or access to the pool or to a way to manually open the cover. When not in the pool, the owner simply closes the cover and the pool is sealed. They're designed to withstand multiple hundreds of pounds placed upon them without tearing or opening. Think about a small family standing on it with no problem.

So the first question likely in your mind is, "Why a cover and not just a fence?" There are multiple facets to that answer.

- 1) A cover completely seals the pool vs. a fence simply enclosing it. There is no access in any way to the pool without the owner present. As the code stands now, someone could build a fence leaving the pool open. While the code does specify certain details, (example: the fence should be "unclimbable") there is always the chance that a "self closing" gate or a section of the fence breaks or leaves some level of accessibility to an open pool. This is a hazard.
- 2) The cover saves money in the end. Depending on the size of yard, the cost of the cover is often less than that of a fence. We had multiple quotes to install a fence around this pool. They varied from as low as \$8,000, to as high as \$24,000. The additional cost of the auto cover ranges between \$3,500 and \$6,000.
- 3) The cover lowers maintenance costs for owners. Debris doesn't get in as easily.
- 4) Potential cost savings to the city. As of now, homeowners need to apply for a fence permit, install the fence, have it inspected and signed off. During inspection the inspector must take time to verify the fence meets the requirements. The potential exists that when someone requests a permit to build a pool, they simply include the bid showing the auto cover included. Now when the

inspector comes, a quick glance to see that it closes all the way is all it would take.

- 5) Reduce the number of fence variance applications due to differences in fence height requirements for pools vs. what is allowed in a front yard.
- 6) Maintaining sense of community by not separating neighbors from each other.

I started talking with my pool company, and being as experienced as they are, they were able to pull some information for me regarding surrounding cities and municipalities and how they deal with this same subject. I took the time to do a little deeper research into what the code for other cities/municipalities actually says. I realize that the time and cost that goes into changing a city code is likely immense, and wanted to see if there were simple options, simple wording changes that could be employed to the benefit of residents wanting to build a pool in the future.

The following is a list of cities that allow an owner to have a built in cover in lieu of a surrounding security fence. I've marked a few that caught my eye and are nearby. I've also taken the liberty of looking up the specific wording of their code as reference. I feel that many of these would meet the needs of our city, and still maintain the level of safety desired.

Afton

Bayport R2 only

Belle Plaine Twp

Belgrade

Buffalo

Cedar Lake Twp

Credit River Twp

Dahlgren Twp

Deephaven

City of Deephaven code 1310.10 Subd. 2 "Swimming pool standards"

(d)Any application for a swimming pool, spa or hot tub must include provisions for screening in the form of a fence or other natural screening, or a combination of the two, not less than 50% closed and at least six feet in height, to be erected along each property line abutting adjacent residential properties and/or adjacent streets and extending a minimum distance equal to the length of the pool decking or the length of the pool itself if no decking will be installed.

[\(Click here for link to City of Deephaven Code\)](#)

Dover

Empire Twp

Elko New Market

Faribault

Foley

Gilman

Grant Twp

Greenfield

Hanover

Helena Twp

Holdingford

Hudson Twp

Independence

Inver Grove Heights

Jackson Twp

Louisville Twp

May Twp

Medina

City Of Medina Code 800.11 Safety Fence or Automatic cover Required

Subd. 2As an alternative to a safety fence, **an automatic pool cover may be utilized** if it meets the standards of F1346-91 (Reapproved 1996) of ASTM, as such standards may be modified, superseded or replaced by ASTM.

[\(Click here for link to Medina City Code\)](#)

Minnetrista

City of Minnetrista Code 505.07 Subd. 9 Accessory Structures and Uses

(d) Swimming Pools. Where noncommercial swimming pools are constructed as accessory structures in residence districts, a four- foot high safety fence with self-closing and self-latching gates **or an automatic pool cover** is required, except in the AP-agriculture preservation and A-agriculture zoning districts. The automatic pool cover shall meet the standards of F1346-91 of the American Society of Testing and Materials (ASTM), as such standards may be modified, superseded or replaced by ASTM. Fences shall be identified on the survey and submitted with the building permit application. It shall be the responsibility of the building permit applicant and property owner to submit materials ensuring compliance with the ASTM standards for an automatic pool cover prior to the issuance of a building permit. Compliance with the ASTM standards shall be shown with the building permit application for the pool. Any person violating this ordinance shall be guilty of a misdemeanor.

[\(Click here for link to Minnetrista City Code\)](#)

Minnetonka Beach

City of Minnetonka Beach Chapter 5.3.D (20) e.ii

(e) All below ground swimming pools shall include one of the following safety barriers:

(ii) Automatic (Powered) Safety Pool Cover

Automatic pool covers shall meet the standards of F1346-91 of the American Society of Testing and Materials (ASTM), as such standards may be modified, superseded or replaced by ASTM. Manually assembled or positioned safety pool covers shall not suffice as a required pool barrier. It shall be the responsibility of the building permit applicant and property owner to submit materials ensuring compliance with the ASTM standards for an automatic pool cover prior to the issuance of a building permit. Compliance with the ASTM standards shall be shown with the building permit application for the pool.

[\(Click here for link to Minnetonka Beach City Code\)](#)

*Mound
New Market Twp
Northfields
Oakgrove*

Orono

According to city employees, not even in city code. After much research, including a trip to the city offices, the city chooses to let home owner insurance dictate need for a pool enclosure.

*Randolph Twp
Rice*

Rochester
Rockford
Rogers
Royalton
Sand Creek Twp
Sartell
Scandia
Spring Lake Twp
St. Augusta
St. Croix Falls
St. Lawrence Twp
Stillwater Twp
West Lakeland

In addition to cites
All rural Scott county
Sherburn county
Wright county
Sterns county

And all townships surrounding Hudson Wisconsin (Troy, Hudson township, St Joseph, Riverfalls township, north Hudson, Hammond).

So as you can see from above, there are many that approve of the practice of using a cover such as mine in place of the fence. In fact there are some that while not included on the list, (Plymouth for example) use the language:

"Fencing Requirements. Fencing or other effective means, including but not limited to walls or buildings, shall be provided to positively control all access to Private Residential Pools."

As you can see from the code examples above, it is VERY common for many municipalities to accept this type of cover. They've clearly done the research, and I'm hoping that Wayzata can piggyback off of that work to make changes to the code that is beneficial to our residents. It's clear that we can do this without sacrificing safety, aesthetics, and cost.

For us personally, we really want to maintain an open feel to our backyard. Our lot tapers toward the back and the fence would make it feel closed off. As I said before, we were lucky enough to go through our building project next door to very good friends, and have had the vision since day one that we'd share a large, open outdoor living space in our backyards. A fence of 5' would very much hinder our sense of community with our friends, and make our lot feel far more closed off than we desire.

So this brings me to my question. Can we get the City of Wayzata to adopt an outlook similar to other surrounding municipalities? Keep in mind that as the rules stand now, I could install a pool, put up a fence and leave the pool uncovered all summer. While the city code does state very specific fence/gate requirements, there is still the risk of a child or animal getting in for multiple reasons such as lack of owner maintenance of the fence/gate, the ability to climb over the fence, or even the option of simply becoming tall enough (in the case of children) or being tall enough to open the gate. In contrast, the only way to get in past my cover is to have the key. Naturally the question arises, "what if the owner leaves the pool open and walks away?"

This is a valid question that I would counter with the fact that an owner without a cover and just a fence is leaving it open all the time, and could likely have a faulty gate or maybe even have it propped open. There are a million scenarios that could come up but the simple fact is that with a built in cover, the pool is sealed and closed when no one is monitoring it. Quite honestly in my brief experience with mine, I've found it easier to close it even when walking away briefly simply to keep falling debris out of my pool.

So what am I asking for with all this?

We would like to see approval for those that have built in covers to be exempt from the fence requirement or at least have the ability to apply for a variance.

As I'd like to do my best to bring solutions to the table, option two would be for the city to consider allowing what's commonly referred to as a mesh barrier. These are semi-permanent barriers meet the height and opening restrictions that are the same as a permanent fence and also meet ASTM standards. The primary difference is that the fence can be removed as needed. Holes are drilled into the concrete around the pool. Posts are then inserted and locked together at the top, making them rigid and securing the pool, but still allowing the option to remove it when so desired. Keep in mind even with it removed, (in our case) the auto cover would still be in place sealing the pool. I've included pictures of this option below. If the council feels that my first given request is unsatisfactory, perhaps this could be another way to solve for a positive change and evolve with surrounding communities.

As I submit this request, I've tried to ask myself the same questions that the City Council will likely have.

- 1) Are we maintaining safety if we make these changes?
- 2) Are the changes within reason as it relates to cost to the taxpayer?

While I can't speak to number 2, I can honestly say that the answer to number one is a solid "YES." If nothing else, this is supported by the fact that so many other towns have accepted it as a safe solution.

At the end of the day, I consider myself a good citizen and resident of Wayzata and will do what I need to do in order to abide by the rules. I hope that sometime soon the city can look at this potential change as a positive for both the residents and the administration. Safety is my number one concern. I welcome any feedback and recommendations as to things I can do as a solution oriented resident to assist in the process of this change happening. I'd even be interested and willing in coming in on my own time to assist the city with any work associated with researching and/or making these requested changes.

Attached to this email are some pictures of some of the things i've referenced, but I'd be happy to provide more data/documentation if you so desire.

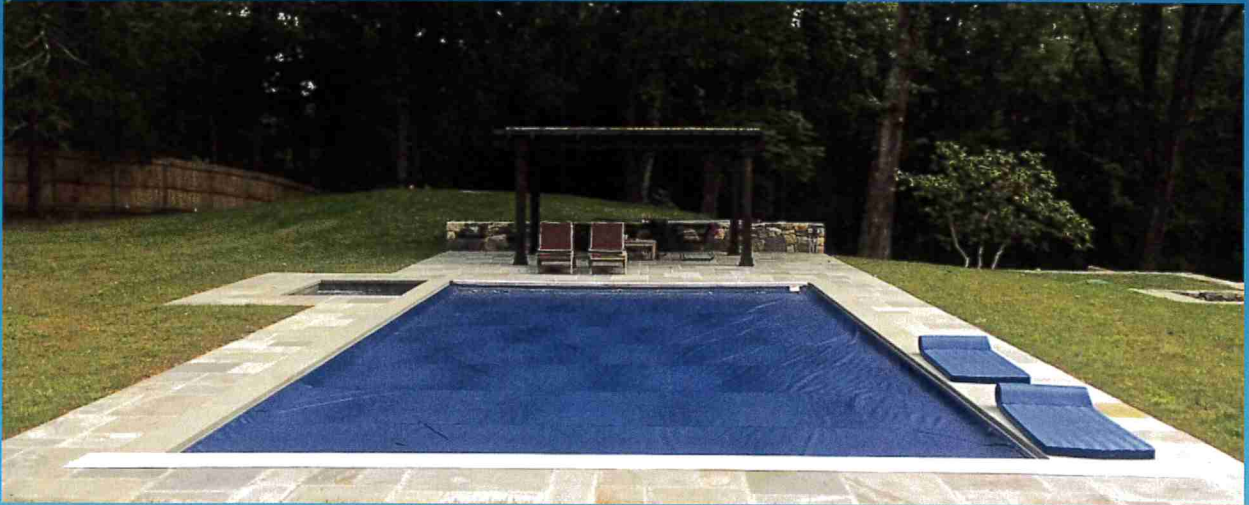
I know that yourselves, as well as the other members of the team running our city are very busy. This is likely a small plate on a big table thats likely very full, but nonetheless, I greatly appreciate your consideration. I plane to introduce myself in person to the city council at a meeting this month, likely on the 19th pending my work schedule. I will also be dropping off a hard copy of this document prior to the above referenced meeting. In the meantime, please feel free to contact me at any time with questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Byron Hixon', with a stylized, cursive script.

Byron Hixon

ATTACHMENTS



Above, you have an example photo of what a pool with an auto cover looks like fully sealed. Note that aside from the hot tub (in this generic example) the entire pool is sealed. There is NO access to the water.



In this photo at left, you can see that the covers are incredibly strong, supporting the weight of multiple adults and children while maintaining a sealed pool.

In the photo to the right, you can see the covered switch with key access. The only way to activate the switch is with the key, and thus this is the only way to open the pool.

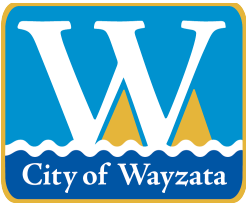


Model 4.5XCNN36



At left is an example of a semi-permanent fence looks like. Holes are drilled in the concrete and removable steel rods are inserted. These rods have the mesh barrier attached to them. The poles go next to each other and lock together at the top. Once all are connected, the structure is very rigid. It included self-closing and latching gates.





City Council Workshop City Council Agenda Report

MEETING DATE: January 7, 2020	WORKSHOP AGENDA ITEM: 2.
TITLE: <u>Discuss Lake Effect/Panoway on Wayzata Bay Phasing and Logistics Plan (6:30 p.m.)</u>	
PREPARED BY: Emily Goellner, Community Development Director	
REVIEWED BY: Jeff Dahl, City Manager	

DISCUSSION OBJECTIVE:

To receive an update on the phasing and logistics plan for the first phase of the Panoway Construction Project (Lake Street, Lake Street Plaza, and Dakota Rail Trail Regional Extension) prior to soliciting bids.

BACKGROUND:

At its December 17 meeting, the City Council approved the project plans and authorized Stahl Construction, on behalf of the City, to rebid Phase I of the Panoway Construction Project.

Stahl has delayed rebidding until late January in order to allow for additional time to collect feedback from Lake Street stakeholders (business owners, property owners, Chamber, Lake Effect Conservancy, etc.). More specifically, they have called business owners along the 600 block, walked and met with business owners along the 600 block, met with property/business owners at the bookends of the project, held an open house on Jan 7 to stakeholders, and discussed the project with other stakeholders such as the Chamber and Lake Effect Conservancy.

The original intention for this item was to provide phasing options for the Council to consider. However, Stahl has requested more time to get additional feedback from the stakeholders in order to come up with the best plan/s. So, for this revised item on the workshop agenda, Stahl will be providing a brief update of the feedback received thus far.

Generally speaking, staff wants to eliminate any potential "red flags" prior to taking this project to the market and therefore additional review by the Council will be needed in late January. Next steps will be to rebid in late January and award mid to late February for an Spring construction start.

ATTACHMENTS:

None