

WAITAKERE CITY COUNCIL

BYLAW NO. 16 1990

FENCING OF SWIMMING POOLS

(Incorporating Amendments No.1 and No.2)

The Waitakere City Council, acting in pursuance and exercise of the powers and authorities conferred on it by the Local Government Act 1974, the Bylaws Act 1910, their respective amendments, and all other powers and authorities in any way enabling it HEREBY RESOLVES by SPECIAL ORDER to make the following bylaw:-

1 SHORT TITLE

The short title of this Bylaw shall be the Waitakere City Council Bylaw No. 16, 1990 - Fencing of Swimming Pools.

2 COMMENCEMENT

This Bylaw shall come into force on the 13th day of March 1990.

3 INTERPRETATION

In this Bylaw, unless the context otherwise requires:-

“Fence” means a fence that complies with the requirements of the Schedule to this Bylaw and includes any part of a building and any gates or doors forming part of the fence; and “fenced” has a corresponding meaning.

“Gates or doors” does not include any door to which Clause 11 of the Schedule of this Bylaw applies.

“Immediate pool area” means the land in or on which the pool is situated and so much of the surrounding area as is used for activities or purposes carried on in conjunction with the use of the pool.

“Judicial officer” means any District Court Judge, justice, or Registrar of a District Court (other than a constable); but does not include any person who is a member or employee of the territorial authority.

“Owner” means the owner of a pool; except -

- (a) Where the pool is subject to a hire purchase agreement within the meaning of the Hire Purchase Act 1971, in which case it means the purchaser of the pool.
- (b) Where the pool is on premises that are not subject to a tenancy under the Residential Tenancies Act 1986 and the pool is subject to a lease or is part of premises subject to a lease, in which case it means the lessee of the pool or the premises.

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“Swimming pool” and “pool” mean an excavation, structure, or product that is used or is capable of being used for the purpose of swimming, wading, paddling, or bathing; and includes any such excavation, structure, or product, that is a spa pool.

“Territorial authority” has the same meaning as in the Local Government Act 1974.

4 APPLICATION TO EXISTING POOLS

This Bylaw shall apply in respect of any swimming pool constructed, erected, or installed before the date of commencement of the Bylaw at any time on or after the 1st day of May 1988 when the pool is filled or partly filled with water.

5 APPLICATION TO NEW POOLS

This Bylaw shall apply in respect of any swimming pool constructed, erected, or installed on or after the date of commencement of this Bylaw or at any time when the pool is filled or partly filled with water.

6 NOTIFICATION OF EXISTENCE OF POOL TO THE COUNCIL

- (1) Every owner of a pool to which this Bylaw applies when the pool is filled or partly filled with water or to which this Bylaw will apply on or after the 1st day of May 1988 when the pool is filled or partly filled with water shall comply with any reasonable requirement of the territorial authority to advise the Council of the existence of the pool.
- (2) Every person who proposes to construct or install a pool to which this Bylaw will apply when the pool is filled or partly filled with water shall notify the Council of the intention to construct or install the pool before the construction or installation commences.

7 OBLIGATIONS OF OWNER AND PERSONS IN CONTROL OF POOL

- (1) Every owner of a pool to which this Bylaw applies shall ensure that, except as provided in any exemption granted under Clause 7 of this Bylaw, the pool, or some or all of the immediate pool area including all of the pool, is fenced by a fence that complies with the requirements of the Schedule to this Bylaw at all times when this Bylaw applies in respect of the pool.
- (2) Every owner of a pool to which this Bylaw applies shall comply or ensure that there is compliance with every condition imposed under Clause 12(2) of this Bylaw.

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- (3) Every person who has possession of the property on which any pool to which this Bylaw applies is situated shall ensure that the pool is not filled or partly filled with water at any time when the person knows or could reasonably be expected to know that any obligation imposed by this section on that or any other person is not being complied with.
- (4) The fact that a person complies with any obligation imposed by this Bylaw shall not excuse that person from any other duty imposed by any other Act, Regulation or Bylaw.

8 OBLIGATION OF TERRITORIAL AUTHORITIES

The Council shall take all reasonable steps to ensure that this Bylaw is complied with within its district.

9 OFFENCE

- (1) Every person who, without reasonable cause, fails to comply with any obligation imposed by Clause 6 or Clause 7 of this Bylaw commits an offence and is liable on summary conviction to a fine not exceeding \$500.00 and, where the failure is a continuing one, to a further fine not exceeding \$50.00 for every day on which the failure has continued.
- (2) Where the owner or person entitled to possession or control of a pool to which this Bylaw applies is not entitled to possession of the property on which the pool is situated or the immediate pool area (whether because of any tenancy agreement, agreement to occupy a hotel room, motel, or camping ground, or otherwise) it shall be a defence to any proceedings for any offence described in subsection (1) of this section in relation to Clause 7 of this Bylaw if the Court is satisfied that the owner took all reasonable steps -
 - (a) To ensure that the obligation was complied with; and
 - (b) To ensure that the persons in possession of the property or entitled or likely to be in the immediate pool area are made aware of the existence of the pool.
- (3) Where any person is convicted of the offence described in subsection (1) of this section in relation to Clause 7 of this Bylaw the Court may order that the pool be drained of water and be kept empty until the pool is fenced in a manner that complies with this Bylaw or any condition imposed under section 12 of this Bylaw is met, as the case may require.

10 POWER OF ENTRY FOR COUNCIL OFFICERS

- (1) Without limiting any other powers of the Council, any officer of the Council, who has reasonable grounds to believe -

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- (a) That there is on any land within the district of the Council a swimming pool to which this Bylaw applies; and
- (b) That the pool is not fenced as required by this Bylaw or any condition imposed under Clause 12 of this Bylaw is not being complied with:-

May at any reasonable time enter on the land and carry out an inspection to determine whether or not there is on the land such a pool that is not fenced as required by this Bylaw or whether or not the condition is being complied with.

- (2) Nothing in subclause (1) of this clause shall confer on any person the power to enter any house, home unit, or apartment building unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.
- (3) Every warrant issued under subclause (2) of this clause shall be directed to a named officer of the Council and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.
- (4) Every person exercising the power of entry conferred by subclause (1) of this clause shall carry a warrant of Appointment issued by the Council and specifying:
 - (a) The name and the office or offices held by the person.
 - (b) That the person is authorised by the Council to exercise the power conferred by subclause (1) of this clause to enter the land and carry out the inspection.

11 EXEMPTED POOLS

Nothing in this Bylaw shall apply in respect of -

- (a) Any pool that has no part of the top of its side walls less than 1.2 metres above the adjacent ground level or any permanent projection from or object standing on the ground outside and within 1.2 metres of the walls, where the outside surface of the side walls is constructed so as to inhibit climbing and any ladder or other means of access to the interior of the swimming pool can be readily removed or rendered inoperable and is removed or rendered inoperable whenever it is intended that the pool not be used.
- (b) Any excavation, structure, or product, in which the maximum depth of water does not exceed 400mm.

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- (c) Any excavation, structure, or product:
 - (i) That is not used in association with any house, home unit, apartment building, school, hospital, hotel, motel, camping ground, or other similar premises; and
 - (ii) That is not modified for use, or intended to be used, for swimming, wading, paddling, or bathing.
- (d) Any pool intended to be used for wading or paddling in any place that is under the administration of the Council.
- (e) Any pool that is wholly enclosed within a building that is used principally for a purpose or purposes not related to the use of the pool.
- (f) Any pool where -
 - (i) Persons are employed and present to provide supervision of the pool whenever the pool is available for use; and
 - (ii) Access to the pool is effectively prevented by a fence that complies with this Bylaw or by locked gates or doors whenever the pool is not intended to be available for use.

12 SPECIAL EXEMPTIONS

- (1) The Council may, by resolution, grant an exemption from some or all of the requirements of this Bylaw in the case of any particular pool where the Council is satisfied, having regard to the particular characteristics of the property and the pool, any other relevant circumstances, and any conditions it imposes under subclause (2) of this clause, that such an exemption would not significantly increase danger to young children.
- (2) In granting an exemption under subclause (1) of this clause, the Council may impose such other conditions relating to the property or the pool as are reasonable in the circumstances.
- (3) Any exemption granted or condition imposed under this clause may be amended or revoked by the Council by resolution.

13 EXPIRY OF CERTIFICATES OF COMPLIANCE

All certificates of compliance issued by the Waitakere City Council or the former Waitemata City Council pursuant to any form of bylaw or enactment or any former clause of this Bylaw shall be deemed to have expired on the 1st day of August 1990 and have no further effect from that date.

14 ALTERATIONS

Every owner of a pool shall immediately notify the Council of any event or occurrence or any work which alters in any way a fence to which this bylaw applies or any structure deemed to comprise such a fence shall comply with any requirements imposed by the Council to ensure continued compliance with this Bylaw.

“SCHEDULE”

REQUIREMENTS FOR FENCES UNDER THIS BYLAW

The requirements for fences under this Bylaw shall be those stipulated in the Schedule to the Fencing of Swimming Pools Act 1987 and any amendments thereto.