

## BARRIERS FOR RESIDENTIAL SWIMMING POOLS, SPAS AND HOT TUBS

### § 8.04.060 DEFINITIONS

“**Barrier**” means a fence, a wall, a building wall or a combination thereof, which completely surrounds the swimming pool and obstructs access to the swimming pool.

“**Habitable Structure**” means any structure with electric and heat intended to be used for living, sleeping, eating, or assembly purposes including but not limited to residences, multifamily dwellings, churches, schools, food facilities and industrial buildings.

“**Hot Tub**” see definition of spa.

“**In-ground pool**” see definition of swimming pool.

“**Natural Barrier**” means a non-seasonal lake, pond or stream greater than 20 feet in width.

“**Neighboring residence**” means a one or two-family dwelling or a one-family townhouse not more than three stories in height, situated on improved property within 500 feet of a residential swimming pool.

“**Non-habitable Structure**” means any structure not identified as habitable as defined and would include but is not limited to garages, sheds, barns, and swimming pools.

“**Residential**” means that which is situated on the premises of a detached one or two-family dwelling or a one-family townhouse not more than three stories in height.

“**Spa – portable, non-portable, hot tub**” means a non-permanent structure intended for recreational bathing in which all controls, water-heating and water-circulating equipment are an integral part of the product.

“**Structure**” means the results of a man-made change to the land constructed on or below the ground, including the construction, reconstruction or placement of a building or any addition to a building; installing a manufactured home on a site; preparing a site for a manufactured home or installing a recreational vehicle or travel trailer on a site for more than one hundred eighty (180) consecutive days.

“**Swimming Pool**” means any structure intended for swimming or recreational bathing that contains water over 24 inches deep. This includes in-ground, aboveground and on-ground swimming pools, hot tubs and spas.

“**Swimming pool – indoor**” means a swimming pool which is totally contained within a structure and surrounded on all four sides by walls of said structure.

“**Swimming pool – outdoor**” means any swimming pool, which is not an indoor pool.

### § 8.04.070 INTENT AND PURPOSE:

The purpose of this Ordinance is to control and prevent nuisances of public health significance.

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### § 8.04.100 BARRIERS FOR RESIDENTIAL SWIMMING POOLS, SPAS AND HOT TUBS

#### A . INTENT AND PURPOSE:

1. The provisions of this document shall control the design of barriers for residential swimming pools, spas and hot tubs. These design controls are intended to provide protection against potential drowning and near drowning to children under the age of five (5) by restricting access to swimming pools, spas and hot tubs.

2. This Section applies to all residential swimming pools, spas and hot tubs in McHenry County unless a more stringent local Ordinance exists.

#### B. REQUIREMENTS

1. **Usage:** In no case shall a swimming pool, hot tub or spa be put into use until it is in compliance with the following requirements and any applicable building code.

2. **Outdoor swimming pool:** An outdoor swimming pool, including an in-ground, aboveground or on-ground pool, hot tub or spa, shall be provided with a barrier which shall comply with the following:

3. **Barrier:** The top of the barrier shall be at least 48 inches above grade measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be four (4) inches measured on the side of the barrier which faces away from the swimming pool. Where the top of the pool structure is above grade, such as an aboveground pool, the barrier may be at ground level, such as the pool structure, or mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be four (4) inches.

4. **Natural Barrier:** The barrier requirements are waived for the portion of the pool/spa/hot tub facing the natural barrier. On all other sides of the property, the barrier must extend to the legal (where established) or normal water level.

5. **Openings in barrier:** Openings in the barrier shall not allow passage of a four (4) inch diameter sphere.

6. **Solid barriers:** Solid barriers which do not have openings, such as a masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

7. **Barrier horizontal and vertical members less than 45 inches:** 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, spacing between the vertical members shall not exceed  $1\frac{3}{4}$  inches in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed  $1\frac{3}{4}$  inches in width.

8. **Barrier horizontal and vertical members 45 inches or more:** Where the barrier is composed of horizontal and vertical members of 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  $1\frac{3}{4}$  inches in width.

9. **Mesh size for chain link:** Maximum mesh size for chain link fences shall be a  $1\frac{1}{4}$  inch square unless the fence is provided with slats fastened at the top or bottom which reduce the openings to no more than  $1\frac{3}{4}$  inches.

10. **Barrier diagonal members:** Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall be no more than  $1\frac{3}{4}$  inches.

11. **Access gates:** Access gates shall comply with the requirements of subsections B.1 through B.10 above, and shall be equipped to accommodate a locking device. Pedestrian access gates shall open outwards away from the pool and shall be self-closing and have a self-latching device. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate,

- 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  $\frac{1}{2}$  inch within 18 inches of the release mechanism.

12. **An aboveground pool structure used as a barrier:**

- a. Where an aboveground pool structure is used as a barrier or where the barrier is mounted on top of the pool structure, and the means of access is a ladder or steps then:
  - (1) the ladder or steps shall be capable of being secured, locked or removed to prevent access or
  - (2) the ladder or steps shall be surrounded by a barrier which meets the requirements of B.1. through B.11. above.
- b. When the ladder or steps are secured, locked, or removed, any opening created shall not allow the passage of a 4-inch diameter sphere.

13. **Moat used to obtain clearance:** Where a moat is used to obtain the 48 inch clearance from ground surface to top of pool, it shall also be 48 inches from the outside rim of the moat to the top of the barrier (or rim of the pool).

14. **Prohibited locations:** Barriers shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the barriers.

15. **Exemptions:**

a. A spa or hot tub with a solid lockable safety cover which complies with ASTM F1346-91 (Replaces ES 13-89) listed below shall be exempt from the provisions of this document. Swimming pools with safety covers shall not be exempt. ASTM F1346-91 (Replaces ES 13- 89). Emergency performance Specification for Safety covers and labeling requirements for covers for Spas and Hot Tubs.

b. Swimming pools/spas/ hot tubs located greater than 500 feet from neighboring residence and that have been in existence prior to January 1, 1992 shall be exempt from all requirements of § 8.04.100, until such time that a neighboring residence is located within 500 feet of the existing swimming pool.

c. The mesh size for chain link barriers in existence prior to October 18, 1994, that are no larger than 2 ¼ inches square, providing an opening of no more than 3 1/5 inches shall be exempt from subsection B.9. above.

d. Swimming pools/spas/hot tubs that have been in existence prior to January 1, 1992 and for which there exists an occupancy certificate issued by the County after August 21, 1990. This exemption shall only apply to pools, spas, and hot tubs that have been issued an occupancy certificate under the 1990 BOCA and that continue to be in compliance with the provisions of the 1990 BOCA National Building Code.

16. **Variances:**

a. **Intent:** it is the intent of § 8.04.100 of the McHenry County Public Health Ordinance that all swimming pools, spas and hot tubs have an effective barrier to discourage access of youngsters (less than 5 years of age). However it is recognized that unique circumstances may exist that would preclude immediate compliance with all parts of § 8.04.100 for swimming pools/spas/hot tubs in existence prior to January 1, 1992.

b. **Standards for a Variance:** Variations from the regulations of this ordinance may be granted in each of the following instances:

(1) For the swimming pools/spas/hot tubs built prior to January 1, 1992, and that require measurement specifications as set forth in this Ordinance, may be granted a variance provided that the “as built” configuration does not deviate by more than 15% of the measurement specifications. The Petitioner shall be exempt from the notice requirements of subsection B.16.c. below.

(2)

(a) Furthermore, a Variance may be granted where evidence is presented and demonstrates:

i. The swimming pools/spas/hot tubs have been built prior to January 1. 1992.

ii. The swimming pools/spas/ hot tubs are located 200 feet to 500 feet from a neighboring residence or less than fifty feet from a natural barrier.

iii. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

(b) The Petitioner shall provide notice as set forth in B.16.c. below.

c. **Notice:** The Petitioner shall notify by means of certified mail-return receipt requested, all of the most recent real estate taxpayers of record of all property abutting the property designated in the petition for a variation. If said property designated in the Petition is bounded by a public road or street, alley or any other public way, such notice shall be sent to all of the most recent real estate taxpayers abutting the public road or street, alley or any other public way directly across the Petitioner's property. All such notices shall be mailed not more than thirty (30) days nor less than fifteen (15) days in advance of filing the petition for variance. The Petitioner shall file a sworn affidavit containing a copy of the notice, the 10 names and addresses of all taxpayers entitled to notice and those who received notice.

d. **Issuance and Time Period:** The Department shall review the variation petition based on the Standards for a Variance. The Department shall, within 10 days from the date of filing the petition, approve or disapprove the petition, notifying the petitioner to that effect in writing. A variance shall be valid for five (5) years.

e. **Recording:**

(1) Where a petition is approved for a variance within 10 days of said approval, the Petitioner shall file for record with the recorder's office a notice of variance which shall prescribe the following information.

- (a) Grantee(s) name – Owner(s)
- (b) Grantee(s) Address
- (c) Legal Description of the Property
- (d) Property Index Number
- (e) A statement of Variance and its Duration
- (f) Name and Address of Preparer

(2) The Petitioner shall submit to the Department a certified copy of the notice of variation within 10 days of its recording.

f. **Appeals:** Appeals may be made in accordance with Article I of the McHenry County Public Health Ordinance.

17. **Enforcement:** The Planning and Development Department and any duly authorized member or representative thereof shall enforce all of the provisions of § 8.04.100 et seq. notwithstanding, those enforcement provisions set forth in Article I of the Public Health Ordinance.

—Excerpt from the *Public Health Ordinance, Article II*, effective January 1, 2018.

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- [Go to the Public Health Ordinance web page.](#)
  - [Go to the Building Division web page.](#)