



STAFF REPORT ACTION REQUIRED

Making a Splash – Use of Condominium Pools for Swim Instruction

Date:	June 1, 2016
To:	Community Development and Recreation Committee
From:	General Manager, Parks, Forestry and Recreation City Solicitor
Wards:	All
Reference Number:	P:\2016\Cluster A\PFR\CD13-062316-AFS#22318

SUMMARY

This report responds to Motion MM9.9 of City Council's meeting held on September 30th and October 1st, 2015 that requests the General Manager ("GM") of Parks, Forestry and Recreation ("PFR") and City Solicitor to report on PFR's ability to provide public instructional swim programs at privately-owned condominium pools, and on the requirements to manage the risks and legal concerns if an access agreement can be negotiated between the City of Toronto and the condominium boards.

The purpose of this report is to provide an overview of areas for consideration, while recognizing that, as each condominium pool is different in terms of design, capacity and access, each proposed site must be evaluated carefully, and on a case-by-case basis.

RECOMMENDATIONS

The General Manager of Parks, Forestry and Recreation and City Solicitor recommend that:

1. the Community Development and Recreation Committee receive this report for information.

Financial Impact

There is no financial impact arising from the adoption of this report.

Parks, Forestry and Recreation cannot provide this service within its existing 2016 Approved Budget. Dedicated resources are required to carry out site assessments, negotiate access/use agreements with condominium boards, pay for the cost of license agreements, program and staff new facilities, and address any liability or risks associated with programming at non-City pools. The costs to implement such a program are not known at this time and require detailed development.

Should City Council direct staff to investigate such opportunities, the Division will initially require one dedicated FTE at approximately \$0.130 million to begin the review of any opportunities and negotiate with condominium boards. These resources would be requested as part of a future year's budget process and would be considered a new enhancement to the Parks, Forestry and Recreation existing service levels. Future funding needs to carry out additional assessments, negotiations, capital modifications, programming and staffing will need to be identified and requested through future operating and capital budget submissions.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting on September 30th and October 1st, 2015, City Council requested that the General Manager, Parks, Forestry and Recreation and City Solicitor report back on the ability to provide public instructional swim programs at condominium pools, if an access agreement could be struck between the City of Toronto and a condominium board for public use of its swimming facility.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.MM9.9>

ISSUE BACKGROUND

Parks, Forestry and Recreation programs 65 year-round indoor pools, and 58 outdoor pools during summer months. Of the 65 indoor locations, 33 are owned and operated by the Toronto District School Board. The Division delivers 200,000 hours of instructional swimming that can accommodate 170,000 registrations annually which represents an 80% utilization rate.

Condominium pool facilities are designed, built and operated for the low volume use of on-site residents and are not intended to be used by the broader community or the general public. Further, condominium pools (Class B) are categorised differently than public pools (Class A) by the *Health Protection and Promotion Act*, Regulation 565 ("Regulation") which governs the operation of swimming pools in Ontario, and may require significant upgrades to meet the public pool standards.

This report identifies legislative, operational and liability issues related to the two types of pool classifications and comments on how feasible the use of condominium pools may be for public learn to swim programming.

COMMENTS

Parks, Forestry and Recreation provides instructional swim lessons typically as a nine week program for fall, winter and spring with a condensed program during the summer. Depending on community need and availability of indoor locations, some outdoor pools offer instructional programming.

Instructional swim programs offered by PFR fall into one of three categories – learn to swim, training and fitness programs, and lifesaving and leadership. These categories address learning by a variety of ages, abilities and expertise. There are several issues that the City needs to consider when evaluating the feasibility for the use of condominium pools for public programs, as outlined below.

Legislative, accessibility and health and safety:

The City must consider compliance with the *Health Protection and Promotion Act*, Regulation 565 ("Regulation") related to operation and safety standards for public and condominium pools in Ontario, the *Occupational Health and Safety Act* ("OHSA"), and the *Accessibility for Ontarians with Disabilities Act* ("AODA").

Swimming pool operation in Ontario is governed by the Health Protection and Promotion Act, Regulation 565. The Regulation identifies two classifications of swimming pools – Class A (public) and Class B (privately-operated pools). Operation and safety standards differ between the two classifications and in order for a pool to be used by the general public, it must meet Class A standards, as outlined in the Regulation, summarized in Appendix A.

Operational program standards and maintenance:

Should a condominium pool meet the Class A standards, the City's ability to deliver an appropriate program mix will depend on the facility size and design. The City must ensure that a condominium pool is reliable, accessible and that it meets the City's requirements for programming. Maintenance standards relative to the public's use of these facilities must also be negotiated with each condominium board, and can be costly to both parties as utilization of what was designed for condominium resident use would also be available for general public access.

The City has developed aquatic design guidelines it follows when building new or renovating existing aquatic spaces. A suitable instructional pool is one that can accommodate a minimum of three to four classes at once, each class with four to eight participants, and levels ranging from beginner to advance. Pool length is typically 25 metres in length, 11 meters in width with suitable depths for instruction.

Viewing areas that provide seating and separate access where parents and caregivers can watch lessons are required to keep unguarded non-participants from being on the pool deck. In addition, emergency services staff must be able to easily access the pool.

Change rooms must be available and AODA compliant to meet the varying needs of all participants registered in programs. Condominium pools will require upgrades to equip them with washroom amenities, showers and adequate personal belonging storage spaces for the participants, as most Class B pools do not have sufficient amenities, due to users retiring to their own personal suites for showering and changing needs.

Lockable storage for program safety and instructional equipment must be available. Safety equipment would be in the form of first aid kits and rescue equipment. Adequate and dedicated storage space would be required for the City to safeguard its program assets, in an area where they can dry properly to avoid damaged equipment. Storage space must be in close proximity to the pool deck.

Administration and confidential information such as class lists, participant contact information, and staff training and qualification information would remain on-site to avoid jeopardizing participants and staff safety and privacy. An exclusive and secure administrative space with lockable storage is required when using satellite program locations.

Non-condominium residents registering for City programs must have the same opportunities as those living within the condominium and will require access to the building and pool area. Condominium residents would not be granted priority registration or access for public programming.

Liability and risk management:

If the City enters into an agreement to use a condominium's pool facilities, the City will likely become an "occupier" of the pool facilities for the purposes of the *Occupiers Liability Act*. An occupier includes a party who has responsibility and control over the condition of a premises, the activities carried out on the premises or control over persons allowed to enter the premises. This would likely include the City.

An occupier is required to take steps to ensure that people using the pool and pool area are kept reasonably safe. What is required will depend on the circumstances of each proposed site. If a person is injured because the City did not fulfill its duties under the *Occupiers' Liability Act*, the injured person may take legal action against the City for compensation for injuries. This exposes the City to costly legal expenses and risk of an adverse court judgement. Liability concerns may be raised where the City does not have full control over access to and maintenance of the pool. This risk can be managed to some degree through terms in the use agreement; however, it cannot be eliminated completely.

The financial consequences of defending and potentially paying out injury claims are borne by the tax base and are not transferred to private insurance companies. Because of joint and several

liability principles in Ontario, even a 1% finding of liability on the part of the City may expose the City to payment of the entire claim.

To manage liability risks, clear policies and procedures must be established that apply specifically to the operation at non-City facilities. These policies and procedures should mirror the policies and procedures already in place at City-run pools. The City's current policies and procedures for City-run pools meet, and in most cases exceed the necessary Class A legislative requirements, to ensure that additional safeguards are in place to minimize risk.

Licence agreement:

Each condominium pool would require its own separate negotiated agreement. Agreements must include access times, access type, fee structures, agreement terms, and maintenance requirements.

The agreements must define all aspects of use, as multiple parties – condo residents, guests, and City staff and program users – will be accessing the facilities at various times. Separate times for use by these parties will best manage the risk. Further, the logistics of access to the condominium's facilities would need to be defined.

It is important to note that access / use agreements are often complicated and require dedicated resources to negotiate. Parks, Forestry and Recreation does not have sufficient resources to advance the significant undertaking of negotiated use agreements with condominium boards, site assessments and negotiated capital modifications that would be required to permit public programming in non-City pools.

Financial considerations:

In order to upgrade privately-operated pools to meet public pool requirements, significant investment may be required. Condominium pools are typically small facilities compared to public pools and would not support the City's variety or volume of programming. It is anticipated that utilization at these sites will be lower, which will lead to higher costs per bather or swim, and a longer return on any investment made by the City.

Suitable locations will need to be identified in the broader context of regional and City-wide service delivery, and must consider master planning initiatives, needs assessments, and proximity to other program locations to ensure investment is being made in areas that are under-served and that services are not duplicated.

There will be additional costs associated with retrofitting Class B pools to meet Class A requirements, in accordance with the Regulation. These costs may be related to facility modifications, mechanical enhancements to the filtration system, and staffing requirements. If capital improvements are needed, issues arise about the appropriateness of the City incurring expenses to improve private condo facilities.

Finally, against these costs, the use of non-City pools typically involves a licence fee to be paid by the City. The City is always looking at creative ways of delivering service, partnerships and optimizing capital investments. Condominium pools, unless specifically designed to be Class A publically operated pools within the development plan, will not provide a sufficient return on the required investments.

CONCLUSION

This report has summarized the research and considerations for providing publically operated programs in condominium pools. Condominium pools are classified as Class B pools by Regulation 565 of the Health Protection and Promotion Act which governs swimming pools in Ontario. Class B pools are not designed, built, operated or staffed for use by the general public.

The City currently offers instructional swimming at 65 Class A indoor locations year-round and select outdoor pools in the summer months. Limitations associated with programming at small condominium pools will lead to lower utilization and a low return on investment which is not advisable. Condominium communities interested in activating their aquatic facilities are encouraged to consider the contracting of private swim school operators who provide swimming lessons to clients in privately operated pools such as in condominiums.

Parks, Forestry and Recreation is undertaking a facility master plan to identify its needs for indoor and outdoor recreational amenities. That plan will also identify new and innovative approaches to integrate public recreational facilities in vertical neighbourhoods, ones that meet our operating, maintenance and legislative requirements.

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ATTACHMENTS

Appendix A - Comparison of Class A and Class B Swimming Pools' Requirements

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Requirement	Class A Pool	Class B Pool
Uses and Access	Operated in conjunction with or as part of a public program, educational, instructional, physical fitness or athletic institution supported in whole or in part by public funds or public subscription for admittance.	Operated on the premises of an apartment building or hotel that contains more than five dwelling units or may be in conjunction with a condominium property for the use of the owners or members and their visitors.
	The City's indoor and outdoor public pools are Class A pools. Condominium and hotel pools are classified as Class B pools.	
Filtration and Water Treatment	Total water volume must circulate through the filter system no less than four times per day.	Total water volume must circulate through the filter system no less than three times per day.
	Class A pools have a higher standard of pool filtration and water quality	
Bather Load (number of visitors) Tracking and Documentation	Lifeguards and pool staff track the bather load daily to determine make-up water required.	Lower usage expected with a set amount of make-up water added daily, to encompass an estimated number of participants.
	Fresh water ("make-up water") is required to be added to the pool on a daily basis and is based on the bather load (attendance). Bather load tracking for Class B pools is difficult to satisfy, as staff are not dedicated to the pool area to capture the total number of bathers per day.	
Safety Requirements (equipment)	Lifeguard control stations are regulated and required. Emergency phone must be easily accessible from the deck.	Lifeguard control stations are not required. Emergency phone may be up to 30 meters away from the pool.
	The purchase and installation of control stations along with emergency phone placement will be required.	
Safety Requirements (staffing)	Requires lifeguard supervision when the pool is in operation in proportion to the bathers on the deck.	Does not require lifeguards if signage warning swimmers is posted.
	A hybrid Class A / B pool that is available to the public and residents may pose a risk if the wrong user group is provided access without the required lifeguard supervision.	
Pool Operators	A dedicated pool operator is on-site for the majority of the operating periods.	Monitoring is often done by a contractor and minimal daily testing is performed by on-site staff, typically a superintendent or security staff.
	Pool operators are responsible for the quality of pool water, cleanliness and safety of the deck, change rooms, and surrounding areas. They perform regular water testing, administration of chemicals, and other maintenance.	