

CITY OF TIOGA, TEXAS

ORDINANCE NO. 379

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TIOGA, TEXAS, AMENDING THE CITY'S ORDINANCE NO. 259, SECTION 23.8.2.2, PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING FOR SAVINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; PROVIDING FOR A PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Tioga is a General-Law municipality located in Grayson County, Texas created in accordance with the provisions of the Texas Local Government Code, the Texas Constitution and operating pursuant to the enabling legislation of the state of Texas; and

WHEREAS, the City Council of the City of Tioga previously adopted Ordinance Number 259, section 23.8.2.2 establishing rules for walls and fences around swimming pools; and

WHEREAS, the City Council desires to amend its City Ordinance regarding rules for walls, fences and barriers around swimming pools; and

WHEREAS, the City Council finds that the adoption of this ordinance is necessary in the interest of public health, safety, and welfare of the citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TIOGA, TEXAS:

SECTION 1
INCORPORATION OF PREMISES

The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2
FINDINGS

After due deliberations the City Council has concluded that the adoption of this Ordinance is in the best interest of the City of Tioga, Texas and of the public health, safety, and welfare.

SECTION 3

AMENDMENTS

3.01 That Ordinance No. 259 of the City of Tioga, Section 23.8.2.2: be amended to read as follows:

- 23.8.2.2 A. a wall or fence, not less than six (6) feet In height, with self-enclosing and self-latching gates at all entrances, completely encloses the pool area or the surrounding yard area, or
- 23.8.2.2 B. a barrier that complies with the following:
1. The top of the barrier shall be at least 48 inches (1219 mm) 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 2 inches (51 mm) 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 above-ground 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 4 inches (102 mm).
 2. Openings in the barrier shall not allow passage of a 4-inch diameter (102 mm) sphere.
 3. Solid barriers which do not have openings, such as masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.
 4. 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 (1143 mm), the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not exceed 1.75 inches (44 mm) in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1.75 inches (44 mm) in width.
 5. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches (1143 mm) or more, spacing between vertical members hall not exceed 4 inches (102 mm). Where there are decorative cutouts within vertical members, spacing with the cutouts shall not exceed 1.75 inches (44 mm) in width.

6. Maximum mesh size for chain link fences shall be a 2.25 inch (57 mm) square unless the fence is provided with slates fastened at the top or the bottom which reduce the openings to not more than 1.75 inches (44 mm).
7. Where the barrier is composed of diagonal members, such as lattice fend, the maximum opening formed by the diagonal members shall not be more than 1.75 inches (44 mm).
8. Access gates shall comply with the requirements of items 1 through 7, and shall be equipped to accommodate a locking device. Pedestrian access gates shall open outward away from the pool and shall be self-closing and have a self-latching device. Gates other than pedestrian assess gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches (1372 mm) from the bottom of the gate, the release mechanism and openings shall be located on the pool side of the gate at least 3 inches (76 mm) below the top of the gate and the gate and barrier shall have no opening greater than 0.5 inch (12.7 mm) within 18 inches (457 mm) of the release mechanism.

3.02 All other articles, chapters, sections, paragraphs, sentences, phrases and words of Ordinance No. 259 are not amended but are hereby ratified and affirmed.

SECTION 4 **CUMULATIVE REPEALER**

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated or has arisen under or pursuant to such other Ordinances on this date of adoption of this Ordinance shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 5 **SAVINGS**

All rights and remedies of the City of Tioga, Texas are expressly saved as to any and all violations of this provision of any other ordinance affecting swimming pool,, which have secured at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances same shall not be affected by this Ordinance but may be prosecuted until final disposition by the court.

SECTION 6

SEVERABILITY

The provisions of the Ordinance are severable. However, in the event this Ordinance or any procedure provided in this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, the remaining and lawful provisions shall be of full force and effect and the City shall promptly promulgate new revised provisions in compliance with the authority's decisions or enactment.

SECTION 7 **PENALTY**

7.01 It shall be unlawful for any person to violate any provision of this Ordinance, and any person violating or failing to comply with any provision of this Ordinance shall be fined, upon conviction, an amount not to exceed two thousand dollars (\$2,000.00) and a separate offense shall be deemed committed upon each day during or on which a violation occurs and continues.

7.02 If the governing body of the City of Tioga determines that a violation of this Ordinance has occurred, the City of Tioga may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity.

SECTION 8 **PUBLICATION**

The City Secretary of the City of Tioga is directed to publish in the official newspaper of the City, the caption, penalty clause, and effective date of this Ordinance as required by law.

SECTION 9 **ENGROSSMENT AND ENROLLMENT**

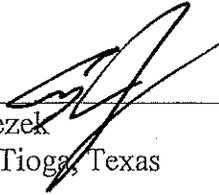
The City Secretary is hereby directed to engross and enroll this Ordinance by copying the descriptive caption in the minutes of the City Council and by filing this Ordinance in the Ordinance records of the City.

SECTION 10 **EFFECTIVE DATE**

This Ordinance shall become effective from and after its date of passage in accordance with law.

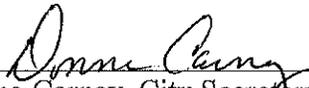
AND IT IS SO ORDAINED.

PASSED AND APPROVED by the City Council of the City of Tioga, Texas this 10th day of September, 2018.



Craig Jezek
City of Tioga, Texas

ATTEST:



Donna Carney, City Secretary
City of Tioga, Texas

[SEAL]