

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. 5425

AN ORDINANCE AMENDING SECTION 31-0102 OF ARTICLE 31-01  
OF CHAPTER 31 OF THE FARGO MUNICIPAL CODE  
RELATING TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE

WHEREAS, the electorate of the City of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purpose; and

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be it Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Section 31-0102 of Article 31-01 of Chapter 31 of the Fargo Municipal Code is hereby amended as follows:

\* \* \* \*

**303.2.1 Fence or Barrier height and clearances.** Barrier heights and clearances shall be in accordance with all the following:

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1. The top of the barrier shall be not less than 48 inches above grade where measured on the side of the barrier that faces away from the pool or spa. Such height shall exist around the entire perimeter of the barrier and for a distance of 4 feet measured horizontally from the outside of the pool or spa to the inside of the required barrier.
2. The vertical clearance between grade and the bottom of the barrier shall not exceed 2 inches (51 mm) for grade surfaces that are not solid, such as grass or gravel, where measured on the side of the barrier that faces away from the pool or spa.
3. The vertical clearance between a surface below the barrier to a solid surface, such as concrete, and the bottom of the required barrier shall not exceed 4 inches (102 mm) where measured on the side of the required barrier that faces away from the pool or spa.
4. Where the top of the pool or spa structure is above grade, the barrier shall be installed on grade or shall be mounted on top of the pool or spa structure. Where the barrier is mounted on the top of the pool or spa, the vertical clearance between the top of the pool or spa and the bottom of the barrier shall not exceed 4 inches (102 mm).

**303.2.2 Openings.** Openings in the barrier shall not allow passage of a 4-inch-diameter (102 mm) sphere.

**303.2.3 Solid barrier surfaces.** Solid barriers that do not have openings shall not contain indentations or protrusions that form handholds and footholds, except for normal construction tolerances and tooled masonry joints.

**303.2.4 Mesh fence as a barrier.** Mesh fences, other than chain link fences in accordance with Section 303.2.7, shall be installed in accordance with the manufacturer's instructions and shall comply with the following:

1. The bottom of the mesh fence shall be not more than 1 inch (25 mm) above the deck or installed surface or grade.
2. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not permit the fence to be lifted more than 4 inches (102 mm) from grade or decking.

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3. The fence shall be designed and constructed so that it does not allow passage of a 4-inch (102mm) sphere under any mesh panel. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not be more than 4 inches (102 mm) from grade or decking.
4. An attachment device shall attach each barrier section at a height not lower than 45 inches (1143 mm) above grade. Common attachment devices include, but are not limited to, devices that provide the security equal to or greater than that of a hook-and-eye-type latch incorporating a spring-actuated retaining lever such as a safety gate hook.
5. Where a hinged gate is used with a mesh fence, the gate shall comply with Section 303.2.10.
6. Patio deck sleeves such as vertical post receptacles that are placed inside the patio surface shall be of a nonconductive material.
7. Mesh fences shall not be installed on top of on-ground residential pools.

**303.2.4.1 Setback for mesh fences.** The inside of a mesh fence shall be not closer than 48 inches (1219 mm) to the nearest edge of the water of a pool or spa.

**303.2.5 Closely spaced horizontal members.** 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 pool or spa side of the fence. Spacing between vertical members shall not exceed 1<sup>3</sup>/<sub>4</sub> inches (44 mm) in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1<sup>3</sup>/<sub>4</sub> inches (44 mm) in width.

**303.2.6 Widely spaced horizontal members.** 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 shall not exceed 4 inches (102 mm). Where there are decorative cutouts within vertical members, the interior width of the cutouts shall not exceed 1<sup>3</sup>/<sub>4</sub> inches (44 mm).

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**303.2.7 Chain link dimensions.** The maximum opening formed by a chain link fence shall be not more than 2 inches (50.8 mm). Where the fence is provided with slats fastened at the top and bottom which reduce the openings, such openings shall be not more than 2 inches (50.8 mm).

**303.2.8 Diagonal members.** Where the barrier is composed of diagonal members, the maximum opening formed by the diagonal members shall be not more than 1<sup>3</sup>/<sub>4</sub> inches (44 mm). The angle of diagonal members shall be not greater than 45 degrees (0.79 rad) from vertical.

**303.2.9 Clear zone.** Where equipment, including pool equipment such as pumps, filters and heaters, is on the same lot as a pool or spa and such equipment is located outside of the barrier protecting the pool or spa, such equipment shall be located not less than 36 inches (914mm) from the outside of the barrier.

**303.2.10 Doors and gates.** Doors and gates in barriers shall comply with the requirements of Sections 303.3.11 through 303.2.13 and shall be equipped to accommodate a locking device. Pedestrian access doors and gates shall open outward away from the pool or spa, shall be self-closing and shall have a self-latching device.

**303.2.11 Utility or service doors and gates.** Doors and gates not intended for pedestrian use, such as utility or service doors and gates, shall remain locked when not in use.

**303.2.12 Double or multiple doors and gates.** Double doors and gates or multiple doors and gates shall have not fewer than one leaf secured in place and the adjacent leaf shall be secured with a self-latching device.

**303.2.13 Latch release.** For doors and gates in barriers, the door and gate latch release mechanisms shall be in accordance with the following:

1. Where door and gate latch release mechanisms are accessed from the outside of the barrier and are not of the self-locking type, such mechanism shall be located above the finished floor or ground surface at residential pools and spas, not less 54 inches (1372 mm).
2. Where door and gate latch release mechanisms are of the self-locking type such as where the lock is operated by means of a key, an electronic opener or the entry of a combination into an integral combination lock, the lock operation control and the latch release

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mechanism shall be located above the finished floor or ground surface at residential pools and spas, at not greater than 54 inches (1372 mm).

3. Where the only latch release mechanism of a self-latching device for a gate is located on the pool and spa side of the barrier, the release mechanism shall be located at a point that is at least 3 inches (76 mm) below the top of the gate.

**303.2.14 Barriers adjacent to latch release mechanisms.** Where a latch release mechanism is located on the inside of a barrier, openings in the door, gate and barrier within 18 inches (457 mm) of the latch shall not be greater than 1/2 inch (12.7 mm) in any dimension.

**303.2.15 Structure wall as a barrier.** Where a wall of a dwelling or structure serves as part of the barrier and where windows having a sill height of less than 48 inches (1219 mm) above the indoor finished floor, doors and gates shall have an alarm that produces an audible warning when the window, door or their screens are opened. The alarm shall be listed and labeled as a water hazard entrance alarm in accordance with UL 2017.

**Exception:** An approved means of protection, such as self-closing doors with self-latching devices, is provided. Such means of protection shall provide a degree of protection that is not less than the protection afforded by an alarm that produces an audible warning when the window, door or their screens are opened.

**303.2.16 On-ground residential pool structure as a barrier.** An on-ground residential pool wall structure or a barrier mounted on top of an on-ground residential pool wall structure shall serve as a barrier where all the following conditions are present:

1. Where only the pool wall serves as the barrier, the bottom of the wall is on grade, the top of the wall is not less than 48 inches (1219 mm) above grade for the entire perimeter of the pool, the wall complies with the requirements of Section 303.2 and the pool manufacturer allows the wall to serve as a barrier.
2. Where a barrier is mounted on top of the pool wall, the top of the barrier is not less than 48 inches (1219 mm) above grade for the entire perimeter of the pool, and the wall and the barrier on top of the wall comply with the requirements of Section 303.2.

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3. Ladders or steps used as means of access to the pool are capable of being secured, locked or removed to prevent access except where the ladder or steps are surrounded by a barrier that meets the requirements of Section 303.
4. Openings created by the securing, locking or removal of ladders and steps do not allow the passage of a 4-inch (102 mm) diameter sphere.
5. Barriers that are mounted on top of on-ground residential pool walls are installed in accordance with the pool manufacturer's instructions.

**303.2.17 Natural barriers.** In the case where the pool or spa area abuts the edge of a lake or other natural body of water, public access is not permitted or allowed along the shoreline, and required barriers extend to and beyond the water's edge not less than 18 inches (457 mm), a barrier is not required between the natural body of water shoreline and the pool or spa.

**303.2.18 Natural topography.** Natural topography that prevents direct access to the pool or spa area shall include but not be limited to mountains and natural rock formations. A natural barrier approved by the governing body shall be acceptable provided that the degree of protection is not less than the protection afforded by the requirements of Sections 303.2 through 303.2.16.

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Section 2. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

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Section 3. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and publication.

/s/  
Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

/s/  
Steven Sprague, City Auditor

First Reading:	2-20-24
Second Reading:	3-4-24
Final Passage:	3-4-24
Publication:	3-13-24