



Legislation Text

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070623
ORIGINAL
THE CHAIR

An ordinance relating to regulations for swimming pools and places.

75-20 rc
75-20.1 rp
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This ordinance repeals and recreates regulations relating to swimming pools and places in the city. The changes include the following:

1. The ordinance adopts ch. Comm 90 and ch. HFS 172, Wis. Adm. Code, as part of the city code.
2. The definitions of certain terms related to swimming pools and places are modified, and new terms and definitions are added.
3. The commissioner of health or the commissioner's representative is authorized to examine public and private swimming places during all periods of operation and test the water for any type of contamination that may endanger the public.
4. The ordinance establishes a hearing and an appeal process for revoking or suspending a swimming pool or swimming place license.
5. Authorizes the commissioner to have a swimming place closed to swimming if the commissioner deems it necessary to protect the patrons and the public.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 75-20 of the code is repealed and recreated to read:

75-20. Swimming Pools and Places.

1. ADOPTION OF STATE CODE. Except as otherwise provided in this section, the city of Milwaukee adopts ch. Comm 90 and ch. HFS 172, Wis. Adm. Code, as amended, as part of this code.
2. DEFINITIONS. In this section:
 - a. "Approved" means approved by, or in accordance with, regulations established by the commissioner.
 - b. "Automatic" means a mechanical action which does not rely upon human control during normal

operations, except for maintenance or occasional readjustment.

c. "Beach" means any swimming place used for swimming, wading, or other full or partial body contact created at a naturally occurring body or source of water, the flow of which is not regulated or fully controllable.

d. "Commissioner" means the commissioner of health, the commissioner of neighborhood services or any other city official to whom the function of regulating swimming pools and swimming places has been delegated pursuant to a memorandum of understanding.

e. "Cross connection" means any arrangement whereby a potable water system is connected, either directly or indirectly, to another water system, sewer system or any system containing another fluid, in such a manner that the possibility exists, under proper conditions, that the fluids of one system could contaminate the other.

f. "Enclosure" means an approved structure or barrier which defines the limits of a given area and contains points of ingress and egress.

g. "Hose bib" means a valved plumbing fitting connected to a water supply and threaded for hose connection.

h. "Person" means any person, firm, partnership, association, corporation, company, contractor, governmental agency, club or organization of any kind.

i. "Pool depth" means the depth of the water at a given point in the pool which shall extend vertically from the pool floor to the horizontal axis of the overflow point of the pool.

j. "Potable water" means water which is safe to drink by reason of applicable health standards.

k. "Private swimming place" means any swimming place maintained only for the exclusive use of no more than 2 individual residential quarters and their occasional guests, is capable of having a pool depth of 36 inches and has a potential volume of at least 3,965 gallons.

L. "Public swimming place" means any swimming place other than a private installation. This includes a municipal, county, association, club, camp, school, motel, hotel, bed and breakfast, apartment building and a similar installation, whether or not a fee is charged for use. A public pool shall not include a pool drained to waste, cleaned and refilled with fresh potable water prior to use by each individual.

m. "Strainer basket" means a device designed to filter large material from the pool water before such water enters the pump and other water treatment equipment.

n. "Swimming place" means that portion of a body of water used, in whole or in part, for swimming, wading, or recreational bathing, together with all shores, adjacent areas, buildings, equipment and appurtenances pertaining to such place.

o. "Swimming pool" means a structure, basin, chamber or tank used for wading, swimming, diving, water recreation, therapy or bathing, whether installed or erected above or below ground elevation and whether temporary or permanent, whether indoors or outdoors.

3. AUTHORITY. Authority for the control of swimming places is vested in the commissioner. The commissioner is authorized to examine public and private swimming places during all periods of operation. The commissioner is also authorized to test the water for any type of contamination that may endanger the public. Swimming places shall include natural, artificial, prefabricated, permanent, or movable swimming places and their facilities.

4. RULES AND REGULATIONS. The commissioner is authorized and empowered to make and adopt written rules and regulations necessary for the proper enforcement of this section and to assure the health and safety of the public. A copy of all rules and regulations shall be kept on file in the office of the commissioner, in the office of the city clerk and in the legislative reference bureau.

5. POSTING OF NOTICES TO BUYERS REQUIRED. Stores or businesses selling private pools to be constructed within the city, whether above or below ground, shall have posted on the premises in

a prominent and conspicuous manner in the vicinity of the swimming pool display, a placard stating as follows: "IMPORTANT NOTICE TO POTENTIAL PRIVATE SWIMMING POOL BUYERS: The city of Milwaukee has limitations and regulations, including the requirement of an installation permit, for private swimming pool construction. These regulations apply to all pools installed in the ground and to all pools installed above the ground which have a potential depth of 36 inches or a potential volume of 3,965 gallons. To determine the limitations concerning such pools and to obtain permits, prior to installation, contact the Milwaukee Department of Neighborhood Services, Nuisance and Environmental Health Division."

6. PERMIT REQUIRED. In addition to the requirements of ch. Comm 90, Wis. Adm. Code, no person shall construct, install, enlarge, establish, maintain or make any alteration to any public swimming place or any outdoor private swimming place without a pool construction permit issued by the commissioner.

a. Application.

a-1. Any person wishing to obtain a permit for a private pool under this section shall file an application on forms provided by the commissioner. The application shall be accompanied by the fees required in s. 60-83.

a-2. Any person wishing to obtain a permit for a public pool under this section shall file an application on forms provided by the commissioner. The application shall be accompanied by one set of plans and specifications which will be retained by the commissioner and the plan examination fee required in s. 60-83. The plans and specifications shall be prepared by a registered architect or engineer. The names and addresses of the owner and the architect or engineer, and the location of the swimming place shall be filed with the application. Plans shall be drawn to a scale and accompanied by sufficiently detailed specifications so as to permit a comprehensive engineering review including the piping and hydraulic details and shall include:

a-2-a. Plans and sectional views with all necessary dimensions of the pool, servicing facilities and surrounding area.

a-2-b. A piping diagram showing all appurtenances including chemical treatment facilities in sufficient detail as well as pertinent elevation data to permit a full analysis of the system.

a-2-c. An electrical layout diagram for the entire installation, if applicable.

a-2-d. Specifications which shall contain details on all treatment equipment, including catalogue identification of pumps, chlorinators, chemical feeders, filters, strainers and all related equipment.

a-2-e. Operating data which shall include flow rates, heads, metering valves and their locations, flow diagram, locations of flow meters, pressure gauges, thermometers, test cocks and sight glasses, along with the system for disposal of pool water.

a-2-f. Such other items as may be required by the commissioner to properly evaluate the swimming pool within the purposes of this section.

a-3. All permits for swimming places shall be approved by the commissioner prior to construction.

b. Revocation. The commissioner reserves the right to revoke a permit.

c. Right of Appeal. Before a permit is revoked, the person to whom the permit has been issued shall be served pursuant to s. 200-12-3 a notice in writing from the commissioner enumerating instances of failure to comply with the regulations. Any person so affected shall be granted a hearing on the matter before the commissioner, provided that such person shall file in the office of the commissioner a written petition requesting such hearing and setting for a statement of the grounds thereof within 20 days after the day the notice was served.

d. Changes Approved. Upon issuance of the permit, construction shall be undertaken subject to the conditions of the permit and in accordance with the plans as approved. No change or modification of any item governed by any provision of this section, or the rules and regulations adopted pursuant thereto, shall be made without having obtained express written approval from the commissioner.

e. Permit Lapse. Except as regulated herein, if any construction for which a permit has been issued is not started within 6 months from the date of the issuance of the permit, or if construction ceases for more than 6 months, then the permit shall lapse and be void and no construction shall be begun or resumed until a new permit is obtained and the fees prescribed in this section paid therefor.

7. PUBLIC POOLS. No public swimming place shall be permitted to operate until approved by the commissioner in accordance with the requirements of this section and the rules and regulations adopted thereto.

a. License Required. No public swimming place shall be used until a valid license to operate has been obtained from the commissioner. When all applicable provisions of this section have been complied with by the applicant, the commissioner shall issue a license to operate a swimming place upon payment of the fee required in s. 60-81. The license shall be issued annually by the commissioner after an inspection reveals that the swimming place is in full compliance with this section and the rules and regulations adopted pursuant thereto.

a-1. License Displayed. The license shall be publicly displayed on the premises. The license may contain whatever limitations are deemed necessary by the commissioner for the protection of the public.

a-2. Exemptions. Beaches posted during the entire swimming season "SWIM AT YOUR OWN RISK - LIFEGUARDS NOT PROVIDED", shall not be required to obtain a license. Such beaches shall comply with the provisions of sub. 14-d when applicable.

b. Suspension.

b-1. Noncompliance. The commissioner shall have the authority to suspend the license issued to any person upon evidence of the failure of the person to operate or maintain the swimming place in conformity with this section and the rules and regulations adopted pursuant thereto. No license shall be suspended by the commissioner until written notice has first been served pursuant to s. 200-12-3 on the licensee advising the licensee of the violations of these provisions and rules and regulations adopted pursuant thereto and allowing him or her a reasonable period of time to correct the conditions. When, in the opinion of the commissioner, failure to operate or maintain the swimming place in conformity with this section and the rules and regulations adopted pursuant thereto has resulted in a serious and immediate hazard to the health or safety of any person, the commissioner shall have the right summarily to suspend the operating license. Upon suspension of the license, the swimming place shall remain closed until such time as compliance has been obtained and the license reinstated.

b-2. Hearings. The commissioner may revoke any license for failure to comply with the regulations referred to in this section or when the license has been obtained through nondisclosure, misrepresentation or misstatement of a material fact. Before a license is revoked, the person to whom the license has been issued shall be served pursuant to s. 200-12-3 notice in writing from the commissioner enumerating instances of failure to comply with the regulations. The owner or operator affected by any notice which has been issued in connection with the enforcement of any provision of this section or any rule or regulations adopted pursuant thereto may request and shall be granted a hearing on the matter before the commissioner, provided that the person shall file in the office of the commissioner a written petition requesting a hearing and setting forth a statement of the grounds therefor within 20 days after the day the notice was served. Within 10 days of receipt of a petition, the commissioner shall set a time and place for a hearing and shall give the petitioner written notice thereof. At the hearing, the petitioner shall be given an opportunity to be heard and to show cause why the notice should be modified or withdrawn. The hearing before the commissioner shall be commenced not later than 30 days after the date on which the petition was filed, provided that upon written application of the petitioner to the commissioner, the commissioner may postpone the date of the hearing for a reasonable time beyond such 30 day period if in the commissioner's judgment the

petitioner has submitted a good and sufficient reason for such postponement. The commissioner may also postpone the hearing to gather testimony and data. The commissioner shall have the power to administer oaths and affirmations in connection with the conduct of any hearing held in accordance with this subdivision.

8. FEES; SWIMMING POOLS AND PLACES. See ss. 60-81 and 60-83 for the required fees.

9. PERMIT TRANSFER NOT ALLOWED. No permit or license for a public swimming place which has been issued under this section shall be transferable.

10. NUISANCES. Nothing in this section shall be construed or interpreted to in any way impair or limit the authority of the city to define and declare nuisances or of the commissioner to cause the removal or abatement of nuisances by summary proceedings or other appropriate proceedings.

11. FLOODING; POOL DRAINAGE. When draining water from a swimming pool, the pool owner shall take steps that are necessary to prevent water from being discharged onto neighboring properties. If swimming pool water is drained in a manner that causes flooding or damage on neighboring properties, it shall be deemed a nuisance and a violation of this section and shall be subject to the penalties in sub. 17.

12. PUBLIC POOL REQUIREMENTS. In addition to the provisions of ch. Comm 90, Wis. Adm. Code, and ch. HFS 172, Wis. Adm. Code, public swimming places shall comply with the requirements listed in this subsection.

a. **Attendant Required.** Public swimming places with pools that have a surface area of less than 2,000 square feet shall provide an attendant at all times that the pool is not locked and secured from public access. Exemptions from this provision may be granted by the commissioner or his designee in cases where the operator can demonstrate that access to the pool will be controlled to prevent unauthorized access.

b. **Warning Device.** A red light shall be provided in the pool area which shall be actuated whenever the recirculation pump ceases to supply water to the filter. The light shall be readily visible to attendants or operators and patrons when an attendant is not provided. A sign shall be posted immediately below the light when an attendant is not provided indicating the person to contact if the light is on.

c. **Automatic Water Level Control.** A device shall be provided which automatically maintains the water level in the pool at the level which is optimum for proper skimming. The water inlet shall be installed to prevent a cross connection with the potable water supply.

d. **Strainer Basket.** A spare strainer basket shall be provided for each filter pump.

e. **Cartridge Filters.** When used, a spare set of cartridge filters shall be provided on site.

f. **Trained Operator.** Trained operator required at pools: certificate of competency required. Every public swimming place shall be operated under the supervision of a trained operator. The commissioner may require a certificate of competency obtained through attendance and successful completion of a swimming pool operator's training course approved by the commissioner as evidence of compliance with this section.

g. **Drinking Fountains.** In addition to the drinking fountain requirements of ch. Comm 90, Wis. Adm. Code, public swimming places with water surface areas greater than 2000 square feet shall provide a low mounted drinking fountain for use by children.

h. **Temperature Gauges.** Where a water heater is provided, fixed temperature gauges shall be installed on the supply and return lines of the recirculation system. The gauges shall be installed and maintained to be easily read by the operator.

i. **Health and Safety Hazards Not Covered.** The commissioner reserves the right to require correction of any health or safety hazard or nuisance which may be found that is not covered in this code.

j. **Animals.** No animals shall be allowed in any swimming pool at any time insofar as the regulation of

the same is possible.

13. PRIVATE OUTDOOR SWIMMING PLACE REQUIREMENTS.

a. Cross Connection With Water Supply. There shall be no cross connections between the city water supply and the swimming pool water or the pool recirculation system. Approved back flow prevention shall be supplied for all threaded hose bibs.

b. Cross Connection With Sewer System. There shall be no cross connections or submerged inlets between the swimming pool or pool system and any other reservoir or conduit which holds or transmits polluted materials.

c. Sewer and Waste Water.

c-1. The sewer or waste water system shall be adequate to serve the swimming pool system and facility.

c-2. No inground swimming pool shall be installed within 25 feet of a septic system or 50 feet of a soil absorption system.

d. Proper Pool Enclosure Required. Every private swimming pool shall, at all times, be properly enclosed so as to prevent children and animals from entering such pools when unattended. The enclosure shall meet the requirements of this paragraph.

d-1. The vertical water enclosing wall of the swimming pool may serve as an approved barrier if it is a non-climbable solid wall of durable material. Such walls shall extend more than 3 feet above the level of the ground immediately adjacent to the pool on all sides of the pool. Such a solid wall barrier shall not be located within 6 feet of any other wall, tree, deck, fence or other object which can be readily climbed and used by children to enter the pool. Ladders, platforms and other devices used to access the pool shall be removed or secured to prevent child access when the pool is not in use.

d-2. An approved barrier shall consist of a properly erected and maintained non-climbable wall or fence at least 48 inches in height which entirely surrounds the pool. The wall or fence shall be constructed so that a 4 inch-diameter sphere cannot be passed through any opening. Every fence shall be constructed in accordance with ss. 239-2 and 245-4.5. Every wall or fence shall be located not less than 4 feet from the vertical, water enclosing wall of the pool. All gates in the walls or fences shall be self-closing and self-latching and shall be at least 48 inches above the ground level. The gate latch release mechanism shall be mounted on the pool side of the gate at least 3 inches from the top of the gate. The gate latch shall be guarded or made inaccessible to children to prevent them from reaching through rather than over the gate and activating the mechanism. The gate shall open out from the pool area. A natural barrier, hedge or wall of a structure or other protective device may be used in lieu of a fence or wall if approved by the commissioner and if the degree of protection is not less than that afforded by a wall, fence, gate and latch as described herein.

e. Electrical Service Conductor Clearance. A pool shall be placed to maintain the distances to electrical service conductors required in NFPA 70, ch. 1, articles 680-8 and 680-10.

14. PUBLIC BEACHES.

a. Location. Public beaches shall be located to the best extent possible to minimize exposure to pollutants and safety hazards.

a-1. Public beaches shall be located to allow ready supervision of the entire area and appurtenances.

b. Design and Construction.

b-1. Swimming areas shall contain a gradually sloped bottom with no sudden drop-offs in water 5 1/2 feet or less. The bottom material shall be sand or other fine particle that does not produce a safety hazard.

b-2. When possible, the swimming area shall be marked at the 5 1/2-foot depth point with solidly anchored brightly colored floats no more than 6 feet on center. The entire off shore boundary of the swimming area should be encompassed by a floating lifeline.

b-3. The beach shall slope gradually to the swimming area and be composed of sand or other approved material.

b-4. When lifeguards are provided, a plan showing the location and number of lifeguards and guard stands, safety equipment, first aid equipment and first aid stations shall be submitted to the commissioner for approval. Lifeguards shall be provided during hours that the beach is officially open to the public. Where lifeguards are not provided, the beach shall be posted: "LIFEGUARDS NOT PROVIDED, SWIM AT YOUR OWN RISK."

b-5. Bulletin boards or other approved structures shall be provided nearby to post safety rules, water quality recommendations and water temperatures. Bulletin boards shall also be provided to post conspicuous notices when the beach is closed and to inform patrons that a life guard is not being provided and swimming is at their own risk.

c. Maintenance of Beach and Swimming Areas.

c-1. Before the beach area is to be used each season, the sand shall be sifted or otherwise treated to remove all material that would constitute a hazard.

c-2. At the beginning of each swimming season, the bottom of the swimming area shall be inspected and all materials that may cause a health or safety hazard shall be removed.

c-3. During the swimming season, the beach and swimming area shall be inspected daily, except during inclement weather, and all weeds, weed mats, animal matter, glass, paper and other foreign material shall be removed. Signs shall be posted which indicate the period when daily inspections are conducted.

c-4. Cladophora mats shall be removed from the beach area as soon as possible. While any mats are present, approved signs shall be posted that recommend that swimmers should not enter the water as safe access to the water does not exist due to the cladophora hazard.

d. Sanitary Facilities.

d-1. Showers and dressing rooms, when supplied, shall be constructed of water impervious materials. Floors and walls shall be smooth and easily cleaned with no cracks. Floors shall be non-slip and constructed to provide immediate drainage. Showers and dressing rooms shall be kept clean and disinfected.

d-2. Separate toilet facilities shall be provided nearby for both sexes. The male toilet room shall be provided with one water closet, one urinal and one lavatory for each 16,000 square feet of beach area. The female toilet room shall be provided with 2 toilets and one lavatory for each 16,000 feet of beach area.

15. BIOLOGICAL AND CHEMICAL HAZARDS. To preserve the public health the commissioner may test or otherwise evaluate the water quality at any beach or public swimming place, or require that the operator test the water at any beach or swimming place for contamination that may endanger the patrons or the public. The commissioner may post water quality recommendations or require that recommendations be posted by the operator. The commissioner shall also have the authority to have the swimming place closed to swimming to protect the health of the patrons and the public.

16. COMPETITIVE CODES. The provisions of this section shall not abrogate the responsibility of any person to comply with any provision of the Wisconsin state codes or other applicable city code. Where there is a conflict in these codes, the most stringent regulation shall apply.

17. PENALTIES.

a. Any person who violates subs. 1 to 15 or any rule or order of the commissioner issued under these subsections shall upon conviction be subject to the penalties specified in s. 61-11.

b. Lien. If any owner or agent fails, omits, neglects or refuses to obey any order from the department of health or the department of neighborhood services, the appropriate department may take such steps as are necessary to remove the nuisance or hazard. Pursuant to s. 66.0627, Wis. Stats., a special charge shall be made against the subject property for the nuisance or hazard abatement and

shall be due and payable 30 days after billing or if not paid within that time become a lien on the subject property. The lien shall automatically be extended upon the current or next tax roll as a delinquent tax against the property and all proceedings in relation to the collection, return and sale of the property for delinquent real estate taxes shall apply to the special charge. The special charge shall not be payable in installments.

c. Appeal. Appeal of the determination of the commissioner imposing special charges against premises may be submitted to the administrative review appeals board as provided by s. 320-11. Appeals filed pursuant to this section shall be filed no later than 30 days after the special charges are imposed.

Part 2. Sections 75-20.1 to 75-20.9 of the code are repealed.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Department of Neighborhood Services

LRB07293-1

TWM:mbh

7/12/2007