

DIMENSIONS

UNDERSTANDING NEW JERSEY'S NEW BATHING CODE REGULATIONS

By: Steven G. Mlenak, Esq.

Builders and property managers should be aware of recent amendments to the New Jersey Public Recreational Bathing Facility Code, which regulates the maintenance and lifeguarding requirements of pools at multi-family developments. While most of the changes are minor or technical in nature, some have already been shown to significantly impact the operating budgets of housing developments throughout New Jersey.

First, it is important to note that despite the fact that it is entitled the "Public Recreational Bathing Facility Code," the Code applies to all housing developments of more than two living units. Nonprofit common interest communities (including most condominium and homeowners associations) can qualify as a "specially exempt facility" under the Code. As long as the pool(s) do not have a diving board, water slide or other risky pool appurtenance, this will exempt them from certain lifeguard requirements. Rental housing with more than two units will be required to comply with all Code regulations. Certain private lakes, bays and rivers, as well as certain campgrounds, hotels, motels, mobile home parks, retirement communities or marinas could also qualify for "specially exempt facility" status.

Lifeguard Requirements

Perhaps the most significant amendments to the Code are those concerning lifeguards. Under the new regulations, pools which are greater than 2,000 square feet must have at least two certified lifeguards. The local health authority can increase the number of lifeguards required based on pool configuration, number of bathers,

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and other factors. Lifeguards must keep watch over the pool based on a "zone of protection plan," so pools with unique configurations may find that the local health authority requires a greater number of lifeguards. Further, as one lifeguard cannot watch more than one pool, facilities with more than one pool (including children's pools with depths of greater than 2 feet) will need to staff one or more lifeguards at each pool. Finally, lifeguards may not assume any other duties which may distract from their lifeguarding duties. Facilities that have historically had their lifeguards check-in guests and/or check badges will now have to hire separate staff to serve that function. These changes have already shown to significantly increase costs for facilities with pools greater than 2,000 square feet.

Pool Inspection & Maintenance

Pool inspections are no longer required before a pool opens for the season (except for new pools). Instead, each pool's owner or operator must submit a checklist certifying compliance with the Code to the local health authority at least 21 days prior to the opening

of the pool season. Facilities must also have a water sample analyzed prior to opening for the season. Year-round pools must submit the checklist at least 30 days before the approval expires. Thereafter, there will be at least one inspection during the pool season (twice per year for year-round pools). Following the inspection, the pool's owner or operator will receive a placard containing an evaluation of "Satisfactory," "Conditionally Satisfactory," or "Unsatisfactory." The placard must be posted near the public entrance to the pool facility.

Changes have also been made to requirements concerning pool maintenance. Under the new regulations, a trained pool operator (TPO) must visit the pool at least once per week. The TPO is tasked with ensuring regulatory compliance and must document each visit in writing. Pools over 2,000 square feet must be under the supervision of an individual with a pool director training certificate (this requirement must be met by January 16, 2019). Hot tub/spa suction outlet covers must now be inspected daily. Further, new water sample testing processing requirements mean that test results must be expedited, which could result in surcharges related to the increased costs for owners and operators related to testing and reporting.

New Equipment – Signage

The Code now specifically provides that a lifeguard stand that adheres to the Code be provided for each lifeguard on duty, that an automatic external defibrillator (AED) be provided, and that one or more throw lines that can reach the other side of the pool be

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A MESSAGE FROM NJBA PRESIDENT

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of all, to make that training easily available. Last year, approximately 30,000 people applied to vocational school districts in NJ and only 11,000 were accepted, mostly due to space constraints.

I have directed NJBA to focus on identifying and partnering with organizations which can help us train our industry's workforce and to support legislation that will assist in funding those initiatives.

NJBA has already engaged with the Department of Labor's Construction-Utilities Talent Development Center and its educational partner, the New Jersey Institute of Technology (NJIT). NJIT is currently offering grant funded employee training in the Construction industry. I encourage you to contact Grant Lucking at NJBA grant@njba.org for more information about this free training.

NJBA is also speaking with the National Association of Home Builders, the Home Builders Institute, county colleges, vocational school districts and other educational institutions to advocate for and assist in furthering construction and skilled trades education.

On the legislative front, NJBA strongly supports S2293 (Sweeney) which proposes \$1 billion in bonds to finance vocational school districts and county colleges. The bill was overwhelmingly approved by the Senate and has been referred to the Assembly Education Committee for further review and consideration along with its Assembly companion measure, A3902 (Benson). NJBA also supports S2303 (Sweeney) which requires the establishment of Work and Learn Consortiums by certain educational institutions to establish certificate and degree programs identified in high labor-demand industries, including the construction industry.

In summary, we will be working diligently to increase our labor pool and address the industry's labor shortage through a multitude of approaches. I look forward to working with our four local associations

to organize outreach and "jobsite visits" to connect those trades and builders who have job openings with prospective employees. Any member interested in participating in these events is invited to contact Lisa Obolsky at NJBA, at lisa@njba.org.

Conclusion

Our association will be very busy over the next year. I know that we will only be able to accomplish our mission of building a more affordable, sustainable and vibrant housing market in NJ with the support of all our members, builders, associates and trades. I thank you all in advance for the cooperation and support I know you will continue to provide to me throughout my tenure as President.

I could not be more proud and appreciative of the opportunity that you've given me to lead the association and to help NJ's residents realize their American dream. I look forward to seeing you all on June 27th at NJBA headquarters in Robbinsville for the Business Operations Seminar, Board Meeting and President's Picnic. Visit www.njba.org/events for more information.

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readily accessible. Posted bathing code rules will also need to be amended to capture the new rules regarding swim diapers. In the past, plastic pants with snug-fitting elastic waists and legs were required for any child that has not been toilet-trained to swim in a pool. The new regulations provide that any diaper specially designed for immersion in water will be acceptable.

Aquatics Facility Plan Changes

New information is required to be kept in each pool facility's written standard operating procedure aquatics facility plan. This includes the location of the emergency shutoff switch for suction outlets, hours of operation, schedule of operational activities, such as water

testing and record keeping, and a zone of protection plan for the lifeguards.

The above represents some of the noteworthy changes to the Code. It is important, however, that builders and property managers familiarize themselves with the entirety of the Code. Managers and pool operators should ensure that they are in compliance with the regulations to avoid fines, and should also ensure that contracts with pool maintenance and lifeguard vendors are up-to-date. Likewise, builders should give careful thought as to how the pools at their multi-family project are designed (with respect to both size and configuration). For example, a 1,990 square foot pool can yield significant operational savings over a 2,000 square foot pool with little impact to bather load.

As evidenced by the fact that the Department of Health has already released two Frequently Asked Questions sheets, the Code amendments have apparently created confusion among property owners, managers and pool contractors, as they fail to answer several questions and certain contradictions can be found. As noncompliance can result in fines and other liability, owners and managers should consult with their attorney on any issue which is not readily answerable by reviewing the text of the Code.