



**Committee:** HHS

**Committee Review:** At a future date

**Staff:** Ludeen McCartney-Green, Legislative Attorney

**Purpose:** To introduce agenda item – no vote expected

**Keywords:** #healthclubpools

AGENDA ITEM 25

May 27, 2021

**Introduction**

## SUBJECT

Bill 20-21, Swimming Pools – Lifeguard Requirement – Amendments

Lead Sponsors: Councilmember Katz and Rice

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Bill – no vote expected

## DESCRIPTION/ISSUE

Bill 20-21 would:

- define the term “health club”
- exempt certain swimming pools at certain facilities from the requirement to have a lifeguard on duty when the pool is open for use;
- require posting of certain signage;
- require certain facilities with a swimming pool to have an emergency alert system;
- require an employee to regularly inspect swimming pool area; and
- generally amend County law relating to swimming pools.

## SUMMARY OF KEY DISCUSSION POINTS

- N/A

### This report contains:

Staff Report

Bill 20-21

Legislative Request Report

Sponsor Memorandum

COMAR 10.17.01.70

Pages 1

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**M E M O R A N D U M**

May 26, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: **Introduction:** Bill 21-20, Swimming Pools – Lifeguard Requirement– Amendments

Bill 21-20, Swimming Pools – Lifeguard Requirement – Amendments, sponsored by Lead Sponsors Councilmembers Katz and Rice, is scheduled to be introduced on May 27, 2021. A public hearing is tentatively scheduled for June 15, 2021 at 1:30 p.m.<sup>1</sup>

Bill 21-20 would define the term “health club”; exempt certain public pools at certain facilities from the requirement to have a lifeguard on duty present when the pool is open for use; require exempted public pools to meet certain criteria, including posting certain signage; require exempted pools to have an emergency alert system; and require an employee to regularly inspect pool area. A memorandum from the lead sponsors is attached on ©8.

**BACKGROUND**

*State regulations*

State regulations, under COMAR 10.17.01.40(D), establishes that an owner of a semi-public pool with the total water surface area greater than 2,500 square feet must have a lifeguard on duty during peak seasonal use (Memorial Day – Labor Day) and year-round for indoor heated pools. Pursuant to COMAR 10.17.01.05, holding membership at the facility, where the facility is an adult health club, is classified as a semi-public pool.

State law does not have a lifeguard requirement for semi-public swimming pools or spas where the water surface area is less than 2,500 square feet. However, state regulations allow local jurisdictions to adopt more stringent restrictions.

*County law*

Under County Code, Section 51-10(b), generally, an owner of a swimming pool is required to have a lifeguard on duty while the pool is in use, regardless of the total water surface area. Thus, Montgomery County has more stringent restrictions than State law. However, the County law does

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<sup>1</sup> #healthclubpools

provide an exemption for facilities with a *public spa* and a limited exemption for *hotels* with total water surface area less than 2,500 square feet. In 2017, the Council enacted legislation (Bill 16-17) that removed the requirement of a lifeguard to be on duty at a hotel swimming pool, except for during certain hours. Specifically, a lifeguard is required to be present while the hotel pool is in use on the weekends, Saturday and Sunday, during the hours of 11am – 7pm. Bill 21-20, similarly to public spas and hotels, would exclude health club pools from the lifeguard requirement under certain criteria.

#### *Other Surrounding Jurisdictions*

There are several local jurisdictions, such as, Anne Arundel County, Baltimore County, and Prince George's County that exempt health club pools from the requirement to have a lifeguard on duty when the pool size is less than 2,500 total square feet. Montgomery County is the sole jurisdiction that requires a lifeguard at a health club swimming pool, regardless of pool size.

#### **BILL SPECIFICS**

According to the Maryland Attorney General – Health Club Unit, there are 138 registered health clubs in Montgomery County, of which, the Department of Health & Human Services (DHHS) confirmed, to date, nineteen (19) have a licensed swimming pool on premises.

Bill 21-20 will provide a limited exemption for an owner of a health club to have a lifeguard on duty while the pool is in use by its members or guests if it meets certain criteria. Essentially, Bill 21-20 seeks to align with State regulations and local jurisdictions to remove the lifeguard requirement for swimming pools at health clubs.

The health club must classify under the defined term of “health club” and meet the minimum criteria for swimming pools.

A health club is defined as:

*Health club* means any licensed and registered corporation or business which offers or provides to the public, on a paid membership basis, services, facilities, instruction, training, or assistance in body building, weight loss, exercising, muscle toning, aerobics, or any other similar physical activity.

The following criteria must be met, in accordance with State and local regulations:

(d) *Health club. A swimming pool located on the grounds of a health club is not subject to paragraph (b) of this section, if it:*

(1) *has a water surface area less than or equal to 2,500 square feet and maximum depth of five feet;*

- (2) is used only for members or guests who are at least 16 years of age; and
- (3) the owner complies with subsection (f) of this subtitle and all other provisions under Code of Maryland Regulations (COMAR) 10.17.01, Public Swimming Pools and Spas.

This packet contains:

Bill 20-21

Legislative Request Report

Sponsor Memorandum

COMAR 10.17.01.70

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F:\LAW\BILLS\2120 Swimming Pool - Lifeguard Requirement - Exemption For Health Clubs\Intro Memo.Docx

Bill No. 20-21  
Concerning: Swimming Pools – Lifeguard  
Requirement – Amendments  
Revised: 5/19/2021 Draft No. 2  
Introduced: May 27, 2021  
Expires: November 28, 2022  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsors: Councilmembers Katz and Rice

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**AN ACT** to:

- (1) define the term “health club”
- (2) exempt certain swimming pools at certain facilities from the requirement to have a lifeguard on duty when the pool is open for use;
- (3) require posting of certain signage;
- (4) require certain facilities with a swimming pool to have an emergency alert system;
- (5) require an employee to regularly inspect swimming pool area; and
- (6) generally amend County law relating to swimming pools.

By amending

Montgomery County Code  
Chapter 51, Swimming Pools  
Sections 51-1 and 51-10

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Sections 51-1 and 51-10 are amended as follows:**

**51-1. Definitions.**

In this Chapter, the following words have the following meanings:

\* \* \*

*Automatic pool cover* means a mechanical device that completely covers the swimming pool surface automatically when activated, and meets the requirements of a power safety cover established by the American Society for Testing and Materials.

*Health club* means any licensed and registered corporation or business which offers or provides to the public, on a paid membership basis, services, facilities, instruction, training, or assistance in body building, weight loss, exercising, muscle toning, aerobics, or any other similar physical activity.

*Hotel* has the same meaning as in Code § 54-1.

\* \* \*

**51-10. Safety standards; lifeguards, [and] spa guards[.] and exemptions.**

\* \* \*

**(b) *Lifeguards.***

(1) Except for public spas, health clubs, and hotels, as provided in paragraph (c), (d), and (e) [(d)], every public swimming pool must have at least one lifeguard with a valid infant/child/adult cardiopulmonary resuscitation (CPR) certificate from the American Red Cross, the American Heart Association, the National Safety Council, or a comparable program approved by the state Department of Health and Mental Hygiene, present when the pool is open for use.

\* \* \*

(c) *Public spas.* A public spa must have at least one spa guard present when the spa is open for use. The spa guard must be available immediately to help in an emergency.

(d) *Health club.* A swimming pool located on the grounds of a health club is not subject to paragraph (b) of this section, if it:

(1) has a water surface area less than or equal to 2,500 square feet and maximum depth of five feet;

(2) is used only for members or guests who are at least 16 years of age; and

(3) the owner complies with subsection (f) of this subtitle and all other provisions under Code of Maryland Regulations (COMAR) 10.17.01, Public Swimming Pools and Spas.

(e) [(d)] *Hotels.* Except for on Saturday and Sunday between 11:00 a.m. and 7:00 p.m., paragraph (b) does not apply to a pool that has a water surface area less than 2,500 square feet located on the grounds of a hotel for the exclusive use of its registered guests if:

(1) the hotel is properly licensed under Chapter 54; and

(2) [the hotel posts warning signs that meet the following] the owner complies with subsection (f) of this subtitle and all other provisions under Code of Maryland Regulations (COMAR) 10.17.01, Public Swimming Pools and Spas.

(f) *Safety Signs Required; Emergency Alert System.*

(1) An owner of a public spa, health club, or hotel must post warning signs that meet the following:

(A) the size, color, design, application, symbol, and visual layout of a safety sign is in compliance with the ANSI Z-535

series of standards for Safety Signs and Colors as referenced in American National Standard for Public Spas;

(B) a safety sign is posted in a permanent location adjacent to a health club or hotel in compliance with the American National Standard for Public Spas;

(C) the safety sign includes the user load of the pool;

(D) a chemical warning sign is posted at the entrance door to a chemical storage area and includes the text "Caution! Chemical Storage Area";

(E) a chemical vat, feeder, pump, and line is labeled to identify the chemical in use;

(F) a chlorine gas warning sign reading "Danger—Chlorine Gas" is posted at the entrance to a chlorine gas feed room and storage area;

(G) other warning, health advisory, and safety signs are posted, as required by Executive Regulation, if necessary to protect the public health and safety; and

(H) a pool that does not have a lifeguard on duty has a conspicuous sign posted adjacent to entrances to the pool reading "Warning: No lifeguard on duty. SWIM AT YOUR OWN RISK. Children under the age of [15] 16 are not permitted to use the pool without adult supervision"; and

(2) [(3)] the pool area has a functional and visible emergency alert system approved by the Director of the Department of Health and Human Services that:

(A) connects directly to 9-1-1; and



79 (B) notifies an employee of the health club or hotel when  
 80 activated; and

81 (3) [(4)] the health club or hotel has an employee with a valid  
 82 infant/child/adult cardiopulmonary resuscitation (CPR) certificate  
 83 from the American Red Cross, the American Heart Association,  
 84 the National Safety Council, or a comparable program approved  
 85 by the state Department of Health and Mental Hygiene, on the  
 86 premises of the health club or hotel when the pool is open for use  
 87 and no lifeguard is on duty[.] ; and

88 (4) the owner of the health club must have an employee who regularly  
 89 inspects the swimming pool area to ensure the well-being and  
 90 safety of members and guests.

*Approved:*

/s/

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Tom Hucker, President, County Council

Date

*Approved:*

/s/

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Marc Elrich, County Executive

Date

*This is a correct copy of Council action.*

/s/

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Selena Mendy Singleton, Esq., Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 20-21


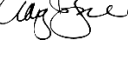
### *Swimming Pools – Lifeguard Requirement - Amendments*

<b>DESCRIPTION:</b>	Bill 20-21 would: <ul style="list-style-type: none"><li>(1) define the term “health club”</li><li>(2) exempt certain swimming pools at certain facilities from the requirement to have a lifeguard on duty when the pool is open for use;</li><li>(3) require posting of certain signage;</li><li>(4) require certain swimming pools at certain facilities to have an emergency alert system;</li><li>(5) require an employee to inspect swimming pool area; and</li><li>(6) generally amend County law relating to swimming pools.</li></ul>
<b>PROBLEM:</b>	Montgomery County is the only jurisdiction that require owners of health club facilities to have a lifeguard on duty while a pool is in use by club members or guests and the pool size is below 2,500 of total surface water. State law and other local jurisdictions have removed the lifeguard requirement from certain pools at health clubs.
<b>GOALS AND OBJECTIVES:</b>	To align Montgomery County with current State law; require adequate measures to ensure pool safety; maintain economic competitiveness.
<b>COORDINATION:</b>	Department of Health & Human Services
<b>FISCAL IMPACT:</b>	To be provided.
<b>ECONOMIC IMPACT:</b>	To be provided.
<b>RACIAL EQUITY AND SOCIAL JUSTICE IMPACT:</b>	To be provided.
<b>EVALUATION:</b>	To be provided.
<b>EXPERIENCE ELSEWHERE:</b>	Anne Arundel County, Baltimore County, Prince George’s County
<b>SOURCE OF INFORMATION:</b>	Ludeen McCartney, Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Applicable within municipalities.
<b>PENALTIES:</b>	A violation of Chapter 51 is a Class A violation.



**MONTGOMERY COUNTY COUNCIL**  
ROCKVILLE, MARYLAND

**M E M O R A N D U M**

To: Montgomery County Council Colleagues  
From: Councilmember Sidney Katz   
Councilmember Craig Rice   
Date: May 20, 2021  
Re: Health Club Swimming Pools | Limited Lifeguard Exemption

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On May 27, 2021, our offices will introduce the attached legislation that allows health club members and members' guests to use the pool when a lifeguard is not present as long (1) the pool is less than 2,500 square feet and a maximum depth of five feet, (2) members and guests are at least 16 years of age, (3) an emergency alert system is installed in the pool area to summon help, (4) the health club has an employee with a valid infant/child/adult CPR certificate to provide quick intervention if needed, and (5) the health club requires that staff regularly check the pool area to ensure the safety and wellbeing of guests.

The goal with this proposal is to ease the burden on an industry struggling due to COVID-19 restrictions while maintaining the safety of our residents. The bill will also align the county with State statute<sup>1</sup> and our jurisdictional neighbors. Presently, only Montgomery County requires lifeguards for pools of this size at health clubs.

Please do not hesitate to reach out to our offices with any questions. We look forward to receiving your support.

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<sup>1</sup> [www.dsd.state.md.us/comar/comarhtml/10/10.17.01.40.htm](http://www.dsd.state.md.us/comar/comarhtml/10/10.17.01.40.htm)

## **COMAR 10.17.01.40**

This document is current through the 4/23/2021 issue of the Maryland Register

### **MD - Code of Maryland Regulations (COMAR) > TITLE 10. MARYLAND DEPARTMENT OF HEALTH > SUBTITLE 17. SWIMMING POOLS AND SPAS > CHAPTER 01. PUBLIC SWIMMING POOLS AND SPAS**

#### **.40 Public Pool and Spa Safety.**

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**A.**First Aid and Lifesaving Equipment. An owner shall ensure that:

(1)A recreational pool is provided with:

- (a)A first aid kit as recommended by the American Red Cross;
- (b)A face mask for CPR;
- (c)Disposable medical grade examination gloves;
- (d)A bloodborne pathogen control kit;
- (e)A backboard designed for medical emergency use that is equipped with straps and head immobilizer;
- (f)A light, strong rescue pole not less than 10 feet long; and
- (g)A rescue tube designed for lifesaving for each required lifeguard;

(2)Except as set forth in § A(3) of this regulation, a public spa is provided with the safety equipment required in § A(1)(a)--(e) of this regulation;

(3)A semipublic spa is provided with the safety equipment required in § A(1)(a)--(d) of this regulation; and

(4)A semipublic pool is provided with a:

- (a)Light, strong rescue pole not less than 10 feet long; and
- (b)Ring buoy or similar approved floatation device with an attached throwing rope measuring 50 feet in length or 1-1/2 times the width of the pool, whichever is longer.

**B.**Telephone. An owner shall ensure that, in case of an emergency, a telephone is available within the pool or spa enclosure to individuals using a public pool or spa that:

(1)Can directly reach a 911 emergency service without the use of a coin and without connection to an internal switchboard;

(2)Is posted with:

(a) The names and phone numbers of the nearest available police, fire, and ambulance or rescue unit; or

(b)911 or with any numbers necessary to reach a 911 emergency service center directly; and

(3)Is posted with the name and location of the pool or spa facility.

**C.**Lifeguard Chair.

(1)An owner shall ensure that a recreational pool is equipped with lifeguard chairs in compliance with the American National Standard for Public Swimming Pools.

## COMAR 10.17.01.40

**(2)**An owner may use a deck-level lifeguard chair in a designated area on the deck adjacent to shallow water instead of an elevated lifeguard chair.

**D.Lifeguards.**

**(1)**An owner of a public pool shall comply with:

**(a)**Local codes requiring lifeguards if the requirements of the local codes are stricter than the requirements set forth in § D(2)--(5) of this regulation; or

**(b)**§ D(2)--(5) of this regulation if no local codes exist, or if the local codes requiring lifeguards are not as strict as the requirements of § D(2)--(5) of this regulation.

**(2)**Except as set forth in § D(1) and (3) of this regulation, an owner of a recreational pool shall have at least one lifeguard on duty on the deck observing the pool while an individual is in the pool, and shall have at the pool:

**(a)**Lifeguards who are appropriately trained and certified for the type of facility and activity in the pool;

**(b)**A sufficient number of lifeguards so that a lifeguard is on duty for each group of 50 individuals, or fraction thereof, in the pool; and

**(c)**In addition to the number of lifeguards required in § D(2)(b) of this regulation, additional lifeguards on duty if:

**(i)**The shape, dimensions, layout, use, activities, or features of the pool create potential safety hazards;

**(ii)**The vision of the required lifeguard or lifeguards is obstructed;

**(iii)**The capabilities of the individuals using the pool are substandard; or

**(iv)**Another condition exists that compromises the ability of a lifeguard to monitor the pool.

**(3)**An owner may use a lifeguard on the deck of a swimming pool to monitor an adjacent wading pool, but if a wading pool is the only pool at a facility or if the wading pool cannot be observed from the deck of the swimming pool, the owner shall ensure that lifeguards are provided at the wading pool in accordance with § D(1) and (2) of this regulation.

**(4)**In addition to meeting the other requirements of this chapter, an owner or operator of a facility specified in the following paragraphs shall ensure that a:

**(a)**Limited public-use pool has water safety supervision for pool activities in compliance with Regulation .15 of this chapter;

**(b)**Child care center has water safety supervision for pool activities at a child care center in compliance with COMAR 07.04.02.41; and

**(c)**Youth camp has water safety supervision for pool activities at a youth camp in compliance with [COMAR 10.16.06](#).

**(5)**The owner may only use or employ a lifeguard who holds a valid lifeguard certification from:

**(a)**The American Red Cross;

**(b)**The Boy Scouts of America, not including a lifesaving merit badge;

**(c)**The Young Men's Christian Association;

**(d)**Ellis and Associates' National Pool and Waterpark Lifeguard Training; or

**(e)**An organization that has a lifeguard training program equivalent to the American Red Cross lifeguard training.

## COMAR 10.17.01.40

**(6)** Except as set forth in § D(1) and (3) of this regulation, an owner of a semipublic pool that has a water surface area greater than 2,500 square feet or that is part of a multiple pool facility within one enclosure that has a combined water surface area greater than 2,500 square feet shall ensure that at least one lifeguard is on duty on the deck observing a pool in the ratio of one guard per 50 individuals in the water:

- (a)** During the peak seasonal use of the pool from Memorial Day to Labor Day; and
- (b)** During the use of an indoor, heated pool throughout the entire year.

**E.** CPR and First-Aid Personnel. Except at a semipublic spa, an owner of a recreational pool, public spa, and a limited public use pool shall ensure that:

**(1)** When the pool or spa is open for use, an individual is present and on-site, holding a valid certification for:

- (a)** Infant/child/adult or professional rescuer cardiopulmonary resuscitation (CPR); and
- (b)** First aid; and

**(2)** The CPR and first aid certifications of the individual required in § E(1) of this regulation are from:

**(a)** A national organization offering certification in CPR or first aid, such as the:

- (i)** American Red Cross;
- (ii)** American Heart Association; or
- (iii)** National Safety Council;

**(b)** The Emergency Medical Services; or

**(c)** An organization that has a certification program in CPR or first aid that is approved by one of the organizations listed in § E(2) of this regulation.

**F.** Safety Signs. An owner of a public pool or spa shall ensure that:

**(1)** The size, color, design, application, symbol, and visual layout of a safety sign is in compliance with the ANSI Z-535 series of standards for Safety Signs and Colors as referenced in American National Standard for Public Spas;

**(2)** A spa safety sign is posted in a permanent location adjacent to a spa in compliance with the American National Standard for Public Spas;

**(3)** The spa safety sign includes the user load of the spa;

**(4)** A chemical warning sign is posted at the entrance door to a chemical storage area and includes the text "Caution! Chemical Storage Area";

**(5)** A chemical vat, feeder, pump, and line is labeled to identify the chemical in use;

**(6)** A chlorine gas warning sign reading "Danger--Chlorine Gas" is posted at the entrance to a chlorine gas feed room and storage area;

**(7)** Other warning, health advisory, and safety signs are posted if necessary to protect the public health and safety, for example, "Danger! No Diving In Shallow Water";

**(8)** A semipublic pool or public spa that does not have a lifeguard on duty has a conspicuous sign posted adjacent to entrances to the pool or spa reading "WARNING; NO LIFEGUARD ON DUTY. SWIM AT YOUR OWN RISK. DO NOT SWIM ALONE. CHILDREN UNDER 15 SHOULD NOT USE THE POOL WITHOUT ADULT SUPERVISION."; and

**(9)** House rules are posted at the entrance to a pool or spa.

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