



**Committee:** HHS  
**Committee Review:** Completed  
**Staff:** Ludeen McCartney-Green, Legislative Attorney  
**Purpose:** Final action – vote expected  
**Keywords:** #healthclubpools

AGENDA ITEM #17  
July 27, 2021  
**Action**  
REVISED

## SUBJECT

Bill 20-21, Swimming Pools – Lifeguard Requirement – Amendments  
Lead Sponsors: Councilmembers Katz and Rice

## EXPECTED ATTENDEES

Clark Beil, Senior Administrator, DHHS  
Kenneth Welch, Environmental Health Manager, DHHS

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Council Action; Vote Required
- The Health and Human Services Committee recommends enactment of Bill 20-21 with amendments.

## 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 translated in certain languages;
- require health club contract for services to include a certain provision;
- 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

- The Health and Human Services Committee recommends enactment of Bill 20-21 with amendments to:
  - Require health club owners to post safety and warning signs in certain languages in the swimming pool area.
  - Require at the time of executing an initial health club contract for services, it must include a disclosure statement regarding no lifeguard will be on premises while the pool is in use.

### This report contains:

This packet contains:  
Bill 20-21

Circle #  
1

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

July 23, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

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

PURPOSE: **Action** – Council vote required.

Bill 20-21, Swimming Pools – Lifeguard Requirement – Amendments, sponsored by Lead Sponsors Councilmembers Katz and Rice, was introduced on May 27, 2021.<sup>1</sup> A public hearing was held on June 15, 2021 and a Health and Human Services Committee Worksession was held on July 15, 2021.

Bill 20-21 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 translated in certain language; require a health club contract to include a certain provision; 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. The economic and fiscal impact statement ©9-10. The RESJ impact statement on page ©15.

**PUBLIC HEARING TESTIMONY**

On June 15, 2021, the County Council held a public hearing where two speakers testified in support of the bill. Dale Tibbitts, on behalf of the County Executive, testified that Bill 20-21 would align the County with existing state law, which is less stringent, page ©18. Andrea Mansfield, on behalf of Fitness International, LLC, dba LA Fitness, testified in support to allow health clubs with relatively small pools who implement certain safety measures be exempt from lifeguard requirements; the exemption would ease the economic burden faced by the fitness club industry due to COVID-19 pandemic, see testimony ©19.

Subsequent the public hearing, the Council received written testimony from Ms. Rhona Bosin, an individual, who opposed the bill on several points, see testimony attached on page ©21.

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<sup>1</sup> #healthclubpools

## **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 provide an exemption for certain facilities with a *public spa* and a limited exemption for *hotels* with the total water surface area less than 2,500 square feet. In 2017, the Council enacted legislation (Bill 16-17), which removed the requirement for a lifeguard to be on duty at a hotel swimming pool, except 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 20-21, similarly to public spas and hotels, would exclude health club pools from the lifeguard requirement if the health club meets certain criteria.

### *Surrounding Local Jurisdictions*

There are several local jurisdictions, such as, Anne Arundel County, Baltimore County, and Prince George’s County that have passed legislation to 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 only 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 club facilities in Montgomery County, of which, the Department of Health & Human Services (DHHS) confirmed, to date, twelve (12) have a licensed swimming pool on premises under 2,500 total square feet.<sup>2</sup>

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<sup>2</sup> Email received from DHHS on June 8, 2021.

Bill 20-21 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 20-21 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.

In addition, 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.

## **DISCUSSION**

There are no legal issues regarding Bill 20-21; however, concerns were raised by the public in opposition to the bill that put forth a few points of discussion for the Councilmembers to review and consider when deciding to adopt Bill 20-21. Below are three overarching areas for review:

### ***Statistics of pool incidents in Montgomery County and surrounding jurisdictions.***

Council staff requested from Montgomery County Police Department (MCPD) data regarding emergency calls for drownings or near-drownings at health club pools for approximately

the past 8 years. Since 2013 to present, Montgomery County Fire & Rescue (MCFR) and MCPD was dispatched twice for reported non-fatal drownings at health clubs. The first incident occurred on 4/12/2008, the lifeguard noticed the guest experiencing a medical emergency and rescued the guest from the pool, the patient was later transported to the hospital, see attached ©25. In the second incident on 10/30/2008, a guest was reported as drowning and a lifeguard extracted the guest from the swimming pool and received CPR by the pool operator, the guest was later transported to a hospital (both patients had a non-life-threatening condition), see attached ©27.

Council staff contacted two local jurisdictions, Anne Arundel and Baltimore County, and inquired, since legislation was enacted in 2018 to remove lifeguards from health club pools has there been an increase in drownings or reduction in pool sanitation or safety. A staff member from Anne Arundel health department reported, there have been no drownings at any health clubs or noticeable effect on sanitation or oversight. Ann Bostic of Baltimore County Department of Health, responded there have been no drownings, EMS calls, or sanitation issues; however, some oversight with chemical water imbalance.<sup>3</sup>

### ***Removal of Lifeguards and Its Effect on Person with Disabilities.***

There were concerns from the public regarding the necessity for a lifeguard to be on premises to aid a person with disabilities who uses a health club swimming pool. Council staff reviewed the American with Disabilities Act (ADA) and its applicability to swimming pools.

ADA require places of public accommodation to provide accessibility and access to persons with disabilities, including swimming pools. Specifically, in 2010, ADA released accessibility guidelines for entry and exits of swimming pools.<sup>4</sup> It requires an owner of a facility with a swimming pool less than 300 linear feet to install a chair lift or sloped ramp for independent access (larger pools have additional accessibility requirements). If a lift is installed it must meet certain design standards, including the opportunity to be independently operated by a person who has a disability. While a person can request special assistance to operate the lift, if swimming alone, a person must be able to call the lift whether it's in the deck or water position to avoid becoming stranded.<sup>5</sup>

In 2010, the Department of Justice (DOJ) in alignment with ADA's Accessibility Guidelines published Title III regulations that clearly defined how business can adhere to the requirements and provides flexibility for businesses who are not readily able to comply.<sup>6</sup> Montgomery County Health Department ensures applicable businesses with swimming pools complete an affidavit and monitor compliance with ADA guidelines,<sup>7</sup> but referrals for enforcement are filed with the DOJ.

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<sup>3</sup> Response received by Council staff on June 23, 2021.

<sup>4</sup> <https://www.access-board.gov/ada/guides/chapter-10-swimming-pools-wading-pools-and-spas/>

<sup>5</sup> <https://www.access-board.gov/ada/guides/chapter-10-swimming-pools-wading-pools-and-spas/#operation>

<sup>6</sup> [https://www.ada.gov/qa\\_existingpools\\_titleIII.htm](https://www.ada.gov/qa_existingpools_titleIII.htm)

<sup>7</sup> [https://www.montgomerycountymd.gov/HHS-Special/Resources/Files/LandRdocs/SwimmingPool/ADAAffidavit5\\_21.pdf](https://www.montgomerycountymd.gov/HHS-Special/Resources/Files/LandRdocs/SwimmingPool/ADAAffidavit5_21.pdf)

Neither the ADA guidelines, DOJ's regulations, or state regulations require a lifeguard's presence for a person with disabilities to access and use a swimming pool. Section 51-9 of the County Code requires a pool operator, who may be a certified lifeguard, to always be on premises and this bill does not remove that requirement. Hence, even though a lifeguard is not legally required, it would benefit health clubs to provide a staff person to assist members who have a disability, but the sole responsibility for assistance does not squarely fall within the responsibility of lifeguards.

### ***Water Quality and Pool Operating Standards – Training and Technical Assistance***

During Council staff research, it has come to the attention from the public and DHHS that health clubs may diminish or become lax in upkeeping water quality and pool operating standards because the removal of lifeguards would eliminate additional accountability and oversight. Council staff recognizes the potential for waning of standards, and as such, Council staff recommends a general refresher educational training and technical assistance for the applicable health clubs to help strengthen services and infrastructure. The Licensure and Regulatory Services within the Montgomery County Department of Health and Human Services can commit to having a staff involved with educating health clubs on swimming pool code compliance and how to properly monitor to minimize the potential for issues regarding water quality.

The training could be an overview of COMCOR 51.00.02 Manual on Public Swimming Pool Operation, which covers water quality requirements (pH, Chlorine, Bromine), general safety and equipment maintenance, record keeping practices, compliance matters, and enforcement.

### **SUMMARY OF HEALTH AND HUMAN SERVICES COMMITTEE WORKSESSION**

At its July 15 worksession, the Health and Human Services Committee voted unanimously (3-0) to recommend the enactment of Bill 20-21 with three amendments. Council staff drafted the amendments to be presented at this Council session.

#### **1. Amendment Related to Safety Signage Translated in Different Languages.**

Councilmember Albornoz requested an amendment to require safety and warning signage posted in the swimming pool area to be translated into different languages to ensure clear communication is available for health club members and guests where English may not be their first language. Council staff reviewed several departmental practices<sup>8</sup> that provide translated documents, brochures, posters, and outreach and education materials for County residents and found the most frequent translations were Spanish, French, Chinese, and Korean. Therefore, the bill has been amended, as follows:

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<sup>8</sup> MCFRS (Section 21-31A); DHCA (Section 29-6); DEP (Section 33B-110).

*After line 35, insert the following:*

- (3) includes posted safety, health, and warning signs, as required under subsection (f), translated in Spanish, French, Chinese, Korean, and other languages, as determined necessary by the Approving authority.

## **2. Amendment Requested for Disclosure Statements in Health Club Contracts.**

The second amendment as requested by Councilmember Rice would require that if a health club swimming pool meets the requirements that would exempt the facility from having a lifeguard present, then at the initial signing of a new contract for health club services, the contract must contain a disclosure statement that informs the prospective member “no lifeguard will be on duty while the pool is in use.”

*After line 42, insert the following:*

(e) Health club contracts – Disclosure Statement Required.

(1) A health club not subject to paragraph (b) of this section, must provide:

- (A) a contract for health club services for members, at the initial point of sale, that includes a disclosure statement, signed and dated by the member, that indicates the facility will not have a lifeguard on duty while the swimming pool is in use.

## **3. Technical Amendment – Transition Clause.**

To consider implementation of general training, education and technical assistance for applicable health clubs, Council staff recommended to the Committee a technical amendment to include a transition clause to allow sufficient time for respective departments to organize and plan a training program accordingly.

*After line 101, insert the following:*

**Sec. 2. Transition.** Following the effective date of this Act, the Department of Health and Human Services, is allotted up to 120 days, to prepare and plan an educational training program that provides an overview of COMCOR 51.00.02, Manual on Public Swimming Pool Operation, other related materials, and technical assistance for applicable health clubs exempt from the lifeguard requirement under Section 51-10(d), as amended.



The HHS Committee adopted amendments (3-0) and the bill's lead sponsors concur with the amendments, as proposed.

**NEXT STEP:** Roll call vote on whether to enact Bill 20-21 with amendments, as recommended by the Health and Human Services Committee.

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Bill No. 20-21  
Concerning: Swimming Pools – Lifeguard Requirement – Amendments  
Revised: 7/15/2021 Draft No. 4  
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 translated in certain languages;
- (4) require health club contract to include a certain provision;
- (5) 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>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

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



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

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

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

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

36 (3) includes posted safety, health, and warning signs, as required  
 37 under subsection (f), translated in Spanish, French, Chinese,  
 38 Korean, and other languages, as determined necessary by the  
 39 Approving authority; and

40 (4) the owner complies with subsection (f) of this subtitle and all other  
 41 provisions under Code of Maryland Regulations (COMAR)  
 42 10.17.01, Public Swimming Pools and Spas.

43 (e) *Health club contracts – Disclosure Statement Required.*

44 (1) A health club not subject to paragraph (b) of this section, must  
 45 provide:

46 (A) a contract for health club services, at the initial point of sale,  
 47 that includes a disclosure statement, signed and dated by the  
 48 member, that indicates the facility will not have a lifeguard  
 49 on duty while the swimming pool is in use.

50 (f) ~~(d)~~ *Hotels.* Except for on Saturday and Sunday between 11:00 a.m.  
 51 and 7:00 p.m., paragraph (b) does not apply to a pool that has a water

52 surface area less than 2,500 square feet located on the grounds of a hotel  
 53 for the exclusive use of its registered guests if:

- 54 (1) the hotel is properly licensed under Chapter 54; and
- 55 (2) [the hotel posts warning signs that meet the following:] the owner  
 56 complies with subsection (f) of this subtitle and all other provisions  
 57 under Code of Maryland Regulations (COMAR) 10.17.01, Public  
 58 Swimming Pools and Spas.

59 (g) **[[f]]** *Safety Signs Required; Emergency Alert System.*

- 60 (1) An owner of a public spa, health club, or hotel must post warning  
 61 signs that meet the following:
  - 62 (A) the size, color, design, application, symbol, and visual  
 63 layout of a safety sign is in compliance with the ANSI Z-535  
 64 series of standards for Safety Signs and Colors as referenced  
 65 in American National Standard for Public Spas;
  - 66 (B) a safety sign is posted in a permanent location adjacent to a  
 67 health club or hotel in compliance with the American  
 68 National Standard for Public Spas;
  - 69 (C) the safety sign includes the user load of the pool;
  - 70 (D) a chemical warning sign is posted at the entrance door to a  
 71 chemical storage area and includes the text "Caution!  
 72 Chemical Storage Area";
  - 73 (E) a chemical vat, feeder, pump, and line is labeled to identify  
 74 the chemical in use;
  - 75 (F) a chlorine gas warning sign reading "Danger—Chlorine  
 76 Gas" is posted at the entrance to a chlorine gas feed room  
 77 and storage area;

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

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

86 (2) [(3)] the pool area has a functional and visible emergency alert  
 87 system approved by the Director of the Department of Health and  
 88 Human Services that:

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

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

92 (3) [(4)] the health club or hotel has an employee with a valid  
 93 infant/child/adult cardiopulmonary resuscitation (CPR) certificate  
 94 from the American Red Cross, the American Heart Association,  
 95 the National Safety Council, or a comparable program approved  
 96 by the state Department of Health and Mental Hygiene, on the  
 97 premises of the health club or hotel when the pool is open for use  
 98 and no lifeguard is on duty[.] ; and

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

102 **Sec. 2. Transition.** Following the effective date of this Act, the Department of  
 103 Health and Human Services, is allotted up to 120 days, to prepare and plan an

104 educational training program that provides an overview of COMCOR 51.00.02,  
105 Manual on Public Swimming Pool Operation, other related materials, and  
106 technical assistance for applicable health clubs exempt from the lifeguard  
107 requirement under Section 51-10(d), as amended.

## LEGISLATIVE REQUEST REPORT

Bill 20-21

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

<b>DESCRIPTION:</b>	Bill 20-21 would: <ol 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></ol>
<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-Green, Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Applicable within municipalities.
<b>PENALTIES:</b>	A violation of Chapter 51 is a Class A violation.


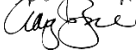
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**MONTGOMERY COUNTY COUNCIL**  
ROCKVILLE, MARYLAND

**MEMORANDUM**

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)

# Economic Impact Statement

Office of Legislative Oversight

## Bill 20-21

## Swimming Pools – Lifeguard Requirements – Amendments

### SUMMARY

The Office of Legislative Oversight (OLO) believes that enacting Bill 20-21 would have a positive, yet marginal, impact on economic conditions in the County.

### BACKGROUND

The goals of Bill 20-21 are to align the County with current State law regarding lifeguard requirements, ensure pool safety, and maintain the economic competitiveness of local “health clubs” (i.e., “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”). Under current law, the County requires owners of health club facilities to have a lifeguard on duty while club members or guests use a pool that is below 2,500 square feet. The County is the only jurisdiction in the State of Maryland that has maintained this lifeguard requirement.

If enacted, Bill 20-21 would align the County with State law by exempting the lifeguard requirement for any pool located on the grounds of a health club that:

- “(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) 38 10.17.01, Public Swimming Pools and Spas.”

In addition to aligning the lifeguard requirement with State law, Bill 20-21 would also require owners of health clubs to post certain safety signs, install an emergency alert system, and have employees perform regular safety inspections in the pool areas.<sup>1</sup>

### METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

The primary entities impacted by Bill 21-20 would be health clubs and lifeguards. According to data from Montgomery County Health and Human Services, there are 12 health clubs that have at least one pool that would meet the water surface area (less than or equal to 2,500 square foot) and depth (maximum five feet) conditions for exempting the lifeguard requirement.<sup>2</sup> For information on the potential impacts of Bill 21-20, OLO communicated with managers and an executive from several of the health clubs that would be affected by the change in law. While OLO was unable to attain

<sup>1</sup> Montgomery County Council, Bill 20-21, Swimming Pools – Lifeguard Requirement – Amendments, introduced on May 27, 2021. See Introduction Staff Report, [https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2712\\_1\\_14450\\_Bill\\_20-2021\\_Introduction\\_20210527.pdf](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2712_1_14450_Bill_20-2021_Introduction_20210527.pdf).

<sup>2</sup> OLO analyst personal communication with Health and Human Services staff.

# Economic Impact Statement

## Office of Legislative Oversight

estimates of the costs and savings that Bill 20-21 would create for these businesses, the qualitative claims made in subsequent sections are based on these sources and OLO analysts' judgment. OLO did not communicate with lifeguards who would potentially be affected by Bill 20-21.

### VARIABLES

The primary variables that would affect the economic impacts of Bill 20-21 are:

- average annual payroll and training costs;
- total cost of membership holds and cancellations due to irregular and consistent pool operating hours;
- total cost of installing emergency alert system;
- total cost of posting signage; and
- wages of lifeguards.

### IMPACTS

**WORKFORCE** ▪ **TAXATION POLICY** ▪ **PROPERTY VALUES** ▪ **INCOMES** ▪ **OPERATING COSTS** ▪ **PRIVATE SECTOR CAPITAL INVESTMENT** ▪ **ECONOMIC DEVELOPMENT** ▪ **COMPETITIVENESS**

#### Businesses, Non-Profits, Other Private Organizations

OLO believes that Bill 20-21 would have a positive economic impact on private organizations in the County. As previously stated, the bill would primarily affect 12 local health clubs which have pools that meet the exemption conditions for the lifeguard requirement. Sources from local health clubs informed OLO that the primary economic impacts of the bill would be the following:

Savings	Costs
<ul style="list-style-type: none"><li>▪ reduction in payroll and training costs associated with staffing pools with lifeguards;</li><li>▪ reduction in disruptions to pool operating hours due to difficulty hiring and staffing lifeguards; and</li><li>▪ reduction in membership holds and cancellations from the inability of health clubs to maintain regular and consistent pool operating hours.</li></ul>	<ul style="list-style-type: none"><li>▪ increase in one-time costs associated with installing an emergency alert system and posting safety signage.</li></ul>

While Bill 20-21 create both savings and costs for affected health clubs, the net effect for these businesses would be positive savings, according to the sources with whom the OLO analyst communicated. The positive net impact would occur due to (a) the magnitude of payroll and training costs and their annual recurrence and (b) the non-recurring costs incurred from installing an emergency alert system and posting safety signage. It is worth noting that the magnitude of the cost of the emergency alert system is unknown since Bill 20-21 does not specify the conditions for compliance. Thus, OLO expects the bill to result in a net gain in business income for the affected health clubs.

# Economic Impact Statement

## Office of Legislative Oversight

Moreover, if health clubs use local business to install emergency alert systems and/or create signage, these businesses would also benefit from Bill 20-21. Indeed, health clubs relying on local businesses for these services and goods would mitigate the economic outflow from the County from local health clubs' expenditures on emergency alert systems and/or safety signage.

Additionally, Bill 20-21 would bring the County to parity with surrounding jurisdictions. This change can be seen as business friendly, which over time and coupled with other changes may lead to a more positive perception of the County's business environment.

Beyond affecting business income, operating costs, and workforce, OLO does not anticipate that Bill 20-21 would affect the Council's other priority indicators.<sup>3</sup>

## Residents

OLO believes that Bill 20-21 would have negative economic impacts for lifeguards affected by Bill 20-21. Any reduction in payroll and training costs for health clubs would come at the expense of wages from lifeguards. However, if the supply of lifeguards is low relative to demand from businesses, then the loss of wages may be marginal. Beyond this effect, OLO does not anticipate the bill to affect other residents in terms of the Council's priority indicators.

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## DISCUSSION ITEMS

Not applicable

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## WORKS CITED

Montgomery County Code. Sec. 2-81B. Economic Impact Statements.

Montgomery County Council, Expedited Bill 21-21, Fire and Rescue Services – Length of Service Awards Program For Volunteers - Amendments, introduced on May 18, 2021.

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## CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

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<sup>3</sup> For the Council's priority indicators, see Montgomery County Code, Sec. 2-81B. Economic Impact Statements, [https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md/0-0-0-80894](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-80894).

# Economic Impact Statement

Office of Legislative Oversight

## CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

**Fiscal Impact Statement**  
**Bill 20-21, Swimming Pools – Lifeguard Requirement - Amendments**

**1. Legislative Summary**

Bill 21-20 defines the term “health club,” and exempts swimming pools at health clubs under specified circumstances from the requirement to have a lifeguard on duty present when the pool is open for use. Furthermore, it requires exempted public pools to meet certain criteria, including posting signage; having an emergency alert system; and requiring an employee to regularly inspect pool area.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

The bill is not expected to impact County revenues or expenditures.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

Not applicable.

**4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

**5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not applicable.

**6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not applicable.

**7. An estimate of the staff time needed to implement the bill.**

No staff time is needed for implementation of the bill.

**8. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

**9. An estimate of costs when an additional appropriation is needed.**

Not applicable.

**10. A description of any variable that could affect revenue and cost estimates.**

Not applicable.

**11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable.

**12. If a bill is likely to have no fiscal impact, why that is the case.**

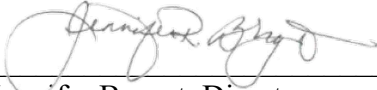
The bill does not make a substantive change to the inspection and licensing process.

**13. Other fiscal impacts or comments.**

Not applicable.

**14. The following contributed to and concurred with this analysis:**

Clark Beil, Senior Administrator, Licensing and Regulatory Services, DHHS  
Lindsay Lucas, Fiscal and Policy Analyst, Office of Management and Budget



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Jennifer Bryant, Director  
Office of Management and Budget

6/28/21

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Date

# Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

## **BILL 20-21: SWIMMING POOLS-LIFEGUARD REQUIREMENT-AMENDMENTS**

### **SUMMARY**

The Office of Legislative Oversight (OLO) expects Bill 20-21 to have a minimal impact on racial equity and social justice in the County.

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### **BACKGROUND**

The County Council introduced Bill 20-21 on May 27, 2021. The bill aims to modify lifeguard requirements for certain business establishments with swimming pools in the County. If enacted, the bill 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.<sup>1</sup>
- 

### **ANTICIPATED RESJ IMPACTS**

Since the scope of Bill 20-21’s influence is estimated to impact a limited number of health clubs with swimming pools (19), OLO anticipates that the bill would have a minimal impact on racial equity and social justice in the County. No changes in RESJ for residents in the County are anticipated under Bill 20-21.

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### **CAVEATS**

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

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### **CONTRIBUTIONS**



# RESJ Impact Statement

## Expedited Bill 20-21

OLO staffer Dr. Theo Holt, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement.

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<sup>1</sup> Montgomery County Council, Bill 20-21, Swimming Pools-Lifeguard Requirement-Amendments, introduced on May 27, 2021, Montgomery County, Maryland.



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich  
County Executive

Marc P. Hansen  
County Attorney

MEMORANDUM

TO: Scott Goldstein, Chief  
Fire & Rescue Service

VIA: Edward B. Lattner, Chief  
Division of Government Operations

FROM: Amy DiBiasio  
Associate County Attorney

DATE: June 9, 2021

RE: **Bill 20-21, Swimming Pools - Lifeguard Requirement - Amendments**

Bill 20-21 does not present any legal issues.

cc: Dale Tibbitts, Special Assistant to the County Executive  
Marc P. Hansen, County Attorney  
Tammy Seymour, OCA  
Ludeen McCartney-Green, Legislative Attorney  
Edward Haenftling, Associate County Attorney

21-003667

**TESTIMONY ON BEHALF OF THE COUNTY EXECUTIVE MARC ELRICH ON Bill 20-21 Swimming Pools – Lifeguard Requirement – Amendments**

Good afternoon Council President Hucker and Members of the County Council. I am Dale Tibbitts, speaking on behalf of County Executive Marc Elrich. The County Executive supports Bill 20 - 21.

The bill aligns the lifeguard requirements for health clubs with the amendments the county has previously made for hotels. There are 12 health club pools covered by these amendments.

Montgomery County's requirements are more stringent than the State's requirements to keep our residents safe.



June 15, 2021

Montgomery County Council  
Stella Werner Council Office Building  
100 Maryland Ave  
Rockville, MD 20850

**Re: LA Fitness Supports Bill 20-21, Swimming Pools - Lifeguard Requirement - Amendments**

Dear Council President Huckler and Honorable Members of the Montgomery County Council:

As the operator of nearly 20 health clubs in Maryland and six in Montgomery County, Fitness International, LLC d/b/a LA Fitness (“LA Fitness”) respectfully requests that you support the above-referenced legislation.

As you know, state rules do not require a lifeguard’s presence at semi-public pools with surface areas under 2,500 square feet (COMAR § 10.17.01.40(D)(6)). At this time, Montgomery County is the only jurisdiction to require lifeguards at health clubs with pools of this size. In the past three years, Anne Arundel, Baltimore and Prince George’s counties passed local laws to exempt health clubs from this requirement. These jurisdictions have also passed legislation to provide an exemption for hotels and motels. Montgomery County’s Code currently allows hotels and motels to operate pools of this size without a lifeguard on duty during certain days of the week, provided that certain safety-related conditions are met. Consistent with the foregoing, Bill 20-21 would permit an entity defined as a health club under the bill to operate pools under a certain size without a lifeguard present, as long as such entity complied with certain safety-related conditions.

Bill 20-21 creates a narrow exemption that would apply only to entities defined as “Health Club” in the local code that operate relatively small pools. Crucially, moreover, pool safety remains a priority under Bill 20-21. Even if exempt, a health club operator would still have to meet all applicable state regulations regarding safety, meet specified sign requirements, and install an emergency alert system approved by the Director of the Department of Health and Human Services that connects directly to 9-1-1 and notifies an employee of the health club when activated. Similarly, exempted health clubs would still to be subject to county rules mandating that certain safety equipment be present, such as first-aid kits and rescue poles. Minors under the age of 16 would also be prohibited from using such pools without requisite supervision. And of course lifeguards would still be required at larger pools (i.e., with surface areas of 2,500 square feet or more) and at pools operated by entities not defined as health clubs.

June 15, 2021

Re: LA Fitness Supports Bill 20-21, Swimming Pools - Lifeguard Requirement - Amendments

Page 2 of 2

Finally, the enactment of Bill 20-21 may benefit both Montgomery County and the local fitness industry, particularly while recovering from the COVID-19 pandemic. Health club closures during the pandemic strained budgets as dues were suspended, members may have canceled memberships, and new members could not be recruited. Providing a lifeguard exemption for health clubs in Montgomery County would assist with budget pressures and ease financial barriers facing health clubs with pools. This may in turn encourage current and prospective health club operators to improve existing amenities and develop new facilities, potentially leading to healthier citizens, additional jobs, and increased tax revenues. Operators may also be less inclined to locate their health clubs in other counties that do not require lifeguards at such pools.

Given the potential benefits of Bill 20-21 and its reasonable balancing of interests summarized above, we respectfully ask that you vote in support of this bill.

Sincerely on behalf of LA Fitness,

Jeremy Hufton  
Senior Vice President  
Corporate and Compliance Counsel  
Fitness International, LLC

Honorable Councilmembers  
Montgomery County, Maryland

I am concerned about Bill 20-21.

My father was the founder of a community swimming pool in Montgomery County. It was there that I took my first swim lesson, at age four. I have been swimming all my life, in neighborhood, county, gym, high school, and college pools, from Germantown to Arlington to College Park.

I understand the Bill has been encouraged by a national fitness company, where I have been a longtime member. I primarily use two of their local facilities.

My concerns about the Bill are as follows:

1. Matching policies at other Maryland counties and from the state. The problem with this logic is it fails to consider the actual merit of the idea. It is akin to the juvenile question, “But, all the other kids do (X), so why can’t I?” If “X” is not a prudent idea, the quantity of kids, or in this case, counties, using the idea becomes irrelevant. Even if all other (Maryland) counties passed similar bills that would not indicate it was the correct thing to do.
2. Revenue gain. A sure way to attract new members is word of mouth. To enhance word of mouth advertising, a fitness company would need to put two new policies in place: 1, ask members for feedback, and 2, act on suggestions from members. In my experience, the fitness facilities where I swim have never done this. (Instead, they hold Member Day events, which they describe as celebrations for current members, but are instead a transparent, poorly executed – how would a potential member know to attend? - attempt to attract new members.)
3. Revenue loss. One wonders how many members, such as myself, would no longer use the pool without lifeguards present, and who might therefore terminate with the company.
4. Pools serving children under 18 would be excluded from the legislation. For a fitness facility to qualify under this requirement, they would have to stop permitting families (with adolescents) to

swim, and more significantly, they would have to discontinue children's swim lessons. Does this mean they would be forgoing revenue from the swim lesson company?

Families with children would, presumably, end their membership and go elsewhere, another significant loss of revenue for the national fitness company. This would also be the loss of a recreational opportunity for families, at a time when children are encouraged to exercise more for obesity prevention and generally for their health.

5. Staff could be freed up to perform other fitness center tasks.

Lifeguards at my fitness facility told me they were not hired by the fitness center, rather, they work for a lifeguard company. Therefore, the fitness facility employees would not be gaining any extra time for non-pool tasks. (If the fitness facility discontinues their arrangement with the lifeguard company, would this be another loss of revenue?)

6. Quality of lifeguarding service. This is not addressed in the Bill, but removing a requirement to have lifeguards seems the opposite direction of improving the quality of their work. Badly needed are lifeguards who do not spend their shift looking down at their phones, and are watching the persons in the pool instead. (I have only seen two lifeguards who were not looking at their phones. Both were staring into space and listening to earbuds. Another lifeguard was using her laptop, with her back to the pool!)

7. Size. The Bill would apply to pools under a certain size. However, a smaller size in no way guarantees a safer pool. For example, at one facility where I swim the pool is small, with only three lanes. Imagine one lane being used for swim lessons, one lane being used for physical therapy (note: another source of revenue), and only one lane available for laps – with no lifeguard present.

8. Safety without a lifeguard present. There are no swimming ability requirements or safety knowledge criteria for persons using these pools. People can be in the water who do not know how to swim, how to float, what to do if they experience a (major or minor) medical event, or how to help another person. This is, at best, frightening.

9. Hygiene. Lifeguards could – although they don't - prevent people from walking on the pool room floor wearing street shoes. This includes workers, prospective members (on a facility tour), and parents of children receiving lessons. At one facility where I swim, members exit the facility - in street attire - by walking out from the

locker room through the pool room. In addition, it is lifeguards who can remind members to shower before entering the water. Without lifeguards, how many members would ignore that requirement?

10. The following concerns are specific to one of the facilities where I swim. It is possible that some or all of them might apply to other facilities.

A. This pool is already an unsafe setting, because lap swimmers and recreational users share the same space, without ropes delineating the two. Therefore, there are teens racing each other, people swimming underneath the surface, people standing and perhaps chatting, walkers, and lap swimmers. The chance for collision is high, and under the circumstances the posted capacity limit is far too high and therefore utterly unsafe.

B. Similarly, the absence of a lifeguard would further endanger pool users who are already at risk. Almost every time I swim laps there, back and forth along a row, a person enters the pool and starts water-walking or swimming in my row: exceedingly dangerous. I'll be doing a backstroke or a crawl stroke (and therefore not able to constantly look ahead of me), and meanwhile, someone will be walking or swimming straight toward me.

C. The tile floor at and near the pool entrance is always heavily soaking wet. It is the lifeguards who (only when asked) mop the water for the safety of pool users.

D. Lifeguards could, although they don't, prevent persons from using the pool and sauna while wearing exercise clothing, and with very long, uncapped hair. It is not pleasant to swim with long hairs in the water, and not hygienic to wear exercise clothing in the pool.

E. Lifeguards could, although they don't, unless asked, request that members abstain from pouring eucalyptus oil onto the steam room grates without asking anyone in the room first. The pool room near the steam room almost always reeks of eucalyptus.

F. Twice, I have reported these concerns to the Montgomery County agency that oversees and licenses fitness center pools. Their response was that everything at the facility was fine. I have written my suggestions to the facility and to the corporate office of the facility as well.



In summary, as a life-long user of indoor swimming pools, it is my strong opinion that eliminating the requirement for lifeguards at any indoor pool would severely imperil the health, well-being and safety of pool-using citizens of Montgomery County.

Thank you for considering my views.

Rhona Bosin, LCSW-C  
Silver Spring, Maryland

# CODE MCPD Incident Report - 180017896

Date: 05/17/2021 15:15

Page: 1 of 2

Report #: 180017896      Montgomery County Police  
Report Date: 04/12/2018 18:01      Start Date: 04/12/2018 15:00  
End Date: 04/12/2018 15:38

**\* 180017896 \***  
180017896

Summary: POLICE INFORMATION

Report Type: 2938 POL INFORMATION

Case Status: 180017896 99 - Not Applicable

## Incident Location

Address: 6828 WISCONSIN AVE

Intersection:

CHEVY CHASE, MD 20815

Response Area: 2D2 - Reporting Area: 031 - Lat: 38.9779723 - Long: -77.091134

Addl. Info:

## Incident Offenses

# 1      Original Report      9199      POLICE INFORMATION

Remarks:

## Officers Involved

Reporting SEPARATED JAMIE MEDLIN - MCPD - 704 - Original Report

Approving SEPARATED RUSSELL RANKIN - MCPD - 973 - Original Report

## Incident People

Victim      **GLENN**

Sex: M      Race: W      DOB:      Age:      Original Report

**\* 100834292 \***  
100834292

Address:      (Date of Info: 04/12/2018)

CHEVY CHASE, MD 20815

Cell Phone:      (Phone Date of Info: 04/12/2018)

## Associated LEA Cases

LEA Case Number:

LEA Case Summary:

180017896

MCPD, Review Status: Review, Case Status: Not Applicable 04/12/2018, Workgroup: MCDH

Assigned To: No Officer Assigned

Incident Narrative

Reporting SEPARATED JAMIE MEDLIN - MCPD, ID # 704 1 04/12/2018 18:02

On 04/12/2018, the writer responded to the Washington Sports Club for a drowning that occurred earlier. When the writer arrived on the scene, MCFR had transported the victim to Suburban Hospital.

While the writer was on scene, he spoke with Brian the Business Director of the club. advised the writer of the following events. stated that Glenn was in the pool swimming laps, when he suffered a medical emergency. The emergency first became noticeable by one of the guests at the Washington Sports Club.

told the writer that began to swim into the lane of a guess and hampered the ability of the guess to complete his workout. The guess noticed that did not look well and notified the life guard on duty. Shortly after notifying the life guard of the situation, they noticed go under the water and not resurface. The life guard immediately jumped into the water and pulled from the pool.

When MCFR responded to the scene they advised that had suffered a seizure. He continued to have seizures while in transport to Suburban Hospital. When arrived at Suburban he was stabilized by the medical staff at the hospital. is expected to recover from his medical emergency.

The writer was able to locate contact information on son and have him respond to Suburban Hospital. As of the time of this report was resting in the emergency room waiting to be admitted to the hospital.

# CODE MCPD Incident Report - 180054454

Date: 05/17/2021 15:15

Page: 1 of 3

Report #: 180054454      Montgomery County Police  
Report Date: 10/30/2018 22:41      Start Date: 10/30/2018 18:30  
End Date: 10/30/2018

**\* 180054454 \***  
180054454

Summary: POLICE INFORMATION

Report Type: 2936 ILL PERSON

Case Status: 180054454 02 - Open

## Incident Location

Address: 9401 OLD GEORGETOWN RD  
Intersection:  
BETHESDA, MD 20814  
Response Area: 2E2 - Reporting Area: 071 - Lat: 39.0107554 - Long: -77.113583  
Addl. Info: YMCA

## Incident Offenses

#1 Original Report 9199 POLICE INFORMATION

Remarks:

## Officers Involved

Approving SGT SHON BARR - MCPD - 1439 - Original Report  
Reporting PO3 ALBERT HANCE - MCPD - 2905 - Original Report

## Incident People

**Victim VALERI** **\* 100702820 \***  
Sex: M Race: W DOB: Age: Original Report  
Address: (Date of Info: 10/04/2016)  
Cell Phone: (Phone Date of Info: 10/04/2016)

**Witness ANTHONY** **\* 100878865 \***  
Sex: M Race: W DOB: Age: Original Report  
Cell Phone: (Phone Date of Info: 10/30/2018)

**Witness ARVIN** **\* 100878866 \***  
Sex: M Race: W DOB: Age: Original Report  
Address: (Date of Info: 10/30/2018)  
BETHESDA, MD 20814  
Cell Phone: (Phone Date of Info: 10/30/2018)

**Witness DANIEL** **\* 100878868 \***  
Sex: M Race: W DOB: Age: Original Report  
Cell Phone: (Phone Date of Info: 10/30/2018)  
Employment: YMCA, 9401 OLD GEORGETOWN RD BETHESDA, MD 20817 (Emp. Date of Info: 10/30/2018)

**Affected Party ALLA BLI** **\* 100878874 \***  
Sex: F Race: W DOB: Age: Original Report  
Cell Phone: (Phone Date of Info: 10/30/2018)

**Witness PETER S** **\* 100878899 \***  
Sex: M Race: W DOB: Age: Original Report  
Cell Phone: (Phone Date of Info: 10/30/2018)

# CODE MCPD Incident Report - 180054454

Date: 05/17/2021 15:15

Page: 2 of 3

## Incident Businesses

**YMCA**

**\*5212\***  
5212

Address: 9401 OLD GEORGETOWN RD  
BETHESDA, MD 20817

Original Report    **Other**

## Associated LEA Cases

LEA Case Number:  
180054454

LEA Case Summary:  
MCPD, Review Status: Review, Case Status: Open 10/31/2018, Workgroup: MCDH

**Assigned To:** No Officer Assigned

Incident Narrative

Reporting PO3 ALBERT HANCE - MCPD, ID # 2905 1 10/30/2018 22:41

On 10-30-2018, at approximately 1838 hrs, Montgomery County Police and Montgomery County Fire/Rescue responded to 9401 Old Georgetown Rd (YMCA) for a report of a drowning. Upon arrival, responding units were met by YMCA employees who advised the following:

Witness Anthony (Lifeguard) stated he was in the process of being relieved by Witness Arvin (Lifeguard) when he noticed Victim Valeri i motionless underwater in the pool. jumped into the pool to retrieve . and extracted out of the water and began first aid.

Witness Daniel (Pool Manager) arrived shortly after was out of the pool and assisted with CPR.

Witness Peter stated he was sharing swim lane two with just prior to the incident. changed to lane one once it became available. continued to swim. swam one more lap and noticed underwater. He then saw the lifeguards extracting . was able to provide Officer Hance with a detail time of the incident since he was tracking his time electronically. The estimated time was 1830 hrs and it's believed might have been underwater for approximately 1.5 to 2 minutes.

Montgomery County Fire/Rescue took over CPR and transported to Suburban Hospital.

Homicide detective Sgt O'Brien (9H26) responded to the scene.

Officer Hance placed personal property inside of his vehicle. Officer Hance gave the vehicle key to 's daughter Alla at Suburban Hospital.

Officer Hance provided with a business card.

## 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.**

---

**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.

### 51.00.01.08 Safety

The sections of the Code of Maryland Regulations (COMAR) 10.17.01 (2013), Public Swimming Pools and Spas, governing public pool and spa safety and pool and spa operator certification are incorporated for the operating standards of this regulation unless superseded or amended by the following specific standards:

A. There must be no protrusions, extensions, means of entanglement, or other obstructions which can cause entrapment or injury to the patron. There must be no hazardous obstruction extending from the Swimming Pool wall or floor.

B. Handholds must be provided around the perimeter of the Swimming Pool and must not be more than 9" above or 3" below the static water level. The overhang for coping or cantilevered decking shall not be greater than 2" nor less than 1" and shall not exceed 2 1/2" in thickness for the last 2" of the overhang.

C. A lifeline must be provided at or within 1' of the transition point and on the shallow side of that point. Its position must be marked with floats at not greater than 5' spacing. The life line must be 1/2" inch minimum diameter and its terminals must be securely anchored, be of corrosion-resistant material, and be of a type which has no projection which may constitute a hazard to patrons.

D. Depth Markers.

1. Depth of water in feet must be clearly and permanently marked at or above the water line on the vertical pool wall and on the top of coping or edge of the deck within 12" of the pool wall. Markings must be at maximum and minimum points, at all points of slope change, and at no more than 2' increments of depth. Such marking must be spaced at no more than 25' intervals and must be arranged to be uniformly located on both sides of the Swimming Pool as well as both ends. In the case of irregularly shaped Swimming Pools, such markings must also designate depths at all major deviations in shape.

2. The depth marking numbers must be at least 4" minimum height, be a contrasting color with the background, and be permanent. Markings on the vertical pool wall must be positioned to be read from the water side. Markings on the deck must be positioned to be read while standing on the deck facing the water. Deck markings must be slip-resistant.

3. Depth markers shall be marked in units of feet and inches. Abbreviations of "FT" and "IN" may be used in lieu of "FEET" and "INCHES".

E. Indoor Public Spas may not be individually enclosed.

F. Hotels exempted from lifeguards must provide a functional and visible emergency alert system approved by the Director that:

1. connects directly to 9-1-1; and
2. notifies an employee of the hotel when activated.

**Sec. 51-8. Operating standards for public swimming pools.**

The following basic principles shall govern the operation of public swimming pools and shall be used to interpret, promulgate regulations and to serve as the basis of issuance and renewal of operating permits under section 51-5.

(a) *Operation generally.* Public swimming pools shall be operated:

(1) To maintain clarity, cleanliness and chemical composition of the water in the pool at all times it is in use in a manner which will prevent the growth and spread of organisms, minimize deleterious effects on the bathers and permit the visual observation and surveillance of bathers at the deepest point of the pool.

(2) To provide such equipment and trained personnel as will:

- a. Permit taking a required emergency action,
- b. Permit regulation and control of the use of the pool, and
- c. Assure proper operation of the pool, its equipment and associated facilities;

(3) To eliminate hazards to the health and safety of bathers and occupations due to:

- a. Unsafe conditions, and
- b. Unsafe practices;

(4) To maintain the cleanliness of decks, surfaces, bath houses and other associated facilities;

(5) To assure performance of equipment and fixtures in the manner for which they were intended;

(6) To provide for the personal hygiene of the bathers.

(b) *Manual on public swimming pool operations.* All permittees and licensees shall comply with the requirements for public swimming pool operation as set forth in this chapter and as set forth in the manual on public swimming pool operations as such manual may be issued by executive regulations by the county executive. The manual on public swimming pool operations shall incorporate an inspection form which shall constitute notice of violation as set forth herein when served on the owner, pool management company, pool operator or agent thereof. (1971 L.M.C., ch. 45, § 1; 1979 L.M.C., ch. 55, § 5.)

**Sec. 51-9. License for swimming pool operators.**

(a) Every public swimming pool must be in the immediate control of a pool operator.

(b) A person may act as both lifeguard and pool operator if acting as both does not adversely affect safety and operational standards.

(c) The approving authority must issue a swimming pool operator's license if the applicant:

(1) is at least 17 years old;

(2) has at least 2 seasons' experience as a lifeguard or operator, or has one season's experience and has successfully completed a training course approved by the approving authority; and

(3) passes an examination given by the approving authority or has an operator's license issued by Montgomery County for the previous operating season.

(d) Reserved.

(e) A swimming pool operator's license is valid for 3 years after the date of issuance, unless revoked by the approving authority. The approving authority may issue a swimming pool operator's license which is valid for less than three years if the applicant requests a license for a shorter period. When an applicant has filed a valid application for license renewal and the applicant's current license has not been suspended or revoked by the approving authority, the current license remains valid for not more than 180 days after its expiration date until the approving authority acts on the renewal request.

(f) A swimming pool operator's license may be suspended or revoked if the licensee:

(a) has repeated or continuing violations of this Chapter; or

(b) obtains the license by fraud.

The approving authority must give the licensee notice in writing of the violations and an opportunity for a hearing before the approving authority before the license is suspended or revoked. (1971 L.M.C., ch. 45, § 1; 1979 L.M.C., ch. 55, § 6; 1986 L.M.C., ch. 3, § 1; 1986 L.M.C., ch. 33, § 1; 1990 L.M.C., ch. 26, § 1.)

**Editor's note**-In its amendment of this section, L.M.C., ch. 26, § 1, contained no subsection (d).