

## CODE OF ORDINANCES

## Chapter 25

## SWIMMING POOLS AND WADING POOLS\*

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 \* **Cross reference(s)**--Buildings, Ch. 6; Zoning, Ch. 27.  
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**Sec. 25-1. Definitions.**

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section.

*Abutter* shall mean any owner of property that abuts or is contiguous with land under consideration by the Code Enforcement Officer for a permit under this Chapter (but does not include the land most directly opposite a subject property on any street). For purposes of identification in providing notice, owners shall be the parties listed by the Assessor for the City of South Portland as those against whom taxes are assessed on the most recent applicable tax assessment records maintained by the Assessor.

*Artificial pool* shall mean a pool composed entirely of artificial construction, located above or below ground.

*Partly artificial pool* shall mean a pool formed from a natural body of water which has either so limited a flow or such an inadequate natural circulation that the quality of water must be maintained by artificial means.

*Person* shall mean any individual, partnership, corporation, entity, association, or public or private organization of any character.

*Private swimming pool* shall mean any pool designed, used and maintained for swimming purposes by an individual for use by members of his household and guests and located on a lot as an accessory use to a residence. Unless otherwise qualified the term "private swimming pool" shall be construed as including both artificial and partly artificial pools.

*Public pool* shall mean a "public pool" as that term is defined in 22 M.R.S.A. § 2491(10-A), as may be amended.

*Public spa* shall mean a "public spa" as that term is defined in 22 M.R.S.A. § 2491(10-B), as may be amended.

*Wading pool* shall mean any artificially constructed pool, not designed or used for swimming purposes, with a maximum area of one hundred and twenty (120) square feet and a maximum water depth of twenty-four (24) inches.

(Code 1966, § 11-9-2; Ord. No. 18-70, 8-3-70; Ord. No. 10-12/13, December 3, 2012 [Fiscal Note: Less than \$1000]; Ord. No. 18-19/20, 5/5/20 [Fiscal Note: Less than \$1000])

**Sec. 25-2. Applicability of electrical regulations.**

- (a) Construction and installation of electric wiring for equipment in or adjacent to swimming pools or wading pools, to metal appurtenances in or within five (5)

feet of such pools, and to the auxiliary equipment such as pumps, filters and similar equipment, shall be in accordance with the electrical regulations of the city.

- (b) Pool reinforcing steel, metal parts of ladders, diving boards and their supports, and the like, and metal parts of electrical equipment associated with the pool water circulating system shall be grounded in accordance with the electrical regulations of the city.

(Code 1966, § 11-9-14; Ord. No. 18-70, 8-3-70)

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**Cross reference(s)**--Electricity, Ch. 6.  
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**Sec. 25-3. Permit required to construct, establish pool.**

No person shall construct or establish a private swimming pool or wading pool without having obtained a permit therefor in the manner prescribed by this chapter.

(Code 1966, § 11-9-3; Ord. No. 18-70, 8-3-70)

**Sec. 25-4. Application for permit: To whom made; accompanying materials.**

- (a) An application for a permit to construct and maintain a private swimming pool or wading pool shall be made to the Code Enforcement Officer by the owner of the property or by the contractor who will construct the pool.
- (b) An application for a wading pool shall be accompanied by duplicate sets of plans, specifications and plot plan of the property. The plot plan shall show the accurate location of the proposed wading pool on the property, together with any proposed bathhouses or cabanas. The plot plan, shall also show the location, height and type of existing fencing or walls on the boundary lines of the property, together with the type and height of such fencing or enclosure as may be required by Sec. 25-10 to prevent, within reason, any person from gaining access beneath or through the fence when the pool is unguarded or unattended.
- (c) An application for a swimming pool shall be accompanied by duplicate sets of the following:
- (i) An existing conditions plan prepared by a land surveyor or other qualified professional licensed in the State of Maine and drawn to scale showing the boundaries of the property; any improvements on the lot including buildings, structures, and paving; and any existing easements.
  - (ii) A plot plan prepared by a land surveyor or other qualified professional licensed in the State of Maine at the same scale as the existing conditions plan showing the accurate location of the proposed swimming pool on the property, together with any proposed bathhouses or cabanas. The plot plan shall also show the location, height and type of existing fencing or walls on the boundary lines of the property, together with the type and height of such fencing or enclosure as may be required by Sec. 25-10 to prevent, within reason, any person from gaining access beneath or through the fence when the pool is unguarded or unattended.
  - (iii) Plans and specifications of the proposed swimming pool.
  - (iv) A drainage plan meeting the submission and design standards of Sec. 27-1536(3) of Chapter 27 of the Code of Ordinances, as may be amended from time to time.

(Code 1966, § 11-9-4; Ord. No. 18-70, 8-3-70; Ord. No. 18-19/20, 5/5/20 [Fiscal Note: Less than \$1000])

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**Cross reference(s)**--Duty to issue applications for permits, § 14-5.  
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**Sec. 25-5. Repealed.**

(Code 1966, §§ 11-9-4--11-9-4.5; Ord. No. 18-70, 8-3-70; Ord. No. 21-05/06, 6/5/06 [Fiscal Note: Less than \$1000])

**Sec. 25-6. Construction, design to allow proper maintenance and operation.**

The construction and design of private swimming pools and wading pools shall be such that they may be maintained and operated in a clean and sanitary condition at all times.

(Code 1966, § 11-9-5; Ord. No. 18-70, 8-3-70)

**Sec. 25-7. Plans of proposed construction to show compliance with chapter.**

All plans submitted to the city for swimming pools and wading pools to be constructed shall show compliance with the requirements of this chapter.

(Code 1966, § 11-9-13; Ord. No. 18-70, 8-3-70)

**Sec. 25-8. Location.**

No private swimming pool or wading pool shall be erected nearer to a street property line or nearer to a side property line than herein set forth for all residence zones. The proposed location of a swimming pool shall be set with stakes or flags by a land surveyor or other qualified professional licensed in the State of Maine at the time of application, and the actual location shall be verified by said professional prior to final City inspection and approval by the Code Enforcement Officer.

- (1) *Residential zoning districts (at time of enactment of Ordinance #18-19/20, those districts are RF, AA, A, G, VR, RT, WR, A-1, G-1, G-2, G-3, G-4, G-5, G-6 and O'NEIL).* Minimum setback from street property line fifty (50) feet, minimum setback from a side or rear property line, ten (10) feet.
- (2) *Non-residential zoning districts.* Minimum setback from street property line twenty (20 feet), minimum setback from a side or rear property line, ten (10) feet.

A corner lot where the street frontages are such that the shorter frontage is ninety (90) per cent or less of the longer frontage, the lot shall be deemed to front on the street possessing the shorter frontage and the longer frontage shall be considered the side property line.

- (3) *Exception.*
  - (a) Notwithstanding the above locational limits and without the need for a variance, the Code Enforcement Officer may issue a permit to an owner of property improved with a dwelling for the purpose of making a private swimming pool on the property safely available to an individual with a disability who resides in the dwelling, provided that the Code Enforcement Officer first makes a determination as follows:
    - (i) the requested accommodation is requested by or on behalf of an individual with a disability as that term is defined in 5 M.R.S. § 4553-A, as may be amended;
    - (ii) the requested accommodation is necessary to provide an individual with a disability an equal opportunity to use and enjoy a private swimming pool; and
    - (iii) the requested accommodation is not greater than necessary for the safety and effectiveness of the private swimming pool.
  - (b) For any application under this subsection, the Code Enforcement Officer shall provide written notice to the abutters as defined in Sec. 25-1 herein of the permit application and shall state that action will be taken on the permit application no earlier than 21 days after the date of the notice. The Code Enforcement Officer shall not issue any permit under this subsection until 21 days after the date of such written notice to the abutters, and the Code Enforcement Officer shall consider any comments on the application received from abutters in that 21 day period. Failure of any property owner

to receive the notice sent under this subsection does not invalidate any action taken by the Code Enforcement Officer.

- (c) In order to reduce the impact of the swimming pool on contiguous properties, the Code Enforcement Officer shall require as a condition of approval of the permit that the fencing called for in Sec. 25-10 be solid/privacy style fencing at least six (6) feet in height and that the property owner maintain such fencing in good condition and repair for as long as the swimming pool remains on the property.
- (d) A fully above-ground private swimming pool installed or constructed hereunder shall be removed when the individual with a disability no longer lives in the dwelling, unless the Code Enforcement Officer makes a determination as follows:
  - (i) the dwelling has been reoccupied by an individual with a disability or such private swimming pool provides benefit for future occupancy by an individual with a disability; or
  - (ii) the removal of the private swimming pool is not readily achievable without making significant structural changes that would impact the safety and soundness of the dwelling on the property, as determined solely by the Code Enforcement Officer; or
  - (iii) the cost of removal of the private swimming pool equals or exceeds 50% of the market value of the private swimming pool, as determined solely by the Code Enforcement Officer.
- (e) The Code Enforcement Officer may impose other conditions of approval of the permit reasonably related to ensuring that the accommodation does not fundamentally alter the nature of this Chapter, including, without limitation, measures to reduce the impact on surrounding properties or measures in consideration of the physical attributes of the property and existing structures on the property.
- (f) All medical records submitted to the Code Enforcement Officer and any other documents submitted for the purpose of describing or verifying an individual's disability are confidential.

(Code 1966, §§ 11-9-11, 11-9-11.1; Ord. No. 18-70, 8-3-70; Ord. No. 2-82/83, 7-19-82; Ord. No. 18-19/20, 5/5/20 [Fiscal Note: Less than \$1000])

**Sec. 25-9. Construction materials to be waterproof, easily cleaned.**

All material used in the construction of private swimming pools and wading pools shall be waterproof and easily cleaned.

(Code 1966, § 11-9-5; Ord. No. 18-70, 8-3-70)

**Sec. 25-10. Fences or walls: Required; specifications; gates and doors.**

- (a) No person owning, controlling or in possession of land within the city, upon which it situated a swimming pool or wading pool or other outside body of water designed or used for swimming, dipping or immersion purposes by men, women or children, of a water depth exceeding eighteen (18) inches, shall fail to maintain on the lot or premises upon which such pool or body of water is located a fence or wall.
- (b) Such fence or wall shall not be less than four (4) feet in height with a maximum height not to exceed seven (7) feet. Such fence or wall shall not have openings, holes or gaps larger than four (4) inches in any dimension, except for doors or gates; provided, however, that if a picket fence is erected or maintained, the horizontal gap dimension shall not exceed four (4) inches; provided, further, that a dwelling or accessory building may be used as a part of such enclosure.

- (c) All gates or doors opening through an enclosure required by this section shall be equipped with self-closing and self-latching devices designed to keep, and capable of keeping, such doors or gates securely closed at all times when not in actual use. Such gates or doors shall have a latching device placed four (4) feet above ground level, or otherwise made inaccessible from the outside to small children; provided, however, that the door of any dwelling occupied by human beings and forming any part of the enclosure need not be so equipped. All such gates or doors shall be kept closed or latched when the pool or body of water is not in use.
- (d) Wherever the requirements of this Section are at variance with the requirements of the Maine Uniform Building and Energy Code, the most restrictive requirement or that imposing the higher standard shall govern.

(Code 1966, §§ 11-9-12, 11-9-12.1; Ord. No. 18-70, 8-3-70; Ord. No. 18-19/20, 5/5/20 [Fiscal Note: Less than \$1000])

**Sec. 25-11. Compliance with fencing and location provisions prerequisite to final inspection, approval.**

Final inspection and approval as evidenced by a certificate of completion of all swimming pools and wading pools constructed subsequent to August 3, 1970, shall be withheld until all the requirements of Secs. 25-8 and 25-10 have been complied with.

(Code 1966, § 11-9-13; Ord. No. 18-70, 8-3-70; Ord. No. 18-19/20, 5/5/20 [Fiscal Note: Less than \$1000])

**Sec. 25-12. Connections between pools and private water supply systems, recirculating or heating systems.**

There shall be no physical connection between a public or private water supply system and a private swimming pool or wading pool at a point below the maximum water line of the pool or to the recirculating or heating system of the pool.

(Code 1966, § 11-9-6; Ord. No. 18-70, 8-3-70)

**Sec. 25-13. Plumbing inspector's approval required where pools connected to sewer; application for approval; approval not to permit improper discharges.**

All private swimming pools and wading pools constructed subsequent to August 3, 1970, within the city and connected to either a storm water sewer or sanitary sewer shall have the approval of the plumbing inspector. Application for approval shall be in writing. Approval shall not be given to discharge such water at the curb or upon the surface of any street.

(Code 1966, § 11-9-7; Ord. No. 18-70, 8-3-70)

**Sec. 25-14. Owner to maintain pool so that chassis breaks and overflow prevented.**

The owner of every private swimming pool or wading pool shall maintain his pool so that breaks in the Pool chassis are prevented and so that water from the pool does not overflow into adjacent public or private property.

(Code 1966, § 11-9-5; Ord. No. 18-70, 8-3-70)

**Sec. 25-15. Treatment with disinfectant required.**

All private swimming pools and wading pools shall be treated with chlorine or its compounds in sufficient quantity so that there will be present in the water at all times when the pool is in use a residual of excess chlorine of not less than two-tenths (0.2) parts per million of available free chlorine.

(Code 1966, § 11-9-8; Ord. No. 18-70, 8-3-70)

**Sec. 25-16. Bacteriological tests, standards.**

Not more than twenty (20) per cent of the samples of water taken from any private swimming pool or wading pool, when more than twenty (20) samples have been examined, and not more than three (3) samples, when less than twenty (20) samples have been examined, shall contain more than two hundred (200) bacteria per cubic centimeter or shall show positive test (confirmed) for chloroform in any of five (5) ten-cubic centimeter portions of water at times when the pool is in use. For the purpose of this section, any number of samplings of water on a single day shall be considered as one sample. The local board of health is hereby authorized to take samples to insure compliance with these requirements. (Code 1966, § 11-9-9; Ord. No. 18-70, 8-3-70)

**Sec. 25-17. Location of accessory buildings.**

No accessory building incident to the operation of any private swimming pool or wading pool shall be located in the required front yard area.

(Code 1966, § 11-9-11.2; Ord. No. 18-70, 8-3-70)

**Sec. 25-18. Maintenance of accessory buildings.**

Locker rooms, bathhouses, cabanas, shower rooms, toilets and all other physical facilities or equipment incident to the operation of any private swimming pool or wading pool shall be kept in a sanitary condition at all times.

(Code 1966, § 11-9-10; Ord. No. 18-70, 8-3-70)

**Sec. 25-19. Variances.**

Variances from the terms of this chapter may be granted by the zoning board of appeals based upon the same standards as are required for variances under the zoning ordinance. Chapter 27 of the Code of Ordinances.

(Ord. No. 2-82/83, 7-19-82; Ord. No. 18-19/20, 5/5/20 [Fiscal Note: Less than \$1000])

**Sec. 25-20. Public pools and spas.**

- (a) Any person operating or maintaining a public pool or spa in the City must first register with the State of Maine Department of Health and Human Services and provide a copy of such registration to the City's Health Inspector.
- (b) City as delegated municipality for health inspections. The State of Maine Department of Health and Human Services' "Rules Relating to Public Pools and Spas," as may be amended from time to time, are adopted by reference as if fully set forth herein. The City desires to be a delegated community or municipality, authorized to perform health inspections consistent with the Rules. The annual fee per fiscal year for such inspections shall be as specified in the Schedule of License, Permit, Inspection and Application Fees established by City Council order. The annual fee shall be billed to the property owner once a year in the month of March and shall be due by May 31. If not paid by May 31, the annual fee shall double and include the City's collection costs (but not including attorney's fees).

(Ord. No. 10-12/13, December 3, 2012 [Fiscal Note: Less than \$1000])

**Sec. 25-21. Appeals.**

Any person aggrieved by a decision of the Code Enforcement Officer hereunder may appeal such decision to the Board of Appeals within thirty (30) days of the date of the decision appealed from, utilizing the same application form, procedures and review standards as used for an administrative appeal under

Chapter 27 of the Code of Ordinances.

Ord. No. 18-19/20, 5/5/20 [Fiscal Note: Less than \$1000

**Cross reference(s)**--Zoning regulations, Ch. 27.