

TEXAS DEPARTMENT OF STATE HEALTH SERVICES ADOPTS NEW RULES & REGULATIONS EFFECTIVE JANUARY 1, 2021 FOR POOLS

The Texas Administrative Code (TAC) has been changed. This change also requires compliance with new rules and regulations. **On the following page you will find a list of mandated signage requirements that must be posted at the pool.** The requirement under TAC 265.201 (j) (5) requires that a pool have a sign with the language:

**“PERSONS UNDER THE AGE OF 14 MUST NOT BE IN THE POOL
WITHOUT ADULT SUPERVISION”**

The BPHOA Board noting this change, wrote to the Texas Department of State Health Services on April 21, 2021 seeking clarification and was informed in writing on April 21, 2021 that this language is mandatory and must be used. This matter has been presented to several attorneys for consideration. The attorneys all agree that this policy has not been fully thought out and that both state and federal laws seem to be in conflict with each other.

Historically the BPHOA allowed children who are ten and eleven years old, and who passed a swim test, to use the pool without parental supervision. Children with ages 12 and over to under 14 years of age were allowed to use the pool without parental supervision. Obviously this **STATE MANDATED CHANGE** is in conflict with the BPHOA historical policy. While there may be a workaround it requires that the City of Sugar Land give permission and consent to change the language of the signs before the signs can be changed. Whether this can be accomplished in a timely fashion is uncertain. The City of Sugar Land was notified of this issue by BPHOA on April 27, 2021. The City Code Enforcement responded on May 11, 2021 that the City would not agree to allow children aged 10-13 to use the pool without adult supervision. Keeping the historical policy in effect without City approval leaves the BPHOA in the position of violating the new Rules & Regulations and being subject to fines and other legal action. This is not an option.

**THE BOARD DID NOT ENACT THIS CHANGE AND
DID NOT WANT IT!!!!**

HOA REGULATIONS DO NOT OVERRIDE FEDERAL LAWS, STATE LAWS, STATE
RULES & AND CITY OF SUGAR LAND ORDINANCES.

HOA RULES THAT ARE IN CONFLICT MUST YIELD TO HIGHER AUTHORITY.

**THE POOL WILL BE OPEN BUT “PERSONS UNDER THE AGE OF 14 MUST
NOT BE IN THE POOL WITHOUT ADULT SUPERVISION”**

There are many laws that the BPHOA must follow in operating a pool. These Laws have been enacted over the years to help promote the health and safety of the pool users. This is not an exclusive list. Some of the more prominent ones are mentioned below. Under Federal law there is the Virginia Graeme Baker Act, and ADA. Pool grates were altered to lessen drownings. The ADA encourages open use by those with mobility issues. Under State Laws the Texas Health and Safety Code, Section 341.064, 341.0645 and 341.0695, provide standards required for pool operations and facilities. The City of Sugar Land has its own Swimming Pool and SPA Code which is the International Swimming Pool and SPA Code. All of these laws, rules, regulations and codes must be complied with or the pool cannot open.

Figure: 25 TAC §265.201(j)(5)	
Required Pool Sign or Signs	Letter and Symbol Size
"WARNING-NO LIFEGUARD ON DUTY" (Where no lifeguard required or provided.)	4 inches
"NO DIVING" and International no diving symbol (Where no lifeguard required or provided.)	4 inches
"IN CASE OF EMERGENCY, DIAL 911"	4 inches
Precise Location of the Pool on or with the Emergency Phone (address, or directions, or GPS location, or building number, as appropriate)	Minimum 1-inch
Hours of Operation	Minimum 1-inch
Directions to and Location of Emergency Phone if Phone Not Visible in Pool Yard	Minimum 2-inches
Maximum User Load Limit	Minimum 2-inches
"PETS IN THE POOL ARE PROHIBITED"	Minimum 2 inches
"DO NOT SWIM IF YOU HAVE BEEN ILL WITH DIARRHEA WITHIN THE PAST 2 WEEKS"	Minimum 2 inches
"CHANGING DIAPERS WITHIN 6 FEET OF THE POOL IS PROHIBITED"	Minimum 2 inches
"GLASS ITEMS NOT ALLOWED IN THE POOL YARD"	Minimum 2 inches
"PERSONS UNDER THE AGE OF 14 MUST NOT BE IN THE POOL WITHOUT ADULT SUPERVISION"	Minimum 2 inches
"EXTENDED BREATH HOLDING ACTIVITIES ARE DANGEROUS AND PROHIBITED"	Minimum 2-inches

From: Ken Langer <[REDACTED]>
Sent: Wednesday, April 21, 2021 1:42 PM
To: Moore, Katie (DSHS) <Katie.Moore@dshs.texas.gov>
Cc: Angela Connell <Aconnell@mascapi.com>
Subject: Pool signage requirements and Question

WARNING: This email is from outside the HHS system. Do not click on links or attachments unless you expect them from the sender and know the content is safe.

Hello.

My name is Kenneth Langer and I am a board member for the Barrington Place Homeowners Association in Sugar Land, Texas. The association has been made aware that new signage requirements have been enacted under TAC 265.201 and we are trying to comply with the requirements.

Looking at 265.201 there is a Sign requirement dealing with persons under the age of 14

More specifically the quoted language reads:

"PERSONS UNDER THE AGE OF 14 MUST NOT BE IN THE POOL WITHOUT ADULT SUPERVISION"

Under historical pool policy the HOA has permitted children who are over 10 years old to swim without adult supervision upon passing a swim test by the lifeguard. We also permitted children over 12 years of age to use the pool without adult supervision. Our Lifeguards have the final say as whether or not a person is able to swim based on the ability of the individual swimmer. Our policy is similar if not somewhat stricter than the City of Sugar Land policy.

I have attached a copy of the City of Sugar Land municipal pool policies. The policy reads that "Children 10 and under must be accompanied by an adult"

So the question the signage brings up is whether or not the 10-under 14 age group must have adult supervision at the HOA pool. If that is the state law our HOA will enforce it. However this will mean a change in our HOA pool policy and plenty of angry parents who think their children are "old enough" to be on their own. So we are looking for clarification and guidance. Is there a new law prohibiting 10 to under 14 year old children from using the pool without adult supervision?

Can you please point out any other authority besides the TAC 265.201 language so that we can educate the members.

I am also adding our management company representative, Ms. Angela Connell, to this email so that she is aware of the requirements needed for compliance and can help us better educate our members. We all hope for a safe and enjoyable swim season. Thank you for your attention in this matter.

RE: Pool signage requirements and Question

From: Moore, Katie (DSHS) (katie.moore@dshs.texas.gov)

To: [REDACTED]

Cc: aconnell@mascapi.com

Date: Wednesday, April 21, 2021, 02:10 PM CDT

Several years ago I was informed by a property manager that the sign requirement in the repealed rules that prohibited children from entering a public pool or spa without an adult had been found by the US Justice Department to be discriminatory. The federal judge found for the plaintiff and fined the property \$250,000.

As soon as I became aware of this, and after discussions with a department attorney, a decision was made to address this problem. The department decided that it would no longer enforce that sign requirement. Local regulatory officials were informed and most if not all followed suit. However, new language was found that was found to be non-discriminatory, that is the language in the 2021 pool rules.

There is also a provision that allows for variations in language in all signs that, with approval of the local regulatory authority, in the 2021 rules. This includes a variation in the age in the sign requirement. Many public pool and spa managers and operators have changed the age to reflect either local regulations or current and past policy at a particular facility. I do caution that any changes to the age language should be made after consulting with legal counsel to ensure that any change would not conflict with the Justice Department ruling.

Kathleen O. Moore, R.S., CPO

Compliance Officer

Public Sanitation and Retail Food Safety Group

Policy, Standards and Quality Assurance Unit

Environmental and Consumer Safety Section

Consumer Protection Division

Department of State Health Services

(512) 231-5719

Fax: (512) 834-6707

www.dshs.texas.gov/poolspa

RE: Pool Signage issue

From: Carrie Paxton-Lamke (clamke@sugarlandtx.gov)

To: [REDACTED] aconnell@mascapi.com; jfigueroa@mascapi.com

Date: Tuesday, May 11, 2021, 11:34 AM CDT

Ken,

Please see this response from Code Enforcement and let me know if you have any further questions/would like to discuss with Ormita (Code Compliance Manager):

After reviewing Sec(s) 265.201 (Safety Features for Pools & Spas) and 265.208 (Certain Requirements for Spas) of the State's Admin Code, there does not appear to be an exception to the State's regulations pertaining to required pool signage regarding the age limit. The established age limit to swim without adult supervision is 14 years of age. The section of the Code that Mr. Langer referenced regarding changing the sign language, states "...variations of the language of the required safety signs as referenced by both statutes are allowed if the language of the safety signs is substantially equivalent to the language provided in the Code." This does not allow for an exception to the restricted age limit. As Mr. Langer stated in his email, Barrington Place established an internal "pool policy" to allow children under the age of 14 (10 – 13) to swim without adult supervision as long as they met a specific requirement.

Based on this, the City would not support changing the sign language in a manner that would conflict with State regulations.

Let me know if this doesn't answer Mr. Langer's question.

Ormita

Carrie Paxton-Lamke
Community Engagement Manager
Office of Communications & Community
Engagement
City of Sugar Land

2700 Town Center Blvd. North
Sugar Land, TX 77479
Direct | 281-275-2401
Cell | 832-374-5431



How did we do? Take our customer service [survey](#).



From: Ken Langer [REDACTED]
Sent: Wednesday, May 5, 2021 2:27 PM
To: Angela Connell <aconnell@mascapi.com>; Joanna Figueroa <jfigueroa@mascapi.com>; Carrie Paxton-Lamke <clamke@sugarlandtx.gov>; Ken Langer [REDACTED]
Subject: Re: Pool Signage issue

Thank you for keeping me in the loop. I appreciate it.

Ken

On Wednesday, May 5, 2021, 02:25:53 PM CDT, Carrie Paxton-Lamke <clamke@sugarlandtx.gov> wrote:

Hi Ken,

I'm waiting to hear from Code Enforcement. Just wanted you to know.

Will get back with you ASAP.

Carrie Paxton-Lamke
Community Engagement Manager
Office of Communications & Community
Engagement
City of Sugar Land

2700 Town Center Blvd. North
Sugar Land, TX 77479
Direct | 281-275-2401
Cell | 832-374-5431



How did we do? Take our customer service [survey](#).



From: Ken Langer <[REDACTED]>
Sent: Tuesday, April 27, 2021 12:19 PM
To: Carrie Paxton-Lamke <clamke@sugarlandtx.gov>; Ken Langer <[REDACTED]>, Angela Connell <aconnell@mascapi.com>; Joanna Figueroa <jfigueroa@mascapi.com>
Subject: Pool Signage issue

OK, trying to summarize a complex issue.

Barrington Place has historically had a pool policy allowing 10 and 11 year old swimmers who passed a swim test to use the pool without adult supervision. 12 & 13 year old swimmers could do so as well. Lifeguard has final say on anyone if they are not proficient on swim skills. This is generally inline with the Municipal City Rules.

The problem is the new signage requirement under the TAC and its affect on the policy

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**“PERSONS UNDER THE AGE OF 14 MUST NOT BE IN THE POOL WITHOUT
ADULT SUPERVISION”**

In addition to my writing to Ms. Moore, this matter has been presented to several attorneys for consideration. The attorneys all agree that this policy has not been fully thought out and that both state and federal laws seem to be in conflict with each other

I think the case is issue is HUD v. Blackacre, L.L.C. Pebble Beach Apartments an apartment complex in Universal City, Texas.

There seems to be a way to change the signage (TAC 265.208) but it looks like City approval is needed in advance of making the change to the signs. We are opening the pool on May 29, 2021. We do not even know if approaching the City is even feasible time-wise.

Thank you for taking my call. I anticipate you will be getting more calls about this as pools open up.

I have included MASC Austin property representatives on this as well (they will need information for other pools as well within the City limits)

Ken Langer