

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

SAFETY MEASURES FOR PRIVATE SWIMMING POOLS BY-LAWS

The Municipal Manager of the City of Johannesburg Metropolitan Municipality hereby, in terms of section 13(a) of the Local Government : Municipal Systems Act, 2000 (Act No. 2 of 2000), publishes the Safety Measures for Private Swimming Pools By-laws for the City of Johannesburg Metropolitan Municipality, as approved by the Council, as set out hereunder.

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Definitions

1. In these By-laws, unless the context otherwise indicates –

“authorised official” means any official of the Council who has been authorised by the Council to administer, implement, and enforce the provisions of the By-laws;

“Council” means –

- (a) the Metropolitan Municipality of the City of Johannesburg established by Provincial Notice No. 6766 of 2000 dated 1

October 2000, as amended, exercising its legislative and executive authority through its municipal Council; or

- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government : Municipal Systems Act, 2000 (Act No 32 of 2000); or
- (d) a service provider fulfilling a responsibility under these By-laws, assigned to it in terms of section 81(2) of the Local Government : Municipal Systems Act (Act No. 32 of 2000) or any other law,

as the case may be;

“enclosure” means a wall or fence, or a wall and fence, including any door and gate therein, surrounding a swimming pool to restrict access thereto;

“indoor swimming pool” means a swimming pool contained within the confines of a building;

“outdoor swimming pool” means a swimming pool that is situated outside a building;

“owner”, in relation to –

- (a) a swimming pool, means the owner of the premises in or on which that pool is situated;

- (b) premises, means the person in whose name the land comprising the premises is registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937); and
- (c) premises which constitute or are comprised in a sectional title scheme in respect of which a sectional title register has been opened in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986) means –
- (i) in relation to a swimming pool situated on the common property of such scheme, the body corporate concerned, or prior to the establishment of a body corporate the developer of the sectional title scheme, as contemplated in that Act; or
- (ii) the registered owner of a unit in a sectional title scheme who has a right to an exclusive use area as contemplated in section 27 of that Act which includes the right to use a swimming pool which has been or may be constructed or erected thereon;

“pool net” means a manually or mechanically operated pool net which complies with the specifications set out in Schedule 1;

“premises” means any land and any building and structure thereon;

“prescribed” means prescribed by the Council;

“prescribed fee” means a fee prescribed by the Council as specified in paragraph (a) of the definition “Council”;

“self-closing device” means a device which, if a door or gate in an enclosure is not held open, automatically causes such door or gate to close and engage a self-latching device;

“self-latching device” means a device which is engaged automatically each time a door or gate in an enclosure is secured in its closed position, which will prevent the door or gate from being opened without unlatching the device; and

“swimming pool” means a privately owned permanent excavation or structure situated at, below or not more than 1m above ground level in the case of an outdoor swimming pool or at, below or not more than 1m above floor level in the case of an indoor swimming pool that is used or is intended to be used for swimming, and is capable of containing at any point, water to a depth of more than 300mm.

Purpose and application of By-laws

- 2.(1) The purpose of these By-laws is to provide for the introduction of safety measures around or over private swimming pools to prevent accidental injury to or the drowning of any person on the premises on which such a swimming pool is situated.
- (2) The erection of a wall or fence to enclose a site in compliance with regulations D4 and D5 of the National Building Regulations made under the National Building Regulations and Building Standards Act,

1977, (Act No. 103 of 1977), read with regulation DD4.1 of the SANS 10400 : 2010 - The Application of the National Building Regulations does not constitute compliance with these By-laws, unless such wall or fence also complies with the provisions of these By-laws.

Enclosures for outdoor swimming pools

3.(1) Subject to the provisions of section 4, the owner of an outdoor swimming pool must cause such pool to be protected by an enclosure which complies with the requirements of subsection (3).

(2) An owner of a swimming pool contemplated in subsection (1), must –

(a) if such swimming pool has been completed prior to or on the date of promulgation of these By-laws; or

(b) if the construction of an outdoor swimming pool was completed subsequent to the date contemplated in paragraph (a),

comply with the provisions of subsection (1) –

(i) not later than 90 days after the date referred to in paragraph (a) in respect of a swimming pool contemplated in that paragraph; or

(ii) prior to letting any water into a swimming pool contemplated in paragraph (b).

(3) An enclosure contemplated in subsection (1) must consist wholly or partially of –

- (a) a wall that –
 - (i) is in compliance with Schedule 2;
 - (ii) is so situated, constructed and maintained that a child under the age of seven years is not able to climb over, crawl under, squeeze through such enclosure or any door gate forming part thereof, or otherwise gain access to the swimming pool on its own; and
 - (iii) has every door or gate forming part thereof fitted with a self-closing and self-latching device which is inaccessible to a child under the age of seven years and which must be maintained in good working order; or
- (b) a fence that is in compliance with the provisions of paragraph (a)(ii) and (iii) inclusive, and with the requirements of SANS 1390 : 2005 - Steel fencing for private swimming pools.

Swimming pool nets

- 4.(1) Notwithstanding the provisions of section 3, an outdoor swimming pool may be fitted with a pool net as an alternative to the requirements of that section.
- (2) The owner of an outdoor swimming pool fitted as contemplated in subsection (1) or, if the owner of the premises concerned is not in occupation thereof, the occupier of those premises, must ensure that

such pool is completely covered by the pool net at all times when the pool is not being used.

- (3) The provisions of section 3(2), read with the necessary changes, apply in respect of the time of compliance to subsection (1).

Safety measures for indoor swimming pools

5.(1) Every indoor swimming pool must be fitted with a pool net which is in compliance with the requirements of Schedule 1.

- (2) The provisions of section 3(2) read with the necessary changes, apply in respect of the time of compliance to subsection (1).

- (3) The provisions of section 4(2), read with the necessary changes, apply in respect of a pool net fitted in terms of subsection (1).

Exemptions

- 6.(1)(a) Notwithstanding the provisions of sections 3, 4 and 5 the Council may on written application by an owner of a swimming pool, on a prescribed form, and on such conditions as it may consider expedient, exempt such owner from having to comply with the whole or any portion of sections 3, 4, or 5 if the Council is satisfied with the sufficiency of other measures of protection against accidental injury and drowning which are in place or will be put in place in respect of the swimming pool concerned.

- (b) If other measures of protection are to be put in place, as contemplated in paragraph (a), an exemption granted in terms of that paragraph is provisional until –
 - (i) such measures have been put in place, and
 - (ii) the owner of the swimming pool concerned has within 120 days after the date of the exemption advised the Council in writing that the measures concerned have been put in place, failing which the provisional exemption lapses.
 - (c) On receipt of a written advice in terms of paragraph (b)(ii), an authorised official must forthwith, in terms of Section 8(1), inspect the swimming pool concerned to ascertain whether a notice in terms of Section 8(2) or a certificate of compliance in terms of Section 8(3) must be issued.
- (2) An application in terms of subsection (1) must be accompanied by the prescribed fee.
- (3) The Council may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), refuse an application in terms of subsection (1) and must in writing advise the applicant of the refusal and the reasons therefor.
- (4) An authorised official must in writing advise an applicant contemplated in subsection (1) of an exemption granted and every condition imposed.

- (5) Every owner to whom an exemption has been granted, in terms of subsection (1), must take all reasonable steps to ensure that every occupier of the premises concerned is aware of the exemption and every condition imposed in terms of that subsection and that every such occupier complies with every such condition.

Supervision of children

7. No owner of a swimming pool or occupier of premises on which a swimming pool is situated and who is responsible for the child concerned, may allow any child under the age of seven years to have access to or to use that swimming pool unless such child is at all times under the direct and personal supervision of a person eighteen years or older.

Inspection of swimming pools and certificates of compliance

- 8.(1) Any swimming pool may be inspected during the hours 8:00 to 17:00 on any working day by an authorised official to determine whether safety measures at the swimming pool are in compliance with the provisions of these By-laws, as contemplated in subsection (3), or for any purpose relating to the implementation and enforcement of these By-laws and compliance with any condition imposed.
- (2) If after an inspection in terms of subsection (1), the authorised official concerned determines that there are no safety measures at the swimming pool or that any such measure is not in compliance with these By-laws, or that there is any other contravention of these By-

laws, he or she must forthwith by written notice served on the owner of the swimming pool –

- (a) require him or her to take the steps specified in that notice that must be taken to comply with these By-laws within a reasonable time of not less than 21 days, so specified, within which such steps must be taken;
 - (b) advise the owner concerned of the right to appeal against the decision of the authorised official in terms of section 10; and
 - (c) advise the owner concerned of the right to apply for an exemption in terms of section 6.
- (3) If after an inspection in terms of subsection (1), the authorised official concerned is satisfied that the safety measures at the swimming pool concerned comply with –
- (a) these By-laws; or
 - (b) with the terms and conditions of an exemption granted in respect of the swimming pool concerned in terms of section 6 and with any other provision of these By-laws to the extent that the application thereof has not been excluded or modified by that exemption,

he or she must forthwith issue a certificate of compliance on a prescribed form to the owner of the swimming.

- (4) An authorised official must, before the commencement of, or during an inspection in terms of subsection (1) at the request of the owner or occupier concerned of the property concerned, produce written confirmation of his or her appointment as an authorised official empowered to carry out inspections for the purposes of these By-laws.
- (5) An authorised official carrying out an inspection in terms of these By-laws, must conduct himself or herself with strict regard to decency and orderliness and with due regard to any person's rights contained in the Bill of Rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

Appeals

9. (1) Any person whose rights are affected by a decision by an authorised official in terms of or for the purposes of these By-laws, may appeal against that decision to the Council by lodging a written notice of appeal with –
- (a) the Municipal Manager of the Council contemplated in paragraph (a) of the definition of Council in section (1); or
 - (b) the Chief Executive Officer of the Council contemplated in paragraph (d) of that definition,
- as the case may be, within 21 days of the date on which he or she was notified of that decision.

- (2) The Council or a committee appointed by the Council, must within six weeks of the lodging of an appeal in terms of subsection (1), commence consideration thereof and must within a reasonable time, take any decision in respect of the appeal which it considers appropriate.
- (3) The Municipal Manager or Chief Executive Officer referred to in subsection (1) as the case may be, must forthwith after a decision has been taken in terms of subsection (2), in writing notify the appellant thereof and furnish him or her with reasons for the decision.
- (4) Any appeal in terms of this section must be dealt with subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

11. **Serving of notices, certificates or other documents**

Any notice, certificate or other document that is required to, or may, be served, delivered or given in terms of, or for the purposes of these By-laws, must be served in any of the following ways :

- (a) By handing a copy thereof to the person to whom it is addressed;
- (b) by leaving a copy thereof at the person's place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time;
- (c) by faxing or emailing a copy thereof to the person, if the person has in writing furnished a fax number or email address to the Council or an authorised official;

- (d) by handing a copy thereof to any representative authorised in writing to accept service on behalf of the person concerned;
- (e) if the person concerned has chosen an address or fax number for service, by leaving a copy thereof at that address or by faxing it to that fax number;
- (f) by sending a copy thereof by prepaid registered or certified post to the last-known address of the person concerned, and, unless the contrary is proved, it shall be deemed that service was effected on the seventh day following the day on which the notice was posted;
- (g) if the person is a company or other body corporate, by serving a copy thereof on an employee of the company or body corporate at its registered office or its principal place of business or its main place of business in the municipal area under the jurisdiction of the Council or, if there is no employee willing to accept service, by affixing a copy thereof to the main door of such office or place of business;
- (h) if the person is a partnership, firm or voluntary association, by serving a copy thereof on a person who at the time of service is apparently in charge of the premises and apparently at least 16 years of age, at the place of business of such partnership, firm or association or if such partnership, firm or association has no place of business, by serving a copy thereof on a partner, the owner of the firm or the chairman or secretary thereof managing or other controlling body of such association, as the case may be.

Offences and penalties

11. Any person who –

- (a) contravenes or fails to comply with any provision of these By-laws ;
- (b) fails to comply with any notice or other document issued, served or sent to him or her in terms of these By-laws;
- (c) fails to comply with any lawful instruction given to him or her in terms of or for the purposes of these By-laws;
- (d) fails to comply with any condition imposed in terms of these By-laws;
- (e) fails or refuses to give information that may lawfully be required, to an authorised official or gives false or misleading information; or
- (f) obstructs or hinders any authorised official in the execution of his or her duties under these By-laws,

is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months and in the case of a continuous offence to a further fine not exceeding R50 or in default of payment to imprisonment not exceeding one day, for every day during the continuance of such offence after a written notice has been issued by the Council and served on the person concerned requiring the discontinuance of such offence.

Repeal of By-laws

12. The By-laws listed in Schedule 3 are hereby repealed.

Short title

13. These By-laws are called the Safety Measures for Private Swimming Pools By-laws.

SCHEDULE 1

SPECIFICATIONS FOR POOL NETS

A. NETTING

1. At least 64 strands of high-density polyethylene monofilament must be used for a braid used in a pool net and each strand must be at least 0.20mm in diameter (i.e. 500 denier).
2. The braid used for a pool net must be a flat braid at least 3,5mm in diameter measured on its flat side.
3. The breaking strain must be at least 150kg.
4. The braid material must contain an ultra-violet inhibitor of at least 2% and must be resistant to any chemicals used in swimming pools.
5. The mesh size of a pool net may not exceed 100mm².
6. The water level when the pool net is in place must not be less than 10cm below the net when the swimming pool is filled to its optimum level.

B. ANCHORING ATTACHMENTS

1. The fittings for securing a pool net to the fittings contemplated in item B2 must be securely attached to the pool net and made of non-corrosive metal.
2. Non-corrosive fittings made of stainless steel or glass-filled nylon or other non-corrosive material of at least equal strength must be anchored into the surrounding paving of the swimming pool or, if this is not possible for any reason, non-corrosive rawl bolts or other similarly effective fittings may be anchored in any vertical wall or other construction.
3. The distance between the fittings contemplated in item B2 may not exceed 750mm unless the surrounding paving makes a

longer distance more appropriate, provided the level and tension of the pool net is not compromised.

C. FLOATS

1. Floats must be fitted in appropriate positions as follows –
 - (a) one float for a swimming pool 15m² but under 50m²; or
 - (b) two floats for a swimming pool of 50m² or more,of water surface of the swimming pool concerned.
2. The function of a float contemplated in item C1 is to maintain the level of the pool net above the level of the water as contemplated in item A6.

D. INSTALLATION

Any pool net must be fitted and cut to size to ensure that it is the correct shape and size for the swimming pool concerned and the edges of such net must be strengthened to ensure that the net can withstand adequately the strain imposed on it when it is secured to the fittings contemplated in item B2.

SCHEDULE 2

Requirements for Swimming Pool Walls

Any wall that forms an enclosure or part thereof must comply with the following requirements :

1. Such wall must –
 - (a) be of concrete, brick or other material pre-approved by the Council ;
 - (b) extend to a height measured from ground level, of at least 1,2m;
 - (c) have, up to a height at least 1.2m above ground level, a smooth vertical outer surface that is free from any recess or projection capable of providing a foothold.
2. There may not be a gap exceeding 100mm horizontal measurement between the wall and any door or gate post.
3. Every door or gate must be so constructed and fitted in a wall that it prevents unassisted access to the swimming pool by a child under the age of seven years.

SCHEDULE 3

REPEALED BY-LAWS

<u>Number and Year</u>	<u>Name of by-law</u>	<u>Extent of repeal</u>
Administrator's Notice 809, dated 23 June 1971	Randburg Municipality : Adoption of Standard by-laws regulating the safe-guarding of swimming pools and excavations	The whole
Administrator's Notice 671, dated 11 June 1980	Johannesburg Municipality by-laws for the Safe Guarding of Swimming Pools	The whole
Administrator's Notice 1247, dated 26 th July 1972	Transvaal Board for the Development of Peri-Urban Areas-Adoption of Standard By-laws regulating the safe-guarding of swimming pools and excavations	The whole