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2015

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commentary after each
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2015

CODE AND COMMENTARY

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- APSP-7 Standard for Suction Entrapment Avoidance



2015 International Swimming Pool and Spa Code® Commentary

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PREFACE

As a followup to the *International Swimming Pool and Spa Code*[®], we offer a companion document, the *International Swimming Pool and Spa Code*[®] *Commentary*. The basic appeal of the Commentary is this: it provides in a small package and at reasonable cost thorough coverage of many issues likely to be dealt with when using the *International Swimming Pool and Spa Code*—and then supplements that coverage with historical and technical background. Reference lists, information sources and bibliographies are also included.

Throughout all of this, strenuous effort has been made to keep the vast quantity of material accessible and its method of presentation useful. With a comprehensive yet concise summary of each section, the Commentary provides a convenient reference for swimming pool and spa regulations. In the chapters that follow, discussions focus on the full meaning and implications of the code text. Guidelines suggest the most effective method of application and the consequences of not adhering to the code text. Illustrations are provided to aid understanding; they do not necessarily illustrate the only methods of achieving code compliance.

The format of the Commentary includes the full text of each section, table and figure in the code, followed immediately by the commentary applicable to that text. Each section's narrative includes a statement of its objective and intent, and usually includes a discussion about why the requirement commands the conditions set forth. Code text and commentary text are easily distinguished from each other. All code text is shown as it appears in the *International Swimming Pool and Spa Code*, and all commentary is indented below the code text and begins with the symbol ❖.

Readers should note that the Commentary is to be used in conjunction with the *International Swimming Pool and Spa Code* and not as a substitute for the code. **The Commentary is advisory only**; the code official alone possesses the authority and responsibility for interpreting the code.

Comments and recommendations are encouraged, for through your input, we can improve future editions. Please direct your comments to the Codes and Standards Development Department at the Chicago District Office.

This is a preview of "ICC ISPSC-2015 Comme...". [Click here to purchase the full version from the ANSI store.](#)

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Chapter 1: Scope and Administration

General Comments

The law of building regulation is grounded on the police power of the state. In terms of how it is used, this is the power of the state to legislate for the general welfare of its citizens. This power enables passage of such laws as a swimming pool and spa code. It is from the police power delegated by the state legislature that local governments are able to enact building regulations. If the state legislature has limited this power in any way, the municipality may not exceed these limitations. Although the municipality may not further delegate its police power (e.g., by delegating the burden of determining code compliance to the building owner, contractor or architect), it may turn over the administration of building regulations to a municipal official, such as a code official, provided that he or she is given sufficient criteria to clearly establish the basis for decisions as to whether or not a proposed swimming pool or spa conforms to the code.

Chapter 1 is largely concerned with maintaining "due process of law" in enforcing the performance criteria contained in the code. Only through careful observation of the administrative provisions can the code official reasonably hope to demonstrate that "equal protection under the law" has been provided. Although it is generally assumed that the administrative and enforcement sections of a code are geared toward the code official, this is not entirely true. The provisions also establish the rights and privileges of the design professional, contractor and swimming pool or spa owner. The position of the code official is merely to review the proposed and completed work and determine whether a swimming pool or spa installation conforms to the code requirements. The

design professional is responsible for the design of a safe swimming pool or spa.

The contractor is responsible for installing the swimming pool or spa in strict accordance with the plans.

During the course of the construction of a swimming pool or spa, the code official reviews the activity to make sure that the spirit and intent of the law are being met and that the swimming pool or spa provides adequate protection of public health. As a public servant, the code official enforces the code in an unbiased, proper manner. Every individual is guaranteed equal enforcement of the code. Furthermore, design professionals, contractors and building owners have the right of due process for any requirement in the code.

Purpose

A swimming pool and spa code, as with any other code, is intended for adoption as a legally enforceable document to safeguard health, safety, property and public welfare. A swimming pool and spa code cannot be effective without adequate provisions for its administration and enforcement. The official charged with the administration and enforcement of pool and spa regulations has a great responsibility, and with this responsibility goes authority. No matter how detailed the swimming pool and spa code may be, the code official must, to some extent, exercise judgment in determining compliance. The code official has the responsibility for establishing that pools and spas are designed and constructed to be reasonably free from hazards associated with the presence and use of the pools and spas. The code is intended to establish an acceptable level of safety.

PART 1—SCOPE AND APPLICATION

SECTION 101 GENERAL

[A] **101.1 Title.** These regulations shall be known as the Swimming Pool and Spa Code of [NAME OF JURISDICTION], hereinafter referred to as "this code."

❖ This section sets forth the scope and intent of the code as it applies to new and existing swimming pools and spas. The adopted regulations are identified by inserting the name of the adopting jurisdiction into the code.

[A] **101.2 Scope.** The provisions of this code shall apply to the construction, alteration, movement, renovation, replace-

ment, repair and maintenance of aquatic recreation facilities, pools and spas. The pools and spas covered by this code are either permanent or temporary, and shall be only those that are designed and manufactured to be connected to a circulation system and that are intended for swimming, bathing or wading.

❖ This section describes the types of swimming pool or spa construction-related activities to which the code is intended to apply. The applicability of the code encompasses the initial design of swimming pools and spas, the installation and construction phases and the maintenance of operating systems. The code intends to regulate any and all swimming pool- and spa-related appliances, systems and associated equipment that can affect the health, safety and wel-

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fare of users insofar as they are affected by the installation, operation and maintenance of such appliances and systems.

The key factors as to whether this code applies to a swimming pool or spa is the intended use of the pool or spa for swimming, bathing or wading and whether the pool or spa is designed and manufactured to be connected to a circulation system. The pools or spas can be of permanent construction or of portable construction.

For example, although a permanent decorative fountain not associated with a pool has a circulation system, the fountain is not intended for swimming, bathing or wading. Thus, the fountain is not covered by the code. Similarly, consider a portable plastic wading pool intended for wading, but not designed to be connected to a circulation system. Therefore, the wading pool is also not covered by the code. See Commentary Figures 101.2(1) through 101.2(4).

[A] 101.3 Intent. The purpose of this code is to establish minimum standards to provide a reasonable level of safety and protection of health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, location and maintenance or use of pools and spas.

❖ The intent of the code is to set forth requirements that establish the minimum acceptable level to safeguard life or limb, health, property and public welfare. Intent becomes important in the application of sections, such as Sections 102, 104.2, 105.2 and 108, as well as any enforcement-oriented interpretive action or judgment. As with any code, the written text is subject to interpretation. Interpretations should not be affected by economics or the potential impact on any party. The only consideration should be protection of the public health, safety and welfare.



FIGURE 101.2(1)
TYPICAL INGROUND POOL
(Photo courtesy of Hamilton & Associates
Architecture, Engineering, Technical Services)

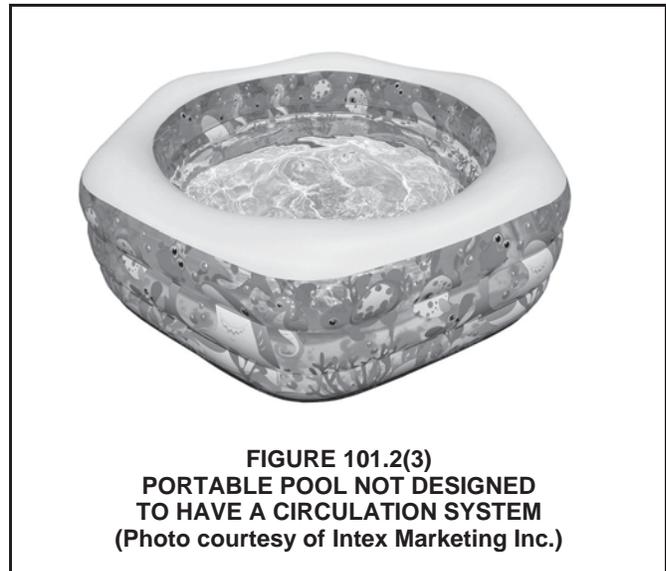


FIGURE 101.2(3)
**PORTABLE POOL NOT DESIGNED
TO HAVE A CIRCULATION SYSTEM**
(Photo courtesy of Intex Marketing Inc.)



FIGURE 101.2(2)
NATURAL BODY OF WATER IS NOT POOL
(Photo courtesy of Hamilton & Associates
Architecture, Engineering, Technical Services)

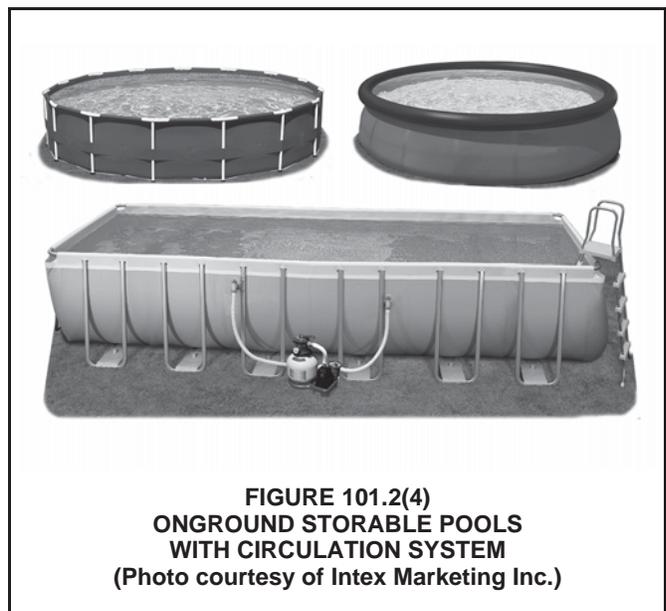


FIGURE 101.2(4)
**ONGROUND STORABLE POOLS
WITH CIRCULATION SYSTEM**
(Photo courtesy of Intex Marketing Inc.)

[A] **101.4 Severability.** If any section, subsection, sentence, clause or phrase of this code is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

❖ Only invalid sections of the code (as established by the court of jurisdiction) can be set aside. This is essential to safeguard the application of the code text to situations in which a provision of the code is declared illegal or unconstitutional. This section preserves the legislative action that put the legal provisions in place.

SECTION 102 APPLICABILITY

[A] **102.1 General.** Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

❖ Specific requirements of the code override or take precedence over general requirements.

[A] **102.2 Existing installations.** Any pool or spa and related mechanical, electrical and plumbing systems lawfully in existence at the time of the adoption of this code shall be permitted to have their use and maintenance continued if the use, maintenance or repair is in accordance with the original design and no hazard to life, health or property is created.

❖ An existing swimming pool or spa is generally considered to be “grandfathered” with code adoption if the system meets a minimum level of safety. Frequently the criteria for this level are the regulations (or code) under which the existing swimming pool or spa was originally constructed. If there are no previous code criteria to apply, the code official is to apply those provisions that are reasonably applicable to existing swimming pools and spas.

[A] **102.3 Maintenance.** Pools and spas and related mechanical, electrical and plumbing systems, both existing and new, and parts thereof, shall be maintained in proper operating condition in accordance with the original design in a safe and sanitary condition. Devices or safeguards that are required by this code shall be maintained in compliance with the edition of the code under which they were installed.

The owner or the owner’s authorized agent shall be responsible for maintenance of systems. To determine compliance with this provision, the code official shall have the authority to require any system to be reinspected.

❖ All swimming pools, spas and equipment are subject to deterioration resulting from aging, wear, accumulation of dirt and debris, corrosion and other factors. Maintenance is necessary to keep swimming pools, spas and equipment in proper operating condition. Required safety devices and controls must be maintained to continue providing the protection that they afford. Existing equipment and systems could have safety devices or other measures that were necessary because of the nature of the equipment, and

such safeguards may have been required by a code that predates the current code. Safeguards required by previous or present codes must be maintained for the life of the equipment or system.

The maintenance of swimming pools and spas as prescribed in this section is the responsibility of the owner of the property. The owner may authorize another party to be responsible for the property, in which case that party is responsible for the maintenance of the swimming pools and spas involved.

The reinspection authority of the code official is needed to ensure compliance with the maintenance requirements in this section

[A] **102.4 Additions, alterations or repairs.** Additions, alterations, renovations or repairs to any pool, spa or related system shall conform to that required for a new system without requiring the existing systems to comply with the requirements of this code. Additions, alterations or repairs shall not cause existing systems to become unsafe, insanitary or overloaded.

Minor additions, alterations, renovations and repairs to existing systems shall be permitted in the same manner and arrangement as in the existing system, provided that such repairs or replacement are not hazardous and are *approved*.

❖ Simply stated, new work must comply with current code requirements. Any alteration or addition to an existing swimming pool or spa involves some new work, and therefore is subject to the requirements of the code. Additions or alterations to an existing swimming pool or spa can place different demands on the system, which could necessitate changing all or part of the swimming pool or spa.

Repair of an existing nonconforming swimming pool or spa is permitted without having to completely replace the nonconforming portion. This typically occurs when repairing the swimming pool or spa wall. This section distinguishes between alterations (subject to applicable provisions of the code) and ordinary repairs (maintenance activities not requiring a permit). The intent of this section is to allow the continued use of the existing swimming pools, spas and equipment that may or may not be designed and constructed as required for new installations.

Existing swimming pools, spas and equipment will normally require repair and component replacement to remain operational. This section permits repair and component replacements without requiring the redesign, alteration or replacement of the entire system. In other words, the swimming pool or spa is allowed to stay as is if it is not hazardous. It is important to note that the word “minor” in this section is intended to modify “additions,” “alterations,” “renovations” and “repairs.” It is not the intent of this section to waive code requirements for the replacement of all or major portions of systems under the guise of repair. Any work, other than minor repairs or replacement of minor portions of a swimming pool or spa, must be considered as new work subject to all applicable provisions of the code. Repairs and minor component replacements are permitted in a manner that is con-

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sistent with the existing swimming pool or spa if those repairs or replacements are approved by the code official; are not hazardous; do not cause the swimming pool, spa or equipment to be any less in compliance with the code than before; and are, to the extent practicable, in compliance with the provisions of the code applicable to new work.

[A] 102.5 Historic buildings. The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of pools, spas or systems shall not be mandatory for existing pools, spas or systems identified and classified by the state or local jurisdiction as part of a historic structure when such pools, spas or systems are judged by the code official to be safe and in the public interest of health, safety and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving of such pool or spa.

❖ This section gives the code official the widest possible flexibility in enforcing the code where the swimming pool or spa in question has historic value. This flexibility does not come without conditions. The most important criterion for application of this section is that the swimming pool or spa must be specifically classified as being of historic significance by a qualified party or agency. Usually this is done by a state or local authority after considerable scrutiny. Most, if not all, states have such authorities, as do many local jurisdictions. Agencies with such authority typically exist at the state or local government level.

[A] 102.6 Moved pools and spas. Except as determined by Section 102.2, systems that are a part of a pool, spa or system moved into or within the jurisdiction shall comply with the provisions of this code for new installations.

❖ Swimming pools and spas that have been relocated are subject to the requirements of the code as if they were new construction. Placing a pool or spa where one did not previously exist is analogous to constructing a new swimming pool or spa. It is the intent of this section to require alteration of the existing pool or spa to the extent necessary to bring it into compliance with the provisions of the code applicable to new construction or make the existing swimming pool or spa comply with Section 102.2.

Some onground storable pools are intended to be disassembled and stored during winter and need not be treated as a new pool when reassembled or placed back in use.

[A] 102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 11 and such codes and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall be the minimum requirements.

❖ The code references many standards and codes promulgated and published by other organizations. A

complete list of referenced standards appears in Chapter 11. The wording of this provision, "shall be those that are listed in Chapter 11," was carefully chosen to establish the edition of the standard or code that is enforceable under the code.

[A] 102.7.1 Application of the International Codes. Where the *International Residential Code* is referenced in this code, the provisions of the *International Residential Code* shall apply to related systems in detached one- and two-family dwellings and townhouses not more than three stories in height. Other related systems shall comply with the applicable International Code or referenced standard.

❖ Where swimming pools or spas are associated with one- and two-family detached dwellings and townhouses not more than three stories in height, the *International Residential Code*® (IRC®) is the referenced building code. All other swimming pools or spas are covered by the remaining family of International Codes® (I-Codes®).

[A] 102.8 Requirements not covered by code. Any requirements necessary for the strength, stability or proper operation of an existing or proposed system, or for the public safety, health and general welfare, not specifically covered by this code shall be determined by the code official.

❖ Evolving technology in our society will inevitably result in a situation in which the code is comparatively silent on an identified hazard. The reasonable application of the code to such hazardous, unforeseen conditions is addressed in this section. Clearly this section and the code official's judicious and reasonable application of it is necessary. The purpose of this section, however, is not to impose requirements that may be preferred when the code provides alternative methods or is not silent on the circumstances. Additionally, this section can be used to implement the general performance-oriented language of the code to specific enforcement situations.

[A] 102.9 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

❖ Other laws enacted by the local, state or federal government may be applicable to a condition that is also governed by a requirement in the code. In such circumstances, the requirements of the code are in addition to those other laws, even though the code official may not be responsible for the enforcement of those laws.

[A] 102.10 Application of references. References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

❖ In a situation where the code may make reference to a chapter or section number or to another code provision without specifically identifying its location in the code, assume that the referenced section, chapter or provision is in the code and not in a referenced code or standard.

PART 2—ADMINISTRATION AND ENFORCEMENT

SECTION 103 DEPARTMENT OF BUILDING SAFETY

[A] **103.1 Creation of enforcement agency.** The department of building safety is hereby created and the official in charge thereof shall be known as the code official.

❖ The executive official in charge of the building safety department is named the “code official” by this section. In actuality, the person who is in charge of the department may hold a different title such as building commissioner, plumbing inspector, construction official, etc. For the purpose of the code, the person is referred to as the “code official” on being appointed.

[A] **103.2 Appointment.** The code official shall be appointed by the chief appointing authority of the jurisdiction.

❖ This section establishes the code official as an appointed position from which he or she cannot be removed, except for cause, subject to a due process review.

[A] **103.3 Deputies.** In accordance with the prescribed procedures of the jurisdiction and with the concurrence of the appointing authority, the code official shall have the authority to appoint a deputy code official, the related technical officers, inspectors, plans examiners and other employees. Such employees shall have powers as delegated by the code official.

❖ This section gives the code official the authority to appoint other individuals to assist with the administration and enforcement of the code. These individuals have authority and responsibility as designated by the code official.

[A] **103.4 Liability.** The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered civilly or criminally liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties.

❖ The code official is not intended to be held liable for actions performed in accordance with the code in a reasonable and lawful manner. The responsibility of the code official in this regard is subject to local, state and federal laws that may supersede this provision. This section further establishes that the code official (or subordinates) is not liable for costs in any legal action instituted in response to the performance of lawful duties. These costs are to be assumed by the state or municipality. The best way to be certain that the code official’s action is a “lawful duty” is to always cite the applicable code section on which the enforcement action is based.

[A] **103.4.1 Legal defenses.** Any suit or criminal complaint instituted against an officer or employee because of an act

performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representatives of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

❖ The cost of defending a code official in a legal action will be borne by the jurisdiction.

SECTION 104 DUTIES AND POWERS OF THE CODE OFFICIAL

[A] **104.1 General.** The code official is hereby authorized and directed to enforce the provisions of this code. The code official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

❖ The duty of the code official is to enforce the code, and he or she is the “authority having jurisdiction” for all matters relating to the code and its enforcement. It is the duty of the code official to interpret the code and to determine compliance. Code compliance will not always be easy to determine and will require judgment and expertise, particularly when enforcing the provisions of Sections 104.10 and 104.11. In exercising this authority, however, the code official cannot set aside or ignore any provision of the code.

[A] **104.2 Applications and permits.** The code official shall receive applications, review construction documents and issue permits for the erection, alteration, demolition and moving of pools, spas and related mechanical, electrical and plumbing systems. The code official shall inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

❖ The code enforcement process is normally initiated with an application for a permit. The code official is responsible for processing the application and issuing permits for the installation, replacement, addition to or modification of swimming pools, spas and related systems in accordance with the code.

[A] **104.3 Notices and orders.** The code official shall issue necessary notices or orders to ensure compliance with this code.

❖ An important element of code enforcement is the necessary advisement of deficiencies and needed corrections, which is accomplished through notices and orders. The code official is required to issue orders to abate illegal or unsafe conditions.

[A] **104.4 Inspections.** The code official shall make the required inspections, or the code official shall have the authority to accept reports of inspection by *approved* agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such

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approved agency or by the responsible individual. The code official is authorized to engage such expert opinion as deemed necessary to report on unusual technical issues that arise, subject to the approval of the appointing authority.

❖ The code official is required to make inspections, as necessary, to determine compliance with the code or to accept written reports of inspections by an approved agency. The inspection of the work in progress or accomplished is another significant element in determining code compliance. Even though a department may not have the resources to inspect every aspect of all work, the required inspections are those that are dictated by administrative rules and procedures based on many parameters, including available inspection resources. To expand the available inspection resources, the code official may approve an inspection agency that, in his or her opinion, possesses the proper qualifications. When unusual, extraordinary or complex technical issues arise relative to a pool or spa installation or to the safety of an existing pool or spa, the code official has the authority to seek the opinion and advice of experts. A technical report from an expert can be used to assist the code official in the approval process.

[A] 104.5 Identification. The code official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

❖ This section requires the code official (including by definition all authorized designees) to carry identification in the course of conducting the duties of the position. This identification removes any question concerning the purpose and authority of the inspector.

[A] 104.6 Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the code official has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code that makes the structure or premises unsafe, dangerous or hazardous, the code official is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the code official shall first make a reasonable effort to locate the owner, the owner's authorized agent or other person having charge or control of the structure or premises and request entry. If entry is refused, the code official shall have recourse to the remedies provided by law to secure entry.

❖ The first part of this section establishes the right of the code official to enter the premises to make the inspections required by Section 106. Permit application forms typically include a statement signed by the applicant (who is the owner or owner's authorized agent) granting the code official the authority to enter specific areas to enforce code provisions related to the permit. The right to enter other structures or premises is more limited. First, to protect the right of privacy, the owner or occupant must grant the code

official permission before the interior of the property can be inspected. Permission is not required for inspections that can be accomplished from within the public right-of-way. Second, access may be denied by the owner or occupant. Unless the inspector has reasonable cause to believe that a violation exists, access may be unattainable. Third, code officials must present proper identification and request admittance during reasonable hours—usually the normal business hours of the establishment. Fourth, inspections must be aimed at securing or determining compliance with the provisions and intent of the regulations that are specifically within the established scope of the code official's authority.

Searches to gather information for the purpose of enforcing other codes, ordinances or regulations are considered unreasonable and are prohibited by the Fourth Amendment to the U.S. Constitution. "Reasonable cause" in the context of this section must be distinguished from "probable cause," which is required to gain access to property in criminal cases. The burden of proof establishing reasonable cause may vary among jurisdictions. Usually, an inspector must show that the property is subject to inspection under the provisions of the code; that the interests of the public health, safety and welfare outweigh the individual's right to maintain privacy; and that such an inspection is required solely to determine compliance with the provisions of the code.

Many jurisdictions do not recognize the concept of an administrative warrant and may require the code official to prove probable cause in order to gain access upon refusal. This burden of proof is usually more substantial, often requiring the code official to stipulate in advance why access is needed (usually access is restricted to gathering evidence for seeking an indictment or making an arrest); what specific items or information is sought; its relevance to the case against the individual subject; how knowledge of the relevance of the information or items sought was obtained; and how the evidence sought will be used. In all such cases, the right to privacy must always be weighed against the right of the code official to conduct an inspection to establish public health, safety and welfare. Such important and complex constitutional issues should be discussed with the jurisdiction's legal counsel. Jurisdictions should establish procedures for securing the necessary court orders when an inspection is deemed necessary following a refusal.

[A] 104.7 Department records. The code official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

❖ In keeping with the need for an efficiently conducted business practice, the code official must keep records pertaining to permit applications, permits, fees collected, inspections, notices and orders issued. Such

documentation provides a valuable resource if questions arise regarding the department's actions with respect to a building. It requires that other documents be kept for the length of time mandated by a jurisdiction's, or its state's, laws or administrative rules for retaining public records.

[A] 104.8 Modifications. Where there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's authorized agent, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen sustainability, health, accessibility, life safety and structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

❖ The code official may amend or make exceptions to the code as needed where strict compliance is impractical. Only the code official has authority to grant modifications. Consideration of a particular difficulty is to be based on the application of the owner and a demonstration that the intent of the code is accomplished. This section is not intended to permit setting aside or ignoring a code provision: rather, it is intended to provide acceptance of equivalent protection. Such modifications do not, however, extend to actions that are necessary to correct violations of the code. In other words, a code violation, or the expense of correcting one, cannot constitute a practical difficulty.

[A] 104.9 Alternative materials, methods and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been *approved*. An alternative material or method of construction shall be *approved* where the code official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code in quality, strength, effectiveness, durability and safety.

❖ The code is not intended to inhibit innovative ideas or technological advances. A comprehensive regulatory document such as a swimming pool and spa code cannot envision and then address all future innovations in the industry. As a result, a performance code must be applicable to and provide a basis for the approval of an increasing number of newly developed, innovative materials, systems and methods for which no code text or referenced standards yet exist. The fact that a material, product or method of construction is not addressed in the code is not an indication that the material, product or method is prohibited. The code official is expected to apply sound technical judgment in accepting materials, systems or methods which, although not anticipated by the drafters of the

current code text, can be demonstrated to offer equivalent performance. By virtue of its text, the code regulates new and innovative construction practices while addressing the relative safety of building occupants. The code official is responsible for determining whether a requested alternative provides an equivalent level of protection of the public health, safety and welfare as required by the code.

The most common application of an alternative approval occurs with the proposed use of new material. For example, if a new piping material is produced, the manufacturer may gain approval for use by submitting adequate technical data indicating it is equivalent in quality, strength, effectiveness, fire resistance, durability and safety to the piping material listed as acceptable in the code. At the same time, the manufacturer may submit a proposed code change to recognize the new piping material. If the code official rejects the request for an alternative approval, the applicant may appeal the decision, as regulated by Section 108.

[A] 104.10 Required testing. Where there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the code official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction.

❖ To provide the basis on which the code official can make a decision regarding an alternative material or type of equipment, sufficient technical data, test reports and documentation must be provided for evaluation. If evidence satisfactory to the code official proves that the alternative equipment, material or construction method is equivalent to that required by the code, the code official is obligated to approve it for use. Any such approval cannot have the effect of waiving any requirements of the code. The burden of proof of equivalence lies with the applicant who proposes the use of alternative equipment, materials or methods.

[A] 104.10.1 Test methods. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the code official shall approve the testing procedures.

❖ The code official must require the submission of any appropriate information and data to assist in the determination of equivalency before a permit can be issued. The type of information required includes test data in accordance with the referenced standards, evidence of compliance with the referenced standard specifications and design calculations. An evaluation report issued by an authoritative agency, such as ICC Evaluation Service, Inc. (ICC-ES), is particularly useful in providing the code official with the technical basis for evaluation and approval of new and innovative plumbing materials and components. The use of authoritative research reports can greatly assist the code official by reducing the time-consuming engi-

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neering analysis necessary to review materials and products. Failure to adequately substantiate a request for the use of an alternative is a valid reason for the code official to deny a request.

[A] 104.10.2 Testing agency. Tests shall be performed by an *approved* agency.

❖ The testing agency must be approved by the code official. The testing agency should have the technical expertise, test equipment and quality assurance to properly conduct and report the necessary testing.

[A] 104.10.3 Test reports. Reports of tests shall be retained by the code official for the period required for retention of public records.

❖ Test reports substantiating the modification must be retained in accordance with public record laws. The attorney of the jurisdiction could be asked to verify the specific time period in applicable laws of the jurisdiction.

[A] 104.11 Alternative engineered design. The design, documentation, inspection, testing and approval of an alternative engineered design shall comply with Sections 104.11.1 through 104.11.6.

❖ This section permits an engineer or architect to design a swimming pool or spa that may not comply with all of the provisions found in Chapters 3 through 11. The design must be approved by the code official and must conform to accepted engineering principles. The engineered pool or spa must provide an equivalent level of protection of the public health, safety and welfare intended by the code.

[A] 104.11.1 Design criteria. An alternative engineered design shall conform to the intent of the provisions of this code and shall provide an equivalent level of quality, strength, effectiveness, durability and safety. Material, equipment or components shall be designed and installed in accordance with the manufacturer's instructions.

❖ Although an engineered swimming pool or spa may not comply with all of the minimum requirements set forth in Chapters 3 through 11, it must comply with the intent of these provisions. This section permits the use of standard engineering principles in the design of an innovative system as long as there is no sacrifice of quality, strength, effectiveness, fire resistance, durability and safety. This section further reinforces the intent of Section 104.9 for the acceptance of alternative materials and equipment. The requirement for compliance with the manufacturer's installation instructions is generally intended to address entire engineered systems. The manufacturer or appropriate industry association provides criteria contained in design and installation handbooks. The manufacturer's instructions must be followed for all innovative fittings or products regulated by this section.

[A] 104.11.2 Submittal. The registered design professional shall indicate on the permit application that the system is an alternative engineered design. The permit and permanent per-

mit records shall indicate that an alternative engineered design was part of the *approved* installation.

❖ The permit and permanent permit records must indicate that an alternative engineered design is part of the proposed swimming pool or spa design. This is essential information to have on file to maintain a complete legal record of the pool or spa. When future permits are applied for regarding alterations or modifications, appropriate measures can then be taken to determine that the future work will not adversely affect the original design.

[A] 104.11.3 Technical data. The registered design professional shall submit sufficient technical data to substantiate the proposed alternative engineered design and to prove that the performance meets the intent of this code.

❖ The appropriate information and data must be submitted to the code official to assist in the approval of the alternative engineered design. This is not an option; rather, it is a requirement. Acceptable data to substantiate the performance of the proposed swimming pool, spa or components include results of tests performed by an approved third-party testing agency, design calculations or an evaluation report issued by an authoritative agency, such as ICC-ES.

[A] 104.11.4 Construction documents. The registered design professional shall submit to the code official two complete sets of signed and sealed construction documents for the alternative engineered design.

❖ This section is used in conjunction with Section 105.3. The required detailing of such documents is needed to provide the code official with the necessary information to review and approve the plans.

[A] 104.11.5 Design approval. Where the code official determines that the alternative engineered design conforms to the intent of this code, the system shall be *approved*. If the alternative engineered design is not *approved*, the code official shall notify the registered design professional in writing, stating the reasons why the alternative was not *approved*.

❖ The code official is responsible for determining whether the requested alternative engineered design provides the equivalent level of protection of public health, safety and welfare as required by the code. The code official's response to the design professional must be in writing, stating the reason for either accepting or rejecting the request. If the code official rejects the request for the alternative engineered system, the registered design professional may appeal the decision.

[A] 104.11.6 Inspection and testing. The alternative engineered design shall be tested and inspected in accordance with the requirements of Section 106.12.

❖ As is the case for all swimming pool and spa installations, the code official must inspect the alternative engineered design pools and spas to verify that the work is in compliance with the construction documents. Section 106 requires the code official to witness the testing of the swimming pool or spa before it

is placed in service to verify that it is free from leaks or other defects.

[A] 104.12 Material and equipment reuse. Materials, equipment and devices shall not be reused unless such elements have been reconditioned, tested, placed in good and proper working condition and *approved*.

❖ The code criteria for materials and equipment have changed over the years. Evaluation of testing and materials technology has permitted the development of new criteria, which the old materials may not satisfy. As a result, used materials must be evaluated in the same manner as new materials. Used (previously installed) equipment must be equivalent to that required by the code if it is to be used in a new installation.

SECTION 105 PERMITS

[A] 105.1 When required. Any owner, or owner's authorized agent who desires to construct, enlarge, alter, repair, move, or demolish a pool or spa or to erect, install, enlarge, alter, repair, remove, convert or replace any system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the code official and obtain the required permit for the work.

❖ This section contains the administrative rules governing the issuance, suspension, revocation or modification of swimming pool and spa permits. It also establishes how and by whom the application for a pool or spa permit is to be made, how it is to be processed and what information it must contain or have attached to it. In general, a permit is required for all activities that are regulated by the code, and these activities cannot begin until the permit is issued.

A swimming pool or spa permit is required for the installation, replacement, alteration or modification of all pools, spas and components that are in the scope of applicability of the code. Replacement of an existing component, piece of equipment or related piping is treated no differently than a new installation in new swimming pool or spa construction. The purpose of a permit is to cause the work to be inspected to determine compliance with the intent of the code.

[A] 105.2 Application for permit. Each application for a permit, with the required fee, shall be filed with the code official on a form furnished for that purpose and shall contain a general description of the proposed work and its location. The application shall be signed by the owner or the owner's authorized agent. The permit application shall contain such other information required by the code official.

❖ This section limits persons who may apply for a permit to the building owner or an authorized agent. An owner's authorized agent could be anyone who is given written permission to act in the owner's interest for the purpose of obtaining a permit, such as an architect, an engineer, a contractor, a tenant or other. Permit forms generally have sufficient space to write a very brief description of the work to be accom-

plished, which is acceptable for small jobs. For larger projects, the description will be augmented by construction documents.

[A] 105.3 Construction documents. Construction documents, engineering calculations, diagrams and other such data shall be submitted in two or more sets with each application for a permit. The code official shall require construction documents, computations and specifications to be prepared and designed by a registered design professional when required by state law. Construction documents shall be drawn to scale and shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that the work conforms to the provisions of this code.

❖ A detailed description of the work for which application is made must be submitted. When the work is of a "minor nature," either in scope or needed description, the code official may use judgment in determining the need for a detailed description of the work. For example, the construction documents for an on-ground storable pool could be in the form of the manufacturer's installation instructions.

These provisions are intended to reflect the minimum scope of information needed to determine code compliance. A statement such as, "All swimming pool and spa work will comply with the 2015 ISPC," on the construction document is not an acceptable substitute for showing the required information.

This section also requires the code official to determine compliance with any state professional registration laws as they apply to the preparation of construction documents.

[A] 105.4 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing unless such application has been pursued in good faith or a permit has been issued; except that the code official is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

❖ Once an application for a permit has been submitted for proposed work, a time limit of 180 days is established for issuance of the permit. This prevents the code official from having to hold on to incomplete or delayed applications for an indefinite amount of time. The code official can grant extensions for this time period if provided with a written request with justifiable reasons for the extension request.

[A] 105.5 Permit issuance. The application, construction documents and other data filed by an applicant for permit shall be reviewed by the code official. If the code official finds that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, and that the fees specified in Section 105.6 have been paid, a permit shall be issued to the applicant.

❖ This section requires the code official to review all submittals for a permit for compliance with the code and to verify that the project will be carried out in accordance with any other applicable laws. This may

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involve interagency communication and cooperation so that all laws are being obeyed. Once the code official verifies this, a permit may be issued upon payment of the required fees.

[A] 105.5.1 Approved construction documents. When the code official issues the permit where construction documents are required, the construction documents shall be endorsed in writing and stamped "APPROVED." Such *approved* construction documents shall not be changed, modified or altered without authorization from the code official. Work shall be done in accordance with the *approved* construction documents.

The code official shall have the authority to issue a permit for the construction of a part of a system before the entire construction documents for the whole system have been submitted or *approved*, provided adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holders of such permit shall proceed at their own risk without assurance that the permit for the entire system will be granted.

❖ Construction documents that reflect compliance with code requirements form an integral part of the permit process. Successful prosecution of the work depends on these documents. This section requires the code official to stamp the complying construction documents as being "approved." Once approved, no further revisions to the documents may be made without the expressed authorization of the code official in order to maintain code compliance.

In the interest of saving time and coordinating construction phases, it is common practice for contractors to seek permits solely applicable to the installation of site work, such as water or electric services. This practice allows the project to proceed before the final construction documents are completed, thus minimizing delays in the construction process. This also allows the builder to perform site work while the weather permits.

The holder of a partial permit must realize that a permit for the remainder of the pool or spa may not be granted for various reasons. Issuance of a partial permit in no way guarantees issuance of a permit for the entire scope of the project.

[A] 105.5.2 Validity. The issuance of a permit or approval of construction documents shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or any other ordinance of the jurisdiction. No permit presuming to give authority to violate or cancel the provisions of this code shall be valid.

The issuance of a permit based upon construction documents and other data shall not prevent the code official from thereafter requiring the correction of errors in said construction documents and other data or from preventing building operations being carried on thereunder when in violation of this code or of other ordinances of this jurisdiction.

❖ An important code section, this section states the fundamental premise that the permit is only "a license to proceed with the work." It is not a license to "violate,

cancel or set aside any provisions of the code." This is important because it means that despite any errors in the approval process, the permit applicant is responsible for code compliance.

[A] 105.5.3 Expiration. Every permit issued shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The code official is authorized to grant, in writing, one or more extensions of time, for a period not more than 180 days. The extension shall be requested in writing and justifiable cause demonstrated.

❖ The permit becomes invalid under two distinct situations, both based on a six-month period. The first situation is when no work has started six months from issuance of the permit. The second situation is when there is no continuation of authorized work for six months. The person who was issued the permit should be notified in writing that it is invalid and what steps must be taken to restart the work.

This section also provides the administrative authority with a means of offsetting the costs associated with expired permits by charging a nominal fee for permit reissuance. If, however, the nature or scope of the work to be resumed is different from that covered by the original permit, the permit process essentially starts from "scratch" and full fees are charged. The same procedure would also apply if the work has not commenced within one year of the date of permit issuance or if work has to be suspended for a year or more.

[A] 105.5.4 Extensions. Any permittee holding an unexpired permit shall have the right to apply for an extension of the time within which the permittee will commence work under that permit when work is unable to be commenced within the time required by this section for good and satisfactory reasons. The code official shall extend the time for action by the permittee for a period not exceeding 180 days if there is reasonable cause. The fee for an extension shall be one-half the amount required for a new permit for such work.

❖ Although it is typical for a project to begin immediately following issuance of a permit, there are occasions when an unforeseen delay may occur. This section intends to afford the permit holder the opportunity to apply for and receive a single, 180-day extension within which to begin a project under a still-valid permit (i.e., less than 180 days old). The applicant must, however, provide the code official with an adequate explanation for the delay in starting a project, which could include such things as the need to obtain approvals or permits from other agencies having jurisdiction. This section requires the code official to determine what constitutes "good and satisfactory" reasons for any delay, and further allows the jurisdiction to offset its administrative costs for extending the permit by charging one-half the fee for a new permit for the extension.

[A] **105.5.5 Suspension or revocation of permit.** The code official shall revoke a permit or approval issued under the provisions of this code in case of any false statement or misrepresentation of fact in the application or on the construction documents upon which the permit or approval was based.

❖ A permit is, in reality, a license to proceed with the work. The code official must revoke all permits shown to be based, all or in part, on any false statement or misrepresentation of fact. An applicant may subsequently reapply for a permit with the appropriate corrections or modifications made to the application and construction documents.

[A] **105.5.6 Retention of construction documents.** One set of *approved* construction documents shall be retained by the code official for a period of not less than 180 days from date of completion of the permitted work, or as required by state or local laws. One set of *approved* construction documents shall be returned to the applicant, and said set shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.

❖ Once the code official has stamped or endorsed as approved the construction documents on which the permit is based (see the commentary to Section 105.5.1), one set of approved construction documents must be kept on the construction site to serve as the basis for all subsequent inspections. To avoid confusion, the construction documents on the site must be precisely the documents that were approved and stamped. This is because inspections are based on the approved documents. Additionally, the contractor cannot determine compliance with the approved construction documents unless those documents are readily available. Unless the approved construction documents are available, the inspection should be postponed and work on the project halted.

[A] **105.6 Fees.** A permit shall not be valid until the fees prescribed by law have been paid. An amendment to a permit shall not be released until the additional fee, if any, has been paid.

❖ All fees are to be paid prior to permit issuance. This requirement establishes that the permit applicant intends to proceed with the work, as well as facilitates payment.

[A] **105.6.1 Work commencing before permit issuance.** Any person who commences any work on a system before obtaining the necessary permits shall be subject to a fee as indicated in the adopted fee schedule and would be in addition to the required permit fees.

❖ This section is intended to serve as a deterrent to proceeding with work on a swimming pool or spa without a permit. As a punitive measure, it doubles the cost of the permit fee. This section does not, however, intend to penalize a contractor called on to do emergency work after hours, provided that he or she makes prompt notification to the code official the next business day, obtains the requisite permit for the work done and has the required inspections performed.

[A] **105.6.2 Fee schedule.** The fees for work shall be as indicated in the following schedule:

[JURISDICTION TO INSERT APPROPRIATE SCHEDULE]

❖ A published fee schedule must be established for plans examination, permits and inspections. Ideally, the department should generate revenues that cover operating costs and expenses. The permit fee schedule is an integral part of this process.

[A] **105.6.3 Fee refunds.** The code official shall authorize the refunding of fees as follows:

1. The full amount of any fee paid hereunder that was erroneously paid or collected.
2. Not more than [SPECIFY PERCENTAGE] percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than [SPECIFY PERCENTAGE] percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

❖ This section allows for a partial refund of fees resulting from the revocation, abandonment or discontinuance of a swimming pool or spa project for which a permit has been issued and fees have been collected. The incomplete work for which the excess fees are to be refunded refers to the work that would have been required by the department had the permit not been terminated. The refund of fees should be related to the cost of enforcement services not provided because of termination of the project.

**SECTION 106
INSPECTIONS**

[A] **106.1 General.** Construction or work for which a permit is required shall be subject to inspection by the code official and such construction or work shall remain accessible and exposed for inspection purposes until *approved*. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the code official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

❖ The inspection function is one of the more important aspects of building department operations. This section authorizes the code official to inspect the work for which a permit has been issued and requires that the work to be inspected remain accessible to the code

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official until inspected and approved. Any expense incurred in removing or replacing material that conceals an item to be inspected is not the responsibility of the code official or the jurisdiction. As with the issuance of permits, an approval as a result of an inspection is not a license to violate the code. Any work approved that might contain a violation of the code does not relieve the applicant from complying with the code.

[A] 106.2 Preliminary inspection. Before issuing a permit, the code official is authorized to examine or cause to be examined buildings, structures and sites for which an application has been filed.

❖ Some projects might require a preliminary inspection by the code official prior to a permit being issued. This is especially useful for remodel and addition projects where the conditions of the existing aquatic vessel are unknown or questionable. This section authorizes the code official to make such inspections.

[A] 106.3 Required inspections and testing. Pool and spa installations or alterations thereto, including equipment, piping, and appliances related thereto, shall be inspected by the code official to ensure compliance with the requirements of this code.

❖ This section requires that all portions of the swimming pool or spa be inspected before and after final accessories are installed. The code official has the authority to require noncomplying items to be brought into compliance and reinspected.

Inspections are necessary to determine that an installation conforms to all code requirements. Because some parts of swimming pool and spa systems are hidden underground, periodic inspections are necessary before portions of the system are concealed. The code official is required to determine that swimming pools, spas and equipment are installed in accordance with the approved construction documents and the applicable code requirements. All inspections that are necessary to provide such verification must be conducted. Generally, the administrative rules of a department may list the required interim inspections. Construction that occurs in steps or phases may necessitate multiple inspections; therefore, an exact number of required inspections cannot be specified. Where violations are noted and corrections are required, reinspections may be necessary. As time permits, frequent inspections of some job sites, especially where the work is complex, can be beneficial in detecting code compliance or other potential problems before they develop or become more difficult to correct.

It is the responsibility of the contractor, the builder, the owner or other authorized party to arrange for the required inspections and to coordinate them to prevent work from being concealed before it is inspected.

1. Inspection of underground piping is especially important because once it is covered, it is the most challenging part of a swimming pool and

spa system in which to detect a leak. If repairs are necessary, underground repairs are proportionately more expensive because of the need for heavy equipment and the more labor-intensive nature of working below grade level.

2. A rough-in inspection is a visual observation of all parts of the piping system that will eventually be concealed. Rough-in inspections also include verification that the applicable test pressures are applied to the system and that leaks do not exist. The inspection must be made before any of the system is covered by finish materials or hidden by future work.

A rough-in inspection may be completed in one visit or as a series of inspections. This is administratively determined by the local inspections department and typically is dependent on the size of the job.

3. A final inspection may be done as a series of inspections or in one visit, similar to a rough-in inspection. A final inspection is required prior to the approval of a swimming pool or spa installation. To verify that all previously issued correction orders have been complied with and to determine whether subsequent violations exist, a final inspection must be made. All violations observed during the final inspection must be noted and the permit holder must be advised.

The final inspection follows the completion of the work or installation. The final inspection is an inspection of all that was installed after the rough-in inspection and not concealed in the construction. Subsequent re-inspections are necessary if the final inspection generates a notice of violation.

[A] 106.4 Other inspections. In addition to the inspections specified in Sections 106.2 and 106.3, the code official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced.

❖ Any item regulated by the code is subject to inspection by the code official to determine compliance with the applicable code provision, and no list can include all types of work in a given building. Also, other inspections before, during or after the rough-in could be necessary. This section gives the code official the authority to inspect any regulated work.

[A] 106.5 Inspection request. It shall be the duty of the holder of the permit or their duly authorized agent to notify the code official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.

❖ This section clarifies that it is the responsibility of the permit holder to arrange for the required inspections when the completed work is ready. It also establishes his or her responsibility for keeping the work open for inspection and providing all means needed to accomplish the inspections.

[A] **106.6 Approval required.** Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the code official. The code official, upon notification, shall make the requested inspection and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or his or her agent wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the code official.

❖ This section establishes that work cannot progress beyond the point of a required inspection without the code official's approval. On making the inspection, the code official must either approve the completed work or notify the permit holder or other responsible party of that which does not comply with the code. Approvals and notices of noncompliance must be in writing, as required by Section 104.4, to avoid any misunderstanding as to what is required. Any work not approved cannot be concealed until it has been corrected and approved by the code official.

[A] **106.7 Approved agencies.** Test reports submitted to the code official for consideration shall be developed by *approved* agencies that have satisfied the requirements as to qualifications and reliability.

❖ The code official is responsible for determining whether to accept an agency's test report, as well as whether the reporting agency is acceptable.

[A] **106.8 Evaluation and follow-up inspection services.** Prior to the approval of a closed, prefabricated system and the issuance of a permit, the code official shall require the submittal of an evaluation report on each prefabricated system indicating the complete details of the system, including a description of the system and its components, the basis upon which the system is being evaluated, test results and similar information, and other data as necessary for the code official to determine conformance to this code.

❖ As an alternative to a physical inspection at the plant or location where systems and components are prefabricated, the code official has the option of accepting an evaluation report from an approved agency detailing such inspections. These evaluation reports can serve as the basis for code compliance.

[A] **106.9 Evaluation service.** The code official shall designate the evaluation service of an *approved* agency as the evaluation agency, and review such agency's evaluation report for adequacy and conformance to this code.

❖ The code official is required to review all submitted reports for conformity to the applicable code requirements. If, in the judgment of the code official, the submitted reports are acceptable, he or she should document the basis for the approval.

[A] **106.10 Follow-up inspection.** Except where ready access is provided to systems, service equipment and accessories for complete inspection at the site without disassembly or dismantling, the code official shall conduct the frequency of in-plant inspections necessary to ensure conformance to the *approved* evaluation report or shall designate an indepen-

dent, *approved* inspection agency to conduct such inspections. The inspection agency shall furnish the code official with the follow-up inspection manual and a report of inspections on request, and the system shall have an identifying label permanently affixed to the system indicating that factory inspections have been performed.

❖ The owner is required to provide special inspections of fabricated assemblies at the fabrication plant. The code official or an approved inspection agency must conduct periodic in-plant inspections to ensure conformance to the approved evaluation report. Such inspections would not be required where the pool or spa can be inspected completely at the job site.

[A] **106.11 Test and inspection records.** Required test and inspection records shall be available to the code official at all times during the fabrication of the system and the installation of the system, or such records as the code official designates shall be filed.

❖ All testing and inspection records related to a fabricated assembly must be filed with the code official so he or she can maintain a complete and legal record of the assembly and erection of the swimming pool or spa.

[A] **106.12 Special inspections.** Special inspections of alternative engineered design systems shall be conducted in accordance with Sections 106.12.1 and 106.12.2.

❖ This section establishes that the design professional has to periodically inspect the alternative engineered design, keep records of such inspections and submit a final report to the code official certifying that all work conforms to the construction documents. Because of the unusual nature and possible complexity of alternative engineered swimming pools and spas, it is necessary for the designer to be involved in the inspection process.

[A] **106.12.1 Periodic inspection.** The registered design professional or designated inspector shall periodically inspect and observe the alternative engineered design to determine that the installation is in accordance with the *approved* construction documents. Discrepancies shall be brought to the immediate attention of the contractor for correction. Records shall be kept of inspections.

❖ The registered design professional must periodically inspect the engineered swimming pools and spas during installation to determine that the pools and spas conform to the approved construction documents. This is an important step because the design professional can identify any deviations from the approved plans in the early stages of the work. The design professional must then advise the contractor of any problems so that corrective measures can be taken before needless costs are incurred, and labor and materials are wasted.

The design professional must compile a complete legal record of the project, which must include all inspections made, discrepancies found and resolutions of discrepancies. It is the responsibility of the design professional to document and submit inspec-

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tion records and written certification in accordance with Section 106.12.2.

[A] 106.12.2 Written report. The registered design professional shall submit a final report in writing to the code official upon completion of the installation, certifying that the alternative engineered design conforms to the *approved* construction documents. A notice of approval for the system shall not be issued until a written certification has been submitted.

❖ After all work is completed, the design professional is required to inspect the entire alternative engineered swimming pool or spa. The details of that inspection, including verification of compliance with the approved construction documents, must be submitted in writing to the code official before final approval can be granted.

[A] 106.13 Testing. Systems shall be tested as required by this code. Tests shall be made by the permit holder and the code official shall have the authority to witness such tests.

❖ Visual inspection of a swimming pool or spa is not all that is required in the determination of compliance with the code. The code has requirements for testing to be performed to disclose leaks and defects.

[A] 106.14 New, altered, extended or repaired systems. New systems and parts of existing systems that have been altered, extended or repaired shall be tested as prescribed by this code.

❖ Every swimming pool or spa system must be tested before it is placed into service. Testing is necessary to make sure that the system is free from leaks or other defects. Testing is also required, to the extent practicable, for portions of existing systems that have been repaired, altered or extended.

[A] 106.15 Equipment, material and labor for tests. Equipment, material and labor required for testing a system or part thereof shall be furnished by the permit holder.

❖ The permit holder is responsible for performing tests, as well as for supplying all of the labor, equipment and apparatus necessary to conduct such tests. The code official observes, but never performs, the test.

[A] 106.16 Reinspection and testing. Where any work or installation does not pass any initial test or inspection, the necessary corrections shall be made to comply with this code. The work or installation shall then be resubmitted to the code official for inspection and testing.

❖ If a system, or portion thereof, does not pass the initial test or inspection, all violations must be corrected and the system must be reinspected.

To encourage code compliance and cover the expense of the code official's time, many jurisdictions charge fees for inspections that are required subsequent to the first reinspection.

[A] 106.17 Approval. After the prescribed tests and inspections indicate that the work complies in all respects with this code, a notice of approval shall be issued by the code official.

❖ After the code official has performed the required inspections and observed the required equipment

and system tests (or has received written reports of the results of such tests), he or she must determine whether the installation or work is in compliance with all applicable sections of the code. The code official must issue a written notice of approval if it has been determined that the work or installation is in apparent compliance with the code. The notice of approval is given to the permit holder, and a copy of the notice is retained on file by the code official.

[A] 106.17.1 Revocation. The code official is authorized to, in writing, suspend or revoke a notice of approval issued under the provisions of this code wherever the notice is issued in error, or on the basis of the incorrect information supplied, or where it is determined that the building or structure, premise, system or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

❖ This section is needed to give the code official the authority to revoke a notice of approval for the reasons indicated in the code text. The code official can suspend the notice until all of the code violations are corrected.

[A] 106.18 Temporary connection. The code official shall have the authority to authorize the temporary connection of the building or system to the utility source for the purpose of testing systems.

❖ The typical procedure for a local jurisdiction is to withhold the issuance of the certificate of occupancy until approvals have been received from each code official responsible for inspection of the structure. The code official is permitted to issue a temporary authorization to make connections to the public utility system prior to the completion of all work. The certification is intended to acknowledge that, because of seasonal limitations, time constraints, the need for testing or partial operation of equipment, some systems may be connected even though the pool or spa is not suitable for use. The intent of this section is that a request for temporary occupancy or the connection and use of systems should not be denied when the requesting permit holder has demonstrated to the code official's satisfaction that the public health, safety and welfare will not be endangered.

The code official should view the issuance of a "temporary authorization or certificate of occupancy" as substantial an act as the issuance of the final certificate. Indeed, the issuance of a temporary certificate of occupancy offers a greater potential for conflict because once the pool or spa is in use, it is very difficult to remove the occupants through legal means.

[A] 106.19 Connection of service utilities. A person shall not make connections from a utility, source of energy, fuel, power, water system or sewer system to any building or system that is regulated by this code for which a permit is required until authorized by the code official.

❖ This section establishes the authority of the code official to approve utility connections to a building, such as water, sewer, electricity, gas and steam, and to require their disconnection when such approval has

not been granted. For the protection of the people who work on swimming pools and spas, such systems must have had final inspection approvals.

SECTION 107 VIOLATIONS

[A] 107.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, repair, remove, demolish or utilize any system, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

❖ This section describes the citing, recording and subsequent actions pursuant to observed code violations. Violations of the code are prohibited; this is the basis for all citations and correction notices.

[A] 107.2 Notice of violation. The code official shall serve a notice of violation or order to the person responsible for the erection, installation, alteration, extension, repair, removal or demolition of work in violation of the provisions of this code, or in violation of a detail statement or the *approved* construction documents there under, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

❖ The code official is required to notify the person responsible for the erection or use of a swimming pool or spa found to be in violation of the code. The section that is allegedly being violated must be cited so that the responsible party can respond to the notice.

[A] 107.3 Prosecution of violation. If the notice of violation is not complied with promptly, the code official shall request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful pool or spa in violation of the provisions of this code or of the order or direction made pursuant thereto.

❖ The code official must pursue, through the use of legal counsel of the jurisdiction, legal means to correct the violation. This is not optional.

Any extensions of time for voluntary correction of the violations must be for a reasonable, legitimate cause, or the code official may be subject to criticism for "arbitrary and capricious" actions. In general, it is better to have a standard time limitation for correction of violations. Departures from this standard must be for a clear and reasonable purpose, usually stated in writing by the violator.

[A] 107.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair a pool or spa in violation of the *approved* construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a **[SPECIFY OFFENSE]**, punishable by a fine of not more than **[AMOUNT]** dollars or by imprisonment not exceeding **[NUMBER OF DAYS]**, or both such fine and imprisonment.

Each day that a violation continues after due notice has been served shall be deemed a separate offense.

❖ A standard fine, or other penalty, as deemed appropriate by the jurisdiction is prescribed in this section. Additionally, this section identifies a principle that "each day that a violation continues shall be deemed a separate offense" for the purpose of applying the prescribed penalty in order to facilitate prompt resolution.

[A] 107.5 Stop work orders. Upon notice from the *code official*, work on any system that is being performed contrary to the provisions of this code or in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's authorized agent, or to the person performing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than **[AMOUNT]** dollars or more than **[AMOUNT]** dollars.

❖ On receipt of a violation notice from the code official, the owner of the property, the owner's agent or the person doing the work must immediately cease all construction activities identified in the notice, except as expressly permitted to correct the violation. A stop work order can prevent a violation from becoming worse and more difficult or expensive to correct. However, it can result in inconvenience and monetary loss to the affected parties; therefore, justification must be evident and judgment must be exercised before such an order is issued.

A stop work order may be issued where work is proceeding without a permit. Hazardous conditions could develop where the code official is unaware of the nature of the work and a permit has not been issued. As determined by the adopting jurisdiction, a penalty may be assessed for failure to comply with this section, and it is to be inserted in the blanks provided.

[A] 107.6 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to prevent violation, or to prevent illegal use of a pool or spa, or to stop an illegal act, conduct, business or utilization of the plumbing on or about any premises.

❖ Despite the assessment of a penalty in the form of a fine or imprisonment against a violator, the violation itself must still be corrected. Failure to make the necessary corrections will result in the violator being subject to additional penalties as described in the preceding section.

[A] 107.7 Unsafe systems. Any system regulated by this code that is unsafe or that constitutes a fire or health hazard, insanitary condition, or is otherwise dangerous to human life

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is hereby declared unsafe. Any use of a system regulated by this code constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared an unsafe use. Any such unsafe system is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal.

❖ Unsafe conditions include those that constitute a health hazard, fire hazard, explosion hazard, shock hazard, asphyxiation hazard, physical injury hazard or are otherwise dangerous to human life and property.

In the course of performing duties, the code official may identify a hazardous condition. Such condition must be declared in violation of the code and, therefore, must be abated.

[A] 107.7.1 Authority to condemn a system. Whenever the code official determines that any system, or portion thereof, regulated by this code has become hazardous to life, health or property or has become insanitary, the code official shall order in writing that such system either be removed or restored to a safe or sanitary condition. A time limit for compliance with such order shall be specified in the written notice. No person shall use or maintain a defective system after receiving such notice.

When such a system is to be disconnected, written notice as prescribed in Section 107.2 shall be given. In cases of immediate danger to life or property, such disconnection shall be made immediately without such notice.

❖ When a swimming pool, spa or related equipment is determined to be unsafe, the code official is required to notify the owner or agent as the first step in correcting the difficulty. Such notice is to describe the repairs and improvements necessary to correct the deficiency or require removal or replacement of the unsafe equipment or system. All such notices must specify a time frame in which the corrective actions must occur. Additionally, such notice should require the immediate response of the owner or agent. If he or she is not available, public notice of such declaration should suffice for the purposes of complying with this section. The code official may also determine that disconnection of the utilities is necessary to correct an unsafe condition and must give written notice to that effect unless immediate disconnection is essential for public health and safety reasons (see the commentary to Section 107.7.2).

[A] 107.7.2 Authority to disconnect service utilities. The code official shall have the authority to authorize disconnection of utility service to the pool or spa regulated by the technical codes in case of an emergency, where necessary, to eliminate an immediate danger to life or property. Where possible, the owner or the owner's authorized agent and occupant of the building where the pool or spa is located shall be notified of the decision to disconnect utility service prior to taking such action. If not notified prior to disconnecting, the owner, the owner's authorized agent or the occupant of the building shall be notified in writing, as soon as practical thereafter.

❖ The code official must have the authority to order disconnection of any utility supplied to a swimming pool, spa or equipment regulated by the code when it is determined that the equipment or any portion thereof has become an immediate danger. Written notice of an order to disconnect service and the causes therefore should be given to the owner and the occupant of the swimming pool, spa or premises. However, disconnection should be done without such notice in cases of immediate danger to life or property.

[A] 107.7.3 Connection after order to disconnect. A person shall not make connections from any energy, fuel, power supply or water distribution system, or supply energy, fuel or water to any equipment regulated by this code that has been disconnected or ordered to be disconnected by the code official or the use of which has been ordered to be discontinued by the code official until the code official authorizes the reconnection and use of such equipment.

When any system is maintained in violation of this code, and in violation of any notice issued pursuant to the provisions of this section, the code official shall institute any appropriate action to prevent, restrain, correct or abate the violation.

❖ Once the reason for discontinuation of use or disconnection of the utility no longer exists, only the code official can authorize resumption of use or reconnection of the system after it is demonstrated to his or her satisfaction that all repairs or other work are in compliance with applicable sections of the code. This section also requires the owner to take action to abate code violations.

SECTION 108 MEANS OF APPEAL

[A] 108.1 Application for appeal. Any person shall have the right to appeal a decision of the code official to the board of appeals. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The application shall be filed on a form obtained from the code official within 20 days after the notice was served.

❖ This section holds that any aggrieved party with a material interest in the decision of the code official may challenge such a decision before a board of appeals. This provides a forum, other than the court of jurisdiction, in which to review the code official's actions.

This section literally allows any person to appeal a decision of the code official. In practice, this section has been interpreted to permit appeals only by aggrieved parties with a material or definitive interest in the decision of the code official. An aggrieved party may not appeal a code requirement per se. The intent of the appeal process is not to waive or set aside a code requirement; rather, it is to provide a means of reviewing a code official's decision on an interpreta-

tion or application of the code or to review the equivalency of protection to the code requirements.

[A] 108.2 Membership of board. The board of appeals shall consist of five members appointed by the chief appointing authority as follows: one for 5 years, one for 4 years, one for 3 years, one for 2 years and one for 1 year. Thereafter, each new member shall serve for 5 years or until a successor has been appointed.

❖ The board of appeals is to consist of five members appointed by the "chief appointing authority"—typically, the mayor or city manager. One member is to be appointed for five years, one for four, one for three, one for two and one for one year. This method of appointment allows for a smooth transition of board of appeals members, allowing continuity of action over the years.

[A] 108.2.1 Qualifications. The board of appeals shall consist of five individuals, one from each of the following professions or disciplines:

1. Registered design professional who is a registered architect; or a builder or superintendent of building construction with not less than 10 years' experience, 5 years of which shall have been in responsible charge of work.
2. Registered design professional with structural engineering or architectural experience.
3. Registered design professional with mechanical and plumbing engineering experience; or a mechanical and plumbing contractor with not less than 10 years' experience, 5 years of which shall have been in responsible charge of work.
4. Registered design professional with electrical engineering experience; or an electrical contractor with not less than 10 years' experience, 5 years of which shall have been in responsible charge of work.
5. Registered design professional with pool or spa experience; or a contractor with not less than 10 years' experience, 5 years of which shall have been in responsible charge of work.

❖ The board of appeals consists of five persons with the qualifications and experience indicated in this section. One must be a registered design professional (see Item 2) with structural or architectural experience. The others must be registered design professionals, construction superintendents or contractors with experience in various areas of swimming pool or spa construction. These requirements are important in that technical people rule on technical matters. The board of appeals is not the place for policy or political deliberations. It is intended that these matters be decided purely on their technical merits, with due regard for state-of-the-art construction technology.

[A] 108.2.2 Alternate members. The chief appointing authority shall appoint two alternate members who shall be

called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership, and shall be appointed for 5 years or until a successor has been appointed.

❖ This section authorizes the chief appointing authority to appoint two alternate members who are to be available if the principal members of the board are absent or disqualified. Alternate members must possess the same qualifications as the principal members and are appointed for a term of five years or until such time that a successor is appointed.

[A] 108.2.3 Chairman. The board shall annually select one of its members to serve as chairman.

❖ It is customary to determine chairmanship annually so that a regular opportunity is available to evaluate and either reappoint the current chairman or appoint a new one.

[A] 108.2.4 Disqualification of member. A member shall not hear an appeal in which that member has any personal, professional or financial interest.

❖ All members must disqualify themselves regarding any appeal in which they have a personal, professional or financial interest.

[A] 108.2.5 Secretary. The chief administrative officer shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of proceedings in the office of the chief administrative officer.

❖ The chief administrative officer is to designate a qualified clerk to serve as secretary to the board. The secretary is required to record the proceedings using detailed records.

[A] 108.2.6 Compensation of members. Compensation of members shall be determined by law.

❖ Members of the board of appeals need not be compensated unless required by the local municipality or jurisdiction.

[A] 108.3 Notice of meeting. The board shall meet upon notice from the chairman, within 10 days of the filing of an appeal or at stated periodic meetings.

❖ The board must meet within 10 days of the filing of an appeal or at regularly scheduled meetings.

[A] 108.4 Open hearing. Hearings before the board shall be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected shall be given an opportunity to be heard.

❖ All hearings before the board must be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected must be heard.

[A] 108.4.1 Procedure. The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not

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require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

❖ The board is required to establish, and make available to the public, written procedures detailing how hearings are to be conducted. Additionally, this section provides that although strict rules of evidence are not applicable, the information presented must be deemed relevant.

[A] 108.5 Postponed hearing. When five members are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

❖ When all five members of the board are not present, either the appellant or the appellant's representative may request a postponement of the hearing.

[A] 108.6 Board decision. The board shall modify or reverse the decision of the code official by a concurring vote of three members.

❖ A concurring vote of three members of the board is needed to modify or reverse the decision of the code official.

[A] 108.6.1 Resolution. The decision of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the code official.

❖ A formal decision in the form of a resolution is required to provide an official record. Copies of this resolution are to be furnished to both the appellant and the code official. The code official is bound by the action of the board of appeals unless he or she thinks that the board of appeals has acted improperly. In such cases, relief through the court having jurisdiction may be sought by corporate council.

[A] 108.6.2 Administration. The code official shall take immediate action in accordance with the decision of the board.

❖ To avoid any undue hindrance in the progress of construction, the code official is required to act without delay, based on the board's decision. This action may be to enforce the decision or to seek legislative relief if the board's action can be demonstrated to be inappropriate.

[A] 108.7 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the chief administrative officer.

❖ This section allows any person to request a review, by the court of jurisdiction, of perceived errors of law. Application for such review must be made after the decision of the board is filed with the chief administrative officer. This helps to establish the observance of due process for all concerned.

Bibliography

The following resource material was used in the preparation of the commentary for this chapter of the code.

Legal Aspects of Code Administration. Washington, DC: International Code Council, 2002.

Chapter 2: Definitions

General Comments

Chapter 2 establishes the meanings of key words and terms used in the code. The words or terms are deemed to be of prime importance in both specifying the subject matter and giving meaning to certain terms used throughout the code for administrative or enforcement purposes.

Purpose

Codes, by their very nature, are technical documents. Every word, term and punctuation mark can alter a sentence's meaning and, if misused, muddy its intent.

Further, the code, with its broad scope of applicability, includes terms used in a variety of construction disciplines. These terms can often have multiple meanings depending on the context or discipline being used at the time.

For these reasons, a consensus on the specific meaning of terms contained in the code must be maintained. Chapter 2 performs this function by stating clearly what specific terms mean for the purpose of the code.

SECTION 201 GENERAL

201.1 Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this code, have the meanings shown in this chapter.

❖ This section contains language and provisions that are supplemental regarding the use of Chapter 2. It gives guidance to the use of the defined words relevant to tense, gender, and plurality.

201.2 Interchangeability. Words used in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

❖ Although the definitions contained in Chapter 2 are to be taken literally, gender and tense are considered to be interchangeable. This is so that any grammatical inconsistencies within the code do not hinder the understanding or enforcement of the requirements.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code*, *International Energy Conservation Code*, *International Fire Code*, *International Fuel Gas Code*, *International Mechanical Code*, *International Plumbing Code* or *International Residential Code*, such terms shall have the meanings ascribed to them as in those codes.

❖ When a word or term appears in the code that is not defined in this chapter, other references may be used to find its definition, such as the other International Codes® (I-Codes®), which are coordinated to prevent conflict between documents.

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms

shall have ordinarily accepted meanings such as the context implies.

❖ Another resource for defining words or terms not defined herein or in other codes is their "ordinarily accepted meanings." The intent of this statement is that a dictionary definition could suffice, provided that such definition refers to the context.

Some of the construction terms used throughout the code may not be defined in Chapter 2 or in a dictionary. In such a case, one would first turn to the definitions contained in the referenced standards (see Chapter 11) and then to published textbooks on the subject in question.

SECTION 202 DEFINITIONS

ACCESSIBLE. Signifies access that requires the removal of an access panel or similar removable obstruction.

❖ Components and equipment for pools or spas must be provided with access so that they can be adjusted, repaired or replaced. The term "accessible" indicates that a component or item must be provided with access.

ACTIVITY POOL. A pool designed primarily for play activity that uses constructed features and devices including lily pad walks, flotation devices, small slide features, and similar attractions.

❖ Where a pool has features or equipment that offer activities other than just swimming in the water, the pool is considered an activity pool.