

NJ Governor Phil Murphy Signs Executive Order 153 Permitting Outdoor Swimming Pools, Outdoor Recreation and Entertainment Facilities to Open

Steven G. Mlenak and John H. Hague
Greenbaum, Rowe, Smith & Davis LLP Client Alert
June 12, 2020

On Tuesday, June 9, 2020, Governor Phil Murphy signed Executive Order No. 153 (EO 153) which permits outdoor swimming pools to open effective June 22 and permits additional outdoor recreational facilities to open effective immediately.

Public and Private Swimming Pools

For weeks, many in New Jersey have been asking the Governor to allow pools to open given reports suggesting a low transmission rate of COVID-19 in an outdoor setting with proper precautions put in place. EO 153 will now allow both public and private swimming facilities, including those in common interest communities, to open their outdoor pools and hot tubs on June 22 at 6:00am subject to compliance with regulations promulgated by the New Jersey Department of Health (DOH).

Public and private pool operators, including common interest communities, should carefully review the DOH regulations with legal counsel in order to ensure compliance.

In summary, the regulations require, at a minimum, that pool operators take the following steps in order to open:

1. Adopt a COVID-19 Pool Operation Prevention Plan (CPOPP) that complies with the regulations and EO 153. Operators are required to submit a copy of the CPOPP to their local health authority;
2. Pool directors and lifeguards must receive training in COVID-19 awareness, cleaning and sanitizing and be certified in accordance with existing rules and certification requirements (the regulations

Attorneys

Steven G. Mlenak

Published Articles (Cont.)

- contain a link to resources available for such training);
3. Establish an “ambassador” role to monitor and encourage social distancing and a “COVID contact person”;
 4. Implement a screening policy for staff entering the facility including temperature readings and screening for fever or signs of COVID-19;
 5. Develop police notification procedures for reporting non-compliance with any activities required by EO 153;
 6. Access to entry and exit points shall be limited and staggered;
 7. Signs shall be posted (i) prohibiting individuals with symptoms of COVID-19, (ii) requiring social distancing procedures, (iii) encouraging masks when out of the water (to eliminate risk of drowning), (iv) requiring frequent handwashing, and (v) discouraging touching one’s face;
 8. Capacity shall be limited to 50% of the maximum capacity, which may be implemented through a reservation system, limiting hours a person may stay in the pool area; and/or demarcating grids on the pool deck;
 9. Occupancy in hot tubs must be reduced to allow social distancing;
 10. Occupancy in pools shall not exceed 28 sq. ft. per bather;
 11. A sign-in sheet must be kept for all staff and patrons to facilitate potential contact tracing efforts;
 12. Pools that can accommodate more than 500 bathers before the 50% reduction must establish an emergency care room with protective covering and must provide basic PPE for isolation in the health area;
 13. Establish a procedure for isolating and transporting anyone with signs of symptoms of COVID-19;
 14. Establish a procedure for enhanced cleaning and disinfecting, especially to high traffic areas, including, but not limited to, the placement of sanitizer stations throughout the facilities, frequent sanitation of high-touch areas and shared objects including life jackets, lifeguard stands, railings, lifesaving equipment, and towel decks;
 15. Furniture may not be shared by anyone other than immediate family members, caretakers, household members or romantic partners, and all such furniture must be disinfected after each occupancy;
 16. While the pool club/association may not provide water play equipment, a patron’s own water play equipment or toys may be used but may not be shared with others other than those set forth in No. 15 above;
 17. Staff and patrons over the age of 2, with the exception of lifeguards on duty, should be encouraged to wear a mask while not in the pool when social distancing cannot be maintained;
 18. Social distancing procedures shall be employed including spacing out of furniture, controlling crowd flow via visible markings, postings or signage, and demarcating and posting signs denoting

- 6 feet of spacing in all commonly used areas or anywhere people may form a line; and
19. Revise emergency evacuation procedures to ensure social distancing protocols can be followed.

Pool facilities may open in advance of June 22 for the purpose of lifeguard training and swimming lessons consistent with Executive Order No. 107. Further, aquatic recreation facilities (water parks), amusement parks and arcades, indoor recreation areas, playgrounds, and recreational water fountains shall remain closed even if located at outdoor pools, while restaurants and other food provisions located at an outdoor pool shall comply with the requirements of Executive Order 150, which are outlined in our earlier Client Alert.

Outdoor Recreation and Entertainment Facilities

EO 153 permits recreational businesses, entertainment businesses, and public and private social clubs that were previously closed pursuant to EO 107 to re-open their **outdoor spaces** to the public provided that such businesses adopt the following policies:

1. Limit access to the interior of a building except when entering and exiting the facility and for use of a restroom;
2. Limit total capacity to a number that ensures all individuals can remain six feet apart;
3. Open-air tarps, tents or other outdoor structures are only allowed for the purpose of protecting against foul weather or for shade;
4. Reservations, cancellations and pre-payments should be made via electronic or telephone reservation systems to limit physical interactions where possible, taking into account those facilities that do not have access to internet service or credit cards;
5. Provide for a physical barrier, such as a shield guard, between visitors and employees wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment;
6. Equipment rentals shall be limited to one person at a time, excluding immediate family members, caretakers, household members or romantic partners, and each piece of equipment must be sanitized after each use;
7. Physical demarcations and signs should be posted to denote six feet of spacing in all commonly used and other applicable areas or where people may form a line;
8. Infection control practices are required, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
9. Provide employees with break time for repeated handwashing;
10. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and patrons;
11. Limit occupancy in restrooms to avoid over-crowding through signage and, where practicable, the use of attendants to monitor capacity;

Published Articles (Cont.)

12. Require frequent sanitization of high-touch areas in accordance with DOH and CDC guidelines;
13. Train employees to perform the above protocols effectively and in a manner that promotes the safety of the visitors and staff;
14. Limit person-to-person interactions;
15. Immediately separate and send home employees who appear to have symptoms consistent with COVID-19;
16. Promptly notify employees of any known exposure to COVID-19 at the workplace, consistent with confidentiality requirements of the Americans with Disabilities Act and other applicable laws; and
17. Require that the worksite be cleaned and disinfected in accordance with CDC guidelines if someone at the site has been diagnosed with COVID-19.

Despite the foregoing, any outdoor gathering that involves individuals who are there at a specific time and for a common reason, such as a movie, concert, etc., remain subject to the limitations on outdoor gatherings set forth in Executive Order 152, which are outlined in our earlier Client Alert.

We will continue to monitor developments that impact businesses and common interest communities related to the reopening of facilities in New Jersey. Please contact the authors of this Alert with questions or to discuss your specific circumstances.

Steven G. Mlenak

Partner, Real Estate and Redevelopment & Land Use Departments
smlenak@greenbaumlaw.com | 732.476.2526

John H. Hague

Partner, Real Estate and Redevelopment & Land Use Departments
jhague@greenbaumlaw.com | 732.476.2466