LESLIE A. FITZGERALD
ASSISTANT CITY ATTORNEY

MICHELLE GARLAND
ASSISTANT CITY ATTORNEY

NICOLE PEDONE
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

HEATHER FERBERT
CITY ATTORNEY

CIVIL ADVISORY DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800

MEMORANDUM OF LAW

DATE: July 23, 2025

TO: Andy Field, Director of Parks and Recreation Department

FROM: City Attorney

SUBJECT: Lifeguard Services at City of San Diego Municipal Pools

INTRODUCTION

The City of San Diego (City) has 14 municipal pools that serve residents and visitors of all ages across different City neighborhoods. Currently, all lifeguards at City pools are City employees who are required to possess an American Red Cross Lifeguard/First Aid Certificate, American Red Cross CPR/Automated External Defibrillator (AED) for Lifeguard Certificate, and an American Red Cross First Aid for Public Safety Personnel Certificate in compliance with title 22 of the California Code of Regulations and California Health & Safety Code. They are trained in first aid and life rescue techniques by City trainers or staff leads. Occasionally, pools must close due to staffing issues such as unavailability of lifeguards, or because available pool hours do not align with requests for pool rentals by outside organizations. As a result, these outside organizations, such as club water polo teams or club swim teams, have requested to provide their own lifeguards. You have asked this Office to determine if these outside organizations can legally provide their own lifeguard services at City municipal pools.

QUESTION PRESENTED

Can outside organizations, clubs, or groups provide their own lifeguard services at City Municipal Pools?

SHORT ANSWER

No. City-operated pools are subject to the operational standards set forth by the California Health & Safety Code, which require the owner or operator to provide lifeguard

services, and there is no authority in statute or case law that would allow this responsibility to be transferred to pool users.[1, 2]

ANALYSIS

I. CITY HAS A MANDATORY DUTY TO PROVIDE THEIR OWN LIFEGUARD SERVICES UNDER THE CALIFORNIA HEALTH AND SAFETY CODE

The California Health & Safety Code establishes the duties of pool operators and the standards by which they must maintain and operate public swimming pools. *See* Cal. Health & Safety Code §§ 116028, 116033, 116045. California Health & Safety Code section 116045(a) states: "[l]ifeguard service shall be provided for any public swimming pool that is wholly artificial construction and for the use of which a direct fee is charged." Cal. Health & Safety Code § 116045(a). "Public swimming" is defined in section 116045 as "any public swimming pool, bathhouse, public swimming and bathing place and all related appurtenances" that are open to the public. Cal. Health & Safety Code § 116045(e)(2). The California Health & Safety Code also defines lifeguard service as the attendance of one or more certified and trained lifeguards "who have no duties to perform other than to supervise the safety of participants in water-contact activities." Cal. Health & Safety Code § 116028. Case law discussing section 116045 of the California Health & Safety Code finds the pool owner/operator as having the obligation to provide the lifeguard services. *See, e.g., Lucas v. Hesperia Golf and Country Club*, 255 Cal. App. 2d 241, 248 (1967); *Haft v. Lone Palm Hotel*, 3 Cal. 3d 756, 766 (1970).

In *Lucas*, a country club faced a wrongful death suit after a boy drowned in its swimming pool. *See Lucas,* 255 Cal. App. 2d at 244-45. The "pool maintenance man" on duty lacked the required certifications under title 22 of the California Code of Regulations and California Health & Safety Code. The court held that the pool, which was available to paying members and their families, was a "public swimming pool" within the meaning of the statute. *Lucas,* 255 Cal. App. 2d at 250-51. The court held that because the pool was licensed by the State, inspected by the county, and membership was not restricted, the club pool easily fell within the broad construction of the term. *Id.* at 250. It further found that a breach of a statutory duty - the failure to provide a qualified lifeguard - may suffice to give rise to an inference that the injury was the proximate result of the violation. *Id.* at 252. Even though there was no direct evidence as to what would have happened had there been a qualified lifeguard present at the pool, the jury "could have reasonably inferred that had one been in attendance as required by law, the victim may have survived." *Id.* at 253.

---

[1] Note that the City can hire an outside agency, under certain conditions, to provide lifeguard services at a public pool per California Health and Safety Code section 116033 and Title 22 of the California Code of Regulations section 65539. This is distinguishable from outside groups hiring and bringing in their own lifeguard services.

[2] The City requires a 1:25 pool guard-to-patron ratio. All group rentals are required to hire additional City-employed pool guards based on group size to ensure proper safety coverage. In addition to providing surveillance, these pool guards may also be assigned to teach swimming lessons or lead aquatic activities. Fees for additional pool guards are in the City's fee schedule.

Pools operated by the City are clearly "public swimming pools" within the meaning of the California Health & Safety Code. Like the country club pool in *Lucas,* City pools are open to members of the public who pay a fee. One could argue that City pools are no longer public when they are rented out by private club teams for practices. However, if, like in *Lucas*, membership to these teams is unrestricted and the users pay a rental fee, then a City pool is likely still considered public under the California Health & Safety Code when rented out for club team use.

If the City allows private club teams or other organizations to employ lifeguards, the City would likely be in breach of a statutory duty to provide a qualified lifeguard. Like in *Lucas,* such a breach could support a finding that the violation was a proximate cause of injuries to swimmers. *Id.* at 252-253.

II. THE CITY MAY BE LIABLE FOR NEGLIGENCE IF IT BREACHES ITS STATUTORY DUTY TO PROVIDE LIFEGUARD SERVICES

In California, tort liability for public entities or public employees must be based on statute. *See Guzman v. County of Monterey,* 46 Cal. 4th 887, 897 (2009) (citing Cal. Gov't Code § 815 (a)). California Government Code section 815.6 provides a statutory basis for liability when the public entity negligently fails to discharge a mandatory duty and the mandatory duty is imposed by a statute designed to protect against the risk of a particular kind of injury. Cal. Gov't Code § 815.6. A statute imposes a mandatory duty on a public entity only when it requires, rather than merely permits, that a particular action be taken or not taken. *See De Villers v. County of San Diego*, 156 Cal. App. 4th 238, 256 (2007). If the City is found to have a mandatory statutory duty to provide lifeguard services, it will be difficult to defend against potential claims of negligent pool operation or lifeguard supervision. Additionally, providing lifeguard services is a duty that likely cannot be delegated to an independent contractor. *See SeaBright Ins. Co. v. US Airways, Inc.,* 52 Cal 4th 590, 600-601 (2011).

Violation of a statutory requirement to provide a lifeguard may shift the burden of proof to the City. *See Haft v. Lone Palm Hotel*, 3 Cal. 3d 756 at 766 (1970). In *Haft*, motel operators violated a statutory requirement by not providing a lifeguard or adequate warning signage for the motel pool where a father and son drowned with no witnesses. *Id.* at 756. The court held that, upon failure to provide lifeguard services, the burden shifts to the defendant pool operators to prove that their violation was not a proximate cause of the deaths. *Id.* at 769. In the absence of such proof, causation of the drownings was established as a matter of law. *Id.* The court further noted that one of the primary purposes of the statute's lifeguard requirement was to control the danger to "careless swimming novices" who might overestimate their swimming abilities. *Id.* at 769-770. Accordingly, the negligence of inexperienced swimmers would not be enough to absolve the defendant of liability for failing to have the required lifeguard or notice and could not be a superseding cause that would break the chain of proximate causation. *Id.*

In the event of a drowning or injury at a City pool without proper City-provided lifeguard service, the City may face similar liability for negligence as a matter of law. If a plaintiff established that the City failed to provide lifeguards, the burden may shift to the City as the pool operator to show that the absence of a City-provided lifeguard did not cause the injury, which is generally a significantly more challenging case to defend.

III. A WAIVER OF LIABILITY MAY BE INSUFFICIENT TO PROTECT THE CITY FROM LIABILITY

A waiver of liability by the outside groups will not likely protect the City from being sued in the event of an injury to a pool user, would not bar an action claiming that the City violated public swimming pool operation standards, and would likely not excuse the City from its statutory duties. *See Capri v. L.A. Fitness International, LLC*, 136 Cal. App. 4th 1078 (2006). A pool operator cannot contract away liability for negligent violations of statutory law, regardless of whether the public interest is affected. *Id.* at 1084; s*ee also* Cal. Civ. Code § 1668 (prohibiting contractual exculpation for a "violation of law"). Therefore, even if the City allowed a pool user to provide their own lifeguard services and required a signed waiver of liability, the waiver would likely be invalid against the City's statutory duties. *See Capri*, 136 Cal. App. 4th at 1085. In *Capri*, a health club's membership agreement included a release and waiver of liability and an indemnity clause. *See Capri*, 136 Cal. App. 4th at 1081. After slipping and falling on algae buildup on the pool deck, a pool user sued the health club for failing to operate a public swimming pool in a safe manner under California Health & Safety Code sections 116040 and 116043. *Id.* at 1084-85. The court held that California Civil Code section 1668, considered together with the applicable provisions of the California Health & Safety Code, precluded operation of a waiver. *Id.* at 1081. Consequently, the waiver did not indemnify the health club from the plaintiff's negligence per se contention. *Id.* at 1085.

Like the plaintiff in *Capri*, pool users may have valid negligence claims against the City for violating the California Health & Safety Code's safety standards for public swimming pools if an injury occurs. The California Health & Safety Code declares that any public swimming pool that is operated contrary to the required standards is a public nuisance, subject to abatement. *See* Cal. Health & Safety Code §§ 116060, 116063. It also criminalizes any violation. *See* Cal. Health & Safety Code §116065. Accordingly, a waiver releasing the City from liability related to safe pool operation is likely a contractual exculpation for a "violation of law" and thus invalid under California Civil Code section 1668.

CONCLUSION

There is no authority that allows the City to permit outside groups, clubs, organizations, or any pool users to provide their own lifeguard services. Failure to comply with the California Health & Safety Code, as well as other related laws regarding the duties and training of such lifeguards has led to the liability on the part of pool owners and operators in several drowning

cases. The City would violate State law and face increased liability if it were to relinquish this safety responsibility to outside pool users.

HEATHER FERBERT, CITY ATTORNEY

By */s/ Nicole Pedone*
Nicole Pedone
Deputy City Attorney

NPM:jdf
ML-2025-1
Doc. No. 4128815