



# MEMORANDUM

Office of the City Attorney

Registrar No. 000129

Phone: 334-5011/Fax 334-2229  
Box 46

TO: Mayor and City Commission

DATE: July 24, 2000  
FIRST READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-00-80  
An ordinance of the City of Gainesville, Florida, amending Article VII of Chapter 6 of the Code of Ordinances relating to swimming pools and providing that residential swimming pools that pass final inspection after October 1, 2000 must meet the requirements of the State of Florida "Preston de Ibern/McKenzie Merriam Residential Swimming Pool Act"; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

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Recommendation: The City Commission adopt the proposed ordinance.

The City Commission at its meeting of July 10, 2000, authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance amending Article VII, of Chapter 6 of the Code of Ordinances relating to residential swimming pools. The ordinance provides that after October 1, new pools must meet State requirements as provided in the "Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act," a copy of which is attached.

Prepared by:

Patricia M. Carter,  
Sr. Assistant City Attorney

Approved and  
Submitted by:

Marion J. Radson,  
City Attorney

MJR:PMC:sw

## CHAPTER 2000-143

### Senate Bill No. 86

An act relating to residential swimming pools, spas, and hot tubs; creating ch. 515, F.S., the "Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act"; providing legislative findings and intent; providing definitions; providing pool safety feature requirements and options; providing penalties; providing pool barrier requirements; providing for a drowning prevention education program and a public information publication; providing for a fee; requiring pool contractors, home builders, and developers to provide buyers with certain information; providing rulemaking authority; providing exemptions; providing an effective date.

WHEREAS, drowning is the leading cause of death for young children in Florida, with 420 children ages 1-4 years drowning in Florida between 1992-1997, 268 of whom drowned at home and 208 of these drowned in swimming pools at home, and

WHEREAS, for every young child who dies from drowning, four suffer brain injury from near-drowning incidents, and

WHEREAS, advances in medical technology are allowing more near-drowning victims to survive, but many are surviving with serious, permanent neurological damage, and

WHEREAS, although supervision is one of the keys to accomplishing the objective of reducing the number of submersion incidents, it is well known that at times children do the unexpected, catching their supervisors off guard, and

WHEREAS, the United States Consumer Product Safety Commission found, in a study of drowning and near-drowning incidents, that the majority of victims lived in or were visiting the residence where the drowning occurred, that less than 2 percent of the submersions occurred when a child trespassed on the property, and that most of the victims were either near or in the residence immediately prior to the incident and reached the pool unnoticed, and

WHEREAS, in addition to the incalculable human cost of these tragic incidents, drownings of young children result in significant losses in productivity and near drownings of young children result in costly emergency medical responses, costly stays in intensive care units, and, sometimes, costly lifetime medical equipment and health care support, to the extent that the health care costs, loss of lifetime productivity, and legal and administrative expenses associated with drownings of young children in Florida each year are estimated to be \$73.5 million and the lifetime cost for care and treatment of a young child who has suffered brain disability due to a near-drowning incident is estimated to be \$4.5 million, and

WHEREAS, Florida has a large population of persons age 65 or older, and drowning is a significant cause of death in this older age group as well, with

448 such elderly persons drowning between 1992-1997, 195 of whom had medical problems such as Alzheimer's disease, confusion, balance or vision impairment, a heart problem, or diabetes and 145 of whom drowned in swimming pools; and, in cases where it was documented, 52 percent of these older Floridians fell into the swimming pool and were not intending to be in the water when they drowned, and

WHEREAS, constant adult supervision of young children and medically frail elderly persons is the primary element in an integrated approach to drowning prevention, and

WHEREAS, in the event of a lapse in such supervision, a pool safety feature that limits or delays access to the residential swimming pool, spa, or hot tub is a critical component in the prevention of drownings, and

WHEREAS, it is the intent of the Legislature that all new residential swimming pools, spas, and hot tubs have at least one pool safety feature to supplement and complement the requirement for constant adult supervision of young children and medically frail elderly persons around such aquatic environments, and

WHEREAS, it is also the intent of the Legislature that the Department of Health be responsible for producing its own or adopting a nationally recognized publication that provides information on drowning prevention and the responsibilities of pool ownership and also for developing its own or adopting a nationally recognized drowning prevention education program for the public and for persons violating pool safety requirements, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 515, Florida Statutes, consisting of sections 515.21, 515.23, 515.25, 515.27, 515.29, 515.31, 515.33, 515.35, and 515.37, is created to read:

515.21 Short title.—This chapter may be cited as the "Preston de Ibern/McKenzie Merriam Residential Swimming Pool Safety Act."

515.23 Legislative findings and intent.—The Legislature finds that drowning is the leading cause of death of young children in this state and is also a significant cause of death for medically frail elderly persons in this state, that constant adult supervision is the key to accomplishing the objective of reducing the number of submersion incidents, and that when lapses in supervision occur a pool safety feature designed to deny, delay, or detect unsupervised entry to the swimming pool, spa, or hot tub will reduce drowning and near-drowning incidents. In addition to the incalculable human cost of these submersion incidents, the health care costs, loss of lifetime productivity, and legal and administrative expenses associated with drownings of young children and medically frail elderly persons in this state each year and the lifetime costs for the care and treatment of young children who have suffered brain disability due to near-drowning incidents each year are enormous. Therefore, it is the intent of the Legislature that all new residential

swimming pools, spas, and hot tubs be equipped with at least one pool safety feature as specified in this chapter. It is also the intent of the Legislature that the Department of Health be responsible for producing its own or adopting a nationally recognized publication that provides the public with information on drowning prevention and the responsibilities of pool ownership and also for developing its own or adopting a nationally recognized drowning prevention education program for the public and for persons violating the pool safety requirements of this chapter.

515.25 Definitions.—As used in this chapter, the term:

(1) "Approved safety pool cover" means a manually or power-operated safety pool cover that meets all of the performance standards of the American Society for Testing and Materials (ASTM) in compliance with standard F1346-91.

(2) "Barrier" means a fence, dwelling wall, or nondwelling wall, or any combination thereof, which completely surrounds the swimming pool and obstructs access to the swimming pool, especially access from the residence or from the yard outside the barrier.

(3) "Department" means the Department of Health.

(4) "Exit alarm" means a device that makes audible, continuous alarm sounds when any door or window which permits access from the residence to any pool area that is without an intervening enclosure is opened or left ajar.

(5) "Indoor swimming pool" means a swimming pool that is totally contained within a building and surrounded on all four sides by walls of or within the building.

(6) "Medically frail elderly person" means any person who is at least 65 years of age and has a medical problem that affects balance, vision, or judgment, including, but not limited to, a heart condition, diabetes, or Alzheimer's disease or any related disorder.

(7) "Outdoor swimming pool" means any swimming pool that is not an indoor swimming pool.

(8) "Portable spa" means a nonpermanent structure intended for recreational bathing, in which all controls and water-heating and water-circulating equipment are an integral part of the product and which is cord-connected and not permanently electrically wired.

(9) "Public swimming pool" means a swimming pool, as defined in s. 514.011(2), which is operated, with or without charge, for the use of the general public; however, the term does not include a swimming pool located on the grounds of a private residence.

(10) "Residential" means situated on the premises of a detached one-family or two-family dwelling or a one-family townhouse not more than three stories high.

(11) "Swimming pool" means any structure, located in a residential area, that is intended for swimming or recreational bathing and contains water over 24 inches deep, including, but not limited to, in-ground, aboveground, and on-ground swimming pools; hot tubs; and nonportable spas.

(12) "Young child" means any person under the age of 6 years.

515.27 Residential swimming pool safety feature options; penalties.—

(1) In order to pass final inspection and receive a certificate of completion, a residential swimming pool must meet at least one of the following requirements relating to pool safety features:

(a) The pool must be isolated from access to a home by an enclosure that meets the pool barrier requirements of s. 515.29;

(b) The pool must be equipped with an approved safety pool cover;

(c) All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm that has a minimum sound pressure rating of 85 dB A at 10 feet; or

(d) All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor.

(2) A person who fails to equip a new residential swimming pool with at least one pool safety feature as required in subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, except that no penalty shall be imposed if the person, within 45 days after arrest or issuance of a summons or a notice to appear, has equipped the pool with at least one safety feature as required in subsection (1) and has attended a drowning prevention education program established by s. 515.31. However, the requirement of attending a drowning prevention education program is waived if such program is not offered within 45 days after issuance of the citation.

515.29 Residential swimming pool barrier requirements.—

(1) A residential swimming pool barrier must have all of the following characteristics:

(a) The barrier must be at least 4 feet high on the outside.

(b) The barrier may not have any gaps, openings, indentations, protrusions, or structural components that could allow a young child to crawl under, squeeze through, or climb over the barrier.

(c) The barrier must be placed around the perimeter of the pool and must be separate from any fence, wall, or other enclosure surrounding the yard unless the fence, wall, or other enclosure or portion thereof is situated on the perimeter of the pool, is being used as part of the barrier, and meets the barrier requirements of this section.



(d) The barrier must be placed sufficiently away from the water's edge to prevent a young child or medically frail elderly person who may have managed to penetrate the barrier from immediately falling into the water.

(2) The structure of an aboveground swimming pool may be used as its barrier or the barrier for such a pool may be mounted on top of its structure; however, such structure or separately mounted barrier must meet all barrier requirements of this section. In addition, any ladder or steps that are the means of access to an aboveground pool must be capable of being secured, locked, or removed to prevent access or must be surrounded by a barrier that meets the requirements of this section.

(3) Gates that provide access to swimming pools must open outwards away from the pool and be self-closing and equipped with a self-latching locking device, the release mechanism of which must be located on the pool side of the gate and so placed that it cannot be reached by a young child over the top or through any opening or gap.

(4) A wall of a dwelling may serve as part of the barrier if it does not contain any door or window that opens to provide access to the swimming pool.

(5) A barrier may not be located in a way that allows any permanent structure, equipment, or similar object to be used for climbing the barrier.

515.31 Drowning prevention education program; public information publication.—

(1) The department shall develop a drowning prevention education program, which shall be made available to the public at the state and local levels and which shall be required as set forth in s. 515.27(2) for persons in violation of the pool safety requirements of this chapter. The department may charge a fee, not to exceed \$100, for attendance at such a program. The drowning prevention education program shall be funded using fee proceeds, state funds appropriated for such purpose, and grants. The department, in lieu of developing its own program, may adopt a nationally recognized drowning prevention education program to be approved for use in local safety education programs, as provided in rule of the department.

(2) The department shall also produce, for distribution to the public at no charge, a publication that provides information on drowning prevention and the responsibilities of pool ownership. The department, in lieu of developing its own publication, may adopt a nationally recognized drowning prevention and responsibilities of pool ownership publication, as provided in rule of the department.

515.33 Information required to be furnished to buyers.—A licensed pool contractor, on entering into an agreement with a buyer to build a residential swimming pool, or a licensed home builder or developer, on entering into an agreement with a buyer to build a house that includes a residential swimming pool, must give the buyer a document containing the requirements of this chapter and a copy of the publication produced by the department under

s. 515.31 that provides information on drowning prevention and the responsibilities of pool ownership.

515.35 Rulemaking authority.—The department shall adopt rules pursuant to the Administrative Procedure Act establishing the fees required to attend drowning prevention education programs and setting forth the information required under this chapter to be provided by licensed pool contractors and licensed home builders or developers.

515.37 Exemptions.—This chapter does not apply to:

(1) Any system of sumps, irrigation canals, or irrigation flood control or drainage works constructed or operated for the purpose of storing, delivering, distributing, or conveying water.

(2) Stock ponds, storage tanks, livestock operations, livestock watering troughs, or other structures used in normal agricultural practices.

(3) Public swimming pools.

(4) Any political subdivision that has adopted or adopts a residential pool safety ordinance, provided the ordinance is equal to or more stringent than the provisions of this chapter.

(5) Any portable spa with a safety cover that complies with ASTM F1346-91 (Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs).

(6) Small, temporary pools without motors, which are commonly referred to or known as "kiddy pools."

Section 2. This act shall take effect October 1, 2000.

Approved by the Governor May 25, 2000.

Filed in Office Secretary of State May 25, 2000.

Ordinance No. 0-00-80

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**An ordinance of the City of Gainesville, Florida, amending Article VII of Chapter 6 of the Code of Ordinances relating to swimming pools and providing that residential swimming pools that pass final inspection after October 1, 2000 must meet the requirements of the State of Florida “Preston de Ibern/McKenzie Merriam Residential Swimming Pool Act”; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.**

**WHEREAS**, since 1980, the City of Gainesville has required enclosures for private swimming pools; and

**WHEREAS**, on May 25, 2000 the Governor approved Senate Bill No. 86, which provides for pool safety feature requirements and barrier requirements for residential swimming pools, and which will go into effect on October 1, 2000; and

**WHEREAS**, the provisions of the new state law are stricter than those of the City of Gainesville and therefore will apply with the city limits; and

**WHEREAS**, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the Auditorium of City Hall in the City of Gainesville; and

**WHEREAS**, a Public Hearing was held pursuant to the published notice described at which hearing the parties in interest and all others had an opportunity to be and were, in fact, heard;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:**

**Section 1.** Article VII of Chapter 6 of the Code of Ordinances of the City of Gainesville is amended to read as follows:



1 **ARTICLE VII. SWIMMING POOLS**

2 **Sec. 6-156. Definitions.**

3 The following words and phrases, when used in this article, shall have the meanings  
4 respectively ascribed to them:

5 *Fences, walls or screening* shall mean suitable fences, walls or screened enclosures so  
6 constructed as to not have openings, holes or gaps larger than 8 inches in any dimension,  
7 except for door and gate openings, or alternatively so as to not have openings, holes or  
8 gaps larger than 4 inches in either the width or height dimension and unlimited in the  
9 other of these two dimensions when the fence is built of a rigid and inflexible material.

10 The fences or walls must be constructed of substantial material such as wood, masonry or  
11 steel which will prevent passage. Screen structures designed and built for the purpose of  
12 completely enclosing swimming pools and constructed of substantial material shall be  
13 acceptable. All fences, walls and screening must be maintained in a condition which  
14 sufficiently satisfies the objective and requirements stated in this article. Hedges shall not  
15 be acceptable.

16 *Private swimming pool* shall include all constructed or prefabricated pools that are used  
17 as a swimming pool in connection with a single-family residence and available only to the  
18 family of the householder and his/her private guests.

19 *Swimming pool* shall mean any body of water in an artificial or semiartificial receptacle or  
20 other container located outdoors which is constructed in such a manner as to permit a  
21 water depth of 18 inches or more and is used or intended to be used for swimming.

22 **Sec. 6-157. Purpose.**

23 The purpose of this article is to secure fences, walls or screening around swimming pools

1 in order to protect young children and other person from drowning or other injuries.

2 **Sec. 6-158. Applicability.**

3 (a) This article shall apply only to ~~a these~~ private swimming pools the construction of  
4 which was begun after June 16, 1980 and that passed final inspection prior to October 1,  
5 2000. Enclosure of ~~new~~ swimming pools as specified in the provisions of this article  
6 shall be inspected and approved at the time of final construction inspection by the  
7 building official or his/her designated inspector.

8 (b) All private swimming pools that have not passed final inspection prior to October  
9 1, 2000 must meet the requirements of ch. 515, Florida Statutes (the Preston de  
10 Ibern/McKenzie Merriam Residential Swimming Pool Safety Act).

11 **Sec. 6-159. Enclosure required.**

12 (a) All private swimming pools shall be enclosed with a fence or wall at least four  
13 feet in height except pool provided with other structures prohibiting unrestrained  
14 admittance to the enclosed area. Any structure used other than a fence or wall shall meet  
15 all zoning setbacks as required in chapter 29. A single-family dwelling may be enclosed  
16 within the fenced area. Any dwelling structure may be used as a part of the enclosure.

17 All gates or doors opening through the enclosure shall be equipped with self-closing and  
18 self-latching devices for keeping the gates or doors securely closed at all times when not  
19 in actual use, except that the door of any dwelling house which forms a part of the  
20 enclosure need not be so equipped. The latching device shall be located on the pool side  
21 of the door or gate, except where access to the pool opens into a dwelling unit or pool  
22 house.

23 (b) No person in control or possession of land within the city, either as owner,

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1 purchaser, lessee, tenant or as licensee, upon which a private swimming pool is situated  
2 shall fail to provide and maintain such fence or other enclosure as specified by this  
3 article.

4 **Section 2.** . It is the intention of the City Commission that the provisions of Section 1 of  
5 this ordinance shall become and be made a part of the Code of Ordinances of the City of  
6 Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be  
7 renumbered or relettered in order to accomplish such intentions.

8 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid  
9 or unconstitutional by any court of competent jurisdiction, then said holding shall in no  
10 way affect the validity of the remaining portions of this ordinance.

11 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of  
12 such conflict hereby repealed.

13 **Section 5.** This ordinance shall become effective immediately upon final adoption.

14  
15 **PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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17 \_\_\_\_\_  
18 PAULA M. DeLANEY  
19 MAYOR

20  
21 ATTEST: Approved as to form and legality

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23 \_\_\_\_\_  
24 KURT M. LANNON  
25 CLERK OF THE COMMISSION

\_\_\_\_\_

MARION J. RADSON  
CITY ATTORNEY

26 This Ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

27 This Ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_,  
28 2000.

