



**City of Long Beach**

*Working Together to Serve*

OFFICE OF THE CITY ATTORNEY

Date: August 11, 2005  
To: Honorable Mayor and City Councilmembers  
From: Robert E. Shannon, City Attorney *RES*  
*GM* Gerald R. Miller, City Manager  
Subject: City Strategies with Respect to Green Pools

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Pursuant to your request of May 24, we have prepared the following overview of current policies and procedures and possible additional actions that the City can take to address "green pools".

**I. CURRENT PRACTICE**

Each of the Greater Los Angeles County Vector Control District, the Compton Creek Vector Control District and the City's Department of Health and Human Services (HHS) are responsible for combating the spread of West Nile Virus (WNV) caused by untreated swimming pools (green pools) located within the City. The respective Vector Control Districts originally served areas of unincorporated Los Angeles County which were later annexed by the City and those Vector Control Districts continue to serve such areas now. HHS currently is responsible for roughly two-thirds of the City's total land area. The responsible agencies currently have in place similar comprehensive strategies to combat the spread of WNV caused by untreated swimming pools. HHS employs the investigation, treatment and follow-up procedures that are more particularly described in Section 5-80 of the HHS Procedure Manual, a copy of which is attached hereto as Exhibit "A". HHS also currently works with the City Prosecutor's Office to prosecute owners whose green pools present an immediate health and safety hazard to the public and who do not cooperate with HHS to abate such hazards.

**II. BEST PRACTICES**

It has been the long-standing policy of the City to only abate green pools when such pools pose a risk to the health and safety of the public, and not to address aesthetic concerns. All except one of the surrounding

municipalities that the City Manager's Office contacted also only take action with respect to green pools in order to abate health and safety risks.

The City of West Covina is the only city that the City Manager's Office could identify that will take abatement action for aesthetic reasons, and is the only city that drains and covers pools on private property as part of such abatement action. Notwithstanding West Covina's willingness to do so, draining green pools would pose a significant liability risk to the City, and would only be considered by the City Attorney's Office as a viable alternative to treatment if the drained pool was filled with dirt immediately after draining. Affirmative action on the part of the City to drain a private pool could give rise to significant liability should (i) the pool become damaged while empty (ii) the pool refill with water for any reason, or (iii) any injury occur in or around the pool. The installation of a pool cover over a green pool or a drained pool would not prevent the pool from acting as a mosquito breeding ground unless the pool cover was airtight, and such installation would impose continuing maintenance obligations upon the City. Under the circumstances, the City's current strategy of treatment of green pools is more effective at abating the spread of the WNV than draining green pools.

### **III. POSSIBLE ADDITIONAL ENFORCEMENT ACTION**

Under the current abatement scheme, HHS employees or employees of the applicable Vector Control Districts will indefinitely treat green pools without charge to the owner of the offending property. Legal action is only taken against those owners who refuse to allow HHS employees access to the property and whose green pools present an immediate health and safety hazard to the public. In order to provide further incentive for all private property owners to properly maintain their pools, the City could (i) recover costs incurred in investigating and abating green pools regardless of whether the owner cooperates with the abatement action and (ii) impose administrative penalties upon the offending property owner. Currently HHS does not recover the costs and expenses it incurs when investigating and abating green pools and does not impose administrative penalties, however, it could do so under Section 9.37 of the Municipal Code.

Generally Section 9.37 allows the City to impose administrative penalties on property owners who permit or cause nuisances to exist upon their property. A green pool that is a breeding ground for mosquitoes constitutes a nuisance under Section 9.37, and HHS can assess administrative penalties against offending homeowners in any part of the City notwithstanding the fact that an agency other than HHS may be responsible for treatment of such pool. The penalties can be up to \$250 per day and can total as much as \$5,000. In addition to the penalties, the City may recover its administrative costs

incurred during abatement action it takes on green pools located within its area of responsibility. The significant penalties that the City can impose upon an offending property owner should provide an effective deterrent to continued failure to abate a green pool.

In the case of offending property owners who fail to pay administrative penalties and/or costs assessed under Section 9.37, which would include absentee owners, the City may place a lien on the offending property. Thereafter the City may cause the offending property to be sold and collect outstanding debts through foreclosure proceedings in the same manner as delinquent municipal taxes are collected. While foreclosure proceedings are pending, HHS personnel may work with the applicable Council District Office to have a guardian appointed to act on behalf of the absentee property owner, if applicable.

Procedure No.  
5-80

SUBJECT

Date  
June 28, 2005

*Stagnant Water in Swimming Pools and Spas*

**I. PURPOSE**

To establish a uniform procedure to be followed by Bureau of Environmental Health personnel when responding to complaints of stagnant or dirty water in unlicensed swimming pools and spas.

**II. SCOPE**

The procedure set forth will address the Bureau of Environmental Health's response to complaints of stagnant or dirty water in unlicensed swimming pools and spas. The authority cited in this procedure is the Uniform Housing Code (UHC) Section 1001.11 as adopted by Long Beach Municipal Code, Section 18.24.010 (B).

**III. PROCEDURE**

**Complaint Intake-**

- A. The complaint will be received by Environmental Health clerical staff and documented on a complaint form. The complaint address will be added to the "Green Pool" log.
- B. The complaint form will then be placed in the mailbox of the Vector Control Specialist (VCS) II.
- C. The VCS II will assign the complaint to a VCS for investigation.

**Complaint Investigation-**

Access to Property Granted

- A. The VCS will attempt to gain voluntary access to the property. If access is granted, the VCS will inspect the condition of the pool/spa. If mosquito breeding is observed, the VCS will treat the pool/spa by using an approved control method. The treatment will be documented in the "Green Pool" log.
- B. The VCS will issue a *First and Final Notice* to the legal owner of the property to eliminate the source of mosquito breeding by one of the following methods:
  - Maintaining and operating the pool/spa in a clean and sanitary manner
  - Draining the swimming pool/spa and filling with dirt
  - Covering the swimming pool/spa

The VCS will issue a reinspection date of 30 days from the initial investigation.

- C. If the violation still exists after 30 days, a letter from the City Prosecutor will be requested. The City Prosecutor will issue a new compliance date. A second treatment of the pool/spa may be administered if necessary at this time. This treatment will also be documented in the "Green Pool" log.

Approved: \_\_\_\_\_

*Ronald R. Arias, Director*

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III. PROCEDURE (cont.)

D. If the violation still exists on or after the date set by the City Prosecutor, a Request for Complaint will be filed with the City Prosecutor's Office.

Access to Property not Granted

A. If an assessment can be made from plain view and the complaint is substantiated, a *First and Final Notice* will be issued to the owner of record. A reinspection date of no more than 48 hours will be issued. If an assessment *cannot* be made, the VCS may request assistance from the Long Beach Police Department's Helicopter Squad to view the property from above. Otherwise the VCS will proceed directly to step B.

B. If the violation still exists after 48 hours or the property cannot be inspected, an *Inspection and Abatement Warrant* will be requested from a Los Angeles County Superior Court Judge. A request for a letter from the City Prosecutor will also be requested at this time. The City Prosecutor will assign a new compliance date.

C. Once the *Inspection and Abatement Warrant* has been obtained, a copy of the signed warrant will be mailed to the owner of record within 24 hours. A copy of the warrant will also be posted on the front door of the building.

D. A date to serve the warrant will be scheduled no more than two weeks from the signing of the warrant. Long Beach Police Department will be requested for assistance in executing the warrant.

E. If access to the property is gained and mosquito breeding is observed, the VCS will treat the pool/spa using approved control methods. If access is denied, a *Forced Entry Warrant* will be requested and a new date will be set to serve the warrant. The treatment will be documented in the "Green Pool" log.

F. If violations still exist after the date set by the City Prosecutor in the letter to the owner, a Request for Complaint will be filed.

G. The VCS will be available to testify in any legal proceedings requested by the City Prosecutor.

Approved:

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Ronald R. Arias, Director

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**City of Long Beach**  
**Department of Health and Human Services**  
**Bureau of Environmental Health**  
**Enforcement Protocol for Unmaintained/Green Pools**

