

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(New Administrative Regulation)

902 KAR 10:127. Kentucky public beach requirements.

RELATES TO: KRS 211.015, 211.090, 211.210, 211.220, 211.990(2)

STATUTORY AUTHORITY: KRS 194A.050, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform requirements for public swimming and bathing beaches.

Section 1. Definitions.

- (1) "Approved" means that which is acceptable to the cabinet.
- (2) "Bather" means a person using a public beach.
- (3) "Cabinet" is defined by KRS 211.015(a).
- (4) "Facility" means a public beach as defined in subsection (6) of this section.
- (5) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.
- (6) "Public beach" means a natural body of water that is modified or improved for the purpose of swimming or bathing.
- (7) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.
- (8) "State Plumbing Code" means the requirements established in 815 KAR Chapter 20.A
- (9) "Turbidity" means the state or quality of being clouded or opaque with suspended matter.

Section 2. Submission of Plans and Specifications for Approval.

- (1) A person shall not construct, alter, or reconstruct a public beach until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.
- (2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to Section (3) of this administrative regulation.
- (3) The front page of the plans submitted for review and approval shall contain the:
 - (a) Name of the public beach;
 - (b) Location by city and county;
 - (c) Name and contact information for the facility owner;
 - (d) Name of the installer; and
 - (e) Name of the engineer, architect, or person preparing the plans.
- (4) Plans shall be submitted by an engineer or architect licensed in the state of Kentucky and bear the individual's official seal.
- (5) The plans shall be:
 - (a) Drawn to scale;

(b) Accompanied by proper specifications to permit a comprehensive review of the plans; and

(c) Include:

1. A site plan of the general area with a sectional view of the facility complex with all necessary dimensions;
2. A diagram showing all appurtenances in sufficient detail, as well as pertinent elevation data, water depths and slope of the beach below the water line;
3. Indication of the placement of sand or gravel for the beach area; and
4. The fees required by Section 3 of this administrative regulation.

(6) One (1) set of approved plans shall be kept at the job site and available for inspection.

(7) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the public beach area and the watershed.

(8) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(9) The facility shall not be used before receiving a final inspection and written approval from the cabinet.

(10) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(11) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Plan Review and Construction Inspection Fees.

(1) A fee shall be required for all plan reviews and construction inspections by the cabinet or the local health department.

(2) The fee for plan review shall be calculated as follows:

- (a) Public beach plan review, the fee shall be \$346.50; and
- (b) Include \$82.50 for interactive water features or inflatable water features.

(3) The fee for public beach construction inspection shall be calculated as follows:

- (a) Pre-construction survey or pre-renovation evaluation, the fee shall be \$231.
- (b) Rough-in construction inspection, the fee shall be \$115.50.
- (c) Final construction inspection, the fee shall be \$173.25.

Section 4. Permit and Inspection Fees.

(1) An annual permit fee of \$110 for all public beaches shall be:

- (a) Paid no later than May 1 each year; and
- (b) Paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

(2) Permits shall be nontransferable from one (1) person to another.

(3) Fees for Inspections.

(a) For all public beaches, the annual inspection fee shall be:

1. Assessed according to the linear footage of beach front;
2. Calculated as established in this paragraph:
 - a. 149 or less linear feet, the fee shall be ninety-nine (99) dollars;
 - b. 150 to 200 linear feet, the fee shall be \$192.50; and
 - c. 201 and above, the fee shall be \$192.50 plus fifty-five (55) dollars for each additional fifty (50) linear feet; and

(b) Include \$82.50 for interactive or inflatable water features.

(4) A late payment fee of fifty-five (55) dollars shall be assessed on all annual permits not received by May 1 each year.

- (5) The inspection fee required by this section shall be:
 - (a) Paid to the local health department having jurisdiction by check or money order made payable to the Kentucky State Treasurer;
 - (b) Deposited in the environmental fee account; and
 - (c) Sent to the Department for Public Health for deposit with the Kentucky State Treasury.

Section 5. Water Quality and Sanitary Requirements for Public Beaches.

- (1) Physical quality. The following characteristics shall not be present in the beach area or watershed:
 - (a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; or
 - (b) Hazardous substances being discharged into public beach water or watershed.
- (2) Bacteriological quality. The bacteriological quality of water at public beaches shall comply with the following criteria:
 - (a) It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and
 - (b) There shall not be any sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the public beach area or immediate watershed.
- (3) Chemical quality. There shall not be any discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 6. Water Supplies at Public Beaches.

- (1) Potable water from an approved municipal water system or water district shall be supplied to all public beaches. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.
- (2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility.

Section 7. Sewage and Wastewater Disposal.

- (1) All sewage and waste water shall be disposed of into a public sewer system if available.
- (2) If a public sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet in 902 KAR 10:085 and the Energy and Environment Cabinet in KAR Title 401;
- (3) If a public sewer system subsequently becomes available, connections shall be made to it and the use of the facility's private sewage disposal system shall be discontinued.

Section 8. Refuse Disposal.

- (1) All refuse at a public swimming and bathing beach shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.
- (2) An adequate number of refuse containers with tight fitting lids shall be provided at readily accessible locations at all public beaches.
- (3) Refuse containers in women's restrooms shall be kept covered.
- (4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.
- (5) Bulk refuse containers shall be:
 - (a) Of approved design and construction;
 - (b) Kept closed; and
 - (c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.

Section 9. Facility Design and Construction.

(1) Attendant structures, such as bathhouses, dressing rooms, or restrooms, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2)

(a) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed.

(b) Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet.

(c) Lettering on markers shall be maintained in good repair.

(d) Within these limits of safe swimming there shall not be any boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers.

(e) Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing.

(f) The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

Section 10. General Facility Operation and Maintenance.

(1) All facilities shall be maintained in good repair and free of debris.

(2) Bather preparation facilities. Each beach facility shall provide one (1) or more central bath house containing the necessary toilet and other plumbing fixtures as designated below.

(a) Toilet facilities shall be provided for females at a ratio of three (3) for 500 linear feet of beach.

(b) Toilet facilities shall be provided for males at a ratio of one (1) for 500 linear feet of beach.

(c) Urinal facilities shall be provided for males at a ratio of two (2) for 500 linear feet of beach.

(d) Lavatories shall be provided for each sex accommodated at a ratio of two (2) for 500 linear feet of beach.

(e) For each additional 500 linear feet of beach one (1) additional toilet and lavatory shall be provided for female and male restrooms and one (1) additional urinal for male restrooms.

(3) A bath house shall be conveniently located within 500 feet of the beach area to be served.

(4) All plumbing installation shall meet the State Plumbing Code, 815 KAR Chapter 20.

(5) A room containing sanitary facilities shall have:

(a) Every opening to the outer air effectively screened and a self-closing entry door;

(b) Natural or artificial lighting;

(c) Hot and cold or tempered water under pressure furnished at every lavatory and sink; and

(d) Cold water furnished to every toilet and urinal.

(6) Floors, walls, ceilings, attached or freestanding fixtures, and equipment shall be easily cleanable and in good repair. Floors shall be maintained in a nonslip condition.

(7) An adequate supplies of toilet tissue, soap, and disposable hand drying towels or suitable hand drying devices shall be provided and maintained.

(8) Refuse containers shall be placed in all restrooms.

(9) Diving boards or platforms, ladders, hand rails, docks, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Maintenance of bathing beaches.

- (a) Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.
- (b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas and shall extend beneath the water of all wading and swimming areas.
- (c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high-water turbidity, which may present safety hazards to bathers.

Section 11. Personnel.

- (1) Operator. A facility operator shall be responsible for the operation and maintenance of the facility. The operator shall be available at all times when the facility is open for use.
- (2) Lifeguards.
 - (a) Lifeguards shall be provided at all bathing beaches that allow bathers seventeen (17) years of age or younger without a responsible adult at a rate of one (1) per 100 linear feet of beach front or major fraction more than half thereof. Public beaches that do not provide lifeguards shall post the following warnings: "No lifeguard on duty. Swim at your own risk. No person seventeen (17) years of age or younger may swim without a responsible adult present."
 - (b) A public beach that has an inflatable water attraction shall have a minimum of one (1) lifeguard per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.
- (3) Lifeguards shall comply with the following:
 - (a) Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;
 - (b) Lifeguards shall be dressed in swimming attire; and
 - (c) Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:
 - 1. Distract their attention from proper observation of persons in the facility area; or
 - 2. Prevent immediate assistance to persons in distress in the water.

Section 12. Safety Equipment.

- (1) One (1) unit of life saving equipment consisting of the following shall be provided per facility:
 - (a) A U.S. Coast Guard approved ring buoy no more than twenty (20) inches in diameter with a three-sixteenths (3/16) inch rope attached;
 - (b) A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length;
 - (c) One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries;
 - (d) One (1) lifeboat outfitted to meet state water safety administrative regulations;
 - (e) A torpedo shaped buoy; and
 - (f) A minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use.
- (2) Lifesaving equipment shall be mounted in a conspicuous place at the most centrally located readily accessible location. Its function shall be plainly marked, and this equipment shall be kept in good repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove this equipment from its established location.
- (3) Telephones.

- (a) All facilities shall have a non-pay landline or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard, and located in a conspicuous, readily accessible location. A cordless telephone shall be prohibited. Instructions for dialing shall be posted if necessary.
- (b) A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.
- (c) All facilities utilizing VoIP telephones shall only use fixed VoIP services. Non-fixed VoIP services shall be prohibited.
- (d) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.
- (4) All drownings, near drownings, and injuries requiring hospitalization shall be immediately reported by next business day to the local health department and the Department for Public Health on form DFS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report, incorporated by reference in 902 KAR 10:125.

Section 13. Spectator and Bather Administrative Regulations.

- (1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.
- (2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:
 - (a) Admission to the facility shall be refused to a person:
 - 1. Having any contagious disease or infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;
 - 2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and
 - 3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;
 - (b) Food, drink, gum, tobacco, or vapor producing products shall not be allowed, other than in specially designated and controlled sections of the facility area;
 - (c) Glass, soap, or other material that creates hazardous conditions shall not be permitted in the beach area or in the water;
 - (d) Beverage containers of glass or metal containers with detachable pull tabs shall not be permitted in the beach area or in the water;
 - (e) Diving in areas other than designated diving areas shall not be permitted; and
 - (f) Caution shall be exercised in the use of diving boards, floating platforms and inflatable attractions.

Section 14. Facility Inspection.

- (1) Inspections.
 - (a) All owners or operators, prior to opening to the public, shall certify to the cabinet in writing, that the facility is in compliance with the requirements of this administrative regulation, except in instances where the cabinet has made an inspection prior to its opening. The cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening.
 - (b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.
- (2) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in

operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(3) The cabinet may make as many additional inspections and reinspections as necessary for the enforcement of this administrative regulation.

(4) When an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-350, Public Beaches Inspection Report, and a copy provided to the facility owner or operator. The inspection report shall:

- (a) Set forth any violation observed;
- (b) Establish a specific and reasonable period of time for the correction of the violation observed; and
- (c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 15. Water Sampling and Testing.

(1) Beaches shall comply with the requirements of Section 5 of this administrative regulation prior to opening for the season and during the operating season.

(2) Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary. Results shall be made available to the cabinet upon inspection.

(3) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 16. Conditions requiring Closure of a Facility and Enforcement Provisions.

(1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

- (a) There is an immediate danger to health or safety;
- (b) The water does not conform to the bacteriological standards contained in this administrative regulation;
- (c) An environmental survey of the area shows evidence of sewage, other pollutants, or toxic materials being discharged to waters tributary to a beach;
- (d) The owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet who bear proper identification, in the performance of their duties;
- (e) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility, and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.

(6) In all other instances of a violation of the provisions of this administrative regulation, or for the nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct the violation. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of the notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet by the owner or operator within the ten (10) day period.

(7) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(8) Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(9)

(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 17. Existing Facilities and Equipment. Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

- (1) Are in good repair;
- (2) Are capable of being maintained in a sanitary condition;
- (3) Meet facility water quality standards; and
- (4) Create no health or safety hazard.

Section 18. Effect on Local Administrative Regulations. Compliance with this administrative regulation shall not relieve any person from compliance with any other state or local laws dealing with beach operation and maintenance matters or zoning requirements that may also be applicable.

Section 19. Variances for Construction Requirements.

- (1) All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance would not affect seriously the safe and healthful operation of the facility.
- (2) Before granting a variance, the cabinet shall require proof from the applicant documenting that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

Section 20. Incorporated by Reference.

- (1) The "DFS-350 Public Beach Inspection Report", 3/2024, is incorporated by reference:
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 2, 2024
FILED WITH LRC: July 11, 2024 at 11:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.