

Public Comments and Responses for Regulatory (Formerly Regulatory Program Administration) Module Code and Annex After the First 60-day Review Period

Informational Copy: NOT Open for Public Comment

NOTE: A large number of comments correctly pointed out that a model code cannot “regulate the regulators”. Therefore we have pulled all information speaking to the Authority Having Jurisdiction (AHJ) into a separate document that will be specifically for pool programs. From the beginning of the MAHC process all partners have agreed that the success of this health and safety effort will depend on improvements in both aquatic facilities and operation as well as in regulatory pool programs. The information for AHJ’s will be retained and posted separately on the MAHC site at a later date.

1. Richard Carroll, Jeff Ellis and Associates (Ocoee, FL)

- *Comment:*
6.4.1.3.3.1 – Overly broad. Define specific events to be reported -- Delete #2 or suggest...Lifeguard activity that requires resuscitation, CPR, Oxygen or AED use.
Changes to Code/Annex:
Agree, modified which types of incidents must be reported within 24 hours.
- *Comment:*
6.6.4.1 – Add...Failure of Aquatic facility to provide required staffing as determined by (enter code list form Lifeguard/bather Supervision).
Changes to Code/Annex:
Agreed. Added “and staffing”
- *Comment:*
6.3.1.1.1 –#3 would require an operator at a stand-alone spray pad?? This would shut down every spray pad that is a stand-alone attraction.
Changes to Code/Annex:
Agreed. Modified to clearly state that this only applies to spray pads that use recirculated water and that operators need to be available within two hours.
- *Comment:*
6.4.2.4.2 – Lifeguard and staff certifications are not checked by the public and should not be displayed. For what purpose...the Permit to operate confers the presence and validity of these items. This is the type of overkill (dog and pony show) that has not affect on safety and only puts an undue burden on the facility for no practical reason.
Changes to Code/Annex:
Agree, eliminated public posting requirement.

- *Comment:*
6.6.1.1 – Remove the word “investigate”. Are we in a police state?

Changes to Code/Annex:

No Change. The word investigate was used because of its use in “waterborne illness investigations”, which are conducted routinely by public health personnel.

- *Comment:*
6.6.1.2 –Same as above

Changes to Code/Annex:

No Change. The word investigate was used because of its use in “waterborne illness investigations”, which are conducted routinely by public health personnel.

- *Comment:*
6.6.1.5 – Same as above

Changes to Code/Annex:

No Change. The word investigate was used because of its use in “waterborne illness investigations”, which are conducted routinely by public health personnel.

- *Comment:*
6.6.1.8 –Same as above

Changes to Code/Annex:

No Change. The word investigate was used because of its use in “waterborne illness investigations”, which are conducted routinely by public health personnel.

- *Comment:*
6.7.1.1 – Too few people to guarantee integrity and absence of individual or political agendas

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- *Comment:*
6.7.1.1 –Should also be an Aquatic professional as well on the list

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document. Currently have” certified safety professional” and three aquatic facility professionals. No change.

- *Comment:*
4.1.3.3.2 –Double standard and too much red tape...if this is so important then why

would only the emergency replacement require submission. Wouldn't the mere fact of the use of the word "emergency" indicate the need for swift action? Submissions do not equal swift action.

Changes to Code/Annex:

The Key Words for sections 4.1.3.3.2 and 4.1.3.3.3 were incorrectly reversed.
Corrected

- *Comment:*
6.6.4.1 – #15 & 19...way too subjective. Make a list of non-approved and allow everything else.
Changes to Code/Annex:
Disagree. The approved chemicals are in the MAHC. Not all hazards can be foreseen or enumerated. The AHJ needs some discretion to allow for public protection when confronted with hazards not specifically itemized in this code.
- *Comment:*
6.7.1.1 – Remove the word "OR"

Changes to Code/Annex:
All sections relating to the AHJ were removed from the Code and placed in a separate document.
- *Comment:*
4.1.1.2 –Define "alter and renovate"
Changes to Code/Annex:
We have refined the definition of substantial alteration.
- *Comment:*
4.1.1.4 –Define "changes and additions"
Changes to Code/Annex:
"Changes or Additions" means deviations from what is listed or shown on the approved plans. We have refined the definition of substantial alteration.
- *Comment:*
4.1.4.4 – Define commissioning or testing of bather safety
Changes to Code/Annex:
Included in annex: "A test, evaluation, or demonstration that confirms that the pool, pool feature, or other equipment in question does not compromise the safety of the pool patrons."
- *Comment:*
6.4.1.3.1.1 –OEM Manuals state 3 years

Changes to Code/Annex:

Agree, changed to three years.

- *Comment:*
6.6.1.3 –Word “out of control” should be deleted

Changes to Code/Annex:

Agree. Removed from 6.6.1.3. All sections relating to the AHJ were removed from the Code and placed in a separate document.

2. Paul Norman, WindCreek Casino & Hotel (Atmore, AL)

- *Comment:*
MAHC Chapter 5 –

1) Model document is far too heavy-handed on AHJ power and enforcement; far too light on useful good operating practices and standards... It seems draconian, rather than pro-active and actually intended to improve safety.

Changes to Code/Annex:

The purpose of this chapter is to list the administrative and permit requirements for operating an aquatic venue.

Comment:

2) Model doc makes no reference to employment of automated tools and sensors to monitor, measure, and apply corrections to water chemistry, such as the ORP practice of measuring chlorine concentration. Allowance of these automated tools permits operators to provide dozens of samples per hour instead of one, and enables corrective adjustments to be made with far smaller quantities.

Changes to Code/Annex:

Nothing in this chapter prohibits the use of automated tools and sensors. Automated controllers are covered in other modules

Comment:

3) Reference to a bound book belongs in the sixties. There is NO NEED to be so restrictive. Owner Operators should and must be able to collect and keep the required records in whatever form they wish, provided they are made conveniently available when needed.

Changes to Code/Annex:

Agree. A bound book was initially listed because it is difficult to alter written statements after they are entered, but we agree that more flexibility in recording is needed so this requirement has been removed.

3. Stephen Keifer, Oregon Health Authority (Portland, OR)

- *Comment:*

4.1.3.1.1 – *Health department procedure is not the purpose of this document. While I agree with the requirement, it does not belong in this code -- Remove.* Places requirements on the AHJ. Not delegated statutory authority to regulate our own department. Most Administrative Code reviewers will not allow agencies to write regulations regulating themselves. Suggest a special annex section listing the desirable procedures, but no code language. The purpose of this model code is for adoption by state and local health departments, not their regulation.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- *Comment:*

4.1.3.1.2 – *Health department staff qualifications do not belong in a document to be adopted by the health department. Define “adequately trained.” Inappropriate language for a set of rules or code. Health department procedure is not the purpose of this document.-- Remove.* Places requirements on the AHJ. Not delegated statutory authority to regulate our own department. Many jurisdictions may not have qualified staff to meet the annex recommendations. The annex list and process is good, but should not be part of the code requirements. Most Administrative Code reviewers will not allow agencies to write regulations regulating themselves. Suggest a special annex section listing the desirable competency of a plan reviewer, but no code language. The purpose of this model code is for adoption by state and local health departments, not their regulation.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- ***Comment:***

4.1.3.1.4 – *Health department procedure is not the purpose of this document. While I agree with the requirement, it does not belong in this code. -- Remove.* Places requirements on the AHJ. 4.1.5.1 & 4.1.5.2 are more appropriate language. Most Administrative Code reviewers will not allow agencies to write regulations regulating themselves. Suggest a special annex section listing the desirable procedures, but no code language. The purpose of this model code is for adoption by state and local health departments, not their regulation.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

4.1.3.1.5 – *Health department procedure is not the purpose of this document. While I agree with the requirement, it does not belong in this code.* -- Remove. Places requirements on the AHJ. Most Administrative Code reviewers will not allow agencies to write regulations regulating themselves. Suggest a special annex section listing the desirable procedures, but no code language.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

4.1.3.1.6 – *Health department procedure is not the purpose of this document. While I agree with the requirement, it does not belong in this code* – Remove... Most Administrative Code reviewers will not allow agencies to write regulations regulating themselves. Suggest a special annex section listing the desirable procedures, but no code language. The purpose of this model code is for adoption by state and local health departments, not their regulation.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

4.1.3.1.7 – *Impractical with the frequent reorganizations and limits on storage. I should be up to the jurisdiction. I have over 20 years' worth of plans and have never needed them after about 5 years. Variances and conditional items are different and should be kept for the life of the aquatic venue.* -- Eliminate the AHJ from this requirement. I think the annex language is more appropriate for the code. "A copy of the approved plans, certificate of construction compliance and all related pool construction documents are (shall or must) to be maintained onsite by the permit holder and made available to health department or regulatory staff upon request."

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

4.1.3.2.3 – *Cannot self-direct the AHJ in their own rules* -- Reword to: "The AQUATIC FACILITY operator shall consult with the AHJ to determine if new or modified plans must be submitted for plan review and approval for the changes proposed."

Changes to Code/Annex:

Agreed. Changed as suggested

- **Comment:**
4.1.3.2.4 – *Cannot self-direct the AHJ in their own rules* – Remove... While I agree with the statement, it doesn't belong here

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**
4.1.3.3.4 & 4.1.3.3.5 – *Cannot self-direct the AHJ in their own rules... Health department procedure is not the purpose of this document. While I agree with the requirements, it does not belong in this code.*—Remove... While I agree with the statement, it doesn't belong here. Not delegated statutory authority to regulate our own department.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**
4.1.4.5 – *Health department procedure is not the purpose of this document. While I agree with the requirements, it does not belong in this -- Remove. Can't regulate myself.*

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**
4.1.5.3.1 – *The code is supposed to provide the requirements for the operation of the pool, not the activities of the AHJ. -- No person shall operate an AQUATIC FACILITY without a current operational permit (license). A new operational permit(license) or permit(license) renewal may be obtained by: ...3.1 Making application for a license(permit) to operate the AQUATIC FACILITY to the AHJ; ...3.2 Paying the license(permit) fee; ...3.3 Showing the compliance of any new construction or alterations with this CODE or; ...3.4 Showing compliance with any items cited on the last AHJ inspection; ...3.5 Such operational license (permit) terminates and is renewable on (expiration date) of each year.*

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

4.1.5.3.2 – *The code is supposed to provide the requirements for the operation of the pool, not the activities of the AHJ.* -- The permit(license) to operate may be withheld, revoked or denied by the AHJ for noncompliance of the AQUATIC FACILITY with the requirements of this CODE

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

4.1.5.3.2 – *The code is supposed to provide the requirements for the operation of the pool, not the activities of the AHJ.* -- Remove! Not delegated statutory authority to regulate our own department.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

5.1.1.3.1 – The AQUATIC FACILITY owner, before a permit(license) is issued, shall supply information showing that:...1),2),3)

Changes to Code/Annex:

Modified content.

- **Comment:**

5.1.2.3 – “The AQUATIC FACILITY is prohibited for operating without an operating permit(license). The facility shall remain closed until a permit(license) is issued by the AHJ.

Changes to Code/Annex:

The existing language allows the AHJ to close an Aquatic Facility that does not have a permit, but also gives the AHJ the flexibility to allow the facility to remain open. This discretion is needed because there are instances when a permit cannot be issued due to a minor omission such as a required signature or fee payment (and the omissions are being addressed), but the facility is in compliance with all other requirements of the code.

- **Comment:**

5.2.3.3 – *The AHJ cannot regulate itself.* -- Substitute: “The following factors will be considered for each variance application....”

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate

document.

Comment:

5.2.4.1 & 5.2.4.1.2 – I cannot require the AHJ to do something. I do not have statutory authority to tell myself what to do. Please reword.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

5.2.4.3 & 5.2.4.4 – Most states have appeal processes. Seldom is the process this simple or straight forward. I would refer the issue to the procedures of the AHJ.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

6.3.1.2.1 – *Sometimes weekly is not enough.* -- ...or on a schedule determined by the AHJ, based on compliance and complexity of operation.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document. The existing language states a minimum of weekly visits. We believe this allows the AHJ to require more frequent visits if necessary.

- **Comment:**

6.4.1.3.1.2 – Is this allowable numbering? Or should each list item be assigned a subsection number? (ex. 6.4.1.3.1.2.1, 6.4.1.3.1.2.2, etc.) This is seen in several places in this module

Changes to Code/Annex:

Formatting is acceptable and used throughout the MAHC. No change

- **Comment:**

6.4.1.3.3 – The code requires only a bound journal entry for accidents. The annex says to report certain incidents immediately to the permit issuing official... I would make them agree. In fact I think the annex language is more appropriate. We don't want to find out months later that an injury, fatality, or communicable disease occurred. I like the idea of a bound log for inspection purposes, but require mandatory reporting. Add to the requirement before the log:

“The AQUATIC FACILITY operator shall report any drowning or near drowning incidents, any illness reports, and any serious injuries requiring EMS response or

emergency medical follow-up.”

Changes to Code/Annex:
Agree, changes made.

- **Comment:**
6.4.1.3.5.1 & .2 – Please consider that since the ARC and maybe others, will be allowing instructors to print their own certifications, that forgery may be a problem. At least a preprinted card is somewhat harder to forge.

Changes to Code/Annex:
The MAHC Committee doesn't know that preprinted cards are harder to forge. We can not fool proof a system to prevent forgeries. Certifying organizations can be contacted for verification.

- **6.6.1.3 / 6.6.1.4 / 6.6.1.6 / 6.6.1.7** – Once again. The CODE is not the place to tell the health department how to do their job. This could easily jeopardize the whole adoption process. A section in the annex might be appropriate, but it cannot be codified. Some of the 6.6 language on access rights, etc. may be appropriate, but we do not have the authority to regulate ourselves. The legislature has reserved that right.

Changes to Code/Annex:
Agree. Sections moved to separate document except 6.6.1.7

- **Comment:**
6.6.3.1 – I'm not sure why this needs to be in a separate section. Again, the code is not the place to tell the health department how to do their job. If the section is appropriate at all, the language must be changed to permissive language; “may”.

Changes to Code/Annex:
Left in code as deemed applicable for jurisdictions that have oversight by a higher authority.

- **Comment:**
6.6.4 – Reverse the language to require the operator to close the pool, and threaten that the AHJ may order closure if the operator has not acted.

Changes to Code/Annex:
Language revised to require the operator or AHJ to close the pool.

- **Comment:**
6.6.5 – Some of this section deals with actions by people other than the health department. This is OK. That which is the health department's responsibility should be removed; since we cannot regulate ourselves.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document. However the MAHC committees felt the sections relating to enforcement should remain in the code. Enforcement is a common section found in other pool codes.

- **Comment:**

6.6.5.1 – Does this mean, if I as an operator close my pool for an imminent health hazard, I have to placard it? If not; remove it.

Changes to Code/Annex:

Yes, code language clarified. If the operator closes the pool, he must placard it and he can remove the “closed” sign when the hazard has been corrected.

- **Comment:**

6.6.6.4.1 – Once again, much of this cannot be specified in a document adopted by the AHJ. Most AHJ’s already have statutory language regarding this subject. Place this in the suggested health department administrative section to be created in the annex. States that need to can add this language back in.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

6.6.8.1 – Good intent, but I cannot require that I have to do something, by code or rule. Make the “shall...”may.” There are times I “may” waive the fee for some reason. “Late” fees seem to often be the subject of waiver.

Changes to Code/Annex:

Added language to allow AHJ to waiver fees.

- **Comment:**

6.6.8.2 – What is the purpose of the first sentence? Who else has authority? It is unnecessary. Again; no “shall”! The AHJ “publishes,” or “a list of fees is available.” I cannot regulate myself.

Changes to Code/Annex:

Agree, first statement eliminated. The second statement was removed from the Code and placed in a separate document.

- **Comment:**

6.7.1 -- Great idea, wrong place! Cannot regulate myself. Move to annex

Changes to Code/Annex:

Agreed. All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

ANNEX 4.1.5.3.2 – Most states already have disputed actions rights and procedures. It is not recommended that new procedures be developed. An AHAC might be recommended, but the state legislature or AG would have to put the AHAC into the appeals process. Any decision would have to be advisory unless the committee membership was granted that authority by the legislature.

Changes to Code/Annex:

The section clearly states their role as advisory. No Change

Comment:

ANNEX 5.2.4 – Inappropriate in a code for pool operation. This is a health dept. procedure, and cannot be mandated by the health dept. Place this and the other AHJ recommendations into a section of the annex for “Health Department Operational Recommendations”

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

ANNEX 6.4.1.3.3 – This is inconsistent with the code. The code suggests a logbook available on site. This requires immediate reporting. Frankly I think immediate reporting is more effective, although a logbook is a good idea so it can be reviewed during an inspection.

Changes to Code/Annex:

Agree. Changes made in code language.

- **Comment:**

ANNEX 6.4.2 – Don’t confuse the issue with health department completed forms. Remember we are talking to pool operators. Some of this is good language for a special section on AHJ administration. I doubt CDC wants these completed by the pool operator. I know our department would not want them submitted by operators to the CDC.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

ANNEX 6.6.1.3 – Once again, this belongs someplace other than the MAHC code commentary. Create an annex area for AHJ program administration. The FDA Food Code Annex 5 is such a separate section. In many states, the legal opinion is that the agency adopting a rule or code cannot regulate itself in that rule or code. To adopt the MAHC, we would have literally pages of rule language deleting out language directing us as an agency, and rewording other language to change the directives around to reference the operator. With some thought, much of the language can be rewritten to do the same action, without “self-directing” the health agency. Other language really needs to go into a document or annex section that discusses the best practices and desires of the MAHC development. There is much merit to the explanation of the processes the AHJ should use, but this document is a non-mandatory model code. It is our desire to make it easy and quick for states to adopt. As a state, I should want to adopt it. It cannot be a federal directive code telling the states what they have to do and how to do it. That did not work well with the VGBPSSA and it won’t work here. The FDA spent decades trying to get states to recognize the Uniform Food Code and later the FDA Food Code. It certainly is not uniform across the country, although it has made great strides towards a uniform set of requirements. The FDA Food Code is an excellent example of the problems trying to get 50 states and who now how many local jurisdictions to agree on uniform regulations. I think there are lessons learned from their successes and mistakes. I hope we learn.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

4. Lee Hovis, Tolomato CDD (Ponte Vedra Beach, FL)

- **Comment:**

Glossary – “Authority Having Jurisdiction” (AHJ) I would request changing the word “Authority” to “Authorities”. There are sections in the MAHC that could overlap with other agencies responsibilities. Water slides and water attractions are examples, as certain states require different agencies to regulate these structures and attractions. Changing Authority to Authorities will provide the code to be enforced by multiple organizations. – **REFERENCE:** Florida Dept. of Fairs & Rides

Changes to Code/Annex:

The Authority Having Jurisdiction can be more than one agency for different sections of the code. No change.

- **Comment:**

4.1.2.2.5 – Change “Equipment Room” to “Equipment Area”. Many facilities have their equipment stored in outside areas instead of buildings.

Changes to Code/Annex:

Code language changed to give AHJ discretion to allow an equipment area.

- **Comment:**

4.1.2.3.2 – The wording is very vague. There are many construction details (particularly with large multifaceted facilities) that may not pertain to the aquatic facility plans and may not be included on pool plans. It needs to be more specific.

Changes to Code/Annex:

Code language clarified to include plans that relate to the aquatic facility.

- **Comment:**

6.3.1.1.2 – “(1) Frequented by an average of more than 200 bathers daily: or” is not a reliable method. In order for this to be a measurable requirement, all facilities must be required to track and log usage (including Hotels, resorts, community/HOA pools, campgrounds, apartment complexes etc.). All usage logs would need to be submitted to the AHJ to prevent facilities from saying that they average less than 200 per day. Is there a distinction between year round and seasonal pools? Many year round pools could well exceed the average number during their peak season but because the non peak time is far less than the average, a facility that should have a qualified operator on site may be allowed, by code, not to have one.

Changes to Code/Annex:

Language added to use permitted bather load rather than an exact measurement.

- **Comment:**

6.3.1.1.2 – “(3) Operated by a school.” Is there a difference in the type of school? (Pre-schools held in commercial or residential buildings, Public schools, Private schools, Church schools etc.) The term “school” may need to be defined.

Changes to Code/Annex:

MAHC sees no difference in the type of school as they serve the public and would require permitting. No change.

- **Comment:**

6.4.1.3.3.1 – “(2) All lifesaving actions and assists taken.....” The terms all and assists can be vague causing inconsistent interpretations of the requirement. What determines a lifesaving assist? A lifeguard in an active catch pool could potentially “assist” hundreds and maybe thousands of visitors to their feet each day. If they don’t assist them, is the situation life threatening? Possibly. The amount of required paperwork would virtually shut down every waterpark or water slide in the country. Assists need to be defined.

Changes to Code/Annex:

Lifeguard assists are now defined “where the lifeguard enters the water or uses a

reaching pole or other equipment to help a struggling swimmer”.

- **Comment:**
6.4.2.1 / 6.4.2.2 / 6.4.2.3 – These are all missing. I hope this content will be available for public comment. It could have many ramifications.

Changes to Code/Annex:

The first section is in Contamination Burden: the other two are in Risk Management and have both been open for public comment

- **Comment:**
6.6.4.1 – 7) Overhead electrical wiring within 20 feet of the pool would mean an indoor pool with an 18 foot ceiling could not have overhead lighting. Wiring in a conduit attached in a permanent manner that prevents the wiring from water exposure and provides an adequate safety barrier should be considered based on the facility and building code.

Changes to Code/Annex:

Clarified as unprotected electrical wiring.

- **Comment:**
6.6.5.3 – If the 15 day hearing is a requirement before operation is resumed, I don't believe the code is practical. The facility should be allowed to reopen once they are in compliance and pass a re-inspection. The re-inspection schedule should be timely, but at the discretion of the AHJ. A hearing should only be required if a facility has consistently violated the code. This will not make pools safer; it will just add more bureaucracy.

Changes to Code/Annex:

Agree. It never was the intent to require the pool to stay closed until the hearing; Language added to clarify this.

- **Comment:**
6.6.6.1.2 – Civil penalties may be a state statute issue.

Changes to Code/Annex:

Where they are not pre-empted by state law this gives the local AHJ the authority. No change.

- **Comment:**
6.6.6.3 – Falsifying government forms or submitting false information is a crime in every state; therefore this is not needed in the MAHC.

Changes to Code/Annex:

Law enforcement agencies may chose not to enforce their laws. This section enables

the AHJ to pursue enforcement. No Change.

- **Comment:**
6.6.6.4.2, 6.6.6.5, 6.6.6.6, 6.6.6.7 – These are not Health Code issues but state statute issues and should not be in the MAHC.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**
6.7.1.2.1, 6.7.1.3, 6.7.1.4, 6.7.2, 6.7.2.1, 6.7.2.2, 6.7.3, 6.7.3.1, 6.7.3.2, 6.7.3.2.1, 6.7.3.3, 6.7.3.4, 6.7.4, 6.7.4.1, 6.7.4.1.1, 6.7.4.1.2, 6.7.4.2, 6.7.4.2.1, 6.7.4.2.2, 6.7.4.3, 6.7.4.3.1, 6.7.4.4, 6.6.4.5 & 6.7.4.5.1 – Any recommendations should not be in a code. Recommendations are not enforceable. Many states have statutes that require Public Hearings to be performed in specific procedural order. The MAHC is not the proper venue to dictate how hearings are setup and performed.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

5. Tom Lachocki, NSPF (Colorado Springs, CO)

- **Comment:**
6.6.1.4 – *Scientific studies have demonstrated that trained operators have fewer violations, which is the reason behind requiring training. The same should apply to inspectors; they should have the same knowledge base as those they are inspecting.* – “Training, either by classroom, or computer module should cover the topics of swimming pool circulation, filtration, water chemistry, water testing, disinfection, spa and warm water facilities, hazard identification, safe handling of pool chemicals and facility maintenance. After the text training is completed, the candidate should accompany a trainer or person with known competency in pool inspections until it is believed he/she has acquired the necessary knowledge and skills to inspect a pool without assistance.” – REFERENCE: Annex language is unverifiable, unenforceable, vague, and un-measurable. We recommend stronger language under inspector requirements to ensure inspector competency.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

6. Gary Fraser, Washington State Dept. of Health (Olympia, WA)

- **Comment:**

Preamble comments related to this module. I was on the committee that worked on this particular module. There are parts of the document that I reviewed that I do not remember any discussion during our committee meetings. In reviewing my past records, I don't find some topics even broached by the committee. The two major sections that seem to have been developed beyond the committee process are sections 4.1.5 dealing with permits and subsection 6.7 establishing an Aquatic Advisory Committee. My comments on these sections are in the chart and below.

My concern with section 4.1.5 is the intent appears to direct the authority for permits to building authority permits. I don't remember this language in any of the drafts that our committee worked on development. The majority of these permits for construction of facilities are handled through health authorities. Our health rules in our state are based on concerns to public health and safety. In our state, there are separate building department rules which are overseen through the state building code authorities and handled through 350 local building authorities, but these aren't health and safety rules. Our department is concerned with the written intent of this draft of the MAHC. We find it hard to support a code that would move health and safety issues away from our current authority and places it in building department as the permit for construction. When statutes were changed in our state in the 80's, the industry supported the change with the intent we would create consistency across the state. We have worked hard to provide that consistency. The responsibility is currently carried out with 6 different reviewing authorities in our state. These include our department and 5 large local health jurisdictions. We meet together routinely and strive for consistent reviews. Moving public health and safety issues to building authorities, and then sending it out to 350 jurisdictions responsible to administer the program in our state will not create a uniform playing field and dilute the public health and safety issues. We do not support this intent.

Changes to Code/Annex:

The term building was changed to construction where appropriate. It is not the intent of the MAHC to move public health into building departments. All code pertaining to the AHJ has been moved to a separate document.

- **Comment:**

Section 6.7 for an Aquatic Advisory Committee is something I do not remember any discussions or find anything in any of the drafts I reviewed. The focus of the aquatic advisory committee for providing a group that people can appeal to when the department (AHJ) has aggrieved them is not a process that our department supports. If actions are denied, our state provides a clear process for aggrieved persons to take their concerns through our hearings process. I believe it circumvents the legal process for proper redress when persons are aggrieved. Persons aggrieved by department actions have administrative hearing rights through impartial administrative law judges that can review the merits of cases based on law. The proposed section 6.7 moves the decision making process to a committee that may not review the merits of cases

impartially.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

Glossary – Clarification to include illness for imminent health hazard -- “Imminent Health Hazard” means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury *or illness* based on the number of potential injuries *or illness* and the nature, severity, and duration of the anticipated injury *or illness*. –

REFERENCE: MMWR report surveillance for recreational waterborne illness (RWI) outbreaks demonstrate a continually increasing number of these RWI outbreaks every two years for at least the past decade.

Changes to Code/Annex:

Agreed. Included illness in definition as suggested.

- **Comment:**

4.1.2.1.2 – AQUATIC FACILITY plans shall include a map indicating the exact location of the AQUATIC FACILITY with street address and geographic location information including the GPS coordinates. – **REFERENCE:** In our state we are not currently geared to track or record GPS coordinates. The industry and designers will balk on the added time to prepare this information if we aren’t doing anything with it. Possibly putting this detail in the annex would be an option.

Changes to Code/Annex:

Agreed, section moved to annex.

- **Comment:**

4.1.3.1.4 – The approval shall also state that other agencies have requirements that need to be addressed beyond these rules. It is the owner’s responsibility to comply with those rules. These include approvals from agencies it is contingent on all other required approvals such as Building, Zoning, Fire, Electrical, Structural and any other approvals as required by local or state law or CODE. – **REFERENCE:** Having the AHJ make approvals contingent on meeting other agencies rules would exceed our enforcement authority. We may support the other rules, but making approvals contingent on other than other health rules our agency has responsibility for, it would be cumbersome and awkward. If we approved a set of plans for our needs and the AHJ was ready to issue an operating permit and find something like an imminent hazard associated with another agencies requirement (such as an electrical hazard), the AHJ may hold up issuing the operating permit until the other agency is satisfied.

Changes to Code/Annex:

Section modified accordingly for clarification.

- **Comment:**

4.1.4.1 – A certificate of construction compliance shall be submitted to the regulatory authority for all AQUATIC FACILITY plans for new construction and ~~major~~ alterations **requiring AHJ approvals**. – **REFERENCE:** Establishes when construction compliance certificates are required. (“major” is not defined).

Changes to Code/Annex:

Agreed Changed as suggested

- **Comment:**

4.1.5 – **Construction** Permits. – **REFERENCE:** Designates conditions for AHJ

Changes to Code/Annex:

Section modified accordingly by adding “construction”.

- **Comment:**

4.1.5.1 – ~~Building and other applicable~~ **Construction** permits shall be obtained before any AQUATIC FACILITY may be constructed. – **REFERENCE:** “Construction” permit more closely delineates authority of the AHJ. “Building” permit implies through local “building” authority. Confusing for most states where AHJ working with these rules is the health department.

Changes to Code/Annex:

Agreed, change as suggested.

- **Comment:**

4.1.5.2 – A ~~building~~ **construction** permit ~~or other applicable permits~~ may be required from the appropriate ~~AHJ regulatory authority~~ before remodeling of an AQUATIC FACILITY. -- “Construction” permit more closely delineates authority of the AHJ. “Building” permit implies through local “building” authority. Confusing for most states where AHJ working with these rules is the health department.

Changes to Code/Annex:

“Building” permits changed to “construction” permits.

- **Comment:**

4.1.5.3 – ~~If a building permit is not required, plans and specifications shall be submitted to the AHJ for review and approval. ---~~The only permits we are discussing in this section deal with the AHJ requirements. This is implying there is not a need to go to the AHJ.

Changes to Code/Annex:

Section was inaccurate and unnecessary and therefore deleted.

- **Comment:**

4.1.5.3.1 – *Move to section 5.1.1.3.1 and modify as edited.*: -- The AHJ after **receiving a certificate of completion from the design professional** verifying information submitted and when new construction, alterations, or annual renewal requirements of this CODE have been met shall issue a permit to operate the AQUATIC FACILITY to the owner. -- This section is not in proper area, it is dealing with operating permit.

Changes to Code/Annex:

Section reworded to include above clause.

- **Comment:**

5.1.1.3.1 – *Modifies basis for reviewing authority* -- Prior to issuing the permit, the AHJ shall determine that: 1) The AQUATIC FACILITY is in compliance with the requirements of this CODE, 2) All required application fees have been paid, and 3) The AQUATIC FACILITY has been approved by the ~~building official~~ **AHJ providing the construction permit, and 4) After the AHJ has received a certificate of completion from the design professional verifying information submitted and approved is installed per approved plans.** -- This position is hard for state health department support. Most of the states AHJ's are health departments not building departments for the rules that this is covering. This rule appears to be moving the authority of the rules for construction permits to the building authority. Washington State Department of Health does not support this change.

Changes to Code/Annex:

Section was unnecessary and therefore deleted.

- **Comment:**

5.1.2 – **Operating** Permit

Changes to Code/Annex:

Section defined as Operating permits

- **Comment:**

5.2.1 – Preoperational Inspections

5.2.1.1 – *This intent of the preoperational inspection was primarily related to new construction when discussed in committee. If want another application for existing facilities, suggest language provided.* -- A pre-operational inspection shall be conducted annually on each seasonal AQUATIC FACILITY for newly constructed pools. Seasonal AQUATIC VENUES with outstanding critical violations shall require pre-operational inspection before issuance of operating permit.

Changes to Code/Annex:

Discussed the financial burden this would place on many AHJ's and decided to move it to separate AHJ document.

- **Comment:**

5.2.2.3 – *Delete this section. Building codes have their own rules for different conditions.* -- An exemption from the AHJ does not exempt the AQUATIC FACILITY from applicable building CODES,

Changes to Code/Annex:

This section was unnecessary and therefore deleted.

- **Comment:**

5.2.3 – *The section on variances should be moved so that it applies to both construction design and operational requirements.*

Changes to Code/Annex:

This section and the exemption section apply to all code requirements including construction design. It states the AHJ may grant a variance to requirements of the CODE.

- **Comment:**

5.2.3.2 – *Burden of variance justification is the responsibility of the applicant.* -- An AQUATIC FACILITY that seeks a variance shall apply in writing with the appropriate forms to the AHJ. The application shall include but not be limited to: 1) A citation of the CODE section to which the variance is requested; 2) A statement as to why the applicant is unable to comply with the CODE section to which the variance is requested; 3) The nature and duration of the variance requested; 4) A compilation of research or mitigating measures providing reasonable justification that statement of reasons why the public health or safety would not be jeopardized if the variance was granted, and 5) A full description of any policies, procedures or equipment that the applicant proposes to use to rectify any potential increase in health or safety risks created by granting the variance.

Changes to Code/Annex:

Statement number 4 in this section was reworded to further emphasize that the applicant needs to demonstrate why the proposed variance will still meet the safety requirements of the code.

- **Comment:**

5.2.3.3 – *Health and safety need to be our primary focus when considering variances.* -
- The AHJ shall complete review of the variance application The AHJ shall consider the following factors: 14) Unusual circumstances unique to the applicant's facility; and 25) The hardship to the applicant that would result if the variance were denied; 31) The effects that such a variance would have on the health and safety of the public at the

AQUATIC FACILITY; 42) Any proposed mitigating policies, procedures, designs or equipment that the applicant provides that purport to could rectify any potential increase in health or safety risks created by granting the variance and, 53) Other health or safety factors as determined by the AHJ

Changes to Code/Annex:

Factor number 4 was renumbered number 1 to emphasize its primary importance in granting variances and this section was moved to the annex.

- **Comment:**

6.3.1.1.1 – *I believe the intent for requiring a qualified operator would only be where water is being treated and recirculated, not for city water that passes through once and goes to waste.* -- A QUALIFIED OPERATOR shall be available on-site during all hours of operation at an AQUATIC FACILITY that has: 1) More than two AQUATIC VENUES; or 2) An AQUATIC VENUE of over 50,000 gallons of water; or 3) Venues that include recirculating spray features; or 4) A venue used for therapy; or 5) A venue used to provide swimming training

Changes to Code/Annex:

Section was changed to include “recirculated water”

- **Comment:**

6.4.1.1.3.1 – **New Proposed language:** Owners shall notify the AHJ of a drowning, near drowning, death, serious injury or serious illness associated with the Aquatic Facility within 48 hours after the occurrence. -- **Reference:** If serious public health and safety problems occur at facilities, AHJ’s need to be aware of the conditions and promptly respond to protect public health and safety (WAC 246-260-121(1)(b))

Changes to Code/Annex:

Language was added to include 24 hour notice for all lifesaving activities that require resuscitation, CPR, Oxygen or AED use, or transportation of the victim to a medical facility.

- **Comment:**

6.6.1.6 – *While I prefer the inspection frequency discussed, it is suggested to move this section to the annex. In our state to mandate this frequency might be more than the industry can bear in the current economic conditions.* -- The AQUATIC FACILITY shall be inspected quarterly for AQUATIC FACILITIES open year round and a minimum of two times per operating permit for seasonal facilities.

Changes to Code/Annex:

Agreed, section moved to HD recommendations.

- **Comment:**

6.6.4.1 -- *Many of the test kits available through such companies as Biolab, Hach,*

LaMotte, Taylor etc. have many test kits common to the pool industry that are different than the ranges described. -- Any of the following violations are imminent health hazards which shall require the AHJ to order immediate correction or to immediately institute action as provided in this CODE: 1) Failure to provide adequate supervision of the AQUATIC FACILITY as prescribed in this CODE; 2) Failure to provide the minimum disinfectant residual levels listed in various sections of this CODE; 3) PH level below 6.5 or if testing equipment doesn't measure below this level, pH level at or below the lowest value of the test equipment; 4) PH level above 8.0 or if testing equipment doesn't measure above this level, pH level at or above the highest value of the test equipment.

*Changes to Code/Annex:
Agreed, section modified.*

- **Comment:**
6.6.4.1 – *These are electrical code requirements. We may close, but would have to refer to electrical authority for ultimate enforcement. Prefer this in the annex or allow AHJ to include as part of item 19. -- 7) Overhead electrical wires within 20 feet horizontally of the AQUATIC VENUE; 8) Unprotected electrical circuits or wiring within 10 feet of the AQUATIC VENUE;*

*Changes to Code/Annex:
Committee decided to retain these sections in the code to enable the AHJ to take immediate action to protect the public when needed.*

- **Comment:**
6.6.4.1 – 9) Failure to maintain an emergency lighting Source for indoor pools

*Changes to Code/Annex:
Discussed that this can apply to outdoor pools with lighting. They need some emergency source if the main lights go out at night when the pool is in use. No change.*

- **Comment:**
6.6.4.1 – *Regarding #12: Our state cannot enforce this requirement for pools built before the depth marking requirement was enacted. There is some concern that this may not present the level to make this a closure item but possibly a quick fix. Regarding #13: This would not merit an imminent hazard in our state currently, Would request consideration that these be removed and for AHJ's so inclined to enforce, they could include in 19). -- 12) Absence of or improper depth markings at an AQUATIC VENUE; 13) Plumbing cross-connections between the drinking water supply and AQUATIC VENUE water or between sewerage system and the AQUATIC VENUE filter backwash facilities; 14) Failure to provide and maintain an enclosure around the AQUATIC VENUE area that will prevent access to the AQUATIC VENUE during the hours in which the AQUATIC VENUE is closed for use; 15) Use of unapproved chemicals or the application of chemicals by unapproved methods to the AQUATIC*

VENUE water; 16) Broken or missing main drain grate in the AQUATIC VENUE; 17) Overcrowding of the AQUATIC VENUE that results in poor supervision of BATHERS; 18) Glass or sharp objects in AQUATIC VENUE or on deck area; or 19) Any other item determined to be a public health hazard by the AHJ.

Changes to Code/Annex:

Section modified to specify the total absence of depth markings but kept in code.

- *Comment:*

6.6.5.1 – *Providing the option for the owner/operator to voluntarily close is a workable model in our state that eliminates some of the formal enforcement actions.* -- Where an imminent public health hazard is found, the AQUATIC VENUE shall be placarded **voluntarily by the owner/operator or formally by the AHJ** to prohibit use until the hazard is corrected in order to protect the public health or safety of BATHERS.

Changes to Code/Annex:

Language was changed in 6.6.5.2.1 to make it clear that either party can placard a pool.

- *Comment:*

6.6.6.1.1 – *Request that the responsible party include the owner of the facility who bears ultimate responsibility of their staff.* -- **An owner** ~~Any person~~ who fails to comply with any such regulation shall be in violation of this CODE.

Changes to Code/Annex:

Committee agreed that “person” can be owner or operator and gives more flexibility to the AHJ. No change.

- *Comment:*

6.6.8.1 – *Bring the construction permit fees clearly into focus for the AHJ and the Operating permit fees for the AHJ.* -- The following fees and corresponding amounts shall be assessed by the AHJ. Some typical fees include: 1) Owner’s **construction permit application fee, which include times for plan review and construction inspection.** 2) ~~Plan review and construction inspection fee,~~ 3) Pre-operational re-inspection **fee and Operating permit fees,** 4) Variance and/or exemption application fee, and 5) Late fees.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document. Wording clarified

- *Comment:*

6.7.1.1 – There shall be created, an Aquatic Health Advisory Committee, hereinafter called "Committee", consisting of **members from the following:** ~~but not limited to seven members, composed of and consisting of a representative of the industries, trades, and professions, as follows:~~ 1) AQUATIC FACILITY Building Contractor **Public Pool (municipal, park department, school, health club);** 2) AQUATIC FACILITY Service &

~~Repair Contractor or~~ **Semi public or limited use type pool (apartment, condo, homeowners association, hotel, motel);** 3) ~~AQUATIC FACILITY Industry Member APSP representative;~~ 4) ~~Certified Safety Professional~~ **Local health jurisdiction members;** 5) Licensed Design Professional (Engineer or Architect); 6) State Health Department Official; 7) Building Code Official – **REFERENCE:** The proposed intent of this committee is not something we support. We support a committee that can serve on an advisory basis for development of rules, guidance documents, use of new products, etc. The weighting of the proposed committee is not evenly balanced. Please see Washington state rule WAC 246-260-191.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document. The current categories are vague to include commenters suggestions. No change in language.

- *Comment:*
6.7.1.2 – *Request this be deleted. This is getting too detailed for how a state runs its administration.* -- ~~The initial recommended terms of office shall be as follows: 1) Three members shall be appointed for a term of three years; 2) Two members for a term of two years; 3) Two members for a term of one year.~~

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- *Comment:*
6.7.1.3 – *Request this be deleted.* -- ~~Upon expiration of the initial term of office of a member of the Committee, their successors shall then be appointed for a recommended term of three years.~~

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- *Comment:*
6.7.1.4 – *Request this be deleted* -- ~~Vacancies for an unexpired term shall be filled by the AHJ.~~

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- *Comment:*
6.7.2 – *Modify the intent of this committee.* -- ~~It shall be the duty of the Committee to hear appeals from the decision of the AHJ and to submit findings to the AHJ.~~ **The**

Committee shall assist in the development of: review of drafting of rules and developing guidelines for use of new products, equipment, procedures and periodic program review. -- **REFERENCE:** See WAC 246-260-191 (Technical Advisory Committee),

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- *Comment:*
6.7.3 – *Eliminate this section and all subsections. This committee could create a means to usurp AHJ authority. – Procedures*

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- *Comment:*
6.7.4 – *Eliminate this section and all subsections. Our public hearings are already covered by state statute and the administrative procedures act -- Public Hearings – REFERENCE:* See WAC 246-260-221.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

7. **Judy Vallandingham, West Virginia Dept of Health and Human Resources (Charleston, WV)**

- *Comment:*
6.7.1 – *The majority of AHJs in WV are small and rural and would not have access to persons designated to serve on this committee -- Revise to not be required by all AHJ – “There should be ...” – REFERENCE:* Each local health department in WV would be an AHJ see WV State Code **CHAPTER 16. PUBLIC HEALTH. ARTICLE 2. LOCAL BOARDS OF HEALTH. §16-2-1. Purpose.** Local boards of health, created, established and operated pursuant to the provisions of this article, are responsible for directing, supervising and carrying out matters relating to the public health of their respective counties or municipalities.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- *Comment:*
6.7.2.1 – *Conflicts with WV Code of State Rules, this section may conflict with other*

jurisdiction codes as well. -- Revise duties and responsibilities not to hear appeals –
REFERENCE: Conflicts with WV State Code 64CSR1 RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS AND DECLARATORY RULINGS

Changes to Code/Annex:

All sections relating to the AHJC were removed from the Code and placed in a separate document.

- **Comment:**

6.7.4 – *Conflicts with WV Code of State Rules, this section may conflict with other jurisdiction codes as well.* -- Remove due to conflicts – **REFERENCE: Conflicts with WV State Code 64CSR1 RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS AND DECLARATORY RULINGS**

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

8. Jennifer Hatfield, APSP (Sarasota, FL)

- **Comment:**

Glossary “Authority Having Jurisdiction -- *Concerns exist due to how current codes used in many states consider AHJ.* -- No specific recommended change, but rather specific concerns:

1. "Authority Having Jurisdiction" definition is too broad. It creates overlap of areas of responsibility of agencies, departments, and organizations. This leaves room for much confusion and mistakes. It also is assuming that the AHJ is all-knowing and all-powerful, not recognizing how the AHJ may include both building and health departments.

Changes to Code/Annex:

The AHJ definition is general by design. In some cases the code sections may be adopted and enforced by the local building department in other cases it may be the health department or other agency.

Comment:

2. Also it is not clear where Building Departments fit in, couldn't they be an AHJ in certain situations? In many instances a building department can also function in the capacity of an AHJ.

Changes to Code/Annex:

Yes. It is a general definition to fit all circumstances.

Comment:

3. Upon reviewing the entire document, it is clear in certain sections of the document that the building official is different from the AHJ, see section 5.1.1.3.1 for example or section 5.2.2.3. However, most states consider an AHJ as including a building department.

Changes to Code/Annex:

AHJ can include building officials since this model code may be adopted by any agency that has appropriate jurisdiction. 5.1.1.3.1 has been modified to say AHJ and 5.2.2.3 was deleted as unnecessary

Comment:

4. The definition of an AHJ says it is “responsible for enforcing the requirements of a **code** or standard...” Should it not say “this code”. Further, if it is meant to include building officials it should state this. One possibility is including a statement that says “building officials or others having statutory authority.”

Changes to Code/Annex:

The definition is generic so does not mean just this code (the MAHC is a model so must first be adopted). We prefer to keep it broad by not singling out specific groups such as building officials. of this code.

Comment:

5. One would think Section 4.0 would be more under the building department (an AHJ) and Section 5.0 would be more under a health department (an AHJ). The problem is the definition set out is not clear on what an AHJ is or what type of AHJ is over different aspects of the module code – **REFERENCE:** International Codes (I-Codes), State codes such as the FL Building Code, etc.

Changes to Code/Annex:

That is the most common division of jurisdiction, but there are many other types of shared jurisdiction, including other agencies other than the health and building departments. The MAHC is a model so cannot provide specifics about all the different types of jurisdiction that occur across the U.S. Pool codes from health departments routinely include elements found in 4.0 that can have direct impact on swimmer or staff health and safety since those officials have purview over ensuring health and safety for the life of the facility.

- **Comment:**

4.0 -- Design Standards & Construction: Recognize this module has yet to come out, but When there are conflicts between jurisdictional requirements, what code shall prevail? Further, not having all the details of this section and noting our concerns with how an AHJ is defined, the following questions/concerns arise:

1. It appears the model code requires the AHJ to approve submittals, even routine ones.

Changes to Code/Annex:

Yes. Have added definitions for “Alter,” “changes or additions,” and substantial alteration.”

Comment:

2. Requiring the AHJ to practice architecture and/or engineering by usurping the design professionals’ prerogative as to the specific contents and format of the construction documents on any particular project are concerning. It appears to clearly define a process, in which an engineer/architect must be hired to design a pool, but then relieves them and gives complete responsibility of the operation and quality on the AHJ.

Changes to Code/Annex:

Most jurisdictions that require plan approval specify the format of the plans. The design professional can create any design they choose as long as it complies with the code. The AHJ reviews the plans to ensure code compliance.

Comment:

3. It appears this code is laying requirements on the ordinance-making and permitting process, usurping the AHJ’s authority.

Changes to Code/Annex:

This is a recommended model code. It is not mandatory for any jurisdiction unless adopted. Information pertaining to the AHJ directly has been moved to a separate document.

- **Comment:**

4.1.1.1 – AQUATIC FACILITY construction plans shall be designed to provide sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the AHJ protect the health and SAFETY of the facility’s BATHERS and patrons.

Changes to Code/Annex:

Agreed, wording altered.

- **Comment:**

4.1.1.3 – All plans shall be prepared by a registered design professional who is registered or licensed to practice their respective design profession person and within their scope of practice as defined by the state or local laws governing professional practice within the jurisdiction in which the project is to be constructed.

Changes to Code/Annex:
Agreed, added suggested text.

- **Comment:**
4.1.2.2.4 – *Cross-connection preventer is not the appropriate term. Backflow prevention assemblies and airgaps is proper term required.* -- Detailed scaled and dimensional drawings for each individual AQUATIC VENUE shall contain a flow diagram showing the location, plan, elevation, and isometrics of: 1) Filters, 2) Pumps, 3) Chemical feeders, 4) Ventilation devices, 5) Heaters, 6) Surge tanks, including operating levels, 7) Backflow prevention assemblies and airgaps ~~Cross-connection preventers~~,

Changes to Code/Annex:
Suggested text adopted and code section changed.

- **Comment:**
4.1.3.1.2 – No specific recommended change, but rather a specific concern: What is adequately trained mean under this section? What are the guidelines? Either provide guidelines or remove.

Changes to Code/Annex:
Greater detail on this is provided in the AHJ recommendations now moved to a separate document.

- **Comment:**
4.1.3.1.3 – *The responsibility is on the engineer and not the owner. Should be removed.* -- ~~The owner shall have final responsibility for the accuracy and completeness of the plans and specifications, as well as for subsequent construction and installation.~~

Changes to Code/Annex:
We don't agree. The owner is always ultimately responsible.

- **Comment:**
4.1.3.3.1 – No specific recommended change, but rather a specific concern: While replacement of pumps and other equipment with "identical" replacement is okay and clear enough, replacement with "substantially similar equipment" is NOT the same and could cause both interpretation and potential performance and/or safety issues. How do you determine if something is "substantially similar" to another? Other codes use a repair as like for like, an alteration as when something is not like for like. May need to consider how other codes address this issue for consistency or leave it to building codes.

Changes to Code/Annex:

Substantially similar allows the flexibility needed. Identical or like for like would be too restrictive. No Change.

- **Comment:**

4.1.5.3 – No specific recommended change, but rather a specific concern: I am not clear on what this section means based on the definition of an AHJ. “If a building permit is not required plans and specification shall be submitted to the AHJ for review and approval.” By whom is it not required?

Changes to Code/Annex:

This section has been deleted based on similar comments.

- **Comment:**

6.7.4.4 – *No change proposed, but should consider what is in many state codes (ICC codes) re appealing an AHJ action and how these will work together. See reference citation -- Any person aggrieved by a decision of the AHJ may at any time, within 30 days after the filing of the AHJ's decision, file an appeal following the various methods of appeal or review procedures in the AHJ. – REFERENCE: 108.1 Application for appeal.* Any person shall have the right to appeal a decision of the *code official* to the board of appeals. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted there under have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The application shall be filed on a form obtained from the *code official* within 20 days after the notice was served.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

9. Scot Hunsaker, Councilman-Hunsaker (St. Louis, MO)

- **Comment:**

4.1.1.2 – *I think we need to clearly define the words alter and renovate. We have seen this applied in very different ways across the country. The glossary and annex language on this does not seem to add much clarity. Cross reference exclusions in 4.1.3.3.1.-- No person shall begin to construct a new AQUATIC FACILITY or shall alter or renovate an existing AQUATIC FACILITY without first having the construction plans detailing the construction or renovation submitted to and approved by the AHJ. Refer to 4.1.3.3.1 for exemptions.*

Changes to Code/Annex:

The word “renovate” has been removed due to a similar comment.

- **Comment:**

4.1.2.1.1 – *The inclusion of the Pool Contractor on the plans works for a design/build process, but not for a design/bid/build process. Contractor is usually not yet selected*

when plans are finalized for AHJ -- AQUATIC FACILITY plans shall include the name, address, and contact information for the owner, and designer, and POOL contractor.

Changes to Code/Annex:

Code section changed as suggested.

- **Comment:**

4.1.2.2.4 – *How and why is ventilation in the swimming pool health code. This seems like a building code issue. These inspectors will likely not have any idea what they are looking at. There is no training for the reviewer on ventilation mentioned in the annex. The inclusion of isometrics for piping and equipment should not be required if there is a "flow diagram" or schematic of the systems.* -- Detailed scaled and dimensional drawings for each individual AQUATIC VENUE shall contain a flow diagram showing the location, plan, elevation, and isometrics of: 1) Filters, 2) Pumps, 3) Chemical feeders, 4) ~~Ventilation devices,~~ 5) Heaters, 6) Surge tanks, including operating levels, 7) Cross-connection preventers, 8) Valves, 9) Piping, 10) Flow meters, 11) Gauges, 12) Thermometers, 13) Test cocks, 14) Sight glasses, and 15) Drainage system for the disposal of aquatic venue water and filter wastewater. Isometrics for piping and equipment are not required if there is a "flow diagram" provided or schematic of the systems.

Changes to Code/Annex:

Ventilation is extremely important for indoor pools and can directly impact health. The ventilations standards are defined elsewhere in this code. Flow diagrams do not always provide sufficient detail to show placement of valves and components.

- **Comment:**

4.1.2.2.5 – *No current jurisdiction that I'm aware of currently requires schematics showing "accessibility for installation and maintenance."* -- ~~Detailed scaled and dimensional drawings for each individual AQUATIC VENUE shall contain a schematic layout of the AQUATIC VENUE equipment room showing accessibility for installation and maintenance.~~

Changes to Code/Annex:

The building of aquatic facilities with inadequate room for equipment maintenance is a widespread problem that needs to be addressed at the plan design stage.

- **Comment:**

4.1.2.3.6 – *Head loss calculations and pump curves are appropriate to provide with the submission to the health department, but not in the project specifications.* -- The technical specifications and supplemental engineering data for each AQUATIC FACILITY and each AQUATIC VENUE shall include: 1) Detailed information on the type, size, operating characteristics, and rating of all mechanical and electrical equipment; 2) Hydraulic computations for head loss in all piping and recirculation equipment; and 3) Pump curves that demonstrate that the selected recirculation

pump(s) are adequate for the calculated required flows.

Changes to Code/Annex:

Agreed. Changed as suggested..

- **Comment:**

4.1.3.1.2 – *This language is very loose compared to what is required of the designer and operator. The annex section seems awfully loose as well requiring working with another trained professional. I think there is a need to develop a training course for much like the CPO or AFO for AHJ staff. -- The AHJ staff shall be adequately trained to conduct plan reviews.*

Changes to Code/Annex:

Agreed. More information on training is provided in the AHJ recommendations. All sections relating to the AHJ were removed from the Code and placed in a separate document since the MAHC cannot regulate the regulators.

- **Comment:**

4.1.3.1.6 – *I would like to suggest a response time to the plan review. Regarding a variance appeal, the MAHC language only gives the owner 10 days. I would like to suggest a 45 day response requirement. -- The AHJ shall provide a plan submission compliance review list to the AQUATIC FACILITY owner with the following information: 1) Categorical items marked satisfactory, unsatisfactory, not applicable, or insufficient information; 2) A comment section keyed to the compliance review list shall detail unsatisfactory and insufficient; 3) Indication of the AHJ approval or disapproval of the AQUATIC FACILITY construction plans; 4) In the case of a disapproval, specific reasons for disapproval and procedure for resubmittal; and 5) Reviewer's name, signature and date of review. All reviews will be submitted to the owner within 45 days of receipt.*

Changes to Code/Annex:

The code is not meant to regulate AHJ's, therefore a 45 day response time has been added. All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

4.1.3.3.3 – *Would recommend that the facility then needs to submit for AHJ's approval within a reasonable period of time (60 days?). -- In emergencies, the replacement may be made prior to receiving the AHJ's approval, with the owner accepting responsibility for proper immediate replacement, if the equipment is not deemed equivalent by the AHJ. The owner must submit to the AHJ for formal approval within 60 days of installation for review and approval.*

Changes to Code/Annex:

Code section amended to require plan submittal in 45 days.

- **Comment:**

4.1.4.4 – *Ventilation and lighting are not within the traditional scope of the aquatic designer and will be outside the scope of the swimming pool contractor so the commissioning requirement of these could get pretty messy.* -- Commissioning or testing reports for systems such as AQUATIC FACILITY lighting, ventilation, recirculation, filtration, DISINFECTION, and BATHER SAFETY shall be included in furnished documentation.

Changes to Code/Annex:

Ventilation and lighting are very important to the health and safety of the public for indoor pools. Lighting is also important for outdoor pools that operate at night.

- **Comment:**

4.1.5.3.2 – *The annex appears to have some time lines in for appeal. I think we should have it in the MAHC.* -- The AHJ, if after reviewing the permit application information, new construction, alterations, or completion of the annual renewal requirements of this CODE and found the application or the AQUATIC FACILITY unsatisfactory shall deny the new or renewal application, provided: 1) Specific reasons for disapproval and procedure for resubmittal; 2) Notice of the rights to appeal this denial and procedures for requesting an appeal; and 3) Reviewer's name, signature and date of review and denial.

Changes to Code/Annex:

The MAHC is not meant to regulate AHJ's. The Annex was amended to include a recommended 45 day time period to approve or reject permits applications. All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

5.2.1.1 – *I am not aware this is the industry standard. This could be a huge burden for most health departments particularly for sessional facilities. This could result in pool closures because the HD is understaffed.* -- A pre-operational inspection shall be conducted annually on each seasonal AQUATIC FACILITY.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document. As such, this section was moved to the HD recommendations, so it is not a code mandate.

- **Comment:**

5.2.4.3.1 – *I don't think 10 days is enough. Given the recent holidays and trying to get correspondence from multiple parties to the right people, I think this should be in the 30 day range.* -- The applicant may petition the AHJ for a hearing within ~~ten~~ 30 business days, from receipt of the variance denial notice, to challenge the variance denial.

Changes to Code/Annex:

Agree, section changed to allow 30 days and section moved to AHJ recommendations.

- **Comment:**

5.2.4.5 – *If a variance is approved by the AHJ and the independent oversight committee, there does not appear to be much positive value for positing this in public. It will just lead to never-ending questions for the designers, contractors, and health department officials. I think this is a mistake.-- Each variance shall be posted in a conspicuous place for the public to view.*

Changes to Code/Annex:

Section deleted.

- **Comment:**

6.3.1.1.1 – *There are a significant number of public stand alone spraygrounds that do not have standing water and do not have a fulltime operator (or even lifeguards) on hand during all hours of operation. This requirement would undoubtedly force the closing of many of these facilities. There are also a considerable amount of therapy venues which may simply include small rehabilitation tanks that probably should not be burdened by this requirement. -- A QUALIFIED OPERATOR shall be available on-site during all hours of operation at an AQUATIC FACILITY that has: 1) More than two AQUATIC VENUES; or 2) An AQUATIC VENUE of over 50,000 gallons of water; ~~or 3) Venues that include spray features; or 4) A venue used for therapy; or 5) A venue used to provide swimming training.~~*

Changes to Code/Annex:

This section was amended due to a previous comment to only include spray features that use recirculated water. The committee believes that venues used for therapy should be included in this more protective category but allows a 2 hour interval for being at the venue.

- **Comment:**

6.3.1.1.2 – *Is there any science looking at the cost benefit analysis for this requirement? The annex is filled with scientific research on inspection studies. Is the committee aware that for a seasonal facility this burden would likely be in the \$25,000 range and for a year around facility the burden would be in the \$75,000 range. This is one more financial reason not to build or operate a pool, which may result in fewer people learning the life skill of swimming. This could be very detrimental to school districts and cities. Also, see comment to section 6.3.1.1.1 pertaining to spraygrounds and therapy pools. -- A QUALIFIED OPERATOR shall be available on-site during all hours of operation at an AQUATIC FACILITY that is: 1) Frequented by an average of more than 200 BATHERS daily; or 2) Operated by a municipality; or 3) Operated by a school.*

Changes to Code/Annex:

The committee respectfully disagrees with the proposed suggested change, but has changed the requirement for an on-site qualified operator to an immediately available qualified operator within 2 hours.

- **Comment:**

6.3.1.2.5 – See comment to section 6.3.1.1.1 pertaining to spraygrounds and therapy pools. -- All AQUATIC FACILITIES without a full time, on-site QUALIFIED OPERATOR shall have a designated on-site RESPONSIBLE SUPERVISOR.

Changes to Code/Annex:

The committee believes a minimum of a responsible supervisor is required. A 2 hour gap has been added

- **Comment:**

6.4.2.4.1 – *Is this really necessary and will it have an impact on public health?* -- The permit to operate and the results of the most recent inspection of the facility shall be posted for public view at the AQUATIC FACILITY.

Changes to Code/Annex:

Most Pool Codes require posting of operating permit. Posting of the last inspection report is one of the current changes being made in jurisdictions to increase transparency and public information. Having the public be able to choose where they eat based on inspection score has been shown to improve restaurant compliance and would be hoped to do the same for aquatics.

- **Comment:**

6.5 – *It should be confirmed that the language is inserted into the code and not linked to a website that could inadvertently change without following proper protocol.* -- **Fecal/Blood/Vomit Contamination Response** Previously posted at <http://www.cdc.gov/healthywater/swimming/pools/> mahc/structure-content/

Changes to Code/Annex:

The link was just pointing to the MAHC module containing this information. It will be part of the MAHC when modules are merged.

- **Comment:**

6.6.1.6 – *I am not aware that this is an industry standard. This could be a huge burden for most health departments particularly for sessional facilities. This could result in pool closures because the HD is understaffed and because of the financial implications for such frequent permitting renewals.* -- The AQUATIC FACILITY shall be inspected quarterly for AQUATIC FACILITIES open year round and a minimum of two times per operating permit for seasonal facilities.

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

6.6.4.1 – *I think it's needed to define what protected is or an inspector could arbitrarily define unprotected (#8). Has the committee evaluated how #9 will impact outdoor pools? The word "prevent" is a huge burden (#14). This could be interpreted beyond what the barrier requirement of the MAHC is stating. I could see this being used in court to make a case that the designer failed in their duty by not preventing a 17 year old from entering the pool. Pools could end up looking like prisons with guard turrets with this language. Be careful with the wording. I don't have a problem with closing the pool for overcrowding, but how will poor supervision be determined. Which came first the poor supervision or the overcrowding? I think this could be a problem in court. Re-word.* -- Any of the following violations are imminent health hazards which shall require the AHJ to order immediate correction or to immediately institute action as provided in this CODE: 1) Failure to provide adequate supervision of the AQUATIC FACILITY as prescribed in this CODE; 2) Failure to provide the minimum disinfectant residual levels listed in various sections of this CODE 3) PH level below 6.5; 4) PH level above 8.0; 5) Failure to continuously operate the AQUATIC VENUE filtration and DISINFECTION equipment; 6) Use of an unapproved or contaminated water supply source for potable water use; 7) Overhead electrical wires within 20 feet horizontally of the AQUATIC VENUE; 8) ~~Unprotected~~ Non-GFI protected electrical circuits or wiring within 10 feet of the AQUATIC VENUE; 9) Failure to maintain an emergency lighting source; 10) Absence of any required lifesaving equipment on AQUATIC VENUE DECK; 11) AQUATIC VENUE bottom not visible; 12) Absence of or improper depth markings at an AQUATIC VENUE; 13) Plumbing cross-connections between the drinking water supply and AQUATIC VENUE water or between sewerage system and the AQUATIC VENUE filter backwash facilities; 14) Failure to provide and maintain an enclosure around the AQUATIC VENUE area in accordance with the MAHC requirements that will inhibit that will prevent access to the AQUATIC VENUE during the hours in which the AQUATIC VENUE is closed for use; 15) Use of unapproved chemicals or the application of chemicals by unapproved methods to the AQUATIC VENUE water; 16) Broken or missing main drain grate in the AQUATIC VENUE; ~~17) Overcrowding of the AQUATIC VENUE that results in poor supervision of BATHERS;~~ 18) Glass or sharp objects in AQUATIC VENUE or on deck area; or 19) Any other item determined to be a public health hazard by the AHJ.

Changes to Code/Annex:

Agree with suggested changes to items 8 and 14. Language changed as suggested. Disagree with comment to eliminate overcrowding section.

- **Comment:**

6.6.5.3 – *This could wipe out a season for a summer operation. For example, if you're closed June 25th and you're not able to re-open or challenge the determination until*

July 10th. That would have the potential to put a private swimming club out of business very quickly. I think the authority has duty to be much more responsive when taking such action. I say 72 hours. -- Within ~~15 days~~ 72 hours of the placarding of an AQUATIC FACILITY, the operator of such facility shall be provided with an opportunity to be heard and present proof that continued operation of the facility does not constitute a danger to the public health.

It was never the intent to require a closure for 15 days if the violation was corrected. This section has been changed to clarify that based on a previous comment.

- **Comment:**
6.7.2.2 – *If the committee is advisory, is it worth having? I think they need to have some teeth or it is not worth the effort and they will become a rubber stamp.-- ~~The duties and powers of this Committee shall be in an advisory capacity only.~~*

Changes to Code/Annex:

All sections relating to the AHJ were removed from the Code and placed in a separate document.

- **Comment:**

ANNEX 6.3.1 – *This module talks about all the negative things that can occur, but no where do we look at the cost benefit of requiring full time supervision. I think the research needs to include a cost benefit analysis. -- Numerous studies have concluded that pools with operators that have gone through formal training on maintenance and operation of pools, have less violations than pools without a trained person available.*

Results from a cross-sectional study after a 2006 outbreak in Nebraska demonstrated that pools without certified operators are more likely to have free chlorine and pH violations than those with certified operators and might pose increased risk of recreational water illness.

Another study showed significant differences between certified versus non-certified operators in levels of pH and combined chlorine, and compliance with combined chlorine standards. The authors conclude the need for increased knowledge and training on maintaining safe chemical conditions in the water.

The etiologic agent of approximately one quarter to one-third of reported recreational water illness outbreaks associated with treated venues are chlorine sensitive. This indicates that the implicated venues were poorly operated and maintained. The occurrence of waterborne disease outbreaks associated with inadequate public pool operation concludes the need for trained operators.

The need for trained personnel on site at aquatic facilities and accessible on weekends when pool use is highest is also illustrated by surveillance data.

One common lesson learned is that outbreaks often occur on weekends and involve large events, and in many cases the primary operator is off on weekends. Other surveillance data depict the settings of the pools where outbreaks occurred. Twenty-two of 58 (38%) outbreaks associated with treated recreational water venues were linked to venues in hotels or membership clubs.

When the CDC reviewed spa inspection reports from regulatory jurisdictions, the authors concluded the “data emphasizes that spa operators can protect the health of users by obtaining appropriate training. Successful prevention strategies must address operator and inspection training.”

CDC has not only concluded that operator training is necessary to prevent waterborne illness, they also concluded it is necessary to prevent chemical accidents and injuries. Research highlights the need for improved staff training on how to safely store and handle chemicals, and emergency response protocols.

Further, “the disproportionate (86%) number of pool chemical-- associated health events occurring in settings where pools were not the primary focus (e.g., schools or hotels) specifically calls for emphasizing training efforts in these settings.”

An evaluation of violation data in one municipality showed a higher level of violations and repeat violations in facilities that did not have a nationally trained operator on staff.

These studies reveal that many pools when operated by inadequately trained staff are more likely to have significant operational violations that result in injury or illness. Ideally, all pools should have adequately trained staff on-site. However, this is not practical or economically feasible. The committee took into consideration the increased risk in larger, more frequently used pools in striking the definition of where an on-site versus off-site trained operator is required. This is considered the first step in which the overall goal is to have on-site qualified operators provided at all aquatic venues.

Changes to Code/Annex:

A statement recommending further cost-benefit analyses of the requirement of having trained staff at aquatic facilities.