

November 3, 2022

VIA FIRST CLASS MAIL & EMAIL

K. Paul Beaton, Jr.
Business License Supervisor
City of Henderson, Nevada
240 S. Water Street
Henderson, Nevada 89015

Re: Swimply Compliance under Nevada Law and Southern Nevada Health District Regulations

Dear Mr. Beaton:

Squire Patton Boggs LLP (SPB) is a global law firm with a well-recognized and experienced national public policy practice assisting clients with their regulatory advocacy efforts. SPB represents Swimply, an innovative and rapidly growing online platform that allows homeowners to make their underutilized residential swimming pools available to members of their local community who are looking to have access to a pool to swim.

As authorized under N.R.S. § 444.070(1), the Southern Nevada Health District (“SNHD”) may adopt and enforce rules concerning the operation of public—not private—swimming pools. A “public swimming pool” is “any structure containing an artificial body of water that is intended to be used collectively by persons for swimming ... regardless of whether a fee is charged for its use.”¹ However, pools at a private residence that are “controlled by the owner or authorized occupant of the residence and the use [of which] is limited to members of the family of the owner or authorized occupant ... or invited guests of the owner or authorized occupant” remain exempt from the statutory definition, and therefore not subject to SNHD’s regulations.²

Several Swimply Hosts residing in the City of Henderson (the City) received emails from the Business Licensing Division claiming that - by renting their private residential pools – Swimply

¹ N.R.S. § 444.065(1).

² N.R.S. § 444.065(2)(a).

Hosts were in violation of SNHD's health and safety requirements. Under Nevada law, running afoul of public swimming pool regulations is an automatic misdemeanor.³ As such, the City subjects its residents to potential criminal liability when it incorrectly assumes that residential private pools rented via Swimply are rendered public.

By incorrectly reprimanding Swimply Hosts, the City **(i)** misinterprets the allowable use of private pools, which use extends to a homeowner's invited guests; **(ii)** contravenes the City's, SNHD's, and the State's existing treatment of home rentals with attached swimming pools; and **(iii)** lends itself to bad policymaking, especially if the goal is to address public safety.

SNHD, in its [Aquatic Facility Regulations](#), does not define the term, "public swimming pool"; instead referring to an "aquatic venue," which is an "artificially constructed structure or modified natural structure where the **general public**⁴ is exposed to water intended for recreational or therapeutic purposes." This definition, and further elaboration on types of "aquatic venues" clearly do not include private residential pools. By utilizing Swimply, homeowners are not opening their swimming pools to the general public, rather, Swimply Hosts regulate who is allowed to access their property, when guests may enter the property, and how the property may be used.

Additionally, as stated in the Nevada statute, a fee is not determinative as to whether a pool is a public one; rather, the exemption for private residential pools hinges on whether it is limited to members of the family of the owner or invited guests. Inviting guests to use their pools for a fee is not demonstrably different than residents inviting guests—who they could possibly not share personal relationships with—to use their pools for free. Following this rationale, a resident inviting guests who then invite strangers could render an otherwise exempt pool as public.

By considering a swimming pool attached to an Airbnb rental private, yet concluding a swimming pool rented through Swimply is in violation of SNHD regulations, the City contradicts itself. To the best of our knowledge, no vacation rental homeowners have received similar email from the City deeming their attached swimming pool in violation of SNHD's regulations.

The concept of economy sharing has existed around the country since 2008. The Nevada legislature, SNHD, and the City of Henderson have been aware of this growing business concept since its inception and have taken no action in clarifying their public swimming pools policies since. The Nevada State Board of Health updated their public pool regulations in 2018 and chose not to update its code to account for home sharing rentals. In 2021, the City enacted [Assembly Bill No. 363](#) to create a baseline for Las Vegas and surrounding areas to regulate transient lodging. This bill includes no mention of swimming pools. Both these instances display legislative awareness—and willingness—to revise home sharing rental regulations, and a decision *not* to regulate swimming pools that may be attached to them.

If safety and public health are at the forefront of the City's minds, there is no support indicating that inviting a guest who may in turn bring unknown guests for free is safer than allowing guests

³ N.R.S. § 444.120.

⁴ The Aquatic Regulations do not define the term "general public."

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to enjoy property for a fee. Swimply provides liability insurance coverage and, much like Airbnb and Vrbo, allows users to provide feedback and ratings, which may then be used to remove unsafe premises from listings, supplying consistent oversight for such properties. There is no evidence that renting a house with a pool for an overnight stay as compared to a residential pool rented for two hours require additional or fewer safety measures.

Last year, Swimply confronted a barrier under a similar regulatory scheme with the Wisconsin Department of Health Services. Ultimately, the Wisconsin Department of Agriculture, Trade and Consumer Protection concluded that Swimply Hosts were generally not operating public pools and therefore not subject to the laws and regulations overseeing public pools. We believe the City should promote similar business-friendly legislation based on our analysis above and rightfully consider the residential swimming pools rented via Swimply private.

We appreciate your attention to this issue welcome the opportunity to discuss this issue further. Please let me know if you have additional questions and I look forward to hearing from you.

Sincerely,



Austin Harrison

Squire Patton Boggs (US) LLP