

ORDINANCE NO. O-05-16

**AN ORDINANCE OF THE CITY OF PALESTINE, TEXAS, ADOPTING
THE CITY OF PALESTINE SWIMMING POOL AND SPA CODE, AND
ESTABLISHING AN EFFECTIVE DATE OF APRIL 4, 2016.**

WHEREAS, the United States Congress has found that adult supervision at all aquatic venues is a critical safety factor in preventing children from drowning, and that the installation and proper use of barriers or fencing, as well as additional layers of protection, could substantially reduce the number of childhood residential swimming pool drownings and near drownings; and

WHEREAS, the City Council has determined that adoption of regulations to improve the safety of pools and spas within the City would provide for and would be in the best interest to safeguard life, health, property, and public welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALESTINE:

I.

That Chapter 58, Health and Sanitation, of the Code of Ordinances of the City of Palestine be amended by adding Article VII, Pool and Spa Safety, to read as follows:

ARTICLE VII. POOL AND SPA SAFETY

Sec. 58-198. - Purpose

(a) This article shall be known as The City of Palestine Public Swimming Pool and Spa Code.

(b) The purpose of this article shall be to enforce the most stringent pool safety standards permitted by law by controlling and regulating the design, construction, operation, and maintenance of all public swimming pools and spas within the City; to provide for the issuance of operating permits, and to provide penalties and remedies so that health and safety hazards may be minimized.

Sec. 58-199. - Texas Standards for Public Swimming Pools and Spas Rules Adopted.

(a) The following state and federal laws for public swimming pools and spas are adopted by reference:

(1) The Virginia Graeme Baker Pool and Spa Safety Act (VGBA), 15 U.S.C. Section 8001 et seq.;

(2) Chapter 757 of the Texas Health and Safety Code; and

(3) Subchapters L and M of Chapter 265 of Title 25 of the Texas Administrative Code.

(b) The provisions of Section 265.208 of Title 25 of the Texas Administrative Code shall not apply to enforcement of this chapter.

Sec. 58-199 - Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

Abate means to remove or demolish and shall include filling an aquatic structure to the surface with earth, bank sand or other similar material approved by the health authority.

Approved drain cover means a suction outlet drain cover that meets the requirements of the VGBA.

Aquatic structure means a pool, spa, or PIWF.

Department means the Development Services Department.

Facility means a pool, spa or PIWF and the restrooms, dressing rooms, equipment rooms, deck, enclosure, and other appurtenances directly serving the pool, spa or PIWF.

Health authority means the Health Inspector of the Development Services Department who is responsible for the enforcement of the provisions of this article.

Inactive aquatic structure means an aquatic structure that is not functioning, operating, or in use, or that has been abandoned but not abated.

Operator means the owner of the property upon which an aquatic structure is located, or any business manager, complex manager, manager of a property owners association, rental agent, or other individual who is in charge of the day-to-day operation or maintenance of an aquatic structure or the property on which it is located.

Permit means an operating permit for a facility issued by the department pursuant to this chapter.

Person in charge means an individual who is actually present or available at a facility at a given moment and is in immediate charge of the day-to-day operation or maintenance of the facility.

Pool means any man-made permanently installed or non-portable structure, basin, chamber, or tank containing or designed to contain a body of water to be used for human swimming, diving, aquatic sports, or other aquatic activity, including any pool that is categorized as a Class A, Class B, Class C or Class D pool pursuant to Section 265.182(99) of Title 25 of the Texas Administrative Code, that is open to the public generally regardless of whether a fee is charged for use, and regardless of whether its use has been abandoned or discontinued. This term does not include a residential pool or spa or a pool that has been abated.

PIWF (public interactive water feature and fountain) means any indoor or outdoor water installation maintained for public recreational use, including but not limited to water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons in various arrays.

Property owners association means an association of property owners as defined in Section 204.004 of the Texas Property Code.

Remodeled or *remodeling* means modification of the design, configuration, capacity, or components of an aquatic structure, including, but not limited to, reconfiguration of a pool or the addition of new plumbing and filtration pipes to an aquatic structure; provided, however, that this

term does not include minor alterations, such as removal of a pool lip, replacing a pump, or replastering the inside of such structure.

Spa means a constructed permanent or portable structure that contains or is designed to contain hot or cold water and (i) is two feet or more in depth, (ii) has a surface area of 250 square feet or less or a volume of 3,250 gallons or less, (iii) is intended to be used for bathing or other recreational uses by human beings, (iv) is not drained and refilled after each use, and (v) includes such elements as hydrojet circulation, mineral baths, air induction bubbles, or any combination thereof; regardless of whether its use has been abandoned or discontinued; provided, however, that this term does not include a residential pool or spa or a spa that has been abated.

VGBA means the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. Section 8001 et seq.

Sec. 58-200. - Permit Required.

(a) No person shall operate an aquatic structure without a permit issued by the health authority. An application for a permit shall be made on forms provided by the health authority and shall be accompanied by payment of the plan review fee.

(b) A valid permit shall be posted in public view in a conspicuous place at the aquatic structure for which it is issued or on file in a secure area of the permitted facility's premises.

(c) Non-transference (change of ownership). Permits issued under the provisions of this article are not transferable. Upon change of ownership of a business, the new business owner will be required to meet current standards as defined in City ordinances and state law before a permit will be issued. The new owner shall notify the City within ten days after assuming ownership of the aquatic structure.

(d) Multiple permits. A separate permit shall be required for every aquatic structure, except that public aquatic structures on a single water filtration system require one permit.

(e) Inspections for permits. An inspection shall be required annually to qualify for a permit.

(f) A permit is valid for one year from the date of issuance.

Sec. 58-201. - Application and plan review for construction of public swimming pools and spas.

(a) No aquatic structure shall be constructed, remodeled, or altered except in accordance with plans and specifications approved by the health authority.

(b) An application and required plans must be submitted to the health authority before an aquatic structure is constructed or remodeled. The following must be submitted prior to obtaining a permit:

1) A completed application provided by the health authority.

2) Construction or remodeling plans, under an engineer's seal, and specifications stating that the proposed construction or remodeling complies with these rules and shows the proposed layout, mechanical plans, construction materials of work areas, and the type and model of proposed fixed equipment and facilities;

- 3) The date on or after which proposed construction is to begin;
- 4) The phone number and address of the entity primarily responsible for constructing the pool, spa or interactive water feature and the phone number and address of the entity primarily responsible for operating the pool, spa or interactive water feature;
- 5) Any additional information necessary to verify compliance.

Sec. 58-203. - Operation of a pool, spa or interactive water feature.

(a) It shall be the responsibility of an operator to ensure that an aquatic structure is in full compliance with the applicable provisions of this chapter and the terms and conditions of any permit issued under this chapter.

(b) Each operator of a facility shall ensure that a person in charge is available during all hours of operation. The responsibilities of the operator under this subsection shall also apply to any other person having possession or control of the operation of the facility.

(c) The terms of this section shall not be construed to alter the terms of any lease or other agreement between landlord and tenant relating to property that is subject to this chapter; provided, however, that no lease or other agreement between landlord and tenant relating to property that is subject to this chapter shall be construed to excuse compliance by any person with this chapter or any applicable state or federal law, rule or regulation regarding pool safety.

(d) An aquatic structure may not be constructed so as to discharge its wastes into a sanitary sewer or other public drainage system unless such discharge is approved in writing by the health authority and the utility official.

(e) All portions of the water distribution system of an aquatic structure shall be protected against backflow from the water into the city's water supply system. The fill line used to introduce water to the aquatic structure shall have a backflow device on the discharge side of the last gate valve or a six-inch air gap at the end of the fill line. The fill line shall not be connected directly to any of the piping or equipment of the circulation system. A fill line from the water supply to prime the pump shall not be allowed.

(f) The operator of a facility shall maintain on site a water quality testing device or kit capable of accurately testing for and measuring pH and disinfectant levels within certain chemical ranges in accordance with section 58-199 of this Code. Operational records of testing results and maintenance activities, including documentation of approved drain covers, shall be retained on site at a facility for not less than two years. However, to the extent that state or federal law requires a more lengthy record retention period, the records shall be retained for the entirety of the state or federally-mandated period.

(g) A pool or spa shall be equipped with approved drain covers.

Sec. 58-204. - Compliance, inspections and investigations.

(a) The health authority shall inspect each facility within the city at least once every 12 months and shall make as many additional inspections as are necessary for the enforcement of this chapter, taking into consideration all public health risks posed by the facility, consumer complaints, reports of illness outbreaks, or the facility's past compliance history. Upon request, the operator shall provide the health authority with all records pertaining to the servicing, maintenance, and operation of the facility.

(b) The health authority may inspect all aquatic structures to protect the public health and to ensure compliance with the provisions of this chapter; provided that in any case in which permission to inspect is denied, the health authority shall obtain an administrative search warrant.

(c) The findings related to a facility inspection shall be recorded on an inspection report form, a copy of which report shall be provided for the person in charge of the facility. A copy of the inspection report shall be kept at the facility and may not be removed by any person except the health authority. The health authority shall maintain a copy of the inspection report in the departmental records.

(d) The inspection report form shall specify a time by which each violation must be corrected. The operator may be subject to criminal or civil penalties for a violation.

(e) Upon request of the operator of a facility, the health authority may allow an extension of the time in which to correct a violation. In determining whether to allow an extension and the length of the extension, the health authority shall consider the degree of risk, if any, posed by the violation and the time reasonably required to correct it. No extension shall be granted if the health authority determines that a significant risk is posed to the public.

(f) A facility that is required to cease operations under the provisions of this section shall not resume operations until a reinspection by the health authority determines that the conditions responsible for the requirement to cease operations no longer exist.

(g) The health authority shall conduct all reinspections required under this section within a reasonable period of time. A permit shall not be renewed until all outstanding fees assessed under this chapter have been paid.

Sec. 58-205. - Enclosure of aquatic structures.

(a) The operator of a facility that is regulated by Chapter 757 of the Texas Health and Safety Code shall at all times maintain an enclosure that complies with those provisions of that chapter adopted by reference in section 58-199(b) of this Code, and the city may remedy violations of this subsection in accordance with the provisions of Section 214.101 of the Local Government Code, including the placement of a lien against the property to recover expenses incurred pursuant to remediation.

(b) The operator of a facility that is regulated by Subchapter L of Chapter 265 of Title 25 of the Texas Administrative Code shall at all times maintain upon such property an enclosure that complies with the requirements of Section 265.200 of that subchapter adopted by reference in section 58-199(c) of this Code.

Sec. 58-206. - Violation of minimum standards for aquatic structures.

(a) In the event of a violation of the minimum standards established by this chapter, the health authority shall provide written notice to the operator to abate, remove, or otherwise remedy the violation immediately. The notice shall be given:

- (1) By personal hand delivery to the operator;
- (2) By letter addressed to the operator at the operator's post office address and sent by certified mail, return receipt requested; or

(3) If personal service cannot be obtained or the operator's post office address is unknown:

A. By posting the notice on or near the front door of each building on the property to which the violation relates; or

B. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

(b) If the operator does not abate, remove or remedy the violation within ten days of service or posting of a notice under this section, the health authority may enter the property where the violation is occurring and perform any work necessary to protect the public health, safety and welfare.

(c) Notwithstanding the notice provisions of this section, upon any determination that the immediate abatement of a violation is necessary to protect the public health, safety or welfare, the health authority may enter the property where the violation is occurring and perform or cause to be performed any work necessary to protect the public health, safety and welfare.

(d) Pursuant to the authority granted by Chapter 342 of the Texas Health and Safety Code, the city may charge all costs incurred by the city under this section in remediating water quality issues, including the cost of providing notice as required, to the owner of the property. The city may assess the expenses against the property where the work was performed and obtain a lien against the property in accordance with the procedure established in Chapter 342 of the Texas Health and Safety Code.

(e) The remedy provided by this section is in addition to all other remedies available under this chapter or as otherwise provided by the Code or state or federal law.

Sec. 58-207. - Permit revocation, suspension and appeal.

(a) The health authority may suspend or deny an operating permit if:

(1) the public facility does not comply with the requirements of this chapter,

(2) the operation of the facility otherwise constitutes a hazard to public health.

(3) the operator does not pay the permit fee, provide accurate operational records to the health authority or allow the health authority to inspect the public facility.

(b) Written notice of a permit suspension shall be provided to the operator of a facility by personal hand delivery or by certified mail, return receipt requested. The notice shall set forth:

(1) The specific conditions at the facility that are in violation of this chapter, in violation of federal or state laws, rules, or regulations regarding pool safety, or constitute a hazard to public health;

(2) That a hearing will be held before a hearing authority;

(3) The date, time and place of the hearing; and

(c) Prior to the revocation of a permit, written notice shall be provided to the operator by personal hand delivery or by certified mail, return receipt requested. The notice shall set forth:

(1) The grounds on which the city will seek revocation of the permit, including the specific violations of this chapter or of federal or state laws regulating pool safety on which the city will rely in seeking revocation of the permit;

(2) That the operator may appear in person, may be represented by counsel, and may present testimony and cross-examine all witnesses. The hearing shall be held not later than ten days after the date the permit revocation notice is received.

Sec. 58-208. - Enforcement.

(a) The health authority is authorized to issue citations charging the violation of any of the provisions of this chapter and, to the extent authorized or permitted by law, any applicable state laws, rules, or regulations regarding pool safety. In addition, the health authority may order a facility closed if the health authority determines:

(1) That it is being operated without a valid permit; or

(2) That the continued operation of the facility will constitute a hazard to the health or safety of persons using the facility or those in close proximity to the facility.

(b) Upon closure of a facility pursuant to this section, the person in charge of the facility shall immediately:

(1) Properly post and maintain signs at all entrances to the facility that state: "CLOSED UNTIL FURTHER NOTICE"; and

(2) Lock all doorways and gates that form a part of the facility enclosure, so that the facility is only accessible to maintenance or authorized personnel for repairs.

(c) Signs required to be posted under this section shall be a minimum size of 8½ inches by 11 inches. The lettering shall be of a contrasting color to the background and not less than one inch in height. Signs shall be positioned so that they are readily visible to a person seeking entry to the facility.

(d) If the person in charge of the facility is absent, or fails or refuses to comply with the requirements of subsection (b), the health authority may post signs and secure the premises in accordance with this section.

(e) A person commits an offense under this section if the person:

(1) Removes, defaces, alters, covers, or renders unreadable a closure sign posted by the health authority; or

(2) Uses a facility subject to a closure order for swimming, diving, or bathing; or

(3) Is a person in charge of a facility subject to a closure order and knowingly allows persons to use the facility for swimming, diving, or bathing; or

(4) Is a person in charge of a facility subject to a closure order and fails to comply with the requirements of this section.

(f) An operator may appeal a closure order within three days after the issuance of the order by filing a written statement with the health authority setting forth the reasons why the closure order should be rescinded. The filing of an appeal does not stay the closure order.

(g) A facility closed by the health authority shall not resume operation until a reinspection by the health authority establishes that the facility is in compliance with this chapter and all applicable state or federal laws and rules and regulations regarding pool safety.

Sec. 58-210. - Penalty for violation.

Any person who violates any provision of this chapter, any rule or regulation promulgated by the health authority or any applicable state law, rule or regulation regarding pool safety shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$250.00 nor more than \$2,000.00 for the first conviction. For any succeeding conviction, such person shall be punished by a fine of not less than \$500.00 nor more than \$2,000.00. Each day that a violation continues shall constitute a separate offense.

II.

All other ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed as of the effective date.

III.

If any provision of this ordinance is found by a court of competent jurisdiction to be unlawful, unconstitutional, or otherwise invalid, the remainder of the ordinance shall remain in effect as if the invalid provision was never part of the ordinance. Provided, however, that if it is possible to reformulate the invalid provision so as to be lawful and valid, the invalid provision, as reformulated, shall remain part of the ordinance.

IV.

The effective date of this Ordinance is March 15, 2016.

PASSED, APPROVED, and ADOPTED by the City Council of the City of Palestine, Texas, at a regular meeting held on this the 14th day of March, 2015.

BOB HERRINGTON, MAYOR

ATTEST:

APPROVED AS TO FORM:

TERESA HERRERA, CITY SECRETARY

RONALD D. STUTES, CITY ATTORNEY