

ORDINANCE NO. 3824-5-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 6, "HEALTH AND ENVIRONMENT," ARTICLE VIII, "ENVIRONMENTAL HEALTH," BY AMENDING DIVISION 1, IN ITS ENTIRETY; AND BY AMENDING DIVISION 4, IN ITS ENTIRETY; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City of Allen Code of Ordinances Chapter 6, "Health and Environment," Article VIII, "Environmental Health," is hereby amended by amending Division 1, in its entirety, to read as follows:

"DIVISION 1. - IN GENERAL

Sec. 6-233. - Purpose.

The purpose of this article is to establish uniform regulations and standards for food service establishments, bed and breakfast establishments, childcare facilities and public and semi-public swimming pools, spas, lagoons, and public interactive water features and fountains (PIWFs) located within the City of Allen in addition to the requirements contained in state and federal law for the purpose of further protecting the public from health hazards and nuisances. The regulatory authority shall enforce all state, federal, and local laws and regulations applicable to the above-referenced establishments operating within the City of Allen, as permitted by law."

SECTION 2. The City of Allen Code of Ordinances Chapter 6, "Health and Environment," Article VIII, "Environmental Health," is hereby amended by amending Division 4 in its entirety, to read as follows:

**"DIVISION 4. - SWIMMING POOLS, SPAS, LAGOONS,
AND PUBLIC INTERACTIVE WATER FEATURES (PIWFs)**

Sec. 6-246. - Adoption of state rules on standards for public pools and spas, lagoons, and interactive water features and fountains.

The city adopts by reference the provisions of the current standards for public pools and spas set forth in Texas Administrative Code Title 25, Ch. 265, Subchapter K, as amended, which establish regulations regarding artificial swimming lagoons, with the exceptions of such sections thereof as are hereinafter deleted, modified or amended below. The city also adopts by reference the provisions of the current standards for public swimming pools and spas set forth in Texas Administrative Code Title 25, Ch. 265, Subchapter L, as amended, which establish regulations regarding public swimming pools and spas, with the exceptions of such sections thereof as are hereinafter deleted, modified or amended below. The city further adopts by reference the current public interactive water features and fountains regulations, as set forth in Texas Administrative Code Title 25, Ch. 265, Subchapter M, as amended, with the exceptions of such sections thereof as are modified or amended below.

Sec. 6-247. - Definitions.

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

Artificial swimming lagoon (lagoon). An artificial body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant. The term does not include a body of water open to the public that continuously recirculates water from a spring or a pool. The term "lagoon" used in this subchapter means "artificial swimming lagoon."

Certified pool operator (CPO). Any individual who has taken and successfully passed a certified pool operator course and has in their possession an unexpired certificate of completion.

Certified pool operator course. A course recognized by the Texas Department of State Health Services as provided in 25 TAC 265.205(b), or by the regulatory authority.

Disinfectant. Energy or chemicals used to kill undesirable or pathogenic (disease causing) organisms and having a measurable residual at a level adequate to make the desired kill.

Extensively remodel. Replacement of facility components or modification of the facility so that the design, configuration, capacity, or operation is 20% or more different from the original design, configuration, capacity, or operation. This term may include complete replacement of plaster, deck, or enclosure, including doors and gates. This term does not include the normal maintenance and repair of a facility or a water circulation system or the partial replacement of circulation system equipment if the size, type, or operation of the equipment is not substantially different from the original equipment. Replacement of 30% or more of the circulation system shall fall within the meaning of extensively remodeled.

Facility. A public or semi-public pool, spa, lagoon, public interactive water feature, restroom, dressing room, equipment room, deck, walkway, beach entry, enclosure, or other appurtenance directly serving the pool, spa, lagoon, or PIWF.

Person. An individual, association, corporation, company, or other similar entity with ownership, care, custody, or control over a swimming pool, spa, or public interactive water features and fountains, including, but not limited to the permit or license holder, employee, or person-in-charge.

pH. A value expressing the relative acidic or basic tendencies of a substance, such as water, as indicated by the hydrogen ion concentration. The pH is expressed as a number on the scale of 0 to 14, 0 being most acidic, lower than 7 being acidic, 7 being neutral, higher than 7 being basic and, 14 being most basic.

Public interactive water features and fountains (PIWFs). Any privately or publicly owned indoor or outdoor installation maintained for public recreation, regardless of whether a fee is charged for use, that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons in various arrays for the purpose of wetting the persons playing in the spray streams. These may stand alone or share a water supply, disinfection system, filtration system, circulation system, or other treatment system that allows water to co-mingle with a pool. PIWFs:

- (1) Include, but are not limited to, interactive water features or fountains that are open exclusively to members of an organization and their guests, residents of a multi-unit apartment building or complex, residential or commercial real estate development, or other multi-family residential area, schools, day care facilities, youth camp or hotel or other public accommodations facility; and

- (2) Do not include interactive water features or fountains located on private property under control of the property owner or owner's tenant, serving a single-family residence or duplex that are intended for use by not more than two resident families and their guests; and
- (3) Are not fountains, installations, amusement rides, or other attractions, whether decorative or interactive, in which only incidental water contact occurs; and
- (4) Do not include interactive water features that are supplied entirely by drinking water that is not recirculated; or use fresh water originating from a natural watercourse and release the fresh water back into the same natural watercourse.

Public pool. A swimming pool or spa to which the general public has access, regardless of whether a fee is charged.

Regulatory authority. City of Allen Environmental Health, or another Department authorized by the City Manager.

Remodel. The replacement of or modification to a swimming pool, spa, lagoon, or PIWF structure, circulation system and/or its appurtenances such that the design, configuration and/or operating characteristics are different than the original design, configuration and/or operating characteristics.

Residential pool/spa. A pool or spa that is located on private property under the control of the owner or lessee, the use of which is limited to swimming, diving and/or recreational bathing by not more than two (2) resident families and their guests. It includes a pool or spa serving only a single-family home or a duplex.

Semi-public pool. A swimming pool or spa that is privately owned and opened only to an identifiable class of persons, including but not limited to, hotel guests, apartment residents, homeowner's association and club members.

Spa. A constructed permanent or portable structure that is two (2) feet or more in depth and that has a surface area of two hundred fifty (250) square feet or less or a volume of three thousand two hundred fifty (3,250) gallons or less and that is intended to be used for bathing or other recreational uses and is not drained and refilled after each use. It may include, but is not limited to, hydro jet circulation, hot water, cold water, mineral baths, air induction bubbles, or any combination thereof. A spa, as is defined in these rules, does not refer to a business establishment such as a day spa or a health spa. Industry terminology for a spa includes, but is not limited to, "hydrotherapy pool," "whirlpool," "hot spa," "hot tub".

Swimming pool or pool. Any man-made, permanently installed or nonportable structure, basin, chamber, or tank containing an artificial body of water that is used for swimming, diving, wading, aquatic sports, or other aquatic activity other than a residential pool and that is operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use. The pool may be either publicly or privately owned. The term does not include a spa or a decorative fountain that is not used as a pool.

Sec. 6-248. – Construction and maintenance standards, plan reviews and plan review fees.

- (a) All lagoons shall comply with the Texas Department of State Health Services Standards set forth in Title 25, Part 1, Chapter 265, Subchapter K of the Texas Administrative Code, as amended.
- (b) All public and semi-public swimming pools and spas shall comply with the Texas Department of State Health Services Standards set forth in Title 25, Part 1, Chapter 265, Subchapter L of the Texas Administrative Code, as amended.

- (c) All PIWFs shall comply with the Texas Department of State Health Services Standards set forth in Title 25, Part 1, Chapter 265, Subchapter M of the Texas Administrative Code, as amended.
- (d) Whenever a facility is constructed or extensively remodeled, or whenever an existing structure or part of a facility enclosure is changed, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the regulatory authority for review and approval before construction begins. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this division. No facility, facility enclosure, facility structure, or facility equipment shall be constructed, extensively remodeled, or converted except when a permit has been granted by the regulatory authority demonstrating compliance with this division. A pre-operational inspection shall be conducted at the facility prior to the start of operations to determine compliance with approved plans and with the requirements of this division.
- (e) The regulatory authority may direct the replacement of the facilities and equipment because of a change of ownership and all requirements of this division shall be met prior to resuming normal course of operations.
- (f) The regulatory authority shall require the replacement of equipment and facilities if they are discovered to be in poor condition, fail to function properly, do not meet current requirements, or endanger the health and safety of the public.
- (g) A health plan review fee in the amount set by the city council shall accompany submitted plans and specifications.
- (h) The regulatory authority may require a certification letter from a licensed electrician that certifies the facility meets all electrical requirements of this Division.

Sec. 6-249. - Permit required.

- (a) No person shall operate a public or semi-public swimming pool, spa, lagoon or PIWF without a valid and current permit issued by the regulatory authority. Only a person who complies with the requirements of this division shall be entitled to receive or retain such a permit. Permits are not transferable and must be displayed in an area visible to the public.
- (b) The permit required by subsection (a), above, will be issued in accordance with the following:
 - (1) An application for a permit for each body of water with separate disinfectant systems shall be submitted on a form provided by the regulatory authority. Such application shall include all information deemed necessary by the regulatory authority.
 - (2) A permit that is issued will be valid from date of issuance until January 31 of the immediately following calendar year, unless suspended or revoked. Permits must be renewed on an annual basis by filing a renewal application and payment of a non-refundable permit fee. An administrative late fee in the amount set by the city council for the city may be required if an application for a renewal permit is made more than ten (10) days after the previous permit has expired. No fees shall be charged to any facility owned and operated by a government agency or independent school district; however, such facilities must comply with all other requirements of this division.

- (3) Prior to final approval of an application for permit or renewal and issuance of such permit, the regulatory authority shall inspect the facility to determine compliance with requirements of this division. If a permitted facility fails inspection at any time during the year and a re-inspection is required, a re-inspection fee in the amount set by the city council for the city may be charged.
- (4) If an application for permit or renewal is denied, the applicant will be informed of the reasons for denial and what action is required to qualify for a permit. The regulatory authority shall issue a permit to the applicant if subsequent inspection reveals that the facility complies with the requirements of this division and all fees have been paid.

Sec. 6-250. - Revocation or suspension of permits.

The regulatory authority may deny, revoke, or suspend any operating permit for the failure of the applicant to comply with the provisions of these standards, or in cases where the operating permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact. Notices of closure shall be processed as follows:

- (a) All notices or orders issued shall be either delivered personally or sent by certified mail to the person to whom the permit was issued or to the person in charge of the subject premises. Except in cases of emergency or urgent public necessity, such notice shall be delivered or mailed at least ten (10) days before any operating permit is revoked or suspended and shall state the reason(s) for such proposed revocation or suspension and notify that person of a right to appeal the decision of the regulatory authority to the director.
- (b) An operating permit which has been revoked or suspended may be reissued upon proper application and upon presentation of evidence that the deficiencies and/or irregularities which caused the revocation or suspension have been corrected.
- (c) If the regulatory authority determines that the operation or maintenance of any swimming pool is such as to constitute an imminent hazard to the health and safety of the public, the operating permit shall be suspended immediately, and the swimming pool shall be closed for use and shall remain closed until the necessary remedial action has been completed.

Sec. 6-251. - Inspections.

Agents of the regulatory authority, after presenting proper identification, shall be permitted to enter any facility at any time, for the purpose of making inspections to determine compliance with these rules. The agents shall be permitted to examine the records of the facility, including testing logs and proof of operator certification.

- (1) Consent and authorization. Application for and operation of a facility inside the City of Allen constitutes consent for the regulatory authority to inspect the facility to determine compliance with this division. Should any owner, person in charge, employee, or agent of the facility hinder, physically prevent, interfere with, or otherwise obstruct the lawful inspection of a facility by the regulatory authority, such action may constitute reason for suspension or revocation of permit and a violation of this section.
- (2) Pre-opening or pre-season inspection.
 - (i) The regulatory authority shall conduct a pre-opening or pre-season inspection at facilities that have been closed for 30 days or longer to verify the facilities conform with requirements contained within this Division.

(ii) No pool or spa shall open for the season if it does not pass this pre-opening or pre-season inspection.

(iii) The certified pool operator shall be present at this inspection.

(3) Inspection reports.

(i) Whenever an inspection is conducted at a facility, the findings shall be recorded on an inspection report form provided by the regulatory authority. The original inspection report form shall be furnished to the owner or person in charge at the completion of the inspection and constitutes a written notice. The inspection report form shall summarize the requirements of these rules and shall set forth a pass or fail ranking for the facility. The completed inspection report form is a public document that should be posted at a conspicuous location for the public.

(ii) Violations noted on the inspection report by the regulatory authority shall be corrected within the time frame given. A reasonable time frame for compliance shall be given for violations unless the health, welfare, or safety of persons using the facility is at risk. If the regulatory notes any condition that endangers public health, the facility shall immediately be closed, and the permit temporarily suspended.

Sec. 6-252. - Certified operator required.

- (a) No person shall operate a facility without obtaining and maintaining certification as a certified aquatic facility operator (A.F.O.), certified pool/spa operator (C.P.O.), pool operator on location (P.O.O.L.) or other certification deemed equivalent by the regulatory authority. All certifications shall be approved by the regulatory authority.
- (b) On days the pool and spa will be open, a certified operator shall test swimming water for pH, disinfectant, water clarity, stabilizer, and temperature to assure safety and protect public health. If test results are not within required limits, the pool or spa shall be immediately closed, and a closure sign posted in a highly visible area. Prior to opening the pool or spa for use, all test results shall be within approved state limits and findings documented to include initial results, corrective actions, and final readings.

Sec. 6-253. - Water quality and disposal standards.

- (a) All swimming pools, spas, lagoons, and PIWFs in the City of Allen, including those intended for private residential use, shall comply with the water requirements of this section to protect public health.

(1) Water quality.

- (i) All swimming pools and spas shall be maintained and kept free of algae to provide sufficient clarity of the main drain from outside the pool at all times. No person shall allow a pool or spa under their control to violate this standard unless the pool or spa has a cover installed or is otherwise secured and meets the requirements of the regulatory authority.
- (ii) All swimming pools, spas, lagoons, and PIWFs shall use make-up water from an approved source suitable for drinking as deemed acceptable by the regulatory authority.

(2) Water disposal.

- (i) All swimming pools, spas, lagoons, and PIWFs containing disinfectant shall discharge filter backwash and overflow lines into an approved septic tank system or sanitary sewer. Additionally,

no person shall allow water containing disinfectant from pools, spas, lagoons, or PIWFs to be discharged into the storm sewer or other natural or manmade watercourse.

- (ii) It shall be unlawful for any person to drain water from a swimming pool, spa, lagoon, or PIWF onto public or privately-owned property at any time. Pools drained for repairs shall be discharged into the sanitary sewer or approved septic tank system.
- (iii) Deck drains of all swimming pools and spas, including residential pools, shall be discharged to a lawn, leaching field, or natural drain.

Secs. 6-254, 6-255. - Reserved."

SECTION 3. All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.

SECTION 7. This ordinance shall take effect immediately from and after its passage in accordance with its provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 25TH DAY OF MAY 2021.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(PGS:4-15-21:TM 121844)

Shelley B. George, CITY SECRETARY