

Chapter 43

SWIMMING POOLS*

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ARTICLE I. IN GENERAL

Secs. 43-1—43-15. Reserved.

ARTICLE II. POOLS FOR SWIMMING AND BATHING†

Sec. 43-16. Definitions.

As used in this article, the following words and phrases shall have the meanings established by this section, unless the context and usage clearly indicate another meaning:

Department means the city's health and human services department.

Free chlorine residual means the chlorine concentration in parts-per-million (p.p.m.) units of water measured as hypochlorous acid (HOCL) or hypochlorite ion (OCL) that remains available in the water for effective, rapid biocidal action after the initial chlorine demand of the water following addition of the chlorine has been satisfied. Concentration of the free chlorine residual shall be measured using any standard method approved by the health officer.

Hydrotherapy spa means a pool designed for recreational and therapeutic bathing use. It includes, but is not limited to, bathing pools that have hydrojet circulation, hot water, cold water, mineral water, air induction bubbles, or any combination thereof. Terminology for a hydrotherapy spa includes, but is not limited to, "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spa," and "hot tub."

Lifeguard means an individual schooled and certified in an advanced course of instruction in lifesaving and water safety by or equivalent to that offered by the American Red Cross, and schooled and certified in a basic life support course in cardiopulmonary resuscitation (CPR) by or equivalent to that offered by the American Red Cross.

Multiunit rental complex means two or more dwelling units in one or more buildings that are under common ownership, managed by the same owner, managing agent, or management company, and located on the same lot or tract of land or adjacent lots or tracts of land. The term includes a condominium project. The term does not include:

- (1) A facility primarily renting rooms to overnight guests; or
- (2) A single-family home or adjacent single-family homes that are not part of a condominium project.

Pool means any receptacle for water, owned or operated by any person, that is constructed, installed, or maintained in or above the ground for the purpose of immersion or partial immersion of human beings for swimming or bathing, that is not drained, cleaned and refilled after each user and that:

- (1) Requires a building permit or permits under the provisions of the Construction Code prior to its construction or installation;
- (2) Is constructed of concrete, mortar, steel, fiberglass, wood or other permanent material; and

*Cross references—Buildings generally, Ch. 10; health generally, Ch. 21; fencing or filling of abandoned swimming pools, § 28-12.

†Editor's note—Section 1 of Ord. No. 85-1326, enacted July 31, 1985, amended the provisions of Art. II to read as herein set forth. Prior to such amendment, Art. II pertained to public pools and consisted of §§ 43-16—43-22 which derived from §§ 36-144—36-150 of the 1968 Code.

- (3) Has a depth at any point of more than six inches.

The term "pool" shall include a hydrotherapy spa.

Any pool, as defined above, whose use for swimming or bathing has been abandoned or discontinued shall nevertheless remain a pool for purposes of the application of this chapter unless filled to the surface with earth, bank sand or other similar material.

Private pool means any pool that is established or maintained on:

- (1) Any private residential premises by an individual for his family use or for guests of his household, and that is not used in connection with any commercial or group enterprise;
- (2) Any apartment project having ten or fewer units; and
- (3) Any condominium complex having 30 or fewer units which is organized pursuant to the Texas Condominium Act, TEX. PROP. CODE ANN., section 81.001 et seq., and where management of the complex is directly supervised by the council of owners or by an individual owner or owners.

Property owners association means an association of property owners for a residential subdivision, condominium, cooperative, town home project, or other project involving residential dwellings.

Public pool means any pool open to the general public, regardless of whether a fee is or is not charged for use of the pool.

Semipublic pool means any pool that is neither a private pool nor a public pool, as defined above. It includes, but is not limited to, any pool on the premises of, or part of, a hotel, motel, trailer court, manufactured home park, apartment project having more than ten units, condominium complex having more than 30 units which is organized pursuant to the Texas Condominium Act, condominium complex which is organized pursuant to the Texas Condominium Act where management of the complex is not directly supervised by the council of owners or by an individual owner

or owners, country club, private club, camp, community association, or other similar establishment or area where the primary business of the establishment is not the operation of a pool and where admission to the use of the pool is included in the fee, or consideration paid or given, for the primary use of the premises, or where admission to the use of the pool is limited to members or residents and their guests regardless of whether a fee is or is not charged for use of the pool.

State regulated pool means a permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over 18 inches deep, located at ground level, above ground, below ground or indoors that is owned, controlled, or maintained by the owner of a multiunit rental complex or by a property owners association. (Ord. No. 85-1326, § 1, 7-31-85; Ord. No. 92-184, § 1, 2-19-92; Ord. No. 94-1268, § 4, 11-22-94; Ord. No. 96-732, § 1, 7-17-96; Ord. No. 02-399, § 89, 5-15-02)

Sec. 43-17. Approval of plans and specifications.

(a) The health officer shall promulgate such reasonable rules and regulations as may be necessary to protect the health, safety and welfare of the public regarding the design, construction and installation of all pools. Such rules and regulations shall not conflict with any applicable provisions of this Code or the Construction Code. All rules and regulations so promulgated shall be kept on file for public inspection at the office of the city secretary and at the office of the health officer. A copy of the rules and regulations shall be provided to any person upon payment of the fees prescribed by law. Plans and specifications for the installation, construction, or reconstruction of all pools shall comply with the rules and regulations promulgated hereunder by the health officer and with all other applicable laws and ordinances. Any person desiring to install, construct or reconstruct a pool shall submit three copies of his plans and specifications to the health officer for his approval, together with the applicable review fee specified in subsection (b), below, before any installation, construction or reconstruction is begun. Upon review of the plans and specifications, the health officer shall determine whether the

work proposed is in conformity with this Code and the rules and regulations issued under this article. He shall note his approval or rejection on one of the copies of the plans and specifications furnished and return the same to the applicant. If rejected, the health officer shall note the reason or reasons therefor on the plans and specifications. No building permit shall be issued for the pool by the building official until the plans and specifications therefor have been approved by the health officer, and all requirements for issuance of the permit under the Construction Code have been met.

(b) The fees for review of plans and specifications by the health officer for installation, construction or reconstruction of pools are set out below. If the plans and specifications call for installation, construction or reconstruction of more than one pool, the appropriate fee as set out below shall be paid for each pool. The fees shall be paid to the health officer and shall be in addition to all applicable fees as set out in the Construction Code and in this article for the operation of the pool. The health officer shall not review any plans and specifications until and unless the applicable fee has been paid for review of the plans and specifications by the health officer. Any fee paid under this section is not refundable, even if the plans and specifications are rejected. The fee for each subsequent review of any one pool's set of plans and specifications that have been changed or revised in any manner shall be one-half of the original review fee set forth below.

Fees for Review of Plans and Specifications:

- (1) For any one private pool . . . \$25.00.
- (2) For any one semipublic or public pool 160.00

(c) All work performed shall conform to the plans and specifications approved by the health officer. Changes or revisions shall not be permitted unless prior approval of the health officer has been obtained. In the event that the building official requires any changes or revisions in any pool plans and specifications as a condition of the issuance of a building permit, such plans and specifications as revised must be resubmitted to the health officer for approval as revised prior to the issuance of the building permit. It shall be

unlawful for any person to install, construct or reconstruct, or to suffer or permit the installation, construction or reconstruction of any pool except in accordance with plans and specifications for such pool which have been approved under this section by the health officer.

(Ord. No. 85-1326, § 1, 7-31-85; Ord. No. 90-635, §§ 144, 145, 5-23-90; Ord. No. 02-399, § 90, 5-15-02; Ord. No. 02-528, § 13e., 6-19-02)

Sec. 43-18. General criteria.

(a) The sides and bottoms of all pools shall be white or a light color so that objects may be clearly seen in all parts of the pool.

(b) A pool shall not be constructed so as to discharge its wastes to a sanitary sewer or other public drainage system unless such discharge is approved in writing by the health officer and the utility official.

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

(d) Each public pool shall provide sufficient showerheads with adjoining drains to permit individuals using the pool to rinse the surface of their bodies before entering the pool. All such facilities shall be maintained in good working condition.

(Ord. No. 85-1326, § 1, 7-31-85; Ord. No. 90-635, § 146, 5-23-90)

Sec. 43-19. Enclosure of pools.

(a) *General.* Owners of land or premises upon which pools or pool yards are situated shall comply with the subsection (b) or (c) of this section, whichever is applicable, regarding the enclosure of their pools.

(b) *Pools other than state regulated pools.* This subsection applies to all pools other than state regulated pools, and the term "pool" shall be so construed where used in this subsection. Every owner of land or premises within the corporate limits of the city, upon which is situated a pool shall at all times maintain upon such land or premises on which the pool is located, a fence, wall or barrier completely surrounding and enclosing such pool and such land or premises. The fence, wall or barrier shall be not less than four feet in height with no openings, holes or gaps larger than four inches as measured in any direction, except that such openings for a picket fence or a picket-type fence (one composed primarily of vertical members) shall be measured in a horizontal direction between members. Gates and doors opening directly into any enclosure of such land or premises as required by this section shall be equipped with self-closing and self-latching devices designed to keep and capable of keeping such doors or gates securely closed at all times when not in actual use. Said latching devices shall be attached to the upper quarter of such gates or doors. The door of any dwelling occupied by human beings and forming any part of the enclosure hereinabove referred to need not be so equipped. A building or existing wall may be used as part of any fence, wall or barrier constructed as required herein.

(c) *State regulated pools.* This subsection applies to all state regulated pools. Every owner of a state regulated pool shall comply with all applicable requirements of chapter 757 of the Texas Health and Safety Code, including provisions relating to enclosures for pool yards, gates, doors, windows and window screens, buildings in pool yards and all other applicable requirements.

(d) *Criminal enforcement.* Failure to comply with this section is unlawful and violations shall be punishable by a fine of not less than \$200.00, nor more than \$1,000.00. Each day that any violation continues is a separate offense.

(e) *Enforcement by dangerous building process.* The city hereby adopts subsections (b) and (c) of this section, above, as its minimum standards for swimming pool fences and enclosures. The health officer shall issue a report to the

neighborhood protection official regarding any swimming pool enclosure or fence that is damaged, deteriorated, substandard, dilapidated or otherwise in a state that poses a hazard to the public health, safety and welfare. In accordance with the applicable procedures established in section 214.101 of the Texas Local Government Code and the laws referred to therein, the neighborhood protection official shall cause the dangerous condition to be abated by the owner or by the city. A lien for city costs shall be placed as provided in subsection (e) of section 214.101. The lien shall include administrative expenses and shall bear interest in the same manner provided in section 10-373 of this Code.

(f) *Suit authorized.* In any instance in which the director of health and human services determines that conventional remedies provided in subsections (d) and (e) of this section above have not been effective for the abatement of a dangerous condition at a state regulated pool, then the director may request in writing that the city attorney bring an action under section 757.012 of the Texas Health and Safety Code. No further authority shall be required for the filing and prosecution of the suit, and the city attorney may seek all relief authorized under section 757.012 or otherwise by law or in equity.

(Ord. No. 85-1326, § 1, 7-31-85; Ord. No. 91-1101, § 2, 7-24-91; Ord. No. 96-732, § 2, 7-17-96; Ord. No. 98-613, § 65, 8-5-98)

Editor's note—Section 2 of Ord. No. 91-1101, adopted July 24, 1991, repealed § 43-19(d) in its entirety. Prior to such ordinance, subsection (d) pertained to exemptions which no longer are in effect.

Cross reference—Fencing abandoned swimming pools, § 28-12.

Sec. 43-20. Pool maintenance and operation.

(a) No person shall maintain and operate a pool in a manner constituting a hazard to the public health.

(b) No object not related to the safety, sanitation or recreational uses of the pool shall be permitted to be in any pool.

(c) All pumps, valves, drains, piping, in-pool lighting, diving structures, ladders, ropes, and other appurtenant equipment used in the opera-

tion of any pool shall be maintained in good working condition. All pools shall have a pump and filter in good working condition. The pump and filter shall be in operation 24 hours a day or at regular intervals controlled by a timing device as necessary to maintain the water in compliance with this article and the regulations promulgated hereunder.

(d) Disinfection equipment used for all pools, including equipment for chlorination, bromination, or other approved means of disinfection, that include in their scheme of operation hazardous, noxious, or toxic materials, shall be maintained in good working condition, free from atmospheric leaks, and shall be inspected by the owner or operator at least once each month to ensure safety.

(e) All water used in pools shall be treated and maintained in accordance with the following standards:

- (1) For pools that are not hydrotherapy spas, a minimum free chlorine residual of 1.0 parts-per-million (p.p.m.) units of water shall be maintained continually.

For hydrotherapy spas, the minimum free chlorine residual of 2.0 parts-per-million (p.p.m.) units of water shall be maintained continually.

- (2) Clarity shall be sufficient such that the main drain lying on the floor of the pool at its deepest point is clearly visible or an eight-inch black disk placed in the deepest point of the pool is clearly visible at all times, regardless of whether the pool is or is not in use.
- (3) Pool water shall not show an acid reaction to a standard Ph test.
- (4) The maximum water temperature of a hydrotherapy spa as measured within six inches of the surface shall be 104 degrees Fahrenheit (40 degrees Celsius), and each hydrotherapy spa shall have a thermostatic control for the water.
- (5) A 100 milliliter sample of pool water shall not show any coliform bacteria present as determined by either the fermentation or membrane filter technique.

- (6) Pool water shall be free of algae.

(f) No person shall operate a pool between the hours of 7:00 p.m. and 6:00 a.m. unless said pool is equipped with lighting, either in-pool or outside-pool, sufficient to illuminate the entire perimeter of the pool sides and the bottom of the pool, including the main drain lying on the floor of the pool at its deepest point.

(Ord. No. 85-1326, § 1, 7-31-85)

Sec. 43-21. Operating permits.

(a) No person shall permit or suffer any public or semipublic pool to be in existence upon any premises under his ownership, possession or control unless there is a current operating permit in effect for the pool. Each public and semipublic pool shall have a separate operating permit. A permit shall expire one year from the date of its issuance or upon transfer of the ownership of the pool, whichever occurs first, unless prior revoked in accordance with the provisions of this article.

There is hereby imposed an operating permit inspection fee of \$85.00.

Upon the receipt of an application for an operating permit and the applicable inspection fee, the health officer shall cause an inspection of the pool to be made to ascertain that all the particulars of this article have been complied with.

If the pool fails to pass inspection in any of the particulars set out in this article, the application for an operating permit shall be denied and the fee paid therefor shall not be returned. Applicants who are denied an operating permit may reapply for such permit at any time by submitting a new application and paying the inspection fee therefor. An operating permit shall not be issued until the pool passes inspection in all the particulars of this article.

(b) Each permit shall be personal to the owner of the pool to whom it is issued. When the ownership of a pool for which a permit has been issued under this article is transferred, the permit shall expire. No permit shall be issued to the new owner without inspection and payment of the operating fee as provided in subsection (a) above.

(c) No person shall operate, or cause to be operated, or permit the operation of any pool without an operating permit as required herein or of any pool for which an operating permit has been suspended or revoked.

(d) Each holder of an operating permit shall ensure that the pool for which he holds an operating permit conforms at all times to the requirements of this article.

(Ord. No. 85-1326, § 1, 7-31-85; Ord. No. 91-1101, § 1, 7-24-91; Ord. No. 02-528, § 13f., 6-19-02)

Sec. 43-22. Pool use.

(a) No individual in an intoxicated condition or afflicted with tuberculosis or any other communicable disease shall use any public or semipublic pool. No person operating a public or semipublic pool shall knowingly permit any individual in an intoxicated condition or afflicted with tuberculosis or any communicable disease to use said public or semi-public pool.

(b) No person operating a public or semipublic pool shall permit animals to enter or remain in said public or semipublic pool.

(c) No person operating a public pool shall permit an individual to enter the water in a public pool without requiring that individual to rinse his entire body through the use of a shower or other similar device maintained and used for such purpose.

(d) No glass containers of any kind shall be allowed in or within five feet of a public or semipublic pool.

(e) It shall be the duty of the owner of each public pool to ensure that at least one lifeguard is on duty and stationed within 20 feet of the water's edge of the pool at any time that the pool is open for use.

(Ord. No. 85-1326, § 1, 7-31-85)

Sec. 43-23. Inspection of pools.

The health officer is hereby empowered to inspect all pools to protect the public health and to ensure compliance with the provisions of this article, provided that in all cases where permis-

sion to inspect is denied, the health officer shall first obtain an administrative search warrant pursuant to the provisions of this Code.

(Ord. No. 85-1326, § 1, 7-31-85)

Sec. 43-24. Notice of violation; suspension and revocation of operating permits.

(a) When the director or acting director of the department determines that a pool for which an operating permit is in effect is in violation of any of the provisions of this article or is a hazard to the public health, then the director or acting director shall deliver to the permit holder, by hand delivery or certified mail, return receipt requested, or by posting in a conspicuous place near the pool, a notice which shall set forth:

- (1) The specific conditions of the pool which are in violation of this article or are a hazard to public health; and
- (2) The specific conditions under which the pool may be put into compliance with the provisions of this article or no longer be a hazard to the public health.

If the director or acting director determines that a pool constitutes an immediate hazard to public health, such notice shall not be required to be given to the permit holder prior to suspension of the operating permit for the pool.

(b) When the director or acting director of the department determines that a pool for which a current operating permit is in effect is still in violation of any of the provisions of this article or is a hazard to the public health after the passage of ten days following the permit holder's receipt of the notice given pursuant to subsection (a) of this section, the operating permit may be suspended pursuant to the following procedures:

- (1) Written notice of a hearing to suspend an operating permit shall be given to the permit holder, or to the person in charge of the pool, or to any agent or employee of the permit holder. Such notice shall set forth:

- a. The specific conditions of the pool that are in violation of this article; or

- b. The specific conditions that constitute a hazard to public health; and
- c. That a hearing will be held before the director of the department or a hearing officer designated for such purpose; and
- d. The date, time, and place of such hearing and the issues to be determined; and
- e. That the permit holder may appear in person or be represented by counsel, and that he or his counsel may present testimony and cross-examine all witnesses.

Such hearing shall be held in the manner described above, pursuant to rules consistent with the nature of the proceedings, not later than ten working days after the date the notice is given. Any hearing officer designated by the director to conduct the hearing shall have no connection to nor prior knowledge of the circumstances that are to be the subject of the hearing, other than that a violation of this article or a hazard to the public health is alleged to have occurred.

- (2) At the hearing, the city shall present sufficient evidence to establish a prima facie case showing violation of this article or existence of conditions constituting a hazard to public health.
- (3) If the director or hearing officer finds that the conditions of the pool violate the requirements of this article or that the pool constitutes a hazard to public health, the director or hearing officer shall make written findings of fact and shall order the operating permit suspended until all violations of this article are corrected and any conditions constituting a hazard to public health are eliminated.

If the director or hearing officer finds that the public interest will be adequately protected by a warning, he may issue such warning without ordering suspension of the operating permit.

The director of the department or the hearing officer shall render a decision within five working days after the date of the hearing.

A copy of the findings of fact and order of the director or hearing officer shall be sent by certified mail, return receipt requested, to the operating permit holder.

- (4) Whenever the reasons for a suspension no longer exist, the operating permit holder, in writing, shall so notify the director or acting director and request an inspection. Such inspection shall be conducted as soon as possible after receiving the request and in no event later than three regular working days after receipt of the request for inspection. If the pool for which the operating permit has been suspended passes inspection, the operating permit shall be reinstated at no charge to the permit holder.
- (c) The director or acting director of the department may revoke an operating permit if:
 - (1) The permit holder or his agents or employees interfere with an inspection of the health officer or his authorized agents; or
 - (2) There are repeated or serious violations of this article.

Notice and hearing for revocation of an operating permit shall be conducted in the same manner as that set out for suspension in subsection (b) above.

(d) If the director or acting director determines that a pool constitutes an immediate hazard to public health, he may order such pool closed immediately, and give notice as set out in subsection (b) above, provided that the suspension or revocation hearing shall be set within 48 hours of the pool's closure.

(Ord. No. 85-1326, § 1, 7-31-85)

Sec. 43-25. Appeals.

Any decision of the health officer regarding approval of pool plans and specifications or issuance of an operating permit may be appealed by the applicant by filing a written notice of appeal

to the director of the department within ten days after the applicant receives notice of the decision complained of. Said director or a hearing officer he may designate for such purpose shall conduct a public hearing thereon in the same manner as that set out in section 43-24(b) of this article, and render a decision within 15 days of receipt of the notice of appeal.

(Ord. No. 85-1326, § 1, 7-31-85)

Sec. 43-26. Penalties.

(a) Any person who violates or suffers or permits or causes the violation of any provision of this article, shall be guilty of a misdemeanor, and, upon first conviction, shall be assessed a fine of not less than \$250.00 nor more than \$2,000.00 and upon second and succeeding convictions such person shall be fined not less than \$500.00 nor more than \$2,000.00.

(b) Each day that any violation may continue shall constitute a separate offense. It shall be an affirmative defense to prosecution under any of the provisions of this article that the pool that fails or failed to comply with the requirements of this article was, at the time of the alleged violation, out of service and was filled or fenced in compliance with the provisions of section 28-12 of the Code.

(c) The city attorney is hereby authorized to file and maintain all necessary legal actions to enjoin any violation(s) of this article within the city limits.

(Ord. No. 85-1326, § 1, 7-31-85; Ord. No. 91-1101, § 3, 7-24-91)

Sec. 43-27. Exemption of certain pools.

Nothing in this article shall be construed to apply to any pool owned by the state or any of its political subdivisions.

(Ord. No. 85-1326, § 1, 7-31-85)

Sec. 43-28. Landlord/tenant.

The terms of this article shall not be construed to alter the terms of any lease or other agreement between landlord and tenant or others relating to property that is the subject of this article; provided that no provision of any lease or other

agreement shall be construed to excuse compliance with this article by any person. It is the intent of this article to identify the parties the city will hold responsible for compliance with and violations of this article, rather than to determine the rights and liabilities of persons under agreements to which the city is not a party.

(Ord. No. 96-732, § 2A, 7-17-96)

ARTICLE III. RESERVED*

***Editor's note**—Section 5 of Ord. No. 85-1326, enacted July 31, 1985, repealed the provisions of former Art. III. The repealed sections, §§ 43-36—43-38, pertained to fencing of swimming pools and derived from §§ 36-161—36-163 of the 1968 Code as amended by Ord. No. 77-497, §§ 1—3, enacted March 30, 1977 and Ord. No. 77-1341, § 1, enacted July 6, 1977.