

ARTICLE XVIII. PUBLIC SWIMMING POOLS AND SPAS*

***Editor's note:** Ord. No. 16313, § 1, adopted March 1, 2005, amended the title of Art. XVIII to read as herein set out. Prior to inclusion of said ordinance, Art. XVIII was entitled, "Public Swimming Pools." See also the Code Comparative Table.

Sec. 16-456. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Article, shall have the meanings hereinafter designated.

Deck means the surface surrounding a swimming pool that is intended to be used for walking by those using the pool.

Director means the director of the department of public health for the city, or the director's authorized representative.

Extensively remodeled means the replacement of or modification to a pool/spa structure, its circulation system or its appurtenances, so that the design, configuration or operation is different from the original design, configuration or operation. This term does not include the normal maintenance and repair or the replacement of equipment, which has been previously approved if the size, type or operation of the equipment is not substantially different from the original equipment.

Free available chlorine means that portion of the total chlorine remaining in chlorinated water that is not combined with ammonia or nitrogen compounds and that will react chemically with undesirable or pathogenic organisms.

Interactive spray ground or attraction means a swimming pool into which water is sprayed but not allowed to pond at the bottom.

May means an act or omission is permissive.

Nationally accredited pool/spa operator means a person who obtains certification by completion of one (1) of the following courses or other nationally recognized course in pool and spa operation, safety and management:

- (1) NRPA, "Aquatic Facility Operator" (A.F.O.); or
- (2) NSPF, "Certified Pool-Spa Operator" (C.P.O.); or
- (3) Y.M.C.A., "Pool Operator on Location" (P.O.O.L.); or
- (4) NSPI, "Professional Pool & Spa Operator" (P.P.S.O.); or
- (5) ASPSA, "Licensed Aquatic Facility Technician" (L.A.F.T.); and
- (6) Possesses a valid and current certificate of accreditation.

pH means the negative logarithm of the hydrogen-ion concentration of a water solution; a measure of the acidity or alkalinity of a solution expressed in standard units.

Pool means any manmade permanently installed or non-portable structure, basin, chamber or tank containing an artificial body of water that is used for swimming, diving, 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 decorative fountain that is not intended to be used as a pool. References within the standard to various types of pools are defined by the following categories:

(A) *Class A pool* means any pool used, with or without a fee, for accredited competitive aquatic events such as Federation Internationale de Natation Amateur (FINA), United States Swimming, United States Diving, National Collegiate Athletic Association (NCAA), National Federation of State High School Associations (NFSHSA), events. A "Class A" pool may also be used for recreation.

(B) *Class B pool* means any pool used for public recreation and open to the general public with or without a fee.

(C) *Class C pool* means any pool operated for and in conjunction with: (i) lodging such as hotels, motels, apartments, condominiums, or mobile home parks; (ii) property owner associations, private organizations, or clubs (including but not limited to country clubs); or (iii) a school, college or university while being operated for academic or continuing education classes. The use of such a pool would be open to occupants, members or students, etc., and their guests but not open to the general public.

(D) *Class D pool* means a wading pool with a maximum water depth of twenty-four (24) inches at any point.

Pool area means the water surface and deck of a swimming pool.

Public swimming pool means any swimming pool other than a private swimming pool. The term shall include the deck and all related facilities such as dressing and locker rooms, toilets, showers, and other areas designed for use by the facility's patrons.

Residential pool or spa means a pool or spa that is located on private property under the control of the property owner or the owner's tenant and that is intended for use by not more than two (2) resident families and their guests. It includes a pool or spa serving only a single-family home or duplex.

Shall means an act or omission is mandatory.

Should means an act or omission is recommended but not mandatory.

Spa means 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 hydrojet circulation, hot water, cold water, mineral baths, air induction bubbles, or any combination thereof.

TAC means the Texas Administrative Code.

Trained pool/spa operator means a person who has attended at least seven (7) hours of pool/spa operation and safety training within the past three (3) years that is approved by the director and who has achieved a score of seventy (70) percent or more on the end of the course examination.

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, §§ 2, 3, 3-1-05)

Sec. 16-457. Purpose.

The purpose of this article is the establishment of minimum standards for the construction, operation and maintenance of public swimming pools and their related facilities in order to protect the health and safety of the public.

(Ord. No. 12156, § 1, 9-12-95)

Sec. 16-458. Fees.

- (a) The city council shall adopt a schedule of fees for:
 - (1) Public pool and spa permits, including an additional fee for the reissuance of a permit after its expiration;
 - (2) Re-inspection;
 - (3) Plans review;
 - (4) Change of ownership; and
 - (5) Pre-permit requests for services.
 - (b) The public health department may not issue a permit or conduct a plans review until all requisite fees have been paid.
 - (c) The fee schedule shall be available to the public at the public health department, consumer health division.
- (Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 4, 3-1-05)

Sec. 16-459. Swimming pool permit required.

A person commits an offense if the person owns, operates, or manages a public swimming pool without a valid permit issued by the director.

(Ord. No. 12156, § 1, 9-12-95)

Sec. 16-460. Issuance of permit.

- (a) A person required to have a permit under this article shall annually complete a permit application on a form prescribed by the director.
 - (b) Prior to the issuance of permit, the applicant shall allow the director to inspect the public pool/spa for compliance with the requirements of the article.
 - (1) The director will inspect any public pool/spa that is newly constructed, extensively remodeled, or under new ownership prior to the issuance of a permit.
 - (2) The director may inspect all other public pools/spas, at the director's discretion, prior to the issuance of a permit.
 - (3) The owner/operator of a public pool/spa shall be responsible at all times for the safe operation of the public pool/spa and for operating the public pool/spa in compliance with this article.
 - (c) The director may require the applicant to provide evidence to the director's satisfaction that the public swimming pool/spa meets the permit conditions of section 16-462.
 - (d) The director may not issue a permit until the public swimming pool/spa passes any required inspection and all applicable fees have been paid.
 - (e) A permit is valid only for the public pool/spa for which it is issued. A separate permit shall be required for each pool/spa located on the same premises. Multiple pools sharing a common filtration system must have separate health permits. A permit is not transferable to other persons, pools or spas.
 - (f) A permit is valid for one (1) year from the date of its issuance unless:
 - (1) It is suspended or revoked by the director;
 - (2) The pool/spa changes ownership; or
 - (3) The pool/spa is remodeled extensively.
- (Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 5, 3-1-05)

Sec. 16-461. State standards adopted and applied.

The standards of the following regulatory materials, in their current form and as they may hereafter be amended, are adopted and applied into this article as if they were set forth at length herein:

(a) Health and Safety Code, Title 5. Section 341.064 "Swimming Pools and Bathhouses".

(b) Title 25 of the TAC, Part I, Chapter 265 Subchapter L, "Standards of Public Pools and Spas".

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 6, 3-1-05)

Sec. 16-462. Permit conditions.

As a condition of obtaining and keeping a permit, a public pool or spa shall at all times be in compliance with the following permit conditions:

(a) The public pool/spa shall meet or exceed the standards set forth in Texas Health and Safety Code, § 341.064, "Swimming Pools and Bathhouses", as currently enacted or as it may hereafter be amended.

(b) The public swimming pool/spa shall meet or exceed the standards set forth in 25 TAC, Chapter 265, Subchapter L, "Standards of Public Pools and Spas", as currently enacted, or as it may hereafter be amended.

(c) Fencing or other enclosures for the public swimming pool/spa shall meet or exceed the requirements of Chapter 7, "Buildings", of the Code of the City of Fort Worth, Texas (1986), as amended, V.T.C.A. Health and Safety Code, Chapter 757, "Pool Yard Enclosures", as currently enacted, or as it may hereafter be amended, and the standards set forth in 25 TAC, Section 265.200, "Pool Yard and Spa Yard Enclosures for Post-10-01-99 and Pre-10-01-99 Pools and Spas."

(d) Pool or spa yard enclosures.

(1) All Class C and D pools and spas, must have an enclosure. Any existing pool or spa that does not have an enclosure shall construct an enclosure in compliance with this subsection. Such enclosure on existing pools and spas not subject to the Health and Safety Code, Chapter 757, shall be upgraded to the standards set forth in this article by January 7, 2007. Enclosures on existing pools/spas subject to the Health and Safety Code, Chapter 757, that are not in compliance, shall be upgraded to the standards of Chapter 757 by January 7, 2007.

(2) The pool or spa yard enclosure shall consist of one (1) or a combination of the following: a fence, portion of a building, wall or other durable enclosure. Doors, openable windows, gates of living quarters or associated private premises shall not be permitted as part of the pool/spa enclosure. The enclosure, doors and gates shall meet the following specifications:

a. Minimum effective perpendicular height of at least forty-eight (48) inches as measured from the deck surface or ground on the outside of the fence.

b. Be designed and constructed so that it cannot be readily climbed by small children. If the enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least forty-five (45) inches, the openings shall not allow the passage of a four-inch diameter sphere.

- c. If the pool/spa yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is less than forty-five (45) inches, the openings may not allow a sphere one and three-fourths (1 3/4) inches in diameter to pass through the enclosure.
 - d. Planters or other structures that may allow children to climb the fence shall not be permitted to encroach within thirty-six (36) inches measured horizontally from the outside of the fence.
 - e. Chain link shall not be used.
- (3) Gates and doors for the public pool or spa yard enclosure shall:
- a. Be equipped with self-closing and self-latching devices and be latched when the pool or spa is not in use. The self-closing device shall be designed to keep the gate or door securely closed and the self-latching device shall latch when the gate is allowed to close from anywhere in its range of operation, from its fully open position to a position where the gate is open six (6) inches from the fully closed position.
 - b. Open outward away from the pool or spa except for compliance with applicable city ordinances.
 - c. Have hand activated door or gate opening hardware located at least three and one-half (3 1/2) feet above the deck or walkway.
 - d. Be capable of being locked.
 - e. Be locked when a Class A or B pool or spa at a Class A or B facility is not opened for use.
 - f. Be locked when a pool/spa is closed as a result of a hazard or condition that warrants the closure and locking of the pool/spa.
- (4) The enclosure shall be designed and constructed so that all persons will be required to pass through common pool/spa enclosure gates or doors in order to gain access to the pool/spa area. All gates and doors exiting the pool/spa area shall open into a public area or walkway accessible by all patrons of the pool/spa.
- (e) All plumbing, electrical work, mechanical facilities, and structures for the swimming pool/spa shall meet or exceed all applicable requirements of Chapter 7, "Buildings"; Chapter 11, "Electricity"; and Chapter 26, "Plumbing", of the Code of the City of Fort Worth, Texas (1986), as amended.
 - (f) Storage of pool/spa chemicals shall meet or exceed all applicable requirements of Chapter 13, "Fire Prevention and Protection," of the Code of the City of Fort Worth, Texas (1986), as amended.
 - (g) Pool/spa water shall be maintained so as to prevent the breeding or harborage of insects.
 - (h) Pool/spa water shall not emit odors that are foul and offensive to a person of reasonable sensibilities.
 - (i) Plumbing facilities shall be installed so that swimming pool/spa filter backwash is filtered and recycled in a manner approved by the water department.
 - (j) A permit holder or applicant shall give the director access at all reasonable times to inspect the swimming pool/spa and to take water samples to determine compliance with this article.
 - (k) A swimming pool/spa permit shall be prominently displayed on the pool/spa premises and be available at all times for inspection by the director.

- (l) Drainage from public swimming pools/spas shall be discharged to the sanitary sewer system only with the prior consent of the water department or that director's authorized representative.
- (m) All Class D pools/spas constructed after the adoption of this article will have separate filtration systems and the recirculation system shall turn over the entire pool/spa water capacity at a minimum of once every thirty (30) minutes based on the manufacturer's recommended turn over rate with a clean filter.
- (n) The spray water from any interactive spray ground or attraction that is accessible to the public shall be released into the sanitary sewer and will not be recirculated.
- (o) All post-10-01-99 pool and spa changing/bathing areas shall be equipped with at least one (1) diaper changing station(s) per restroom. Each changing station will be manufactured from smooth and easily cleanable sturdy materials and maintained in good repair at all times when the pool/spa is open. Each diaper changing area will be equipped with hand washing sinks and supplied with hot and cold running water and soap for hand washing and disposable towels or air hand drying device.
- (p) A sign visible from the pool/spa yard enclosure shall state in at least two-inch letters "DIAPER CHANGING IN THE POOL/SPA AREA IS PROHIBITED".
(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 7, 3-1-05)

Sec. 16-463. Plans review; new and remodeled pools and spas.

- (a) Prior to beginning the construction of a new swimming pool/spa or the extensive remodeling of an existing swimming pool/spa, the owner shall submit plans and specifications for such construction or remodeling to the director for review.
- (b) The plans and specifications shall indicate the proposed layout and arrangement of mechanical, plumbing, fencing, electrical, construction materials of work areas, the type and model of proposed fixed equipment and facilities, and all associated buildings or structures.
- (c) A licensed professional engineer shall examine the final pool/spa design/blueprints for all new and extensively remodeled pools/spas (including structural, mechanical, plumbing, or electrical renovations) and certify by original signature and engineer's seal compliance with 25 TAC Sections 265.183 to 265.201 and Sections 265.205(a) to 265.206(d), "Standards for Public Pools and Spas".
- (d) No work shall begin until the director has received the engineer's certificate of pre-construction, conducted a plans review and has relayed to the development department that a building permit may be issued. Work shall commence and conclude within the time allowed by such permits. Deviations from approved plans shall not be permitted. If no work has begun within one hundred eighty (180) days from the date the director has given written notice that work may begin, the director may rescind such advisory.
- (e) The pool or spa construction shall pass a pregunite inspection, preplaster inspection, and preoperational inspection by the director prior to issuance of a permit.
- (f) A licensed professional engineer shall inspect the completed new or renovated pool/spa construction and certify by original signature and engineers seal that the pool/spa is installed and constructed in accordance with the 25 TAC Sections 265.183 to 265.201 and Sections 265.205(a) to 265.206(d), "Standards of Public Pools and Spas".
(Ord. No. 12156, § 1, 9-12-95; Ord. No. 13749, § 1, 3-23-99; Ord. No. 16313, § 8, 3-1-05)

Sec. 16-464. Pre-operation inspection.

Whenever plans and specifications are required to be submitted to the director of public health by section 16-463 of this article, the director or the director's duly authorized representative shall inspect the pool/spa prior to the start of operations, to determine compliance of the approved plans and specifications with the requirements of this article and regulations of the Texas Department of State Health Services.

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 9, 3-1-05)

Sec. 16-465. Nationally accredited or trained pool/spa operators.

(a) The owner or person in control of a public swimming pool/spa shall designate one (1) or more nationally accredited or trained pool/spa operators for the pool/spa as required. A nationally accredited or trained pool/spa operator shall be readily available on-site or by recall to be on-site within one (1) hour during all hours of operation to monitor the public swimming pool/spa and maintain it in a safe and sanitary manner.

(b) New and existing Class A, B, and D pools and spas, located at Class A and B facilities shall be required to have a nationally accredited pool/spa operator.

(c) New and existing Class C and D pools and spas shall be required to have trained pool/spa operators. In order to be considered trained, a pool/spa operator shall successfully complete a course in pool/spa maintenance and safety approved by the director.

(d) A person commits an offense if the person owns or is in control of a public swimming pool/spa that does not have a nationally accredited or trained pool/spa operator readily available during all hours of pool/spa operation.

(e) A person who owns or is in control of a public swimming pool/spa shall maintain proof by posting prominently on the premises that the pool/spa has a designated nationally accredited or trained pool/spa operator certificate and shall present such proof to the director upon demand.

(f) In a prosecution for a violation of subsection (d), failure to present proof of a designated nationally accredited or trained pool/spa operator to the director shall constitute prima facie evidence that a nationally accredited or trained pool/spa operator is not readily available during all hours of operation.

(g) Class C and D Pools and Spas:

(1) If a trained pool/spa operator is not employed on-site at the public swimming pool/spa, the owner or person in control of the pool/spa shall post a sign visible from the deck of the pool/spa stating the telephone number or pager number of the trained pool/spa operator. The letters in such signs shall be of a minimum height of one (1) inch, and shall be of a color contrasting to their background.

a. At a minimum, such signs shall state:

"TO REPORT MECHANICAL, SAFETY OR WATER QUALITY PROBLEMS WITH THIS FACILITY, CALL _____ DURING HOURS OF OPERATION."

b. Such signs shall be of weather-resistant construction, and shall be posted where they are readily visible to a reasonably observant person.

(2) A person commits an offense if the person owns or is in control of a swimming pool/spa with no trained pool/spa operator employed on-site and fails to post or maintain signs required by subsection (g)(1)(a) and (b).

(i) Permit applications for new and existing Class A, B, and D pools and spas located at Class A and B facilities shall name the designated nationally accredited pool/spa operator for the public swimming pool/spa for which a permit is sought. If the designated nationally accredited pool/spa operator changes during the term of the permit, the owner or person in control of the pool/spa shall immediately report such change to the director.

(j) A person commits an offense if the person owns or is in control of a public swimming pool/spa and knowingly fails to report a change of a nationally accredited pool/spa operator as required by subsection (i).

(k) The director shall charge a fee set by the city council for any courses or tests the director administers pursuant to this section.

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 10, 3-1-05)

Sec. 16-466. Maintenance of pool/spa records.

(a) When Class A, B, and D pools and spas, located at Class A and B facilities are open for use, water quality tests for disinfectant level and pH shall be conducted at least every two (2) hours. To assure proper disinfectant levels and pH, tests shall be conducted more frequently if necessary. If a system is used to automatically control disinfectant and pH, testing for disinfectant level and pH shall be made at least once per day.

(b) When a Class C or D pool or a spa located at a Class C facility is open for use, water quality tests for disinfectant level and pH will be made one (1) or more times per day. To assure proper disinfectant levels and pH, tests shall be conducted more frequently if necessary.

(c) Disinfectant levels and pH will be recorded following each test and the operational record of tests shall be kept for two (2) years and will be made available upon request by the director.

(d) Test methods shall be capable of measuring chemical ranges as set forth in 25 TAC Chapter 265 without dilution of pool or spa water.

(e) To ensure compliance with applicable codes, all pool and spa facilities shall record the inspections and make repairs, as necessary, of the following:

(1) Ground fault circuit interrupters for pool/spa equipment shall be tested weekly;

(2) Condition of pool/spa yard enclosure and gates shall be inspected weekly; and

(3) Emergency telephone operation shall be tested monthly.

(f) A person commits an offense if the person owns, is in control of, or is a nationally accredited or trained pool/spa operator of a public pool/spa and fails to maintain records as required by this section.

(g) A person commits an offense if the person owns, is in control of, or is a nationally accredited or trained pool/spa operator of a public swimming pool/spa and fails to make records required by this section available to the director immediately upon the director's request.

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 11, 3-1-05)

Sec. 16-467. Grounds for permit denial.

(a) The director may deny the issuance of a pool or spa permit:

(1) If the applicant for the permit of the pool(s)/spa(s) being permitted has been convicted of one (1) or more violations of this article, Texas Health and Safety Code §

341.064, TAC 25 Chapter 265 Subchapter L, or Health and Safety Code Chapter 757 within the twelve (12) months preceding the date of the application; or

(2) If any of the permit conditions of section 16-462 are not met.

(b) An applicant whose permit is denied will be notified by the director, in writing, within ten (10) days of the date of the denial. The director shall set out the grounds for the denial.

(c) The notice will be personally delivered to the applicant or sent by certified mail, return receipt requested, to the address listed on the application.

(d) An applicant whose permit is denied may request an appeals hearing within ten (10) days after service of the notice of denial. Such request shall be in writing, shall specify the reasons why the permit should not be denied, and shall be filed with the director.

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 12, 3-1-05)

Sec. 16-468. Grounds for suspension or revocation of permit.

After notice and hearing, the director may suspend for up to one hundred eighty (180) days or may revoke a public swimming pool/spa permit if:

(a) The permit holder or person in control of the public swimming pool/spa is convicted of a violation of this article or Texas Health and Safety Code, § 341.064, 25 TAC Chapter 265, Subchapter L, or Texas Health and Safety Code, Chapter 757 during the term of the permit.

(b) The permit holder or person in control of the pool/spa fails to comply with any of the permit conditions set forth in section 16-462.

(c) The permit holder or person in control of the pool/spa fails to comply with an inspection report order.

(d) The permit holder or person in control of the pool/spa disobeys a closure order issued by the director pursuant to this article.

(e) The permit holder made a materially false statement on the permit application or there is any false statement or misrepresentation as to a material fact in any plans and specifications submitted pursuant to this article.

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 13, 3-1-05)

Sec. 16-469. Right of entry.

(a) The director may enter the premises of public swimming pools/spas at all reasonable times whenever it is necessary to make an inspection to enforce any of the provisions of this article, to collect water samples, or whenever the director has probable cause to believe that a violation of this article exists on such premises.

(b) The director shall first present appropriate credentials and demand entry if the premises are occupied. If the premises are unoccupied, the director shall first make a reasonable attempt to locate the owner or person in control of the premises and demand entry.

(c) If entry is denied or if a person in control cannot be located, the director shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain a search warrant under the provisions of Article 18.05 of the Texas Code of Criminal Procedure.

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 14, 3-1-05)

Sec. 16-470. Inspection reports.

- (a) After inspecting a public swimming pool/spa pursuant to this article, the director may prepare a written inspection report. Such report may specify the violations observed during the inspection and order the owner or person in control to bring the facility into compliance with this article by a specified time.
- (b) The director shall furnish a copy of the inspection report to the owner or person in control of the facility.
- (c) The inspection report shall state:
"FAILURE TO COMPLY WITH THE ORDERS OF THIS REPORT MAY RESULT IN THE ISSUANCE OF CRIMINAL CITATIONS, THE CLOSURE OF THE FACILITY, THE SUSPENSION OR REVOCATION OF YOUR SWIMMING POOL/SPA PERMIT, AND THE EXERCISE OF ALL OTHER REMEDIES ALLOWED BY LAW."
- (d) A person commits an offense if the person owns or is in control of a public swimming pool/spa and fails to comply with an order issued pursuant to this Section. (Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 15, 3-1-05)

Sec. 16-471. Closure order.

- (a) The director may order a public swimming pool/spa closed if the director determines:
 - (1) That it is being operated without a valid public swimming pool/spa permit;
 - (2) That it is being operated without a nationally accredited pool/spa operator or trained pool/spa operator readily available during all hours of pool/spa operation; or
 - (3) That the continued operation of the pool/spa will constitute an imminent hazard to the health or safety of persons using the facility, or those in close proximity to the facility.
- (b) After the director closes a public swimming pool/spa, the owner or person in control of the pool/spa shall immediately:
 - (1) Properly post and maintain signs at all entrances to the public swimming pool/spa that state: "CLOSED UNTIL FURTHER NOTICE"; and
 - (2) Lock all doorways and gates that form a part of the public swimming pool/spa enclosure.
- (c) Signs required by subsection (b) shall be a minimum size of eight and one-half (8 1/2) inches by eleven (11) inches. The lettering shall be of a contrasting color to the background. Signs shall be positioned so that they are readily visible to a reasonably observant person.
- (d) If the owner or person in control of the public swimming pool/spa is absent, or fails or refuses to comply with subsections (b) and (c), the director may post signs and secure the premises in accordance with this section.
- (e) A person commits an offense if the person owns or is in control of a public swimming pool/spa subject to a closure order and fails to comply with subsections (b) or (c) of this section.
- (f) A person other than the director commits an offense if the person removes, defaces, alters, covers or renders unreadable a closure sign posted by the director.

(g) A person commits an offense if the person uses for swimming, diving or bathing a public swimming pool/spa that has been closed by the director and which is properly posted as required by this section.

(h) A person commits an offense if the person owns or is in control of a public swimming pool/spa subject to a closure order and knowingly allows persons to use the pool/spa for swimming, diving or bathing.

(i) A public swimming pool/spa closed by the director shall not resume operation until a reinspection by the director determines that the facility has been brought into compliance with this article.

(j) A permit holder may appeal a closure order to the director within three (3) days after the issuance of the order. The appeal shall be in writing, shall set forth the reasons why the closure order should be rescinded, and shall be filed with the director. The filing of an appeal does not stay the closure order.

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 16, 3-1-05)

Sec. 16-472. Hearings procedures.

(a) *General provisions.*

(1) When notice is required to be given to a person under this section, it shall be in writing and mailed certified mail, return receipt requested, to that person's last known mailing address.

(2) Notice shall specify the date, time and place of the hearing.

(3) Notice shall be deemed received five (5) days after it is placed in a mail receptacle of the United States Postal Service.

(4) For purposes of this section, the director shall be empowered to administer oaths and to promulgate procedural rules for the conduct of the hearing.

(5) Whenever any deadline specified in this section falls upon a Saturday, Sunday or a city-recognized holiday, the deadline shall be the next regular city business day.

(6) The date of an order or ruling required to be made under this section shall be deemed to be the date it is signed.

(7) The administrative remedies set forth in this section shall be in addition to any criminal penalties or other remedies provided in the ordinances of this city or the laws of this state.

(8) Decisions shall be made based on a preponderance of the evidence, with the city having the burden of proof.

(b) *Conduct of hearings.*

(1) Upon determining that cause exists to suspend or revoke a public swimming pool/spa permit, the director may schedule a hearing.

(2) Upon receipt of an appeal by a person whose public swimming pool/spa permit was denied or whose pool/spa was ordered closed, the director shall schedule a hearing for a time no later than ten (10) days following receipt of the request.

(3) The director shall send notice of the hearing to the person and shall act as the hearing officer.

(4) After the conclusion of the hearing, the director shall make written findings of fact and conclusions of law and shall issue a written decision without undue delay.

(5) This hearing shall be deemed to exhaust the administrative remedies of the person aggrieved.

(Ord. No. 12156, § 1, 9-12-95; Ord. No. 16313, § 17, 3-1-05)

Sec. 16-473. Nuisance.

(a) A public swimming pool/spa is hereby declared to be a nuisance if:

- (1) Pool/spa water clarity standards in 25 TAC Chapter 265, "Standards of Public Pools and Spas", are not maintained.
- (2) Water at the public swimming pool/spa is not maintained so as to prevent the breeding or harborage of insects.
- (3) Water at the public swimming pool/spa emits an odor that is foul and offensive to a person of reasonable sensibilities.
- (4) The owner/operator fails to maintain the pool/spa in compliance with this article, Texas Health and Safety Code § 341.064, TAC 25 Chapter 265 Subchapter L, Health and Safety Code Chapter 757 or ceases to operate the pool/spa.

(b) The director may give notice to the owner of the property on which a nuisance under this section is located to abate, remove or otherwise remedy such nuisance immediately.

(c) The notice must be given:

- (1) Personally to the owner in writing;
- (2) By letter addressed to the owner at the owner's post office address and sent by certified mail, return receipt requested; or
- (3) If personal service cannot be obtained or the owner's post office address is unknown:
 - a. By publication in the official newspaper of the city at least twice within ten (10) consecutive days; or
 - b. By posting the notice on or near the front door of each building on the property to which the violation relates; or
 - c. 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.
- (d) If the public swimming pool/spa has a valid or suspended permit issued pursuant to this article and the permit holder is not the same person as the owner of the property, notice shall also be given to the permit holder.
- (e) If the property owner does not comply with the notice within ten (10) days of service, the director may enter the property containing the nuisance and do any work necessary to abate the nuisance.

(f) If the immediate abatement of the nuisance is deemed necessary by the director to protect the public health, safety or welfare of the public from an imminent hazard, the director may, without complying with the notice provisions of this section, enter the property containing the nuisance and do or cause to be done any work necessary to abate the nuisance.

(g) All costs incurred by the city to abate a nuisance, including the cost of giving notice as required, shall initially be paid by the city and charged to the owner of the property. The city may assess the expenses against the real estate on which the work was done.

(h) To obtain a lien against the property, the director shall file a statement of expenses with the county clerk for the county in which the property is located. The lien shall be

security for the costs incurred and interest accruing at the rate of ten (10) percent per annum on the amount due from the date of payment by the city.

(i) The lien is inferior only to:

(1) Tax liens; and

(2) Liens for street improvements.

(j) The remedy provided by this section is in addition to all other remedies available under this article or elsewhere.

(Ord. No. 16313, § 18, 3-1-05)

Sec. 16-474. Penalties and enforcement.

(a) An offense as defined under this article is a Class C misdemeanor punishable by a fine not to exceed two thousand dollars (\$2,000.00). Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense.

(b) If an offense defined under this article does not include a culpable mental state, then one is not needed and the offense shall be one of strict liability.

(c) The director may establish enforcement procedures to ensure compliance with this article which are consistent with the regulations adopted herein.

(Ord. No. 16313, § 19, 3-1-05)

Secs. 16-475--16-485. Reserved.