

ORDINANCE NUMBER 948

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AMENDING CHAPTER 100 OF THE BURKBURNETT CODE OF ORDINANCES; REGULATIONS PERTAINING TO PUBLIC POOLS AND SPAS; DEFINING CERTAIN TERMS; CREATING AN OFFENSE FOR VIOLATION OF THE REGULATIONS AND ESTABLISHING A PENALTY; ESTABLISHING PROCEDURES FOR PERMITS AND CERTIFICATION OF MANAGERS OF OPERATIONS; AUTHORIZING INSPECTIONS; ESTABLISHING MAINTENANCE AND OPERATION PROCEDURES; PROVIDING FOR REGULATIONS IN THE POOL AND SPA AREA AND FOR SUSPENSION OF A PERMIT; ADOPTING DESIGN STANDARDS; PROVIDING FOR REVIEW OF REPAIR PLANS AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Article III, Section 2 of the Charter of the City of Burkburnett, Texas (the “City”) authorizes the City to adopt, amend, and enforce all ordinances necessary to protect the health and life of the City and its inhabitants; and

WHEREAS, the Board of Commissioners of the City has determined that the regulations amended in this ordinance are necessary to protect the health and life of the City and its inhabitants; and

WHEREAS, this ordinance was adopted at a meeting of the Board of Commissioners which was open to the public and was preceded by proper notice, as required by Chapter 551 of the Texas Government Code (the Open Meetings Act);

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS:

SECTION 1. Amending, Chapter 100. That Chapter 100 of the Code of Ordinances of the City of Burkburnett, Texas, be amended as follows:

CHAPTER 100: REGULATION OF PUBLIC POOLS

State law reference—Public pools and spas, V.T.C.A., Health, and Safety Code § 341.064 et seq.

§ 100.01 ADOPTION OF RULES AND REGULATIONS

(A) The standards of the following statutes, laws, and regulations in their current form and as they may hereafter be amended, are adopted, amended, and applied into this article as if they were set forth at length herein:

- (1) Tex. Health and Safety Code Title 5. § 341.064 "Swimming Pools and Bathhouses;" and
- (2) Tex. Health and Safety Code Chapter 757 (Pool Yard Enclosures); and
- (3) Tex. Administrative Code Title 25, Part I, Chapter 265 Subchapter L, "Standards of Public Pools and Spas;" and
- (4) Tex. Administrative Code Title 25, Part I, Chapter 265 Subchapter M, "Public Interactive Water Features and Fountains."

(B) If a conflict occurs between a provision of this article and a provision of the above statutes, laws, or regulations, the stricter provision shall apply.

§ 100.02 DEFINITIONS

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aquatic facility means a pool, spa, special aquatic activity device, public interactive water feature, fountain or venue that may be used for swimming or bathing, or other regulated water body as defined by state aquatic facility regulations.

Authorized agent or employee means the director of health of the regulatory authority, which shall have the enforcement responsibility for this article.

Certified pool operator. A person who:

- (a) Possesses a valid and current certificate of accreditation, and
- (b) Obtains certification by completion of one of the following courses or other nationally recognized course in aquatic facility operation, safety and management, and:
 1. NRPA, "Aquatic Facility Operator" (A.F.O.);
 2. NSPF, "Certified Pool-Spa Operator" (C.P.O);
 3. Y.M.C.A., "Pool Operator on Location" (P.O.O.L.);
 4. NSPI, "Professional Pool and Spa Operator" (P.P.S.O.); or
 5. ASPSA, "Licensed Aquatic Facility Technician" (L.A.F.T.); or
 6. Other training at discretion of the Director of Health

Coliform testing refers to total coliform, not fecal coliform.

Enclosure means a fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround an aquatic facility.

Extensively remodeled means the replacement of or modification to an aquatic facility structure or its enclosure, its circulation system or its appurtenances, so that the design, configuration or operation is different from the original design, configuration or operation, including the installation of new deck detail or tile work that is different from the original design. 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.

Manager of operations means the person primarily responsible for the safe, sanitary maintenance of a public pool, spa, or other water-related activity.

Permit holder means a local person who has the ultimate responsibility for the operation of any pool, spa, or other related water activity regulated in this Chapter, and who shall, in all respects, act as the representative for any entity having an ownership interest in the same.

Private aquatic facility means any aquatic facility located on private, single-family residential property under the control of the homeowner or tenant, the use of which is limited to members of the homeowner's or tenant's family or invited guests.

Public aquatic facility means any aquatic facility which is intended to be used by the general public for swimming, bathing or other related purposes and is operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use.

Regulatory authority means the Wichita Falls-Wichita County Public Health District.

Secured means that an enclosure during normal operation is maintained so that all gates and entrances are maintained closed with functioning self-latching and self-closing mechanisms, and that the enclosure is not allowed to maintain gaps large enough to allow the passage of a four-inch sphere or provide any feature that may be easily climbed to gain access to the aquatic facility. The enclosure during times when the aquatic facility is closed to the public must maintain the above conditions, but the gates or entrances to the enclosure must also be locked so that no person may enter the gates or entrances without the authorization of the certified pool operator and or the person in charge.

Semi-public aquatic facility means any aquatic facility which is not included within the definition of either "private aquatic facility" or "public aquatic facility" as those terms are defined in this section.

Service animal means a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

State aquatic facility regulations means the regulations adopted by the state of Texas to regulate public pools and spas, and includes the following, as amended from time to time:

- (a) Tex. Health and Safety Code Title 5, § 341.064 "Swimming Pools and Bathhouses;" and
- (b) Tex. Health and Safety Code Chapter 757 (Pool Yard Enclosures); and
- (c) Tex. Administrative Code Title 25, Part I, Chapter 265 Subchapter L, "Standards of Public Pools and Spas;" and
- (d) Tex. Administrative Code Title 25, Part I, Chapter 265 Subchapter M, "Public Interactive Water Features and Fountains."

§ 100.03 OFFENSE; PENALTY FOR VIOLATION

A violation under this chapter is a Class C misdemeanor punishable by a fine of not more than \$500.00. Such person may be enjoined from continuing such violations. Each day upon which such violation occurs constitutes a separate violation.

§ 100.04 PERMIT, CERTIFICATION OF MANAGER OF OPERATIONS

(A) *Permit required; transferability; posting.* A person may not operate an aquatic facility without a permit issued by the regulatory authority. Permits are not transferable from one person to another person or from one location to another location. A valid permit must be posted at every establishment regulated by this ordinance. Therapeutic pools and class E pools as defined in the standards are not exempt from this section.

(B) *Application for permit.* A person desiring to operate an aquatic facility must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the pool, the name and address of each manager of operations, and the application fee. An incomplete application will not be processed. Failure to provide all required information or falsifying information required may result in denial or revocation of the permit. All permits will expire March 31 of each year; the same information is required for a renewal permit as for an initial permit. Each pool and spa at each location will be charged a separate permit fee as determined by the regulatory authority.

(C) *Certification of manager of operations.*

(1) A manager of operations of an aquatic facility shall obtain certification from the regulatory authority. A manager of operations may obtain certification by successfully completing a training course conducted by the regulatory authority. No person will be allowed to act as the manager of operations without first having obtained certification.

(2) At least two certification training programs will be conducted per year. The fee for certification of a manager of operations shall be determined by the regulatory authority, and the certification shall expire one year following its issuance.

(3) A person showing a current certificate as a Certified Aquatic Facility Operator (AFO), Certified Pool-Spa Operator (CPO), a Pool Operator on Location (POOL) or any other training approved by the regulatory authority, may be exempt from the health district training as long as:

- a. Facilities constructed before the adoption of this article must comply with all provisions of this article and all future amendments to this article, unless the regulatory authority grants a variance in writing, or unless otherwise exempted under Tex. Health and Safety Code Sec. 757.005.
- b. If a variance to this article is issued by the regulatory authority, the permit applicant must annually reapply for the variance in writing. The granting of a variance does not guarantee that the director will grant future variances.
- c. All fees are nonrefundable and will not be prorated.

§ 100.05 INSPECTIONS AND ANNUAL PRE-INSPECTIONS

(A) The regulatory authority is authorized to conduct inspections as necessary to ensure compliance with all sections of this article. The regulatory authority shall have the right of entry at any reasonable hour upon the premises where an aquatic facility is located. The regulatory authority shall have the authority to collect water samples from the aquatic facility for laboratory analysis.

(B) Each public or semi-public aquatic facility shall pass an annual pre-operation inspection by the regulatory authority prior to use by the public each permit year. There shall be no charge for one preliminary pre-operation inspection that is not requested by the facility and for one pre-operation inspection that is requested by the facility; a re-inspection fee shall be required for all further pre-operation inspections.

(C) Effective with permit renewal in 2020, each public or semi-public aquatic facility shall also annually submit certification by a licensed, registered electrician that the electrical equipment for the aquatic facility meets all local, state, and federal electrical codes on a form promulgated by the city.

§ 100.06 MAINTENANCE AND OPERATION

(A) Every aquatic facility shall be under the supervision of the permit holder, who shall be responsible for compliance with all parts of this article relating to aquatic facility maintenance, aquatic facility operation, and safety of swimmers. It shall be unlawful for such permit holder to cause or permit the existence of a condition which violates any section of this article. It shall be the duty of the certified pool operator and or an appropriately trained designee to:

- (1) assure that someone can physically respond within one hour of being notified by the regulatory authority to the site of the aquatic facility; and

- a. Check at least once per day that the aquatic facility remains in compliance with this article and with state aquatic facility regulations; and
 - b. Check and record water chemistry at least once per day for each aquatic facility permitted to ensure compliance with state and local aquatic facility regulations, including:
 - 1. Disinfectant levels; and
 - 2. pH levels; and
 - 3. Cyanuric acid levels (if applicable); and
 - c. Ensure that an appropriate method is used to check water chemistry as specified in state aquatic facility regulations; and
 - a. Retain records of daily water chemistry checks for at least two years on site; and
 - b. All records must be made available to the regulatory authority upon request.
 - c. Register certification as a certified pool operator or manager of operations with the regulatory authority and maintain a copy of the registration on-site at the facility. In the event that the certified pool operator/manager of operations is no longer employed on premises, the aquatic facility must employ another certified pool operator/manager of operations who possesses or obtains a current Wichita Falls Wichita County Public Health District Manager of operations or certified pool operator as defined by this ordinance.
- 2) To ensure compliance with this article, it is recommended that all manager of operations/certified pool operators use a DPD test kit certified by the American National Standards Institute (ANSI).

(B) All pumps, filters, sanitizers, and chemical feeders, drains, ladders, lighting, ropes and appurtenant equipment used in the operation of all aquatic facilities, shall be maintained in a good state of repair.

(C) All aquatic facilities shall be treated and maintained in accordance with current state department of health standards unless otherwise stated:

(1) Every pool shall contain a sanitizer concentration equivalent to a free chlorine residual between 1.0-8.0 ppm. Every spa shall contain a minimum sanitary concentration equivalent to a free chlorine residual of 3.0 - 8.0ppm minimum. If an aquatic facility is outside the required range of free chlorine residual equivalent, then the aquatic facility shall be immediately closed to the public. A test kit for measuring the concentration of the free chlorine shall be present at each aquatic facility. The regulatory authority must approve use of any sanitizer other than chlorine.

(2) Every aquatic facility shall have water with a pH of not less than 7.2 and not more than 7.8. An adequate pH test kit shall be present at each aquatic facility. If a aquatic facility test shows an acid reaction less than 7.2 or basic reaction over 7.8, then the aquatic facility shall be immediately closed to the public.

(3) The presence of microorganisms of the total coliform group or E coli in any water sample shall be deemed unacceptable water quality. Two consecutive samples showing microorganisms of total coliform will be grounds for immediate closure of the aquatic facility.

(4) Every aquatic facility shall have water clarity sufficient for the main drain or a six-inch diameter turbidity test disk placed at the deepest part of the aquatic facility, to be visible from the sidewalks of the aquatic facility at all distances up to ten yards, measured from a line drawn across the pool through the disc. Failure to meet this requirement shall be sufficient cause for immediate closure of the aquatic facility.

(5) A 15-minute maximum timer will be installed and operational at each spa. The timer must be located so that it cannot be reached unless a person exits the spa.

(6) Cyanuric acid shall not exceed 100ppm in any aquatic facility. If the level exceeds 100ppm, the facility shall close until the level can be lowered to below 80ppm.

(7) During any routine inspection, if the regulatory authority is required to close the pool for non-compliance, a re-inspection fee may be charged to the permit holder for each requested return visit for re-inspection

§ 100.07 REGULATIONS IN POOL AND SPA AREA; SUSPENSION OF PERMIT

(A) A person commits an offense if he/she violates any portion of this article or the standards set forth by the state department of health.

(B) Failure to comply with any section of this article may result in the immediate closure of the aquatic facility and/or the initiation of legal action. Upon determination that the aquatic facility does not comply with the provisions of this article, the regulatory authority shall notify the permit holder or manager of operations of the existing violations. If the regulatory authority determines that the condition of the aquatic facility may be hazardous to the health or safety of the swimmers or the general public, the aquatic facility shall be immediately closed. A new water sample and inspection of the aquatic facility will be conducted from 8:00 AM to 2:00 PM, Monday through Thursday at the request of the pool manager of operations or the permit holder. The aquatic facility water must completely turnover through the filtration and chlorination system at least once before reinspection and resampling. If compliance has been achieved, the permit holder shall be notified that the aquatic facility may be opened.

(C) When the regulatory authority has ordered that an aquatic facility be closed due to noncompliance with any provision of this article, the permit holder shall not allow the aquatic facility to be used for swimming, diving or bathing purposes and shall immediately take every

reasonable step to prevent the use of such aquatic facility for such purposes. By way of example and without limiting such duty, the permit holder shall immediately:

(1) Post notices reasonably likely to come to the attention of potential users of the pool or spa advising of the closure; and

(2) Lock all gates and doorways in any fence or other enclosure surrounding such pool.

(3) Failure to immediately comply with the above will result in the regulatory authority posting a sign at the pool, which states, "Pool Closed by Order of the Wichita Falls-Wichita County Public Health District." It shall be unlawful to remove, cover, or mutilate such sign without the approval of the regulatory authority. Use of the aquatic facility by an individual for swimming, diving or bathing purposes after the regulatory authority has ordered such aquatic facility to be closed shall be deemed prima facie evidence that the permit holder of such aquatic facility has knowingly allowed the aquatic facility to be used for such purposes.

(D) The regulatory authority shall suspend a permit to operate a public pool or spa if:

(1) A permit holder fails to designate a certified manager of operations as specified in this Chapter;

(2) The condition or operation of a pool or spa is considered to be hazardous or constitutes an imminent health hazard to the health or safety of swimmers or the general public; or

(3) The permit holder fails to keep all spa equipment and devices working properly.

(4) The suspension shall continue until the regulatory authority has conducted a new inspection, and the cause of suspension is corrected.

§ 100.08 CONSTRUCTION COMPLIANCE AND PLAN REVIEW

(A) Prior to beginning the construction of a new aquatic facility or the extensive remodeling of an existing aquatic facility, the owner shall submit plans and specifications for such construction or remodeling to the City building inspections department 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 aquatic facility design/blueprints for all new and extensively remodeled aquatic facilities (including structural, mechanical, plumbing or electrical renovations) and certify by original signature and engineer's seal compliance with state aquatic facility regulations and this article.

(D) No work shall begin until regulatory authority has received the engineer's certificate of pre-construction, conducted a plan review, and has communicated with the City building inspections 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 without approval in writing from the regulatory authority and the City building inspections department. If no work has begun within 180 days from the date the regulatory authority has given written notice that work may begin, or if work has begun and is halted more than 60 days, the director may withdraw approval.

(E) The aquatic facility construction shall pass a pre-guniting inspection, pre-plaster inspection and preoperational inspection by the regulatory authority prior to issuance of a permit. The completion of these inspections by a regulatory authority does not substitute or replace inspections required by other departments within the city.

(F) It is the responsibility of the person in charge to ensure that the building permit applicant and licensed professional engineer comply with all zoning, building, fire, and health ordinances of the City of Burkburnett.

§ 100.09 REGULATIONS FOR ALL PERSONS IN AQUATIC FACILITIES

A person commits an offense if they:

- (a) Have skin abrasions, open sores, skin disease, eye disease, nasal or ear discharge, diarrhea, or a communicable disease and bathes in a public or semi-public aquatic facility; or
- (b) Alter or remove safety equipment or signage from a public or semi-public aquatic facility except in an emergency; or
- (c) Alter or damage any part of a public or semi-public aquatic facility enclosure or allows the aquatic facility enclosure to remain unsecured while the enclosure is under repair; or
- (d) Alter or damage drain and/or suction outlet covers or grates; or
- (e) Carry glass within a public or semi-public aquatic facility area or enclosure; or
- (f) Allow an animal under their control to enter or remain within the aquatic facility, area or enclosure of a public or semi-public aquatic facility without approval from the regulatory authority, unless the animal is a service animal; or
- (g) Interfere with or obstructs the regulatory authority while they are in the process of enforcing this article; or
- (h) If they are the manager of operations or certified pool operator or person in charge and knowingly or intentionally violate any provision of this chapter.

§ 100.10 RESERVED

SECTION TWO. Severability. In the event any portion of this ordinance is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the other provisions of this ordinance.

SECTION THREE. Publication. The Director of Administration is authorized and directed to publish the caption and penalty prescribed by this Ordinance in accordance with State Law.

SECTION FOUR. Effective Date. This Ordinance shall be in force and effect from and after its publication.

SECTION FIVE. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

APPROVED AND PASSED this 30th day of May 2019.

Carl Law, Mayor

ATTEST:

Trish Holley, Director of Administration