

## ARTICLE VII

### PUBLIC POOLS, SPAS, AND PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS

#### Section 7.01 Adoption of the Texas Standards for Public Swimming Pools, Spas, and Public Interactive Water Features and Fountains

- A. The provisions of Texas Health and Safety Code Sections 341.064, 341.0645, and 341.0695, as amended, and the current regulations enacted by the Texas Department of State Health Services Standards for Public Pools, Spas, and Public Interactive Water Features and Fountains found in Title 25, Texas Administrative Code, Chapter 265, Subchapter L and Subchapter M, as amended, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of this Article. The term “this Article” includes the adopted regulations, as amended.
- B. Scope.
1. The intent and purpose of this Article is to provide requirements for the inspection and operation of public pools, spas, and public interactive water features and fountains in the City of Arlington, Texas, or its jurisdiction, and to provide for the issuance or revocation of permits for the operations of public pools, spas, and public interactive water features and fountains.
  2. This Article does not govern residential pools and spas as defined by Title 25, Texas Administrative Code, Chapter 265, Subchapter L, as amended. The Construction Chapter, as amended, governs residential pools and spas.
  3. Pool and Spa Enclosure Requirements.
    - a. This Article does not govern pool and spa enclosure requirements.
    - b. Residential Pools and Spas. The Construction Chapter, as amended, applies to residential pools and spas and any other pool and spa not considered a public pool or spa under this Article.
    - c. Public Pools and Spas. All public pools and spas must comply with Texas Health and Safety Code Chapter 757, as amended, including the regulations enacted pursuant to Texas Health and

Safety Code Chapter 757.011, as amended, which are provided in Title 25, Texas Administrative Code Section 265.200, as amended.

4. This Article does not govern the building permit process.
- C. Other Applicable Laws.
1. If there is any conflict between any provision of the State statutes and regulations adopted pursuant to authority granted by Texas Health and Safety Code Section 341.081, as amended, and any provision of this Article, the provisions of this Article, which are more stringent than the incorporated State statutes and regulations, shall prevail.
  2. Texas Accessibility Standards Compliance. It is not intended for this Article to negate any provision of the Texas Accessibility Standards. If there is a conflict with the Texas Accessibility Standards, the Texas Accessibility Standards shall prevail.
  3. Americans with Disabilities Act (“ADA”) Compliance. It is not intended for this Article to conflict with any provision of the Americans with Disabilities Act (“ADA”). If there is a conflict between this Article and the ADA, the ADA shall prevail.
  4. Virginia Graeme Baker Pool and Spa Safety Act (“VGBA”) Compliance. In addition to the requirements of this Article or other applicable City Ordinances or state laws and regulations, all public pools, spas, and PIWFs must comply with the Virginia Graeme Baker Pool and Spa Safety Act (“VGBA”), as amended. If a particular provision of the VGBA, as amended, is more stringent than a particular provision of this Article or applicable City Ordinance or state law, then the VGBA, as amended, shall prevail. If the VGBA, as amended, has any provision that is not addressed by this Article, including state law and other City Ordinances, then this Article shall be interpreted to include that particular VGBA provision as an additional requirement.
  5. Compliance with other City Ordinances. The provisions of the Construction Chapter, the Electrical Chapter, the Nuisance Chapter, the Plumbing Chapter, the Backflow Prevention Chapter, the Uniform Development Code, and any other applicable City Ordinance, including any codes or standards adopted as amended, apply in addition to the provisions of this Article. If there is any conflict between a provision of

this Article and the provisions of other City Ordinances, including codes or standards adopted and amended by other City Ordinances, the more stringent provision shall prevail.

- D. The State statutes referenced in this Article are available at the website of the Texas Legislature. The adopted State regulations are available online at the websites of the Texas Secretary of State and the Texas Department of State Health Services. The Administrator may provide the current website addresses or adopted State regulations upon request.
- E. Amendments and Additions. The adoption by reference of the State regulations, as provided in Subsection (A) above, is made subject to the following amendments and additions, and is modified and amended as follows:
1. Definitions.
    - a. “Certified Operator Course” shall mean a course described by Title 25, Texas Administrative Code Section 265.203(a), as amended, for the operation of a public pool or spa, or a course described by Title 25, Texas Administrative Code Section 265.303(a), as amended, for the operation of a PIWF.
    - b. “Certified PIWF Operator” means a person who has attended a training course and received certification for the operation of a public interactive water feature or fountain in accordance with Title 25, Texas Administrative Code Section 265.303(a), as amended.
    - c. “Certified Pool Operator” means a person who has attended a training course and received certification for pool or spa operation in accordance with Title 25, Texas Administrative Code Section 265.203(a), as amended.
    - d. “Closure Order” shall mean an order from the Administrator or the Administrator’s designee ordering the closure of a public pool, spa, or public interactive water feature or fountain for failing an inspection or permit requirements or for violating State or local law relevant to public pools, spas, or public interactive water features or fountains.

- e. “Owner or Operator” shall have the same meaning as the definition of “owner/operator” in Title 25, Texas Administrative Code Section 265.182(94), as amended, and the definition of “Owner or Operator” in Title 25, Texas Administrative Code Section 265.302(42), as amended.
  - (1) The definition of “owner/operator” in Title 25, Texas Administrative Code Section 265.182(94), as amended, applies to the ownership or operation of a Public Pool or Spa.
  - (2) The definition of “owner or operator” in Title 25, Texas Administrative Code Section 265.302(42), as amended, applies to the ownership or operation of a PIWF.
  - (3) In addition, the term “permit holder,” as defined in Article I of this Chapter shall apply as an additional person who is considered to be an Owner or Operator of a Public Pool, Spa, or PIWF.
- f. “Operating permit” shall mean a permit that allows the operation and use of a public pool, spa, or PIWF.
- g. “Public Interactive Water Feature or Fountain” shall mean an “interactive water feature or fountain” as defined in Texas Health and Safety Code Section 341.0695, as amended, and any further definition or example defined as a “public interactive water feature or fountain” in Title 25, Texas Administrative Code, Chapter 265, Subchapter M, as amended. In this Article, the term “PIWF” shall mean a Public Interactive Water Feature or Fountain as defined by this Section.
- h. “Public Pool” shall include the term “pool” as defined by regulations in Title 25, Texas Administrative Code, Chapter 265, Subchapter L, as amended. This term includes the different classification of pools defined by state law, except that this definition excludes any residential pool or therapeutic pool as defined by state law. In addition, this definition includes any pool which is intended to be used by the general public including, but not limited to, hotel or motel guests, health club members and guests, water park or amusement park guests, water slide guests,

homeowner association members and guests, or multi-family community residents and guests for swimming, diving, recreational bathing or other related purposes, operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use.

- i. “Regulatory authority” in the adopted State regulations shall mean the Administrator for this Article or the Administrator’s designee. The Administrator shall have the authority to create policies and procedures for the administration of this Article as long as the policies and procedures are consistent with this Article and applicable state law.
  - j. “Spa” shall mean a spa as defined by regulations in the Title 25, Texas Administrative Code, Chapter 265, Subchapter L, as amended. This term does not include a residential spa.
  - k. “Trained Pool Operator” shall mean a person who has attended a training course that meets the criteria of a Trained Pool Operator Course described in this Article.
  - l. “Trained Pool Operator Course” shall mean a course described by Section 7.06 of this Chapter, as amended.
2. Title 25, Texas Administrative Code Section 265.183(a), as amended, shall include the following as an additional subsection:

The Administrator, or a city employee designated by the City Manager, or a designee, to review a building permit or the plans for a public pool, spa, or PIWF pursuant to the Construction Chapter, as amended, must require that a registered professional engineer or registered architect licensed by the State of Texas to practice as such be consulted to assure that the pool and spa are designed and built in compliance with these regulations and applicable federal, state, and or local regulatory requirements. The engineer’s or architect’s professional seal must be affixed to the plans and a statement attesting to the fact that the pool or spa was designed, constructed, and able to operate in compliance with these standards. This statement must also be made available for review at a reasonable time upon request by the Administrator.

3. Electrical Requirements for Pools, Spas, Pool Yards, and Spa Yards, and PIWFs.

a. References to the National Electrical Code.

In Title 25, Texas Administrative Code Section 265.192, as amended, all references to the 1996 or 2002 National Electrical Code (“NEC”), or any other edition of the NEC, shall mean the City of Arlington Electrical Chapter, as amended. In addition, all other references to any edition of the NEC in Title 25, Texas Administrative Code, Chapter 265, Subchapters L and M, as amended, shall mean the City of Arlington Electrical Chapter.

b. Annual Electrician Inspection Requirement.

In Title 25, Texas Administrative Code Section 265.192(e), as amended, the following paragraph shall be included as an additional subsection:

All post-10/01/1999 and pre-10/01/1999 ground fault circuit interrupters of pools and spas shall be inspected by an electrician in accordance with the Texas Occupations Code, as amended, at least once a year prior to March 1 of each year or the expiration date of the current operating permit or as required by the Administrator. The licensed electrician shall submit verification in writing that the pool related electrical components are in proper working order.

4. Trained Pool Operator Requirement for the Operation of Class C Pools and Spas. Title 25, Texas Administrative Code Section 265.203, as amended, shall include the following as an additional subsection:

Class C Pool and Spa Requirements.

- a. The Owner or Operator of every new and existing Class C pool or spa shall ensure that the public pool or spa is cared for by a Trained Pool Operator who has successfully completed a training course according to Section 7.06 of this Chapter, as amended. The Trained Pool Operator shall be responsible for the daily water treatment operations, record keeping, and maintenance of the public pool or spa in compliance with this Article. Compliance will be demonstrated by presenting proof of training and all required records to the Administrator as described in this Article.

- b. While the public pool or spa is open and available for use, a Trained Pool Operator must be:
  - (1) on-site at the public pool or spa; or
  - (2) readily available to respond and come to the public pool or spa within one hour of being notified by the Administrator.
- c. In addition to all other requirements of this Article, if an Owner or Operator employs a swimming pool service company, the Owner or Operator or person in charge must ensure that:
  - (1) all water treatment operations, record keeping, and maintenance requirements are complied with; and
  - (2) each employee of the swimming pool service company servicing a public pool or spa in the City qualifies as a Trained Pool Operator and the swimming pool servicing the company provides proof of the required training for each employee to the Administrator upon request. If proof of required training for a particular employee cannot be verified by the Administrator, then that employee shall not operate a pool in the City.

5. Backflow Prevention.

- a. Public Pools and Spas. Title 25, Texas Administrative Code Section 265.189(c) is amended to include the following paragraph as an additional subsection:

The Owner or Operator must comply with the City of Arlington Backflow Prevention Chapter, as amended.

- b. PIWFs. Title 25, Texas Administrative Code Section 265.304(b) is amended to be replaced with the following language:

Water distribution system. All portions of the water distribution system serving a PIWF shall be protected against backflow and back siphonage. All PIWFs must comply with the City of Arlington Plumbing Chapter, as amended, and the City of Arlington Backflow Prevention Chapter, as amended, including

any testing and inspection requirements. No direct mechanical connection shall be made between the chlorinating equipment or system of piping for the PIWF and a sanitary sewer system, septic system, or other wastewater disposal system.

6. Additional Testing, Inspection, Maintenance and Records Requirements.

- a. Public Pools and Spas. Title 25, Texas Administrative Code Section 265.204(d) is amended to be replaced with the following language:

Other Required Tests and Inspections for Public Pools and Spas.

(1) Daily Required Tests and Inspections.

Unless the testing and inspection requirements specified in Title 25, Texas Administrative Code Section 265.204(c), as amended, apply to a particular public pool or spa, tests for total chlorine or bromine as applicable, cyanuric acid, and pH at all post-10/01/99 and pre-10/01/99 pools and spas shall be conducted daily to ensure proper chemical control. Also, the main drains shall be inspected to ensure that they are visible.

(2) Monthly Required Tests and Inspections.

The following items must be inspected and tested monthly in order to ensure that they are in good working order and are in compliance with this Article and other applicable law:

- (a) Drains. The main drains shall be inspected to ensure that they are secure and in good working order.
- (b) Safety Vacuum Release System (“SVRS”). The SVRS includes any Safety Vacuum Release Device or Atmospheric Vent System (“AVS”) that is a part of the SVRS and must be tested to ensure that all equipment is in good working order.



- (c) Emergency phone. A monthly 911 test call must be conducted to ensure that the emergency phone is in good working order, is unobstructed, and complies with all other requirements.
  - (d) Pool and spa enclosures.
  - (e) All safety equipment required by Title 25, Texas Administrative Code Section 265.199(i), as amended.
  - (f) Pool and spa lights.
  - (g) Ground fault circuit interrupters (“GFCI”).
- (3) Tests for alkalinity and hardness at post-10/01/99 and pre-10/01/99 pools and spas shall be conducted as necessary to ensure proper chemical control.
- b. PIWFs.
- (1) Title 25, Texas Administrative Code Section 265.307(a)(3) is amended to include the following paragraph as an additional subsection:  
  
In accordance with Title 25, Texas Administrative Code Section 265.307(a)(3), as amended, a PIWF must be tested for *Cryptosporidium* immediately upon any notification that a person who has used the PIWF has been diagnosed with Cryptosporidiosis.
  - (2) Daily Required Tests and Inspections.  
Water quality testing and inspection requirements shall be conducted in accordance with Title 25, Texas Administrative Code Section 265.306(o), as amended.
  - (3) Monthly Required Tests and Inspections.  
  
The following items must be inspected and tested monthly in order to ensure that they are in good working order and are in compliance with this Article or other applicable law:

- (A) Pool and spa enclosures containing a PIWF;
  - (B) All PIWF lights that could potentially have contact with water or otherwise present a risk for electrical shock; and
  - (C) GFCIs.
- c. Backflow Prevention.  
The Owner or Operator shall perform or ensure that all inspection and testing required by the City of Arlington Backflow Prevention Chapter, as amended, the City of Arlington Plumbing Chapter, as amended, and the Texas Administrative Code, as amended, are conducted, any necessary maintenance or repair is performed, and all backflow prevention devices are kept in good working order. Records shall be kept in accordance with the City of Arlington Backflow Prevention Chapter, as amended, the City of Arlington Plumbing Chapter, as amended, and the Texas Administrative Code, as amended.
- d. Records. A record of all tests and inspections made pursuant to this Article and the adopted regulations must be kept for two years. Failure to keep required records or perform required tests shall constitute a violation. Each missing entry in a required record shall constitute a separate violation.
7. Appeal Hearings. Title 25, Texas Administrative Code Sections 265.308(c) and 265.308(d), as amended, are deleted from the adopted regulations. Title 25, Texas Administrative Code Section 265.308 is amended to contain the following sentence as an additional subsection:

All hearings and appeals for Closure Orders or Operating Permit revocations shall be governed by Section 7.12 of the City of Arlington Health and Sanitation Chapter, as amended.

**Section 7.02 Maintenance and Operation, Offenses Generally**

- A. Responsibility of the Owner or Operator, Person in Charge, or Attendant of a Public Pool, Spa, or PIWF.

1. The Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF shall be responsible for compliance with this Article and shall ensure that the public pool, spa, or PIWF is maintained in a sanitary condition.
2. An Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF has a duty to prevent violations of this Article and other laws applicable to public pools, spas, and PIWFs.
3. An Owner or Operator subject to a Closure Order or an Operating Permit revocation under this Article must maintain the public pool, spa, or PIWF involved in the Closure Order or Permit Revocation in compliance with this Article, any City Ordinances applicable to public pools, spas, or PIWFs, any incorporated regulations, and state law.

B. Offenses.

1. An Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF commits an offense if the person violates, causes, or fails to prevent a violation of this Article.
2. Each day that a violation of this Article exists shall constitute a separate offense unless the public pool, spa, or PIWF is lawfully demolished in accordance with policies and procedures established by the Administrator and verified by the Administrator. The Owner or Operator shall obtain any necessary permit required by the City of Arlington Code of Ordinances.
3. An Owner or Operator, Person in Charge, or attendant of a public pool, spa, or PIWF subject to a Closure Order or an Operating Permit revocation shall maintain the public pool, spa, or PIWF, which was the subject of the Closure Order or Operating Permit revocation, in compliance with this Article and any state laws or City Ordinances applicable to public pools, spas, or PIWFs.
4. Penalty.
  - a. In accordance with Texas Health and Safety Code Section 341.091, as amended, the following violations shall be punished by a fine of not less than \$10.00 or more than \$200.00:

- (1) A violation of a permitting or inspection requirement imposed under authority granted by Texas Health and Safety Code Section 341.064(n), as amended; and
  - (2) A violation of a Closure Order requirement imposed under authority granted by Texas Health and Safety Code Section 341.064(o), as amended.
- b. Violations of other provisions of this Article that are not described by Subsection (B)(4)(a) shall be punished in accordance with Article IX of this Chapter.
  - c. Each day that a violation exists shall constitute a separate offense.
- C. Violations May Result in a Closure Order. Any violation of this Article or any other law applicable to public pools, spas, and PIWFs may result in an immediate Closure Order for a public pool, spa, or PIWF as described in the Section 7.10 of this Chapter.
- D. Penalties are Cumulative. In addition to the enforcement remedies provided in this Article, the City may pursue any lawful remedy provided by this Code of Ordinances or state law, including, but not limited to, remedies under Texas Health and Safety Chapter 341, Texas Local Government Code Chapters 54 and 214, the Construction Chapter, the Nuisance Chapter, and the Municipal Court Chapter, as amended. The use of one enforcement remedy does not preclude the use of other lawful remedies.
- E. Enforcement Responsibility. The Administrator, or anyone designated by the Administrator to enforce this Article, a health official, a code compliance officer, a building inspector, or any peace officer, or any authorized City official shall have enforcement responsibility for this Article.

### **Section 7.03 Building Permit Required**

The requirements of the Construction Chapter, as amended, shall apply whenever a residential pool or spa, a public pool or spa, or a PIWF is constructed or extensively remodeled as defined in Article I of this Chapter.

**Section 7.04 Public Pool, Spa, and PIWF Operating Permits**

- A. In order to own, operate, or allow the use of a public pool, spa, or PIWF, an Operating Permit must be obtained for the public pool, spa, or PIWF. Each public pool, spa, and PIWF must have a separate Operating Permit. A public pool Operating Permit does not allow the operation of a spa or PIWF. A spa Operating Permit does not allow the operation of a public pool or PIWF. A PIWF Operating Permit does not allow the operation of public pool or spa. A public pool Operating Permit, a spa Operating Permit, and a PIWF Operating Permit shall not be combined. An Operating Permit shall permit the operation of the public pool, spa, or PIWF only at the location and for the Owner or Operator for which it was granted.
- B. In this Article, the term “Operating Permit” shall include: a public pool Operating Permit, a spa Operating Permit, and a PIWF Operating Permit.
- C. The Administrator shall grant the initial Operating Permit for a newly constructed or extensively remodeled public pool, spa, or PIWF if:
1. a building permit has been obtained;
  2. all required permits for electrical, plumbing, pool enclosures, or any other related permit have been obtained;
  3. all required inspections for the permits have been passed; and
  4. all required fees have been paid.
- D. An Operating Permit expires on the first day of March of each year unless revoked before the first day of March.
- E. In order to renew an Operating Permit, the public pool, spa, or PIWF must pass an annual inspection. The Administrator shall renew a permit for a public pool, spa, or PIWF for any person or firm applying to renew an Operating Permit in the City of Arlington if the person or firm:
1. complies with the requirements of this Chapter, the Unified Development Code, the Construction Chapter, any other applicable City ordinance or state law or regulation, the Texas Accessibility Standards, the Americans with Disabilities Act, and the Virginia Graeme Baker Pool and Spa Safety Act;

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2. provides proof that every person operating the public pool, spa, or PIWF has completed any required operator training as specified in this Article or state law;
  3. pays all required fees;
  4. submits proof that the public pool, spa, or PIWF has been inspected by a licensed electrician in accordance with Section 7.01(E)(3)(b) of this Chapter, as amended;
  5. provides all required records to the Administrator;
  6. complies with any outstanding building permit requirements for repairs or remodels; and
  7. passes an inspection.
- F. Extensive Remodeling. If a public pool, spa, or PIWF has been or is being extensively remodeled as defined in Article I, an Operating Permit will be renewed only if: a building permit has been obtained, all required inspections have been passed, and all required fees have been paid. The Building Official or a designee shall determine whether a building permit is required when a pool, spa, or PIWF is being extensively remodeled, in accordance with the Construction Chapter, as amended.
- G. Offense. An Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF commits an offense if the person operates, allows the operation of, or fails to prevent the use of a public pool, spa, or PIWF without a current and valid Operating Permit. Each day that a violation of this Subsection exists shall constitute a separate offense until the Operating Permit is re-instated or the public pool, spa, or PIWF is lawfully demolished in accordance with policies and procedures established by the Administrator and verified by the Administrator. The Owner or Operator shall obtain any necessary permits required by this Code of Ordinances.

### **Section 7.05 Fees**

- A. Administrative fees shall be charged for operating permits, inspections, operating permit reinstatements, re-inspections, and duplicate permits, except that no fees

shall be charged for City owned and operated public pools, spas, or PIWFs. Building permit fees may be charged in accordance with the Construction Chapter, as amended, when a building permit is required by Section 7.03 of this Chapter, as amended.

- B. Fees for operating permits, reinstatements, inspections, re-inspections, duplicate permits, and building permits required by Section 7.03 of this Chapter, as amended, shall be in an amount set by resolution of the City Council.
- C. Administrative fees are not transferable or refundable. Every permit issued under this Article shall be non-transferable and non-refundable.

### **Section 7.06 Operator Training**

- A. An Owner or Operator, an employee or agent of the Owner or Operator, or a Person in Charge must ensure that all persons maintaining or operating a public pool, spa, or PIWF, including operators from a servicing company, have the appropriate training as required by this Article and state law for the particular class of pool, spa, or PIWF being operated. An Owner or Operator, an employee or agent of the Owner or Operator, or a Person in Charge commits an offense if the person fails to comply with this Subsection.
- B. Certified Operator Course Requirements. A Certified Operator Course is only required under this Article when it is required by the adopted provisions of the Texas Administrative Code, as amended. A person will only qualify as a Certified Pool Operator by receiving certification for completing a Certified Operator Course described in Title 25, Texas Administrative Code Section 265.203(a), as amended. A person qualifies as a Certified PIWF Operator by receiving certification for completing a Certified Operator Course described in Title 25, Texas Administrative Code Section 265.303(a), as amended. A person will only qualify as both a Certified Pool Operator and a Certified PIWF Operator if the person receives certification for completing a Certified Operator Course that is described by both Title 25, Texas Administrative Code Sections 265.203(a) and 265.303(a), as amended.
- C. All public pool and spa operators must complete a Trained Pool Operator Course, or a similar course meeting the requirements described in this Section, unless otherwise required to complete a Certified Operator Course. Completion of a Certified Operator Course may be substituted for a Trained Pool Operator Course as long as the Certified Operator Course certificate is valid and is described by

Title 25, Texas Administrative Code Section 265.203(a), as amended. A Trained Pool Operator Course may not be used as a substitute for a Certified Operator Course when a Certified Operator Course is required.

D. Minimum Standards for a Trained Pool Operator Course. A Trained Pool Operator Course shall meet the following minimum requirements:

1. The training course must be in an instructor-led format. Self-instructional, self-study, or online courses are not acceptable.
2. The training course must consist of at least six (6) hours of classroom instruction.
3. The training course must be taught by a Certified Pool Operator.
4. The instructor of the training course shall provide a certificate or other documentation meeting the requirements in Subsection (E) that may be used to verify a pool operator's successful completion of a course compliant with this Section. In addition to the certificate, the Owner or Operator shall provide proof of the course curriculum and the course instructor's qualification as a Certified Pool Operator to the Administrator upon request. If this information is not provided, then the training will not qualify a person as a Trained Pool Operator.
5. The training course curriculum is subject to review by the Administrator. If the training course curriculum is not consistent with this Section or if the course was not taught by a Certified Pool Operator, then completion of that course will not be sufficient to meet the requirements of this Section.
6. The training course must include instruction on:
  - a. water chemistry;
  - b. water testing;
  - c. water filtration and re-circulation;
  - d. water-borne diseases and their prevention;
  - e. pool safety; and



- f. applicable state and local regulations.

E. Proof of Compliance.

1. Trained Pool Operator Certificates.

- a. Trained Pool Operator Certificates must include the following information:
  - (1) the participant's name;
  - (2) the date that the training course was conducted;
  - (3) the title of the training course;
  - (4) the instructor's name and the organization's name, if applicable; and
  - (5) the number of hours of classroom instruction.
- b. Only the original certificate will be accepted. Trained Pool Operator Certificates are subject to verification by the Administrator with the person or organization who conducted the class.
- c. Unless otherwise stated in the certificate or supporting documents for the course, Trained Pool Operator Certificates are valid for two years from the date of issuance. A valid, current, and unexpired training certificate or other documentary proof of completion for each pool operator must be provided to the Administrator upon request.
- d. If all information required by this Section is not included on the certificate, then the Administrator may consider supporting documents in addition to the certificate.

2. Certified Operator Certificates. The Owner or Operator shall provide to the Administrator upon request a valid, current, and unexpired training certificate, or other documentary proof of completion allowed by state or federal law, for each pool operator required to complete a Certified Pool Operator training course. If an operator is required to be a Certified Pool

Operator or Certified PIWF Operator, any certificates or other proof of completion must meet the requirements as established by state or federal law. A Certified Operator Certificate shall be valid for the duration provided by state law.

F. Offenses.

1. A person commits an offense if the person operates or maintains a public pool, spa, or PIWF when the person does not qualify as a Trained Pool Operator, Certified Pool Operator, or Certified PIWF Operator as required by this Article.
2. An Owner or Operator or person in charge commits an offense by allowing a person to operate or maintain a public pool, spa, or PIWF or by failing to prevent a person from operating or maintaining a public pool, spa, or PIWF when that person does not qualify as a Trained Pool Operator, Certified Pool Operator, or Certified PIWF Operator as required by this Article.

**Section 7.07 Posting of Public Pool, Spa, and PIWF Permits and Pool Operators Training Certificate**

- A. The Operating Permit and all applicable training certificates for each public pool, spa, and PIWF shall be displayed in public view. An Owner or Operator commits an offense by failing to display the Operating Permit or an applicable training certificate in public view.
- B. Signs shall be required to be posted at all public pool, spa, or PIWF entrances stating “All violations may be reported to the City of Arlington.” The signs shall also be required to have a phone number to use for reporting violations. This phone number will be provided by the Administrator. Signage must be in at least two contrasting colors and lettering must be no smaller than one (1) inch in height.
- C. An Owner or Operator commits an offense by failing to post any signs required by this Section.
- D. An Owner or Operator commits an offense by posting a sign that does not contain the information required by this Section or does not comply with the lettering or color contrasting requirements of this Section.

**Section 7.08 Inspections**

The Administrator is authorized to conduct inspections in accordance with Texas Health and Safety Code Sections 341.064 and 341.0695, as amended, and Title 25, Texas Administrative Code, Chapter 265, Subchapters L and M, as amended. The Administrator may issue a Closure Order if inspection of the public pool, spa, or PIWF or any records is refused or delayed.

**Section 7.09 Regulations in the Public Pool, Spa, or PIWF Area**

- A. A person commits an offense if the person:
1. allows an animal under the person's control to enter or remain within the area or enclosure of a public pool, spa, or PIWF;
  2. has skin abrasions, open sores, skin disease, eye disease, nasal or ear discharge or a communicable disease and swims in or enters a public pool, spa, or PIWF;
  3. alters or removes safety equipment from a public pool, spa, or PIWF except in an emergency;
  4. carries glass within a public pool, spa, or PIWF area or enclosure; or
  5. allows persons to access a public pool, spa, or PIWF where there exists any violation of this Article or any other City Ordinances or state laws applicable to public pools, spas, or PIWFs.
- B. An Owner or Operator commits an offense by failing to prevent a person from committing an offense under this Section or by failing to take immediate reasonable and lawful action to stop a violation.
- C. An Owner or Operator must follow all laws and regulations outlined in the Americans with Disabilities Act and any other applicable state or federal laws regarding service animals or assistance animals. It is an affirmative defense to prosecution under Subsection (A)(1) if the animal is a service animal that is located within the pool area or enclosure, but not in the water, except as allowed

by state or federal law. The term “Service Animal” shall mean a service animal or assistance animal as defined by the applicable state or federal law.

**Section 7.10 Closure Orders**

- A. Failure to comply with any provision of this Article or state law applicable to public pools, spas, and PIWFs may result in the immediate closure of the public pool, spa, or PIWF and the pursuit of any other remedy allowed by law.
- B. After an inspection or complaint investigation, the Administrator shall notify the Owner or Operator, Person in Charge, or a designated employee or agent about any existing violations of this Article or applicable state or federal law. The Administrator may allow for a reasonable time to comply before issuing a Closure Order.
- C. A public pool, spa, or PIWF may be closed immediately with a Closure Order if the Administrator determines that:
  - 1. the condition of the public pool, spa, or PIWF is hazardous to the health or safety of the swimmers or of the general public, including but not limited to a positive test for *Cryptosporidium* in accordance with Title 25, Texas Administrative Code Section 265.308, as amended;
  - 2. there is violation of this Article or any applicable state or federal law;
  - 3. the Operating Permit is expired or revoked;
  - 4. there is a pool or spa enclosure violation; or
  - 5. a repair or remodel was performed without a required permit.
- D. Notice of Closure Order.
  - 1. After a Closure Order has been issued, notice of the Closure Order must be provided to the Owner or Operator, or a designated agent or employee of the Owner or Operator, either by:
    - a. personal service to the Owner or Operator, Person in Charge, or an employee, agent, or attendant of the public pool, spa, or PIWF; or

b. by mail to the Owner or Operator at the address indicated in the Operating Permit or at the owner's address as recorded in the appraisal district records of the jurisdiction in which the property is located, unless the contact information is amended in accordance with procedures established by the Administrator.

2. Failure to provide this notice will not affect the validity of the Closure Order.

E. Sign Requirements.

1. When a public pool, spa, or PIWF is subject to a Closure Order, the Administrator shall conspicuously post signs at all entrances to the public pool, spa, or PIWF stating "Closed By The City of Arlington."

2. Any sign posted by the Administrator shall not be altered or removed unless authorized by the Administrator.

3. The Owner or Operator or a Person in Charge must ensure that the signs are inspected daily. If a sign is removed or altered, the Owner or Operator, or an employee or agent of the Owner or Operator, must immediately notify the Administrator.

F. Preventing the Use of the Public Pool, Spa or PIWF Subject to a Closure Order.

1. When the Administrator has ordered the closure of a public pool, spa, or PIWF, the Owner or Operator or Person in Charge of such public pool, spa, or PIWF must prevent persons from using the public pool, spa, or PIWF and shall immediately take every reasonable measure to prevent persons from using the public pool, spa, or PIWF.

2. Upon issuance of a Closure Order, the Owner or Operator, Person in Charge, or an employee or an agent of the Owner or Operator, must immediately lock the gates and doorways in any fence or other enclosure surrounding such public pool, spa, or PIWF.

3. The Administrator may order the Owner or Operator to use any other reasonable measure to prevent the entry to the public pool, spa, or PIWF. The Administrator may allow a reasonable time for compliance.

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G. Re-inspection. If the grounds for which the Closure Order was issued have been corrected, the Owner or Operator or Person in Charge may schedule a re-inspection with the Administrator. The re-inspection will be performed during the Administrator's normal working hours.

H. Compliance.

1. If the Administrator verifies that compliance has been achieved, the inspection has been passed, the grounds for which the Closure Order was issued no longer exist, and any required fees have been paid, the Administrator shall lift the Closure Order and notify the Owner or Operator, or an employee or agent of the Owner or Operator, in person or by mail that the public pool, spa, or PIWF may be opened.
2. A Closure Order shall be lifted if the public pool, spa, or PIWF is demolished in accordance with policies and procedures established by the Administrator and verified by the Administrator. The Owner or Operator shall obtain any necessary permit required by this Code of Ordinances.

I. Offenses.

1. Violation of Signage Requirements.

- a. An Owner or Operator, a Person in Charge, or an employee or agent of the Owner or Operator or a Person in Charge, commits an offense if the person fails to notify the Administrator that a sign required by this Section has been removed or altered. Each day that a violation of this Subsection exists shall constitute a separate violation.
- b. A person commits an offense if the person removes or alters a sign required by this Section or authorizes the removal or alteration of a sign required by this Section.

2. Requirement to Prevent Use of a Closed Public Pool, Spa, or PIWF.

- a. The Owner or Operator, Person in Charge, or an employee or an agent of the Owner or Operator or the Person in Charge, or an attendant of a public pool, spa, or PIWF subject to a Closure Order commits an offense if the person fails to:

- (1) comply with the Administrator's order to use a reasonable measure to prevent a person from entering a public pool, spa, or PIWF subject to a Closure Order; or
    - (2) secure or lock any gate or doorway in a fence or other enclosure surrounding a public pool, spa, or PIWF while a closure order is effective.
  - b. Each day that a violation of this Subsection exists shall constitute a separate violation.
3. Use of a Closed Public Pool, Spa, or PIWF Prohibited.
- a. When a public pool, spa, or PIWF is closed by a Closure Order, an Owner or Operator, or person in charge, or an attendant of the public pool, spa, or PIWF commits an offense by allowing a person to use, or failing to prevent a person from using the public pool, spa, or PIWF or from entering the enclosure area of the public pool, spa, or PIWF.
  - b. A person commits an offense if the person knowingly, recklessly, or with criminal negligence, uses or enters the enclosure area of a public pool, spa, or PIWF that is closed by a Closure Order. If there are signs present in compliance with this Section, then it shall be presumed that the person committed the violation knowingly, recklessly, or with criminal negligence.

### **Section 7.11 Operating Permit Revocation**

- A. An Operating Permit for a public pool, spa, or PIWF may be revoked for any of the following grounds:
1. a public pool, spa, or PIWF is operated in violation of a Closure Order;
  2. false information about the public pool, spa, or PIWF was presented to the Administrator or any employee or peace officer employed by the City of Arlington;
  3. a public pool, spa, or PIWF has been declared to be a dangerous structure in accordance with the Construction Chapter, as amended, or is the subject

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of three convictions, deferred dispositions, or liability findings within one year for violations of this Article or any other City Ordinance or state law applicable to public pools, spas, or PIWFs;

4. a public pool, spa, or PIWF has been closed with a Closure Order two times or more within one year;
  5. records required by this Article have not been kept or provided to the Administrator;
  6. a public pool, spa, or PIWF is the subject of an investigation by any state or federal agency for health or environmental matters;
  7. a public pool, spa, or PIWF is being operated in a manner that constitutes a public nuisance; or
  8. the revocation is necessary to protect the public from an immediate health hazard that a Closure Order is insufficient to remedy.
- B. If an Operating Permit is revoked under this Section, unless otherwise specified, a permit may be revoked for up to one (1) year from the date of revocation. An Owner or Operator must pay all permit fees and bring the public pool, spa, or PIWF into full compliance with all applicable City ordinances, state law, and federal law. Furthermore, the public pool, spa, or PIWF must pass an inspection by the Administrator before a revoked Operating Permit may be reinstated.

### **Section 7.12 Administrative Hearings**

#### A. Appeal to a Hearing Officer.

1. The Owner or Operator of a public pool, spa, or PIWF for which a Closure Order has been issued or an Operating Permit has been revoked under this Article may request an administrative hearing in order to appeal the decision. This request must be made in accordance with procedures established by the Administrator or designated hearing officer.
2. Notice.
  - a. When the Administrator issues a Closure Order or revokes an Operating Permit, the Administrator shall provide the Owner or



Operator with notice of the ability to request an administrative hearing. The notice shall contain a statement explaining the right of the Owner or Operator to request a hearing for the purpose of determining whether the Operating Permit revocation or Closure Order should be affirmed. The notice shall contain instructions on how to request an administrative hearing.

- b. The notice shall be provided by personal service to the Owner or Operator, or by mail to either person's address according to the appraisal district records of the jurisdiction in which the property is located, the address specified in the documents submitted for the current Operating Permit, or to an address specified by the person in accordance with procedures established by the Administrator.
  - c. If notice cannot be accomplished by mail or personal service to the Owner or Operator, the notice shall be provided by posting the notice:
    - (1) on all entrances to the public pool, spa or PIWF or near the front door of the building on the property to which the revoked Operating Permit or Closure Order relates; or
    - (2) on a placard attached to a stake driven into the ground on the property to which the revoked Operating Permit or Closure Order relates, if the property contains no buildings.
  - d. If the notice is mailed to the Owner or Operator in accordance with this Section and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered to be delivered. If the notice is provided by mail, the date of the notice is the date of delivery. If the date of delivery is not known, then notice given by mail is deemed to be delivered three (3) days after the date mailed.
3. In order to request a hearing, the Owner or Operator shall provide a written request for a hearing to the Administrator before the expiration of ten (10) days from the date the notice was provided under Subsection (A)(2).
  4. If the Administrator does not receive a timely request for a hearing, the Operating Permit revocation or Closure Order will be final.

5. If the Administrator receives a request for a hearing, the Administrator or designated Hearing Officer will schedule a hearing within ten (10) days after the date the request is filed unless the parties agree to a certain date beyond the ten (10) days. The Owner or Operator's request for hearing must contain an address and a phone number where notice of the hearing may be provided.
6. The Administrator may preside over the hearing as the Hearing Officer or designate a Hearing Officer.
7. The Hearing Officer shall have the authority to establish hearing procedures, compel the attendance of witnesses, and administer oaths. The Owner or Operator may submit evidence by notarized affidavit if the Owner or Operator cannot appear in person.
8. Hearings.
  - a. Closure Order Appeals.
    - (1) In order to affirm a Closure Order, the Hearing Officer must find that a violation of this Article has occurred, which constituted the ground for the Closure Order being issued. The Hearing Officer shall make this determination based upon the totality of the circumstances using a preponderance of the evidence standard.
    - (2) If the Owner or Operator, or an authorized agent or representative does not appear at the hearing or otherwise respond to the hearing notice, the Hearing Officer shall still review the Closure Order and any notarized affidavit submitted by the person. The Hearing Officer may stay or continue the hearing if necessary or if requested by the Owner or Operator or the City.
    - (3) The Hearing Officer must make a written order either affirming or lifting the Closure Order. If the Closure Order is affirmed, the Hearing Officer shall describe the criteria for lifting the Closure Order in the Hearing Officer's order and the public pool, spa, or PIWF shall be closed until the criteria is met and verified by the Administrator. If the Closure Order is lifted, the Owner or Operator may proceed

to operate the public pool, spa, or PIWF. The order shall be provided to the Owner or Operator in a manner consistent with this Section.

b. Operating Permit Revocation Appeals.

- (1) If the Hearing Officer finds by a preponderance of the evidence that the revocation of the Operating Permit is necessary to protect the public, then the Hearing Officer shall affirm the Operating Permit revocation. This finding shall be based upon the following factors:
  - (a) The number of violations, convictions, or liability findings;
  - (b) The number of previous closure orders;
  - (c) Repeat violations;
  - (d) Previous warnings that did not involve a citation;
  - (e) Complaints filed by citizens which have been verified by a peace officer, the Administrator, or an employee designated by the Administrator;
  - (f) The degree that the public health was endangered;
  - (g) Any pending action or investigation by another agency; or
  - (h) Any evidence that the public pool, spa, or PIWF constitutes a public nuisance.
- (2) After the hearing, the Hearing Officer shall issue a written order. The order shall be provided to the Owner or Operator in a manner consistent with this Section.
- (3) The Hearing Officer may affirm the permit revocation and state conditions that the Owner or Operator must satisfy in order to reinstate the permit. The permit shall be reinstated when the Hearing Officer has verified that compliance has

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been obtained. The Hearing Officer may establish procedures to verify compliance before a permit is reinstated.

- (4) If, after the hearing, the Hearing Officer does not affirm the permit revocation, the Hearing Officer or designee shall give written notice of the findings to the Owner or Operator within ten (10) days. If the Hearing Officer does not affirm the operating permit revocation, the public pool, spa, or PIWF may be operated immediately.
  - (5) The Hearing Officer may affirm the revocation and adjust the revocation period in a manner based upon the findings.
9. The determination of the Hearing Officer shall be final on the date it is signed.
  10. A request for a hearing does not stay the effect of an Operating Permit revocation, a Closure Order, or the use of any enforcement measure.
  11. This Section does not apply to the denial or revocation of a building permit or remedies for Dangerous and Substandard Structures, or any remedies pursuant to the Construction Chapter or any other applicable ordinance, state law, or federal law.
- B. If a Closure Order or Operating Permit revocation is withdrawn or lifted by the Administrator for any reason prior to the scheduled date and time of a hearing described in this Section, the Hearing Officer shall cancel the hearing upon a motion by any interested party. (Amend Ord 17-038, 6/27/17)