

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 94, "SWIMMING POOL AND SPA OPERATION AND MAINTENANCE," OF THE CITY'S CODE OF ORDINANCES BY REPEALING SAID CHAPTER AND REPLACING IT WITH A NEW CHAPTER 94 TO BE TITLED "STANDARDS FOR PUBLIC SWIMMING POOLS, SPAS, AND PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS"; PROVIDING FOR THE ADOPTION OF 25 TAC CHAPTER 265, SUBCHAPTER L AND SUBCHAPTER M; PROVIDING FOR THE REQUIREMENT OF PERMITS FOR PUBLIC SWIMMING POOLS, SPAS, AND PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS; PROVIDING FOR INSPECTIONS OF PUBLIC SWIMMING POOLS, SPAS AND PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS; PROVIDING FOR CERTIFIED POOL OPERATORS; PROVIDING FOR MAINTENANCE AND OPERATION OF PUBLIC SWIMMING POOLS AND SPAS; PROVIDING FOR TEMPORARY CLOSURE OF PUBLIC SWIMMING POOLS, SPAS, AND PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS; PROVIDING FOR HEARINGS; PROVIDING FOR NOTICE OF HEARINGS; PROVIDING FOR A FEE SCHEDULE; AMENDING APPENDIX A, "SCHEDULE OF FEES"; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; ESTABLISHING GOVERNING LAW; PROVIDING FOR A PENALTY FOR THE VIOLATION HEREOF; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the State of Texas has adopted rules and regulations relating to standards for public swimming pools, spas, and public interactive water features and fountains; and

**WHEREAS,** the City Council of the City of McKinney seeks to adopt such public swimming pool, spa, and public interactive water features and fountains regulations in the City's Code of Ordinances to reflect such regulations and procedures; and

**WHEREAS,** the City Council of the City of McKinney believes that the adoption of such regulations will safeguard the public health and provide safe public swimming pools, spas, and public interactive water features and fountains.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:**

Section 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. Chapter 94 of the City of McKinney Code of Ordinance, entitled “Swimming Pool and Spa Maintenance”, is hereby repealed in its entirety and replaced with a new Chapter 94, entitled “Standards for Public Swimming Pools, Spas, and Public Interactive Water Features and Fountains”, to read as follows:

**“Sec.94-1. - Adoption of state rules on Standards for Public Pools and Spas, and Interactive Water Features and Fountains.**

The City of McKinney hereby adopts by reference the provisions of the current Standards for Public Pools and Spas set forth in 25 Texas Administrative Code Chapter 265 Subchapter L, as amended, which establish regulations regarding Public Swimming Pools and Spas, save and except the deletions and additions set forth below. The City of McKinney also hereby adopts by reference the current Interactive Water Features and Fountains regulations, as set forth in 25 Texas Administrative Code Chapter 265 Subchapter M, as amended, save and except the deletions and additions set forth below. The regulations are made part of this Ordinance as if fully set forth herein. Copies of the regulations are on file in the Office of the City Secretary, being marked and designated as the Standards for Public Pools and Spas, and Interactive Water Features and Fountains, published by the Texas Department of State Health Services.

In adopting the regulations set forth in Chapter 265, Subchapters L and M of the Texas Administrative Code, the City seeks to complement the existing standards found in the International Swimming Pool and Spa Code, as amended, as adopted by the City Council and contained in Section 122-40 of the City of McKinney Code of Ordinances, as amended. Should there be any conflict between the regulations found herein and the regulations found in 25 Texas Administrative Code Chapter 265 Subchapters L and M, as amended, and those regulations found in the International Swimming Pool and Spa Code, as amended, the regulations found herein shall take priority over those found in Chapter 265, Subchapters L and M of the Texas Administrative Code, as amended, which then shall supersede those regulations found in the International Swimming Pool and Spa Code, as amended.

**Sec.94-2. Definitions.**

For the purpose of this Chapter, the following terms shall have the meaning given below:

- (a) **Authorized Representative.** The City of McKinney Executive Director of Development Services, or his/her authorized designee.

- (b) **Certified Pool Operator (CPO).** Any individual who has taken and successfully passed a certified pool operator course and has in their possession an unexpired certificate of completion.
- (c) **Certified Pool Operator Course.** A course accredited by the Texas Department of State Health Services as provided in 25 TAC 265.203
- (d) **Inspector.** A City of McKinney Environmental Health Specialist, or his/her authorized designee.
- (e) **Person in Charge.** The person who holds the pool permit and maintains responsibility and/or control over the pool.
- (f) **pH.** A value expressing the relative acidic or basic tendencies of a substance, such as water, as indicated by the hydrogen ion concentration. The pH is expressed as a number on the scale of zero to 14, zero being most acidic, 1 to 7 being acidic, 7 being neutral, 7 to 14 being basic and, 14 being most basic.
- (g) **Public interactive water feature and fountain (PIWF).** Any indoor or outdoor installation maintained for public recreation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannon in various arrays for the purpose of wetting the persons playing in the spray streams. PIWF's:
  - (1) May be stand-alone PIWFs or may share a water supply, disinfection system, filtration system, circulation system, or other treatment system that allows water to co-mingle with a pool;
  - (2) May be publicly or privately owned;
  - (3) May be operated by an owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for use;
  - (4) Include, but are not limited to, interactive water features or fountains that are open exclusively to members of an organization and their guests, residents of a multi-unit apartment building or apartment complex, residential real estate development, or other multi-family residential area, schools, day care facilities, youth camp, or hotel or other public accommodations facility;
  - (5) Do not include interactive water features or fountains located on private property under the control of the property owner or the owner's tenant serving a single-family residence or duplex

that are intended for use by not more than two resident families and their guests; and

- (6) Are not fountains, installations, amusement rides, or other attractions, whether decorative or interactive, in which only incidental water contact occurs.
- (h) **Public Swimming Pool.** Any pool, as defined in 25 TAC 265.182(99), that is not constructed or maintained in conjunction with a single-family residence or two-residence townhouse.
- (i) **Regulatory Authority.** The City of McKinney, Texas.
- (j) **Season.** The days between April 1<sup>st</sup> and November 1<sup>st</sup> each calendar year when swimming pools are generally open for public use.
- (k) **Spa.** Any spa, as defined in 25 TAC 265.182(127), that is not constructed or maintained in conjunction with a single-family residence or a two-residence townhouse.

**Sec. 94-3. Regulations, permits, and preoperational inspections.**

- (a) It shall be unlawful for any person to operate a public swimming pool, spa, or PIWF within the city limits of the City of McKinney without first having been issued a valid pool permit along with the payment of the fee for the pool permit, as set forth in Appendix A of the Code of Ordinances. Only a person who complies with the requirements in this chapter shall be entitled to receive or retain a permit. Permits are not transferable from one person, place or entity to another person, place, or entity. Every public swimming pool, spa and PIWF shall have a valid permit posted in a conspicuous place visible to the public. Permits shall remain in effect until April 30<sup>th</sup> of each year, regardless of when application was made, unless sooner revoked for cause, or as otherwise provided herein.
- (b) Applications for a pool permit shall be made through the City of McKinney Citizen's Self-Service Portal and shall include the name and address of each applicant and the location and type of pool.
- (c) The application shall be accompanied by a nonrefundable permit fee, as set forth in Appendix A, on file and available for inspection in the office of the City Secretary.
- (d) The application shall be accompanied by a certification letter from a licensed electrician as set forth in Sec. 94-5(e), herein.

- (e) The McKinney Independent School District, Prosper Independent School District, Frisco Independent School District, and Allen Independent School District shall be exempt from the permit fee.
- (f) A pool permit that lapses for non-payment of the annual pool permit fee will be reinstated upon payment of the permit fee, except that permits which have lapsed for more than one (1) month shall only be reinstated upon payment of the pool permit fee as well as a late fee, as set forth in Appendix A of the Code of Ordinances.

#### **SECTION 94-4. Certified Pool Operator Required**

- (a) No person shall operate a public swimming pool or spa on or after 90 days after the effective date of this ordinance unless the person has employed a certified pool operator who has a valid certificate issued by an accredited course as provided in Section 94-2(c) above.
- (b) A certified pool operator must be employed by the person in charge at all times.
- (c) The certified pool operator shall be responsible for the sanitation, safety, and proper maintenance of the public swimming pool or spa and all associated physical and mechanical equipment.
- (d) The certified pool operator shall be responsible for the maintenance of all records and logs required by this ordinance.
- (e) A permitted public swimming pool or spa shall employ another certified pool operator within 30 days of the effective termination of the previous certified pool operator.
- (f) The certified pool operator certificate shall be posted in a conspicuous place visible to the public alongside the pool permit and shall be made available upon request during an inspection.

#### **Sec. 94-5. Maintenance & Operation of Public Swimming Pools and Spas**

- (a) When a public swimming pool or spa is in operation, the free chlorine or bromine shall be tested at least once a day and recorded. These records must be maintained on site for one year and shall be made available upon request of an Inspector at all times.
- (b) When a public swimming pool or spa is in operation, the pH of the water shall be tested at least once a day and records. These records must be on site for one year and shall be made available for inspection by the Authorized Representative at all times.

- (c) The certified pool operator shall maintain a test kit capable of measuring chemical ranges as required by 25 TAC 265.204(a).
- (d) Pool water must be maintained with sufficient clarity to permit a distinct view of the main drain from outside the pool, regardless if the pool is operational or not.
- (e) A certification letter from a licensed electrician shall be provided annually that certifies the public swimming pool or spa meets all electrical requirements of this section. The certification letter will be required to renew the annual pool permit, and shall be dated within one month of the application.
- (f) A replacement drain cover with fasteners meeting the manufacturer's specifications must be kept on site. The replacement drain cover shall be identical to the drain cover(s) in use. The installation date of the drain covers in use must be written and available upon request of an Inspector.

#### **Sec. 94-6. Inspections of Public Swimming Pools, Spas, and PIWFs**

- (a) Public swimming pools, spas, and PIWFs shall receive a pre-operational inspection by an Inspector each year prior to opening for the season.
- (b) Public swimming pools, spas, and PIWFs shall receive a minimum of one operational inspection by an Inspector during the season.
- (c) Public swimming pools, spas, and PIWFs may be subject to additional inspections by an Inspector as necessary to ensure compliance with this ordinance.

#### **Sec. 94-7. Temporary Closure of Public Swimming Pools, Spas, and PIWFs**

- (a) All public swimming pools, spas, and PIWFs shall be temporarily closed whenever any of the following conditions occur:
  - (1) Disinfection levels do not meet the parameters as defined by 25 TAC 265.204(a), as amended.
  - (2) There is a malfunction or non-function of the recirculation system, and proper turnover rates are not being obtained in accordance with 25 TAC 265.187(b), as amended.
  - (3) If the entry gate to the public swimming pool or spa does not self-close and self-latch, thereby creating a safety hazard in

accordance with 25 TAC 265.200(c)(2), as amended.

- (4) If the emergency telephone is not operational or does not directly contact emergency personnel in accordance with 25 TAC 265.199(j), as amended.
  - (5) If the pool yard enclosure allows a sphere four inches in diameter to pass under the pool yard enclosure, or openings in the vertical members of the pool yard enclosure allow a sphere four inches in diameter to pass through the enclosure in accordance with Health and Safety Code §757.003 (c)-(d), as amended.
  - (6) If there is any other condition which may endanger the health, safety, or welfare of persons using the public swimming pool, spa, or PIWF.
- (b) The public swimming pool, spa, or PIWF shall temporarily close and remain closed until the Regulatory Authority conducts a re-inspection. The Inspector who documents the conditions shall provide his/her cell phone number and his/her supervisor's cell phone number to coordinate a re-inspection over a weekend, but in no event shall the re-inspection occur later than the next business day. The Inspector shall endeavor to perform a re-inspection as soon as possible, including on a weekend if possible. It shall be the responsibility of the Person in Charge to contact the Regulatory Authority at the provided phone number to schedule a re-inspection, and pay the re-inspection fee, as set forth in Appendix A, prior to the re-inspection being conducted.
- (c) If a public swimming pool, spa, or PIWF is required to temporarily close, and the Person in Charge, or their representative, is not on site, the Inspector shall secure the entry gates in a manner that does not allow it to be opened and post a sign on the gate(s) that the public swimming pool, spa, or PIWF is temporarily closed. The Inspector shall provide on the sign his/her phone number and his/her supervisor's phone number to call for a re-inspection.

#### **Sec. 94-8. Hearings**

- (a) The Authorized Representative shall hear all appeals taken under this Chapter for denials, revocations and suspensions.
- (b) The Authorized Representative shall designate the time and the place for the hearings provided herein. Based upon the evidence presented at such hearing, the Authorized Representative shall make a final finding by sustaining, modifying, or rescinding any notice or order considered in the hearing. The Authorized Representative

shall furnish a written report of the hearing decision to the permit, license, or certificate holder.

### **Sec. 94-9. Notice of Hearings**

A notice provided for in this section is properly served when it is delivered to the permit holder or the Person in Charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the permit holder.

### **Sec. 94-10. Fee Schedule**

All fees referenced herein shall be as established from time to time by the City Council and set forth in Appendix A to the McKinney Code.”

Section 3. Chapter 94 of Appendix A of the City of McKinney Code of Ordinance, entitled “Swimming Pool and Spa Maintenance”, is hereby repealed in its entirety and replaced with a new Chapter 94, entitled “Standards for Public Swimming Pools, Spas, and Interactive Water Features”, to read as follows:

**“Chapter 94 Standards for Public Swimming Pools, Spas, and Interactive Water Features.**

*Sec. 94-10 Fee Schedule.*

Swimming Pool or Spa\500.00

Public Interactive Water Feature\250.00

Re-Inspection\75.00

Late fee\200.00”

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

Section 5. All provisions of the Code of Ordinances of the City of McKinney, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effort.

Section 6. An offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended,



in effect when the offense was committed and the former law is continued in effect for this purpose.

Section 7. Any person, firm, or corporation violating any of the provisions of this ordinance or of the Code of Ordinances, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of McKinney, Texas, shall be subject to a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense; and each and every day said violation is continued shall constitute a separate offense.

This ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.**

CITY OF MCKINNEY, TEXAS

\_\_\_\_\_  
GEORGE C. FULLER  
Mayor

CORRECTLY ENROLLED:

\_\_\_\_\_  
EMPRESS DRANE  
City Secretary  
LISA SEWELL  
Deputy City Secretary

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney