

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, AMENDING ORDINANCE 06-02-14 AND ADOPTING BY REFERENCE THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES STANDARDS FOR PUBLIC INTERACTIVE WATER FEATURES AND FOUNDATIONS, CODIFIED AT TEXAS ADMINISTRATIVE CODE TITLE 25, CHAPTER 265, SUBCHAPTER M, AS AMENDED, SAVE AND EXCEPT FOR CERTAIN DELETIONS AND ADDITIONS; MODIFYING CERTAIN REGULATIONS GOVERNING PUBLIC AND SEMI-PUBLIC POOLS IN FRISCO; ESTABLISHING REGULATIONS FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS WITHIN FRISCO; PROVIDING A PENALTY CLAUSE, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas (“City Council”) has investigated and determined that it would be advantageous and beneficial to the City of Frisco, Texas (“Frisco”) and its citizens to amend Ordinance No. 06-02-14 for the purpose of modifying certain regulations governing public and semi-public pools in Frisco, as set forth herein; and

WHEREAS, the City Council has further investigated and determined that it would be advantageous and beneficial to the citizens of Frisco to adopt by reference the Standards for Public Interactive Water Features and Fountains (“PIWFs”) promulgated by the Texas Department of State Health Services, codified at 25 Texas Administrative Code Chapter 265, Subchapter M, which are adopted and incorporated herein by reference, save and except the deletions and additions set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

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: Amendment of Ordinance No. 06-02-14. Ordinance No. 06-02-14 is hereby amended as follows:

Section 4(J) (Section 265.201 (Dressing and Sanitary Facilities at Post-10/1/99 and Pre-10/1/99 Pools and Spas)) is amended as follows:

...

- (g) **Sanitary facilities serving post-10/01/99 pools or spas in apartments, hotels, motels or condominiums.** Post-10/01/99 Class C and D pools and spas located in an apartment, hotel, motel or condominium complex are not required to have the following facilities:

...

- (3) Deleted.

...

- (5) Deleted.

...

- (7) Deleted.

Section 4(N) (Section 265.208 (Enforcement)) is amended as follows:

- (a) ...

If inspections by the local regulatory authority determine that the operation or maintenance of the pool, spa, public interactive water feature or facility constitutes a serious health or safety hazard for the user, the local regulatory authority may request voluntary immediate closure, perform involuntary closure, seek injunctive relief in district court, and/or use any other enforcement methods and/or remedies available. The local regulatory authority may pursue any and all appropriate legal remedies available to it including, but not limited to, immediately posting the pool closed and issuing citations to the operator or owner. Whenever a pool voluntarily closes or is required to cease operation at any time, all access to the pool shall be restricted and a notice shall be posted at every entrance notifying the public that the pool is closed until further notice. Whenever a pool closes by mandate of the local regulatory authority or is required to cease operation, all access to the pool shall be restricted and a notice shall be posted at every entrance notifying the public that the pool is closed until further notice; a re-inspection fee in the amount of One Hundred and No/100 Dollars (\$100.00) shall be paid; and, a re-inspection of the offense shall be performed by the local regulatory authority to ensure correction prior to operation.

Section 6 (Revocation or Suspension of Operating Permit) is amended as follows:

- (a) ...

- (b) ...

- (c) A Permit to Operate that has been revoked or suspended may be reissued upon proper application, payment of all fees and presentation of evidence that the deficiencies, violations and/or irregularities that caused the revocation or suspension have been corrected.
- (d) If Frisco determines that the operation or maintenance of any swimming pool, spa or public interactive water feature constitutes an imminent hazard to the health and/or safety of the public, the Permit to Operate shall be suspended immediately, and the swimming pool, spa or public interactive water feature shall be closed for use and shall remain closed until the necessary remedial action has been successfully completed. Frisco shall make an inspection of completion of remedial action to ensure compliance with this Ordinance. Each separate inspection shall incur a fee of One Hundred and No/100 Dollars (\$100.00), which must be paid prior to the inspection being performed.

Section 8 (Administrative Process/Issuance of Permit to Operate) is amended as follows:

- (a) No person shall operate a swimming pool, spa or public interactive water feature unless a valid Permit To Operate said swimming pool, spa or public interactive water feature has been obtained from Frisco; provided, however, pools and spas which are subject to Section 265.206, Texas Department of Health Pool Rules, will not be required to obtain the permit described in this Section. A separate permit is required for pools, spas and public interactive water features physically separated by pool enclosure. A pool, spa or public interactive water feature located inside a pool enclosure will be subject to fee of Two Hundred Twenty-Five and No/100 Dollars (\$225.00) per entity. Such permit for each location of the pool, spa or public interactive water feature, unless otherwise revoked or suspended as prescribed herein, shall be valid from the date of issuance through March 31st of the following year. If paid by April 30th, the fee shall be Three Hundred Twenty-Five and No/100 Dollars (\$325.00) per entity; by May 31st, the fee shall be Four Hundred and Twenty-Five and No/100 Dollars (\$425.00) per entity. After May 31st, the fee shall be Five Hundred and No/100 Dollars (\$500.00) per entity. If, upon the first inspection, fees have not been paid, the pool, spa or public interactive water feature will be closed until compliance with this ordinance is met. A separate application and fee shall be submitted for each operational permit sought. A separate pool or public interactive water feature is determined by physical separation. A spa is considered separate and requires separate fees by the local regulatory authority.
- (b) ...
- (c) ...
- (d) Frisco shall require an inspection of the pool, spa or public interactive water feature prior to March 31st of each year. This inspection shall be required prior to

the approval of the Permit to Operate each year. Should any pool, spa or public interactive water feature fail the annual inspection, the owner of the subject pool, spa or public interactive water feature is responsible for remedying the issues which resulted in the failed inspection, and for obtaining a satisfactory re-inspection from Frisco prior to the issuance of a Permit to Operate. Each re-inspection will incur a fee of One Hundred and No/100 Dollars (\$100.00) and must be paid prior to re-inspection. The Permit to Operate will be approved when each pool, spa or public interactive water feature is in full compliance with this Ordinance.

- (e) The Frisco Permit to Operate shall expire on March 31st of each year. It is the responsibility of the operator/owner to request the inspection and to apply for the Permit to Operate prior to March 31st each year.
- (f) Once the inspection is approved, the application for Permit to Operate is submitted and appropriate fees are paid, Frisco will release the Permit to Operate.

SECTION 3: Adoption of Standards for Public Interactive Water Features and Fountains. Frisco hereby adopts by reference the Standards for Public Interactive Water Features and Fountains promulgated by the Texas Department of State Health Services, codified at 25 Texas Administrative Code Chapter 265, Subchapter M, as amended, which establish regulations for the construction, operation and maintenance of public interactive water features and fountains, save and except the deletions and additions set forth below (the “Public Interactive Water Features and Fountains Rules”). The Public Interactive Water Features and Fountains Rules are made a part of this Ordinance as if fully set forth herein. Copies of the Public Interactive Water Features and Fountains Rules are on file in the Office of the City Secretary of Frisco, being marked and designated as the Public Interactive Water Features and Fountains Rules, published by the Texas Department of State Health Services, General Sanitation Division. The following deletions and additions to the Public Interactive Water Features and Fountains Rules are hereby approved and adopted:

Section 265.302 Definitions is amended as follows:

...

- (63) Remodeled – Replacement of facility components or modification of the PIWF so that the design, configuration, capacity or operation differs in any aspect from the original approved design. This term does not include normal maintenance and repair of a PIWF or a water circulation system but does include any replacement or repair of circulation system equipment if the size, type or operation of the equipment differs from the original equipment.

Section 265.307 Inspections and Permitting of Public Interactive Water Features and Fountains is amended as follows:

(a) Frisco may:

...

(3) Require that the PIWF is tested for *Cryptosporidium* or other water borne illnesses/diseases when the illnesses/diseases are diagnosed in an individual who has used the PIWF. Such testing costs shall be incurred and paid for by the owner or operator of the PIWF.

...

(e) The owner or operator of a PIWF shall obtain from Frisco an annual operational permit for each PIWF. The permit fee for each PIWF that has recirculated water shall be Two Hundred Twenty-Five and No/100 Dollars (\$225.00); the permit fee for each PIWF that has non-recirculated water shall be One Hundred and No/100 Dollars (\$100.00).

...

(g) The owner or operator of a PIWF shall permit Frisco to conduct an inspection of the PIWF prior to March 31st of each year. This inspection shall be required prior to the approval of an annual operational permit. Should any portion of the PIWF and/or facility fail the annual inspection, the owner or operator of the subject PIWF or facility shall be responsible for remedying the issues which resulted in the failed inspection, and for obtaining a satisfactory re-inspection prior to the March 31st deadline and before the issuance of the annual operational permit. Each re-inspection will incur a fee of One Hundred and No/100 Dollars (\$100.00) and must be paid prior to re-inspection. The annual operational permit will be approved when the PIWF is in full compliance with this Ordinance.

Section 265.308 Closure of a Public Interactive Water Feature and Fountain is amended as follows:

...

(g) If Frisco determines that the operation, construction or maintenance of any PIWF constitutes an imminent hazard to the health or safety of the public, the annual operational permit shall be suspended immediately, and the PIWF shall be closed for use and shall remain closed until the necessary remedial action has been successfully completed. Frisco shall make an inspection after completion of such remedial action to ensure compliance with this Ordinance. Each separate inspection shall incur a fee of One Hundred and No/100 Dollars (\$100.00) and shall be paid prior to the inspection being performed.

SECTION 4: Penalty. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 5: Savings/Repealing. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent prosecution from being commenced for any violation occurring prior to the repeal of the ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

SECTION 6: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS, on this 2nd day of January 2018, ~~2017~~.



Jeff Cheney, Mayor

**ATTESTED TO AND
CORRECTLY RECORDED**



Jenny Page, City Secretary



APPROVED AS TO FORM:



Abernathy, Roeder, Boyd & Hullett, P.C.
Ryan D. Pittman, City Attorneys

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