

**Summary of Proposed Changes to
Lincoln Municipal Code 8.38 Public Swimming Pools
1/13/14**

8.38.010 Definitions.

Definitions are updated to reflect current State Regulations and new regulations in this ordinance.

8.38.015 Purpose.

A purpose statement is added to clarify the intent of the ordinance to reduce hazards to public health and safety, including drowning and serious injury; minimize disease transmission potential; prevent nuisance conditions; and promote physical activity and afford recreation. Other health ordinances have such purpose statements.

8.38.020 Approval for Construction.

In order to assure that public swimming pools are correctly designed prior to construction, the ordinance requires Health Director approval prior to the issuance of a building permit.

8.38.030 Design and Construction Standards.

This section adopts state regulations Nebraska Title 178 NAC 4 Public Swimming Pool Design and Construction Standards by reference.

8.38.040 Permit to Operate.

Changes clarify that the permit to operate will be valid through March thirty-first and that the permit be conspicuously posted on the pool premises.

8.38.045 Permit; Application.

The current ordinance does not provide specificity on the permit application. New language requires that an application for a permit to operate a swimming pool shall be made to the Health Director on forms furnished for such purpose. Forms will require the owner's full name, mailing address, phone number, email address, the establishment name, location and type of pools or spas, the signature of the owner, and other relevant information. This is current practice, but this section formalizes that practice in ordinance.

8.38.050 Operational Standards.

This section specifies that pools shall be operated and managed according to the "Lincoln Operational and Management Standards for Public Swimming Pools." This is a separate document from LMC 8.38, which will be adopted by resolution. It is necessary to address the numerous details and circumstances related to the operation and management of different types of public pools. Nebraska Title 178 NAC 2 Operation And Management of Public Swimming Pools was not able to be adopted by reference due to numerous content issues that referenced State authority instead of local, State permitting procedures, inspections, fees, refunds, enforcement, etc. The majority of these are in LMC 8.38.

8.38.070 Registration of Lincoln Swimming Pool Operator or a Lincoln Pool Water Quality Test; Application and

8.38.075 Registration of Lincoln Swimming Pool Operator or a Lincoln Pool Water Quality Tester; Requirements

The current section 070 addresses lifeguard requirements, which will be addressed in operational standards and can be deleted from the ordinance.

New provisions are added to require the registration of all swimming pool operators and pool water quality testers. Registration shall be good for two years. This will allow the City to suspend or revoke the registration to do such work. Similar provisions are contained in other health ordinances, such as for food managers and on-site wastewater treatments system installers.

To become registered, the person shall complete the required application forms, pay the registration fee, and complete a training and testing program approved by the Health Director.

Rationale: Summary data of routine public pool inspections conducted by LLCHD reveals that operational violations are not uncommon. LLCHD pool inspection data for the period of September 1, 2012 to August 31, 2013 indicates that 26% of routine inspections (nearly one in four) resulted in immediate closure of the pool due to the seriousness of a violation(s). During the time period specified, the following were the four most common reasons for an immediate pool closure:

- disinfectant level not within required parameters – 38%
- pH not within acceptable range – 20%
- combine chlorine exceeds maximum allowed – 17%
- cyanuric acid exceeds maximum allowed – 14%

The type and frequency of violations indicate a need for pool staff training in areas such as recreational water illness transmission, required water chemistry parameters and water quality testing and recordkeeping. Therefore, requiring pool operators and pool water quality testers to obtain a certificate of competency by attending an approved training and passing a test is necessary. Furthermore, requiring registration of pool operators and pool water quality testers is appropriate. The registration aspect provides the Health Department a mechanism to suspend or revoke a pool operator or pool water quality tester registration for serious and repeated violations of swimming pool regulations that may cause an imminent health risk.

8.38.090 Swimming Pool Permit Fees; New; Renewal; Variance.

Currently a permit for a new pool costs the same as that for renewing a permit. It is proposed that the fee for a new permit be increased to reflect the staff time required to review plans for a new public pool to insure compliance with code requirements, design and construction standards, and Lincoln Operational and Management Standards for Public Swimming Pools.

Renewal permit fees, additional spa permit fees, pro-rated permit fees and renewal late fees are not changed.

A variance request review fee (\$200) is added to code to cover the first two hours of staff review time. If additional review time is required, a fee of \$100 per hour of time is proposed. This is similar to fees charged for variances in other health ordinances.

8.38.095 Lincoln Swimming Pool Operator and Lincoln Pool Water Quality Tester Registration Fees.

Requiring registration of all pool operators and pool water quality testers will allow the City of Lincoln to suspend or revoke a registration to do such work. A fee of \$20 will be charged for both Lincoln Swimming Pool Operator and Lincoln Pool Water Quality Tester registration. Each registration will be valid for two years from the date of issuance. Training fee costs will not increase due to this fee.

The existing version of LMC 8.38 lacks procedural detail by which the Health Director shall conduct pool inspections and enforcement proceedings. Updates to LMC 8.38 establish appropriate documentation and notification procedures for the Health Director to follow when conducting inspections and establishes consistency in enforcement measures.

8.38.100 Polluted or Unsafe Water

This section modifies existing language that had the same intent. If a body of water is determined by the Health Director to be unsafe due to an imminent health risk, then it is not allowed to be used for swimming or bathing purposes.

8.38.110 Inspection and Enforcement.

For newly constructed pools, an inspection shall be conducted before an initial permit is issued. While this has been the practice for many years, it was not clear in the ordinance.

New provisions require the Health Director to provide an inspection report to both the pool owner and the Lincoln Swimming Pool Operator responsible for the pool. This will assure that all parties that need the inspection results will get them. The current ordinance did not provide clarity on what an inspection report must include. As proposed, the inspection report will specify: the conditions found; a reasonable time period to correct violations; failure to correct violations may result in suspension or revocation of a permit; the owner may request a hearing before the Health Director. This section also sets forth similar provisions in the event that a warning notice is issued for violations that pose a health risk. In addition, new language makes it clear that the Health Director may order that a swimming pool be immediately closed if conditions pose an imminent health risk.

The existing version of LMC 8.38 provides for “Revocation of Permit” however the ordinance is vague regarding the process by which a revocation occurs and does not clarify the rights of the person whose permit has been revoked. The revised Sections 120, 140, 150, 160 and 170 establish procedures for the Health Director and the aggrieved person to utilize in the event that a permit or registration has been suspended or revoked by the Health Director. These are modeled after other Health ordinances.

8.38.120 Permit or Registration; Suspension, Revocation.

This section sets forth provisions for suspension or revocation of a permit to operate a pool for violations of state statutes or ordinances of the City or causing an imminent health risk. It also provides for suspension or revocation of a swimming pool operator registration and a pool water quality tester registration. **Section 8.38.140** provides that any person whose permit or registration has been suspended may apply for reinstatement, which must be approved by the Health Director. **Section 8.38.150** defines the process for serving notice regarding the suspension or revocation of a permit or registration. **Section 8.38.160** provides a framework for an enforcement hearing, including: time frames for conducting a hearing after a request has been made; the appointment of a hearing officer by the Health Director; the rights of person who requested the hearing to introduce evidence and call and examine witnesses; and for the Health Director to make a final determination within ten days of the hearing. **Section 8.38.170** provides for any person to appeal the final determination of the Health Director to the district court.

8.38.180 Variances

The existing version of LMC 8.38 does not provide for variance requests. This provision is needed to accommodate potential improvements or advancements in pool design, construction, operation and management. For example, a variance could be used to allow a new disinfectant technology that is not commonly used in pools, so long as the variance is as protective of public health as existing disinfectant standards.

8.38.190 and 8.38.200

These are general provisions that are included other ordinances. Section 8.38.190 is the **Liability of Owner** statement and section 8.38.200 is the **Severability and Savings Clause**.