

## Chapter 8.38

### PUBLIC SWIMMING POOLS

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#### 8.38.010 Definitions.

For the purposes of this chapter, the following words shall have the following meanings:

**Additional Spa** shall mean a spa which is co-located with a permitted swimming pool.

**Department** shall mean the Lincoln-Lancaster County Health Department.

**Health Director** shall mean the Health Director of the Lincoln-Lancaster County Health Department or an authorized representative of the director.

**Imminent Health Risk** shall mean a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury, illness or disease based on the number of potential affected persons and the nature, severity and duration of the anticipated injury, illness or disease.

**Lincoln Pool Water Quality Tester** shall mean an individual of at least 16 years of age who holds a valid Lincoln Pool Water Quality Tester certificate issued by the Health Director.

**Lincoln Swimming Pool Operator** shall mean an individual of at least 19 years of age who holds a valid Lincoln Swimming Pool Operator's certificate issued by the Health Director.

**Person** shall mean any individual, firm, partnership, association, corporation, company, municipality, political subdivision, community governmental agency, club, organization, or other entity owning or operating a swimming pool.

**Spa** shall mean a specific type of swimming pool, such as a hot tub or whirlpool designed for recreational use which is not intended to be drained, cleaned, and refilled after each individual use. Spa shall include, but not be limited to, hydro-jet circulation, hot water, cold water, mineral baths, air induction systems, or any combination thereof.

**Spray park** shall mean a pool providing recirculated water to spray features with no permanent standing water accessible to pool patrons.

**Substantial modification or improvement** shall mean construction that: changes the depth, shape, piping, pumping, or other basic design features of a public swimming pool in a manner that affects pool patron safety or recirculation system design; changes a pool's deck; changes the basic design of a diving board; or adds a special feature. Work not considered a substantial modification or improvement includes maintenance and repairs.

**Swimming pool** shall mean any artificial basin of water modified, improved, constructed, or installed which is used for the purpose of public swimming, wading, diving, recreation, or instruction. Swimming pool includes, but is not limited to, a pool serving a community, a subdivision, an apartment complex, a condominium, a club, a camp, a school, an institution, a park, a manufactured home park, a hotel, a motel, a recreational area, or a water park. Swimming pool includes a spa, hot tub or whirlpool or similar device which (1) is designed for recreational use and is not to be drained, cleaned and refilled after each individual use and (2) may consist of elements, including, but not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction systems, or any combination thereof. Swimming pool does not include an artificial lake, a pool at a private residence intended only for the use of the owner and guests, or a pool operated exclusively for medical treatment, physical therapy, water rescue training, or training of divers.

All swimming pools shall be divided into the following classes:

(a) **Class A pool** shall mean a pool operated by a municipality, political subdivision, or governmental agency; or a pool intended for use for accredited competitive aquatic events such as Federational Internationale de Natation, U.S. Swimming, U.S. Diving, National Collegiate Athletic Association, National Federation of State High School Associations, etc.

(b) **Class B pool** shall mean a swimming pool operated at a facility including, but not limited to, an apartment, a condominium, a property owner association, a child care facility, and lodgings such as hotels and motels.

(c) **Class C pool** shall mean a spa.

(d) **Class D pool** shall mean a wading pool.

(e) **Class E pool** shall mean a spray park.

(f) **Class F pool** shall mean a swimming pool at a health club, fitness center, community fitness center, or college or university not used for accredited competitive aquatic events as described in (a).

**Wading pool** shall mean a pool that is no more than 24 inches deep. (Ord. 20009 §1; April 14, 2014: prior Ord. 15565 §1; May 14, 1990: P.C. §8.67.010: Ord. 13167 §1; July 13, 1981: Ord. 12224 §1; March 13, 1978).

#### **8.38.015 Purpose.**

The City Council finds that properly designed, constructed, installed, operated, and maintained swimming pools and spas:

- (a) Reduce hazards to public health and safety, including drowning and serious injury;
- (b) Minimize disease transmission potential;
- (c) Prevent nuisance conditions;
- (d) Promote physical activity and afford recreation.

It is therefore declared to be the public policy of this city to eliminate and prevent health and safety risks posed by swimming pools by regulating the construction, maintenance, and operation of these facilities and by requiring training, certification, and registration for swimming pool operators and pool water quality testers. The City Council authorizes the Health Director to administer and enforce this chapter. (Ord. 20009 §2; April 14, 2014).

#### **8.38.020 Plans; Approval for Construction.**

No person shall begin construction or installation of, or make substantial modification or improvement to, any swimming pool regulated by this chapter without first having approval of the Health Director for such project.

The Department of Building and Safety shall not issue a building permit for the construction or substantial modification of a swimming pool until it is approved by the Health Director. In addition to the requirements of this chapter, the requirements of the plumbing, building, electrical, zoning, and all other relevant ordinances and regulations of the city shall apply. (Ord. 20009 §3; April 14, 2014; prior Ord. 15565 §2; May 14, 1990: P.C. §8.67.020: Ord. 12224 §2; March 13, 1978).

#### **8.38.030 Design and Construction Standards.**

Except as hereinafter provided by specific amendment, the standards and regulations set forth in Neb. Rev. Stat. §§ 71-4302 and 71-4303 and Nebraska Department of Health and Human Services, Regulation and Licensure, Title 178 NAC 4 Public Swimming Pool Design and Construction Standards, as amended from time to time, are hereby adopted by reference and incorporated into Chapter 8.38 of the Lincoln Municipal Code. (Ord. 20009 §4; April 14, 2014; prior Ord. 15565 §3; May 14, 1990: P.C. §8.67.030: Ord. 12224 §3; March 13, 1978).

#### **8.38.040 Permit to Operate.**

No person shall operate or maintain a swimming pool in the city or within three miles of its boundaries unless a permit for said swimming pool has been issued by the Health Director. Each permit shall be valid through March thirty-first following issuance of the permit. A renewal permit shall be secured on or before April first of each year, which will expire March thirty-first of the following year. All permits shall state the conditions and term thereof. Specifically, it shall be a condition of said permits that they designate a Lincoln Swimming Pool Operator responsible for operating said pool during the term of the permit. It shall be unlawful for any person to conduct, operate, maintain, or manage a swimming pool without complying with the requirements of this chapter, and the Health Director is charged with the enforcement of the provisions hereof. A permit to operate a swimming pool shall be nontransferable. The permit must be conspicuously posted on the pool premises. (Ord. 20009 §5; April 14, 2014; prior Ord. 15565 §4; May 14, 1990: P.C. §8.67.050: Ord. 12224 §5; March 13, 1978).

#### **8.38.045 Permit; Application.**

An application for a permit to operate a swimming pool shall be made to the Health Director on forms furnished for such purpose. Such forms shall require the owner's full name, mailing address, phone number, email address, the establishment name, location, and the number and types of pools or spas on the premises, the Lincoln Swimming Pool Operator(s) designated for the pool, the signature of the owner(s), and such other relevant information as may be required by the Health Director. (Ord. 20009 §6; April 14, 2014).

#### **8.38.050 Operational Standards.**

All swimming pools shall be operated and maintained in accordance with the Lincoln Operational and Management Standards for Public Swimming Pools adopted by resolution of the City Council, after report and recommendation of the Board of Health. (Ord. 20009 §7; April 14, 2014; prior Ord. 15565 §5; May 14, 1990; P.C. §8.67.060; Ord. 12224 §6; March 13, 1978).

#### **8.38.060 Supervision of Swimming Pools.**

(Repealed by Ord. 20009 §8; April 14, 2014; prior Ord. 15565 §6; May 14, 1990; P.C. §8.67.070; Ord. 14901 §1; June 6, 1988; Ord. 12224 §7; March 13, 1978).

#### **8.38.070 Lifeguard Requirements.**

(Repealed by Ord. 20009 §8; April 14, 2014; prior Ord. 15565 §7; May 14, 1990; P.C. §8.67.080; Ord. 12224 §8; March 13, 1978).

#### **8.38.073 Certificate for Lincoln Swimming Pool Operator or Lincoln Pool Water Quality Tester; Required.**

Every person who is designated as the operator of a swimming pool regulated under this chapter shall hold a valid certificate for a Lincoln Swimming Pool Operator. Every person who performs water quality testing for any swimming pool regulated under this chapter shall hold a valid certificate either as a Lincoln Swimming Pool Operator or a Lincoln Pool Water Quality Tester. The performance of either of these roles without the required certificate is hereby declared unlawful. A Lincoln Swimming Pool Operator and a Lincoln Pool Water Quality Tester must follow the requirements provided in this chapter along with any and all other applicable laws and regulations. A failure to follow these requirements are grounds for suspension or revocation of a certificate for a Lincoln Swimming Pool Operator or a Lincoln Pool Water Quality Tester in addition to any other penalty provided for by law. (Ord. 20009 §10; April 14, 2014).

#### **8.38.075 Certificate for Lincoln Swimming Pool Operator or Lincoln Pool Water Quality Tester, Application.**

After January 1, 2015 an application for a Lincoln Swimming Pool Operator certificate or a Lincoln Water Quality Tester certificate shall be made to the Health Director on forms furnished for such purpose. Such forms shall require the applicant's name, address, business address, phone number, and email address, and such other relevant information as may be required by the Health Director. Any person licensed as a swimming pool operator prior to enactment of this Section shall be considered a Lincoln Swimming Pool Operator as defined in this chapter until such time as the existing license expires at which time said person will be required to apply for and receive a certificate as set forth in this chapter for Lincoln Swimming Pool Operators or Lincoln Water Quality Tester. (Ord. 20009 §11; April 14, 2014).

**8.38.077 Certificate for Lincoln Swimming Pool Operator or a Lincoln Pool Water Quality Tester; Requirements.**

(a) Before a certificate shall be issued to anyone according to the provisions of this chapter, the applicant shall be required to satisfactorily complete a training and testing program approved by the Health Director to determine their qualifications and fitness for executing the work necessary for a Lincoln Swimming Pool Operator or a Lincoln Pool Water Quality Tester. The Health Director shall issue a certificate if: (1) The applicant has properly completed the required application forms; (2) The certificate fee has been paid pursuant to this chapter; (3) The applicant has satisfactorily completed a training and testing program applicable to the certificate requested; and (4) The applicant agrees to up-date all data required to be provided to the Health Department in the application described in Section 8.38.075 as it changes, including applicant's address, business address, phone number, and such other information as the Health Director requires.

(b) Once issued, said certificate shall remain in force for two years from its date of issue, except that it may be suspended or revoked as provided for in this chapter. (Ord. 20009 §12; April 14, 2014).

**8.38.080 Compliance with Requirements of State of Nebraska Health Department.**

(Repealed by Ord. 20009 §13; April 14, 2014; prior Ord. 15565 §8; May 14, 1990: P.C. §8.67.090; Ord. 12224 §9; March 13, 1978).

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

(a) The City Council may, by resolution, from time to time establish or revise fees for swimming pools permitted under this chapter.

Any new swimming pool permit issued after the thirtieth of September of each calendar year shall pay 67% of the new permit fee.

(b) Renewal Late Fees:

(1) A permit holder who fails to renew the permit before it expires, but within 30 days of the date of expiration shall pay a late fee of 33% of the annual fee in addition to the annual fee.

(2) A permit holder who fails to renew the permit before it expires and fails to renew the permit within 30 days from the date of expiration shall pay a late fee of 67% of the annual fee in addition to the annual fee.

(c) Variance Fee. Any person who submits a variance request shall submit an initial variance review fee as the City Council may, by resolution, from time to time establish or revise payable to the City of Lincoln. This shall cover the first two hours of staff review time. Should additional hours be required, each hour thereafter shall be charged at a rate of \$100.00 per hour.

(d) All fees for a permit to conduct, operate, and maintain a swimming pool along with any additional fees described above shall be payable annually to the City of Lincoln. All permit fees and variance fees described in this Section shall be credited to the Health Fund. (Ord. 20076 §1; August 18, 2014; prior Ord. 20009 §14; April 14, 2014; Ord. 19935 §1; October 21, 2013; Ord. 19788 §11; October 8, 2012; Ord. 19611 §7; September 12, 2011; Ord. 19447 §8; September 13, 2010; Ord. 19302 §14; September 14, 2009; Ord. 19141 §10; September 15, 2008; Ord. 18983 §12; August 27, 2007; Ord. 18800 §9; September 18, 2006; Ord. 18598 §7; August 22, 2005; Ord. 17714 §1; August 14, 2000; Ord. 15565 §9; May 14, 1990: P.C. §8.67.100; Ord. 15245 §1; August 7, 1989; Ord. 12224 §10; March 13, 1978).

**8.38.095 Permit; Renewal Late Fees.**

(Repealed by Ord. 20009 §15; April 14, 2014: Ord. 19141 §11; September 15, 2008).

**8.38.097 Lincoln Swimming Pool Operator and Lincoln Pool Water Quality Tester Certificates; Fees.**

(a) There shall be a fee as the City Council may, by resolution, from time to time establish or revise for each application for a Lincoln Swimming Pool Operator certificate,

(b) There shall be a fee as the City Council may, by resolution, from time to time establish or revise for each application for a Lincoln Pool Water Quality Tester certificate.

(c) Each certificate shall be valid for two (2) years from the date of issuance.

(d) All fees shall be payable to the City of Lincoln and shall be credited to the Health Fund. (Ord. 20076 §2; August 18, 2014: prior Ord. 20009 §16; April 14, 2014).

**8.38.100 Polluted or Unsafe Water.**

No body of water in the City of Lincoln or within three miles thereof shall be used for swimming or bathing purposes by any person if it:

(a) contains sewage, waste or other contaminating or polluting substances or material rendering the water hazardous to health; or

(b) is determined by the Health Director to be unsafe due to an imminent health risk. (Ord. 20009 §17; April 14, 2014: prior Ord. 15565 §10; May 14, 1990: P.C. §8.67.102: Ord. 12224 §11; March 13, 1978).

**8.38.110 Inspections and Enforcement.**

The Health Director is hereby authorized and directed to make such inspections as are necessary to determine satisfactory compliance with this ordinance.

(a) The Health Director shall conduct an inspection of each swimming pool before an initial permit is issued.

(b) Upon presentation of proper credentials, the Health Director may enter at reasonable times any building, structure, or premises having a swimming pool located in the city or within three miles thereof to determine compliance with the requirements of this ordinance, and it shall be unlawful for any person to deny right of entry to the Health Director to make the inspection.

(c) An operator shall permit the Health Director to inspect at any reasonable time for the purpose of determining compliance with the provisions of this chapter.

(d) The Health Director shall record the inspection findings on an inspection report. The Health Director shall furnish the inspection report to the swimming pool owner and the Lincoln Swimming Pool Operator(s) responsible for said swimming pool.

(e) The inspection report shall set forth specific conditions found including those which constitute a violation of the Lincoln Municipal Code.

(f) A warning notice may be issued for violations that the Health Director determines pose an imminent or substantial health risk. Such warning notice shall:

(1) Set forth specific conditions found to be violations of the Lincoln Municipal Code;

(2) Establish a specific and reasonable period of time for correction of such violations;

(3) State that failure to correct the violations specified in the warning notice may result in immediate suspension or revocation of the permit and prosecution for violation of this chapter;

(4) State that owner may request a hearing before the Health Director upon such inspection findings and warning notice by filing a written request with the Health Director.

(g) After the time period given for correction in the inspection report or warning notice, the Health Director shall reinspect the establishment to determine compliance.

(h) The completed inspection report form and the warning notice are public documents that shall be made available for public disclosure to any person who requests it according to law.

(i) Whenever the Health Director has reasonable grounds for believing that there has been a violation of this ordinance, or that the conditions in existence at a swimming pool pose an imminent health risk, the Health Director may order that the swimming pool be immediately closed until such time as the conditions are corrected and all provisions of this ordinance are complied with. The Health Director shall give written notice to the person or persons alleged to be in violation. Such notice shall identify the provision of this ordinance alleged to be violated and the facts alleged to constitute such violation. (Ord. 20009 §18; April 14, 2014: prior Ord. 15565 §11; May 14, 1990: P.C. §8.67.104: Ord. 12224 §12; March 13, 1978).

### **8.38.120 Permit or Certificate; Suspension, Revocation.**

It shall be a condition of any permit or certificate issued under this chapter that it may be suspended or revoked at any time by the Health Director for the violation of Neb. Rev. Stat. §§71-4301 through 71-4307, any of the provisions of this chapter, regulations adopted pursuant to this chapter, or any other ordinances of the City resulting in a risk to the public's health. Any permits or certificates granted under this chapter shall be subject to suspension or revocation in the following manner:

(a) The Health Director shall provide notification as provided in Section 8.38.150.

(b) The Health Director may suspend or revoke the permit or certificate for a period of time not to exceed ninety days.

(c) The suspension or revocation shall be effective immediately upon notice.

(d) The person notified shall have a right to a hearing which the Health Director shall conduct in accordance with Section 8.38.160.

(e) It shall be unlawful to continue to operate or cause, permit or allow use of the swimming pool after receiving notice of suspension or revocation of the permit for said pool.

(f) It shall be unlawful to perform as a Lincoln Swimming Pool Operator or Lincoln Pool Water Quality Tester during any period of suspension or revocation of a person's respective certificate.

(f) Actions for reinstatement, hearing, or appeal shall not stay or delay the suspension or revocation in any manner. (Ord. 20009 §19; April 14, 2014: prior Ord. 15565 §12; May 14, 1990: P.C. §8.67.106: Ord. 12224 §13; March 13, 1978).

### **8.38.130 Penalty.**

Any person upon whom a duty is placed by the provisions of this ordinance who shall fail, neglect, or refuse to perform such duty or who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for a period of not to exceed six months or by a fine of not to exceed \$500.00 recoverable with costs, or both. Each day that a violation of this ordinance continues shall constitute a separate and distinct offense and shall be punishable as such. (Ord. 15565 §13; May 14, 1990: P.C. §8.67.108: Ord. 12224 §14; March 13, 1978).

**8.38.140 Suspended Permit or Certificate; Reinstatement.**

(a) Any person whose permit or certificate has been suspended may apply for reinstatement following a period of suspension. The application shall include a signed statement that the conditions causing suspension have been corrected.

(b) The Health Director shall review the application for reinstatement or inspect the swimming pool within three days after receiving the application for reinstatement.

(c) The Health Director shall reinstate the permit or certificate if the conditions causing suspension of the permit have been corrected. (Ord. 20009 §20; April 14, 2014).

**8.38.150 Notice; Service.**

(a) The Health Director may serve notice regarding any suspension or revocation of a permit or certificate under this Chapter as follows:

(1) By personal service; or

(2) By certified mail, postage prepaid, return receipt requested to the owner's or registrant's last known address as indicated on the application for certificate.

(b) The person making personal service may provide a written declaration under penalty of perjury identifying the person served and the time, date, and manner of service as proof of service.

(c) If the service is to a person other than the owner or person holding a certificate, the Health Director may send a copy of the notice to the owner or person holding a permit or certificate by regular mail. The copy is not required as part of the notice, and receipt of the copy does not affect the notice. (Ord. 20009 §21; April 14, 2014).

**8.38.160 Enforcement Hearings.**

(a) The Health Director shall conduct hearings no later than:

(1) Three days after a request for a hearing after a suspension or revocation, or

(2) Fourteen days after any other request.

(b) The Health Director may appoint a suitable hearing officer to hear the matter. Such hearing officer shall make recommendations based on the evidence adduced at the hearing for the Health Director's final determination of the matter.

(c) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. The person requesting the hearing and the Health Director may:

(1) Call and examine witnesses on any matter relevant to the issues of the hearing;

(2) Introduce documentary and physical evidence; and

(3) Cross examine opposing witnesses on any matter relevant to the issues of the hearing.

(d) The Health Director may uphold, reverse, or modify the act or findings prompting the request for hearing and may take such other reasonable action as the Health Director may determine proper in relation to the request.

(e) The Health Director shall make a final determination within ten days after the hearing.

(f) The Health Director's decision shall be final and binding upon the City and upon the person making the request. Said decision may be appealed as provided by law. (Ord. 20009 §23; April 14, 2014).

### **8.38.170 Appeals.**

(a) If the Health Director denies any application or fails or refuses to issue a permit or certificate under this chapter within forty-five days from the date of a complete application, such decision may be appealed to the district court as provided for by law.

(b) Any person aggrieved by a final decision of the Health Director in the administration or enforcement of this chapter may appeal such decision to the district court as provided by law. (Ord. 20009 §24; April 14, 2014).

### **8.38.180 Variances.**

Requests for variances from the design and construction standards must be submitted to the Health Director in writing and must be accompanied by applicable fees. A variance may only be issued in relation to Sections 8.38.020 and 8.38.030 and only after consultation with the Nebraska Department of Health & Human Services. The Director may only grant a variance upon demonstration that the pool's operation and management meet the intent of this chapter, and the regulations adopted pursuant to this chapter, and do not pose an increased health or safety risk. Requests for a variance will be approved or disapproved on a case-by-case basis. The Health Director shall act on the request for variance within thirty days. The Health Director shall not approve any variance until all applicable fees have been paid. (Ord. 20009 §25; April 14, 2014).

### **8.38.190 Liability of Owner.**

Every act or omission of whatsoever nature constituting a violation of any of the provisions of this chapter, by an officer, director, manager or other agent or employee of any owner if said act is committed or omission is made with the authorization, knowledge, or approval of the owner, shall be deemed and held to be the act of such owner, and said owner shall be punishable in the same manner as if said act or omission had been done or omitted by such owner personally. (Ord. 20009 §26; April 14, 2014).

### **8.38.200 Severability and Savings Clause.**

(a) Each section and each subdivision of a section of this title is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the passage of this ordinance is concerned and invalidity of any section or subdivision of a section of this title shall not invalidate any other section or subdivision of a section thereof.

(b) This title shall in no manner affect pending actions, either civil or criminal, founded on or growing out of any ordinance or part of any ordinance hereby repealed; and this title shall in no manner affect rights or causes of action, either civil or criminal, not in suit that may have already accrued or grown out of any ordinance or part of any ordinance hereby repealed. (Ord. 20009 §27; April 14, 2014).