

ORDINANCE NO. 050232

Amending Chapter 78 of the Code of Ordinances, entitled "Water," by repealing Article III therein, entitled "Swimming and Bathing Facilities," consisting of Sections 78-171 through 78-209, and enacting in lieu thereof a new Article III of like title and consisting of new sections 78-171 through 78-240 pertaining to the regulation of swimming and bathing facilities, establishing new fees and clarifying procedures of inspection, suspension and revocation of operating permits.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 78 of the Code of Ordinances, entitled "Water", is hereby amended by repealing Article III therein, entitled "Swimming and Bathing Facilities", consisting of Sections 78-171 through 78-209 inclusive, and enacting in lieu thereof a new Article III of like title and consisting of new Sections 78-171 through 78-240 inclusive, said Article and Sections to read as follows:

ARTICLE III. SWIMMING AND BATHING FACILITIES

DIVISION 1. GENERALLY

Sec. 78-171. Scope, purpose and intent of article.

(a) The scope, purpose and intent of this article is to provide a uniform set of rules and regulations governing and controlling swimming and bathing facilities, to provide a guide for the licensing of existing and new swimming pools, special-purpose facilities and natural bathing places, as defined in this article, and to regulate the construction, reconstruction, maintenance, operation and repair of swimming pools, special-purpose facilities and natural bathing places within the city.

(b) This article includes rules and regulations for water safety, health and sanitation.

(c) This article includes technical requirements pertaining to such facilities, but there is also vested in the director power and authority to make such specific requirements for each permit holder as in his judgment and discretion are just and reasonable.

(d) The provisions of this article shall be in addition to existing laws and ordinances, and any owner or operator of any and all bathing facilities shall be required to comply with all of such provisions.

(e) This article is not intended to include and regulate single-family residential swimming pools or pools similarly situated.

Sec. 78-172. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bathing facility includes, generally, any swimming pool, special-purpose facility or natural bathing place as defined in this section.

Director means the director of the city department of health or his designee.

Lifeguard means a person who is 16 years of age or older and who meets the qualifications prescribed in this article, whose sole function and duty is to supervise those persons utilizing water facilities and to be able to render any assistance to persons in distress in the water or in the immediately adjacent water area, and who holds a current certificate in lifesaving from an accredited organization approved by the director.

Natural bathing place includes such places as ponds, rivers, lakes, springs or such other places in which water cleanliness is dependent upon natural flow or upon wind or wave action, and where the place is used or operated as a swimming pool or bathing facility, either for profit, not for profit or for public recreational purposes.

Operating permit means the permit issued by the director to either construct, reconstruct, maintain, operate or repair a swimming pool, special-purpose pool or natural bathing place, as defined and set forth in the particular conditions and requirements for each applicant thereof where found necessary and justified in the discretion of the director, in accordance with his rules and regulations.

Seasonal permits are operating permits issued for any swimming pool, special-purpose facility or natural bathing place that is in operation for less than 7 months of the calendar year.

Special-purpose facility includes the term in its ordinary sense and meaning, and also any therapeutic pools, water slides, treatment pools, spas, hot tubs and special-purpose pools for water therapy, that are not drained after each use, whether they are operated or managed on a profit or not-for-profit basis, associated with or separate from public facilities or utilized for public recreational purposes.

Swimming pool includes the term in its ordinary sense and meaning, and also any and all wading pools, spray pools, private pools, semiprivate pools, club pools, public pools or any other artificial bathing place where such could be reasonably so denominated, but not exclusive thereof, whether they are operated or managed on a profit or not-for-profit basis, or for public recreational purposes.

Yearly permits are operating permits issued for any swimming pool, special-purpose facility or natural bathing place that is in operation for more than 7 months of the calendar year.

Sec. 78-173. Duties of director.

The director shall have the duty and responsibility of enforcing the provisions of this article and the rules and regulations promulgated by him as authorized by section 78-174, or any amendments in requirements or conditions of any permit issued under this article; and, in addition thereto, he or she shall keep records of all operating permits issued or renewed and any changes thereof, prepare a form of application for such permit, cause an inspection of the premises to be made at any reasonable time of any permit holder, make any amendments to the conditions and requirements either before or after an operating permit is issued, or do any other matter or thing necessary to carry out the intent, purpose and scope of this article and the rules and regulations promulgated under this article.

Sec. 78-174. Authority to prescribe additional rules and regulations.

(a) *Scope of authority.* The director shall formulate rules and regulations for implementing the provisions of this article, and such rules shall include any and all requirements for lifeguards. Such rules and regulations shall be filed with the city clerk, and, when so filed, shall be in effect as part of this article. Such rules may be modified or superseded by other rules and regulations filed by the director from time to time.

(b) *Scope of regulations.* The director shall have power and authority to make provision in such rules and regulations for health, sanitation and adequate water safety as such rules and regulations may appertain to each and every holder of a permit under this article; and such provisions, conditions or requirements shall be subject to modification, deletions, additions or other change or alteration as to any holder of a permit as the director may find and determine at any time.

Sec. 78-175—78-179. Reserved.

DIVISION 2. OPERATING PERMITS

Sec. 78-180. Required.

(a) All persons, firms, partnerships, corporations and associations, either for profit or nonprofit, now or hereafter owning, operating or managing a swimming pool or natural bathing place or other like facility, as defined in section 78-172, shall obtain an operating permit for each such facility from the director. The permit shall be issued only after an application has been submitted and approved by the director on forms to be furnished by him or her. Permits are not transferable with any changes in ownership.

(b) A construction permit shall be required in addition to any and all other requirements made under law or ordinance in those instances where there is initial

construction, reconstruction or repair of any bathing facility, whether or not an operating permit has been issued for the bathing facility.

Sec. 78-181. Conditions.

No operating permit shall be issued by the director until the applicant therefore has complied with the rules and regulations promulgated by the director and all provisions of this article. The director is authorized and directed to endorse on the operating permit such conditions and requirements which in his best judgment and discretion are necessary for the protection of the health and safety of the persons utilizing such swimming pool or bathing facility. Such conditions and requirements shall conform as closely as possible to the rules and regulations promulgated by the director. Such rules and regulations shall not be so strictly construed to operate hardship upon any applicant; but the director shall have discretion to prescribe reasonable conditions and requirements to carry out the scope, purpose and intent of this article.

Sec. 78-182. Application; fees.

(a) *Contents of application.* Before any permit shall be issued, all persons now or hereafter owning, operating or managing a bathing facility shall complete an application for an operating permit on forms furnished by the director. The application shall show the location, operation, specifications and such other information of the existing or proposed bathing facility as may be required by the director.

(b) *Investigation of facility.* Upon receipt of an application, the director shall cause an investigation to be made of the existing facility, or the plans and specifications of a proposed facility, to determine if such applicant meets the requirements of this article and the rules and regulations promulgated under this article.

(c) *Application fee.* A fee of \$50.00 shall accompany the initial application and also any instance where a permit holder may thereafter apply to the director for a modification of the particular requirements and conditions embodied in such permit.

(d) *Fees generally.* Fees shall be based upon the following classification of bathing facility and whether the bathing facility is operational seasonally or yearly, as defined in Sec.-172. Classes of pools shall be as follows:

Class I - Municipal, community, athletic clubs or swimming clubs, country clubs, public and private schools and various camp and day care pools. Natural bathing places shall be in this class but are exempt from disinfectant levels. Class I pools shall not have a mandatory closing time.

Class II - Pools not meeting the supervision requirements shall be included within this class, i.e. hotels, motels, apartment complexes, condominiums, and multiple-housing units. Except with special permission, Class II pools must close at 10:00pm. No children under the age of 12 are allowed in the pool without a responsible person of the age 16 or older.

Class III - All baby pools or wading pools with a maximum depth of two (2) feet.

Class IV - Special Purpose Facilities - Hot tubs, spas, whirlpools or any pools operated for medical treatment, that are not drained after each use.

The following schedule prescribes applicable fees for permits described in this article and the effective dates of such fees:

| Class | Type | Current Fee | Permit Year 2006 | Permit Year 2007 and Forward |
|--------------|-------------|--------------------|-------------------------|-------------------------------------|
| Class I | Yearly | \$400 | \$475 | \$550 |
| Class I | Seasonal | \$250 | \$300 | \$350 |
| Class II | Yearly | \$400 | \$475 | \$550 |
| Class II | Seasonal | \$250 | \$300 | \$350 |
| Class III | Yearly | \$170 | \$210 | \$250 |
| Class III | Seasonal | \$170 | \$185 | \$200 |
| Class IV | Yearly | \$170 | \$210 | \$250 |
| Class IV | Seasonal | \$170 | \$185 | \$200 |

(e) *Reinstatement fee.* In addition to other fees established herein, there shall be a fee of \$50.00 for the reinstatement of any permits that have been suspended or revoked.

(f) *Adjustment of fees.* The director shall have the authority to adjust the above-listed fees annually to reflect the change in the consumer price index (all items/all urban consumers/Kansas City, Missouri Kansas) published by the United States Department of Labor, Bureau of Labor Statistics. The costs of issuance and inspections of permits may be increased by the CPI Index indicated above.

Sec. 78-183. Amendment of requirements; Notice and review.

(a) *Authority of director.* The director is authorized, upon proper showing, to amend the requirements and conditions set forth in any permit issued under this division upon proper application of any holder of an operating permit.

(b) *Notice to permit holder.* Before the director shall cause an amendment in the conditions and requirements in any permit or renewal thereof to be made, he or she shall cause a notice to be given to such permit holder at least ten days before he amends such permit, stating therein the nature of the action he proposes to take with regard to the conditions and requirements of such permit.

(c) *Right to review.* If such permit holder is aggrieved by the proposed action of the director, he shall have the right to a hearing thereon before the director of health, and have a transcript thereof made and a decision rendered thereon, which shall constitute the amended permit. A request for hearing by the permit holder shall be made in writing and

delivered to the director of health within five days after receipt of the notice of proposed amendment, and shall state the grounds upon which objection to the proposed amendment of the director is made. If such permit holder is still aggrieved by the action of the director, then a judicial review of such decision may be had in the circuit court of the county wherein such bathing facility is situated.

Sec. 78-184. Duties of permit holder.

All holders of operating permits issued under this division shall comply with all provisions of this article, and the rules and regulations promulgated by the director, as such provisions, rules and regulations may be amended from time to time, and also each and every condition and requirement endorsed upon such permit or any renewal thereof issued under this division, as such conditions and requirements may be amended by the director as provided in section 78-183.

Sec. 78-185—Sec.78-199. Reserved.

DIVISION 3. ENFORCEMENT AND RIGHTS

Sec. 78-200. Inspections required.

The director shall cause periodic inspections to be made of all swimming pools, special-purpose facilities and natural bathing places regulated under this article to ensure that the holder of the operating permit issued under this article is complying with the provisions of this article, the rules and regulations promulgated by the director, as they may be amended from time to time, and the conditions and requirements set forth in the operating permit issued for the particular facility for which the operating permit was issued or renewed.

Sec. 78-201. Non-health-hazardous or life-threatening violations; opportunity to correct.

During an inspection, if a health officer discovers that a permit holder has failed to comply with this article or the rules and regulations established by the director, and the violation is not life-threatening or a potentially serious health hazard, he or she shall:

1. Inform the permit holder, his agent, servant or employee in writing that a violation exists;
2. Allow the permit holder an opportunity to correct the violation within a reasonable period of time, as determined by the director; and
3. Re-inspect the swimming pool, special-purpose facility or natural bathing place to determine if the violation still exists.

Sec. 78-202. Same--Notice of Hearing for Suspension or Revocation.

If the director finds the permit holder still in violation upon re-inspection pursuant to Sec. 78-201, he shall notify the permit holder in writing of his intention to suspend or revoke the permit and allow the permit holder an opportunity for a hearing. Such notice shall be sent to the permit holder at least 5 days before such hearing and shall include the date, time and location of the hearing.

Sec. 78-203. Same—Hearings; Record of proceedings; Failure to appear.

a) *Hearings.* The director shall conduct hearings pursuant to Sec. 78-202 to determine if a suspension or revocation shall take effect. The permit holder shall be allowed to show cause why such action should not be taken.

b) *Record of proceedings.* The director shall cause to be made a true and accurate transcript of such proceedings, and any appeal or review thereof by such permit holder shall be taken in accordance with the law.

c) *Action by director.* After any hearing shall be concluded, the director shall make findings of fact and conclusions of law upon which his or her decision shall be based. Such conclusions may result in either no action taken due to no violation, suspension or revocation.

d) *Automatic suspension.* Failure of a permit holder to appear at the hearing shall result in automatic suspension of the permit.

Sec. 78-204. Same—Suspensions; Reinstatements of permits; Length of suspension.

(a) After a hearing, if the director finds the permit holder to be in violation of this article or the rules and regulations and suspends the permit, the permit holder shall lock, secure or close the area of violation and post a sign indicating that the bathing facility is closed for maintenance or is temporarily out of service.

(b) Failure of the permit holder to lock, close, or secure the bathing facility and maintain such signage during suspension may result in revocation of the permit.

(c) If the permit holder has corrected the violation during a period of suspension, he or she shall notify the director of the intention to have the permit reinstated.

(d) The director shall re-inspect the premises. If the violation no longer exists, the director or health officer will leave written notification that the permit has been reinstated. Such notice shall also notify the permit holder that the closure signage may be removed and the bathing facility may once again operate.

(e) The director shall charge a reinstatement fee of \$50.00 whenever a suspended permit is reinstated upon a re-inspection, as stated in Section 78-128(e).

(f) Suspensions in effect longer than 90 days shall result in a revocation.

Sec. 78-205. Same—Revocations.

If the director decides to revoke a permit after a hearing or pursuant to Sec. 78-204(b) or 78-204(f), such bathing facility shall not remain in operation and shall be secured in a fashion deemed necessary by the director.

Sec. 78-206. Health-hazardous or life-threatening violations; opportunity to correct.

During an inspection, if a health officer discovers that a permit holder has failed to comply with this article or the rules and regulations established by the director, and the violation is life-threatening or a potentially serious health hazard, he or she shall:

1. Immediately lock, secure or close the area of violation and post a sign indicating that the bathing facility is closed for maintenance or is temporarily out of service.
2. Inform the permit holder or his agent, servant or employee in writing that a violation exists;
3. Allow the permit holder an opportunity to correct the violation within a reasonable period of time, as determined by the director; and
4. Re-inspect the swimming pool, special-purpose facility or natural bathing place to determine if the violation still exists.

Sec. 78-207. Same--Notice of Hearing for Suspension or Revocation.

If the director finds the permit holder still in violation upon re-inspection pursuant to Sec. 78-206, he shall notify the permit holder in writing of his intention to suspend or revoke the permit and allow the permit holder an opportunity for a hearing. Such notice shall be sent to the permit holder at least 5 days before such hearing and shall include the date, time and location of the hearing.

Sec. 78-208. Same—Hearings; record of proceedings; Failure to appear.

a) *Hearings.* The director shall conduct hearings pursuant to Sec. 78-207 to determine if a suspension or revocation shall take effect. The permit holder shall be allowed to show cause why such action should not be taken.

b) *Record of proceedings.* The director shall cause to be made a true and accurate transcript of such proceedings, and any appeal or review thereof by such permit holder shall be taken in accordance with the law.

c) *Action by director.* After any hearing shall be concluded, the director shall make findings of fact and conclusions of law upon which his or her decision shall be based. Such conclusions may result in either no action taken due to no violation, suspension or revocation.

d) *Automatic suspension.* Failure of a permit holder to appear at the hearing shall result in automatic suspension of the permit.

Sec. 78-209. Same—Suspensions; Reinstatements of permits; Length of suspension.

(a) After a hearing, if the director finds the permit holder to be in violation of this article or the rules and regulations and suspends the permit, he shall make an order that the area or facility in violation remain locked, secured or closed and that signs indicating the bathing facility is closed for maintenance or is temporarily out of service remain in place during the period of suspension.

(b) Failure of the permit holder to lock, close or secure the bathing facility and maintain such signage during suspension may result in revocation of the permit.

(c) If the permit holder has corrected the violation during a period of suspension, he or she shall notify the director of his intention to have the permit reinstated.

(d) The director shall re-inspect the premises. If the violation no longer exists, the director or health officer will leave written notification that the permit has been reinstated. Such notice shall also notify the permit holder that the closure signage may be removed and the bathing facility may once again be in operation.

(e) The director shall charge a reinstatement fee of \$50.00 whenever a suspended permit is reinstated upon a re-inspection, as stated in Section 78-182(e).

(f) Suspensions in effect longer than 90 days shall result in a revocation.

Sec. 78-210. Same—Revocations.

If the director decides to revoke a permit after a hearing or pursuant to Sec. 78-209(b) or 78-209(f), such bathing facility shall not remain in operation and shall be secured in a fashion deemed satisfactory by the director.

Sec. 78-211. Violations generally; penalty; failure to obtain permit or renew.

(a) Any person violating any provision of this article, the rules and regulations of the director, or the conditions and requirements contained in the operating permit, as any or all of such provisions, rules, regulations, conditions or requirements may be amended, shall be deemed guilty of an ordinance violation, and upon conviction thereof shall be punished as provided in Section 1-17. Such violations apply to actions or inactions taken by the permit holder, his agents, servants or employees.

(b) Failure of any person to obtain an operating permit or keep the permit in force and effect by proper renewal thereof, where an operating permit is required, shall constitute a violation of this article.

(c) Where the permit holder is a corporation or other association authorized by law to act only through an officer thereof, the officers executing the application or their successors shall be the responsible person subject to the penalties set forth in this section for the violation of this article.

Sec. 78-212. Appeal .

Any permit holder aggrieved by an adverse ruling or decision by the director may have the ruling or decision reviewed by any means authorized by law, and such review shall begin in the first instance of the circuit court of the county in which the bathing facility is situated.

Sec. 78-213—78-240. Reserved.

Approved as to form and legality:

Joseph A. Guarino
Assistant City Attorney