

Sec. 43-2. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

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Pool means any man-made permanently installed or non-portable structure, basin, chamber, or tank containing or designed to contain a body of water to be used for human swimming, diving, aquatic sports, or other aquatic activity, including any pool that is categorized as a Class A, Class B, or Class C ~~or Class D~~ public pool pursuant to Section 265.182(9976) of Title 25 of the Texas Administrative Code, regardless of whether a fee is charged for use, and regardless of whether its use has been abandoned or discontinued; provided, however, that this term does not include a residential pool or spa or a pool that has been abated.

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Residential pool or spa means a pool or spa that is located on private property under the control of the property owner or the owner's tenant and that is intended for use by not more than two resident families and their guests, including a pool or a spa serving only a single-family home or duplex. ~~any man-made structure, basin, chamber, or tank containing or designed to contain a body of water to be used for human swimming, diving, aquatic sports, or other aquatic activity and that is located at a single-family home or a duplex.~~

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Spa means a body of water intended for the immersion of persons in either hot or cold water, circulated in a closed system, and not intended to be drained and refilled after each use. A spa can include a filter, a heater, a pump, a blower and water sanitizing equipment. The term includes a swim spa or exercise spa, including any spa that is categorized as a Class A, Class B or Class C spa pursuant to Section 265.182 (94) of Title 25 of the Texas Administrative Code. ~~a constructed permanent or portable structure that contains or is designed to contain hot or cold water and (i) is two feet or more in depth, (ii) has a surface area of 250 square feet or less or a volume of 3,250 gallons or less, (iii) is intended to be used for bathing or other recreational uses by human beings, (iv) is not drained and refilled after each use, and (v) includes such elements as hydrojet circulation, mineral baths, air induction bubbles, or any combination thereof; regardless of whether its use has been abandoned or discontinued; provided, however, that this term does not include a residential pool or spa or a spa that has been abated.~~

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Sec. 43-6. ~~Facilities~~ Aquatic structures: minimum standards.

- (a) Except as provided in subsection (b) of this section, the City adopts minimum standards for ~~facilities~~ aquatic structures that are identical to or stricter than those pool safety standards contained in the following state and federal laws, all of which are incorporated herein:
 - (1) The VGBA;
 - (2) Chapter 757 of the Texas Health and Safety Code, as it relates to facilities; and
 - (3) Subchapters L and M of Chapter 265 of Title 25 of the Texas Administrative Code, as it relates to facilities; and
 - (4) That volume of the Construction Code known as the *City of Houston Swimming Pool and Spa Code*.
- (b) The provisions of Section ~~265.208~~ 265.211 of Title 25 of the Texas Administrative Code shall not apply to enforcement of this chapter.
- (c) The operator of an facility ~~facility~~ aquatic structure shall maintain the facility ~~facility~~ aquatic structure in accordance with the pool safety standards adopted by the City pursuant to subsection (a) of this section. Any inconsistency between the requirements of this article and subsection (a) shall be resolved in favor of the more restrictive requirement.

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Sec. 43-9. Approval of plans and specifications.

- (a) No aquatic structure shall be constructed, remodeled, or altered except in accordance with plans and specifications approved by the health officer. An applicant shall submit ~~two sets of~~ properly prepared plans and specifications for the construction, remodeling, or alteration of an aquatic structure, along with a nonrefundable plan review fee, to the health officer for approval before the construction, remodeling, or alteration is begun. The health officer shall approve the plans and specifications if they meet the applicable requirements. If the plans and specifications do not meet all applicable requirements, the health officer shall reject the plans and provide the applicant a written explanation of the discrepancies between the applicable requirements and the existing plans and specifications. An applicant whose plans and specifications have been rejected may resubmit a revised set of plans and specifications for review.
- (b) The plans and specifications shall comply with this chapter and all other applicable laws, rules and regulations, including the Construction Code. The plans and specifications shall include, at a minimum, such elements as the proposed layout, arrangement, and construction materials of an aquatic structure and its

components. One set of the approved plans and specifications shall be given to the owner or contractor responsible for the construction of the aquatic structure. A second set of approved plans and specifications shall remain on file with the health officer.

- (c) Any proposed change to the proposed layout, arrangement, and construction materials of an aquatic structure and its components after the first set of plans and specifications have been approved by the health officer shall be shown on revised plans and specifications which shall be submitted to and reviewed by the health officer. Upon approval prior to any work related to such elements, the approved changes shall be added to the original plans and specifications.
- (d) An aquatic structure may not be constructed so as to discharge its wastes into a sanitary sewer or other public drainage system unless such discharge is approved in writing by the health officer and the utility official.
- (e) All portions of the water distribution system of an aquatic structure shall be protected against backflow from the water into the city's water supply system. The fill line used to introduce water to the aquatic structure shall have a backflow device on the discharge side of the last gate valve or a six-inch air gap at the end of the fill line. The fill line shall not be connected directly to any of the piping or equipment of the circulation system. A fill line from the water supply to prime the pump shall not be allowed.
- (f) A pool or spa shall be equipped with approved drain covers.
- (g) The health officer shall inspect an aquatic structure that has been constructed, remodeled or altered prior to its operation to determine compliance with the approved plans and specifications and with all other applicable requirements. A preoperational inspection fee will be assessed in conjunction with the inspection of an an facility-aquatic structure. An aquatic structure that fails to pass this inspection may not be operated or used.
- (h) No permit shall be issued to or renewed for any facility-aquatic structure for which outstanding fees are owed to the city.

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Sec. 43-33. Enclosure of aquatic structures.

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- (b) The operator of an an facility-aquatic structure that is regulated by Chapter 757 of the Texas Health and Safety Code shall at all times maintain an enclosure that complies with those provisions of that chapter adopted by reference in section 43-6(a) of this Code, and the city may remedy violations of this subsection in accordance with the provisions of Section 214.101 of the Local Government Code, including the placement of a lien against the property to recover expenses incurred pursuant to remediation.

- (c) The operator of an facility-aquatic structure that is regulated by Subchapter L of Chapter 265 of Title 25 of the Texas Administrative Code shall at all times maintain upon such property an enclosure that complies with the requirements of Section 265.2030 of that subchapter adopted by reference in section 43-6(a) of this Code.

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Sec. 43-35. Enforcement and closures.

- (a) The health officer is authorized to issue citations charging the violation of any of the provisions of this chapter, the City of Houston Swimming Pool and Spa Code, and, to the extent authorized or permitted by law, any applicable state laws, rules or regulations regarding pool safety. In addition, the health officer may order an facility-aquatic structure closed if the health officer determines:
- (1) That it is being operated without a valid permit; or
 - (2) That the continued operation of the aquatic structure will constitute a hazard to the health or safety of persons using the facility-aquatic structure or those in close proximity to the facility-aquatic structure.
- (b) Written notice of a closure order shall be provided to the operator of an aquatic structure. The notice shall:
- (1) Set forth the specific conditions at the aquatic structure that constitute a hazard to public health; or
 - (2) Set forth the specific conditions at the aquatic structure that are in violation of this chapter, the City of Houston Swimming Pool and Spa Code, federal or state laws, or rules or regulations regarding pool safety.
 - (3) Be sent by personal hand delivery, certified mail, or private delivery service, return receipt requested. If there is documented proof that these methods are not successful, the written notice of a closure order may be sent to the operator by email.
- ~~(b)~~(c) Upon closure of an facility-aquatic structure pursuant to this section, the person in charge of the facility-aquatic structure shall immediately:
- (1) Properly post and maintain signs at all entrances to the facility-aquatic structure that state: "CLOSED UNTIL FURTHER NOTICE"; and
 - (2) Lock all doorways and gates that form a part of the facility-aquatic structure enclosure, so that the facility-aquatic structure is only accessible to maintenance or authorized personnel for repairs.

Signs required to be posted under this section shall be a minimum size of 8½ inches by 11 inches. The lettering shall be of a contrasting color to the background and not less than one inch in height. Signs shall be positioned so that they are readily visible to a person seeking entry to the ~~facility~~aquatic structure.

~~(e)~~(d) If the person in charge of the ~~facility~~aquatic structure is absent or fails or refuses to comply with the requirements of subsection (b), the health officer may post signs and secure the premises in accordance with this section.

~~(d)~~(e) A person commits an offense under this section if the person:

- (1) Removes, defaces, alters, covers or renders unreadable a closure sign posted by the health officer; or
- (2) Uses an ~~facility~~aquatic structure subject to a closure order for swimming, diving or bathing; or
- (3) Is a person in charge of an ~~facility~~aquatic structure subject to a closure order and knowingly allows persons to use the ~~facility~~aquatic structure for swimming, diving or bathing; or
- (4) Is a person in charge of an ~~facility~~aquatic structure subject to a closure order and fails to comply with the requirements of this section.

(f) The health officer shall notify the operator of a timeframe for reinspection after the health officer issues the closure order. If, upon reinspection any time before the end of the timeframe provided, it is found that the violations have been corrected, the health officer will lift the closure order. If the violations have not been corrected within the timeframe, and the operator has not received an approved extension, the closure order shall remain in place and the health officer may issue additional citations.

~~(e)~~(g) An operator may appeal a closure order within ~~three~~10 days after the ~~issuance~~receipt of notice of the closure order by filing a written statement with the health officer setting forth the reasons why the closure order should be rescinded. The filing of an appeal does not ~~stay~~postpone or halt the closure order.

~~(f)~~ A facility closed by the health officer shall not resume operation until a reinspection by the health officer establishes that the facility is in compliance with this chapter, the City of Houston Swimming Pool and Spa Code, and all applicable state or federal laws and rules and regulations regarding pool safety.

(h) If an appeal is not timely filed, the closure order shall remain in place pending the results of the reinspection scheduled pursuant to subsection (f) of this section. If the appeal is timely filed, a hearing shall be scheduled with written notice provided to the operator by personal hand delivery, certified mail, or private delivery service within 5 days after receipt of the appeal. If there is documented proof that these

methods are not successful, the written notice may be sent to the operator by email. The notice shall set forth:

- (1) That a hearing will be held before a hearing officer;
 - (2) The date, time, and place of the hearing; and
 - (3) That the operator may appear in person or virtually, may be represented by counsel, and may present testimony and cross-examine all witnesses. The hearing shall be held not later than 10 days after receipt of the appeal.
- (i) All hearings shall be conducted by a person designated by the director of the department, who shall be referred to as the hearing officer. The director of the department shall not designate any person to perform the duties of hearing officer under this section who has participated in the inspection of the aquatic structure, or has prior knowledge of the allegations or circumstances discovered in the inspection or inspections, except that the person designated as hearing officer may, prior to the hearing, receive a copy of the closure order given to the operator.
- (j) All hearings shall be conducted under rules consistent with the informal nature of the proceedings; provided, however, the following rules shall apply:
- (1) Each party shall have the right to representation by a licensed attorney, although an attorney is not required.
 - (2) Each party may present witnesses on his own behalf.
 - (3) Each party has the right to cross-examine all witnesses.
 - (4) The hearing officer may consider only the evidence presented at the hearing in rendering the order.
- (k) If the operator fails to appear at the hearing at the time, place, and date specified, the health officer shall present sufficient evidence to establish a prima facie case showing violation of this chapter or the *City of Houston Swimming Pool and Spa Code*, or conditions constituting a hazard to public health that formed the basis of the closure order.
- (l) If the hearing officer determines that the aquatic structure was operated in violation of this chapter, the *City of Houston Swimming Pool and Spa Code*, federal or state laws, rules or regulations regarding pool safety, or constituted a hazard to public health, the hearing officer shall make written findings of fact and shall affirm the closure order. If the hearing officer finds that the public interest will be adequately protected by a warning or other penalties authorized under this chapter, he may rescind the closure order and impose such penalties. A copy of the findings and order of the hearing officer shall be sent by personal hand delivery, certified mail, or private delivery service, return receipt requested, to the operator. If there is

documented proof that these methods are not successful, the findings and order may be sent to the operator by email.

Sec. 43-36. Permit suspension.

- (a) The health officer may, upon notice to the permit holder, suspend a permit if the operator of an facility-aquatic structure does not comply with the requirements of this chapter or the *City of Houston Swimming Pool and Spa Code*, or if the operation of the facility-aquatic structure otherwise constitutes a hazard to public health. Suspension is effective upon service of the notice required by subsection (b) below. Upon issuance of a permit suspension, active pool operations shall immediately cease, and the permit shall be removed from the facility-aquatic structure by the health officer and retained at the department until the suspension has terminated.
- (b) Written notice of a permit suspension shall be provided to the operator of an facility-aquatic structure by personal hand delivery ~~or~~, certified mail, or private delivery service, return receipt requested. If there is documented proof that these methods are not successful, the written notice may be sent to the operator by email. The notice shall set forth:
- (1) The specific conditions at the facility-aquatic structure that are in violation of this chapter, the *City of Houston Swimming Pool and Spa Code*, ~~in violation of~~ or federal or state laws, rules or regulations regarding pool safety, or that constitute a hazard to public health;
 - (2) That a hearing will be held before a hearing officer;
 - (3) The date, time and place of the hearing; and
 - (4) That the operator may appear in person or virtually, may be represented by counsel, and may present testimony and cross-examine all witnesses. The hearing shall be held not later than ten days after the date the permit is suspended.
- (c) A permit suspension hearing under this section shall be held in accordance with the procedures set forth in section 43-35 of this Code. ~~All hearings shall be conducted by a person designated by the director, who shall be referred to as the hearing officer. The director shall not designate any person to perform the duties of hearing officer under this section who has participated in the inspection of the facility, or has prior knowledge of the allegations or circumstances discovered in the inspection or inspections, except that the person designated as hearing officer may, prior to the hearing, receive a copy of the notice given to the operator.~~
- (d) ~~All hearings shall be conducted under rules consistent with the informal nature of the proceedings; provided, however, the following rules shall apply:~~

- ~~(1)~~ Each party shall have the right to representation by a licensed attorney, although an attorney is not required.
 - ~~(2)~~ Each party may present witnesses on his own behalf.
 - ~~(3)~~ Each party has the right to cross-examine all witnesses.
 - ~~(4)~~ The hearing officer may consider only the evidence presented at the hearing in rendering the order.
- ~~(e)~~(d) If the operator fails to appear at the hearing at the time, place, and date specified, the health officer shall present sufficient evidence to establish a prima facie case showing violation of this chapter or the *City of Houston Swimming Pool and Spa Code*, or conditions constituting a hazard to public health that formed the basis of the suspension of the permit.
- ~~(f)~~(e) If the hearing officer determines that the facility-aquatic structure was operated in violation of this chapter or the *City of Houston Swimming Pool and Spa Code*, or constituted a hazard to public health, the hearing officer shall make written findings of fact and shall affirm the permit suspension until all violations of this chapter are corrected and any conditions constituting a hazard to public health are eliminated. If the hearing officer finds that the public interest will be adequately protected by a warning or other penalties authorized under this chapter, he may order the permit to be reinstated and impose such penalties. A copy of the findings and order of the hearing officer shall be sent by personal hand delivery, certified mail, or private delivery service, return receipt requested, to the operator. If there is documented proof that these methods are not successful, the findings and order may be sent to the operator by email.
- ~~(g)~~(f) Whenever the reason for a suspension no longer exists, the operator shall notify the health officer that the conditions under which the permit was suspended have been corrected and request a reinspection. The reinspection shall be conducted as soon as possible after the request is received and, in any event, no later than three regular working days after the receipt of the request.

Sec. 43-37. Permit revocation.

- (a) A permit may be revoked for up to 180 days if:
 - (1) The person in charge or his agents or employees fail or refuse to permit an inspection of the facility-aquatic structure by a health officer; or
 - (2) The department has found three or more violations of the applicable portions of this chapter, the *City of Houston Swimming Pool and Spa Code*, or of federal or state laws, rules or regulations regarding pool safety within the preceding twelve-month period.

- (b) Prior to the revocation of a permit, written notice shall be provided to the operator by personal hand delivery ~~or by~~, certified mail, or private delivery service, return receipt requested. If there is documented proof that these methods are not successful, the written notice may be sent to the operator by email. The notice shall set forth:
- (1) The grounds on which the city will seek revocation of the permit, including the specific violations of this chapter, the *City of Houston Swimming Pool and Spa Code*, or ~~of~~ federal or state laws regulating pool safety on which the city will rely in seeking revocation of the permit;
 - (2) That a hearing will be held before a hearing officer;
 - (3) The date, time and location of the hearing; and
 - (4) That the operator may appear in person or virtually, may be represented by counsel and may present testimony and cross-examine all witnesses. The hearing shall be held not later than ten days after the date the permit revocation notice is received.
- (c) A permit revocation hearing under this section shall be held in accordance with the procedures set forth in section 43-365 of this Code.
- (d) If the hearing officer determines that there are grounds for revocation of the permit, the hearing officer shall make written findings of fact and shall order the revocation of the permit for a period of not more than 180 days. A copy of the findings and order of the hearing officer shall be sent by personal hand delivery, certified mail, or private delivery service, return receipt requested, to the operator. If there is documented proof that these methods are not successful, the findings and order may be sent to the operator by email.
- (e) All operation of an an facility-aquatic structure shall cease immediately upon receipt of service of written notice that the permit for that facility-aquatic structure has been revoked pursuant to subsection (d), and the health officer shall physically remove the permit from the premises.
- (f) Reinstatement of a permit that has been revoked shall require the operator to resubmit an application and payment of a ~~repay the~~ permit fee as if it were an initial application. No new permit application shall be considered for an an facility-aquatic structure where the hearing officer has revoked the permit ~~has been revoked~~ until the expiration of the revocation period.