

ORDINANCE NO. 1167

AN ORDINANCE TO AMEND AND REENACT CHAPTER 15-04 OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO RELATING TO RECREATIONAL AQUATIC FACILITIES.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WEST FARGO, NORTH DAKOTA:

SECTION 1. Chapter 15-04 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, is hereby amended and reenacted to read as follows:

CHAPTER 15-04

RECREATIONAL AQUATIC FACILITIES

SECTIONS:

- 15-0401. Definitions.
- 15-0402. Regulation by Health Department.
- 15-0403. Health Department Approval of Construction Plans.
- 15-0404. Fence/Barrier and Gate Requirements.
- 15-0405. Inspection by Health Department.
- 15-0406. Periodic Inspection and Testing by Health Department.
- 15-0407. Licenses and Fees.
- 15-0408. Licenses - Compliance and Revocation.
- 15-0409. Pool Operator Certification.
- 15-0410. Variance.
- 15-0411. Appeals.

15-0401. DEFINITIONS.

1. "Aquatic Venue," as defined by the Model Aquatic Health Code, means an artificially constructed or modified natural structure where the general public is exposed to water intended for recreational or therapeutic purpose. Such structures do not necessarily contain standing water so water exposure may occur via contact, ingestion, or aerosolization. Examples include swimming pools, water parks, water slides, spas (including spa pools and hot tubs), therapeutic pools, fountains, wet decks, spray pads, and interactive water features.
2. "Health Department" shall mean the Fargo Cass Public Heath Department and its authorized designees and representatives.

3. "Certified operator" shall mean the person having a current certification from the successful completion of at least one of the following three courses: (a) the National Swimming Pool Foundation Certified Pool Operator course, (b) both Tech I and Tech II courses of the National Spa and Pool Institute, and (c) the National Recreation and Park Association Aquatic Facility Operator course.
4. "Person" shall mean any individual, limited liability company, firm, partnership, association, corporation, company, society, government agency, club, business entity, or any organization of any kind.
5. "Pool" shall mean any structure, chamber, or tank containing an artificial body of water for recreational use, including, without limitation, a competition pool, wading pool, splash pad, spa, lazy river, special purpose pool, plunge pool, water slide, flume, speed slide, wave pool, sand bottom pool, vortex pool, and zero entry pool.
6. "Private residential pool" shall mean a pool connected with a single family residence or with a multi-unit owner occupied complex that is located on private property and that is under the control of the property owner(s), the use of which pool is limited to the owner(s) or invited guests, is deeper than 2 feet, and has a recirculation system. A pool that is used for commercial purposes is not a private residential pool.

15-0402. REGULATION BY HEALTH DEPARTMENT. The Health Department and agents and employees thereof, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of Aquatic Venues and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices shall be approved by the Health Department, are hereby adopted by reference and fully incorporated herein, including any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.

No person shall own, operate, or allow to be occupied a Aquatic Venue, except a private residential pool, without a license for such issued by the Health Department.

No person shall occupy an Aquatic Venue that has been closed and placarded for closure by the Health Department, and no license shall allow such Aquatic Venue to be occupied after such closure and placarding other than for the limited purposes of repairs, maintenance or other activities needed to correct an imminent health hazard.

15-0403. HEALTH DEPARTMENT APPROVAL OF CONSTRUCTION PLANS. Before work is commenced on the construction of an Aquatic Venue, or on any alteration, addition, remodeling, or other improvement to an Aquatic Venue, the plans and specifications shall have been must be approved by the Health Department.

15-0404. FENCE/BARRIER AND GATE REQUIREMENTS. A fence or other barrier at least six (6) feet in height shall completely encircle all Aquatic Venues and private residential pools. Any fence, gate, or door shall be equipped such that it can be latched from the inside to prevent access when the pool is unattended.

15-0405. INSPECTION BY HEALTH DEPARTMENT. The Health Department may inspect or cause to be inspected all Aquatic Venues within the City at such times as it may deem necessary to carry out the intent of this ordinance. The Health Department is hereby authorized to enter upon any premises to take such samples of water from such pools at such times as it may deem necessary and to require the owner, proprietor, or operator to comply with rules and regulations pertaining to Aquatic Venues promulgated by the Health Department, which regulations which have been adopted by the City of Fargo, North Dakota, as may be amended from time to time, are hereby adopted as applicable regulations in the City of West Fargo. In the event of the failure of compliance after due notice with the rules and regulations and requirements of the Health Department or the requirements of this ordinance, the Health Department shall have the power to abate or cause a suspension of the use of such Aquatic Venue until such time as the same is, in the opinion of the Health Department, no longer a menace or a hazard to health, safety, or morals.

15-0406. PERIODIC INSPECTION AND TESTING BY THE HEALTH DEPARTMENT. All Aquatic Venues in use shall be sampled and tested for water quality at intervals to be determined by the Health Department. The allowable limits and frequency of such tests shall be as determined by the Health Department.

15-0407. LICENSES AND FEES. A license shall be issued when investigation has determined that the Aquatic Venue and its method of operation will conform to the requirements of this chapter. A license, once issued, is nontransferable. A license shall be valid only for the location, unless revoked for cause, for the time period indicated. The license shall be posted in a conspicuous place in the Aquatic Venue. Fees shall be set by resolution of the board of city commissioners and shall be sufficient to cover the actual expenses of administering and enforcing this program, including the expenses of inspecting. The fee for the periodic tests required in Section 15-0409 shall be established by resolution of the Board of City Commissioners. Periodic inspection and testing fees shall be at the expense of the Aquatic Venue.

15-0408. LICENSES - COMPLIANCE AND REVOCATION. All licensees shall comply with the requirements of the regulations, rules, standards, and practices promulgated and adopted as set forth in Section 15-0402. The Health Department may revoke any license to operate an Aquatic Venue or may direct any Aquatic Venue to close upon violation of this chapter including a violation of the adopted regulations, rules, standards, and practices and including the failure to pay the administrative penalty imposed pursuant to this section; or may order both such closure and revocation of such license.

1. When the Health Department has revoked an Aquatic Venue license, the person in charge:
 - a. Shall immediately close the pool for use by anyone;
 - b. Shall be notified in writing by the Health Department that the Aquatic Venue license is immediately revoked upon service of the notice and the suspension shall remain in effect until a hearing with the Health Department occurs. If the Health Department finds the operation to be in compliance with the requirements of this chapter, the Aquatic Venue may reapply for a new license;
 - c. May request a hearing by filing a written request for a hearing with the Health Department within ten (10) days of receipt of the notice of revocation; and
 - d. Shall be notified, if a written request for a hearing is not filed within ten (10) days that the revocation shall be sustained.

Any Aquatic Venue owner whose license has been revoked may, at any time, make written application for a re-inspection for the purpose of re-applying for a license. The application shall include a statement, signed by the owner, that, in the owner's opinion, the conditions causing the revocation have been corrected.

A new license may be issued if the Health Department determines that conditions which prompted the revocation no longer exist.

2. When the health department has ordered an Aquatic Venue to be closed and has placarded the same to prohibit use until an imminent health hazard is corrected, if the licensee or agent or employee of the licensee either fails to close said pool or said licensee, agent or employee thereof opens the pool for occupancy or use prior to approval of the Health Department, then, in

addition to any other remedies provided herein, administrative penalties may be imposed upon the licensee as follows:

- a. For a first offense: a \$500 monetary penalty;
 - b. For a second offense within the prior twelve-month period since the date of the prior offense: a \$1,000 monetary penalty plus a period of suspension of the violator's license to be determined by the administrative board, below, or if said board's decision is appealed, by the Board of City Commissioners; and
 - c. For a third or any subsequent such offense occurring within the prior twelve-month period since the next previous offense: a \$1,000 monetary penalty plus a period of suspension of the violator's license to be determined by the administrative board, below, or if said board's decision is appealed, by the Board of City Commissioners.
3. Administrative Board-Notice of Violation-Procedure for Hearing-Appeals. There is hereby established a three-member administrative board consisting of the health officer, the director of public health and the city auditor. When an Aquatic Venue has been ordered closed and placarded by the Health Department, as authorized by law, and subsequently the health department determines that the Aquatic Venue either has not been closed, has not remained closed or has been unlawfully allowed to be occupied prior to approval of the Health Department, then the Health Department may cause a notice of violation to be delivered to the licensee, which notice shall describe the nature of the violation, the date or dates said violation existed, and the amount of the administrative penalty being sought by such notice. Upon receipt of the notice of violation, the licensee may admit to the violation, pay the monetary administrative penalty and make arrangements with the Health Department for implementation of the suspension of the licensee's license within ten (10) days or a public hearing before the administrative board will be scheduled by the Health Department. A hearing shall be set by the Health Department and a notice of said hearing issued to the licensee specifying the time and place of the hearing and further describing the reason for said hearing. The notice shall be served upon the licensee. No hearing shall be held until at least ten (10) days after the date of service of the notice. The licensee shall have a right to be heard at the hearing. After receiving the evidence

at the hearing, the administrative board shall make a determination as to the facts that occurred and issue a written decision, determined by a majority vote of the members of the administrative board, to be served upon the licensee. If an administrative penalty is imposed, the written decision must identify the amount of the administrative fine in the amount set forth herein and the date by which it must be paid and it must provide the dates of commencement and completion of any period of suspension of the license. The licensee may appeal the decision of the administrative board by filing a written notice of appeal of said decision with the Health Department within ten days of the date of service of the administrative board's written decision upon the licensee. A hearing of said appeal shall be set by the city commission specifying the time and place of the hearing and notice of the same shall be served upon the licensee. At the hearing of the appeal to the board of city commissioners, the licensee shall be allowed to make any statements or arguments and fully argue its case but it will not be entitled to a trial de novo. The decision of the board of city commissioners shall be based on a review of the evidence presented to the administrative board along with a record of the hearing and based upon a review of the findings and decision of the administrative board along with the statements and arguments of the licensee presented to the board of city commissioners to determine whether to affirm or reverse the decision of the administrative board. The decision of the board of city commissioners shall be served on the licensee, such decision being subject to further appeal in accordance with Chapter 28-34 of the North Dakota Century Code. Service of notices of hearing or of decisions of the administrative board or the board of city commission shall be completed in the same manner as provided by law for the service of a summons in a civil action (Rule 4, North Dakota Rules of Civil Procedure).

4. Within 15 days of the closure and placarding of an Aquatic Venue, the operator of the Aquatic Venue may request an opportunity to be heard and present proof that continued operation of the facility does not constitute a danger to the public health.

15-0409. POOL OPERATOR CERTIFICATION. Every commercial Aquatic Venue must have at least one (1) certified operator on staff to operate or to help operate the facility.

15-0410. VARIANCE. In any case where a license is required by this chapter, and upon application by the responsible person or persons, the Director of the Health Department, or health official designated by the Director of the Health Department, may grant a

variance from the strict interpretation or application of law, regulations, or rules. A variance may be granted upon an affirmative finding that all of the following conditions exist:

1. The requested variance arises from conditions that are unique to the subject property or matter that are not ordinarily found in similar properties or matters;
2. The strict application of the applicable standards or regulations will constitute an unnecessary hardship;
3. The strict enforcement of any provision of this chapter, or of the rules and regulations promulgated pursuant to this chapter would be unreasonable, impractical, or not feasible under the circumstances;
4. The variance desired will not adversely affect the public health, safety, or general welfare; and
5. The variance is the minimum variance that will overcome the hardship.

In granting the variance, the Director of the Health Department or designated health official may include such conditions as may be reasonably necessary to maintain the general purpose of these rules and regulations and the interest of applicable local, state, or federal laws.

15-0411. APPEALS. Any person aggrieved by a decision of the Health Department or one (1) of its officials, including, without limitation, an order or denial of an order, or by the denial of a permit or a variance, may appeal such decision by filing a notice of appeal with the Director of the Health Department. Appeals of final decisions made pursuant to the procedures of this chapter must be filed within ten (10) days of the date of the decision. Said appeal must be in writing and shall be submitted to the Director of the Health Department. The Health Department shall consider the appealed decision as a new matter in a public hearing and, at the close of the public hearing, act to affirm or reverse the original decision.

SECTION 2. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.

President of Board of City
Commissioners of the City of
West Fargo, North Dakota

ATTEST:

City Auditor

Date of First Reading:

Date of Second Reading:

Date of Publication: