

ORDINANCE NO. 2018- -CM
AMENDING TIPPECANOE COUNTY CODE CHAPTER 95
PUBLIC AND SEMI-PUBLIC SWIMMING POOL AND SPAS

WHEREAS, the Board of Commissioners have the duty and authority pursuant to IC 16-20-2-2(c) to adopt health ordinances that apply to the entire County;

WHEREAS, the Board of Commissioners had previously adopted Chapter 95 of the Tippecanoe County Code concerning Public Pools; and

WHEREAS, the Board of Commissioners, upon recommendation of the Tippecanoe County Board of Health, seeks to improve and clarify Chapter 95 of the Tippecanoe County Code:

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Tippecanoe County, Indiana, that the Tippecanoe County Code be amended by repealing existing Chapter 95 (sections 95.01 through 95.99, inclusive) and replacing it with a new Chapter 95 as follows:

§ 95.01 **TITLE**. This Ordinance and all ordinances supplemental or amendatory hereto shall be known as the Public and Semi-Public Swimming Pool and Spa Ordinance of Tippecanoe County, Indiana, and may be cited as such and will be referred to herein as "this Ordinance".

§ 95.02 **PURPOSE**. The purpose of this Ordinance is to safeguard public health and assure that all public and semi-public pools and spas meet minimum safety standards. This Ordinance and the regulations incorporated into this Ordinance establishes definitions, sets standards for management and personnel, pool operations, and equipment and facilities and provides for public and semi-public pool and spa permits, inspections, fines, and employee restrictions.

§ 95.03 **AUTHORITY/PRIVATE HOME EXCLUSION**. The Tippecanoe County Health Department is hereby authorized to issue public and semi-public pool and spa permits, collect permit fees and fines, perform inspections, order or compel correction of violations of this Ordinance, and is otherwise authorized to perform all actions necessary for the administration and enforcement of this Ordinance and protection of public health incidental to operation of public and semi-public pools and spas. This Ordinance shall apply throughout Tippecanoe County, including the incorporated and unincorporated areas of the County. Nothing in this Ordinance shall be construed as applying to any pool or spa constructed at a one (1) or two (2) family dwelling and maintained by an individual for the sole use of the household and house guests.

§ 95.04 **ADOPTION BY REFERENCE**. Title 410 IAC 6-2.1, Public and Semi-Public Pools and Title 675 IAC 20-1.1 Indiana Swimming Pool Code are incorporated by reference in this Ordinance, as those regulations may be amended or supplemented from time to time.

§ 95.05 **DEFINITIONS**.

- A. In addition to any definitions stated in regulations incorporated within this Ordinance, the following definitions apply through this Ordinance. In the event of a conflict, the definitions in this Ordinance shall govern.

1. ACCREDITING ORGANIZATION - an independent organization, such as the National Swimming Pool Foundation, that is qualified to train, certify, and re-certify a pool operator.
2. BOARD OF HEALTH – The Tippecanoe County Board of Health.
3. CERTIFICATION DOCUMENT - a certificate, letter, or other document which includes the expiration date that verifies the individual has passed an accredited examination given by an accredited testing service.
4. CPO - a certified pool operator that is recognized by an accredited organization, such as the National Swimming Pool Foundation, or has been recognized by the Tippecanoe County Health Department, as possessing knowledge and skill sufficient to be regarded as the equivalent of a certified pool operator.
5. DEPARTMENT - the Indiana State Department of Health or its authorized representative.
6. HEALTH OFFICER -the Health Officer of the Tippecanoe County Health Department, and his or her authorized representatives.
7. HEARING OFFICER - the person presiding over any meeting, hearing, or similar proceeding to consider or enforce this Ordinance. The Hearing Officer shall normally be the Health Officer, or the Health Officer's designee.
8. HEALTH DEPARTMENT- the local health department in Tippecanoe County or its authorized representative.
9. IMMINENT HEALTH HAZARD - a significant threat or danger to health that includes, but is not limited to, the reasons for closure set forth in other parts of this ordinance. An imminent health hazard is considered to exist when there is evidence sufficient to show that a condition, product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the:
 - a. number of potential injuries or illnesses; and
 - b. nature, severity, and duration of the anticipated injury or illness.
10. INSPECTION - a visit by a regulatory authority to determine compliance with this Ordinance and any other pool and spa rules.
11. INSPECTION REPORT - the document prepared by the Tippecanoe County Health Department that is completed as the result of the inspection and provided to the Operator.
12. OPERATOR - the person or corporation that has primary oversight responsibility for operation of the pool or spa through ownership, or lease or contractual agreement. The term includes a permittee.
13. PERMIT - the document issued by the Tippecanoe County Health Department that authorizes a person or corporation to operate a public or semi-public pool.
14. PERMITTEE - the person, association, corporation, individual, partnership, or other legal entity or establishment that owns or leases the premises upon which the pool or spa is located and whose name appears on the permit.
15. POOL - any structure, basin, chamber, or tank containing an artificial body of water for swimming, bathing, competition, relaxation, therapy, or recreational use. The term “pool” as used in this ordinance also includes pool and spa variations that recirculate water such as baby pools, lazy rivers, plunge pools, wading pools, splash pads, and other aquatic venues.

16. PUBLIC POOL – any pool, other than those pools defined as a semi-public pool, which is intended to be used for swimming or bathing and is operated by a concessionaire, owner, lessee, operator, or licensee, regardless of whether a fee is charged for use. However, this definition does not include any pool, constructed at a one (1) or two (2) family dwelling, and maintained by an individual for the sole use of the household and house guests.
17. REGULATORY AUTHORITY - the local, state, or federal enforcement body or authorized representative having jurisdiction over public or semi-public pools and spas.
18. REPEAT VIOLATION - a violation that has been observed and recorded on a previous inspection form and the violation was also observed and recorded again on a subsequent inspection report.
19. RE-CERTIFICATION - requiring a pre-certified individual to pass an accredited certification examination within five (5) years from the date of issue of their most recent certificate issue date or complying with the accredited testing service's written policy for re-certification.
20. SEASONAL POOL OR SPA- a pool or spa that will be open for no more than a continuous six-month period in any year.
21. SEMI-PUBLIC POOL - any pool that is intended to be used for swimming or bathing and is operated solely for and in conjunction with:
 - a) schools, universities, and colleges;
 - b) hotels, motels, apartments, condominiums, bed and breakfasts, or similar lodgings;
 - c) camps or mobile home parks; or
 - d) memberships clubs or associations;
 - e) therapeutic pools such as those at rehabilitation & health care facilities.
22. SPA - a pool designed for recreational and/or therapeutic use, commonly known as a hot tub or therapy pool, which is not drained, cleaned, and refilled after each use. The term may include, but is not limited to:
 - a) hydrojet circulation;
 - b) hot water;
 - c) cold water;
 - d) mineral baths;
 - e) air induction systems; or
 - f) any combination thereof.
23. THERAPEUTIC POOL -any pool used for rehabilitation of patients or clients at a health care facility. This ordinance does not apply to any therapeutic pool which is drained and sanitized between uses.
24. UNSATISFACTORY WATER SAMPLE - a water sample that contains more than two hundred (200) bacteria colonies per milliliter as determined by the heterotrophic thirty-five (35) degree Centigrade plate count, a test positive (confirmed test) for coliform organisms in any of the five (5) to ten (10) milliliter portions of a sample when the multiple tube fermentation tube test is used, a test positive for more than one (1) coliform organism per fifty (50) milliliters when the membrane filter test is used, or the presence, in the water sample, of other

recognized bacteria or harmful chemicals or substances known to result in an imminent health hazard to users of the pool or spa.

§ 95.06 PERMITS.

- A. For pools and spas regulated by this ordinance, it shall be unlawful for any person or entity to operate a public or semi-public pool or spa in Tippecanoe County, Indiana, that does not possess a permit issued by the Tippecanoe County Health Department or its designee. The Tippecanoe County Health Department shall provide the appropriate application forms for permits. The permit shall provide the name and address and contact information of the permittee of the pool and spa, any operator, and such other information as necessary to facilitate the purposes of this ordinance. A pool or spa permit shall be issued for a term of one (1) year. The permit(s) shall be posted in the establishment in a place conspicuous to the public.
- B. Each pool or spa within a permittee's establishment will require a separate permit. Therefore, if an establishment has a pool and a spa they will be required to obtain two (2) permits. This ensures that the Tippecanoe County Health Department can suspend a permit when necessary and an unaffected pool or spa may remain open, according to this ordinance and the Indiana State Department of Health's Swimming Pool Rule, 410 IAC 6-2.1.
- C. Establishments applying for an annual or seasonal permit must provide proof of a satisfactory water sample obtained from the pool or spa prior to issuance or re-issuance of a permit. This criterion allows the Tippecanoe County Health Department to ensure the annual pool can remain open and the seasonal pool or spa has met all the mandatory bacteriological requirements before it is allowed to open.
- D. Permit Fees: Permit fees are required to be paid to the Tippecanoe County Health Department prior to issuance of any pool or spa permit. Fees are established in the Tippecanoe County Health Department Fee Ordinance as that ordinance exists at the time of application for a pool or spa permit.
- E. Outstanding Fees: All fees, fines, and penalties associated with a pool or spa must be paid before a permit may be issued, renewed, or reinstated, even if the pool or spa was operated by a prior permittee or different entity.
- F. Plan Review: Any newly constructed, rehabilitated or altered public pools or spas must show proof of plan approval from the Indiana Fire and Building Services Department and any other applicable regulatory authority and provide such plans to the health department for further plan review and approval by the health department. A separate fee of \$150.00 for each establishment, which fee will include a combination of pools or spas, shall be charged for such plan review. After submitting pool or spa plans for review, if a permit application associated with those plans is denied, any corrective action necessary for a pool or spa permit must be completed within ninety (90) days or a new plan review fee is payable.

G. Application Denial: If an application for a permit to operate a swimming pool or spa is denied, the Tippecanoe County Health Department shall provide the applicant with a notice that includes:

1. The specific reasons and any applicable rule citations for the permit denial,
2. The actions, if any, that the applicant might take to qualify for a permit, and
3. Advisement of the applicant's right of appeal such denial through the process indicated in this Ordinance for permit revocation and an indication of estimated time frames for an appeal.

After denial of a permit, any corrective action necessary for a pool or spa permit must be completed within ninety (90) days or a new permit application and fee is payable.

§ 95.07 CERTIFIED POOL OPERATOR. All pool and spa permittees shall have at least one employee, or retain the services of a professional, who is a certified pool or spa operator (CPO). The CPO shall demonstrate knowledge of pool or spa operations and show proficiency of required information through passing a test that is part of a certified pool or spa operation training program. The CPO shall provide a certification document in a form sufficient to verify authenticity of the certification. The Tippecanoe Health Department shall consider other forms of documentation establishing an operator's qualifications to act as a CPO but the Tippecanoe Health Department shall not be required to accept such documentation as equivalent to a certification document. Further requirements for a CPO include:

1. Each operator shall physically visit and inspect each pool or spa not less frequently than once per week and be available to service the pool or spa whenever it is open for use by the public,
2. The operator shall assume responsibility for compliance with this rule,
3. Proof of certification shall be made available to the health officer upon request,
4. The certification must be renewed whenever required by the relevant certifying authority, but such certification shall not be recognized to exceed a period of five (5) years.

§ 95.08 INSPECTIONS. The health department may inspect each public or semi-public pool or spa for which a permit is required at any time during the pool or spa's normal operational hours or as may be scheduled with the operator of the pool or spa. If, during an inspection of any pool or spa, the health department discovers a violation of any of the requirements of this Ordinance, the health department's representative shall issue a written narrative report listing such violations and a time for correction to the operator. A copy of the written report shall be filed with the records of the health department.

§ 95.09 MINIMUM REQUIREMENTS. All Public and Semi-Public Pools and spas shall comply at least with the minimum requirements specified by 675 IAC 20-1.1, Swimming Pool Code, and 410 IAC 6-2.1, Public and Semi-Public Pools, and this Ordinance.

§ 95.10 UNSAFE POOL/EMERGENCY CLOSURE.

- A. If, during an inspection of any pool or spa, the health department discovers a violation of any of the requirements of Indiana law including this Ordinance, the health department's representative may order the pool or spa immediately closed if continued operation of the

pool or spa is deemed to present an imminent health hazard. Circumstances that may result in an immediate pool or spa closure include the following reasons:

1. Failure to meet bacteriological requirements of 410 IAC 6-2.1, section 31(f) Public and Semi-Public Pools,
 2. Failure to meet the disinfectant concentrations of 410 IAC 6-2.1, section 30(b) Public and Semi-Public Pools,
 3. Failure to meet water clarity requirements according to of 410 IAC 6-2.1, section 31(a) Public and Semi-Public Pools,
 4. A missing or broken grate for the pool or spa main drain,
 5. Failure to meet lifeguard requirements according to 410 IAC 6-2.1, section 35 Public and Semi-Public Pools, if applicable,
 6. Nonoperational pump, filter, and/or disinfectant feeders,
 7. A nonsolid fecal accident,
 8. Spa water temperature exceeding one hundred four (104) degrees Fahrenheit,
 9. Failure to maintain a pH between seven (7.0) and seven and eight-tenths (7.8),
 10. Detecting any measurable concentration of chlorinated isocyanurates and cyanuric acid stabilizers used in an indoor pool,
 11. Interference with the Health Officer's performance of their duties, including denial of access to the pool or spa premises,
 12. Failure to possess a valid permit,
 13. Any other condition that poses a serious and immediate risk of illness or injury.
- B. Any closure Order will be in writing. The Order shall identify the pool permittee, describe the specific grounds upon which closure is based, direct the immediate closure of the pool or spa and vacating of the premises by users of the pool or spa, list the corrective actions necessary to re-open the pool or spa, and state that a hearing on the emergency closure may be requested by permittee as the holder of the permit. The order shall be served in person on the pool or spa permittee, or some other person in charge or in control of the pool or spa.
- C. Resuming Operation: If a permittee has discontinued operations for any of the reasons stated above or otherwise according to law, the permittee must obtain approval from the Tippecanoe County Health Department before resuming operations. The Tippecanoe County Health Department may rescind any emergency closure at any time with or without a hearing if it is determined that the reason for the closure no longer exists.
- D. A pool operator shall immediately discontinue operations and notify the Tippecanoe County Health Department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous toxic materials, gross unsanitary occurrence or condition, or other circumstance that present an imminent health hazard.

§ 95.11 PERMIT REVOCATION.

- A. The Tippecanoe County Health Officer, after providing an opportunity for a hearing, may revoke a pool or spa permit for serious or repeat violation(s) of any of the requirements of any Indiana statutes and regulations or this Ordinance; or, interference with the Health

Officer or the Health Officer's agent(s) in the performance of their duties.

- B. Prior to such action, the Health Officer shall provide written notice to the pool or spa operator. The notice shall state the reasons for permit revocation and advise the operator the permit shall be revoked after no less than ten (10) days following service of such notice, unless the permit holder files with the Health Department of Tippecanoe County, Indiana a written request for a hearing. Any hearing request must be filed prior to the date upon which the permit revocation is to become effective. Consistent with the provisions for emergency closure stated in this Ordinance, use of a pool or spa may be prohibited through the closure process while permit revocation proceedings are pending.
- C. The notice of hearing shall be served upon the permittee by leaving or mailing by Certified Mail the notice to the address listed on the permit application as the permittee's mailing address or such other address as the permittee shall designate in writing to the Health Officer.
- D. If no request for a hearing is filed prior to the date the permit revocation is to become effective, revocation of the permit becomes final.

§ 95.12 PROCEDURE FOR HEARING.

- A. All hearings required under this or any other section, shall be open to the public and held with sufficient written notice to the permittee of time, place, and nature thereof to enable the operator to appear and participate in the hearing.
- B. At any hearing required under this Ordinance, the Hearing Officer shall be the Health Officer or the Health Officer's designee. Every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by legal counsel as arranged by the pool or spa permittee or operator. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitive evidence may be excluded.
- C. Within a reasonable time after such hearing, the Health Officer or the Health Officer's designee shall enter a final order, subject to the right of appeal to a Court having jurisdiction of the parties and of the subject matter of the appeal.
- D. To exercise the right of appeal, a party to the final order must file a petition for relief from the order with the Circuit or a Superior Court of Tippecanoe County no later than as required by law or sixty (60) days from the date of the health officer's final order, whichever is less.
- E. If a pool or spa permit is revoked, subject to any court order, no pool or spa permit will be issued, with respect to the pool or spa that was the subject of the permit, until after one year from the date of the permit revocation in the case of annual pools and for one month in the case of seasonal pools (a mandatory continuing closure period); provided that, if the pool or spa permittee or operator can show through plan review a significant change of circumstances incidental to the maintenance, repair, or replacement of the pool or spa facilities or equipment or other relevant circumstances associated with the operation of the

pool or spa that the reasons for a permit revocation would be unlikely to re-occur, the Health Officer, in their discretion, may waive mandatory continuing closure of the pool or spa and may issue a new permit.

§ 95.13 ENFORCEMENT. It shall be the duty of the Health Officer to enforce the provisions of this Ordinance. Any permit issued in conflict with the provisions of this Ordinance shall be null and void. A violation of an abatement order issued by the Health Officer pursuant to the provisions of I.C. 16-20-1-25, or a similar statute, shall be considered a violation of this Ordinance.

§ 95.14 VIOLATIONS. Whenever the Health Officer determines that any person or entity subject to the provisions of this Ordinance is in willful or continuing violation of any of the provisions of this Ordinance, in addition to any other remedy or penalty imposed by this Ordinance, the Health Officer shall furnish evidence of said willful or continuing violation to the Prosecuting Attorney of Tippecanoe County, Indiana or the attorney for the Department who shall seek all appropriate legal remedies against the entity or person(s) violating the provisions of this Ordinance.

§ 95.15 PENALTIES. The Department has determined that one of the most efficient methods of encouraging compliance with ordinances to protect the public health is to assess civil penalties (fines) for violators of laws intended to suppress disease and minimize health risks. For purposes of tracking violations and imposing fines under this Ordinance the Department shall maintain inspection records for not less than one (1) year from the date of any inspection conducted consistent with this Ordinance. No fine is payable the first time a violation is noted within any one-year period. For a second or subsequent violation of this Ordinance within any one-year period, a civil penalty is payable as provided in this Ordinance.

- A. The following civil penalties (fines) shall apply for a violation of this Ordinance which reoccurs for a second or subsequent time within any one-year period:
 - 1. The second time the same violation is determined within any one-year period, there will be a fine of \$50.00.
 - 2. The third (and subsequent) time the same violation is determined within any one-year period, there will be a fine of \$100.00.
- B. Each day after the expiration of the time limit for abating any violation of this Ordinance or completing other actions as ordered by the Tippecanoe County Health Department or the Health Officer, shall constitute a distinct and separate offense.
- C. All fines shall be payable in full within thirty (30) days of assessment, unless otherwise ordered by the Hearing Officer. Failure to pay fines by the due date will result in an additional ten percent (10%) late fee. No permit is to be issued or renewed, even if the permittee or operator subsequently acquire its interest in the pool or spa, until all fines associated with the pool or spa have been paid in full. Any fines and late fees may be collected in any manner provided herein or as provided by law including any law for collection of debts, along with attorney fees incurred to collect said amounts owing and with all costs of collection.

D. Any assessment of a civil penalty by this Ordinance is subject to the right of appeal and a public hearing which will be scheduled, conducted, and concluded as provided in this Ordinance. Any request for an appeal shall be filed in writing with the Health Officer within ten (10) days of assessment of the civil penalty.

§ 95.16 INJUNCTION. The Health Officer may bring an action for an injunction in the Circuit or any Superior Court of Tippecanoe County, Indiana, to restrain any person from violating the provisions of this Ordinance, to cause such violation(s) to be prevented, abated or removed, or to otherwise enforce this Ordinance.

§ 95.17 EXPENSE. Any person violating any of the provisions of this Ordinance shall be liable to the Tippecanoe County Health Department for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and costs.

§ 95.18 CUMULATIVE. The remedies provided in this section shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

BE IT FURTHER ORDAINED that:

1. SEVERABILITY. Invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.
2. PARTIAL INVALIDITY. If any term or provision of this Ordinance shall be found to be wholly or partially unenforceable then, notwithstanding same, the remainder of this Ordinance shall remain in full force and effect and such term or provision shall be deemed stricken or modified to the extent required to make the remainder of this Ordinance enforceable.
3. EFFECTIVE DATE. This ordinance shall be in full force and effect upon passage, signing, and publication as required by law.

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on first reading this _____ day of _____, 2018, by the following vote:

VOTE

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY

Thomas P. Murtaugh, President

David S. Byers, Vice President

Tracy A. Brown, Member

ATTEST:

Robert Plantenga,
Auditor of Tippecanoe County

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on second reading this ____ day of _____, 2018, by the following vote:

VOTE

BOARD OF COMMISSIONERS OF
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