

Public and Semi-Public Swimming Pool / Spa Ordinance

2006 BCC - 11



Howard County Health Department

Division of Environmental Health

Effective: June 11, 2006

HOWARD COUNTY PUBLIC AND SEMI-PUBLIC SWIMMING POOL/SPA ORDINANCE

ORDINANCE NO. 2006 –BCC - 11

The purpose of this ordinance is to provide minimum standards for the prevention and suppression of disease and health risks associated with recreational water illnesses and to otherwise promote public safety and welfare and protection of the environment.

This ordinance regulates public and semi-public swimming pools, spas, wading pools, and therapeutic pools with regard to the health and welfare of people in water settings. It is also to provide for the orderly, consistent, and effective implementation of the Indiana State Department of Health Title 675 IAC 20-1, *Swimming Pool Code*, and Title 410 IAC 6-2.1, *Public and Semi-Public Pools*, as amended. This ordinance provides for the administration and enforcement of the provisions contained herein, and fixes penalties for violation.

Be it ordained by the Board of Commissioners of Howard County, State of Indiana, that:

Section 1. TITLE.

This Ordinance and all Ordinances supplemental or amendatory hereto shall be known as the Public and Semi-Public Swimming Pool/Spa Ordinance of Howard County, and may be cited as such and will be referred to herein as "this Ordinance".

Section 2. PURPOSE.

The purpose of this Ordinance is to safeguard public health and assure that all swimming pools are safe for use. It establishes definitions; sets standards for management and personnel, pool operations, and equipment and facilities; and provides for public and semi-public pool permits, inspections, fines and employee restrictions.

SECTION 3. AUTHORITY.

The Regulatory Authority is hereby authorized to issue Public and Semi-Public Pool and Spa Permits, collect permit fees and fines, perform inspections, order or otherwise compel correction of violations of this Ordinance, and is otherwise authorized to perform all actions necessary for the administration and enforcement of this Ordinance.

Section 4. ADOPTION BY REFERENCE.

Title 410 IAC 6-2.1, *Public and Semi-Public Pools*, as amended, and 675 IAC 20-1 *Indiana Swimming Pool Code*, second edition, are hereby incorporated by reference in

this Ordinance, as may be amended from time to time, as the same published in the Indiana Register of the Indiana Administrative Code with effective dates fixed therein. Copies of 410 IAC 6-2.1 et. Seq. and 675 IAC 20-1 et. Seq. are available and on file in the office of the Howard County Health Department.

Section 5 . DEFINITIONS.

“Accrediting organization” means an independent organization, such as the National Swimming Pool Foundation, that is qualified to train, certify, and re-certify a pool operator.

“Board of Health” means a local board of health as defined in IC 16-18-2-210 and referred to in IC 16-20.

“Certification Document” means 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.

“Conflict of Interest” (derived from 68 IAC 9-1-1(b)(2)) means a situation in which the private financial interest of the Howard County Official, Howard County Official’s spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the Howard County Official’s judgment in the performance of a public duty. (Note: The Howard County Officials should follow the code of ethics if a code of ethics was established for Howard County Officials.)

“CPO” means a certified pool operator that is recognized by an accredited organization, such as the National Swimming Pool Foundation, and/or has been recognized by the Howard County Health Department.

“Department” means the Indiana State Department of Health or its authorized representative.

“Health Officer(s)” is a medical doctor serving as the executive officer for the Howard County Health Department and secretary for the Howard County Board of Health.

“Hearing Officer” means an individual or panel of individuals acting in the capacity of a Hearing Officer in proceedings. The Hearing Officer is not the Health Officer or any other employee of the Howard County Health Department. (Examples of Hearing Officer could be the Howard County Board of Health, a subcommittee of Howard County Board of Health, a subcommittee of health professionals from the community or other non-biased third party appointed by the Board of Health.)

“Howard County Health Department” means the local health department in Howard County or authorized representative having jurisdiction over a public or semi-public pool.

“Howard County Official” means any Official of Howard County, Indiana.

“Imminent Health Hazard” means a significant threat or danger to health that includes, but is not limited to, the reasons for closure set forth in sections 11 and 12, page 7 of this ordinance. An imminent health hazard 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 or illness based on the:

- 1) number of potential injuries or illnesses; and
- 2) Nature, severity, and duration of the anticipated injury or illness.

“Inspection” means a visit by the regulatory authority to determine compliance with pool laws.

“Inspection Report” means the document prepared by the Howard County Health Department that is completed as the result of the inspection and provided to the Operator.

“Operator” means the person or corporation that has primary oversight responsibility for operation of the pool through ownership, or lease or contractual agreement (permittee.)

“Order” (derived from IC 4-21.5-1-9) means a Howard County Health Department action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific Persons. The term includes a permit.

“Permit” means the document issued by the Howard County Health Department that authorizes a person or corporation to operate a public or semi-public pool.

“Permittee” means the person, association, corporation, individual, partnership, or other legal entity that owns the pool and whose name appears on the permit.

“Pool” means any structure, basin, chamber, or tank containing an artificial body of water for swimming, bathing, competition, relaxation, therapeutic, or recreational use (All spas, baby pools, lazy rivers, plunge pools, etc. are considered pools for this purpose of this ordinance).

“Public Pool” means any pool, other than those 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. Nothing in this article shall be construed as applying to 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.

“Regulatory Authority” means the local, state, or federal enforcement body or authorized representative having jurisdiction over a public or semi-public pool.

“Repeat Violation” means a violation that has been observed and recorded on the previous inspection form and the violation was also observed and recorded again on the consecutive inspection report.

“Re-certification” means 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.

“Semi-Public Pool” means any pool that is intended to be used for swimming or bathing and is operated solely for and in conjunction with:

- 1) schools, universities, and colleges;
- 2) hotels, motels, apartments, condominiums, bed and breakfasts, or similar lodgings;
- 3) camps or mobile home parks; or
- 4) memberships clubs or associations
- 5) therapeutic pools; rehabilitation & health care facilities. (see # 140)

Nothing in this article shall be construed as applying to 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.

“Spa” means a pool designed for recreational and/or therapeutic use, which is not drained, cleaned, and refilled after each use. The term may include, but is not limited to:

- 1) hydrojet circulation;
- 2) hot water;
- 3) cold water;
- 4) mineral baths;
- 5) air induction systems; or
- 6) any combination thereof.

“Therapeutic Pool” means any pool used for rehabilitation of patients or clients at a health care facility. A therapeutic pool would be considered Semi-Public.

“Unsatisfactory Water Sample” means 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 of any coliform when the one hundred (100) milliliter presence/absence test is used.

Section 6. PERMITS.

1. It shall be unlawful for any person to operate a Public or Semi-Public Pool in Howard County that does not possess a valid permit issued by the regulatory authority. The permit shall provide the name and address of the operator of the pool. An Annual Swimming Pool Permit or an Annual Spa Permit shall be issued for a term of one (1) year, beginning on May 1st and expiring on April 30th of the next year. A Seasonal Swimming Pool Permit or a Seasonal Spa Permit shall be obtained for any pool that will be opened less than six (6) months in the same calendar year. All seasonal pools must obtain a permit prior to opening. Any holder of a Permit shall be subject to inspection as set forth herein. The Howard County Health Department shall provide the appropriate application forms for the permits. The permit(s) shall be posted in the establishment in a place conspicuous to the public.

2. Each pool within an 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 Howard County Health Department can suspend a permit when necessary and an unaffected pool may remain open, according to this ordinance. and the Indiana State Department of Health's Swimming Pool Rule, 410 IAC 6-2.1.

3. Establishments applying for an Annual or Seasonal Permit must provide proof of a satisfactory water sample obtained from the pool prior to issuance of a permit. This criterion allows the Howard County Health Department to ensure the annual pool can remain open and the seasonal pool has met all the mandatory bacteriological requirements before it is allowed to open.

4. Prior to issuance of a Permit, an application must be filled out and submitted to the Howard County Health Department for each pool. The application will provide contact information and specific information regarding each pool.

Plan Review: Any newly constructed, rehabilitated or altered public pools or spas must show proof of prior approval from the Indiana Fire and Building Services Department. Their authority for this plan review is addressed in Title 675 IAC 20-1.

Permit Fees: Fees are required to be paid to the Howard County Health Department prior to issuance of any permit. Fees are established in the Howard County Fee Collection Ordinance, as amended. Fees are required for each Annual Swimming Pool or Spa Permit (May-April) or any Seasonal Swimming Pool or Spa Permit to operate a Public or Semi-Public Pool as defined in Section 6- 1 of this ordinance.

Outstanding Fees: All fees, fines, and penalties must be paid before a permit may be issued, renewed, or **reinstated**.

Application Denial: If an application for a Permit to operate a swimming pool/spa is denied, the Howard County Health Department shall provide the applicant with a notice that includes:

- (1) The specific reasons and rule citations for the Permit denial;
- (2) The actions, if any, that the applicant must take to qualify for Permit; and
- (3) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

Section 7. PERMIT SUSPENSION

The Health Department may conduct administrative proceeding for suspension, denial, and/or revocation of the Establishment's Permit before a Hearing Officer. (See the Appeals Section of this Ordinance to ensure that due process is followed.)

Any person whose permit has been suspended may at any time make application to the regulatory authority for the reinstatement of the permit.

Section 8. MINIMUM REQUIREMENTS.

All Public and Semi-Public Pools shall comply with at least the minimum requirements specified by 675 IAC 20-1, *Swimming Pool Code*, and 410 IAC 6-2.1, *Public and Semi-Public Pools*, and this Ordinance.

Section 9. CERTIFIED POOL OPERATOR CERTIFICATION

The Certified Pool Operator (CPO) training is not required by this ordinance. However, the Howard County Health Department strongly recommends that all pool operators and/or management participate in a CPO training course. The CPO training allows pool operators to obtain the knowledge concerning pool chemistry that is essential for complying with this ordinance.

The CPO certification examination by the National Swimming Pool Foundation or an equivalent nationally recognized certification examination is recognized by the Howard County Health Department.

Section 10. INSPECTION OF PUBLIC AND SEMI-PUBLIC POOLS.

The regulatory authority may inspect each public or semi-public pool for which a permit is required at any time during its normal operational hours. If, during an inspection of any public pool, the regulatory authority discovers the violation of any of the requirements of this Ordinance, it 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 regulatory authority.

Section 11. 410 IAC 6-2.1 REASONS FOR CLOSURE

- 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) The grate on the main drain is missing or broken.
- 5) Failure to meet lifeguard requirements according to 410 IAC 6-2.1, section 35 *Public and Semi-Public Pools*, if applicable.
- 6) A pump, filter, and/or disinfectant feeders is nonoperational.
- 7) A nonsolid fecal accident.
- 8) Spa water temperature exceeds one hundred four (104) degrees Fahrenheit.

Section 12. ADDITIONAL REQUIREMENTS.

Additional reasons that may result in closure:

- 1) Failure to have the swimming pool under the supervision of an individual who shall assume the responsibility for compliance with all parts of 410 IAC 6-2.1 and this ordinance.
- 2) Failure to maintain a pH between seven and two-tenths (7.2) and seven and eight-tenths (7.8).
- 3) Detecting any measurable concentration of chlorinated isocyanurates and cyanuric acid stabilizers used in an indoor pool.
- 4) Any other imminent health hazard that could cause injury or illness.

Ceasing Operation and Contacting the Howard County Health Department: A pool operator shall immediately discontinue operations and notify the Howard 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 or toxic materials, gross unsanitary occurrence or condition, or other circumstance that may endanger public health.

Resuming Operation: If an Establishment has discontinued operations for the reasons stated above or otherwise according to law, the Operator must obtain approval from the Howard County Health Department before resuming operations.

Section 13. COMPLIANCE AND ENFORCEMENT.

1. The Howard County Health Department may suspend a Swimming Pool or Spa Permit to operate a pool if it determines through inspection or any other means as specified in this ordinance that an **imminent health hazard** exists. The suspension shall remain in effect until the Regulatory Authority confirms that the condition(s) cited in the notice of suspension no longer exist.
2. The Regulatory Authority may at any time summarily suspend a pool's permit:
 - A. By providing written notice to the permit holder or operator, without prior warning, notice of a hearing, or a hearing, if it is determined that an **imminent health hazard** exists; or
 - B. For interference with the regulatory authority in the performance of its duties.
3. A permit holder may request a hearing to address concerns about the regulatory authority's compliance actions, except that a hearing request does not stay the regulatory authority's imposition of a summary suspension. If a permit is suspended and/or revoked, the pool/spa must be inaccessible to bathers by use of locked doors or other barriers.

The following are options available to Howard County Health Department for consideration:

- (A) The Howard County Health Officer may issue an "Order to Abate", Permit Suspension, Pool Closure Order, or hold a Hearing and levy fines based on a condition that may transmit, generate, or promote disease. A hearing shall be called if an establishment has obtained four closures within a thirty day period. Reasons for closure are listed on page seven of this ordinance, sections 11 and 12. A requested inspection that does not meet operational standards shall also count as a closure for these purposes. Failure on the part of the Operator to comply with the Order could result in the enforcement of the Order in the court of jurisdiction by the initiation of an action by the county attorney, or attorney authorized by the county executive or county prosecuting attorney. (See IC 16-20-1-25; See also the Appeals Section of this Ordinance)

- (B) If the action concerning public health is an ordinance violation, the county attorney or attorney authorized by the county executive may be requested to institute a proceeding in the courts for the enforcement of the ordinance violation. (See IC 34-28-5-1)
- (C) If the action concerning public health is a criminal offense, the county prosecuting attorney shall be requested to institute a proceeding in the courts for enforcement. (See IC 16-20-1-25 (c)).

MONETARY FINES:

Unless adjusted by an administrative order, the following schedule of monetary penalties shall be used if penalties are to be assessed:

The penalty for operating a public or semi-public pool without a valid permit(which includes any pool closed by a health inspector), as defined in this ordinance, shall be up to \$500. 00.

The penalty for repeated violations on consecutive inspection reports as defined in this ordinance and in 410 IAC 6-2.1, shall be up to \$50.00 for each violation for each day the violation(s) continue. The \$50.00 fine for repeated violations excludes any items listed on page seven, sections 11 and 12 that describe reasons for closure.

All other penalties will be assessed by the Hearing Officer. In determining the seriousness of the violation and the specific amount of the penalty to be sought for each violation, the Hearing Officer will consider, but is not limited to, the following:

- (1) The potential for harm or imminent threat to public health.**
- (2) The extent of deviation from statutory or regulatory requirements.**
- (3) Degree of willfulness or negligence.**
- (4) History of noncompliance.**

The absence of direct harm will not result in assessment of a lower penalty for a violation.

The Howard County Health Department may suspend a permit to operate a pool if it determines through inspection, swimming pool logs that are not maintained according to Indiana State Department of Health's Swimming Pool Rule 410 IAC 6-2.1, or other means as specified in this ordinance, that an imminent health hazard exists.

Pool Closure Orders will be issued and Health Department signage will be immediately posted. Pool closure signage placed by the Regulatory Authority shall not be removed except by the Regulatory Authority. A Return of Service Order will be completed for a record of the date and time the order was delivered.

Section 14: APPEALS

- (1) Any Person(s) aggrieved by Orders issued under the Section 13: Compliance and Enforcement of this Ordinance, shall be entitled to a review of the final Order before a Hearing Officer by filing an administrative written request therefore with the Health Officer (*Secretary of the Howard County Board of Health See IC 16-20-1-10*). The written request must be mailed or hand delivered to Health Officer, *Howard County Health Department 120 E. Mulberry St., 2nd floor Kokomo, IN 46901*) and must be received within fifteen (15) days after such final Order is issued.
- (2) Upon the Health Officer's receipt of such request, the Hearing Officer shall hear the matter again in an open hearing after at least five (5) days written notice of the time, place and nature thereof. The time shall be measured pursuant to the rules of court of the jurisdiction. (A shorter period of time may be granted, if requested by either party and agreed upon.)
- (3) The notice of the hearing shall be served upon the Person requesting the review by hand delivering or mailing by Certified Mail the notice to the address listed on the Permit application as the Person's mailing address or such other address, as the Person shall designate in the letter of request to the Health Officer.
- (4) The Hearing Officer establishes the Rules of Procedure and advises the parties prior to the start of the proceedings.
- (5) The Hearing Officer shall make written findings of facts and shall enter its final administrative Order or determination of this matter in writing.
- (6) The administrative Order completes the Administrative Appeals procedure.

Section 15: CONFLICT OF INTEREST

No Howard County Official shall conduct himself or herself in a manner that is or could have the appearance of a Conflict of Interest.

Section 16: UNCONSTITUTIONALITY CLAUSE

Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

Section 17: REPEAL AND EFFECTIVE DATE

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect thirty (30) days after its adoption and publication as provided by law.

Passed and adopted by the Commissioners of Howard County, State of Indiana, on this sixth day of March, 2006.

Signed:

President

Member

Member

Howard County Board of Commissioners

Howard County, Indiana

Attest:

Howard County Auditor