

**DOUGLAS COUNTY
PUBLIC SWIMMING POOL
ORDINANCE**

June 18, 2015

An Ordinance Providing for the Licensing and Inspection of Public Swimming Pools; Regulating the Operation and Maintenance and Providing for the Administration, Enforcement of this Ordinance and the Fixing of Violations Throughout the Entirety of Douglas County and Pope County Thereof be and thereby is established as follows:

The Douglas County Board of Commissioners, Pope County Board of Commissioners and the Horizon Community Health Board, pursuant to Minnesota Statutes, Chapter 145A, Section 145A.05, Subd. 8 ordain:

SECTION 1 – PURPOSE

The purpose of this ordinance is to establish standards for all public swimming pools and to protect the health, safety and general welfare of the people of Douglas and Pope Counties, including the following general objectives:

1. Provide a minimum standard for the design, construction, operation and maintenance of public swimming pools.
2. Correct and prevent conditions that may adversely affect persons utilizing public swimming pools.
3. Meet consumer expectations for the quality and safety of public swimming pools.
4. Establish inspection requirements and associated procedures involved with administering and enforcing this Ordinance.
5. Comply with the delegation agreement that Horizon Community Health Board has entered into with the Minnesota Department of Health.

SECTION 2 - LEGAL AUTHORITY

This ordinance is enacted pursuant to Minnesota Statutes, Chapter 157, which establishes the authority for the State to license public swimming pools and Minnesota Statutes, Chapter 145A, Section 145A.05, which authorizes the Commissioner of Health to enter into an agreement with counties or cities organized under the provisions of Minnesota Statutes Chapter 145A, Section 145A.05 to perform all or part of the licensing, inspection and enforcement duties authorized under the provisions of these sections.

SECTION 3 – DEFINITIONS

For the purpose of this ordinance the following words shall have the following meanings:

1. **Administrator:** “Administrator” means the Administrator of Horizon Public Health and his or her respective designee(s) operating under the authority of the Horizon Community Health Board to administer environmental health programs and public health services.

2. **Appeals Board:** “Appeals Board” means three representatives, two of which are appointed by the County Board of Commissioners representing the county from which the appeal is generated and one appointed by the other participating County Board of Commissioners.
3. **Agency:** “Agency” means Horizon Public Health, providing delegated services for Food, Pool and Lodging services in the counties of Douglas and Pope.
4. **Commissioner:** “Commissioner” means the commissioner of health.
5. **Community Health Board:** “Community Health Board” means the 13-member appointed Board governing Horizon Public Health.
6. **County:** “County” means the County of Douglas or Pope, Minnesota.
7. **County Board:** “County Board” means the elected Board of Commissioners for the County of Douglas or Pope.
8. **Delegation Agreement:** “Delegation Agreement” means the properly executed delegation of responsibility to the Horizon Community Health Board by the State of Minnesota, as provided in Minnesota Statutes.
9. **Environmental Health Advisory Committee:** The “Environmental Health Advisory Committee” shall consist of two Douglas County Commissioners appointed annually by the Douglas County Board of Commissioners and two Pope County Commissioners appointed annually by the Pope County Board of Commissioners, the Horizon Public Health Administrator, the Supervisor of Environmental Health and the Registered Sanitarian(s). The Environmental Health Advisory Committee shall serve in an advisory capacity to review matters related to the programmatic and fiscal operations of the Horizon Environmental Health Program and to make recommendations to the Horizon Community Health Board on matters reserved to that Board by law.
10. **Hazard:** “Hazard” means any biological, chemical, or physical property that may cause an unacceptable consumer health risk.
11. **Hearing:** “Hearing” means a proceeding held before the Horizon Environmental Health Appeals Board where evidence is taken for the purpose of determining an issue of fact.

12. **Imminent Health Hazard:** “Imminent Health Hazard” means a significant threat or danger to health that exists 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 based upon:
 - A) the number of potential injuries; and
 - B) the nature, severity and duration of the anticipated injury.
13. **License:** “License” includes the whole or part of any permit, certificate approval, registration or similar form of permission or renewal required by County ordinance or State law administered by the County for the operation of any business, service, or facility.
14. **Licensee:** “Licensee” means the person who has been given the authority by the issuance of a license by the County to establish, operate, and/or maintain a facility or activity regulated by County ordinances.
15. **Owner:** “Owner” means any person or person(s) having a legal interest in real or personal property or any person in possession or control of real or personal property including, but not limited to, mortgages, contract for deed vendees, and contract for deed vendors.
16. **Person:** “Person” means an individual, firm, partnership, association, or corporation or other entity including the United States government, any interstate body, the state, and any agency, department, or political subdivision of the state.
17. **Pool:** “Pool” means any structure, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational use including special purpose pools and wading pools.
18. **Private Residential Pool:** “Private residential pool” means a pool connected with a single-family residence or owner-occupied duplex, located on private property under the control of the homeowner, the use of which is limited to family members or the family’s invited guests. A private residential pool is not a pool used as part of a business.
19. **Public Pool:** “Public pool” has the meaning given in Minnesota Statutes, Chapter 144, Section 144.1222, subd. 4, paragraph (d).
20. **Public Health Services:** “Public health services” means the services of Horizon Public Health that are authorized under Minnesota Statutes, Chapter 145A, Local Public Health Act, including the Counties of Douglas, Pope, Grant, Stevens, and Traverse.

21. Risk Categories:

A. **High-risk establishment.** “High-risk establishment” means any food and beverage service establishment, hotel, motel, lodging establishment, or resort that:

1. Serves potentially hazardous foods that require extensive processing on the premise, including manual handling, cooling, reheating, or holding for service;
2. Prepares foods several hours or days before service;
3. Serves menu items that epidemiologic experience has demonstrated to be common vehicles of food-borne illnesses;
4. Has a public swimming pool; or
5. Draws its drinking water from a surface water supply.
6. Must be inspected at least once every 12 months.

B. **Medium-risk establishment.** “Medium-risk establishment” means a food and beverage service establishment, hotel, motel, lodging establishment, or resort that:

1. Serves potentially hazardous foods but with minimal holding between preparation and service; or
2. Serves foods, such as pizza, that require extensive handling followed by heat treatment
3. Must be inspected at least once every 18 months.

C. **Low-risk establishment.** “Low-risk establishment” means a food and beverage service establishment, hotel, motel, lodging establishment, or resort that is not a high-risk or medium-risk establishment that:

1. Must be inspected at least once every 24 months.

22. Spa Pool: “Spa pool” means a hot water pool intended for seated recreational use with a water agitation system in addition to the recirculation system. Spa pool is synonymous with the term “whirlpool”.

23. Special Purpose Pool: “Special purpose pool” means a pool intended to accommodate a use other than normal swimming, diving, or wading. A special purpose pool includes, but is not limited to, spa pools, pools used for water therapy, dedicated plunge pools, flume water slides, and wave pools.

24. Wading Pool: “Wading pool” means any pool with a maximum depth of 24 inches used or designed to be used exclusively for wading.

SECTION 4-ADOPTION OF PUBLIC POOL STANDARDS

The standards for Public Pools outlined in Minnesota Rules, Chapter 4717.0150 to 4717.3970 and the Abigail Taylor Pool Safety Act; Minnesota Statutes, Chapter 144, Section 144.1222 are hereby incorporated in and made part of this ordinance. Wherein Minnesota Rules, Chapter 4717, refers to the Commissioner, Commissioner shall mean the Horizon Community Health Board and its designated environmental Services staff.

SECTION 5 – PLAN REVIEW OF FUTURE CONSTRUCTION

When a public pool in Douglas or Pope County is licensed or going to be licensed under the provisions of Minnesota Rules, Chapter 4717, is constructed, installed or materially altered, complete plans and specifications shall be submitted to the Minnesota Department of Health as specified in Minnesota Rules, Chapter 4717, part 4717.0450, along with the required fee.

SECTION 6 - FEES

Fees for the administration of the Horizon Public Health Public Swimming Pool Ordinance shall be established and amended periodically by action of the respective County Boards.

SECTION 7 –REGULATORY AGENCY

Horizon Public Health is hereby established in this Ordinance as the Agency responsible for the enforcement and administration of this Ordinance. The Agency shall:

- 1) Act as the inspecting Agency for Douglas and Pope Counties;
- 2) Issue licenses and maintain records relating to this Ordinance;
- 3) Provide informational materials regarding this Ordinance;
- 4) Administer this Ordinance; receive applications, requests, documentation; interpret and apply the Ordinance; and enforce the Ordinance.

SECTION 8 -- INCORPORATION OF MINNESOTA PUBLIC SWIMMING POOL CODE

Minnesota Rules, Chapter 4717, parts 4717.0150 to 4717.3970, the Minnesota Public Swimming Pool Code, in effect on the effective date of this Ordinance, and all future revisions thereof, are hereby adopted by reference and made part of this Ordinance.

SECTION 9 - LICENSES

8.1 **General.** It shall be unlawful for any person, firm, corporation or partnership to operate a public swimming pool within the County who does not possess a valid license issued by the Agency as required by this ordinance. Only a person who complies with the requirements of this ordinance shall be entitled to receive and retain such a license

- 8.2 **Application.** Any person desiring to operate a public swimming pool shall first make application for a license on forms provided by the Agency, pay the required fee, and receive approval for operation, including plan review approval if a plan review is required. The application shall include: the full name and address of the owner of the building, structure, or enclosure; the lessee and manager of the establishment; the name under which the business is to be conducted; and any other information as may be required by the Agency to complete the application for license. The license shall be issued for the calendar year for which application is made and shall expire on December 31 of such year. Any person who operates a place of business after the expiration date of a license or without having submitted an application and paid the fee shall be deemed to have violated the provisions of this ordinance and shall be subject to enforcement action, as provided in this ordinance.
- 8.3 **License renewals.** License renewals shall be obtained on an annual basis. License renewal applications shall be submitted to the Agency on forms provided by it no later than December 1 of the year proceeding the year for which application is made; or in the case of a new business, not later than the opening date of such a business.
- 8.4 **Expiration Date.** Initial and renewal licenses shall be issued for the calendar year for which application is made and shall expire on December 31 of such year.
- 8.5 **Initial & Renewal Fee Schedule.** Initial and renewal license applications shall be accompanied by the applicable fee as determined by the participating County Boards of Commissioners. Such rates may be changed by action of the participating County Boards of Commissioners from time to time as they shall deem appropriate. All license fees are non-refundable.
- 8.6 **Reduced License Fee.** Beginning on or after October 1 of each year, the license fee for new establishments or operators shall be one half of the appropriate annual license fee.
- 8.7 **Issuance or Denial of License:**
- a. Unless otherwise provided in this ordinance under which a license is issued, the Agency shall have fifteen (15) days to approve or deny an application for license or renewal. All establishments requiring a license under this ordinance are expected to submit their application for an initial license or renewal by December 1 of the year prior to the requested license period.
 - b. If December 1 falls on a weekend, the annual license renewal application and fee is due at the end of the county business day the following Monday.
 - c. Where an application is approved by the Agency, the establishment's license(s) shall be issued according to Agency policies and procedures.

- d. Where a license is denied, the Agency shall state the factual basis for its decision and notice of its decision shall be hand delivered by the Agency to the applicant or shall be served by registered or certified mail to said applicant at the address designated in the license application. The applicant shall have ten (10) working days, exclusive of the day of service, to request a hearing. The request shall be in writing stating the grounds for appeal and served personally or by registered or certified mail on the Agency by midnight of the tenth (10th) agency working day following service of the notice of denial. If the applicant fails to request an appeal within the specified time period, any opportunity for a hearing is forfeited and the Agency's decision is final. After receipt of an appeal request, the Agency shall set time and place for the hearing.

8.8 License Non-Transferable:

- a. A license is not transferable and non-refundable.
- b. The discontinuation of an operation by the licensee at the address covered by the license voids the license.
- c. A voided license shall be surrendered to the Agency immediately by anyone in possession of it.

8.9 Change of Ownership: A license shall not be issued to any person when an establishment changes ownership until an inspection by the Agency has been conducted and a compliance schedule has been established that is mutually agreeable to the owner and the Agency regarding previous orders.

When an establishment has been closed for 90 days or more, the Agency shall conduct an inspection and set forth a compliance schedule that is mutually agreeable to the new owners and the Agency to achieve compliance with the Minnesota Public Swimming Pool Code prior to issuing a license.

8.10 License Displayed. A valid license shall be conspicuously posted in every public swimming pool.

SECTION 9 – INSPECTION/ENFORCEMENT:

- 9.1 Horizon Public Health shall inspect public swimming pools according to Minnesota Statutes, Chapter 157 and rules adopted under Minnesota Statutes, Chapter 157, and the Horizon Inspection and Enforcement Policy.
- 9.2 The person operating a public swimming pool shall, upon request of the Agency and after proper identification, permit access to all parts of the public swimming pool at any reasonable time for purpose of inspection and shall exhibit and allow copying of any records necessary to ascertain compliance with the provisions of this Ordinance.

- 9.3 Every person engaged in the operation of a public swimming pool, shall upon request; furnish reasonable samples free of charge to the Agency for laboratory analysis.
- 9.4 Whenever an inspection of a public swimming pool is made, the findings shall be recorded on the inspection report form. One copy of the inspection report form shall be furnished to the person in charge of the establishment. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it, except when report forms are a part of a pending litigation.
- 9.5 The inspection report form shall specify a specific and reasonable period of time for the correction of violations. Correction of violations shall be accomplished within the period specified.

SECTION 10 – SUSPENSION AND REVOCATION OF LICENSE

- 10.1 Licenses may be suspended temporarily by the Agency, at any time for failure by the holder to comply with the requirements of this ordinance. Whenever a license holder or operator has failed to comply with any notice requiring corrective action, issued under the provisions of this ordinance, that license holder or operator may be notified in writing with a form of suspension that the license upon service of notice is immediately suspended and that an opportunity for a hearing before the Appeals Board will be provided if a written request for appeal is filed within ten (10) agency working days with the Agency by the license holder.
- 10.2 Notwithstanding the other provisions of this ordinance, whenever the Agency finds unsanitary or other condition(s) in the operation of a public swimming pool which, in their judgment, may constitute a substantial hazard to the public health, they can without warning, notice or hearing, issue a written notice to the license holder or operator citing such condition(s), specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and if deemed necessary, such order shall state that the license is immediately suspended, and all public swimming pool operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, but upon written petition to the Agency, shall be afforded an appeal before the Appeals Board.
- 10.3 Any person whose license or permit has been suspended may at any time make application for a re-inspection for the purpose of reinstatement of the license. Within ten (10) agency working days following receipt of a written request, including a statement signed by the applicant that in their opinion the condition(s) causing suspension of the license has/have been corrected, the Agency shall make a re-inspection. If the applicant is in compliance with the requirements of this ordinance and Minnesota Rules, Chapter 4717, parts 4717.0150 to 4717.3970, the license shall be reinstated.

- 10.4 Revocation of License. For serious or repeated violations of any of the requirements of this ordinance or Minnesota Rules, Chapter 4717, parts 4717.0150 to 4717.3970, the license may be permanently revoked after an opportunity for a hearing before the Appeals Board has been provided. Prior to such action, the Agency shall notify the license holder in writing, advising that the license shall be permanently revoked at the end of a five (5) agency working day period.
- 10.5 Emergency Closure. Whenever the Agency finds that an emergency exists which requires immediate action to protect public health, it may, without notice or hearing, issue an Order reciting the existence of an emergency and require that such action be taken as deemed necessary to meet the emergency. Notwithstanding the other provisions of this Ordinance, such Order shall be effective immediately. Any person to whom an Emergency Order is directed shall comply therewith immediately.
- a. Emergency Closure Procedure. Emergency Closure of an Establishment will be ordered if a prohibited activity is occurring or it is determined that the Establishment is an imminent health hazard.
 - b. Following an Emergency Closure, the Establishment shall not reopen without written permission from the Agency.
 - c. The Agency must give written permission to reopen upon submission of satisfactory proof that the problem condition(s) causing the need for emergency closure have been corrected or removed by the operator(s).
 - d. Following an emergency closure, correction of the problem condition requires that all inanimate objects, equipment and surface areas in the room or area where the prohibited activity or imminent health hazard occurred be cleaned and sanitized.

SECTION 11 –PROCEDURE WHEN INFECTION IS SUSPECTED

When the Agency has reasonable cause to suspect the possibility of disease transmission from a public swimming pool employee, the Agency shall under the direction and/or guidance of the Minnesota Department of Health, secure an illness or morbidity history of the suspected employee, and/or make other investigations as may be required, and take appropriate action. The Agency may require any or all of the following measures:

- 1) The immediate exclusion of the employee from all public swimming pools;
- 2) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease;

- 3) Adequate medical and laboratory examinations of the employee, or other employees, and their body discharges, and;
- 4) The immediate closure of the public swimming pool concerned, until in the opinion of the Agency no further danger of disease outbreak exists.

SECTION 12 – APPEALS

- 12.1 Request for Hearing. Any person affected by a notice of embargo, suspension, or revocation shall be granted a hearing on the matter before the Appeals Board upon filing in the office of Horizon Public Health, a written petition requesting such a hearing and a brief statement. The petition shall be filed within ten (10) agency working days after the notice was served.
- 12.2 Date of Hearing. The hearing requested shall be held not more than ten (10) agency working days after the date on which the petition was filed. The Appeals Board may postpone the date of the hearing for a reasonable time beyond such ten (10) agency working day period, if in the judgment a good and sufficient reason exists for such postponement.
- 12.3 Notice of Hearing. The Agency shall give five (5) agency working days written notice of the hearing to the petitioner or petitioners by personal service or by certified mail to the petitioner or petitioner's last known address.
- 12.4 Proceedings. At the hearing, the petitioner, their agent, or attorney shall be given an opportunity to be heard and to show why the notice of embargo, suspension, or revocation issued by the Agency should be modified or withdrawn. The Agency shall present a detailed written statement of their findings of fact and recommendation(s) to the Appeals Board at the time of the hearing.
- 12.5 Decisions of the Appeals Board. The Appeals Board, within three (3) agency working days after such hearing, shall sustain, modify or withdraw the notice of embargo, suspension, or revocation depending upon its findings of fact. A copy of the decision of the Appeals Board shall be served by mail to the petitioner or petitioners. Any person aggrieved by the decision of the Appeals Board may seek relief therein from any court as provided by the laws of the state.
- 12.6 Record of Proceedings. The proceedings of each hearing held before the Appeals Board pursuant to petition, including the findings of fact and the recommendation(s) of the Agency shall be recorded and reduced to writing and entered as a public record in the office of the Public Health Administrator at Horizon Public Health. Such record shall include a copy of every notice or order or writing issued in connection with the matter.
- 12.7 Notices not Appealed. Any notice served pursuant to the provisions of this ordinance shall automatically become final if a written petition for a hearing is not filed with the Agency within ten (10) agency working days after the notice is served.

SECTION 13 – VARIANCES

All variances for pools must be submitted to the Minnesota Department of Health for approval. Horizon Public Health shall not consider any application for an exception that involves a variance from applicable Minnesota rules until review and action required by applicable Minnesota state departments has been conducted. If the applicable Minnesota department denies the requested variance, then Horizon Public Health shall not consider the application for exception.

SECTION 14 – CRIMINAL LIABILITY AND ENFORCEMENT

- 14.1 Criminal Penalties. Any person, firm or corporation who violates any of the provisions of this Ordinance, or who fails, neglects or refuses to comply with the provisions of this Ordinance, including violations of conditions and safeguards, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed \$1,000.00 or by imprisonment not to exceed 90 days, or both. Each day that a violation exists shall constitute a separate offense.
- 14.2 Civil Remedies. In the event of a violation or a threat of violation of this Ordinance, the County Attorney may take appropriate action to enforce this Ordinance, including application of injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct, or abate such violations or threatened violations.

SECTION 15 – SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, said invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application and for this purpose the provisions of this ordinance are severable.

SECTION 16 - PROVISIONS ACCUMULATIVE

The provisions of this Ordinance are cumulative and are additional limitations upon all other rules, statutes, and ordinances heretofore passed covering any subject matter.

SECTION 17 - NO CONSENT

Nothing contained in this Ordinance shall be deemed to be consent, license or permit to operate, construct or maintain any site, facility or establishment or to carry on any activity, trade, profession or privilege.

SECTION 18 –REPEALER

All prior ordinances pertaining to subjects treated in this Ordinance shall be deemed repealed from and after the effective date of this Ordinance, provided this repeal shall not affect any offense committed or penalty incurred, or any right established prior to the effective date of this Ordinance.

SECTION 19 - EFFECTIVE DATE

Effective date This Ordinance shall be in full force and effect after its passage and publication provided by law, but no sooner than January 1, 2015, whichever comes later.

ADOPTED BY THE DOUGLAS COUNTY BOARD OF COMMISSIONERS THIS

7th DAY OF July, 2015.

Charlie Meyer
Chairperson
Douglas County Board of Commissioners

OR

ADOPTED BY THE POPE COUNTY BOARD OF COMMISSIONERS THIS _____

DAY OF _____, 2015.

Chairperson
Pope County Board of Commissioners

Reviewed and Accepted by the Horizon Community Health Board this 13th
day of July, 2015.

Larry Ludo
Chairperson
Horizon Community Health Board