

# Chapter 61A. Travis County Rules for Regulation and Permitting Of Public Swimming Pools within Unincorporated Areas of Travis County<sup>1</sup>

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## **61A.01 Definitions**

- (a) "Applicant" means any person who is preparing or has filed an application for a Permit pursuant to this Chapter 61.A ("Chapter"). The Applicant shall be the Owner/Operator.
- (b) "Auditor" means Susan Spataro, the Travis County Auditor(or her successor in office) or her designated representative.
- (c) "Authorized Employee" means any qualified employee of the Austin Travis County Health Department who has completed an exercise on the interpretation and application of State Sanitation Rules, and has met any other requirements imposed by Travis County and/or the State in order to be authorized to enforce the provisions of this Chapter.
- (d) "Director" means David Lurie, Director of the Austin Travis County Health Department, his successor in office or designated representative.
- (e) "Hot Tub" means a spa constructed of wood with sides and bottoms formed separately and joined together by pressure from surrounding hoops, bands, or rods; distinct from spa units formed of plastic, concrete, metal or other materials.
- (f) "Owner/Operator" means the fee title holder of the property upon which the Swimming Pool is located ("Owner"), and/or business manager,

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<sup>1</sup> Chapter 61A was adopted 9/24/2004, Item 13.

complex manager, property owners, association manager, rental agent or other individual who is in charge of the day to day operation or maintenance of the property ("Operator"). The Owner/Operator is responsible to ensure that the Swimming Pool and associated facilities comply with state and local Swimming Pool design, construction, operation and maintenance standards

- (g) "Permit" means the document evidencing the authority of the holder of the Permit to operate a Swimming Pool under these Pool Rules. Unless otherwise indicated by the context, a reference to a Permit under these Pool Rules shall include the initial Permit and/or any renewal Permit.
- (h) "Permittee" means a person to whom a Permit has been issued pursuant to this chapter. Permittee shall be the Owner/Operator.
- (i) "Spa" means a constructed permanent or portable structure intended to be used for bathing or other recreational uses which is not drained and refilled after each use. Industry terminology for a spa includes, but is not limited to, "hydrotherapy pool," "whirlpool," "hot spa," "hot tub," etc.
- (i) "Swimming Pool" means a man-made structure, basin, chamber or tank containing an artificial body of water, including a Spa, maintained expressly for public recreational purposes, swimming and similar aquatic sports, or therapeutic purposes, including above-ground and/or in-ground pools or spas, Hot Tubs. Enforcement of these Pool Rules may also include the enclosure surrounding such Swimming Pool, as necessary.
- (k) "Swimming Pool Laws" means all federal, state and local statutes, laws, codes, rules, regulations and other enforceable directives applicable to the planning, construction, and operation of a Swimming Pool, including but not limited to Texas Administrative Code, Title 25, Part 1, Chapter 265, Subchapter L, and Texas Health and Safety Code, Section 341.064.

**61A.02 Authority**

- (a) Pursuant to Texas Health and Safety Code, Section 341.064, County may:
  - (1) require that owners or operators of a public Swimming Pool obtain a Permit for operation of the Swimming Pool;
  - (2) inspect public Swimming Pools for compliance with applicable state law and regulations, including these Pool Rules;
  - (3) charge a reasonable fee in connection with an inspection and/or permit required under these Pool Rules pursuant to applicable requirements; and

(4) by order, close as specified herein any Swimming Pool within the jurisdiction of the County if the operation violates applicable laws and regulations.

(b) These Rules for Regulation and Permitting of public Swimming Pools Within Unincorporated Areas of Travis County("Pool Rules") are adopted by the Travis County Commissioners Court acting in its capacity as the governing body of Travis County("County") under the authority of Texas Health and Safety Code, Section 341.064, and other applicable statutes, relating to the authority of counties to enforce State of Texas("State") law and rules adopted under state law concerning Swimming Pools. Chapter 341, Texas Health and Safety Code, authorizes counties to:

- (1) require the owner or operator of a public swimming pool to obtain a Permit to operate a Swimming Pool; and
- (2) inspect public swimming pool(s) within the jurisdiction of the county; and
- (3) impose and collect reasonable fee(s) in connection with the issuance of a Permit or inspection required under these Pool Rules.

IF

- (1) the Auditor reviews the program every two (2) years to ensure that the fees imposed do not exceed the cost of the program; and
- (2) the county refunds Permit holders any revenue determined by the Auditor to exceed the cost of the program.

**61A.03 Purpose**

(a) The purpose of these Pool Rules is to enforce the state law and rules adopted under state law in order to protect the public health, safety, and welfare by requiring owners and operators of public Swimming Pools to obtain a Permit from the County in order to operate such public Swimming Pools. This order is not intended to establish standards for the operation of Swimming Pools.

**61A.04 Area of Jurisdiction**

(a) These Pool Rules shall apply to all unincorporated areas of the County, including areas in the extra-territorial jurisdiction of municipalities within the County. Areas within the boundaries of incorporated areas of a municipality are not included in the area of jurisdiction unless that municipality has entered into an interlocal agreement with County under which the municipality has elected to utilize these Pool Rules.

**61A.05 Effective Date**

- (a) All provisions of these Pool Rules shall be effective upon adoption by the Commissioners court. These Pool Rules shall apply only to an offense committed on or after June 20, 2003. An offense is committed before June 20, 2003, if any element of the offense occurs before June 20, 2003. An offense committed before June 20, 2003, is covered by the law in effect when the offense was committed and the former law is continued in effect for that purpose.

**61A.06 Miscellaneous Provisions**

- (a) Construction. These Pool Rules shall be construed liberally to accomplish the purpose stated herein.
- (b) Interpretation. The Commissioners Court shall resolve any question regarding any interpretation of these Pool Rules.
- (c) Precedents. To the extent of any conflict between these Pool Rules and a State law, or rule adopted under State law, the State law or rule shall prevail.
- (d) Severability. If any provision of these Pool Rules, or the application thereof to any Person or circumstance, is held invalid by a court of competent jurisdiction, validity of the remainder of these Pool Rules and the application thereof shall not be affected.

**61A.07 Notice Procedures**

- (a) Method of Notice. Any notice or notification required or permitted to be given pursuant to these Pool Rules shall be in writing and shall be given and deemed to have been given immediately if delivered personally to the last known address of the party to whom notice is given, or on the third day following mailing if placed in the United States Mail by certified or registered mail, return receipt required, postage prepaid, addressed to the last known address of the party to whom notice is given.
- (b) Notice to County. Unless otherwise specifically stated in these Pool Rules, notice to County shall be given in writing pursuant to Section 61A.07(a) and addressed to: David Lurie, Director Austin Travis County Health Department P. O. Box 1748 Austin, Texas 78759
- (c) Notification by Director. In any instance under these Pool Rules in which the Director must give notice, that notice shall include, but not be limited to:
  - (1) the nature of the relief or action sought;
  - (2) the location or unit which is the subject of the notification;

- (3) the date, time, and place of the hearing being held relevant to the notice;
  - (4) the legal authority(including citation of the specific section(s) of the applicable statute, rule or section of these Pool Rules) and jurisdiction under which action is proposed or relief sought; and
  - (5) any additional information deemed necessary by the Director.
- (d) Copy of Notice. The Director shall retain a copy of any notice issued pursuant to these Pool Rules.

**61A.08 Fees For Permits**

- (a) Schedule of Fees.
- (1) Fee Schedule. To defray the reasonable costs of administering the program established under these Pool Rules ("Program"), County shall require fees to be paid in connection with all necessary actions by County related to a Permit or inspection required under these Pool Rules(including plan reviews) in accordance with these Pool Rules and established from time to time by the Commissioners Court. A copy of the current fees shall be maintained by the County and made available to any Applicant.
  - (2) Nonprofit Organization. The County may, at the discretion of the Commissioners Court, set a separate schedule of fees, or waive the fees, for a non-profit organization. Implementation of such a reduced/waived fee for a non-profit does not exempt the non-profit from compliance with all other provisions of the Swimming Pool Laws and these Pool Rules. Any organization claiming to be a non-profit shall provide the Director with all information deemed necessary by the Director to determine whether the organization is a non-profit organization. Non-profit organizations include any private, non-profit, tax exempt corporation under Section 501(c)(3), Internal Revenue Code of 1986 [26 USC, Section 501(c)(3)1].
- (b) County Auditor Review
- (1) The Auditor shall review the Program every two years to ensure that the fees imposed do not exceed the cost of the Program; and
  - (2) The County shall refund Permittee(s) any revenue determined by the Auditor to exceed the cost of the Program

**61A.09 Permit Required**

- (a) Commencement of Operations. A Person shall not commence operations of or operate a Swimming Pool within the County unless that Person has a valid, subsisting Permit issued pursuant to these Pool Rules.
- (b) Applicant/Permittee. The Person making application for the Permit under these Pool Rules shall be the Owner/Operator as defined herein. IF the Permit is issued in the Operator's name, the operator shall be responsible for notification to the Owner of all matters concerning the enforcement of these Pool Rules. IF the Permit is issued in the Owner's name, the Owner shall be responsible for notification to the Operator of all matters concerning the enforcement of these Pool Rules. County shall notify only the Permittee of matters concerning the enforcement of these Pool Rules. Under Section 61A.14(e), "Transfer," a Permit issued in the name of the Operator shall not transfer to the Owner, nor shall a Permit issued in the Owner's name transfer to the Operator. Any change in the Permittee will require application for and issuance of a new Permit in order for operations to continue.
- (b) Compliance With Swimming Pool Laws. A Permittee shall continue to comply with all Swimming Pool Laws as long as that Permittee operates a Swimming Pool. Only a Person who complies with the Swimming Pool Laws is entitled to receive and retain a Permit. If the County finds on inspection that an Applicant is not in compliance with Swimming Pool Laws, the County may deny, suspend or revoke a Permit pursuant to these Pool Rules, and may re-inspect the Applicant at a later date to determine if the Applicant is in compliance.
- (c) Posting a Permit. A Permittee shall post a valid, subsisting Permit in a place accessible to the Authorized Employee on the premises of the Swimming Pool.

**61A.10 Permitting Authority**

- (a) Designation of Permitting Authority. The Director is hereby designated by the Commissioners Court to be the Permitting Authority under these Pool Rules. Such designation does, within the limits of applicable law and these Pool Rules, include the duty and necessary powers to administer and enforce these Pool Rules. As referenced herein, the use of the terms "Director" and "Permitting Authority" shall be interchangeable unless otherwise indicated by the context.
- (b) Duties and Powers. The Permitting Authority shall, within the limits of applicable law and these Pool Rules, have the following specific duties and necessary concomitant powers:
  - (1) to enforce the Swimming Pool Laws and these Pool Rules and make appropriate recommendations to proper County

authorities when instances of non-compliance with the Swimming Pool Laws and/or these Pool Rules have been determined.

- (2) to make inspections of Swimming Pools
- (3) to provide the Commissioners Court any information concerning the implementation of these Pool Rules as the Permitting Authority may deem necessary or as may be requested by the Commissioners Court.
- (4) to perform all other duties necessary to meet the requirements of these Pool Rules and the Swimming Pool laws.

**61A.11 Plans and Specifications.**

- (a) Requirement for Plan Review. When an Applicant plans to construct or extensively remodel a Swimming Pool, or for any other reason makes application for a Permit (other than a Renewal Permit) under this Chapter, that Applicant shall submit properly prepared plans and specifications to the Director for review before construction, remodeling, conversion or operation begins. If the plans and specifications are in compliance with Swimming Pool laws, the Director/Permitting Authority shall approve them and give Applicant a Statement of Plan Approval signed by the Director.
- (b) Requirement for Plan Approval. A Person shall not operate a Swimming Pool unless and until the construction, remodeling or conversion is completed in accordance with plans and specifications approved by the Director.
- (c) Content of Plans and Specifications. The specifications of the Swimming Pool and enclosure shall be in accordance with Texas Administrative Code, Chapter 265, the Texas Department of Health Standards for Public Swimming Pool and Spa, and Texas Health and Safety Code, Chapter 757, "Pool Yard Enclosures," and all other applicable Swimming Pool Laws. Plans shall indicate the proposed layout, equipment arrangement, mechanical plans and construction areas, and the type and model of proposed equipment and facilities, and other information as may reasonably be requested by the Director in order to ensure compliance with Swimming Pool Laws.

**61A.12 Permit and Renewal Application Process**

- (a) Information required on Permit and Renewal Application. Applications for permits and renewal permits to operate a Swimming Pool shall be made in Writing to the Director on a form prescribed by the Director and shall, along with such other information as the Director may require, contain the following information:

- (1) The name, mailing address, residential street address, business street address, telephone number (residential and business), driver's license number (or other State identification number) and date of birth of the owner, and of the Applicant, if different from the owner
  - (2) The name of the proposed or existing facility in which the Swimming Pool is/will be located;
  - (3) The street address of the proposed or existing facility in which the Swimming Pool is/will be located; and
  - (4) If the Applicant is a partnership, corporation or other legal entity, the name, mailing address, residential street address, business street address, telephone number, driver's license number (or other State identification number), and date of birth of each officer and/or director of the partnership, corporation or legal entity, and the name and address for service of process on the registered agent of any corporation.
- (b) Documents Required with Permit and Renewal Application. The Applicant shall attach the following documents to the application:
- (1) If an assumed name is used, a date-stamped copy of the Certificate of Assumed Name;
  - (2) If the Applicant is a general partnership, a copy of the fully executed partnership agreement;
  - (3) If the Applicant is a limited partnership, a date-stamped copy of the Certificate of Limited Partnership;
  - (4) If the Applicant is a corporation, a date-stamped copy of the Articles of Incorporation filed with the Texas Secretary of State and a certified copy of the corporate resolution authorizing the corporation to file an application pursuant to these Pool Rules and designating the officer authorized to execute the application; and/or
  - (5) Any other documentation deemed necessary by the Director.
- (c) Acknowledgement Required on Permit and Renewal Application. The application shall be notarized and shall contain the following statements:
- (1) "All of the information contained in this application is true and correct to the best of the Applicant's knowledge and belief." and
  - (2) "Applicant acknowledges that the Permit applied for shall be subject to all provisions of the orders, ordinances, rules and regulations of Travis County and shall be subject to all provisions of the codes and statutes and all rules adopted under

the codes and statutes of the State of Texas governing Swimming Pools and all Swimming Pool Laws.

- (d) Signature Required. Any application for a Permit and/or renewal Permit shall be signed by the Applicant. If the Applicant is a partnership, such signature shall be by a general partner on behalf of the partnership and, if the Applicant is a corporation, such signature shall be by the officer of the corporation designated to execute the application on behalf of the corporation.
- (e) Payment of Fee. The Applicant shall pay the fee(s) required under these Pool Rules when an application for Permit or renewal Permit is submitted. No application shall be processed prior to the payment such fee(s) in full.

**61A.13 Procedure for Director/Permitting Authority's Approval**

- (a) Review of Application. Prior to approval of any application for a Permit, the Director shall review the application and supporting documents to determine if they are in compliance with this Order and Swimming Pool Laws. If the application is not in compliance, the Director shall so notify the Applicant and provide Applicant with a list of those elements which are missing from the application.
- (h) The Applicant shall file a written request with the Director to inspect the Swimming Pool when the Applicant believes it is in compliance with the approved plans and specifications. If the Swimming Pool is not in compliance with the plans and specifications approved by the Director, the Director shall issue a notification that states how it does not comply with the Swimming Pool Laws and these Pool Rules. After the Applicant has brought the Swimming Pool into compliance with the approved plans and specifications, Swimming Pool Laws and these Pool Rules, the Applicant shall request the Director to inspect the Swimming Pool again.
- (c) Request for Inspection. The Applicant shall file a written request for inspection with the Director at least seventy-two (72) hours (excluding weekends and legal holidays, including any holidays declared by County) prior to the need for inspection. Within seven (7) days after receipt of any such written request for inspection, the Director shall inspect the Swimming Pool to determine whether it is in compliance with the plans and specifications, Swimming Pool Laws and these Pool Rules.
- (d) Approval of Permit. After review of the application and inspection of the Swimming Pool, if the Swimming Pool is in compliance with the plans and specifications approved by the Director and the Swimming Pool Laws and these Pool Rules, the Director shall approve the Permit.

Such approval shall be issued within twenty-four (24) hours of the inspection in which full and complete compliance is determined.

(e)

Denial of Permit

- (1) Criteria. The Director may deny approval of any application for Permit for the following reason(s):
  - (A) the plans and specifications are not in compliance with Swimming Pool Laws;
  - (B) the Swimming Pool is not in compliance with the approved plans and specifications;
  - (C) the Applicant has provided any information in the application which was not true and correct at the time that the application was submitted; or
  - (D) the plans and specifications or the Swimming Pool are not in full and complete compliance with the application, the Swimming Pool Laws and these Pool Rules.
- (2) Notification of Denial. When one or more of the criteria for denial exist, the Director shall provide the Applicant with a written notification that the Permit is denied. The Applicant shall then have ten (10) days from receipt of the notification of denial to file a written request for hearing with the Director. If no such request for hearing is received within that ten (10) day period, then the Permit is considered denied. If the Applicant files a written request for hearing within the ten (10) day period, the Director shall schedule a hearing pursuant to Section 61A.16 of these Pool Rules.

**61A.14 Issuance of Permits and Renewals**

- (a) Initial Permit. The initial Permit may be issued by the Director upon:
  - (1) receipt of the prescribed fee
  - (2) receipt of the completed application
  - (3) completion of inspection resulting in the finding that the Swimming Pool is in compliance with the Swimming Pool Laws, the approved plans and specifications, and these Pool Rules,
- (b) Issuance. Upon satisfaction of the requirements of these Pool Rules, and within ten (10) days of the approval of the Swimming Pool, the Director will issue the Permit to the Applicant. Each Permit shall include the date of expiration of said Permit.
- (c) Expiration. Each Permit shall expire one year from the date of issuance.

- (d) **Renewal Permits.** At least thirty (30) days prior to the expiration of any Permit, the Permittee shall file the necessary renewal fee and a completed application for renewal. Upon a finding that:
- (1) the Swimming Pool is still in compliance with all requirements of these Pool Rules; and
  - (2) the Permit has not been revoked
  - (3) ; and the Permit has not been suspended,
- the Renewal Permit will be issued by the Director. If any of the above requirements have not been met, the Director shall issue a written notification of the problems with the Renewal application to the Applicant/Permittee, and the Permittee shall then proceed to cure the defects in the Renewal Application to the satisfaction of the Director and within all requirements of these Pool Rules.
- (e) **Transfer.** A Permit shall not be transferred from one Owner/Operator to another. Any Permit transferred or attempted to be transferred is no longer a valid Permit as of the date of the transfer or attempted transfer.

**61A.15 Suspension and Revocation of Permit**

- (a) **Suspension**
- (1) **Criteria.** The Director may suspend a Permit for the following reasons:
    - (A) the Swimming Pool is not in compliance with these Pool Rules or the Swimming Pool Laws.
    - (B) the Applicant has provided any information in the application which was not true and correct at the time that the application was submitted.
  - (2) **Notification of Suspension.** When either of the criteria for suspension exists, the Director shall send the Permittee a written notification of such suspension, with the description of the basis for the suspension. The Permittee shall have ten (10) days in which to file a written request for a hearing concerning such suspension with the Director. If no such Written request for hearing is received with that ten (10) day period, the Permit is considered suspended until the Swimming Pool is brought into full and complete compliance with the Swimming Pool Rules and these Pool rules, as determined by the Director. If a timely written request for hearing is received by the Director, the Director shall schedule a hearing pursuant to Section 61A.16 of these Pool Rules.

- (3) Effect of Suspension. A valid, subsisting Permit does not exist when a Permit has suspended, and the Permittee must cease operation of the Swimming Pool immediately for so long as the suspension is in effect.

(b) Revocation

- (1) Criteria. If a Permit has been suspended for more than thirty (30) days, and the Swimming Pool has not been brought into full and complete compliance, the Director may revoke the Permit.
- (2) Notification of Revocation. Upon revocation of the Permit, the Director will send the Permittee a written notice of such revocation. The Permittee shall then have ten (10) days from the receipt of such notice of revocation to file a written request for hearing with the Director. If no such request for hearing is received, the Permit is considered revoked and no valid Permit shall then exist. Revocation, as well as suspension, shall result in the complete cessation of operation of the Swimming Pool. If a timely request for hearing is received by the Director, then a hearing shall be scheduled and held pursuant to Section 61A.16 of these Pool Rules.
- (3) Effect of Revocation. A valid, subsisting Permit does not exist when a Permit has been denied or revoked, and the Permittee must cease operation of the Swimming Pool immediately for so long as the suspension is in effect. Any Person whose Permit has been denied or revoked may make a new application for a Permit pursuant to these Pool Rules and must be issued a new Permit before operations of the Swimming Pool may begin.

(c) Closure

- (1) Closure for Violation. The County may, by order, close, for the period of time specified in the order, a Swimming Pool within the jurisdiction of the County if the operation of the Swimming Pool violates the Swimming Pool Laws or these Pool Rules, or if a permitting or inspection requirement of these Pool Rules has been violated by the operation of the Swimming Pool.
- (2) Authorization to Close by Commissioners Court. The Commissioners Court hereby authorizes the Director, or his qualified designated representative, to take the necessary action to close any Swimming Pool pursuant to the provisions of these Pool Rules.

**61A.16 Hearing on Denial, Suspension or Revocation**

- (a) Request for Hearing. An Applicant/Permittee will have ten (10) days in which to file a written request for hearing to the Director following receipt of a notification of denial, suspension or revocation. The

request for hearing shall include the location of the Swimming Pool, the nature of the denial, suspension or revocation, the relief sought, and any other facts relevant to the hearing. The hearing will be held before the Health Authority and will be scheduled as soon as practicable, but in no event more than fifteen (15) days following receipt by the Director of the written request for hearing. The Health Authority will set the time and place for the hearing.

- (b) Notification of Hearing, The Director or Health Authority shall provide written notice of the hearing to the Applicant/Permittee not less than ten (10) days before the date that the hearing is scheduled, unless the Applicant/Permittee submits a sworn request for earlier hearing that acknowledges his/her right to ten (10) days notice under these Pool Rules and expressly waives that right.
- (c) Hearing Procedures. Hearings held relevant to these Pool Rules must be held in compliance with this Section 61A.16, The Health Authority shall direct the hearing at his/her discretion.
- (d) Decision of Hearing. Based on the evidence and arguments presented at the hearing, and within the Swimming Pool Laws and these Pool Rules, the Health Authority shall decide whether to sustain, modify or rescind the denial, suspension or revocation of the Permit. The Health Authority shall provide the Applicant/Permittee and the Director with a written decision that states the final decision and the basis upon which the decision was made within ten (10) days of the hearing.
- (e) Records of Hearing, The Director shall maintain a copy of the written decision of the Health Authority for no less than one (1) year or the conclusion of any action appealing a decision of the Health Authority, whichever comes later.

**61A.17 Enforcement. Subject to the terms of Section 61A.05(a),**

- (a) Compliance Inspection
  - (1) The Director may enter the premises of a Swimming Pool governed by these Pool Rules during normal operating hours to conduct inspections to determine whether the Swimming Pool is in compliance with the Swimming Pool laws, these Pool Rules, and any other applicable laws, rules, or orders.
  - (2) If it appears that a Person is violating applicable Swimming Pool Laws, including these Pool Rules, the County may, on request by the district attorney, county attorney, or with the approval of the Commissioners Court, institute a civil suit in a district court for civil or criminal enforcement pursuant to applicable laws and rules.

- (b) Criminal Enforcement. Pursuant to Texas Health and Safety Code, Section 341.091,
- (1) A Person commits an offense if the Person operates a Swimming Pool covered by these Pool Rules without a Permit as required by these Pool Rules and shall be assessed a civil penalty.
  - (2) An offense under these Pool Rules is a Class C misdemeanor,
  - (3) Each day on which a violation occurs constitutes a separate offense.
  - (4) Jurisdiction for prosecution of a suit under these Pool Rules is in the Justice of the Peace Courts.
  - (5) Venue for prosecution of a suit under these Pool Rules is in the Justice of the Peace precinct in which the violation is alleged to have occurred.
- (c) Civil Enforcement. Pursuant to Texas Health and Safety Code, Section 341.092, whenever it appears that a Swimming Pool is required to have a Permit and is operating without such Permit, the County Attorney, City Attorney, or District Attorney may sue in District Court for injunctive relief against the Person who is operating said Swimming Pool.