

ELKHART COUNTY
SWIMMING POOL ORDINANCE

An ordinance to protect and promote public health; to provide for the prevention and control of disease, to prevent accidents; to establish the administrative rules for the operation; to provide overview and consultation; and to establish penalties and remedies for swimming pools in Elkhart County.

Section 1. Title. This Ordinance may be referred to as the "Elkhart County Swimming Pool Ordinance."

Section 2. Adoption by Reference. The regulations located at 410 IAC 6-2.1 et seq. entitled "Public and Semi-Public Pools," as amended from time to time and promulgated by the Indiana State Department of Health and 675 IAC 20-1.1 et seq., 675 IAC 20-2 et. seq., and 675 IAC 20-3 et seq. entitled "Swimming Pool Code," as amended from time to time and promulgated by the Indiana Fire Prevention and Building Safety Commission are hereby incorporated and adopted by reference. One copy of these regulations shall be on file with the Elkhart County Health Department.

Section 3. Definitions. Except as provided below, the terms defined in 410 IAC 6-2.1 and 675 IAC 2-1.1 shall carry the same definitions wherever used in this Ordinance as the definition provided in those regulations. For the purpose of this Ordinance, the terms below shall be defined as follows:

A. "Alkalinity" shall mean the amount of bicarbonate, carbonate, or hydroxide compounds present in water. Alkalinity refers to the ability or capacity of water to resist change in pH. Alkalinity is referred to as the buffering capacity of water.

B. "Approved" shall mean as approved by the Elkhart County Health Officer.

C. "Bath House" shall mean dressing, shower, and sanitary facilities for each sex.

D. "Bather Load" shall mean the maximum number of people using the pool and the adjoining deck area at any given moment.

E. "Calcium Hardness" shall mean the amount of calcium dissolved in the water. Calcium hardness shall be measured by a test kit and shall be expressed in parts per million of calcium carbonate.

F. "Chlorine" shall mean the chemical element that exists as a gas in its elemental form or as part of a chemical compound, which is an oxidant and a biocidal agent, used in swimming pool disinfection. Chlorine may also be referred to as chlorine gas, calcium hypochlorite, sodium hypochlorite, or lithium hypochlorite.

G. "Combined Chlorine" (chloramine) shall mean the portion of the total chlorine existing in water in chemical combination with ammonia, nitrogen, and/or organic compounds. Chloramine causes eye and skin irritation and has a strong, objectionable odor.

H. "Cyanuric Acid" shall mean a chemical family of pool sanitizer products (isocyanurates) that are self stabilizing by containing cyanuric acid and are used to prevent the decomposition of chlorine by ultra-violet light. Cyanuric acid is

also referred to as stabilizer, isocyanuric acid, conditioner, or triazinetrione.

I. "Disinfectant" shall mean a chemical or chemicals used to react with and to kill undesirable or pathogenic organisms and having an easily measured free residual.

J. "Free Chlorine" shall mean that portion of the total chlorine remaining in chlorinated water that is not combined with ammonia, nitrogen compounds, or other compounds and will react chemically with undesirable or pathogenic organisms.

K. "Health Department" shall mean the Elkhart County Health Department.

L. "Health Officer" shall mean the Elkhart County Health Officer or his or her duly authorized representative.

M. "Health Hazard" shall mean any condition which in the opinion of the Health Officer may reasonably lead to injury or disease or put the public health at risk. A health hazard may include, but shall not be limited to: unacceptable disinfection residuals; unacceptable bacterial levels; water clarity that does not allow viewing all parts of the pool; a failure to have working self-contained breathing apparatus equipment; or a failure to have an operator on duty trained in proper use, repair, and the hazards of chlorine gas when chlorine gas is in use.

N. "Inspection" shall mean a complete review of all portions of a swimming pool facility including the swimming pool and surrounding area, water supply, sewage disposal system, mechanical equipment and equipment room, chemical storage

facility, safety and testing equipment, bath house, and any other portion of the swimming pool facility as deemed necessary by the Health Officer.

O. "Licensee" shall mean the person who is the owner of a licensed swimming pool, which shall include an authorized representative who shall be responsible for the acceptance of all notices at the address listed on the application for any license issued hereunder.

P. "Mechanical Chemical Feeder" shall mean a device approved by the Health Officer that allows for the continuous (twenty-four (24) hours per day) and automatic addition of a chemical which imparts an easily measured free residual. All such devices must be sized so as to be able to provide an acceptable chemical residual, adjustable so as to be able to readily increase or decrease the chemical as necessary, and durable so as to be able to operate continuously twenty-four (24) hours per day.

Q. "Operating Records" shall mean a written record on approved forms, completed daily, outlining hours of operation and all testing results including bacterial, disinfectant residual, combined chlorine, pH, alkalinity, cyanuric acid, calcium hardness, and any changes to the pool operation.

R. "Person(s) in charge" (PIC) shall mean the individual(s) who has demonstrated knowledge of all laws, rules, and regulations of both the State of Indiana and Elkhart County governing swimming pools and who supervises compliance with all parts of this Ordinance. The PIC shall be in supervision of the

pool operations during normal working hours and available within a reasonable amount of time for emergencies during non-working hours.

S. "pH" shall mean a measure of the relative acidity or basicity of water as indicated by the hydrogen ion concentration. pH is expressed as a number on the scale of 0 to 14.

T. "Pool Enclosure" shall mean the barrier between the swimming pool area and the area outside which is intended to deter unauthorized entry from outside the swimming pool area. The pool enclosure is not intended to be sat, walked, or climbed upon; may not afford external foot holds or hand holds; shall provide self-closing and self-latching hardware on all gates, doors, or other accesses through the enclosure; and shall be locked when the swimming pool is closed.

U. "State Health Department" shall mean the Indiana State Department of Health.

V. "Stop Work Order" shall mean a written order of the Health Officer to stop all work on a project or construction of a swimming pool until the project is in compliance with all provisions of this Ordinance.

W. "Superchlorinate" shall mean the practice of adding a sufficient amount of chlorine to water to destroy chlorine demand compounds and any combined chlorine which may be present. Superchlorinate is referred to as breakpoint chlorination. Generally, chlorine must be added to ten (10) times the difference

between the free chlorine and the total chlorine in the swimming pool water to superchlorinate and achieve breakpoint chlorination.

X. "Swimming Pool" shall mean an artificial body of water used by individuals primarily for the purposes of swimming, wading, diving, recreation, or instruction, and includes all related equipment, bath houses, structures, areas, and enclosures intended for the use of individuals using or operating the swimming pool. Swimming pools shall include any structure, basin, chamber, or tank containing water for swimming, wading, diving, recreational or instruction and shall include swimming pools, pools, slide pools, spa pools, wave pools, wading pools, diving pools, whirlpools, hot tubs, water slides, and spas. Swimming pools shall not include:

1. Residential swimming pools serving one (1) or two (2) family dwellings and maintained by an individual for the sole use of the household and house guests;
2. Portable hot tubs or other pools or spas operated for medical treatment, physical therapy, or other special purposes that are drained and cleaned between uses and filled directly prior to use; and
3. Natural bathing areas such as streams, lakes, rivers, or man-made lakes.

Y. "Test Kit" shall mean a device used to accurately monitor the disinfectant residual, pH, alkalinity, calcium hardness, combined chlorine, and any other chemical characteristic of the water determined by the Health Officer as important in the control of water quality. A test kit shall be durable; shall have

the appropriate range of standards which are accurate and stable; shall have fresh reagents; and shall be simple to use. When cyanuric acid is used, a test kit for determining cyanuric acid levels shall be provided.

Z. "Total Dissolved Solids" shall mean the total amount of dissolved matter in water (i.e. calcium, magnesium, carbonate, bicarbonates, metallic compounds, etc.).

Section 4. License Requirements. No person shall operate a swimming pool in Elkhart County without a valid license. A swimming pool license shall be issued for a term of one (1) year commencing May 1st and expiring on April 30th of the subsequent year and must be renewed annually.

Prior to licensure, the person(s) in charge shall demonstrate knowledge of all applicable laws, rules, and regulations by passing a proficiency exam conducted by the Health Department with a score of eighty percent (80%) or higher. The exam shall be reviewed periodically to determine applicability to current laws, rules, and regulations. Opportunity for re-examination shall be afforded to an applicant upon request but not more frequently than once per week. Completion of the proficiency exam will not be required in successive years as long as the swimming pool remains under the continuous operation of the proficient person(s) in charge. The person(s) in charge shall only be in charge of one pool while in the position of person in charge for any given facility except that facilities with more than one pool located on

the same or contiguous property may have the same person in charge.

At any time the swimming pool is not under the operation of the person(s) determined to be proficient, the licensee shall find a new person in charge within one (1) week. The exam to determine proficiency shall be required to be taken by the new person in charge within one (1) week of taking over the position of person in charge and shall pass the exam within three (3) weeks. If the new person in charge does not pass the proficiency exam within three (3) weeks, the swimming pool shall close until they have a person in charge that has passed the proficiency exam. Swimming pool licenses are not transferable. The swimming pool license shall be conspicuously posted at every swimming pool.

Section 5. Issuance of License.

A. Any person wishing to operate a swimming pool in Elkhart County shall make written application for a license to operate the swimming pool on approved forms. The application shall include the name and address of the applicant, the location and type of proposed swimming pool, the signature of the applicant, the names and addresses of the person(s) in charge, the days and hours of operation, and any other information deemed necessary by the Health Officer. Application for licensure must be completed prior to all requests for inspection.

B. Before approving an application for a license to operate a swimming pool, the Health Officer shall inspect the swimming pool to determine compliance with this Ordinance.

C. The Health Officer shall promptly issue a license if it is determined that the proposed swimming pool is in compliance with this Ordinance and is designed, constructed, and equipped to be operated in a manner which protects public health.

D. A separate license shall be required for each swimming pool operated or to be operated by any person; provided, however, that multiple swimming pools operated at the same facility under the same ownership shall be required to have only one license.

Section 6. License Restrictions. A swimming pool which has not held a required license to operate for a period of one (1) year, or has had its license revoked by the Health Officer, shall be required to apply for a new license before resuming operations and shall not be issued a license to operate unless it complies with all of the requirements of this Ordinance, including the construction, design, equipment, and sanitation requirements applicable to a new swimming pool.

Upon change of ownership of a swimming pool, a new license to operate must be obtained from the Health Department prior to operating under the new owner. A license will not be issued to the new owner unless the swimming pool is in compliance with current codes and regulations.

Section 7. Sampling and Testing. Bacteriological examination of all swimming pools must be completed prior to opening and at least once per week as outlined in Rule 410 IAC 6-2.1. Sample results must be submitted in writing to the Health Department within seven (7) days of sample collection.

Every swimming pool shall be equipped with a test kit. In addition to the testing requirements as outlined in Rule 410 IAC 6-2.1, tests for disinfectant residual and pH in the swimming pool shall be conducted not less than two (2) times per day and recorded on approved forms. These tests shall be conducted prior to opening the pool to swimmers and one other time later in the day when the pool is in use by swimmers. Spas shall be tested at least three (3) times a day, once prior to opening, once mid-day, and once at the end of the operating day. Tests for calcium hardness, alkalinity, and cyanuric acid shall be conducted as necessary to maintain acceptable chemical balance but not less than once per week. Tests for combined chlorine shall be conducted at least twice per week. Results shall be recorded on the approved operating record forms. All such records shall be maintained for at least one (1) year and shall be available for examination by the Health Officer.

Section 8. Chemical Testing. The water chemistry and bactericidal chemical concentrations shall be maintained within the parameters as established in Rule 410 IAC 6-2.1. Where the concentration of combined chlorine is greater than 0.50 mg/l

(ppm), the swimming pool shall be superchlorinated or otherwise treated in a manner to oxidize and reduce the concentration of combined chlorine. No harsh or irritating chemical in concentrated form shall be added manually and directly to the water of any swimming pool except under emergency conditions. Should it be necessary to add any harsh or irritating chemical in concentrated form directly into the water of any swimming pool, use of the swimming pool shall be terminated until such time as the chemical is dissolved completely in and is diffused thoroughly throughout the swimming pool. The broadcasting or manual application of chemicals to maintain a disinfectant residual or pH is prohibited except as may be required to superchlorinate the swimming pool. Under no conditions may superchlorination or manual adjustment of pH occur while the swimming pool is in use by swimmers.

Section 9. Suspension of License. The Health Officer may, upon written notice without prior warning or hearing, suspend any license to operate a swimming pool for any of the following reasons:

A. The operation, in the opinion of the Health Officer, constitutes an imminent health hazard.

B. The swimming pool has one (1) or more critical violations as follows:

1. Disinfectant residual is below or above acceptable levels;

2. Water clarity does not allow for observation of the entire swimming pool bottom including bottom drain;
3. Life guards are not present where required;
4. Water samples are unacceptable chemically or bacteriologically;
5. Chlorine or disinfectant mechanical chemical feeder is not working; or
6. Self contained breathing apparatus is not working and/or no one qualified in its use is on duty where required.

C. Interference with the Health Officer in the performance of his or her duties;

D. Failure to correct an imminent health hazard;

E. Failure to correct any specific violation on two or more consecutive routine inspections; or

F. Failure to comply with the correction schedule established by the Health Officer.

The license shall be promptly reinstated when it has been verified by the Health Officer that the reason for suspension has been corrected. Suspension shall be for a period not exceeding thirty (30) days. Whenever the license to operate a swimming pool is suspended, the licensee or the person(s) in charge shall be notified in writing that the license to operate the swimming pool is, upon serving of the notice, immediately suspended. Opportunity for a hearing will be provided if a written request for a hearing is filed, by the licensee or the person(s) in charge, with the Health Officer within ten (10) days

after service of the notice. An opportunity for a hearing with the Health Officer shall be afforded within twenty (20) days of receipt of the request. If no written request for hearing is filed within ten (10) days, the suspension is sustained. The Health Officer shall end the suspension upon request of the licensee or the person(s) in charge if the reason for the suspension no longer exists. If after thirty (30) days the suspension is still in place, the Health Officer shall conduct a hearing for license revocation.

Section 10. License Revocation. The Health Officer may, after providing opportunity for hearing, revoke a license to operate a swimming pool for any of the following reasons:

- A. A serious violation(s) of this Ordinance;
- B. Repeated violations of this Ordinance found in consecutive inspections;
- C. Interference with the Health Officer in the performance of his or her duties; or
- D. As a result of a license suspension.

Before revocation, the Health Officer shall notify the licensee or the person(s) in charge, in writing, of the reasons for which such license is subject to revocation. The license to operate the swimming pool shall be revoked at the end of ten (10) days following service of such notice unless a written request for a hearing is filed with the Health Officer within the ten (10) day period. If no request for hearing is filed within the ten (10)

day period, the revocation of the license to operate the swimming pool becomes final.

Section 11. Service of Notice. Any notice provided for in this Ordinance is properly served when it is delivered to the licensee or to the person(s) in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the licensee. A copy of the notice shall be filed in the records of the Health Department.

Section 12. Hearings. The hearings provided for in this Ordinance shall be conducted by the Health Officer at a time and place designated by the Health Officer. The Health Officer shall make a final finding based upon the complete hearing record and shall sustain, modify, or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the licensee, or to the person in charge, by the Health Officer within ten (10) days of the hearing if requested from the Health Officer. The licensee and person(s) in charge shall immediately comply with an order or decision of the Health Officer. Should the Health Officer be unable to conduct a hearing or should he consider it in the best interests of Elkhart County to do so, he may in his discretion request that the Elkhart County Board of Health conduct the hearing.

In the event that the licensee or his authorized representative fails to attend any hearing, he shall be deemed to have accepted the decision of the Health Officer.

In the event that the licensee or the person(s) in charge fails to abide by the hearing decision or written orders of the Health Officer, the Health Officer may furnish written evidence of the violation to the Elkhart County Prosecutor for prosecution for violation of the provisions of this Ordinance. The Health Officer may also furnish written evidence of the violation to the office of the Elkhart County Attorney for appropriate action against the licensee including enforcement action for violation of the provisions of this Ordinance.

Section 13. License Fees. License fees shall be charged prior to the issuance of a license to operate a swimming pool in Elkhart County. All such fees shall be charged in accordance with the Health Department Fee Schedule Ordinance as amended from time to time.

Section 14. License Fee Penalty. Any person found to be operating a swimming pool after May 1st of each year after the effective date of this Ordinance without a valid license shall be assessed a license fee with civil penalty. The license fee with penalty shall be equal to three (3) times the appropriate license fee as determined under the Health Department Fee Schedule Ordinance. The license fee with penalty shall be paid prior to issuance of a license to operate.

Section 15. Inspections. The Health Officer may enter upon the swimming pool premises and other property of a person at all reasonable times for the purpose of inspecting the swimming

pool, examining records maintained by the operator, and carrying out the requirements of this Ordinance upon producing proper credentials and identification. No person shall open or place in service any swimming pool without first obtaining a license for such operation from the Health Officer. An applicant for licensure shall notify the Health Officer, to request an initial inspection, at least one week prior to the anticipated opening. The Health Officer shall make the inspection within three (3) working days of the receipt of notice from the applicant but only after a minimum of one (1) satisfactory bacterial sample is received by the Health Department. A minimum of one (1) additional inspection will normally be completed during the swimming pool's regular operating season but inspections may be performed as often as necessary for the efficient and effective enforcement of this Ordinance.

Section 16. Report of Inspection. Whenever an inspection is made of a swimming pool, the findings shall be recorded on an approved inspection report form. The inspection report form shall summarize the violations of this Ordinance and shall set forth requirements for correction. A copy of the completed inspection report form shall be presented to the person(s) in charge of the swimming pool at the conclusion of the inspection. The complete inspection report form constitutes an official notice of the inspection findings and an order of the Health Officer to correct all violations found.

Section 17. Correction of Violations. The completed inspection form shall specify a reasonable period of time for the correction of the noted violations. Correction of all violations shall be accomplished within the period specified in accordance with the following provisions:

A. If an imminent health hazard is determined by the Health Officer to exist, the swimming pool shall immediately close to all swimmers and guests until the violation can be corrected. Operations shall not be resumed until authorized by the Health Officer.

B. If the bacterial water quality of the swimming pool cannot be assured to be acceptable as outlined in this Ordinance by weekly bacteriological examination or the result of those examinations indicates a violation of this Ordinance, the swimming pool shall immediately close to all swimmers and guests until satisfactory bacteriological water quality can be verified by at least one satisfactory bacteriological sample.

C. If inspection by the Health Officer determines a disinfectant residual below the levels required in 410 IAC 6-2.1 for the type of pool in question, the swimming pool shall immediately close to all swimmers and guests as required by Rule 410 IAC 6-2.1 until disinfectant levels are acceptable. If the disinfectant residual drops below the equivalent of five tenths (.5) mg/l chlorine or detection levels, determined by an accurate test kit in normal use, the swimming pool shall immediately close

and shall be superchlorinated for a period of not less than twenty-four hours (24) prior to adjusting chlorine levels to the levels required in 410 IAC 6-2.1. Suitable chlorine levels shall be verified by the Health Officer prior to reopening the swimming pool to swimmers and guests.

D. All other violations of this Ordinance shall be corrected in accordance with the Elkhart County Swimming Pool Inspection Form and the following schedule:

1. Water Quality: Corrective action required to commence immediately with compliance required within twenty-four (24) hours.
2. Water Clarity: Corrective action required to commence immediately with compliance required within forty-eight (48) hours.
3. Disinfectant Residual and Bacterial Content: Corrective action required to commence immediately with compliance required within seven (7) days.
4. Circulation and Filtration: Compliance required within thirty (30) days if water quality is being maintained. If water quality cannot be maintained, the Health Officer may order closure until repairs are completed.
5. Tests and Records: Corrective action required to commence immediately with compliance required within ten (10) days.
6. Structures and Fixtures: Compliance required within the number of days specified by the Health Officer dependent upon severity, but with compliance always required prior to renewal of the license.
7. Safety: Corrective action required to commence immediately with compliance required within the number of days specified by the

Health Officer but not to exceed sixty (60) days.

8. Signs and Enclosure: Compliance required prior to opening; replacements required within thirty (30) days.
9. Cleanliness: Compliance required within ten (10) days.
10. License: License to be obtained and posted prior to opening; if licensure cannot be demonstrated, then immediate closure is required until the license is obtained.

Section 18. Plan Review. Prior to the construction, rehabilitation, or alteration of any swimming pool in Elkhart County, a plan review fee, as provided in the Health Department Fee Schedule Ordinance as amended periodically, along with the plans and specification sheets stamped with the State of Indiana Plan Release shall be submitted to the Health Officer for plan review. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, and the type and model of proposed fixed and non-fixed equipment and facilities. Failure to submit the appropriate plan review fee and construction plans prior to beginning construction, rehabilitation, or alteration may result in a stop work order.

Section 19. Fines and Penalties. Any person who violates any provision of this Ordinance shall be deemed to have committed an Ordinance violation and, upon conviction, shall be fined not more than Five Hundred Dollars (\$500.00) for the first offense and not more than One Thousand Dollars (\$1,000.00) for the second and each subsequent offense. Each violation of the

Ordinance shall constitute a separate Ordinance violation, and each day that a violation continues shall constitute a separate Ordinance violation. In addition to the specific enforcement mechanisms contained within this Ordinance, the Health Officer may furnish written evidence of any violation of this Ordinance to the Elkhart County Prosecutor and/or the Elkhart County Attorney for appropriate action against the licensee and the person(s) in charge, including prosecution and enforcement action for violation of the provisions of this Ordinance.

Section 20. Construction.

A. In the event that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to conflict with any provision of 410 IAC 6-2.1 et seq., 675 IAC 20-1.1 et seq., 675 IAC 20-2 et seq., or 675 IAC 20-3 et seq., then and in any such event the more strict provision shall govern.

B. In the event that any provision of this Ordinance is ultimately determined by a court of competent jurisdiction to be preempted by any state or federal law or regulation, this Ordinance shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the preempting state or federal law or regulation.

C. Each provision of this Ordinance shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

D. Compliance with the requirements of this Ordinance does not obviate or eliminate the necessity of complying with any other applicable federal, state, or local laws and regulations affecting swimming pools.

Section 21. Authority of Health Officer. It is hereby acknowledged, understood, and declared by the Board of Commissioners of the County of Elkhart, Indiana, that under this Ordinance the Health Officer is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of the County of Elkhart, Indiana in regulating swimming pools. The authority of the Health Officer to issue, deny, suspend, or revoke or fail or refuse to issue, deny, suspend, or revoke any license, approval, order, registration, or similar authorization under this Ordinance is hereby declared to be discretionary.

Section 22. Effective Date and Repeal. Following publication in accordance with the requirements of law, this Ordinance shall take effect on the ____ day of _____, 2006. All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

Approved by the Board of Commissioners of the County of Elkhart, Indiana this _____ day of _____, 2006.

BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA

By: _____
Phil R. Stiver, President

By: _____
Mike Yoder

By: _____
Terry Rodino

Attest:

David L. Hess Elkhart County Auditor

Adopted by the Elkhart County Board of Health this _____ day of _____, 2006.

_____, Chairman
Elkhart County Board of Health