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APRIL WHETSTONE  
WHITLEY COUNTY RECORDER  
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PREVENT. PROMOTE. PROTECT.

# Whitley County Public & Semi-Public Swimming Pools Ordinance



ORDINANCE # 2018-01

The purpose of this ordinance is to safeguard public health; to promote public health; to provide for the prevention and control of disease; to prevent accidents; to establish the administrative rules for operation; and to establish penalties and remedies for public and semi-public pools in Whitley County.

Section 1. Title.

This Ordinance may be referred to as the "Whitley County Public & Semi-Public Swimming Pool Ordinance" and shall be referred to herein as the "Ordinance".

Section 2. Adoption by Reference.

The requirements of Indiana administrative code Title 675 IAC 20 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 as part of this Ordinance, and 410 IAC 6-2.1 Public and Semi-Public Pools Rule of the Indiana State Department of Health.

Section 3. Definitions.

Except as provided below, the terms defined in Indiana administrative code Title 410 IAC 6-2.1 and Indiana administrative code Title 675 IAC 20 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. "Approved" shall mean as approved by the Whitley County Health Officer.
- B. "Health Board" shall mean the Whitley County Health Board.
- C. "Health Department" shall mean the Whitley County Health Department.
- D. "Health Officer" shall mean the Whitley County Health Officer or his or her duly authorized representative.
- E. "Imminent Health Hazard" shall mean any condition, which in the opinion of the Health Officer may reasonably lead to injury or disease or put public health at risk.
- F. "Inspection" shall mean a complete review of all required swimming pool records and 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.

- G. "Order" (derived from IC 4-21.5-1-9) shall mean a Whitley 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.
- H. "Owner" shall mean any individual, association, company, corporation, partnership, division of government or other group acting as a unit, trust, estate, agent or legal representative thereof who shall hold title to the real estate upon which the swimming pool is placed, or who shall be legally responsible for the operations of the swimming pool, or who shall be so named as the owner on the swimming pool permit application.
- I. "Permit" shall mean a certificate issued by the Health Officer of Whitley County, Indiana, to operate a public or semi-public swimming pool.
- J. "Person" shall mean any individual, association, company, corporation, partnership, and division of government, agent, or other legal representative.
- K. "Person in Charge" shall mean the person who supervises pool operations and compliance with all laws, rules, and regulations governing public and semi-public swimming pools of both the State of Indiana and Whitley County, Indiana.
- L. "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.
- M. "Semi-public pool" means any pool restricted for use by residents, members, or registered guests that is intended to be used for swimming or bathing and is operated solely for and in conjunction with: (1) hotels, motels, apartments, condominiums, bed and breakfasts, tourist homes, or similar facilities associated with lodgings; (2) camps or mobile home parks; or (3) membership clubs, churches, or associations. 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.
- N. "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.

#### Section 4. Permit Requirements.

- A. It shall be unlawful for any Person to operate a public or semi-public swimming pool in Whitley County, Indiana, who does not possess a valid Permit from the Health Officer.
- B. Only Persons who comply with the applicable provisions of this Ordinance shall be entitled to receive and retain such Permit.
- C. Such Permit shall be posted in a conspicuous place on the premises in or about the swimming pool facility.
- D. Such Permit shall be for a term of one (1) year or less beginning January 1<sup>st</sup> of each year and expiring the December 31<sup>th</sup> of the succeeding year and shall be renewed annually.

#### Section 5. Issuance of Operating Permit.

- A. Any Person wishing to operate a swimming pool in Whitley County, Indiana, shall make written application for a Permit to operate the swimming pool on approved forms. Application for Permit must be completed prior to all requests for inspection.
- B. A separate Permit shall be required for each swimming pool operated or to be operated by the same Owner at the same address.

#### Section 6. Permit Restrictions.

- A. The Owner of a swimming pool which has not held a required Permit to operate for a period of at least one (1) year or has had its Permit revoked by the Health Officer, shall be required to apply for a new Permit before resuming operations and shall not be issued a Permit to operate unless the swimming pool complies with all of the requirements of this Ordinance, including, but not limited to, the design, construction, equipment, and sanitation requirements applicable to a new swimming pool.
- B. A Permit issued under this Ordinance is not transferable to another Owner or location. Upon a change of ownership of a swimming pool, a new Permit to operate must be obtained from the Health Department prior to operating under the new Owner. A Permit will not be issued to the new Owner unless the swimming pool is in compliance this Ordinance and all applicable laws, rules, and regulations.

#### Section 7. Permit Fees.

- A. Swimming pools operating only during the months of May, June, July, August, and/or September shall pay to the Health Department a seasonal fee of \$100.00, which shall be submitted with the Permit application.
- B. Swimming pools operating for periods which include months in addition to those listed in Section 7(A), shall pay to the Health Department an annual Permit fee of \$200.00, which shall be submitted with the Permit application.
- C. Tax supported units of government shall be exempt from payment of any fees as set by this Ordinance; however, such units must comply with all other provisions of this Ordinance.
- D. All Permit fees shall be payable on or before January 1<sup>st</sup> of the year intended for Permit and shall be subject to an additional late penalty charge of twenty-five percent (25%) of the Permit fee if the Permit fee is submitted after January 31<sup>st</sup>.
- E. Once an establishment has been issued a Permit to allow pool operations, the cost of such Permit is non-refundable.

#### Section 8. Construction Requirements.

- A. All public and semi-public swimming pools shall be constructed and operated in accordance with the terms and provisions of Indiana administrative code 675 IAC 20 et. seq.

#### Section 9. Plan Review Requirements, Fees, and Initial Operation.

- A. Prior to the construction, rehabilitation, or alteration of any swimming pool in Whitley County, a plan review shall be conducted by the Health Officer to ensure compliance with the Indiana State Department of Health administrative code Title 410 IAC 6-2.1 et. seq.
- B. An application for a plan review must be filed with the Health Officer prior to beginning construction. The following shall be submitted with the application:
  - 1. A plan review fee of fifty dollars (\$50.00).
  - 2. Proof that a State Construction Design Release has been issued by the Indiana Department of Fire and Building Services.
  - 3. Plans and specifications certified and sealed by a professional engineer or architect legally registered in the State of Indiana.
  - 4. Completed plan review forms issued by the Whitley County Health Department.
- C. Construction on the proposed swimming pool shall begin only after the Health Officer has given approval for the project upon the review of all required plan review documents.

- D. Failure to submit the appropriate plan review fee and required plan review documents prior to beginning construction, rehabilitation, or alteration may result in a Stop Work Order.
- E. The Health Officer shall have the right to issue a Stop Work Order at any stage during construction if the previously approved plans and specifications are not being followed.
- F. A verbal Order and a written notice to stop work shall be issued by the Health Officer. The written notice shall be posted in a conspicuous place on or near the construction site.
- G. An applicant for a swimming pool Permit shall notify the Health Officer to request an initial inspection of the newly constructed, rehabilitated, or altered swimming pool at least one week prior to the anticipated opening.
- H. The Health Officer shall make the inspection within two (2) 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.
- I. The Health Officer shall issue a Permit 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.

#### Section 10. Swimming Pool Sanitation, Operation and Safety Regulations.

Any and all of the provisions of the Indiana State Department of Health administrative code Title 410 IAC 6-2.1 et seq., entitled "Public and Semi-Public Swimming Pools Rule", is adopted in its entirety into the "Whitley County Public & Semi-Public Swimming Pool Ordinance" for Whitley County, Indiana, as though fully set out herein.

#### Section 11. Powers for Inspection.

- A. The Health Officer may enter upon all areas of the swimming pool premises 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 identification.
- B. A minimum of one (1) Inspection per calendar month will be completed during the swimming pool's regular operating season; however, Inspections may be performed as often as necessary for the efficient and effective enforcement of this Ordinance.
- C. A written Inspection report will be issued by the Health Officer to the Person in Charge of the swimming pool at the time of each Inspection, noting any violation(s) found. The completed Inspection report constitutes an official notice of the Inspection findings and an Order of the Health Officer to correct all violations found.

#### Section 12. Powers for Notices, Hearings and Orders.

- A. Whenever the Health Officer determines there are reasonable grounds to believe that there has been a violation of any provision of this Ordinance, the Health Officer shall give notice of such alleged violation(s) to the Owner as hereinafter provided. Such notice shall:
1. Be in written form;
  2. Include a statement of the reason(s) why the notice is being issued;
  3. Allow a reasonable time as determined by the Health Officer for the correction of the violation(s); and
  4. Be served upon the Owner and/or Person in Charge, provided that such notice shall be deemed to be properly served when it is personally delivered thereof to, or when it is sent by certified mail, return receipt requested, to the last known address of the Owner listed on the permit and/or to the swimming pool facility address with attention to the Person in Charge, or by posting a copy thereof in a conspicuous place in or about the swimming pool facility.
- B. Any Person aggrieved by any such notice issued by the Health Officer may request in writing and shall be granted a hearing on the matter before the Health Officer provided that such Person shall file in the office of the latter within ten (10) days after service of the notice, a written petition requesting such hearing and setting forth grounds therefore. Upon receipt of such petition, the Health Officer shall arrange a time and place for such hearing no later than ten (10) days after receipt and shall give the petitioner written notice thereof. The Health Officer and Owner may agree to a shorter period of time, if requested by either party.
- C. At such hearing, the petitioner shall be given an opportunity to be heard and to show cause why compliance with this Ordinance should not be met. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitive evidence may be excluded.
- D. After such hearing, the Health Officer shall sustain, modify, or withdraw the notice, depending upon his or her findings as to whether compliance with the provisions of this Ordinance has been met. If the Health Officer shall sustain or modify such notice, it shall be deemed to be a final Order, subject to the right of appeal in accordance with Section 13.

### Section 13. Right of Appeal.

- A. Any Owner aggrieved by the final Order of the Health Officer shall be entitled to a review of the final Order before the Health Board by filing a written petition requesting a hearing before the Health Board and setting forth the grounds within fifteen (15) days after such final Order is issued.
- B. Upon receipt of such petition, the Health Board shall arrange a time and place for such hearing no later than ten (10) days after receipt and shall give the petitioner written

notice thereof. The Health Officer and Owner may agree to a shorter period of time, if requested by either party.

- C. The Health Board, at its own option, may conduct a special meeting to consider the appeal at the cost of the Person asking for the appeal. The expense of such proceedings shall be charged to the Owner asking for the appeal.
- D. At such hearing, the Owner aggrieved by the Health Officer's Order shall be permitted to present its evidence and information to the Health Board. The Health Officer shall also be permitted to present information and evidence to the Health Board.
- E. At such hearing, the same rules of procedure shall apply as in the case of the hearing before the Health Officer. The Health Board may sustain, modify or withdraw the decision of the Health Officer.
- F. The Health Board shall make written findings of fact and shall enter its final Order or determination of the matter in writing.

#### Section 14. Effective Order.

Any notice served of this Ordinance shall automatically become an Order if a written petition for a hearing is not filed in the office of the Health Officer within ten (10) days after such notice is served.

#### Section 15. Emergency Order.

- A. Whenever the Health Officer finds that an Imminent Health Hazard emergency exists, which requires immediate action to protect public health, the Health Officer may, without notice or hearing, issue an Order reciting the existence of such an emergency and requiring that such action be taken as he or she deem necessary to meet the emergency.
- B. Notwithstanding the other provisions of this Ordinance, such Order shall be effective immediately, but upon petition to the Health Officer shall be afforded a hearing within three (3) days, not to include weekends or holidays, in the manner provided in this Ordinance.
- C. After such hearing, depending upon the finding as to whether the provisions of this Ordinance have been complied with, the Health Officer shall continue such Order in effect, or modify it, or withdraw it. If the Health Officer shall continue such Order in effect or modify it, it shall be deemed to be an Order.

#### Section 16. Enforcement and Penalties.

- A. Any person, firm, or corporation who shall violate any provision of this ordinance shall be served by the Health Officer with a written Order stating the nature of the violation

and providing a time limit for satisfactory correction thereof. Any person, firm, or corporation found in violation shall be subject to the penalties set forth herein.

- B. It shall be the duty of the Health Officer to enforce the provisions of this Ordinance. Any permit issued in conflict with the provisions of this Ordinance shall be null and void. A violation of an Order issued by the Health Officer, Health Department or Health Board shall be considered to be a violation of this Ordinance.
- C. Whenever the Health Officer determines that the Owner of any swimming pool is in willful violation of any of the provisions of this Ordinance, the Health Officer shall furnish evidence of said willful violation to the attorney for the Health Board, who shall prosecute all persons violating said provisions of this Ordinance.
- D. The operation of any public or semi-public swimming pool which is contrary to any of the provisions of this Ordinance is hereby declared to be a common nuisance and an unlawful violation of this Ordinance; and the Owner of said swimming pool shall be liable for maintaining a common nuisance.
- E. Any Owner who violates any provision of this Ordinance shall upon conviction be punished by a fine of not more than five hundred dollars (\$500.00) for each violation. Each day of the existence of any violation of this Ordinance shall be a separate offense.
- F. The Health Officer may bring an action for an injunction in the Circuit Court or Superior Court of Whitley County, Indiana, to restrain any Owner from violating the provisions of this Ordinance or to cause such violation to be prevented, abated or removed.
- G. Any Owner violating any of the provisions of this Ordinance shall become liable to Whitley County for any expense, loss, or damage occasioned by reason of such violation, including reasonable attorney's fees and costs.
- H. The remedies provided for in this section shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

#### Section 17. Enforcement Interpretation.

The Health Officer may initiate any procedures as he or she deems necessary for proper enforcement in order to carry out the purpose and intent of this Ordinance.

#### Section 18. Repeal of Conflicting Ordinances.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

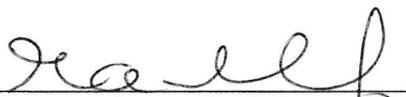
#### Section 19. Severability.

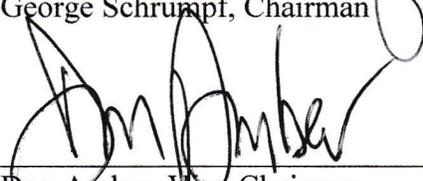
The invalidity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.

Section 20. Effective Date

Approved by the Board of the Whitley County Commissioners this day 21, May 2018.

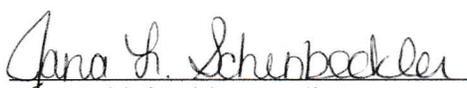
Board of Commissioners of Whitley County Indiana.

  
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George Schrupf, Chairman

  
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Don Amber, Vice-Chairman

  
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Tom Western – Member

Attest:

  
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Jana Schinbeckler, Auditor