

## **ORDINANCE NO.**

**AN ORDINANCE REPEALING AND RESTATING CHAPTER 16 “HEALTH AND SANITATION,” ARTICLE XIX: “RECREATIONAL AQUATIC SPRAYGROUNDS,” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, TO RENAME THE ARTICLE “PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS”; TO UPDATE REGULATIONS TO ALIGN WITH CHANGES IN STATE LAW; TO UPDATE DEFINITIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL PRIOR ORDINANCES AND REPEAL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Fort Worth (“City Council”) seeks to protect the public health and safety of the citizens and visitors of Fort Worth by adopting minimum State standards for construction, maintenance, and sanitation for Public Interactive Water Features and Fountains;

**WHEREAS**, City Council finds it necessary to retain three higher regulatory standards which require: 1) signage prohibiting diaper changing; 2) coliform water testing; and 3) use of supplemental disinfection on all water features;

**WHEREAS**, The City Council finds it necessary to update definitions and regulations to align with changes in state law; and

**WHEREAS**, The City Council finds this Ordinance to be reasonable and necessary.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, THAT:**

### **SECTION 1.**

Chapter 16, “Health and Sanitation,” Article XIX “Recreational Aquatic Spray Grounds,” of the Code of the City of Fort Worth, Texas (2015), as amended, is hereby repealed and restated in its entirety to be and read as follows:

## CHAPTER 16: HEALTH AND SANITATION

### ARTICLE XIX: PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS

#### § 16-500 PURPOSE.

The purpose of this article is to protect the health and safety of the public by establishing minimum standards for the construction, operation and maintenance of Public Interactive Water Features and their related facilities.

#### § 16-501 STATE STANDARDS ADOPTED AND APPLIED.

The standards of the following regulatory materials, in their current form and as they may hereafter be amended, are adopted and applied into this article as if they were set forth at length herein: TAC Title 25 Part 1 Chapter 265 Subchapter M, Sections 265.301-265.308.

#### § 16-502 DEFINITIONS.

For purposes of this Article, the following terms and phrases shall have the meanings herein designated unless a provision explicitly states otherwise.

**ADEQUATE.** Sufficient to accomplish the purpose for which something is intended and to such a degree that no unreasonable risk to health or safety is presented. Complying with generally accepted standards, principles or practices applicable to a particular trade, business, occupation or profession is adequate with the meaning of the Article.

**cm.** Centimeter.

**DIRECTOR.** The Director of the department of Environmental Services for the City of Fort Worth or the Director's authorized representative.

**EXTENSIVELY REMODELED.** The replacement of or modification to a public interactive water feature and fountains structure, its circulation system, or its appurtenances, so that the design, configuration or operation is different from the original design, configuration or operation. This term does not include the normal maintenance and repair or the replacement of equipment that has been previously approved if the size, type or operation of the equipment is not substantially different from the original equipment.

**FREE AVAILABLE DISINFECTANT.** That portion of the total approved chemical disinfectant remaining in water that is not combined with other compounds and that will react chemically with pathogenic or other undesirable organisms.

**gpm.** Gallons per minute.

**gpm/sf.** Gallons per minute per square foot.

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**mJ.** Milijoule.

**mJ/cm<sup>2</sup>.** Milijoules per centimeter squared.

**OPERATING DAY.** A day on which the Public Interactive Water Feature and Fountain is open to patrons for any period of time.

**OPERATING WEEK.** A seven-day period beginning on Sunday and concluding on Saturday, one or more days of which the Public Interactive Water Feature and Fountain is open to patrons.

**PERSON.** A natural Person, corporation, organization, business trust, estate, trust, partnership, association or other legal entity. The term does not include government or a governmental subdivision or agency.

**pH.** The negative logarithm of the hydrogen-ion concentration of a water solution; a measure of the acidity or alkalinity of a solution expressed in standard units.

**PUBLIC INTERACTIVE WATER FEATURE AND FOUNTAIN(PIWF).** Any indoor or outdoor installation maintained for public recreation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons in various arrays for the purpose of wetting the Persons playing in the spray streams. PIWFs: (A) may be stand-alone PIWFs or may share a water supply, disinfection system, filtration system, circulation system, or other treatment system that allows water to comeingle with a pool; (B) may be publicly or privately owned; (C) may be operated by an owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for use; (D) include, but are not limited to, interactive water features or fountains that are open exclusively to members of an organization and their guests, residents of a multi-unit apartment building or apartment complex, residential real estate development, or other multifamily residential area, schools, day care facilities, youth camp, or hotel or other public accommodations facility; (E) do not include interactive water features or fountains located on private property under the control of the property owner or the owner's tenant serving a single-family residence or duplex and that are intended for use by not more than two resident families and their guests; and (F) are not fountains, installations, amusement rides, or other attractions, whether decorative or interactive, in which only incidental water contact occurs. The term shall include the deck and all related buildings, appurtenances, and facilities such as dressing and locker rooms, toilets, showers, and other areas designed for operation of the facility or for use by the facility's patrons. The term does not include an artificial body of water that meets the definition of pool under Article XVIII of this Chapter.

**sf.** Square foot.

**SUPPLEMENTAL WATER TREATMENT SYSTEM.** Disinfection processes or systems installed in addition to the standard systems and designed to achieve a minimum 3-log (99.9%) reduction in the number of infective Cryptosporidium.

**TAC.** The Texas Administrative Code.

**WASTE WATER.** All water that has been dispensed or re-circulated at a PIWF. The term includes water generated when a PIWF tank and circulation system is flushed, drained, or both. The term does not include rain or other precipitation.

**§ 16-503 PERMIT REQUIRED**

- (1) Every facility within the corporate limits of the City of Fort Worth that meets the definition of a Public Interactive Water Feature and Fountain under this Article must obtain a permit from the Director of the City's Environmental Services department in order to operate.
- (2) A Person commits an offense if the Person owns, operates, or manages a PIWF without a valid permit issued by the Director.
- (3) As a condition of obtaining and keeping a permit, a PIWF shall at all times be in compliance with:
  - (a) The minimum standards set forth in Tex. Administrative Code Title 25, Chapter 265, Subchapter M, "Public Interactive Water Features and Fountains," as currently enacted, or as it may hereafter be amended; and
  - (b) The technical standards set forth in Section 16-504 of this Article.

**§ 16-504 TECHNICAL STANDARDS.**

- (a) A Public Interactive Water Feature and Fountain must comply with the technical specifications of all subsections of this Section with respect to construction, operation and maintenance.
  - (1) *Water supply.*
    - a. Water supply to the PIWF facility must meet the standards under Texas law for public drinking water, which are currently found in Tex. Administrative Code Title 30.
    - b. Cross-connection between the water supply and re-circulation systems is prohibited.
  - (2) *Filtration.*
    - a. Filtration must meet one of the following standards:
      1. *Sand filters.*

- i. High-rate sand filters (pressure or vacuum) shall be properly maintained and operated according to the manufacturer's instructions and at a filter rate not to exceed 15 gpm/sf.
- ii. Filter air release valves shall be opened as needed to remove air that collects in the filters.
- iii. Sand filters shall be backwashed at a flow rate of 12 to 15 gpm/sf or at the rate recommended by the manufacturer.

2. *Diatomaceous earth filters.*

- i. Diatomaceous earth filters shall be properly maintained and operated according to the manufacturer's instructions and at a filter rate not to exceed two gpm/sf with body feed or one and one-half gpm/sf without body feed.
- ii. Diatomaceous earth filters must be equipped with a separation tank.
- iii. Used diatomaceous earth filter media, including separation tank sludge, shall be disposed of or treated as a solid waste material in accordance with the requirements of State law.

3. *Cartridge filters.*

- i. Cartridge filters shall be properly maintained and operated according to the manufacturer's instructions and at a filter rate not to exceed a maximum of 0.375 gpm/sf.
  - ii. Cleaning and replacement of cartridge filters must be in accordance with the manufacturer's recommendations. One complete spare set of cartridges shall be available at all times to facilitate cleaning.
- b. Operating instructions must be permanently attached to all filters, regardless of type.
  - c. All filtration systems, regardless of type, must be equipped with inlet and outlet pressure gauges and other gauges in accordance with the manufacturer's specifications.
  - d. Regardless of type, the filtration system must be equipped with flow metering equipment to ensure that water flow does not exceed the prescribed rate.

(3) *Chemical disinfection.*

- a. A Public Interactive Water Feature and Fountain must:
  1. Employ a type of chemical disinfectant that is approved under State law for use with a spa.
  2. Be designed and maintained so that Free Available Disinfectant levels meet state requirements for chemical disinfection of a spa.
  3. Employ a system that continually monitors and automatically controls chlorine or bromine levels and pH balance by dispensing appropriate disinfectant in designated intervals.
  4. Be equipped with chemical metering equipment that monitors and records data regarding Free Available Disinfectant levels to ensure that such levels are maintained at the prescribed level.
  5. Be manually tested for Free Available Disinfectant levels and recorded at least once during each operating day.
- b. Test methods shall be capable of measuring chemical ranges as set forth in Tex. Administrative Code Title 25, Chapter 265 Subchapter M without the dilution of PIWF water.
- c. Chemical dispensing and metering equipment shall be cleaned, maintained and repaired in accordance with the manufacturer's recommendations.

*(4) Supplemental Water Treatment Systems:*

- a. Each pump providing water to the PIWF must be equipped with a Supplemental Water Treatment System.
- b. The Supplemental Water Treatment System shall be located so that all water entering the PIWF is treated immediately before such water is dispensed through a spray feature.

*(5) Ultraviolet light sanitization.*

- a. If utilizing UV sanitation as a Supplemental Water Treatment System, in addition to the standards set forth in Tex. Administrative Code Title 25, Chapter 265 Subchapter M, Section 265.306, the following standards apply:
  1. A spare UV lamp and other necessary equipment shall be provided on-site to allow for prompt repair by qualified personnel who are properly instructed in the operation and maintenance of the equipment.

2. The UV light units and light intensity meters shall be cleaned, maintained and repaired in accordance with the manufacturer's recommendations.
3. The UV lamp(s) shall be replaced when decreased ultraviolet light intensity is due to lamp failure.

*(6) Precipitation, Waste Water and drainage system.*

Waste Water from the PIWF, including filter backwash, shall be introduced to the sanitary sewer system through an air gap equal to at least twice the diameter of the drain pipe or by another method that will prevent backflow and back-siphonage.

*(7) Fencing.*

The PIWF perimeter must be enclosed or fenced in order to minimize the risk of contamination of the spray pad surface by animals and animal waste. Acceptable fencing types include chain link; wood or wood-like composites with slats spaced no more than four inches apart; and iron bars spaced no more than four inches apart. If a PIWF is located in the same enclosure as a public swimming pool/spa, the pool enclosure rules apply.

*(8) Signage.*

Each PIWF entry point must be posted with a sign prohibiting hanging diapers inside the PIWF enclosure.

*(9) Building codes.*

Every newly constructed or Extensively Remodeled PIWF must be constructed and maintained so as to comply with all applicable Federal, State and Local building codes in effect for PIWF at the time the construction or remodeling occurs.

**§ 16-505 FILING APPLICATION FOR PERMIT.**

Prior to beginning the construction or Extensive Remodeling of a facility that meets the definition of a Public Interactive Water Feature and Fountain under this Article, the Person who owns, operates or manages the facility must submit a completed application for a PIWF permit on the form promulgated by the Director. In accordance with the requirements of this Article, the application must be accompanied by plans and specifications for the construction or remodeling as well as all required fees.

**§ 16-506 FEES.**

- (a) The City Council shall adopt a schedule of fees for:

- (1) Public Interactive Water Feature and Fountain permits, including an additional fee for the reissuance of a permit after its expiration;
  - (2) Re-inspection;
  - (3) Plans review;
  - (4) Change of owner or operator; and
  - (5) Pre-permit requests for services.
- (b) Fees charged for PIWF services shall be the same as those charged for services related to pools and spas.
- (c) The Environmental Services department may not issue a permit or conduct a plans review until all applicable fees have been paid.
- (d) The fee schedule shall be available to the public at the Environmental Services department.

**§ 16-507 EXAMINATION, WATER TESTING AND MAINTENANCE OF RECORDS.**

- (a) The owner, operator or manager of a PIWF shall examine the facility at least once during each operating day to ensure that:
- (1) The spray pad surface is undamaged, clean and free of debris;
  - (2) The deck and all associated buildings, appurtenances and facilities, (including but not limited to, dressing and locker rooms, toilets and showers) are in good repair and do not pose a threat to public health or safety;
  - (3) Pumps and filters are functioning properly and water is flowing at the prescribed rate;
  - (4) Water pH level is within the required range;
  - (5) Chemical disinfectant levels are within prescribed range and metering equipment is operating properly; and
  - (6) The Supplemental Water Treatment System is functioning properly and within prescribed range.
- (b) The owner, operator or manager of a Public Interactive Water Feature and Fountain shall examine the facility at least once during each operating week to ensure that:
- (1) Any required ground fault circuit interrupters are functioning properly; and



- (2) Fencing around the PIWF is in good repair.
- (c) The owner, operator or manager of a Public Interactive Water Feature and Fountain shall have the water from each circulation system tested and analyzed in accordance with the following requirements:
  - (1) Water testing must be performed by an agency or entity that is not affiliated with the PIWF. Testing by a government entity, including but not limited to the City, shall satisfy this requirement;
  - (2) Initial testing shall be conducted at the conclusion of the first operating day of each year;
  - (3) Periodic testing shall be conducted at least once every 90 days following the first operating day of each year;
  - (4) The testing must include analysis to determine whether fecal coliforms are present;
  - (5) The testing process must include analysis for any additional physical, chemical or microbiological parameters required by the Director; and
  - (6) Results of all water testing shall be filed with the Director.
- (d) If any analysis required under subsection (c) above indicates the presence of fecal coliforms or any other contaminant that poses a threat to human health, a Person with knowledge of such analysis is under a duty to notify the Director within 24 hours.
- (e) Notations shall be made regarding the results of all examinations, inspections, and tests required under subsections (a), (b) and (c) above. These records shall be maintained on the premises of the PIWF for a minimum of 24 months from the date of the examination or test and shall be provided to the Director on request.
- (f) The owner, operator or manager of a PIWF shall promptly correct or repair any defect or problem discovered in the course of an examination under subsection (a) or (b) above. The owner, operator or manager must record all repairs and maintain on the premises of the PIWF such records for a minimum of 24 months from the date of the examination. These records shall be provided to the Director on request.
- (g) A Person commits an offense if the Person knows of the presence in PIWF water of any organism or contaminant that poses a threat to human health and fails to notify the Director within 24 hours.
- (h) A Person commits an offense if the Person owns, operates or manages a PIWF and fails to conduct the examinations or testing or fails to maintain the records required by this Section.

- (i) A Person who owns, operates or manages a PIWF commits an offense if the Person fails to make required records available to the Director immediately upon request.

**§ 16-508 PLANS REVIEW.**

- (a) Prior to beginning the construction or extensive remodeling of a facility that meets the definition of Public Interactive Water Feature and Fountain under this Article, the owner, operator or manager shall submit detailed plans and specifications for such construction or remodeling to the Director for review.
- (b) The plans and specifications shall indicate the proposed layout and arrangement of mechanical, plumbing and electrical systems; construction materials of work areas; the location, composition and dimensions of fencing; the type and model of proposed fixed equipment and facilities; and the location, dimensions and composition of all associated buildings or structures.
- (c) A licensed professional engineer shall examine the plans and specifications for all new or Extensively Remodeled Public Interactive Water Feature and Fountain and certify by original signature and engineer's seal compliance with this Article.
- (d) No work shall begin until the Director has received the engineer's certificate of pre-construction, conducted a plans review, and relayed in writing to the planning and development department that a building permit may be issued. Work shall commence and conclude within the time allowed by building permits.
- (e) If no work has begun within 180 days from the date the Director has given written notice that work may begin, the Director may rescind such approval.

**§ 16-509 PRE-OPERATION INSPECTION.**

- (a) Every new or Extensively Remodeled Public Interactive Water Feature and Fountain shall be subject to inspection by the Director prior to the commencement or resumption of operations to determine compliance of the approved plans and specifications with the requirements of this Article.
- (b) Following completion of the construction or extensive remodeling of a PIWF, a licensed professional engineer shall inspect the new or renovated facility and certify by original signature and engineer's seal, on a form approved by the Director, that the PIWF is installed and constructed in accordance with the requirements of this Article.
- (c) No permit shall be issued until the PIWF construction has passed the required inspections.

**§ 16-510 RIGHT OF ENTRY.**

- (a) The Director has the authority to enter the premises of a Public Interactive Water Feature and Fountain, including but not limited to the PIWF facility, building, storage area, equipment room, or office area, at all reasonable times to make an inspection, to enforce any of the provisions of this Article, to collect water samples, to review records, to question any Person, or to locate, to identify, and to assess the condition of the PIWF facility, or whenever the Director has probable cause to believe that a violation of this Article exists on such premises.
- (b) The Director shall first present appropriate credentials and demand entry if the premises are occupied. If the premises are unoccupied, the Director shall first make a reasonable attempt to locate the owner, operator or manager of the premises and demand entry.
- (c) If entry is denied or if an owner, operator or manager cannot be located, the Director shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain an administrative warrant under the provisions of the Texas Code of Criminal Procedure.

#### **§ 16-511 INSPECTION REPORTS.**

- (a) If the Director observes one or more violations of this Article during an inspection, the Director shall prepare a written inspection report specifying the violation(s) observed and ordering the owner, operator or manager to bring the facility into compliance with this Article by a specified time. If the Director does not observe any violations of this Article during an inspection, the Director may, but is not required to, prepare a written inspection report detailing the results of the inspection.
- (b) The Director shall furnish a copy of the inspection report to the owner, operator or manager of the PIWF.
- (c) The inspection report shall state:  
“FAILURE TO COMPLY WITH THE ORDERS OF THIS REPORT MAY RESULT IN ANY OR ALL OF THE FOLLOWING: THE ISSUANCE OF CRIMINAL CITATIONS, THE CLOSURE OF THE FACILITY, THE SUSPENSION OR REVOCATION OF YOUR PUBLIC INTERACTIVE WATER FEATURE AND FOUNTAIN PERMIT, AND THE EXERCISE OF ALL OTHER REMEDIES ALLOWED BY LAW.”
- (d) A Person commits an offense if the Person owns, operates or manages a Public Interactive Water Feature and Fountain and fails to comply with an order issued pursuant to this Section.

#### **§ 16-512 ISSUANCE OF PERMIT.**

- (a) The Director may issue an initial Public Interactive Water Feature permit only if all of the following conditions are met:

- (1) A completed application has been filed;
  - (2) All required fees have been paid in full;
  - (3) Detailed plans and specifications demonstrating compliance with all requirements of this Article have been submitted and reviewed by the Director or detailed plans and specifications demonstrating compliance with some requirements of this Article have been submitted and reviewed by the Director and the Director has granted a written variance or waiver from compliance with any remaining requirements of this Article;
  - (4) A licensed professional engineer has examined the plans and specifications and certified by original signature and engineer's seal that the plans and specifications comply with all requirements of this Article;
  - (5) A pre-operation inspection by the Director has been completed and the PIWF is found to be in compliance with all requirements of this Article; and
  - (6) A licensed professional engineer has inspected the PIWF and certified by original signature and engineer's seal that the PIWF is installed and constructed in accordance with all requirements of this Article.
- (b) A permit is valid only for the PIWF for which it is issued. A separate permit shall be required for each PIWF located on the same premises. Multiple PIWFs sharing a common circulation and filtration system must have separate health permits. A permit is not transferable to other Persons or PIWFs.
- (c) A permit is valid for one year from the date of its issuance unless:
- (1) It is suspended or revoked by the Director;
  - (2) The PIWF changes ownership; or
  - (3) The PIWF is remodeled extensively.

**§ 16-513      DENIAL OF PERMIT.**

- (a) The Director may deny the issuance of a PIWF permit if:
- (1) Any of the technical requirements of Section 16-504 are not met;
  - (2) All required fees have not been paid in full;
  - (3) A permit application is incomplete or contains one or more materially false statements;

- (4) Plans and specifications submitted for review contain one or more false statements or misrepresentations as to a material fact; or
- (5) The Director determines that specific conditions exist that would pose a threat to public health or safety.
- (b) If a permit is denied, the Director shall provide the applicant with written notification within ten days of the date the application is denied. Such notice shall set out the grounds for the denial.
- (c) The notice of denial must be served on the applicant by personal delivery or by certified mail, return receipt requested, to the address listed on the application.
- (d) An applicant whose permit is denied may request an appeal hearing within ten days after receipt of the notice of denial. The appeal must be in writing, specify the reasons why the permit should not be denied, and filed with the Director. An appeal from a denial of an application shall be conducted in accordance with Section 16-516 of this Article.

**§ 16-514       SUSPENSION OR REVOCATION OF PERMIT.**

- (a) After notice and hearing, the Director may suspend for up to 180 days or may revoke a PIWF permit if:
  - (1) An owner, operator or manager of the PIWF fails to comply with any of the technical requirements set forth in Section 16-504;
  - (2) An owner, operator or manager of the PIWF fails to comply with an inspection report order;
  - (3) An owner, operator or manager of the PIWF disobeys a closure order issued by the Director pursuant to this Article; or
  - (4) An owner, operator or manager of the PIWF made a materially false statement on the permit application or there is any false statement or misrepresentation as to a material fact in any plans and specifications submitted pursuant to this Article.

**§ 16-515       CLOSURE ORDER.**

- (a) The Director may order a Public Interactive Water Feature and Fountain closed if the Director determines that:
  - (1) The PIWF is being operated without a valid PIWF permit; or
  - (2) The continued operation of the PIWF will constitute an imminent hazard to the health or safety of Persons using the facility, or those in close proximity to the facility.

- (b) After the Director closes a PIWF the owner, operator or manager of the PIWF shall immediately:
- (1) Properly post and maintain signs at all entrances to the PIWF that state “CLOSED UNTIL FURTHER NOTICE;” and
  - (2) Lock all doorways and gates that form a part of the PIWF enclosure.
- (c) Signs required by subsection (b) above shall be a minimum size of eight and one-half inches by 11 inches. The lettering shall be of a contrasting color to the background. Signs shall be positioned so that they are readily visible to a reasonably observant Person.
- (d) If the owner, operator or manager of the PIWF is absent or fails or refuses to comply with subsections (b) and (c) above, the Director may post signs and secure the premises in accordance with this Section.
- (e) A Person commits an offense if the Person is an owner, operator or manager of a PIWF subject to a closure order and fails to comply with subsection (b) or (c) of this Section.
- (f) A Person (other than the Director) commits an offense if the Person removes, defaces, alters, covers or renders unreadable a closure sign posted by the Director.
- (g) A Person commits an offense if the Person uses a PIWF that has been closed by the Director and the PIWF bears the signage as required by Section (b)(1).
- (h) A Person commits an offense if the Person is an owner, operator or manager of a PIWF subject to a closure order and knowingly allows a Person to use the PIWF.
- (i) A PIWF closed by the Director shall not resume operation until a re-inspection by the Director determines that the facility has been brought into compliance with this Article.
- (j) A permit holder may appeal a closure order to the Director within three days after the issuance of the order.
1. The appeal must:
    - a. Be in writing;
    - b. Set forth the reasons why the closure order should be rescinded; and
    - c. Be filed with the Director.
- (k) The filing of an appeal does not stay the closure order.

**§ 16-516      HEARINGS PROCEDURES.**

*(a) General provisions.*

- (1) When notice is required to be given to a Person under this Section, it shall be in writing and served either by personal delivery or by certified mail, return receipt requested, to the Person's last known mailing address.
- (2) Notice shall specify the date, time and place of the hearing.
- (3) Notice shall be deemed received five days after it is placed in a mail receptacle of the United States Postal Service.
- (4) For purposes of this Section, the Director shall be empowered to administer oaths and to promulgate procedural rules for the conduct of the hearing.
- (5) Whenever any deadline specified in this Section falls on a Saturday, Sunday or City-recognized holiday, the deadline shall be extended to the next regular City business day.
- (6) The date of an order or ruling required to be made under this Section shall be deemed to be the date it is signed.
- (7) The administrative remedies set forth in this Section shall be in addition to any criminal penalties or other remedies provided in the ordinances of this City or the laws of this state.
- (8) Decisions shall be made based on a preponderance of the evidence, with the City having the burden of proof.

*(b) Conduct of hearings.*

- (1) Upon determining that cause exists to suspend, deny or revoke a PIWF's permit, the Director may schedule a hearing.
- (2) On receipt of an appeal from a Person whose PIWF permit was denied or whose PIWF was ordered closed, the Director shall schedule a hearing for a time no later than ten business days following date the request for appeal is received.
- (3) The Director shall send notice of the hearing to the Person and shall act as the hearing officer.
- (4) After the conclusion of the hearing, the Director shall make written findings of fact and conclusions of law and shall issue a written decision without undue delay.

- (5) This hearing shall be deemed to exhaust the administrative remedies of the Person whose PIWF permit was denied, suspended, or revoked or whose PIWF was closed by the Director.

**§ 16-517        NUISANCE.**

- (a) A Public Interactive Water Feature and Fountain is hereby declared to be a nuisance if:
  - (1) The technical standards mandated by Section 16-504 are not met;
  - (2) Water at the PIWF is not maintained so as to prevent the breeding or harborage of insects;
  - (3) Water at the PIWF emits an odor that is foul and offensive to a Person of reasonable sensibilities;
  - (4) The PIWF is not maintained so as to prevent the breeding or harborage of vermin; or
  - (5) The PIWF is not maintained in compliance with this Article.
- (b) The Director may give notice to immediately abate, remove or otherwise remedy a nuisance under this Section to the owner of the property on which the nuisance is located.
- (c) The notice must be in writing and served:
  - (1) By personal delivery to the owner, operator or manager;
  - (2) By certified mail, return receipt requested, to the last known mailing address for the owner, operator or manager; or
  - (3) If neither personal nor certified mail service is possible:
    - a. By publication in the official newspaper of the City at least twice within ten consecutive days;
    - b. By posting the notice on or near the front door of each building on the property to which the violation relates; or
    - c. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.
- (d) If the Public Interactive Water Feature and Fountain has a valid or suspended permit issued pursuant to this Article, and the permit holder is not the same Person as the owner of the property, notice shall also be given to the permit holder.



- (e) If the property owner does not comply with the notice within ten days of service, the Director may enter the property containing the nuisance and do any work necessary to abate the nuisance.
- (f) If the immediate abatement of the nuisance is deemed necessary by the Director to protect the health, safety or welfare of the public from an imminent hazard, the Director may, without complying with the notice provisions of this Section, enter the property containing the nuisance and do or cause to be done any work necessary to abate the nuisance.
- (g) All costs incurred by the City to abate a nuisance, including the cost of giving notice as required, shall initially be paid by the City and charged to the owner of the property. The City may assess the expenses against the real estate on which the work was done.
- (h) To obtain a lien against the property, the Director shall file a statement of expenses with the county clerk for the county in which the property is located. The lien shall be security for the costs incurred and interest accruing at the rate of 10% per annum on the amount due from the date of payment by the City.
- (i) The lien is inferior only to:
  - (1) Tax liens; and
  - (2) Liens for street improvements.
- (j) The remedy provided by this Section is in addition to all other remedies available under this Article or elsewhere.

#### **§ 16-518      PENALTIES AND ENFORCEMENT.**

- (a) An offense under this Article is a Class C misdemeanor punishable by a fine not to exceed \$2,000.00. Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense.
- (b) If an offense defined under this Article does not include a culpable mental state, then intent, knowledge, or recklessness suffices to establish criminal responsibility.
- (c) The Director may establish enforcement procedures that are consistent with the regulations adopted herein in order to ensure compliance with this Article.

### **SECTION 2.**

This ordinance shall be cumulative of all provisions of ordinances of the Code of the City of Fort Worth, Texas, (2015), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

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### **SECTION 3.**

It is hereby declared to be the intention of the Council that the phrases, clauses, sentences, paragraphs and Sections of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or Section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and Sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or Section.

### **SECTION 4.**

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of the City of Fort Worth, or any other ordinances of the City, that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance, but may be prosecuted until final disposition by the courts.

### **SECTION 5.**

All violations of Chapter 16, Article XIX, of the Fort Worth City Code shall be punishable by a fine not to exceed two thousand dollars (\$2,000.00) for each violation. Each day a violation occurs or continues to occur is a separate violation.

### **SECTION 6.**

The City Secretary of the City of Fort Worth, Texas is hereby directed to publish the caption, penalty provisions and effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Texas Local Government Code, Section 52.013.

### **SECTION 7.**

This ordinance shall take effect upon adoption and publication as required by law, and it is so ordained.

**APPROVED AS TO FORM AND LEGALITY:**

**ATTEST:**

\_\_\_\_\_  
Amarna Muhammad  
Assistant City Attorney

\_\_\_\_\_  
Jannette Goodall  
City Secretary

Date: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_