

Brown County Ordinance #2014-03

Providing for the Regulation of Public Swimming Pools

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Statutes and Rules referenced in this Ordinance can be accessed to read or download at this website:
<https://www.revisor.mn.gov/pubs/>

BE IT AND IT IS HEREBY RESOLVED by the Brown County Board of Commissioners, State of Minnesota, under the authority of Minnesota Statutes, Chapters, 145A and 375 that:

An Ordinance providing for the licensing and inspection of public swimming pools; regulating their design, construction, operation, and maintenance, and providing for the administration and enforcement thereof; be and hereby is established as follows:

SECTION 1: Purpose and Authority

- 1.1 The purpose and intent of this Ordinance is to provide a standard for the design, construction, operation, and maintenance of public swimming pools so that public health and safety will be maintained.
- 1.2 This Ordinance establishes the minimum standards; as defined in Minnesota Rules, Parts 4717.0150 to 4717.3970, and Minnesota Statutes, Section 144.1222 (with the exception of Subdivision 3).
- 1.3 Minnesota Rules, Chapter 4717, and Minnesota Statutes, Section 144.1222, in effect on the effective date of this Ordinance, and all future revisions thereof, are hereby adopted by reference and made part of this Ordinance.

SECTION 2: Scope

This Ordinance shall be applicable to all public swimming pools which are located in Brown County, Minnesota as defined in Minnesota Rules, Part 4717.0250, and this Ordinance.

SECTION 3: Administration

This Ordinance shall be administered by the Brown-Nicollet Environmental Health Department, hereinafter referred to as the "Regulatory Authority."

SECTION 4: Definitions

Words, phrases, and terms used in the Ordinance shall be given the same meaning as those set forth in Minnesota Rules, Part 4717.0250, and this Ordinance. The following definitions shall apply in the interpretation and the enforcement of this Ordinance:

- 4.1. **Appeals Board** shall consist of the Chairperson and Vice Chairperson of the Brown-Nicollet Community Health Board or their designated appointees, and the Environmental Health Director or a designated agent.
- 4.2. **Approved** shall mean acceptable to the Regulatory Authority based on determination of conformity with principals, practices, and generally recognized standards that protect public health.
- 4.3. **Board** shall mean the Brown-Nicollet Community Health Board acting under the provisions of Minnesota Statutes, Chapter 145A, as the Board of Health.
- 4.4. **Commissioner of Health** shall mean the Minnesota Commissioner of Health.
- 4.5. **County** shall mean Brown County.
- 4.6. **Environmental Health Department** shall mean the Brown-Nicollet Community Health Board and its environmental health staff.
- 4.7. **Environmental Health Director** shall mean the Brown-Nicollet Community Health Board's Environmental Health Director and any related staff acting under the Board's authority.

- 4.8 **Licensee** shall mean the person who has been given the authority by the issuance of a license by the County to establish, operate, manage, and/or maintain a facility or activity regulated by County ordinances or as otherwise designated in the County Ordinance.
- 4.10 **Person** shall mean an individual, firm, corporation, partnership, association, or other entity including the United States government, any interstate body, the state, and any agency, department, or political subdivision of the state.
- 4.11 **Private Residential Swimming Pool** shall mean any swimming pool located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by members of the homeowner's family or their invited guests and is not used as part of a business. (The design, construction, and operation of such pools are not subject to the provisions of Minnesota Rules, Chapter 4717).
- 4.11 **Public Swimming Pool** shall mean any swimming pool, other than a private residential swimming pool, that is: (1) open to the public generally, whether for a fee or free of charge; (2) open exclusively to members of an organization and their guests; (3) open to residents of a multiunit apartment building, apartment complex, residential real estate development, or other multifamily residential area; (4) open to patrons of a lodging establishment or other public accommodation facility; (5) operated by a person in a park, school, licensed child care facility, group home, motel, camp, resort, club, condominium, manufactured home park, or political subdivision, with the exception of swimming pools at family home day-cares licensed under Minnesota Statutes, Section 245A.14, Subdivision 11, Paragraph (a).
- 4.12 **Regulatory Authority** shall mean the Brown-Nicollet Environmental Health Department, its Director or other designated agent.
- 4.13 **Special Purpose Pool** shall mean treatment pools, therapeutic pools, and special pools for water therapy whirlpools, spas, cold plunge, plunge pools, waterslides and wave pools.
- 4.14 **Variance** shall mean any modification or variation to the requirements of this Ordinance where it is determined that, by reason of exceptional circumstances, the strict enforcement of this Ordinance would cause unnecessary hardship.
- 4.15 **Wading pool** shall mean any pool used or designed to be used exclusively for wading or bathing and a maximum depth of twenty-four (24) inches.

SECTION 5: Review of Construction Plans

When a public pool in the jurisdiction of the Regulatory Authority is licensed or to be licensed under the provisions of Minnesota Rules, Chapter 4717; is constructed, installed, or materially altered, complete plans and specifications shall be submitted to the Commissioner of Health as specified in Minnesota Rules, Part 4717.0450, along with the required fee.

SECTION 6: Licensure

- 6.1 The Regulatory Authority is authorized to issue licenses for the operation of public swimming pools and such pools are required to be licensed prior to commencing operation in any calendar year. It shall be unlawful for any person to operate a public pool within the jurisdiction of the Regulatory Authority who does not possess a valid license issued to them by the Brown-Nicollet Community Health Office as required by this Ordinance. Only a person who complies with the requirements of this Ordinance shall be entitled to receive and retain such a license.
- 6.2 Licenses issued pursuant to this Ordinance expire on December 31, of each year. License renewal applications shall be filed prior to January 1, in each calendar year or the first day of operation. Licenses shall become overdue and subject to a penalty after December 31, of each calendar year or thirty (30) days after the first day of operation. Every person seeking to operate a public swimming pool shall make application in writing to the Regulatory Authority. Such application shall include: the applicant's full name and address; whether such applicant is an individual, firm, partnership or corporation; the location of the facility to be licensed; as well as the signature of the applicant(s). Such application shall be provided by the Regulatory Authority. When a person is seeking to operate more than one swimming pool, an additional license and fee shall be required.
- 6.3 Applicants for license shall pay an annual license fee at a rate specified by the Board. This annual license fee may be adjusted as the Board shall deem appropriate. A penalty fee at a rate specified by the Board shall be added to the amount of the license fee and paid by the applicant if the annual license fee has not reached the Brown-Nicollet Community Health Office by the dates specified. Licenses shall not be transferable from one establishment, person, or location to another establishment, person, or location. When opening after October 1, and before January 1; a new business or new operator is only required to pay one-half (½) of the normal annual fee.
- 6.4 If the Regulatory Authority should determine from the application that the health and safety of the public will be properly safeguarded, approval of the license may be given. In the case of a newly constructed or altered pool, plans and specifications shall be submitted and approved by the Commissioner of Health as specified in Minnesota Rules, Part 4717.0450 before a license for operation is offered.
- 6.5 If the Regulatory Authority should determine from the application or subsequent inspection that the health and safety of the public in the pool will not be properly safeguarded, the Regulatory Authority may deny the application for licensure. Such applicant is entitled to a hearing before the Appeals Board as outlined in Section 10 of this Ordinance.

SECTION 7: Inspection

- 7.1 The Environmental Health Department shall inspect public swimming pools as frequently as necessary to ensure compliance with this Ordinance, but not less than the frequency established by Minnesota Statutes, Section 157.20.
- 7.2 Pursuant to Minnesota Rules, Part 4717.0375, the Regulatory Authority shall have the right to enter and have access to the public pool at any time during the conduct of business. No persons shall interfere with or hinder the Regulatory Authority in the performance of its duties, or refuse to permit the Regulatory Authority to make such inspections.

- 7.3 The person operating a public pool shall, upon request of the Brown-Nicollet Environmental Health Department and after proper identification, permit access to all parts of the pool at any reasonable time for purpose of inspection and shall exhibit and allow copying of any records necessary to ascertain compliance with the provisions of this Ordinance.
- 7.4 When any of the conditions in the following items listed as A to F are found, a public pool must be immediately closed to use when so ordered by the Regulatory Authority. The owner of the pool or the owner's agent must place a sign at the entrance to the pool indicating that the pool is closed. The pool must remain closed until the condition is corrected and approval to reopen is granted by the Regulatory Authority. A pool must be closed when:
- a. The units of lifesaving equipment specified in Minnesota Rules, Part 4717.1450, are not provided;
 - b. The water clarity standard specified in Minnesota Rules, Part 4717.1750, Subpart 7, is not met;
 - c. The disinfectant residual specified in Minnesota Rules, Part 4717.1750, Subpart 3, is not met;
 - d. The pool has been constructed or physically altered without approval of plans as required by Minnesota Rules, Part 4717.0450;
 - e. All pool drain equipment does not meet the requirements of Minnesota Statutes, Section 144.1222, Subdivisions 1(b), (c), and (d); and/or
 - f. There is any condition that endangers the health or safety of the public.
- 7.5 All findings of an inspection of a public pool shall be recorded on the inspection report form. One copy of the inspection report form shall be furnished to the person in charge. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it, except when report forms are a part of pending litigations.
- 7.6 The inspection report form shall specify a specific and reasonable period of time for the correction of the violations. Correction of the violations shall be accomplished within the period specified.

SECTION 8: Suspension of License

- 8.1 Licenses may be suspended temporarily by the Regulating Authority at any time for failure by the holder to comply with the requirements of this Ordinance. Whenever a license holder or operator has failed to comply with any notice requiring corrective action, issued under the provisions of this Ordinance, that license holder or operator may be notified in writing that the license upon service of notice is immediately suspended and that an opportunity for a hearing before the Appeals Board will be provided if a written request for appeal is filed within ten (10) business days with the Brown-Nicollet Environmental Health Director by the license holder.
- 8.2 Any person whose license or permit has been suspended may at any time make application for a re-inspection for the purpose of reinstatement of the license. Within ten (10) business days following receipt of a written request, including a statement signed by the applicant that in their opinion the condition(s) causing suspension of the license has/have been corrected, the Brown-

Nicollet Environmental Health Director shall make a re-inspection. If the applicant is in compliance with the requirements of this Ordinance, the license shall be reinstated.

SECTION 9: Revocation of License

A license may be permanently revoked for serious or repeated violations of any of the requirements of this Ordinance; Minnesota Rules, Chapter 4717; or Minnesota Statutes, Section 144.1222; after the opportunity for a hearing before the Appeals Board is provided. Prior to such action, the Brown-Nicollet Environmental Health Director shall notify the license holder in writing, advising that the license shall be permanently revoked at the end of a five (5) day period.

SECTION 10: Appeals Procedure

Appeals shall be heard by the Appeals Board.

- 10.1 Request for Hearing. Any person affected by a notice of closure, suspension, or revocation shall be granted a hearing on the matter before the Appeals Board upon filing in the office of the Brown-Nicollet Environmental Health Director, a written petition requesting such a hearing and setting forth a brief statement on the grounds therefore. Said petition shall be filed within ten (10) business days after the notice was served.
- 10.2 Date of Hearing. The hearing requested shall be held not more than ten (10) business days after the date on which the petition was filed. The Chairperson of the Appeals Board may postpone the date of the hearing for a reasonable time beyond such ten (10) business day period, if in the judgment of the Chairperson, a good and sufficient reason exists for such postponement.
- 10.3 Notice of Hearing. The Brown-Nicollet Environmental Health Director shall cause five (5) business days written notice of the hearing to be given to the petitioner(s) by personal service or by mailing said notice to the petitioner(s)'s last known address.
- 10.4 Proceedings. At such hearing the petitioner(s), their agent, or attorney shall be given an opportunity to be heard and to show cause why the notice of closure, suspension, or revocation issued by the Brown-Nicollet Environmental Health Director should be modified or withdrawn. The Brown-Nicollet Environmental Health Director shall present a detailed written statement of their findings and recommendation(s) to the Appeals Board at the time of the hearing.
- 10.5 Decisions of the Appeals Board. The Appeals Board, within three (3) business days after such hearing, shall sustain, modify, or withdraw the notice of closure, suspension, or revocation depending upon its findings. A copy of the decision of the Appeals Board shall be served by mail to the petitioner(s). Any person aggrieved by the decision of the Appeals Board may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the State of Minnesota.
- 10.6 Record of Proceedings. The proceedings of each hearing held before the Appeals Board pursuant to petition, including the findings and the recommendation(s) of the Environmental Services Director, shall be recorded and reduced to writing and entered as a public record in the office of the Brown-Nicollet Environmental Health Director. Such record shall include a copy of every notice, order, or writing issued in connection with the matter.

10.7 Notices Not Appealed. Any notice served pursuant to the provisions of this Ordinance shall automatically become final if a written petition for a hearing is not filed with the Environmental Health Department within ten (10) business days after the notice is served.

SECTION 11: Severability

The provisions of this Ordinance shall be severable. Should any section, paragraph, sentence, clause, phrase, or portion of this Ordinance be declared invalid for any reason, the remainder of said Ordinance shall not be affected thereby.

SECTION 12: Penalties

Any person, firm, or corporation who violates any of the provisions hereof or who fails to comply with any of the provisions hereof or who makes any false statement in any document required to be submitted under the provisions hereof, is guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed ninety (90) days or both. Each day that a violation continues shall constitute a separate offense. Such persons may be enjoined from continuing such violations.

SECTION 13: Variances

The Commissioner of Health shall grant a variance to Minnesota Rules, Parts 4717.0150 to 4717.3950, only according to the procedures and criteria specified in Minnesota Rules, Parts 4717.7000 to 4717.7050.

SECTION 14: Effective Date

This Ordinance, adopted 12-23-2014, hereby repeals and replaces in its entirety the Brown County Ordinance Providing for the Regulation of Public Swimming Pools of June 1, 2010.

Signature: 
Chairperson, Brown County Board of Commissioners

Attest: 
Brown County Administrator