ORDER NO. 2019-001

AN ORDER REGARDING THE REGULATION OF PUBLIC SWIMMING POOLS, SPAS, ARTIFICIAL SWIMMING LAGOONS, AND INTERACTIVE WATER FEATURES AND FOUNTAINS, ESTABLISHING PERMITTING REQUIREMENTS AND THE APPLICABILITY OF FEES

The Williamson County and Cities Health District was created pursuant to the provisions of Chapter 121 of the Texas Health and Safety Code. Pursuant to Section 121.043 of the Texas Health and Safety Code public health districts have the authority to perform any public health function that its members may perform, which includes enforcing state law and rules concerning public swimming pools, spas, artificial swimming lagoons, interactive water features and fountains and pool yard enclosures. A residential pool or spa serving one or two dwellings (a single-family home or a duplex), regardless of whether the pool or spa is permanently or temporarily installed in or above the ground, is exempt from this order. The purpose of this order is to protect against public health hazards and safety hazards occurring in public swimming pools, spas, artificial swimming lagoons, and interactive water features and fountains, and pool yard enclosures pursuant to Section 341.064, Section 341.0645, Section 341.0695 and Chapter 757 of the Texas Health and Safety Code.

Therefore, the Williamson County Board of Health adopts the following order, which shall apply to all areas within Williamson County, Texas, except for areas regulated under a municipal ordinance, order, or resolution, which is more restrictive than the rules adopted in Section 1 of this Order:

Section 1. Adoption of State Law and Rules and Definitions

The Williamson County and Cities Health District (WCCHD) adopts and incorporates by reference the provisions of Chapter 341 and Chapter 757, Texas Health and Safety Code, applicable to public swimming pools, spas, artificial swimming lagoons, and interactive water features and fountains, including Section 341.064, Section 341.0645 and Section 341.0695, Texas Health and Safety Code, and the current rules found in Texas Administrative Code, Title 25, Part 1, Chapter 265, General Sanitation, Subchapter L, Standards for Public Pools and Spas, Sections 265.181 through 265.208 and in Texas Administrative Code, Title 25, Part 1, Chapter 265, General Sanitation, Subchapter M, Public Interactive Water Features and Fountains, Sections 265.301 through 265.308, regarding the regulation of sanitation requirements, design and construction standards, minimum operating standards, and permits at public swimming pools, public spas, artificial swimming lagoons, and public interactive water features and fountains in the jurisdiction of WCCHD, and including all future amendments and revisions to said rules.
The definitions found in Texas Administrative Code, Title 25, Part 1, Chapter 265, Sections 265.181 through 265.207 regarding the regulation of public pools and spas, as well as Sections 265.301 through 265.308 regarding the regulation of public interactive water features and fountains and the definitions found in Chapter 757, Section 757.001, Texas Health and Safety Code, shall apply to this Order except as such terms may be otherwise defined herein.

**Artificial swimming lagoon.** The words “artificial swimming lagoon” means an artificial body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant. The term does not include a body of water open to the public that continuously recirculates water from a spring or a pool.

**Authorized agent.** The words “authorized agent or employee” mean the employees of the regulatory authority.

**Board of Health.** The words “Board of Health” mean the Williamson County Board of Health, which is the governing body of the WCCHD.

**Executive Director.** The words “Executive Director” mean the executive director of WCCHD or his/her designee.

**Modify or modified or modification.** The words "modify" or "modified" or "modification" mean the replacement of or modification to a pool structure, circulation system and/or appurtenances such that the design, configuration, and/or operating characteristics are different than the original design, configuration, and/or operating characteristics, but does not include normal maintenance and repair or the replacement of equipment which had been previously approved, provided that the type, size, and/or operating characteristics of the equipment are not substantially different than the original equipment.

**Operator training and certification.** The words “operator training and certification” mean the completion of one of the following courses or their equivalent obtained by the pool or spa operator:

1. the National Recreation and Park Association Aquatic Facility Operator (A.F.O.);
2. the National Swimming Pool Foundation Certified Pool-Spa Operator (C.P.O.);
3. the Aquatic Training Institute Certified Pool Technician (C.P.T.); or
4. the National Swimming Pool Institute Professional Pool and Spa Operator (P.P.S.O).

**Owner or operator.** The words “owner or operator” mean the owner of the property upon which the pool, spa, artificial swimming lagoon or public interactive water feature and fountain is located, or the operator, business manager, complex manager, property owners’ association manager, rental agent, lessee, licensee, concessionaire, or individual who is in charge of the day to day operations or maintenance of the property. The owner and operator are responsible to ensure that the pool, spa, artificial swimming lagoon or public water feature and fountain and associated facilities comply with state and local standards.

**Person.** The words "person" shall include an individual representing a private, not-for-profit, or governmental entity.
Pool, spa, artificial swimming lagoon, interactive water feature and fountain permit. The words "pool, spa, artificial swimming lagoon, interactive water feature or fountain permit" shall mean the permit required by the provisions of this Order. The term does not include any other permit required for the construction of a public pool, spa, artificial swimming lagoon, interactive water feature or fountain, and the issuance of a permit under the provisions of this Order shall not be construed to exempt a public pool, spa, artificial swimming lagoon, interactive water feature or fountain from any other applicable legal requirements, including without limitation the requirement to obtain a building permit or any other permit required by law.

Pool yard or spa yard enclosure or enclosure. The words “pool yard or spa yard enclosure or enclosure” mean a fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround a pool or spa and must meet the current requirements of Chapter 757 of the Texas Health and Safety Code.

Public Interactive Water Feature and Fountain (PIWF). The words “public interactive water feature and fountain” mean 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. The installation and operation must meet the standards set in Section 341.0695 (a) through (h) Texas Health and Safety Codes.

Public swimming pool. The words “public swimming pool” mean an artificial body of water, including a spa, maintained expressly for public recreational purposes, swimming and similar aquatic sports, or therapeutic purposes. The term does not include an artificial swimming lagoon or a body of water open to the public that continuously recirculates water from a spring. The term does not include a pool or spa for private use as a residential pool or spa at a single-family home or duplex.

Regulatory authority. The words “regulatory authority” mean the Williamson County and Cities Health District.

State laws and rules. The words "state laws and rules" mean the state laws found in Chapters 341 and 757 of the Texas Health and Safety Code, including Section 341.064 and Section 341.0695, Texas Health and Safety Code and the rules found at Texas Administrative Code, Title 25, Part 1, Chapter 265, General Sanitation, Subchapter L, Sections 265.181 through 265.208 and in Texas Administrative Code, Title 25, Part 1, Chapter 265, General Sanitation, Subchapter M, Sections 265.301 through 264.308.

Section 2. Public Pool, Spa, Artificial Swimming Lagoon, Interactive Water Features and Fountain Permits Required

No person shall operate a public pool, spa, artificial swimming lagoon, interactive water feature and fountain without a valid permit for each pool, spa, artificial swimming lagoon, interactive water feature or fountain issued by the WCCHD. A valid pool, spa, artificial swimming lagoon, interactive water feature or fountain permit shall at all times be available on the premises for
inspection and shall at all times be displayed in public view. A pool, spa, artificial swimming lagoon, interactive water feature and fountain permit that has been revoked, that has expired, or that has lapsed for any reason is not valid. A suspended pool, spa, artificial swimming lagoon, interactive water feature and fountain permit is not valid during the period of suspension.

Permits are not transferrable from one person to another or from one public pool, spa, artificial swimming lagoon, interactive water feature and fountain to another. All permits expire on March 31 each year.

Section 3. Application for Permit and Fees

Any person desiring to operate a public pool, spa, artificial swimming lagoon, interactive water feature and fountain must make a written application for a permit on forms provided by the regulatory authority. The application must contain the name and address of each applicant, the location and type of the proposed public pool, spa, artificial swimming lagoon, interactive water feature and fountain and the applicable fee. An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are required on an annual basis and updated contact information is required for a renewal permit.

WCCHD will issue a public pool, spa, artificial swimming lagoon, interactive water feature or fountain permit to any person making application in Williamson County; provided that the person complies with the requirements of this Order and the annual pool, spa, artificial swimming lagoon, interactive water feature and fountain permit fee is paid.

Prior to the issuance of an initial permit, the regulatory authority shall inspect the proposed public pool, spa, artificial swimming lagoon, interactive water feature and fountain to determine compliance with state laws and rules. A proposed public pool, spa, artificial swimming lagoon, interactive water feature and fountain that does not comply with state laws and rules and this Order may be denied a permit.

After the submittal of the application and fee for a renewal of an existing permit, the permit may be issued by the regulatory authority. An inspection will be scheduled within a timeframe established by the regulatory authority to determine compliance with state laws and rules and this Order.

Public pool, spa, artificial swimming lagoon, interactive water feature or fountain permits shall expire on March 31 each year unless the permit is suspended or revoked for cause before the expiration date. Pool, spa, artificial swimming lagoon, interactive water feature and fountain permit renewal fees per pool, spa, artificial swimming lagoon, interactive water feature or fountain permit must be paid in full prior to issuance of any renewal permit. A late fee shall be charged when the fee for the renewal of a permit is not paid before the expiration of the existing permit.
Public pool, spa, artificial swimming lagoon, interactive water feature and fountain permits that lapse solely due to non-payment of the annual permit fee will be reinstated upon payment of the annual permit fee and the late fee.

The fee schedule for permits issued and inspections conducted under this Order will be established and set by the Williamson County Board of Health.

**Section 4. Permit Application Procedures and Plan Review Requirements**

Whenever a new public pool, spa, artificial swimming lagoon, interactive water feature or fountain is to be constructed or an existing public pool, spa, artificial swimming lagoon, interactive water feature or fountain is modified, an application for a plan review and a public pool, spa, artificial swimming lagoon, interactive water feature or fountain permit shall be made in writing on the form provided by WCCHD.

The plans and specifications shall indicate the proposed layout and arrangement of mechanical, plumbing, fencing, electrical, construction materials of work areas, the type and model of proposed fixed equipment and facilities, and all associated buildings and structures. A licensed professional engineer or architect must certify by letter and seal that to the best of his/her knowledge, information and belief the public swimming pool, spa, artificial swimming lagoon, interactive water feature and fountain was designed to comply and as described complies with present statutes of the Texas Administrative Code, Title 25, Part 1, Chapter 265 and Sections 341.064, 341.0645, and 341.0695, and Chapter 757 of the Texas Health and Safety Code. The public pool, spa, artificial swimming lagoon, interactive water feature and fountain construction shall pass a preoperational inspection by WCCHD prior to issuance of an initial permit.

An application fee must accompany the Application for a Plan Review and Permit for each public pool, spa, artificial swimming lagoon, interactive water feature and fountain and the included properly prepared plans and specifications.

A separate application for a permit, submission of plans, and a separate application fee is required for each public pool, spa, artificial swimming lagoon, interactive water feature and fountain for which a permit is sought.

After WCCHD reviews the application and plans and conducts an inspection to ensure compliance with standards adopted herein, applicant will be notified and where an application has been approved, permit shall be issued after the owner/operator pays the permit fee.

The regulatory authority may grant a variance by modifying or waiving the requirements of this Order, if in the opinion of the regulatory authority, a public health or safety hazard or nuisance will not result from the variance. Before a variance is approved, the person requesting the variance will provide: 1) a statement of the proposed variance citing the relevant rule, and 2) an analysis of how the proposed variance will provide equal or greater protection of public health and safety.
A person commits an offense if the person makes a false statement on any application, report, or other documentation required to be submitted to WCCHD under the provisions of this section. An offense under this section shall be misdemeanor and shall be subject to a criminal and civil penalties as provided in this Order.

Section 5. Inspections

Inspection authority. The Executive Director shall establish standards for inspections conducted by WCCHD. WCCHD is authorized to conduct such inspections as it deems necessary to ensure compliance with all provisions of this Order. WCCHD shall have right of entry at any reasonable hour upon the premises where a public pool, spa, artificial swimming lagoon, interactive water feature and fountain is located. WCCHD shall have the authority to collect water samples from the public pool, spa, artificial swimming lagoon, interactive water feature and fountain. WCCHD’s authority to inspect public pools, spas, interactive water features and fountains includes, without limitation, the right to access all parts of the public pool, spa, artificial swimming lagoon, interactive water feature and fountain and the right to view and copy any or all of the records relating to the construction or maintenance of the public pool, spa, artificial swimming lagoon, interactive water feature and fountain.

Permit inspections. Prior to the issuance of the initial permit, WCCHD shall inspect the public pool, spa, artificial swimming lagoon, interactive water feature and fountain. Prior to the issuance of a renewal permit, WCCHD may inspect the public pool, spa, artificial swimming lagoon, interactive water feature and fountain.

Additional inspections. Additional inspections shall be performed as often as necessary for the enforcement of this Order. WCCHD will determine the frequency of inspections to be made pursuant to this Order. If a public pool, spa, artificial swimming lagoon, interactive water feature and fountain fails an inspection pursuant to WCCHD’s inspection standards a passing re-inspection will be required.

Inspection based on complaint. WCCHD shall have the authority to inspect a public pool or spa based on complaints or other credible information indicating the possibility of a violation of this Order.

Frequency of Inspections. The number of times that a public pool, spa, artificial swimming lagoon, interactive water feature and fountain will be inspected during a calendar year will be determined by WCCHD based on the operating frequency schedule, the specific type of facility and the facility’s history of compliance. Additional inspections shall be performed as deemed necessary to protect against public health hazards and to reduce the risk of infectious disease or injury.

Section 6. Operation and Management

Public pools, spas, artificial swimming lagoons, and interactive water features or fountains shall be maintained under the supervision and direction of a properly trained and certified operator who is responsible for the sanitation, safety, and proper maintenance of the pool, spa, artificial
swimming lagoon or interactive water feature and fountain, and for maintaining all physical and mechanical equipment and records.

Section 7. Permit Suspension and Closure of Public Pool, Spa, Artificial Swimming Lagoon, Interactive Water Feature and Fountain.

If the regulatory authority determines that the condition of the public pool, spa, artificial swimming lagoon, interactive water feature and fountain is hazardous to the health or safety of its users, the regulatory authority may, without prior notice and hearing, immediately suspend the permit and issue a closure order until such time as the condition of the pool, spa, artificial swimming lagoon, interactive water feature and fountain no longer poses a hazard to its users.

Signs shall be posted at all entrances of any public pool, spa, artificial swimming lagoon interactive water feature or fountain that has been closed under the provisions of this section. Signs shall be clearly visible and shall state, "Closed by the Williamson County and Cities Health District." Signs posted by the regulatory authority shall not be altered or removed unless authorized by the regulatory authority. WCCHD shall have the authority to restrict access to the closed public pool, spa, artificial swimming lagoon interactive water feature or fountain. The authorization for reopening the public pool, spa, artificial swimming lagoon interactive water feature or fountain will be determined when evidence is provided that conditions no longer exist that pose a hazard to the health or safety of the users.

Section 8. Denial or Revocation of a Permit

WCCHD may, with prior notice revoke a permit for a violation, including but limited to serious or repeated violations, of any of the requirements of this Order or any State or local law, ordinance or rule governing health, sanitation or safety. The revocation of a permit may be accompanied by the Division Director's order closing the pool, spa, artificial swimming lagoon, interactive water feature or fountain for a period specified in the order as authorized by Texas Health and Safety Code, Section 341.064(o) or Section 341.0695(j).

Under this Section, WCCHD may, after giving notice deny or revoke a permit for any violation of this order, the state law, or the state rules.

The notice of the reasons for the denial or revocation of the permit shall be in writing and shall be given by hand delivery to the permit holder or its agent or by certified mail, return receipt requested, to the permit holder or applicant at the address as shown on the permit application or renewal. If the permit holder or applicant is not the owner of the pool, spa, artificial swimming lagoon, or public interactive water feature or fountain, a copy of the notice shall also be sent to the owner by certified mail, return receipt requested. The reason for the denial or revocation shall be stated in the notice. The permit holder, applicant, or owner shall have ten (10) days from the receipt of the notice letter to appeal the denial or revocation to the Executive Director. If no request for an appeal is received by the regulatory authority after ten days of receipt of the notice by the permit holder, applicant, or owner, the regulatory authority may take the proposed action.

If an appeal is requested within the 10-day period, the appeal shall be conducted by the WCCHD Executive Director. The Executive Director shall appoint a time, day, and location for the appeal.
Both the WCCHD Environmental Health Division Director and the permit holder, applicant, or owner shall have the right to present witnesses and evidence in the hearing. Based on the evidence presented at the hearing, the Executive Director shall make a final written decision in the matter and shall notify WCCHD and the permit holder, applicant, or owner that requested the appeal.

Section 9. Enforcement of Order / Penalties

The provisions of this Order will be enforced by an authorized agent of WCCHD.

The following criminal penalties for violations of the state laws and rules and this Order are authorized by Texas Health and Safety Code, Section 341.091.

Criminal Penalty.
A person commits an offense if the person violates the state laws and rules, the permitting or inspection requirements imposed by this Order, or an order of the Executive Director closing a pool, spa, or artificial swimming lagoon for a period of time specified in the closing order. An offense under Section 341.091, Texas Health and Safety Code is a misdemeanor punishable by a fine of not less than $10 or more than $200.

If it is shown on the trial of the defendant that the defendant has been convicted of an offense under Chapter 341, Texas Health and Safety Code within a year before the date on which the offense being tried occurred, the defendant shall be punished by a fine of not less than $10 or more than $1,000, confinement in jail for not more than 30 days, or both.

Each day of a continuing violation is a separate offense.

The following civil penalties for violations of the state laws and rules and this Order are authorized by Texas Health and Safety Code, Section 341.092.

Civil Enforcement.
A person who violates the state laws and rules shall be assessed a civil penalty. A person who violates a permitting or inspection requirement imposed by this Order or an order of the Executive Director closing a pool, spa, or artificial swimming lagoon for a period of time specified in the closing order shall be assessed a civil penalty. A civil penalty under Section 341.092, Texas Health and Safety Code may not be less than $10 or more than $200 for each violation and for each day of a continuing violation.

If it is shown on the trial of the defendant that the defendant has previously violated Section 341.092, Texas Health and Safety Code, the defendant shall be assessed a civil penalty of not less than $10 or more than $1,000 for each violation and for each day of a continuing violation.

Injunction.
If it appears that a person has violated, is violating, or is threatening to violate the state laws and rules, a permitting or inspection requirement imposed by this Order, or a closure order issued by the Executive Director regarding a pool, spa, or artificial swimming lagoon, the WCCHD and the Williamson County Attorney may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation. WCCHD and the
Williamson County Attorney may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation. WCCHD and the Williamson County Attorney may seek the assessment and recovery of a civil penalty or both injunctive relief and a civil penalty. The Texas Department of State Health Services is a necessary and indispensable party in a suit brought by WCCHD under Section 341.092, Texas Health and Safety Code.

Section 10. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Order is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Order, which shall remain in full force and effect.

Section 11. Effective Date

The provisions of this Order shall take effect 30 days from adoption by the Williamson County Board of Health.

PASSED AND APPROVED BY THE WILLIAMSON COUNTY BOARD OF HEALTH ON THIS _____ day of November, 2019

CHAIRPERSON
WILLIAMSON COUNTY BOARD OF HEALTH

ATTEST: ____________________________
SECRETARY
WILLIAMSON COUNTY BOARD OF HEALTH