Ordinances Governing

HEALTH AND SANITATION

in the

CITY OF ARLINGTON

TEXAS

Amended by Ordinance No. 19-061

(December 3, 2019)

(Chapter Designator: HEALTH)

ORDINANCE HISTORY

Number	Date of Adoption	Comments
88-46	03/15/88	
90-37	04/03/90	Amend **Section 1.01**, redefining "Infectious Waste"; amend **Section 2.08**, providing proper treatment and disposal of infectious wastes; amend **Section 9.01**, providing a penalty for violation.
91-15	02/05/91	Addition of **Article XI**, Retail Sales of Tobacco Products, regulating the sale of tobacco products; addition of Appendix "A", regulating sale decals.
91-18	02/19/91	Amend **Section 10.01**, Definitions, to add definitions of "Administrative Area," "Eating Establishment," "Net Floor Area," "Retail or Service Establishment" and "Tobacco Product"; amend **Section 10.02**, Smoking Prohibited - Public Places, prohibiting smoking in public places, and providing exceptions and defenses; amend **Section 10.03**, Regulation of Smoking - Eating Establishments, prohibiting smoking in eating establishments, and providing exceptions and defenses; addition of **Section 10.04**, Regulation of Smoking - Bars, regulating smoking in bars; amend **Section 10.05**, Posting of Signs and Placing of Receptacles Required, establishing requirements for no smoking signs and extinguishment facilities; amend **Section 10.07**, Structural Modifications Not Required, providing for exceptions; addition of **Section 10.10**, Culpability, providing for a strict liability offense.
91-58	6/18/91	Amend **Section 10.01**, Definitions, to add definitions for "Billiard Hall", "Bingo Parlor" and "Tobacco Shop", and to delete the definition for "Bar"; amend **Section 10.02**, Smoking Prohibited - Public Places, to add **Subsection (F)**, allowing an exemption for tobacco shops; amend **Section 10.04**, Regulation of Smoking in Bars, Nightclubs, Adult Entertainment Establishments, Billiard Halls and Bingo Parlors, regulating smoking in certain public places; amend **Section 10.05**, Posting of Signs and Placing of

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Number	Date of Adoption	Comments
		Receptacles Required, relative to signage and smoking extinguishment facilities in certain public places.
93-07	02/02/93	Amend **Section 10.02**, Smoking Prohibited - Public Places, **Subsection (A)**, Prohibited Places, to prohibit smoking in outdoor service lines, athletic facilities, theaters and amphitheaters; amend **Subsection (C)**, Defenses, to provide a defense to smoking in private areas, private seating areas and press boxes of outdoor athletic facilities, theaters and amphitheaters; amend **Section 10.05**, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, to provide for public address system announcements.
93-25	03/23/93	Amend **Section 10.01**, Definitions, to revise definition of "employer" and add definition for "physically separated section"; amend **Section 10.06**, Regulation of Smoking - Workplace, creating regulations for smoking in the workplace.
93-26	03/30/93	Amend **Section 4.01**, Texas State Department of Health Rules on Food Service Sanitation Adopted, to add **Subsection 4.01(G)** eliminating the requirement for controlled air currents in certain outdoor serving areas.
94-02	01/04/94	Amend **Section 10.03**, Regulation of Smoking - Eating Establishments, to include the regulation of bars, night clubs, adult entertainment establishments, billiard halls and bingo parlors; repeal **Section 10.04**, Regulation of Smoking in Bars, Nightclubs, Adult Entertainment Establishments, Billiard Halls and Bingo Parlors; repeal Article XI and adopt a new **Article XI**, Retail Sales of Tobacco Products, to prohibit the sale of tobacco products by vending machines.
94-26	02/08/94	Amend **Section 10.02(D)(4)**, Smoking Prohibited - Public Places; **Section 10.03(C)(2)** and **(3)**, Regulation of Smoking - Eating Establishments; **Section 10.06**,

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Number	Date of Adoption	Comments
		Structural Modifications Not Required; **Section 10.07**, Exemptions, to revise certain references. Amend **Section 10.04**, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, relative to requirements for posting of signs; amend **Section 11.03**, Vending Machines, to provide an exception to the prohibition of the sale of tobacco products by vending machines within the City limits.
94-109	07/19/94	Amend **Section 10.03**, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls and Bingo Parlors, to regulate smoking in such establishments, including bowling centers.
94-146	10/25/94	Amend **Article V**, Child Care Centers, relative to the minimum standards for the operation of child care centers within the City of Arlington.
95-89	07/05/95	Amend **Section 4.01**, Texas State Department of Health Rules on Food Sanitation Adopted, relative to the definitions of "food processing establishment" and "Commissary".
96-20	01/30/96	Addition of **Article XII**, On-Site Sewage Disposal, adopting rules regulating on-site sewage facilities to abate or prevent injury or pollution to the public health.
96-135	10/15/96	The adoption of a new **Article VII**, entitled Public and Semipublic Swimming Pools.
96-136	10/15/96	Amend **Section 5.10**, relative to fingerprinting and denial of license; amend **Section 5.20**, at **subsection (D)**, relative to chain-link fence exemptions; amend **Section 5.23**, at **subsection (C)**, relative to uninsured/underinsured motorist insurance.

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Number	Date of Adoption	Comments
97-19	02/04/97	Amend **Article I**, Definitions, **Section 1.01**, Definitions, relative to the addition of the definitions of "deep areas", "extensively remodeled", "free available chlorine", "non-profit organization", "service animal" and "shallow area", the deletion of the definitions of "environmental health official", "free chlorine residual" and "manager of operations", and the amendment of the definition of "lifeguard"; amend **Article IV**, Regulation of Food Service Establishments, **Section 4.01**, Texas State Department of Health Rules on Food Service Sanitation Adopted, relative to the adoption of the rules on food service sanitation as adopted and published by the Texas Department of Health; amend **Section 4.02**, Food Service Establishment, relative to permit requirement; amend **Section 4.04**, Permits - Authority To Issue, relative to the designation of the proper authority; amend **Section 4.05**, Permits - Application, relative to permit application requirements; amend **Section 4.08**, Permits - Duration, relative to nonpayment of permit fee and suspension of permit; amendment of **Section 4.09**, Permits - Non-Transferable, relative to the nonrefundability of a permit and validity of a permit only for the owner for which granted; amend **Section 4.10**, Revocation of Food Handling Permit, relative to the designation of the proper authority; amend **Section 4.11**, Suspension of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit, relative to the addition of language to include mobile food service establishment; amendment of **Section 4.12**, Revocation of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit, relative to the addition of language to include mobile food service establishment; amend **Section 4.13**, Service of Notices, **Section 4.14**, Hearing, **Section 4.16**, Inspection Frequency, and **Section 4.17**, Examination and Condemnation of Food, relative to the designation of the proper authority; amend **Section 4.19**, Operation of Mobile Food

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Number	Date of Adoption	Comments
		Service Establishment Near Schools, relative to items sold on a mobile food unit; amend **Section 4.20**, Fees, relative to consolidation of the section into one paragraph; amend **Article VII**, Public and Semipublic Swimming Pools, **Section 7.10, Subsection (C)**, relative to the wording on signs for diving in water greater than five (5) feet in depth.
97-98	07/15/97	Addition of **Article XII,** Youth Tobacco Use, relative to prohibiting the possession of tobacco products by minors.
97-108	07/29/97	Amend Ordinance 97-98 relative to the renumbering of **Article XII,** Youth Tobacco Use.
97-126	09/02/97	Amendment of **Article II, Section 2.02,** Residential Collection - Placement of Containers, **Subsection (D)**, relative to the time that residential garbage may be placed at the curbside for collection.
98-12	01/20/98	Amend **Article I, Section 1.01,** Definitions, relative to the addition of a definition for "Food Service Employee"; amend **Article IV, Section 4.01,** Texas Department of Health Rules on Food Service Sanitation Adopted, by the addition of a new **subsection (D)(13)**, relative to the requirement of food service employees to keep their hands and exposed portions of their arms clean and renumbering the remaining subsections; amend **Section 4.01, Subsection (D)(13),** relative to the minimization of bare-hand contact with exposed, ready-to-eat food; amend **Section 4.03,** Food Handlers - Permit Required, relative to food handling permits; addition of **Section 4.21,** Responsibilities of the Owner, Manager, or Person-In-Charge, relative to the responsibilities of the owner, manager or person-in-charge.
99-16	02/02/99	Temporarily suspend application of portions of the "Health And Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, **Section 2.01**, Duties of

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Number	Date of Adoption	Comments
		Customer, **Subsection (A)**, and the first sentence of **Section 2.04**, Residential Collection - Charges, to the extent of conflict with the City's automated trash collection pilot program from February 1, 1999 to June 30, 1999.
99-90	07/27/99	Amend **Article I**, Definitions, **Section 1.01**, Definitions, relative to the deletion of the definitions of "Mingle, mingling", "Private Parts", and "Promoter" and the addition of the definitions of "Permit Holder" and "Person in charge"; amend **Article IV**, Regulation of Food Service Establishments, relative to adoption of Texas Food Establishment Rules; amend **Article V**, Child Care Centers, relative to changes in application process, worker qualifications and safety and sanitation.
00-037	04/04/00	Amend **Article I**, Definitions, **Section 1.01**, Definitions, relative to the deletion of definitions of "Deep Areas", "Free Available Chlorine", "Lifeguard", "Semipublic Pool", "Service Animal", "Shallow Area", "Spa" and "Swimming Pool or Pool", the addition of the definitions of "Therapy Pool" and "Trained Pool Operator", and the amendment of the definitions of "Issuing Officer", "Private Pool" and "Public Pool"; amend **Article VII**, Public and Semipublic Swimming Pools, relative to updating the ordinance to conform to recent changes in State law.
01-045	04/24/01	Amend **Article II**, Garbage and Trash, **Section 2.02**, Residential Collection - Placement of Containers, **Subsection (D)** relative to recycling containers.
03-039	04/01/03	Amend **Article IV**, Regulation of Food Establishments, **Section 4.01**, Texas Food Establishment Rules Adopted, **Subsection (D)(3)**, relative to the addition of a registration fee for a Certified Food Protection Manager and the addition of Commissary; **Section 4.02**, Food Establishment, **Subsection (A)**, and **Section 4.04**, Permits – Authority

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Number	Date of Adoption	Comments
		to Issue, relative to the addition of Commissary and Catering Vehicle; **Section 4.05**, Permits – Application, and **Section 4.07**, Posting of Food Handler, Food Establishment, and Temporary Food Establishment Permits, relative to the addition of Commissary; **Section 4.08**, Permits - Duration, relative to the duration of a Food Handler Permit and the addition of Commissary and Catering Vehicle; **Section 4.09**, Permits – Non-Transferable, relative to the addition of Commissary; **Section 4.11**, Suspension of a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment Permit, **Section 4.12**, Denial of a Food Establishment, Mobile Food Permit, or Temporary Permit, **Section 4.13**, Revocation of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit, and **Section 4.15**, Notice of Appeal; Hearing, **Subsection (A)**, relative to the addition of Commissary and Catering Vehicle; **Section 4.16**, Inspection Frequency, and **Section 4.18**, Review of Plans, relative to the addition of Commissary; amend **Article V**, Child Care Centers, **Section 5.07**, Permit Duration and Renewal, relative to a Permit Reinstatement Fee; amend **Article VII**, Public Swimming Pools, **Section 7.01**, Texas Standards for Public Swimming Pool and Spa Rules Adopted, Subsection (D)(5)(a), relative to registration of Trained Pool Operators.
04-007	01/13/04	Amend **Article I**, **Section 1.01,** relative to the definitions of "Issuing Officer" and "Health Authority"; **Article II**, **Section 2.09,** to update the reference to the proper notification agent; **Section 2.19, Article IV**, **Section 4.01(D)(1), Section 4.01(D)(3)(d), Section 4.03, Section 4.05(A), Section 4.06, Section 4.11(C), Article V**, **Section 5.07, Section 5.08(B)(1), Section 5.08(D), Section 5.10, Section 5.11, Section 5.17(A), Section 5.23(G),** and **Section 5.25(B),** to update the reference to the Neighborhood Services Department; **Article VII**,

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Number	Date of Adoption	Comments
		Section 7.01(D)(1), and **Section 7.01(D)(2)**, to delete references to the Health Division**; Section 7.04(A), Section 7.08(A)**, and **Section 7.12**, to update the references to the Neighborhood Services Department**; Article VIII, Section 8.01(A), Section 8.02(A), Section 8.03, Section 8.04(A), Section 8.05, Section 8.06**, and **Section 8.07**, to update the reference of Issuing Officer to Administrator**; Section 8.08, Article X, Section 10.02(D)(5), Section 10.03(F)(1)(e), Section 10.03(G)**, and **Section 10.07(A)**, to update the references of Health Official and Health Department to Administrator; **Section 12.02**, **Section 12.06**, **Section 12.07**, **Section 12.08**, **Section 12.13(B)(1)**, and **Section 12.15**, to update the references of Health Department and Texas Natural Resource Conservation Commission.
04-100	11/09/04	Amend **Article X**, Regulation of Smoking, **Section 10.02,** Smoking Prohibited - Public Places, by the addition of **Subsection (A)(16)**, relative to the prohibition of smoking in common areas of a multi-family development.
04-101	11/09/04	Amend **Article IV**, Regulation of Food Establishments, **Section 4.06,** Food Handling School Required – Food Handler Permit, relative to Food Handling Training Course; **Section 4.08,** Permits – Duration, **Subsection (B),** relative to Mobile Food Permit and Catering Vehicle Permit expiration date; amend **Article V**, Child Care Centers, **Section 5.11,** Child Care Workers Class Required, relative to Child Care Workers Training Course.
05-010	02/08/05	Amend **Article VII**, Public Swimming Pools, **Section 7.01**, Texas Standards for Public Swimming Pool and Spa Rules Adopted, and **Section 7.08,** Review of Plans, relative to the adoption of new State regulations.
05-092	10/11/05	Amend **Article X,** Regulation of Smoking, **Section 10.01,** Definitions**,** by the addition of the definition of

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Number	Date of Adoption	Comments
		"Condominium"; amend **Section 10.02**, Smoking Prohibited – Public Places, **Subsection (B),** by the addition of **Subsections (5)** and **(6)**, relative to multi-family developments.
06-083	08/22/06	Amend **Article II**, Garbage and Trash, **Section 2.19**, City Disposal Site, **Subsection (C)(1)**; **Article IV**, Regulation of Food Establishments, **Section 4.01**, Texas Food Establishment Rules Adopted, **Subsection (D)**; **Section 4.03**, Food Handler – Permit Required; **Section 4.05**, Permits – Application, **Subsection (A)**; **Section 4.06**, Food Handling Training Required – Food Handler Permit; **Section 4.11**, Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, **Subsection (C)**; **Section 4.20**, Fees; **Article V**, Child Care Centers, **Section 5.07**, Permit Duration and Renewal; **Section 5.08**, Permit Renewal Denial, Suspension and Revocation, **Subsections (B)(1)** and **(D)**; **Section 5.10**, Child Care Workers Permit; **Section 5.11**, Child Care Workers Training Required; **Section 5.17**, Fees, **Subsection (A)**; **Section 5.23**, Safety and Sanitation, **Subsection (G)**; **Section 5.25**, Liability Insurance, **Subsection (B)**; **Article VII**, Public Swimming Pools, **Section 7.01**, Adoption of the Texas Standards for Public Swimming Pools and Spas, **Subsection (D)(4)(m)(1)**; **Section 7.04**, Fees, **Subsection (A)**; **Section 7.08**, Review of Plans, **Subsection (A)**; **Section 7.12**, Failure to Comply; **Article X**, Regulation of Smoking, **Section 10.02**, Smoking Prohibited – Public Places, **Subsection (D)(5)**; **Article XII**, On-Site Sewage Disposal, **Section 12.06**, Amendments, Additions and Deletions, **Subsection (B)**; **Section 12.08**, Duties and Powers, first two paragraphs, relative to updating the reference to the Community Services Department.
06-103	10/10/06	Amend **Article X**, Regulation of Smoking, **Section 10.01**, Definitions, by the addition of the definitions of

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		"Bar", "Health care facility" and "Shared HVAC system" and the amendment of the definitions of "Bingo parlor" and "Eating establishment"; **Section 10.02**, Smoking Prohibited – Public Places; **Section 10.03**, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls, Bingo Parlors and Bowling Centers; **Section 10.04**, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, **Subsection (A)**, relative to the posting of signs; by the deletion of **Section 10.06**, Structural Modifications Not Required; and by the deletion of **Section 10.07**, Exemptions.
06-110	11/28/06	Amend **Article X**, Regulation of Smoking, **Section 10.03**, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Sexually Oriented Businesses, Billiard Halls, Bingo Parlors and Bowling Centers, **Subsection (F)(2)**, relative to the posting of signs; **Section 10.04**, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, **Subsection (B)**, relative to receptacles; **Subsection (D)** relative to offenses; **Section 10.06**, Penalty for Violation; and by the deletion of **Section 10.07**, Culpability.
07-022	04/10/07	Amend **Article X**, Regulation of Smoking, **Section 10.01**, Definitions, by the addition of the definitions of "Fraternal Organization", "Nursing Home", "Park" and "Private Club"; **Section 10.02**, Smoking Prohibited – Public Places.
07-097	12/18/07	Amend **Article IV**, Regulation of Food Establishments, **Section 4.01**, Texas Food Establishment Rules Adopted, **Subsection (D)(3)(a)**, relative to updating references to state law, department and rules; **Subsection (D)(3)(d)**, relative to requiring written notice; **Section 4.04**, Permits – Authority to Issue, relative to limiting the number of Temporary Food Establishment Permits issued; **Section 4.16**,

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		Inspection Frequency, relative to inspections; **Section 4.20**, Fees, relative to specifying fees; **Article V**, Child Care Centers, **Section 5.02**, Texas Department of Protective and Regulatory Services Regulations Adopted, relative to updating references to state law, department and rules; **Section 5.04**, Permit Required, **Subsection (B)(5), (6) and (12)**, relative to updating references to state departments; **Section 5.05**, Permit Application, **Subsections (A)** and **(B)**, relative to updating references to Arlington Health Division and required information on permit applications; **Section 5.08**, Permit Renewal Denial, Suspension and Revocation, **Subsections (A)** and **(B)**, relative to updating references to a state department; **Section 5.11**, Child Care Workers Training Required, relative to certifying course instructors; **Section 5.14**, Display of Child Care Workers Permit, relative to displaying the original permit; **Section 5.15**, Appeal of Permit Denial, Suspension or Revocation, relative to denying, suspending or revoking permits or certifications; **Section 5.17**, Fees, **Subsection (A)**, relative to specifying fees; **Section 5.20**, Diaper Changing Provisions, **Subsection (B)**, relative to sanitization; **Article VII**, Public Swimming Pools, **Section 7.01**, Adoption of the Texas Standards for Public Swimming Pools and Spas, **Subsections (A) and (B)**, relative to updating references to state law; **Section 7.01**, **Subsection (D)(3)**, relative to electrical inspections; **Section 7.02**, Swimming Pool Permit Required, **Subsection (A)**, relative to requiring permits; **Section 7.04**, Fees, **Subsection (A)**, relative to specifying fees; **Section 7.09**, Inspections, relative to updating references to the Administrator or designee; **Section 7.10**, Maintenance and Operation, relative to compliance with City ordinances; **Section 7.11**, Regulations in Pool Area, by the amendment of **Subsection (B)** and the addition of **Subsection (F)**, relative to offenses; **Section 7.12**, Failure to Comply, relative to references to the Arlington Health Division; **Article VIII**, Mass Gatherings, **Section 8.08**, Rules

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		and Regulations, **Subsection (A)**, relative to updating references to a State department; **Article XII**, On-Site Sewage Disposal, **Section 12.02**, On Site Sewage Facility Rules Adopted, relative to updating references to state law; **Section 12.09**, Collection of Fees, relative to specifying fees; **Section 12.13**, Penalties, relative to updating references to state law.
08-020	03/18/08	Amend **Article X**, Regulation of Smoking, **Section 10.01**, Definitions; and **Section 10.02**, Smoking Prohibited - Public Places, **Subsection (B)**, Exceptions.
10-021	01/26/10	Amend **Article II**, Garbage and Trash, **Section 2.13**, Private Collection and Disposal, **Subsection (B)(1)**, relative to Class A license requirements.
10-069	09/14/10	**Article I,** Definitions, **Section 1.01,** Definitions, by the addition of the definition of "Seasonal Food Establishment"; amend **Article IV**, Regulation of Food Establishments, **Section 4.01**, Texas Food Establishment Rules Adopted, **Subsection (D)(3)(e); Section 4.02,** Food Establishment; **Section 4.04,** Permits - Authority to Issue; **Section 4.05,** Permits - Application, **Subsection (A); Section 4.07,** Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment or Commissary Permits, by the amendment of the title and the section; **Section 4.08,** Permits - Duration, **Subsection (B); Section 4.09,** Permits - Non-transferable; **Section 4.11,** Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, by the amendment of the title and the section; **Section 4.12,** Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, by the amendment of the title and the section; **Section 4.13,** Revocation of a Permit for a Food Establishment, Mobile Food Establishment,

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Number	Date of Adoption	Comments
		Temporary Food Establishment, Commissary, or Catering Vehicle, by the amendment of the title; **Section 4.15,** Notice of Appeal; Hearing, **Subsection (A)**; relative to Seasonal Food Establishment.
11-049	09/13/11	Amend **Article XII,** On-Site Sewage Disposal, by the amendment of the title and article relative to adopting on-site sewage facilities regulations to prevent injury or pollution to the public health.
15-056	11/10/15	Amend **Article I**, Definitions, **Section 1.01**, Definitions, by the addition of the definitions of "Recycle", "Recyclable Materials, Recyclables or Recycling" and "Reusable Recycling Container"; amend **Article II**, Garbage and Trash, by the addition of **Section 2.02.01**, Residential Storage of Reusable Recycling Containers.
17-015	03/07/17	Amend **Article XII**, On-Site Sewage Facilities, in its entirety, relative to adopting on-site sewage facilities regulations to prevent injury or pollution to the public health.
17-024	05/09/17	Amend **Article X**, Regulation of Smoking, in its entirety.
17-038	06/27/17	Amend **Article I**, Definitions; by the amendment of the definition of "Administrator", and the deletion of the definitions of "Private Pool", "Public Pool", "Therapy Pool", "Trained Pool Operator", and "Water Slide"; amend **Article IV**, Regulation of Food Establishments; **Article V**, Child Care Centers; **Article VII**, Public Swimming Pools; and **Article IX**, Violations and Penalties; relative to aligning the City Code with applicable State regulations pertaining to food establishments, child care centers, and public pools, spas and public interactive water features and fountains.

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Number	Date of Adoption	Comments
18-039	08/07/18	Amend **Article I**, Definitions, **Section 1.01**, Definitions, by the addition of definitions for "Multi-Family Property", "Owner", "Recycling Collection Container", "Recycling Collection Services", "Recycling Collector", and "Tenant"; amend **Article II**, Garbage and Trash, by the addition of **Section 2.02.02**, Recycling Collection Services at Multi-Family Properties.
19-030	05/21/19	Addition of **Article XIV**, Hotel Premises and Sanitation Regulations, relative to providing clear and concise requirements for the maintenance of lodging facilities within the City of Arlington.
19-061	12/03/19	Amend **Article I**, Definitions, **Section 1.01**, Definitions, by the deletion of the definition for "Mass Gathering"; and the repeal of **Article VIII**, Mass Gatherings.

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ARTICLE I

DEFINITIONS

Section 1.01 Definitions:

The following words and terms, when used in this Chapter, shall have the meanings respectively ascribed to them in this section.

Administrator - Such officers and employees of the City as may be designated by the City Manager to enforce and administer the provisions of this Chapter or a specified Article. The Administrator shall promulgate rules necessary to enforce the provisions of this Chapter or a specified Article. This definition includes the Administrator's designee. (Amend Ord 17-038, 6/27/17)

Approved Container - A reusable container utilized by the collector as set forth in Section 2.06(C) of Article II of this Chapter and referred to as commercial type containers, or a nonreusable container of sufficient size and strength to adequately hold garbage and trash without spillage.

Brush - Cuttings or trimmings from trees, shrubs or similar materials which are not susceptible to placement in disposable containers.

City - The City of Arlington, Texas.

Collector - The person or entity designated by the City, pursuant to a contract with the City, to collect garbage, trash, brush and debris within the corporate limits of the City of Arlington.

Container - An approved container meeting City designated standards. A description of approved containers may be obtained in the office of the Administrator. (Amend Ord 88-46, 3/15/88)

Customer - Any owner, occupant, tenant or person otherwise in control of any premises in the City on which garbage and trash are accumulated and from which the same is removed or required to be removed pursuant to the terms of this Chapter.

Debris - Dirt, concrete, rocks, bricks or other waste building materials.

Extensively Remodeled - Structural changes that require the issuance of a Building Permit, included but not limited to changes in walls, floors, equipment, and/or plumbing. (Amend Ord 97-19, 2/4/97)

Food Service Employee - an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces. (Amend Ord 98-12, 1/20/98)

Garbage - Animal and vegetable waste matter resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products.

Health Authority - The physician appointed by the Arlington City Council as required by law. (Amend Ord 04-007, 1/13/04)

Infectious Waste - A solid waste containing pathogens or biologically active material which, because of its type, concentration and quantity is capable of transmitting disease and which is comprised of the following:

1. Animal waste - Includes carcasses, body parts, bedding and whole bulk blood or other blood components of animals intentionally exposed to pathogens.

2. Bulk blood and blood products - Includes all waste bulk human blood, serum, plasma and other blood components.

3. Microbiological waste - Includes cultures and stocks of infectious agents and associated biologicals, cultures from laboratories, discarded vaccines, disposable culture dishes, and disposable devices used to transfer, inoculate and mix cultures.

4. Pathological waste - Includes but is not limited to human materials (including body parts, tissues and/or fluids) removed from a body; and anatomical remains.

5. Sharps - Includes the following materials when contaminated: hypodermic needles and syringes with attached needles; scalpel and razor blades used for medical procedures; pasteur pipettes; and broken glass from laboratories. (Amend Ord 90-37, 4/3/90)

Jurisdictional Area - The area within the corporate limits of the City of Arlington and the unincorporated area within five thousand feet (5,000') thereof, within which areas home rule cities are empowered by Section 19 of Article 1175 of the Revised Civil Statutes of Texas to define and prohibit nuisances.

Multi-Family Property - A dwelling or group of dwellings on one lot containing separate living units for three or more families, but which may have joint services or facilities. (Amend Ord 18-039, 8/7/18)

Non-profit Organization - A civic or fraternal organization, charity, lodge, association, proprietorship, or corporation possessing an Internal Revenue Code § 501(C)(3) exemption, or a religious organization meeting the definition of "church" under the Internal Revenue Code § 170(b)(1)(A)(I). (Amend Ord 97-19, 2/4/97)

Owner - Each and every person or entity who is a record owner of a fee simple interest or an undivided fee simple interest in a parcel of land. If such parcel is subject to a condominium or other multi-ownership regime, the owners' association representing such multi-ownership regime, and not individual unit owners, shall be deemed the owner thereof. (Amend Ord 18-039, 8/7/18)

Permit Holder - The entity that is legally responsible for the operations of the business such as the owner, owners' agent, or other person; and who possesses a valid permit to operate the business. (Amend Ord 99-90, 7/27/99)

Person - Any individual, partnership, co-partnership, firm, company, corporation, association, joint-stock company, trust, estate, political subdivision or any other legal representatives, agents or assigns.

Person in Charge – The individual present at a location who is responsible for the operation at the time of inspection. (Amend Ord 99-90, 7/27/99)

Property – Any real or personal property of any type.

Recycle - The process of collecting, sorting, cleansing, treating, and reconstituting trash for reuse or to gain reusable material for the manufacture of a new product. (Amend Ord 15-056, 11/10/15)

Recyclable Materials, Recyclables or Recycling - Shall mean all trash susceptible of being recycled, including, without limitation: newsprint; cardboard; chipboard; paper; magazines; aluminum beverage containers; steel tin cans; clear, brown and green glass; plastics (excluding Styrofoam); and such other materials as may be designated by the Administrator. (Amend Ord 15-056, 11/10/15)

Recycling Collection Container - A container for recyclable materials that is supplied to a multi-family property by a recycling collector for use by the tenants of the multi-family property and that is approved as part of a commercial site plan, pursuant to Section 2.02.02, as amended. (Amend Ord 18-039, 8/7/18)

Recycling Collection Services - The collection, hauling, and processing of all recyclable materials accumulated in recycling collection containers, in cooperation with a recycling collector. (Amend Ord 18-039, 8/7/18)

Recycling Collector - A person, firm, corporation, partnership or entity that collects recyclable materials from multi-family properties within the City. (Amend Ord 18-039, 8/7/18)

Residential - Pertaining to any structure or premises used for permanent living quarters of whatever type, including conventional single-family residences, duplexes, multi-family residences, apartments or mobile homes.

Reusable Recycling Container – A container supplied to a customer by the City for residential use and which remains the property of the City of Arlington, the Collector, or as otherwise specified in the contract between the City and the Collector entered into under this Article. Such container is assigned to a specific address, and may be removed from the assigned address only by the Administrator or his/her designee. (Amend Ord 15-056, 11/10/15)

Seasonal Food Establishment - A food establishment that operates for a period of time between 15 and 180 days where one or more food vendors operate pursuant to one Seasonal Food Establishment permit at a single building or at the same address for a single event. The food establishment hours of operations during the allowed time period shall be either 1) between one to two days a week for no more than six hours a day or 2) between one to five days a week for no more than two hours a day. (Amend Ord 10-069, 9/14/10)

Tenant - A person who is authorized by lease to occupy a dwelling in a multi-family property to the exclusion of others, and who is obligated to pay rent. (Amend Ord 18-039, 8/7/18)

Trash - All solid waste (as defined by the Municipal Solid Waste Management Regulations of the Texas Department of Health) other than garbage, debris and brush.

Waste Material - Refuse, garbage, rubbish, other solid or liquid wastes and useless, unused, unwanted or discarded materials.

ARTICLE II

GARBAGE AND TRASH

Section 2.00 Policy

The City Council shall, in the exercise of its sound discretion, determine what means shall be employed for the collection, hauling and disposal of trash, garbage, debris, brush and refuse within the City of Arlington so as to preserve and protect the public health, and may in the exercise of its sound discretion, by ordinance, designate one (1) Collector subject to such conditions as the City Council may impose to ensure protection of the public health. The City Council may, pursuant to V.T.C.S., Local Government Code, Section 252.002(a)(2), expend funds and enter contracts for such services to protect the public health without the necessity of requiring competitive bids. Should the City Council, by ordinance, designate one (1) Collector for the collection, hauling and disposal of garbage, trash, debris, brush and refuse or any combination thereof, such Collector shall be governed by the requirements of this Chapter and by any contract authorized by the City Council to govern the relationship between the City and Collector.

Section 2.01 Duties of Customer

A. To Provide Containers: Every customer shall provide and use approved containers sufficient in number to hold the garbage and trash normally accumulating on the premises of said customer.

B. To Secure Containers: Every customer shall keep all garbage and trash containers used by it securely closed in such a manner as to prevent the scattering of the contents thereof and to render said contents inaccessible to insects, rodents and other animals.

Section 2.02 Residential Collection - Placement of Containers

It shall be the duty of each customer of residential premises in the City to place garbage and trash containers at locations as follows:

A. Premises on Alleys: If the premises from which garbage and trash are to be collected is adjacent to a dedicated public alley, the customer shall place all containers adjacent to the alley at a location on the premises and easily accessible to the Collector from outside said premises.

B. Other Premises: In the event there is no alley adjacent to the premises, the customer shall place all containers for collection at curbside on the street on which said premises are addressed.

C. Designation of Collection Point: In the event it is not practical to place containers for collection at locations hereinabove provided, the Administrator or his duly authorized representative shall designate the point most easily accessible for collection in such instances.

D. Time of Placement: All containers shall be placed at the hereinabove prescribed locations not later than 7:00 a.m. on the day of scheduled collection. In this regard, it shall be unlawful for any customer to place containers of garbage or recycling at said location prior to 7:00 p.m. the evening prior to the day of scheduled collection. Reusable recycling containers must be removed from the curb prior to 7:00 a.m. of the morning following the day of scheduled collection. (Amend Ord 01-045, 4/24/01)

Section 2.02.01 **<u>Residential Storage of Reusable Recycling Containers</u>**

A. When not placed at the curb for collection during the permitted times for scheduled collection under this Article, reusable recycling containers shall be stored so as not to be visible from the public street or right-of-way in front of the customer's residential premises. A violation of this section is not a criminal offense.

1. Upon the occurrence of three (3) separate violations of this section at least ten (10) days apart within a period of six months, and after sending a written warning by certified mail, return receipt requested, to the customer for each violation, the Administrator or his/her designee may, after the third such written warning, remove a reusable recycling container if the violation of this section is not corrected on or before the tenth (10th) day after the date that the customer receives the third written warning. The customer is deemed to have received any such warnings three (3) days after the date mailed.

2. Upon request by the customer and payment of a fee in an amount set by resolution of the City Council, the reusable recycling container will be returned to the customer's residential premises. Such request and payment shall constitute a waiver of an administrative review.

3. Removal of the reusable recycling container shall not entitle the customer to a reduction or refund of any portion of the charges associated with the collection of recyclables authorized by this Article or other ordinance or resolution.

B. A customer whose assigned reusable recycling container has been removed may appeal the removal.

1. An appeal may be perfected by making, on or before the expiration of ten (10) days after the removal, a written request to the Administrator for an administrative review. The Administrator or his/her designee shall complete the administrative review on or before the expiration of ten (10) days after receipt of the written request.

2. The Administrator may establish procedures consistent with this section for the administrative review as well as the conditions under which a reusable recycling container may be returned.

3. The reusable recycling container will be returned to the customer's residential premises without payment of a fee upon a finding by the Administrator or his/her designee that:

a. the customer was not responsible for one or more of the violations,

b. one or more of the violations did not occur,

c. the customer had no reasonable alternative to the storage location of the reusable recycling container that would comply with this section, or

d. no person living at the residential premises was physically able, by reason of bodily condition or disability, to comply with this section.

4. If the Administrator or his/her designee does not find that the customer meets the requirements under this section to have the reusable recycling

container returned without payment of a fee, the reusable recycling container will be returned to the customer's residential premises upon request by the customer and payment of a fee in an amount set by resolution of the City Council.

(Amend Ord 15-056, 11/10/15)

Section 2.02.02 <u>Recycling Collection Services at Multi-Family Properties</u>

A. <u>Recycling at Multi-Family Properties</u>

1. The requirements of this Section apply to multi-family properties constructed on or after November 5, 2018.

2. The owner or person in charge or otherwise in control of a multi-family property shall provide recycling collection services using a recycling collector in accordance with an approved commercial site plan under Subsection (B), as amended.

3. Recycling collectors that provide recycling collection services to a multi-family property shall collect and remove recyclable materials from the recycling collection containers at the property on a frequency of at least once a week or as often as necessary to prevent recycling collection containers from overflowing.

4. <u>Recycling Collection Containers</u>

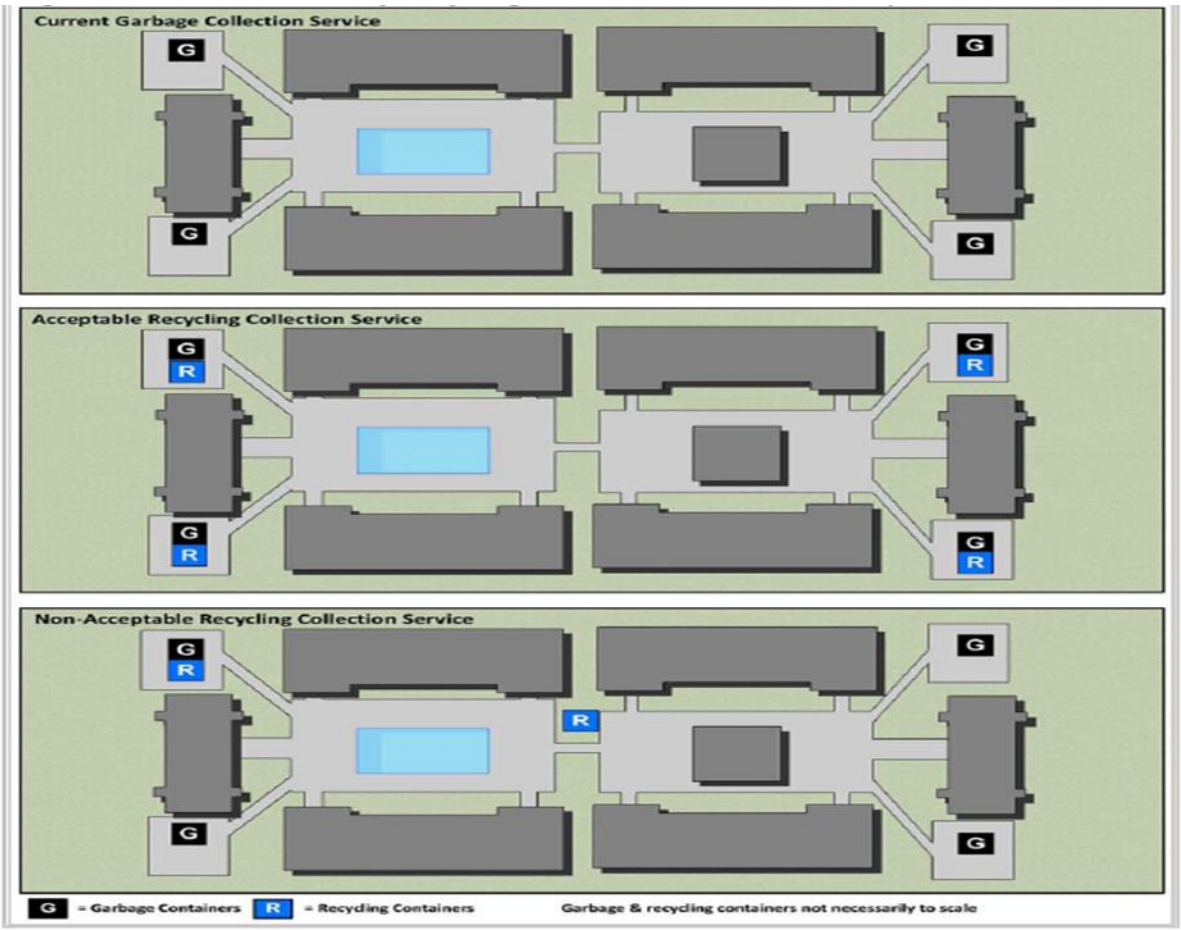
a. Upon request of the owner or person in charge or otherwise in control of a multi-family property, recycling collectors shall supply recycling collection containers to multi-family properties, pursuant to an approved commercial site plan under Subsection (B), as amended. Recycling collection containers must be enclosed or screened in compliance with all applicable provisions of this Code of Ordinances.

b. Recycling collection containers must be of an appropriate size for the anticipated amount of recyclables generated at the multi-family property. There must be one recycling collection container for each approved container for garbage and trash at the multi-family property. One recycling collection container must be placed

adjacent to each approved container for garbage and trash at the multi-family property and must be readily accessible to the recycling collector.

c. Figure 2.02.02-1, Multi-family Recycling Collection Container Placement Example, demonstrates in a graphical manner the required placement of recycling collection containers under Subsection (A)(4), as amended.

Figure 2.02.02-1, Multi-family Recycling Collection Container Placement Example



d. The owner or person in charge or otherwise in control of a multi-family property must provide clear and visible signage on each recycling collection container:

(1) Stating that the container is only for recyclable materials; and

(2) Describing the types of recyclable materials that are acceptable for placement in the container.

5. Educational Materials

a. The owner or person in charge or otherwise in control of a multi-family property must provide tenants with educational materials and other information about recycling services, including: information on the types of recyclable materials accepted, proper separation of recyclable materials, and the location of recycling collection containers. This information must be distributed to all tenants upon the commencement of providing recycling services at the property and must be provided to all new tenants upon moving in to a leased dwelling unit.

b. When changes are made to recycling collection services at the property, the owner or person in charge or otherwise in control of a multi-family property shall provide tenants with information and instructions detailing the changes.

c. Upon request, recycling collectors shall provide educational and promotional material such as posters, introductory letters and signage to the owner or person in charge or otherwise in control of a multi-family property, including when there is a change in ownership at the property or the method of collection under Subsection (A)(7), as amended.

6. Collection and Removal of Recycling Collection Container Contents

a. The owner or person in charge or otherwise in control of a multi-family property must:

(1) Maintain continuous, regular recycling collection service at the property; and

(2) Ensure that a recycling collector collects and removes the contents of all recycling collection containers at the

property on a frequency of at least once a week or as often as necessary to prevent recycling collection containers from overflowing.

b. If a recycling collector does not collect and remove the contents of a recycling collection container from a property for any reason, the owner or person in charge or otherwise in control of a multi-family property must dispose of the contents of the recycling collection container as required by this Article.

c. The owner or person in charge or otherwise in control of a multi-family property is subject to all other applicable provisions of this Code of Ordinances pertaining to the filling of commercial-type containers as well as nuisances involving the accumulation or presence of garbage and trash at the property.

7. Continuation of Recycling Collection Services. The owner or person in charge or otherwise in control of a multi-family property is responsible for the continuation of recycling collection services whenever there is a change in:

a. The ownership or person in charge or otherwise in control of the property; or

b. The method of collection, such as a change in the types or location of containers.

8. Collection Options for Certain Multi-Family Properties

a. This Subsection provides an alternative option for recycling collection services at multi-family properties located on lots that are one (1) acre or less in size and that do not have sufficient space at the property for a recycling collection container.

b. The owner or person in charge or otherwise in control of a multi-family property described by this Subsection may satisfy the recycling collection requirements of this Section by providing alternative recycling collection services with the approval of the Administrator. Any recycling collection services where recyclable materials are collected from the City right-of-way must be performed by the Collector.

9. Transportation of Recyclable Materials. Drivers of vehicles transporting recyclable materials for a recycling collector shall comply with all applicable state and local traffic laws, including but not limited to, Texas Transportation Code chapter 725, as amended, governing the transportation of loose materials.

B. Plan Review Process

1. Prior to providing recycling collection services in accordance with Subsection (A), the owner or person in charge or otherwise in control of a multi-family property must submit to the Administrator a commercial site plan, pursuant to Construction Chapter § 4.02, as amended. The commercial site plan shall include a description of the proposed recycling collection containers to be used at the property, the location and placement of the containers, as well as the enclosures for the containers.

2. Upon the Administrator's approval of the commercial site plan, the owner or person in charge or otherwise in control of a multi-family property shall implement recycling collection services within thirty (30) days of receiving a certificate of occupancy.

C. Recycling Collector Permit

1. Issuance of Permits and Application. The Administrator has the authority to issue annual recycling collector permits. Each recycling collector must obtain an annual recycling collector permit in order to provide or conduct recycling collection services to a multi-family property under this Section. To apply for a recycling collector permit, a recycling collector must submit an application to the Administrator on a form prescribed by the Administrator. On the form, the recycling collector must include all information required by Section 2.14, as amended.

2. Permit Fee. There shall be established a recycling collector permit fee. The recycling collector must pay the recycling collector permit fee at the time that the application is submitted and upon renewal of the permit under Subsection (C)(4), as amended.

3. Duration of Permits. Recycling collector permits shall remain in full force and effect for twelve (12) months from the date of issuance unless

suspended or revoked sooner under Subsection (C)(7), as amended. Recycling collector permits shall be nontransferable and nonrefundable.

4. Renewal of Permits. Recycling collectors may renew a recycling collector permit upon:

   a. Payment of the annual recycling collector permit fee;

   b. Providing proof to the Administrator of having timely submitted the annual report under Subsection (C)(5), as amended; and

   c. Providing proof to the Administrator of current insurance coverage as required by Subsection (C)(6), as amended.

5. Annual Report. On or before March 31st of each year, all recycling collectors must submit to the Administrator an annual report, on a form prescribed by the Administrator, detailing the volume and tonnage of recyclable materials collected from multi-family properties in the prior calendar year.

6. Insurance Requirements. At all times, recycling collectors shall maintain the following minimum insurance coverage while providing or conducting recycling collection services and throughout the duration of their recycling collector permit:

   a. Automobile Liability - $1,000,000 combined limit per occurrence for bodily injury and property damage.

   b. Umbrella Liability - $2,000,000 per occurrence combined limit per occurrence/aggregate for bodily injury and property damage.

   c. Environmental or Pollution Liability - $10,000,000 per contamination incident; $10,000,000 General Aggregate.

7. Denial of Applications and Suspension or Revocation of Permits

   a. An application may be denied, or a recycling collector permit may be suspended or revoked if:

      (1) A recycling collector submits false information on an application for a recycling collector permit;

(2) A recycling collector does not maintain insurance coverage as required by Subsection (C)(6), as amended;

(3) A recycling collector has been convicted of or had a charge dismissed upon completion of deferred disposition two (2) or more times within the past two (2) years for violations of this Article or any provision of this Code of Ordinances related to conduct involving recyclable materials, recycling collection services, or recycling collection containers; or

(4) Any driver or drivers for a recycling collector have been convicted of or had a charge dismissed upon completion of deferred disposition three (3) or more times, in total, within the past two (2) years for violations of:

(a) This Article or any provision of this Code of Ordinances related to conduct involving recyclable materials, recycling collection services, or recycling collection containers; or

(b) State law involving the operation of a vehicle.

b. Upon denial of an application or suspension or revocation of a permit, the recycling collector shall be notified in writing of the decision. The recycling collector may request a hearing before the Administrator or a designated hearing officer by submitting a request in writing within ten (10) days of the decision to deny an application or suspend or revoke a recycling collector permit.

c. After the hearing, the Administrator or designated hearing officer will decide whether to affirm or reverse the decision to deny or suspend or revoke a permit. The Administrator or designated hearing officer will notify the recycling collector within thirty (30) days of the decision.

D. <u>Administration</u>

1. The Administrator or his designee may designate personnel to administer and enforce the provisions of this Section. Those designated by the

Administrator or his designee may exercise any enforcement powers as set forth in this Code of Ordinances.

2. All fees under this Section shall be in an amount set by resolution of the City Council.

3. The owner or person in charge or otherwise in control of a multi-family property is not responsible for whether tenants choose to participate in the recycling of recyclable materials at the property.

E. Offenses

1. The owner or person in charge or otherwise in control of a multi-family property commits an offense if the person fails to provide or implement recycling collection services at the property as required by this Section.

2. The owner or person in charge or otherwise in control of a multi-family property commits an offense if the person fails to comply with any requirement of an approved commercial site plan for the property under Subsection (B), as amended.

3. The owner or person in charge or otherwise in control of a multi-family property commits an offense if the person fails to place recycling collection containers at the property in compliance with an approved commercial site plan or as required by Subsection (A)(4), as amended.

4. The owner or person in charge or otherwise in control of a multi-family property commits an offense if the person fails to have the contents of all recycling collection containers at the property removed and disposed of under Subsection (A)(6), as amended, or as otherwise required by this Article.

5. A recycling collector commits an offense if the recycling collector provides or conducts recycling collection services at a multi-family property without a valid recycling collector permit issued by the Administrator under Subsection (C), as amended.

6. A person commits an offense if the person violates any provision of this Section by performing an act prohibited or failing to perform an act required.

(Amend Ord 18-039, 8/7/18)

Section 2.03 **Residential Collection - Bundled Trash and Brush**

In the event trash is of such a nature that it cannot be placed in approved containers, it shall be placed in tied bundles or nonreusable receptacles having no outside dimension of more than four feet (4') and shall be placed for collection as provided in Section 2.02 hereof. Brush shall be cut in lengths not to exceed four feet (4') and shall be trimmed and stacked at curbside to a height of not more than three feet (3') with the larger ends placed toward the curb or street. Trash or brush that is not placed for collection in approved containers shall be collected at the rate of one (1) cubic yard per pick-up day. All vines and thorny bushes shall be placed in disposable containers. No bundle, container or other item shall weigh more than fifty (50) pounds nor constitute more than one (1) cubic yard.

Section 2.04 **Residential Collection - Charges**

The collection and removal of garbage and trash in nonreusable containers from premises used for residential purposes shall be made two (2) times each week. Fair and reasonable charges for the provision of such service shall be set by resolution from time to time by the City Council. For new accounts, said charges shall be prorated for each and every day of the month during which such service is available and provided to the customer for the first month's billing. When a customer has an active water account with the City, said charges shall be due and payable simultaneously with charges for water service. There shall be no refunds made to customers for missed pickups or when no service is provided due to holidays or days on which there exists inclement weather which prevents the collection and removal of garbage and trash. Additionally, there shall be no refunds made due to customer vacations or when the premises are vacated for whatever reason when the water account remains active.

Section 2.05 **Duties of Commercial, Institutional and Industrial Customers - Location of Containers**

It shall be the duty of the owner or person otherwise in control of commercial, institutional or industrial premises within the City which avails itself of regular City of Arlington disposal service, to cause all garbage and trash accumulated on said premises to be placed at a location on the premises which is readily accessible to the Collector and approved by the Administrator. Commercial-type containers shall be placed at a location on the premises arranged by the customer and Collector; if such container is enclosed by

fencing or any material, such customer shall provide an opening of at least twelve feet (12') for container access. If gates are used, the customer will ensure that they are tied open for easy access by Collector on the dates collection is scheduled. Commercial-type containers shall be provided by the City's designated Collector. Should the City have no designated Collector, commercial-type containers shall be provided by the customer subject to approval of the Administrator.

Section 2.06 **Commercial, Institutional and Industrial Collection Charges**

A. Frequency of Collection: The collection and removal of garbage and trash from houses, buildings and premises used for commercial, institutional or industrial purposes shall be made as often as necessary in order to maintain such premises free of accumulations of garbage and trash. In this regard, garbage collection shall be made not less than two (2) times each week.

B. Charges - Nonreusable Containers: The collection and removal of garbage and trash in nonreusable containers, as defined in this Chapter, from the premises of commercial, institutional and industrial customers, shall be made two (2) times each week. Fair and reasonable charges for the provision of such service shall be set by resolution of the City Council.

C. Charges - Commercial-type Containers: As an alternative to the collection methods provided in 2.06B above, commercial, institutional and industrial customers may dispose of garbage and trash by means of commercial-type portable containers meeting City specifications. Additionally, multi-family residential complexes may employ said commercial-type containers for garbage and trash collection in the same manner as commercial, institutional and industrial customers. Fair and reasonable charges for such services shall be set by resolution from time to time by the City Council.

D. Additional Charges: In addition to the charges described in this section, there shall be set by resolution by the City Council additional charges for the following services:

1. Delivery of container to new customer

2. Delivery of container to old customer after pick-up for nonpayment

3. Container with casters

4. Container inside fence

5. Mileage (if located south of I-20) for:

   Front Loaders
   Roll Off

6. Charges will be assessed all commercial account customers that have obstructions in front of the containers or have containers that have not been moved by the customer to the collection area on the day of pick-up that result in return trips; and also, the same charge would apply for containers being picked up for past due billings.

7. A daily lease charge and a dump charge will be assessed for a special 8 yard bottom dump.

8. Customers with containers which are burned will be assessed an additional charge which shall be based upon the size of the container.

Section 2.07 **Collection of Charges**

The charges for the removal and disposal of all garbage and trash shall be entered by the City against the customer. A person who shall fail or refuse to pay the charge within fifteen (15) days from the date same shall become due and payable may have his garbage service suspended and the Administrator shall be notified immediately for appropriate action in accordance with the provisions of this Ordinance. The authorized Collector of the City is hereby authorized at the City's option, to act as agent for the City in the collection of charges herein provided. The City or its Collector may, at the commencement of service to any customer, require a cash deposit in an amount equal to one (1) month's bill, as estimated by the City. Said deposit shall be refunded to the customer upon termination of service and the payment of all service charges then due and owing.

Section 2.08 **Collection to be Carried on in Systematic, Efficient and Sanitary Manner**

A. The collection, removal and disposal of all garbage and trash shall be carried on in a systematic, efficient manner to keep the entire City in a clean and sanitary condition.

B. All garbage or trash that is mixed with water or other liquids shall be drained before being put into a garbage or trash container. All animal matter subject to decomposition shall be well wrapped in paper or other material before being deposited in such container.

C. The customer shall not commingle infectious wastes with routine solid waste but shall segregate infectious wastes for special collection and transportation by the collector.

1. The customer shall secure infectious waste within an approved infectious waste container provided by the collector. This container shall be:

a. puncture-resistant;

b. leak-proof; and

c. clearly marked “infectious waste.”

2. The customer shall store the containers holding infectious waste in a secured compartment so as to render the contents inaccessible to any insects, animals and unauthorized persons until picked up by the collector.

3. This subsection does not apply to waste generated by:

a. single or multi-family dwellings; and

b. hotels, motels or other accommodations which provide lodging and other similar services for the public.

4. This subsection applies to special waste generated by the operation of the following types of publicly or privately owned or operated health care related facilities, including but not limited to: ambulatory surgical centers; abortion clinics; birthing centers; blood banks and blood drawing centers; clinics, including but not limited to medical, dental and veterinary; clinical, diagnostic, pathological or biomedical research laboratories; educational institution health centers; educational institution research laboratories; emergency medical services; end stage renal dialysis facilities; funeral establishments; home health agencies; hospitals; long term care facilities; mental health and mental retardation facilities, including but not limited to hospitals, schools, and community centers;

minor emergency centers; occupational health clinics and clinical laboratories; pharmacies; pharmaceutical manufacturing plants and research laboratories; professional offices, including but not limited to the offices of physicians and dentists; special residential care facilities; and veterinary clinical and research laboratories. (Amend Ord 90-37, 4/3/90)

Section 2.09 **Duty of Customer to See that Containers are Emptied; Reporting Requirement**

Every customer is hereby required to maintain constant supervision and surveillance over garbage containers on his premises. If, after having been timely placed for collection, the containers are not collected or emptied and the contents removed, as the case may be, by an agent or representative of the City or other duly authorized person within a period of twenty-four (24) hours of scheduled collection, the customer shall promptly notify the agent of this fact. (Amend Ord 04-007, 1/13/04)

Section 2.10 **Prohibited Acts**

A. Debris in Container: It shall be unlawful for any person to place debris in any container herein required to be used for garbage and trash.

B. Open Bins Prohibited: It shall be unlawful for any person to deposit or maintain garbage and trash in open bins or other containers not designated as approved containers as that term is herein defined.

C. Burning Materials: It shall be unlawful for any person to deposit any burning match, charcoal, ember or flammable substance or similar material in any container used for the disposal of garbage or trash.

D. Unauthorized Use of Containers: It shall be unlawful for any person to deposit debris, garbage, trash or brush in a container or on private property of another without the consent of the owner of such container or of such property. No hazardous waste, as that term is defined in the "Industrial Waste" Chapter, may be deposited at any location within the City regardless of consent of the owner of the property.

E. Overfilling Prohibited: Commercial-type containers with open tops shall not be filled with garbage or trash above the top flange of such container.

Section 2.11 **(Repealed as Section 1.12)**
(Amend Ord 2298, 8-18-70)

Section 2.12 **(Repealed as Section 1.13)**
(Amend Ord 2298, 8-18-70)

Section 2.13 **Private Collection and Disposal**

A. License Required: Except as otherwise provided in this Chapter, no person shall empty garbage or trash containers of another, convey or transport garbage or trash of another, or collect and transport garbage and trash from his nonresidential premises or place of business using his own vehicles and equipment without a license.

1. Nothing in this Section shall be construed to require duly authorized agents or employees of the City, County, State or any political subdivision thereof, or persons acting pursuant to a contract with the City, County, State or any political subdivision thereof for public collection and disposal, to secure a license otherwise required herein.

2. No garbage or trash shall be removed from non-residential premises or places of business, for hire or otherwise, unless same is removed by the City's designated Collector, by one possessing a Class A or Class B License as described in this Section, or by one excluded from licensing requirements by Section 2.13 A.1. or Section 2.20 of this Chapter.

B. Classifications of Licenses: There shall be two (2) classifications of licenses as follows:

1. Class A - A license that authorizes a person who generates an average of less than 3 tons of garbage and trash per operating day to engage in the collection and transportation of garbage and trash from such person's own non-residential premises or place of business using such person's own vehicles and equipment. For purposes of this Section, "operating day" shall be defined as six days per week excluding the legal holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Said license shall be granted by the Administrator upon compliance with the same provisions required for

applying for a permit in Section 2.14 hereof (but no permit shall be required) and upon payment of the Class A License Fee which shall be set by resolution of the City Council. A Class A License shall expire on December 31st of each year and shall be renewed by submitting a new application therefor in accordance with this Section. A separate license shall be required for each nonresidential premises or place of business of an applicant. The Administrator may revoke a Class A License if the Licensee is convicted of a violation of any of the provisions of this Article, if the Licensee commits fraud or misrepresentation in the application for said license or if the Licensee operates outside the scope of the Class A License. (Amend Ord 10-021, 1/26/10)

2. Class B - For the collection and transportation of garbage and trash for hire, or for the collection and transportation of same from any point other than licensee's nonresidential premises or place of business, if City Council has not designated a Collector to perform such service. Said license may be issued by the City Council, upon compliance with the provisions of Section 2.14 and 2.15 hereof. Only one (1) license shall be required for operations hereunder, but permits shall be required, as provided in subparagraph (D) hereof.

   a. Should City Council designate a Collector, no Class B License shall be issued for so long as the City Council continues to authorize such Collector to operate as the designated Collector for the City of Arlington.

   b. However, nothing in this Section shall be construed as prohibiting the City Council from taking such action as may be required to protect the public health.

C. <u>Frequency of Collection</u>: Licensees, as well as any designated Collector hereunder, must dispose of garbage or trash collected by them at City garbage and trash disposal sites not less than two (2) times a week.

D. <u>Permits Under Class B License; Fees</u>:

1. Class B Licensees (but not a City designated Collector) shall obtain from the Administrator a separate permit for each customer service or pick-up, and an application for said permit shall state the location of the pick-up, the type of garbage or trash facility to be used, and such other information as the Administrator may deem necessary.

2. The annual fee for each permit obtained by a Class B licensee shall be an amount equal to one (1) month's charge for City service of the same class, as the same is prescribed in Sections 2.04 and 2.06 of this Chapter.

E. Permit Required: It shall be unlawful for any person with a Class B License to engage in the collection or transportation of garbage and trash for hire from any premises for which a permit has not been obtained, as hereinabove provided.

F. Identification of Vehicles: All trucks and containers used for the collection and transportation of garbage and trash shall be clearly marked with the owner's name and telephone number in letters not less than two inches (2″) high.

G. Covers on Trucks: All vehicles used for the collection and transportation of garbage and trash shall be enclosed or covered with net, canvas or wire to prevent the contents thereof from falling or blowing into the public streets or adjacent property.

Section 2.14 Permit - Application; Information to be Shown

The application for a permit required by Section 2.13 of this ordinance shall set forth:

1. the name and address of the applicant;

2. the trade name under which the applicant does or proposes to do business;

3. the number of vehicles the applicant desires to operate, the class, size and design of each vehicle;

4. whether or not the applicant has been convicted of the violation of any felony or misdemeanor, whether or not the applicant, or any persons with whom he has been associated or employed, has a claim or judgment against him for damages resulting from the negligent operation of a vehicle;

5. the financial ability and responsibility of the applicant;

6. his ability to respond to damages in the event of damages to persons or damage to property by reason of the negligent operation of a vehicle on the streets or public thoroughfares of the City;

7. the nature and character of the service the applicant proposes to render;

8. the experience he has had in rendering such service;

9. the patrons for whom he proposes to render this service; and,

10. such other information as the City Council may require.

Section 2.15 **Class B License; Investigation of Application by City Council**

A. If the City Council fails to designate a Collector, or if the Collector fails to provide the services required of him, Council may choose to issue a Class B License or Licenses. Any person desiring a Class B License shall make application to the City Council, which shall make or cause to be made such investigation as it may consider necessary in order to determine whether public convenience and necessity requires the granting of such license, and whether the applicant is a fit and proper person to conduct such business. The City Council may obtain from the Texas Department of Public Safety or from a local law enforcement agency the record of any conviction of any person applying for said license. The City Council may disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license, because of a person's conviction of a felony or misdemeanor if the crime relates directly to the duties and responsibilities of one who engages in the business of the collection and transportation of garbage and trash for hire. If the City Council denies a person a Class B License or the opportunity to be examined for a Class B License because of the person's prior conviction of a crime and the relationship of the crime to the license, the City shall notify the person in writing:

1. of the reason for the denial or disqualification;

2. of the review procedure provided by Subsection B of this Section; and

3. of the earliest date that the person may appeal.

B. A person who has been denied a license or the opportunity to be examined for a license by the City Council may file an action in the District Court of Tarrant

County, Texas, for a review of the evidence presented to the City Council and its decision. The person must begin the judicial review by filing a petition with the court within thirty (30) days after the City Council's decision is final and appealable. This subsection shall not apply during the time City trash and garbage services are provided by a designated Collector with an exclusive contract with the City.

Section 2.16 **Permit - Nontransferable; Revocation**

All licenses, or any other authority granted by the City Council for the collection, removal and disposal of garbage and trash, shall be nontransferable and may be revoked by the City Council at any time after notice and hearing when it has been determined by the City Council that such action is necessary for the public health, safety and welfare, and that the license holder or other authorized service-provider has failed to meet the requirements of this ordinance or has failed to comply with conditions placed upon such license or authority pursuant to Section 2.22.

Section 2.17 **Permit - Kept in Possession of Person Rendering Service; Inspection**

In all cases where permits have been issued for the collection, removal and disposal of garbage and trash, such permit shall be in the possession of the person rendering such service and shall be subject to inspection at all times; if such permit is not in the possession of such person, such person will not be allowed to dispose of such garbage or trash within the City of Arlington.

Section 2.18 **Duty of Administrator as to Inspection and Enforcement of Ordinance**

In the event it is found that this Ordinance or any other applicable ordinance is being violated, appropriate timely action shall be taken by the Administrator to ensure full compliance with its provision.

Section 2.19 **City Disposal Site**

A. No persons other than those having valid licenses and those excepted by Section 2.13A from the licensing requirements shall use any garbage and trash disposal

site of the City for disposal purposes; provided, however, that persons on regular City of Arlington disposal service may use such facilities without license for dumping excess garbage, trash or brush.

B. Except as provided below, persons disposing of garbage, trash, brush or debris at any garbage or trash disposal site of the City, including persons holding a valid license for private collection and disposal of same, shall pay a disposal fee for each and every load of garbage, trash, brush or debris disposed or deposited in accordance with the schedule of charges set by resolution by the City Council. Said Charges shall not be applied to loads of waste materials which result from the activities of any department of the City government or loads which are disposed of pursuant to contract with the City where the City Council has waived such fees. Only Arlington residents, businesses and contractors that generate garbage, trash, brush or debris within the Arlington City Limits may use the City's disposal sites. Proof of residency or location of origin of such garbage, trash, brush or debris may be required before same will be allowed to be unloaded. Persons disposing of garbage, trash, brush or debris at a City garbage and trash disposal site shall dispose of same at locations within such disposal site designated by signage or as directed by City personnel.

C. 1. No person shall dispose of garbage, trash, brush or debris at a site other than a City designated garbage and trash site without a permit issued by the Community Services Department. (Amend Ord 06-083, 8/22/06)

2. Such permit shall be issued only if the materials and site are compatible with existing health and sanitation laws.

3. It is an affirmative defense to prosecution that the person is the owner of the site or has written consent from the owner and the items being disposed of or to be disposed of are rock or dirt.

Section 2.20 **<u>Wastes from Building Operations or Property Clean-Up</u>**

Debris, trash or brush resulting from construction, major cleanup or major remodeling and repair, resulting from a general cleanup of vacant or improved property just prior to its occupancy, or resulting from sizable amounts of trees, trash, brush and debris cleared from property in preparation for construction, will not be removed by the City as regular service performed by the designated City Collector. A person needing the removal of such debris, trash or brush shall have same removed at his expense, and such person shall not be required to have a license or permit to collect or transport such debris,

trash or brush. Although such person is not required to place any type of container on his property, any container used must be provided by the designated City Collector. Should the City's Collector supply a person a commercial-type container to dispose of debris, trash or brush, such person shall pay the disposal fee required by the City Collector to dispose of the waste in addition to the normal charge for such service.

Section 2.21 **Hazardous Wastes**

No hazardous waste, radioactive waste, or Class I industrial solid waste, as those terms are defined in the Municipal Solid Waste Management Regulations by the Texas Department of Health, shall be accepted for the disposal at the City garbage and trash disposal sites.

Section 2.22 **Emergency Powers**

A. Should the Administrator make a determination that:

1. the designated Collector, or any other person acting by authority of this Ordinance, is unable to provide the services required pursuant to this Ordinance, and

2. public health, safety and welfare requires that alternative garbage and trash hauling services be procured,

the Administrator may take whatever measures may be required to protect the public health, safety and welfare. Such measures may include contracting for services previously provided by the designated Collector issuing temporary permits or licenses or other measures determined by the Administrator to be required.

B. Any determination made pursuant to Section 2.22A above, must be in writing and must delineate the grounds for such determination.

C. Any contract, license or permit issued pursuant to Section 2.22A above, shall be temporary in nature, and shall in no event extend beyond twenty-one (21) days from the date issued or executed unless authorized by the City Council for an extended period within the twenty-one (21) days.

D. Any determination of the public necessity made by the Administrator, pursuant to Subsection A above, shall be reviewed by the City Council if a written request for such review is submitted by a party materially affected by the determination to the Administrator within five (5) days of the Administrator's written determination of public necessity. The Administrator shall promptly place the matter on the City Council agenda, and the City Council shall make an independent determination of public necessity [items A(1) and A(2), above]; and shall:

1. Affirm the findings of the Administrator and take such action as is necessary to protect the public interest; or

2. Modify the Administrator's findings and impose such conditions upon continued operation as may be necessary to protect the public interest; or

3. Reverse the Administrator's findings. However, reversal of the Administrator's findings shall not affect the terms of any action taken by the Administrator pursuant to Section 2.22A of this Chapter. (Amend Ord 88-46, 3/15/88)

ARTICLE III

HOSPITAL AUTHORITY

Section 3.01 Hospital Authority Created

There is hereby created, under Chapter 472, Acts of the 55th Legislature (Article 4437e Vernon's Texas Civil Statutes), a Hospital Authority in the City of Arlington, and said Authority shall comprise the territory included within the boundaries of said City. Said Authority shall be a body politic and corporate.

Section 3.02 Name

The name of said Authority shall be "Arlington Hospital Authority".

Section 3.03 Board of Directors

The Authority shall be governed by a Board of Directors consisting of seven (7) members to be appointed by the governing body of the City and they shall serve until their successors are appointed as hereinafter provided, subject to the provisions of Section 4 of the law cited in Section 3.01 above. The Board of Directors shall be divided into two classes. There shall be four (4) Directors in the first class and their terms shall expire on the 31st day of March 1959, and on the 1st day of July in odd numbered years thereafter. There shall be three directors in the second class and their terms shall expire on the 31st day of March, 1960, and on the 1st day of July in even numbered years thereafter.

ARTICLE IV

REGULATION OF FOOD ESTABLISHMENTS

Section 4.01 Texas Food Establishment Rules Adopted

A. The provisions of the current rules or rules as amended by the Texas Board of Health known as the Texas Food Establishment Rules ("TFER") found in Title 25, Texas Administrative Code, Chapter 228, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article IV, Regulation of Food Establishments, of the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987.

B. The intent and purpose of this Section is to provide for the inspecting of food establishments in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the handling of food in such establishments. The enforcement of this Article and the fixing of penalties shall be regulated in accordance with this Chapter. The adopted State regulations are available online at the websites of the Texas Secretary of State and the Texas Department of State Health Services. The Administrator may provide the current website addresses or adopted State regulations upon request.

C. In the event of a conflict between any provision of the Texas Food Establishment Rules and any provision of this Article, this Article shall prevail.

D. The adopting by reference of the Texas Food Establishment Rules, as provided in Section 4.01(A) above, as amended, is made subject to and is modified and amended as follows:

1. Title 25, Texas Administrative Code Section 228.2, Definitions, shall be amended as follows:

   a. The definition of the term "Mobile Food Unit" or "MFU" is amended to include the term "mobile food establishment."

   b. The definition of the term "Regulatory Authority" shall mean the department and officials designated by the City Manager to administer and enforce the provisions of this Article. The term also includes the term "Administrator" as defined in this Chapter.

2. Title 25, Texas Administrative Code Section 228.33 shall be amended to add the following provisions:

   a. After October 11, 2015, compliance with the proficiency and testing requirements of Section 228.33(a), as amended, will be demonstrated by presenting the Certified Food Protection Manager Certificate to the Regulatory Authority and payment of a fee set by resolution of the Arlington City Council.

   b. The permit holder of a new or existing Food Establishment that has changed ownership, or a Food Establishment whose Certified Food Protection Manager has transferred or resigned shall have thirty (30) days to comply with the requirements of this Section.

   c. The Administrator has determined that the following Food Establishments pose minimal risk of causing, or contributing to, foodborne illnesses based on the nature of the operation and extent of food operation, and are accordingly exempt from the requirements of amended Section 228.33: Food Establishments that serve only fountain drinks, coffee, popcorn, beef jerky, and/or nuts.

   d. In accordance with Title 25, Texas Administrative Code Section 228.243, as amended, if the Administrator determines that a health hazard or nuisance will not result, the Administrator may:

      1. Grant a variance from the general requirement that each food establishment have a separate Certified Food Protection Manager employed in a supervisory capacity; and

      2. Approve one Certified Food Protection Manager to be employed in a supervisory capacity for several Food Establishments located in the same building or venue and under the same ownership and management.

3. Title 25, Texas Administrative Code Section 228.66 shall be amended to add the following provision:

   The Administrator may require a food establishment to install a single designated food preparation sink depending on the volume and type of

food prepared at the food establishment, including fruits and vegetables. This sink must be clearly identified as a food preparation sink and may not be equipped with chemical dispensing systems or handwashing materials, except for fruit and vegetable washes. The requirements of this Subsection only apply to food establishments that are opened, constructed, or extensively remodeled on or after August 1, 2017.

4. Title 25, Texas Administrative Code Section 228.175 shall be amended to add the following provision:

   Handwashing sinks must be located a maximum of 20 feet from food preparation, food dispensing and warewashing areas, unless otherwise approved by the Administrator. The requirements of this Subsection shall only apply to food establishments that are opened, constructed, or extensively remodeled on or after August 1, 2017.

5. Title 25, Texas Administrative Code Section 228.221(a)(1) shall be amended to add the following provisions:

   a. A Central Preparation Facility from which a mobile food establishment operates shall issue service records for each mobile food establishment in a manner and form prescribed by the Administrator.

   b. The permit holder or person in control of a mobile food establishment shall keep and maintain Central Preparation Facility service records of the mobile establishment unit for a minimum of 30 days.

   c. The operator of a mobile food establishment must report to the Central Preparation Facility daily for service, disposal of wastewater and overnight parking. A person shall not park, stop, or stand a mobile food establishment on the premises of a residential property.

   d. Mobile food establishments shall operate from a Central Preparation Facility or other fixed food establishment and shall report to such location daily for supplies and for cleaning and servicing operations, in accordance with Title 25, Texas Administrative Code Section 228.221(b)(1), as amended.

6. Title 25, Texas Administrative Code Section 228.221(a)(6) shall be amended to add the following provision:

   A mobile food establishment must be constructed of commercial grade (National Scientific Foundation, "NSF") materials and equipment.

E. In accordance with Title 25, Texas Administrative Code Section 228.243, as amended, the Administrator may grant a variance by modifying or waiving the requirements of this Article if the Administrator determines that a health hazard or nuisance will not result from the variance.

Section 4.02 <u>Food Establishment - Permit Required</u>

A. No person or firm shall operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program in the City of Arlington without a valid permit issued by the Administrator.

B. In cases where a person or firm conducts, in a single building or at the same address, more than one (1) operation, vocation or business, whether such operation, vocation or business constitutes a Food Establishment or Temporary Food Establishment, then a separate permit shall be required for each such operation, vocation or business.

Section 4.03 <u>Food Handler - Permit Required</u>

A. Every Food Service Employee shall within thirty (30) days of the date of employment, be the holder of a current valid Food Handler Permit, issued upon completion of a Food Handler Education or Training Program accredited through the Texas Department of State Health Services or the American National Standards Institute.

B. No person who owns, manages or otherwise controls any Food Establishment shall permit any Food Service Employee to be employed therein who does not after thirty (30) days of employment possess a current valid Food Handler Permit, issued upon completion of a Food Handler Education or Training Program accredited through the Texas Department of State Health Services or the American National Standards Institute.

C. During all operating hours of a Temporary Food Establishment, there must be at least one Temporary Food Service Employee on site with a current Food Handler permit or a current Certified Food Protection Manager Certificate, pursuant to Title 25, Texas Administrative Code Section 228.222(a)(2), as amended.

Section 4.04 <u>Permits - Authority to Issue</u>

The Administrator is hereby authorized to issue permits to any person or firm making application for a Food Handler Permit, Food Establishment Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Seasonal Food Establishment Permit, Central Preparation Facility Permit, or Feeding Program Permit, in the City of Arlington, provided that only a person or firm that complies with the requirements of this Article shall be entitled to receive and retain such permit and provided that a person or firm applying for a Temporary Food Establishment Permit has not been issued the maximum number of Temporary Food Establishment Permits that are allowed to be issued to any person or firm during any one year period. The maximum number of Temporary Food Establishment Permits that may be issued shall be set by policy of the Administrator.

Section 4.05 <u>Permits - Application</u>

A. Application for such permit as required of this Article in Sections 4.02 and 4.03, as amended, shall be made in writing to the Administrator upon forms prescribed and furnished by the Administrator. If the application for permit is being made to operate in conjunction with a single event or is for a single event, a copy of all City of Arlington required event permits, if any, shall accompany the application.

B. A Food Establishment permit Plan Review fee shall be required for each Food Establishment or Central Preparation Facility that requires plans to be submitted according to Section 4.17, as amended.

C. A Food Establishment permit application fee shall be required for each Food Establishment or Central Preparation Facility that requires a new Food Establishment Permit or Central Preparation Facility Permit due to change of ownership, change in type of operation, or revocation, and a new application shall be made for a permit as required by Section 4.02, as amended. Whenever a new Food Establishment Permit or Central Preparation Facility Permit is required, the Regulatory Authority shall inspect the Food Establishment or Central Preparation

Facility prior to beginning operation to determine compliance with requirements of this Article.

D. A Mobile Food Establishment must apply for and obtain a new Mobile Food Establishment Permit each year. Prior to the issuance of an annual Mobile Food Establishment Permit, the Mobile Food Establishment must pay all required fees and pass an inspection to verify compliance with the provisions of this Article.

E. Failure to provide all required information, or falsifying information required on the application, may result in denial or revocation of the permit.

F. Applicants for a Temporary Food Establishment Permit must submit with their application a current Food Handler Permit or Certified Food Protection Manager Certificate for the person in control of the Temporary Food Establishment.

G. Applicants for a Mobile Food Establishment Permit must submit with their application a current Certified Food Protection Manager Certificate for the person in control of the Mobile Food Establishment.

H. Applicants and holders of a Food Establishment Permit must demonstrate that the food establishment is in compliance with all applicable requirements under federal, state, and local law, including those established by this Code of Ordinances. Failure to demonstrate such compliance with applicable laws under this Section may result in denial or revocation of the permit.

Section 4.06 <u>Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment or Central Preparation Facility Permits</u>

Every permit holder or person in charge shall at all times have available on the premises for inspection the Food Handler Permit of its employees, and shall at all times display in public view the Food Establishment Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Seasonal Food Establishment, Central Preparation Facility Permit, or Feeding Program Permit.

Section 4.07 <u>Permits - Duration</u>

A. Except as provided by Subsection (B), any Food Establishment Permit, Mobile Food Establishment Permit, or Central Preparation Facility Permit, granted under

the provision of Section 4.02, as amended, shall remain in full force and effect twelve (12) months from the date of issuance as long as the annual food establishment permit fee is paid unless sooner suspended or revoked for cause.

B. A Food Establishment Permit or Central Preparation Facility Permit that lapses for non-payment of the applicable annual permit fee will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

C. The following standards apply to permits for Temporary Food Establishments, Temporary Mobile Food Establishments, Seasonal Food Establishments, and Feeding Programs:

1. Temporary Food Establishment Permits and Temporary Mobile Food Establishment Permits shall remain in full force and effect for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration from date of issuance unless sooner suspended or revoked for cause.

2. Seasonal Food Establishment Permits shall remain in full force and effect for a period of time not less than fifteen (15) consecutive days and not to exceed 180 days in conjunction with or as the single event attracting one or more food vendors at a single building or address. Upon expiration of a Seasonal Food Establishment Permit, a period of thirty (30) days must pass before a person may apply for a new Seasonal Food Establishment Permit.

3. Feeding Program Permits for feeding programs approved by the Texas Department of Agriculture shall remain in full force and effect for a period of time not less than fifteen (15) consecutive days and not to exceed ninety (90) days. Upon expiration of a Feeding Program Permit, a period of 180 days must pass before a person may apply for a new Feeding Program Permit.

Section 4.08 <u>Permits - Non-transferable</u>

A. Every permit issued under the provisions of this Article shall be nontransferable and nonrefundable.

B. A Food Establishment Permit, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility Permit, or Feeding Program Permit shall be valid for and permit the operation of the establishment only at the location, for the type of food service, and for the permit holder for which granted.

C. A Mobile Food Establishment Permit shall be valid only for the mobile food establishment, the type of food service, and for the permit holder for which granted.

Section 4.09 <u>Suspension or Revocation of Food Handler's Permit</u>

The Administrator shall have the right to suspend or revoke a valid Food Handler Permit at any time the holder of such card becomes affected with any disease in a communicable form, becomes a carrier of any such disease or is suspected of being affected with or being a carrier of any such disease as stated in Title 25, Texas Administrative Code Section 228.256(b), as amended. Such suspension or revocation shall remain in effect until such person is released from restrictions or exclusions according to the Texas Health and Safety Code Section 438.033, as amended, and the conditions stated in Title 25, Texas Administrative Code Section 228.256(d), as amended.

Section 4.10 <u>Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program</u>

A. The Administrator may, without prior notice or hearing, suspend any permit granted under Section 4.02, as amended, to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program if the permit holder or person in charge does not comply with the requirements of this Article, or if the operation of the Food Establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Section 4.14, as amended. When a permit is suspended, food service operations shall immediately cease.

B. The Administrator may end the suspension at any time if reasons for suspension no longer exist.

C. Whenever a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program is required under the provisions of this Section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time. During the time a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The City of Arlington."

Section 4.11 <u>Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program</u>

The Administrator may, after providing notice of opportunity for a hearing according to Section 4.14, as amended, deny a permit to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility or Feeding Program, if the applicant for the permit does not comply with the requirements of this Article, or if the operation otherwise constitutes a substantial hazard to public health. Whenever a denial of a permit has become final, the applicant may make written application for a permit according to Section 4.05, as amended.

Section 4.12 <u>Revocation of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program</u>

The Administrator may, after providing opportunity for a hearing according to Section 4.14, as amended, revoke a permit granted under Section 4.02, as amended, for serious or repeated violations of any of the requirements of this Article, failure to maintain a Food Establishment permit or other permit due to failure to pay fees according to Section 4.07, as amended, or for interference with the Regulatory Authority in the performance of its duty. Prior to revocation, the Regulatory Authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten (10) days following service of such notice, unless a written request for a hearing is filed with the Administrator by the holder of the permit within such ten (10) day period. If no request

for hearing is filed within the ten (10) day period, the revocation of the permit becomes final. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit according to Section 4.05(C), as amended.

Section 4.13 <u>Service of Notices</u>

A notice provided for in this Article is properly served when it is delivered to the permit holder or person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the Administrator.

Section 4.14 <u>Notice of Appeal; Hearing</u>

A. Upon denial, suspension, or revocation of a permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program, the Regulatory Authority shall notify the applicant, permit holder, or person in charge, in writing, of the reason for which the permit is subject of denial, suspension, or revocation. The applicant, permit holder, or person in charge shall file a written request for a hearing with the Administrator within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial, suspension, or revocation is sustained.

B. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.

C. The hearings provided for in this Article shall be conducted by the Administrator or a designated hearing officer at a time and place designated by the Administrator or the hearing officer. Based upon the recorded evidence of such hearing, the Administrator or the designated hearing officer shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder of the permit by the Administrator or the designated hearing officer.

D. After such hearing, an applicant that has had a permit denied, suspended, or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.

E. An appeal shall not stay the denial or suspension of the permit unless otherwise directed by the Administrator.

Section 4.15 <u>Inspection Frequency</u>

A. An inspection of a Food Establishment shall be prioritized based upon assessment of the Food Establishment's history of compliance and potential risk factors for causing foodborne illness according to Title 25, Texas Administrative Code Section 228.249, as amended, and evaluations by the Regulatory Authority.

B. The Administrator shall classify Food Establishments as high priority, medium priority, or low priority, according to the risk factors deemed relevant to the operation by Title 25, Texas Administrative Code Section 228.249, as amended.

C. Additional inspections of the Food Establishment shall be performed as often as necessary for the enforcement of this Article.

D. <u>Inspections</u>.

1. The Regulatory Authority may conduct inspections of a food establishment whenever necessary to enforce any of the provisions of this Article or if there is probable cause to believe that a violation of this Article exists at a food establishment.

2. The Regulatory Authority shall have access to the food establishment and its premises as provided by Title 25, Texas Administrative Code Section 228.250, as amended, and through every remedy provided by law.

E. Permit holders shall display in public view at all customer entrances a copy of the last routine inspection report.

Section 4.16 <u>Disposition of Unsafe, Adulterated, or Contaminated Food</u>

A. In accordance with Title 25, Texas Administrative Code Section 228.81, as amended, food that is unsafe, adulterated, or contaminated shall be discarded.

B. If the Regulatory Authority determines that any food is unsafe, adulterated, or contaminated, the Regulatory Authority may issue a written order that the food be discarded by immediately denaturing and rendering the food inedible. The

Regulatory Authority shall provide a copy of the written order to the owner, manager or person in charge of the food establishment.

C. If the owner, manager, or person in charge of the food establishment does not discard the food subject to an order to discard, the Regulatory Authority may seize and discard such food pursuant to a warrant or any other remedy provided by law.

D. Food that is subject to an order to discard shall not be used, served, or offered for public consumption.

E. The owner, manager, or person in control of any food that was ordered to be discarded may appeal the order to the Administrator. The Administrator may designate a hearing officer to conduct hearings under this Section. In order to appeal, the owner, manager, or person in control of such food must file a written request for a hearing with the Administrator within ten (10) days of the order being issued to discard the food.

F. If any food that is subject to an order to discard has not yet been discarded at the time that a hearing is requested, the Administrator may, upon request, permit the food to be stored at an approved location, pending the outcome of the hearing, unless the Administrator determines that storage of such food is not possible without risk to the public health, in which case the food may be seized and discarded pursuant to Subsection (C).

G. Upon a timely request for a hearing under Subsection (E), the Administrator shall schedule a hearing within twenty (20) days of the written request and provide notice to the person who requested the hearing. At the hearing, if the Administrator or designated hearing officer determines that the food subject to an order to discard was unsafe, adulterated or contaminated, the Administrator or designated hearing officer shall:

1. Affirm the order of the Regulatory Authority; and

2. Order that the food be discarded if the food is being stored pursuant to Subsection (F).

H. The Regulatory Authority may examine, collect samples, and detain food in order to enforce the provisions of this Article, as provided by Title 25, Texas Administrative Code Section 228.255, as amended.

Section 4.17 <u>Review of Plans</u>

A. Whenever a Food Establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a Food Establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the Administrator for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Administrator shall approve the plans and specifications if they meet the requirements of this Article. No Food Establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the Administrator.

B. Whenever plans and specifications are required to be submitted under this Section, the Regulatory Authority shall inspect the Food Establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this Article.

C. Failure to follow the approved plans and specifications may result in a permit denial, suspension, or revocation.

Section 4.18 <u>Operation of Mobile Food Establishment</u>

A. Any person or firm who operates a mobile food establishment as defined in this Article shall not operate such establishment within one block of any block containing an elementary school, junior high school, or middle school.

B. No mobile food establishment may enter any City park containing a concession stand for the purpose of vending without first receiving written permission from the Director of the Parks and Recreation Department or the Director's designee.

C. A mobile food establishment shall not stop to sell or serve food for a period of time exceeding thirty (30) minutes.

D. A mobile food establishment may only operate in excess of thirty (30) minutes when it is operating:

1. in conjunction with a City-sponsored event or a permitted event authorized by the Construction Chapter, as amended, and only for the duration of that event; or

2. as an accessory use to an existing business with a valid mobile food establishment certificate of occupancy, as authorized by the Unified Development Code, as amended.

E. Food for public consumption must be prepared and stored at the central preparation facility or on the mobile food establishment. Food for public consumption may not be prepared or stored at any other location, including but not limited to an unpermitted or residential kitchen, pursuant to Title 25, Texas Administrative Code Section 228.62(a), as amended.

F. Only food items previously approved by the Regulatory Authority may be sold on a mobile food establishment. Non-food items such as toys, fireworks, or any hazardous substances such as stink bombs are prohibited.

Section 4.19 <u>Fees and Policies</u>

A. The various requirements for review of plans, permits, licenses, certificates, inspections, reinspections and such administrative function of this Article shall require the payment of fees, submitted to the Administrator, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated Food Establishments or public school cafeterias. Fees are not to be transferable or refundable.

B. The Administrator may establish policies and procedures consistent with this Article to implement the provisions of this Article.

Section 4.20 <u>Responsibilities of the Owner, Manager, or Person-in-Charge</u>

The permit holder, owner, manager, or person-in-charge of a food establishment shall operate the facility in compliance with the provisions of this Article and other applicable sections of the Code of the City of Arlington and shall respond within the specified schedule of time when any deficiency or violation has been identified by the Regulatory Authority. (Amend Ord 17-038, 6/27/17)

ARTICLE V

CHILD CARE CENTERS

Section 5.01 Purpose

The purpose of this Article is to provide minimum standards for the operation of child care centers in the City of Arlington to protect the health, safety and welfare of the occupants and patrons.

Section 5.02 Texas Department of Family and Protective Services Regulations Adopted

A. The provisions of the current rules or rules as amended, known as the "Minimum Standards for Child-Care Centers", found in Title 40, Texas Administrative Code, Chapter 746, and "Minimum Standards for School-Age and Before or After School Programs" found in Title 40, Texas Administrative Code, Chapter 744, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article V, Child Care Centers, of the "Health and Sanitation" Chapter of the Code of the City of Arlington.

B. The adopted State regulations are available online at the websites of the Texas Secretary of State and the Texas Department of Family and Protective Services. The Administrator may provide the current website addresses or adopted State regulations upon request.

Section 5.03 Administration: Permit, Issue, Inspection, Compliance, Enforcement

A. The Administrator is hereby authorized to issue a Child Care Center Permit in the City of Arlington when he finds that the permit applicant has complied with the requirements of this Article and other applicable sections of the Code of the City of Arlington. The Administrator shall cause the child care center to be inspected annually to ensure that the facilities, grounds and equipment are maintained in compliance with this Article and in a safe and sanitary condition for the welfare of the occupants and patrons of the child care center, along with appropriate directives to resolve deficiencies observed in the inspections. The Administrator shall have the authority to enforce the provisions of this Article and to issue citations for violation of any of its provisions.

B. The permit holder and/or the person in charge of the child care center shall operate the facility in compliance with the provisions of this Article and other applicable sections of the Code of the City of Arlington and shall respond within the specified schedule of time when any deficiency or violation has been identified by the Administrator.

Section 5.04 <u>Permit Required</u>

A. No person, firm or corporation shall operate a child care center in the City of Arlington unless and until a permit for such purposes has been issued by the Administrator.

B. For purposes of this Article, the term "child care center" is hereby defined as a facility where child care occurs. The term "child care center" includes the following terms:

1. "Child-care facility", "Day-care center", "Before-school or after-school program", and "School-age program," as defined by Texas Human Resources Code Section 42.002, as amended;

2. "Child-care center" as defined by Title 40, Texas Administrative Code Section 746.123; and

3. "Before or after-school program" and "School-age program," as defined by Title 40, Texas Administrative Code Section 744.123.

C. For purposes of this Article, the term "child care center" does not include a facility that is exempt from obtaining a child care facility license by the Department of Family and Protective Services under Texas Human Resources Code Section 42.041, as amended.

D. For the purposes of this Article, child care centers located in public school facilities operated by a local independent school district, which are exempt from an annual sanitation inspection pursuant to Title 40, Texas Administrative Code Section 746.3401, as amended, are exempt from obtaining a child care center permit under this Chapter.

Section 5.05 <u>Permit Application</u>

A. Application for a permit to operate a child care center shall be submitted by the owner on a form specified by the Administrator.

B. The permit application shall state the owner's name, address and telephone number.

C. The permit application shall indicate the name, street and mailing addresses of the child care center, status of food service provided for children, and days and times of operation. The permit application shall include the operational policies required for:

1. Child-Care Centers under Title 40, Texas Administrative Code Section 746.501, as amended; or

2. School-Age and Before or After-School Programs under Title 40, Texas Administrative Code Section 744.501, as amended.

D. A Child Care Center permit application fee shall be required for each child care center that requires plans to be submitted according to Section 5.06, as amended.

E. Upon change of ownership, a change of ownership fee is due and a new application shall be made for a permit as required in this Section. The Administrator or the Administrator's designees shall inspect the Child Care Center prior to its beginning operation to determine compliance with the requirements of this Article. Failure to comply with the requirements of this Article may result in denial, suspension, or revocation.

F. The owner shall affirm that a Certificate of Occupancy has been applied for with the City of Arlington, its issuance contingent in part on the successful application for a child care center permit.

G. The owner shall affirm that a Child Care Center license has been applied for with the Texas Department of Family and Protective Services Child Care Licensing Division. Issuance of a City of Arlington Child Care Center Permit is contingent upon a successful application for a Child Care Center license issued by the Department of Family and Protective Services.

H. The permit application shall include a certificate of liability insurance coverage that complies with Section 5.22, as amended.

I. Failure to provide all required information, or falsifying information required on the application may result in denial, suspension, or revocation of the permit.

Section 5.06 <u>Review of Plans</u>

A. Whenever a Child Care Center is constructed or extensively remodeled and whenever an existing structure is converted to use as a Child Care Center, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the Administrator for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the layout and arrangement of any proposed food service areas, indoor and outdoor areas to be used for the child care center including mechanical plans; construction materials; plumbing fixtures; the type of fixed equipment; and playground and fall zone specifications. The Administrator shall approve the plans and specifications if they meet the requirements of this Article.

B. No Child Care Center shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the Administrator. The approved plans and specifications must be followed in construction, remodeling, or conversion.

C. Whenever plans and specifications are required to be submitted, the Administrator or the Administrator's designee shall inspect the Child Care Center prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this Article.

D. Failure to follow the approved plans and specifications may result in permit denial, suspension, or revocation.

Section 5.07 <u>Permit Duration and Renewal</u>

A Child Care Center Permit shall be valid for one (1) year from the date of issuance, unless suspended or revoked as hereinafter provided. Any changes to the days or hours of operation, to the ages of children to be cared for, or indoor or outdoor space used for the purpose of providing child care services must be submitted in writing to the Administrator within forty-eight (48) hours of the change taking effect. Incorrect information in records previously submitted to the Administrator for the child care center shall be corrected before the permit may be renewed. A Child Care Center Permit that

lapses for non-payment of the annual Child Care Center Permit fee will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

Section 5.08 <u>Permit Renewal Denial, Suspension and Revocation</u>

A. The Administrator is hereby authorized to deny, suspend, or revoke a Child Care Center Permit for a violation of any provision of this Article. Denial, suspension or revocation of a permit shall be effected by notice, in writing, setting forth the reasons therefore and specifying any requirements or schedules of time for further action related to the suspension or revocation.

B. The following actions shall constitute cause for denial or suspension:

1. Failure to respond within specified limits of time regarding violations observed during an inspection of the premises and operation.

2. Any violation of this Article which poses a safety or public health hazard to any child entrusted to the care of the child care center.

3. Failure to keep continually in force the required liability insurance, according to Section 5.22, as amended.

4. Failure to possess a valid Child Care Center License or Accreditation issued by Texas Department of Family and Protective Services according to Chapter 42 of the Texas Human Resources Code, as amended.

5. Failure to meet the requirements of Chapter 42 of the Texas Human Resources Code, as amended, related to the requirements for criminal history check and background search of central registry of reported cases of child abuse for all persons who are present while children are in care.

C. The following actions shall constitute cause for revocation:

1. Failure to correct a violation following suspension of the permit.

2. Knowingly submitting false information, or allowing false information to be submitted, in the application for a permit.

D. Whenever a permit is denied, suspended or revoked, the permit holder or person in charge shall cease operations. Parents must be immediately notified of the denial, suspension, or revocation so that alternative child care arrangements can be made. Operations shall not resume until such time as a reinspection determines that conditions no longer exist causing denial or suspension. The permit holder shall notify the Administrator when the conditions causing the denial or suspension have been corrected. The center may not resume operations until the Administrator verifies that the conditions have been corrected and written authorization given. A sign shall be posted by the Administrator at the entrance of the building clearly visible to a reasonably observant person which states "Closed By The City of Arlington". Signs posted by the Administrator shall not be altered or removed unless authorized by the Administrator.

E. A permit that has been revoked shall not be reissued.

Section 5.09 <u>Display of Permit</u>

The Child Care Center Permit shall be conspicuously posted on an inside wall of the main facility and shall be continuously displayed in public view.

Section 5.10 <u>Child Care Workers Permit</u>

A. Every person owning, employed by or otherwise connected with a child care center whose work involves caring for children shall within thirty (30) days of the date of employment, be the holder of a current Child Care Workers Permit, issued by the Administrator.

B. No person who owns, operates, or otherwise controls any child care center shall permit any person to be employed therein whose work involves caring for children who does not after thirty (30) days of employment possess a current valid Child Care Workers Permit issued by the Administrator.

C. <u>Child Care Workers Training Course</u>. In order to receive a Child Care Workers Permit, every person shall be required to satisfactorily complete a Child Care Workers Training Course conducted by an instructor who has been approved by the Administrator pursuant to Section 5.11, as amended. This requirement must be met upon expiration of a permit and upon application for a new permit.

D. Duration and Renewal. A Child Care Workers Permit shall be valid for three (3) years from the date of its issue, unless revoked as herein provided.

E. Child Care Workers Permit Suspension – Revocation. The Administrator shall have the right to suspend or revoke a valid Child Care Workers Permit at any time the holder of such permit violates any of the provisions of this Article.

F. Display of Child Care Workers Permit. The original current Child Care Workers Permit shall be maintained at the child care center for each of its employees or staff members and shall be available for review upon the request of the Administrator.

Section 5.11 Child Care Worker Training Course and Instructor Certification

A. A currently State certified Child Care Director or a representative from an authorized training organization may apply to the Administrator for certification as an approved instructor of the Child Care Workers Training Course. Application for certification shall be submitted on the form specified by the Administrator. The application shall be submitted with the proposed class curriculum and, if applicable, a copy of the applicant's valid State certification as a Child Care Director.

B. Approved class curriculum shall include instruction on the following health and sanitation topics:

1. Handwashing;

2. Handling of food;

3. Diaper changing and toileting procedures;

4. Cleaning and sanitizing methods;

5. Reportable illnesses;

6. Child illness regulations and policies;

7. Employee illness regulations and policies; and

8. Indoor and outdoor safety checks.

C. Upon approval of the proposed curriculum and verification of the information on the application, the Administrator shall certify the applicant as an approved instructor. Failure to provide all required information including material required for the approval of the curriculum or falsifying information required on the application may result in denial, suspension or revocation of the certification pursuant to the provisions provided in this Chapter. A City of Arlington Child Care Workers Training Course Instructor Certification shall be valid for five (5) years from the date of issuance unless suspended or revoked for violation of any of the provisions of this Article. Suspension or revocation shall occur pursuant to the provisions in this Chapter.

Section 5.12 <u>Appeal of Permit or Certification - Denial, Suspension or Revocation</u>

A. Upon finding that the Child Care Center Permit, Child Care Workers Permit, or Child Care Workers Training Course Instructor Certification should be denied, suspended or revoked, the Administrator shall, within ten (10) days of the finding, notify the owner or person in charge in writing, specifying the result of the finding and the reasons therefore. The applicant may request a hearing before the Administrator.

B. Notice of appeal shall be filed within twenty (20) days of the date of the written notice of denial, suspension or revocation.

C. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.

D. After such hearing, the owner or the person in charge that has had a permit or certification denied, suspended or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.

E. An appeal shall not stay the denial, suspension or revocation of a license, permit or certification unless otherwise directed by the Administrator.

Section 5.13 <u>Permits - Non-transferable</u>

No permit issued under this Article shall be used for any purpose other than the intent for which it was issued, nor be transferred or assigned to, or in any manner used by, any person, firm or corporation other than the one to whom issued by the Administrator.

Section 5.14 Fees

A. The various requirements for review of plans, permits, licenses, certificates, inspections, reinspections, and such administrative function of this Article shall require the payment of fees, submitted to the Administrator, in an amount approved by resolution of the Arlington City Council. Fees shall not be refundable or transferable.

B. For the purposes of fees, child care centers with a Food Establishment, as defined in the Texas Food Establishment Rules as adopted by Article IV of this Chapter, must obtain a permit for a "Child Care Center with Food Service."

Section 5.15 Food Service in Child Care Centers

A child care center in which food is prepared or served for human consumption shall comply with the pertinent food service regulations contained in Article IV of this Chapter. The fees set forth in Article IV for Food Establishments shall not be required for the food service portion of a child care center. A child care center worker who has been issued a Child Care Workers Permit need not also obtain a Food Handler's Permit, except as required by Article IV of this Chapter and the Texas Food Establishment Rules. The director of a child care center or the staff person primarily responsible for food preparation in the child care center kitchen is required to hold a Certified Food Protection Manager Certificate from a provider accredited by the Texas Department of State Health Services.

Section 5.16 Plumbing and Toilet Facilities

A. Plumbing and toilet fixtures shall be provided in accordance with the Plumbing Code of the City of Arlington.

B. The temperature of any water available to the occupants or patrons of a child care center shall not exceed 120° Fahrenheit.

C. Each lavatory shall be provided with both hot and cold water, tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing or metering faucet shall provide a flow of water for at least twenty (20) seconds without the need to reactivate the faucet.

D. Handwashing sinks may not be used for purposes other than handwashing, including but not limited to rinsing items that may be placed in a child's mouth (such as pacifiers or teething rings) and obtaining water for consumption or food preparation.

E. Toilet tissue, paper towels or clean cloths and soap shall be available at all times for the use of occupants and patrons. The use of common towels is prohibited. Handwashing soap may not be diluted with water.

F. Toilet facilities must be maintained clean and sanitary.

G. Toilet facilities including diaper changing areas must be constructed with smooth, easily cleanable walls, floors and work surfaces.

Section 5.17 <u>Diaper Changing Provisions</u>

A. When diapering a child, a separate diaper changing station such as a changing table, counter-top, or other elevated structure must be used. The use of the floor or crib for diaper changing is prohibited.

B. The diapering surface must be smooth, easily cleanable, and in good repair, free of cracks and tears. The diapering surface must be cleaned by removing all visible debris and waste, and then sanitized using a disinfectant registered with the Environmental Protection Agency ("EPA"), such as Quaternary Ammonia or a chlorine bleach solution, after changing each child. Disinfecting solutions shall be prepared and used as provided by Title 40, Texas Administrative Code, Chapter 744, Subchapter K, Health Practices, as amended, and Chapter 746, Subchapter R, Health Practices, as amended. Bleach measurement shall be adjusted to equal 200PPM when tested on chlorine bleach paper testing strips. EPA-registered disinfectants shall be used in accordance with the manufacturer's instructions printed on the product label.

C. Diaper changing areas must be provided with a properly designed and maintained hand washing lavatory equipped with both hot and cold water, tempered by means of a mixing valve or combination faucet, soap and sanitary single use towels.

D. Diaper pails or trash cans equipped with tight-fitting lids shall be provided for disposal of soiled diapers. Diaper pail liners or trash can liners shall be changed as regularly as needed to reduce offensive odors.

E. Diaper changing procedures shall be posted at all diaper changing stations.

F. Diapering and food preparation areas shall be physically separate from one another, and their surfaces shall be kept clean, uncluttered, and dry. The diapering surface shall only be used for diapering a child.

Section 5.18 <u>Playgrounds and Outdoor Activity Spaces</u>

A. A playground or other outdoor activity space shall provide not less than 100 square feet of area for each child occupying the area at one time.

B. A playground or other outdoor activity space shall be surrounded by a fence not less than four feet (4′) in height, unless the child care center is exempt from the minimum fencing requirements of Title 40, Texas Administrative Code Section 744.2953, as amended. Construction of fences at child care centers must comply with all applicable provisions of this Code of Ordinances, including the Unified Development Code standards related to the minimum and maximum height of fences as well as materials used to construct fences. Openings in fences shall not present an entrapment hazard. An opening in a fence presents an entrapment hazard if the opening is greater than three and one-half (3.5) inches and less than nine (9) inches.

C. Any pool, pond or other body of water greater than two feet (2′) in depth shall be separated from a playground or other outdoor activity space by a fence not less than six feet (6′) in height, constructed so that children cannot easily climb over it, with self-closing, self-latching gate(s). Gates to the pool enclosure must be kept locked at all times that the pool is not in use. In all other ways, the pool must comply with the Construction Chapter of the Code of the City of Arlington and all applicable State laws relative to pool construction and safety, including the Texas Department of State Health Services Standards for Public Swimming Pools and Spas. All pools used by the children must comply with the pertinent regulations contained in Article VII of this Chapter for public swimming pools, spas, and public interactive water features and fountains. Permits are required, as set forth in Article VII of this Chapter, and all fees must be paid.

D. Outdoor activities and field trips where children may encounter a pool, a pond or other body of water shall be attended by an adult competent in water-safety procedures, as certified by the American Red Cross, and trained in life-saving techniques stated in Section 5.20(C), as amended.

E. Tires and other outdoor equipment must be provided with adequate drainage to prevent breeding of mosquitoes.

Section 5.19 <u>Release of Child</u>

Child care centers shall comply with all required standards of Title 40, Texas Administrative Code, Chapters 744 and 746, as amended, related to the release of children from a Child Care Center.

Section 5.20 <u>Safety and Sanitation</u>

A. A child care center shall not be located in a mobile home or in any part of a building other than the ground level unless approved by the Arlington Fire Department.

B. Smoke detectors or other approved fire alarm equipment shall be installed to provide an effective warning to the building occupants of fire in any kitchen area, sleeping area or any area containing mechanical equipment. Centers with fifty (50) or more occupancy must install a fire alarm system that complies with the Fire Prevention Chapter of the Code of the City of Arlington for child care centers. Smoke detectors may be used in place of fire alarm systems in centers with less than fifty (50) occupants.

C. One (1) staff per group of children must have current certification within the last two (2) years in first aid with rescue breathing and choking. One (1) staff per facility (as well as one (1) staff per group of children away from the facility) having current training within the last two (2) years in cardiopulmonary resuscitation ("CPR") for infants and children must be present at all times the center is in operation. Certificates evidencing such training shall be available upon request from any City official.

D. The child care center shall take all necessary measures to maintain the structure and grounds free of insect and rodent infestation. Pest control services shall be provided by an individual or business that is properly licensed by and in compliance with the Texas Structural Pest Control Board requirements. Pest control records must be maintained by the child care center for a period of two (2) years and must be available for review by the Administrator.

E Unsafe children's products, including those that have been recalled by the United States Consumer Product Safety Commission, shall not be used at a child care center, pursuant to Title 40, Texas Administrative Code Sections 746.4133 and 746.4135, as amended.

F. The interior of the building shall be maintained free of debris and filth. Walls and floors shall be maintained in good repair, structurally sound and free of holes, dangerous protrusions or other obvious hazards. The floors including carpeting, tile or other coverings shall be kept clean and free of accumulation of debris and filth.

G. Grounds around the child care center must be maintained free of debris, unnecessary items or any harborage for rodents, mosquitoes, or other pests.

H. The following areas at a Child Care Center shall be cleaned, sanitized, disinfected, laundered and/or vacuumed as described in the table below.

1. Definitions. The following terms, when used in this Section, shall have the meanings respectively ascribed to them in this Section.

a. "Clean" – Physically remove all dirt and contamination, oftentimes using soap and water. The friction of cleaning removes most germs and exposes any remaining germs to the effects of a sanitizer or disinfectant used later.

b. "Disinfect" – Destroy or inactivate most germs on any inanimate object, but not bacterial spores. Disinfecting may be appropriate for diaper tables, door and cabinet handles, toilets, and other bathroom surfaces.

c. "Germs" – Microscopic living things that causes disease such as bacteria, viruses, parasites and fungi.

d. "Sanitize" – Reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Sanitizing may be appropriate for food service tables, high chairs, toys, and pacifiers. The term shall also include the definition of "sanitize" as defined by Title 40, Texas Administrative Code Sections 744.123 and 746.123, as amended.

2. The appropriate test strips shall be available on site to test cleaning solutions.

3. Cleaning, Sanitizing, and Disinfecting Frequency Table.

Cleaning, Sanitizing, and Disinfecting Frequency Table			
Areas	**Before Each Use**	**After Each Use**	**As Needed and End of the Day**
Food Areas- Sanitize at 50ppm bleach water or as directed by EPA registered product label			
Food preparation surfaces	Clean, Sanitize	Clean, Sanitize	
Eating utensils & dishes		Clean, Sanitize	
Tables & highchair trays	Clean, Sanitize	Clean, Sanitize	
Toilet & Diapering Areas- Disinfect at 200ppm bleach water or as directed by EPA registered product label			
Changing tables		Clean, Disinfect	
Potty chairs		Clean, Disinfect	
Handwashing sinks & faucets			Clean, Disinfect
Countertops			Clean, Disinfect
Toilets			Clean, Disinfect
Diaper pails			Clean, Disinfect
Floors			Clean, Disinfect
Child Care Areas- Sanitize at 100ppm bleach water or as directed by EPA registered product label			
Toys		Clean	Clean, Sanitize, Launder
Floors			Clean, Sanitize, Vacuum

Section 5.21 <u>Provisions for the Control of Communicable Disease</u>

A. All Staff shall clean their hands and exposed portions of their arms with a cleaning compound by vigorously rubbing together the surfaces of their lathered hands and arms for at least twenty (20) seconds and thoroughly rinsing with clean water and shall pay particular attention to the areas underneath the fingernails and between the fingers. Staff shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

B. Staff must wash before preparing or serving food, before feeding a child or handling food, after caring for a sick child, after diapering, after assisting a child with toileting, after coughing and sneezing, after cleaning soiled surfaces, and after engaging in other activity that contaminates the hands.

C. Staff must assist children to ensure that their hands are thoroughly washed before eating, after using the toilet, after a diaper change, after playing outdoors, after playing with pets, after coughing or sneezing, or after any activity that contaminates the hands.

D. Permanent signs shall be conspicuously posted by all handsinks including those in the restrooms, food service areas, and classrooms, so as to be noticed by normally observant individuals, reminding all persons to wash hands. Permanent signs, including pictorial messages, shall be posted for communication with children unable to read.

E. Employees and staff members shall have received a Mantoux tuberculosis skin test, with negative results, within the last 2 years. In the case of a positive result or when a Mantoux tuberculosis skin test cannot be administered, a tuberculosis examination shall be conducted by a physician and the person found not to be a risk for the communication of tuberculosis. Subsequent testing may be required by the health authority if the person is exposed to tuberculosis.

F. Persons whose behavior and/or health status poses an immediate threat or danger to the health or safety of the children must not be present when children are in care at a child care center, in accordance with Title 40, Texas Administrative Code Sections 744.2603 and 746.3703, as amended.

G. Children who are ill may not attend a Child Care Center as provided by Title 40, Texas Administrative Code Sections 744.2571-744.2575 and 746.3601-746.3605, as amended.

H. In accordance with Title 40, Texas Administrative Code Sections 744.2576 and 746.3606, as amended, a child who was ill may return to a Child Care Center when:

1. The child is free of symptoms of illness for 24 hours; or

2. The child's parent or guardian provides a health-care professional's statement that the child no longer has an excludable disease or condition.

Section 5.22 <u>Liability Insurance</u>

The child care center applicant must have liability insurance coverage according to Chapter 42 of the Texas Human Resources Code, as amended. Proof of the required insurance coverage must be presented to the Administrator upon request and upon application for or renewal of a Child Care Center Permit. (Amend Ord 17-038, 6/27/17)

ARTICLE VI

AMBIENT AIR AND EMISSION STANDARDS

(Repealed)

ARTICLE VII

PUBLIC POOLS, SPAS, AND PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS

Section 7.01 Adoption of the Texas Standards for Public Swimming Pools, Spas, and Public Interactive Water Features and Fountains

A. The provisions of Texas Health and Safety Code Sections 341.064, 341.0645, and 341.0695, as amended, and the current regulations enacted by the Texas Department of State Health Services Standards for Public Pools, Spas, and Public Interactive Water Features and Fountains found in Title 25, Texas Administrative Code, Chapter 265, Subchapter L and Subchapter M, as amended, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of this Article. The term "this Article" includes the adopted regulations, as amended.

B. Scope.

1. The intent and purpose of this Article is to provide requirements for the inspection and operation of public pools, spas, and public interactive water features and fountains in the City of Arlington, Texas, or its jurisdiction, and to provide for the issuance or revocation of permits for the operations of public pools, spas, and public interactive water features and fountains.

2. This Article does not govern residential pools and spas as defined by Title 25, Texas Administrative Code, Chapter 265, Subchapter L, as amended. The Construction Chapter, as amended, governs residential pools and spas.

3. Pool and Spa Enclosure Requirements.

a. This Article does not govern pool and spa enclosure requirements.

b. Residential Pools and Spas. The Construction Chapter, as amended, applies to residential pools and spas and any other pool and spa not considered a public pool or spa under this Article.

c. Public Pools and Spas. All public pools and spas must comply with Texas Health and Safety Code Chapter 757, as amended, including the regulations enacted pursuant to Texas Health and

Safety Code Chapter 757.011, as amended, which are provided in Title 25, Texas Administrative Code Section 265.200, as amended.

4. This Article does not govern the building permit process.

C. Other Applicable Laws.

1. If there is any conflict between any provision of the State statutes and regulations adopted pursuant to authority granted by Texas Health and Safety Code Section 341.081, as amended, and any provision of this Article, the provisions of this Article, which are more stringent than the incorporated State statutes and regulations, shall prevail.

2. Texas Accessibility Standards Compliance. It is not intended for this Article to negate any provision of the Texas Accessibility Standards. If there is a conflict with the Texas Accessibility Standards, the Texas Accessibility Standards shall prevail.

3. Americans with Disabilities Act ("ADA") Compliance. It is not intended for this Article to conflict with any provision of the Americans with Disabilities Act ("ADA"). If there is a conflict between this Article and the ADA, the ADA shall prevail.

4. Virginia Graeme Baker Pool and Spa Safety Act ("VGBA") Compliance. In addition to the requirements of this Article or other applicable City Ordinances or state laws and regulations, all public pools, spas, and PIWFs must comply with the Virginia Graeme Baker Pool and Spa Safety Act ("VGBA"), as amended. If a particular provision of the VGBA, as amended, is more stringent than a particular provision of this Article or applicable City Ordinance or state law, then the VGBA, as amended, shall prevail. If the VGBA, as amended, has any provision that is not addressed by this Article, including state law and other City Ordinances, then this Article shall be interpreted to include that particular VGBA provision as an additional requirement.

5. Compliance with other City Ordinances. The provisions of the Construction Chapter, the Electrical Chapter, the Nuisance Chapter, the Plumbing Chapter, the Backflow Prevention Chapter, the Uniform Development Code, and any other applicable City Ordinance, including any codes or standards adopted as amended, apply in addition to the provisions of this Article. If there is any conflict between a provision of

this Article and the provisions of other City Ordinances, including codes or standards adopted and amended by other City Ordinances, the more stringent provision shall prevail.

D. The State statutes referenced in this Article are available at the website of the Texas Legislature. The adopted State regulations are available online at the websites of the Texas Secretary of State and the Texas Department of State Health Services. The Administrator may provide the current website addresses or adopted State regulations upon request.

E. Amendments and Additions. The adoption by reference of the State regulations, as provided in Subsection (A) above, is made subject to the following amendments and additions, and is modified and amended as follows:

1. Definitions.

a. "Certified Operator Course" shall mean a course described by Title 25, Texas Administrative Code Section 265.203(a), as amended, for the operation of a public pool or spa, or a course described by Title 25, Texas Administrative Code Section 265.303(a), as amended, for the operation of a PIWF.

b. "Certified PIWF Operator" means a person who has attended a training course and received certification for the operation of a public interactive water feature or fountain in accordance with Title 25, Texas Administrative Code Section 265.303(a), as amended.

c. "Certified Pool Operator" means a person who has attended a training course and received certification for pool or spa operation in accordance with Title 25, Texas Administrative Code Section 265.203(a), as amended.

d. "Closure Order" shall mean an order from the Administrator or the Administrator's designee ordering the closure of a public pool, spa, or public interactive water feature or fountain for failing an inspection or permit requirements or for violating State or local law relevant to public pools, spas, or public interactive water features or fountains.

e. "Owner or Operator" shall have the same meaning as the definition of "owner/operator" in Title 25, Texas Administrative Code Section 265.182(94), as amended, and the definition of "Owner or Operator" in Title 25, Texas Administrative Code Section 265.302(42), as amended.

(1) The definition of "owner/operator" in Title 25, Texas Administrative Code Section 265.182(94), as amended, applies to the ownership or operation of a Public Pool or Spa.

(2) The definition of "owner or operator" in Title 25, Texas Administrative Code Section 265.302(42), as amended, applies to the ownership or operation of a PIWF.

(3) In addition, the term "permit holder," as defined in Article I of this Chapter shall apply as an additional person who is considered to be an Owner or Operator of a Public Pool, Spa, or PIWF.

f. "Operating permit" shall mean a permit that allows the operation and use of a public pool, spa, or PIWF.

g. "Public Interactive Water Feature or Fountain" shall mean an "interactive water feature or fountain" as defined in Texas Health and Safety Code Section 341.0695, as amended, and any further definition or example defined as a "public interactive water feature or fountain" in Title 25, Texas Administrative Code, Chapter 265, Subchapter M, as amended. In this Article, the term "PIWF" shall mean a Public Interactive Water Feature or Fountain as defined by this Section.

h. "Public Pool" shall include the term "pool" as defined by regulations in Title 25, Texas Administrative Code, Chapter 265, Subchapter L, as amended. This term includes the different classification of pools defined by state law, except that this definition excludes any residential pool or therapeutic pool as defined by state law. In addition, this definition includes any pool which is intended to be used by the general public including, but not limited to, hotel or motel guests, health club members and guests, water park or amusement park guests, water slide guests,

homeowner association members and guests, or multi-family community residents and guests for swimming, diving, recreational bathing or other related purposes, operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use.

i. "Regulatory authority" in the adopted State regulations shall mean the Administrator for this Article or the Administrator's designee. The Administrator shall have the authority to create policies and procedures for the administration of this Article as long as the policies and procedures are consistent with this Article and applicable state law.

j. "Spa" shall mean a spa as defined by regulations in the Title 25, Texas Administrative Code, Chapter 265, Subchapter L, as amended. This term does not include a residential spa.

k. "Trained Pool Operator" shall mean a person who has attended a training course that meets the criteria of a Trained Pool Operator Course described in this Article.

l. "Trained Pool Operator Course" shall mean a course described by Section 7.06 of this Chapter, as amended.

2. Title 25, Texas Administrative Code Section 265.183(a), as amended, shall include the following as an additional subsection:

The Administrator, or a city employee designated by the City Manager, or a designee, to review a building permit or the plans for a public pool, spa, or PIWF pursuant to the Construction Chapter, as amended, must require that a registered professional engineer or registered architect licensed by the State of Texas to practice as such be consulted to assure that the pool and spa are designed and built in compliance with these regulations and applicable federal, state, and or local regulatory requirements. The engineer's or architect's professional seal must be affixed to the plans and a statement attesting to the fact that the pool or spa was designed, constructed, and able to operate in compliance with these standards. This statement must also be made available for review at a reasonable time upon request by the Administrator.

3. Electrical Requirements for Pools, Spas, Pool Yards, and Spa Yards, and PIWFs.

   a. References to the National Electrical Code.
   In Title 25, Texas Administrative Code Section 265.192, as amended, all references to the 1996 or 2002 National Electrical Code ("NEC"), or any other edition of the NEC, shall mean the City of Arlington Electrical Chapter, as amended. In addition, all other references to any edition of the NEC in Title 25, Texas Administrative Code, Chapter 265, Subchapters L and M, as amended, shall mean the City of Arlington Electrical Chapter.

   b. Annual Electrician Inspection Requirement.
   In Title 25, Texas Administrative Code Section 265.192(e), as amended, the following paragraph shall be included as an additional subsection:

   All post-10/01/1999 and pre-10/01/1999 ground fault circuit interrupters of pools and spas shall be inspected by an electrician in accordance with the Texas Occupations Code, as amended, at least once a year prior to March 1 of each year or the expiration date of the current operating permit or as required by the Administrator. The licensed electrician shall submit verification in writing that the pool related electrical components are in proper working order.

4. Trained Pool Operator Requirement for the Operation of Class C Pools and Spas. Title 25, Texas Administrative Code Section 265.203, as amended, shall include the following as an additional subsection:

   Class C Pool and Spa Requirements.

   a. The Owner or Operator of every new and existing Class C pool or spa shall ensure that the public pool or spa is cared for by a Trained Pool Operator who has successfully completed a training course according to Section 7.06 of this Chapter, as amended. The Trained Pool Operator shall be responsible for the daily water treatment operations, record keeping, and maintenance of the public pool or spa in compliance with this Article. Compliance will be demonstrated by presenting proof of training and all required records to the Administrator as described in this Article.

b. While the public pool or spa is open and available for use, a Trained Pool Operator must be:

(1) on-site at the public pool or spa; or

(2) readily available to respond and come to the public pool or spa within one hour of being notified by the Administrator.

c. In addition to all other requirements of this Article, if an Owner or Operator employs a swimming pool service company, the Owner or Operator or person in charge must ensure that:

(1) all water treatment operations, record keeping, and maintenance requirements are complied with; and

(2) each employee of the swimming pool service company servicing a public pool or spa in the City qualifies as a Trained Pool Operator and the swimming pool servicing the company provides proof of the required training for each employee to the Administrator upon request. If proof of required training for a particular employee cannot be verified by the Administrator, then that employee shall not operate a pool in the City.

5. Backflow Prevention.

a. Public Pools and Spas. Title 25, Texas Administrative Code Section 265.189(c) is amended to include the following paragraph as an additional subsection:

The Owner or Operator must comply with the City of Arlington Backflow Prevention Chapter, as amended.

b. PIWFs. Title 25, Texas Administrative Code Section 265.304(b) is amended to be replaced with the following language:

Water distribution system. All portions of the water distribution system serving a PIWF shall be protected against backflow and back siphonage. All PIWFs must comply with the City of Arlington Plumbing Chapter, as amended, and the City of Arlington Backflow Prevention Chapter, as amended, including

any testing and inspection requirements. No direct mechanical connection shall be made between the chlorinating equipment or system of piping for the PIWF and a sanitary sewer system, septic system, or other wastewater disposal system.

6. Additional Testing, Inspection, Maintenance and Records Requirements.

a. Public Pools and Spas. Title 25, Texas Administrative Code Section 265.204(d) is amended to be replaced with the following language:

Other Required Tests and Inspections for Public Pools and Spas.

(1) Daily Required Tests and Inspections.

Unless the testing and inspection requirements specified in Title 25, Texas Administrative Code Section 265.204(c), as amended, apply to a particular public pool or spa, tests for total chlorine or bromine as applicable, cyanuric acid, and pH at all post-10/01/99 and pre-10/01/99 pools and spas shall be conducted daily to ensure proper chemical control. Also, the main drains shall be inspected to ensure that they are visible.

(2) Monthly Required Tests and Inspections.

The following items must be inspected and tested monthly in order to ensure that they are in good working order and are in compliance with this Article and other applicable law:

(a) Drains. The main drains shall be inspected to ensure that they are secure and in good working order.

(b) Safety Vacuum Release System ("SVRS"). The SVRS includes any Safety Vacuum Release Device or Atmospheric Vent System ("AVS") that is a part of the SVRS and must be tested to ensure that all equipment is in good working order.

(c) Emergency phone. A monthly 911 test call must be conducted to ensure that the emergency phone is in good working order, is unobstructed, and complies with all other requirements.

(d) Pool and spa enclosures.

(e) All safety equipment required by Title 25, Texas Administrative Code Section 265.199(i), as amended.

(f) Pool and spa lights.

(g) Ground fault circuit interrupters ("GFCI").

(3) Tests for alkalinity and hardness at post-10/01/99 and pre-10/01/99 pools and spas shall be conducted as necessary to ensure proper chemical control.

b. PIWFs.

(1) Title 25, Texas Administrative Code Section 265.307(a)(3) is amended to include the following paragraph as an additional subsection:

In accordance with Title 25, Texas Administrative Code Section 265.307(a)(3), as amended, a PIWF must be tested for *Cryptosporidium* immediately upon any notification that a person who has used the PIWF has been diagnosed with Cryptosporidiosis.

(2) Daily Required Tests and Inspections.
Water quality testing and inspection requirements shall be conducted in accordance with Title 25, Texas Administrative Code Section 265.306(o), as amended.

(3) Monthly Required Tests and Inspections.

The following items must be inspected and tested monthly in order to ensure that they are in good working order and are in compliance with this Article or other applicable law:

(A) Pool and spa enclosures containing a PIWF;

(B) All PIWF lights that could potentially have contact with water or otherwise present a risk for electrical shock; and

(C) GFCIs.

c. Backflow Prevention.
The Owner or Operator shall perform or ensure that all inspection and testing required by the City of Arlington Backflow Prevention Chapter, as amended, the City of Arlington Plumbing Chapter, as amended, and the Texas Administrative Code, as amended, are conducted, any necessary maintenance or repair is performed, and all backflow prevention devices are kept in good working order. Records shall be kept in accordance with the City of Arlington Backflow Prevention Chapter, as amended, the City of Arlington Plumbing Chapter, as amended, and the Texas Administrative Code, as amended.

d. Records. A record of all tests and inspections made pursuant to this Article and the adopted regulations must be kept for two years. Failure to keep required records or perform required tests shall constitute a violation. Each missing entry in a required record shall constitute a separate violation.

7. Appeal Hearings. Title 25, Texas Administrative Code Sections 265.308(c) and 265.308(d), as amended, are deleted from the adopted regulations. Title 25, Texas Administrative Code Section 265.308 is amended to contain the following sentence as an additional subsection:

All hearings and appeals for Closure Orders or Operating Permit revocations shall be governed by Section 7.12 of the City of Arlington Health and Sanitation Chapter, as amended.

Section 7.02 Maintenance and Operation, Offenses Generally

A. Responsibility of the Owner or Operator, Person in Charge, or Attendant of a Public Pool, Spa, or PIWF.

1. The Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF shall be responsible for compliance with this Article and shall ensure that the public pool, spa, or PIWF is maintained in a sanitary condition.

2. An Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF has a duty to prevent violations of this Article and other laws applicable to public pools, spas, and PIWFs.

3. An Owner or Operator subject to a Closure Order or an Operating Permit revocation under this Article must maintain the public pool, spa, or PIWF involved in the Closure Order or Permit Revocation in compliance with this Article, any City Ordinances applicable to public pools, spas, or PIWFs, any incorporated regulations, and state law.

B. Offenses.

1. An Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF commits an offense if the person violates, causes, or fails to prevent a violation of this Article.

2. Each day that a violation of this Article exists shall constitute a separate offense unless the public pool, spa, or PIWF is lawfully demolished in accordance with policies and procedures established by the Administrator and verified by the Administrator. The Owner or Operator shall obtain any necessary permit required by the City of Arlington Code of Ordinances.

3. An Owner or Operator, Person in Charge, or attendant of a public pool, spa, or PIWF subject to a Closure Order or an Operating Permit revocation shall maintain the public pool, spa, or PIWF, which was the subject of the Closure Order or Operating Permit revocation, in compliance with this Article and any state laws or City Ordinances applicable to public pools, spas, or PIWFs.

4. Penalty.

a. In accordance with Texas Health and Safety Code Section 341.091, as amended, the following violations shall be punished by a fine of not less than $10.00 or more than $200.00:

(1) A violation of a permitting or inspection requirement imposed under authority granted by Texas Health and Safety Code Section 341.064(n), as amended; and

(2) A violation of a Closure Order requirement imposed under authority granted by Texas Health and Safety Code Section 341.064(o), as amended.

b. Violations of other provisions of this Article that are not described by Subsection (B)(4)(a) shall be punished in accordance with Article IX of this Chapter.

c. Each day that a violation exists shall constitute a separate offense.

C. Violations May Result in a Closure Order. Any violation of this Article or any other law applicable to public pools, spas, and PIWFs may result in an immediate Closure Order for a public pool, spa, or PIWF as described in the Section 7.10 of this Chapter.

D. Penalties are Cumulative. In addition to the enforcement remedies provided in this Article, the City may pursue any lawful remedy provided by this Code of Ordinances or state law, including, but not limited to, remedies under Texas Health and Safety Chapter 341, Texas Local Government Code Chapters 54 and 214, the Construction Chapter, the Nuisance Chapter, and the Municipal Court Chapter, as amended. The use of one enforcement remedy does not preclude the use of other lawful remedies.

E. Enforcement Responsibility. The Administrator, or anyone designated by the Administrator to enforce this Article, a health official, a code compliance officer, a building inspector, or any peace officer, or any authorized City official shall have enforcement responsibility for this Article.

Section 7.03 Building Permit Required

The requirements of the Construction Chapter, as amended, shall apply whenever a residential pool or spa, a public pool or spa, or a PIWF is constructed or extensively remodeled as defined in Article I of this Chapter.

Section 7.04 <u>Public Pool, Spa, and PIWF Operating Permits</u>

A. In order to own, operate, or allow the use of a public pool, spa, or PIWF, an Operating Permit must be obtained for the public pool, spa, or PIWF. Each public pool, spa, and PIWF must have a separate Operating Permit. A public pool Operating Permit does not allow the operation of a spa or PIWF. A spa Operating Permit does not allow the operation of a public pool or PIWF. A PIWF Operating Permit does not allow the operation of public pool or spa. A public pool Operating Permit, a spa Operating Permit, and a PIWF Operating Permit shall not be combined. An Operating Permit shall permit the operation of the public pool, spa, or PIWF only at the location and for the Owner or Operator for which it was granted.

B. In this Article, the term "Operating Permit" shall include: a public pool Operating Permit, a spa Operating Permit, and a PIWF Operating Permit.

C. The Administrator shall grant the initial Operating Permit for a newly constructed or extensively remodeled public pool, spa, or PIWF if:

1. a building permit has been obtained;

2. all required permits for electrical, plumbing, pool enclosures, or any other related permit have been obtained;

3. all required inspections for the permits have been passed; and

4. all required fees have been paid.

D. An Operating Permit expires on the first day of March of each year unless revoked before the first day of March.

E. In order to renew an Operating Permit, the public pool, spa, or PIWF must pass an annual inspection. The Administrator shall renew a permit for a public pool, spa, or PIWF for any person or firm applying to renew an Operating Permit in the City of Arlington if the person or firm:

1. complies with the requirements of this Chapter, the Unified Development Code, the Construction Chapter, any other applicable City ordinance or state law or regulation, the Texas Accessibility Standards, the Americans with Disabilities Act, and the Virginia Graeme Baker Pool and Spa Safety Act;

2. provides proof that every person operating the public pool, spa, or PIWF has completed any required operator training as specified in this Article or state law;

3. pays all required fees;

4. submits proof that the public pool, spa, or PIWF has been inspected by a licensed electrician in accordance with Section 7.01(E)(3)(b) of this Chapter, as amended;

5. provides all required records to the Administrator;

6. complies with any outstanding building permit requirements for repairs or remodels; and

7. passes an inspection.

F. Extensive Remodeling. If a public pool, spa, or PIWF has been or is being extensively remodeled as defined in Article I, an Operating Permit will be renewed only if: a building permit has been obtained, all required inspections have been passed, and all required fees have been paid. The Building Official or a designee shall determine whether a building permit is required when a pool, spa, or PIWF is being extensively remodeled, in accordance with the Construction Chapter, as amended.

G. Offense. An Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF commits an offense if the person operates, allows the operation of, or fails to prevent the use of a public pool, spa, or PIWF without a current and valid Operating Permit. Each day that a violation of this Subsection exists shall constitute a separate offense until the Operating Permit is re-instated or the public pool, spa, or PIWF is lawfully demolished in accordance with policies and procedures established by the Administrator and verified by the Administrator. The Owner or Operator shall obtain any necessary permits required by this Code of Ordinances.

Section 7.05 Fees

A. Administrative fees shall be charged for operating permits, inspections, operating permit reinstatements, re-inspections, and duplicate permits, except that no fees

shall be charged for City owned and operated public pools, spas, or PIWFs. Building permit fees may be charged in accordance with the Construction Chapter, as amended, when a building permit is required by Section 7.03 of this Chapter, as amended.

B. Fees for operating permits, reinstatements, inspections, re-inspections, duplicate permits, and building permits required by Section 7.03 of this Chapter, as amended, shall be in an amount set by resolution of the City Council.

C. Administrative fees are not transferable or refundable. Every permit issued under this Article shall be non-transferable and non-refundable.

Section 7.06 <u>Operator Training</u>

A. An Owner or Operator, an employee or agent of the Owner or Operator, or a Person in Charge must ensure that all persons maintaining or operating a pubic pool, spa, or PIWF, including operators from a servicing company, have the appropriate training as required by this Article and state law for the particular class of pool, spa, or PIWF being operated. An Owner or Operator, an employee or agent of the Owner or Operator, or a Person in Charge commits an offense if the person fails to comply with this Subsection.

B. <u>Certified Operator Course Requirements</u>. A Certified Operator Course is only required under this Article when it is required by the adopted provisions of the Texas Administrative Code, as amended. A person will only qualify as a Certified Pool Operator by receiving certification for completing a Certified Operator Course described in Title 25, Texas Administrative Code Section 265.203(a), as amended. A person qualifies as a Certified PIWF Operator by receiving certification for completing a Certified Operator Course described in Title 25, Texas Administrative Code Section 265.303(a), as amended. A person will only qualify as both a Certified Pool Operator and a Certified PIWF Operator if the person receives certification for completing a Certified Operator Course that is described by both Title 25, Texas Administrative Code Sections 265.203(a) and 265.303(a), as amended.

C. All public pool and spa operators must complete a Trained Pool Operator Course, or a similar course meeting the requirements described in this Section, unless otherwise required to complete a Certified Operator Course. Completion of a Certified Operator Course may be substituted for a Trained Pool Operator Course as long as the Certified Operator Course certificate is valid and is described by

Title 25, Texas Administrative Code Section 265.203(a), as amended. A Trained Pool Operator Course may not be used as a substitute for a Certified Operator Course when a Certified Operator Course is required.

D. Minimum Standards for a Trained Pool Operator Course. A Trained Pool Operator Course shall meet the following minimum requirements:

1. The training course must be in an instructor-led format. Self-instructional, self-study, or online courses are not acceptable.

2. The training course must consist of at least six (6) hours of classroom instruction.

3. The training course must be taught by a Certified Pool Operator.

4. The instructor of the training course shall provide a certificate or other documentation meeting the requirements in Subsection (E) that may be used to verify a pool operator's successful completion of a course compliant with this Section. In addition to the certificate, the Owner or Operator shall provide proof of the course curriculum and the course instructor's qualification as a Certified Pool Operator to the Administrator upon request. If this information is not provided, then the training will not qualify a person as a Trained Pool Operator.

5. The training course curriculum is subject to review by the Administrator. If the training course curriculum is not consistent with this Section or if the course was not taught by a Certified Pool Operator, then completion of that course will not be sufficient to meet the requirements of this Section.

6. The training course must include instruction on:

   a. water chemistry;

   b. water testing;

   c. water filtration and re-circulation;

   d. water-borne diseases and their prevention;

   e. pool safety; and

f. applicable state and local regulations.

E. Proof of Compliance.

1. Trained Pool Operator Certificates.

a. Trained Pool Operator Certificates must include the following information:

(1) the participant's name;

(2) the date that the training course was conducted;

(3) the title of the training course;

(4) the instructor's name and the organization's name, if applicable; and

(5) the number of hours of classroom instruction.

b. Only the original certificate will be accepted. Trained Pool Operator Certificates are subject to verification by the Administrator with the person or organization who conducted the class.

c. Unless otherwise stated in the certificate or supporting documents for the course, Trained Pool Operator Certificates are valid for two years from the date of issuance. A valid, current, and unexpired training certificate or other documentary proof of completion for each pool operator must be provided to the Administrator upon request.

d. If all information required by this Section is not included on the certificate, then the Administrator may consider supporting documents in addition to the certificate.

2. Certified Operator Certificates. The Owner or Operator shall provide to the Administrator upon request a valid, current, and unexpired training certificate, or other documentary proof of completion allowed by state or federal law, for each pool operator required to complete a Certified Pool Operator training course. If an operator is required to be a Certified Pool

Operator or Certified PIWF Operator, any certificates or other proof of completion must meet the requirements as established by state or federal law. A Certified Operator Certificate shall be valid for the duration provided by state law.

F. Offenses.

1. A person commits an offense if the person operates or maintains a public pool, spa, or PIWF when the person does not qualify as a Trained Pool Operator, Certified Pool Operator, or Certified PIWF Operator as required by this Article.

2. An Owner or Operator or person in charge commits an offense by allowing a person to operate or maintain a public pool, spa, or PIWF or by failing to prevent a person from operating or maintaining a public pool, spa, or PIWF when that person does not qualify as a Trained Pool Operator, Certified Pool Operator, or Certified PIWF Operator as required by this Article.

Section 7.07 Posting of Public Pool, Spa, and PIWF Permits and Pool Operators Training Certificate

A. The Operating Permit and all applicable training certificates for each public pool, spa, and PIWF shall be displayed in public view. An Owner or Operator commits an offense by failing to display the Operating Permit or an applicable training certificate in public view.

B. Signs shall be required to be posted at all public pool, spa, or PIWF entrances stating "All violations may be reported to the City of Arlington." The signs shall also be required to have a phone number to use for reporting violations. This phone number will be provided by the Administrator. Signage must be in at least two contrasting colors and lettering must be no smaller than one (1) inch in height.

C. An Owner or Operator commits an offense by failing to post any signs required by this Section.

D. An Owner or Operator commits an offense by posting a sign that does not contain the information required by this Section or does not comply with the lettering or color contrasting requirements of this Section.

Section 7.08 <u>Inspections</u>

The Administrator is authorized to conduct inspections in accordance with Texas Health and Safety Code Sections 341.064 and 341.0695, as amended, and Title 25, Texas Administrative Code, Chapter 265, Subchapters L and M, as amended. The Administrator may issue a Closure Order if inspection of the public pool, spa, or PIWF or any records is refused or delayed.

Section 7.09 <u>Regulations in the Public Pool, Spa, or PIWF Area</u>

A. A person commits an offense if the person:

1. allows an animal under the person's control to enter or remain within the area or enclosure of a public pool, spa, or PIWF;

2. has skin abrasions, open sores, skin disease, eye disease, nasal or ear discharge or a communicable disease and swims in or enters a public pool, spa, or PIWF;

3. alters or removes safety equipment from a public pool, spa, or PIWF except in an emergency;

4. carries glass within a public pool, spa, or PIWF area or enclosure; or

5. allows persons to access a public pool, spa, or PIWF where there exists any violation of this Article or any other City Ordinances or state laws applicable to public pools, spas, or PIWFs.

B. An Owner or Operator commits an offense by failing to prevent a person from committing an offense under this Section or by failing to take immediate reasonable and lawful action to stop a violation.

C. An Owner or Operator must follow all laws and regulations outlined in the Americans with Disabilities Act and any other applicable state or federal laws regarding service animals or assistance animals. It is an affirmative defense to prosecution under Subsection (A)(1) if the animal is a service animal that is located within the pool area or enclosure, but not in the water, except as allowed

by state or federal law. The term "Service Animal" shall mean a service animal or assistance animal as defined by the applicable state or federal law.

Section 7.10 <u>Closure Orders</u>

A. Failure to comply with any provision of this Article or state law applicable to public pools, spas, and PIWFs may result in the immediate closure of the public pool, spa, or PIWF and the pursuit of any other remedy allowed by law.

B. After an inspection or complaint investigation, the Administrator shall notify the Owner or Operator, Person in Charge, or a designated employee or agent about any existing violations of this Article or applicable state or federal law. The Administrator may allow for a reasonable time to comply before issuing a Closure Order.

C. A public pool, spa, or PIWF may be closed immediately with a Closure Order if the Administrator determines that:

1. the condition of the public pool, spa, or PIWF is hazardous to the health or safety of the swimmers or of the general public, including but not limited to a positive test for *Cryptosporidium* in accordance with Title 25, Texas Administrative Code Section 265.308, as amended;

2. there is violation of this Article or any applicable state or federal law;

3. the Operating Permit is expired or revoked;

4. there is a pool or spa enclosure violation; or

5. a repair or remodel was performed without a required permit.

D. <u>Notice of Closure Order</u>.

1. After a Closure Order has been issued, notice of the Closure Order must be provided to the Owner or Operator, or a designated agent or employee of the Owner or Operator, either by:

a. personal service to the Owner or Operator, Person in Charge, or an employee, agent, or attendant of the public pool, spa, or PIWF; or

b. by mail to the Owner or Operator at the address indicated in the Operating Permit or at the owner's address as recorded in the appraisal district records of the jurisdiction in which the property is located, unless the contact information is amended in accordance with procedures established by the Administrator.

2. Failure to provide this notice will not affect the validity of the Closure Order.

E. Sign Requirements.

1. When a public pool, spa, or PIWF is subject to a Closure Order, the Administrator shall conspicuously post signs at all entrances to the public pool, spa, or PIWF stating "Closed By The City of Arlington."

2. Any sign posted by the Administrator shall not be altered or removed unless authorized by the Administrator.

3. The Owner or Operator or a Person in Charge must ensure that the signs are inspected daily. If a sign is removed or altered, the Owner or Operator, or an employee or agent of the Owner or Operator, must immediately notify the Administrator.

F. Preventing the Use of the Public Pool, Spa or PIWF Subject to a Closure Order.

1. When the Administrator has ordered the closure of a public pool, spa, or PIWF, the Owner or Operator or Person in Charge of such public pool, spa, or PIWF must prevent persons from using the public pool, spa, or PIWF and shall immediately take every reasonable measure to prevent persons from using the public pool, spa, or PIWF.

2. Upon issuance of a Closure Order, the Owner or Operator, Person in Charge, or an employee or an agent of the Owner or Operator, must immediately lock the gates and doorways in any fence or other enclosure surrounding such public pool, spa, or PIWF.

3. The Administrator may order the Owner or Operator to use any other reasonable measure to prevent the entry to the public pool, spa, or PIWF. The Administrator may allow a reasonable time for compliance.

G. Re-inspection. If the grounds for which the Closure Order was issued have been corrected, the Owner or Operator or Person in Charge may schedule a re-inspection with the Administrator. The re-inspection will be performed during the Administrator's normal working hours.

H. Compliance.

1. If the Administrator verifies that compliance has been achieved, the inspection has been passed, the grounds for which the Closure Order was issued no longer exist, and any required fees have been paid, the Administrator shall lift the Closure Order and notify the Owner or Operator, or an employee or agent of the Owner or Operator, in person or by mail that the public pool, spa, or PIWF may be opened.

2. A Closure Order shall be lifted if the public pool, spa, or PIWF is demolished in accordance with policies and procedures established by the Administrator and verified by the Administrator. The Owner or Operator shall obtain any necessary permit required by this Code of Ordinances.

I. Offenses.

1. Violation of Signage Requirements.

a. An Owner or Operator, a Person in Charge, or an employee or agent of the Owner or Operator or a Person in Charge, commits an offense if the person fails to notify the Administrator that a sign required by this Section has been removed or altered. Each day that a violation of this Subsection exists shall constitute a separate violation.

b. A person commits an offense if the person removes or alters a sign required by this Section or authorizes the removal or alteration of a sign required by this Section.

2. Requirement to Prevent Use of a Closed Public Pool, Spa, or PIWF.

a. The Owner or Operator, Person in Charge, or an employee or an agent of the Owner or Operator or the Person in Charge, or an attendant of a public pool, spa, or PIWF subject to a Closure Order commits an offense if the person fails to:

(1) comply with the Administrator's order to use a reasonable measure to prevent a person from entering a public pool, spa, or PIWF subject to a Closure Order; or

(2) secure or lock any gate or doorway in a fence or other enclosure surrounding a public pool, spa, or PIWF while a closure order is effective.

b. Each day that a violation of this Subsection exists shall constitute a separate violation.

3. Use of a Closed Public Pool, Spa, or PIWF Prohibited.

a. When a public pool, spa, or PIWF is closed by a Closure Order, an Owner or Operator, or person in charge, or an attendant of the public pool, spa, or PIWF commits an offense by allowing a person to use, or failing to prevent a person from using the public pool, spa, or PIWF or from entering the enclosure area of the public pool, spa, or PIWF.

b. A person commits an offense if the person knowingly, recklessly, or with criminal negligence, uses or enters the enclosure area of a public pool, spa, or PIWF that is closed by a Closure Order. If there are signs present in compliance with this Section, then it shall be presumed that the person committed the violation knowingly, recklessly, or with criminal negligence.

Section 7.11 Operating Permit Revocation

A. An Operating Permit for a public pool, spa, or PIWF may be revoked for any of the following grounds:

1. a public pool, spa, or PIWF is operated in violation of a Closure Order;

2. false information about the public pool, spa, or PIWF was presented to the Administrator or any employee or peace officer employed by the City of Arlington;

3. a public pool, spa, or PIWF has been declared to be a dangerous structure in accordance with the Construction Chapter, as amended, or is the subject

of three convictions, deferred dispositions, or liability findings within one year for violations of this Article or any other City Ordinance or state law applicable to public pools, spas, or PIWFs;

4. a public pool, spa, or PIWF has been closed with a Closure Order two times or more within one year;

5. records required by this Article have not been kept or provided to the Administrator;

6. a public pool, spa, or PIWF is the subject of an investigation by any state or federal agency for health or environmental matters;

7. a public pool, spa, or PIWF is being operated in a manner that constitutes a public nuisance; or

8. the revocation is necessary to protect the public from an immediate health hazard that a Closure Order is insufficient to remedy.

B. If an Operating Permit is revoked under this Section, unless otherwise specified, a permit may be revoked for up to one (1) year from the date of revocation. An Owner or Operator must pay all permit fees and bring the public pool, spa, or PIWF into full compliance with all applicable City ordinances, state law, and federal law. Furthermore, the public pool, spa, or PIWF must pass an inspection by the Administrator before a revoked Operating Permit may be reinstated.

Section 7.12 <u>Administrative Hearings</u>

A. <u>Appeal to a Hearing Officer</u>.

1. The Owner or Operator of a public pool, spa, or PIWF for which a Closure Order has been issued or an Operating Permit has been revoked under this Article may request an administrative hearing in order to appeal the decision. This request must be made in accordance with procedures established by the Administrator or designated hearing officer.

2. <u>Notice</u>.

a. When the Administrator issues a Closure Order or revokes an Operating Permit, the Administrator shall provide the Owner or

Operator with notice of the ability to request an administrative hearing. The notice shall contain a statement explaining the right of the Owner or Operator to request a hearing for the purpose of determining whether the Operating Permit revocation or Closure Order should be affirmed. The notice shall contain instructions on how to request an administrative hearing.

b. The notice shall be provided by personal service to the Owner or Operator, or by mail to either person's address according to the appraisal district records of the jurisdiction in which the property is located, the address specified in the documents submitted for the current Operating Permit, or to an address specified by the person in accordance with procedures established by the Administrator.

c. If notice cannot be accomplished by mail or personal service to the Owner or Operator, the notice shall be provided by posting the notice:

(1) on all entrances to the public pool, spa or PIWF or near the front door of the building on the property to which the revoked Operating Permit or Closure Order relates; or

(2) on a placard attached to a stake driven into the ground on the property to which the revoked Operating Permit or Closure Order relates, if the property contains no buildings.

d. If the notice is mailed to the Owner or Operator in accordance with this Section and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered to be delivered. If the notice is provided by mail, the date of the notice is the date of delivery. If the date of delivery is not known, then notice given by mail is deemed to be delivered three (3) days after the date mailed.

3. In order to request a hearing, the Owner or Operator shall provide a written request for a hearing to the Administrator before the expiration of ten (10) days from the date the notice was provided under Subsection (A)(2).

4. If the Administrator does not receive a timely request for a hearing, the Operating Permit revocation or Closure Order will be final.

5. If the Administrator receives a request for a hearing, the Administrator or designated Hearing Officer will schedule a hearing within ten (10) days after the date the request is filed unless the parties agree to a certain date beyond the ten (10) days. The Owner or Operator's request for hearing must contain an address and a phone number where notice of the hearing may be provided.

6. The Administrator may preside over the hearing as the Hearing Officer or designate a Hearing Officer.

7. The Hearing Officer shall have the authority to establish hearing procedures, compel the attendance of witnesses, and administer oaths. The Owner or Operator may submit evidence by notarized affidavit if the Owner or Operator cannot appear in person.

8. Hearings.

   a. Closure Order Appeals.

      (1) In order to affirm a Closure Order, the Hearing Officer must find that a violation of this Article has occurred, which constituted the ground for the Closure Order being issued. The Hearing Officer shall make this determination based upon the totality of the circumstances using a preponderance of the evidence standard.

      (2) If the Owner or Operator, or an authorized agent or representative does not appear at the hearing or otherwise respond to the hearing notice, the Hearing Officer shall still review the Closure Order and any notarized affidavit submitted by the person. The Hearing Officer may stay or continue the hearing if necessary or if requested by the Owner or Operator or the City.

      (3) The Hearing Officer must make a written order either affirming or lifting the Closure Order. If the Closure Order is affirmed, the Hearing Officer shall describe the criteria for lifting the Closure Order in the Hearing Officer's order and the public pool, spa, or PIWF shall be closed until the criteria is met and verified by the Administrator. If the Closure Order is lifted, the Owner or Operator may proceed

to operate the public pool, spa, or PIWF. The order shall be provided to the Owner or Operator in a manner consistent with this Section.

b. Operating Permit Revocation Appeals.

(1) If the Hearing Officer finds by a preponderance of the evidence that the revocation of the Operating Permit is necessary to protect the public, then the Hearing Officer shall affirm the Operating Permit revocation. This finding shall be based upon the following factors:

(a) The number of violations, convictions, or liability findings;

(b) The number of previous closure orders;

(c) Repeat violations;

(d) Previous warnings that did not involve a citation;

(e) Complaints filed by citizens which have been verified by a peace officer, the Administrator, or an employee designated by the Administrator;

(f) The degree that the public health was endangered;

(g) Any pending action or investigation by another agency; or

(h) Any evidence that the public pool, spa, or PIWF constitutes a public nuisance.

(2) After the hearing, the Hearing Officer shall issue a written order. The order shall be provided to the Owner or Operator in a manner consistent with this Section.

(3) The Hearing Officer may affirm the permit revocation and state conditions that the Owner or Operator must satisfy in order to reinstate the permit. The permit shall be reinstated when the Hearing Officer has verified that compliance has

been obtained. The Hearing Officer may establish procedures to verify compliance before a permit is reinstated.

(4) If, after the hearing, the Hearing Officer does not affirm the permit revocation, the Hearing Officer or designee shall give written notice of the findings to the Owner or Operator within ten (10) days. If the Hearing Officer does not affirm the operating permit revocation, the public pool, spa, or PIWF may be operated immediately.

(5) The Hearing Officer may affirm the revocation and adjust the revocation period in a manner based upon the findings.

9. The determination of the Hearing Officer shall be final on the date it is signed.

10. A request for a hearing does not stay the effect of an Operating Permit revocation, a Closure Order, or the use of any enforcement measure.

11. This Section does not apply to the denial or revocation of a building permit or remedies for Dangerous and Substandard Structures, or any remedies pursuant to the Construction Chapter or any other applicable ordinance, state law, or federal law.

B. If a Closure Order or Operating Permit revocation is withdrawn or lifted by the Administrator for any reason prior to the scheduled date and time of a hearing described in this Section, the Hearing Officer shall cancel the hearing upon a motion by any interested party. (Amend Ord 17-038, 6/27/17)

ARTICLE VIII

MASS GATHERINGS

(Repealed)

ARTICLE IX

VIOLATIONS AND PENALTIES

Section 9.01 Penalty for Violation

A. Any person, corporation, association, or entity who violates any of the provisions of this Chapter commits an offense that is considered a class C misdemeanor and each day the violation continues shall be a separate offense.

B. If the definition of an offense under this Chapter does not prescribe a culpable mental state, then a culpable mental state is not required. Such offense shall be punishable by a fine not to exceed Five Hundred Dollars and No Cents ($500.00). Although not required, if a culpable mental state is in fact alleged in the charge of the offense and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, such offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents ($2,000.00).

C. If the definition of an offense under this Chapter prescribes a culpable mental state and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, then a culpable mental state is required and the offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents ($2,000.00).

D. If the offense relates to an ordinance for which Administrative Adjudication can be used, then the offense may be enforced by the Administrative Adjudication procedures described in the Municipal Court Chapter, Article 9. (Amend Ord 17-038, 6/27/17)

ARTICLE X

REGULATION OF SMOKING

Section 10.01 Definitions

The following words and terms when used in this article shall have the meanings respectively ascribed to them in this section:

"Bar" shall mean any establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A "bar" includes those facilities located within a hotel, motel or other similar transient occupancy establishment.

"Bingo parlor" shall mean a facility regulated under V.T.C.A., Occupations Code §2001.001 et seq. - "Bingo Enabling Act", as amended, that does not allow persons under the age of eighteen (18) years to enter the facility; does not employ persons under the age of eighteen (18) years; does not share a heating/ventilation/air conditioning system with another establishment in which smoking is prohibited; and does not open into any other establishment in which smoking is prohibited under this Article.

"Condominium" shall mean a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

"Conveyance" shall mean public transportation facilities or a vehicle for the moving of persons from one place to another where smoking is prohibited by this Article.

"Eating establishment" shall mean any operation engaged in the preparation of food which gives food or offers food for sale to the public, guests or employees.

"Employee" shall mean any person who is employed by any employer for direct or indirect monetary wages or profit.

"Employer" shall mean any person who employs the services of an individual person or any person in control of the workplace.

"Enclosed" shall mean closed in by a roof and walls with appropriate openings for ingress and egress.

"Fraternal Organization" shall mean an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501, as amended.

"Health care facility" shall mean any ambulatory surgical center, rehabilitation center, or minor emergency treatment facility.

"Nursing Home" shall mean a facility or area furnishing food and shelter in single or multiple facilities to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment. In addition, the facility provides minor treatment under the direction and supervision of a physician, or provides a service which meets some need beyond the basic provision of food, shelter and laundry.

"Park" shall mean any land selected, obtained, or acquired by the City for use as a public park, or recreation or playground area, and any building or facility thereon, owned and maintained by the City as a public park, or recreation or playground area, whether or not such areas have been formally dedicated to such purpose.

"Place of Employment" shall mean any area under the control of a public or private employer which employees may frequent during the course of employment, including, but not limited to, private offices, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, hallways, enclosed portions of construction sites, temporary offices and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

"Public Place" shall mean any enclosed area to which the public or a substantial group of the public is invited or in which the public or a substantial group of the public is permitted or is a place of employment. For purposes of this section, the term "public place" includes but is not limited to: retail or service establishments; offices; professional, commercial or financial establishments; public and private institutions of education; eating establishments; hospitals; health care facilities; nursing homes; residential treatment facilities; child care facilities; bars; nightclubs; sexually oriented businesses, billiard halls, bowling centers, buildings owned or occupied by political

subdivisions; public transportation facilities and vehicles; reception areas; elevators, libraries, museums, theaters and waiting rooms. For purposes of this section, a "public place" does not include a private residence or a bingo parlor as defined by this Section.

"Retail or service establishment" shall mean any establishment which sells goods or services to the general public.

"Smoke" shall mean the gases, particles or vapors released into the air as a result of combustion from any tobacco product.

"Smoker's lounge" shall mean any facility that is attached to a retail tobacco shop for the purpose of enjoyment of tobacco products purchased from the attached tobacco shop.

"Smoking" shall mean engaging in an act that generates smoke as a result of the combustion of any tobacco product.

"Stand Alone Tobacco Shop" shall mean a tobacco shop that is housed in a facility that shares no common mechanical equipment systems or physical properties such as walls, ceilings, or hallways with any other establishment, occupancy or use.

"Tobacco product" shall mean a cigarette, cheroot, stooge, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a non-electronic tobacco substitute.

"Tobacco shop" shall mean a retail establishment whose annual gross revenues from the sale of tobacco products and smoking accessories are at least fifty percent (50%).

Section 10.02 <u>Smoking Prohibited - Public Places</u>

A. Smoking is prohibited in all enclosed public places.

B. Smoking is prohibited in the following non-enclosed public places:

1. Grounds of a hospital, health care facility or nursing home;

2. Any portion of any publicly or privately owned unenclosed area to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;

3. Any seating area of any publicly or privately owned outdoor athletic facility having an overall fixed seating capacity of at least six hundred (600) people and used for the purpose of viewing a single athletic field;

4. Any designated seating area of any publicly or privately owned outdoor theater or amphitheater having an overall fixed or temporary seating capacity of at least five thousand (5,000) people or more and used for the purpose of viewing live performances;

5. Any common area of a multi-family development;

6. Within fifteen (15) feet of the primary outside entrance of a bar, nightclub, sexually oriented business, billiard hall or bowling center;

7. Within fifty (50) feet of outside entrances, operable windows, or ventilation systems of enclosed areas not described by Subsection (B)(6) above where smoking is prohibited by this Article, so as to ensure that smoke does not enter those areas;

8. the following areas of a park:

   a. while seated in or within fifty (50) feet of a dugout or bleacher provided for spectators at outdoor athletic events;

   b. a park playground or within fifty (50) feet of a park playground;

   c. in plaza areas at athletic complexes or within fifty (50) feet of such area;

   d. in a park restroom or within fifty (50) feet of such restroom; or

   e. within the fenced areas at a swimming pool or within fifty (50) feet of such area.

C. <u>Affirmative Defenses</u>.

1. It is an affirmative defense to prosecution under Subsection (B)(1) that the smoking occurred on the grounds of a nursing home in an outdoor area, that may be enclosed by fixed walls, which has been designated by the owner, manager, or operator or other person having control of such area, as a smoking area. Said designated smoking area must be at least fifty feet from outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article.

2. It is an affirmative defense to prosecution under Subsection (B)(4) that the smoking occurred in an unenclosed common area which has been designated by the owner, manager, or operator or other person having control of such areas, as a smoking area.

3. It is an affirmative defense to prosecution under Subsection (B)(5) if the multi-unit development is owner occupied condominiums.

4. It is an affirmative defense to prosecution under Subsection (A) that the smoking occurred in a fraternal organization unless the smoking occurred in an area that has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area.

5. It is an affirmative defense to prosecution under this Section that the public place within which the offense occurred did not have prominently displayed a notice that smoking was prohibited.

6. It is an affirmative defense to prosecution under Subsection (B)(6) that facilities for the extinguishment of smoking materials were not located within fifteen feet (15′) of the primary entrance of an establishment described by Subsection (B)(6).

7. It is an affirmative defense to prosecution under Subsection (B)(7) that facilities for the extinguishment of smoking materials were not located within the conveyance or within fifty feet (50′) of the public entrances to the place or establishment.

8. It is an affirmative defense to prosecution under Subsections (B)(3) and (B)(4) that the offense occurred in an open concourse designated as a smoking area by the owner, operator or person in control of the outdoor athletic facility, theater or amphitheater.

9. It is an affirmative defense to prosecution under Subsection (A) that the smoking occurred in:

   a. a smoker’s lounge attached to a tobacco shop that meets the requirements of Subsection (D)(1);

   b. a stand alone tobacco shop that meets the requirements of Subsection (E)(1); or

   c. a tobacco shop that meets the requirements of Subsection (E)(2)(a).

10. It is an affirmative defense to prosecution under Subsection (A) that the smoking occurred in a bingo parlor as defined by Section 10.01.

D. Smoker's Lounges Attached to Tobacco Shops.

1. Smoker's lounges attached to tobacco shops shall meet all of the following requirements:

a. The smoker's lounge shall not allow or employ persons under the age of eighteen (18). Signs shall be conspicuously posted at all entrances of the smoker's lounge which state: "**No One Under Age 18 Allowed.**"

b. Signs shall be conspicuously posted at all entrances to the tobacco shop noting that smoking is prohibited within the tobacco shop in accordance with Section 10.03(A).

c. The smoker's lounge shall have separate entrances, exits and restroom facilities from the attached tobacco shop.

d. The smoker's lounge shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.

e. The smoker's lounge must have a separate heating and cooling system from the tobacco shop and any other establishment, occupancy or use where smoking is prohibited.

f. The smoker's lounge shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.

2. Ventilation Systems.

a. The ventilation system may be tested by the City to verify that the system removes visual smoke at a rate of four (4) times per hour and that air from the smoker's lounge is not allowed or drawn into

the tobacco shop or any other establishment where smoking is prohibited.

b. The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.

3. Operation of Smoker's Lounges and Nonsmoking Designation.

a. The Administrator may deny the opportunity to operate a smoker's lounge upon a finding that:

(1) Smoke is migrating from the smoker's lounge into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited; or

(2) The smoker's lounge has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

b. Upon such a finding, the smoker's lounge shall be deemed to be nonsmoking until successfully tested.

4. Offenses.

a. The owner, manager or operator of a tobacco shop commits an offense if he or she allows smoking in an area deemed to be nonsmoking by the Administrator.

b. The owner, manager or operator of a tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this Section.

E. Tobacco Shops.

1. Stand Alone Tobacco Shops. Stand alone tobacco shops shall meet all of the following requirements:

a. The stand alone tobacco shop shall not allow or employ persons under the age of eighteen (18).

b. Signs shall be conspicuously posted at all entrances of the stand alone tobacco shop which state: "**No One Under Age 18 Allowed.**"

2. Other Tobacco Shops.

a. Other tobacco shops not described by Subsection (E)(1) shall meet all of the following requirements:

(1) The tobacco shop shall not allow or employ persons under the age of eighteen (18).

(2) Signs shall be conspicuously posted at all entrances of the tobacco shop which state: "**No One Under Age 18 Allowed.**"

(3) The tobacco shop shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing air from the tobacco shop to migrate into any other establishment, occupancy or use where smoking is prohibited.

(4) The tobacco shop must have a separate heating and cooling system from any other establishment, occupancy or use where smoking is prohibited.

(5) The tobacco shop shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the tobacco shop to migrate into any other establishment, occupancy or use where smoking is prohibited.

b. Ventilation Systems.

(1) The ventilation system may be tested by the City to verify that the system removes visual smoke at a rate of four (4) times per hour and that air from the tobacco shop is not allowed or drawn into any other establishment where smoking is prohibited.

(2) The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy

of the system appears to fail to meet the objectives of the ordinance.

c. Nonsmoking Designation.

(1) The Administrator may deem the tobacco shop nonsmoking upon a finding that:

(a) Smoke is migrating from the tobacco shop into any other establishment, occupancy or use where smoking is prohibited; or

(b) The tobacco shop has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

(2) Upon such a finding, the tobacco shop shall be deemed to be nonsmoking until successfully tested.

d. Offenses.

(1) The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she allows smoking in an area deemed to be nonsmoking by the Administrator.

(2) The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this section.

F. Globe Life Park in Arlington. Smoking at the Globe Life Park in Arlington is allowed only at designated areas near the outer perimeter of the first level and upper concourse. When food kiosks are located in the smoking areas, smoking is prohibited in the kiosk line and within fifty (50) feet of the food kiosk. Signage must indicate that smoking is not permitted in a kiosk line or within fifty (50) feet of the food kiosk.

Section 10.03 <u>Posting of Signs, Placing of Receptacles and Public Address System Announcement Required</u>

A. <u>Signs</u>. A place or conveyance regulated by Section 10.02 that is required to be totally nonsmoking, shall have signs conspicuously posted at all entrances which state: **"No Smoking - City Ordinance."** Such "No Smoking" signs shall have bold lettering of not less than one inch in height.

B. <u>Receptacles</u>. A place or establishment, other than an establishment described by Subsection 10.02(B)(6), regulated by Section 10.02 which is partially or totally nonsmoking, shall have facilities for the extinguishment of smoking materials located within fifty feet (50′) of all entrances and within all designated smoking areas. A bar, nightclub, sexually oriented business, billiard hall or bowling center shall have facilities for the extinguishment of smoking materials located within fifteen feet (15′) of all entrances. A conveyance regulated by Section 10.02 shall have facilities for the extinguishment of smoking materials within the conveyance.

C. <u>Public Address System Announcement</u>. In those outdoor athletic facilities, theaters and amphitheaters where a public address system is used, the owner, operator or person in control of an outdoor athletic facility, theater or amphitheater shall announce prior to each game or performance the prohibition of smoking in seating areas.

D. <u>Offenses</u>.

1. The owner, manager or operator of a place, conveyance or establishment commits an offense if he or she fails to post signs and provide extinguishment facilities as required by this section.

2. The owner, manager or operator of a place, conveyance or establishment commits an offense if he or she places or maintains facilities for the extinguishment of smoking materials in public areas other than as provided for in Subsection (B).

3. The owner, manager or operator of an outdoor athletic facility, theater or amphitheater where a public address system is used, commits an offense if he or she operates such a facility without announcing or causing to be announced prior to each game or performance the prohibition of smoking in seating areas.

Section 10.04 Regulation of Smoking – Place of Employment

It shall be the responsibility of employers to provide a smoke-free workplace for all employees. Each Employer having any enclosed place of employment located within the City shall make known to employees that smoking shall be prohibited in all enclosed areas within the place of employment. This Section does not negate the affirmative defenses provided in Section 10.02.

Section 10.05 Penalty For Violation

A. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this Article commits an offense, and upon conviction thereof, shall be fined an amount:

1. not less than Twenty-five and No/100 Dollars ($25.00) nor more than Two Hundred and No/100 Dollars ($200.00);

2. not less than Fifty and No/100 Dollars ($50.00) nor more than Five Hundred and No/100 Dollars ($500.00) if the person has been previously convicted one time for an offense under this Article; and

3. not less than One Hundred and No/100 Dollars ($100.00) nor more than Two Thousand and No/100 Dollars ($2,000.00) if the person has been previously convicted two or more times for an offense under this Article.

B. Each day that a violation is permitted to exist shall constitute a separate offense.

C. Culpable Mental State.

1. If the definition of an offense under this Article does not prescribe a culpable mental state, then a culpable mental state is not required.

2. Although not required, if a culpable mental state is in fact alleged in the charge of an offense under Subsection (A)(3), such offense shall be punishable as provided by that Subsection above. If, however, a culpable mental state is not alleged in the charge of an offense under Subsection (A)(3), such offense shall be punishable by a fine in an amount not less than One Hundred and No/100 Dollars ($100.00) nor more than Five Hundred and No/100 Dollars ($500.00).

(Amend Ord 17-024, 5/9/17)

ARTICLE XI

RETAIL SALES OF TOBACCO PRODUCTS

Section 11.01 Definitions

"Tobacco product" shall have the same definition as in Article X of this chapter.

"Vending machine" shall mean any mechanical, electric or electronic self-serving device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

Section 11.02 Purpose

The purpose of this article is to protect the health, safety and welfare of persons under the age of eighteen (18) from the health risks caused by the use of tobacco products.

Section 11.03 Vending Machines

A. A person commits an offense if he or she sells, offers for sale, allows the sale of, allows the offer for sale of or allows the display for sale of tobacco products by use of a vending machine.

B. Exceptions.

1. It is an exception to Subsection (A) that a cigarette vending machine is located within an enclosed facility which does not admit any persons under the age of eighteen (18) years. The establishment shall post a sign at each entrance of the enclosed facility that persons under the age of eighteen (18) years are prohibited from the enclosed facility. Enclosed facility means an area surrounded by a wall and which area may not be accessed except by doorway.

2. It shall also be an exception to Subsection (A) that a cigarette vending machine is located in a portion of a facility to which the general public or members of a private club do not have access. The establishment shall post a sign at the entrances to this area to which the general public or members of a private club are prohibited. (Amend Ord 94-26, 2/8/94)

Section 11.04 <u>Penalty and Culpability</u>

A. A violation of this article is punishable by a fine not to exceed **$2,000.00**.

B. There shall be no requirement of a culpable mental state for a violation of this article.

Section 11.05 <u>Effective Date</u>

This article shall become effective on February 1, 1994. (Amend Ord 94-02, 01/04/94)

ARTICLE XII

ON-SITE SEWAGE FACILITIES

Section 12.01 Adopting Chapter 366, Texas Health and Safety Code

Chapter 366 of the Texas Health and Safety Code, as amended, is hereby adopted and designated together with all amendments, deletions and addenda hereinafter contained, the same as though it were copied at length herein.

The City of Arlington, Texas clearly understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, and will fully enforce Chapter 366 of the Texas Health and Safety Code and Chapters 7 and 37 of the Texas Water Code, and associated rules referenced in Section 12.04 of this Article.

Section 12.02 Area of Jurisdiction

The Rules shall apply to all the area lying within the incorporated limits of Arlington, Texas.

Section 12.03 On-Site Sewage Facility Rules

Any permit issued for an on-site sewage facility within the jurisdictional area of Arlington, Texas, must comply with the Rules adopted in Section 12.04 of this Ordinance.

Section 12.04 On-Site Sewage Facility Rules Adopted

The Rules, Title 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285, as amended, promulgated by the Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees of Arlington, Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

Section 12.05 Incorporation By Reference

The Rules, 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules.

Section 12.06 Amendments

The City of Arlington, Texas, wishing to adopt more stringent Rules for its On-Site Sewage Facility Ordinance understands that the more stringent local Rule shall take precedence over the corresponding Texas Commission on Environmental Quality requirement. Listed below are the more stringent Rules adopted by Arlington, Texas:

A. All on-site sewage facilities must be permitted regardless of lot size; and

B. Real estate inspections of on-site sewage facilities necessary for mortgage financing approval may be conducted by the City of Arlington, Texas, upon request.

Section 12.07 Development or Organized Disposal Systems

In order to implement the stated policy of the legislature and the Texas Commission on Environmental Quality to encourage the development and use of organized disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution, protect the public health, and maintain and enhance the quality of water in the state, installation of an on-site sewage facility will only be allowed if the property owner has received written authorization from the designated representative for the City and has obtained a permit in accordance with Section 12.10. Such authorization will only be granted if the designated representative of the City determines that connection to the City sanitary sewer system is not feasible, including when the property does not abut a street, alley, or other public right of way in which sufficient line of the sanitary sewer system of the City exists.

Section 12.08 Duties and Powers

Designated personnel of the City of Arlington, Texas, are herewith declared the designated representatives for the enforcement of these Rules within its jurisdictional area.

The appointed individual(s) must be approved and certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities of the designated representative of the City of Arlington, Texas. The designated representative duties and concomitant powers shall include the following:

1. To resolve any question regarding any interpretation of these Rules;

2. To enforce these Rules and to make appropriate recommendations to proper city officials when instances of noncompliance with these Rules have been determined;

3. To make statutorily mandated inspections of proposed, new and existing on-site sewage facilities;

4. To collect fees set by the authorized agent as necessary to recover the reasonable costs incurred in meeting the requirements of these Rules;

5. To make monthly reports to the authorized agent on all actions, including legal actions, taken concerning these Rules;

6. To investigate nuisance complaints within twenty-one (21) days of receipt. All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within thirty (30) days; and

7. To adopt policies and procedures consistent with this Article and state law necessary to perform all required duties and for the administration of this Article; and

8. To perform all other duties necessary to meet the requirements of these Rules.

Section 12.09 <u>Collection of Fees</u>

The various requirements for permits, installation, application, repairs, inspections, re-inspections and such administrative function of this Article shall require payment of fees submitted to the City of Arlington, Texas, in an amount set by resolution of the City Council. All fees collected shall be made payable to the City of Arlington, Texas. A fee of $10 will also be collected for each on-site sewage facility permit to be paid to the On-Site Wastewater Treatment Research Council as required by the Texas Health and Safety Code, Chapter 367, as amended.

Section 12.10 <u>Permit Requirements</u>

A. Texas Health and Safety Code, Chapter 366, Subchapter D, as amended, describes permit requirements for on-site sewage facilities, including but not limited to: the application process, inspections, approval and disapproval of applications, and issuance of permits.

B. A person must hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage facility or on-site sewage disposal system, in accordance with Texas Health and Safety Code § 366.051, as amended. The designated representative has the authority to approve or disapprove applications for permits as well as to revoke permits as provided by this Article and other applicable law.

C. If the designated representative approves a permit, each new on-site sewage facility shall be inspected and approved by the designated representative prior to the final covering of the facility.

1. The applicant or registered installer shall notify the designated representative that an inspection is desired at least five (5) working days prior to the need for inspection.

2. The applicant or registered installer shall provide whatever reasonable assistance the designated representative requests in order to make the inspection.

3. The applicant or registered installer must be present at the time of the inspection for that facility.

Section 12.11 <u>Appeals</u>

A. Persons may appeal an action or decision of the designated representative to the Appeal Officer designated by the City Manager to hear such appeals.

B. The designated representative shall provide written notice to the property owner of decisions involving an on-site sewage facility, including but not limited to decisions disapproving or revoking a permit as well as decisions requiring the owner to connect the property to the City sanitary sewer system or repair or replace an on-site sewage facility. The owner may appeal a decision of the

designated representative by filing a written request for a hearing with the Appeal Officer before the expiration of seven (7) days from the date that the notice was provided.

C. If the Appeal Officer timely receives a request for a hearing under this Section, the Appeal Officer will schedule a hearing within fifteen (15) days unless the parties agree to a certain date beyond fifteen (15) days.

D. At the hearing, upon reviewing any relevant evidence from the owner and the City, the Appeal Officer will determine by a preponderance of the evidence whether sufficient grounds exist to affirm the decision of the designated representative. In making a determination, the Appeal Officer may consider: the seriousness of the violations at the property or the current condition of the property, the history of previous violations at the property, the health and safety of the community as well as persons living at adjacent and nearby properties, and any other relevant facts or evidence that the Appeal Officer may find helpful in making a determination.

E. After the hearing has concluded, the Appeal Officer will enter an order either affirming, overturning, or modifying the decision of the designated representative, and will provide written notice of the order to the owner and the designated representative.

F. The Appeal Officer may adopt policies and procedures consistent with this Article to conduct appeals of decisions of the designated representative.

Section 12.12 <u>Enforcement Plan</u>

A. The City of Arlington, Texas, clearly understands that, at a minimum, it must follow the requirements in 30 Texas Administrative Code § 285.71 Authorized Agent Enforcement of On-Site Sewage Facilities, as amended. This Ordinance adopts and incorporates all applicable provisions related to on-site sewage facilities, which includes, but is not limited to those found in Chapters 341 and 366 of the Texas Health and Safety Code, Chapters 7, 26, and 37 of the Texas Water Code and 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285, as amended.

B. The designated representative shall conduct an inspection of any on-site sewage facility or septic system when any of the following conditions exist:

1. The designated representative has reason to believe that:

   a. the on-site sewage facility was installed or is being operated without a permit or otherwise in violation of this Chapter or other applicable law;

   b. the on-site sewage facility is causing pollution or is creating a public health threat or nuisance condition; or

   c. construction or plumbing work was performed on the on-site sewage facility resulting in additional wastewater load being placed on the system; or

2. An application is made for building or plumbing permits at the property showing that the proposed construction or plumbing work will result in additional wastewater load being placed on the system.

C. The designated representative may revoke a permit and the owner must comply with the requirements of Subsection (D) if the on-site sewage facility:

1. Ceases to function as designed; or

2. Poses an environmental hazard or constitutes a nuisance to public health.

D. If any of the conditions under Subsection (C) occur and the permit is revoked, the designated representative will provide the owner of the on-site sewage facility with written notice of the permit revocation and that the owner must complete one of the following requirements within 60 days of the written notice.

1. If the property abuts any street, alley, or other public right of way in which any sufficient line of the sanitary sewer system of the City exists, the property must connect to the City sanitary sewer system.

2. If the property does not abut a street, alley, or other public right of way in which sufficient line of the sanitary sewer system of the City exists, the on-site sewage facility may instead be repaired or replaced upon written authorization from the designated representative for the City.

E. Upon request of the owner or permittee and in consideration of actual or potential environmental hazards or nuisances to public health, the designated representative may approve or deny extensions of time to comply with Subsection (D).

F. If the designated representative grants authorization for repair or replacement of the on-site sewage facility under Subsection (D)(2), the designated representative shall conduct an inspection upon completion of the work to verify compliance. If the facility is found to be compliant with all applicable laws, rules, and regulations, a permit may be issued or the existing permit may be modified.

G. A person commits an offense if the person:

1. owns or maintains a property with an on-site sewage facility where any of the conditions of Subsection (C) have occurred; and

2. fails to connect to the City sanitary sewer system or repair or replace the on-site sewage facility as provided by Subsection (D).

Section 12.13 <u>Penalties</u>

The City of Arlington, Texas, adopts the criminal, injunction or civil suit, and civil penalty provisions as set forth in Chapters 366 and 341 of the Texas Health and Safety Code, Chapters 7, 26 and 37 of the Texas Water Code and 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285, as amended. Each day of a continuing violation is a separate offense and is punishable as such. The penalties shall include, but are not limited to the following penalties.

A. <u>Criminal Penalties</u>

1. A person commits an offense if a person operates as an installer unless the person is registered by the state.

2. A person commits an offense if the person violates a rule adopted by the Texas Commission on Environmental Quality under this chapter or an order or resolution adopted by an authorized agent under Section 366.0515 of the Texas Health and Safety Code, as amended.

3. A person commits an offense if the person begins to construct, alter, extend or repair an on-site sewage facility owned by another person before the owner of the system obtains a permit to install, construct, alter, extend or repair the on-site system as required.

4. An emergency repair to an on-site sewage facility without a permit is not an offense under the Rules if such repairs meet the criteria of Section 12.14.

5. An offense under this section is a Class C misdemeanor unless it is shown in the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is punishable under the provisions of state law.

6. Each day that a violation occurs constitutes a separate offense.

7. A person commits an offense if the person owns or maintains a property where there exists a nuisance described by this Subsection. A public health nuisance is sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons.

   a. An offense under this Subsection is a misdemeanor punishable by a fine of not less than $10.00 or more than $200.00.

   b. If the Defendant has previously been convicted of an offense under this Subsection, the offense is punishable under the provisions of State law.

B. <u>Injunction or Civil Suit</u>

1. The Administrator may, in partnership with the Texas Commission on Environmental Quality, request the Attorney General to bring a civil suit, if it appears that a person has violated, is violating, or is threatening to violate any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit or other order of the Commission issued pursuant to Chapter 366, Texas Health and Safety Code for:

   a. mandatory or prohibitory injunctive relief, as warranted by the facts;

   b. a civil penalty as provided by Chapter 366, Texas Health and Safety Code; or

   c. both injunctive relief and civil penalty.

C. Civil Penalty

The authorized agent may request that the Texas Commission on Environmental Quality initiate an enforcement action pursuant to these sections through a petition filed with the Commission. If the Commission initiates an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of the enforcement action.

D. Fees and Costs Recoverable

If an authorized agent or the state prevails in a suit pursuant to Subchapter F of Chapter 366 of the Texas Health and Safety Code, as amended, it may recover reasonable attorney's fees, court costs and reasonable investigative costs incurred in relation the proceeding.

Section 12.14 Emergency Repair

An emergency repair to an on-site sewage facility without a permit is not an offense under these Rules if the following procedures are carried out:

A. The repair is made for the purpose of abatement of an immediate, dangerous and serious health hazard;

B. That said repair does meet minimum state design criteria;

C. That said repair does not constitute an alteration of the on-site system;

D. That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent within seventy-two (72) hours of the date of the repair; and

E. That said repair must be inspected for compliance with the state's design criteria.

Section 12.15 Relinquishment of Ordinance

If the City Council of Arlington, Texas, decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the City Council shall follow

the procedures outlined in 30 Texas Administrative Code § 285.10 (d)(1) through (4), as amended.

After relinquishing its on-site sewage facility authority, the authorized agent understands that it may be subject to charge-back fees in accordance with 30 Texas Administrative Code § 285.10 (d)(5) and § 285.14, as amended, after the date that delegation has been relinquished.

Section 12.16 Severability

It is hereby declared to be the intention of the City Council of Arlington, Texas, 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 should 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, or sections of this Ordinance, since the same would have been enacted by the City Council without incorporation in this Ordinance of such unconstitutional phrases, clause, sentence, paragraph, or section.

Section 12.17 Effective Date

This Ordinance shall be in full force and effect from and after its date of approval as required by law and upon the approval of the Texas Commission on Environmental Quality.

(Amend Ord 17-015, 3/7/17)

ARTICLE XIII

YOUTH TOBACCO USE

Section 13.01 Definitions

The following words and terms when used in this article shall have the meanings respectively ascribed to them in this section:

"Tobacco Product" shall mean a cigarette, cheroot, stogie, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a tobacco substitute.

Section 13.02 Purpose

The purpose of this article is to protect the health, safety and welfare of persons under the age of eighteen (18) from the health risks caused by the use of tobacco products.

Section 13.03 Possession of Tobacco Products by Minors Prohibited

A. An individual who is younger than eighteen (18) years of age commits an offense if the individual:

1. possesses, purchases, consumes, or accepts a tobacco product; or

2. falsely represents himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.

B. It is an exception to the application of this section that the individual younger than eighteen (18) years of age possessed the cigarette or tobacco product in the presence of:

1. an adult parent, a guardian, or a spouse of the individual; or

2. an employer of the individual, if possession or receipt of the tobacco product is required in the

performance of the employee's duties as an employee.

C. It is an exception to the application of this section that the individual younger than eighteen (18) years of age is participating in an inspection or test of compliance while under the direction and supervision of a police officer in the process of enforcing this article.

Section 13.04 <u>Penalty and Culpability</u>

A. Except as provided in Subsection (B), a violation of this article is punishable by a fine of not less than Twenty Five and No/100 Dollars ($25) nor more than Seventy Five and No/100 Dollars ($75).

B. If a person has been previously convicted of a violation of this article, a violation of this article is punishable by a fine of not less than One Hundred and No/100 Dollars ($100) nor more than Two Hundred Fifty and No/100 Dollars ($250).

C. There shall be no requirement of a culpable mental state for a violation of this article.

Section 13.05 <u>Effective Date</u>

This article shall become effective on August 1, 1997, and shall expire on January 1, 1998." (Amend Ord 97-108, 7/29/97)

ARTICLE XIV

HOTEL PREMISES AND SANITATION REGULATIONS

Section 14.01 Definitions

In this article:

Hotel means an establishment in which lodging is offered and provided to the public for compensation and classified under Lodging Facilities in Article 3 of the Unified Development Code (UDC), excluding a Bed and Breakfast Inn, Short-Term Rental or other lodging facility that operates pursuant to a certificate of occupancy authorizing an R-2 occupancy under Section 310 of Chapter 3, "Use and Occupancy Classification," of the IBC.

Inspection Official means the City's duly appointed Building Official or Health Official, or their designees.

International Building Code ("IBC") means the most recent edition of the International Building Code adopted as the official building code, as amended, in Article I, Building Code, of the "Construction" Chapter of the Arlington City Code.

Nontransient means occupancy of a sleeping unit for more than 30 consecutive days.

Transient means occupancy of a sleeping unit for not more than 30 consecutive days.

Transient hotel means a hotel, which: (i) operates pursuant to a certificate of occupancy authorizing an R-1 occupancy under Section 310 of Chapter 3, "Use and Occupancy Classification," of the IBC; or (ii) maintains transient or nontransient units pursuant to a certificate of occupancy that does not assign an occupancy classification; or (iii) maintains nontransient sleeping units and such units are not constructed nor equipped in accordance with the standards for an R-2 occupancy under Section 310 of Chapter 3, "Use and Occupancy Classification," of the IBC.

Section 14.02 Premises conditions

A. Compliance with codes. All hotel premises and guest rooms shall fully comply with all City of Arlington Construction, Fire Prevention, and Unified

Development Code requirements and this chapter as determined by the Building Official.

B. Occupancy prohibited. No room at a hotel may be let or occupied if it fails to meet all of the health, sanitation and safety requirements of this section.

C. Bathroom conditions/cleanliness. The bathroom in each guest room of a hotel shall contain a minimum of one toilet, one lavatory, and one shower and/or bathtub, which may include a bathtub/shower combination. Bathroom fixtures shall be sanitary design, and all such fixtures shall be cleaned and disinfected daily. All fixtures, including vanities and mirrors, shall be maintained without cracks, chips or stains. Floors and other horizontal surfaces shall be cleaned and sanitized at each change of occupancy or at least once a week when occupancy does not change. A supply of toilet paper and single-use soap must be provided. Used personal hygiene items left by departing guests shall be discarded.

D. Carpet condition/cleanliness. Carpeting shall be free of stains, holes, rips or odors in excess of normal wear and tear, and it shall be maintained in a sanitary condition.

E. Floor condition/cleanliness. Non-carpeted floor surfaces shall be completely covered with a commercial grade floor covering made of non-absorbent, non-porous material. All surfaces and tile grouting shall be maintained without cracks, rips or missing or damaged transition strips and base trim.

F. Wall condition/cleanliness. Wall surfaces shall be maintained without spots, stains, flakes, chips or holes, and shall be maintained in a clean and sanitary condition.

G. Mold/mildew. All surfaces, including but not limited to walls, ceilings, carpeting, flooring fixtures and sealants, shall be free from mold and mildew. All bathrooms and toilet rooms shall be adequately ventilated to remove excessive moisture. Whenever evidence of significant water/moisture intrusion is found within or upon surfaces or materials that may promote the growth of mold, the source of the water or moisture shall be corrected and appropriate measures taken to remediate the mold, if any.

H. Hot water. Boilers and hot water supply systems throughout the hotel shall be designed and regulated to deliver hot water to each use in the hotel within the temperature range specified by applicable codes for such use (e.g., bathing, laundry, food preparation).

I. Electrical equipment. All electrical equipment and fixtures such as televisions and lamps shall be properly installed and maintained to manufacturer's specifications and be in operable condition.

J. Climate control. Cooling and heating facilities shall be provided capable of maintaining a room temperature between 68°F (20°C) and 80°F (26.7°C) while occupied by guests.

K. Furniture condition. All furniture items shall be maintained in like new and proper working condition without defects, pinch points or holes.

L. Window/light fixture treatments and interior lighting. Shades, draperies or blinds shall be provided to cover all windows and appropriate light fixtures. All shades, draperies and blinds shall be free of stains, holes, rips or odors in excess of normal wear and tear, and be maintained in a sanitary, operational condition.

M. Security. All doors and windows designed to be opened shall be operable and have an operable door or window security or locking device. In-room telecommunications systems and equipment, if provided, shall be configured and maintained to provide access to outside emergency services in accordance with applicable state or federal law.

N. Exterior security lighting. The exterior of the hotel property, including adjacent public sidewalks and parking lots under the control of the operator, shall be illuminated at least between one hour after sundown and one-half hour before sunrise. Illumination shall be a minimum of one-tenth (0.1) of one (1) foot-candle throughout the property and shall not exceed four-tenths (0.4) of one (1) foot-candle of light measured at the property line.

O. Pools. Pools must comply with Article VII, "Public Pools, Spas, and Public Interactive Water Features and Fountains," of this Chapter. In order to prevent the breeding of mosquitos and other health and safety hazards to the public, pools must either be maintained in working order and permitted by the Health Official or removed from the premises in accordance with city standards for removal.

P. Chemical storage areas. Chemical storage and handling areas shall be supplied with handwashing fixtures and facilities for employees.

Q. Removal of prior guest's property. Any property left in any hotel or motel room by a person or party that has checked out shall be removed by the operator of the

hotel before the room may be occupied by another party. The property must be stored or disposed of in accordance with applicable laws.

R. Smoking. The hotel shall comply with Article X, "Regulation of Smoking" of this chapter.

S. Kitchenettes. A kitchenette, when provided, shall include:

1. Counters for food preparation made of impervious material and easily cleanable;

2. Cupboards, drawers or other storage areas in which utensils, tableware and food can be stored protected from contamination;

3. A washable waste container; and

4. A sink supplied with adequate hot water and capable of attaining a temperature of 120°F at the faucet within two minutes at a minimum pressure of 20 psi.

5. Optional equipment and fixtures, if included in the kitchenette, shall meet the following standards:

a. Cooking equipment that is installed according to manufacturer's specifications and with ventilation as required by applicable codes.

b. A refrigeration unit for holding cold food, capable of maintaining a temperature of 45°F or lower.

Section 14.03 <u>Health, sanitation, and control of vermin</u>

A. Mattress condition/cleanliness. Mattresses and box springs shall be free of stains, holes, rips or odors and maintained in a sanitary, operational condition. A mattress or box spring is not in operational condition if it has broken springs, indentations or sags. Mattresses shall be routinely inspected by staff for condition and sanitation.

B. Linens. Linens shall be free of stains, holes, rips or odors and shall be laundered with soap or detergent and sanitized with a product labeled for that use. The hotel shall launder linens in-house or use a third-party commercial linen service.

1. If linens are laundered in-house, the hotel shall maintain an on-site laundry facility with an adequate hot water supply, high-capacity laundry equipment operating to OEM specifications, and related fixtures for washing, drying, folding and clean linen storage.

2. Storage areas for soiled bedding, linen, and towels shall be separated from clean bedding, linen, and towels.

3. If a third-party commercial linen provider is used, all linens and/or conveyances that are found to be dirty, stained, or otherwise in poor condition must be rejected or segregated from clean linens.

4. Laundry that has been exposed to a biohazardous event shall be handled in accordance with the Biohazard Event Response Plan and all applicable regulatory requirements.

5. Linens in each guest room shall be replaced daily, unless the hotel offers occupants an optional energy or water conservation program approved by the Inspection Official and the occupant of the guest room affirmatively opts to participate in the program or the hotel maintains an alternate linen service approved by the Inspection Official.

C. Pests. All hotel premises shall be maintained so that they are free from rodents, insects, ectoparasites and vermin, and free from conditions that encourage or harbor rodents, insects and vermin.

D. Extermination. All hotel premises shall be treated for insects by an exterminator licensed by the State at least quarterly, or on a more frequent schedule as determined necessary by the Inspection Official to treat infestation. Documentation of pest control services shall be maintained on premises for six months after the services were rendered. The guest room shall not be occupied by new guests until the timeframe recommended by the manufacturer of the treatment substance, such as a fumigant, has passed.

E. Housekeeping carts. Housekeeping carts shall be maintained in clean and sanitary condition. Each cart used for combined delivery of clean articles and removal of items for laundering must have a separate storage bin or bag for the soiled articles. The storage bin shall be made of a cleanable, smooth, and impervious material; storage bags shall be made of a durable material that is machine washable unless the bag is for single use only. Soiled articles or chemicals shall be stored or

stowed on the cart to prevent contact with clean linens. All containers of chemicals used for maintaining guest rooms shall be labeled.

F. New, disposable single-use, food-grade plastic ice bucket liners shall be provided each day that the guest room is occupied except when disposable single-use ice buckets are provided. Multi-use glasses shall be collected daily, washed, rinsed, sanitized, and protected from recontamination before being replaced in the room. Single-service drinking cups shall be individually wrapped or dispensed in a sanitary manner.

G. Biohazard Event Control Plan. Every hotel shall have a written Biohazard Event Control Plan in such detail satisfactory to the Inspection Official and that is available for review and evaluation by the Official. The Biohazard Event Control Plan shall include:

1. Cleaning and sanitation procedures by which hotel employees can safely disinfect potentially-contaminated environmental surfaces and control potential communicable disease outbreaks among guests and/or employees;

2. Detection, containment, remediation and closure of rooms or areas impacted by sanitary sewage discharge, leaks, spills or backflow. All such events shall be contained within four (4) hours of detection and may be subject to closure by the Inspection Official. All sewage spills must be remediated in a manner that eliminates potential disease transmission, offensive odors, sewage solids, and sewage litter; and

3. Procedures for biohazard events in which a biological agent, including pathogenic microorganisms and their toxins, causes a condition that may constitute a threat to human health or safety, are to be reported to the Inspection Official and procedures for documenting response activities.

H. Sanitary sewage events. All sanitary sewage discharge, leaks, spills or backflow shall be contained within four (4) hours of detection by the hotel or notification from hotel guests. The Inspection Official, in consultation with hotel management, is authorized to close to public use guest rooms or other areas of the hotel contaminated by any such event until the rooms or areas are cleaned and cleared of potential disease transmission, offensive odors, and sewage solids and litter.

I. Employee work practices. Every hotel shall promulgate, maintain and enforce standard operating policies and procedures for all employees that are directly involved in the servicing or maintenance of guest rooms. Such policies and procedures shall include:

1. Employee recognition of and reporting of health hazards in guest rooms and other hotel facilities where guests are invited;

2. Employee training in response to biohazard events and handling in accordance with OSHA standards;

3. Personal hygiene while on duty;

4. Sequestration of or temporary reassignment of employees with communicable disease, open wounds, skin infections, or acute respiratory infections until and unless cleared for work by a medical professional; and

5. Such other reasonable policies and procedures as the Inspection Official deems necessary and proper to ensure that hotel employees protect the health and safety of guests and prevent the spread of communicable disease.

Section 14.04 <u>Manager on duty</u>

The hotel shall designate a manager(s)-on-duty who can be contacted by the Inspection Official regarding inspections of the premises and other matters pertaining to compliance with the provisions of this article. A manager-on-duty shall be available to be reached in person or by phone at all times while guests are on the hotel premises. Each designated manager-on-duty shall be authorized to, and shall not refuse to, accept service of citation for any violations on the premises.

Section 14.05 <u>Inspections required</u>

A. The Inspection Official shall inspect each hotel premises, to include the physical examination of an appropriate sampling of guest rooms, not less than once annually for compliance with the provisions of this article. The Official may inspect or reinspect a hotel premises more frequently and/or vary the number of guest rooms included in the sampling as deemed necessary and proper to achieve and maintain continuing compliance.

B. The Inspection Official may forego a physical examination of rooms and conduct a records audit only when the hotel demonstrates to the satisfaction of the Official that adequate cleaning, sanitation and maintenance operating procedures are in place to ensure compliance with this article and that the hotel makes such records, schedules, internal reports, or reliable third-party audits available to the Official for review and evaluation.

C. In order to carry out the intent of this article, the Inspection Official is authorized to conduct inspections of a hotel premises during normal business hours. In furtherance thereof, the Official may, but is not required, to request of the hotel manager that a prescribed number of rent-ready guest rooms be made available for inspection and/or that the hotel's cleaning, sanitation and maintenance records, schedules, internal reports, or third-party audits be made available for review and evaluation.

D. It shall be unlawful and an offense for any person to fail or refuse a lawful request of the Inspection Official to inspect a hotel room or to produce for the Official's review and evaluation the records, schedules, internal reports, or third-party audits that the hotel relies upon or proffers as evidence of its compliance with the provisions of this article.

Section 14.06 <u>Inspection fees</u>

A fee established by resolution of the City Council will be charged to reimburse the City for all costs associated with the administration of this article.

Section 14.07 <u>Violations and enforcement</u>

A. A person commits an offense if the person operates any hotel without a valid certificate of occupancy or contrary to or in violation of the terms or conditions of its certificate of occupancy.

B. A person commits an offense if the person commits any act forbidden or fails to perform any act required in this Article.

C. Each violation of this Article shall constitute a separate offense and each offense is punishable by a fine as specified in Article IX, Section 9.01 of this Chapter.

D. Allegation and evidence of a culpable mental state is not required for proof of an offense under this article except where expressly required.

E. Any condition reasonably believed to be imminently dangerous to the life, limb, health or safety of the occupants may be abated by the Inspection Official in accordance with State law.

F. At the option of the City, and in addition to all other available remedies, the City may proceed to enforce the requirements of this chapter under the alternative procedure set forth in Texas Local Government Code, Chapter 54, Subchapter B, "Municipal Health and Safety Ordinances".

G. At the option of the Inspection Official, immediate enforcement may be temporarily abated if the owner agrees to a supervised compliance plan, demonstrates the ability to comply with the plan and makes continuing progress toward compliance.

(Amend Ord 19-030, 5/21/19)

ORDINANCE NO. 96-20

AN ORDINANCE AMENDING THE "**HEALTH AND SANITATION**" CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, BY THE ADDITION OF **ARTICLE XII**, ENTITLED ON-SITE SEWAGE DISPOSAL, ADOPTING RULES REGULATING ON-SITE SEWAGE FACILITIES TO ABATE OR PREVENT INJURY OR POLLUTION TO THE PUBLIC HEALTH; PROVIDING FOR A FINE OF UP TO **$500** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE AS PROVIDED BY LAW AND UPON THE APPROVAL OF THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "**Health and Sanitation**" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through addition of Article XII, On-site Sewage Disposal, so that hereafter the same shall be and read as follows:

ARTICLE XII

ON-SITE SEWAGE DISPOSAL

Section 12.01 Adopting Chapter 366, Texas Health and Safety Code

Chapter 366 of the Texas Health and Safety Code, Vernon's Texas Statutes Annotated 1992 Edition and 1995 Supplement is hereby adopted and designated together with amendments, deletions and addenda hereinafter contained, the same as though it were copied at length herein.

The City of Arlington, Texas, clearly understands the technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site

sewage facilities and will fully enforce Chapter 366 of the Texas Health and Safety Code.

Section 12.02 <u>On Site Sewage Facility Rules Adopted</u>

The Rules ("Design Criteria For On-site Sewage Facilities and 30 TAC 285.101 - 285.115) promulgated by the Texas Natural Resource Conservation Commission for on-site sewage systems are hereby adopted, and all officials and employees of the City of Arlington, Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

Section 12.03 <u>Area of Jurisdiction</u>

The Rules adopted by this Ordinance shall apply to all of the incorporated area of the City of Arlington, Texas.

Section 12.04 <u>On Site Sewage Facility Rules</u>

Any structure discharging sewage into an on-site sewage facility within the jurisdictional area of the City of Arlington, Texas, must comply with the Rules adopted in Section 12.02 of this Article.

Section 12.05 <u>Incorporation by Reference</u>

The Design Criteria and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules.

Section 12.06 <u>Amendments, Additions and Deletions</u>

The City of Arlington, Texas, wishing to adopt more stringent Rules for its On-site Sewage Facility Ordinance, understands that the more stringent conflicting local Rule shall take precedence over the corresponding Texas Natural Resource Conservation Commission requirement.

The adoption of Chapter 366, as provided in Section 12.01 above, is modified and amended by the following:

A. All on-site sewage facilities must be permitted regardless of lot size; and

B. The addition that real estate inspections of on-site sewerage facilities necessary for mortgage financing approval shall be conducted by the City of Arlington Health Department.

Section 12.07 <u>Development or Organized Disposal Systems</u>

In order to implement the stated policy of the legislature and the Texas Natural Resource Conservation Commission to encourage the development and use of organized disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution, protect the public health, and maintain and enhance the quality of water in the state, the following requirements are made:

A. No person may cause or allow the installation of an on-site sewage facility when any part of the facility is to be five hundred feet (500') in horizontal distance (measured on the closest practicable access route) of an existing organized system, unless one of the following requirements has been met:

   1. The person has received a written denial of service from the owner or governing body of the organized disposal system; or

   2. The person has received a written determination from the designated representative that it is not feasible for the person to connect to the organized disposal system.

B. Whenever an organized disposal system is developed within five hundred feet (500') in horizontal distance (measured on the closest practicable route) from any private sewage facility, that private sewage facility shall be connected to the organized system unless one of the requirements set forth in subsections A.1. or A.2. of this section has been met.

Section 12.08 <u>Duties and Powers</u>

The Health Department of the City of Arlington, Texas, is herewith declared the designated representative for the enforcement of these Rules within its jurisdictional area.

The appointed individual(s) must be approved and certified by the Texas Natural Resource Conservation Commission before assuming the duties and responsibilities of the designated representative of the Arlington Health Department. The designated representative shall have the following duties and concomitant powers:

1. To resolve any question regarding any interpretation of these Rules, or the Design Criteria;

2. To enforce these Rules and to make appropriate recommendations to proper city officials when instances of noncompliance with these Rules have been determined;

3. To make statutorily mandated inspections of proposed, new and existing on-site sewage facilities;

4. To collect fees set by the authorized agent as necessary to recover the reasonable costs incurred in meeting the requirements of these Rules;

5. To make semi-annual reports to the authorized agent on all actions, including legal actions, taken concerning these Rules;

6. To investigate nuisance complaints within twenty-one (21) days of receipt. All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within thirty (30) days; and

7. To perform all other duties necessary to meet the requirements of these Rules.

Section 12.09 Collection of Fees

All fees collected for permits and/or inspections shall be made payable to the City of Arlington, Texas.

Section 12.10 License to Operate

Each new on-site sewage facility shall be inspected and approved by the designated representative prior to the final covering of the facility.

A. The applicant or registered installer shall notify the designated representative that an inspection is desired at least five (5) working days prior to the need for inspection.

B. The applicant or registered installer shall provide whatever reasonable assistance the designated representative requests in order to make the inspection.

C. The applicant or registered installer must be present at the time of the inspection for that facility.

Section 12.11 Appeals

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the Appeal Officer designated by the City Manager to hear such appeals.

Section 12.12 Enforcement

The designated representative may routinely inspect on-site sewage facilities to assure continued compliance with these Rules.

The designated representative shall inspect any on-site system that is believed to be causing pollution, a threat to the public health, nuisance conditions, or illegally installed or altered. If upon inspection it is found that any of these conditions exist, the owner of the on-site sewage facility will be notified in writing of the violation and what must be done to achieve compliance, and provide a reasonable amount of time to comply. The on-site sewage

facility shall be reinspected at the expiration of the allotted time.

A. If the facility is found to be compliant, a license may be issued or the existing license may be modified.

B. If the facility is found to be noncompliant, appropriate enforcement shall be taken.

Section 12.13 <u>Penalties</u>

The City of Arlington, Texas, adopts the criminal, injunction or civil suit, and civil penalty provisions as set forth in Sections 366.091, 366.092, 366.0921 of the Texas Health and Safety Code and/or any other such penalties (Section 341.091 of the Texas Department of Health, Chapter 341) that may be provided by state law. Each day of a continuing violation is a separate offense and is punishable as such.

A. <u>Criminal Penalties</u>

1. A person commits an offense if a person operates as an installer unless the person is registered by the state.

2. A person commits an offense if the person violates a rule adopted by the Commission under this chapter or an order or resolution adopted by an authorized agent under Subchapter C in a county that is contiguous to an international border.

3. A person commits an offense if the person begins to construct, alter, extend or repair an on-site sewage facility owned by another person before the owner of the system obtains a permit to install, construct, alter, extend or repair the on-site system as required.

4. An emergency repair to an on-site sewage facility without a permit is not an offense under the Rules if such repairs meet the criteria of Section 12.14.

5. An offense under this section is a Class C misdemeanor unless it is shown in the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in

which event the offense is punishable under the provisions of state law.

6. Each day that a violation occurs constitutes a separate offense.

7. A person commits an offense if the person violates the provisions of this Section regarding nuisances.

   a. A public health nuisance is sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons.

      (1) An offense under this section is a misdemeanor punishable by a fine of not less than $10.00 or more than $200.00.

      (2) If the Defendant has previously been convicted of an offense under this Chapter, the offense is punishable under the provisions of State law.

      (3) Each day of a continuing violation is a separate offense.

B. <u>Injunction or Civil Suit</u>

1. The Administrator or his authorized agent may, in partnership with the Commission, request the Attorney General to bring a civil suit, if it appears that a person has violated, is violating, or is threatening to violate any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit or other order of the Commission issued pursuant to Chapter 366, Texas Health and Safety Code for:

   a. mandatory or prohibitory injunctive relief, as warranted by the facts;

   b. a civil penalty as provided by Chapter 366, Texas Health and Safety Code; or

   c. both injunctive relief and civil penalty.

2. Venue for an action under Chapter 366, Texas Health and Safety Code, is in Travis County District Court, the county in which the defendant resides, or in the county in which the violation occurs.

C. <u>Civil Penalty</u>

1. The authorized agent may request that the Commission initiate an enforcement action pursuant to these sections through a petition filed with the Commission.

   a. An owner who violates any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit, or order issued pursuant to Chapter 366, Texas Health and Safety Code, is subject to a civil penalty of not less than $100 nor more than $500 for each act of violation and for each day of violation.

   b. Any other person who violates any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit, or order issued pursuant to Chapter 366, Texas Health and Safety Code, is subject to Civil penalty of not less than $500 nor more than $5,000 for each act of violation and for each day of violation.

2. The civil penalties recovered shall be divided between the authorized agent and the state based on the proportion of resources expended by each entity in the course of the enforcement action.

Section 12.14 <u>Emergency Repair</u>

An emergency repair to an on-site sewage facility without a permit is not an offense under these Rules if the following procedures are carried out:

A. The repair is made for the purpose of abatement of an immediate, dangerous and serious health hazard;

B. That said repair does meet minimum state design criteria;

C. That said repair does not constitute an alteration of the on-site system;

D. That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent within seventy-two (72) hours of the date of the repair; and

E. That said repair must be inspected for compliance with the state's design criteria.

Section 12.15 <u>Relinquishment of Ordinance</u>

If the City Council of Arlington, Texas, decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the City Council shall follow the procedures outlined below:

A. The City Council shall inform the Texas Natural Resource Conservation Commission by certified mail at least thirty (30) days before the published date of the public hearing notice that it wishes to relinquish its On-site Sewage Facility Ordinance.

B. The City Council shall post the required public notice in a newspaper regularly published or circulated in the area of jurisdiction at least thirty (30) days prior to the anticipated date of action by the authorized agent and must solicit written comments for that thirty (30) day period.

C. The City Council shall send a copy of the public notice, a publisher's affidavit of public notice, and a certified copy of the court's minutes to the Texas Natural Resource Conservation Commission.

D. Upon relinquishment of the ordinance, the local governmental entity shall surrender its area of jurisdiction to the Commission.

E. The local governmental entity shall pay the Texas Natural Resource Conservation Commission the appropriate charge back fees for permitting, inspections and complaint investigations of on-site sewage facilities in the surrendered area of jurisdiction.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed **Five Hundred and No/100 Dollars ($500.00)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result

of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective as provided by law and upon the approval of the Texas Natural Resource Conservation Commission.

PRESENTED AND GIVEN FIRST READING on the 23rd day of January, **1996**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 30th day of January, **1996**, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____

RICHARD E. GREENE, Mayor

ATTEST:

_____
CINDY KEMP, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY_____

ORDINANCE NO. 96-135

AN ORDINANCE AMENDING THE "**HEALTH AND SANITATION**" CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE REPEAL OF THE EXISTING **ARTICLE VII** THEREOF, AND THE ADOPTION OF A NEW ARTICLE VII, ENTITLED PUBLIC AND SEMIPUBLIC SWIMMING POOLS, RELATIVE TO REQUIREMENTS FOR REVIEW OF POOL PLANS BY THE HEALTH DEPARTMENT PRIOR TO CONSTRUCTION, PAYMENT OF LATE FEES IF PERMIT FEES ARE NOT PAID TIMELY, ENHANCEMENT OF DEPTH MARKER AND "NO DIVING" SIGNAGE AND CHANGES IN TERMINOLOGY; PROVIDING FOR A FINE OF UP TO **$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "**Health and Sanitation**" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the repeal of the existing Article VII and the adoption of a new **Article VII**, so that hereafter said Article shall be and read as follows:

ARTICLE VII

PUBLIC AND SEMIPUBLIC SWIMMING POOLS

Section 7.01 **Swimming Pool Permit Required**

A. No person or firm shall operate a public or semipublic pool without a valid Swimming Pool Permit from the City of Arlington, issued by the Administrator or his designee.

B. The Administrator or his designee shall issue a Swimming Pool Permit to any person or firm making application in the City of Arlington; providing that the person or firm complies with the requirements of this ordinance and the annual swimming pool permit fee is paid.

Section 7.02 <u>Swimming Pool Permits Application</u>

A. Application for a Swimming Pool Permit shall be made in writing on the form provided by the Administrator or his designee. A separate application is required for each pool for which a permit is sought. An application shall be made for a permit for each pool that is constructed or extensively remodeled according to Article 7.06(A) of this chapter or at any time there is a change of ownership.

B. Swimming pool application fee is due for each pool that is constructed or extensively remodeled according to Section 7.06(A) of this chapter. A separate fee is required for each pool for which a swimming pool permit is sought.

Section 7.03 <u>Fees</u>

A. The requirements for permits and administrative fees of this Article shall require the payment to be submitted to the Arlington Health Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated swimming pools.

B. Fees are not transferable or refundable. Every permit issued under the provision of this ordinance shall be non-transferable and non-refundable. A Swimming Pool Permit shall permit the operation of the pool only at the location and for the owner for which granted.

Section 7.04 <u>Posting of Swimming Pool Permits</u>

The Swimming Pool Permit shall at all times be available on the premises for inspection and shall at all times be displayed in public view.

Section 7.05 **Permits - Duration**

A. Swimming Pool Permits shall expire on March 1 of each year unless annual swimming pool permit fee is paid, or unless suspended for cause before expiration date.

B. Swimming Pool Permits that lapse for non-payment of the annual swimming pool permit fee, will be reinstated upon payment of reinstatement fee.

Section 7.06 **Review of Plans**

A. Whenever a swimming pool is constructed or extensively remodeled, properly prepared plans and specifications for such construction or remodeling along with the Application Fee shall be submitted to the City of Arlington Health Department for review and approval before construction or remodeling is started. The plans and specifications shall include general plans of structures drawn to scale including diving facilities if provided. Detail plans shall show longitudinal and cross sections sufficient to explain the construction of the pool. Specifications shall contain details on all treatment equipment, including performance ranges of pumps, chlorinators, chemical feeders, filters, strainers, lights, skimmers, inlet and outlet fittings, diving boards, safety equipment, and other related equipment. The City of Arlington Health Department shall approve the plans and specifications if they meet the requirements of this ordinance. No swimming pool shall be constructed or extensively remodeled except in accordance with plans and specifications approved by the City of Arlington Health Department.

B. Whenever plans and specifications are required to be submitted to the regulatory authority, the regulatory authority shall inspect the pool prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance.

Section 7.07 **Inspections**

The Administrator or his designee is authorized to conduct such inspections as he deems necessary to ensure compliance with all provisions of this ordinance. He shall have right of entry at any reasonable hour upon the premises

where a public or semipublic pool is located. He shall have the authority to collect water samples from the pool.

Section 7.08 <u>Maintenance and Operation</u>

A. The owner or person-in-charge of every public or semipublic pool shall be responsible for compliance with all parts of this Article relating to pool maintenance, pool operation and safety of swimmers. It shall be unlawful for the owner or person-in-charge to cause or permit the existence of a condition which is in violation of any part of this Article.

B. All pumps, filters, disinfectant and chemical feeders, drains, ladders, lighting, ropes and appurtenant equipment used in the operation of all public and semipublic pools shall be maintained in a good state of repair.

C. All public and semipublic pools shall be treated and maintained in accordance with the following standards:

1. Every pool shall contain a disinfection concentration of a minimum free available chlorine of 1.0 mg/l. Every spa shall contain a disinfection concentration of a minimum free available chlorine of 2.0 mg/l. Use of any disinfectant other than chlorine must be approved by the Texas Department of Health. A test kit for measuring the concentration of the disinfectant, accurate within 0.2 mg/1, shall be provided at each pool.

2. If cyanuric acid is used to stabilize the free available chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water should be at least 30 mg/1, but shall not exceed 100 mg/1. A test kit should be available for measuring the concentration of cyanuric acid.

3. Every pool shall have water with a pH of not less than 7.2 and not more than 8.0. A pH test kit, accurate to the nearest 0.2 pH units, shall be provided at each pool. The total alkalinity of the pool water shall be at least 50 mg/1, but not greater than 150 mg/1.

4. The presence of organisms of the coliform group in any sample shall be deemed unacceptable water quality.

5. Every pool shall have water clarity sufficient for the main drain, or a six inch (6") diameter turbidity test disk placed at the deepest part of the pool to be clearly visible. Failure to meet this requirement shall be sufficient cause for immediate closure of the pool.

6. Every pool shall be free of scum and foreign floating matter, sediment, dirt, slime, algae and all other foreign material that may be conducive to the transmission of disease.

D. The circulation system of a public or semipublic pool must be in operation and properly maintained at all times.

E. Every pool is required to have at least one continuous disinfection system that is capable of precisely introducing a sufficient quantity of approved disinfectant necessary to maintain the level stated in C(1) of this section. Hand broadcasting of chemicals directly on to the pool surface shall not be allowed while the pool is in use.

E. Water introduced into the pool shall be supplied through an approved air gap. Any other method of introducing water into the pool system must comply with the Uniform Plumbing Code of the City of Arlington.

F. Areas surrounding a public or semipublic pool, including bathhouses, dressing rooms, toilets, shower stalls and lounging areas shall be kept clean and in a state of good repair at all times.

G. All swimming pool backwash and drainage water shall be disposed of into the sanitary sewer unless otherwise authorized by the Administrator or his designee

H. All chemicals used in swimming pool water treatment shall be stored in their original containers and kept in a cool, dry and well-ventilated place, out of the reach of children, and should be kept in a locked room.

Section 7.09 <u>Health and Safety Provisions</u>

A. All public pools, excluding spas, shall be attended by at least one (1) lifeguard during all hours of operation.

B. The following safety equipment shall be readily available, kept in good repair, and ready condition at all public and semipublic pools, excluding spas and water slides, during all times they are open for use:

1. A strong, light pole including a body hook or shepherd's crook type of pole, having blunted ends, with a minimum length of twelve feet (12');

2. A United States Coast Guard approved ring buoy with outside diameter of fifteen inches (15") to twenty inches (20"), to which shall be firmly attached a throw line at least one-fourth inches (1/4") diameter to three-eighths inches (3/8") diameter, at least the length of the maximum width of the pool or fifty feet, which ever is less.

3. A rope and float line separating the shallow area of the pool from the deep area at the transition point.

Section 7.10 <u>Warning Signs</u>

A. Semipublic pools, where no lifeguard service is provided, shall post in plain view at each entrance to the pool a warning sign which states, "WARNING - NO LIFEGUARD ON DUTY", with clear, legible letters at least four inches (4") in height. In addition, the sign shall also state, "CHILDREN SHOULD NOT USE POOL WITHOUT AN ADULT IN ATTENDANCE".

B. A sign shall be placed in distinct view of swimmers at all semipublic pools giving the emergency 911 telephone number and shall state the location of the nearest telephone At public pools, emergency 911 telephone number shall be conveniently located at each telephone location.

C. A sign shall be placed in distinct view in areas where water depth is five feet (5') or less that states "No Diving" in four inch (4") letters along with the

International sign for no diving and the words "in water less than 5 feet" in two inch (2") letters.

D. A sign should be posted requiring a shower before using the pool.

E. A sign should be posted at all public and semipublic spas containing the following warning:

1. Pregnant women; small children; elderly persons; and persons suffering from heart disease; diabetes; or high or low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

2. Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness.

3. Do not use if water temperature is greater than 104° F.

4. Do not use alone.

5. Observe reasonable time limits of 10-15 minutes, then leave the water to cool down before returning to the spa. Overexposure to hot water may cause nausea, dizziness, and fainting.

6. Enter and exit slowly.

7. Keep breakable objects out of the spa area.

8. Never use electrical appliances (telephone, radios, TV, etc.) within five feet (5') of the spa.

Section 7.11 <u>Depth Markings</u>

A. Depth markings must be visible at or above the water surface of the vertical pool wall and on the edge of the deck next to the pool, at maximum and minimum depth points, at points of break between depths and spaced at not more than twenty-five foot (25') intervals around the entire perimeter of the pool. Markings must be in numerals of a minimum height of four inches (4"). Depth markings must be permanently applied using contrasting color to the background on which they are

applied. Lettering shall spell out "Feet" or "Inches" or abbreviate "Ft." or "In".

B. The words "No Diving", along with an International Warning symbol of no diving shall be clearly marked on the pool deck in contrasting color and letter at least four inches (4")in height. The warning shall be placed every twenty-five feet (25') around the shallow portion of the pool where water depth is five feet (5') or less.

Section 7.12 <u>Regulations in Pool Area</u>

A person commits an offense if he/she:

A. Allows an animal under his/her control to enter or remain within the pool area or pool enclosure of a public or semipublic pool, except that service animals may be allowed in the pool area or enclosure and not in the pool water unless the person can show that the service animal is providing a service; or

B. Has skin abrasions, open sores, skin disease, eye disease, nasal or ear discharge or a communicable disease and swims in a public or semipublic pool; or

C. Works at a public or semipublic pool while infected with a communicable disease; or

D. Alters or removes safety equipment from a public or semipublic pool except in an emergency; or

E. Carries glass within a public or semipublic pool area or enclosure.

Section 7.13 <u>Failure to Comply</u>

A. Failure to comply with any section of this ordinance may result in the immediate closure of the pool and/or the initiation of legal action. Upon determination that the pool does not comply with the provisions of this ordinance, the Administrator or his designee shall notify the owner or person-in-charge of the existing violations. If Administrator or his designee determines that the condition of the pool is hazardous to the health or safety of the swimmers or of the general public, the pool shall be immediately closed.

Signs shall be posted at all entrances to the swimming pool. Said sign shall be clearly visible to a reasonably observant person and shall state, "Closed By The Arlington Health Department". A reinspection of the pool will be conducted during the regular working hours of the Health Department at the request of the pool Manager of Operations. If compliance has been achieved, the owner or person-in-charge shall be notified that the pool may be opened.

B. Signs posted by the Administrator or his designee stating "Closed By the Arlington Health Department" shall not be altered or removed unless authorized by the Administrator or his designee.

Section 7.14 **Violation of Closure Order**

When the Administrator or his designee has ordered that a pool be closed due to non-compliance with any provision of this ordinance, the owner of such pool shall not knowingly allow the pool to be used for swimming, diving or bathing purposes and shall immediately take every reasonable step to prevent the use of such pool for such purposes. By way of example and without limiting such duty, the owner shall (1) immediately post notices reasonably likely to come to the attention of potential users of the pool, advising of the closure, and (2) shall immediately lock all gates and doorways in any fence or other enclosure surrounding such pool.

Use of the pool by an individual for swimming, diving or bathing purposes after the Administrator or his designee has ordered such pool to be closed shall be deemed prima facie evidence that the owner of said pool has knowingly allowed the pool to be used for such purposes.

Section 7.15 **Enforcement Responsibility**

The Administrator or his designee shall have enforcement responsibility for this ordinance.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed **Two Thousand Dollars**

($2000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this

ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 8th day of October, **1996**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 15th day of October, **1996**, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

_____
RICHARD E. GREENE, Mayor

ATTEST:

_____
CINDY KEMP, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY_____

ORDINANCE NO. 96-136

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE V**, ENTITLED CHILD CARE CENTERS, BY THE AMENDMENT OF **SECTION 5.10**, LICENSE QUALIFICATIONS, RELATIVE TO FINGERPRINTING AND DENIAL OF LICENSE; BY THE AMENDMENT OF **SECTION 5.20**, PLAYGROUND PROVISIONS, AT SUBSECTION (D), RELATIVE TO CHAIN-LINK FENCE EXEMPTIONS; BY THE AMENDMENT OF **SECTION 5.23**, LIABILITY INSURANCE, AT SUBSECTION (C), RELATIVE TO UNINSURED/UNDERINSURED MOTORIST INSURANCE COVERAGE; PROVIDING FOR A FINE OF UP TO **$2,000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article V, Child Care Centers, by the amendment of **Section 5.10**, License Qualifications, so that hereafter said section shall be and read as follows:

Section 5.10 License Qualifications

The applicant shall submit a license application on a form specified by the Arlington Health Department which shall state the name, date of birth, sex, residence address, telephone number, drivers license or picture identification card, and such other information as may be specified. A Child Care Worker's License may be issued by the Administrator or his designee only after the license applicant has requested and received a review by the Arlington Police Department of the previous ten (10) years of the license applicant's criminal history. A Child Care Worker's License shall not be issued to any person with a

conviction or who is under indictment for, or is the subject of an official criminal complaint alleging violation of any offense contained in Titles 5, 6 or Chapter 43 of the Texas Penal Code or a felony violation of the Texas Controlled Substance Act. Upon review, the Administrator may deny a license on the basis of the applicant's criminal history or other information which the Administrator reasonably believes presents a potential threat to the safety and welfare of a child. Failure to provide accurate information on the Health Department Application is grounds for immediate denial or revocation of a Child Care License.

Further, Article V, is hereby amended through the amendment of **Section 5.20**, Playground Provisions, Subsection (D), so that hereafter said subsection shall be and read as follows:

D. A playground shall be surrounded by a chain-link fence not less than six feet (6') in height. When screening is required by the "Zoning" Chapter of the Code of the City of Arlington, screening devices of at least six feet (6') may substitute for the chain-link fence, as long as at least one (1) side of the play area remains constructed of chain-link. Fences at child care centers in existence prior to October, 1985, may be continued and maintained if they are a minimum of four feet (4') in height. Administrator or his designee may exempt this requirement if the playground is used in association with seasonal or special activities for children five (5) years old and older. Exemptions must be approved in writing for the specific activity and for a limited period of time.

Further, Article V, is hereby amended through the amendment of **Section 5.23**, Liability Insurance, Subsection (C), so that hereafter said subsection shall be and read as follows:

C. The child care center applicant must have liability insurance coverage in the minimum amount of $300,000 combined single limit for each occurrence of bodily injury or death and property damage that occurs due to motor vehicle accident during transportation of a child. Coverage shall be provided for all owned/leased nonowned and hired vehicles. Such insurance is to include coverage for uninsured/underinsured motorist.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed **Two Thousand and No/100 Dollars ($2,000)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 8th day of October, **1996**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 15th day of October, **1996**, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

_____
RICHARD E. GREENE, Mayor

ATTEST:

_____
CINDY KEMP, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY_____

ORDINANCE NO. 97-19

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE I,** ENTITLED DEFINITIONS, BY THE AMENDMENT OF **SECTION 1.01**, DEFINITIONS, RELATIVE TO THE ADDITION OF THE DEFINITIONS OF "DEEP AREAS", "EXTENSIVELY REMODELED", "FREE AVAILABLE CHLORINE", "NON-PROFIT ORGANIZATION", "SERVICE ANIMAL" AND "SHALLOW AREA", THE DELETION OF THE DEFINITIONS OF "ENVIRONMENTAL HEALTH OFFICIAL", "FREE CHLORINE RESIDUAL" AND "MANAGER OF OPERATIONS", AND THE AMENDMENT OF THE DEFINITION OF "LIFEGUARD"; THROUGH THE AMENDMENT OF **ARTICLE IV**, ENTITLED REGULATION OF FOOD SERVICE ESTABLISHMENTS, BY THE AMENDMENT OF **SECTION 4.01**, TEXAS STATE DEPARTMENT OF HEALTH RULES ON FOOD SERVICE SANITATION ADOPTED, RELATIVE TO THE ADOPTION OF THE RULES ON FOOD SERVICE SANITATION AS ADOPTED AND PUBLISHED BY THE TEXAS DEPARTMENT OF HEALTH; BY THE AMENDMENT OF **SECTION 4.02**, FOOD SERVICE ESTABLISHMENT, RELATIVE TO PERMIT REQUIREMENT; BY THE AMENDMENT OF **SECTION 4.04**, PERMITS - AUTHORITY TO ISSUE, RELATIVE TO THE DESIGNATION OF THE PROPER AUTHORITY; BY THE AMENDMENT OF **SECTION 4.05**, PERMITS - APPLICATION, RELATIVE TO PERMIT APPLICATION REQUIREMENTS; BY THE AMENDMENT OF **SECTION 4.08**, PERMITS - DURATION, RELATIVE TO NONPAYMENT OF PERMIT FEE AND SUSPENSION OF PERMIT; BY THE AMENDMENT OF **SECTION 4.09**, PERMITS - NON-TRANSFERABLE, RELATIVE TO THE NONREFUNDABILITY OF A PERMIT AND VALIDITY OF A PERMIT ONLY FOR THE OWNER FOR WHICH GRANTED; BY THE AMENDMENT OF **SECTION 4.10**, REVOCATION OF FOOD HANDLING PERMIT, RELATIVE TO THE DESIGNATION OF THE PROPER AUTHORITY; BY THE AMENDMENT OF **SECTION 4.11**, SUSPENSION OF A FOOD SERVICE ESTABLISHMENT OR TEMPORARY FOOD SERVICE ESTABLISHMENT PERMIT, RELATIVE

TO THE ADDITION OF LANGUAGE TO INCLUDE MOBILE FOOD SERVICE ESTABLISHMENT; BY THE AMENDMENT OF **SECTION 4.12**, REVOCATION OF A FOOD SERVICE ESTABLISHMENT OR TEMPORARY FOOD SERVICE ESTABLISHMENT PERMIT, RELATIVE TO THE ADDITION OF LANGUAGE TO INCLUDE MOBILE FOOD SERVICE ESTABLISHMENT; BY THE AMENDMENT OF **SECTION 4.13**, SERVICE OF NOTICES, **SECTION 4.14**, HEARING, **SECTION 4.16**, INSPECTION FREQUENCY, AND **SECTION 4.17**, EXAMINATION AND CONDEMNATION OF FOOD, RELATIVE TO THE DESIGNATION OF THE PROPER AUTHORITY; BY THE AMENDMENT OF **SECTION 4.19**, OPERATION OF MOBILE FOOD SERVICE ESTABLISHMENT NEAR SCHOOLS, RELATIVE TO ITEMS SOLD ON A MOBILE FOOD UNIT; BY THE AMENDMENT OF **SECTION 4.20**, FEES, RELATIVE TO CONSOLIDATION OF THE SECTION INTO ONE PARAGRAPH; THROUGH THE AMENDMENT OF **ARTICLE VII**, ENTITLED PUBLIC AND SEMIPUBLIC SWIMMING POOLS, BY THE AMENDMENT OF **SECTION 7.10**, **SUBSECTION (C)**, RELATIVE TO THE WORDING ON SIGNS FOR DIVING IN WATER GREATER THAN FIVE (5) FEET IN DEPTH; PROVIDING FOR A FINE OF UP TO $2,000 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article I, Definitions, by the amendment of **Section 1.01**, Definitions, by the deletion of the definitions of "Environmental Health Official", "Free Chlorine Residual" and "Manager Of Operations" and the addition or revisions of the following definitions, so that hereafter the same shall be and read as follows:

Deep Areas - Portion of a pool with water depth in excess of five feet (5').

Extensively Remodeled - Structural changes that require the issuance of a Building Permit, included but not limited to changes in walls, floors, equipment, and/or plumbing.

Free Available Chlorine - That portion of the total chlorine remaining in chlorinated water that is not combined with ammonia or nitrogen compounds and will react chemically with undesirable or pathogenic organisms.

Lifeguard - An individual who holds a current American Red Cross certificate in "Lifeguarding" or its equivalent which also includes training in adult and infant CPR and standard First Aid.

Non-profit Organization - A civic or fraternal organization, charity, lodge, association, proprietorship, or corporation possessing an Internal Revenue Code § 501(C)(3) exemption, or a religious organization meeting the definition of "church" under the Internal Revenue Code § 170(b)(1)(A)(I).

Service Animal - Any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Shallow Area - Portions of a pool or spa with water depth five feet (5') or less.

Further, Article IV is hereby amended through the amendment of **Section 4.01**, Texas State Department of Health Rules On Food Service Sanitation Adopted, so that hereafter said section shall be and read as follows:

Section 4.01 Texas Department of Health Rules on Food Service Sanitation Adopted

A. The Rules on Food Service Sanitation as adopted and published by the Texas Department of Health is herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article IV, Regulation of Food Service Establishments, of the

"Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987.

B. The intent and purpose of this Section is to provide for the inspecting of food service establishments in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the handling of food in such establishments. The enforcement of this ordinance and the fixing of penalties shall be regulated in accordance with this chapter and the terms of the unabridged form of the Texas Department of Health, Rules on Food Service Sanitation, a copy of which is on file in the Office of the City Secretary.

C. In the event of a conflict between any provision of the Texas Department of Health, Rules on Food Service Sanitation and any provision of this ordinance, this ordinance shall prevail.

D. The adopting by reference of the Texas Department of Health, Rules on Food Service Sanitation, as provided in Section 4.01(A) above, is made subject to and is modified and amended as follows:

1. The words "regulatory authority" in said Rules shall mean the City of Arlington **Health Department**; and

2. The words "Retail Food Stores" in the definition of Food Service Establishment shall be **deleted**; and

3. The definition of "Food Processing Establishment" shall mean a commercial establishment that manufactures, packages or stores food for human consumption and does not provide food directly or indirectly through delivery service to a consumer; and

4. The definition of "Retail Food Store" shall be **added** to the definitions in 229.162 and shall mean any establishment where food and food products are offered for sale to the ultimate consumer and intended for off-premises consumption. Retail Food Store shall not include establishments which handle only prepackaged, non-potentially hazardous foods; and

5. Paragraph (d) of Rule 229.171, Examination And Condemnation Of Food, shall be **deleted**; and

6. The term "Food Service Establishment" of this ordinance shall, in addition, include Retail Food Store and Commissary, whether they be mobile or operate from a fixed location; and

7. In the definition of "commissary", the words "for distribution through retail outlet under common ownership or through a mobile food unit" shall be **added**; and

8. The phrase "45°F (7°C)" shall mean "41°F (5°C)" except that Ready-to-eat potentially hazardous foods may be held at 45°F (7°C) if discarded after a maximum of 3 days; and

9. The paragraph: "Cooked Potentially Hazardous Food shall be cooled: from 140°F (60°C) to 70°F (21°C) within 2 hours; and from 70°F (21°C) to 41°F (5°C), or below within 4 hours. Potentially Hazardous Food prepared from ingredients at ambient temperature, such as reconstituted food and canned tuna, shall be cooled to 41°F (5°C) or below within 4 hours. Cooling shall be accomplished by placing the food in shallow pans, separating the food into smaller or thinner portions, using rapid cooling equipment, stirring the food in a container placed in an ice water bath, using containers that facilitate heat transfer, adding ice as an ingredient, or other effective methods depending on the type of food being cooled." shall **replace** 229.163(c)(2)(B); and

10. The sentence: "Poultry, wild game animals, stuffed fish, stuffed meat, stuffed pasta, and stuffed poultry, or stuffing containing fish, meat, or poultry, shall be cooked to an internal temperature of 165°F (74°C) or above for at least 15 seconds." shall **replace** 229.163(d)(3)(A); and

11. The sentence: "Restructured and/or ground beef products, comminuted fish and meats, injected meats, pork, exotic species of game animals, and eggs shall be cooked to an internal temperature of at least 155°F (68°C) for a minimum of 15 seconds or the temperature and time necessary to obtain the equivalent destruction of pathogenic

organisms, unless otherwise ordered by the immediate consumer." shall **replace** 229.163(d)(3)(B); and

12. The sentence: "Shell eggs that are broken and prepared in response to a consumer's order and for immediate service, and fish and meat that are not specified in Section 4.01(D)(11) above; shall be cooked to heat all parts of the food to a temperature of at least 145°F (63°C)or above for a minimum of 15 seconds." shall be **added** as 229.163(d)(3)(D); and

13. The paragraph: "Food service employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, or single-use gloves. If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw meat and for no other purpose, and discarded when damaged or soiled or when interruptions occur in the operation." shall be **added** to 229.164 as item (e); and

14. The sentence: "A sign shall be prominently displayed in view of each rest room lavatory used by food service employee that states: 'Employees must thoroughly wash hands before returning to work after using the rest room'." shall be **added** to 229.164 as item (f).

Further, Article IV is hereby amended through the amendment of **Section 4.02**, Food Service Establishment, so that hereafter said section shall be and read as follows:

Section 4.02 Food Service Establishment

A. No person or firm shall operate a Food Service Establishment, Temporary Food Service Establishment, or Mobile Food Unit in the City of Arlington without a valid permit issued by the Administrator or his designee.

B. In cases where a person or firm conducts, in a single building or at the same address, more than one (1) operation, vocation or business, whether such operation, vocation or business constitutes a Food Service Establishment or Temporary Food Service

Establishment, then a separate permit shall be required for each such operation, vocation or business.

Further, Article IV is hereby amended through the amendment of **Section 4.04**, Permits - Authority to Issue, so that hereafter said section shall be and read as follows:

Section 4.04 Permits - Authority to Issue

The Administrator or his designee is hereby authorized to issue permits to any person or firm making application for a Food Handling Permit, Temporary Food Establishment Permit or a Food Establishment Permit in the City of Arlington; provided that only a person or firm that complies with the requirements of this ordinance shall be entitled to receive and retain such permit.

Further, Article IV is hereby amended through the amendment of **Section 4.05**, Permits - Application, so that hereafter said section shall be and read as follows:

Section 4.05 Permits - Application

A. Application for such permit as required of this ordinance in Sections 4.02 and 4.03 shall be made in writing to the Administrator or his designee upon forms prescribed and furnished by the City of Arlington Health Department.

B. A Food Service Establishment permit application fee shall be due for each food establishment that requires plans to be submitted according to Section 4.18 of this chapter.

C. Upon change of ownership of a Food Service Establishment, a change of ownership fee is due and a new application shall be made for a permit as required by Section 4.02 of this ordinance. Whenever a change of ownership has occurred, the regulatory authority shall inspect the Food Service Establishment prior to the new owner beginning operation to determine compliance with requirements of this ordinance.

Further, Article IV is hereby amended through the amendment of **Section 4.08**, Permits - Duration, so that hereafter said section shall be and read as follows:

Section 4.08 **Permits - Duration**

A. Any Food Service Establishment Permit or Mobile Food Unit Permit granted under the provision of Section 4.02 of this ordinance shall remain in full force and effect twelve (12) months from the date of issuance as long as the annual food establishment permit fee is paid and unless sooner suspended or revoked for cause. A Food Establishment Permit that lapses for non-payment of the annual food establishment permit fee, will be reinstated upon payment of a reinstatement fee.

B. An exception to 4.08(A) above is that a Temporary Food Establishment Permit shall remain in full force and effect for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration from date of issuance unless sooner suspended or revoked for cause.

C. Any permit granted under provisions of Section 4.03(A), of this ordinance shall remain in full force and effect for thirty-six (36) months from the date of issuance unless sooner suspended or revoked for cause.

Further, Article IV is hereby amended through the amendment of **Section 4.09**, Permits - Non-Transferable, so that hereafter said section shall be and read as follows:

Section 4.09 **Permits - Non-Transferable**

Every permit issued under the provisions of this ordinance shall be nontransferable and nonrefundable. A Food Service Establishment or Temporary Food Service Establishment Permit shall permit the operation of the establishment only at the location and for the owner for which granted.

Further, Article IV is hereby amended through the amendment of **Section 4.10**, Revocation of Food Handling Permit, so that hereafter said section shall be and read as follows:

Section 4.10 **Revocation of Food Handling Permit**

The Administrator or his designee shall have the right to revoke a valid Food Handlers Permit at any time the holder of such card becomes affected with any disease in a

communicable form, becomes a carrier of any such disease or is suspected of being affected with or being a carrier of any such disease, and such revocation shall remain in effect until a licensed physician certifies that such person is free of communicable disease.

Further, Article IV is hereby amended through the amendment of **Section 4.11**, Suspension of a Food Service Establishment or Temporary Food Service Establishment Permit, so that hereafter said section shall be and read as follows:

Section 4.11 Suspension of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit

A. The Administrator or his designee may, without prior notice or hearing, suspend any permit granted under Section 4.02 of this ordinance to operate a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment if the holder of the permit does not comply with the requirements of this ordinance, or if the operation of the Food Service Establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Section 4.11(B) of this ordinance. When a permit is suspended, food service operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within twenty (20) days of receipt of a request for a hearing.

B. Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the holder of the permit within ten (10) days. If no written request for hearing is filed within ten (10) days, the suspension is sustained. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

C. Whenever a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment is required under the provisions of this

section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time. During the time a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The Arlington Health Department".

Further, Article IV is hereby amended through the amendment of **Section 4.12**, Revocation of a Food Service Establishment or Temporary Food Service Establishment Permit, so that hereafter said section shall be and read as follows:

Section 4.12 Revocation of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit

The Administrator or his designee may, after providing opportunity for a hearing, revoke a permit granted under Section 4.02 of this ordinance for serious or repeated violations of any of the requirements of this ordinance or for interference with the regulatory authority in the performance of its duty. Prior to revocation the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten (10) days following service of such notice, unless a written request for a hearing is filed with the Administrator or his designee by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit.

Further, Article IV is hereby amended through the amendment of **Section 4.13**, Service of Notices, so that hereafter said section shall be and read as follows:

Section 4.13 **Service of Notices**

A notice provided for in this ordinance is properly served when it is delivered to the holder of the permit or person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the Administrator or his designee.

Further, Article IV is hereby amended through the amendment of **Section 4.14**, Hearing, so that hereafter said section shall be and read as follows:

Section 4.14 **Hearing**

The hearings provided for in this ordinance shall be conducted by the Administrator or his designee at a time and place designated by it. Based upon the recorded evidence of such hearing, the Administrator or his designee shall make a final finding, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the Administrator or his designee.

Further, Article IV is hereby amended through the amendment of **Section 4.16**, Inspection Frequency, so that hereafter said section shall be and read as follows:

Section 4.16 **Inspection Frequency**

A. An inspection of a Food Service Establishment shall be performed at least once every six (6) months. Additional inspections of the Food Service Establishment shall be performed as often as necessary for the enforcement of this ordinance.

B. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Administrator or his designee has reasonable cause to believe that there exists in any building or upon any premises any condition or violation of this Chapter, the Administrator or his designee may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrator or his designee by this Chapter. If such building or premises be occupied, he shall first

present proper credentials and request entry. If such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused or if no owner or other person having charge or control of the building or premises can be located, the Administrator or his designee shall have recourse to every remedy provided by law to secure entry.

Further, Article IV is hereby amended through the amendment of **Section 4.17**, Examination and Condemnation of Food, so that hereafter said section shall be and read as follows:

Section 4.17 Examination and Condemnation of Food

Food may be examined or sampled by Administrator or his designee as often as necessary for enforcement of this ordinance. The regulatory authority may, upon written notice to the owner or person in charge specifying with particularity the reasons therefor, place a hold order on any food which it believes is in violation of any section of this ordinance. The Administrator or his designee shall tag, label or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served or removed from the establishment. The Administrator or his designee shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for hearing may be filed within ten (10) days and that if no hearing is requested the food shall be destroyed. A hearing shall be held if so requested, and on the basis of evidence produced at that hearing, the hold order may be vacated or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this ordinance.

Further, Article IV is hereby amended through the amendment of **Section 4.19**, Operation of Mobile Food Service Establishment Near Schools, so that hereafter said section shall be and read as follows:

Section 4.19 **Operation of Mobile Food Service Establishment**

A. Any person or firm who operates a Mobile Food Unit or a Mobile Food Service Establishment as defined in this ordinance shall not operate such establishment within one block of any block containing an elementary or junior high school.

B. Only food items previously approved by the regulatory authority may be sold on a Mobile Food Unit. Non-food items such as toys, fireworks, or any hazardous substances such as stink bombs are prohibited.

Further, Article IV is hereby amended through the amendment of **Section 4.20**, Fees, so that hereafter said section shall be and read as follows:

Section 4.20 **Fees**

The various requirements for permits, licenses, certificates, and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Health Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated Food Service Establishments or public school cafeterias. Fees are not to be transferable or refundable.

Further, Article VII is hereby amended through the amendment of **Section 7.10**, Warning Signs, at **Subsection (C)**, so that hereafter said section shall be and read as follows:

C. A sign shall be placed in distinct view in areas where water depth is five feet (5') or less that states "No Diving" in four inch (4") letters along with the International sign for no diving. If any portion of the pool is greater than five feet (5') in depth and diving is allowed, the sign shall also include the words "in water 5 feet or less" in two inch (2") letters.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof

shall be fined an amount not to exceed **Two Thousand Dollars ($2000.00)** for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be

published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 4th day of February, **1997**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 11th day of February, **1997**, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

_____
RICHARD E. GREENE, Mayor

ATTEST:

_____
CINDY KEMP, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY_____

ORDINANCE NO. 97-98

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE ADDITION OF **ARTICLE XII**, ENTITLED YOUTH TOBACCO USE, RELATIVE TO PROHIBITING THE POSSESSION OF TOBACCO PRODUCTS BY MINORS; PROVIDING FOR A FINE OF UP TO **$250** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE AUGUST 1, 1997 AND EXPIRATION UPON JANUARY 1, 1998

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the addition of **Article XII,** Youth Tobacco Use**,** so that hereafter said article shall be and read as follows:

ARTICLE XII

YOUTH TOBACCO USE

Section 12.01 Definitions

The following words and terms when used in this article shall have the meanings respectively ascribed to them in this section:

"Tobacco Product" shall mean a cigarette, cheroot, stogie, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a tobacco substitute.

Section 12.02 Purpose

The purpose of this article is to protect the health, safety and welfare of persons under the age of eighteen (18) from the health risks caused by the use of tobacco products.

Section 12.03 <u>Possession of Tobacco Products by Minors Prohibited</u>

A. An individual who is younger than eighteen (18) years of age commits an offense if the individual:

   1. possesses, purchases, consumes, or accepts a tobacco product; or

   2. falsely represents himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.

B. It is an exception to the application of this section that the individual younger than eighteen (18) years of age possessed the cigarette or tobacco product in the presence of:

   1. an adult parent, a guardian, or a spouse of the individual; or

   2. an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.

C. It is an exception to the application of this section that the individual younger than eighteen (18) years of age is participating in an inspection or test of compliance while under the direction and supervision of a police officer in the process of enforcing this article.

Section 12.04 <u>Penalty and Culpability</u>

A. Except as provided in Subsection (B), a violation of this article is punishable by a fine of not less than Twenty Five and No/100 Dollars ($25) nor more than Seventy Five and No/100 Dollars ($75).

B. If a person has been previously convicted of a violation of this article, a violation of this article is punishable by a fine of not less than One Hundred and No/100 Dollars ($100) nor more than Two Hundred Fifty and No/100 Dollars ($250).

C. There shall be no requirement of a culpable mental state for a violation of this article.

Section 12.05 <u>Effective Date</u>

This article shall become effective on August 1, 1997, and shall expire on January 1, 1998.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Hundred Fifty and No/100 Dollars ($250) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective August 1, 1997, and expire on January 1, 1998.

PRESENTED AND GIVEN FIRST READING on the 8th day of July, **1997**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 15th day of July, **1997**, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

_____
ELZIE ODOM, Mayor

ATTEST:

_____
CINDY KEMP, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY_____

ORDINANCE NO. 97-108

AN ORDINANCE AMENDING ORDINANCE NO. 97-89 RELATIVE TO THE RENUMBERING OF ARTICLE XII, YOUTH TOBACCO USE, OF THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987; PROVIDING FOR A FINE OF UP TO **$250** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION; DECLARING AN EMERGENCY AND BECOMING EFFECTIVE AUGUST 1, 1997 AND EXPIRING ON JANUARY 1, 1998

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That **Ordinance No. 97-89**, approved by final reading on **July 15, 1997**, amending the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby **amended in part at the caption and Section 1**, to hereafter be and read as follows:

"AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE ADDITION OF **ARTICLE XIII**, ENTITLED YOUTH TOBACCO USE, RELATIVE TO PROHIBITING THE POSSESSION OF TOBACCO PRODUCTS BY MINORS; PROVIDING FOR A FINE OF UP TO **$250** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE AUGUST 1, 1997 AND EXPIRATION UPON JANUARY 1, 1998

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the addition of **Article XIII,** Youth Tobacco Use**,** so that hereafter said article shall be and read as follows:

ARTICLE XIII

YOUTH TOBACCO USE

Section 13.01 Definitions

The following words and terms when used in this article shall have the meanings respectively ascribed to them in this section:

"Tobacco Product" shall mean a cigarette, cheroot, stogie, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a tobacco substitute.

Section 13.02 Purpose

The purpose of this article is to protect the health, safety and welfare of persons under the age of eighteen (18) from the health risks caused by the use of tobacco products.

Section 13.03 Possession of Tobacco Products by Minors Prohibited

A. An individual who is younger than eighteen (18) years of age commits an offense if the individual:

   1. possesses, purchases, consumes, or accepts a tobacco product; or

   2. falsely represents himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.

B. It is an exception to the application of this section that the individual younger than eighteen (18) years of

age possessed the cigarette or tobacco product in the presence of:

1. an adult parent, a guardian, or a spouse of the individual; or

2. an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.

C. It is an exception to the application of this section that the individual younger than eighteen (18) years of age is participating in an inspection or test of compliance while under the direction and supervision of a police officer in the process of enforcing this article.

Section 13.04 <u>Penalty and Culpability</u>

A. Except as provided in Subsection (B), a violation of this article is punishable by a fine of not less than Twenty Five and No/100 Dollars ($25) nor more than Seventy Five and No/100 Dollars ($75).

B. If a person has been previously convicted of a violation of this article, a violation of this article is punishable by a fine of not less than One Hundred and No/100 Dollars ($100) nor more than Two Hundred Fifty and No/100 Dollars ($250).

C. There shall be no requirement of a culpable mental state for a violation of this article.

Section 13.05 <u>Effective Date</u>

This article shall become effective on August 1, 1997, and shall expire on January 1, 1998."

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Hundred Fifty and No/100 Dollars ($250) for each offense. Each day that a

violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This is an ordinance for the immediate preservation of the public peace, property, health and safety, and is an emergency measure within the meaning of Article VII, Sections 11 and 12, of the City Charter; and the City Council, by the affirmative vote of all of its members present and voting, hereby declares that this ordinance is an emergency measure, and the requirement that it be read at two (2) meetings, as specified in Section 11, is hereby waived.

9.

This ordinance shall become effective August 1, 1997, and expire on January 1, 1998.

PRESENTED, FINALLY PASSED AND APPROVED, on the 29th day of July, 1997, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the **City of Arlington, Texas**.

_____
ELZIE ODOM, Mayor

ATTEST:

_____
CINDY KEMP, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY_____

ORDINANCE NO. 97-126

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE II**, ENTITLED GARBAGE AND TRASH, BY THE AMENDMENT OF **SECTION 2.02**, RESIDENTIAL COLLECTION - PLACEMENT OF CONTAINERS, SUBSECTION (D), RELATIVE TO THE TIME THAT RESIDENTIAL GARBAGE MAY BE PLACED AT THE CURBSIDE FOR COLLECTION; PROVIDING FOR A FINE OF UP TO **$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article II,** Garbage and Trash**, Section 2.02**, Residential Collection - Placement Of Containers, Subsection (D), so that hereafter said subsection shall be and read as follows:

D. Time of Placement: All containers shall be placed at the hereinabove prescribed locations not later than 7:00 a.m. on the day of scheduled collection. In this regard, it shall be unlawful for any customer to place containers of garbage at said location prior to 7:00 p.m. the evening prior to the day of the scheduled collection.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a

violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 26th day of August, **1997**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 2nd day of September, **1997**, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

_____
ELZIE ODOM, Mayor

ATTEST:

_____
CINDY KEMP, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY_____

ORDINANCE NO. 98-12

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE I**, ENTITLED DEFINITIONS, BY THE AMENDMENT OF **SECTION 1.01**, DEFINITIONS, RELATIVE TO THE ADDITION OF A DEFINITION FOR "FOOD SERVICE EMPLOYEE"; THROUGH THE AMENDMENT OF **ARTICLE IV**, ENTITLED REGULATION OF FOOD SERVICE ESTABLISHMENTS, BY THE AMENDMENT OF **SECTION 4.01**, TEXAS DEPARTMENT OF HEALTH RULES ON FOOD SERVICE SANITATION ADOPTED, BY THE ADDITION OF A NEW SUBSECTION (D)(13), RELATIVE TO THE REQUIREMENT OF FOOD SERVICE EMPLOYEES TO KEEP THEIR HANDS AND EXPOSED PORTIONS OF THEIR ARMS CLEAN AND RENUMBERING THE REMAINING SUBSECTIONS; BY THE AMENDMENT OF **SECTION 4.01**, SUBSECTION (D)(13), RELATIVE TO THE MINIMIZATION OF BARE-HAND CONTACT WITH EXPOSED, READY-TO-EAT FOOD; BY THE AMENDMENT OF **SECTION 4.03**, FOOD HANDLERS - PERMIT REQUIRED, RELATIVE TO FOOD HANDLING PERMITS; BY THE ADDITION OF **SECTION 4.21**, RESPONSIBILITIES OF THE OWNER, MANAGER, OR PERSON-IN-CHARGE, RELATIVE TO THE RESPONSIBILITIES OF THE OWNER, MANAGER, OR PERSON-IN-CHARGE; PROVIDING FOR A FINE OF UP TO **$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article I,** Definitions**,** by the

amendment of **Section 1.01**, Definitions, by the addition of the definition for "Food Service Employee", so that hereafter said definition shall be and read as follows:

Food Service Employee - an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

Further, Article IV, Regulation Of Food Service Establishments, is hereby amended through the amendment of **Section 4.01**, Texas Department of Health Rules On Food Service Sanitation Adopted, by the addition of a new Subsection (D)(13) and renumbering the remaining subsections, so that hereafter said subsection shall be and read as follows:

13. The paragraph "Food Service Employees shall keep their hands and exposed portions of their arms clean.

    (a) Food Service Employees shall clean their hands and exposed portions of their arms with a cleaning compound by vigorously rubbing together the surfaces of their lathered hands and arms for at least twenty (20) seconds and thoroughly rinsing with clean water. Food Service Employees shall pay particular attention to the areas underneath the fingernails and between the fingers.

    (b) Food service employees shall clean their hands and exposed portions of their arms immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles; before putting on single-use gloves; after touching bare human body parts other than clean hands and clean, exposed portions of arms; after using the toilet room; after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking; after handling soiled equipment or utensils; during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks; when switching between working with raw food and

working with ready-to-eat food; and after engaging in other activities that contaminate the hands.

(c) Food Service Employees shall keep their fingernails trimmed below the finger tips, filed, and maintained so the edges and surfaces are cleanable and not rough.

(d) While preparing food, food employees may not wear jewelry on their arms and hands. This section does not apply to a plain ring such as a wedding band." shall replace 229.164 (b) and (c)(3); and

Further, Article IV is hereby amended through the amendment of **Section 4.01**, by the amendment of Subsection (D)(13) so that hereafter said subsection shall be and read as follows:

14. The paragraph: "Food Service Employees shall avoid bare-hand contact with exposed, ready-to-eat food by use of suitable utensils or single-use gloves; or thoroughly wash their hands and exposed portions of their arms according to Subsection 4.01(D)(13) of this chapter. If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw meat and for no other purpose, and discarded when damaged or soiled or when interruptions occur in the operation." shall be **added** to 229.164 as item(e); and

Further, Article IV is hereby amended through the amendment of **Section 4.03**, Food Handlers - Permit Required, so that hereafter said section shall be and read as follows:

Section 4.03 Food Handlers - Permit Required

A. Every Food Service Employee shall within thirty (30) days of the date of employment, be the holder of a current valid Food Handling Permit, issued by the City of Arlington Health Department.

B. No person who owns, manages or otherwise controls any Food Service Establishment shall permit any Food Service Employee to be employed therein who does not

after thirty (30) days of employment possess a current valid Food Handling Permit issued by the City of Arlington Health Department.

Further, Article IV is hereby amended through the addition of **Section 4.21**, Responsibilities of the Owner, Manager, or Person-in-Charge, so that hereafter said section shall be and read as follows:

Section 4.21 Responsibilities of the Owner, Manager, or Person-in-Charge

The owner, manager, or person-in-charge of a food service establishment shall operate the facility in compliance with the provisions of this Article and other applicable sections of the Code of the City of Arlington and shall respond within the specified schedule of time when any deficiency or violation has been identified by the Administrator or his designee.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 13th day of January, **1998**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 20th day of January, **1998**, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 99-16

AN ORDINANCE TEMPORARILY SUSPENDING APPLICATION OF PORTIONS OF THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, SECTION 2.01, ENTITLED DUTIES OF CUSTOMER, SUBSECTION (A), AND SECTION 2.04, ENTITLED RESIDENTIAL COLLECTION - CHARGES, TO THE EXTENT OF CONFLICT WITH THE CITY'S AUTOMATED TRASH COLLECTION PILOT PROGRAM

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

To the extent certain portions of the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, to wit: Section 2.01(A), and the first sentence of Section 2.04, are inconsistent with provisions of the City's pilot program testing automated trash collection, said conflicting portions of the "Health and Sanitation" Chapter are temporarily suspended but only as to residences identified as participants in the pilot program, as shown on the attached maps, only to the extent of the conflict, and only for the duration of the pilot program, beginning February 1, 1999, and ending June 30, 1999.

PRESENTED AND GIVEN FIRST READING on the 26th day of January, **1999**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 2nd day of February, **1999**, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 99-90

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE I**, ENTITLED DEFINITIONS, BY THE AMENDMENT OF **SECTION 1.01**, DEFINITIONS, RELATIVE TO THE DELETION OF THE DEFINITIONS OF "MINGLE, MINGLING", "PRIVATE PARTS", AND "PROMOTER" AND THE ADDITION OF THE DEFINITIONS OF "PERMIT HOLDER" AND "PERSON IN CHARGE"; THROUGH THE AMENDMENT OF **ARTICLE IV**, ENTITLED REGULATION OF FOOD SERVICE ESTABLISHMENTS, RELATIVE TO ADOPTION OF TEXAS FOOD ESTABLISHMENT RULES; THROUGH THE AMENDMENT OF **ARTICLE V**, ENTITLED CHILD CARE CENTERS, RELATIVE TO CHANGES IN APPLICATION PROCESS, WORKER QUALIFICATIONS AND SAFETY AND SANITATION; PROVIDING FOR A FINE OF UP TO **$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article I,** Definitions**,** by the amendment of **Section 1.01**, Definitions, by the deletion of the definitions of "Mingle, mingling", "Private Parts", and "Promoter" and the addition of the definitions of "Permit Holder" and "Person in Charge", so that hereafter said definitions shall be and read as follows:

Permit Holder - The entity that is legally responsible for the operations of the business such as the owner, owners' agent, or other person; and who possesses a valid permit to operate the business.

Person in charge - The individual present at a location who is responsible for the operation at the time of inspection.

Further, Article IV, Regulation Of Food Service Establishments, is hereby amended so that hereafter said article shall be and read as follows:

ARTICLE IV

REGULATION OF FOOD ESTABLISHMENTS

Section 4.01 Texas Food Establishment Rules Adopted

A. The provisions of the current rules or rules as amended by the Texas Board of Health known as the Texas Food Establishment Rules found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article IV, Regulation of Food Establishments, of the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987.

B. The intent and purpose of this Section is to provide for the inspecting of food establishments in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the handling of food in such establishments. The enforcement of this ordinance and the fixing of penalties shall be regulated in accordance with this chapter and the terms of the unabridged form of the Texas Food Establishment Rules, a copy of which is on file in the Office of the City Secretary.

C. In the event of a conflict between any provision of the Texas Food Establishment Rules and any provision of this ordinance, this ordinance shall prevail.

D. The adopting by reference of the Texas Food Establishment Rules, as provided in Section 4.01(A) above, is made subject to and is modified and amended as follows:

1. The words "regulatory authority" in said Rules shall mean the City of Arlington **Health Department**; and

2. The sentence: "A sign shall be prominently displayed in view of each rest room lavatory used by food service employees that states: 'Employees must thoroughly wash hands before returning to work after using the rest room'" shall be **added** to 229.163(C) as item (13).

3. After June 1, 2000, the sentence in 229.163(b) shall be amended to "The person in charge shall demonstrate this knowledge by compliance with these rules, by being a Certified Food Protection Manager who has shown proficiency of required information through passing a test that is part of a Food Protection Management Program accredited by the Texas Department of Health according to 25 TAC Section 229.172, and by responding correctly to the inspector's questions as they relate to the specific food operation."

   a. The permit holder of every Food Establishment shall ensure that at least one person in charge at each location, who is responsible for supervising food preparation and service, has a valid Food Protection Management Training Certificate issued by the Texas Department of Health as proof of successful completion of a Texas Department of Health accredited Food Protection Management Training Program as defined in 25 TAC§ 229.172.

   b. The permit holder shall make Food Protection Manager Certificates available for immediate inspection upon request by the regulatory authority.

   c. The permit holder of a new Food establishment, an existing Food establishment that has changed ownership, or a Food Establishment whose Certified Food Protection Manager has transferred or resigned shall have thirty (30) days to comply with the requirements of this Section.

   d. The permit holder of an existing Food Establishment shall notify the Health Department within forty-eight (48) hours of the termination or transfer of a Certified Food Protection Manager. The permit holder shall

have thirty (30) days from the effective date of the termination or transfer to comply with the requirements of this Section.

e. The following Food Establishments are exempt from the requirements of this Section: Temporary Food Establishments; Food Establishments that sell or distribute only prepackaged foods or uncut produce; and Food Establishments that serve only fountain drinks, coffee, alcoholic beverages, popcorn, and/or snow cones.

f. A permit holder is in compliance with the provisions of this section if there is one Certified Food Protection Manager employed in a supervisory capacity for several Food Establishments located in the same building and under the same ownership and management.

Section 4.02 <u>Food Establishment</u>

A. No person or firm shall operate a Food Establishment, Temporary Food Establishment, or Mobile Food Establishment in the City of Arlington without a valid permit issued by the Administrator or his designee.

B. In cases where a person or firm conducts, in a single building or at the same address, more than one (1) operation, vocation or business, whether such operation, vocation or business constitutes a Food Establishment or Temporary Food Establishment, then a separate permit shall be required for each such operation, vocation or business.

Section 4.03 <u>Food Handler - Permit Required</u>

A. Every Food Service Employee shall within thirty (30) days of the date of employment, be the holder of a current valid Food Handler Permit, issued by the City of Arlington Health Department.

B. No person who owns, manages or otherwise controls any Food Service Establishment shall permit any Food Service Employee to be employed therein who does not after thirty (30) days of employment possess a current

valid Food Handler Permit issued by the City of Arlington Health Department.

Section 4.04 <u>Permits - Authority to Issue</u>

The Administrator or his designee is hereby authorized to issue permits to any person or firm making application for a Food Handler Permit, Mobile Food Establishment, Temporary Food Establishment Permit or a Food Establishment Permit in the City of Arlington; provided that only a person or firm that complies with the requirements of this ordinance shall be entitled to receive and retain such permit.

Section 4.05 <u>Permits - Application</u>

A. Application for such permit as required of this ordinance in Sections 4.02 and 4.03 shall be made in writing to the Administrator or his designee upon forms prescribed and furnished by the City of Arlington Health Department.

B. A Food Establishment permit Plan Review fee shall be due for each Food Establishment that requires plans to be submitted according to Section 4.18 of this chapter.

C. A Food Establishment permit application fee shall be due for each Food Establishment that requires a new Food Establishment permit due to change of ownership, change in type of operation, or revocation, and a new application shall be made for a permit as required by Section 4.02 of this ordinance. Whenever a new Food Establishment Permit is required, the regulatory authority shall inspect the Food Establishment prior to beginning operation to determine compliance with requirements of this ordinance.

D. Failure to provide all required information, or falsifying information required on the application, may result in denial or revocation of the permit.

Section 4.06 <u>Food Handling School Required - Food Handler Permit</u>

In order to receive a Food Handler Permit, every person owning, employed by, or otherwise connected with a Food Establishment whose work brings him into contact with food,

utensils or food service equipment shall be required to attend a Food Handling School held by the City of Arlington Health Department before a Food Handler Permit will be issued. This requirement must be met upon expiration of the permit and upon application for a new permit.

Section 4.07 <u>Posting of Food Handler, Food Establishment, and Temporary Food Establishment Permits</u>

Every permit holder or person in charge shall at all times have available on the premises for inspection the Food Handler Permit of its employees and shall at all times display in public view the Food Establishment Permit, Mobile Food Establishment Permit, or Temporary Food Establishment Permit.

Section 4.08 <u>Permits - Duration</u>

A. Any Food Establishment Permit or Mobile Food Permit granted under the provision of Section 4.02 of this ordinance shall remain in full force and effect twelve (12) months from the date of issuance as long as the annual food establishment permit fee is paid unless denied, or sooner, suspended or revoked for cause. A Food Establishment Permit that lapses for non-payment of the annual food establishment permit fee, will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

B. An exception to 4.08(A) above is that a Temporary Food Establishment Permit shall remain in full force and effect for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration from date of issuance unless sooner suspended or revoked for cause.

C. Any permit granted under provisions of Section 4.03(A), of this ordinance shall remain in full force and effect for thirty-six (36) months from the date of issuance unless sooner suspended or revoked for cause.

Section 4.09 <u>Permits - Non-Transferable</u>

Every permit issued under the provisions of this ordinance shall be nontransferable and nonrefundable. A

Food Establishment or Temporary Food Establishment Permit shall permit the operation of the establishment only at the location, for the type of food service, and for the permit holder for which granted.

Section 4.10 <u>Suspension or Revocation of Food Handler's Permit</u>

The Administrator or his designee shall have the right to suspend or revoke a valid Food Handler Permit at any time the holder of such card becomes affected with any disease in a communicable form, becomes a carrier of any such disease or is suspected of being affected with or being a carrier of any such disease as stated in Texas Food Establishment Rules, Section 229.171(o)(2). Such suspension or revocation shall remain in effect until such person is released from restrictions or exclusions according to the Texas Health and Safety Code, Chapter 438.033, and the conditions stated in the Texas Food Establishment Rules, Section 229.171(o)(4).

Section 4.11 <u>Suspension of a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment Permit</u>

A. The Administrator or his designee may, without prior notice or hearing, suspend any permit granted under Section 4.02 of this ordinance to operate a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment if the permit holder or person in charge does not comply with the requirements of this ordinance, or if the operation of the Food Establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Section 4.15 of this ordinance. When a permit is suspended, food service operations shall immediately cease.

B. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

C. Whenever a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment is required under the provisions of this section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be

offered within a reasonable time. During the time a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The Arlington Health Department".

Section 4.12 **Denial of a Food Establishment, Mobile Food Permit, or Temporary Permit**

The Administrator or his designee may, after providing notice of opportunity for a hearing according to Section 4.15 of this ordinance, deny a permit to operate a Food Establishment, Mobile Food Permit, or Temporary Food Permit if the applicant for the permit does not comply with the requirements of this ordinance, or if the operation otherwise constitutes a substantial hazard to public health. Whenever a denial of a permit has become final, the applicant may make written application for a permit according to Section 4.05 of this ordinance.

Section 4.13 **Revocation of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit**

The Administrator or his designee may, after providing opportunity for a hearing according to Section 4.15 of this ordinance, revoke a permit granted under Section 4.02 of this ordinance for serious or repeated violations of any of the requirements of this ordinance, failure to maintain a Food Establishment permit due to failure to pay fees according to Section 4.08 of the ordinance, or for interference with the regulatory authority in the performance of its duty. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten (10) days following service of such notice, unless a written request for a hearing is filed with the Administrator or his designee by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit according to Section 4.05(C) of this ordinance.

Section 4.14 <u>Service of Notices</u>

A notice provided for in this ordinance is properly served when it is delivered to the permit holder or person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the Administrator or his designee.

Section 4.15 <u>Notice of Appeal; Hearing</u>

A. Upon denial, suspension, or revocation of a Food Establishment, Mobile Food Establishment Permit, or a Temporary Food Establishment; the regulatory authority shall notify the applicant, permit holder, or person in charge, in writing, of the reason for which the permit is subject of denial, suspension, or revocation. The applicant, permit holder, or person in charge shall file a written request for a hearing with the Administrator or his designee within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial, suspension , or revocation is sustained.

B. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.

C. The hearings provided for in this ordinance shall be conducted by the Administrator or his designee at a time and place designated by it. Based upon the recorded evidence of such hearing, the Administrator or his designee shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder of the permit by the Administrator or his designee.

D. After such hearing, an applicant that has had a permit denied, suspended, or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.

E. An appeal shall not stay the denial or suspension of the permit unless otherwise directed by the Administrator.

Section 4.16 <u>Inspection Frequency</u>

A. An inspection of a Food Service Establishment shall be performed at least once annually and shall be prioritized based upon assessment of a Food Establishment's compliance and potential of causing foodborne illness according to Section 229.171(h) of the Texas Food Establishment Rules.

B. The Administrator or his designee shall classify Food Establishments as high priority, medium priority, or low priority; according to the type of operations, particular foods that are prepared, numbers of people served; susceptibility of the population served, and any other risk factor deemed relevant to the operation.

C. Additional inspections of the Food Establishment shall be performed as often as necessary for the enforcement of this ordinance.

D. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Administrator or his designee has reasonable cause to believe that there exists in any building or upon any premises any condition or violation of this Chapter, the Administrator or his designee may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrator or his designee by this Chapter. If such building or premises is occupied, he shall first present proper credentials and request entry. If such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused or if no owner or other person having charge or control of the building or premises can be located, the Administrator or his designee shall have recourse to every remedy provided by law to secure entry.

Section 4.17 <u>Examination and Condemnation of Food</u>

Food may be examined or sampled by Administrator or his designee as often as necessary for enforcement of this ordinance. The regulatory authority may, upon written notice to the owner or person in charge specifying with particularity the reasons therefor, place a hold order on any food which it believes is in violation of any section of

this ordinance. The Administrator or his designee shall tag, label or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served or removed from the establishment. The Administrator or his designee shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for hearing may be filed within ten (10) days and that if no hearing is requested the food shall be destroyed. A hearing shall be held if so requested, and on the basis of evidence produced at that hearing, the hold order may be vacated or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this ordinance.

Section 4.18 <u>Review of Plans</u>

A. Whenever a Food Establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a Food Establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this ordinance. No Food Establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the regulatory authority.

B. Whenever plans and specifications are required to be submitted to the regulatory authority, the regulatory authority shall inspect the Food Establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance.

C. Failure to follow the approved plans and specifications may result in a permit denial, suspension, or revocation.

Section 4.19 **Operation of Mobile Food Establishment**

A. Any person or firm who operates a Mobile Food Unit or a Mobile Food Establishment as defined in this ordinance shall not operate such establishment within one block of any block containing an elementary or junior high school.

B. Only food items previously approved by the regulatory authority may be sold on a Mobile Food Unit. Non-food items such as toys, fireworks, or any hazardous substances such as stink bombs are prohibited.

Section 4.20 **Fees**

The various requirements for permits, licenses, certificates, and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Health Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated Food Establishments or public school cafeterias. Fees are not to be transferable or refundable.

Section 4.21 **Responsibilities of the Owner, Manager, or Person-in-Charge**

The permit holder, owner, manager, or person-in-charge of a food establishment shall operate the facility in compliance with the provisions of this Article and other applicable sections of the Code of the City of Arlington and shall respond within the specified schedule of time when any deficiency or violation has been identified by the Administrator or his designee.

Further, Article V, Child Care Centers, is hereby amended so that hereafter said article shall be and read as follows:

ARTICLE V

CHILD CARE CENTERS

Section 5.01 **Purpose**

The purpose of this Article is to provide minimum standards for the operation of child care centers in the City of

Arlington to protect the health, safety and welfare of the occupants and patrons.

Section 5.02 <u>Texas Department of Protective and Regulatory Services Regulations Adopted</u>

A. The provisions of the current rules or rules as amended, known as the "Minimum Standards for Day Care Centers", found in 40 Texas Administrative Code, Chapter 715, Section 401 through 429 are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article V, Child Care Centers, of the "Health and Sanitation" Chapter of the Code of the City of Arlington.

B. An unabridged copy of the "Minimum Standards for Day Care Centers" shall be kept on file in the Office of the City Secretary. The provisions of the "Minimum Standards for Day Care Centers" shall apply, as though such regulations were copied at length herein, except where specific other provisions are expressed within this Article.

Section 5.03 <u>Administration: Permit, Issue, Inspection, Compliance, Enforcement</u>

A. The Administrator or his designee is hereby authorized to issue a child care center permit in the City of Arlington when he finds that the permit applicant has complied with the requirements of this Article and other applicable sections of the Code of the City of Arlington. The Administrator shall cause the child care center to be inspected annually to ensure that the facilities, grounds and equipment are maintained in compliance with this Article and in a safe and sanitary condition for the welfare of the occupants and patrons of the child care center, along with appropriate directives to resolve deficiencies observed in the inspections. The Administrator shall have the authority to enforce the provisions of this Article and to issue citations for violation of any of its provisions.

B. The permit holder and/or the person in charge of the child care center shall operate the facility in compliance with the provisions of this Article and other applicable sections of the Code of the City of

Arlington and shall respond within the specified schedule of time when any deficiency or violation has been identified by the Administrator or his designee.

Section 5.04 **Permit Required**

No person, firm or corporation shall operate a child care center in the City of Arlington unless and until a permit for such purposes has been issued by the Administrator or his designee. For purposes of this Chapter, "child care center" is hereby defined as follows:

A. **Child Care Center**. A facility where child care occurs. The term "child care" shall be applied where:

1. Care, guidance or supervision is provided for thirteen (13) or more children under the age of fourteen (14), exclusive of persons who are related by blood, marriage or adoption to the owner or operator of the facility; and

2. Care, guidance or supervision is provided for a period of less than a twenty-four (24) hour day at least three (3) days a week, whether or not the facility is operated for profit or charges for the service it offers.

B. The term "child care" shall **not** apply to:

1. A State-operated facility;

2. An agency home as defined by the Texas Human Resources Code, Chapter 42, Section 42.002(11);

3. A facility that is operated in connection with a shopping center, business, religious organization or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;

4. A school or class for religious instruction that does not last longer than two (2) weeks and is conducted by a religious organization during the summer months;

5. A youth camp licensed by the Texas Department of Health;

6. A hospital licensed by the Texas Department of Health and Mental Retardation or the Texas Department of Health;

7. An educational facility accredited by the Texas Education Agency or the Texas Private School Accreditation Commission that operates primarily for educational purposes in grades Kindergarten and above;

8. An educational facility that operates solely for educational purposes in grades Kindergarten through at least Grade 2, that does not provide custodial care for more than one (1) hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes and requires compliance with health, safety, fire and sanitation standards equal to standards required by State, county and municipal codes;

9. Kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency or the Texas Private School Accreditation Commission, that offers educational programs through Grade 6, and that does not provide custodial care during the hours before or after the customary school day;

10. A family home as defined by the Texas Human Resources Code, Chapter 42, Section 42.002(9);

11. An educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility, both of which do not provide custodial care for more than two (2) hours maximum per day, and that offers educational programs for children age five (5) and above in one (1) or more of the following: Kindergarten through at least Grade 3, elementary or secondary grades; provided, however, that a religious organization, such as that described in Subsection B(3), above, where children are cared for during short periods while parents or persons responsible for the children are attending reli-

gious services or engaged in other activities on or near the premises, may provide custodial care for more than two (2) hours per day; or

12. After-school care facilities in public schools that provide care before or after the usual school day, or full day care for the same children on school holidays or during summer vacation for more than twelve (12) children, ages five (5) through thirteen (13) years, for children enrolled in the public school provided that the facility is properly licensed by the Texas Department of Protective and Regulatory Services.

C. For purposes of this Article, "religious organization" shall be defined as a church, synagogue or other religious institution which purpose is to support and serve the propagation of truly held religious beliefs.

Section 5.05 <u>Permit Application</u>

A. Application for a permit to operate a child care center shall be submitted by the owner on a form specified by the Arlington Health Department.

B. The permit application shall state the owner's name, address and telephone number and the name and social security account numbers of all employees and staff members of the child care center.

C. The permit application shall indicate the name, street and mailing addresses of the child care center, status of food service provided for children, and times of operation.

D. Child Care Center permit application fee shall be due for each child care center that requires plans to be submitted according to Section 5.06 of this chapter.

E. Upon change of ownership, a change of ownership fee is due and a new application shall be made for a permit as required in this Section. The regulatory authority shall inspect the Child Care Center prior to its beginning operation to determine compliance with the requirements of this ordinance. Failure to comply with the requirements of this ordinance may result in denial, suspension, or revocation.

F. The owner shall affirm that a Certificate of Occupancy has been applied for with the Arlington Building Inspection Department, its issuance contingent in part on the successful application for a child care center permit.

G. The permit application shall include a certificate of liability insurance coverage that complies with Section 5.25.

H. Failure to provide all required information, or falsifying information required on the application may result in denial, suspension, or revocation of the permit.

Section 5.06 <u>Review of Plans</u>

A. Whenever a Child Care Center is constructed or extensively remodeled and whenever an existing structure is converted to use as a Child Care Center, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the layout and arrangement of any proposed food service areas, indoor and outdoor areas to be used for the child care center including mechanical plans; construction materials; plumbing fixtures; the type of fixed equipment; and playground and fall zone specifications. The regulatory authority shall approve the plans and specifications if they meet the requirements of this ordinance.

B. No Child Care Center shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the regulatory authority. The approved plans and specifications must be followed in construction, remodeling, or conversion.

C. Whenever plans and specifications are required to be submitted, the regulatory authority shall inspect the Child Care Center prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance.

D. Failure to follow the approved plans and specifications may result in permit denial, suspension, or revocation.

Section 5.07 <u>Permit Duration and Renewal</u>

A Child Care Center Permit shall be valid for one (1) year from the date of issuance, unless suspended or revoked as hereinafter provided. Application for renewal of a permit shall be made on a form specified by the Arlington Health Department. The permit holder shall contact the Arlington Health Department for renewal purposes not later than four (4) weeks prior to impending expiration of the permit. The procedure of renewal shall require that the operator of the child care center confirm the accuracy of the records of the Arlington Health Department regarding facilities, equipment, manner of operation and employees, stated in Section 5.05. Any incorrect information in the records of the Arlington Health Department for the child care center shall be corrected before the permit may be renewed.

Section 5.08 <u>Permit Renewal Denial, Suspension and Revocation</u>

A. The Administrator or his designee is hereby authorized to deny, suspend, or revoke a Child Care Center Permit for a violation of any provision of this Article. Denial, suspension or revocation of a permit shall be effected by notice, in writing, setting forth the reasons therefor and specifying any requirements or schedules of time for further action related to the suspension or revocation.

B. The following actions shall constitute cause for denial or suspension:

   1. Failure to respond within specified limits of time regarding violations observed during an Arlington Health Department inspection of the premises and operation;

   2. Any violation of this Article which poses a safety or public health hazard to any child entrusted to the care of the child care center; and

   3. Failure to keep continually in force the required liability insurance, according to Section 5.25.

4. Failure to possess a valid Child Care Center License or Accreditation issued by Texas Department of Protective and Regulatory Services according to Chapter 42 of the Human Resources Code.

5. Failure to meet the requirements of Chapter 42 of the Texas Department of Protective and Regulatory Services, Human Resources Code, related to the requirements for criminal history check and background search of central registry of reported cases of child abuse for all persons who are present while children are in care.

C. The following actions shall constitute cause for revocation:

1. Failure to correct a violation following suspension of the permit; and

2. Knowingly submitting false information, or allowing false information to be submitted, in the application for a permit.

D. Whenever a permit is denied, suspended or revoked, the permit holder or person in charge shall cease operations. Parents must be immediately notified of the denial, suspension, or revocation so that alternative child care arrangements can be made. Operations shall not resume until such time as a reinspection determines that conditions no longer exist causing denial or suspension. The permit holder shall notify the Administrator when the conditions causing the denial or suspension have been corrected. The center may not resume operations until the Administrator verifies that the conditions have been corrected and written authorization given. A sign shall be posted by the Administrator at the entrance of the building clearly visible to a reasonably observant person which states "Closed By The Arlington Health Department". Signs posted by the Administrator or his designee shall not be altered or removed unless authorized by the Administrator or his designee.

E. A permit that has been revoked shall not be reissued.

Section 5.09 **Display of Permit**

The Child Care Center Permit shall be conspicuously posted on an inside wall of the main facility and shall be continuously displayed in public view.

Section 5.10 **Child Care Workers Permit**

A. Every person owning, employed by or otherwise connected with a child care center whose work involves caring for children shall within thirty (30) days of the date of employment, be the holder of a current Child Care Workers Permit, issued by the City of Arlington Health Department.

B. No person who owns, operates, or otherwise controls any child care center shall permit any person to be employed therein whose work involves caring for children who does not after thirty 30 days of employment possess a current valid Child Care Workers Permit issued by the City of Arlington Health Department.

Section 5.11 **Child Care Workers Class Required**

In order to receive a Child Care Workers Permit, every person shall be required to attend a Child Care Workers Class held by the City of Arlington Health Department before a Child Care Workers Permit will be issued. This requirement must be met upon expiration of the permit and upon application for a new permit.

Section 5.12 **Child Care Workers Permit Duration and Renewal**

A Child Care Workers Permit shall be valid for three (3) years from the date of its issue, unless revoked as herein provided.

Section 5.13 **Child Care Workers Permit Suspension - Revocation**

The Administrator or his designee shall have the right to suspend or revoke a valid Child Care Workers Permit at any time the holder of such card becomes affected with any

disease in a communicable form, becomes a carrier of any such disease or is suspected of being affected with or being a carrier of any such disease. Such suspension or revocation shall remain in effect until a licensed physician certifies that such person is free of communicable disease according to Texas Health and Safety Code, Chapter 438.033.

Section 5.14 <u>Display of Child Care Workers Permit</u>

A copy of the current Child Care Workers Permit shall be maintained at the child care center for each of its employees or staff members and shall be available for review upon the request of the Administrator or his designee.

Section 5.15 <u>Appeal of Permit Denial, Suspension or Revocation</u>

A. Upon finding that the Child Care Center Permit may not be issued, or that the permit should be suspended or revoked, the Administrator or his designee shall, within ten (10) days of the finding, notify the owner or person in charge in writing, specifying the result of the finding and the reasons therefor. The applicant may request a hearing before the Administrator.

B. Notice of appeal shall be filed within twenty (20) days of the date of the written notice of denial or revocation.

C. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.

D. After such hearing, the owner or the person in charge that has had a permit denied, suspended or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.

E. An appeal shall not stay the denial, suspension or revocation of a license or permit unless otherwise directed by the Administrator.

Section 5.16 <u>Permits - Non-transferable</u>

No permit issued under this Article shall be used for any purpose other than the intent for which it was issued,

nor be transferred or assigned to, or in any manner used by, any person, firm or corporation other than the one to whom issued by the Administrator.

Section 5.17 <u>Fees</u>

A. The various requirements for permits, and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Health Department, in an amount approved by resolution of the Arlington City Council. Fees shall not be refundable.

B. For the purpose of fees, centers with a Food Establishment, as defined in Article IV of this Chapter, must permit as a "Center with Food Service."

Section 5.18 <u>Food Service in Child Care Centers</u>

A child care center in which food is prepared or served for human consumption shall comply with the pertinent food service regulations contained in Article IV of this Chapter. The fees set forth in Article IV for Food Establishments shall not be required for the food service portion of a child care center. For the purpose of Food Handler's Permit, as defined in Article IV of this chapter, a worker who has been issued a Child Care Workers Permit need not also obtain a Food Handler's Permit.

Section 5.19 <u>Plumbing and Toilet Facilities</u>

A. Plumbing and toilet fixtures shall be provided in accordance with the Plumbing Code of the City of Arlington.

B. The temperature of any water available to the occupants or patrons of a child care center shall not exceed 120° Fahrenheit.

C. Except where intended only for use by the children, each lavatory shall be provided with both hot and cold water, tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing or metering faucet shall provide a flow of water for at least twenty (20) seconds without the need to reactivate the faucet.

D. Toilet tissue, paper towels or clean cloths and soap shall be available at all times for the use of occupants and patrons. The use of common towels is prohibited.

E. Toilet facilities must be maintained clean and sanitary.

F. Toilet facilities including diaper changing areas must be constructed with smooth, easily cleanable walls, floors and work surfaces.

Section 5.20 <u>Diaper Changing Provisions</u>

A. When diapering a child, a separate diaper changing station such as a changing table, counter-top, or other elevated structure must be used. The use of the floor or crib for diaper changing is prohibited.

B. The diapering surface must be smooth, easily cleanable, and in good repair, free of cracks and tears. The diapering surface must be cleaned by removing all visible debris and waste, then sanitized using a solution of ¼ cup of household bleach per gallon of water after changing each child.

C. Diaper changing areas must be provided with a properly designed and maintained hand washing lavatory equipped with both hot and cold water, tempered by means of a mixing valve or combination faucet, soap and sanitary single use towels.

D. Diaper pails or trash cans equipped with tight-fitting lids shall be provided for disposal of soiled diapers.

E. Diaper changing procedures shall be posted at all diaper changing stations.

F. Diapering and food preparation areas shall be physically separate from one another, and their surfaces shall be kept clean, uncluttered, and dry. The diapering surface shall only be used for diapering a child. Whenever possible, the same staff member should not prepare food and change diapers.

Section 5.21 <u>Playground Provisions</u>

A. An outdoor playground shall be provided and shall be supervised by adults in an adult-child ratio not less than that maintained in indoor activities.

B. A playground shall provide not less than 100 square feet of area for each child occupying the area at one time.

C. The indoor and outdoor playground area, including all play equipment, shall be maintained in a safe condition. No sharp edges, dangerous protrusions or other obvious hazards shall be allowed in the play area. All equipment must be designed to protect against entrapment. Fall zones under equipment should be of wood chips, small gravel, sand, or other material designed to effectively absorb shock and prevent injury. All play areas and playground equipment installed, modified, or repaired after October 1, 1999, must meet Consumer Product Safety Commission Handbook for Public Playgrounds Safety Guidelines Publication No. 325.

D. A playground shall be surrounded by a chain-link fence not less than six feet (6') in height. When screening is required by the "Zoning" Chapter of the Code of the City of Arlington, screening devices of at least six feet (6') may substitute for the chain-link fence, as long as at least one (1) side of the play area remains constructed of chain-link. Fences at child care centers in existence prior to October, 1985, may be continued and maintained if they are a minimum of four feet (4') in height. Administrator or his designee may exempt this requirement if the playground is used in association with seasonal or special activities for children five (5) years old and older. Exemptions must be approved in writing for the specific activity and for a limited period of time.

E. Any pool, pond or other body of water greater than two feet (2') in depth shall be separated from a playground by a fence not less than six feet (6') in height, constructed so that children cannot easily climb over it, with self-closing, self-latching gate(s). Gates to the pool enclosure must be kept locked at all times that the pool is not in use. In all other ways, the pool must comply with the "Construction" Chapter of the Code of the City of Arlington and State law relative to pool

construction and safety. All pools used by the children must comply with the pertinent regulations contained in Article VII of this Chapter for public and semi-public swimming pools. Permits are required, as set forth in Article VII of this Chapter, and all fees must be paid.

F. Outdoor activities and field trips where children may encounter a pool, a pond or other body of water shall be attended by an adult competent in water-safety procedures, as certified by the American Red Cross, and trained in life-saving techniques stated in Section 5.23(F).

G. Tires must be provided with adequate drainage to prevent breeding of mosquitoes.

Section 5.22 <u>Release of Child</u>

A. The child care center shall maintain a register for the signature of persons to whom children are released. Daily signatures shall not be required by this Article for authorized persons to whom children are regularly released. However, the child care center may require such signature of any persons at its discretion.

B. An enrollment agreement required upon admission of any child to the child care center shall include a statement that the child will be released only to a parent or person named by the parent, and a statement that persons bringing the child or picking up the child will ensure that a staff member is aware of the child's arrival or departure. School-age children who leave the facility to go to classes or other approved activities shall have written permission from their parents; parents shall specify the activity, time and method of transportation. The child care center shall maintain a record of parents and other persons to whom the child is authorized for release. Each parent shall provide the child care center with the final four (4) digits of their social security number for purposes of security in emergency conditions, as identified in Subsection C below. In the case of a divorce after a child has been enrolled, it shall be the responsibility of the one who is granted custody of the child (being the one with whom the child lives) to provide the child care center with a copy of the custody decree or

agreement, and request that the authorization records for release of the child be changed.

C. When emergency conditions require that a child be released to a person not identified in the release authorization records, the child care center shall require the parent's prior approval, which may be submitted by telephone. The parent, identified for security by the four (4) digit social security number, shall designate the person to whom the child is to be released. The person to whom the child is to be released must in turn provide the parent's four (4) digit number as identification, and shall be photographed by the child care center and provide a signature and date on the photograph, which shall be retained by the child care center for at least three (3) months.

Section 5.23 <u>Safety and Sanitation</u>

A. A fire evacuation and relocation diagram shall be conspicuously posted in assembly rooms and classrooms in a child care center. All employees and staff members shall be instructed in fire emergency procedures. Fire evacuation drills shall be conducted at sufficient intervals to assure familiarity with emergency procedures among employees and staff members.

B. Electrical outlets accessible to children shall be protected with child-proof covers or safety outlets when not being used.

C. A child care center shall not be located in a mobile home or in any part of a building other than the ground level unless approved by the Arlington Fire Department.

D. A child care center shall maintain an adequate amount of first-aid supplies including, but not limited to soap, antiseptic solutions, absorbent cotton, cotton-tip applicators, sterile gauze, adhesive tape and adhesive bandages. One (1) medium-sized package or container of each of these first-aid supplies shall be maintained in unopened reserve at all times. A magnifying glass, thermometer and tweezers shall also be available. First-aid procedures and supplies shall be applied, including cleaning and bandaging, for any cut or bleeding abrasion of the skin.

E. Smoke detectors or other approved fire alarm equipment shall be installed to provide an effective warning to the building occupants of fire in any kitchen area, sleeping area or any area containing mechanical equipment. Centers with fifty (50) or more occupancy must install a fire alarm system that complies with the "Fire Prevention" Chapter of the Code of the City of Arlington for child care centers. Smoke detectors may be used in place of fire alarm systems in centers with less than fifty (50) occupants.

F. One (1) staff per group of children must have current certification within the last two (2) years in first aid with rescue breathing and choking. One (1) staff per facility (as well as one (1) staff per group of children away from the facility) having current training within the last two (2) years in cardiopulmonary resuscitation (CPR) for infants and children must be present at all times the center is in operation. Certificates evidencing such training shall be available upon request from any City official.

G. The child care center shall take effective measures to maintain the structure and grounds free of insect and rodent infestation. Pest control services shall be provided by an individual or business that is properly licensed by and in compliance with the Texas Structural Pest Control Board requirements. Pest control records must be maintained by the child care center for a period of two (2) years and must be available for review by the Arlington Health Department.

H. All equipment and furnishings such as high chairs, chairs, tables, cribs, swings, or playpens shall be in good repair and shall be free of entrapment and entanglement hazards

I. The interior of the building shall be maintained free of debris and filth. Walls and floors shall be maintained in good repair, structurally sound and free of holes, dangerous protrusions or other obvious hazards. The floors including carpeting, tile or other coverings shall be kept clean and free of accumulation of debris and filth.

J. Grounds around the child care facility must be maintained free of debris, unnecessary items or any harborage for rodents or mosquitoes.

K. All fences, bridges, railings, and other ornaments or equipment on the grounds that are accessible to the children must not pose an entrapment or entanglement hazard.

Section 5.24 <u>Provisions for the Control of Communicable Disease</u>

A. All Staff shall clean their hands and exposed portions of their arms with a cleaning compound by vigorously rubbing together the surfaces of their lathered hands and arms for at least twenty (20) seconds and thoroughly rinsing with clean water and shall pay particular attention to the areas underneath the fingernails and between the fingers. Staff shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

B. Staff must wash before preparing or serving food, before feeding a child or handling food, after caring for a sick child, after diapering, after assisting a child with toileting, after coughing and sneezing, after cleaning soiled surfaces, and after engaging in other activity that contaminates the hands.

C. Staff must assist children to ensure that their hands are thoroughly washed before eating, after using the toilet, after a diaper change, after playing outdoors, after playing with pets, after coughing or sneezing, or after any activity that contaminates the hands.

D. Permanent signs shall be conspicuously posted by all handsinks including those in the restrooms, food service areas, and classrooms, so as to be noticed by normally observant individuals, reminding all persons to wash hands. Permanent signs, including pictorial messages, shall be posted for communication with children unable to read.

E. Employees and staff members shall have received a Mantoux tuberculosis skin test, with negative results, within the last 2 years. In the case of a positive result or when a Mantoux tuberculosis skin test can not be administered, a tuberculosis examination shall be conducted by a physician and the person found not to be a risk for the communication of tuberculosis. Subsequent testing may be required by the health authority if the person is exposed to tuberculosis.

F. Employees and staff members shall not present themselves for work when ill with a contagious virus or other disease that may affect the health of other persons. Persons shall not be permitted in the child care center whose health status or behavior suggests a hazard to the health, safety and welfare of others, including symptoms of a contagious illness, a dangerous mental or physical condition or symptoms of drug or alcohol intoxication.

G. Any child with symptoms of a communicable disease such as oral fever 100.4, uncontrolled diarrhea (2 or more loose, watery stools in 24 hours) or vomiting (2 or more episodes in 24 hours) shall be isolated from other children at the child care center. Extra attention must be given to handwashing and sanitation until the child can be picked up by a parent or other person(s) authorized by the parent according to Section 5.22 of this Chapter.

Section 5.25 <u>Liability Insurance</u>

A. The child care center applicant must have liability insurance coverage in the minimum amount of $300,000 for each occurrence of negligence according to Chapter 42 of the Texas Human Resources Code. The policy must cover injury or death that occurs while a child is in the care of the facility and must remain in effect at all times that the center is operating.

B. A licensee who does not have coverage for any of the reasons stated in Chapter 42 of the Texas Human Resources Code must provide proof to the Arlington Health Department that each child's parent(s), caretaker(s) or conservator has been properly notified. This proof must be presented to the City of Arlington Environmental Health Department within three (3) working days from the time coverage is discontinued, exhausted or denied.

C. The child care center applicant must have liability insurance coverage in the minimum amount of $300,000 combined single limit for each occurrence of bodily injury or death and property damage that occurs due to motor vehicle accident during transportation of a child. Coverage shall be provided for all owned/leased nonowned and hired vehicles. Such insurance is to include coverage for uninsured/underinsured motorist.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 20th day of July, **1999**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 27th day of July, **1999**, by a vote of 7 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 00-037

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE I**, ENTITLED DEFINITIONS, BY THE AMENDMENT OF **SECTION 1.01**, DEFINITIONS, RELATIVE TO THE DELETION OF THE DEFINITIONS OF "DEEP AREAS", "FREE AVAILABLE CHLORINE", "LIFEGUARD", "SEMIPUBLIC POOL", "SERVICE ANIMAL", "SHALLOW AREA", "SPA" AND "SWIMMING POOL OR POOL", THE ADDITION OF THE DEFINITIONS OF "THERAPY POOL" AND "TRAINED POOL OPERATOR", AND THE AMENDMENT OF THE DEFINITIONS OF "ISSUING OFFICER", "PRIVATE POOL" AND "PUBLIC POOL"; THROUGH THE AMENDMENT OF **ARTICLE VII**, ENTITLED PUBLIC AND SEMIPUBLIC SWIMMING POOLS, RELATIVE TO UPDATING THE ORDINANCE TO CONFORM TO RECENT CHANGES IN STATE LAW; PROVIDING FOR A FINE OF UP TO $2000 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article I,** Definitions**,** by the amendment of **Section 1.01**, Definitions, by the **deletion** of the definitions of "Deep Areas", "Free Available Chlorine", "Lifeguard", "Semipublic Pool", "Service Animal", "Shallow Area", "Spa" and "Swimming Pool or Pool", the **addition** of the definitions of "Therapy Pool" and "Trained Pool Operator", and the **amendment** of the definitions of "Issuing Officer", "Private Pool" and "Public Pool", so that hereafter said definitions shall be and read as follows:

Issuing Officer - The Director of Neighborhood Services for the City of Arlington or his designee.

Private Pool - A pool or spa serving only one or two dwellings (a single or duplex residential pool), regardless of whether the pool/spa is permanently or temporarily installed in the ground, on the ground or above the ground, the use of which is limited to members of the homeowner's or tenant's family or invited guests.

Public Pool - Any pool or spa which is intended to be used by the general public for swimming, diving, recreational bathing or other related purposes, operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use. This definition excludes any private pool or therapy pool as defined in this ordinance.

Therapy Pool - A pool or spa operated exclusively for therapeutic purposes such as medical treatment or physical therapy.

Trained Pool Operator - A person who has attended a certified training course of at least six (6) classroom hours approved by the Administrator.

Further, **Article VII**, Public and Semipublic Swimming Pools, is hereby amended so that hereafter said article shall be and read as follows:

ARTICLE VII

PUBLIC SWIMMING POOLS

Section 7.01 Texas Standards for Public Swimming Pool and Spa Rules Adopted

A. The provisions of the current rules or rules as amended by the Texas Board of Health known as the Texas Standards for Public Swimming Pool and Spa Rules found in 25 Texas Administrative Code, Part 1, Chapter 265, Subchapter K, Sections 181 through 207 are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article VII, Public Swimming Pools, of the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987.

B. The intent and purpose of this Section is to provide for the inspecting of public swimming pools in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the operations of public pools. The enforcement of this ordinance and the fixing of penalties shall be regulated in accordance with this chapter and the terms of the unabridged form of the Texas Standards for Public Swimming Pool and Spa, a copy of which is on file in the Office of the City Secretary.

C. In the event of a conflict between any provision of the Texas Standards for Public Pool and Spa Rules and any provision of this ordinance, this ordinance shall prevail.

D. The adopting by reference of the Texas Standards for Public Swimming Pool and Spa Rules, as provided in Section 7.01(A) above, is made subject to and is modified and amended as follows:

1. The words "regulatory authority" in said Rules shall mean the Administrator or his designee with the City of Arlington Health Division; and

2. Section 265.183.(a) shall read: The division may require that a registered professional engineer or registered architect licensed by the State of Texas to practice as such be consulted to assure that the pool and spa are designed and built in compliance with these rules applicable federal, state, and or local regulatory requirements. The engineers or architect’s professional seal shall be affixed to the plans and a statement attesting to the fact that the pool or spa was designed, constructed, and able to operate in compliance with these standards. This statement shall also be made available for review at a reasonable time upon request by the administrator.

3. The word "required" shall replace the word "recommend" in Section 265.184 (b)

4. The words "new and existing pools" shall replace the words "new pools" in Sections 265.199 (b) and (c) except Section 265.199.

5. Section 265.203 (b) shall read as follows:

A. After May 1, 2001, the permit holder or person-in-charge of every new and existing Class C pools shall ensure that the pool and/or spa be cared for by a Trained Pool Operator who has successfully completed a training course according to Section 7.05 of this Chapter. The Trained Pool Operator shall be responsible for the daily water treatment operations, record keeping, and maintenance of the pool in compliance with this Chapter.

B. The permit holder or person-in-charge of a Class C pool whose trained pool operator has transferred, resigned, or no longer employed shall have thirty (30) days to comply with the requirements of this Section.

C. A permit holder or person-in-charge is in compliance with the provisions of this section if they employ a swimming pool service company whose employee services the pool has a valid pool training certificate.

Section 7.02 <u>Swimming Pool Permit Required</u>

A. No person or firm shall operate a public pool without a valid Swimming Pool Permit from the City of Arlington, issued by the Administrator or his designee.

B. The Administrator or his designee shall issue a Swimming Pool Permit to any person or firm making application in the City of Arlington; providing that the person or firm complies with the requirements of this ordinance and the annual swimming pool permit fee is paid.

Section 7.03 <u>Swimming Pool Permits Application</u>

A. Application for a Swimming Pool Permit shall be made in writing on the form provided by the Administrator or his designee. A separate application is required for each pool for which a permit is sought. An application shall be made for a permit for each pool that is constructed or extensively remodeled according to

Article 7.08(A) of this chapter or at any time there is a change of ownership.

B. Swimming pool application fee is due for each pool that is constructed or extensively remodeled according to Section 7.08(A) of this chapter. A separate fee is required for each pool for which a swimming pool permit is sought.

Section 7.04 <u>Fees</u>

A. The requirements for permits and administrative fees of this Article shall require the payment to be submitted to the Arlington Health Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated swimming pools.

B. Fees are not transferable or refundable. Every permit issued under the provision of this ordinance shall be non-transferable and non-refundable. A Swimming Pool Permit shall permit the operation of the pool only at the location and for the owner for which granted.

Section 7.05 <u>Pool Operator's Training</u>

A. Pool Operators training courses shall consist of at least six (6) classroom hours instructed by a Certified Pool Operator with content approved by the Administrator.

B. A certificate of completion within the last two (2) years of issue date must be provided for review upon request by the Administrator.

Section 7.06 <u>Posting of Swimming Pool Permits and Pool Operator's Training Certificate</u>

The Swimming Pool Permit and Pool Operator's Training Certificate shall at all times be available on the premises for inspection and shall at all times be displayed in public view.

Section 7.07 <u>Permits - Duration</u>

A. Swimming Pool Permits shall expire on March 1 of each year unless annual swimming pool permit fee is paid, or unless suspended for cause before expiration date.

B. Swimming Pool Permits that lapse for non-payment of the annual swimming pool permit fee, will be reinstated upon payment of reinstatement fee.

Section 7.08 <u>Review of Plans</u>

A. Whenever a public swimming pool is constructed or extensively remodeled, properly prepared plans and specifications for such construction or remodeling according to Section 265.183 (a) of the Ordinance along with the Application Fee shall be submitted to the City of Arlington Health Department for review and approval before construction or remodeling is started.

B. Whenever plans and specifications are required to be submitted to the regulatory authority, the regulatory authority shall inspect the pool prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance.

Section 7.09 <u>Inspections</u>

The Administrator or his designee is authorized to conduct such inspections as he deems necessary to ensure compliance with all provisions of this ordinance. He shall have right of entry at any reasonable hour upon the premises where a public or semipublic pool is located. He shall have the authority to collect water samples from the pool.

Section 7.10 <u>Maintenance and Operation</u>

A. The owner or person-in-charge of every public pool shall be responsible for compliance with all parts of this Article relating to pool maintenance, pool operation and safety of swimmers. It shall be unlawful for the owner or person-in-charge to cause or permit the existence of a condition which is in violation of any part of this Article.

Section 7.11 **<u>Regulations in Pool Area</u>**

A person commits an offense if he/she:

A. Allows an animal under his/her control to enter or remain within the pool area or pool enclosure of a public or semipublic pool, except that service animals may be allowed in the pool area or enclosure and not in the pool water unless the person can show that the service animal is providing a service; or

B. Has skin abrasions, open sores, skin disease, eye disease, nasal or ear discharge or a communicable disease and swims in a public pool; or

C. Works at a public pool while infected with a communicable disease; or

D. Alters or removes safety equipment from a public or semipublic pool except in an emergency; or

E. Carries glass within a public or semipublic pool area or enclosure.

Section 7.12 **<u>Failure to Comply</u>**

A. Failure to comply with any section of this ordinance may result in the immediate closure of the pool and/or the initiation of legal action. Upon determination that the pool does not comply with the provisions of this ordinance, the Administrator or his designee shall notify the owner or person-in-charge of the existing violations. If Administrator or his designee determines that the condition of the pool is hazardous to the health or safety of the swimmers or of the general public, the pool shall be immediately closed. Signs shall be posted at all entrances to the swimming pool. Said sign shall be clearly visible to a reasonably observant person and shall state, "Closed By The Arlington Health Department". A reinspection of the pool will be conducted during the regular working hours of the Health Department at the request of the pool Manager of Operations. If compliance has been achieved, the owner or person-in-charge shall be notified that the pool may be opened.

B. Signs posted by the Administrator or his designee stating "Closed By the Arlington Health Department" shall not be altered or removed unless authorized by the Administrator or his designee.

Section 7.13 **Violation of Closure Order**

When the Administrator or his designee has ordered that a pool be closed due to non-compliance with any provision of this ordinance, the owner of such pool shall not knowingly allow the pool to be used for swimming, diving or bathing purposes and shall immediately take every reasonable step to prevent the use of such pool for such purposes. By way of example and without limiting such duty, the owner shall (1) immediately post notices reasonably likely to come to the attention of potential users of the pool, advising of the closure, and (2) shall immediately lock all gates and doorways in any fence or other enclosure surrounding such pool.

Use of the pool by an individual for swimming, diving or bathing purposes after the Administrator or his designee has ordered such pool to be closed shall be deemed prima facie evidence that the owner of said pool has knowingly allowed the pool to be used for such purposes.

Section 7.14 **Enforcement Responsibility**

The Administrator or his designee shall have enforcement responsibility for this ordinance.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provi-

sions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 28th day of March, **2000**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and

approved on the 4th day of April, **2000**, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 01-045

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE II**, ENTITLED GARBAGE AND TRASH, BY THE AMENDMENT OF **SECTION 2.02,** RESIDENTIAL COLLECTION – PLACEMENT OF CONTAINERS**,** BY THE AMENDMENT OF SUBSECTION (D) RELATIVE TO RECYCLING CONTAINERS; PROVIDING FOR A FINE OF UP TO $2000 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article II,** Garbage and Trash, by the amendment of Section 2.02, Residential Collection – Placement of Containers, by the amendment of Subsection (D) so that hereafter said subsection shall be and read as follows:

D. Time of Placement: All containers shall be placed at the hereinabove prescribed locations not later than 7:00 a.m. on the day of scheduled collection. In this regard, it shall be unlawful for any customer to place containers of garbage or recycling at said location prior to 7:00 p.m. the evening prior to the day of scheduled collection. Reusable recycling containers must be removed from the curb prior to 7:00 a.m. of the morning following the day of scheduled collection.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the **10th** day of **April**, **2001**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **24th** day of **April**, **2001**, by a vote of **6** ayes and **2** nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 03-039

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE IV**, REGULATION OF FOOD ESTABLISHMENTS, **SECTION 4.01**, TEXAS FOOD ESTABLISHMENT RULES ADOPTED, SUBSECTION (D)(3), RELATIVE TO THE ADDITION OF A REGISTRATION FEE FOR A CERTIFIED FOOD PROTECTION MANAGER AND THE ADDITION OF COMMISSARY; **SECTION 4.02**, FOOD ESTABLISHMENT, SUBSECTION (A), AND **SECTION 4.04**, PERMITS – AUTHORITY TO ISSUE, RELATIVE TO THE ADDITION OF COMMISSARY AND CATERING VEHICLE; **SECTION 4.05**, PERMITS – APPLICATION, AND **SECTION 4.07**, POSTING OF FOOD HANDLER, FOOD ESTABLISHMENT, AND TEMPORARY FOOD ESTABLISHMENT PERMITS, RELATIVE TO THE ADDITION OF COMMISSARY; **SECTION 4.08**, PERMITS - DURATION, RELATIVE TO THE DURATION OF A FOOD HANDLER PERMIT AND THE ADDITION OF COMMISSARY AND CATERING VEHICLE; **SECTION 4.09**, PERMITS – NON-TRANSFERABLE, RELATIVE TO THE ADDITION OF COMMISSARY; **SECTION 4.11**, SUSPENSION OF A FOOD ESTABLISHMENT, MOBILE FOOD ESTABLISHMENT, OR TEMPORARY FOOD ESTABLISHMENT PERMIT, **SECTION 4.12**, DENIAL OF A FOOD ESTABLISHMENT, MOBILE FOOD PERMIT, OR TEMPORARY PERMIT, **SECTION 4.13**, REVOCATION OF A FOOD SERVICE ESTABLISHMENT, MOBILE FOOD SERVICE ESTABLISHMENT, OR TEMPORARY FOOD SERVICE ESTABLISHMENT PERMIT, AND **SECTION 4.15**, NOTICE OF APPEAL; HEARING, SUBSECTION (A), RELATIVE TO THE ADDITION OF COMMISSARY AND CATERING VEHICLE; **SECTION 4.16**, INSPECTION FREQUENCY, AND **SECTION 4.18**, REVIEW OF PLANS, RELATIVE TO THE ADDITION OF COMMISSARY; THROUGH THE AMENDMENT OF **ARTICLE V**, CHILD CARE CENTERS, **SECTION 5.07**, PERMIT DURATION AND RENEWAL, RELATIVE TO A PERMIT REINSTATEMENT FEE; THROUGH THE AMENDMENT OF **ARTICLE VII**, PUBLIC SWIMMING POOLS, **SECTION 7.01**, TEXAS STANDARDS FOR PUBLIC SWIMMING POOL AND SPA RULES ADOPTED, SUBSECTION (D)(5)(a), RELATIVE TO REGISTRATION OF TRAINED POOL OPERATORS; PROVIDING FOR A FINE OF UP TO **$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING

EFFECTIVE APRIL 15, 2003, EXCEPT SUBSECTION 7.01(D)(5)(a) SHALL BECOME EFFECTIVE ON OCTOBER 1, 2003

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article IV,** Regulation of Food Establishments**,** by the amendment of **Section 4.01**, Texas Food Establishment Rules Adopted, Subsection (D)(3), so that hereafter said subsection shall be and read as follows:

3. After June 1, 2000, the sentence in 229.163(b) shall be amended to "The person in charge shall demonstrate this knowledge by compliance with these rules, by being a Certified Food Protection Manager who has shown proficiency of required information through passing a test that is part of a Food Protection Management Program accredited by the Texas Department of Health according to 25 TAC Section 229.172, and by responding correctly to the inspector's questions as they relate to the specific food operation. After April 15, 2003, compliance will be demonstrated by presenting the certificate to the Neighborhood Services Department and payment of a fee set by resolution of the Arlington City Council."

   a. The permit holder of every Food Establishment or Commissary shall ensure that at least one person in charge at each location, who is responsible for supervising food preparation and service, has a valid Food Protection Management Training Certificate issued by the Texas Department of Health as proof of successful completion of a Texas Department of Health accredited Food Protection Management Training Program as defined in 25 TAC§ 229.172 and registered with the City of Arlington.

   b. The permit holder shall make Food Protection Manager Certificates and proof of City registration available for immediate inspection upon request by the regulatory authority.

   c. The permit holder of a new Food Establishment or Commissary, or an existing Food Establishment or Commissary that has changed ownership, or a Food Establishment or Commissary whose Certified Food Protection Manager has transferred or resigned shall have thirty (30) days to comply with the requirements of this Section.

   d. The permit holder of an existing Food Establishment or Commissary shall notify the Health Department within forty-eight (48) hours of the termination or transfer of a Certified Food Protection Manager. The permit holder shall have thirty (30) days from the effective date of the termination or transfer to comply with the requirements of this Section.

e. The following Food Establishments are exempt from the requirements of this Section: Temporary Food Establishments; Food Establishments that sell or distribute only prepackaged foods or uncut produce; and Food Establishments that serve only fountain drinks, coffee, alcoholic beverages, popcorn, and/or snow cones.

f. A permit holder is in compliance with the provisions of this section if there is one Certified Food Protection Manager employed in a supervisory capacity for several Food Establishments located in the same building and under the same ownership and management.

Further, Article IV is hereby amended by the amendment of **Section 4.02**, Food Establishment, Subsection (A), so that hereafter said subsection shall be and read as follows:

A. No person or firm shall operate a Food Establishment, Temporary Food Establishment, Mobile Food Establishment, Commissary, or Catering Vehicle in the City of Arlington without a valid permit issued by the Administrator or his designee.

Further, Article IV is hereby amended by the amendment of **Section 4.04**, Permits – Authority to Issue, so that hereafter said section shall be and read as follows:

Section 4.04 Permits - Authority to Issue

The Administrator or his designee is hereby authorized to issue permits to any person or firm making application for a Food Handler Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Food Establishment Permit, Commissary Permit, or Catering Vehicle Permit, in the City of Arlington; provided that only a person or firm that complies with the requirements of this ordinance shall be entitled to receive and retain such permit.

Further, Article IV is hereby amended by the amendment of **Section 4.05**, Permits - Application, so that hereafter said section shall be and read as follows:

Section 4.05 Permits - Application

A. Application for such permit as required of this ordinance in Sections 4.02 and 4.03 shall be made in writing to the Administrator or his designee upon forms prescribed and furnished by the City of Arlington Health Department.

B. A Food Establishment permit Plan Review fee shall be due for each Food Establishment or Commissary that requires plans to be submitted according to Section 4.18 of this chapter.

C. A Food Establishment permit application fee shall be due for each Food Establishment or Commissary that requires a new Food Establishment permit due to change of ownership, change in type of operation, or revocation, and a new application shall be made for a permit as required by Section 4.02 of this ordinance. Whenever a new Food Establishment Permit is required, the

regulatory authority shall inspect the Food Establishment or Commissary prior to beginning operation to determine compliance with requirements of this ordinance.

D. Failure to provide all required information, or falsifying information required on the application, may result in denial or revocation of the permit.

Further, Article IV is hereby amended by the amendment of **Section 4.07**, Posting of Food Handler, Food Establishment, and Temporary Food Establishment Permits, so that hereafter said section shall be and read as follows:

Section 4.07 Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment or Commissary Permits

Every permit holder or person in charge shall at all times have available on the premises for inspection the Food Handler Permit of its employees, and shall at all times display in public view the Food Establishment Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit or Commissary Permit.

Further, Article IV is hereby amended by the amendment of **Section 4.08**, Permits - Duration, so that hereafter said section shall be and read as follows:

Section 4.08 Permits - Duration

A. Any Food Establishment Permit, Mobile Food Permit, Commissary Permit, or Catering Vehicle Permit granted under the provision of Section 4.02 of this ordinance shall remain in full force and effect twelve (12) months from the date of issuance as long as the annual food establishment permit fee is paid unless sooner suspended or revoked for cause. A Food Establishment Permit that lapses for non-payment of the annual food establishment permit fee, will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

B. An exception to 4.08(A) above is that a Temporary Food Establishment Permit shall remain in full force and effect for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration from date of issuance unless sooner suspended or revoked for cause.

C. Any permit granted under provisions of Section 4.03(A) of this ordinance shall remain in full force and effect for twenty-four (24) months from the date of issuance unless sooner suspended or revoked for cause.

Further, Article IV is hereby amended by the amendment of **Section 4.09**, Permits – Non-transferable, so that hereafter said section shall be and read as follows:

Section 4.09 Permits - Non-transferable

Every permit issued under the provisions of this ordinance shall be nontransferable and nonrefundable. A Food Establishment, Temporary Food Establishment or Commissary Permit shall permit the operation of the establishment only at the location, for the type of food service, and for the permit holder for which granted.

Further, Article IV is hereby amended by the amendment of **Section 4.11**, Suspension of a Food Establishment, Mobile Food Establishment, or Temporary Food Establishment Permit, so that hereafter said section shall be and read as follows:

Section 4.11 Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle

A. The Administrator or his designee may, without prior notice or hearing, suspend any permit granted under Section 4.02 of this ordinance to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle if the permit holder or person in charge does not comply with the requirements of this ordinance, or if the operation of the Food Establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Section 4.15 of this ordinance. When a permit is suspended, food service operations shall immediately cease.

B. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

C. Whenever a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle is required under the provisions of this section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time. During the time a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The Arlington Health Department."

Further, Article IV is hereby amended by the amendment of **Section 4.12**, Denial of a Food Establishment, Mobile Food Permit, Or Temporary Permit, so that hereafter said section shall be and read as follows:

Section 4.12 Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle

The Administrator or his designee may, after providing notice of opportunity for a hearing according to Section 4.15 of this ordinance, deny a permit to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary or Catering Vehicle, if the applicant for the permit does not comply with the requirements of this ordinance, or if the operation otherwise constitutes a substantial hazard to public health. Whenever a denial of a permit has become final, the applicant may make written application for a permit according to Section 4.05 of this ordinance.

Further, Article IV is hereby amended by the amendment of **Section 4.13**, Revocation of a Food Service Establishment, Mobile Food Service Establishment, or Temporary Food Service Establishment Permit, so that hereafter said section shall be and read as follows:

Section 4.13 <u>Revocation of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle</u>

The Administrator or his designee may, after providing opportunity for a hearing according to Section 4.15 of this ordinance, revoke a permit granted under Section 4.02 of this ordinance for serious or repeated violations of any of the requirements of this ordinance, failure to maintain a Food Establishment permit due to failure to pay fees according to Section 4.08 of the ordinance, or for interference with the regulatory authority in the performance of its duty. Prior to revocation, the regulatory authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten (10) days following service of such notice, unless a written request for a hearing is filed with the Administrator or his designee by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit according to Section 4.05(C) of this ordinance.

Further, Article IV is hereby amended by the amendment of **Section 4.15**, <u>Notice of Appeal; Hearing</u>, Subsection (A), so that hereafter said subsection shall be and read as follows:

A. Upon denial, suspension, or revocation of a permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, the regulatory authority shall notify the applicant, permit holder, or person in charge, in writing, of the reason for which the permit is subject of denial, suspension, or revocation. The applicant, permit holder, or person in charge shall file a written request for a hearing with the Administrator or his designee within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial, suspension , or revocation is sustained.

Further, Article IV is hereby amended by the amendment of **Section 4.16**, <u>Inspection Frequency</u>, so that hereafter said section shall be and read as follows:

Section 4.16 <u>Inspection Frequency</u>

A. An inspection of a Food Service Establishment or Commissary shall be performed at least once annually and shall be prioritized based upon assessment of the Food Establishment or Commissary's compliance and potential of causing foodborne illness according to Section 229.171(h) of the Texas Food Establishment Rules.

B. The Administrator or his designee shall classify Food Establishments and Commissaries as high priority, medium priority, or low priority, according to the type of operations, particular foods that are prepared, numbers of people served, susceptibility of the population served, and any other risk factor deemed relevant to the operation.

C. Additional inspections of the Food Establishment or Commissary shall be performed as often as necessary for the enforcement of this ordinance.

B. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Administrator or his designee has reasonable cause to believe that there exists in any building or upon any premises any condition or violation of this Chapter, the Administrator or his designee may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrator or his designee by this Chapter. If such building or premises is occupied, he shall first present proper credentials and request entry. If such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused or if no owner or other person having charge or control of the building or premises can be located, the Administrator or his designee shall have recourse to every remedy provided by law to secure entry.

Further, Article IV is hereby amended by the amendment of **Section 4.18**, Review of Plans, so that hereafter said section shall be and read as follows:

Section 4.18 Review of Plans

A. Whenever a Food Establishment or Commissary is constructed or extensively remodeled and whenever an existing structure is converted to use as a Food Establishment or Commissary, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this ordinance. No Food Establishment or Commissary shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the regulatory authority.

B. Whenever plans and specifications are required to be submitted to the regulatory authority, the regulatory authority shall inspect the Food Establishment or Commissary prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance.

C. Failure to follow the approved plans and specifications may result in a permit denial, suspension, or revocation.

Further, Article V, Child Care Centers, is hereby amended by the amendment of **Section 5.07**, Permit Duration and Renewal, so that hereafter said section shall be and read as follows:

Section 5.07 Permit Duration and Renewal

A Child Care Center Permit shall be valid for one (1) year from the date of issuance, unless suspended or revoked as hereinafter provided. Application for renewal of a permit shall be made on a form specified by the Arlington Health Department. The permit holder shall contact the Arlington Health Department for renewal purposes not later than four (4) weeks prior to impending expiration of the permit. The procedure of

renewal shall require that the operator of the child care center confirm the accuracy of the records of the Arlington Health Department regarding facilities, equipment, manner of operation and employees, stated in Section 5.05. Any incorrect information in the records of the Arlington Health Department for the child care center shall be corrected before the permit may be renewed. A Child Care Center Permit that lapses for non-payment of the annual Child Care Center Permit fee will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

Further, Article VII, Public Swimming Pools, is hereby amended by the amendment of **Section 7.01**, Texas Standards for Public Swimming Pool and Spa Rules Adopted, Subsection (D)(5)(a), so that hereafter said section shall be and read as follows:

a. After May 1, 2001, the permit holder or person-in-charge of every new and existing Class C pool shall ensure that the pool and/or spa is cared for by a Trained Pool Operator who has successfully completed a training course according to Section 7.05 of this Chapter. The Trained Pool Operator shall be responsible for the daily water treatment operations, record keeping, and maintenance of the pool in compliance with this Chapter. After October 1, 2003, compliance will be demonstrated by presenting proof of training to the Neighborhood Services Department and payment of a registration fee set by resolution of the Arlington City Council.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all

personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective April 15, 2003, except Subsection 7.01(D)(5)(a) shall become effective October 1, 2003.

PRESENTED AND GIVEN FIRST READING on the **25th** day of **March**, **2003**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **1st** day of **April**, **2003**, by a vote of **6** ayes and **2** nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 04-007

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE I**, **SECTION 1.01,** RELATIVE TO THE DEFINITIONS OF "ISSUING OFFICER" AND "HEALTH AUTHORITY"; **ARTICLE II**, **SECTION 2.09,** RELATIVE TO UPDATING THE REFERENCE TO THE PROPER NOTIFICATION AGENT; **SECTION 2.19, ARTICLE IV**, **SECTION 4.01(D)(1), SECTION 4.01(D)(3)(d), SECTION 4.03, SECTION 4.05(A), SECTION 4.06, SECTION 4.11(C), ARTICLE V**, **SECTION 5.07, SECTION 5.08(B)(1), SECTION 5.08(D), SECTION 5.10, SECTION 5.11, SECTION 5.17(A), SECTION 5.23(G),** AND **SECTION 5.25(B),** RELATIVE TO UPDATING THE REFERENCE TO THE NEIGHBORHOOD SERVICES DEPARTMENT; **ARTICLE VII**, **SECTION 7.01(D)(1)**, AND **SECTION 7.01(D)(2)**, RELATIVE TO THE DELETION OF REFERENCES TO THE HEALTH DIVISION**; SECTION 7.04(A), SECTION 7.08(A)**, AND **SECTION 7.12**, RELATIVE TO UPDATING THE REFERENCES TO THE NEIGHBORHOOD SERVICES DEPARTMENT**; ARTICLE VIII, SECTION 8.01(A), SECTION 8.02(A), SECTION 8.03, SECTION 8.04(A), SECTION 8.05, SECTION 8.06**, AND **SECTION 8.07**, RELATIVE TO UPDATING THE REFERENCE OF ISSUING OFFICER TO ADMINISTRATOR**; SECTION 8.08, ARTICLE X, SECTION 10.02(D)(5), SECTION 10.03(F)(1)(e), SECTION 10.03(G)**, AND **SECTION 10.07(A)**, RELATIVE TO UPDATING THE REFERENCES OF HEALTH OFFICIAL AND HEALTH DEPARTMENT TO ADMINISTRATOR; **SECTION 12.02**, **SECTION 12.06**, **SECTION 12.07**, **SECTION 12.08**, **SECTION 12.13(B)(1)**, AND **SECTION 12.15**, RELATIVE TO UPDATING THE REFERENCES OF HEALTH DEPARTMENT AND TEXAS NATURAL RESOURCE CONSERVATION COMMISSION; PROVIDING FOR A FINE OF UP TO **$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR

PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER FIRST PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article I**, Definitions, **Section 1.01,** Definitions, by the **deletion** of the definition of "Issuing Officer".

Further, **Article I**, **Section 1.01**, is hereby amended so that the definition of "Health Authority" shall be and read as follows:

HEALTH AUTHORITY is the physician appointed by the Arlington City Council as required by law.

Further, **Article II**, Garbage and Trash**, Section 2.09**, Duty of Customer to See that Containers are Emptied; Reporting Requirement, is hereby amended so that hereafter said section shall be and read as follows:

Section 2.09 Duty of Customer to See that Containers are Emptied; Reporting Requirement

Every customer is hereby required to maintain constant supervision and surveillance over garbage containers on his premises. If, after having been timely placed for collection, the containers are not collected or emptied and the contents removed, as the case may be, by an agent or representative of the City or other duly authorized person within a period of twenty-four (24) hours of scheduled collection, the customer shall promptly notify the agent of this fact.

Further, **Article II**, **Section 2.19**, City Disposal Site, Subsection (C)(1), is hereby amended so that hereafter said subsection shall be and read as follows:

C. 1. No person shall dispose of garbage, trash, brush or debris at a site other than a City designated garbage and trash site without a permit issued by the Neighborhood Services Department.

Further, **Article IV**, Regulation of Food Establishments, **Section 4.01**, Texas Food Establishment Rules Adopted, Subsection (D)(1), is hereby amended so that hereafter said subsection shall be and read as follows:

1. The words "regulatory authority" in said Rules shall mean the City of Arlington **Neighborhood Services Department**; and

Further, **Article IV, Section 4.01(D)(3)(d)**, is hereby amended so that hereafter said subsection shall be and read as follows:

d. The permit holder of an existing Food Establishment or Commissary shall notify the Neighborhood Services Department within forty-eight (48) hours of the termination or transfer of a Certified Food Protection Manager. The permit holder shall have thirty (30) days from the effective date of the termination or transfer to comply with the requirements of this Section.

Further, **Article IV**, **Section 4.03**, Food Handler - Permit Required, is hereby amended so that hereafter said section shall be and read as follows:

Section 4.03 Food Handler - Permit Required

A. Every Food Service Employee shall within thirty (30) days of the date of employment, be the holder of a current valid Food Handler Permit, issued by the City of Arlington Neighborhood Services Department.

B. No person who owns, manages or otherwise controls any Food Service Establishment shall permit any Food Service Employee to be employed therein who does not after thirty (30) days of employment possess a current valid Food Handler Permit issued by the City of Arlington Neighborhood Services Department.

Further, **Article IV, Section 4.05**, Permits - Application, Subsection (A), is hereby amended so that hereafter said subsection shall be and read as follows:

A. Application for such permit as required of this ordinance in Sections 4.02 and 4.03 shall be made in writing to the Administrator or his designee upon forms

prescribed and furnished by the City of Arlington Neighborhood Services Department.

Further, **Article IV**, **Section 4.06**, Food Handling School Required - Food Handler Permit, is hereby amended so that hereafter said section shall be and read as follows:

Section 4.06 Food Handling School Required - Food Handler Permit

In order to receive a Food Handler Permit, every person owning, employed by, or otherwise connected with a Food Establishment whose work brings him into contact with food, utensils or food service equipment shall be required to attend a Food Handling School held by the City of Arlington Neighborhood Services Department before a Food Handler Permit will be issued. This requirement must be met upon expiration of the permit and upon application for a new permit.

Further, **Article IV**, **Section 4.11**, Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, Subsection (C), is hereby amended so that hereafter said subsection shall be and read as follows:

C. Whenever a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle is required under the provisions of this section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time. During the time a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The Arlington Neighborhood Services Department."

Further, **Article IV**, **Section 4.20**, Fees, is hereby amended so that hereafter said section shall be and read as follows:

Section 4.20 **Fees**

The various requirements for permits, licenses, certificates, and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Neighborhood Services Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated Food Establishments or public school cafeterias. Fees are not to be transferable or refundable.

Further, **Article V**, Child Care Centers, **Section 5.07**, Permit Duration and Renewal, is hereby amended so that hereafter said section shall be and read as follows:

Section 5.07 **Permit Duration and Renewal**

A Child Care Center Permit shall be valid for one (1) year from the date of issuance, unless suspended or revoked as hereinafter provided. Application for renewal of a permit shall be made on a form specified by the Arlington Neighborhood Services Department. The permit holder shall contact the Arlington Neighborhood Services Department for renewal purposes not later than four (4) weeks prior to impending expiration of the permit. The procedure of renewal shall require that the operator of the child care center confirm the accuracy of the records of the Arlington Neighborhood Services Department regarding facilities, equipment, manner of operation and employees, stated in Section 5.05. Any incorrect information in the records of the Arlington Neighborhood Services Department for the child care center shall be corrected before the permit may be renewed. A Child Care Center Permit that lapses for non-payment of the annual Child Care Center Permit fee will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

Further, **Article V**, **Section 5.08**, Permit Renewal Denial, Suspension and Revocation, Subsection (B)(1), is hereby amended so that hereafter said subsection shall be and read as follows:

1. Failure to respond within specified limits of time regarding violations observed during an Arlington Neighborhood Services Department inspection of the premises and operation;

Further, **Article V**, **Section 5.08**, Subsection (D), is hereby amended so that hereafter said subsection shall be and read as follows:

D. Whenever a permit is denied, suspended or revoked, the permit holder or person in charge shall cease operations. Parents must be immediately notified of the denial, suspension, or revocation so that alternative child care arrangements can be made. Operations shall not resume until such time as a reinspection determines that conditions no longer exist causing denial or suspension. The permit holder shall notify the Administrator when the conditions causing the denial or suspension have been corrected. The center may not resume operations until the Administrator verifies that the conditions have been corrected and written authorization given. A sign shall be posted by the Administrator at the entrance of the building clearly visible to a reasonably observant person which states "Closed By The Arlington Neighborhood Services Department". Signs posted by the Administrator or his designee shall not be altered or removed unless authorized by the Administrator or his designee.

Further, **Article V**, **Section 5.10**, Child Care Workers Permit, is hereby amended so that hereafter said section shall be and read as follows:

Section 5.10 Child Care Workers Permit

A. Every person owning, employed by or otherwise connected with a child care center whose work involves caring for children shall within thirty (30) days of the date of employment, be the holder of a current Child Care Workers Permit, issued by the City of Arlington Neighborhood Services Department.

B. No person who owns, operates, or otherwise controls any child care center shall permit any person to be employed therein whose work involves caring for children who does not after thirty (30) days of employment possess a current valid Child Care Workers Permit issued by the City of Arlington Neighborhood Services Department.

Further, **Article V**, **Section 5.11**, Child Care Workers Class Required, is hereby amended so that hereafter said section shall be and read as follows:

Section 5.11 **Child Care Workers Class Required**

In order to receive a Child Care Workers Permit, every person shall be required to attend a Child Care Workers Class held by the City of Arlington Neighborhood Services Department before a Child Care Workers Permit will be issued. This requirement must be met upon expiration of the permit and upon application for a new permit.

Further, **Article V**, **Section 5.17**, Fees, Subsection (A), is hereby amended so that hereafter said subsection shall be and read as follows:

A. The various requirements for permits, and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Neighborhood Services Department, in an amount approved by resolution of the Arlington City Council. Fees shall not be refundable.

Further, **Article V**, **Section 5.23**, Safety and Sanitation, Subsection (G), is hereby amended so that hereafter said subsection shall be and read as follows:

G. The child care center shall take effective measures to maintain the structure and grounds free of insect and rodent infestation. Pest control services shall be provided by an individual or business that is properly licensed by and in compliance with the Texas Structural Pest Control Board requirements. Pest control records must be maintained by the child care center for a period of two (2) years and must be available for review by the Arlington Neighborhood Services Department.

Further, **Article V**, **Section 5.25**, Liability Insurance, Subsection (B), is hereby amended so that hereafter said subsection shall be and read as follows:

B. A licensee who does not have coverage for any of the reasons stated in Chapter 42 of the Texas Human Resources Code must provide proof to the Arlington Neighborhood Services Department that each child's parent(s), caretaker(s) or conservator has been properly notified. This proof must be presented to the City of Arlington Neighborhood Services Department within three (3) working days from the time coverage is discontinued, exhausted or denied.

Further, **Article VII**, Public Swimming Pools, **Section 7.01**, Texas Standards for Public Swimming Pool and Spa Rules Adopted, Subsection (D)(1), is hereby amended so that hereafter said subsection shall be and read as follows:

1. The words "regulatory authority" in said Rules shall mean the Administrator or his designee; and

Further, **Article VII**, **Section 7.01**, Subsection (D)(2), is hereby amended so that hereafter said subsection shall be and read as follows:

2. Section 265.183.(a) shall read: The Administrator may require that a registered professional engineer or registered architect licensed by the State of Texas to practice as such be consulted to assure that the pool and spa are designed and built in compliance with these rules applicable federal, state, and or local regulatory requirements. The engineers or architect's professional seal shall be affixed to the plans and a statement attesting to the fact that the pool or spa was designed, constructed, and able to operate in compliance with these standards. This statement shall also be made available for review at a reasonable time upon request by the Administrator.

Further, **Article VII**, **Section 7.04**, Fees, Subsection (A), is hereby amended so that hereafter said subsection shall be and read as follows:

A. The requirements for permits and administrative fees of this Article shall require the payment to be submitted to the Arlington Neighborhood Services Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated swimming pools.

Further, **Article VII**, **Section 7.08**, Review of Plans, Subsection (A), is hereby amended so that hereafter said subsection shall be and read as follows:

A. Whenever a public swimming pool is constructed or extensively remodeled, properly prepared plans and specifications for such construction or remodeling according to Section 265.183 (a) of the Ordinance along with the Application Fee shall be submitted to the City of Arlington Neighborhood Services Department for

review and approval before construction or remodeling is started.

Further, **Article VII**, **Section 7.12**, Failure to Comply, is hereby amended so that hereafter said section shall be and read as follows:

Section 7.12 Failure to Comply

A. Failure to comply with any section of this ordinance may result in the immediate closure of the pool and/or the initiation of legal action. Upon determination that the pool does not comply with the provisions of this ordinance, the Administrator or his designee shall notify the owner or person-in-charge of the existing violations. If Administrator or his designee determines that the condition of the pool is hazardous to the health or safety of the swimmers or of the general public, the pool shall be immediately closed. Signs shall be posted at all entrances to the swimming pool. Said sign shall be clearly visible to a reasonably observant person and shall state, "Closed By The Arlington Neighborhood Services Department". A reinspection of the pool will be conducted during the regular working hours of the Neighborhood Services Department at the request of the pool Manager of Operations. If compliance has been achieved, the owner or person-in-charge shall be notified that the pool may be opened.

B. Signs posted by the Administrator or his designee stating "Closed By the Arlington Neighborhood Services Department" shall not be altered or removed unless authorized by the Administrator or his designee.

Further, **Article VIII**, Mass Gatherings, **Section 8.01**, Prohibition, Subsection (A), is hereby amended so that hereafter said subsection shall be and read as follows:

A. No person may act as a promoter of a mass gathering unless he obtains a permit from the Administrator under the provisions of this Article. If the owner of the property on which the mass gathering will be held is not the promoter as defined in Section 1.01, the owner of the property shall not be required to obtain a permit under the provisions of this Article.

Further, **Article VIII**, **Section 8.02**, Application for Permit, Subsection (A), so that hereafter said subsection shall be and read as follows:

A. At least sixty (60) days before a mass gathering is to be held, the promoter of the mass gathering shall file with the Administrator an application for a permit. This provision may be waived by the Administrator if the provisions of this Article will otherwise be complied with.

Further, **Article VIII**, **Section 8.03**, Investigation, is hereby amended so that hereafter said section shall be and read as follows:

Section 8.03 Investigation

A. After an application is filed with the Administrator, he shall send copies to the Chief of Police.

B. The Administrator shall inquire into preparations for the mass gathering and at least five (5) days before the hearing shall submit a report to the Administrator stating whether he believes that the minimum standards of health and sanitation provided by state and local laws, rules, regulations, and orders will be maintained.

C. The Chief of Police shall investigate preparations for the mass gathering and at least five (5) days before the hearing shall submit a report to the Administrator stating whether he believes that minimum standards provided by state and local laws, rules, regulations, and orders for assuring public safety and order will be maintained.

D. The Administrator and the Chief of Police shall be available to give testimony relating to their reports at the hearing.

Further, **Article VIII**, **Section 8.04**, Hearing, Subsection (A), is hereby amended so that hereafter said subsection shall be and read as follows:

A. The Administrator shall set a date and a time for a hearing on the application which shall be held at least ten (10) days before the day on which the mass gathering is to begin. In the event waiver of Section 8.02(A) has been made the hearing shall be as close to the ten (10) day requirement as practicable.

Further, **Article VIII**, **Section 8.05**, Findings of Issuing Officer, is hereby amended so that hereafter said section title and section shall be and read as follows:

Section 8.05 Findings of Administrator

A. After the hearing is completed, the Administrator shall enter his findings in the record and shall grant or deny the permit.

B. The Administrator may deny the permit if he finds that:

1. The application contains false or misleading information or required information is omitted;

2. The location selected for the mass gathering is inadequate for the purpose for which it is to be used;

3. The promoter has not made adequate preparations to limit the number of persons attending the mass gathering;

4. The promoter does not have assurance that performers who are scheduled to appear will appear;

5. The preparations for the mass gathering do not assure that minimum standards of sanitation and health will be maintained or that the mass gathering will be conducted in an orderly fashion and the physical safety of persons in attendance will be protected, or that adequate supervision of minor persons will be provided;

6. Adequate arrangements for traffic control have not been provided; or

7. Adequate medical and nursing care will not be available.

C. If the Administrator denies the permit, the City shall notify the promoter in writing:

1. of the reasons for denial;

2. that the promoter may file an action in the District Court of Tarrant County, Texas, for review of the evidence presented to the Administrator at the hearing, the findings of the Administrator, and his decision. Said judicial review shall be perfected by the filing of a

petition with the court within ten (10) days of the date of the hearing.

D. The Administrator may impose reasonable conditions or restrictions on the granting of a permit, including but not limited to, any of the following:

1. Restrictions on fires, fireworks, amplified sound, use of alcoholic beverages, dancing, sports, use of animals, equipment, or vehicles, the number of persons to be present, the location of any bandstand or stage, or any other use which appears likely to create a risk of unreasonable harm to the public;

2. A requirement that the applicant pay a reasonable deposit of security for the repair of any damage to City property, or the cost of cleanup, or both;

3. A requirement that the applicant pay a reasonable fee to defray the cost of furnishing adequate forces for security and traffic control by the Police Department at the proposed use or activity.

4. A requirement that the permittee furnish additional sanitary and refuse facilities that might be reasonably necessary, based on the use or activity for which the permit is being sought.

Further, **Article VIII**, **Section 8.06**, Revocation of Permit, is hereby amended so that hereafter said section shall be and read as follows:

Section 8.06 Revocation of Permit

A. After a permit is issued, if the Administrator finds that preparations for the event will not be completed by the time the mass gathering is to begin or that the permit has been obtained by fraud or misrepresentation, he may revoke the permit.

B. The Administrator must give notice to the promoter forty-eight (48) hours in advance of the revocation, and hold a hearing on the revocation if requested by the promoter.

Further, **Article VIII**, **Section 8.07**, Appeal, is hereby amended so that hereafter said section shall be and read as follows:

Section 8.07 **Appeal**

Any promoter or person affected by the action of the Administrator in granting or revoking a permit under this Article may appeal to the City Manager. Any promoter who seeks review of the Administrator's denial of a permit shall follow the appeal procedure outlined in Section 8.05(C) of this article.

Further, **Article VIII**, **Section 8.08**, Rules and Regulations, is hereby amended so that hereafter said section shall be and read as follows:

Section 8.08 **Rules and Regulations**

A. The Administrator shall adopt rules and regulations consistent with the State Department of Health rules and regulations relating to minimum standards of health and sanitation to be maintained at mass gatherings.

B. The Chief of Police shall adopt rules and regulations consistent with the Texas Department of Public Safety rules and regulations relating to minimum standards which must be maintained to protect public safety and maintain order at a mass gathering.

Further, **Article X**, Regulation of Smoking, **Section 10.02**, Smoking Prohibited - Public Places, Subsection (D)(5), is hereby amended so that hereafter said subsection shall be and read as follows:

5. All designated smoking rooms and areas shall be subject to the approval of the Neighborhood Services Department.

Further, **Article X**, **Section 10.03**, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls, Bingo Parlors and Bowling Centers, Subsection (F)(1)(e), is hereby amended so that hereafter said subsection shall be and read as follows:

e. The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.

Further, **Article X**, **Section 10.03**, Subsection (G), is hereby amended so that hereafter said subsection shall be and read as follows:

G. A designated smoking area shall be situated so as to minimize the impact of smoke upon pathways and other common areas. Such location shall be subject to the approval of the Administrator. The floor space of a bar located in an eating establishment is considered as part of the net floor area of the eating establishment for the purpose of identifying smoking areas.

Further, **Article X**, **Section 10.07**, Exemptions, Subsection (A), is hereby amended so that hereafter said subsection shall be and read as follows:

A. Any owner or manager of a business, facility, room, structure or other establishment subject to Section 10.02, 10.04 and 10.05 may apply to the Administrator for an exemption or modification to any provision of this article due to unusual circumstances or conditions. Such exemption shall be granted only if the Environmental Health Official finds from the evidence presented by the applicant for exemption either that:

Further, **Article XII**, On-site Sewage Disposal, **Section 12.02**, Onsite Sewage Facility Rules Adopted, is hereby amended so that hereafter said section shall be and read as follows:

Section 12.02 On Site Sewage Facility Rules Adopted

The Rules ("Design Criteria For On-site Sewage Facilities and 30 TAC 285.101 - 285.115) promulgated by the Texas Commission on Environmental Quality (hereinafter called "the Commission") for on-site sewage systems are hereby adopted, and all officials and employees of the City of Arlington, Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

Further, **Article XII**, **Section 12.06**, Amendments, Additions, and Deletions, is hereby amended so that hereafter said section shall be and read as follows:

Section 12.06 Amendments, Additions and Deletions

The City of Arlington, Texas, wishing to adopt more stringent Rules for its On-site Sewage Facility Ordinance, understands that the more stringent conflicting local Rule shall take precedence over the corresponding Texas Commission on Environmental Quality requirement.

The adoption of Chapter 366, as provided in Section 12.01 above, is modified and amended by the following:

A. All on-site sewage facilities must be permitted regardless of lot size; and

B. The addition that real estate inspections of on-site sewerage facilities necessary for mortgage financing approval shall be conducted by the City of Arlington Neighborhood Services Department.

Further, **Article XII**, **Section 12.07**, Development or Organized Disposal Systems, is hereby amended so that hereafter the first paragraph of said section shall be and read as follows:

In order to implement the stated policy of the legislature and the Texas Commission on Environmental Quality to encourage the development and use of organized disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution, protect the public health, and maintain and enhance the quality of water in the state, the following requirements are made:

Further, **Article XII**, **Section 12.08**, Duties and Powers, is hereby amended so that hereafter said section shall be and read as follows:

Section 12.08 Duties and Powers

The Neighborhood Services Department of the City of Arlington, Texas, is herewith declared the designated representative for the enforcement of these Rules within its jurisdictional area.

The appointed individual(s) must be approved and certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities of the designated representative of the Arlington Neighborhood Services Department. The designated representative shall have the following duties and concomitant powers:

1. To resolve any question regarding any interpretation of these Rules, or the Design Criteria;

2. To enforce these Rules and to make appropriate recommendations to proper city officials when instances of noncompliance with these Rules have been determined;

3. To make statutorily mandated inspections of proposed, new and existing on-site sewage facilities;

4. To collect fees set by the authorized agent as necessary to recover the reasonable costs incurred in meeting the requirements of these Rules;

5. To make semi-annual reports to the authorized agent on all actions, including legal actions, taken concerning these Rules;

6. To investigate nuisance complaints within twenty-one (21) days of receipt. All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within thirty (30) days; and

7. To perform all other duties necessary to meet the requirements of these Rules.

Further, **Article XII**, **Section 12.13**, Penalties, Subsection (B)(1), is hereby amended so that hereafter said subsection shall be and read as follows:

1. The Administrator may, in partnership with the Commission, request the Attorney General to bring a civil suit, if it appears that a person has violated, is violating, or is threatening to violate any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit or other order of the Commission issued pursuant to Chapter 366, Texas Health and Safety Code for:

Further, **Article XII**, **Section 12.15**, Relinquishment of Ordinance, is hereby amended so that hereafter said section shall be and read as follows:

Section 12.15 Relinquishment of Ordinance

If the City Council of Arlington, Texas, decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the City Council shall follow the procedures outlined below:

A. The City Council shall inform the Texas Commission on Environmental Quality by certified mail at least thirty (30) days before the published date of the public hearing notice that it wishes to relinquish its On-site Sewage Facility Ordinance.

B. The City Council shall post the required public notice in a newspaper regularly published or circulated in the area of jurisdiction at least thirty (30) days prior to the anticipated date of action by the authorized agent and must solicit written comments for that thirty (30) day period.

C. The City Council shall send a copy of the public notice, a publisher's affidavit of public notice, and a certified copy of the court's minutes to the Texas Commission on Environmental Quality.

D. Upon relinquishment of the ordinance, the local governmental entity shall surrender its area of jurisdiction to the Commission.

E. The local governmental entity shall pay the Texas Commission on Environmental Quality the appropriate charge back fees for permitting, inspections and complaint investigations of on-site sewage facilities in the surrendered area of jurisdiction.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten days after first publication.

PRESENTED AND GIVEN FIRST READING on the **6th** day of **January, 2004**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **13th** day of **January, 2004**, by a vote of **9** ayes and **0** nays at a regular meeting of the City Council of the City of Arlington, Texas.

ORDINANCE NO. 04-100

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE X**, REGULATION OF SMOKING, **SECTION 10.02,** SMOKING PROHIBITED - PUBLIC PLACES, BY THE ADDITION OF SUBSECTION (A) (16), RELATIVE TO THE PROHIBITION OF SMOKING IN COMMON AREAS OF A MULTI-FAMILY DEVELOPMENT; PROVIDING FOR A FINE OF UP TO **$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER FIRST PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article X**, Regulation Of Smoking, **Section 10.02,** Smoking Prohibited - Public Places, by the addition of Subsection (A)(16) so that hereafter said subsection shall be and read as follows:

16. Any common area of a multi-family development.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions

thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten days after first publication.

PRESENTED AND GIVEN FIRST READING on the **26th** day of **October**, **2004**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **9th** day of **November**, **2004**, by a

vote of **8** ayes and **0** nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 04-101

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE IV**, REGULATION OF FOOD ESTABLISHMENTS, **SECTION 4.06,** FOOD HANDLING SCHOOL REQUIRED - FOOD HANDLER PERMIT, RELATIVE TO FOOD HANDLING TRAINING COURSE; **SECTION 4.08, SUBSECTION (B),** PERMITS - DURATION, RELATIVE TO MOBILE FOOD PERMIT AND CATERING VEHICLE PERMIT EXPIRATION DATE; THROUGH THE AMENDMENT OF **ARTICLE V**, CHILD CARE CENTERS, **SECTION 5.11,** CHILD CARE WORKERS CLASS REQUIRED, RELATIVE TO CHILD CARE WORKERS TRAINING COURSE; PROVIDING FOR A FINE OF UP TO **$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE DECEMBER 1, 2004

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article IV**, Regulation Of Food Establishments, **Section 4.06,** Food Handling School Required - Food Handler Permit, so that hereafter said section shall be and read as follows:

Section 4.06 Food Handling Training Required - Food Handler Permit

In order to receive a Food Handler Permit, every person owning, employed by, or otherwise connected with a Food Establishment whose work brings him into contact with food, utensils or food service equipment shall be required to satisfactorily complete a Food Handling Training Course conducted by an instructor who has been approved by the City of Arlington Neighborhood Services Department. This requirement must be met upon expiration of the permit and upon application for a new permit.

Further, **Article IV**, **Section 4.08**, Permits - Duration, Subsection (B), is hereby amended so that hereafter said subsection shall be and read as follows:

B. Exceptions to 4.08(A) above are: 1) a Temporary Food Establishment Permit shall remain in full force and effect for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration from date of issuance unless sooner suspended or revoked for cause; and 2) a Mobile Food Permit or Catering Vehicle Permit shall expire on December 31st of each year.

Further, **Article V**, Child Care Centers, **Section 5.11**, Child Care Workers Class Required, is hereby amended so that hereafter said section shall be and read as follows:

Section 5.11 Child Care Workers Training Required

In order to receive a Child Care Workers Permit, every person shall be required to satisfactorily complete a Child Care Workers Training Course conducted by an instructor who has been approved by the City of Arlington Neighborhood Services Department. This requirement must be met upon expiration of the permit and upon application for a new permit.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective December 1, 2004.

PRESENTED AND GIVEN FIRST READING on the **26th** day of **October**, **2004**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **9th** day of **November, 2004**, by a vote of **8** ayes and **0** nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 05-010

AN ORDINANCE AMENDING THE **"HEALTH AND SANITATION"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE VII**, PUBLIC SWIMMING POOLS, **SECTION 7.01**, TEXAS STANDARDS FOR PUBLIC SWIMMING POOL AND SPA RULES ADOPTED, AND **SECTION 7.08,** REVIEW OF PLANS, RELATIVE TO THE ADOPTION OF NEW STATE REGULATIONS; PROVIDING FOR A FINE OF UP TO **$2000** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND **BECOMING EFFECTIVE FEBRUARY 18, 2005**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article VII**, Public Swimming Pools, by the amendment of **Section 7.01,** Texas Standards for Public Swimming Pool and Spa Rules Adopted, so that hereafter said section shall be and read as follows:

Section 7.01 Adoption of the Texas Standards for Public Swimming Pools and Spas

A. The provisions of the current rules or rules as amended by the Texas Board of Health known as the Texas Department of State Health Services Standards for Public Swimming Pools and Spas found in Texas Administrative Code, Title 25, Health Services, Part 1, Chapter 265, Subchapter L, Sections 181 through 208, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article VII, Public Swimming Pools, of the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987.

B. The intent and purpose of this Section is to provide for the inspection of public swimming pools in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the operations of public pools. The enforcement of this ordinance and the fixing of penalties shall be regulated in accordance with this chapter and the terms of the unabridged form of the Texas Standards for Public Swimming Pools and Spas, a copy of which is on file in the Office of the City Secretary.

C. In the event of a conflict between any provision of the Texas Standards for Public Pools and Spas regulations and any provision of this ordinance, this ordinance shall prevail.

D. The adopting by reference of the Texas Standards for Public Swimming Pools and Spas, as provided in Section 7.01(A) above, is made subject to and is modified and amended as follows:

1. The words "regulatory authority" in said regulations shall mean the Administrator or his designee.

2. Section 265.183(a) shall read:

   The Administrator may require that a registered professional engineer or registered architect licensed by the State of Texas to practice as such be consulted to assure that the pool and spa are designed and built in compliance with these regulations and applicable federal, state, and or local regulatory requirements. The engineers or architect’s professional seal shall be affixed to the plans and a statement attesting to the fact that the pool or spa was designed, constructed, and able to operate in compliance with these standards. This statement shall also be made available for review at a reasonable time upon request by the Administrator.

3. Section 265.192(e)(1) shall read as follows:

   All post-10/01/1999 and pre-10/01/1999 ground fault circuit interrupters of pools and spas

shall be inspected by a licensed electrician in this state at least once a year prior to the beginning of swimming pool season and/or as required by the Administrator.

4. Section 265.203 is amended by the addition of the following:

(m) Class C Pool Requirements:

1. After May 1, 2001, the permit holder or person-in-charge of every new and existing Class C pool shall ensure that the pool and/or spa is cared for by a Trained Pool Operator who has successfully completed a training course according to Section 7.05 of this Chapter. The Trained Pool Operator shall be responsible for the daily water treatment operations, record keeping, and maintenance of the pool in compliance with this Chapter. After October 1, 2003, compliance will be demonstrated by presenting proof of training to the Neighborhood Services Department and payment of a registration fee set by resolution of the Arlington City Council;

2. The permit holder or person-in-charge of a Class C pool whose Trained Pool Operator has transferred, resigned, or is no longer employed shall have thirty (30) days to comply with the requirements of this Section;

3. A permit holder or person-in-charge is in compliance with the provisions of this section if they employ a swimming pool service company whose employee servicing the pool has a valid pool training certificate.

Further, **Article VII**, **Section 7.08**, Review of Plans, Subsection (B), is hereby amended so that hereafter said subsection shall be and read as follows:

B. Whenever plans and specifications are required to be submitted to the regulatory authority, the regulatory authority shall inspect the pool during construction and prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this ordinance.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a

result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective February 18, 2005.

PRESENTED AND GIVEN FIRST READING on the **18th** day of **January, 2005**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **8th** day of **February**, **2005**, by a vote of **8** ayes and **0** nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

Ordinance No. 05-092

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article X, Regulation of Smoking, at Section 10.01, Definitions, by the addition of the definition of "Condominium"; and by the amendment of Section 10.02, Smoking Prohibited – Public Places, at Subsection (B), by the addition of Subsections (5) and (6), relative to multi-family developments; providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at Article X, Regulation of Smoking, at **Section 10.01**, Definitions, by the addition of the definition of "Condominium" so that hereafter said definition shall be and read as follows:

"Condominium" shall mean a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

Further, Article X, **Section 10.02**, Smoking Prohibited – Public Places, Subsection (B) is hereby amended by the

addition of Subsections (5) and (6) so that said subsections shall be and read as follows:

5. It is an exception to Subsection (A)(16) that the smoking or possession occurred in an unenclosed common area which has been designated by the owner, manager, or operator or other person having control of such areas, as a smoking area. Such designated unenclosed common area shall not be subject to the ventilation requirements of Section 10.02(D)(4).

6. It is an exception to Subsection (A)(16) if the multi-unit development is owner occupied condominiums.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of

Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten days after first publication.

PRESENTED AND GIVEN FIRST READING on the **27th** day of **September, 2005**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **11th** day of **October, 2005**, by a vote of **8** ayes and **0** nays at a regular meeting of the City Council of the City of Arlington, Texas.

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY /s/ David Barber

Published ST 8-30-06 & 9-04-06

Ordinance No. 06-083

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article II, Garbage and Trash, Section 2.19, City Disposal Site, Subsection (C)(1); Article IV, Regulation of Food Establishments, Section 4.01, Texas Food Establishment Rules Adopted, Subsection (D); Section 4.03, Food Handler – Permit Required; Section 4.05, Permits – Application, Subsection (A); Section 4.06, Food Handling Training Required – Food Handler Permit; Section 4.11, Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, Subsection (C); Section 4.20, Fees; Article V, Child Care Centers, Section 5.07, Permit Duration and Renewal; Section 5.08, Permit Renewal Denial, Suspension and Revocation, Subsections (B)(1) and (D); Section 5.10, Child Care Workers Permit; Section 5.11, Child Care Workers Training Required; Section 5.17, Fees, Subsection (A); Section 5.23, Safety and Sanitation, Subsection (G); Section 5.25, Liability Insurance, Subsection (B); Article VII, Public Swimming Pools, Section 7.01, Adoption of the Texas Standards for Public Swimming Pools and Spas, Subsection (D)(4)(m)(1); Section 7.04, Fees, Subsection (A); Section 7.08, Review of Plans, Subsection (A); Section 7.12, Failure to Comply; Article X, Regulation of Smoking, Section 10.02, Smoking Prohibited – Public Places, Subsection (D)(5); Article XII, On-Site Sewage Disposal, Section 12.06, Amendments, Additions and Deletions, Subsection (B); Section 12.08, Duties and Powers, first two paragraphs, relative to updating the reference to the Community Services Department; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article II,** Garbage and Trash, **Section 2.19,** City Disposal Site, **Subsection (C)(1),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

C. 1. No person shall dispose of garbage, trash, brush or debris at a site other than a City designated garbage and trash site without a permit issued by the Community Services Department.

Further, **Article IV,** Regulation of Food Establishments, is hereby amended by the amendment of **Section 4.01,** Texas Food Establishment Rules Adopted, **Subsection (D),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

D. The adopting by reference of the Texas Food Establishment Rules, as provided in Section 4.01(A) above, is made subject to and is modified and amended as follows:

1. The words "regulatory authority" in said Rules shall mean the City of Arlington **Community Services Department**; and

2. The sentence: "A sign shall be prominently displayed in view of each rest room lavatory used by food service employees that states: 'Employees must thoroughly wash hands before returning to work after using the rest room'" shall be **added** to 229.163(C) as item (13).

3. After June 1, 2000, the sentence in 229.163(b) shall be amended to "The person in charge shall demonstrate this knowledge by compliance with these rules, by being a Certified Food Protection Manager who has shown proficiency of required information through passing a test that is part of a Food Protection Management Program accredited by the Texas Department of Health according to 25 TAC Section 229.172, and by responding correctly to the inspector's questions as they relate to the specific food operation. After April 15, 2003, compliance will be demonstrated by presenting the certificate to the Community Services Department and payment of a fee set by resolution of the Arlington City Council."

   a. The permit holder of every Food Establishment or Commissary shall ensure that at least one person in charge at each location, who is responsible for supervising food preparation and service, has a

valid Food Protection Management Training Certificate issued by the Texas Department of Health as proof of successful completion of a Texas Department of Health accredited Food Protection Management Training Program as defined in 25 TAC § 229.172 and registered with the City of Arlington.

b. The permit holder shall make Food Protection Manager Certificates and proof of City registration available for immediate inspection upon request by the regulatory authority.

c. The permit holder of a new Food Establishment or Commissary, or an existing Food Establishment or Commissary that has changed ownership, or a Food Establishment or Commissary whose Certified Food Protection Manager has transferred or resigned shall have thirty (30) days to comply with the requirements of this Section.

d. The permit holder of an existing Food Establishment or Commissary shall notify the Community Services Department within forty-eight (48) hours of the termination or transfer of a Certified Food Protection Manager. The permit holder shall have thirty (30) days from the effective date of the termination or transfer to comply with the requirements of this Section.

e. The following Food Establishments are exempt from the requirements of this Section: Temporary Food Establishments; Food Establishments that sell or distribute only prepackaged foods or uncut produce; and Food Establishments that serve only fountain drinks, coffee, alcoholic beverages, popcorn, and/or snow cones.

f. A permit holder is in compliance with the provisions of this section if there is one Certified Food Protection Manager employed in a supervisory capacity for several Food Establishments located in the same building and under the same ownership and management.

Further, **Article IV** is hereby amended by the amendment of **Section 4.03,** Food Handler – Permit Required, relative to updating the reference to the Community Services Department so that said section shall be and read as follows:

A. Every Food Service Employee shall within thirty (30) days of the date of employment, be the holder of a current valid Food Handler Permit, issued by the City of Arlington Community Services Department.

B. No person who owns, manages or otherwise controls any Food Service Establishment shall permit any Food Service Employee to be employed therein who does not after thirty (30) days of employment possess a current valid Food Handler Permit issued by the City of Arlington Community Services Department.

Further, **Article IV** is hereby amended by the amendment of **Section 4.05,** Permits - Application, **Subsection (A),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

A. Application for such permit as required of this ordinance in Sections 4.02 and 4.03 shall be made in writing to the Administrator or his designee upon forms prescribed and furnished by the City of Arlington Community Services Department.

Further, **Article IV** is hereby amended by the amendment of **Section 4.06,** Food Handling Training Required – Food Handler Permit, relative to updating the reference to the Community Services Department so that said section shall be and read as follows:

In order to receive a Food Handler Permit, every person owning, employed by, or otherwise connected with a Food Establishment whose work brings him into contact with food, utensils or food service equipment shall be required to satisfactorily complete a Food Handling Training Course conducted by an instructor who has been approved by the City of Arlington Community Services Department. This requirement must be met upon expiration of the permit and upon application for a new permit.

Further, **Article IV** is hereby amended by the amendment of **Section 4.11,** Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, **Subsection (C),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

C. Whenever a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle is required under the provisions of this section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time. During the time a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The Arlington Community Services Department."

Further, **Article IV** is hereby amended by the amendment of **Section 4.20,** Fees, relative to updating the reference to the Community Services Department so that said section shall be and read as follows:

Section 4.20 Fees

The various requirements for permits, licenses, certificates, and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Community Services Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated Food Establishments or public school cafeterias. Fees are not to be transferable or refundable.

Further, **Article V,** Child Care Centers, is hereby amended by the amendment of **Section 5.07,** Permit Duration and Renewal, relative to updating the reference to the Community Services Department so that said section shall be and read as follows:

Section 5.07 Permit Duration and Renewal

A Child Care Center Permit shall be valid for one (1) year from the date of issuance, unless suspended or revoked as hereinafter provided. Application for renewal of a permit shall be made on a form specified by the Arlington Community Services Department. The permit holder shall contact the Arlington Community Services Department for renewal purposes not later than four (4) weeks prior to impending expiration of the permit. The procedure of renewal shall require that the operator of the child care center confirm the accuracy of the records of the Arlington Community Services Department regarding facilities, equipment, manner of operation and employees, stated in Section 5.05. Any incorrect information in the records of the Arlington Community Services Department for the child care center shall be corrected before the permit may be renewed. A Child Care Center Permit that lapses for non-payment of the annual Child Care Center Permit fee will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

Further, **Article V** is hereby amended by the amendment of **Section 5.08,** Permit Renewal Denial, Suspension and Revocation, **Subsection (B)(1),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

1. Failure to respond within specified limits of time regarding violations observed during an Arlington Community Services Department inspection of the premises and operation;

Further, **Article V** is hereby amended by the amendment of **Section 5.08, Subsection (D)**, relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

D. Whenever a permit is denied, suspended or revoked, the permit holder or person in charge shall cease operations. Parents must be immediately notified of the denial, suspension, or revocation so that alternative child care arrangements can be made. Operations shall not resume until such time as a reinspection determines that conditions no longer exist causing denial or suspension. The permit holder shall notify the Administrator when the conditions causing the denial or suspension have been corrected. The center may not resume operations until the Administrator verifies that the conditions have been corrected and written authorization given. A sign shall be posted by the Administrator at the entrance of the building clearly visible to a reasonably observant person which states "Closed By The Arlington Community Services Department". Signs posted by the Administrator or his designee shall not be altered or removed unless authorized by the Administrator or his designee.

Further, **Article V** is hereby amended by the amendment of **Section 5.10,** Child Care Workers Permit, relative to updating the reference to the Community Services Department so that said section shall be and read as follows:

Section 5.10 Child Care Workers Permit

A. Every person owning, employed by or otherwise connected with a child care center whose work involves caring for children shall within thirty (30) days of the date of employment, be the holder of a current Child Care Workers Permit, issued by the City of Arlington Community Services Department.

B. No person who owns, operates, or otherwise controls any child care center shall permit any person to be employed therein whose work involves caring for children who does not after thirty (30) days of employment possess a current valid Child Care Workers Permit issued by the City of Arlington Community Services Department.

Further, **Article V** is hereby amended by the amendment of **Section 5.11,** Child Care Workers Training Required, relative to updating the reference to the Community Services Department so that said section shall be and read as follows:

Section 5.11 Child Care Workers Training Required

In order to receive a Child Care Workers Permit, every person shall be required to satisfactorily complete a Child Care Workers Training Course conducted by an instructor who has been approved by the City of Arlington Community Services Department. This requirement must be met upon expiration of the permit and upon application for a new permit.

Further, **Article V** is hereby amended by the amendment of **Section 5.17,** Fees, **Subsection (A),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

A. The various requirements for permits, and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Community Services Department, in an amount approved by resolution of the Arlington City Council. Fees shall not be refundable.

Further, **Article V** is hereby amended by the amendment of **Section 5.23,** Safety and Sanitation, **Subsection (G),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

G. The child care center shall take effective measures to maintain the structure and grounds free of insect and rodent infestation. Pest control services shall be provided by an individual or business that is properly licensed by and in compliance with the Texas Structural Pest Control Board requirements. Pest control records must be maintained by the child care center for a period of two (2) years and must be available for review by the Arlington Community Services Department.

Further, **Article V** is hereby amended by the amendment of **Section 5.25,** Liability Insurance, **Subsection (B),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

B. A licensee who does not have coverage for any of the reasons stated in Chapter 42 of the Texas Human Resources Code must provide proof to the Arlington Community Services Department that each child's parent(s), caretaker(s) or conservator has been properly notified. This proof must be presented to the City of Arlington Community Services Department within three (3) working days from the time coverage is discontinued, exhausted or denied.

Further, **Article VII,** Public Swimming Pools, is hereby amended by the amendment of **Section 7.01,** Adoption of the Texas Standards for Public Swimming Pools and Spas, **Subsection (D)(4)(m)(1),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

1. After May 1, 2001, the permit holder or person-in-charge of every new and existing Class C pool shall ensure that the pool and/or spa is cared for by a Trained Pool Operator who has successfully completed a training course according to Section 7.05 of this Chapter. The Trained Pool Operator shall be responsible for the daily water treatment operations, record keeping, and maintenance of the pool in compliance with this Chapter. After October 1, 2003, compliance will be demonstrated by presenting proof of training to the Community Services Department and payment of a registration fee set by resolution of the Arlington City Council;

Further, **Article VII** is hereby amended by the amendment of **Section 7.04,** Fees, **Subsection (A),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

A. The requirements for permits and administrative fees of this Article shall require the payment to be submitted to the Arlington Community Services Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated swimming pools.

Further, **Article VII** is hereby amended by the amendment of **Section 7.08,** Review of Plans, **Subsection (A),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

A. Whenever a public swimming pool is constructed or extensively remodeled, properly prepared plans and specifications for such construction or remodeling according to Section 265.183 (a) of the Ordinance along with the Application Fee shall be submitted to the City of Arlington Community Services Department for review and approval before construction or remodeling is started.

Further, **Article VII** is hereby amended by the amendment of **Section 7.12,** Failure to Comply, relative to updating the reference to the Community Services Department so that said section shall be and read as follows:

Section 7.12 Failure to Comply

A. Failure to comply with any section of this ordinance may result in the immediate closure of the pool and/or the initiation of legal action. Upon determination that the pool does not comply with the provisions of this ordinance, the Administrator or his designee shall notify the owner or person-in-charge of the existing violations. If Administrator or his designee deter-mines that the condition of the pool is hazardous to the health or safety of the swimmers or of the general public, the pool shall be immediately closed. Signs shall be posted at all entrances to the swimming pool. Said sign shall be clearly visible to a reasonably observant person and shall state, "Closed By The Arlington Community Services Department". A reinspection of the pool will be conducted during the regular working hours of the Community Services Department at the request of the pool Manager of Operations. If compliance has been achieved, the owner or person-in-charge shall be notified that the pool may be opened.

B. Signs posted by the Administrator or his designee stating "Closed By the Arlington Community Services Department" shall not be altered or removed unless authorized by the Administrator or his designee.

Further, **Article X,** Regulation of Smoking, is hereby amended by the amendment of **Section 10.02,** Smoking Prohibited – Public Places, **Subsection (D)(5),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

5. All designated smoking rooms and areas shall be subject to the approval of the Community Services Department.

Further, **Article XII,** On-Site Sewage Disposal, is hereby amended by the amendment of **Section 12.06,** Amendments, Additions and Deletions, **Subsection (B),** relative to updating the reference to the Community Services Department so that said subsection shall be and read as follows:

B. The addition that real estate inspections of on-site sewerage facilities necessary for mortgage financing approval shall be conducted by the City of Arlington Community Services Department.

Further, **Article XII** is hereby amended by the amendment of **Section 12.08,** Duties and Powers, the first two paragraphs, relative to updating the reference to the Community Services Department so that the said first two paragraphs shall be and read as follows:

The Community Services Department of the City of Arlington, Texas, is herewith declared the designated representative for the enforcement of these Rules within its jurisdictional area.

The appointed individual(s) must be approved and certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities of the designated representative of the Arlington Community Services Department. The designated representative shall have the following duties and concomitant powers:

2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

6.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 8th day of August, 2006, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 22nd day of August, 2006, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

PUBLISHED ST 10-24-06 & 10-30-06

Ordinance No. 06-103

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article X, Regulation of Smoking, at Section 10.01, Definitions, by the addition of the definitions of "Bar", "Health care facility" and "Shared HVAC system" and the amendment of the definitions of "Bingo parlor" and "Eating establishment"; by the amendment of Section 10.02, Smoking Prohibited – Public Places; by the amendment of Section 10.03, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls, Bingo Parlors and Bowling Centers; by the amendment of Section 10.04, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, at Subsection (A), relative to the posting of signs; by the deletion of Section 10.06, Structural Modifications Not Required; and by the deletion of Section 10.07, Exemptions; and providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective January 1, 2007

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article X**, Regulation of Smoking, **Section 10.01**, Definitions, by the addition of the definitions of "Bar", "Health care facility" and "Shared HVAC system" and the amendment of the definitions of "Bingo parlor" and "Eating Establishment" so that hereafter said definitions shall be and read as follows:

"Bar" shall mean any establishment licensed by the State for the sale of alcoholic beverages that derives more than 75% of the establishment's gross revenue from the on-premise sale of alcoholic beverages for on-premise consumption. For purposes of this Ordinance, any establishment which sells or serves alcoholic beverages in quantities which exceed 75% of the estimated daily gross sales is defined as a bar. For purposes of this definition, "daily gross sales" shall be calculated using the normal selling price of all items of food and alcoholic beverages served in the establishment and shall reflect the

price normally charged for such items in the particular establishment for which the daily gross sales figure is calculated, whether such items is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged during promotions, happy hours, and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of daily gross sales.

"Bingo parlor" shall mean a facility regulated under V.T.C.A., Occupations Code §2001.001 et seq. - "Bingo Enabling Act".

"Eating establishment" shall mean any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually served or available to be served to patrons at all times such establishment is open to the public, and where food sales constitute not less than 25% of the daily gross sales of said establishment; and for purposes of this Ordinance, any establishment which sells or serves alcoholic beverages in quantities which exceed 75% of the daily gross sales of said establishment is excluded from the category of establishments defined as restaurants and shall be included in the category of establishments defined as bars. For purposes of this definition, "daily gross sales" shall be calculated using the normal selling price of all items of food and alcoholic beverages served in the establishment and shall reflect the price normally charged for such items in the particular establishment for which the daily gross sales figure is calculated whether such item is actually sold at normal selling price, below normal entrance fee or other consideration paid. Reduced prices charged during promotions, happy hours, and other occasions when drinks are sold at reduced prices or served at no charge, shall not be considered "normal selling price" for calculation of daily gross sales.

"Health care facility" shall mean any ambulatory surgical center, rehabilitation center, or minor emergency treatment facility.

"Shared HVAC system" shall mean a heating/ventilation/air conditioning system that circulates air through more than one retail or service establishment in which public or private business is conducted.

Further, Article X, **Section 10.02**, Smoking Prohibited – Public Places, is hereby amended so that said section shall be and read as follows:

Section 10.02 Smoking Prohibited - Public Places

A. Prohibited Places. A person commits an offense if he possesses a burning tobacco product or smokes a tobacco product within:

1. A public primary or secondary school;

2. An elevator in buildings generally used by and open to the public, including elevators in office buildings, hotels and multi-family dwellings;

3. A library;

4. A museum;

5. The buildings or grounds of a hospital or health care facility;

6. A transit system bus;

7. A room or enclosed place of public assembly in which public business is conducted when the public business requires or provides an opportunity for direct participation or observation by the general public;

8. Indoor or outdoor service lines in which more than one (1) person is giving or receiving goods or services of any kind;

9. Retail or service establishments;

10. Public rest rooms;

11. Every publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event;

12. Any portion of any publicly or privately owned room, building or other enclosed place to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;

13. Any portion of any publicly or privately owned unenclosed area to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;

14. Any seating area of any publicly or privately owned outdoor athletic facility having an overall fixed seating capacity of at least six hundred (600) people and used for the purpose of viewing a single athletic field;

15. Any designated seating area of any publicly or privately owned outdoor theater or amphitheater having an overall fixed or temporary seating capacity of at least five thousand (5,000) people or more and used for the purpose of viewing live performances;

16. Any common area of a multi-family development; or

17. Fifty feet of outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article, so as to ensure that tobacco smoke does not enter those areas.

B. Exceptions.

1. It is an exception to Subsection (A) that the smoking or possession was by a person as part of his participation in an authorized theatrical performance.

2. It is an exception to Subsection (A)(16) that the smoking or possession occurred in an unenclosed common area which has been designated by the owner, manager, or operator or other person having control of such areas, as a smoking area.

3. It is an exception to Subsection (A)(16) if the multi-unit development is owner occupied condominiums.

C. Defenses.

1. It is a defense to prosecution under this section that the conveyance or public place within which the offense occurred did not have prominently displayed a reasonably sized notice that smoking was prohibited.

2. It is a defense to prosecution under this section that facilities for the extinguishment of smoking materials were not located within the conveyance or within fifty feet (50') of the public entrances to the place or establishment.

3. It is a defense to prosecution under Sections 10.02(A)(14) and 10.02(A)(15) that the offense occurred in an open concourse designated as a smoking area by the owner, operator or person in control of the outdoor athletic facility, theater or amphitheater.

D. Eating Establishments. An eating establishment within a use governed by this section shall be governed by Section 10.03.

Further, Article X, **Section 10.03**, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Adult Entertainment Establishments, Billiard Halls, Bingo Parlors and Bowling Centers, so that said section shall be and read as follows:

Section 10.03 Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Sexually Oriented Businesses, Billiard Halls, Bingo Parlors and Bowling Centers

A. A person commits an offense if he or she smokes tobacco or possesses a burning tobacco product in an eating establishment, bar, night club, sexually oriented business, billiard hall, bingo parlor or bowling center.

B. An owner, manager or operator of an eating establishment, bar, nightclub, sexually oriented business, billiard hall, bingo parlor or bowling center commits an offense if he or she allows smoking of a tobacco product.

C. Exceptions.

1. It is an exception to Subsection (A) and (B) that the smoking or possession occurred in a bar, nightclub, sexually oriented business, billiard hall, bingo parlor or bowling center that:

   a. does not allow or employ persons under the age of eighteen (18) years; and

   b. does not open into an eating establishment, hotel, motel or any other establishment in which smoking is prohibited under this Article.

2. Notwithstanding Subsection (1), smoking shall be prohibited in all facilities that have shared HVAC systems, unless all the establishments using a shared HVAC system meet the requirements for exception as outlined in subsection (1) above.

D. Defenses.

1. It is a defense to a prosecution under Subsection (A) that the establishment did not have prominently displayed a reasonably sized notice that smoking was prohibited.

2. It is a defense to a prosecution under Subsection (A) that the facilities for the extinguishment of smoking materials were not located within fifty feet (50') and outside of the public entrances of the establishment.

E. The owner, manager or operator of an eating establishment, bar, nightclub, sexually oriented business, billiard hall, bingo parlor or bowling center commits an offense if he or she designates or maintains a smoking area in violation of this section.

F. 1. An establishment which does not meet the exception requirements of Subsection (C) shall post a sign at all public entrances stating: **"No Smoking - City Ordinance."**

2. The owner or manager of an establishment governed by this subsection commits an offense if he or she fails to post and maintain the required signs.

3. All children's playgrounds associated with eating establishments shall be nonsmoking. All doors and gates leading to such play areas shall be posted: **"No Smoking - City Ordinance."**

Further, Article X, **Section 10.04**, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, Subsection (A), is hereby amended so that said subsection shall be and read as follows:

A. Signs.

1. A place or conveyance regulated by Sections 10.02 or 10.03; that is required to be totally nonsmoking, shall have signs conspicuously posted at all entrances which state: **"No Smoking - City Ordinance."**

2. If a place or conveyance regulated by Section 10.02 has a designated smoking area, such signs may also state: **"Except In Designated Areas."**

3. A designated smoking area shall have signs conspicuously posted in the area which state: **"Smoking In This Area Only."**

4. Establishments exempt under Subsection 10.03(C) shall have signs conspicuously posted at all entrances which state: **"We Do Not Have A Nonsmoking Area."**

Further, Article X, is hereby amended by the **deletion** of **Section 10.06**, Structural Modifications Not Required, by the **deletion** of **Section 10.07**, Exemptions, and by the **renumbering** of subsequent sections.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective January 1, 2007.

PRESENTED AND GIVEN FIRST READING on the 26th day of September, 2006, at a regular meeting of the City Council of the City of Arlington, Texas; and

GIVEN SECOND READING, passed and approved on the 10th day of October, 2006, by a vote of 8 ayes and 1 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

Ordinance No. 06-110

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article X, Regulation of Smoking, at Section 10.03, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Sexually Oriented Businesses, Billiard Halls, Bingo Parlors and Bowling Centers, at Subsection (F)(2), relative to the posting of signs; by the amendment of Section 10.04, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, at Subsection (B), relative to receptacles and at Subsection (D) relative to offenses; by the amendment of Section 10.06, Penalty for Violation; and by the deletion of Section 10.07, Culpability; and providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective January 1, 2007

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article X**, Regulation of Smoking, **Section 10.03**, Regulation of Smoking - Eating Establishments, Bars, Night Clubs, Sexually Oriented Businesses, Billiard Halls, Bingo Parlors and Bowling Centers, at Subsection (F)(2), so that said subsection shall be and read as follows:

2. The owner or manager of an establishment governed by this subsection commits an offense if he or she fails to post and maintain the required signs. There shall be no requirement of a culpable mental state for this offense.

Further, Article X, **Section 10.04**, Posting of Signs, Placing of Receptacles and Public Address System Announcement Required, Subsection (B), is hereby amended so that said subsection shall be and read as follows:

B. Receptacles. A place, establishment or conveyance regulated by Sections 10.02 or 10.03, which is partially or totally nonsmoking, shall have facilities for the

extinguishment of smoking materials located within fifty feet (50') of all entrances and within all designated smoking areas.

Further, Article X, **Section 10.04**, Subsection (D), is hereby amended so that said subsection shall be and read as follows:

D. Offenses.

1. The owner, manager or operator of a place, conveyance or establishment commits an offense if he fails to post signs and provide extinguishment facilities as required by this section. There shall be no requirement of a culpable mental state for this offense.

2. The owner, manager or operator of a place, conveyance or establishment commits an offense if he places or maintains facilities for the extinguishment of smoking materials in public areas other than as provided for in Subsection (B). There shall be no requirement of a culpable mental state for this offense.

3. The owner, manager or operator of an outdoor athletic facility, theater or amphitheater where a public address system is used, commits an offense if he operates such a facility without announcing or causing to be announced prior to each game or performance the prohibition of smoking in seating areas.

Further, Article X, **Section 10.06**, Penalty for Violation, is hereby amended so that said section shall be and read as follows:

A. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined an amount not less than Twenty-five and No/100 Dollars ($25.00) nor more than Two Hundred and No/100 Dollars ($200.00); provided, however, in the event the actor has previously been convicted under this section, the actor shall be fined an amount not less than Fifty and No/100 Dollars ($50.00) nor more than Five Hundred and No/100 Dollars ($500.00) for a second conviction hereunder, and shall be fined an amount not less than One Hundred and No/100 Dollars ($100.00) nor more than Two Thousand and No/100 Dollars ($2,000.00) for a third conviction hereunder and for each conviction thereafter. Each day that a violation is permitted to exist shall constitute a separate offense.

B. Notwithstanding Subsection (A) above, the fine for violations of Subsections 10.03(F)(2), 10.04(D)(1) and 10.04(D)(2) or any other offense within this Article where the culpable mental state is specifically dispensed, shall be an amount not

less than One Hundred and No/100 Dollars ($100.00) nor more than Five Hundred and No/100 Dollars ($500.00) for a third conviction hereunder and for each conviction thereafter.

Further, Article X, is hereby amended by the **deletion** of **Section 10.07**, Culpability.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective January 1, 2007.

PRESENTED AND GIVEN FIRST READING on the 10th day of October, 2006, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 28th day of November, 2006, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

PUBLISHED ST 04-16-07 & 04-23-07

Ordinance No. 07-022

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article X, Regulation of Smoking, at Section 10.01, Definitions, by the addition of the definitions of "Fraternal Organization", "Nursing Home", "Park" and "Private Club"; by the amendment of Section 10.02, Smoking Prohibited – Public Places; and providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article X**, Regulation of Smoking, **Section 10.01**, Definitions, by the addition of the definitions of "Fraternal Organization", "Nursing Home", "Park" and "Private Club" so that hereafter said definitions shall be and read as follows:

"Fraternal Organization" shall mean a facility or area for a special purpose organization or for the sharing of sports, arts, literature, politics or other similar interests, but not primarily for profit or to render a service that is customarily carried on as a business, excluding churches, synagogues, or other houses of worship.

"Nursing Home" shall mean a facility or area furnishing food and shelter in single or multiple facilities to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment. In addition, the facility provides minor treatment under the direction and supervision of a physician, or provides a service which meets some need beyond the basic provision of food, shelter and laundry.

"Park" shall mean any land selected, obtained, or acquired by the City for use as a public park, or recreation or playground area, and any building or facility thereon, owned and maintained by the City as a public park, or recreation or playground area, whether or not such areas have been formally dedicated to such purpose.

"Private Club" shall mean the private quarters for a private organization, a principal purpose of which is the preparation and service of food and/or drink for members and their guests only.

Further, Article X, **Section 10.02**, Smoking Prohibited – Public Places, is hereby amended so that said section shall be and read as follows:

Section 10.02 Smoking Prohibited - Public Places

A. Prohibited Places. A person commits an offense if he possesses a burning tobacco product or smokes a tobacco product within:

1. A public primary or secondary school;

2. An elevator in buildings generally used by and open to the public, including elevators in office buildings, hotels and multi-family dwellings;

3. A library;

4. A museum;

5. The buildings or grounds of a hospital, health care facility or nursing home;

6. A transit system bus;

7. A room or enclosed place of public assembly in which public business is conducted when the public business requires or provides an opportunity for direct participation or observation by the general public;

8. Indoor or outdoor service lines in which more than one (1) person is giving or receiving goods or services of any kind;

9. Retail or service establishments;

10. Public rest rooms;

11. Every publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event;

12. Any portion of any publicly or privately owned room, building or other enclosed place to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;

13. Any portion of any publicly or privately owned unenclosed area to which the public or a substantial group of the public has access, which has been

designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;

14. Any seating area of any publicly or privately owned outdoor athletic facility having an overall fixed seating capacity of at least six hundred (600) people and used for the purpose of viewing a single athletic field;

15. Any designated seating area of any publicly or privately owned outdoor theater or amphitheater having an overall fixed or temporary seating capacity of at least five thousand (5,000) people or more and used for the purpose of viewing live performances;

16. Any common area of a multi-family development; or

17. Fifty feet of outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article, so as to ensure that tobacco smoke does not enter those areas.

18. the following areas of a park:

    a. while seated in or within fifty (50) feet of a dugout or bleacher provided for spectators at outdoor athletic events;
    b. a park playground or within fifty (50) feet of a park playground;
    c. in plaza areas at athletic complexes or within fifty (50) feet of such area;
    d. in a park restroom or within fifty (50) feet of such restroom; or
    e. within the fenced areas at a swimming pool or within fifty (50) feet of such area.

B. Exceptions.

1. It is an exception to Subsection (A) that the smoking or possession was by a person as part of his participation in an authorized theatrical performance.

2. It is an exception to Subsection (A)(16) that the smoking or possession occurred in an unenclosed common area which has been designated by the owner, manager, or operator or other person having control of such areas, as a smoking area.

3. It is an exception to Subsection (A)(16) if the multi-unit development is owner occupied condominiums.

4. It is an exception to Subsection (A)(5) that the smoking or possession occurred on the grounds of a nursing home in an outdoor area, that may be

enclosed by fixed walls, which has been designated by the owner, manager, or operator or other person having control of such area, as a smoking area. Said designated smoking area must be at least fifty feet from outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article.

5. It is an exception to Subsection (A) that the smoking or possession occurred in a fraternal organization or private club unless the smoking occurred in an area that has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area.

C. Defenses.

1. It is a defense to prosecution under this section that the conveyance or public place within which the offense occurred did not have prominently displayed a reasonably sized notice that smoking was prohibited.

2. It is a defense to prosecution under this section that facilities for the extinguishment of smoking materials were not located within the conveyance or within fifty feet (50') of the public entrances to the place or establishment.

3. It is a defense to prosecution under Sections 10.02(A)(14) and 10.02(A)(15) that the offense occurred in an open concourse designated as a smoking area by the owner, operator or person in control of the outdoor athletic facility, theater or amphitheater.

D. Eating Establishments. An eating establishment within a use governed by this section shall be governed by Section 10.03.

E. Shared HVAC System. Notwithstanding other provisions to the contrary, smoking shall be prohibited in all facilities that have shared HVAC systems, unless smoking is otherwise permitted in all the establishments using a shared HVAC system.

F. Rangers Ballpark in Arlington. Smoking at the Rangers Ballpark in Arlington is allowed only at designated areas near the outer perimeter of the first level and upper concourse. When food kiosks are located in the smoking areas, smoking is prohibited in the kiosk line and within fifty (50) feet of the food kiosk. Signage must indicate that smoking is not permitted in a kiosk line or within fifty (50) feet of the food kiosk. Smoking is not restricted in private club areas of the Rangers Ballpark in Arlington.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 27th day of March, 2007, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 10th day of April, 2007, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

PUBLISHED ST 12-24-07 & 12-31-07

Ordinance No. 07-097

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article IV, Regulation of Food Establishments, Section 4.01, Texas Food Establishment Rules Adopted, Subsection (D)(3)(a), relative to updating references to state law, department and rules, and Subsection (D)(3)(d), relative to requiring written notice; Section 4.04, Permits – Authority to Issue, relative to limiting the number of Temporary Food Establishment Permits issued; Section 4.16, Inspection Frequency, relative to inspections; Section 4.20, Fees, relative to specifying fees; through the amendment of Article V, Child Care Centers, Section 5.02, Texas Department of Protective and Regulatory Services Regulations Adopted, relative to updating references to state law, department and rules; Section 5.04, Permit Required, Subsection (B)(5), (6) and (12), relative to updating references to state departments; Section 5.05, Permit Application, Subsections (A) and (B), relative to updating references to Arlington Health Division and required information on permit applications; Section 5.08, Permit Renewal Denial, Suspension and Revocation, Subsections (A) and (B), relative to updating references to a state department; Section 5.11, Child Care Workers Training Required, relative to certifying course instructors; Section 5.14, Display of Child Care Workers Permit, relative to displaying the original permit; Section 5.15, Appeal of Permit Denial, Suspension or Revocation, relative to denying, suspending or revoking permits or certifications; Section 5.17, Fees, Subsection (A), relative to specifying fees; Section 5.20, Diaper Changing Provisions, Subsection (B), relative to sanitization; through the amendment of Article VII, Public Swimming Pools, Section 7.01, Adoption of the Texas Standards for Public Swimming Pools and Spas, Subsections (A) and (B), relative to updating references to state law; Section 7.01, Subsection (D)(3), relative to electrical inspections; Section 7.02, Swimming Pool Permit Required, Subsection (A), relative to requiring permits; Section 7.04, Fees, Subsection (A), relative to specifying fees; Section 7.09, Inspections, relative to updating references to the Administrator or designee;

Section 7.10, Maintenance and Operation, relative to compliance with City ordinances; Section 7.11, Regulations in Pool Area, by the amendment of Subsection (B) and the addition of Subsection (F), relative to offenses; Section 7.12, Failure to Comply, relative to references to the Arlington Health Division; through the amendment of Article VIII, Mass Gatherings, Section 8.08, Rules and Regulations, Subsection (A), relative to updating references to a State department; through the amendment of Article XII, On-Site Sewage Disposal, Section 12.02, On Site Sewage Facility Rules Adopted, relative to updating references to state law; Section 12.09, Collection of Fees, relative to specifying fees; Section 12.13, Penalties, relative to updating references to state law; and providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article IV**, Regulation of Food Establishments, **Section 4.01**, Texas Food Establishment Rules Adopted, **Subsection (D)(3)(a)**, so that said subsection shall be and read as follows:

a. The permit holder of every Food Establishment or Commissary shall ensure that at least one person in charge at each location, who is responsible for supervising food preparation and service, has a valid Food Protection Management Training Certificate issued by the Texas Department of State Health Services as proof of successful completion of a Texas Department of State Health Services accredited Food Protection Management Training Program as defined in 25 TAC § 229.176 and registered with the City of Arlington.

Further, Article IV, **Section 4.01, Subsection (D)(3)(d)**, is hereby amended so that said subsection shall be and read as follows:

d. The permit holder of an existing Food Establishment or Commissary shall notify the Community Services Department in writing within forty-eight (48) hours of the termination or transfer of a Certified Food Protection Manager. The permit holder shall have thirty (30) days from the effective date of the termination or transfer to comply with the requirements of this Section.

Further, Article IV, **Section 4.04**, Permits – Authority to Issue, is hereby amended so that said section shall be and read as follows:

Section 4.04 Permits – Authority to Issue

The Administrator or his designee is hereby authorized to issue permits to any person or firm making application for a Food Handler Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Food Establishment Permit, Commissary Permit, or Catering Vehicle Permit, in the City of Arlington; provided that only a person or firm that complies with the requirements of this ordinance shall be entitled to receive and retain such permit and provided that a person or firm applying for a Temporary Food Establishment Permit has not been issued the maximum number of Temporary Food Establishment Permits that are allowed to be issued to any person or firm during any one year period. The maximum number of Temporary Food Establishment Permits that may be issued shall be set by policy of the regulatory authority.

Further, Article IV, **Section 4.16**, Inspection Frequency, is hereby amended so that said section shall be and read as follows:

Section 4.16 Inspection Frequency

A. An inspection of a Food Service Establishment or Commissary shall be performed at least once annually and shall be prioritized based upon assessment of the Food Establishment or Commissary's compliance and potential risk factors for causing foodborne illness according to Section 229.171(h) of the Texas Food Establishment Rules and Community Services Department evaluations.

B. The Administrator or his designee shall classify Food Establishments and Commissaries as high priority, medium priority, or low priority, according to the type of operations, particular foods that are prepared, numbers of people served, susceptibility of the population served, or any other risk factor deemed relevant to the operation by the Community Services Department.

C. Additional inspections of the Food Establishment or Commissary shall be performed as often as necessary for the enforcement of this ordinance.

D. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Administrator or his designee has reasonable cause to believe that there exists in any building or upon any premises any condition or violation of this Chapter, the Administrator or his designee may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrator or his designee by this Chapter. If such building or premises is occupied, he shall first present proper credentials and request entry. If such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused or if no owner or other person having charge or control of the building or premises can be located, the Administrator or his designee shall have recourse to every remedy provided by law to secure entry.

E. Permit holders shall display in public view at all customer entrances a copy of the last routine inspection.

Further, Article IV, **Section 4.20**, Fees, is hereby amended so that said section shall be and read as follows:

Section 4.20 Fees

The various requirements for review of plans, permits, licenses, certificates, inspections, reinspections and such administrative function of this Article shall require the payment of fees submitted to the Arlington Community Services Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated Food Establishments or public school cafeterias. Fees are not to be transferable or refundable.

Further, Article V, Child Care Centers, **Section 5.02**, Texas Department of Protective and Regulatory Services Regulations Adopted, is hereby amended so that the title and the section shall be and read as follows:

Section 5.02 Texas Department of Family and Protective Services Regulations Adopted

A. The provisions of the current rules or rules as amended, known as the "Minimum Standards for Day Care Centers", found in 40 Texas Administrative Code, Chapter 746, Section 101 through 5621 are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article V, Child Care Centers, of the "Health and Sanitation" Chapter of the Code of the City of Arlington.

B. An unabridged copy of the "Minimum Standards for Day Care Centers" shall be kept on file in the Office of the City Secretary. The provisions of the "Minimum Standard Rules for Licensed Child - Care Centers" shall apply, as though such regulations were copied at length herein, except where specific other provisions are expressed within this Article.

Further, Article V, **Section 5.04**, Permit Required, **Subsections (B)(5), (6)** and **(12)**, are hereby amended so that said subsections shall be and read as follows:

5. A youth camp licensed by the Texas Department of State Health Services;

6. A hospital licensed by the Texas Department of Mental Health and Mental Retardation or the Texas Department of State Health Services;

12. After-school care facilities in public schools that provide care before or after the usual school day, or full day care for the same children on school holidays or during summer vacation for more than twelve (12) children, ages five (5) through thirteen (13) years, for children enrolled in the public school provided that the facility is properly licensed by the Texas Department of Family and Protective Services.

Further, Article V, **Section 5.05**, Permit Application, **Subsections (A)** and **(B)**, are hereby amended so that said subsections shall be and read as follows:

A. Application for a permit to operate a child care center shall be submitted by the owner on a form specified by the Arlington Health Division.

B. The permit application shall state the owner's name, address and telephone number and the name of all employees and staff members of the child care center.

Further, Article V, **Section 5.08**, Permit Renewal Denial, Suspension and Revocation, **Subsections (A)** and **(B),** are hereby amended so that said subsections shall be and read as follows:

A. The Administrator or his designee is hereby authorized to deny, suspend, or revoke a Child Care Center Permit for a violation of any provision of this Article. Denial, suspension or revocation of a permit shall be effected by notice, in writing, setting forth the reasons therefore and specifying any requirements or schedules of time for further action related to the suspension or revocation.

B. The following actions shall constitute cause for denial or suspension:

1. Failure to respond within specified limits of time regarding violations observed during an Arlington Community Services Department inspection of the premises and operation;

2. Any violation of this Article which poses a safety or public health hazard to any child entrusted to the care of the child care center; and

3. Failure to keep continually in force the required liability insurance, according to Section 5.25.

4. Failure to possess a valid Child Care Center License or Accreditation issued by Texas Department of Family and Protective Services according to Chapter 42 of the Human Resources Code.

5. Failure to meet the requirements of Chapter 42 of the Texas Department of Family and Protective Services, Human Resources Code, related to the requirements for criminal history check and background search of central registry of reported cases of child abuse for all persons who are present while children are in care.

Further, Article V, **Section 5.11**, Child Care Workers Training Required, is hereby amended so that said section and title shall be and read as follows:

Section 5.11 Child Care Workers Training Required and Certification of Certain Course Instructors

A. In order to receive a Child Care Workers Permit, every person shall be required to satisfactorily complete a Child Care Workers Training Course conducted by an instructor who has been approved by the City of Arlington Community Services Department. This requirement must be met upon expiration of a permit and upon application for a new permit.

B. A currently State certified Child Care Director may apply to the City of Arlington Community Services Department for certification as an approved instructor of the Child Care Workers Training Course. Application for certification shall be submitted on the form specified by the Director of Community Services. The application shall be submitted with the proposed class curriculum and a copy of the applicant's valid State certification as a Child Care Director. Upon approval of the proposed curriculum and verification of the information on the application, the City of Arlington Community Services Department shall certify the applicant as an approved instructor. Failure to provide all required information including material required for the approval of the curriculum or falsifying information required on the application may result in denial, suspension or revocation of the

certification pursuant to the provisions provided in this Chapter. A City of Arlington Child Care Workers Training Certification shall be valid for three (3) years from the date of issuance unless suspended or revoked for cause. Suspension or revocation shall occur pursuant to the provisions in this Chapter.

Further, Article V, **Section 5.14,** Display of Child Care Workers Permit, is hereby amended so that said section shall be and read as follows:

Section 5.14 Display of Child Care Workers Permit

The original current Child Care Workers Permit shall be maintained at the child care center for each of its employees or staff members and shall be available for review upon the request of the Administrator or his designee.

Further, Article V, **Section 5.15,** Appeal of Permit Denial, Suspension or Revocation, is hereby amended so that said section and title shall be and read as follows:

Section 5.15 Appeal of Permit or Certification - Denial, Suspension or Revocation

A. Upon finding that the Child Care Center Permit or Child Care Workers Training Certification should be denied, suspended or revoked, the Administrator or his designee shall, within ten (10) days of the finding, notify the owner or person in charge in writing, specifying the result of the finding and the reasons therefore. The applicant may request a hearing before the Administrator.

B. Notice of appeal shall be filed within twenty (20) days of the date of the written notice of denial, suspension or revocation.

C. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.

D. After such hearing, the owner or the person in charge that has had a permit or certification denied, suspended or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.

E. An appeal shall not stay the denial, suspension or revocation of a license, permit or certification unless otherwise directed by the Administrator.

Further, Article V, **Section 5.17**, Fees, **Subsection (A),** is hereby amended so that said subsection shall be and read as follows:

A. The various requirements for review of plans, permits, licenses, certificates, inspections, reinspections, and such administrative function of this Article shall require the payment of fees, submitted to the Arlington Community Services Department, in an amount approved by resolution of the Arlington City Council. Fees shall not be refundable or transferable.

Further, Article V, **Section 5.20**, Diaper Changing Provisions, **Subsection (B),** is hereby amended so that said subsection shall be and read as follows:

B. The diapering surface must be smooth, easily cleanable, and in good repair, free of cracks and tears. The diapering surface must be cleaned by removing all visible debris and waste, and then sanitized using a solution of ¼ cup of household bleach per gallon of water after changing each child. Bleach measurement shall be adjusted to equal 200PPM when mixed with one gallon of water.

Further, Article VII, Public Swimming Pools, **Section 7.01**, Adoption of the Texas Standards for Public Swimming Pools and Spas, **Subsections (A)** and **(B),** are hereby amended so that said subsections shall be and read as follows:

A. The provisions of the current rules or rules as amended by the Texas Board of Health known as the Texas Department of State Health Services Standards for Public Swimming Pools and Spas found in Texas Administrative Code, Title 25, Health Services, Part 1, Chapter 265, Subchapter L, Sections 181 through 206, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article VII, Public Swimming Pools, of the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987.

B. The intent and purpose of this Section is to provide for the inspection of public and semi-public swimming pools in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the operations of public and semi-public pools. The enforcement of this ordinance and the fixing of penalties shall be regulated in accordance with this chapter and the terms of the unabridged form of the Texas Standards for Public Swimming Pools and Spas, a copy of which is on file in the Office of the City Secretary.

Further, Article VII, **Section 7.01, Subsection (D)(3),** is hereby amended so that said subsection shall be and read as follows:

3. Section 265.192(e) shall read as follows:

All post-10/01/1999 and pre-10/01/1999 ground fault circuit interrupters of pools and spas shall be inspected by a licensed electrician in this state at least once a year prior to the beginning of swimming pool season and/or as required by the Administrator. The licensed electrician shall submit verification in writing that the pool related electrical components are in proper working order.

Further, Article VII, **Section 7.02**, Swimming Pool Permit Required, **Subsection (A),** is hereby amended so that said subsection shall be and read as follows:

A. No person or firm shall own or operate a public pool without a valid Swimming Pool Permit from the City of Arlington, issued by the Administrator or his designee.

Further, Article VII, **Section 7.04**, Fees, **Subsection (A),** is hereby amended so that said subsection shall be and read as follows:

A. The requirements for permits, inspections, reinspections and administrative fees of this Article shall require the payment to be submitted to the Arlington Community Services Department, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated swimming pools.

Further, Article VII, **Section 7.09**, Inspections, is hereby amended so that said section shall be and read as follows:

Section 7.09 Inspections

The Administrator or his designee is authorized to conduct such inspections as he deems necessary to ensure compliance with all provisions of this ordinance. Administrator or designee shall have right of entry at any reasonable hour upon the premises where a public or semipublic pool is located. Administrator or designee shall have the authority to collect water samples from the pool.

Further, Article VII, **Section 7.10**, Maintenance and Operation, is hereby amended so that said section shall be and read as follows:

Section 7.10 Maintenance and Operation

The owner or person-in-charge of every public pool shall be responsible for compliance with all parts of this Article relating to pool maintenance, pool operation and

safety of swimmers. It shall be unlawful for the owner or person-in-charge to cause or permit the existence of a condition which is in violation of any part of this Article or other City ordinances.

Further, Article VII, **Section 7.11**, Regulations in Pool Area, **Subsection (B)**, is hereby amended so that said subsection shall be and read as follows:

B. Has skin abrasions, open sores, skin disease, eye disease, nasal or ear discharge or a communicable disease and swims in a semi-public or public pool; or

Further, Article VII, **Section 7.11**, is hereby amended by the addition of **Subsection (F)** so that said subsection shall be and read as follows:

F. Allows persons access to any public or semi-public pool were violations exist.

Further, Article VII, **Section 7.12**, Failure to Comply, is hereby amended so that said section shall be and read as follows:

Section 7.12 Failure to Comply

A. Failure to comply with any section of this ordinance may result in the immediate closure of the pool and/or the initiation of legal action. Upon determination that the pool does not comply with the provisions of this ordinance, the Administrator or his designee shall notify the owner or person-in-charge of the existing violations. If Administrator or his designee determines that the condition of the pool is hazardous to the health or safety of the swimmers or of the general public, the pool shall be immediately closed. Signs shall be posted at all entrances to the swimming pool. Said sign shall be clearly visible to a reasonably observant person and shall state, "Closed By The Health Division ". A reinspection of the pool will be conducted during the regular working hours of the Community Services Department at the request of the pool Manager of Operations. If compliance has been achieved, the owner or person-in-charge shall be notified that the pool may be opened.

B. Signs posted by the Administrator or his designee stating "Closed By the Health Division " shall not be altered or removed unless authorized by the Administrator or his designee.

C. Each public and semi-public pool shall be required to post signage at all public pool entrances stating "All violations should be reported to the Department of Community Services – Health Division at 817-459-6777." Signage should be in

at least two contrasting colors and lettering should be no smaller than 1 inch in height.

Further, Article VIII, Mass Gatherings, **Section 8.08**, Rules and Regulations, **Subsection (A)**, is hereby amended so that said subsection shall be and read as follows:

A. The Administrator shall adopt rules and regulations consistent with the Texas Department of State Health Services rules and regulations relating to minimum standards of health and sanitation to be maintained at mass gatherings.

Further, **Article XII**, On-Site Sewage Disposal, **Section 12.02**, On-Site Sewage Facility Rules Adopted, is hereby amended so that said section shall be and read as follows:

Section 12.02 On Site Sewage Facility Rules Adopted

The Rules ("General Provisions" 30 TAC 285.1 - 285.8 and "Planning, Construction, and Installation Standards for OSSF" 30 TAC 285.30 – 285.39) promulgated by the Texas Commission on Environmental Quality (hereinafter called "the Commission") for on-site sewage systems are hereby adopted, and all officials and employees of the City of Arlington, Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

Further, **Article XII, Section 12.09**, Collection of Fees, is hereby amended so that said section shall be and read as follows:

Section 12.09 Collection of Fees

The various requirements for permits, installation, application, repairs, inspections, reinspections and such administrative function of this Article shall require payment of fees submitted to the City of Arlington in an amount set by resolution of the City Council. All fees collected shall be made payable to the City of Arlington, Texas.

Further, **Article XII, Section 12.13**, Penalties, is hereby amended so that said section shall be and read as follows:

Section 12.13 Penalties

The City of Arlington, Texas, adopts the criminal, injunction or civil suit, and civil penalty provisions as set forth in Sections 366.071, 366.092, 366.0922, 366.0923 of the Texas Health and Safety Code and/or any other such penalties (Section 341.091 of the

Texas Department of State Health Services, Chapter 341) that may be provided by state law. Each day of a continuing violation is a separate offense and is punishable as such.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of

Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 4th day of December, 2007, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 18th day of December, 2007, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

KAREN PARZA, Acting City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

Published ST 3-24-08 and 3-31-08

Ordinance No. 08-020

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article X, Regulation of Smoking, at Section 10.01, Definitions; and by the amendment of Section 10.02, Smoking Prohibited – Public Places, at subsection (B), Exceptions; and providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article X**, Regulation of Smoking, at **Section 10.01**, Definitions by the addition of the definition of "Smoker's lounge" and "Stand Alone Tobacco Shop" so that hereafter said definitions shall be and read as follows:

"Smoker's lounge" shall mean any facility that is attached to a retail tobacco shop for the purpose of enjoyment of tobacco products purchased from the attached tobacco shop.

"Stand Alone Tobacco Shop" shall mean a tobacco shop that is housed in a facility that shares no common mechanical equipment systems or physical properties such as walls, ceilings, or hallways with any other establishment, occupancy or use.

Further, that the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article X**, Regulation of Smoking, **Section 10.02**, Smoking Prohibited – Public Places, by the addition of subsections **(B)(6)**, and **(B)(7)** so that said subsections shall be and read as follows:

6. It is an exception to Subsection (A) that the smoking or possession was by a person in a smoker's lounge attached to a tobacco shop that meets the following requirements:

The smoker's lounge shall not allow or employ persons under the age of eighteen (18). Signs shall be conspicuously posted at all entrances of the smoker's lounge which state: "**No One Under Age 18 Allowed**".

b. **Smoking is prohibited within the tobacco shop.** Signs shall be conspicuously posted at all entrances to the tobacco shop in accordance with Section 10.04(A)(1) of this ordinance.

c. The smoker's lounge shall have separate entrances, exits and restroom facilities from the attached tobacco shop.

d. The smoker's lounge shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.

e. The smoker's lounge must have a separate heating and cooling system from the tobacco shop and any other establishment, occupancy or use where smoking is prohibited.

f. The smoker's lounge shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.

g. The ventilation system may be tested by the City to verify that the system removes visual smoke at a rate of four (4) times per hour and that air from the smoker's lounge is not allowed or drawn into the tobacco shop or any other establishment where smoking is prohibited.

h. The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.

i. The Administrator may deny the opportunity to operate a smoker's lounge upon a finding that:

(1) Smoke is migrating from the smoker's lounge into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited; or

(2) The smoker's lounge has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

Upon such a finding, the smoker's lounge shall be deemed to be nonsmoking until successfully tested.

j. The owner, manager or operator of a tobacco shop commits an offense if he or she allows smoking of a tobacco product in an area deemed to be nonsmoking by the Administrator.

k. The owner, manager or operator of a tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this section.

Exception for Tobacco Shops meeting the requirements set forth below:

a. Stand Alone Tobacco Shop. It is an exception to Subsection (A) that the smoking or possession was by a person in a Stand Alone Tobacco Shop that meets the following requirements:

(1) The stand alone tobacco shop shall not allow or employ persons under the age of eighteen (18).

(2) Signs shall be conspicuously posted at all entrances of the stand alone tobacco shop which state: "**No One Under Age 18 Allowed**".

b. Tobacco Shop. It is an exception to Subsection (A) that the smoking or possession was by a person in a tobacco shop that meets the following requirements:

(1) The tobacco shop shall not allow or employ persons under the age of eighteen (18).

(2) Signs shall be conspicuously posted at all entrances of the tobacco shop which state: "**No One Under Age 18 Allowed**".

(3) The tobacco shop shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing air from the tobacco shop to migrate into the any other establishment, occupancy or use where smoking is prohibited.

(4) The tobacco shop must have a separate heating and cooling system from any other establishment, occupancy or use where smoking is prohibited.

(5) The tobacco shop shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the tobacco shop to migrate into any other establishment, occupancy or use where smoking is prohibited.

(6) The ventilation system may be tested by the City to verify that the system removes visual smoke at a rate of four (4) times per hour and that air from the tobacco shop is not allowed or drawn into any other establishment where smoking is prohibited.

(7) The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.

(8) The Administrator may deem the tobacco shop nonsmoking upon a finding that:

(a) Smoke is migrating from the tobacco shop into any other establishment, occupancy or use where smoking is prohibited; or

(b) The tobacco shop has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

Upon such a finding, the tobacco shop shall be deemed to be nonsmoking until successfully tested.

c. The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she allows smoking of a tobacco product in an area deemed to be nonsmoking by the Administrator.

d. The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this section.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined an amount not less than Twenty-five and No/100 Dollars ($25.00) nor more than Two Hundred and No/100 Dollars ($200.00); provided, however, in the event the actor has previously been convicted under this section, the actor shall be fined an amount not less than Fifty and No/100 Dollars ($50.00) nor more than Five Hundred and No/100 Dollars ($500.00) for a second conviction hereunder, and shall be fined an amount not less than One Hundred and No/100 Dollars ($100.00) nor more than Two Thousand and No/100 Dollars ($2,000.00) for a third conviction hereunder and for each conviction thereafter. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 4th day of March, 2008, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 18th day of March, 2008, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

KAREN BARBER, Acting City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

Ordinance No. 10-021

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article II, Garbage and Trash, Section 2.13, Private Collection and Disposal, by the amendment of Subsection (B)(1), relative to Class A license requirements; and providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability, governmental immunity, injunctions, publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article II**, Garbage and Trash, **Section 2.13**, Private Collection and Disposal, by the amendment of Subsection (B)(1) so that said subsection shall be and read as follows:

B. Classifications of Licenses: There shall be two (2) classifications of licenses as follows:

1. Class A - A license that authorizes a person who generates an average of less than 3 tons of garbage and trash per operating day to engage in the collection and transportation of garbage and trash from such person's own non-residential premises or place of business using such person's own vehicles and equipment. For purposes of this Section, "operating day" shall be defined as six days per week excluding the legal holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Said license shall be granted by the Administrator upon compliance with the same provisions required for applying for a permit in Section 2.14 hereof (but no permit shall be required) and upon payment of the Class A License Fee which shall be set by resolution of the City Council. A Class A License shall expire on December 31st of each year and shall be renewed by submitting a new application therefor in accordance with this Section. A separate license shall be required for each nonresidential premises or place of business of an applicant. The Administrator may revoke a Class A License if the Licensee is convicted of a violation of any of the provisions of this Article, if the Licensee commits fraud or misrepresentation in the application for

said license or if the Licensee operates outside the scope of the Class A License.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of

Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 12th day of January, 2010, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 26th day of January, 2010, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

KAREN BARLAR, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

Ordinance No. 10-069

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article I, Definitions, Section 1.01, Definitions, by the addition of the definition of "Seasonal Food Establishment"; through the amendment of Article IV, Regulation of Food Establishments, Section 4.01, Texas Food Establishment Rules Adopted, Subsection (D)(3)(e); Section 4.02, Food Establishment; Section 4.04, Permits - Authority to Issue; Section 4.05, Permits - Application, Subsection (A); Section 4.07, Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment or Commissary Permits, by the amendment of the title and the section; Section 4.08, Permits - Duration, Subsection (B); Section 4.09, Permits - Non-transferable; Section 4.11, Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, by the amendment of the title and the section; Section 4.12, Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, by the amendment of the title and the section; Section 4.13, Revocation of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle, by the amendment of the title; Section 4.15, Notice of Appeal; Hearing, Subsection (A); relative to Seasonal Food Establishment; providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability, governmental immunity, injunctions, publication and becoming effective on October 1, 2010

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article I**, Definitions, **Section 1.01**, Definitions, by the addition of the definition of "Seasonal Food Establishment", so that said definition shall be and read as follows:

Seasonal Food Establishment - A food establishment that operates for a period of time between 15 and 180 days where one or more food vendors operate pursuant to one Seasonal Food Establishment permit at a single building or at the same address for a single event. The food establishment hours of operations during the allowed time period shall be either 1) between one to two days a week for no more than six hours a day or 2) between one to five days a week for no more than two hours a day.

Further, **Article IV,** Regulation of Food Establishments, **Section 4.01**, Texas Food Establishment Rules Adopted, is hereby amended by the amendment of **Subsection (D)(3)(e)**, so that said subsection shall be and read as follows:

e. The following Food Establishments are exempt from the requirements of this Section: Temporary Food Establishments; Seasonal Food Establishments; Food Establishments that sell or distribute only prepackaged foods or uncut produce; and Food Establishments that serve only fountain drinks, coffee, alcoholic beverages, popcorn, and/or snow cones.

Further, **Article IV, Section 4.02,** Food Establishment, is hereby amended so that said section shall be and read as follows:

Section 4.02 Food Establishment

A. No person or firm shall operate a Food Establishment, Temporary Food Establishment, Mobile Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle in the City of Arlington without a valid permit issued by the Administrator or his designee.

B. In cases where a person or firm conducts, in a single building or at the same address, more than one (1) operation, vocation or business, whether such operation, vocation or business constitutes a Food Establishment or Temporary Food Establishment, then a separate permit shall be required for each such operation, vocation or business except for an operation, vocation or business at a Seasonal Food Establishment where more than one (1) operation, vocation or business may operate under one valid Seasonal Food Establishment permit issued for that single building or location.

Further, **Article IV, Section 4.04,** Permits - Authority to Issue, is hereby amended so that said section shall be and read as follows:

Section 4.04 Permits - Authority to Issue

The Administrator or his designee is hereby authorized to issue permits to any person or firm making application for a Food Handler Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Food Establishment Permit, Seasonal Food Establishment Permit, Commissary Permit, or Catering Vehicle Permit, in the City of Arlington, provided that only a person or firm that complies with the requirements of this ordinance shall be entitled to receive and retain such permit and provided that a person or firm applying for a Temporary Food Establishment Permit has not been issued the maximum number of Temporary Food Establishment Permits that are allowed to be issued to any person or firm during any one year period. The maximum number of Temporary Food Establishment Permits that may be issued shall be set by policy of the regulatory authority.

Further, **Article IV, Section 4.05**, Permits - Application, Subsection (A), is hereby amended so that said subsection shall be and read as follows:

A. Application for such permit as required of this ordinance in Sections 4.02 and 4.03 shall be made in writing to the Administrator or his designee upon forms prescribed and furnished by the City of Arlington Community Services Department. If the application for permit is being made to operate in conjunction with a single event or is for a single event, a copy of all City of Arlington required event permits, if any, shall accompany the application.

Further, **Article IV, Section 4.07, Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment or Commissary Permits**, is hereby amended by the amendment of the **title** and the **section** so that said section shall be and read as follows:

Section 4.07 Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment or Commissary Permits

Every permit holder or person in charge shall at all times have available on the premises for inspection the Food Handler Permit of its employees, and shall at all times display in public view the Food Establishment Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Seasonal Food Establishment or Commissary Permit.

Further, **Article IV, Section 4.08**, Permits - Duration, Subsection (B), is hereby amended so that said subsection shall be and read as follows:

B. Exceptions to 4.08(A) above are: 1) a Temporary Food Establishment Permit shall remain in full force and effect for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration from date of issuance unless sooner suspended or revoked for cause; 2) a Seasonal Food Establishment Permit shall remain in full force and effect for a period of time not less than fifteen (15) consecutive days and not to exceed 180 days in conjunction with or as the single event attracting one or more food vendors at a single building or address; and 3) a Mobile Food Permit or Catering Vehicle Permit shall expire on December 31st of each year.

Further, **Article IV, Section 4.09**, Permits - Non-transferable, is hereby amended so that said section shall be and read as follows:

Section 4.09 Permits - Non-transferable

Every permit issued under the provisions of this ordinance shall be nontransferable and nonrefundable. A Food Establishment, Temporary Food Establishment, Seasonal Food Establishment or Commissary Permit shall permit the operation of the establishment only at the location, for the type of food service, and for the permit holder for which granted.

Further, **Article IV, Section 4.11, Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle**, is hereby amended by the amendment of the **title** and the **section** so that said section shall be and read as follows:

Section 4.11 Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle

A. The Administrator or his designee may, without prior notice or hearing, suspend any permit granted under Section 4.02 of this ordinance to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle if the permit holder or person in charge does not comply with the requirements of this ordinance, or if the operation of the Food Establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by Section 4.15 of this ordinance. When a permit is suspended, food service operations shall immediately cease.

B. The regulatory authority may end the suspension at any time if reasons for suspension no longer exist.

C. Whenever a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle is required under the provisions of this section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time. During the time a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The Arlington Community Services Department."

Further, **Article IV, Section 4.12, Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle**, is hereby amended by the amendment of the **title** and the **section** so that said section shall be and read as follows:

Section 4.12 Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle

The Administrator or his designee may, after providing notice of opportunity for a hearing according to Section 4.15 of this ordinance, deny a permit to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary or Catering Vehicle, if the applicant for the permit does not comply with the requirements of this ordinance, or if the operation otherwise constitutes a substantial hazard to public health. Whenever a denial of a permit has become final, the applicant may make written application for a permit according to Section 4.05 of this ordinance.

Further, **Article IV, Section 4.13, Revocation of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Commissary, or Catering Vehicle,** is hereby amended by the amendment of the **title** so that said title shall be and read as follows:

Section 4.13 Revocation of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle

Further, **Article IV, Section 4.15, <u>Notice of Appeal; Hearing</u>**, Subsection (A), is hereby amended so that said subsection shall be and read as follows:

A. Upon denial, suspension, or revocation of a permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Commissary, or Catering Vehicle, the regulatory authority shall notify the applicant, permit holder, or person in charge, in writing, of the reason for which the permit is subject of denial, suspension, or revocation. The applicant, permit holder, or person in charge shall file a written request for a hearing with the Administrator or his designee within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial, suspension, or revocation is sustained.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective on October 1, 2010.

PRESENTED AND GIVEN FIRST READING on the 7th day of September, 2010, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 14th day of September, 2010, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

MARTHA GARCIA, Acting City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

Ordinance No. 11-049

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article XII, <u>On-Site Sewage Disposal</u>, by the amendment of the title and article relative to adopting on-site sewage facilities regulations to prevent injury or pollution to the public health; providing for a fine of up to $2,000 for each violation of this ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication and upon approval by the Texas Commission on Environmental Quality

WHEREAS, the Texas Commission on Environmental Quality, hereinafter referred to as Commission, has established Rules for on-site sewage facilities to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, the Legislature has enacted legislation, codified as Texas Health and Safety Code, Chapter 366, which authorizes a local government to regulate the use of on-site sewage facilities in its jurisdiction in order to abate or prevent pollution or injury to public health arising out of the use of on-site sewage facilities; and

WHEREAS, due notice was given of a public meeting to determine whether the City Council of Arlington, Texas, should enact an ordinance controlling or prohibiting the installation or use of on-site sewage facilities in the City of Arlington, Texas; and

WHEREAS, the City Council of Arlington, Texas, finds that the use of on-site sewage facilities in Arlington, Texas, is causing or may cause pollution, and is injuring or may injure the public health; and

WHEREAS, the City Council of Arlington, Texas, has considered the matter and deems it appropriate to enact an Ordinance adopting Rules regulating on-site sewage facilities to abate or prevent pollution, or injury to public health in Arlington, Texas; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the matters and facts recited in the preamble hereof are hereby found and determined to be true and correct.

2.

That the use of on-site sewage facilities in Arlington, Texas is causing or may cause pollution or is injuring or may injure the public health.

3.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article XII**, On-Site Sewage Disposal, so that the **title** and Article shall be and read as follows:

ARTICLE XII

ON-SITE SEWAGE FACILITIES

Section 12.01 Adopting Chapter 366, Texas Health and Safety Code

Chapter 366 of the Texas Health and Safety Code, as amended, is hereby adopted and designated together with all amendments, deletions and addenda hereinafter contained, the same as though it were copied at length herein.

The City of Arlington, Texas clearly understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, and will fully enforce Chapter 366 of the Texas Health and Safety Code and Chapters 7 and 37 of the Texas Water Code, and associated rules referenced in Section 12.04 of this Article.

Section 12.02 Area of Jurisdiction

The Rules shall apply to all the area lying within the incorporated limits of Arlington, Texas.

Section 12.03 On-Site Sewage Facility Rules

Any permit issued for an on-site sewage facility within the jurisdictional area of Arlington, Texas, must comply with the Rules adopted in Section 12.04 of this Ordinance.

Section 12.04 On-Site Sewage Facility Rules Adopted

The Rules, Title 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285, promulgated by the Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees of Arlington,

Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

Section 12.05 Incorporation By Reference

The Rules, 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules.

Section 12.06 Amendments

The City of Arlington, Texas, wishing to adopt more stringent Rules for its On-Site Sewage Facility Ordinance understands that the more stringent local Rule shall take precedence over the corresponding Texas Commission on Environmental Quality requirement. Listed below are the more stringent Rules adopted by Arlington, Texas:

A. All on-site sewage facilities must be permitted regardless of lot size; and

B. Real estate inspections of on-site sewage facilities necessary for mortgage financing approval shall be conducted by the City of Arlington, Texas.

Section 12.07 Development or Organized Disposal Systems

In order to implement the stated policy of the legislature and the Texas Commission on Environmental Quality to encourage the development and use of organized disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution, protect the public health, and maintain and enhance the quality of water in the state, the following requirements are made:

A. No person may cause or allow the installation of an on-site sewage facility when any part of the facility is located on property adjacent to an existing organized system, unless one of the following requirements has been met:

   1. The person has received a written denial of service from the owner or governing body of the organized disposal system; or

   2. The person has received a written determination from the designated representative that it is not feasible for the person to connect to the organized disposal system.

B. Whenever an organized disposal system is developed adjacent to a property served by any private sewage facility, that private sewage facility shall be connected to the organized system unless one of the requirements set forth in subsections A(1) or A(2) of this section has been met.

Section 12.08 Duties and Powers

Designated personnel of the City of Arlington, Texas, are herewith declared the designated representatives for the enforcement of these Rules within its jurisdictional area.

The appointed individual(s) must be approved and certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities of the designated representative of the City of Arlington, Texas. The designated representative duties and concomitant powers shall include the following:

1. To resolve any question regarding any interpretation of these Rules;

2. To enforce these Rules and to make appropriate recommendations to proper city officials when instances of noncompliance with these Rules have been determined;

3. To make statutorily mandated inspections of proposed, new and existing on-site sewage facilities;

4. To collect fees set by the authorized agent as necessary to recover the reasonable costs incurred in meeting the requirements of these Rules;

5. To make monthly reports to the authorized agent on all actions, including legal actions, taken concerning these Rules;

6. To investigate nuisance complaints within twenty-one (21) days of receipt. All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within thirty (30) days; and

7. To perform all other duties necessary to meet the requirements of these Rules.

Section 12.09 Collection of Fees

The various requirements for permits, installation, application, repairs, inspections, re-inspections and such administrative function of this Article shall require payment of fees submitted to the City of Arlington, Texas, in an amount set by resolution of the City Council. All fees collected shall be made payable to the City of Arlington, Texas. A fee of $10 will also be collected for each on-site sewage facility permit to be paid to the On-Site Wastewater Treatment Research Council as required by the Texas Health and Safety Code, Chapter 367. This fee may be amended from time to time by resolution of the City Council.

Section 12.10 License to Operate

Each new on-site sewage facility shall be inspected and approved by the designated representative prior to the final covering of the facility.

A. The applicant or registered installer shall notify the designated representative that an inspection is desired at least five (5) working days prior to the need for inspection.

B. The applicant or registered installer shall provide whatever reasonable assistance the designated representative requests in order to make the inspection.

C. The applicant or registered installer must be present at the time of the inspection for that facility.

Section 12.11 Appeals

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the Appeal Officer designated by the City Manager to hear such appeals.

Section 12.12 Enforcement Plan

The City of Arlington, Texas, clearly understands that, at a minimum, it must follow the requirements in 30 Texas Administrative Code § 285.71 Authorized Agent Enforcement of On-Site Sewage Facilities. This Ordinance adopts and incorporates all applicable provisions related to on-site sewage facilities, which includes, but is not limited to those found in Chapters 341 and 366 of the Texas Health and Safety Code, Chapters 7, 26, and 37 of the Texas Water Code and 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285.

Further, the designated representative may routinely inspect on-site sewage facilities to assure continued compliance with these Rules.

The designated representative shall inspect any on-site system that is believed to be causing pollution, a threat to the public health, nuisance conditions, or illegally installed or altered. If upon inspection it is found that any of these conditions exist, the owner of the on-site sewage facility will be notified in writing of the violation and what must be done to achieve compliance, and provide a reasonable amount of time to comply. The on-site sewage facility shall be re-inspected at the expiration of the allotted time.

A. If the facility is found to be compliant, a license may be issued or the existing license may be modified.

B. If the facility is found to be noncompliant, appropriate enforcement shall be taken.

Section 12.13 Penalties

The City of Arlington, Texas, adopts the criminal, injunction or civil suit, and civil penalty provisions as set forth in Chapters 366 and 341 of the Texas Health and Safety Code, Chapters 7, 26 and 37 of the Texas Water Code and 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285. Each day of a continuing violation is a separate offense and is punishable as such. The penalties shall include, but are not limited to the following penalties.

A. Criminal Penalties

1. A person commits an offense if a person operates as an installer unless the person is registered by the state.

2. A person commits an offense if the person violates a rule adopted by the Texas Commission on Environmental Quality under this chapter or an order or resolution adopted by an authorized agent under Section 366.0515 of the Texas Health and Safety Code.

3. A person commits an offense if the person begins to construct, alter, extend or repair an on-site sewage facility owned by another person before the owner of the system obtains a permit to install, construct, alter, extend or repair the on-site system as required.

4. An emergency repair to an on-site sewage facility without a permit is not an offense under the Rules if such repairs meet the criteria of Section 12.14.

5. An offense under this section is a Class C misdemeanor unless it is shown in the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is punishable under the provisions of state law.

6. Each day that a violation occurs constitutes a separate offense.

7. A person commits an offense if the person violates the provisions of this Section regarding nuisances.

    a. A public health nuisance is sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons.

        (1) An offense under this section is a misdemeanor punishable by a fine of not less than $10.00 or more than $200.00.

(2) If the Defendant has previously been convicted of an offense under this Chapter, the offense is punishable under the provisions of State law.

B. Injunction or Civil Suit

1. The Administrator may, in partnership with the Texas Commission on Environmental Quality, request the Attorney General to bring a civil suit, if it appears that a person has violated, is violating, or is threatening to violate any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit or other order of the Commission issued pursuant to Chapter 366, Texas Health and Safety Code for:

   a. mandatory or prohibitory injunctive relief, as warranted by the facts;

   b. a civil penalty as provided by Chapter 366, Texas Health and Safety Code; or

   c. both injunctive relief and civil penalty.

C. Civil Penalty

The authorized agent may request that the Texas Commission on Environmental Quality initiate an enforcement action pursuant to these sections through a petition filed with the Commission. If the Commission initiates an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of the enforcement action.

D. Fees and Costs Recoverable

If an authorized agent or the state prevails in a suit pursuant to Subchapter F of Chapter 366 of the Texas Health and Safety Code, it may recover reasonable attorney's fees, court costs and reasonable investigative costs incurred in relation the proceeding.

Section 12.14 Emergency Repair

An emergency repair to an on-site sewage facility without a permit is not an offense under these Rules if the following procedures are carried out:

A. The repair is made for the purpose of abatement of an immediate, dangerous and serious health hazard;

B. That said repair does meet minimum state design criteria;

C. That said repair does not constitute an alteration of the on-site system;

D. That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent within seventy-two (72) hours of the date of the repair; and

E. That said repair must be inspected for compliance with the state's design criteria.

Section 12.15 Relinquishment of Ordinance

If the City Council of Arlington, Texas, decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the City Council shall follow the procedures outlined in 30 Texas Administrative Code § 285.10 (d)(1) through 4.

After relinquishing its on-site sewage facility authority, the authorized agent understands that it may be subject to charge-back fees in accordance with Texas Administrative Code § 285.10 (d)(5) and § 285.14 after the date that delegation has been relinquished.

Section 12.16 Severability

It is hereby declared to be the intention of the City Council of Arlington, Texas, 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 should 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, or sections of this Ordinance, since the same would have been enacted by the City Council without incorporation in this Ordinance of such unconstitutional phrases, clause, sentence, paragraph, or section.

Section 12.17 Effective Date

This Ordinance shall be in full force and effect from and after its date of approval as required by law and upon the approval of the Texas Commission on Environmental Quality.

4.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

5.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

6.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

7.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

8.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

9.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

10.

This ordinance shall become effective ten (10) days after first publication as described above and upon the approval of the Texas Commission on Environmental Quality.

PRESENTED AND GIVEN FIRST READING on the 16th day of August, 2011, at a regular meeting of the City Council of the City of Arlington, Texas; and

GIVEN SECOND READING, passed and approved on the 13th day of September, 2011, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

Ordinance No. 15-056

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article I, Definitions, Section 1.01, Definitions, by the addition of the definitions of "Recycle", "Recyclable Materials, Recyclables or Recycling" and "Reusable Recycling Container"; and the amendment of Article II, Garbage and Trash, by the addition of Section 2.02.01, Residential Storage of Reusable Recycling Containers; providing this ordinance be cumulative; providing for severability, governmental immunity and publication; and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "**Health and Sanitation**" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article I**, Definitions, **Section 1.01**, Definitions, by the addition of the definitions of "Recycle", "Recyclable Materials, Recyclables or Recycling" and "Reusable Recycling Container", so that hereafter said definitions shall read as follows:

Recycle - The process of collecting, sorting, cleansing, treating, and reconstituting trash for reuse or to gain reusable material for the manufacture of a new product.

Recyclable Materials, Recyclables or Recycling - Shall mean all trash susceptible of being recycled, including, without limitation: newsprint; cardboard; chipboard; paper; magazines; aluminum beverage containers; steel tin cans; clear, brown and green glass; plastics (excluding Styrofoam); and such other materials as may be designated by the Administrator.

Reusable Recycling Container – A container supplied to a customer by the City for residential use and which remains the property of the City of Arlington, the Collector, or as otherwise specified in the contract between the City and the Collector entered into under this Article. Such container is assigned to a specific address, and may be removed from the assigned address only by the Administrator or his/her designee.

Further, **Article II**, Garbage and Trash, is hereby amended through the **addition** of **Section 2.02.01**, Residential Storage of Reusable Recycling Containers, so that hereafter said Section shall read as follows:

Section 2.02.01 **Residential Storage of Reusable Recycling Containers**

A. When not placed at the curb for collection during the permitted times for scheduled collection under this Article, reusable recycling containers shall be stored so as not to be visible from the public street or right-of-way in front of the customer's residential premises. A violation of this section is not a criminal offense.

1. Upon the occurrence of three (3) separate violations of this section at least ten (10) days apart within a period of six months, and after sending a written warning by certified mail, return receipt requested, to the customer for each violation, the Administrator or his/her designee may, after the third such written warning, remove a reusable recycling container if the violation of this section is not corrected on or before the tenth (10th) day after the date that the customer receives the third written warning. The customer is deemed to have received any such warnings three (3) days after the date mailed.

2. Upon request by the customer and payment of a fee in an amount set by resolution of the City Council, the reusable recycling container will be returned to the customer's residential premises. Such request and payment shall constitute a waiver of an administrative review.

3. Removal of the reusable recycling container shall not entitle the customer to a reduction or refund of any portion of the charges associated with the collection of recyclables authorized by this Article or other ordinance or resolution.

B. A customer whose assigned reusable recycling container has been removed may appeal the removal.

1. An appeal may be perfected by making, on or before the expiration of ten (10) days after the removal, a written request to the Administrator for an administrative review. The Administrator or his/her designee shall complete the administrative review on or before the expiration of ten (10) days after receipt of the written request.

2. The Administrator may establish procedures consistent with this section for the administrative review as well as the conditions under which a reusable recycling container may be returned.

3. The reusable recycling container will be returned to the customer's residential premises without payment of a fee upon a finding by the Administrator or his/her designee that:

a. the customer was not responsible for one or more of the violations,

b. one or more of the violations did not occur,

c. the customer had no reasonable alternative to the storage location of the reusable recycling container that would comply with this section, or

d. no person living at the residential premises was physically able, by reason of bodily condition or disability, to comply with this section.

4. If the Administrator or his/her designee does not find that the customer meets the requirements under this section to have the reusable recycling container returned without payment of a fee, the reusable recycling container will be returned to the customer's residential premises upon request by the customer and payment of a fee in an amount set by resolution of the City Council.

2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

6.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 27th day of October, 2015, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 10th day of November, 2015, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY

Ordinance No. 17-015

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article XII, On-Site Sewage Facilities, by the amendment of the article relative to adopting on-site sewage facilities regulations to prevent injury or pollution to the public health; providing for a fine of up to $2,000 for each violation of this ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication and upon approval by the Texas Commission on Environmental Quality

WHEREAS, the Texas Commission on Environmental Quality, hereinafter referred to as Commission, has established Rules for on-site sewage facilities to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, the Legislature has enacted legislation, codified as Texas Health and Safety Code, Chapter 366, which authorizes a local government to regulate the use of on-site sewage facilities in its jurisdiction in order to abate or prevent pollution or injury to public health arising out of the use of on-site sewage facilities; and

WHEREAS, due notice was given of a public meeting to determine whether the City Council of Arlington, Texas, should enact an ordinance controlling or prohibiting the installation or use of on-site sewage facilities in the City of Arlington, Texas; and

WHEREAS, the City Council of Arlington, Texas, finds that the use of on-site sewage facilities in Arlington, Texas, is causing or may cause pollution, and is injuring or may injure the public health; and

WHEREAS, the City Council of Arlington, Texas, has considered the matter and deems it appropriate to enact an Ordinance adopting Rules regulating on-site sewage facilities to abate or prevent pollution, or injury to public health in Arlington, Texas; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the matters and facts recited in the preamble hereof are hereby found and determined to be true and correct.

2.

That the use of on-site sewage facilities in Arlington, Texas is causing or may cause pollution or is injuring or may injure the public health.

3.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article XII**, On-Site Sewage Facilities, so that the Article shall be and read as follows:

ARTICLE XII

ON-SITE SEWAGE FACILITIES

Section 12.01 Adopting Chapter 366, Texas Health and Safety Code

Chapter 366 of the Texas Health and Safety Code, as amended, is hereby adopted and designated together with all amendments, deletions and addenda hereinafter contained, the same as though it were copied at length herein.

The City of Arlington, Texas clearly understands that there are technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, and will fully enforce Chapter 366 of the Texas Health and Safety Code and Chapters 7 and 37 of the Texas Water Code, and associated rules referenced in Section 12.04 of this Article.

Section 12.02 Area of Jurisdiction

The Rules shall apply to all the area lying within the incorporated limits of Arlington, Texas.

Section 12.03 On-Site Sewage Facility Rules

Any permit issued for an on-site sewage facility within the jurisdictional area of Arlington, Texas, must comply with the Rules adopted in Section 12.04 of this Ordinance.

Section 12.04 On-Site Sewage Facility Rules Adopted

The Rules, Title 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285, as amended, promulgated by the Texas Commission on Environmental Quality for on-site sewage facilities are hereby adopted, and all officials and employees

of Arlington, Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

Section 12.05 Incorporation By Reference

The Rules, 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285 and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules.

Section 12.06 Amendments

The City of Arlington, Texas, wishing to adopt more stringent Rules for its On-Site Sewage Facility Ordinance understands that the more stringent local Rule shall take precedence over the corresponding Texas Commission on Environmental Quality requirement. Listed below are the more stringent Rules adopted by Arlington, Texas:

A. All on-site sewage facilities must be permitted regardless of lot size; and

B. Real estate inspections of on-site sewage facilities necessary for mortgage financing approval may be conducted by the City of Arlington, Texas, upon request.

Section 12.07 Development or Organized Disposal Systems

In order to implement the stated policy of the legislature and the Texas Commission on Environmental Quality to encourage the development and use of organized disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution, protect the public health, and maintain and enhance the quality of water in the state, installation of an on-site sewage facility will only be allowed if the property owner has received written authorization from the designated representative for the City and has obtained a permit in accordance with Section 12.10. Such authorization will only be granted if the designated representative of the City determines that connection to the City sanitary sewer system is not feasible, including when the property does not abut a street, alley, or other public right of way in which sufficient line of the sanitary sewer system of the City exists.

Section 12.08 Duties and Powers

Designated personnel of the City of Arlington, Texas, are herewith declared the designated representatives for the enforcement of these Rules within its jurisdictional area.

The appointed individual(s) must be approved and certified by the Texas Commission on Environmental Quality before assuming the duties and responsibilities of

the designated representative of the City of Arlington, Texas. The designated representative duties and concomitant powers shall include the following:

1. To resolve any question regarding any interpretation of these Rules;

2. To enforce these Rules and to make appropriate recommendations to proper city officials when instances of noncompliance with these Rules have been determined;

3. To make statutorily mandated inspections of proposed, new and existing on-site sewage facilities;

4. To collect fees set by the authorized agent as necessary to recover the reasonable costs incurred in meeting the requirements of these Rules;

5. To make monthly reports to the authorized agent on all actions, including legal actions, taken concerning these Rules;

6. To investigate nuisance complaints within twenty-one (21) days of receipt. All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within thirty (30) days; and

7. To adopt policies and procedures consistent with this Article and state law necessary to perform all required duties and for the administration of this Article; and

8. To perform all other duties necessary to meet the requirements of these Rules.

Section 12.09 <u>Collection of Fees</u>

The various requirements for permits, installation, application, repairs, inspections, re-inspections and such administrative function of this Article shall require payment of fees submitted to the City of Arlington, Texas, in an amount set by resolution of the City Council. All fees collected shall be made payable to the City of Arlington, Texas. A fee of $10 will also be collected for each on-site sewage facility permit to be paid to the On-Site Wastewater Treatment Research Council as required by the Texas Health and Safety Code, Chapter 367, as amended.

Section 12.10 <u>Permit Requirements</u>

A. Texas Health and Safety Code, Chapter 366, Subchapter D, as amended, describes permit requirements for on-site sewage facilities, including but not limited to: the application process, inspections, approval and disapproval of applications, and issuance of permits.

B. A person must hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage facility or on-site sewage disposal system, in accordance with Texas Health and Safety Code § 366.051, as amended. The designated representative has the authority to approve or disapprove applications for permits as well as to revoke permits as provided by this Article and other applicable law.

C. If the designated representative approves a permit, each new on-site sewage facility shall be inspected and approved by the designated representative prior to the final covering of the facility.

1. The applicant or registered installer shall notify the designated representative that an inspection is desired at least five (5) working days prior to the need for inspection.

2. The applicant or registered installer shall provide whatever reasonable assistance the designated representative requests in order to make the inspection.

3. The applicant or registered installer must be present at the time of the inspection for that facility.

Section 12.11 <u>Appeals</u>

A. Persons may appeal an action or decision of the designated representative to the Appeal Officer designated by the City Manager to hear such appeals.

B. The designated representative shall provide written notice to the property owner of decisions involving an on-site sewage facility, including but not limited to decisions disapproving or revoking a permit as well as decisions requiring the owner to connect the property to the City sanitary sewer system or repair or replace an on-site sewage facility. The owner may appeal a decision of the designated representative by filing a written request for a hearing with the Appeal Officer before the expiration of seven (7) days from the date that the notice was provided.

C. If the Appeal Officer timely receives a request for a hearing under this Section, the Appeal Officer will schedule a hearing within fifteen (15) days unless the parties agree to a certain date beyond fifteen (15) days.

D. At the hearing, upon reviewing any relevant evidence from the owner and the City, the Appeal Officer will determine by a preponderance of the evidence whether sufficient grounds exist to affirm the decision of the designated representative. In making a determination, the Appeal Officer may consider: the seriousness of the violations at the property or the current condition of the property, the history of previous violations at the property, the health and safety

of the community as well as persons living at adjacent and nearby properties, and any other relevant facts or evidence that the Appeal Officer may find helpful in making a determination.

E. After the hearing has concluded, the Appeal Officer will enter an order either affirming, overturning, or modifying the decision of the designated representative, and will provide written notice of the order to the owner and the designated representative.

F. The Appeal Officer may adopt policies and procedures consistent with this Article to conduct appeals of decisions of the designated representative.

Section 12.12 <u>Enforcement Plan</u>

A. The City of Arlington, Texas, clearly understands that, at a minimum, it must follow the requirements in 30 Texas Administrative Code § 285.71 Authorized Agent Enforcement of On-Site Sewage Facilities, as amended. This Ordinance adopts and incorporates all applicable provisions related to on-site sewage facilities, which includes, but is not limited to those found in Chapters 341 and 366 of the Texas Health and Safety Code, Chapters 7, 26, and 37 of the Texas Water Code and 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285, as amended.

B. The designated representative shall conduct an inspection of any on-site sewage facility or septic system when any of the following conditions exist:

1. The designated representative has reason to believe that:

   a. the on-site sewage facility was installed or is being operated without a permit or otherwise in violation of this Chapter or other applicable law;

   b. the on-site sewage facility is causing pollution or is creating a public health threat or nuisance condition; or

   c. construction or plumbing work was performed on the on-site sewage facility resulting in additional wastewater load being placed on the system; or

2. An application is made for building or plumbing permits at the property showing that the proposed construction or plumbing work will result in additional wastewater load being placed on the system.

C. The designated representative may revoke a permit and the owner must comply with the requirements of Subsection (D) if the on-site sewage facility:

1. Ceases to function as designed; or

2. Poses an environmental hazard or constitutes a nuisance to public health.

D. If any of the conditions under Subsection (C) occur and the permit is revoked, the designated representative will provide the owner of the on-site sewage facility with written notice of the permit revocation and that the owner must complete one of the following requirements within 60 days of the written notice.

1. If the property abuts any street, alley, or other public right of way in which any sufficient line of the sanitary sewer system of the City exists, the property must connect to the City sanitary sewer system.

2. If the property does not abut a street, alley, or other public right of way in which sufficient line of the sanitary sewer system of the City exists, the on-site sewage facility may instead be repaired or replaced upon written authorization from the designated representative for the City.

E. Upon request of the owner or permittee and in consideration of actual or potential environmental hazards or nuisances to public health, the designated representative may approve or deny extensions of time to comply with Subsection (D).

F. If the designated representative grants authorization for repair or replacement of the on-site sewage facility under Subsection (D)(2), the designated representative shall conduct an inspection upon completion of the work to verify compliance. If the facility is found to be compliant with all applicable laws, rules, and regulations, a permit may be issued or the existing permit may be modified.

G. A person commits an offense if the person:

1. owns or maintains a property with an on-site sewage facility where any of the conditions of Subsection (C) have occurred; and

2. fails to connect to the City sanitary sewer system or repair or replace the on-site sewage facility as provided by Subsection (D).

Section 12.13 <u>Penalties</u>

The City of Arlington, Texas, adopts the criminal, injunction or civil suit, and civil penalty provisions as set forth in Chapters 366 and 341 of the Texas Health and Safety Code, Chapters 7, 26 and 37 of the Texas Water Code and 30 Texas Administrative Code Chapter 30, Subchapters A and G, and Chapter 285, as amended. Each day of a continuing violation is a separate offense and is punishable as such. The penalties shall include, but are not limited to the following penalties.

A. Criminal Penalties

1. A person commits an offense if a person operates as an installer unless the person is registered by the state.

2. A person commits an offense if the person violates a rule adopted by the Texas Commission on Environmental Quality under this chapter or an order or resolution adopted by an authorized agent under Section 366.0515 of the Texas Health and Safety Code, as amended.

3. A person commits an offense if the person begins to construct, alter, extend or repair an on-site sewage facility owned by another person before the owner of the system obtains a permit to install, construct, alter, extend or repair the on-site system as required.

4. An emergency repair to an on-site sewage facility without a permit is not an offense under the Rules if such repairs meet the criteria of Section 12.14.

5. An offense under this section is a Class C misdemeanor unless it is shown in the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is punishable under the provisions of state law.

6. Each day that a violation occurs constitutes a separate offense.

7. A person commits an offense if the person owns or maintains a property where there exists a nuisance described by this Subsection. A public health nuisance is sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons.

   a. An offense under this Subsection is a misdemeanor punishable by a fine of not less than $10.00 or more than $200.00.

   b. If the Defendant has previously been convicted of an offense under this Subsection, the offense is punishable under the provisions of State law.

B. Injunction or Civil Suit

1. The Administrator may, in partnership with the Texas Commission on Environmental Quality, request the Attorney General to bring a civil suit, if it appears that a person has violated, is violating, or is threatening to violate any provision of Chapter 366, Texas Health and Safety Code, or

any rule, permit or other order of the Commission issued pursuant to Chapter 366, Texas Health and Safety Code for:

a. mandatory or prohibitory injunctive relief, as warranted by the facts;

b. a civil penalty as provided by Chapter 366, Texas Health and Safety Code; or

c. both injunctive relief and civil penalty.

C. Civil Penalty

The authorized agent may request that the Texas Commission on Environmental Quality initiate an enforcement action pursuant to these sections through a petition filed with the Commission. If the Commission initiates an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of the enforcement action.

D. Fees and Costs Recoverable

If an authorized agent or the state prevails in a suit pursuant to Subchapter F of Chapter 366 of the Texas Health and Safety Code, as amended, it may recover reasonable attorney's fees, court costs and reasonable investigative costs incurred in relation the proceeding.

Section 12.14 Emergency Repair

An emergency repair to an on-site sewage facility without a permit is not an offense under these Rules if the following procedures are carried out:

A. The repair is made for the purpose of abatement of an immediate, dangerous and serious health hazard;

B. That said repair does meet minimum state design criteria;

C. That said repair does not constitute an alteration of the on-site system;

D. That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent within seventy-two (72) hours of the date of the repair; and

E. That said repair must be inspected for compliance with the state's design criteria.

Section 12.15 Relinquishment of Ordinance

If the City Council of Arlington, Texas, decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the City Council shall follow the procedures outlined in 30 Texas Administrative Code § 285.10 (d)(1) through (4), as amended.

After relinquishing its on-site sewage facility authority, the authorized agent understands that it may be subject to charge-back fees in accordance with 30 Texas Administrative Code § 285.10 (d)(5) and § 285.14, as amended, after the date that delegation has been relinquished.

Section 12.16 Severability

It is hereby declared to be the intention of the City Council of Arlington, Texas, 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 should 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, or sections of this Ordinance, since the same would have been enacted by the City Council without incorporation in this Ordinance of such unconstitutional phrases, clause, sentence, paragraph, or section.

Section 12.17 Effective Date

This Ordinance shall be in full force and effect from and after its date of approval as required by law and upon the approval of the Texas Commission on Environmental Quality.

4.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

5.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

6.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

7.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

8.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

9.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

10.

This ordinance shall become effective ten (10) days after first publication as described above and upon the approval of the Texas Commission on Environmental Quality.

PRESENTED AND GIVEN FIRST READING on the 28th day of February, 2017, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 7th day of March, 2017, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY_____

Ordinance No. 17-024

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article X, Regulation of Smoking; providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article X**, Regulation of Smoking, so that hereafter said Article shall be and read as follows:

ARTICLE X

REGULATION OF SMOKING

Section 10.01 Definitions

The following words and terms when used in this article shall have the meanings respectively ascribed to them in this section:

"Bar" shall mean any establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A "bar" includes those facilities located within a hotel, motel or other similar transient occupancy establishment.

"Bingo parlor" shall mean a facility regulated under V.T.C.A., Occupations Code §2001.001 et seq. - "Bingo Enabling Act", as amended, that does not allow persons under the age of eighteen (18) years to enter the facility; does not employ persons under the age of eighteen (18) years; does not share a heating/ventilation/air conditioning system with another establishment in which smoking is prohibited; and does not open into any other establishment in which smoking is prohibited under this Article.

"Condominium" shall mean a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions.

Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

"Conveyance" shall mean public transportation facilities or a vehicle for the moving of persons from one place to another where smoking is prohibited by this Article.

"Eating establishment" shall mean any operation engaged in the preparation of food which gives food or offers food for sale to the public, guests or employees.

"Employee" shall mean any person who is employed by any employer for direct or indirect monetary wages or profit.

"Employer" shall mean any person who employs the services of an individual person or any person in control of the workplace.

"Enclosed" shall mean closed in by a roof and walls with appropriate openings for ingress and egress.

"Fraternal Organization" shall mean an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501, as amended.

"Health care facility" shall mean any ambulatory surgical center, rehabilitation center, or minor emergency treatment facility.

"Nursing Home" shall mean a facility or area furnishing food and shelter in single or multiple facilities to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment. In addition, the facility provides minor treatment under the direction and supervision of a physician, or provides a service which meets some need beyond the basic provision of food, shelter and laundry.

"Park" shall mean any land selected, obtained, or acquired by the City for use as a public park, or recreation or playground area, and any building or facility thereon, owned and maintained by the City as a public park, or recreation or playground area, whether or not such areas have been formally dedicated to such purpose

"Place of Employment" shall mean any area under the control of a public or private employer which employees may frequent during the course of employment, including, but not limited to, private offices, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, hallways, enclosed portions of construction sites, temporary offices and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

"Public Place" shall mean any enclosed area to which the public or a substantial group of the public is invited or in which the public or a substantial group of the public is permitted or is a place of employment. For purposes of this section, the term "public place" includes but is not limited to: retail or service establishments; offices; professional, commercial or financial establishments; public and private institutions of education; eating establishments; hospitals; health care facilities; nursing homes; residential treatment facilities; child care facilities; bars; nightclubs; sexually oriented businesses, billiard halls, bowling centers, buildings owned or occupied by political subdivisions; public transportation facilities and vehicles; reception areas; elevators, libraries, museums, theaters and waiting rooms. For purposes of this section, a "public place" does not include a private residence or a bingo parlor as defined by this Section.

"Retail or service establishment" shall mean any establishment which sells goods or services to the general public.

"Smoke" shall mean the gases, particles or vapors released into the air as a result of combustion from any tobacco product.

"Smoker's lounge" shall mean any facility that is attached to a retail tobacco shop for the purpose of enjoyment of tobacco products purchased from the attached tobacco shop.

"Smoking" shall mean engaging in an act that generates smoke as a result of the combustion of any tobacco product.

"Stand Alone Tobacco Shop" shall mean a tobacco shop that is housed in a facility that shares no common mechanical equipment systems or physical properties such as walls, ceilings, or hallways with any other establishment, occupancy or use.

"Tobacco product" shall mean a cigarette, cheroot, stooge, cigar, snuff, smoking tobacco, chewing tobacco and any article or product made of tobacco or a non-electronic tobacco substitute.

"Tobacco shop" shall mean a retail establishment whose annual gross revenues from the sale of tobacco products and smoking accessories are at least fifty percent (50%).

Section 10.02 <u>Smoking Prohibited - Public Places</u>

A. Smoking is prohibited in all enclosed public places.

B. Smoking is prohibited in the following non-enclosed public places:

1. Grounds of a hospital, health care facility or nursing home;

2. Any portion of any publicly or privately owned unenclosed area to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;

3. Any seating area of any publicly or privately owned outdoor athletic facility having an overall fixed seating capacity of at least six hundred (600) people and used for the purpose of viewing a single athletic field;

4. Any designated seating area of any publicly or privately owned outdoor theater or amphitheater having an overall fixed or temporary seating capacity of at least five thousand (5,000) people or more and used for the purpose of viewing live performances;

5. Any common area of a multi-family development;

6. Within fifteen (15) feet of the primary outside entrance of a bar, nightclub, sexually oriented business, billiard hall or bowling center;

7. Within fifty (50) feet of outside entrances, operable windows, or ventilation systems of enclosed areas not described by Subsection (B)(6) above where smoking is prohibited by this Article, so as to ensure that smoke does not enter those areas;

8. the following areas of a park:

   a. while seated in or within fifty (50) feet of a dugout or bleacher provided for spectators at outdoor athletic events;

   b. a park playground or within fifty (50) feet of a park playground;

   c. in plaza areas at athletic complexes or within fifty (50) feet of such area;

   d. in a park restroom or within fifty (50) feet of such restroom; or

   e. within the fenced areas at a swimming pool or within fifty (50) feet of such area; and

C. Affirmative Defenses.

1. It is an affirmative defense to prosecution under Subsection (B)(1) that the smoking occurred on the grounds of a nursing home in an outdoor area, that may be enclosed by fixed walls, which has been designated by the owner, manager, or operator or other person having control of such area, as a smoking area. Said designated smoking area must be at least fifty feet from outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article.

2. It is an affirmative defense to prosecution under Subsection (B)(4) that the smoking occurred in an unenclosed common area which has been designated by the owner, manager, or operator or other person having control of such areas, as a smoking area.

3. It is an affirmative defense to prosecution under Subsection (B)(5) if the multi-unit development is owner occupied condominiums.

4. It is an affirmative defense to prosecution under Subsection (A) that the smoking occurred in a fraternal organization unless the smoking occurred in an area that has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area.

5. It is an affirmative defense to prosecution under this Section that the public place within which the offense occurred did not have prominently displayed a notice that smoking was prohibited.

6. It is an affirmative defense to prosecution under Subsection (B)(6) that facilities for the extinguishment of smoking materials were not located within fifteen feet (15') of the primary entrance of an establishment described by Subsection (B)(6).

7. It is an affirmative defense to prosecution under Subsection (B)(7) that facilities for the extinguishment of smoking materials were not located within the conveyance or within fifty feet (50') of the public entrances to the place or establishment.

8. It is an affirmative defense to prosecution under Subsections (B)(3) and (B)(4) that the offense occurred in an open concourse designated as a smoking area by the owner, operator or person in control of the outdoor athletic facility, theater or amphitheater.

9. It is an affirmative defense to prosecution under Subsection (A) that the smoking occurred in:

a. a smoker's lounge attached to a tobacco shop that meets the requirements of Subsection (D)(1);

b. a stand alone tobacco shop that meets the requirements of Subsection (E)(1); or

c. a tobacco shop that meets the requirements of Subsection (E)(2)(a).

10. It is an affirmative defense to prosecution under Subsection (A) that the smoking occurred in a bingo parlor as defined by Section 10.01.

D. Smoker's Lounges Attached to Tobacco Shops.

1. Smoker's lounges attached to tobacco shops shall meet all of the following requirements:

a. The smoker's lounge shall not allow or employ persons under the age of eighteen (18). Signs shall be conspicuously posted at all entrances of the smoker's lounge which state: "**No One Under Age 18 Allowed.**"

b. Signs shall be conspicuously posted at all entrances to the tobacco shop noting that smoking is prohibited within the tobacco shop in accordance with Section 10.03(A).

c. The smoker's lounge shall have separate entrances, exits and restroom facilities from the attached tobacco shop.

d. The smoker's lounge shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.

e. The smoker's lounge must have a separate heating and cooling system from the tobacco shop and any other establishment, occupancy or use where smoking is prohibited.

f. The smoker's lounge shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the smoker's lounge to migrate into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited.

2. Ventilation Systems.

a. The ventilation system may be tested by the City to verify that the system removes visual smoke at a rate of four (4) times per hour and that air from the smoker's lounge is not allowed or drawn into the tobacco shop or any other establishment where smoking is prohibited.

b. The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.

3. Operation of Smoker's Lounges and Nonsmoking Designation.

a. The Administrator may deny the opportunity to operate a smoker's lounge upon a finding that:

(1) Smoke is migrating from the smoker's lounge into the tobacco shop or any other establishment, occupancy or use where smoking is prohibited; or

(2) The smoker's lounge has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

b. Upon such a finding, the smoker's lounge shall be deemed to be nonsmoking until successfully tested.

4. Offenses.

a. The owner, manager or operator of a tobacco shop commits an offense if he or she allows smoking in an area deemed to be nonsmoking by the Administrator.

b. The owner, manager or operator of a tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this Section.

E. Tobacco Shops.

1. Stand Alone Tobacco Shops. Stand alone tobacco shops shall meet all of the following requirements:

a. The stand alone tobacco shop shall not allow or employ persons under the age of eighteen (18).

b. Signs shall be conspicuously posted at all entrances of the stand alone tobacco shop which state: "**No One Under Age 18 Allowed.**"

2. Other Tobacco Shops.

a. Other tobacco shops not described by Subsection (E)(1) shall meet all of the following requirements:

(1) The tobacco shop shall not allow or employ persons under the age of eighteen (18).

(2) Signs shall be conspicuously posted at all entrances of the tobacco shop which state: "**No One Under Age 18 Allowed.**"

(3) The tobacco shop shall be enclosed from floor to roof by solid walls and shall have no voids or penetrations allowing air from the tobacco shop to migrate into any other establishment, occupancy or use where smoking is prohibited.

(4) The tobacco shop must have a separate heating and cooling system from any other establishment, occupancy or use where smoking is prohibited.

(5) The tobacco shop shall have a ventilation system which provides a complete air change every fifteen (15) minutes and shall exhaust the air to the exterior of the building and shall not allow air from the tobacco shop to migrate into any other establishment, occupancy or use where smoking is prohibited.

b. Ventilation Systems.

(1) The ventilation system may be tested by the City to verify that the system removes visual smoke at a rate of four (4) times per hour and that air from the tobacco shop is not allowed or drawn into any other establishment where smoking is prohibited.

(2) The owner shall be required to pass additional tests in the future, as determined by the Administrator, if the adequacy of the system appears to fail to meet the objectives of the ordinance.

c. Nonsmoking Designation.

(1) The Administrator may deem the tobacco shop nonsmoking upon a finding that:

(a) Smoke is migrating from the tobacco shop into any other establishment, occupancy or use where smoking is prohibited; or

(b) The tobacco shop has failed to meet any of the standards set forth in this section or tests prescribed by the Administrator.

(2) Upon such a finding, the tobacco shop shall be deemed to be nonsmoking until successfully tested.

d. Offenses.

(1) The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she allows smoking in an area deemed to be nonsmoking by the Administrator.

(2) The owner, manager or operator of a tobacco shop or stand alone tobacco shop commits an offense if he or she designates or maintains a smoking area in violation of this section.

F. Globe Life Park in Arlington. Smoking at the Globe Life Park in Arlington is allowed only at designated areas near the outer perimeter of the first level and upper concourse. When food kiosks are located in the smoking areas, smoking is prohibited in the kiosk line and within fifty (50) feet of the food kiosk. Signage must indicate that smoking is not permitted in a kiosk line or within fifty (50) feet of the food kiosk.

Section 10.03 Posting of Signs, Placing of Receptacles and Public Address System Announcement Required

A. Signs. A place or conveyance regulated by Section 10.02 that is required to be totally nonsmoking, shall have signs conspicuously posted at all entrances which state: **"No Smoking - City Ordinance."** Such "No Smoking" signs shall have bold lettering of not less than one inch in height.

B. Receptacles. A place or establishment, other than an establishment described by Subsection 10.02(B)(6), regulated by Section 10.02 which is partially or totally

nonsmoking, shall have facilities for the extinguishment of smoking materials located within fifty feet (50') of all entrances and within all designated smoking areas. A bar, nightclub, sexually oriented business, billiard hall or bowling center shall have facilities for the extinguishment of smoking materials located within fifteen feet (15') of all entrances. A conveyance regulated by Section 10.02 shall have facilities for the extinguishment of smoking materials within the conveyance.

C. Public Address System Announcement. In those outdoor athletic facilities, theaters and amphitheaters where a public address system is used, the owner, operator or person in control of an outdoor athletic facility, theater or amphitheater shall announce prior to each game or performance the prohibition of smoking in seating areas.

D. Offenses.

1. The owner, manager or operator of a place, conveyance or establishment commits an offense if he or she fails to post signs and provide extinguishment facilities as required by this section.

2. The owner, manager or operator of a place, conveyance or establishment commits an offense if he or she places or maintains facilities for the extinguishment of smoking materials in public areas other than as provided for in Subsection (B).

3. The owner, manager or operator of an outdoor athletic facility, theater or amphitheater where a public address system is used, commits an offense if he or she operates such a facility without announcing or causing to be announced prior to each game or performance the prohibition of smoking in seating areas.

Section 10.04 Regulation of Smoking – Place of Employment

It shall be the responsibility of employers to provide a smoke-free workplace for all employees. Each Employer having any enclosed place of employment located within the City shall make known to employees that smoking shall be prohibited in all enclosed areas within the place of employment. This Section does not negate the affirmative defenses provided in Section 10.02.

Section 10.05 Penalty For Violation

A. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this Article commits an offense, and upon conviction thereof, shall be fined an amount:

1. not less than Twenty-five and No/100 Dollars ($25.00) nor more than Two Hundred and No/100 Dollars ($200.00);

2. not less than Fifty and No/100 Dollars ($50.00) nor more than Five Hundred and No/100 Dollars ($500.00) if the person has been previously convicted one time for an offense under this Article; and

3. not less than One Hundred and No/100 Dollars ($100.00) nor more than Two Thousand and No/100 Dollars ($2,000.00) if the person has been previously convicted two or more times for an offense under this Article.

B. Each day that a violation is permitted to exist shall constitute a separate offense.

C. Culpable Mental State.

1. If the definition of an offense under this Article does not prescribe a culpable mental state, then a culpable mental state is not required.

2. Although not required, if a culpable mental state is in fact alleged in the charge of an offense under Subsection (A)(3), such offense shall be punishable as provided by that Subsection above. If, however, a culpable mental state is not alleged in the charge of an offense under Subsection (A)(3), such offense shall be punishable by a fine in an amount not less than One Hundred and No/100 Dollars ($100.00) nor more than Five Hundred and No/100 Dollars ($500.00).

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 11th day of April, 2017, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 9th day of May, 2017, by a vote of 7 ayes and 2 nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY

Ordinance No. 17-038

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article I, Definitions; by the amendment of the definition of "Administrator", and the deletion of the definitions of "Private Pool", "Public Pool", "Therapy Pool", "Trained Pool Operator", and "Water Slide"; Article IV, Regulation of Food Establishments; Article V, Child Care Centers; Article VII, Public Swimming Pools; and Article IX, Violations and Penalties; relative to aligning the City Code with applicable State regulations pertaining to food establishments, child care centers, and public pools, spas and public interactive water features and fountains; providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended by the amendment of **Article I**, Definitions, by the amendment of the definition of "Administrator", and the **deletion** of the definitions of "Private Pool", "Public Pool", "Therapy Pool", "Trained Pool Operator", and "Water Slide", so that hereafter said amended definition shall be and read as follows:

Administrator - Such officers and employees of the City as may be designated by the City Manager to enforce and administer the provisions of this Chapter or a specified Article. The Administrator shall promulgate rules necessary to enforce the provisions of this Chapter or a specified Article. This definition includes the Administrator's designee.

Further, **Article IV**, Regulation of Food Establishments, is hereby amended so that said Article shall be and read as follows:

ARTICLE IV

REGULATION OF FOOD ESTABLISHMENTS

Section 4.01 Texas Food Establishment Rules Adopted

A. The provisions of the current rules or rules as amended by the Texas Board of Health known as the Texas Food Establishment Rules ("TFER") found in Title 25, Texas Administrative Code, Chapter 228, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of Article IV, Regulation of Food Establishments, of the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987.

B. The intent and purpose of this Section is to provide for the inspecting of food establishments in the City of Arlington, Texas, or its police jurisdiction, and to provide for the issuing, suspending or revoking of permits for the handling of food in such establishments. The enforcement of this Article and the fixing of penalties shall be regulated in accordance with this Chapter. The adopted State regulations are available online at the websites of the Texas Secretary of State and the Texas Department of State Health Services. The Administrator may provide the current website addresses or adopted State regulations upon request.

C. In the event of a conflict between any provision of the Texas Food Establishment Rules and any provision of this Article, this Article shall prevail.

D. The adopting by reference of the Texas Food Establishment Rules, as provided in Section 4.01(A) above, as amended, is made subject to and is modified and amended as follows:

1. Title 25, Texas Administrative Code Section 228.2, Definitions, shall be amended as follows:

   a. The definition of the term "Mobile Food Unit" or "MFU" is amended to include the term "mobile food establishment."

   b. The definition of the term "Regulatory Authority" shall mean the department and officials designated by the City Manager to administer and enforce the provisions of this Article. The term also includes the term "Administrator" as defined in this Chapter.

2. Title 25, Texas Administrative Code Section 228.33 shall be amended to add the following provisions:

a. After October 11, 2015, compliance with the proficiency and testing requirements of Section 228.33(a), as amended, will be demonstrated by presenting the Certified Food Protection Manager Certificate to the Regulatory Authority and payment of a fee set by resolution of the Arlington City Council.

b. The permit holder of a new or existing Food Establishment that has changed ownership, or a Food Establishment whose Certified Food Protection Manager has transferred or resigned shall have thirty (30) days to comply with the requirements of this Section.

c. The Administrator has determined that the following Food Establishments pose minimal risk of causing, or contributing to, foodborne illnesses based on the nature of the operation and extent of food operation, and are accordingly exempt from the requirements of amended Section 228.33: Food Establishments that serve only fountain drinks, coffee, popcorn, beef jerky, and/or nuts.

d. In accordance with Title 25, Texas Administrative Code Section 228.243, as amended, if the Administrator determines that a health hazard or nuisance will not result, the Administrator may:

1. Grant a variance from the general requirement that each food establishment have a separate Certified Food Protection Manager employed in a supervisory capacity; and

2. Approve one Certified Food Protection Manager to be employed in a supervisory capacity for several Food Establishments located in the same building or venue and under the same ownership and management.

3. Title 25, Texas Administrative Code Section 228.66 shall be amended to add the following provision:

The Administrator may require a food establishment to install a single designated food preparation sink depending on the volume and type of food prepared at the food establishment, including fruits and vegetables. This sink must be clearly identified as a food preparation sink and may not be equipped with chemical dispensing systems or handwashing materials, except for fruit and vegetable washes. The requirements of this Subsection only apply to food establishments that are opened, constructed, or extensively remodeled on or after August 1, 2017.

4. Title 25, Texas Administrative Code Section 228.175 shall be amended to add the following provision:

   Handwashing sinks must be located a maximum of 20 feet from food preparation, food dispensing and warewashing areas, unless otherwise approved by the Administrator. The requirements of this Subsection shall only apply to food establishments that are opened, constructed, or extensively remodeled on or after August 1, 2017.

5. Title 25, Texas Administrative Code Section 228.221(a)(1) shall be amended to add the following provisions:

   a. A Central Preparation Facility from which a mobile food establishment operates shall issue service records for each mobile food establishment in a manner and form prescribed by the Administrator.

   b. The permit holder or person in control of a mobile food establishment shall keep and maintain Central Preparation Facility service records of the mobile establishment unit for a minimum of 30 days.

   c. The operator of a mobile food establishment must report to the Central Preparation Facility daily for service, disposal of wastewater and overnight parking. A person shall not park, stop, or stand a mobile food establishment on the premises of a residential property.

   d. Mobile food establishments shall operate from a Central Preparation Facility or other fixed food establishment and shall report to such location daily for supplies and for cleaning and servicing operations, in accordance with Title 25, Texas Administrative Code Section 228.221(b)(1), as amended.

6. Title 25, Texas Administrative Code Section 228.221(a)(6) shall be amended to add the following provision:

   A mobile food establishment must be constructed of commercial grade (National Scientific Foundation, "NSF") materials and equipment.

E. In accordance with Title 25, Texas Administrative Code Section 228.243, as amended, the Administrator may grant a variance by modifying or waiving the requirements of this Article if the Administrator determines that a health hazard or nuisance will not result from the variance.

Section 4.02 Food Establishment - Permit Required

A. No person or firm shall operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program in the City of Arlington without a valid permit issued by the Administrator.

B. In cases where a person or firm conducts, in a single building or at the same address, more than one (1) operation, vocation or business, whether such operation, vocation or business constitutes a Food Establishment or Temporary Food Establishment, then a separate permit shall be required for each such operation, vocation or business.

Section 4.03 Food Handler - Permit Required

A. Every Food Service Employee shall within thirty (30) days of the date of employment, be the holder of a current valid Food Handler Permit, issued upon completion of a Food Handler Education or Training Program accredited through the Texas Department of State Health Services or the American National Standards Institute.

B. No person who owns, manages or otherwise controls any Food Establishment shall permit any Food Service Employee to be employed therein who does not after thirty (30) days of employment possess a current valid Food Handler Permit, issued upon completion of a Food Handler Education or Training Program accredited through the Texas Department of State Health Services or the American National Standards Institute.

C. During all operating hours of a Temporary Food Establishment, there must be at least one Temporary Food Service Employee on site with a current Food Handler permit or a current Certified Food Protection Manager Certificate, pursuant to Title 25, Texas Administrative Code Section 228.222(a)(2), as amended.

Section 4.04 Permits - Authority to Issue

The Administrator is hereby authorized to issue permits to any person or firm making application for a Food Handler Permit, Food Establishment Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Seasonal Food Establishment Permit, Central Preparation Facility Permit, or Feeding Program Permit, in the City of Arlington, provided that only a person or firm that complies with the requirements of this Article shall be entitled to receive and retain such permit and provided that a person or firm applying for a Temporary Food Establishment Permit has not been issued the maximum number of Temporary Food Establishment Permits that are allowed to be issued to any person or firm during any one year period. The maximum

number of Temporary Food Establishment Permits that may be issued shall be set by policy of the Administrator.

Section 4.05 <u>Permits - Application</u>

A. Application for such permit as required of this Article in Sections 4.02 and 4.03, as amended, shall be made in writing to the Administrator upon forms prescribed and furnished by the Administrator. If the application for permit is being made to operate in conjunction with a single event or is for a single event, a copy of all City of Arlington required event permits, if any, shall accompany the application.

B. A Food Establishment permit Plan Review fee shall be required for each Food Establishment or Central Preparation Facility that requires plans to be submitted according to Section 4.17, as amended.

C. A Food Establishment permit application fee shall be required for each Food Establishment or Central Preparation Facility that requires a new Food Establishment Permit or Central Preparation Facility Permit due to change of ownership, change in type of operation, or revocation, and a new application shall be made for a permit as required by Section 4.02, as amended. Whenever a new Food Establishment Permit or Central Preparation Facility Permit is required, the Regulatory Authority shall inspect the Food Establishment or Central Preparation Facility prior to beginning operation to determine compliance with requirements of this Article.

D. A Mobile Food Establishment must apply for and obtain a new Mobile Food Establishment Permit each year. Prior to the issuance of an annual Mobile Food Establishment Permit, the Mobile Food Establishment must pay all required fees and pass an inspection to verify compliance with the provisions of this Article.

E. Failure to provide all required information, or falsifying information required on the application, may result in denial or revocation of the permit.

F. Applicants for a Temporary Food Establishment Permit must submit with their application a current Food Handler Permit or Certified Food Protection Manager Certificate for the person in control of the Temporary Food Establishment.

G. Applicants for a Mobile Food Establishment Permit must submit with their application a current Certified Food Protection Manager Certificate for the person in control of the Mobile Food Establishment.

H. Applicants and holders of a Food Establishment Permit must demonstrate that the food establishment is in compliance with all applicable requirements under federal, state, and local law, including those established by this Code of

Ordinances. Failure to demonstrate such compliance with applicable laws under this Section may result in denial or revocation of the permit.

Section 4.06 <u>Posting of Food Handler, Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment or Central Preparation Facility Permits</u>

Every permit holder or person in charge shall at all times have available on the premises for inspection the Food Handler Permit of its employees, and shall at all times display in public view the Food Establishment Permit, Mobile Food Establishment Permit, Temporary Food Establishment Permit, Seasonal Food Establishment, Central Preparation Facility Permit, or Feeding Program Permit.

Section 4.07 <u>Permits - Duration</u>

A. Except as provided by Subsection (B), any Food Establishment Permit, Mobile Food Establishment Permit, or Central Preparation Facility Permit, granted under the provision of Section 4.02, as amended, shall remain in full force and effect twelve (12) months from the date of issuance as long as the annual food establishment permit fee is paid unless sooner suspended or revoked for cause.

B. A Food Establishment Permit or Central Preparation Facility Permit that lapses for non-payment of the applicable annual permit fee will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

C. The following standards apply to permits for Temporary Food Establishments, Temporary Mobile Food Establishments, Seasonal Food Establishments, and Feeding Programs:

1. Temporary Food Establishment Permits and Temporary Mobile Food Establishment Permits shall remain in full force and effect for a period of time not more than fourteen (14) consecutive days in conjunction with a single event or celebration from date of issuance unless sooner suspended or revoked for cause.

2. Seasonal Food Establishment Permits shall remain in full force and effect for a period of time not less than fifteen (15) consecutive days and not to exceed 180 days in conjunction with or as the single event attracting one or more food vendors at a single building or address. Upon expiration of a Seasonal Food Establishment Permit, a period of thirty (30) days must pass before a person may apply for a new Seasonal Food Establishment Permit.

3. Feeding Program Permits for feeding programs approved by the Texas Department of Agriculture shall remain in full force and effect for a period of time not less than fifteen (15) consecutive days and not to exceed ninety (90) days. Upon expiration of a Feeding Program Permit, a period of 180 days must pass before a person may apply for a new Feeding Program Permit.

Section 4.08 <u>Permits - Non-transferable</u>

A. Every permit issued under the provisions of this Article shall be nontransferable and nonrefundable.

B. A Food Establishment Permit, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility Permit, or Feeding Program Permit shall be valid for and permit the operation of the establishment only at the location, for the type of food service, and for the permit holder for which granted.

C. A Mobile Food Establishment Permit shall be valid only for the mobile food establishment, the type of food service, and for the permit holder for which granted.

Section 4.09 <u>Suspension or Revocation of Food Handler's Permit</u>

The Administrator shall have the right to suspend or revoke a valid Food Handler Permit at any time the holder of such card becomes affected with any disease in a communicable form, becomes a carrier of any such disease or is suspected of being affected with or being a carrier of any such disease as stated in Title 25, Texas Administrative Code Section 228.256(b), as amended. Such suspension or revocation shall remain in effect until such person is released from restrictions or exclusions according to the Texas Health and Safety Code Section 438.033, as amended, and the conditions stated in Title 25, Texas Administrative Code Section 228.256(d), as amended.

Section 4.10 <u>Suspension of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program</u>

A. The Administrator may, without prior notice or hearing, suspend any permit granted under Section 4.02, as amended, to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program if the permit holder or person in charge does not comply with the requirements of this Article, or if the operation of the Food Establishment otherwise constitutes a substantial

hazard to public health. Suspension is effective upon service of the notice required by Section 4.14, as amended. When a permit is suspended, food service operations shall immediately cease.

B. The Administrator may end the suspension at any time if reasons for suspension no longer exist.

C. Whenever a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program is required under the provisions of this Section to cease operations, it shall not resume operations until such time as a reinspection determines that conditions responsible for the requirement to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time. During the time a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program is required to cease operations, a sign shall be posted on the outside of the establishment, clearly visible to a reasonably observant person, which sign shall state "Closed By The City of Arlington."

Section 4.11 Denial of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program

The Administrator may, after providing notice of opportunity for a hearing according to Section 4.14, as amended, deny a permit to operate a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility or Feeding Program, if the applicant for the permit does not comply with the requirements of this Article, or if the operation otherwise constitutes a substantial hazard to public health. Whenever a denial of a permit has become final, the applicant may make written application for a permit according to Section 4.05, as amended.

Section 4.12 Revocation of a Permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program

The Administrator may, after providing opportunity for a hearing according to Section 4.14, as amended, revoke a permit granted under Section 4.02, as amended, for serious or repeated violations of any of the requirements of this Article, failure to maintain a Food Establishment permit or other permit due to failure to pay fees according to Section 4.07, as amended, or for interference with the Regulatory Authority in the performance of its duty. Prior to revocation, the Regulatory Authority shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the ten (10) days

following service of such notice, unless a written request for a hearing is filed with the Administrator by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit according to Section 4.05(C), as amended.

Section 4.13 <u>Service of Notices</u>

A notice provided for in this Article is properly served when it is delivered to the permit holder or person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the Administrator.

Section 4.14 <u>Notice of Appeal; Hearing</u>

A. Upon denial, suspension, or revocation of a permit for a Food Establishment, Mobile Food Establishment, Temporary Food Establishment, Seasonal Food Establishment, Central Preparation Facility, or Feeding Program, the Regulatory Authority shall notify the applicant, permit holder, or person in charge, in writing, of the reason for which the permit is subject of denial, suspension, or revocation. The applicant, permit holder, or person in charge shall file a written request for a hearing with the Administrator within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial, suspension, or revocation is sustained.

B. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.

C. The hearings provided for in this Article shall be conducted by the Administrator or a designated hearing officer at a time and place designated by the Administrator or the hearing officer. Based upon the recorded evidence of such hearing, the Administrator or the designated hearing officer shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder of the permit by the Administrator or the designated hearing officer.

D. After such hearing, an applicant that has had a permit denied, suspended, or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.

E. An appeal shall not stay the denial or suspension of the permit unless otherwise directed by the Administrator.

Section 4.15 Inspection Frequency

A. An inspection of a Food Establishment shall be prioritized based upon assessment of the Food Establishment's history of compliance and potential risk factors for causing foodborne illness according to Title 25, Texas Administrative Code Section 228.249, as amended, and evaluations by the Regulatory Authority.

B. The Administrator shall classify Food Establishments as high priority, medium priority, or low priority, according to the risk factors deemed relevant to the operation by Title 25, Texas Administrative Code Section 228.249, as amended.

C. Additional inspections of the Food Establishment shall be performed as often as necessary for the enforcement of this Article.

D. Inspections.

1. The Regulatory Authority may conduct inspections of a food establishment whenever necessary to enforce any of the provisions of this Article or if there is probable cause to believe that a violation of this Article exists at a food establishment.

2. The Regulatory Authority shall have access to the food establishment and its premises as provided by Title 25, Texas Administrative Code Section 228.250, as amended, and through every remedy provided by law.

E. Permit holders shall display in public view at all customer entrances a copy of the last routine inspection report.

Section 4.16 Disposition of Unsafe, Adulterated, or Contaminated Food

A. In accordance with Title 25, Texas Administrative Code Section 228.81, as amended, food that is unsafe, adulterated, or contaminated shall be discarded.

B. If the Regulatory Authority determines that any food is unsafe, adulterated, or contaminated, the Regulatory Authority may issue a written order that the food be discarded by immediately denaturing and rendering the food inedible. The Regulatory Authority shall provide a copy of the written order to the owner, manager or person in charge of the food establishment.

C. If the owner, manager, or person in charge of the food establishment does not discard the food subject to an order to discard, the Regulatory Authority may seize and discard such food pursuant to a warrant or any other remedy provided by law.

D. Food that is subject to an order to discard shall not be used, served, or offered for public consumption.

E. The owner, manager, or person in control of any food that was ordered to be discarded may appeal the order to the Administrator. The Administrator may designate a hearing officer to conduct hearings under this Section. In order to appeal, the owner, manager, or person in control of such food must file a written request for a hearing with the Administrator within ten (10) days of the order being issued to discard the food.

F. If any food that is subject to an order to discard has not yet been discarded at the time that a hearing is requested, the Administrator may, upon request, permit the food to be stored at an approved location, pending the outcome of the hearing, unless the Administrator determines that storage of such food is not possible without risk to the public health, in which case the food may be seized and discarded pursuant to Subsection (C).

G. Upon a timely request for a hearing under Subsection (E), the Administrator shall schedule a hearing within twenty (20) days of the written request and provide notice to the person who requested the hearing. At the hearing, if the Administrator or designated hearing officer determines that the food subject to an order to discard was unsafe, adulterated or contaminated, the Administrator or designated hearing officer shall:

1. Affirm the order of the Regulatory Authority; and

2. Order that the food be discarded if the food is being stored pursuant to Subsection (F).

H. The Regulatory Authority may examine, collect samples, and detain food in order to enforce the provisions of this Article, as provided by Title 25, Texas Administrative Code Section 228.255, as amended.

Section 4.17 <u>Review of Plans</u>

A. Whenever a Food Establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a Food Establishment, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the Administrator for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Administrator shall approve the plans and specifications if they meet the requirements of this Article. No Food

Establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the Administrator.

B. Whenever plans and specifications are required to be submitted under this Section, the Regulatory Authority shall inspect the Food Establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this Article.

C. Failure to follow the approved plans and specifications may result in a permit denial, suspension, or revocation.

Section 4.18 <u>Operation of Mobile Food Establishment</u>

A. Any person or firm who operates a mobile food establishment as defined in this Article shall not operate such establishment within one block of any block containing an elementary school, junior high school, or middle school.

B. No mobile food establishment may enter any City park containing a concession stand for the purpose of vending without first receiving written permission from the Director of the Parks and Recreation Department or the Director's designee.

C. A mobile food establishment shall not stop to sell or serve food for a period of time exceeding thirty (30) minutes.

D. A mobile food establishment may only operate in excess of thirty (30) minutes when it is operating:

1. in conjunction with a City-sponsored event or a permitted event authorized by the Construction Chapter, as amended, and only for the duration of that event; or

2. as an accessory use to an existing business with a valid mobile food establishment certificate of occupancy, as authorized by the Unified Development Code, as amended.

E. Food for public consumption must be prepared and stored at the central preparation facility or on the mobile food establishment. Food for public consumption may not be prepared or stored at any other location, including but not limited to an unpermitted or residential kitchen, pursuant to Title 25, Texas Administrative Code Section 228.62(a), as amended.

F. Only food items previously approved by the Regulatory Authority may be sold on a mobile food establishment. Non-food items such as toys, fireworks, or any hazardous substances such as stink bombs are prohibited.

Section 4.19 Fees and Policies

A. The various requirements for review of plans, permits, licenses, certificates, inspections, reinspections and such administrative function of this Article shall require the payment of fees, submitted to the Administrator, in an amount approved by resolution of the Arlington City Council; except that no fees shall be charged for City owned and operated Food Establishments or public school cafeterias. Fees are not to be transferable or refundable.

B. The Administrator may establish policies and procedures consistent with this Article to implement the provisions of this Article.

Section 4.20 Responsibilities of the Owner, Manager, or Person-in-Charge

The permit holder, owner, manager, or person-in-charge of a food establishment shall operate the facility in compliance with the provisions of this Article and other applicable sections of the Code of the City of Arlington and shall respond within the specified schedule of time when any deficiency or violation has been identified by the Regulatory Authority.

Further, **Article V**, Child Care Centers, is hereby amended so that said Article shall be and read as follows:

ARTICLE V

CHILD CARE CENTERS

Section 5.01 Purpose

The purpose of this Article is to provide minimum standards for the operation of child care centers in the City of Arlington to protect the health, safety and welfare of the occupants and patrons.

Section 5.02 Texas Department of Family and Protective Services Regulations Adopted

A. The provisions of the current rules or rules as amended, known as the "Minimum Standards for Child-Care Centers", found in Title 40, Texas Administrative Code, Chapter 746, and "Minimum Standards for School-Age and Before or After School Programs" found in Title 40, Texas Administrative Code, Chapter 744, are herein adopted together with the additions, deletions, and amendments hereinafter

contained, as part of Article V, Child Care Centers, of the "Health and Sanitation" Chapter of the Code of the City of Arlington.

B. The adopted State regulations are available online at the websites of the Texas Secretary of State and the Texas Department of Family and Protective Services. The Administrator may provide the current website addresses or adopted State regulations upon request.

Section 5.03 Administration: Permit, Issue, Inspection, Compliance, Enforcement

A. The Administrator is hereby authorized to issue a Child Care Center Permit in the City of Arlington when he finds that the permit applicant has complied with the requirements of this Article and other applicable sections of the Code of the City of Arlington. The Administrator shall cause the child care center to be inspected annually to ensure that the facilities, grounds and equipment are maintained in compliance with this Article and in a safe and sanitary condition for the welfare of the occupants and patrons of the child care center, along with appropriate directives to resolve deficiencies observed in the inspections. The Administrator shall have the authority to enforce the provisions of this Article and to issue citations for violation of any of its provisions.

B. The permit holder and/or the person in charge of the child care center shall operate the facility in compliance with the provisions of this Article and other applicable sections of the Code of the City of Arlington and shall respond within the specified schedule of time when any deficiency or violation has been identified by the Administrator.

Section 5.04 Permit Required

A. No person, firm or corporation shall operate a child care center in the City of Arlington unless and until a permit for such purposes has been issued by the Administrator.

B. For purposes of this Article, the term "child care center" is hereby defined as a facility where child care occurs. The term "child care center" includes the following terms:

1. "Child-care facility", "Day-care center", "Before-school or after-school program", and "School-age program," as defined by Texas Human Resources Code Section 42.002, as amended;

2. "Child-care center" as defined by Title 40, Texas Administrative Code Section 746.123; and

3. "Before or after-school program" and "School-age program," as defined by Title 40, Texas Administrative Code Section 744.123.

C. For purposes of this Article, the term "child care center" does not include a facility that is exempt from obtaining a child care facility license by the Department of Family and Protective Services under Texas Human Resources Code Section 42.041, as amended.

D. For the purposes of this Article, child care centers located in public school facilities operated by a local independent school district, which are exempt from an annual sanitation inspection pursuant to Title 40, Texas Administrative Code Section 746.3401, as amended, are exempt from obtaining a child care center permit under this Chapter.

Section 5.05 <u>Permit Application</u>

A. Application for a permit to operate a child care center shall be submitted by the owner on a form specified by the Administrator.

B. The permit application shall state the owner's name, address and telephone number.

C. The permit application shall indicate the name, street and mailing addresses of the child care center, status of food service provided for children, and days and times of operation. The permit application shall include the operational policies required for:

1. Child-Care Centers under Title 40, Texas Administrative Code Section 746.501, as amended; or

2. School-Age and Before or After-School Programs under Title 40, Texas Administrative Code Section 744.501, as amended.

D. A Child Care Center permit application fee shall be required for each child care center that requires plans to be submitted according to Section 5.06, as amended.

E. Upon change of ownership, a change of ownership fee is due and a new application shall be made for a permit as required in this Section. The Administrator or the Administrator's designees shall inspect the Child Care Center prior to its beginning operation to determine compliance with the requirements of this Article. Failure to comply with the requirements of this Article may result in denial, suspension, or revocation.

F. The owner shall affirm that a Certificate of Occupancy has been applied for with the City of Arlington, its issuance contingent in part on the successful application for a child care center permit.

G. The owner shall affirm that a Child Care Center license has been applied for with the Texas Department of Family and Protective Services Child Care Licensing Division. Issuance of a City of Arlington Child Care Center Permit is contingent upon a successful application for a Child Care Center license issued by the Department of Family and Protective Services.

H. The permit application shall include a certificate of liability insurance coverage that complies with Section 5.22, as amended.

I. Failure to provide all required information, or falsifying information required on the application may result in denial, suspension, or revocation of the permit.

Section 5.06 <u>Review of Plans</u>

A. Whenever a Child Care Center is constructed or extensively remodeled and whenever an existing structure is converted to use as a Child Care Center, properly prepared plans and specifications for such construction, remodeling or conversion shall be submitted to the Administrator for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the layout and arrangement of any proposed food service areas, indoor and outdoor areas to be used for the child care center including mechanical plans; construction materials; plumbing fixtures; the type of fixed equipment; and playground and fall zone specifications. The Administrator shall approve the plans and specifications if they meet the requirements of this Article.

B. No Child Care Center shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the Administrator. The approved plans and specifications must be followed in construction, remodeling, or conversion.

C. Whenever plans and specifications are required to be submitted, the Administrator or the Administrator's designee shall inspect the Child Care Center prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of this Article.

D. Failure to follow the approved plans and specifications may result in permit denial, suspension, or revocation.

Section 5.07 Permit Duration and Renewal

A Child Care Center Permit shall be valid for one (1) year from the date of issuance, unless suspended or revoked as hereinafter provided. Any changes to the days or hours of operation, to the ages of children to be cared for, or indoor or outdoor space used for the purpose of providing child care services must be submitted in writing to the Administrator within forty-eight (48) hours of the change taking effect. Incorrect information in records previously submitted to the Administrator for the child care center shall be corrected before the permit may be renewed. A Child Care Center Permit that lapses for non-payment of the annual Child Care Center Permit fee will be reinstated upon payment of a reinstatement fee, except that permits lapsed for more than three (3) months may not be reinstated.

Section 5.08 Permit Renewal Denial, Suspension and Revocation

A. The Administrator is hereby authorized to deny, suspend, or revoke a Child Care Center Permit for a violation of any provision of this Article. Denial, suspension or revocation of a permit shall be effected by notice, in writing, setting forth the reasons therefore and specifying any requirements or schedules of time for further action related to the suspension or revocation.

B. The following actions shall constitute cause for denial or suspension:

1. Failure to respond within specified limits of time regarding violations observed during an inspection of the premises and operation.

2. Any violation of this Article which poses a safety or public health hazard to any child entrusted to the care of the child care center.

3. Failure to keep continually in force the required liability insurance, according to Section 5.22, as amended.

4. Failure to possess a valid Child Care Center License or Accreditation issued by Texas Department of Family and Protective Services according to Chapter 42 of the Texas Human Resources Code, as amended.

5. Failure to meet the requirements of Chapter 42 of the Texas Human Resources Code, as amended, related to the requirements for criminal history check and background search of central registry of reported cases of child abuse for all persons who are present while children are in care.

C. The following actions shall constitute cause for revocation:

1. Failure to correct a violation following suspension of the permit.

2. Knowingly submitting false information, or allowing false information to be submitted, in the application for a permit.

D. Whenever a permit is denied, suspended or revoked, the permit holder or person in charge shall cease operations. Parents must be immediately notified of the denial, suspension, or revocation so that alternative child care arrangements can be made. Operations shall not resume until such time as a reinspection determines that conditions no longer exist causing denial or suspension. The permit holder shall notify the Administrator when the conditions causing the denial or suspension have been corrected. The center may not resume operations until the Administrator verifies that the conditions have been corrected and written authorization given. A sign shall be posted by the Administrator at the entrance of the building clearly visible to a reasonably observant person which states "Closed By The City of Arlington". Signs posted by the Administrator shall not be altered or removed unless authorized by the Administrator.

E. A permit that has been revoked shall not be reissued.

Section 5.09 Display of Permit

The Child Care Center Permit shall be conspicuously posted on an inside wall of the main facility and shall be continuously displayed in public view.

Section 5.10 Child Care Workers Permit

A. Every person owning, employed by or otherwise connected with a child care center whose work involves caring for children shall within thirty (30) days of the date of employment, be the holder of a current Child Care Workers Permit, issued by the Administrator.

B. No person who owns, operates, or otherwise controls any child care center shall permit any person to be employed therein whose work involves caring for children who does not after thirty (30) days of employment possess a current valid Child Care Workers Permit issued by the Administrator.

C. Child Care Workers Training Course. In order to receive a Child Care Workers Permit, every person shall be required to satisfactorily complete a Child Care Workers Training Course conducted by an instructor who has been approved by the Administrator pursuant to Section 5.11, as amended. This requirement must be met upon expiration of a permit and upon application for a new permit.

D. Duration and Renewal. A Child Care Workers Permit shall be valid for three (3) years from the date of its issue, unless revoked as herein provided.

E. Child Care Workers Permit Suspension – Revocation. The Administrator shall have the right to suspend or revoke a valid Child Care Workers Permit at any time the holder of such permit violates any of the provisions of this Article.

F. Display of Child Care Workers Permit. The original current Child Care Workers Permit shall be maintained at the child care center for each of its employees or staff members and shall be available for review upon the request of the Administrator.

Section 5.11 Child Care Worker Training Course and Instructor Certification

A. A currently State certified Child Care Director or a representative from an authorized training organization may apply to the Administrator for certification as an approved instructor of the Child Care Workers Training Course. Application for certification shall be submitted on the form specified by the Administrator. The application shall be submitted with the proposed class curriculum and, if applicable, a copy of the applicant's valid State certification as a Child Care Director.

B. Approved class curriculum shall include instruction on the following health and sanitation topics:

1. Handwashing;

2. Handling of food;

3. Diaper changing and toileting procedures;

4. Cleaning and sanitizing methods;

5. Reportable illnesses;

6. Child illness regulations and policies;

7. Employee illness regulations and policies; and

8. Indoor and outdoor safety checks.

C. Upon approval of the proposed curriculum and verification of the information on the application, the Administrator shall certify the applicant as an approved instructor. Failure to provide all required information including material required for the approval of the curriculum or falsifying information required on the application may result in denial, suspension or revocation of the certification pursuant to the provisions provided in this Chapter. A City of Arlington Child Care Workers Training Course Instructor Certification shall be valid for five (5)

years from the date of issuance unless suspended or revoked for violation of any of the provisions of this Article. Suspension or revocation shall occur pursuant to the provisions in this Chapter.

Section 5.12 Appeal of Permit or Certification - Denial, Suspension or Revocation

A. Upon finding that the Child Care Center Permit, Child Care Workers Permit, or Child Care Workers Training Course Instructor Certification should be denied, suspended or revoked, the Administrator shall, within ten (10) days of the finding, notify the owner or person in charge in writing, specifying the result of the finding and the reasons therefore. The applicant may request a hearing before the Administrator.

B. Notice of appeal shall be filed within twenty (20) days of the date of the written notice of denial, suspension or revocation.

C. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.

D. After such hearing, the owner or the person in charge that has had a permit or certification denied, suspended or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.

E. An appeal shall not stay the denial, suspension or revocation of a license, permit or certification unless otherwise directed by the Administrator.

Section 5.13 Permits - Non-transferable

No permit issued under this Article shall be used for any purpose other than the intent for which it was issued, nor be transferred or assigned to, or in any manner used by, any person, firm or corporation other than the one to whom issued by the Administrator.

Section 5.14 Fees

A. The various requirements for review of plans, permits, licenses, certificates, inspections, reinspections, and such administrative function of this Article shall require the payment of fees, submitted to the Administrator, in an amount approved by resolution of the Arlington City Council. Fees shall not be refundable or transferable.

B. For the purposes of fees, child care centers with a Food Establishment, as defined in the Texas Food Establishment Rules as adopted by Article IV of this Chapter, must obtain a permit for a "Child Care Center with Food Service."

Section 5.15 Food Service in Child Care Centers

A child care center in which food is prepared or served for human consumption shall comply with the pertinent food service regulations contained in Article IV of this Chapter. The fees set forth in Article IV for Food Establishments shall not be required for the food service portion of a child care center. A child care center worker who has been issued a Child Care Workers Permit need not also obtain a Food Handler's Permit, except as required by Article IV of this Chapter and the Texas Food Establishment Rules. The director of a child care center or the staff person primarily responsible for food preparation in the child care center kitchen is required to hold a Certified Food Protection Manager Certificate from a provider accredited by the Texas Department of State Health Services.

Section 5.16 Plumbing and Toilet Facilities

A. Plumbing and toilet fixtures shall be provided in accordance with the Plumbing Code of the City of Arlington.

B. The temperature of any water available to the occupants or patrons of a child care center shall not exceed 120° Fahrenheit.

C. Each lavatory shall be provided with both hot and cold water, tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing or metering faucet shall provide a flow of water for at least twenty (20) seconds without the need to reactivate the faucet.

D. Handwashing sinks may not be used for purposes other than handwashing, including but not limited to rinsing items that may be placed in a child's mouth (such as pacifiers or teething rings) and obtaining water for consumption or food preparation.

E. Toilet tissue, paper towels or clean cloths and soap shall be available at all times for the use of occupants and patrons. The use of common towels is prohibited. Handwashing soap may not be diluted with water.

F. Toilet facilities must be maintained clean and sanitary.

G. Toilet facilities including diaper changing areas must be constructed with smooth, easily cleanable walls, floors and work surfaces.

Section 5.17 Diaper Changing Provisions

A. When diapering a child, a separate diaper changing station such as a changing table, counter-top, or other elevated structure must be used. The use of the floor or crib for diaper changing is prohibited.

B. The diapering surface must be smooth, easily cleanable, and in good repair, free of cracks and tears. The diapering surface must be cleaned by removing all visible debris and waste, and then sanitized using a disinfectant registered with the Environmental Protection Agency ("EPA"), such as Quaternary Ammonia or a chlorine bleach solution, after changing each child. Disinfecting solutions shall be prepared and used as provided by Title 40, Texas Administrative Code, Chapter 744, Subchapter K, Health Practices, as amended, and Chapter 746, Subchapter R, Health Practices, as amended. Bleach measurement shall be adjusted to equal 200PPM when tested on chlorine bleach paper testing strips. EPA-registered disinfectants shall be used in accordance with the manufacturer's instructions printed on the product label.

C. Diaper changing areas must be provided with a properly designed and maintained hand washing lavatory equipped with both hot and cold water, tempered by means of a mixing valve or combination faucet, soap and sanitary single use towels.

D. Diaper pails or trash cans equipped with tight-fitting lids shall be provided for disposal of soiled diapers. Diaper pail liners or trash can liners shall be changed as regularly as needed to reduce offensive odors.

E. Diaper changing procedures shall be posted at all diaper changing stations.

F. Diapering and food preparation areas shall be physically separate from one another, and their surfaces shall be kept clean, uncluttered, and dry. The diapering surface shall only be used for diapering a child.

Section 5.18 Playgrounds and Outdoor Activity Spaces

A. A playground or other outdoor activity space shall provide not less than 100 square feet of area for each child occupying the area at one time.

B. A playground or other outdoor activity space shall be surrounded by a fence not less than four feet (4') in height, unless the child care center is exempt from the minimum fencing requirements of Title 40, Texas Administrative Code Section 744.2953, as amended. Construction of fences at child care centers must comply with all applicable provisions of this Code of Ordinances, including the Unified Development Code standards related to the minimum and maximum height of fences as well as materials used to construct fences. Openings in fences shall not

present an entrapment hazard. An opening in a fence presents an entrapment hazard if the opening is greater than three and one-half (3.5) inches and less than nine (9) inches.

C. Any pool, pond or other body of water greater than two feet (2') in depth shall be separated from a playground or other outdoor activity space by a fence not less than six feet (6') in height, constructed so that children cannot easily climb over it, with self-closing, self-latching gate(s). Gates to the pool enclosure must be kept locked at all times that the pool is not in use. In all other ways, the pool must comply with the Construction Chapter of the Code of the City of Arlington and all applicable State laws relative to pool construction and safety, including the Texas Department of State Health Services Standards for Public Swimming Pools and Spas. All pools used by the children must comply with the pertinent regulations contained in Article VII of this Chapter for public swimming pools, spas, and public interactive water features and fountains. Permits are required, as set forth in Article VII of this Chapter, and all fees must be paid.

D. Outdoor activities and field trips where children may encounter a pool, a pond or other body of water shall be attended by an adult competent in water-safety procedures, as certified by the American Red Cross, and trained in life-saving techniques stated in Section 5.20(C), as amended.

E. Tires and other outdoor equipment must be provided with adequate drainage to prevent breeding of mosquitoes.

Section 5.19 <u>Release of Child</u>

Child care centers shall comply with all required standards of Title 40, Texas Administrative Code, Chapters 744 and 746, as amended, related to the release of children from a Child Care Center.

Section 5.20 <u>Safety and Sanitation</u>

A. A child care center shall not be located in a mobile home or in any part of a building other than the ground level unless approved by the Arlington Fire Department.

B. Smoke detectors or other approved fire alarm equipment shall be installed to provide an effective warning to the building occupants of fire in any kitchen area, sleeping area or any area containing mechanical equipment. Centers with fifty (50) or more occupancy must install a fire alarm system that complies with the Fire Prevention Chapter of the Code of the City of Arlington for child care centers. Smoke detectors may be used in place of fire alarm systems in centers with less than fifty (50) occupants.

C. One (1) staff per group of children must have current certification within the last two (2) years in first aid with rescue breathing and choking. One (1) staff per facility (as well as one (1) staff per group of children away from the facility) having current training within the last two (2) years in cardiopulmonary resuscitation ("CPR") for infants and children must be present at all times the center is in operation. Certificates evidencing such training shall be available upon request from any City official.

D. The child care center shall take all necessary measures to maintain the structure and grounds free of insect and rodent infestation. Pest control services shall be provided by an individual or business that is properly licensed by and in compliance with the Texas Structural Pest Control Board requirements. Pest control records must be maintained by the child care center for a period of two (2) years and must be available for review by the Administrator.

E Unsafe children's products, including those that have been recalled by the United States Consumer Product Safety Commission, shall not be used at a child care center, pursuant to Title 40, Texas Administrative Code Sections 746.4133 and 746.4135, as amended.

F. The interior of the building shall be maintained free of debris and filth. Walls and floors shall be maintained in good repair, structurally sound and free of holes, dangerous protrusions or other obvious hazards. The floors including carpeting, tile or other coverings shall be kept clean and free of accumulation of debris and filth.

G. Grounds around the child care center must be maintained free of debris, unnecessary items or any harborage for rodents, mosquitoes, or other pests.

H. The following areas at a Child Care Center shall be cleaned, sanitized, disinfected, laundered and/or vacuumed as described in the table below.

1. Definitions. The following terms, when used in this Section, shall have the meanings respectively ascribed to them in this Section.

a. "Clean" – Physically remove all dirt and contamination, oftentimes using soap and water. The friction of cleaning removes most germs and exposes any remaining germs to the effects of a sanitizer or disinfectant used later.

b. "Disinfect" – Destroy or inactivate most germs on any inanimate object, but not bacterial spores. Disinfecting may be appropriate for diaper tables, door and cabinet handles, toilets, and other bathroom surfaces.

c. "Germs" – Microscopic living things that causes disease such as bacteria, viruses, parasites and fungi.

d. "Sanitize" – Reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Sanitizing may be appropriate for food service tables, high chairs, toys, and pacifiers. The term shall also include the definition of "sanitize" as defined by Title 40, Texas Administrative Code Sections 744.123 and 746.123, as amended.

2. The appropriate test strips shall be available on site to test cleaning solutions.

3. Cleaning, Sanitizing, and Disinfecting Frequency Table.

Cleaning, Sanitizing, and Disinfecting Frequency Table			
Areas	**Before Each Use**	**After Each Use**	**As Needed and End of the Day**
Food Areas- Sanitize at 50ppm bleach water or as directed by EPA registered product label			
Food preparation surfaces	Clean, Sanitize	Clean, Sanitize	
Eating utensils & dishes		Clean, Sanitize	
Tables & highchair trays	Clean, Sanitize	Clean, Sanitize	
Toilet & Diapering Areas- Disinfect at 200ppm bleach water or as directed by EPA registered product label			
Changing tables		Clean, Disinfect	
Potty chairs		Clean, Disinfect	
Handwashing sinks & faucets			Clean, Disinfect
Countertops			Clean, Disinfect
Toilets			Clean, Disinfect
Diaper pails			Clean, Disinfect
Floors			Clean, Disinfect
Child Care Areas- Sanitize at 100ppm bleach water or as directed by EPA registered product label			
Toys		Clean	Clean, Sanitize, Launder
Floors			Clean, Sanitize, Vacuum

Section 5.21 Provisions for the Control of Communicable Disease

A. All Staff shall clean their hands and exposed portions of their arms with a cleaning compound by vigorously rubbing together the surfaces of their lathered hands and arms for at least twenty (20) seconds and thoroughly rinsing with clean water and shall pay particular attention to the areas underneath the fingernails and between the fingers. Staff shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

B. Staff must wash before preparing or serving food, before feeding a child or handling food, after caring for a sick child, after diapering, after assisting a child with toileting, after coughing and sneezing, after cleaning soiled surfaces, and after engaging in other activity that contaminates the hands.

C. Staff must assist children to ensure that their hands are thoroughly washed before eating, after using the toilet, after a diaper change, after playing outdoors, after playing with pets, after coughing or sneezing, or after any activity that contaminates the hands.

D. Permanent signs shall be conspicuously posted by all handsinks including those in the restrooms, food service areas, and classrooms, so as to be noticed by normally observant individuals, reminding all persons to wash hands. Permanent signs, including pictorial messages, shall be posted for communication with children unable to read.

E. Employees and staff members shall have received a Mantoux tuberculosis skin test, with negative results, within the last 2 years. In the case of a positive result or when a Mantoux tuberculosis skin test cannot be administered, a tuberculosis examination shall be conducted by a physician and the person found not to be a risk for the communication of tuberculosis. Subsequent testing may be required by the health authority if the person is exposed to tuberculosis.

F. Persons whose behavior and/or health status poses an immediate threat or danger to the health or safety of the children must not be present when children are in care at a child care center, in accordance with Title 40, Texas Administrative Code Sections 744.2603 and 746.3703, as amended.

G. Children who are ill may not attend a Child Care Center as provided by Title 40, Texas Administrative Code Sections 744.2571-744.2575 and 746.3601-746.3605, as amended.

H. In accordance with Title 40, Texas Administrative Code Sections 744.2576 and 746.3606, as amended, a child who was ill may return to a Child Care Center when:

1. The child is free of symptoms of illness for 24 hours; or

2. The child's parent or guardian provides a health-care professional's statement that the child no longer has an excludable disease or condition.

Section 5.22 Liability Insurance

The child care center applicant must have liability insurance coverage according to Chapter 42 of the Texas Human Resources Code, as amended. Proof of the required insurance coverage must be presented to the Administrator upon request and upon application for or renewal of a Child Care Center Permit.

Further, **Article VII**, Public Swimming Pools, is hereby amended by the amendment of the **title** and the entire Article so that said Article shall be and read as follows:

ARTICLE VII

PUBLIC POOLS, SPAS, AND PUBLIC INTERACTIVE WATER FEATURES AND FOUNTAINS

Section 7.01 Adoption of the Texas Standards for Public Swimming Pools, Spas, and Public Interactive Water Features and Fountains

A. The provisions of Texas Health and Safety Code Sections 341.064, 341.0645, and 341.0695, as amended, and the current regulations enacted by the Texas Department of State Health Services Standards for Public Pools, Spas, and Public Interactive Water Features and Fountains found in Title 25, Texas Administrative Code, Chapter 265, Subchapter L and Subchapter M, as amended, are herein adopted together with the additions, deletions, and amendments hereinafter contained, as part of this Article. The term "this Article" includes the adopted regulations, as amended.

B. Scope.

1. The intent and purpose of this Article is to provide requirements for the inspection and operation of public pools, spas, and public interactive water features and fountains in the City of Arlington, Texas, or its jurisdiction, and to provide for the issuance or revocation of permits for the operations of public pools, spas, and public interactive water features and fountains.

2. This Article does not govern residential pools and spas as defined by Title 25, Texas Administrative Code, Chapter 265, Subchapter L, as amended. The Construction Chapter, as amended, governs residential pools and spas.

3. Pool and Spa Enclosure Requirements.

   a. This Article does not govern pool and spa enclosure requirements.

   b. Residential Pools and Spas. The Construction Chapter, as amended, applies to residential pools and spas and any other pool and spa not considered a public pool or spa under this Article.

   c. Public Pools and Spas. All public pools and spas must comply with Texas Health and Safety Code Chapter 757, as amended, including the regulations enacted pursuant to Texas Health and Safety Code Chapter 757.011, as amended, which are provided in Title 25, Texas Administrative Code Section 265.200, as amended.

4. This Article does not govern the building permit process.

C. Other Applicable Laws.

1. If there is any conflict between any provision of the State statutes and regulations adopted pursuant to authority granted by Texas Health and Safety Code Section 341.081, as amended, and any provision of this Article, the provisions of this Article, which are more stringent than the incorporated State statutes and regulations, shall prevail.

2. Texas Accessibility Standards Compliance. It is not intended for this Article to negate any provision of the Texas Accessibility Standards. If there is a conflict with the Texas Accessibility Standards, the Texas Accessibility Standards shall prevail.

3. Americans with Disabilities Act ("ADA") Compliance. It is not intended for this Article to conflict with any provision of the Americans with Disabilities Act ("ADA"). If there is a conflict between this Article and the ADA, the ADA shall prevail.

4. Virginia Graeme Baker Pool and Spa Safety Act ("VGBA") Compliance. In addition to the requirements of this Article or other applicable City Ordinances or state laws and regulations, all public pools, spas, and PIWFs must comply with the Virginia Graeme Baker Pool and Spa Safety Act ("VGBA"), as amended. If a particular provision of the VGBA, as amended, is more stringent than a particular provision of this Article or applicable City Ordinance or state law, then the VGBA, as amended, shall prevail. If the VGBA, as amended, has any provision that is not addressed

by this Article, including state law and other City Ordinances, then this Article shall be interpreted to include that particular VGBA provision as an additional requirement.

5. Compliance with other City Ordinances. The provisions of the Construction Chapter, the Electrical Chapter, the Nuisance Chapter, the Plumbing Chapter, the Backflow Prevention Chapter, the Uniform Development Code, and any other applicable City Ordinance, including any codes or standards adopted as amended, apply in addition to the provisions of this Article. If there is any conflict between a provision of this Article and the provisions of other City Ordinances, including codes or standards adopted and amended by other City Ordinances, the more stringent provision shall prevail.

D. The State statutes referenced in this Article are available at the website of the Texas Legislature. The adopted State regulations are available online at the websites of the Texas Secretary of State and the Texas Department of State Health Services. The Administrator may provide the current website addresses or adopted State regulations upon request.

E. Amendments and Additions. The adoption by reference of the State regulations, as provided in Subsection (A) above, is made subject to the following amendments and additions, and is modified and amended as follows:

1. Definitions.

a. "Certified Operator Course" shall mean a course described by Title 25, Texas Administrative Code Section 265.203(a), as amended, for the operation of a public pool or spa, or a course described by Title 25, Texas Administrative Code Section 265.303(a), as amended, for the operation of a PIWF.

b. "Certified PIWF Operator" means a person who has attended a training course and received certification for the operation of a public interactive water feature or fountain in accordance with Title 25, Texas Administrative Code Section 265.303(a), as amended.

c. "Certified Pool Operator" means a person who has attended a training course and received certification for pool or spa operation in accordance with Title 25, Texas Administrative Code Section 265.203(a), as amended.

d. "Closure Order" shall mean an order from the Administrator or the Administrator's designee ordering the closure of a public pool, spa, or public interactive water feature or fountain for failing an

inspection or permit requirements or for violating State or local law relevant to public pools, spas, or public interactive water features or fountains.

e. "Owner or Operator" shall have the same meaning as the definition of "owner/operator" in Title 25, Texas Administrative Code Section 265.182(94), as amended, and the definition of "Owner or Operator" in Title 25, Texas Administrative Code Section 265.302(42), as amended.

(1) The definition of "owner/operator" in Title 25, Texas Administrative Code Section 265.182(94), as amended, applies to the ownership or operation of a Public Pool or Spa.

(2) The definition of "owner or operator" in Title 25, Texas Administrative Code Section 265.302(42), as amended, applies to the ownership or operation of a PIWF.

(3) In addition, the term "permit holder," as defined in Article I of this Chapter shall apply as an additional person who is considered to be an Owner or Operator of a Public Pool, Spa, or PIWF.

f. "Operating permit" shall mean a permit that allows the operation and use of a public pool, spa, or PIWF.

g. "Public Interactive Water Feature or Fountain" shall mean an "interactive water feature or fountain" as defined in Texas Health and Safety Code Section 341.0695, as amended, and any further definition or example defined as a "public interactive water feature or fountain" in Title 25, Texas Administrative Code, Chapter 265, Subchapter M, as amended. In this Article, the term "PIWF" shall mean a Public Interactive Water Feature or Fountain as defined by this Section.

h. "Public Pool" shall include the term "pool" as defined by regulations in Title 25, Texas Administrative Code, Chapter 265, Subchapter L, as amended. This term includes the different classification of pools defined by state law, except that this definition excludes any residential pool or therapeutic pool as defined by state law. In addition, this definition includes any pool which is intended to be used by the general public including, but not limited to, hotel or motel guests, health club members and guests, water park or amusement park guests, water slide guests, homeowner association members and guests, or multi-family

community residents and guests for swimming, diving, recreational bathing or other related purposes, operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use.

i. "Regulatory authority" in the adopted State regulations shall mean the Administrator for this Article or the Administrator's designee. The Administrator shall have the authority to create policies and procedures for the administration of this Article as long as the policies and procedures are consistent with this Article and applicable state law.

j. "Spa" shall mean a spa as defined by regulations in the Title 25, Texas Administrative Code, Chapter 265, Subchapter L, as amended. This term does not include a residential spa.

k. "Trained Pool Operator" shall mean a person who has attended a training course that meets the criteria of a Trained Pool Operator Course described in this Article.

l. "Trained Pool Operator Course" shall mean a course described by Section 7.06 of this Chapter, as amended.

2. Title 25, Texas Administrative Code Section 265.183(a), as amended, shall include the following as an additional subsection:

The Administrator, or a city employee designated by the City Manager, or a designee, to review a building permit or the plans for a public pool, spa, or PIWF pursuant to the Construction Chapter, as amended, must require that a registered professional engineer or registered architect licensed by the State of Texas to practice as such be consulted to assure that the pool and spa are designed and built in compliance with these regulations and applicable federal, state, and or local regulatory requirements. The engineer's or architect's professional seal must be affixed to the plans and a statement attesting to the fact that the pool or spa was designed, constructed, and able to operate in compliance with these standards. This statement must also be made available for review at a reasonable time upon request by the Administrator.

3. <u>Electrical Requirements for Pools, Spas, Pool Yards, and Spa Yards, and PIWFs</u>.

a. <u>References to the National Electrical Code</u>.
In Title 25, Texas Administrative Code Section 265.192, as amended, all references to the 1996 or 2002 National Electrical Code ("NEC"), or any other edition of the NEC, shall mean the

City of Arlington Electrical Chapter, as amended. In addition, all other references to any edition of the NEC in Title 25, Texas Administrative Code, Chapter 265, Subchapters L and M, as amended, shall mean the City of Arlington Electrical Chapter.

b. Annual Electrician Inspection Requirement.
In Title 25, Texas Administrative Code Section 265.192(e), as amended, the following paragraph shall be included as an additional subsection:

All post-10/01/1999 and pre-10/01/1999 ground fault circuit interrupters of pools and spas shall be inspected by an electrician in accordance with the Texas Occupations Code, as amended, at least once a year prior to March 1 of each year or the expiration date of the current operating permit or as required by the Administrator. The licensed electrician shall submit verification in writing that the pool related electrical components are in proper working order.

4. Trained Pool Operator Requirement for the Operation of Class C Pools and Spas. Title 25, Texas Administrative Code Section 265.203, as amended, shall include the following as an additional subsection:

Class C Pool and Spa Requirements.

a. The Owner or Operator of every new and existing Class C pool or spa shall ensure that the public pool or spa is cared for by a Trained Pool Operator who has successfully completed a training course according to Section 7.06 of this Chapter, as amended. The Trained Pool Operator shall be responsible for the daily water treatment operations, record keeping, and maintenance of the public pool or spa in compliance with this Article. Compliance will be demonstrated by presenting proof of training and all required records to the Administrator as described in this Article.

b. While the public pool or spa is open and available for use, a Trained Pool Operator must be:

(1) on-site at the public pool or spa; or

(2) readily available to respond and come to the public pool or spa within one hour of being notified by the Administrator.

c. In addition to all other requirements of this Article, if an Owner or Operator employs a swimming pool service company, the Owner or Operator or person in charge must ensure that:

(1) all water treatment operations, record keeping, and maintenance requirements are complied with; and

(2) each employee of the swimming pool service company servicing a public pool or spa in the City qualifies as a Trained Pool Operator and the swimming pool servicing the company provides proof of the required training for each employee to the Administrator upon request. If proof of required training for a particular employee cannot be verified by the Administrator, then that employee shall not operate a pool in the City.

5. Backflow Prevention.

a. Public Pools and Spas. Title 25, Texas Administrative Code Section 265.189(c) is amended to include the following paragraph as an additional subsection:

The Owner or Operator must comply with the City of Arlington Backflow Prevention Chapter, as amended.

b. PIWFs. Title 25, Texas Administrative Code Section 265.304(b) is amended to be replaced with the following language:

Water distribution system. All portions of the water distribution system serving a PIWF shall be protected against backflow and back siphonage. All PIWFs must comply with the City of Arlington Plumbing Chapter, as amended, and the City of Arlington Backflow Prevention Chapter, as amended, including any testing and inspection requirements. No direct mechanical connection shall be made between the chlorinating equipment or system of piping for the PIWF and a sanitary sewer system, septic system, or other wastewater disposal system.

6. Additional Testing, Inspection, Maintenance and Records Requirements.

a. Public Pools and Spas. Title 25, Texas Administrative Code Section 265.204(d) is amended to be replaced with the following language:

Other Required Tests and Inspections for Public Pools and Spas.

(1) Daily Required Tests and Inspections.

Unless the testing and inspection requirements specified in Title 25, Texas Administrative Code Section 265.204(c), as amended, apply to a particular public pool or spa, tests for total chlorine or bromine as applicable, cyanuric acid, and pH at all post-10/01/99 and pre-10/01/99 pools and spas shall be conducted daily to ensure proper chemical control. Also, the main drains shall be inspected to ensure that they are visible.

(2) Monthly Required Tests and Inspections.

The following items must be inspected and tested monthly in order to ensure that they are in good working order and are in compliance with this Article and other applicable law:

(a) Drains. The main drains shall be inspected to ensure that they are secure and in good working order.

(b) Safety Vacuum Release System ("SVRS"). The SVRS includes any Safety Vacuum Release Device or Atmospheric Vent System ("AVS") that is a part of the SVRS and must be tested to ensure that all equipment is in good working order.

(c) Emergency phone. A monthly 911 test call must be conducted to ensure that the emergency phone is in good working order, is unobstructed, and complies with all other requirements.

(d) Pool and spa enclosures.

(e) All safety equipment required by Title 25, Texas Administrative Code Section 265.199(i), as amended.

(f) Pool and spa lights.

(g) Ground fault circuit interrupters ("GFCI").

(3) Tests for alkalinity and hardness at post-10/01/99 and pre-10/01/99 pools and spas shall be conducted as necessary to ensure proper chemical control.

b. PIWFs.

(1) Title 25, Texas Administrative Code Section 265.307(a)(3) is amended to include the following paragraph as an additional subsection:

In accordance with Title 25, Texas Administrative Code Section 265.307(a)(3), as amended, a PIWF must be tested for *Cryptosporidium* immediately upon any notification that a person who has used the PIWF has been diagnosed with Cryptosporidiosis.

(2) Daily Required Tests and Inspections.
Water quality testing and inspection requirements shall be conducted in accordance with Title 25, Texas Administrative Code Section 265.306(o), as amended.

(3) Monthly Required Tests and Inspections.

The following items must be inspected and tested monthly in order to ensure that they are in good working order and are in compliance with this Article or other applicable law:

(A) Pool and spa enclosures containing a PIWF;

(B) All PIWF lights that could potentially have contact with water or otherwise present a risk for electrical shock; and

(C) GFCIs.

c. Backflow Prevention.
The Owner or Operator shall perform or ensure that all inspection and testing required by the City of Arlington Backflow Prevention Chapter, as amended, the City of Arlington Plumbing Chapter, as amended, and the Texas Administrative Code, as amended, are conducted, any necessary maintenance or repair is performed, and all backflow prevention devices are kept in good working order. Records shall be kept in accordance with the City of Arlington Backflow Prevention Chapter, as amended, the City of Arlington Plumbing Chapter, as amended, and the Texas Administrative Code, as amended.

d. Records. A record of all tests and inspections made pursuant to this Article and the adopted regulations must be kept for two years. Failure to keep required records or perform required tests shall

constitute a violation. Each missing entry in a required record shall constitute a separate violation.

7. Appeal Hearings. Title 25, Texas Administrative Code Sections 265.308(c) and 265.308(d), as amended, are deleted from the adopted regulations. Title 25, Texas Administrative Code Section 265.308 is amended to contain the following sentence as an additional subsection:

All hearings and appeals for Closure Orders or Operating Permit revocations shall be governed by Section 7.12 of the City of Arlington Health and Sanitation Chapter, as amended.

Section 7.02 Maintenance and Operation, Offenses Generally

A. Responsibility of the Owner or Operator, Person in Charge, or Attendant of a Public Pool, Spa, or PIWF.

1. The Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF shall be responsible for compliance with this Article and shall ensure that the public pool, spa, or PIWF is maintained in a sanitary condition.

2. An Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF has a duty to prevent violations of this Article and other laws applicable to public pools, spas, and PIWFs.

3. An Owner or Operator subject to a Closure Order or an Operating Permit revocation under this Article must maintain the public pool, spa, or PIWF involved in the Closure Order or Permit Revocation in compliance with this Article, any City Ordinances applicable to public pools, spas, or PIWFs, any incorporated regulations, and state law.

B. Offenses.

1. An Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF commits an offense if the person violates, causes, or fails to prevent a violation of this Article.

2. Each day that a violation of this Article exists shall constitute a separate offense unless the public pool, spa, or PIWF is lawfully demolished in accordance with policies and procedures established by the Administrator and verified by the Administrator. The Owner or Operator shall obtain any necessary permit required by the City of Arlington Code of Ordinances.

3. An Owner or Operator, Person in Charge, or attendant of a public pool, spa, or PIWF subject to a Closure Order or an Operating Permit revocation shall maintain the public pool, spa, or PIWF, which was the subject of the Closure Order or Operating Permit revocation, in compliance with this Article and any state laws or City Ordinances applicable to public pools, spas, or PIWFs.

4. Penalty.

   a. In accordance with Texas Health and Safety Code Section 341.091, as amended, the following violations shall be punished by a fine of not less than $10.00 or more than $200.00:

      (1) A violation of a permitting or inspection requirement imposed under authority granted by Texas Health and Safety Code Section 341.064(n), as amended; and

      (2) A violation of a Closure Order requirement imposed under authority granted by Texas Health and Safety Code Section 341.064(o), as amended.

   b. Violations of other provisions of this Article that are not described by Subsection (B)(4)(a) shall be punished in accordance with Article IX of this Chapter.

   c. Each day that a violation exists shall constitute a separate offense.

C. Violations May Result in a Closure Order. Any violation of this Article or any other law applicable to public pools, spas, and PIWFs may result in an immediate Closure Order for a public pool, spa, or PIWF as described in the Section 7.10 of this Chapter.

D. Penalties are Cumulative. In addition to the enforcement remedies provided in this Article, the City may pursue any lawful remedy provided by this Code of Ordinances or state law, including, but not limited to, remedies under Texas Health and Safety Chapter 341, Texas Local Government Code Chapters 54 and 214, the Construction Chapter, the Nuisance Chapter, and the Municipal Court Chapter, as amended. The use of one enforcement remedy does not preclude the use of other lawful remedies.

E. Enforcement Responsibility. The Administrator, or anyone designated by the Administrator to enforce this Article, a health official, a code compliance officer, a building inspector, or any peace officer, or any authorized City official shall have enforcement responsibility for this Article.

Section 7.03 Building Permit Required

The requirements of the Construction Chapter, as amended, shall apply whenever a residential pool or spa, a public pool or spa, or a PIWF is constructed or extensively remodeled as defined in Article I of this Chapter.

Section 7.04 Public Pool, Spa, and PIWF Operating Permits

A. In order to own, operate, or allow the use of a public pool, spa, or PIWF, an Operating Permit must be obtained for the public pool, spa, or PIWF. Each public pool, spa, and PIWF must have a separate Operating Permit. A public pool Operating Permit does not allow the operation of a spa or PIWF. A spa Operating Permit does not allow the operation of a public pool or PIWF. A PIWF Operating Permit does not allow the operation of public pool or spa. A public pool Operating Permit, a spa Operating Permit, and a PIWF Operating Permit shall not be combined. An Operating Permit shall permit the operation of the public pool, spa, or PIWF only at the location and for the Owner or Operator for which it was granted.

B. In this Article, the term "Operating Permit" shall include: a public pool Operating Permit, a spa Operating Permit, and a PIWF Operating Permit.

C. The Administrator shall grant the initial Operating Permit for a newly constructed or extensively remodeled public pool, spa, or PIWF if:

1. a building permit has been obtained;

2. all required permits for electrical, plumbing, pool enclosures, or any other related permit have been obtained;

3. all required inspections for the permits have been passed; and

4. all required fees have been paid.

D. An Operating Permit expires on the first day of March of each year unless revoked before the first day of March.

E. In order to renew an Operating Permit, the public pool, spa, or PIWF must pass an annual inspection. The Administrator shall renew a permit for a public pool, spa, or PIWF for any person or firm applying to renew an Operating Permit in the City of Arlington if the person or firm:

1. complies with the requirements of this Chapter, the Unified Development Code, the Construction Chapter, any other applicable City ordinance or state law or regulation, the Texas Accessibility Standards, the Americans

with Disabilities Act, and the Virginia Graeme Baker Pool and Spa Safety Act;

2. provides proof that every person operating the public pool, spa, or PIWF has completed any required operator training as specified in this Article or state law;

3. pays all required fees;

4. submits proof that the public pool, spa, or PIWF has been inspected by a licensed electrician in accordance with Section 7.01(E)(3)(b) of this Chapter, as amended;

5. provides all required records to the Administrator;

6. complies with any outstanding building permit requirements for repairs or remodels; and

7. passes an inspection.

F. Extensive Remodeling. If a public pool, spa, or PIWF has been or is being extensively remodeled as defined in Article I, an Operating Permit will be renewed only if: a building permit has been obtained, all required inspections have been passed, and all required fees have been paid. The Building Official or a designee shall determine whether a building permit is required when a pool, spa, or PIWF is being extensively remodeled, in accordance with the Construction Chapter, as amended.

G. Offense. An Owner or Operator, Person in Charge, or an attendant of a public pool, spa, or PIWF commits an offense if the person operates, allows the operation of, or fails to prevent the use of a public pool, spa, or PIWF without a current and valid Operating Permit. Each day that a violation of this Subsection exists shall constitute a separate offense until the Operating Permit is re-instated or the public pool, spa, or PIWF is lawfully demolished in accordance with policies and procedures established by the Administrator and verified by the Administrator. The Owner or Operator shall obtain any necessary permits required by this Code of Ordinances.

Section 7.05 Fees

A. Administrative fees shall be charged for operating permits, inspections, operating permit reinstatements, re-inspections, and duplicate permits, except that no fees shall be charged for City owned and operated public pools, spas, or PIWFs. Building permit fees may be charged in accordance with the Construction

Chapter, as amended, when a building permit is required by Section 7.03 of this Chapter, as amended.

B. Fees for operating permits, reinstatements, inspections, re-inspections, duplicate permits, and building permits required by Section 7.03 of this Chapter, as amended, shall be in an amount set by resolution of the City Council.

C. Administrative fees are not transferable or refundable. Every permit issued under this Article shall be non-transferable and non-refundable.

Section 7.06 Operator Training

A. An Owner or Operator, an employee or agent of the Owner or Operator, or a Person in Charge must ensure that all persons maintaining or operating a pubic pool, spa, or PIWF, including operators from a servicing company, have the appropriate training as required by this Article and state law for the particular class of pool, spa, or PIWF being operated. An Owner or Operator, an employee or agent of the Owner or Operator, or a Person in Charge commits an offense if the person fails to comply with this Subsection.

B. Certified Operator Course Requirements. A Certified Operator Course is only required under this Article when it is required by the adopted provisions of the Texas Administrative Code, as amended. A person will only qualify as a Certified Pool Operator by receiving certification for completing a Certified Operator Course described in Title 25, Texas Administrative Code Section 265.203(a), as amended. A person qualifies as a Certified PIWF Operator by receiving certification for completing a Certified Operator Course described in Title 25, Texas Administrative Code Section 265.303(a), as amended. A person will only qualify as both a Certified Pool Operator and a Certified PIWF Operator if the person receives certification for completing a Certified Operator Course that is described by both Title 25, Texas Administrative Code Sections 265.203(a) and 265.303(a), as amended.

C. All public pool and spa operators must complete a Trained Pool Operator Course, or a similar course meeting the requirements described in this Section, unless otherwise required to complete a Certified Operator Course. Completion of a Certified Operator Course may be substituted for a Trained Pool Operator Course as long as the Certified Operator Course certificate is valid and is described by Title 25, Texas Administrative Code Section 265.203(a), as amended. A Trained Pool Operator Course may not be used as a substitute for a Certified Operator Course when a Certified Operator Course is required.

D. Minimum Standards for a Trained Pool Operator Course. A Trained Pool Operator Course shall meet the following minimum requirements:

1. The training course must be in an instructor-led format. Self-instructional, self-study, or online courses are not acceptable.

2. The training course must consist of at least six (6) hours of classroom instruction.

3. The training course must be taught by a Certified Pool Operator.

4. The instructor of the training course shall provide a certificate or other documentation meeting the requirements in Subsection (E) that may be used to verify a pool operator's successful completion of a course compliant with this Section. In addition to the certificate, the Owner or Operator shall provide proof of the course curriculum and the course instructor's qualification as a Certified Pool Operator to the Administrator upon request. If this information is not provided, then the training will not qualify a person as a Trained Pool Operator.

5. The training course curriculum is subject to review by the Administrator. If the training course curriculum is not consistent with this Section or if the course was not taught by a Certified Pool Operator, then completion of that course will not be sufficient to meet the requirements of this Section.

6. The training course must include instruction on:

   a. water chemistry;

   b. water testing;

   c. water filtration and re-circulation;

   d. water-borne diseases and their prevention;

   e. pool safety; and

   f. applicable state and local regulations.

E. Proof of Compliance.

1. Trained Pool Operator Certificates.

   a. Trained Pool Operator Certificates must include the following information:

      (1) the participant's name;

      (2) the date that the training course was conducted;

(3) the title of the training course;

(4) the instructor's name and the organization's name, if applicable; and

(5) the number of hours of classroom instruction.

b. Only the original certificate will be accepted. Trained Pool Operator Certificates are subject to verification by the Administrator with the person or organization who conducted the class.

c. Unless otherwise stated in the certificate or supporting documents for the course, Trained Pool Operator Certificates are valid for two years from the date of issuance. A valid, current, and unexpired training certificate or other documentary proof of completion for each pool operator must be provided to the Administrator upon request.

d. If all information required by this Section is not included on the certificate, then the Administrator may consider supporting documents in addition to the certificate.

2. Certified Operator Certificates. The Owner or Operator shall provide to the Administrator upon request a valid, current, and unexpired training certificate, or other documentary proof of completion allowed by state or federal law, for each pool operator required to complete a Certified Pool Operator training course. If an operator is required to be a Certified Pool Operator or Certified PIWF Operator, any certificates or other proof of completion must meet the requirements as established by state or federal law. A Certified Operator Certificate shall be valid for the duration provided by state law.

F. Offenses.

1. A person commits an offense if the person operates or maintains a public pool, spa, or PIWF when the person does not qualify as a Trained Pool Operator, Certified Pool Operator, or Certified PIWF Operator as required by this Article.

2. An Owner or Operator or person in charge commits an offense by allowing a person to operate or maintain a public pool, spa, or PIWF or by failing to prevent a person from operating or maintaining a public pool, spa, or PIWF when that person does not qualify as a Trained Pool

Operator, Certified Pool Operator, or Certified PIWF Operator as required by this Article.

Section 7.07 <u>Posting of Public Pool, Spa, and PIWF Permits and Pool Operators Training Certificate</u>

A. The Operating Permit and all applicable training certificates for each public pool, spa, and PIWF shall be displayed in public view. An Owner or Operator commits an offense by failing to display the Operating Permit or an applicable training certificate in public view.

B. Signs shall be required to be posted at all public pool, spa, or PIWF entrances stating "All violations may be reported to the City of Arlington." The signs shall also be required to have a phone number to use for reporting violations. This phone number will be provided by the Administrator. Signage must be in at least two contrasting colors and lettering must be no smaller than one (1) inch in height.

C. An Owner or Operator commits an offense by failing to post any signs required by this Section.

D. An Owner or Operator commits an offense by posting a sign that does not contain the information required by this Section or does not comply with the lettering or color contrasting requirements of this Section.

Section 7.08 <u>Inspections</u>

The Administrator is authorized to conduct inspections in accordance with Texas Health and Safety Code Sections 341.064 and 341.0695, as amended, and Title 25, Texas Administrative Code, Chapter 265, Subchapters L and M, as amended. The Administrator may issue a Closure Order if inspection of the public pool, spa, or PIWF or any records is refused or delayed.

Section 7.09 <u>Regulations in the Public Pool, Spa, or PIWF Area</u>

A. A person commits an offense if the person:

1. allows an animal under the person's control to enter or remain within the area or enclosure of a public pool, spa, or PIWF;

2. has skin abrasions, open sores, skin disease, eye disease, nasal or ear discharge or a communicable disease and swims in or enters a public pool, spa, or PIWF;

3. alters or removes safety equipment from a public pool, spa, or PIWF except in an emergency;

4. carries glass within a public pool, spa, or PIWF area or enclosure; or

5. allows persons to access a public pool, spa, or PIWF where there exists any violation of this Article or any other City Ordinances or state laws applicable to public pools, spas, or PIWFs.

B. An Owner or Operator commits an offense by failing to prevent a person from committing an offense under this Section or by failing to take immediate reasonable and lawful action to stop a violation.

C. An Owner or Operator must follow all laws and regulations outlined in the Americans with Disabilities Act and any other applicable state or federal laws regarding service animals or assistance animals. It is an affirmative defense to prosecution under Subsection (A)(1) if the animal is a service animal that is located within the pool area or enclosure, but not in the water, except as allowed by state or federal law. The term "Service Animal" shall mean a service animal or assistance animal as defined by the applicable state or federal law.

Section 7.10 <u>Closure Orders</u>

A. Failure to comply with any provision of this Article or state law applicable to public pools, spas, and PIWFs may result in the immediate closure of the public pool, spa, or PIWF and the pursuit of any other remedy allowed by law.

B. After an inspection or complaint investigation, the Administrator shall notify the Owner or Operator, Person in Charge, or a designated employee or agent about any existing violations of this Article or applicable state or federal law. The Administrator may allow for a reasonable time to comply before issuing a Closure Order.

C. A public pool, spa, or PIWF may be closed immediately with a Closure Order if the Administrator determines that:

1. the condition of the public pool, spa, or PIWF is hazardous to the health or safety of the swimmers or of the general public, including but not limited to a positive test for *Cryptosporidium* in accordance with Title 25, Texas Administrative Code Section 265.308, as amended;

2. there is violation of this Article or any applicable state or federal law;

3. the Operating Permit is expired or revoked;

4. there is a pool or spa enclosure violation; or

5. a repair or remodel was performed without a required permit.

D. Notice of Closure Order.

1. After a Closure Order has been issued, notice of the Closure Order must be provided to the Owner or Operator, or a designated agent or employee of the Owner or Operator, either by:

   a. personal service to the Owner or Operator, Person in Charge, or an employee, agent, or attendant of the public pool, spa, or PIWF; or

   b. by mail to the Owner or Operator at the address indicated in the Operating Permit or at the owner's address as recorded in the appraisal district records of the jurisdiction in which the property is located, unless the contact information is amended in accordance with procedures established by the Administrator.

2. Failure to provide this notice will not affect the validity of the Closure Order.

E. Sign Requirements.

1. When a public pool, spa, or PIWF is subject to a Closure Order, the Administrator shall conspicuously post signs at all entrances to the public pool, spa, or PIWF stating "Closed By The City of Arlington."

2. Any sign posted by the Administrator shall not be altered or removed unless authorized by the Administrator.

3. The Owner or Operator or a Person in Charge must ensure that the signs are inspected daily. If a sign is removed or altered, the Owner or Operator, or an employee or agent of the owner or Operator, must immediately notify the Administrator.

F. Preventing the Use of the Public Pool, Spa or PIWF Subject to a Closure Order.

1. When the Administrator has ordered the closure of a public pool, spa, or PIWF, the Owner or Operator or Person in Charge of such public pool, spa, or PIWF must prevent persons from using the public pool, spa, or PIWF and shall immediately take every reasonable measure to prevent persons from using the public pool, spa, or PIWF.

2. Upon issuance of a Closure Order, the Owner or Operator, Person in Charge, or an employee or an agent of the Owner or Operator, must immediately lock the gates and doorways in any fence or other enclosure surrounding such public pool, spa, or PIWF.

3. The Administrator may order the Owner or Operator to use any other reasonable measure to prevent the entry to the public pool, spa, or PIWF. The Administrator may allow a reasonable time for compliance.

G. Re-inspection. If the grounds for which the Closure Order was issued have been corrected, the Owner or Operator or Person in Charge may schedule a re-inspection with the Administrator. The re-inspection will be performed during the Administrator's normal working hours.

H. Compliance.

1. If the Administrator verifies that compliance has been achieved, the inspection has been passed, the grounds for which the Closure Order was issued no longer exist, and any required fees have been paid, the Administrator shall lift the Closure Order and notify the Owner or Operator, or an employee or agent of the owner or Operator, in person or by mail that the public pool, spa, or PIWF may be opened.

2. A Closure Order shall be lifted if the public pool, spa, or PIWF is demolished in accordance with policies and procedures established by the Administrator and verified by the Administrator. The Owner or Operator shall obtain any necessary permit required by this Code of Ordinances.

I. Offenses.

1. Violation of Signage Requirements.

a. An Owner or Operator, a Person in Charge, or an employee or agent of the owner or Operator or a Person in Charge, commits an offense if the person fails to notify the Administrator that a sign required by this Section has been removed or altered. Each day that a violation of this Subsection exists shall constitute a separate violation.

b. A person commits an offense if the person removes or alters a sign required by this Section or authorizes the removal or alteration of a sign required by this Section.

2. Requirement to Prevent Use of a Closed Public Pool, Spa, or PIWF.

a. The Owner or Operator, Person in Charge, or an employee or an agent of the Owner or Operator or the Person in Charge, or an attendant of a public pool, spa, or PIWF subject to a Closure Order commits an offense if the person fails to:

(1) comply with the Administrator's order to use a reasonable measure to prevent a person from entering a public pool, spa, or PIWF subject to a Closure Order; or

(2) secure or lock any gate or doorway in a fence or other enclosure surrounding a public pool, spa, or PIWF while a closure order is effective.

b. Each day that a violation of this Subsection exists shall constitute a separate violation.

3. Use of a Closed Public Pool, Spa, or PIWF Prohibited.

a. When a public pool, spa, or PIWF is closed by a Closure Order, an Owner or Operator, or person in charge, or an attendant of the public pool, spa, or PIWF commits an offense by allowing a person to use, or failing to prevent a person from using the public pool, spa, or PIWF or from entering the enclosure area of the public pool, spa, or PIWF.

b. A person commits an offense if the person knowingly, recklessly, or with criminal negligence, uses or enters the enclosure area of a public pool, spa, or PIWF that is closed by a Closure Order. If there are signs present in compliance with this Section, then it shall be presumed that the person committed the violation knowingly, recklessly, or with criminal negligence.

Section 7.11 Operating Permit Revocation

A. An Operating Permit for a public pool, spa, or PIWF may be revoked for any of the following grounds:

1. a public pool, spa, or PIWF is operated in violation of a Closure Order;

2. false information about the public pool, spa, or PIWF was presented to the Administrator or any employee or peace officer employed by the City of Arlington;

3. a public pool, spa, or PIWF has been declared to be a dangerous structure in accordance with the Construction Chapter, as amended, or is the subject of three convictions, deferred dispositions, or liability findings within one year for violations of this Article or any other City Ordinance or state law applicable to public pools, spas, or PIWFs;

4. a public pool, spa, or PIWF has been closed with a Closure Order two times or more within one year;

5. records required by this Article have not been kept or provided to the Administrator;

6. a public pool, spa, or PIWF is the subject of an investigation by any state or federal agency for health or environmental matters;

7. a public pool, spa, or PIWF is being operated in a manner that constitutes a public nuisance; or

8. the revocation is necessary to protect the public from an immediate health hazard that a Closure Order is insufficient to remedy.

B. If an Operating Permit is revoked under this Section, unless otherwise specified, a permit may be revoked for up to one (1) year from the date of revocation. An Owner or Operator must pay all permit fees and bring the public pool, spa, or PIWF into full compliance with all applicable City ordinances, state law, and federal law. Furthermore, the public pool, spa, or PIWF must pass an inspection by the Administrator before a revoked Operating Permit may be reinstated.

Section 7.12 <u>Administrative Hearings</u>

A. <u>Appeal to a Hearing Officer</u>.

1. The Owner or Operator of a public pool, spa, or PIWF for which a Closure Order has been issued or an Operating Permit has been revoked under this Article may request an administrative hearing in order to appeal the decision. This request must be made in accordance with procedures established by the Administrator or designated hearing officer.

2. <u>Notice</u>.

a. When the Administrator issues a Closure Order or revokes an Operating Permit, the Administrator shall provide the Owner or Operator with notice of the ability to request an administrative hearing. The notice shall contain a statement explaining the right of the Owner or Operator to request a hearing for the purpose of

determining whether the Operating Permit revocation or Closure Order should be affirmed. The notice shall contain instructions on how to request an administrative hearing.

b. The notice shall be provided by personal service to the Owner or Operator, or by mail to either person's address according to the appraisal district records of the jurisdiction in which the property is located, the address specified in the documents submitted for the current Operating Permit, or to an address specified by the person in accordance with procedures established by the Administrator.

c. If notice cannot be accomplished by mail or personal service to the Owner or Operator, the notice shall be provided by posting the notice:

(1) on all entrances to the public pool, spa or PIWF or near the front door of the building on the property to which the revoked Operating Permit or Closure Order relates; or

(2) on a placard attached to a stake driven into the ground on the property to which the revoked Operating Permit or Closure Order relates, if the property contains no buildings.

d. If the notice is mailed to the Owner or Operator in accordance with this Section and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered to be delivered. If the notice is provided by mail, the date of the notice is the date of delivery. If the date of delivery is not known, then notice given by mail is deemed to be delivered three (3) days after the date mailed.

3. In order to request a hearing, the Owner or Operator shall provide a written request for a hearing to the Administrator before the expiration of ten (10) days from the date the notice was provided under Subsection (A)(2).

4. If the Administrator does not receive a timely request for a hearing, the Operating Permit revocation or Closure Order will be final.

5. If the Administrator receives a request for a hearing, the Administrator or designated Hearing Officer will schedule a hearing within ten (10) days after the date the request is filed unless the parties agree to a certain date beyond the ten (10) days. The Owner or Operator's request for hearing must contain an address and a phone number where notice of the hearing may be provided.

6. The Administrator may preside over the hearing as the Hearing Officer or designate a Hearing Officer.

7. The Hearing Officer shall have the authority to establish hearing procedures, compel the attendance of witnesses, and administer oaths. The Owner or Operator may submit evidence by notarized affidavit if the Owner or Operator cannot appear in person.

8. Hearings.

   a. Closure Order Appeals.

      (1) In order to affirm a Closure Order, the Hearing Officer must find that a violation of this Article has occurred, which constituted the ground for the Closure Order being issued. The Hearing Officer shall make this determination based upon the totality of the circumstances using a preponderance of the evidence standard.

      (2) If the Owner or Operator, or an authorized agent or representative does not appear at the hearing or otherwise respond to the hearing notice, the Hearing Officer shall still review the Closure Order and any notarized affidavit submitted by the person. The Hearing Officer may stay or continue the hearing if necessary or if requested by the Owner or Operator or the City.

      (3) The Hearing Officer must make a written order either affirming or lifting the Closure Order. If the Closure Order is affirmed, the Hearing Officer shall describe the criteria for lifting the Closure Order in the Hearing Officer's order and the public pool, spa, or PIWF shall be closed until the criteria is met and verified by the Administrator. If the Closure Order is lifted, the Owner or Operator may proceed to operate the public pool, spa, or PIWF. The order shall be provided to the Owner or Operator in a manner consistent with this Section.

   b. Operating Permit Revocation Appeals.

      (1) If the Hearing Officer finds by a preponderance of the evidence that the revocation of the Operating Permit is necessary to protect the public, then the Hearing Officer shall affirm the Operating Permit revocation. This finding shall be based upon the following factors:

(a) The number of violations, convictions, or liability findings;

(b) The number of previous closure orders;

(c) Repeat violations;

(d) Previous warnings that did not involve a citation;

(e) Complaints filed by citizens which have been verified by a peace officer, the Administrator, or an employee designated by the Administrator;

(f) The degree that the public health was endangered;

(g) Any pending action or investigation by another agency; or

(h) Any evidence that the public pool, spa, or PIWF constitutes a public nuisance.

(2) After the hearing, the Hearing Officer shall issue a written order. The order shall be provided to the Owner or Operator in a manner consistent with this Section.

(3) The Hearing Officer may affirm the permit revocation and state conditions that the Owner or Operator must satisfy in order to reinstate the permit. The permit shall be reinstated when the Hearing Officer has verified that compliance has been obtained. The Hearing Officer may establish procedures to verify compliance before a permit is reinstated.

(4) If, after the hearing, the Hearing Officer does not affirm the permit revocation, the Hearing Officer or designee shall give written notice of the findings to the Owner or Operator within ten (10) days. If the Hearing Officer does not affirm the operating permit revocation, the public pool, spa, or PIWF may be operated immediately.

(5) The Hearing Officer may affirm the revocation and adjust the revocation period in a manner based upon the findings.

9. The determination of the Hearing Officer shall be final on the date it is signed.

10. A request for a hearing does not stay the effect of an Operating Permit revocation, a Closure Order, or the use of any enforcement measure.

11. This Section does not apply to the denial or revocation of a building permit or remedies for Dangerous and Substandard Structures, or any remedies pursuant to the Construction Chapter or any other applicable ordinance, state law, or federal law.

B. If a Closure Order or Operating Permit revocation is withdrawn or lifted by the Administrator for any reason prior to the scheduled date and time of a hearing described in this Section, the Hearing Officer shall cancel the hearing upon a motion by any interested party.

Further, **Article IX**, Violations and Penalties, is hereby amended so that said Article shall be and read as follows:

ARTICLE IX

VIOLATIONS AND PENALTIES

Section 9.01 Penalty for Violation

A. Any person, corporation, association, or entity who violates any of the provisions of this Chapter commits an offense that is considered a class C misdemeanor and each day the violation continues shall be a separate offense.

B. If the definition of an offense under this Chapter does not prescribe a culpable mental state, then a culpable mental state is not required. Such offense shall be punishable by a fine not to exceed Five Hundred Dollars and No Cents ($500.00). Although not required, if a culpable mental state is in fact alleged in the charge of the offense and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, such offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents ($2,000.00).

C. If the definition of an offense under this Chapter prescribes a culpable mental state and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, then a culpable mental state is required and the offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents ($2,000.00).

D. If the offense relates to an ordinance for which Administrative Adjudication can be used, then the offense may be enforced by the Administrative Adjudication procedures described in the Municipal Court Chapter, Article 9.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be

published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 13th day of June, 2017, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 27th day of June, 2017, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY

Ordinance No. 18-039

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article I, Definitions, Section 1.01, Definitions, by the addition of definitions for "Multi-Family Property", "Owner", "Recycling Collection Container", "Recycling Collection Services", "Recycling Collector", and "Tenant"; and Article II, Garbage and Trash, by the addition of Section 2.02.02, Recycling Collection Services at Multi-Family Properties; providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; and providing for severability, governmental immunity, injunctions, publication and becoming effective on November 5, 2018

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended by the amendment of **Article I**, Definitions, **Section 1.01**, Definitions, by the addition of definitions for "Multi-Family Property", "Owner", "Recycling Collection Container", "Recycling Collection Services", "Recycling Collector", and "Tenant" so that hereafter said definitions shall be and read as follows:

Multi-Family Property - A dwelling or group of dwellings on one lot containing separate living units for three or more families, but which may have joint services or facilities.

Owner - Each and every person or entity who is a record owner of a fee simple interest or an undivided fee simple interest in a parcel of land. If such parcel is subject to a condominium or other multi-ownership regime, the owners' association representing such multi-ownership regime, and not individual unit owners, shall be deemed the owner thereof.

Recycling Collection Container - A container for recyclable materials that is supplied to a multi-family property by a recycling collector for use by the tenants of the multi-family property and that is approved as part of a commercial site plan, pursuant to Section 2.02.02, as amended.

Recycling Collection Services - The collection, hauling, and processing of all recyclable materials accumulated in recycling collection containers, in cooperation with a recycling collector.

Recycling Collector - A person, firm, corporation, partnership or entity that collects recyclable materials from multi-family properties within the City.

Tenant - A person who is authorized by lease to occupy a dwelling in a multi-family property to the exclusion of others, and who is obligated to pay rent.

Further, **Article II**, Garbage and Trash, is hereby amended by the addition of **Section 2.02.02**, Recycling Collection Services at Multi-Family Properties, so that said Section 2.02.02 shall be and read as follows:

Section 2.02.02. Recycling Collection Services at Multi-Family Properties

A. Recycling at Multi-Family Properties

1. The requirements of this Section apply to multi-family properties constructed on or after November 5, 2018.

2. The owner or person in charge or otherwise in control of a multi-family property shall provide recycling collection services using a recycling collector in accordance with an approved commercial site plan under Subsection (B), as amended.

3. Recycling collectors that provide recycling collection services to a multi-family property shall collect and remove recyclable materials from the recycling collection containers at the property on a frequency of at least once a week or as often as necessary to prevent recycling collection containers from overflowing.

4. Recycling Collection Containers

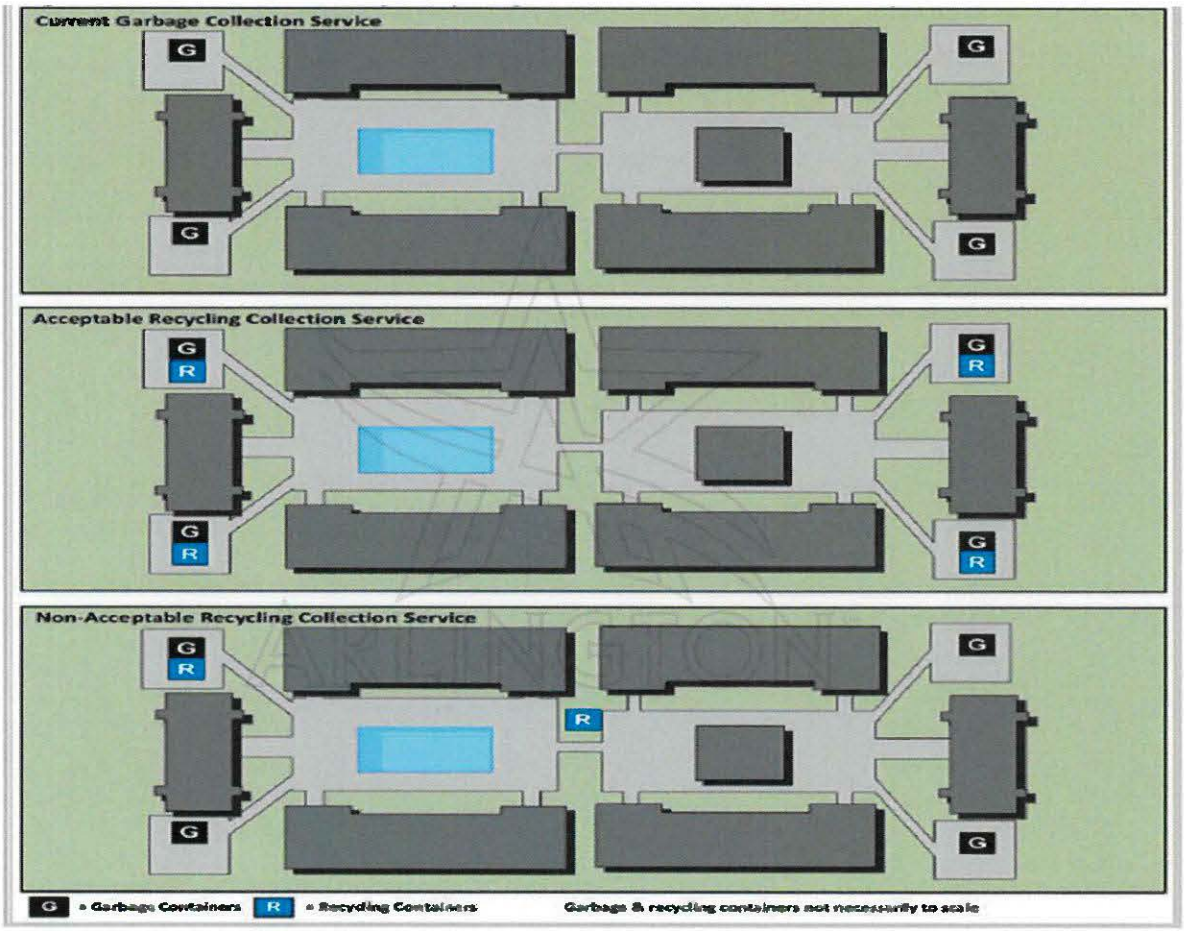
   a. Upon request of the owner or person in charge or otherwise in control of a multi-family property, recycling collectors shall supply recycling collection containers to multi-family properties, pursuant to an approved commercial site plan under Subsection (B), as amended. Recycling collection containers must be enclosed or screened in compliance with all applicable provisions of this Code of Ordinances.

   b. Recycling collection containers must be of an appropriate size for the anticipated amount of recyclables generated at the multi-family property. There must be one recycling collection container for each approved container for garbage and trash at the multi-family property. One recycling collection container must be placed adjacent to each approved container for garbage and trash at the

multi-family property and must be readily accessible to the recycling collector.

c. Figure 2.02.02-1, Multi-family Recycling Collection Container Placement Example, demonstrates in a graphical manner the required placement of recycling collection containers under Subsection (A)(4), as amended.

Figure 2.02.02-1, Multi-family Recycling Collection Container Placement Example



d. The owner or person in charge or otherwise in control of a multi-family property must provide clear and visible signage on each recycling collection container:

(1) Stating that the container is only for recyclable materials; and

(2) Describing the types of recyclable materials that are acceptable for placement in the container.

5. Educational Materials

a. The owner or person in charge or otherwise in control of a multi-family property must provide tenants with educational materials and other information about recycling services, including: information on the types of recyclable materials accepted, proper separation of recyclable materials, and the location of recycling collection containers. This information must be distributed to all tenants upon the commencement of providing recycling services at the property and must be provided to all new tenants upon moving in to a leased dwelling unit.

b. When changes are made to recycling collection services at the property, the owner or person in charge or otherwise in control of a multi-family property shall provide tenants with information and instructions detailing the changes.

c. Upon request, recycling collectors shall provide educational and promotional material such as posters, introductory letters and signage to the owner or person in charge or otherwise in control of a multi-family property, including when there is a change in ownership at the property or the method of collection under Subsection (A)(7), as amended.

6. Collection and Removal of Recycling Collection Container Contents

a. The owner or person in charge or otherwise in control of a multi-family property must:

(1) Maintain continuous, regular recycling collection service at the property; and

(2) Ensure that a recycling collector collects and removes the contents of all recycling collection containers at the property on a frequency of at least once a week or as often as necessary to prevent recycling collection containers from overflowing.

b. If a recycling collector does not collect and remove the contents of a recycling collection container from a property for any reason, the owner or person in charge or otherwise in control of a multi-family property must dispose of the contents of the recycling collection container as required by this Article.

c. The owner or person in charge or otherwise in control of a multi-family property is subject to all other applicable provisions of this Code of Ordinances pertaining to the filling of commercial-type containers as well as nuisances involving the accumulation or presence of garbage and trash at the property.

7. Continuation of Recycling Collection Services. The owner or person in charge or otherwise in control of a multi-family property is responsible for the continuation of recycling collection services whenever there is a change in:

a. The ownership or person in charge or otherwise in control of the property; or

b. The method of collection, such as a change in the types or location of containers.

8. Collection Options for Certain Multi-Family Properties

a. This Subsection provides an alternative option for recycling collection services at multi-family properties located on lots that are one (1) acre or less in size and that do not have sufficient space at the property for a recycling collection container.

b. The owner or person in charge or otherwise in control of a multi-family property described by this Subsection may satisfy the recycling collection requirements of this Section by providing alternative recycling collection services with the approval of the Administrator. Any recycling collection services where recyclable materials are collected from the City right-of-way must be performed by the Collector.

9. Transportation of Recyclable Materials. Drivers of vehicles transporting recyclable materials for a recycling collector shall comply with all applicable state and local traffic laws, including but not limited to, Texas Transportation Code chapter 725, as amended, governing the transportation of loose materials.

B. Plan Review Process

1. Prior to providing recycling collection services in accordance with Subsection (A), the owner or person in charge or otherwise in control of a multi-family property must submit to the Administrator a commercial site plan, pursuant to Construction Chapter § 4.02, as amended. The commercial site plan shall include a description of the proposed recycling

collection containers to be used at the property, the location and placement of the containers, as well as the enclosures for the containers.

2. Upon the Administrator's approval of the commercial site plan, the owner or person in charge or otherwise in control of a multi-family property shall implement recycling collection services within thirty (30) days of receiving a certificate of occupancy.

C. Recycling Collector Permit

1. Issuance of Permits and Application. The Administrator has the authority to issue annual recycling collector permits. Each recycling collector must obtain an annual recycling collector permit in order to provide or conduct recycling collection services to a multi-family property under this Section. To apply for a recycling collector permit, a recycling collector must submit an application to the Administrator on a form prescribed by the Administrator. On the form, the recycling collector must include all information required by Section 2.14, as amended.

2. Permit Fee. There shall be established a recycling collector permit fee. The recycling collector must pay the recycling collector permit fee at the time that the application is submitted and upon renewal of the permit under Subsection (C)(4), as amended.

3. Duration of Permits. Recycling collector permits shall remain in full force and effect for twelve (12) months from the date of issuance unless suspended or revoked sooner under Subsection (C)(7), as amended. Recycling collector permits shall be nontransferable and nonrefundable.

4. Renewal of Permits. Recycling collectors may renew a recycling collector permit upon:

   a. Payment of the annual recycling collector permit fee;

   b. Providing proof to the Administrator of having timely submitted the annual report under Subsection (C)(5), as amended; and

   c. Providing proof to the Administrator of current insurance coverage as required by Subsection (C)(6), as amended.

5. Annual Report. On or before March 31st of each year, all recycling collectors must submit to the Administrator an annual report, on a form prescribed by the Administrator, detailing the volume and tonnage of recyclable materials collected from multi-family properties in the prior calendar year.

6. Insurance Requirements. At all times, recycling collectors shall maintain the following minimum insurance coverage while providing or conducting recycling collection services and throughout the duration of their recycling collector permit:

   a. Automobile Liability - $1,000,000 combined limit per occurrence for bodily injury and property damage.

   b. Umbrella Liability - $2,000,000 per occurrence combined limit per occurrence/aggregate for bodily injury and property damage.

   c. Environmental or Pollution Liability - $10,000,000 per contamination incident; $10,000,000 General Aggregate.

7. Denial of Applications and Suspension or Revocation of Permits

   a. An application may be denied, or a recycling collector permit may be suspended or revoked if:

      (1) A recycling collector submits false information on an application for a recycling collector permit;

      (2) A recycling collector does not maintain insurance coverage as required by Subsection (C)(6), as amended;

      (3) A recycling collector has been convicted of or had a charge dismissed upon completion of deferred disposition two (2) or more times within the past two (2) years for violations of this Article or any provision of this Code of Ordinances related to conduct involving recyclable materials, recycling collection services, or recycling collection containers; or

      (4) Any driver or drivers for a recycling collector have been convicted of or had a charge dismissed upon completion of deferred disposition three (3) or more times, in total, within the past two (2) years for violations of:

         (a) This Article or any provision of this Code of Ordinances related to conduct involving recyclable materials, recycling collection services, or recycling collection containers; or

         (b) State law involving the operation of a vehicle.

   b. Upon denial of an application or suspension or revocation of a permit, the recycling collector shall be notified in writing of the

decision. The recycling collector may request a hearing before the Administrator or a designated hearing officer by submitting a request in writing within ten (10) days of the decision to deny an application or suspend or revoke a recycling collector permit.

c. After the hearing, the Administrator or designated hearing officer will decide whether to affirm or reverse the decision to deny or suspend or revoke a permit. The Administrator or designated hearing officer will notify the recycling collector within thirty (30) days of the decision.

D. Administration

1. The Administrator or his designee may designate personnel to administer and enforce the provisions of this Section. Those designated by the Administrator or his designee may exercise any enforcement powers as set forth in this Code of Ordinances.

2. All fees under this Section shall be in an amount set by resolution of the City Council.

3. The owner or person in charge or otherwise in control of a multi-family property is not responsible for whether tenants choose to participate in the recycling of recyclable materials at the property.

E. Offenses

1. The owner or person in charge or otherwise in control of a multi-family property commits an offense if the person fails to provide or implement recycling collection services at the property as required by this Section.

2. The owner or person in charge or otherwise in control of a multi-family property commits an offense if the person fails to comply with any requirement of an approved commercial site plan for the property under Subsection (B), as amended.

3. The owner or person in charge or otherwise in control of a multi-family property commits an offense if the person fails to place recycling collection containers at the property in compliance with an approved commercial site plan or as required by Subsection (A)(4), as amended.

4. The owner or person in charge or otherwise in control of a multi-family property commits an offense if the person fails to have the contents of all recycling collection containers at the property removed and disposed of under Subsection (A)(6), as amended, or as otherwise required by this Article.

5. A recycling collector commits an offense if the recycling collector provides or conducts recycling collection services at a multi-family property without a valid recycling collector permit issued by the Administrator under Subsection (C), as amended.

6. A person commits an offense if the person violates any provision of this Section by performing an act prohibited or failing to perform an act required.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective on November 5, 2018 as described above.

PRESENTED AND GIVEN FIRST READING on the 19th day of June, 2018, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 7th day of August, 2018, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY

Ordinance No. 19-030

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the addition of Article XIV, Hotel Premises and Sanitation Regulations, relative to providing clear and concise requirements for the maintenance of lodging facilities within the City of Arlington; providing for a fine of up to $2,000.00 for each violation; providing this ordinance be cumulative; and providing for severability, governmental immunity, injunctions, publication, and an effective date

WHEREAS, the average age of lodging facilities within the City of Arlington was recently found to be over twenty years; and

WHEREAS, the aging conditions of these facilities has reinforced the need for clear and concise requirements to establish minimum standards to insure the health and safety for the thousands of occupants that visit Arlington each year; and

WHEREAS, the City Council has determined that it is in the best interest of the public and in support of the health, safety, morals and general welfare of the citizens that the amendments relative to the "Health and Sanitation" Chapter be approved; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

THAT the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended by the addition of **Article XIV**, Hotel Premises and Sanitation Regulations, and said Article shall be and hereafter read as follows:

ARTICLE XIV

HOTEL PREMISES AND SANITATION REGULATIONS

Section 14.01 Definitions

In this article:

Hotel means an establishment in which lodging is offered and provided to the public for compensation and classified under Lodging Facilities in Article 3 of the Unified Development Code (UDC), excluding a Bed and Breakfast Inn, Short-Term Rental or other lodging facility that operates pursuant to a certificate of occupancy authorizing an R-2 occupancy under Section 310 of Chapter 3, "Use and Occupancy Classification," of the IBC.

Inspection Official means the City's duly appointed Building Official or Health Official, or their designees.

International Building Code ("IBC") means the most recent edition of the International Building Code adopted as the official building code, as amended, in Article I, Building Code, of the "Construction" Chapter of the Arlington City Code.

Nontransient means occupancy of a sleeping unit for more than 30 consecutive days.

Transient means occupancy of a sleeping unit for not more than 30 consecutive days.

Transient hotel means a hotel, which: (i) operates pursuant to a certificate of occupancy authorizing an R-1 occupancy under Section 310 of Chapter 3, "Use and Occupancy Classification," of the IBC; or (ii) maintains transient or nontransient units pursuant to a certificate of occupancy that does not assign an occupancy classification; or (iii) maintains nontransient sleeping units and such units are not constructed nor equipped in accordance with the standards for an R-2 occupancy under Section 310 of Chapter 3, "Use and Occupancy Classification," of the IBC.

Section 14.02 Premises conditions

A. Compliance with codes. All hotel premises and guest rooms shall fully comply with all City of Arlington Construction, Fire Prevention, and Unified Development Code requirements and this chapter as determined by the Building Official.

B. Occupancy prohibited. No room at a hotel may be let or occupied if it fails to meet all of the health, sanitation and safety requirements of this section.

C. Bathroom conditions/cleanliness. The bathroom in each guest room of a hotel shall contain a minimum of one toilet, one lavatory, and one shower and/or bathtub, which may include a bathtub/shower combination. Bathroom fixtures shall be sanitary design, and all such fixtures shall be cleaned and disinfected daily. All fixtures, including vanities and mirrors, shall be maintained without cracks, chips or stains. Floors and other horizontal surfaces shall be cleaned and sanitized at each change of occupancy or at least once a week when occupancy does not change. A supply of toilet paper and single-use soap must be provided. Used personal hygiene items left by departing guests shall be discarded.

D. Carpet condition/cleanliness. Carpeting shall be free of stains, holes, rips or odors in excess of normal wear and tear, and it shall be maintained in a sanitary condition.

E. Floor condition/cleanliness. Non-carpeted floor surfaces shall be completely covered with a commercial grade floor covering made of non-absorbent, non-porous material. All surfaces and tile grouting shall be maintained without cracks, rips or missing or damaged transition strips and base trim.

F. Wall condition/cleanliness. Wall surfaces shall be maintained without spots, stains, flakes, chips or holes, and shall be maintained in a clean and sanitary condition.

G. Mold/mildew. All surfaces, including but not limited to walls, ceilings, carpeting, flooring fixtures and sealants, shall be free from mold and mildew. All bathrooms and toilet rooms shall be adequately ventilated to remove excessive moisture. Whenever evidence of significant water/moisture intrusion is found within or upon surfaces or materials that may promote the growth of mold, the source of the water or moisture shall be corrected and appropriate measures taken to remediate the mold, if any.

H. Hot water. Boilers and hot water supply systems throughout the hotel shall be designed and regulated to deliver hot water to each use in the hotel within the temperature range specified by applicable codes for such use (e.g., bathing, laundry, food preparation).

I. Electrical equipment. All electrical equipment and fixtures such as televisions and lamps shall be properly installed and maintained to manufacturer's specifications and be in operable condition.

J. Climate control. Cooling and heating facilities shall be provided capable of maintaining a room temperature between 68°F (20°C) and 80°F (26.7°C) while occupied by guests.

K. Furniture condition. All furniture items shall be maintained in like new and proper working condition without defects, pinch points or holes.

L. Window/light fixture treatments and interior lighting. Shades, draperies or blinds shall be provided to cover all windows and appropriate light fixtures. All shades, draperies and blinds shall be free of stains, holes, rips or odors in excess of normal wear and tear, and be maintained in a sanitary, operational condition.

M. Security. All doors and windows designed to be opened shall be operable and have an operable door or window security or locking device. In-room telecommunications systems and equipment, if provided, shall be configured and

maintained to provide access to outside emergency services in accordance with applicable state or federal law.

N. Exterior security lighting. The exterior of the hotel property, including adjacent public sidewalks and parking lots under the control of the operator, shall be illuminated at least between one hour after sundown and one-half hour before sunrise. Illumination shall be a minimum of one-tenth (0.1) of one (1) foot-candle throughout the property and shall not exceed four-tenths (0.4) of one (1) foot-candle of light measured at the property line.

O. Pools. Pools must comply with Article VII, "Public Pools, Spas, and Public Interactive Water Features and Fountains," of this Chapter. In order to prevent the breeding of mosquitos and other health and safety hazards to the public, pools must either be maintained in working order and permitted by the Health Official or removed from the premises in accordance with city standards for removal.

P. Chemical storage areas. Chemical storage and handling areas shall be supplied with handwashing fixtures and facilities for employees.

Q. Removal of prior guest's property. Any property left in any hotel or motel room by a person or party that has checked out shall be removed by the operator of the hotel before the room may be occupied by another party. The property must be stored or disposed of in accordance with applicable laws.

R. Smoking. The hotel shall comply with Article X, "Regulation of Smoking" of this chapter.

S. Kitchenettes. A kitchenette, when provided, shall include:

1. Counters for food preparation made of impervious material and easily cleanable;

2. Cupboards, drawers or other storage areas in which utensils, tableware and food can be stored protected from contamination;

3. A washable waste container; and

4. A sink supplied with adequate hot water and capable of attaining a temperature of 120°F at the faucet within two minutes at a minimum pressure of 20 psi.

5. Optional equipment and fixtures, if included in the kitchenette, shall meet the following standards:

   a. Cooking equipment that is installed according to manufacturer's specifications and with ventilation as required by applicable codes.

b. A refrigeration unit for holding cold food, capable of maintaining a temperature of 45°F or lower.

Section 14.03 <u>Health, sanitation, and control of vermin</u>

A. Mattress condition/cleanliness. Mattresses and box springs shall be free of stains, holes, rips or odors and maintained in a sanitary, operational condition. A mattress or box spring is not in operational condition if it has broken springs, indentations or sags. Mattresses shall be routinely inspected by staff for condition and sanitation.

B. Linens. Linens shall be free of stains, holes, rips or odors and shall be laundered with soap or detergent and sanitized with a product labeled for that use. The hotel shall launder linens in-house or use a third-party commercial linen service.

1. If linens are laundered in-house, the hotel shall maintain an on-site laundry facility with an adequate hot water supply, high-capacity laundry equipment operating to OEM specifications, and related fixtures for washing, drying, folding and clean linen storage.

2. Storage areas for soiled bedding, linen, and towels shall be separated from clean bedding, linen, and towels.

3. If a third-party commercial linen provider is used, all linens and/or conveyances that are found to be dirty, stained, or otherwise in poor condition must be rejected or segregated from clean linens.

4. Laundry that has been exposed to a biohazardous event shall be handled in accordance with the Biohazard Event Response Plan and all applicable regulatory requirements.

5. Linens in each guest room shall be replaced daily, unless the hotel offers occupants an optional energy or water conservation program approved by the Inspection Official and the occupant of the guest room affirmatively opts to participate in the program or the hotel maintains an alternate linen service approved by the Inspection Official.

C. Pests. All hotel premises shall be maintained so that they are free from rodents, insects, ectoparasites and vermin, and free from conditions that encourage or harbor rodents, insects and vermin.

D. Extermination. All hotel premises shall be treated for insects by an exterminator licensed by the State at least quarterly, or on a more frequent schedule as determined necessary by the Inspection Official to treat infestation. Documentation of pest control services shall be maintained on premises for six

months after the services were rendered. The guest room shall not be occupied by new guests until the timeframe recommended by the manufacturer of the treatment substance, such as a fumigant, has passed.

E. Housekeeping carts. Housekeeping carts shall be maintained in clean and sanitary condition. Each cart used for combined delivery of clean articles and removal of items for laundering must have a separate storage bin or bag for the soiled articles. The storage bin shall be made of a cleanable, smooth, and impervious material; storage bags shall be made of a durable material that is machine washable unless the bag is for single use only. Soiled articles or chemicals shall be stored or stowed on the cart to prevent contact with clean linens. All containers of chemicals used for maintaining guest rooms shall be labeled.

F. New, disposable single-use, food-grade plastic ice bucket liners shall be provided each day that the guest room is occupied except when disposable single-use ice buckets are provided. Multi-use glasses shall be collected daily, washed, rinsed, sanitized, and protected from recontamination before being replaced in the room. Single-service drinking cups shall be individually wrapped or dispensed in a sanitary manner.

G. Biohazard Event Control Plan. Every hotel shall have a written Biohazard Event Control Plan in such detail satisfactory to the Inspection Official and that is available for review and evaluation by the Official. The Biohazard Event Control Plan shall include:

1. Cleaning and sanitation procedures by which hotel employees can safely disinfect potentially-contaminated environmental surfaces and control potential communicable disease outbreaks among guests and/or employees;

2. Detection, containment, remediation and closure of rooms or areas impacted by sanitary sewage discharge, leaks, spills or backflow. All such events shall be contained within four (4) hours of detection and may be subject to closure by the Inspection Official. All sewage spills must be remediated in a manner that eliminates potential disease transmission, offensive odors, sewage solids, and sewage litter and

3. Procedures for biohazard events in which a biological agent, including pathogenic microorganisms and their toxins, causes a condition that may constitute a threat to human health or safety, are to be reported to the Inspection Official and procedures for documenting response activities.

H. Sanitary sewage events. All sanitary sewage discharge, leaks, spills or backflow shall be contained within four (4) hours of detection by the hotel or notification from hotel guests. The Inspection Official, in consultation with hotel management, is authorized to close to public use guest rooms or other areas of the hotel contaminated by any such event until the rooms or areas are cleaned and

cleared of potential disease transmission, offensive odors, and sewage solids and litter.

I. Employee work practices. Every hotel shall promulgate, maintain and enforce standard operating policies and procedures for all employees that are directly involved in the servicing or maintenance of guest rooms. Such policies and procedures shall include:

1. Employee recognition of and reporting of health hazards in guest rooms and other hotel facilities where guests are invited;

2. Employee training in response to biohazard events and handling in accordance with OSHA standards;

3. Personal hygiene while on duty;

4. Sequestration of or temporary reassignment of employees with communicable disease, open wounds, skin infections, or acute respiratory infections until and unless cleared for work by a medical professional; and

5. Such other reasonable policies and procedures as the Inspection Official deems necessary and proper to ensure that hotel employees protect the health and safety of guests and prevent the spread of communicable disease.

Section 14.04 <u>Manager on duty</u>

The hotel shall designate a manager(s)-on-duty who can be contacted by the Inspection Official regarding inspections of the premises and other matters pertaining to compliance with the provisions of this article. A manager-on-duty shall be available to be reached in person or by phone at all times while guests are on the hotel premises. Each designated manager-on-duty shall be authorized to, and shall not refuse to, accept service of citation for any violations on the premises.

Section 14.05 <u>Inspections required</u>

A. The Inspection Official shall inspect each hotel premises, to include the physical examination of an appropriate sampling of guest rooms, not less than once annually for compliance with the provisions of this article. The Official may inspect or reinspect a hotel premises more frequently and/or vary the number of guest rooms included in the sampling as deemed necessary and proper to achieve and maintain continuing compliance.

B. The Inspection Official may forego a physical examination of rooms and conduct a records audit only when the hotel demonstrates to the satisfaction of the Official that adequate cleaning, sanitation and maintenance operating procedures are in

place to ensure compliance with this article and that the hotel makes such records, schedules, internal reports, or reliable third-party audits available to the Official for review and evaluation.

C. In order to carry out the intent of this article, the Inspection Official is authorized to conduct inspections of a hotel premises during normal business hours. In furtherance thereof, the Official may, but is not required, to request of the hotel manager that a prescribed number of rent-ready guest rooms be made available for inspection and/or that the hotel's cleaning, sanitation and maintenance records, schedules, internal reports, or third-party audits be made available for review and evaluation.

D. It shall be unlawful and an offense for any person to fail or refuse a lawful request of the Inspection Official to inspect a hotel room or to produce for the Official's review and evaluation the records, schedules, internal reports, or third-party audits that the hotel relies upon or proffers as evidence of its compliance with the provisions of this article.

Section 14.06 <u>Inspection fees</u>

A fee established by resolution of the City Council will be charged to reimburse the City for all costs associated with the administration of this article.

Section 14.07 <u>Violations and enforcement</u>

A. A person commits an offense if the person operates any hotel without a valid certificate of occupancy or contrary to or in violation of the terms or conditions of its certificate of occupancy.

B. A person commits an offense if the person commits any act forbidden or fails to perform any act required in this Article.

C. Each violation of this Article shall constitute a separate offense and each offense is punishable by a fine as specified in Article IX, Section 9.01 of this Chapter.

D. Allegation and evidence of a culpable mental state is not required for proof of an offense under this article except where expressly required.

E. Any condition reasonably believed to be imminently dangerous to the life, limb, health or safety of the occupants may be abated by the Inspection Official in accordance with State law.

F. At the option of the City, and in addition to all other available remedies, the City may proceed to enforce the requirements of this chapter under the alternative

procedure set forth in Texas Local Government Code, Chapter 54, Subchapter B, "Municipal Health and Safety Ordinances".

G. At the option of the Inspection Official, immediate enforcement may be temporarily abated if the owner agrees to a supervised compliance plan, demonstrates the ability to comply with the plan and makes continuing progress toward compliance.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents ($2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

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4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective October 1, 2019.

PRESENTED AND GIVEN FIRST READING on the 7th day of May, 2019, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 21st day of May, 2019, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

Alex Busken, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY

Ordinance No. 19-061

An ordinance amending the "Health and Sanitation" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article I, Definitions, Section 1.01, Definitions, by the deletion of the definition for "Mass Gathering"; and the repeal of Article VIII, Mass Gatherings; providing for a fine of up to $2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; and providing for severability, governmental immunity, injunctions, publication, and an effective date

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article I**, Definitions, **Section 1.01**, Definitions, by the **deletion** of the definition for "Mass Gathering".

Further, the **"Health and Sanitation"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended by the **repeal** of Article VIII, Mass Gatherings.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars ($2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication.

PRESENTED AND GIVEN FIRST READING on the 12th day of November, 2019, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 3rd day of December, 2019, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY_____