

ORDINANCE NO. 4965

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE MESQUITE CITY CODE BY AMENDING DIVISION 1, GENERALLY, AND DIVISION 5, PUBLIC AND SEMI-PUBLIC POOLS AND SPAS, OF ARTICLE IX, SWIMMING POOL AND SPA CODE, OF CHAPTER 5, BUILDINGS AND CONSTRUCTION, TO PROVIDE REGULATIONS FOR SWIMMING POOLS AND SPAS LOCATED ON SINGLE-FAMILY PROPERTY FOR WHICH FEES ARE CHARGED FOR USE BY THE PUBLIC; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE IN AN AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Centers for Disease Control and Prevention reports that: (a) in the United States, more children ages 1-4 die from drowning than any other cause of death except birth defects and for children ages 1-14, drowning is the second leading cause of unintentional injury death after motor vehicle crashes; (b) an estimated 3,960 fatal, unintentional drownings and 8,080 nonfatal drownings occur on an annual basis; and (c) for every child in the United States that drowns, five other children receive emergency room care for injuries suffered in a swimming pool, forty-seven percent (47%) of which occur at a residential swimming pool; and

WHEREAS, the United States Product Consumer Safety Commission reports there are an average of 390 deaths a year attributed to drowning in a swimming pool or spa, seventy-four percent (74%) or more of which occur at residential locations; and

WHEREAS, numerous sources attribute swimming pool drowning deaths to dangerous conditions, defective or inadequate equipment, and absence of life-saving supplies and equipment; and

WHEREAS, the City of Mesquite, Texas (“City”), is a home-rule municipality acting under its Charter adopted, and amended, by the electorate pursuant to the Texas Constitution, Article 11, Section 5 and the Texas Local Government Code, Chapter 9; and

WHEREAS, a home-rule municipality has full power of local self-government, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 51, Section 51.072(a); and

WHEREAS, a home-rule municipality may enforce ordinances necessary to protect health, life, and property, and to preserve the good government, order, and security of the municipality and its inhabitants, pursuant to Chapter 54 of the Texas Local Government Code; and

WHEREAS, the City shall have the power to enact and enforce ordinances necessary to protect health, life, and property, and to prevent and summarily abate and remove all nuisances, and to preserve and enforce good government and order and security of the City and its inhabitants, pursuant to Mesquite City Charter, Article III, Section 2; and

WHEREAS, it is the intent of the City Council to ensure that there be adequate regulations to protect the public health, safety, and welfare concerning the use and operation of swimming pools and spas and in particular those made available to the public in whole or in part; and

WHEREAS, upon the review and consideration of all matters attendant and related hereto, the City Council finds that this ordinance is in the best interests of the City and its citizens and should be approved and adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The findings contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as a part of this ordinance.

SECTION 2. Article IX , Swimming Pool and Spa Code, of Chapter 5, Buildings and Construction, of the Mesquite City Code, as amended, is hereby amended by amending Section 5-402 of Division 1, Generally, and Sections 5-451, 5-452, 5-455, 5-456, and 5-464 of Division 5, Public and Semi-Public Pools and Spas, by revising said Sections as shown on Exhibit 1 hereto and to now read as shown on Exhibit 2 hereto, both exhibits being incorporated herein by reference. Except as hereby amended and in all other respects, said Code and Chapter shall remain in full force and effect.

SECTION 3. All ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

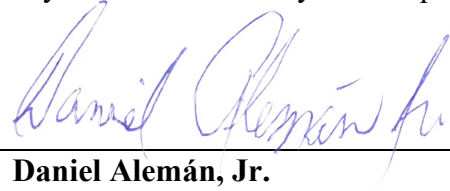
SECTION 4. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 5. Should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 6. Any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed \$500.00 for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.


SECTION 7. This ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas,
on the 1st day of August 2022.



Daniel Alemán, Jr.
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT 1

CHAPTER 5, BUILDINGS AND CONSTRUCTION ARTICLE IX, SWIMMING POOL AND SPA CODE

DIVISION 1. GENERALLY

* * *

Sec. 5-402. Adopted.

The International Swimming Pool and Spa Code (I.S.P.S.C.), 2018 Edition, a publication of the International Code Council (I.C.C.), is hereby adopted by reference and incorporated herein to the same extent as if such code were copied verbatim in this Section, subject to the deletions, additions, and amendments ("the local amendments") prescribed in [divisions 1, 2, 3, 4 and 5 of this article](#). A copy of the International Swimming Pool and Spa Code, 2018 Edition, and the local amendments thereto shall be maintained in the Office of the City Secretary.

* * *

DIVISION 5. PUBLIC AND SEMI-PUBLIC POOLS AND SPAS

Sec. 5-451. General provisions.

Any person who operates a public or semi-public swimming pool or spa within the city shall first obtain a permit from the health authority and shall comply with the requirements of this article. This article shall be liberally construed and applied to promote its underlying purpose of protecting public health [and safety](#).

Sec. 5-452. Definitions.

For the purpose of this article:

Approved means accepted as satisfactory under the terms of this article and given formal and official sanction by the approving authority.

Combined residual chlorine ("chloramine") means the amount of chlorine which has reacted with ammonia and other nitrogenous material to form chloroammonia compounds.

Director means the director of [community-planning and development services, his or her designated representative](#), or his [or her](#) organizational successor.

Fecal coliform means bacteria, through lab analysis, that is indicative of fecal pollution.

Free residual chlorine means the chlorine concentration, in milligrams per liter (equivalent to ppm - parts per million) of water, available for rapid and effective biocidal action. This is the chlorine which remains uncombined with nitrogenous compounds after the initial chlorine demand of the water has been satisfied.

Health authority means the health official of the city or his [or her](#) designated representative.

Main drains mean the outlet(s) at the deepest portion of the pool or spa.

May means permissive whenever used in this article.

Operator means the person ultimately responsible for the safe, sanitary maintenance of a public or semi-public pool and/or spa.

Person means an individual, firm, partnership, association, corporation, company or organization of any kind.

Private pool means ~~any~~ swimming pool located on private single-family residential property, under the control of ~~a property~~the owner or legal occupant of said single-family residential property, ~~the use of such pool is limited to the members of his the owner or occupant's family or their invited guests, and no fee is charged, directly or indirectly, for use of the pool.~~

Private spa means a spa designed for recreational or therapeutic use located on private single-family residential property under the control of ~~at the home~~owner or legal occupant of said single-family residential property, ~~the use of such spa is limited to members of his the owner or occupant's family or their private-invited guests, and no fee is charged, directly or indirectly, for the use of the spa.~~

Public pool means any swimming pool ~~other than a private pool which that~~ is open to the general public and intended to be used for swimming, bathing or other related purposes, and is operated by an owner, lessee, operator, licensee or concessionaire regardless of whether a fee is charged for its use.

Public spa means any spa ~~other than a private spa that~~ is open to the general public and ~~intended to be used~~designed for recreational or therapeutic use ~~containing hot, cold, ambient or warmed water which uses high velocity water recirculation systems.~~

Regulatory authority means the health authority.

Semi-public pool means a swimming pool which is (a) ~~privately owned and~~ available only to a recognizable group of people, patrons or customers to include but not be limited to motel guests, apartment residents and club members, or (b) a swimming pool located on single-family residential property and a fee is charged, directly or indirectly, for use of the swimming pool.

Semi-public spa means a spa which is (a) ~~privately owned and~~ available only to a recognizable group of people, patrons or customers to include but not be limited to apartment, condominium or townhouse residents, hotel guests and health club members, or (b) a spa located on single-family residential property and a fee is charged, directly or indirectly, for use of the spa.

Shall means mandatory whenever used in this article.

Spa means a small body of water, manmade, which is ~~exclusively operated~~ in conjunction with high velocity air and/or high velocity water recirculation systems, utilizing hot, cold or ambient temperature water, including Jacuzzis, hot tubs and whirlpools.

Swimming pool means any structure, basin, chamber or tank containing an artificial body of water for swimming, diving, physical fitness or recreational bathing. A spa is a swimming pool.

Total residual chlorine means the arithmetic sum of free available residual chlorine and combined residual chlorine.

Turnover rate means the amount of time required for a pool or spa circulation system to displace the entire volume of water in that pool or spa.

* * *

Sec. 5-455. Registered certified pool operator required.

- (a) Within ninety (90) days of the effective date of this article, any person who operates a public or semi-public pool or spa shall employ at least one (1) person who has a valid and current certified pool operator registration issued by the health authority.
- (b) A person who operates a public or semi-public pool or spa is in compliance with the provisions of this section if he or she has at least one (1) full-time employee available for consultation, responsible for maintenance of said pool or spa, and who has a valid and current certified pool operator registration. Semi-public pools owned by homeowners associations or maintained by off-premises management companies, and operators of semi-public pools located on single-family residential property, shall utilize pool maintenance companies whose field employees are registered, certified pool operators. It shall be the responsibility of the permit holder to require and verify maintenance company's employees' registration and be able to document the use of registered pool operators to the satisfaction of the health authority.
- (c) The Health Official shall issue a certified pool operator registration to any person who submits the required application, pays the required fee and provides evidence of completion of an approved certified pool operator course. See Appendix D for applicable fees. An approved certified pool operator course shall meet the following minimum criteria:
 - (1) The course shall have been completed within the previous three (3) years.
 - (2) The course shall be taught by a person adequately trained in swimming pool sanitation, such as a public health official, a person trained in the life sciences, a biologist or chemist.
 - (3) The course curriculum shall include the following topics:
 - a. Swimming pool design;
 - b. Disinfection;
 - c. Circulation;
 - d. Filtration;
 - e. Swimming pool chemistry; and
 - f. Safety.
 - (4) Persons completing the course shall be given a document of certification by the course provider.
- (d) Term, evidence and transfer of registration:
 - (1) Unless sooner revoked by the health authority for cause as stated herein, a certified pool operator registration expires three (3) years from the date of issuance.
 - (2) The person operating a public or semi-public pool or spa shall provide evidence, at the request of the health authority, that a registered pool operator is employed.
 - (3) A certified pool operator registration is not transferable.

- (4) Denial or revocation of registration. The health authority may refuse to issue or may revoke a certified pool operator registration only if the applicant or holder:
- a. Has been convicted of preventing the lawful inspection of a public or semi-public pool or spa;
 - b. Makes a false statement of material fact in application for registration;
 - c. Was employed as a pool or spa operator where such pool or spa under his care was closed by order of the health authority two (2) or more times within a two-year period or where the permit to operate a pool or spa under his care was revoked.

Sec. 5-456. Construction standards.

(a) All public or semi-public pools or spas constructed within the city after the effective date of this article shall conform to the current adopted design standards of the Department of State Health Services for Public Swimming Pool Construction or Minimum Standards for Public Spas of the National Swimming Pool Institute; however, where such standards are less restrictive than the standards of this article or any other provision of the Code of the city, the more restrictive code shall govern.

(b) All public or semi-public pools or spas undergoing repair or renovation within the city after the effective date of this article shall be repaired or renovated according to the provisions of subsection 5-456(a) of this article.

(c) All public and semi-public swimming pools and spas, and operation thereof, shall comply with all applicable requirements Title III Public Accommodations of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181 – 12189, as amended.

* * *

Sec. 5-464. Suspension, denial or revocation of operational permit.

(a) Denial, suspension or revocation of permit.

- (1) The health authority shall have the right to deny or temporarily suspend a permit to operate a public or semi-public pool or spa for the following reasons:
- a. The annual permit fee is not paid; or
 - b. The permit holder or applicant fails to have in his employ a certified/registered pool operator according to the requirements of this article; or
 - c. The permit holder or applicant fails to keep all pool and spa equipment properly maintained as to comply with the requirements of this article; or
 - d. The condition of the pool or spa, due to poor water quality, lack of safety equipment, structural deficiencies or hazards, and/or improper wastewater disposal, is deemed by the health authority to be hazardous to the health or safety of swimmers, the environment or to the general public; or

- e. The permit holder or applicant, after receiving notification of violation from the health authority, fails to correct the violation within a time frame specified by the health authority; or
- f. The permit holder or applicant prohibits the health authority from conducting a lawful inspection; or
- g. The permit holder or applicant, or the certified pool operator in his employment, provides false information or falsified documentation to the health authority as it relates to the provisions of this article.

h. The permit holder or applicant operates a swimming pool or spa in a manner that constitutes a public nuisance.

- (2) The permit shall remain suspended or denied until all causes of suspension or denial have been corrected. The health authority shall post signs at the pool or spa entrance stating that the pool or spa is closed by authority of the health department. Said signs shall remain posted until removed by the health authority.
 - (3) The health authority may permanently revoke a pool or spa permit for any of the following reasons:
 - a. The permit holder violates any of the provisions of this article, which the permit holder fails to correct after having received notice of such violation from the health authority; or
 - b. The permit holder fails or refuses to comply in a timely manner with any final notice or order of the health authority suspending a permit or the appellate decision of the director, including any conditions thereof; or
 - c. The permit holder, his employees, agents or pool operator remove, cover or conceal signs posted by the health authority.
 - (4) Upon denial, suspension or revocation of a permit, the applicant or permit holder shall be notified in writing of the decision to deny, suspend or revoke said permit, of the reasons of such denial, suspension or revocation and of the applicant or permit holder's right to appeal.
 - (5) An applicant or permit holder shall have the right to appeal the decision to deny, suspend or revoke a permit by submitting to the health authority, within 10 business days of the receipt of notice of denial, suspension or revocation, a written request for a hearing before the director. If a written request for a hearing is not received within ten (10) business days, the action of the health authority is final.
- (b) Appeals; powers and duties of the director.
- (1) Within ten (10) business days following the receipt of a request for an appeal, the director shall provide a hearing at a time and place designated by him. The director may continue the hearing for the convenience of either party or for the purpose of securing relevant evidence or witnesses.
 - (2) The director shall have the authority to sustain, modify or rescind any official notice or order issued by the health authority as provided by respective City Code. The director's action to sustain, modify or rescind the decision of the health authority

may be conditioned upon a requirement that the permit holder undertake repairs or improvements by a date certain that the director deems necessary to correct any inoperable, unsafe, unsanitary or dangerous condition.

- (3) The director shall render his decision in writing, and a copy of the decision shall be furnished to the permit holder by the health authority.

EXHIBIT 2

CHAPTER 5, BUILDINGS AND CONSTRUCTION ARTICLE IX, SWIMMING POOL AND SPA CODE

DIVISION 1. GENERALLY

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Sec. 5-402. Adopted.

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Health authority means the health official of the city or his or her designated representative.

Main drains mean the outlet(s) at the deepest portion of the pool or spa.

May means permissive whenever used in this article.

Operator means the person ultimately responsible for the safe, sanitary maintenance of a public or semi-public pool and/or spa.

Person means an individual, firm, partnership, association, corporation, company or organization of any kind.

Private pool means a swimming pool located on private single-family residential property, under the control of the owner or legal occupant of said single-family residential property, the use of such pool is limited to the members of the owner or occupant's family or their invited guests, and no fee is charged, directly or indirectly, for use of the pool.

Private spa means a spa designed for recreational or therapeutic use located on private single-family residential property under the control of the owner or legal occupant of said single-family residential property, the use of such spa is limited to members of the owner or occupant's family or their invited guests, and no fee is charged, directly or indirectly, for the use of the spa.

Public pool means any swimming pool that is open to the general public and intended to be used for swimming, bathing or other related purposes, and is operated by an owner, lessee, operator, licensee or concessionaire regardless of whether a fee is charged for its use.

Public spa means any spa that is open to the general public and intended to be used for recreational or therapeutic use.

Regulatory authority means the health authority.

Semi-public pool means a swimming pool which is (a) available only to a recognizable group of people, patrons or customers to include but not be limited to motel guests, apartment residents and club members, or (b) a swimming pool located on single-family residential property and a fee is charged, directly or indirectly, for use of the swimming pool.

Semi-public spa means a spa which is (a) available only to a recognizable group of people, patrons or customers to include but not be limited to apartment, condominium or townhouse residents, hotel guests and health club members, or (b) a spa located on single-family residential property and a fee is charged, directly or indirectly, for use of the spa.

Shall means mandatory whenever used in this article.

Spa means a small body of water, manmade, which is operated in conjunction with high velocity air and/or high velocity water recirculation systems, utilizing hot, cold or ambient temperature water, including Jacuzzis, hot tubs and whirlpools.

Swimming pool means any structure, basin, chamber or tank containing an artificial body of water for swimming, diving, physical fitness or recreational bathing. A spa is a swimming pool.

Total residual chlorine means the arithmetic sum of free available residual chlorine and combined residual chlorine.

Turnover rate means the amount of time required for a pool or spa circulation system to displace the entire volume of water in that pool or spa.

* * *

Sec. 5-455. Registered certified pool operator required.

- (a) Within ninety (90) days of the effective date of this article, any person who operates a public or semi-public pool or spa shall employ at least one (1) person who has a valid and current certified pool operator registration issued by the health authority.
- (b) A person who operates a public or semi-public pool or spa is in compliance with the provisions of this section if he or she has at least one (1) full-time employee available for consultation, responsible for maintenance of said pool or spa, and who has a valid and current certified pool operator registration. Semi-public pools owned by homeowners associations or maintained by off-premises management companies, and operators of semi-public pools located on single-family residential property, shall utilize pool maintenance companies whose field employees are registered, certified pool operators. It shall be the responsibility of the permit holder to require and verify maintenance company's employees' registration and be able to document the use of registered pool operators to the satisfaction of the health authority.
- (c) The Health Official shall issue a certified pool operator registration to any person who submits the required application, pays the required fee and provides evidence of completion of an approved certified pool operator course. See Appendix D for applicable fees. An approved certified pool operator course shall meet the following minimum criteria:
 - (1) The course shall have been completed within the previous three (3) years.
 - (2) The course shall be taught by a person adequately trained in swimming pool sanitation, such as a public health official, a person trained in the life sciences, a biologist or chemist.
 - (3) The course curriculum shall include the following topics:
 - a. Swimming pool design;
 - b. Disinfection;
 - c. Circulation;
 - d. Filtration;
 - e. Swimming pool chemistry; and
 - f. Safety.
 - (4) Persons completing the course shall be given a document of certification by the course provider.
- (d) Term, evidence and transfer of registration:
 - (1) Unless sooner revoked by the health authority for cause as stated herein, a certified pool operator registration expires three (3) years from the date of issuance.
 - (2) The person operating a public or semi-public pool or spa shall provide evidence, at the request of the health authority, that a registered pool operator is employed.
 - (3) A certified pool operator registration is not transferable.
 - (4) Denial or revocation of registration. The health authority may refuse to issue or may revoke a certified pool operator registration only if the applicant or holder:

- a. Has been convicted of preventing the lawful inspection of a public or semi-public pool or spa;
- b. Makes a false statement of material fact in application for registration;
- c. Was employed as a pool or spa operator where such pool or spa under his care was closed by order of the health authority two (2) or more times within a two-year period or where the permit to operate a pool or spa under his care was revoked.

Sec. 5-456. Construction standards.

- (a) All public or semi-public pools or spas constructed within the city after the effective date of this article shall conform to the current adopted design standards of the Department of State Health Services for Public Swimming Pool Construction or Minimum Standards for Public Spas of the National Swimming Pool Institute; however, where such standards are less restrictive than the standards of this article or any other provision of the Code of the city, the more restrictive code shall govern.
- (b) All public or semi-public pools or spas undergoing repair or renovation within the city after the effective date of this article shall be repaired or renovated according to the provisions of subsection 5-456(a) of this article.
- (c) All public and semi-public swimming pools and spas, and operation thereof, shall comply with all applicable requirements Title III Public Accommodations of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181 – 12189, as amended.

* * *

Sec. 5-464. Suspension, denial or revocation of operational permit.

- (a) Denial, suspension or revocation of permit.
 - (1) The health authority shall have the right to deny or temporarily suspend a permit to operate a public or semi-public pool or spa for the following reasons:
 - a. The annual permit fee is not paid; or
 - b. The permit holder or applicant fails to have in his employe a certified/registered pool operator according to the requirements of this article; or
 - c. The permit holder or applicant fails to keep all pool and spa equipment properly maintained as to comply with the requirements of this article; or
 - d. The condition of the pool or spa, due to poor water quality, lack of safety equipment, structural deficiencies or hazards, and/or improper wastewater disposal, is deemed by the health authority to be hazardous to the health or safety of swimmers, the environment or to the general public; or
 - e. The permit holder or applicant, after receiving notification of violation from the health authority, fails to correct the violation within a time frame specified by the health authority; or

- f. The permit holder or applicant prohibits the health authority from conducting a lawful inspection; or
 - g. The permit holder or applicant, or the certified pool operator in his employment, provides false information or falsified documentation to the health authority as it relates to the provisions of this article.
 - h. The permit holder or applicant operates a swimming pool or spa in a manner that constitutes a public nuisance.
 - (2) The permit shall remain suspended or denied until all causes of suspension or denial have been corrected. The health authority shall post signs at the pool or spa entrance stating that the pool or spa is closed by authority of the health department. Said signs shall remain posted until removed by the health authority.
 - (3) The health authority may permanently revoke a pool or spa permit for any of the following reasons:
 - a. The permit holder violates any of the provisions of this article, which the permit holder fails to correct after having received notice of such violation from the health authority; or
 - b. The permit holder fails or refuses to comply in a timely manner with any final notice or order of the health authority suspending a permit or the appellate decision of the director, including any conditions thereof; or
 - c. The permit holder, his employees, agents or pool operator remove, cover or conceal signs posted by the health authority.
 - (4) Upon denial, suspension or revocation of a permit, the applicant or permit holder shall be notified in writing of the decision to deny, suspend or revoke said permit, of the reasons of such denial, suspension or revocation and of the applicant or permit holder's right to appeal.
 - (5) An applicant or permit holder shall have the right to appeal the decision to deny, suspend or revoke a permit by submitting to the health authority, within 10 business days of the receipt of notice of denial, suspension or revocation, a written request for a hearing before the director. If a written request for a hearing is not received within ten (10) business days, the action of the health authority is final.
- (b) Appeals; powers and duties of the director.
- (1) Within ten (10) business days following the receipt of a request for an appeal, the director shall provide a hearing at a time and place designated by him. The director may continue the hearing for the convenience of either party or for the purpose of securing relevant evidence or witnesses.
 - (2) The director shall have the authority to sustain, modify or rescind any official notice or order issued by the health authority as provided by respective City Code. The director's action to sustain, modify or rescind the decision of the health authority may be conditioned upon a requirement that the permit holder undertake repairs or improvements by a date certain that the director deems necessary to correct any inoperable, unsafe, unsanitary or dangerous condition.

- (3) The director shall render his decision in writing, and a copy of the decision shall be furnished to the permit holder by the health authority.