ORDINANCE NO. 6364

AN ORDINANCE TO AMEND CHAPTER 4.70 "HIGH-RISK SEXUAL CONDUCT" OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY REPEALING EXISTING SECTIONS 4.70.010 THROUGH 4.70.050.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

SECTION 1. That Chapter 4.70 "High-Risk Sexual Conduct" of the 2015 Municipal Code of Council Bluffs, Iowa, is hereby amended by repealing existing Sections 4.70.010 through 4.70.050 as follows:

~~4.70.010 - Findings.~~
~~It is found that there are within the City of Council Bluffs commercial premises, buildings and structures, or parts thereof, which, by reason of the design and use of such premises, buildings or structures are conducive to the spread of communicable disease of danger to persons frequenting such premises, buildings and structures, and to the public health, safety and welfare of the community. The health, safety and welfare of all persons in the city of Council Bluffs must be protected through the application and enforcement of standards relating such premises, buildings and structures, in order to eliminate the possibility of the spread of, or infection by, contagious disease. The sexually transmittable disease of acquired immune deficiency syndrome, currently found to be irreversible and uniformly fatal, is found to be of particular danger to persons in this community. The incidence of this disease is found to occur in discernible population groups. The risk factors for obtaining or spreading the disease are associated with high-risk sexual conduct. The commercial premises, buildings and structures where persons are placed at risk of infection from this disease or other communicable disease facilitated by their design or use for high-risk sexual conduct are in need of regulation, and of establishment of minimal standards for the prevention of the spread of this disease and other communicable diseases for the protection of the public health, safety and welfare of the community.~~

~~4.70.020 - Definitions.~~
~~(1) As used in this chapter: "high-risk sexual conduct" means: (a) Fellatio; (b) Anal intercourse; (c) Vaginal intercourse with persons who engage in sexual acts in exchange for money. (2) "Hazardous site" means any commercial premises, building or structure, or any part thereof, which is a site of high-risk sexual conduct. (3) "Booths, stalls, or partitioned portions of a room or individual rooms" means: (a) Enclosures specifically offered to persons for a fee or as an incident to performing high-risk sexual conduct; or (b) Enclosures which are part of a business operated on the premises which offers movies, videos or other entertainment to be viewed within the enclosure, including enclosures wherein movies, videos or other entertainment is dispensed for a fee.~~
~~"Booths, stalls, or partitioned portions of a room or individual rooms" does not mean enclosures which are private offices used by the owners, managers or persons employed on the premises for attending to the tasks of their employment, and which are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing movies, videos or other entertainment for a fee, and are not open to any persons other than employees.~~

~~(4) "Open to an adjacent public room so that the area inside is visible to persons in the adjacent public room" means either the absence of any door, curtain or portal partition or a door or other device which is made entirely of clear, transparent, nontinted, distortion-free material such as glass, plexiglass or~~

other similar material meeting building code and safety standards except for the outer most four inches of the door frame, which permits the activity inside the enclosure to be viewed or seen by persons outside the enclosure. (5) "Director of health" means the city of Council Bluffs director of public health or the director's designee. (6) "Board of public health" means the city of Council Bluffs' board of public health.

4.70.030 - Building standards.

(a) No commercial building, structure, premises or part thereof, or facilities therein, shall be so constructed, used, designed or operated for the purpose of engaging in, or permitting persons to engage in, sexual activities which include high-risk sexual conduct. (b) No person shall own, operate, manage, rent, lease or exercise control of any commercial building, structure, premises, or portion or part thereof, which contains: (1) An aperture which facilitates sexual activity between persons on either side of a partition between subdivisions of a room, portion, or part of a building, structure, or premises; (2) Booths, stalls, or partitioned portions of a room, or individual rooms, used for the viewing of motion pictures or other forms of entertainment, having doors, curtains or portal partitions, unless such booths, stalls, partitioned portions of a room, or individual rooms so used shall have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. Such areas shall be lighted in a manner that the persons in the areas used for viewing motion pictures, videos, or other forms of entertainment are visible from the adjacent public rooms, but such lighting shall not be of such intensity as to prevent the viewing of the motion pictures, videos or other offered entertainment; (3) Booths, stalls, partitioned portions of a room, or individual rooms used for the viewing of videos, motion pictures, or other entertainment, unless those areas are inspected at least twice daily and cleaned with an approved disinfectant solution as needed; and unless those areas are provided with individual trash receptacles with plastic liners. (c) The standards as set forth in this section shall not apply to buildings, structures and premises which are lawfully operating as hotels, motels, apartment complexes, condominiums or roominghouses. (d) (1) No booth, stall, partitioned portions of a room, or individual rooms may be occupied by more than one person at any time. (2) The owner, operator, manager or person exercising control over any commercial building, structure, premises, or portion or part thereof, which contains booths, stalls, partitioned portions of a room, or individual rooms, shall post a clearly visible sign advising customers that booths may be occupied by only one person at any time.

4.70.035 - Obstructing view.

(a) No person shall obstruct the view of the area inside booths, stalls or partitioned portions of a room or individual rooms in any fashion which would cause the area inside to not be visible to persons in the adjacent public room. (b) No operator shall permit the view of the area inside of booths, stalls, or partitioned portions of a room or individual rooms to be obstructed in any fashion which would cause the area inside to not be visible to persons in the adjacent public room.

4.70.040 - Powers of the director of health.

(a) In exercising powers conferred by this or any other section of this Code relating to communicable diseases, the board of health and the director of health shall be guided by the most recent instructions, opinions and guidelines of the Centers for Disease Control of the United States Department of Health and Human Services which relate to the spread of infectious diseases. Any regulations which are adopted by the board of health which relate to controlling the spread of infectious diseases shall also apply in exercising the powers authorized by this code. (b) In order to ascertain the source of infection and reduce its spread, the director of health, and persons under the director's direction and control, shall have full power and authority to inspect or cause to be inspected, and to issue orders regarding any commercial building, structure or premises, or any part thereof, which may be a site of high-risk

~~sexual conduct. If the director of health determines that a hazardous site exists, the director of health shall declare it to be a public health hazard and public health nuisance and shall then: (1) Notify the management, owner or tenant of the premises that the director has reasonable belief that the premises, building or structure is a hazardous site. (2) Issue warnings to the management, owner or tenant of the premises stating the reasons for the director's belief that the premises, building, or structure is a hazardous site. (3) Once such notice and warnings have been issued, the director, or his/her designee shall proceed as follows: (i) After the management, owner or tenant of the premises has been notified in writing as to the basis of the director's determination, the management, owner or tenant shall have ten (10) days to request a hearing before the board of public health for a determination as to the existence of such hazardous site. If the management, owner or tenant of the premises does not request a hearing within ten (10) days of the notice, the director shall then cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site. The director of health shall cause orders to be issued to the management, owner or tenant of the premises constituting the hazardous site to take corrective measures to prevent high-risk sexual conduct from taking place within the premises. (ii) If the management, owner or tenant of the premises requests a hearing, the hearing shall be held before the board of public health at a date not more than thirty (30) days after demand for a hearing. After considering all evidence, the board of public health shall make a determination as to whether the premises constitutes a hazardous site. The board of public health shall then issue a decision based upon all evidence presented. If the board makes a determination that the premises constitutes a hazardous site, the board shall then issue an order and cause the premises, building or structure to be posted with a warning advising the public that the premises have been declared a hazardous site. (4) If, within thirty (30) days from issuance of the orders to the management, owner or tenant of the hazardous site, the director of health determines that such corrective measures have not been undertaken, then the director of health may order the abatement of the hazardous site as a public nuisance, which shall be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction; or may secure a court order for the closure of the premises constituting the hazardous site until the premises, building or structure is in compliance with the standards set for in Section 4.70.030; or may refer the violation to the city prosecutor for prosecution as a civil infraction or simple misdemeanor. (5) Any person who removes, destroys or defaces warnings posted on premises shall be guilty of a misdemeanor.~~

~~4.70.050 - Penalty.~~

~~Any person found guilty of a violation of the provisions of this chapter shall, upon conviction, be subject to the penalty provisions of Section 8.02.020 of this code. Each day that a violation is allowed to continue shall constitute a separate and distinct violation. At the discretion of the city attorney, any violation of the provisions of this chapter may be pursued as a municipal infraction according to the terms of Chapter 1.95 in lieu of criminal prosecution.~~

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND October 22 2018.
APPROVED

_____
MATTHEW J. WALSH Mayor

Attest: _____
JODI QUAKENBUSH City Clerk

First Consideration: 10-8-18
Second Consideration: 10-22-18
Public Hearing: N/A
Third Consideration: _____