ORDINANCE NO. 6366

AN ORDINANCE TO AMEND CHAPTER 4.80 "MINIMUM REQUIREMENTS FOR TANNING" OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY REPEALING EXISTING SECTIONS 4.80.010 THROUGH 4.80.070.

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

SECTION 1. That Chapter 4.80 "Minimum Requirements for Tanning" of the 2015 Municipal Code of Council Bluffs, Iowa, is hereby amended by repealing existing Sections 4.80.010 through 4.80.070 as follows:

~~4.80.010 - Purpose.~~
~~This chapter provides for the permitting and regulation of tanning facilities and devices used for the purpose of tanning human skin through the application of ultraviolet radiation. This includes, but is not limited to, public and private businesses, hotels, motels, apartments, condominiums, health and country clubs.~~

~~Reference to CFR's in this chapter are those in effect October 1, 1996, and any additional amendments.~~

~~These rules stipulate minimum safety requirements relating to the operation of tanning devices; procedures for obtaining a permit; qualifications for tanning facility operators; and procedures for health departments to provide for the inspection of tanning facilities and enforcement of these rules. Tanning facilities which are in compliance with these rules are not relieved from the requirements of any other federal and state regulations or local ordinances.~~

~~4.80.020 - Definitions.~~
~~For the purposes of the Municipal Code of Council Bluffs, the following definitions shall apply throughout, unless a more specific definition is included in the relevant chapter or section or the common usage of the term would clearly indicate another definition:~~

~~(1) "Board of health" means the local board of health as constituted under Chapter 137 of the Code of Iowa. (2) "Cleansing" means to remove soil, dirt, oils or other residues from the surface tanning unit which may come into contact with the skin. (3) "Cleansing agent" means a substance capable of producing the effect of cleansing. These agents shall not adversely affect the equipment or the health of the consumer and shall be acceptable to the department or board of health. (4) "Consumer" means any member of the public who is provided access to a tanning facility in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning facility as a condition or benefit of membership or access. (5) "Department" means the city of Council Bluffs department of public health. (6) "Director" means the director of public health or the director's designee. (7) "Exposure position" means any position, distance, orientation, or location relative to the radiation surfaces of a tanning device at which the user is intended to be exposed to ultraviolet radiation from the product, as recommended by the manufacturer. (8) "Formal training" means a course of instruction approved by the department for operators of tanning facilities. (9) "Health care professional" means an individual, licensed by the state of Iowa, who has received formal medical training in the use of phototherapy. (10) "Inspection" means an official examination or~~

observation including but not limited to tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of these rules. (11) "Manufacturer's recommendations" means written guidelines established by a manufacturer and approved by the U.S. Food and Drug Administration for the installation and operation of the manufacturer's equipment. (12) "Operator" means an individual designated to control operation of the tanning facility and to instruct and assist the consumer in the proper operation of the tanning devices. (13) "Permit" or "permit to operate" means a document issued by the department which authorizes a person to operate a tanning facility in the city of Council Bluffs, Iowa. (14) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing, but shall not include federal government agencies. (15) "Phototherapy device" means a piece of equipment that emits ultraviolet radiation and is used by a health care professional in the treatment of disease. (16) "Tanning device" means any equipment that emits electromagnetic radiation with wavelengths in the air between two hundred (200) and four hundred (400) nanometers and that is used for tanning of human skin, such as sunlamps, tanning booths, or tanning beds. The term also includes any accompanying equipment such as protective eyewear, timers, and handrails. (17) "Tanning facility" means a place that provides access to tanning devices for compensation. (18) "Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between two hundred (200) nanometers and four hundred (400) nanometers.

4.80.030 - Exemptions.

The department may upon application or upon its own initiative, grant exemptions from the requirements of these rules as long as it will not result in undue hazard to public health and safety. The following categories of devices are exempt from the provisions of this chapter:

(1) Other Purposes. Devices intended for purposes other than the deliberate exposure of human skin to ultraviolet radiation which produce or emit ultraviolet radiation incidental to their proper operation. (2) Personal Use. Tanning devices which are limited exclusively to personal use by an individual and this individual's immediate family. Multiple ownership of the device by persons for personal use only does not qualify it for the "personal use only" exemption. (c) Phototherapy Devices. Phototherapy devices used by properly trained health care professional in the treatment of disease.

4.80.040 - Permits and fees.

(a) No tanning facility shall be operated in the city without having a permit to operate issued by the Iowa Department of Public Health. (b) Inspections. (1) Inspections shall be conducted annually. (2) Inspection costs. (A) An inspection cost of thirty-three dollars ($33.00) per tanning device shall be billed to the permit holder up to a maximum of three hundred thirty dollars ($330.00) per facility. (B) Inspection costs shall be due upon receipt of payment due notice. When the tanning facility is located within a contracted area of a board of health, the costs billed will be paid to the contracted board of health or its designee. (C) Inspection costs not received within forty-five days of the date of billing will be assessed a twenty-five dollar ($25.00) penalty for each month or fraction thereon that the bill is delinquent. (3) Inspections shall include the following areas: proper operation and maintenance of devices, review of required records and training documentation, operator understanding and competency, and the requirements of these rules.

4.80.050 - Construction and operation of tanning facilities.

Unless otherwise ordered or approved by the department, each tanning facility shall be constructed, operated, and maintained to meet the following minimum requirements:

(1) A tanning facility shall provide and post the following warning signs and statements that describe the hazards associated with the use of tanning devices: (A) A warning sign in a conspicuous location readily visible to persons entering the establishment. This warning sign shall use 0.5 inch (12.7 millimeter) letters for "Danger, Ultraviolet Radiation" and 0.25 inch (6.4 millimeter) letters for all other lettering. The sign shall use red lettering against a white background, be at least nine inches by twelve (12) inches (22.9 centimeters by 30.5 centimeters) and have the following wording:
DANGER
ULTRAVIOLET RADIATION

Overexposure can cause:

— Eye and skin injury

— Allergic reaction

Repeated exposure may cause:

— Premature aging of the skin

— Skin cancer

Failure to wear protective eyewear may result in:

— Severe burns to eyes

— Long-term injury to eyes

Medication or cosmetics may increase your sensitivity.

(B) A warning sign with the identical wording set forth in subsection (1)(A) of this section posted within one meter of the tanning device in a conspicuous location readily visible to a person preparing to use the device. This warning sign shall use 0.5 inch (12.7 millimeter) lettering for "Danger, Ultraviolet Radiation" and 0.25 inch (6.4 millimeter) lettering. The sign shall use red lettering against a white background and be at least six inches by nine inches (15.2 centimeters by 22.9 centimeters) in size. (C) A tanning facility shall provide each customer with a written warning statement prior to the customer's initial exposure which includes at least the following information: (i) A representative list of potential photosensitizing drugs and agents; this list should at least include drugs or agents in the product classes of acne treatment, antibacterials, antibiotics, anticonvulsants, antidepressants, antidiabetics, antihypertensive, dye, estrogen and progesterones, melonogenics, perfumes and toilet articles, tranquilizers, antihistamines, and antimicrobials/anti-infectious agents. A partial list of drugs and agents in these product classes is found in Appendixes IA, IB, and IC of Chapter 46 of the Iowa Administrative Code and is adopted by reference. (ii) Information regarding potential negative health effects related to ultraviolet exposure, including: a. The increased risk of skin cancer later in life; b. The increased risk of skin thickening and premature aging; c. The possibility of burning or rashes, especially if using any of the potential photosynthesizing drugs and agents. Consult a physician before using a tanning device, if you are using medication, have a history of skin problems or you are especially sensitive to sunlight. (iii) Basic information on how different skin types respond to tanning (See Appendix No. 2 of Chapter 46 of the Iowa Administrative Code); (iv) An explanation of the need to use eyewear; (v) The operator shall then request that the consumer sign a statement that the

information has been read and understood. (2) Federal Certification. (A) Only tanning devices manufactured and certified under the provisions of 21 CFR Part 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products," shall be used in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR Part 1010.2 and 1010.3. (B) Labeling shall meet the requirements, be visible on each unit and be permanently affixed. Labeling shall include: (i) Warning statement with the words:

"Danger - Ultraviolet radiation. Follow instructions. Avoid overexposure. As with natural sunlight, overexposure can cause premature aging of the skin and skin cancer. WEAR PROTECTIVE EYEWEAR; FAILURE TO MAY RESULT IN SEVERE BURNS OR A LONG-TERM INJURY TO THE EYES. Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications or have a history of skin problems or believe yourself especially sensitive to sunlight. If you do not tan in the sun, you are unlikely to tan from the use of this product."

(ii) Recommended Exposure Position(s). Any exposure position may be expressed either in terms of a distance specified both in meters and in feet (or in inches) or through the use of markings or other means to indicate clearly the recommended exposure position. (iii) Directions for achieving the recommended exposure position(s) and a warning that the use of other positions may result in overexposure. (iv) A recommended exposure schedule including duration and spacing of sequential exposures and maximum exposure time(s) in minutes. (v) A statement of the time it may take before the expected results appear. (vi) Designation of the ultraviolet lamp type to be used in the product. (3) Tanning Device Timers. (A) Each tanning device shall have a timer which complies with the requirements of 21 CFR Part 1040.20. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer shall have an error factor greater than +/- 10 percent of the indicated setting. (B) Each tanning device must have a method of remote timing located so that customers may not control their own exposure time. (C) Tokens for token timers shall not be issued to any consumer in quantities greater than the device manufacturer's maximum recommended exposure time for the consumer. (4) Each tanning device shall incorporate a control on the product to enable the consumer to manually terminate the radiation emission from the product at any time without disconnecting the electrical source or removing the ultraviolet lamp. (5) The operator shall ensure that the facility interior temperature does not exceed one hundred (100) degrees Fahrenheit or thirty-eight degrees Celsius. (6) Condition of Tanning Devices. (A) There shall be physical barriers to protect consumers from injury induced by touching or breaking the lamps. (B) The tanning devices shall be maintained in good repair and comply with all state and local electrical code requirements. (7) Additional Requirements for Stand-up Booths. (A) There shall be physical barriers (handrails, etc.) or other means (floor markings) to indicate the proper exposure distance between ultraviolet lamps and the consumer's skin. (B) The construction of the booth shall be such that it will withstand the stress of use and the impact of a falling person. (C) Access to the booth shall be of rigid construction; doors shall open outwardly. Handrails and nonslip floors shall be provided. (8) Protective Eyewear. (A) Eyewear shall not be re-used by another consumer. (B) Protective eyewear shall meet the requirements of 21 CFR Part 1040.20(c)(4). (C) Protective eyewear shall not be altered in any manner that would change its use as intended by the manufacturer (i.e., removal of straps). (D) A tanning facility operator shall not allow a consumer to use a tanning device if that consumer does not use the protective eyewear required by this subrule. (9) Operation. (A) A trained operator must be present when a tanning device is operated. The operator must be within hearing distance to allow the consumer to easily summon help if necessary. If the operator is not in the immediate vicinity during use, the following conditions must be met: (i) The consumer can summon help through use of an audible device such as an intercom or buzzer; and (ii) The operator can reach the consumer within thirty (30) seconds after being summoned.

(B) The facility permit to operate shall be displayed in an open public are of the tanning facility. (C) A record shall be kept by the facility operator of each consumer's total number of tanning visits and tanning times, exposure lengths in minutes, times and dates of the exposure, and any injuries or illness resulting from the use of the tanning device. (D) A written report of any tanning injury shall be forwarded by the permit holder to the Iowa Department of Public Health and the local board of health within five working days of its occurrence or knowledge thereof, The report shall include: (i) The name of the affected individual; (ii) The name and location of the tanning facility involved; (iii) The nature of the injury; (iv) The name and address of health care provider treating the affected individual, if any; and (v) Any other information considered relevant to the situation. (E) Defective or burned-out lamps or filters shall be replaced with a type intended for use in that device as specified on the product label on the tanning device, or, with lamps or filters that are "equivalent" under 21 CFR Part 1040, Section 1040.20 and policies applicable at the time of lamp manufacture. (F) The permit holder shall replace ultraviolet lamps and bulbs, which are not otherwise defective or damaged, at such frequency or after such duration of use as may be recommended by the manufacturer of such lamps or bulbs. (G) Contact surfaces of tanning devices shall be cleansed by the operator with a cleansing agent between each use or the contact surfaces may be covered by a nonreusable protective material during each use. (H) Any records or documentation required by this chapter must be maintained in the tanning facility for a minimum of two years. Records maintained on computer systems shall be regularly copied, at least monthly, and updated on storage media other than the hard drive of the computer. An electronic record must be retrievable as a printed copy. (I) The operator shall limit the exposure of the consumer to the maximum exposure frequency and session duration recommended by the manufacturer. (J) When a tanning device is being used, no other person shall be allowed to remain in the tanning device area unless protective eyewear is worn. (10) Training of Operators. (A) No individual shall begin functioning as an operator unless the individual has satisfactorily completed a training program. Training shall include but not be limited to: (i) The requirements of Chapter 46 of the Iowa Administrative Code; (ii) Procedures for correct operation of the tanning facility and tanning devices; (iii) The determination of skin type of consumers and appropriate determination of duration of exposure to tanning devices; (iv) Recognition of reaction or overexposure; (v) Manufacturer's procedures for operation and maintenance of tanning devices. (B) Owners and managers must complete formal training approved by the Iowa Department of Public Health. All owners and managers training after December 31, 1997, must satisfactorily pass a certification examination approved by the Iowa Department of Public Health before operating a tanning facility or training employees. (C) For Operators Trained After December 31, 1997. Owners and managers are responsible to train operators in the above topics and to provide review as necessary. Training programs shall be approved by the Iowa Department of Public Health and include final testing. Operators shall be questioned during inspections as to the level of the individual's understanding and competency in operating the tanning device. (D) Proof of training for both owner/managers and employees must be maintained in the tanning facility and available for inspection. For operators trained after December 31, 1997, the employee record shall be the original test which bears the signature of the employee, the date, and a statement signifying that all answers have been completed by the employee and without prior knowledge to the scoring key. (11) Promotional Materials. A tanning facility shall not claim, or distribute promotional materials that claim, that using a tanning device is safe or free from risk or that the use of the device will result in medical or health benefits. The only claim that may be made is that the device is for cosmetic use only.

4.80.060 - Inspections, violations and injunctions.

(a) The director or an authorized agent shall have access at all reasonable times to any tanning facility to inspect the facility to determine if this chapter is being violated. (b) A person who operates or uses a tanning device or tanning facility in violation of this chapter or of any rule adopted pursuant to this

~~chapter is guilty of a simple misdemeanor. (c) If the director finds that a person has violated, or is violating or threatening to violate this chapter and that the violation creates an immediate threat to the health and safety of the public, the director may petition the district court for a temporary restraining order to restrain the violation or threat of violation. (d) On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter, the district court shall grant any injunctive relief warranted by the facts. (e) Enforcement. (1) The department shall take the following steps or use any other applicable ordinances, resolutions, rules, and/or regulations when enforcement of these rules is necessary. (A) Cite each section of the municipal code or rules violated. (B) Specify the manner in which the owner or operator failed to comply. (C) Specify the steps required for correcting the violations. (D) Request a corrective action plan, including a time schedule for completion of the plan. (E) Set a reasonable time limit, not to exceed thirty (30) days from the receipt of the notice, within which the permit holder must respond. (2) The department shall review the corrective action plan and approve it or require that it be modified. (3) In cases where the permit holder fails to comply with conditions of the written notice, the department shall send a regulatory letter, via certified mail, advising the permit holder that unless action is taken within five days of receipt, the case shall be turned over to the city attorney for court action.~~

~~4.80.070 - Penalty for violation.~~

~~Any person, firm, partnership, corporation or any legal entity found guilty of a violation of any of the provisions of this chapter shall upon conviction be subject to a fine not exceeding one hundred dollars ($100.00) or be imprisoned for a term not exceeding thirty (30) days. 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: _____