



Scott County Health Department

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January 28, 2020

To: Mahesh Sharma, County Administrator

From: Edward Rivers, Director

Subject: Approve Scott County Code of Ordinances, Chapter 39 - "Tanning Facilities", and associated fees.

Background

On May 17, 2019, the Iowa Department of Public Health (IDPH) notified its local Pool, Tattoo and Tanning Contractors that the tanning program would not be included in the next 28E agreement (effective July 1, 2019). Due to state budget reductions, IDPH no longer has the capacity to support counties in inspection activities as outlined in previous 28E contracts. IDPH indicated that counties with local tanning ordinances may administer the tanning program under county authority.

In May 2019, staff consulted with Robert Cusack, of the Scott County Attorney's office, about adopting tanning rules, setting fees, and imposing a minimum age requirement. Mr. Cusack reported that this would not be in contravention of state law. A literature review was conducted of tanning regulations across the United States. Iowa was found to be rated high regarding regulations on adult tanning, but low regarding children tanning (due to no age limit).

In June 2019, Linn County passed a tanning ordinance, and other jurisdictions (Johnson County, Cerro Gordo County, Siouxland District Health) were drafting language. These ordinances set fees at \$50 per unit with a \$500 maximum per facility.

At the July 18, 2019, Scott County Board of Health meeting, the information regarding the tanning program being removed from the 28E agreement and Robert Cusack's statement regarding a local ordinance was shared the Board of Health, and approval was given to move forward with drafting an ordinance.

In September 2019, staff contacted eight of the twenty-two tanning facilities in Scott County to obtain input on increasing fees to cover the cost of the program, and imposing a minimum age requirement. Six facilities allow someone under eighteen years of age to tan; two of these require parental consent while the other four do not. Two facilities do not allow anyone under eighteen years of age to tan. Regarding fees, the only issue mentioned was that a tanning facility has to pay a 10% federal excise tax for UV tanning devices.

At the October 17, 2019, Scott County Board of Health meeting, an overview of the draft ordinance was presented to the Board of Health, and input on a minimum age was requested. Upon

discussion, the Board of Health recommended that no one under the age of sixteen be allowed to use tanning booths, and to require written parental permission for sixteen and seventeen year olds, with a requirement that the parent be present on the first visit to the tanning facility.

In November 2019, the draft ordinance was reviewed by Robert Cusack. He found it to be sufficient to accomplish its intended purposes, and was not in contravention of state law.

On December 6, 2019, an email with a copy of the draft ordinance was sent to all tanning facilities in Scott County. The email requested feedback and provided the public hearing date as the December Scott County Board of Health meeting.

On December 19, 2019, the Scott County Board of Health held a public hearing on the draft ordinance. Emails from three Scott County tanning facilities were provided to the Board of Health and one owner was present to speak. Two of the three emails had concerns regarding both the proposed fees and the minimum age requirements; the third email just had concerns regarding the fees. The owner who spoke at the public hearing expressed concern that the minimum age requirement could negatively affect business. Following discussion, the Scott County Board of Health unanimously passed the ordinance. We request that the Board of Supervisors codify rules as Chapter 39 of the Scott County Code of Ordinances.

The following table lists the previous state fees, proposed fees, and justification for the changes.

Effective at Time of Publication			
Scott County Code Chapter 39– Tanning Facilities			
<u>Tanning Facilities</u>	<u>Previous State Fees</u>	<u>New Fees</u>	<u>Justification</u>
Inspection Fee for per tanning unit	\$33.00	\$55.00	Become more aligned with program costs. The fiscal year 2020 cost of the based on time, non-salary expense, and indirect costs is \$6,785. The new rate would not fully fund the program (\$6785/98 beds = \$69.24 per unit).
Inspection Fee maximum for facilities with ten or more tanning units	\$330.00	\$550.00	

We further request that the Board of Supervisors adopt the fee schedule by resolution at the third reading of the ordinance.

Staff and I will be at the February 4, 2020 Committee of the Whole meeting to discuss the proposed ordinance and answer any questions.

CHAPTER 39 TANNING FACILITIES

- 39-1 SCOPE AND PURPOSE**
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AN ORDINANCE THE CODE OF SCOTT COUNTY, IOWA, BY ADDING CHAPTER 39 AS FOLLOWS:

BE IT ENACTED BY THE BOARD OF SUPERVISORS, SCOTT COUNTY IOWA:

SEC. 39-1. SCOPE AND PURPOSE

To establish an ordinance for minimum standards for inspections and providing penalties for violation of the provisions herein 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 businesses, hotels, motels, apartments, condominiums, health and country clubs. This ordinance stipulates minimum safety requirements relating to the operation of tanning devices; procedures for obtaining a permit; qualifications for tanning facility operators; and procedures 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.

SEC. 39-2. DEFINITIONS

The following words shall have the following meaning for the purposes of this ordinance:

1. "Board of Health" means the Scott County Board of Health as authorized by Iowa Code, Chapter 137.
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 Scott County Health Department.
6. "Health Officer" means the Director of the Scott County Health Department or the duly authorized representative.
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 Iowa Department of Public Health which authorizes a person to operate a tanning facility in Scott County, 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.

SEC. 39-3. 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 ordinance:

- A. 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.
- B. 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.

SEC. 39-4. PERMITS AND FEES.

- A. No tanning facility shall be allowed to operate in Scott County without having a permit to operate issued by the Iowa Department of Public Health per IAC 641-46.4(1-6)

SEC. 39-5. CONSTRUCTION AND OPERATION

Unless otherwise ordered or approved by the Iowa Department of Public Health, each tanning facility shall be constructed, operated, and maintained to meet the following minimum requirements:

- A. A tanning facility shall provide and post the following warning signs and statements that describe the hazards associated with the use of tanning devices:
 - 1) 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 black lettering against a white background, be at least nine (9) 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.

- 2) 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 black lettering against a white background and be at least six inches by nine inches (15.2 centimeters by 22.9 centimeters) in size.

- 3) A tanning facility shall require each consumer to read the information in Appendices 1, 2, and 3 prior to the consumer's initial exposure and annually thereafter. Appendices 1, 2, and 3 are in IAC 641-46.

- a) The operator shall then require the consumer to annually sign a statement that the information has been read and understood. b) The information in Appendices 1, 2, and 3 shall be posted in each tanning room.

B. Federal Certification.

- 1) 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.

- 2) Labeling shall meet the requirements, be visible on each unit and be permanently affixed. Labeling shall include:

- a) 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."

- b) 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.
- c) Directions for achieving the recommended exposure position(s) and a warning that the use of other positions may result in overexposure.
- d) A recommended exposure schedule including duration and spacing of sequential exposures and maximum exposure time(s) in minutes.
- e) A statement of the time it may take before the expected results appear.
- f) Designation of the ultraviolet lamp type to be used in the product.
- g) The FDA code of Federal Regulations 21 CFR part 878.4635 further requires labeling on sunlamp products and ultraviolet lamps intended for use in

sunlamp products be labelled as follows: "Attention: This sunlamp product should not be used on persons under the age of 18 years." This label shall be readily visible when the person approaches the tanning device.

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) 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.
- d) The operator shall ensure that the facility interior temperature does not exceed one hundred (100) degrees Fahrenheit or thirty-eight degrees Celsius.

4) 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.

5) 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.

6) 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.
 - 1. Ask to see the eyewear before the consumer enters the tanning room; or
 - 2. Provide disposable eyewear in the tanning room at all times and post a sign stating that the disposable eyewear is available and that eyewear must be worn,
- e) A tanning facility operator shall instruct the consumer in the proper utilization of the protective eyewear required by this subrule.

7) Operation.

a) Minimum Age

1. A tanning facility shall not allow a consumer under sixteen years of age to use a tanning device
2. A tanning facility may allow a consumer who is sixteen or seventeen years of age to use a tanning device if:
 - a. The consumer's parent is present on the initial visit to sign a parental permission form.
 - i) The parent must return to the facility to sign the parental permission form annually until the person turns eighteen.
 - b. The facility will make a photocopy or electronic scan of each consumer's driver's license or state ID and keep on file.
 - c. The facility will make a photocopy or electronic scan of the consumer's parent's driver's license or state ID (if the consumer is 16 or 17) and keep on file with the consumer's driver's license and the signed parental permission form.

b) 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:

1. The consumer can summon help through use of an audible device such as an intercom or buzzer
2. The operator or emergency personnel can reach the consumer within a reasonable amount of time after being summoned.

c) The facility permit to operate shall be displayed in an open public area of the tanning facility.

d) 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.

e) 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:

1. The name of the affected individual.
2. The name and location of the tanning facility involved.
3. The nature of the injury.
4. The name and address of health care provider treating the affected individual, if any.
5. Any other information considered relevant to the situation.

f) 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.

- g) 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.
- h) Contact surfaces of tanning devices shall be cleansed by the operator with a cleansing agent between each use or cleansed by the consumer provided the following conditions are met:
 - 1. The operator instructs the consumer annually on how to properly cleanse the unit.
 - 2. The consumer annually signs a statement stating that the consumer agrees to cleanse the unit after each use.
 - 3. Signs are posted in each tanning room reminding the consumer to cleanse the tanning unit after each use and stating the proper way to cleanse the unit.
 - 4. The operator cleanses the tanning unit at least once a day.
- i) 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.
- j) The operator shall limit the exposure of the consumer to the maximum exposure frequency and session duration recommended by the manufacturer.
- k) When a tanning device is being used, no other person shall be allowed to remain in the tanning device area.

8) 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:
 - 1. The requirements of IAC 641-46 and this ordinance.
 - 2. Procedures for correct operation of the tanning facility and tanning devices.
 - 3. The determination of skin type of consumers and appropriate determination of duration of exposure to tanning devices.
 - 4. Recognition of reaction or overexposure.
 - 5. 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 must satisfactorily pass a certification examination approved by the Iowa Department of Public Health before operating a tanning facility or training employees.

- c) 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. 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.
 - e) Operators shall be at least 16 years of age.
 - f) Operators and owners/managers shall complete the required training and testing every five years.
- 9) Promotional Materials.
- a) 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.
- 10) Requirements for electronically controlled facilities. Electronically controlled facilities are those facilities that rely on electronic means to monitor consumers.
- a) Entry into the facility is allowed by card only. The card is specifically activated for tanning use if the facility offers other activities.
 - b) Police and all emergency services will have access to the facility through a key box located outside the entrance of the facility.
 - c) The tanning unit will not activate if the card is not programmed for tanning.
 - d) The consumer must sign a tanning agreement that states the number of minutes per session, that the consumer agrees to wear protective eyewear, that the consumer will cleanse the unit after tanning and that the consumer is aware of the emergency access in each room.
 - e) The card will be programmed for the number of minutes the consumer is allowed to tan. The card may be reprogrammed for an increase in minutes per session only after the consumer has reviewed and resigned the Tanning Agreement. After 30 consecutive days without the consumer's accessing the tanning facility, the card will be deactivated and the consumer must reapply to access the tanning unit.
 - f) The operator will demonstrate to each consumer how to properly cleanse the unit after tanning, including the top, bottom, and handles. A sign will be placed in each room explaining the cleansing process. The operator will cleanse the units at least once a day when they are in use.

- g) Free disposable eyewear will be placed in each room along with a sign stating that the disposable eyewear is available and that eyewear must be worn.
- h) An emergency call button or device will be placed in each tanning room conveniently located within reach of the tanning unit. This device will call the operator or emergency personnel.
- i) During annual inspections, the inspector may ask any consumer about any of the above processes.

SEC. 39-6. INSPECTIONS AND FEES

A Pre-opening Inspection

- 1) A preoperational inspection to verify that a new/remodeled facility is in compliance with this ordinance and plans approved by the Iowa Department of Public Health shall be conducted prior to the facility opening.

B. Inspections

- 1) The health officer shall have access at all reasonable times to any tanning facility to inspect the facility to determine if this chapter is being violated.
 - a) Inspections shall be conducted annually and as necessary for complaint investigation.
 - b) 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.
 - c) If violations are found, the health officer will indicate on the inspection form:
 - 1. Each section of the municipal code or rules violated
 - 2. Request a corrective action plan, including a time schedule for completion of the plan.
 - 3. Set a reasonable time limit, not to exceed thirty (30) days from the receipt of the notice, within which the permit holder must respond.
 - 4. The department shall review the corrective action plan and approve it or require that it be modified.
 - 5. 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 permit holder will be guilty of a municipal infraction.
- 2) If the health officer 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 health officer may remove the tanning bed from service and/or close the facility until corrections are made.

C. Inspection fees

- 1) Inspection fees shall be established by resolution of the Scott County Board of Supervisors from time to time as deemed appropriate.
- 2) Inspection costs shall be due upon receipt of payment due notice and payable to the Scott County Treasurer.
- 3) 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.

SEC. 39-7. ENFORCEMENT

- A. It shall be the duty of the Health officer to enforce the provision of this Chapter.

SEC. 39-8 JURISDICTION

- A. The provisions of this Chapter shall apply throughout Scott County, Iowa, including cities and towns therein.

SEC. 39-9 MUNICIPAL INFRACTIONS

- A. Any person, persons, firm, partnerships, or corporations, whether acting alone or in concert with any other, who violates this ordinance shall be guilty of a municipal infraction and shall be penalized as set forth in Chapter 29 of the Scott County Code of Scott County , Iowa.

SEC. 39-10 HEARING

- A. In the event any person is aggrieved by any order made by the Health Officer, they may within twenty (20) days of the date of such order, appeal to the Board of Health and in writing, state their reasons for requesting such order to be rescinded or modified. The Board of Health shall review the actions of the Health Officer, and if reasonable grounds exist, shall modify, withdraw or order compliance with said order. Appeal from any order of the Board of Health may be taken within twenty (20) days to the District Court of Scott County, Iowa.

SEC. 39-11 SEPARABILITY OF PROVISIONS

- A. If any section, paragraph, clause, or provisions of this ordinance shall be held invalid; the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

SEC. 39-12 EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after its passage, adoption, and publication as required by law.

PASSED AND APPROVED this _____ day of _____, 2020.

ATTEST:

DRAFT