

ORDINANCE NO. 96

AN ORDINANCE AUTHORIZING THE PERMITTING AND INSPECTION OF TANNING FACILITIES; ESTABLISHING PERMITTING, SUSPENSION AND APPEAL PROCEDURES, DECLARING A PENALTY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council of the City of Zavalla, Texas to protect the public health, safety and welfare; and

WHEREAS, Texas Health & Safety Code, Chapter 146 regulates tattoo and certain body piercing studios; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.002(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, it is the desire of the City Council that Tanning Facilities be regulated for the safety and welfare of the citizens of Zavalla, Texas;

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

SECTION 1 DEFINITIONS

1.1 The following definitions shall apply in the interpretation and the enforcement of this Ordinance:

- a. *Operator*. An owner of a tanning facility or an agent of an owner of a tanning facility.
- b. *Person*. An individual, partnership, corporation, or association.
- c. *Tanning device*. An instrument, apparatus, implement, machine, contrivance, or any equipment, including a sunlamp, tanning booth, and tanning bed, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for the tanning of human skin. The term also includes any accompanying equipment, including protective eyewear, timers, and handrails.

d. *Tanning facility.* A business that provides persons access to or use of tanning devices.

e. *Building official.* The Chief Building Official for the City of Lufkin, or his/her designee.

f. *Regulatory Authority.* The Director of the Angelina County & Cities Health District, or his/her designated representative having responsibility to enforce and administer this Ordinance.

g. *Permit holder.* A person who owns, operates, or maintains a tanning facility, in compliance with these sections.

SECTION 2 CONSOLIDATION OF REGULATORY LAWS

2.1 The following legislation, rules, and regulations as they presently exist, or as hereinafter amended, are incorporated herein as though set out verbatim:

a. Chapter 145 of the Texas Health & Safety Code; and

b. Title 25, Part 1, Chapter 229, Subchapter T, Rules §§ 229.345—357 of the Texas Administrative Code.

SECTION 3 COMPLIANCE AND PENALTIES

3.1 A tanning device used by a tanning facility must comply with all applicable state and federal laws and regulations.

3.2 Upon inspection of a tanning facility that reveals a violation of this Ordinance, and/or its consolidated regulatory laws, a citation may be issued to the business or legal owner and the facility's permit may be revoked as set forth in Sections 10 and 11 of this Ordinance.

3.3 A person who owns, operates or maintains a tanning facility shall comply with the provisions of this Ordinance. To violate any provision of this Ordinance shall be deemed a Class C misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500.00).

3.4 In addition to the penalty provided above, the city shall be entitled to pursue all other criminal and civil remedies to which it is entitled under the authority of other ordinances or state law.

SECTION 4 ISSUANCE OF PERMITS

4.1 It is unlawful for any person to conduct, operate or maintain a tanning facility within the City of Zavalla without a valid permit issued by the local regulatory authority.

4.2 A person operating a tanning facility shall display the permit issued by the regulatory authority in a prominent place within the facility which is clearly visible to the public.

4.3 It is unlawful to transfer any permit issued under this Ordinance to another person or location.

SECTION 5 PERMITTING PROCEDURES

5.1 Any person who desires a permit for a tanning facility shall apply for the permit on a form provided by the City of Zavalla and/or regulatory authority. To receive a tanning facility permit, a person must submit a completed application to the regulatory authority, proof of a valid state tanning facility license issued by the Texas Department of Health and the required local application fee.

5.2 Upon receipt of the completed application, the City of Zavalla and/or regulatory authority is authorized to inspect the proposed tanning facility for compliance with the provisions of this Ordinance. The regulatory authority shall issue a local tanning facility permit after determining that the proposed facility is in compliance with all applicable health regulations.

5.3 The permit issued by the City of Zavalla regulatory authority shall be valid for one (1) year or unless otherwise revoked for cause as hereinafter prescribed. The permit fee will be two hundred dollars (\$200.00).

5.4 Whenever a tanning facility is constructed or remodeled so as to require a building permit, or an existing structure is converted in whole or part for use as a tanning facility, plans and specifications for such construction, remodeling or conversion with the applicable fees shall be submitted to the building official for review and approval in accordance with applicable city rules and regulations before construction, remodeling or conversion is begun. The building official shall approve the plans and specifications if they meet applicable city regulations.

5.5 The building official or his designee shall be allowed to perform an inspection of the tanning facility prior to the start of operations as a tanning facility to determine compliance with approved plans and requirements of this Ordinance. A City of Lufkin certificate of occupancy issued by the building official must be obtained prior to the operation of the facility.

SECTION 6 INSPECTIONS

6.1 Tanning facilities may be routinely inspected and as frequently as necessary by the regulatory authority to determine compliance with the provisions of this Ordinance.

6.2 The regulatory authority shall be allowed access to any tanning facility, and to the records required by this Ordinance or as otherwise authorized by state law, at any reasonable time, for the purpose of enforcing the provisions of this Ordinance.

SECTION 7 CUSTOMER NOTICE

7.1 A tanning facility shall give each customer a written statement warning that:

a. Failure to use the eye protection provided to the customer by the tanning facility may result in damage to the eyes;

b. Overexposure to ultraviolet light causes burns;

c. Repeated exposure may result in premature aging of the skin and skin cancer;

d. Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain: (1) foods; (2) cosmetics; or (3) medications, including: (i) tranquilizers; (ii) diuretics; (iii) antibiotics; (iv) high blood pressure medicines; or (v) birth control pills;

e. Any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device;

f. A person with skin that always burns easily and never tans should avoid a tanning device; and

g. A person with a family or past medical history of skin cancer should avoid a tanning device.

SECTION 8 WARNING SIGNS

8.1 A tanning facility shall post the warning signs required by § 145.006 of the Texas Health & Safety Code in a conspicuous location where it is readily visible by persons entering the establishment.

SECTION 9 OPERATIONAL REQUIREMENTS

9.1 A tanning facility shall have an operator present during operating hours. The operator must:

- a. Be sufficiently knowledgeable in the correct operation of the tanning devices used at the facility;
- b. Instruct, inform, and assist each customer in the proper use of the tanning devices;
- c. Complete and maintain records required by this chapter; and
- e. Explain or otherwise inform each customer initially using the tanning facility of:
 - (1) the potential hazards of and protective measures necessary for ultraviolet radiation;
 - (2) the requirement that protective eyewear be worn while using a tanning device;
 - (3) the possibility of photosensitivity or of a photo allergic reaction to certain drugs, medicine, or other agents when a person is subjected to the sun or ultraviolet radiation;
 - (4) the correlation between skin type and exposure time;
 - (5) the maximum exposure time to the facility's devices;
 - (6) the biological process of tanning; and
 - (7) the dangers of and the necessity to avoid overexposure to ultraviolet radiation.

9.2 Before each use of a tanning device, the operator shall provide with each device clean and properly sanitized protective eyewear that protects the eyes from ultraviolet radiation and allows adequate vision to maintain balance. The protective eyewear shall be located in the immediate area of each tanning device and shall be provided without charge to each user of a tanning device. The operator may not allow a person to use a tanning device

if that person does not use protective eyewear that meets the requirements of the United States Food and Drug Administration. The operator also shall show each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer of the tanning device.

9.3 The tanning facility operator shall clean and properly sanitize the body contact surfaces of a tanning device after each use of the tanning device.

9.4 The tanning facility shall use a timer with an accuracy of at least plus or minus 10 percent of the maximum timer interval of the tanning device. The operator shall limit the exposure time of a customer on a tanning device to the maximum exposure time recommended by the manufacturer. A timer shall be located so that a customer cannot set or reset the customer's

exposure time. The operator shall control the temperature of the customer contact surfaces of a tanning device and the surrounding area so that it may not exceed 100 degrees Fahrenheit.

9.5 Before a customer who is 18 years of age or older uses a tanning facility's tanning device for the first time and each time a person executes or renews a contract to use a tanning facility, the person must provide photo identification and sign a written statement acknowledging that the person has read and understood the required warnings before using the device and agrees to use protective eyewear.

9.6 To ensure the proper operation of the tanning equipment, a tanning facility may not allow a person younger than 13 years of age to use a tanning device unless:

a. The facility receives written permission from the person's physician allowing the person to use the device; and

b. The person's parent or legal guardian remains at the tanning facility while the person uses the device.

9.7 Before any person 16 or 17 years of age uses a tanning facility device for the first time, the person must give the operator a written informed consent statement signed and dated by the person's parent or legal guardian stating that the parent or legal guardian has read and understood the warnings given by the tanning facility, consents to the minor's use of a tanning device, and agrees that the minor will use protective eyewear. In addition, a person 13, 14, or 15 years of age must be accompanied by a parent or legal guardian who must remain at the tanning facility while the person uses the tanning device.

9.8 When a tanning device is in use by a person, another person may not be allowed in the area of the tanning device.

9.9 A record of each customer using a tanning device must be maintained at the tanning facility at least until the third anniversary of the date of the customer's last use of a tanning device. The record shall include:

a. The date and time of the customer's use of a tanning device;
b. The length of time the tanning device was used;
c. Any injury or illness resulting from the use of a tanning device;
d. Any written informed consent statement required to be signed under Subsections 9.5, 9.6, or 9.7;

e. The customer's skin type, as determined by the customer by using the Fitzpatrick scale (provided by the Texas Department of Health to each applicant for an original or renewal license) for classifying a skin type;

- f. Whether the customer has a family history of skin cancer; and
- g. Whether the customer has a past medical history of skin cancer.

9.10 An operator shall keep an incident log at each tanning facility. The log shall be maintained at the tanning facility at least until the third anniversary of the date of an incident. The log shall include each:

- a. Alleged injury;
- b. Use of a tanning device by a customer not wearing protective eyewear;
- c. Mechanical problem with a tanning device; and
- d. Customer complaint.

SECTION 10 VIOLATIONS; NOTIFICATION AND ORDER TO CORRECT

10.1 **Authority to order correction.** If the City of Zavalla and/or regulatory authority determine that a tanning facility is in violation of this Ordinance or other law, it must notify the facility in writing of the violation and by written order direct the studio to correct the violation within a definite period of time.

10.2 **Immediate corrections.** If the City of Zavalla and/or regulatory authority determine that the violation constitutes an imminent and serious threat to the public health or safety, it shall order the permit holder to immediately correct the violation or to cease operations to the extent determined necessary to abate the threat until the violation is permanently corrected.

10.3 In addition to the authority listed above, the city shall be entitled to pursue all other remedies including the issuance of citations for municipal court or filing a complaint with the Texas Department of Health.

10.4 The city attorney may engage in the enforcement of the civil penalty and injunction order of the state law if requested by the Commissioner of the Texas Department of Health pursuant to Texas Health & Safety Code, § 145.0121, Civil Penalty and Injunction.

SECTION 11 SUSPENSION OF PERMITS

11.1 The City of Huntington and/or regulatory authority may suspend a permit issued under provision of this Ordinance if it determines that the owner, operator or person in charge of a tanning facility has:

- a. Been convicted twice within a twelve (12) month period for violation of this Ordinance;

b. Failed to comply, within the time specified, with an order to correct or abate an imminent threat to the public health or safety;

c. Intentionally or knowingly provided false information to the regulatory authority or his designee during a lawful inspection;

d. Intentionally or knowingly impeded a lawful inspection by the regulatory authority or his designee; or

e. A violation of federal or state law, or violation of a rule of the Texas Department of Health adopted under Chapter 145 of the Texas Health & Safety Code.

11.2 The City of Zavalla and/or regulatory authority shall suspend the permit for a definite period of time not to exceed one (1) year, or until the violations resulting in said suspension, have been corrected or abated.

11.3 Upon receipt of written notice of suspension issued by the regulatory authority, the permit holder shall immediately cease operation of the studio for which the permit is suspended. The notice of suspension must include:

a. The name of the permit holder;

b. The location or identification of the establishment for which the permit is suspended;

c. The reason for the suspension; and

d. A statement informing the establishment of its right to appeal the suspension.

SECTION 12 APPEAL


12.1 A decision by the City of Zavalla and/or regulatory authority invoking suspension of a permit is final unless an appeal is filed, in writing, with the city manager or his designated representative within ten (10) calendar days of the notice of suspension.

12.2 The city manager or his designated representative shall set a time and date for a hearing on the suspension and shall issue a decision, in writing, within ten (10) calendar days of the hearing date. The filing of an appeal in accordance with subsection 12.1 of this section enjoins or stays an action of the regulatory authority pending a final decision by the city manager or his designated representative, except in circumstances where the regulatory authority has determined that the suspension is due to an uncorrected or unabated imminent threat to the public health or safety.

PASSED AND APPROVED on First Reading by the City Council of the City of Zavalla, Texas, at its regular meeting this the 12 day of March, 2012.



Carlos Guzman, Mayor Pro-Tem
City of Zavalla

ATTEST: 
Rhonda Pigg, City Secretary
City of Zavalla

