

CHAPTER 8-13. TANNING FACILITIES

**8-13-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Department" means the Bismarck Fire Department, Environmental Health Division.

2. "Phototherapy device" means equipment that emits ultraviolet radiation and is used in treating disease.

3. "Tanning device" means equipment that emits electromagnetic radiation having wavelengths in the air between two hundred and four hundred nanometers and which is used for tanning of human skin and any equipment used with that equipment, including food and drug administration-approved protective eyewear, timers, and handrails. The term does not include a phototherapy device used by a physician.

4. "Tanning facility" means a place or business that provides individuals access to a tanning device. Tanning facilities located in individual dwelling units for personal use are exempt from this chapter.

*(Ord. 5607, 11-27-07; Ord. 5714, 04-28-09)*

**8-13-02. Permit-Fee.** A person may not operate a tanning facility without a permit issued by the department under this chapter. The holder of a permit shall display the permit in a conspicuous place at the tanning facility for which the permit is issued. Permits issued under this chapter expire annually. An applicant for a permit shall submit an application for a permit to the department on a form provided by the department with a permit fee as established by the city commission. The application must include the name and the complete mailing address and the street address of the tanning facility and any other information reasonably required by the department for the administration of this chapter.

*(Ord. 5607, 11-27-07)*

**8-13-03. Advertising - Notices - Warning Signs.**

1. A tanning facility may not state in advertising that the tanning facility holds a license or permit issued by the department to operate a tanning facility. No tanning facility may state in

any advertising, written or verbal, that tanning is free of hazards from ultraviolet radiation or has any health benefits other than those recognized by a credible medical or scientific source.

2. A tanning facility shall give to each of the tanning facility's customer's written notice of the following:

a. Failure to wear the eye protection provided by the tanning facility may result in damage to the customer's eyes and may cause cataracts;

b. Overexposure to a tanning device causes burns;

c. Repeated exposure to a tanning device may cause premature aging of the skin and may cause skin cancer

d. Abnormal skin sensitivity or burning of the skin while using a tanning device may be caused by:

1. Certain foods

2. Certain cosmetics; and

3. Certain medications, including tranquilizers, diuretics, antibiotics, high blood pressure medicines, and birth control pills; and

e. An individual who takes a drug should consult a physician before using a tanning device.

3. A tanning facility shall display prominently a warning sign in each area where a tanning device is used. The lettering on the warning sign shall be at least five millimeters high for the word "WARNING". The warning sign must convey the following directions and information:

a. Follow all instructions.

b. Avoid too frequent or too lengthy exposure. As with exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.

c. Wear food and drug administration-approved protective eyewear.

d. Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four hours immediately preceding or immediately following the use of a tanning device.

e. Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.

f. If your skin does not tan when exposed to the sun, it is unlikely that your skin will tan when exposed to this tanning device.

4. The tanning facility shall maintain a record of the date on which each fluorescent tube is replaced. The tubes, bulbs or lamps shall be replaced at the frequency recommended by the manufacturer or when the tubes, bulbs or lamps become damaged or defective. No tube, bulb or lamp designated for medical use only may be used.

5. An owner or employee of a tanning facility may not claim, or distribute materials that claim, that using a tanning device is free of risk.

*(Ord. 5607, 11-27-07)*

**8-13-04. Duties.**

1. The owner of a tanning facility shall ensure that all of the following are fulfilled:

a. A customer under eighteen years of age may not be permitted to use the tanning in a facility until the customer provides the facility with written consent in a form prescribed by the department, of a parent or legal guardian to use the tanning facility. The consent must indicate that the parent or legal guardian has read the warnings required by this chapter and that the customer agrees to wear food and drug administration approved protective eyewear. The parent or legal guardian shall provide a notarized statement of consent or sign the consent form in the presence of the owner of the tanning facility or an employee responsible for the operation of the ultraviolet radiation device of the facility. The written consent form expires twelve months from the date signed. A customer under the age of fourteen years may not be allowed to utilize a tanning device at a tanning facility without a written order from a physician licensed in this state and without being accompanied by a parent or legal guardian for every use of the tanning facility.

b. During operating hours there is present at the tanning facility a trained operator who is able to inform customers about, and assist customers in, the proper use of tanning devices.

c. Each tanning bed is properly sanitized after each use.

Floors, walls, ceilings, fixtures, etc. shall be maintained in a clean condition and in good repair.

If cloth towels are used, laundry facilities including a mechanical washer and dryer shall be located in an area separated from tanning devices in the facility.

d. Properly sanitized and securely fitting food and drug administration-approved protective eyewear that protects the wearer's eyes from ultraviolet radiation and allows enough vision to maintain balance is made available to the

customer.

e. Approved sanitizing solutions are those approved by the Environmental Protection Agency. Chemical test strips shall be available and used to monitor the concentration of sanitizer used for sanitizing surfaces. Test strips must be compatible with sanitizer used.

f. A customer is not allowed to use a tanning device unless the customer agrees to use food and drug administration-approved protective eyewear.

g. A customer is shown how to use such physical aids as handrails and markings on the floor to determine the proper distance from the device.

h. A timing device that is accurate within ten percent is used.

i. Each tanning device is equipped with a mechanism that allows the customer to turn off the tanning device.

j. A customer is limited to the maximum exposure time recommended by the manufacturer.

k. A customer is not allowed to use a tanning device more than once every twenty-four hours.

l. The interior temperature of the tanning facility does not exceed one hundred degrees Fahrenheit.

m. The statements under subdivision a. of subsection 2 are retained by the tanning facility for the lesser of three years or until the customer signs a new statement.

n. Only tanning equipment manufactured and certified to comply with 21 CFR Part 1040, Section 1040.20, "Sunlamp products and ultraviolet lamps intended for use in sunlamp products", in tanning facilities may be used.

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 Section 1010.3.

Only tanning equipment that has a timer which complies with the requirements of 21 CFR Part 1040, Section 1040.20(c)(2) may be used. The timer shall be incorporated in the tanning device. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time.

Protective acrylic sheets must be in place when a tanning device is in use, except that the protective acrylic may be sleeves over the lamps in the upper portion of a device or over lamps in booth devices.

2. A user of a tanning facility shall do all of the following:

a. Immediately before the customer's first use of a tanning facility in a year, sign a statement acknowledging that the customer has read and understands the notice under subsection 2 of Section 8-13-03 and the warning sign under subsection 3 of Section 8-13-03 and specifying that the customer agrees to use food and drug administration-approved protective eyewear.

b. Use food and drug administration approved protective eyewear at all times while using a tanning device.

*(Ord. 5607, 11-27-07)*

**8-13-05. Injury Reports.** If a customer of a tanning facility reports a sunburn injury to that facility resulting from the use of its tanning device, the owner shall provide the customer with written information on how to report the alleged injury to the department. If a health care provider treats a patient for a sunburn injury and determines, in the exercise of professional judgment, that the injury occurred as a result of using a tanning device at a tanning facility, the health care provider shall report the circumstances of the injury to the department. A health care provider making or not making a report in good faith pursuant to this section is immune from

liability for making or not making a report.  
(Ord. 5607, 11-27-07)

**8-13-06. Recordkeeping.**

1. The operator of a tanning facility shall maintain the following records:

a. Each customer's total number of tanning visits, dates and duration of tanning exposure.

b. Each customer's signature and acknowledgement that the customer has read and understands the written notice as required in subsection 2 of section 23-39-03 of the North Dakota Century Code and the warning sign as prescribed in section 33-42-01-04 of this chapter.

c. Each parental or legal guardians written consent for customers under eighteen years of age as required in subsection 1(a) of North Dakota Century Code section 23-39-05. All customer records shall be maintained for three years after the last tanning visit.

2. The operator shall maintain the following information for each tanning device:

a. Manufacturers equipment/operators manual and any service-related material.

b. Inspections, maintenance, and notifications performed on the tanning device, including the date of service and dates of bulb replacement. Device records shall be maintained for three years.

(Ord. 5607, 11-27-07)

**8-13-07. Permit Suspension or Revocation.** Any permit issued under the provisions of this chapter may be suspended or revoked by the board of health for a violation of the provisions of this chapter, after notice and an opportunity for a hearing. A violation of any provision of this chapter is an offense.

(Ord. 5607, 11-27-07)