



Planning, Zoning, and Building Department

BOARD ACTION REPORT – APPEALABLE ITEM

Request: Tattoo Establishment – Similarity of Use Determination
Location: Applies to Neighborhood Commercial, General Commercial, Central Business District, Planned Commercial, Resort/Tourism, Old School Square Historic Arts District, and Mixed Residential, Office, Commercial Districts
Board: Planning and Zoning Board
Meeting Date: March 21, 2016

Board Action:

Approved (5-0; Krall and Pike absent) the Similarity of Use Determination for the Tattoo Establishment as similar to Personal Service Providers, i.e. barber and beauty salons, or Services and Facilities as a permitted use within any zoning district permitting these uses.

Project Description

Currently, Delray Beach's Land Development Regulations (LDRs) does not specifically list tattoo studios/parlors or related uses as either a principal, accessory or conditional use. Therefore, an interpretation is necessary to determine whether or not the use is allowable through the similarity of use process [Sec. 4.3.2(C)(1) and (2)] until such time as the LDRs are amended to include regulations for tattoo studios/parlors.

Pursuant to LDR Section 2.4.5(N)(5), prior to approving a determination of similarity of use request, the Planning and Zoning Board must find that the requested use is indeed similar to a use allowed in the referenced zoning districts and as defined by the LDRs. The specific request is for a Board determination that a *Tattoo Studio* is similar to *Professional Service Providers*, as listed in LDR Section 4.4.9 of the GC zoning district (within Services and Facilities) and Appendix A, Definitions. While the Applicant is interested in establishing a tattoo studio at 165 Avenue L, the similarity of use determination would apply to all zoning districts that permit Personal Service Providers (also referred to as Services and Facilities) including Neighborhood Commercial (NC), General Commercial (GC), Central Business District (CBD), Planned Commercial (PC), Resort/Tourism (RT), Old School Square Historic Arts District (OSSHAD), and Mixed Residential, Office, Commercial (MROC) Districts.

Board comments:

Board discussion included state regulations regarding tattoo establishments and health regulations. Concerns also included whether the request included body piercing and future considerations of regulations related to time, manner, and place regulations and how these would be different for tattoo establishments versus a barber shop or salon. This will be addressed as part of the pending amendment to the Land Development Regulations.

Public Comments

There were no public comments.

Associated Actions:

There are no associated actions with this request. The Planning & Zoning Division is drafting amendments to the Land Development Regulations to specifically include "Tattoo Establishments" in the list of uses with associated supplemental standards.

Next Action: The PZB action is final unless appealed by the City Commission.

PLANNING AND ZONING BOARD MEMORANDUM STAFF REPORT

Meeting Date: March 21, 2016

Request: Similarity of Use Determination for a Tattoo Studio

Applicant: Michael Weiner
Weiner & Thompson, P.A.

Location: Applies to Neighborhood Commercial, General Commercial, Central Business District, Planned Commercial, Resort/Tourism, Old School Square Historic Arts District, and Mixed Residential, Office, Commercial Districts

Recommendation: Approval

ITEM BEFORE THE BOARD

The item before the Board is a request for a determination of similarity of use, pursuant to LDR Section 4.3.2(C)(2). The request is to determine that a Tattoo Studio has similar characteristics to Personal Service Providers, i.e. barber and beauty salons. If this determination of a similarity of use is approved, a Tattoo Studio would be allowed as a permitted use within any zoning district (listed above) where Personal Service Providers or Services and Facilities are permitted uses.

BACKGROUND

On December 29, 2015, the United States Court of Appeals for the 11th Circuit¹, in *Buehrle v. City of Key West*² (Exhibit A), concluded that tattooing constituted artistic expression protected under the First Amendment of the U.S. Constitution. As protected artistic expression, a municipality may regulate protected artistic expression only if the regulation: (1) is justified without reference to the content of the regulated speech, (2) is narrowly tailored to serve a significant governmental interest, and (3) leaves open ample alternative channels for communication of the information. Effectively, the City of Delray Beach may regulate tattoo studios, parlors, or related uses through reasonable time, place, and manner restrictions with supporting evidence for such restrictions based upon the three criteria.

Currently, Delray Beach's Land Development Regulations (LDRs) does not specifically list tattoo studios/parlors or related uses as either a principal, accessory or conditional use. Therefore, an interpretation is necessary to determine whether or not the use is allowable through the similarity of use process [Sec. 4.3.2(C)(1) and (2)] until such time as the LDRs are amended to include regulations for tattoo studios/parlors.

¹ The United States Courts of Appeals for the 11th Circuit includes Florida, Georgia and Alabama.

² *Buehrle v. City of Key West*², No. 14-15354, 2015 U.S. App. LEXIS 22782

On February 8, 2016, an Administrative Similarity of Use request was submitted for a Tattoo Studio located at 165 Avenue L. The location is within the Planned Commercial (PC) zoning district. The letter (Exhibit B) requesting the administrative similarity of use determination provides the Applicant's justification for the determination. LDR Section 4.3.2(C) requires an interpretation by the Director as to whether the use is allowable on the basis that it is identical to a listed use. If the request is not identical but has similar characteristics to allowable uses, the use may be established in a specific zoning district through action of the Planning and Zoning Board.

On February 22, 2016, the Director issued a determination that the use is not identical to a use listed under the GC zoning district, however, it may have similar characteristics to specific uses and is eligible under Section 4.3.2(C)(2) for a determination of a similarity of use by the Planning and Zoning Board.

On March 4, 2016, the Applicant requested that the determination of a similarity of use be scheduled for consideration by the Planning and Zoning Board. The letter also provides supplemental information regarding the similarity of use (Exhibit C).

The following sections provide an analysis of the similarity of use and recommendation for the request.

SIMILARITY OF USE ANALYSIS

Pursuant to LDR Section 2.4.5(N)(5), prior to approving a determination of similarity of use request, the Planning and Zoning Board must find that the requested use is indeed similar to a use allowed in the referenced zoning districts and as defined by the LDRs. The specific request is for a Board determination that a *Tattoo Studio*³ is similar to *Professional Service Providers*, as listed in LDR Section 4.4.9 of the GC zoning district (within Services and Facilities) and Appendix A, Definitions. While the Applicant is interested in establishing a tattoo studio at 165 Avenue L, the similarity of use determination would apply to all zoning districts that permit Personal Service Providers (also referred to as Services and Facilities) including Neighborhood Commercial (NC), General Commercial (GC), Central Business District (CBD), Planned Commercial (PC), Resort/Tourism (RT), Old School Square Historic Arts District (OSSHAD), and Mixed Residential, Office, Commercial (MROC) Districts.

Section 381.00771, Florida Statutes, defines a "tattoo" as a "mark or design made on or under the skin of a human being by a process of piercing or ingraining a pigment, dye, or ink in the skin." The statutes also define tattoo artist and tattoo establishment. A tattoo establishment is a use that is not specifically listed as an allowable use in any zoning districts. Permanent makeup, typically associated with a spa or salon, is considered tattooing and may be referred to as micropigmentation. The statutes now require the same licensing and regulation for both tattoo artists and permanent makeup artists.

The Land Development Regulations, Appendix "A", defines Personal Service Providers as "(Beauty Salons, Spas, etc.) Commercial establishments providing personal services varying in range and scope including but not limited to hairstyling, manicuring, pedicures, facials,

³ All tattoo studios (referred to by statute as "Tattoo Establishments") and tattoo artists are regulated by Sections 381.0071 – 381.00791, Florida Statutes. They are further regulated by the Florida Department of Health within Chapter 64E-28 of the Florida Administrative Code entitled "Tattooing". The establishment and artist must be licensed by the State of Florida and regularly inspected.

massages, etc.". The LDRs do not have a definition of tattoo establishment or related definitions. Personal Service Providers are also similar to barber and beauty shops and salons listed in the Permitted Uses and Principal Structures section of several commercial zoning districts under Services and Facilities. In general, personal service providers include any business (or use) with the primary purpose of providing personal services and encompass a wide range of professions which may include tattoo artists and tattooing. Generally, the impacts of a tattoo establishment are similar to personal service providers.

In 2010 and 2012, the City of Hermosa Beach, California, and the City of Mesa, Arizona, respectively, both had ordinances banning tattoo establishments which were struck down by the 9th Circuit Court, similar to the recent 11th Circuit action. These municipalities have adopted amendments to their codes to include tattoo establishments with reasonable time, place, and manner restrictions; however, they did not maintain their ban on tattoo establishments. They found that the use was generally similar to personal service providers but due to potential secondary effects required limitations on the use. Attached is an October 4, 2010, Hermosa Beach memorandum regarding a municipal code amendment to allow tattoo businesses in certain districts, along with Ordinance No. 10-1313 (Exhibit D).

The Planning Department is currently drafting a proposed LDR text amendment to specifically address tattoo establishments as a use with reasonable restrictions. The restrictions may address at a minimum concentration of similar age restricted uses (distance/separation), health risks (compliance with health regulations and licensing), and potential for late night activity near residential uses (hours of operation). Until such time as these regulations are adopted, the Department recommends that the Board make a determination of a similarity of use between Personal Service Providers and Tattoo Establishments.

REVIEW BY OTHERS

Courtesy Notices:

No public notices or courtesy notices have been distributed to adjacent property owners or associations. Letters of support or objection, if any, will be presented at the meeting.

ALTERNATIVE ACTIONS

- A. Determine that a *Tattoo Studio* is similar to the use category of Services and Facilities, Professional Service Providers, as listed in LDR Section 4.4.9 of the GC zoning district and Appendix A, Definitions, and approve the request.
- B. Determine that a similarity of use is not appropriate, but the use is recommended for inclusion in the Land Development Regulations through a formal text amendment.
- C. Determine that a *Tattoo Studio* is not similar to the use category of Services and Facilities, Professional Service Providers, as listed in LDR Section 4.4.9 of the GC zoning district and Appendix A, Definitions, and deny the request.

RECOMMENDED ACTION

By motion, approve the similarity of use request that a *Tattoo Studio* is similar to Services and Facilities, Professional Service Providers, as listed in LDR Section 4.4.9 of the GC zoning district and Appendix A, Definitions as presented.

Planning and Zoning Board Memorandum Staff Report – March 21, 2016
Determination of Similarity of Use: Tattoo Studio in Multiple Zoning Districts.

Report Prepared by: Timothy Stillings, Planning & Zoning Director

Attachments:

- Exhibit A – *Buehrle v. City of Key West*, No. 14-15354, 2015 U.S. App. LEXIS 22782
- Exhibit B – February 8, 2016, Administrative Similarity of Use request
- Exhibit C – March 4, 2016 Similarity of Use request supplemental letter
- Exhibit D – Hermosa Beach Memorandum and Ordinance No. 10-1313

EXHIBIT A

Buehrle v. City of Key West

United States Court of Appeals for the Eleventh Circuit

December 29, 2015, Decided

No. 14-15354

Reporter

2015 U.S. App. LEXIS 22782

BRAD BUEHRLE, Plaintiff-Appellee, versus
CITY OF KEY WEST, Defendant-Appellant.

Prior History: [*1] Appeal from the United States District Court for the Southern District of Florida. D.C. Docket No. 4:13-cv-10103-JEM.

Disposition: REVERSED and REMANDED.

study indicating that the operation of tattoo establishments in the historic district would impact the tourism industry.

Outcome

The judgment was reversed, and the case was remanded.

Core Terms

tattoo, ordinance, establishments, historic district, City's, artist, artistic expression, governmental interest, district court, municipal, tourism, regulation, painting, manner restriction, summary judgment, reasonable time, stated purpose, Amendment's, designated, serves

Case Summary

Overview

HOLDINGS: [1]-Tattooing constituted artistic expression protected by the First Amendment; [2]-The city's interests were substantial in not allowing additional tattoo establishments to operate in the historic district because it would adversely impact the character and fabric of the district and thus the tourism that the district attracts; [3]-The city failed to meet its burden of showing that the city ordinance served the aforementioned interests; [4]-The city conceded the absence of any ill effect as a result of the two tattoo establishments it currently allowed to operate in the historic district; [5]-It pointed to no

LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Freedoms >
Freedom of Speech > Expressive Conduct

HN1 Tattooing constitutes artistic expression protected by the First Amendment.

Real Property Law > Zoning > Historic Preservation

HN2 Key West, Florida prohibits tattoo establishments in the historic district. Key West, Fla., Code of Ordinances, subpart A, § 42-6(a). It allows tattoo establishments only in the General Commercial District as a conditional use. Key West, Fla., Code of Ordinances, subpart B, § 122-418(21).

Constitutional Law > ... > Fundamental Freedoms >
Freedom of Speech > Expressive Conduct

HN3 The First and Fourteenth Amendments prohibit states from making any law abridging the freedom of speech. U.S. Const. amends. I and XIV. That protection does not end at the spoken or written word, but extends to various forms of artistic expression. Pictures, films, paintings,

drawings, and engravings have First Amendment protection. The First Amendment unquestionably shields the painting of Jackson Pollock, music of Arnold Schönberg, or Jabberwocky verse of Lewis Carroll. Although the United States Supreme Court has never explicitly defined the entire universe of artistic expression safeguarded by the First Amendment, it has cast the amendment's protections over a variety of artistic media, including movies, music without words, and nude dancing.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Expressive Conduct

HN4 The United States Court of Appeals for the Ninth Circuit encountered the issue of whether tattooing is a protected form of artistic expression in the Anderson decision, where it held that tattooing was protected speech and that a city constitutionally could not ban tattoo establishments from operating in the city. The United States Court of Appeals for the Eleventh Circuit joins the Ninth Circuit in holding that the act of tattooing is sheltered by the First Amendment, in large part because find tattooing is virtually indistinguishable from other protected forms of artistic expression. As the Ninth Circuit observed, the principal difference between a tattoo and, for example, a pen-and-ink drawing, is that a tattoo is engrafted onto a person's skin rather than drawn on paper. A form of speech does not lose First Amendment protection based on the kind of surface it is applied to.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Expressive Conduct

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Free Press

HN5 The First Amendment's safeguards are not neatly cabined. Protected artistic expression frequently encompasses a sequence of acts by different parties, often in relation to the same piece of work. The First Amendment protects the artist who paints a piece just as surely as it

protects the gallery owner who displays it, the buyer who purchases it, and the people who view it. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read. Any other interpretation of the First Amendment in that context would deprive it of the force and effect the United States Supreme Court has told courts it deserves.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Expressive Conduct

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Free Press

HN6 A regulation limiting the creation of art curtails expression as effectively as a regulation limiting its display. The government need not ban a protected activity such as the exhibition of art if it can simply proceed upstream and dam the source. Consistent with the United States Supreme Court's teaching, the right to display a tattoo loses meaning if the government can freely restrict the right to obtain a tattoo in the first place. The tattoo cannot be created without the tattooing process. Thus, as with writing or painting, the tattooing process is inextricably intertwined with the purely expressive product, the tattoo, and is itself entitled to full First Amendment protection. For that reason, the United States Supreme Court has never drawn a distinction between the process of creating a form of pure speech, such as writing or painting, and the product of those processes, the essay or the artwork, in terms of the First Amendment protection afforded. The First Amendment protects both the act of writing content and the act of publishing it.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Time, Place & Manner Restrictions

HN7 A municipality may regulate protected artistic expression only if the regulation: (1) is justified without reference to the content of the regulated speech, (2) is narrowly tailored to serve a

significant governmental interest, and (3) leaves open ample alternative channels for communication of the information.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Time, Place & Manner Restrictions

Real Property Law > Zoning > Historic Preservation

HN8 In the context of time, place, and manner restrictions, there is no question that a city's further interest in creating an aesthetic ambiance which will attract tourists is a substantial government interest, especially where a designated historic area is at issue. A government has a more significant interest in the aesthetics of designated historical areas than in other areas.

Evidence > Burdens of Proof > Allocation

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Time, Place & Manner Restrictions

HN9 In the context of time, place, and manner restrictions, a court does not simply take a city at its word that the ordinance serves the mentioned legitimate interests. Instead, a city must demonstrate that it had a reasonable basis for believing that its regulation would further those legitimate interests. That burden is not a rigorous one. But a municipality cannot get away with shoddy data or reasoning. It must rely on at least some pre-enactment evidence that the regulation would serve its asserted interests. The enacting body must cite to some meaningful indication--in the language of the code or in the record of legislative proceedings--that the legislature's purpose in enacting the challenged statute was a concern over secondary effects rather than merely opposition to proscribed expression. Such evidence can include anything reasonably believed to be relevant, including a municipality's own findings, evidence gathered by other localities, or evidence described in a judicial opinion.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Time, Place & Manner Restrictions

HN10 In the context of time, place, and manner restrictions, an ordinance's statement of purpose may demonstrate that the ordinance serves a significant governmental interest if the statement of purpose is sufficiently detailed and supported with evidence.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Time, Place & Manner Restrictions

HN11 In the context of time, place, and manner restrictions, when the reasons for an ordinance are given in the context of a lawsuit challenging the ordinance, well after the enactment of the ordinance, they cannot serve as pre-enactment evidence that the ordinance serves a significant governmental interest.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Time, Place & Manner Restrictions

HN12 In the context of time, place, and manner restrictions, a court is not at liberty simply to presume the evidence needed to sustain the ordinance. The government bears the burden of showing that the articulated concern has more than merely speculative factual grounds.

Counsel: For Brad Buehrle, Plaintiff - Appellant: Wayne LaRue Smith, Brett Tyler Smith, The Smith Law Firm, Key West, FL.

For City of Key West, Defendant - Appellee: Michael Thomas Burke, Hudson Carter Gill, J. Marcos Martinez, Johnson Anselmo Murdoch Burke Piper & Hochman, PA, Fort Lauderdale, FL.

Judges: Before MARCUS, WILLIAM PRYOR and JILL PRYOR, Circuit Judges.

Opinion by: JILL PRYOR

Opinion

JILL PRYOR, Circuit Judge:

The City of Key West, Florida has barred Brad Buehrle from opening a tattoo establishment in the City's designated historic district, pursuant to an ordinance strictly limiting the number of tattoo establishments permitted to operate there. Mr. Buehrle contends that the act of tattooing is entitled to First Amendment protection and that the ordinance is an unconstitutional restriction on his freedom of expression. The district court granted summary judgment to the City, agreeing with Mr. Buehrle that *HNI* tattooing constitutes artistic expression protected by the First Amendment but nevertheless finding the ordinance to be a reasonable time, place, and manner restriction. We agree with the district court's [*2] conclusion that tattooing is protected artistic expression, but we reverse the summary judgment because, on the record before us, the City has failed to show that the ordinance is a reasonable time, place, and manner restriction.

I. BACKGROUND

Mr. Buehrle wished to open a tattoo establishment in the City's historic district. After negotiating a lease to rent commercial space there, he attempted to file an application with the City for a business license. The City denied Mr. Buehrle's application. *HN2* The City prohibits tattoo establishments in the historic district, *see* Key West, Fla., Code of Ordinances, subpart A, § 42-6(a), and allows tattoo establishments only in the General Commercial District as a "conditional use," *see id.* subpart B, § 122-418(21).

The island of Key West has a history of restricting the operation of tattoo establishments. From 1966 to 2007, there was a blanket prohibition on operating any tattoo establishments on the island. According to local lore, this ban arose at the request of the United States Navy, which feared

that its sailors would obtain ill-advised tattoos. Today, the City permits only two tattoo businesses to operate in the historic district as lawful non-conforming uses; it [*3] allowed these as part of the settlement of a prior lawsuit challenging the constitutionality of the ban. The City maintains that, given its history, tattoo establishments are inconsistent with the district's historic character. It also fears that rash tourists will obtain regrettable tattoos, leading to negative association with Key West. Thus, it argues, permitting more tattoo establishments will adversely affect tourism.

Mr. Buehrle filed suit in state court in Monroe County, Florida. The City removed the action to the United States District Court for the Southern District of Florida. After conducting discovery, the parties filed cross-motions for summary judgment. The district court granted the City's motion and denied Mr. Buehrle's, concluding that although the act of tattooing constitutes protected speech, the City's ordinance was content neutral and constituted a reasonable time, place, and manner restriction. This is Mr. Buehrle's appeal.

II. DISCUSSION

A. Tattooing as Artistic Expression

HN3 The First and Fourteenth Amendments prohibit states from making any law abridging the freedom of speech. U.S. Const. amends. I, XIV; *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 581, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). This protection "does not end at the spoken or written word," *Texas v. Johnson*, 491 U.S. 397, 404, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989), but extends to various forms of artistic expression.

[*4] *See Kaplan v. California*, 413 U.S. 115, 119-20, 93 S. Ct. 2680, 37 L. Ed. 2d 492 (1973) ("[P]ictures, films, paintings, drawings, and engravings . . . have First Amendment protection . . ."); *see also Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569, 115 S. Ct. 2338, 132 L. Ed. 2d 487 (1995) (noting that the First Amendment "unquestionably shield[s]"

the "painting of Jackson Pollock, music of Arnold Schönberg, or Jabberwocky verse of Lewis Carroll"). Although the Supreme Court has never explicitly defined the entire universe of artistic expression safeguarded by the First Amendment, it has cast the amendment's protections over a variety of artistic media, including movies, *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501-02, 72 S. Ct. 777, 96 L. Ed. 1098 (1952); music without words, *Ward v. Rock Against Racism*, 491 U.S. 781, 790, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989); and nude dancing, *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 66, 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981).

We have never addressed whether tattooing is a protected form of artistic expression. *HN4* The Ninth Circuit encountered this issue in *Anderson v. City of Hermosa Beach*, where it held that tattooing was protected speech and that Hermosa Beach constitutionally could not ban tattoo establishments from operating in the city. 621 F.3d 1051, 1055 (9th Cir. 2010). We join the Ninth Circuit in holding that the act of tattooing is sheltered by the First Amendment, in large part because we find tattooing to be virtually indistinguishable from other protected forms of artistic expression. As our sister circuit observed, "[t]he principal difference between a tattoo and, for example, a pen-and-ink drawing, is that a tattoo is engrafted onto a person's skin rather than drawn [*5] on paper. . . . [A] form of speech does not lose First Amendment protection based on the kind of surface it is applied to." *Id.* at 1061.

The City points us to a number of district and state court decisions drawing a distinction between the process of creating a tattoo and the tattoo itself. These courts reason that the act of wearing a tattoo is communicative, and consequently protected speech, but that the process of tattooing is not. *See, e.g., Hold Fast Tattoo, LLC v. City of North Chicago*, 580 F. Supp. 2d 656, 660 (N.D. Ill. 2008); *Yurkew v. Sinclair*, 495 F. Supp. 1248, 1253-54 (D. Minn. 1980); *State v. White*, 348 S.C.

532, 560 S.E.2d 420, 423 (S.C. 2002). In the opinion of these courts, a tattoo artist's "interest in engaging in conduct involving tattooing does not rise to the level of displaying the actual image conveyed by the tattoo, as the tattoo itself is clearly more communicative, and would be regarded as such by the average observer, than the process of engrafting the tattoo on the recipient." *Yurkew*, 495 F. Supp. at 1254. This, these courts explain, is because "[t]he act of tattooing . . . is not intended to convey a particularized message. The very nature of the tattoo artist is to custom-tailor a different or unique message for each customer to wear on the skin." *Hold Fast Tattoo*, 580 F. Supp. 2d at 660. As such, "[t]he act of tattooing is one step removed from actual expressive conduct" because, although it can be used to convey a message, it is the customer's message being conveyed, [*6] not the tattoo artist's. *Id.*

These decisions treat the First Amendment's protection as a mantle, worn by one party to the exclusion of another and passed between them depending on the artistic technique employed, the canvas used, and each party's degree of creative or expressive input. But *HN5* the First Amendment's safeguards are not so neatly cabined. Protected artistic expression frequently encompasses a sequence of acts by different parties, often in relation to the same piece of work. The First Amendment protects the artist who paints a piece just as surely as it protects the gallery owner who displays it, the buyer who purchases it, and the people who view it. *See Griswold v. Connecticut*, 381 U.S. 479, 482, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965) ("The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read . . .").

Any other interpretation of the First Amendment in this context would deprive it of the force and effect the Supreme Court has told us it deserves. *See Ward*, 491 U.S. at 790. *HN6* A regulation limiting the creation of art curtails expression as

effectively as a regulation limiting its display. The government need not ban a protected activity such as the exhibition of art if it can simply proceed upstream and dam the source. Consistent with [*7] the Supreme Court's teaching, the right to *display* a tattoo loses meaning if the government can freely restrict the right to *obtain* a tattoo in the first place. *See Anderson*, 621 F.3d at 1062 ("[T]he tattoo cannot be created without the tattooing process Thus, as with writing or painting, the tattooing process is inextricably intertwined with the purely expressive product (the tattoo), and is itself entitled to full First Amendment protection."). For this reason, the Supreme Court has never "drawn a distinction between the process of creating a form of pure speech (such as writing or painting) and the product of these processes (the essay or the artwork) in terms of the First Amendment protection afforded." *Id.* at 1061 (emphasis omitted); *see also Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116-18, 112 S. Ct. 501, 116 L. Ed. 2d 476 (1991) (First Amendment protects both the act of writing content and the act of publishing it).

We suspect the idea that a tattoo represents the expression of the wearer and not the tattoo artist may spring from an outmoded perception of the tattoo industry. During the 1960s, tattoo artists began evolving the craft of tattooing beyond the rote application of standardized designs that historically characterized the medium. *See* Ryan J. Walsh, Comment, *Painting on a Canvas of Skin: Tattooing and the First Amendment*, 78 U. Chi. L. Rev. 1063, 1090-91 (2011). Today, tattooing as practiced [*8] by a large segment of tattoo artists "emphasizes creativity and expression" and is "quite self-consciously an expressive movement." *Id.* As one commentator writes,

[T]attooing has become a leading art form . . . and the subject of museum exhibits throughout the United States. Today, tattoo artists are known for their large-scale, unified,

custom designs, and some have even sought copyrights for their finished pieces. Currently, most tattoo artists are graduates of college art programs who seek the intrinsic appeal of the medium and desire to break free from the limitations, distortions and irrelevance of conventional elitist modes of art production.

Carly Strock, Comment, *These Tats Are Made for Talking: Why Tattoos and Tattooing Are Protected Speech Under the First Amendment*, 31 Loy. L.A. Ent. L. Rev. 175, 187 (2011) (footnotes and internal quotation marks omitted). Mr. Buehrle and his work appear to be of this ilk, and we see no meaningful basis on which to distinguish his work from that of any other artist practicing in a visual medium, certainly not a basis sufficient to deny him First Amendment protection.

B. Reasonable Time, Place, and Manner Restriction

Having decided that tattooing is artistic expression protected by the First Amendment, we must determine whether the City's [*9] municipal ordinance limiting that expression is constitutional. *HN7* A municipality may regulate protected artistic expression only if the regulation (1) is justified without reference to the content of the regulated speech, (2) is narrowly tailored to serve a significant governmental interest, and (3) leaves open ample alternative channels for communication of the information. *Ward*, 491 U.S. at 791. Mr. Buehrle concedes the ordinance is content-neutral. Thus, we need only scrutinize the ordinance under the latter two factors. Because we conclude that the City has failed to demonstrate that the ordinance serves a significant governmental interest, we do not address whether it leaves open ample alternative channels of communication.

The City argues that the ordinance's purpose is to prevent the deterioration of the historic district. Specifically, the City fears that allowing additional tattoo establishments to operate in the historic

district would adversely impact the "character and fabric" of the district and thus the tourism that the district attracts. We do not doubt that these are substantial government interests. *See One World One Family Now v. City of Miami Beach*, 175 F.3d 1282, 1288 (11th Cir. 1999) (*HN8* "There is . . . no question that the city's further interest in creating an aesthetic [*10] ambiance which will attract tourists . . . is a substantial government interest, especially where, as here, a designated historic area is at issue."); *Messer v. City of Douglasville*, 975 F.2d 1505, 1510 (11th Cir. 1992) ("A government has a more significant interest in the aesthetics of designated historical areas than in other areas.").

Our inquiry does not end there, however. *HN9* We do not simply take the City at its word that the ordinance serves the aforementioned interests. Instead, the City must demonstrate that it had a reasonable basis for believing that its regulation would further these legitimate interests. *See Zibtluda, LLC v. Gwinnett Cty. ex rel. Bd. of Comm'rs*, 411 F.3d 1278, 1286 (11th Cir. 2005). This burden is not a rigorous one. *Id.* But a municipality cannot "get away with shoddy data or reasoning." *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002) (plurality opinion). It "must rely on at least *some* pre-enactment evidence" that the regulation would serve its asserted interests. *Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee Cty.*, 337 F.3d 1251, 1268 (11th Cir. 2003); *see also Zibtluda*, 411 F.3d at 1286 ("Nevertheless, [the enacting body] must cite to *some* meaningful indication—in the language of the code or in the record of legislative proceedings—that the legislature's purpose in

enacting the challenged statute was a concern over secondary effects rather than merely opposition to proscribed expression.") (alteration in original) (quoting *Ranch House, Inc. v. Amerson*, 238 F.3d 1273, 1283 (11th Cir. 2001)). Such evidence can include anything "reasonably [*11] believed to be relevant—including a municipality's own findings, evidence gathered by other localities, or evidence described in a judicial opinion." *Peek-A-Boo Lounge*, 337 F.3d at 1268 (internal quotation marks omitted).

The City has failed to meet its burden. Aside from the ordinance's vague statement of purpose,¹ the only support for the City's claim that the ordinance serves significant governmental interests consists of statements by Donald Craig, the City's Director of Planning. In his deposition and an affidavit submitted in support of the City's motion for summary judgment, Mr. Craig asserted that: Key West historically prohibited tattoo establishments from operating in the historic district; allowing tattoo establishments to operate there would impact the district's "character and fabric," which "could . . . impact tourism"; and tourists might negatively associate Key West with tattoos that they had obtained there but come to regret.

As an initial matter, *HN11* Mr. Craig's reasons were given in the context of Mr. Buehrle's lawsuit, well after the enactment of the ordinance. They therefore cannot serve as *pre-enactment* evidence that the ordinance serves a significant governmental interest. *See Peek-A-Boo Lounge*, 337 F.3d at 1268; *see also Zibtluda*, 411 F.3d at 1286. Even were that not the case, we would still find Mr. Craig's statements inadequate because they are, by and large, unsubstantiated. It is undisputed that there was a blanket prohibition on

¹ *HN10* An ordinance's statement of purpose may demonstrate that the ordinance serves a significant governmental interest if the statement of purpose is sufficiently detailed and supported with evidence. *See Zibtluda*, 411 F.3d at 1286-87 (upholding an ordinance based on its statement of purpose, which cited to experiences [*12] of other counties and municipalities, documentary evidence, and oral testimony). Here, though, the ordinance's statement of purpose refers to no evidence and contains no detail beyond its general assertion that limiting the number of tattoo establishments will prevent "the potential deterioration of a preserved historic district; an increase in the incidence of disease; and land use incompatibilities." Key West, Fl., Code of Ordinances, subpart B, § 122-1543(a). On appeal, the City argues only deterioration of a preserved historic district.

the operation of tattoo establishments on the island of Key West from 1966 to 2007, but nothing in the record corroborates Mr. Craig's assertions about the prohibition's origin or tells us whether any tattoo [*13] establishments operated in the area prior to 1966.

Significantly, the mere fact that Key West successfully prohibited tattoo establishments in the historic district for approximately forty years does not support the conclusion that allowing more tattoo establishments would cause the district's historical value to deteriorate and impact tourism. To the contrary, the City's recent experience suggests otherwise. The City concedes the absence of any ill effect as a result of the two tattoo establishments it currently allows to operate in the historic district. And it fails to explain why allowing additional tattoo establishments to operate there would sour the district's historical flavor, especially since the first two apparently have not done so.

Particularly glaring is the lack of evidentiary support for the City's assertions concerning tattooing's purported effect on tourism. The City pointed to no study indicating that the operation of tattoo establishments in the historic district would impact the tourism industry. The City conducted no investigation and made no findings. It relied upon no expert testimony, findings made by other municipalities, or evidence described in judicial decisions. [*14] It failed to muster even anecdotal evidence supporting its claims. The closest the City came to presenting evidence on

the impact on tourism was a passing reference to a few lines of a Jimmy Buffett song. And we are unsure whether even that reference fully supports its position.²

The First Amendment requires more. *HN12* We are not at liberty simply to "presume the evidence" needed to sustain the ordinance. *Peek-A-Boo Lounge*, 337 F.3d at 1267. "[T]he government bears the burden of showing that the articulated concern has more than merely speculative factual grounds." *Flanigan's Enters., Inc. v. Fulton Cty.*, 242 F.3d 976, 986 (11th Cir. 2001).³ The City failed to satisfy this burden. On the record before us, the City has presented insufficient evidence that it had a reasonable basis for [*15] believing that its ordinance would actually serve the significant governmental interests it propounds. Perhaps, if the district court chooses to permit the introduction of new evidence on remand, the City can produce the kind of evidence that would satisfy its burden, but so far it has not done so.

III. CONCLUSION

The district court erred when it concluded that the City's municipal ordinance restricting the number of tattoo establishments in its historic district was a reasonable time, place, and manner restriction on protected expression. We reverse the grant of summary judgment and remand the case to the district court for further proceedings consistent with this opinion.

REVERSED and REMANDED.

² Jimmy Buffett's song "Margaritaville" was referenced twice in the record, once by Mr. Craig in his deposition and once by the City's attorney in oral argument before the district court, to support the claim that inebriated tourists are likely to get and then regret tattoos if more tattoo establishments operate in the historic district. But the singer in "Margaritaville"—seemingly far from suffering embarrassment over his tattoo—considers it "a real beauty." Jimmy Buffett, "Margaritaville," on *Songs You Know by Heart* (Geffen Records 1985).

³ Although the decision in *Flanigan's Enterprises* was ultimately superseded on other grounds by a county ordinance, Fulton County, Ga., Code § 18-79(17), see *Flanigan's Enters., Inc. of Ga. v. Fulton Cty.*, 596 F.3d 1265 (11th Cir. 2010), it remains valid for the cited proposition.

LAW OFFICES
**WEINER, LYNNE
& THOMPSON, P.A.**

MICHAEL S. WEINER
JEFFREY C. LYNNE
LAURIE A. THOMPSON
JAMES F. CAPLAN
BRETT J. HOROWITZ

PROFESSIONAL ASSOCIATION
10 SE 1st AVENUE, SUITE C
DELRAY BEACH, FLORIDA 33444

RECEIVED BY

FEB 08 2016

City of Delray Beach
Planning & Zoning

TELEPHONE (561) 265-2666
FACSIMILE (561) 945-8779
JLYNNE@ZONELAW.COM
WWW.ZONELAW.COM

EXHIBIT B

February 8, 2016

VIA HAND-DELIVERY

Mr. Tim Stillings
Director of Planning and Zoning
City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444

**RE: ADMINISTRATIVE SIMILARITY OF USE DETERMINATION
TATTOO STUDIO USE**

Dear Mr. Stillings:

Thank you for meeting with us on Friday, January 29, 2016, in your office to discuss my client, Tradition Tattoo (Mrs. Rebecca Loveless) and her desire to relocate her existing tattoo studio from the Boca Raton to Delray Beach. As we discussed during that meeting, it has been our understanding that the City has historically hesitated to approve the siting of tattoo studios within any zoning district of Delray Beach but that such a decision was inconsistent with the recent case of *Buehrle v. City of Key West*, No. 14-15354, 2015 U.S. App. LEXIS 22782 (11th Cir. Dec. 29, 2015) which case held that cities may not preclude tattoo studios, citing First Amendment protections, and must reasonably provide for their establishment within a municipality.

In order to facilitate our client's relocation in the absence of any unnecessary judicial intervention, you have asked us to provide you with an analysis of Tattoo Studio uses and their similarity to other Permitted uses within the City. This analysis is authorized pursuant to LDR Section 1.4.1(C), which incorporates LDR Section 4.3.2(C)(1):

Interpretation by Director: In situations where a specific use is not listed in examples provided under a type, the Director may determine that a specific use is allowable on the basis is identical to uses listed in examples. The Director shall maintain a list of such determinations.
(Emphasis added).

All tattoo studios (referred to by statute as "Tattoo Establishments") and tattoo artists themselves are regulated by Sections 381.00771 – 381.00791, Florida Statutes. These statutes are found within Chapter 381, Florida Statutes, entitled "Public Health" and are further regulated by the Florida Department of Health pursuant to rules adopted and codified within Chapter 64E-28 of

the Florida Administrative Code entitled "Tattooing." These rules provide that both a Tattoo Artist as well as any Tattoo Establishment must be licensed by the State of Florida and regularly inspected. See, generally, <http://www.floridahealth.gov/ENVIRONMENTAL-HEALTH/tattooing/index.html>. For your records, we have included the statutory scheme and regulations governing these uses.

The Department of Health posts on its website those all license holders who are permitted to provide tattoo services within the City of Delray Beach, which list can be accessed here: <http://www.floridahealth.gov/statistics-and-data/eh-tracking-and-reporting/tattoos.html>. The list of City-approved and State-licensed Tattoo Establishments includes "Changes Faces Makeovers," located at 140 NE 2nd Avenue (zoned CBD); "Dr. Mylissa's Medical Boutique," located at 1425 S. Congress Avenue (zoned MROC); and "New Hue Permanent Makeup," located at 4600 Linton Blvd. (zoned SAD). We have included with this letter a copy of that listing.

Based upon these approved uses, it appears that a Tattoo Establishment use is identical to, and intended to fall within the same use category of "Personal Service Providers" as that term is defined within LDR Appendix "A" which provides as follows:

(Beauty Salons, Spas, etc.) Commercial establishments providing personal services varying in range and scope including but not limited to hairstyling, manicuring, pedicures, facials, massages, etc.

While we have reason to believe that these licensed providers outwardly market themselves as places to obtain "Permanent Makeup and Cosmetics," there is nothing within the City's Land Development Regulations or otherwise which precludes a lawful distinction between "permanent makeup" and utilizing the same tools, methods, inks, and processes elsewhere on a person's body. As the above-referenced federal case provides, the City can no more regulate the expression placed on someone's body, either through word or image, than it can where such expressive conduct occurs.

The only thing the City may lawfully regulate is the compatibility of the use with adjacent uses. Since the use occurs entirely within the premises, and is no different than other similar "permanent makeup" studios already openly authorized by the City, we believe that wherever Personal Service Providers are allowed, a Tattoo Establishment must be allowed as of right without further regulation. To create a separate definition and to regulate differently, would be to constrain free speech unreasonably.

In this instance, our client has identified what would otherwise appear to be compatible and suitable property located within the existing South Delray Shopping Center, 165 Avenue L, Delray Beach. This property appears to have a City zoning designation of GC and which use would therefore appear to be a Permitted Use pursuant to LDR Section 4.4.9(B)(4) (allowing "services and facilities including but not limited to ... barber and beauty shops and salons").

We respectfully request an expedited response to our letter so that our client may relocate her business to the City without unreasonable delay. She is between leases and therefore time is of the essence. Should you have any specific questions relating to the nature of the use, beyond the

Mr. Tim Stillings
Director of Planning and Zoning
February 8, 2016
Page 3

answers provided during our meeting, please do not hesitate to ask. I thank you for your time and prompt response to this letter.

Very truly yours,



JEFFREY C. LYNNE

JCL:ek

Enclosures

Cc: Mark McDonnell, Assistant Director of Planning and Zoning
Michael Dutko, Esq., Assistant City Attorney
Ashlee Coosaia, EI

<u>County</u>	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>Date</u>	<u>Inspection</u>	<u>Show</u>
Palm Beach	<u>Bodyvital LLC</u>	660 Linton Boulevard, Unit 113	Delray Beach	8/13/2015	Satisfactory	Show
Palm Beach	<u>Changing Faces Makeovers, Inc.</u>	140 NE 2nd Avenue	Delray Beach	4/7/2015	Satisfactory	Show
Palm Beach	<u>Dr. Mylissa's Medical Boutique</u>	1425 S Congress Avenue	Delray Beach	11/12/2015	Satisfactory	Show
Palm Beach	<u>Gregory D Albert MD PA</u>	6290 Linton Blvd, Unit 203	Delray Beach	12/8/2015	Satisfactory	Show
Palm Beach	<u>New Hue Permanent Makeup LLC</u>	4600 Linton Boulevard	Delray Beach	11/19/2015	Satisfactory	Show
Palm Beach	<u>Solid Image Tattoo</u>	3860 N Federal Highway	Delray Beach	6/24/2015	Satisfactory	Show
Palm Beach	<u>Solid Image Tattoo</u>	3860 N Federal Highway	Delray Beach	6/19/2015	Stop Use Issued	Show
Palm Beach	<u>Thomas L Tzikas</u>	526 SE 5th Ave	Delray Beach	3/25/2015	Satisfactory	Show

Records 1-8 of 8



Gary R. Nikolits, CFA

Homestead Exemption

E-file

Property Appraiser

Palm Beach County



Location Address 140 NE 2ND AVE

Municipality DELRAY BEACH

Parcel Control Number 12-43-46-16-01-075-0120

Subdivision DELRAY TOWN OF

Official Records Book 26867

Page 896

Sale Date JUN-2014

Legal Description TOWN OF DELRAY LT-12 (LESS W-4 FT ALLEY R/W) & NLY 41.75 FT OF LT-13 (LESS W 4 FT ALLEY R/W) BLK 75

Owners

ACM ENTERPRISES INCORPORATED

Mailing address510 SUNSHINE DR
DELRAY BEACH FL 33444 1719

Sales Date	Price	OR Book/Page	Sale Type	Owner
JUN-2014	\$3,000,000	26867 / 0896	WARRANTY DEED	ACM ENTERPRISES INCORPORATED
AUG-2003	\$10	15929 / 1042	WARRANTY DEED	PINEAPPLE GROVE PARTNERS LLC
MAY-2003	\$1,200,000	15362 / 1717	WARRANTY DEED	SHOWCASE REALTY & CNTRCTNG INC
MAR-1998	\$100	10364 / 0397	QUIT CLAIM	MDS INC
JAN-1972	\$37,500	01998 / 1461	WARRANTY DEED	

No Exemption Information Available.

Number of Units 0 *Total Square Feet 7182

Acres 0.3478

Use Code 1100 - STORES

Zoning CBD - Central Business (12-DELRAY BEACH)

Tax Year	2015	2014	2013
Improvement Value	\$1,113,413	\$567,378	\$541,266
Land Value	\$757,500	\$593,880	\$530,250
Total Market Value	\$1,870,913	\$1,161,258	\$1,071,516

All values are as of January 1st each year

Tax Year	2015	2014	2013
Assessed Value	\$1,870,913	\$1,161,258	\$1,056,012
Exemption Amount	\$0	\$0	\$0
Taxable Value	\$1,870,913	\$1,161,258	\$1,056,012

Tax Year	2015	2014	2013
Ad Valorem	\$42,795	\$26,946	\$24,729
Non Ad Valorem	\$2,220	\$2,357	\$2,366
Total tax	\$45,015	\$29,303	\$27,095



Gary R. Nikolits, CFA

Homestead Exemption **E-file** ▶**Property Appraiser**

Palm Beach County



Location Address 660 W LINTON BLVD

Municipality DELRAY BEACH

Parcel Control Number 12-43-46-29-24-001-0000

Subdivision LAVERS INTERNATL PLAZA PL 1

Official Records Book 26996

Page 389

Sale Date JUL-2014

Legal Description LAVERS INTERNATL PLAZA PL 1 TR A LAVERS INTERNATL PLAZA PL 2 PB51P3

OwnersLIP I LLC &
LIP II LLC
LIP III LLC**Mailing address**102 NE 2ND ST # 305
BOCA RATON FL 33432 3908

Sales Date	Price	OR Book/Page	Sale Type	Owner
JUL-2014	\$15,300,000	26996 / 0389	DEED OF TRUST	LIP I LLC &
JUL-2001	\$6,000,000	12726 / 1317	WARRANTY DEED	MARULLI ALFRED N JR TR
NOV-1996	\$6,230,000	09552 / 1529	WARRANTY DEED	
MAY-1991	\$3,500,000	06828 / 0740	WARRANTY DEED	
OCT-1989	\$100	06241 / 1113	CERT OF TITLE	

1 2

No Exemption Information Available.

Number of Units 0

*Total Square Feet 85357

Acres 7.6728

Use Code 1600 - SHOPPING CENTER
COMMITYZoning PC - Planned Commercial (12-DELRAY
BEACH)

Tax Year	2015	2014	2013
Improvement Value	\$6,121,892	\$5,279,719	\$4,939,301
Land Value	\$4,725,984	\$2,754,039	\$2,673,824
Total Market Value	\$10,847,876	\$8,033,758	\$7,613,125

All values are as of January 1st each year

Tax Year	2015	2014	2013
Assessed Value	\$10,847,876	\$7,623,000	\$6,930,000
Exemption Amount	\$0	\$0	\$0
Taxable Value	\$10,847,876	\$7,623,000	\$6,930,000

Tax Year	2015	2014	2013
Ad Valorem	\$237,284	\$172,380	\$159,760
Non Ad Valorem	\$35,935	\$37,460	\$37,588
Total tax	\$273,219	\$209,840	\$197,348



Property Appraiser

Gary R. Nikolits, CFA

Palm Beach County

Homestead Exemption

E-file ▶



Location Address 1585 S CONGRESS AVE

Municipality DELRAY BEACH

Parcel Control Number 12-43-46-19-38-001-0000

Subdivision LINTON SQUARE

Official Records Book 07407

Page 0956

Sale Date SEP-1992

Legal Description LINTON SQUARE ALL OF PLAT (LESS WLY 11 FT SW 20TH AVE R/W)

Owners

GATOR LINTON PARTNERS LTD

Mailing address1595 NE 163RD ST
MIAMI FL 33162 4717

Sales Date	Price	OR Book/Page	Sale Type	Owner
SEP-1992	\$3,400,000	07407 / 0956	WARRANTY DEED	
JUN-1986	\$12,790,500	04925 / 0554	WARRANTY DEED	

No Exemption Information Available.

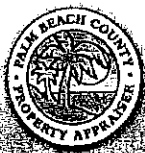
Number of Units 0	*Total Square Feet 105775	Acres 8.4718
Use Code 1600 - SHOPPING CENTER CMMITY	Zoning MROC - Mixed Res' Office & Commercial (12- DELRAY BEACH)	

Tax Year	2015	2014	2013
Improvement Value	\$4,965,138	\$4,452,446	\$4,221,804
Land Value	\$2,758,130	\$2,728,977	\$2,583,210
Total Market Value	\$7,723,268	\$7,181,423	\$6,805,014

All values are as of January 1st each year

Tax Year	2015	2014	2013
Assessed Value	\$7,723,268	\$7,181,423	\$6,600,000
Exemption Amount	\$0	\$0	\$0
Taxable Value	\$7,723,268	\$7,181,423	\$6,600,000

Tax Year	2015	2014	2013
Ad Valorem	\$168,937	\$159,456	\$148,772
Non Ad Valorem	\$55,871	\$59,493	\$59,700
Total tax	\$224,808	\$218,949	\$208,472



Gary R. Nikolits, CFA

Homestead Exemption

E-file ▶

Property Appraiser

Palm Beach County



Location Address 4600 W LINTON BLVD

Municipality DELRAY BEACH

Parcel Control Number 12-42-46-25-20-008-0000

Subdivision MIDTOWN DELRAY

Official Records Book 24824

Page 1080

Sale Date OCT-2011

Legal Description MIDTOWN-DELRAY TR-H

Owners

LINTON GROVE LLC

Mailing address50 E SAMPLE RD STE 400
POMPANO BEACH FL 33064 3552

Sales Date	Price	OR Book/Page	Sale Type	Owner
OCT-2011	\$10,250,000	24824 / 1080	WARRANTY DEED	LINTON GROVE LLC
JUN-2008	\$1,600,000	22730 / 0491	WARRANTY DEED	MIDTOWN MEDICAL LLC

No Exemption Information Available.

Number of Units *Total Square Feet 33411 Acres 2.5828
Use Code 1900 - PROF OFFICES Zoning SAD - Special Activities (12-DELRAY BEACH)

Tax Year	2015	2014	2013
Improvement Value	\$8,249,797	\$6,954,332	\$6,580,613
Land Value	\$962,921	\$953,774	\$935,075
Total Market Value	\$9,212,718	\$7,908,106	\$7,515,688

All values are as of January 1st each year

Tax Year	2015	2014	2013
Assessed Value	\$8,698,917	\$7,908,106	\$7,515,688
Exemption Amount	\$0	\$0	\$0
Taxable Value	\$8,698,917	\$7,908,106	\$7,515,688

Tax Year	2015	2014	2013
Ad Valorem	\$194,138	\$175,592	\$167,642
Non Ad Valorem	\$7,675	\$8,176	\$8,200
Total tax	\$201,813	\$183,768	\$175,842

- b. The contaminated instruments and all other instruments, must be packaged properly and loaded correctly into the autoclave.
- c. The contaminated instruments must be sterilized by autoclave.
- 4. All sterilized instruments must be stored and handled in a manner that maintains sterility.
- 5. Autoclaves must be cleaned regularly and serviced at least once a year.
- 6. Each body-piercing salon utilizing autoclave sterilization techniques must post the sterilization procedures and ensure that personnel responsible for performing the sterilization procedures are adequately trained.
- 7. All staff must be trained in proper infection-control procedures.
- 8. Presterilized, prewrapped, disposable instruments may be used, but must be used in accordance with the manufacturer's instructions.

(c) The body-piercing salon must be in compliance with s. 381.0098.

History.—s. 1, ch. 99-176.

381.00771 Definitions of terms used in ss. 381.00771-381.00791.—As used in ss. 381.00771-381.00791, the term:

- (1) "Active license or registration" means a current license or registration issued by the department that is not suspended or revoked.
- (2) "Department" means the Department of Health.
- (3) "Guest tattoo artist" means a person who is licensed, registered, or certified to practice tattooing in a jurisdiction outside of this state who is registered with the department to practice tattooing in this state.
- (4) "Operator" means a person designated by a tattoo establishment or temporary establishment to control the operation of the establishment.
- (5) "Stop-use order" means a written notice from the department to a licensee or registrant requiring him or her to remove any tattooing equipment or supplies, or cease conducting any particular procedures, because the equipment or supplies are not being used or the procedures are not being conducted in accordance with ss. 381.00771-381.00791 or any rule adopted under those sections.
- (6) "Tattoo" means a mark or design made on or under the skin of a human being by a process of piercing and ingrainings a pigment, dye, or ink in the skin.
- (7) "Tattoo artist" means a person licensed under ss. 381.00771-381.00791 to practice tattooing.
- (8) "Tattoo establishment" means any permanent location, place, area, structure, or business where tattooing is performed.

(9) "Temporary establishment" means any location, place, area, or structure where tattooing is performed during, and in conjunction with, a convention or other similar event that does not exceed 14 consecutive days.

History.—s. 1, ch. 2010-220.

381.00773 Application of ss. 381.00771-381.00791; exemption.—

(1) Except for s. 381.00787, which applies to all persons, ss. 381.00771-381.00791 do not apply to a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466 who performs tattooing exclusively for medical or dental purposes.

(2) Sections 381.00771-381.00791 apply exclusively to the tattooing of human beings and do not apply to the tattooing of any animal.

History.—s. 2, ch. 2010-220.

381.00775 Tattoo artists; licensure; registration of guest tattoo artists.—

(1) Except as provided in s. 381.00773, a person may not tattoo the body of any human being in this state unless the person is licensed as a tattoo artist or registered as a guest tattoo artist under this section.

(2)(a) A person seeking licensure as a tattoo artist must apply to the department in the format prescribed by the department. An application must include:

1. The name and residence address of the applicant.
2. The name and street address of each tattoo establishment and temporary establishment at which the applicant intends to practice tattooing in this state.

(b) The department shall issue a license to an applicant who:

1. Is 18 years of age or older.
2. Submits a completed application.
3. Pays the applicable license fee established in s. 381.00781.
4. Submits proof of successful completion of an education course approved by the department on blood-borne pathogens and communicable diseases.
5. Submits proof of passage of an examination approved by the department on the material presented in the education course.

(c) The department shall approve one or more education courses and examinations that allows a person to complete the requirements of subparagraphs (b)4. and 5. in person or through an Internet website.

(d) A tattoo artist must, within 30 days after a change, notify the department of any change in the following information disclosed in his or her most recent application for issuance or renewal of his or her tattoo artist license in the format prescribed by the department:

1. The name and residence address of the tattoo artist.

2. The name and street address of each tattoo establishment in this state at which the tattoo artist has practiced tattooing for more than 14 days since the most recent renewal of his or her tattoo artist license or, if the license has not been renewed, since the license was issued.

(3)(a) A person seeking registration as a guest tattoo artist must apply to the department in the format prescribed by the department. An application must include:

1. The name and residence address of the applicant.

2. The name and street address of each tattoo establishment and temporary establishment at which the applicant will practice under the guest tattoo artist registration.

(b) The department shall issue a guest tattoo artist registration to an applicant who:

1. Is 18 years of age or older.

2. Submits a completed application.

3. Pays the applicable registration fee established in s. 381.00781.

4. Holds an active license, registration, or certification issued by a jurisdiction outside this state, whether by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction, if:

a. The education and examination requirements of the license, registration, or certification substantially meet or exceed the requirements of subparagraphs (2)(b)4. and 5.; or

b. The applicant submits proof of successful completion of an education course approved by the department under subparagraph (2)(b)4. and proof of passage of an examination approved by the department under subparagraph (2)(b)5.

(4)(a) A tattoo artist license is valid for 1 year and must be renewed annually.

(b) A guest tattoo artist registration is valid for 14 days. A guest tattoo artist may apply for reregistration before or after expiration of his or her current registration.

(5) A license or registration issued by the department under this section is not transferable.

History.—s. 3, ch. 2010-220.

381.00777 Tattoo establishments; licensure; temporary establishments.—

(1)(a) Except as provided in s. 381.00773, a person may not tattoo the body of any human being in this state except at a tattoo establishment or temporary establishment licensed under this section.

(b) A person may not operate a tattoo establishment or temporary establishment in this state unless the establishment is licensed under this section.

(2) A person seeking licensure of a tattoo establishment must apply to the department in the format prescribed by the department. An application must include:

- (a) The registered business name, including any fictitious names under which the tattoo establishment conducts business in the state.
- (b) The street address and telephone number of the tattoo establishment.
- (c) The name, mailing address, and telephone number of the tattoo establishment's operator.
- (d) The name and address of the tattoo establishment's registered agent for service of process in the state.

(3) The department shall issue a tattoo establishment license to an applicant, if:

- (a) The applicant submits a completed application.
 - (b) The applicant pays the applicable license fee established in s. 381.00781.
 - (c) The establishment complies with all applicable local building, occupational, zoning, and health codes.
- (4) A temporary establishment must meet the same requirements for licensure as a permanent tattoo establishment.
- (5)(a) A license is valid only for the location listed on the license. A tattoo establishment must notify the department in the format prescribed by the department before any change of the licensed location. A tattoo establishment with more than one location must obtain a separate license for each location.
- (b) A tattoo establishment license is valid for 1 year and must be renewed annually.
- (c) A temporary establishment license is valid for the duration of a convention or other similar event for which the license is issued not to exceed 14 consecutive days.
- (6) A license issued by the department under this section is not transferable.

History.—s. 4, ch. 2010-220.

381.00779 Practice requirements.—

- (1) A tattoo establishment or temporary establishment must:
- (a) Display an active license for the establishment in a manner that is easily visible to the public at all times while tattooing is performed at the establishment.
 - (b) Ensure that each tattoo artist and guest tattoo artist, while practicing tattooing at the establishment, meets all applicable requirements of ss. 381.00771-381.00791.
 - (c) Maintain sanitary conditions of the establishment at all times.
 - (d) Comply with all state and local health codes and ordinances.
 - (e) Allow the department to inspect the establishment pursuant to subsection (4).
 - (f) Comply with s. 381.0098 and rules adopted under that section.
- (2) A tattoo artist or guest tattoo artist must:

- (a) Display his or her active license in a manner that is easily visible to the public at all times while practicing tattooing.
 - (b) Practice tattooing exclusively at an establishment licensed under ss. 381.00771-381.00791.
 - (c) Maintain sanitary conditions of the establishment at all times.
 - (d) Comply with all state and local health codes and ordinances.
- (3) A tattoo artist or guest tattoo artist may tattoo the body of a minor child only to the extent authorized in s. 381.00787. A tattoo establishment or temporary establishment must keep, for the period prescribed by the department, each written notarized consent submitted under s. 381.00787(2)(c) by the parent or legal guardian of a minor child who is tattooed at the establishment.
- (4) The department may inspect and investigate each tattoo establishment and temporary establishment as necessary to ensure compliance with ss. 381.00771-381.00791. However, the department shall inspect each tattoo establishment at least annually and shall inspect each temporary establishment before and, as necessary, during a convention or similar event with which the establishment is connected.

History.—s. 5, ch. 2010-220.

381.00781 Fees; disposition.—The department shall establish by rule the following fees:

- (1) For the initial licensure of a tattoo establishment and the renewal of such license, a fee not to exceed \$250 per year.
- (2) For licensure of a temporary establishment, a fee not to exceed \$250.
- (3) For the initial licensure of a tattoo artist and the renewal of such license, a fee not to exceed \$150 per year.
- (4) For registration or reregistration of a guest tattoo artist, a fee not to exceed \$45.
- (5) For reactivation of an inactive tattoo establishment license or tattoo artist license. A license becomes inactive if it is not renewed before the expiration of the current license.

History.—s. 6, ch. 2010-220; s. 38, ch. 2012-184.

381.00783 Grounds for discipline; administrative penalties.—

- (1) The following acts constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any tattoo establishment, temporary establishment, tattoo artist, guest tattoo artist, operator of a tattoo establishment, or unlicensed person engaged in activities regulated under ss. 381.00771-381.00791:
- (a) Providing false information on an application for licensure or registration.
 - (b) Violating a state or local health code or ordinance.
 - (c) Violating any provision of ss. 381.00771-381.00791, rule adopted under those sections, or lawful order of the department.

(d) Being found guilty of or pleading nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of tattooing or the operation of a tattoo establishment or temporary establishment.

(e) Committing fraud, deceit, negligence, or misconduct in the practice of tattooing or the operation of a tattoo establishment or temporary establishment.

(f) Aiding, procuring, or assisting a person to unlawfully practice tattooing or unlawfully operate a tattoo establishment or temporary establishment.

(g) Failing to keep the written notarized consent of the parent or legal guardian of a minor child who is tattooed at a tattoo establishment or temporary establishment for the period specified pursuant to s. 381.00779(3) or knowingly making false entries in a parent's or legal guardian's written notarized consent.

(2) When the department determines that a person commits any of the acts set forth in subsection (1), the department may enter an order imposing one or more of the following penalties:

(a) Refusal to issue a license or registration or renew a license.

(b) Suspension or revocation of a license or registration.

(c) Imposition of an administrative fine not to exceed \$1,500 for each count or separate violation.

(d) Issuance of a reprimand.

(e) Placement of the licensee or registrant on probation for a specified period and subject to the conditions that the department may specify.

(f) Issuance of a stop-use order.

(g) Corrective action.

(3) The department shall impose stricter penalties for the repetition of violations and as the severity of violations escalate, distinguishing lesser violations from those that endanger the public health.

(4) Disciplinary proceedings shall be conducted as provided in chapter 120.

History.—s. 7, ch. 2010-220.

381.00785 Criminal penalties.—

(1) A person may not:

(a) Operate a tattoo establishment or temporary establishment in this state without a license.

(b) Practice tattooing in this state without a tattoo artist license or guest tattoo artist registration, except as provided in s. 381.00773.

(c) Practice tattooing in this state at any place other than a tattoo establishment or temporary establishment, except as provided in s. 381.00773.

(d) Obtain or attempt to obtain a license or registration by means of fraud, misrepresentation, or concealment.

(2) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 2010-220.

381.00787 Tattooing prohibited; penalty.—

(1) A person may not tattoo the body of a minor child younger than 16 years of age unless the tattooing is performed for medical or dental purposes by a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466.

(2) A person may not tattoo the body of a minor child who is at least 16 years of age, but younger than 18 years of age, unless:

(a) The minor child is accompanied by his or her parent or legal guardian;

(b) The minor child and his or her parent or legal guardian each submit proof of his or her identity by producing a government-issued photo identification;

(c) The parent or legal guardian submits his or her written notarized consent in the format prescribed by the department;

(d) The parent or legal guardian submits proof that he or she is the parent or legal guardian of the minor child; and

(e) The tattooing is performed by a tattoo artist or guest tattoo artist licensed under ss. 381.00771-381.00791 or a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466.

(3) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, a person who tattoos the body of a minor child younger than 18 years of age does not violate this section, if:

(a) The person carefully inspects what appears to be a government-issued photo identification that represents that the minor child is 18 years of age or older.

(b) The minor child falsely represents himself or herself as being 18 years of age or older and presents a fraudulent identification.

(c) A reasonable person of average intelligence would believe that the minor child is 18 years of age or older and that the photo identification is genuine, was issued to the minor child, and truthfully represents the minor child's age.

History.—ss. 1, 2, ch. 59-439; s. 1, ch. 69-118; s. 1148, ch. 71-136; s. 1, ch. 77-174; s. 124, ch. 92-149; s. 23, ch. 93-260; s. 1426, ch. 97-102; s. 9, ch. 2010-220.

Note.—Former s. 877.04.

381.00789 Rulemaking.—The department shall adopt rules to administer ss. 381.00771-381.00791. Such rules may include, but are not limited to, rules defining terms; prescribing educational requirements for tattoo artists and guest tattoo artists, health and safety requirements, sanitation practices, and sterilization requirements and procedures; and providing requirements for tattoo equipment, customer notification, the contents of customer records, the retention of records, and physical plants. The department shall consult with representatives of the tattooing industry in this state during the development of such rules.

History.—s. 10, ch. 2010-220.

381.00791 Local laws and ordinances.—Sections 381.00771-381.00791 do not preempt any local law or ordinance of a county or municipality that imposes regulations on tattoo establishments, temporary establishments, tattoo artists, or the practice of tattooing which are in addition to those sections.

History.—s. 11, ch. 2010-220.

CHAPTER 64E-28 TATTOOING

64E-28.001	Scope of Chapter Rules
64E-28.002	Definitions
64E-28.003	Licensure Requirements for a Tattoo Artists
64E-28.004	Registration Requirements for a Guest Tattoo Artist
64E-28.005	Licensure Requirements for a Tattoo Establishment
64E-28.006	Education Course Requirements
64E-28.007	Operational Requirements for a Tattoo Establishment
64E-28.008	Operational Requirements for a Temporary Tattoo Establishment
64E-28.009	Standards of Practice for a Tattoo Artist or Guest Tattoo Artist
64E-28.011	Fee Schedule

64E-28.001 Scope of Chapter Rules.

These rules provide minimum standards relating to tattoo artists and tattoo establishments, including licensure and registration requirements, operational requirements, standards of practice, and a fee schedule.

Rulemaking Authority 381.00789 FS. Law Implemented 381.00787, 381.00791 FS. History--New 9-5-12.

64E-28.002 Definitions.

- (1) Alcohol-based hand sanitizer – An antimicrobial skin sanitizer which contains a minimum concentration of at least 60% alcohol.
- (2) Aseptic technique – Practices used by a tattoo artist to prevent cross contamination.
- (3) Compromised package – A wet, torn, or stained package.
- (4) Contaminated – means the presence of disease-causing organisms on inanimate objects or surfaces.
- (5) Cross contamination – The act of spreading disease-causing organisms from one surface to another.
- (6) Department – The Department of Health and its representative county health departments.
- (7) Disinfect – The use of a product registered with the United States Environmental Protection Agency (USEPA) as a tuberculocidal disinfectant which results in the reduction in the number of disease-causing organisms on objects or surfaces, thereby rendering them safe for handling and use.
- (8) Equipment – All machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with the operation of a tattoo establishment.
- (9) Fixed – Incapable of being moved.
- (10) Government-issued photo identification – A document issued by a state, federal, or foreign government containing the photo of the person it is identifying.
- (11) Inactive license – A tattoo establishment or artist license which has not been renewed on or before the date of expiration.
- (12) Instruments – Hand pieces and other tools that may come in contact with a customer's body or be exposed to body fluids during tattooing procedures.
- (13) Minor – An individual who is less than eighteen (18) years of age.
- (14) Person – Any individual, partnership, corporation, association, or public body.
- (15) Registered business name – The name, as registered with the Department of State, under which a tattoo establishment operates.
- (16) Registered agent for service of process – A person, as registered with the Department of State, authorized by a tattoo establishment to receive legal notices for the establishment.
- (17) Single-use – means products or items that are intended for one-time, one-person use and are disposed of after use on each customer, such as cotton swabs or balls, gauze pads, tissues or paper products, sanitary coverings, razors, instruments that pierce the skin, and protective gloves.
- (18) Spore strip – A device used to monitor the sterilization process in a steam autoclave to ensure destruction of *Geobacillus stearothermophilus* spores.
- (19) Sterilization – The use of a steam autoclave to destroy all forms of microbial life, including spores.
- (20) Tattoo artist – A tattoo artist as defined in Section 381.00771, F.S., including an artist who performs cosmetic tattooing.
- (21) Unobstructed access – A situation where an artist can wash their hands and return to the tattooing area without recontaminating their hands by handling an object such as a door knob.

64E-28.003 Licensure Requirements for a Tattoo Artist.

(1) An applicant seeking initial licensure as a tattoo artist shall submit a completed application for licensure to the department on form DH 4147, 8/12, Application for Tattoo Artist License, which is incorporated herein by reference and which can be obtained from the environmental health section of the county health department, which has jurisdiction for the tattooing program in the county where the tattoo artist lives, or from the internet at <https://www.flrules.org/Gateway/reference.asp?No=Ref-01524> or <http://www.myfloridaeh.com/community/Tattoo/index.html>. An application shall be considered complete if all of the information requested on the form is provided, along with the fee specified in Rule 64E-28.011, F.A.C., and the following documentation is attached:

- (a) A copy of a government issued photo identification confirming the applicant is at least 18 years of age.
- (b) A copy of the certificate of training proving completion of a department approved course on blood-borne pathogens and communicable diseases with having achieved a minimum score of seventy percent (70%) on the course examination.
- (2) A tattoo artist's license is valid, throughout the state of Florida, for one year from the date it is issued.
- (3) A tattoo artist seeking licensure renewal shall:
 - (a) Annually, submit a completed application for license renewal on Form DH 4147 before the date of expiration.
 - 1. An application shall be considered complete if all of the information requested on the form is provided, along with the fee specified in Rule 64E-28.011, F.A.C.
 - 2. A license which has not been renewed on or before the date of expiration shall be deemed inactive. If this day falls on a weekend or holiday, a tattoo artist license must be renewed on or before the first working day after the date of expiration.
 - (b) Not perform tattooing without an active license.
 - (4) A tattoo artist license shall not be transferrable from one person to another.

64E-28.004 Registration Requirements for a Guest Tattoo Artist.

(1) A guest tattoo artist seeking registration by the department shall:

(a) Submit, at least fourteen (14) days prior to practicing tattooing in any licensed tattoo establishment or licensed temporary tattoo establishment, a completed application for registration to the department on Form DH 4150, 7/12, Application for Guest Tattoo Artist Registration, which is incorporated herein by reference and which can be obtained from the environmental health section of the county health department, which has jurisdiction for the tattooing program in the county where the tattoo artist lives, or from the internet at <https://www.flrules.org/Gateway/reference.asp?No=Ref-01525> or <http://www.myfloridaeh.com/community/Tattoo/index.html>. An application shall be considered complete if all of the information requested on the form is provided, along with the fee specified in Rule 64E-28.011, F.A.C., and the following documentation is attached:

- 1. A copy of a government issued photo identification confirming the applicant is at least 18 years of age.
- 2. A copy of an active license, registration, or certification in another jurisdiction.
- 3. A copy of the certificate of training proving completion of a course on blood-borne pathogens and communicable diseases, which meets the requirements specified in paragraph (b).
- (b) Complete a department approved course on blood-borne pathogens and communicable diseases with having achieved a minimum score of seventy percent (70%) on the course examination.
 - 1. Completion of the educational course mentioned in paragraph (b), shall not be required when a tattoo artist has completed a blood-borne pathogens and communicable diseases course as a requirement for license, registration, or certification in a jurisdiction outside of the state and, as determined by the department, the course requirements met or exceeded those prescribed in Sections 381.00775(2)(b)4. and 5., F.S., and Rule 64E-28.006, F.A.C.
 - 2. A tattoo artist may submit a course curriculum to the department and request the department conduct a review for determination of the requirements specified in subparagraph (1)(b)1. Requests for curriculum review shall be submitted prior to submission of a completed application for registration of a guest artist.

- (2) A guest tattoo artist's registration is valid for up to fourteen (14) consecutive days, throughout the State of Florida.
- (3) A guest tattoo artist shall not perform tattooing without an active guest tattoo artist registration.
- (4) A guest tattoo artist registration shall not be transferrable from one person to another.

64E-28.005 Licensure Requirements for a Tattoo Establishment.

(1) Licensure of a permanent tattoo establishment:

(a) Prior to performing tattooing, a completed application shall be submitted to the county health department on form DH 4151, 8/12, Application for Tattoo Establishment Licensure, which is incorporated herein by reference and which can be obtained from the environmental health section of the county health department, which has jurisdiction for the tattooing program in the county where the establishment is physically located, or from the internet at <https://www.flrules.org/Gateway/reference.asp?No=Ref-01526> or <http://www.myfloridaeh.com/community/Tattoo/index.html>. An application shall be considered complete if all of the information requested on the form is provided, along with the fee specified in Rule 64E-28.011, F.A.C.

(b) A license for a tattoo establishment is valid for one year from the date it is issued.

(c) A license which has not been renewed on or before the date of expiration shall be deemed inactive. If this day falls on a weekend or holiday, a tattoo artist license must be renewed on or before the first working day after the date of expiration.

(2) Licensure of a temporary tattoo establishment:

(a) A completed application to be submitted to the county health department on form DH 4151 at least thirty (30) days prior to performing tattooing. An application shall be considered complete if all of the information requested on the form is provided, along with the fee specified in Rule 64E-28.011, F.A.C.

(b) A license for a temporary tattoo establishment is valid for up to fourteen (14) consecutive days in conjunction with a convention or similar event for which the license is issued.

(3) No tattooing shall be performed at an establishment that does not have an active license.

(4) A tattoo establishment license shall not be transferrable from one location or person to another.

Rulemaking Authority 381.00789 FS. Law Implemented 381.00777 FS. History—New 9-5-12.

64E-28.006 Education Course Requirements.

(1) All educational courses per Section 381.00775(2)(b)4., F.S., shall be approved by the department. Any person seeking approval of an education course shall submit a request for determination of compliance with the requirements of this rule to the Department of Health, Bureau of Community Environmental Health, 4052 Bald Cypress Way, Bin #A08, Tallahassee, FL 32399. All requests for course approval shall be handled in accordance with Section 120.60, F.S. Requests for course approval shall include submission of the following documentation:

(a) A copy of the credentials of trainers and persons compiling the curriculum.

(b) A copy of the curriculum.

(c) Copies of training materials.

(d) A copy of the test to be given.

(e) A copy of the answers to the test questions.

(f) A copy of the certificate of training to be issued.

(2) The course shall meet the following criteria:

(a) Utilize a classroom-based or internet-based delivery method.

(b) Be specific to the tattoo industry.

(c) Be a minimum of three (3) hours in length, excluding the examination.

(d) Include an opportunity for interactive questions and answers with the person conducting the training.

(e) Include, at a minimum, education and training on blood-borne pathogens, such as human immunodeficiency virus and hepatitis B and C viruses, and communicable diseases, such as hepatitis A, staphylococcal including those of methicillin-resistant *Staphylococcus aureus*, tuberculosis, impetigo, scabies, ringworm, molluscum contagiosum, herpes simplex, and herpes zoster, and the prevention of such transmission. This information shall include:

1. Identification of the disease;

2. Identification of the infectious agent;

3. Mode of transmission;

4. Incubation period;

5. Period of communicability; and

6. Prevention of transmission in a tattoo setting.

(f) Be followed by a written examination covering the materials in the course. The examination shall contain a minimum of fifty (50) questions with a passing score of at least seventy percent (70%).

(g) Ensure identity verification and validation for each student taking the internet or classroom course and test.

(3) In addition to that specified in paragraphs (2)(b)-(g) above, internet-based courses shall meet the following criteria:

- (a) Each course section shall have a minimum time to finish that section before it is possible to move on to the next section.
- (b) Identity verification and validation shall occur prior to the initiation of the internet course, using an identity verifying technology that seeks verification through internet databases using information that is specific to the student's identity. Following initial identity verification, validation shall occur at least every hour during the course and prior to completing the test.
- (c) The course shall automatically terminate when a student fails to answer an identity validation question during a 60-second response time period or a student provides more than one incorrect answer to a validation question. Upon termination, a one-hour waiting period is required before the student is allowed to register again.
- (d) At a minimum, the course provider shall include on the internet registration form, initial blocks in which the student indicates agreement with the following information:
 - 1. That the student who registers for the course is the person taking the course.
 - 2. That the student will be asked time-limited identity validation questions during the internet course. The validation questions will ask the student questions about themselves based on information provided by them and obtained through internet databases as described in paragraph (b), above. Failure by a student to answer an identity validation question during a 60-second response time period or a student providing more than one incorrect answer to an identity validation question will cause the course to automatically terminate. Upon termination, a 1-hour waiting period is required before the student is allowed to register again.
- (e) A student shall be prevented from proceeding with the internet course should they fail to indicate agreement with each stipulation listed in paragraph (d) above.
- (f) A subject matter expert representing the course provider shall be available by telephone or via electronic means during normal business hours to assist students.
- (4) In order to ensure that the requirements of this rule section are met, the department may annually register and take the course, as any interested student would.
- (5) The course provider shall notify the department in writing within 30 days of determining that a student has attempted or acquired certification by committing fraud, deceit, false statements, or perjury. When this is determined, the course provider shall revoke the certificate.
- (6) Any reference to department approval shall state no more than: "This course is approved by the Florida Department of Health for tattoo artist licensure under Section 381.0775, F.S. and Chapter 64E-28, F.A.C."
- (7) Course approval is not transferrable from person to person.

Rulemaking Authority 381.00789 FS. Law Implemented 381.00775 FS. History—New 5-15-12.

64E-28.007 Operational Requirements for a Tattoo Establishment.

- (1) Tattoo establishments shall have walls, a floor, and a ceiling. Floors and walls located in the tattooing area, the area where items are cleaned and sterilized, and in the restrooms shall be constructed of non-absorbent, easily cleanable materials. The entire establishment shall be maintained in clean condition and good repair.
- (2) There shall not be a direct opening between a tattoo establishment and any building or portion of a building used as living or sleeping quarters. This shall be accomplished, at a minimum, by a solid floor to ceiling wall of separation.
- (3) A tattoo establishment shall not be located in an area where food is prepared.
- (4) Eating and drinking, except for the purpose of administering first aid, and smoking are prohibited in areas where tattooing is performed or where instruments and supplies are cleaned and stored.
- (5) Water supplies shall comply with the provisions of Chapter 64E-8 or 62-550, F.A.C.
- (6) Sewage disposal shall comply with the provisions of Chapter 64E-6 or 62-200, F.A.C.
- (7) The establishment shall use effective measures to protect against the entrance, breeding, and presence of vermin, such as insects and rodents. Openings to the outside shall be protected by such means as self-closing doors, closed windows, or screening. If screening is used, it shall not be less than sixteen (16) mesh to the inch.
- (8) Animals shall not be allowed in a tattoo establishment, except as provided under Section 413.08, F.S. Aquariums with fish shall be allowed in waiting rooms and non-procedural areas only.
- (9) Each tattoo establishment shall have an artificial light source equivalent to at least one hundred (100) foot candles in the tattooing area and in the area where items are cleaned and sterilized.
- (10) Restrooms shall be supplied with toilet tissue, a hand sink supplied with running water under pressure, liquid soap, a dispenser with single-use paper towels, and a waste receptacle. Signage shall be posted in the restroom to instruct employees that they must thoroughly wash their hands before returning to work.
- (11) A handsink with unobstructed access shall be located within each tattoo area or centrally located within the overall workroom area, so that each tattoo artist has access to the handsink for handwashing.

(a) The handsink shall be supplied with running water under pressure, liquid soap, a dispenser with single-use paper towels, and a waste receptacle.

(b) A restroom handsink may be used as the handsink provided that it is located within the tattoo establishment and it meets the above stated requirements.

(12) At a minimum, contaminated, reusable items shall be cleaned manually in a sink, separate from the handsink(s), or mechanically in an ultrasonic machine prior to sterilization.

(a) If items are manually cleaned in a sink, the sink shall be deep enough to allow complete submersion of the items. Gloves shall be worn when manual cleaning is performed.

(b) If items are cleaned in an ultrasonic machine, the machine shall be used in accordance with the manufacturer's instructions, which shall be available for review by the department at the time of inspection.

(c) After cleaning, items shall be rinsed and allowed to air dry or shall be dried with single-use paper towels prior to packaging for sterilization.

(d) If only individually packaged, pre-sterilized, single-use items are used in the establishment, the cleaning sink and ultrasonic machine requirements do not apply.

(13) A tattoo establishment shall have a steam autoclave for sterilizing instruments.

(a) The autoclave shall be used in accordance with the manufacturer's instructions for packaging, loading, and processing items.

(b) The autoclave shall be maintained to ensure proper operation.

1. The autoclave shall be cleaned at the frequency recommended by the manufacturer and shall be serviced at least once a year or at the frequency recommended by the manufacturer.

2. A copy of the manufacturer's instructions for operating, cleaning, and servicing the autoclave shall be maintained in the tattoo establishment and shall be available for review by the department at the time of an inspection.

(14) When using an autoclave, sterilization shall be verified through:

(a) A chemical indicator strip placed inside one packet in each load to monitor the sterilization procedure. The strip must indicate exposure to steam and the autoclave operating temperature.

(b) Testing with spore strips at a minimum frequency of every 40 hours of operation of the autoclave, but not less than on a quarterly basis.

1. Test results shall be confirmed by an independent laboratory.

2. In the event of positive results, the autoclave shall be immediately taken out of service and all unused items processed in the autoclave since the most recent negative test results shall be considered non-sterile.

3. While the autoclave remains out of service, tattooing may continue provided either another properly functioning autoclave is placed in service in the establishment or all single-use, pre-sterilized instruments are used.

4. When the improperly functioning autoclave has been restored to proper function, which shall be confirmed by follow-up testing, it may be placed back in service.

(15) Each tattoo establishment shall maintain autoclave sterilization records onsite. The records shall, at a minimum, include the following information:

(a) Autoclave log showing cumulative run time, quantity and types of items sterilized on a given date, and the date spore strip testing was conducted.

(b) Spore strip results provided by an independent laboratory.

(16) If only individually packaged, pre-sterilized, single-use items are used, an autoclave shall not be required nor the requirements specified in subparagraphs 12., 13., 14., and 15. of this section.

(a) Individually packaged, pre-sterilized, single-use items shall be sterilized with ethylene gas or gamma rays and shall be labeled with the expiration date by the manufacturer.

(b) If a package containing pre-sterilized, single-use items has been compromised, the contents shall be discarded.

(17) Packages of sterile items, which are sterilized by the tattoo establishment, shall be labeled with the date of autoclaving. If any package has been compromised, the items shall be re-sterilized.

(18) All packages of sterile items shall be stored in a clean, dry, covered container or in a clean, dry cabinet until just prior to use.

(19) Work chairs, tables, stands, cabinets, and counter tops shall have a smooth, non-porous, easily cleanable surface, and shall be cleaned and disinfected after each customer.

(20) If any liquid product is not in its original container, the container into which the product has been placed shall be labeled with the name of the product.

(21) Each tattoo establishment shall maintain the following records:

- (a) Customer records, including parental consent;
- (b) Autoclave sterilization records and maintenance records;
- (c) Documentation identifying the method of sterilization utilized by the manufacturer if the information is not printed on the packaging of the item.

(d) The records stated in paragraphs (a), (b), and (c) above shall be maintained for two years with those records for the current licensing period maintained onsite in the establishment and available for review by the department at the time of inspection.

(e) Personnel records of each tattoo artist who works in the establishment. The record shall contain the tattoo artist's name, address, date of birth, and the license number issued by the department. Personnel records shall be maintained for at least 2 years after an artist's employment ends.

(22) A tattoo establishment shall allow the department to conduct, at minimum, annual inspections for the purpose of ensuring compliance with Sections 381.00771-00791, F.S., and these rules. Results of each inspection shall be recorded on DH Form 4153, 7/12, Tattoo Establishment Inspection Report, herein incorporated by reference and which can be obtained at <https://www.flrules.org/Gateway/reference.asp?No=Ref-01527> or from the environmental health section of the county health department having jurisdiction.

(23) Biomedical waste shall be managed in accordance with Section 381.0098, F.S. and Chapter 64E-16, F.A.C. Regular solid waste shall be collected, stored and disposed of in a manner and at a frequency that does not create a sanitary nuisance, as defined in Chapter 386, F.S.

(24) Tattoo establishments, currently operating on the effective date of this rule, which are not in full compliance with the handsink and cleaning sink requirements shall have six months from the effective date of this rule to comply with the requirements.

Rulemaking Authority 381.00789 FS. Law Implemented 381.00779 FS. History—New 9-5-12.

64E-28.008 Operational Requirements for a Temporary Tattoo Establishment.

(1) A licensed temporary establishment shall meet the operational requirements set forth in Rule 64E-28.007, F.A.C., with the following exceptions.

(2) A temporary establishment shall have rigid perimeter walls, a rigid floor, and a rigid ceiling. Floors in the tattooing area and the area where items are cleaned and sterilized shall be constructed of nonabsorbent, easily cleanable materials. The entire establishment shall be maintained in clean condition and good repair.

(3) If any tattoo items are sterilized by an artist prior to a temporary event, spore test results confirmed by an independent laboratory, shall be available for review by the department at the time of inspection.

(4) A temporary establishment shall allow the department to conduct, at minimum, an initial inspection prior to and, if deemed necessary, during the convention or similar event for the purpose ensuring compliance with Sections 381.00771-00791, F.S., and these rules. Results of each inspection shall be recorded on DH Form 4153, 7/12, Tattoo Establishment Inspection Report.

Rulemaking Authority 381.00789 FS. Law Implemented 381.00779 FS. History—New 9-5-12.

64E-28.009 Standards of Practice for a Tattoo Artist or Guest Tattoo Artist.

(1) A tattoo artist shall ensure that a customer record is completed for each customer. The record shall, at a minimum, include the following:

- (a) Name of tattoo artist.
- (b) Customer's name, age, and birthdate.
- (c) Description and location of tattoo on the customer's body.
- (d) Signature of the customer.
- (e) Signature of the artist.
- (f) Date(s) tattooing procedure is performed.

(2) Pursuant to Section 381.00787, F.S., a tattoo artist shall not tattoo the body of a minor less than sixteen (16) years of age.

(3) If tattooing a minor who is sixteen (16) or seventeen (17) years of age, a tattoo artist shall:

(a) Inspect copies of a government-issued photo identification for both the minor and for the parent or legal guardian of the minor. If the photo identification for the minor does not show a birth date, a copy of the minor's birth certificate shall be provided.

(b) Obtain a signed and notarized consent by the minor's parent or legal guardian on form DH 4146, 7/12, Written Notarized Consent For Tattooing of a Minor Child, Age 16 through 17 Years Old, which is incorporated herein by reference and which can be obtained from the environmental health section of the county health department, which has jurisdiction for the tattooing program in the county where the tattoo artist lives or the tattoo establishment is physically located, or from the internet at <https://www.flrules.org/Gateway/reference.asp?No=Ref-01528> or <http://www.myfloridaeh.com/community/Tattoo/index.html>.

- (c) Complete the requirements of subsection (1).
- (4) Prior to or after performing a tattoo procedure on a customer, a tattoo artist shall provide information on aftercare to the customer, both verbally and in writing.
- (5) Prior to setup for a tattoo procedure, a tattoo artist shall:
- Ensure that the skin area where a tattoo is to be applied is visibly healthy.
 - Wash their hands thoroughly using liquid soap, rinse them, and dry them using single-use paper towels.
- (6) Prior to performing a tattoo procedure, a tattoo artist shall cleanse the area of the skin where the tattoo will be placed using a clean, single-use paper towel or pad and a solution labeled as an antiseptic. The antiseptic solution shall be used in accordance with the manufacturer's instructions.
- (7) If hair is to be removed from the area to be tattooed, either a single-use razor shall be used, or clippers which are capable of being disinfected. If hair removal is done after cleansing, the area shall be re-cleansed as specified in subsection (6) above.
- (8) While performing a tattoo procedure, a tattoo artist shall:
- Use aseptic techniques, including barrier covers on instruments and equipment that may come into contact with the tattoo artist or the customer during the tattoo procedure. Should an artist choose to not use a barrier cover on the tattoo machine, they must disinfect the machine upon completion of the tattoo procedure.
 - Use only sterile needle bars, sterile needle tubes, and single-use, sterile needles.
 - Wear new, disposable examination gloves, which shall be discarded after the completion of each single tattooing session.
 - Should the gloves become torn, punctured, or otherwise contaminated outside the general scope of tattooing, or should the gloves come in contact with any object or surface other than the customer's skin or items being used in the procedure, the gloves shall be removed and discarded and the tattoo artist shall thoroughly wash their hands or apply an alcohol-based hand sanitizer and re-glove before resuming the tattoo session.
 - In the event a tattoo artist must leave the tattooing area, the gloves shall be removed and discarded. The artist shall thoroughly wash their hands or apply an alcohol-based hand sanitizer and re-glove before resuming the tattoo session.
- (d) Discard any sterile, single-use items that become contaminated and replace them with sterile items before resuming the procedure.
- (e) Use a stencil that is single-use and clean. The product used to apply the stencil shall be packaged as a single dose or dispensed from a product container as a single customer dose.
- (f) Any item used for freehand artistry on the customer shall be single-use and discarded after use unless an antiseptic is applied to the skin after marking the skin.
- (g) Use inks, dyes, and pigments which are intended for tattooing.
 - Inks shall be used in accordance with the manufacturer's instructions.
 - Individual portions of inks, dyes, or pigments shall be dispensed into clean single-use cups for each customer.
- (9) Any item which an artist adds to a tattoo machine to stabilize the needle shall be either single-use or a reusable item that has been disinfected.
- (10) Upon completion of a tattooing procedure, a tattoo artist shall:
- Remove any excess ink from the customer's skin with a single-use clean paper towel or pad.
 - Use a clean glove, single-use paper towel, or single-use pad to apply a moisturizing ointment or lotion that is packaged as a single dose or is dispensed from a product container as a single customer dose.
 - If needed, cover the tattooed area with a clean nonstick bandage.
 - Remove and discard any barriers used to cover instruments and equipment and disinfect both the tattoo machine and the work area with a tuberculocidal disinfectant registered with the USEPA.
 - Remove any reusable instruments from the tattooing area in preparation for cleaning, rinsing, drying, and sterilization.
 - Discard any unused ink, dye, or pigment.
 - Thoroughly wash and rinse hands and dry them with clean single-use paper towels.

Rulemaking Authority 381.00787, 381.00789 FS. Law Implemented 381.00779 FS. History--New 9-5-12.

64E-28.011 Fee Schedule.

(1) Tattoo Artist License and Renewal	\$ 60.00
(2) Guest tattoo Artist Registration and Re-registration	\$ 35.00
(3) Tattoo Establishment License	\$200.00
(4) Temporary Establishment License	\$200.00
(5) Reactivation of Tattoo Artist License	\$ 25.00

(6) Reactivation of Tattoo Establishment License

\$ 75.00

Rulemaking Authority 381.00789 FS. Law Implemented 381.00781 FS. History—New 9-24-12.

LAW OFFICES
WEINER & THOMPSON, P.A.

MICHAEL S. WEINER
LAURIE A.
THOMPSON
JAMES F. CAPLAN
BRETT J. HOROWITZ

PROFESSIONAL ASSOCIATION
10 SE 1st AVENUE, SUITE C
DELRAY BEACH, FLORIDA 33444

TELEPHONE (561) 265-2666
FACSIMILE (561) 945-8779
MWEINER@ZONELAW.COM
WWW.ZONELAW.COM

EXHIBIT C

March 4, 2016

Via: Email

Mr. Tim Stillings
Director
Planning and Zoning
City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444
Email: stillings@mydelraybeach.com

Mr. Mark McDonnell
Assistant Director
Planning and Zoning
City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444
Email: mcdonnell@mydelraybeach.com

Re: Tatoo Studio
File: TRAD002

Dear Tim and Mark:

In supplement to the letter of February 6, 2016, let me bring to your attention some additional matters.

By way of information, tattoos have gained acceptance as of this past decade. Life magazine estimated in 1936 that approximately 6% of the population had at least one tattoo. Harris Polls, done in 2003, 2008 and 2012, now show at an estimated 16% (2003), 14% (2008) and 21% (2012) of Americans having at least one tattoo. Another survey through Pew Research Center indicates that 36% of those within the ages 18 to 25, and 40% of those within the ages of 26 to 40 have at least one tattoo.

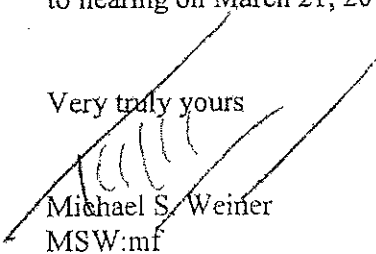
The decision in *Buehrle v. City of Key West*, No. 14-15354, 2015 U.S. App. LEXIS 22782 (11th Cir. Dec 29, 2015) does not stand alone. In the case of *Anderson v. City of Hermosa Beach*, No. 08-56914, 621 F.3d 1051 (9th Cir. Sept 9, 2010), the court struck down a local municipal ordinance banning tattoo parlors. The court concluded: "In sum, we hold that the tattoo itself, the process of tattooing, and the business of tattooing are forms of pure expression fully protected by the First Amendment." This case was followed by the Arizona Supreme Court in

Letter to Timothy Stillings/Mark McDonnell
Re: Tatoo Studio
March 4, 2016
Page 2

the case of *Coleman v. City of Mesa*, 284 P.3d 863 (2012). Hence, this is a widely adopted proposition.

There is no reason to marginalize this activity. Given the tolerance the City has shown for "permanent make-up," a distinction for this protected activity is not warranted. We look forward to hearing on March 21, 2016 and thank you for your consideration of these matters.

Very truly yours



Michael S. Weiner
MSW:mf

EXHIBIT D

October 4, 2010

Honorable Mayor and Members of the
Hermosa Beach City Council

Regular Meeting of
October 12, 2010

SUBJECT: MUNICIPAL CODE AMENDMENT TO ALLOW TATTOO BUSINESSES AND BODY
PIERCING STUDIOS IN THE C-3 ZONE, AND ZONES PERMITTING C-3 USES, OR
OTHER ZONES AS DEEMED APPROPRIATE.

Recommendation:

Waive full reading and introduce on first reading a regular ordinance and adopt an urgency ordinance to amend the zoning code to allow tattoo/body piercing studios in the C-3 zone (and zones that allow C-3 uses), or the C-2/C-3 zone (and zones that allow C-3 uses).

Background:

On September 28, 2010, the City Council adopted an interim urgency ordinance prohibiting the establishment of tattoo studios in order to allow additional time to study and adopt an ordinance regulating the establishment of such uses in the City. This report and the attached proposed code amendments are presented to meet the requirements of Section 65858 of the State Government Code and to comply with the decision of the Ninth Circuit Court of Appeals discussed below.

Currently, tattoo studios are not listed as a permitted use of property under the City's Zoning Ordinance and pursuant to Hermosa Beach Municipal Code Section 17.26.030, uses not listed in the Code are deemed prohibited. The Ninth Circuit Court of Appeals recently held in the case of *Johnny Anderson v. City of Hermosa Beach* that the City's total ban on tattoo studios is unconstitutional, and that tattooing is [a] "purely expressive activity fully protected by the First Amendment, and that a total ban on such activity is not a reasonable "time, place, or manner" restriction. The opinion states, "regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests but . . . it need not be the least restrictive or least intrusive means of doing so. . . . So long as the means chosen are not *substantially broader than necessary* to achieve the government's interest, . . . the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech restrictive alternative." At this juncture, the City's only options are to seek review of this decision in the United States Supreme Court or to comply with the decision by amending the Zoning Ordinance to allow tattoo studios.

The issue of allowing tattoo/body art studios in the city was considered by the Planning Commission at several meetings in 2007 in response to public inquiries, and a request that tattoo business be considered similar to other permitted uses in the code. On July 17, 2007 the Commission considered various land use alternatives, including the following: (1) allow the use with no discretionary review, (2) allow the use subject to a conditional use permit, (3) allow the use in the C-3 zone subject to a CUP, (2) allow the use subject to a CUP and impose location restrictions consistent with those imposed on adult businesses (1,000 foot distance between body art studios; and 200 feet from residentially zoned property, schools, parks and churches¹), (4) in addition to the above, whether to allow the use in one or more of the commercial districts, (4) continue to not allow the use. Standards relating to Health Department permits, hours of operation, and waste disposal plan were considered.

¹ Section 17.40.050: The exterior walls of the proposed establishment are located more than 200 feet from the exterior boundaries of any lot or parcel of residentially zoned property, any property used for a church, temple or other place used exclusively for religious worship, or any playground, park with recreational facilities or school. The exterior walls of the proposed establishment are located more than 1000 feet from the exterior boundaries of any lot or parcel of land upon which any other such adult business establishment is located.

The Commission initially directed staff to prepare a resolution supporting allowing tattoo/body art studios in the C-3 zone subject to a CUP and distance/separation, Health Department permit, waste disposal plan, and hours of operation. However, after considering these options and a draft ordinance, on October 16, 2007 the Planning Commission recommended against allowing tattoo studios within the City. The recommendation was presented to the City Council on January 8, 2008, at which meeting the Council sustained the Commission's recommendation finding that the use is incompatible and will not further the intent of the zoning ordinance because the city already has a substantial number of age restricted uses and permitting an additional category of age restricted uses within the city's limited area will saturate the city with businesses that are not open to the general public and will diminish the ability of the city to attract residents and visitors of all ages.

Following this determination by the Council, Mr. Anderson filed his lawsuit in the federal courts alleging that the City's total ban violated his first amendment rights. The City prevailed on a motion for summary judgment in the trial court, but that decision was reversed by the Ninth Circuit in the decision described above.

Analysis:

Given the history of this issue and the holding of the Ninth Circuit Court of Appeal, staff recommends the following options for considerations to impose reasonable time place and manner restrictions on tattoo businesses:

1. Allow tattoo/body piercing businesses only in the C-3 zone and zones that allow C-3 uses (namely SPA -7 and SPA-8 zones) as a permitted use subject to the following standards:

- The exterior walls of the establishment are located more than one thousand (1,000) feet from the exterior walls of any other tattoo/body piercing establishment.
- The operator of the tattoo/body piercing establishment shall obtain and maintain in compliance all permits required by the County of Los Angeles, Department of Public Health.
- Tattoo/body piercing establishments shall not operate between the hours of 11:00 p.m. and 7:00 a.m.
- Temporary or mobile establishments or events are not authorized by this section.

2. Allow tattoo/body piercing businesses in both the C-2 and C-3 zones and zones that allow C-3 uses (namely SPA -7 and SPA-8 zones), as a permitted use, subject to the standards above.

The combination of limiting these uses to C-3 zones and imposing a 1,000 foot restriction between these businesses would limit the total potential sites to about 7 to 9 in the worst case where locations were coordinated. Additionally allowing these businesses in the C-2 zone would increase the total possible sites by two. Under the options for consideration, these businesses would not be allowed in the SPA-11 zone along "upper" Pier Avenue. Aside from the health issues, which are regulated, a concentration of businesses that exclusively cater to adults arguably may be considered as a legitimate locational restriction. The 1,000 foot restriction will prevent a concentration of tattoo/body piercing businesses,

The Los Angeles Health Code which has been adopted by the city of Hermosa Beach (Chapter 8.04 Hermosa Beach Municipal Code), and Chapter 11.36 of the Los Angeles County Code, Body Art Establishments address the qualifications of the operator and conduct and conditions of the establishment (<http://www.lapublichealth.org/eh/docs/baLACOrdinance.pdf>). Tattoo/body piercing studios are required to obtain a public health facility permit and each individual operator is required to obtain a public health operator permit. The City may, if it chooses, establish an enhanced health inspection program. Minors are allowed with the consent and in the presence of the minor's parent or guardian.

To the extent that tattooing/body piercing is a typically a small-scale specialty service, the use could be found to be consistent with the C-2 zone (generally Pier Plaza and Hermosa Avenue) which is intended to provide opportunities for a limited range of office, retail, and services uses specifically for the scale and character of the downtown – a pedestrian oriented shopping/entertainment district catering to both residents and visitors.

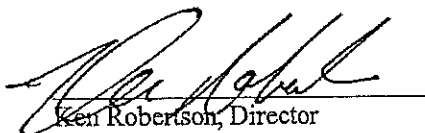
Conversely, to the extent that tattooing/body piercing businesses are associated with behavior and activity that creates secondary effects that may not be appropriate in the downtown district, limiting the use to the C-3 zone may also be a legitimate place restriction. The C-3 zone is intended to provide opportunities for a much broader range of office, retail, and service businesses deemed suitable for the city than the C-2 zone, and appropriate for the diverse nature of the Pacific Coast Highway and Aviation Boulevard commercial corridors. This includes business that may not be suitable for other zones because they attract heavy vehicular traffic or have specific adverse impacts.

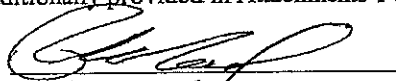
Environmental Review:

The proposed amendment is exempt from the California Environmental Quality Act under Section 15061(b)(3) of Title 14 of the California Code of Regulations on the basis that tattoo/body piercing studios are similar in impacts to other allowed personal services uses in the C-3 and C-2 zones located within an urbanized area with the availability of all services.

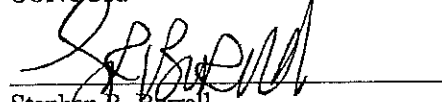
Summary:

Two alternatives are presented to appropriately regulate tattoo/body piercing studios by applying time, place or manner restrictions that provide first amendment protection for tattooing as a 'purely expressive activity'. The alternative ordinances allow tattoo/body piercing studios as a permitted use limited to C-3 zones and zones that allow C-3 uses only (Attachment 1), or in either C-2 or C-3 zones (Attachment 2). Minimal standards address concentration of similar age restricted uses (distance/separation), health risks (compliance with health permits), and potential for late night activity in districts generally surrounded by residential uses (hours of operation). Parallel urgency ordinances are additionally provided in Attachments 1 and 2.


Ken Robertson, Director
Community Development Department


Pamela Townsend
Senior Planner

CONCUR:


Stephen R. Burrell
City Manager

Attachments:

1. Draft Urgency and Regular Ordinances – C-3 zones
2. Draft Urgency and Regular Ordinances – C-2 and C-3 zones
3. Zoning Map

November 2, 2010, 2010

City Council Meeting
November 9, 2010

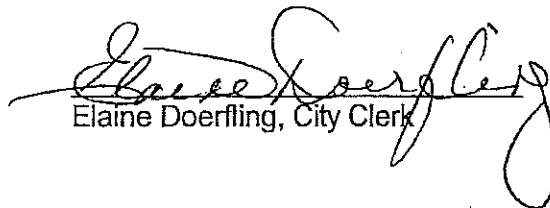
Mayor and Members
of the City Council

ORDINANCE NO. 10-1313 - entitled "AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A ZONE TEXT AMENDMENT TO THE MUNICIPAL CODE TO ALLOW TATTOO/BODY PIERCING STUDIOS IN C-2 AND C-3 ZONES (AND ZONES THAT ALLOW C-3 USES),"

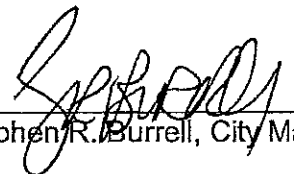
Submitted for **adoption and waiver of full reading** is Ordinance No. 10-1313 relating to the above subject.

At the meeting of October 26, 2010, the Ordinance was presented to the City Council for consideration and was then introduced by the following vote:

AYES:	Duclos, Fishman, Mayor Tucker
NOES:	Bobko, DiVirgilio
ABSENT:	None
ABSTAIN:	None


Elaine Doerfling, City Clerk

Noted:


Stephen R. Burrell, City Manager

ORDINANCE NO. 10-1313

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA,
APPROVING A ZONE TEXT AMENDMENT TO THE MUNICIPAL
CODE TO ALLOW TATTOO/BODY PIERCING STUDIOS IN C-2 and C-
3 ZONES (AND ZONES THAT ALLOW C-3 USES)

THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA,
DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Subsection (B) of Section 5.04.200 of Title 5, Chapter 5.04 of the Hermosa
Beach Municipal Code is amended by amending Section 1, Classification A, Group 7 to read as
follows:

Group 7: Barbershops, manicuring, facial massage, beauty parlors, cosmetic skin
treatment and establishments where massage services are offered by an individual as an incidental
or accessory service and does not occupy more than 25% of the area of the establishment, shall pay
an annual license tax and an additional license tax for each operator other than the owner.
Tattoo/body piercing studios require compliance with the regulations set forth in Section
17.26.070.

SECTION 2. Section 17.04.050 of Title 17, Chapter 17.04 of the Hermosa Beach
Municipal Code is amended by adding the following definitions to the alphabetical list of
commercial land use definitions to read as follows:

“Body piercing” means to puncture, perforate, or penetrate a human body part or tissue
with an object, appliance, or instrument for the purpose of placing a foreign object in the
perforation to prevent the perforation from closing. This includes, but is not limited to, creating
such an opening in the lip, tongue, nose, eyebrow or navel for the purpose of inserting jewelry or
other decorations. Body piercing does not include piercing of the ear lobe or outer portion of the
ear.

“Permanent make-up” means the application of pigment to or under the skin of a person
for the purpose of permanently or semi-permanently changing the color or appearance of the skin.
This includes, but is not limited to, permanent or semi-permanent eyeliner or lip color.

1 "Tattoo/tattooing" means to insert pigment, ink or dye under the surface of the skin of a
2 person by pricking with a needle or otherwise, to permanently change the color or appearance of
3 the skin or to produce an indelible mark or figure visible through the skin. Tattooing does not
4 include application of permanent make-up that is performed as an incidental service in a beauty
5 shop, day spa, or other service or retail establishment.

6 "Tattoo/body piercing studio" means any establishment where tattooing and/or body
7 piercing takes place.

8 **SECTION 3.** Section 17.26.030 of Title 17, Chapter 17.26 of the Hermosa Beach
9 Municipal Code is amended by adding Tattoo/body piercing studios to the alphabetical table of
10 uses permitted in commercial zones to read as follows:

USE	C-1	C-2	C-3	See Section
Tattoo/body piercing studios	-	P	P	17.26.070

18
19 **SECTION 4.** A new Section 17.26.070 shall be added to Title 17, Chapter 17.26 of the
20 Hermosa Beach Municipal Code to read as follows:

21 **17.26.070 Tattoo/Body Piercing Studios – Standards and Limitations.**

22 Every tattoo/body piercing studio shall be subject to the following in addition to all other
23 requirements of law:

24 A. The exterior walls of any establishment in the C-2 zone shall be located more than
25 one thousand (1,000) feet from the exterior walls of any other tattoo/body piercing establishment
26 and the exterior walls of any establishment in the C-3 zone or zone that allows C-3 uses shall be
27 located more than one thousand five hundred (1,500) feet from the exterior walls of any other
28 tattoo/body piercing establishment.

1 B. The operator of the tattoo/body piercing establishment shall obtain and maintain in
2 compliance all permits required by the County of Los Angeles, Department of Public Health.

3 C. Tattoo/body piercing establishments shall not operate between the hours of 10:00
4 p.m. and 10:00 a.m.

5 D. Live animals, except for service animals, shall not be allowed on the premises.

6 E. Once established, tattoo/body piercing establishments shall not be permitted to
7 expand into another tenant space or building or otherwise on the site or any contiguous site, or to
8 establish additional locations within the city.

9 F. Temporary or mobile establishments or events are not authorized by this section.

10 **SECTION 5.** Prior to the expiration of fifteen (15) days after the date of its adoption, the
11 City Clerk shall cause this Ordinance to be published in the Easy Reader, a weekly newspaper of
12 general circulation published and circulated, in the City of Hermosa Beach in the manner provided
13 by law.

14 **SECTION 6.** The City Clerk shall certify to the passage and adoption of this Ordinance,
15 shall enter the same in the book of original Ordinances of said city, and shall make minutes of the
16 passage and adoption thereof in the records of the proceedings of the City Council at which the
17 same is passed and adopted.

18 **SECTION 7.** This Ordinance shall become effective and be in full force and effect from
19 and after thirty (30) days of its final passage and adoption.

20 **PASSED, APPROVED and ADOPTED** this 9th of November 2010 by the following vote:

21 AYES:

22 NOES:

23 ABSENT:

24 ABSTAIN:

25 **PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

26 **ATTEST:**

APPROVED AS TO FORM:

27
28 _____
City Clerk

City Attorney



City of Hermosa Beach

Regulating Tattoo/Body Piercing Studios in the City

Frequently Asked Questions

Q: Why are tattoo/body piercing studios now allowed in Hermosa Beach?

A: Until recently, tattoo/body piercing studios were prohibited in the City. However, in 2010 a federal appeals court ruled that tattooing is a protected form of speech and held the City's ban unconstitutional.

Q: Why did the City not appeal the court's ruling?

A: After consultation with several constitutional law experts, the City concluded that a petition to the Supreme Court would likely be futile.

Q: How many tattoo/body piercing studios are now located in the City's limits?

A: One tattoo/body piercing studio is open and operating on Pier Plaza and three others have been approved at 802 Hermosa Avenue, 333 Pacific Coast Highway and 1010 Aviation Blvd.

Q: What are the allowable days and hours of operation for tattoo/body piercing studios?

A: Tattoo/body piercing studios may operate seven days a week, from 10:00 a.m. to 10:00 p.m.

Q: Will more tattoo/body piercing studios be permitted in the City?

A: The City has adopted guidelines regulating the placement and distancing of tattoo/body piercing studios, which limit the number of these businesses that can be supported in the City. Tattoo/body piercing studios must not be closer than 1,000 feet of one another in the C-2 zone (downtown) and not closer than 1,500 feet in the C-3 zone (PCH, Aviation, Artesia). These distancing requirements will potentially allow three additional tattoo/body piercing studios on PCH and/or Artesia Boulevard, and no more studios in the C-2 zoned areas along Hermosa Avenue and Pier Plaza. Tattoo/body piercing studios are not allowed on Pier Avenue between Palm Drive and Valley Drive.



City of Hermosa Beach

Regulating Tattoo/Body Piercing Studios in the City

Frequently Asked Questions

Q: Is it possible for the City to adopt a moratorium to stop additional tattoo/body piercing studios from opening?

A: The City imposed a moratorium in September 2010 in order to provide time to prepare and adopt the permanent regulations described above. State law does not permit the City to adopt another moratorium.

Q: What regulatory power does the City have over tattoo/body piercing studios?

A: The City's zoning ordinance establishes the minimum distance and operating requirements discussed above, and requires that tattoo/body piercing studios comply with all health codes—including a facility permit, operator's permit, and registered body art technician certificate. Under the court ruling declaring tattooing to be a form of pure speech under the First Amendment, the City's regulations must be content-neutral and narrowly tailored to serve a substantial governmental interest. The City cannot base its regulations on unsubstantiated fears about the impacts of tattoo/body piercing studios, but instead, must base its regulations on substantiated evidence of the impacts of tattoo/body piercing studios on the community. There is no clear test for determining what regulations would be permissible versus those that would be held overly restrictive; rather, the court would evaluate the availability of evidence of negative impacts.

Q: Did the City Council conduct open hearings to allow public participation before adopting the tattoo/body piercing regulations following the Ninth Circuit decision?

A: Yes. The City Council discussed the subject of tattoo regulations at six public meetings between September and December 2010, three of which were noticed public hearings, and all of which were preceded by substantial publicity by local media outlets.

Q: Why do other cities have more restrictive regulations on tattoo/body piercing studios?

A: The Ninth Circuit decision is relatively recent. Most cities have not yet had the opportunity to update regulations that have been on the books for many years and are now not compliant with constitutional requirements.



City of Hermosa Beach

Regulating Tattoo/Body Piercing Studios in the City

Frequently Asked Questions

Q: Why did the City not separate tattoo/body piercing studios from homes?

A: The City's commercial zones are all very close to homes, and such a regulation might effectively prevent tattoo/body piercing studios altogether.

Q: Why did the City adopt the regulations it did?

A: The City Council balanced the need for regulation against the likelihood of further expensive litigation, a difficult process given that under the first amendment, any restrictions on speech are presumptively suspect and more restrictions would create greater risk of invalidity.

Q: What is the City doing to ensure these tattoo/body piercing studios comply with all applicable laws and regulations?

A: The activities of tattoo/body piercing studios are closely monitored by the City's Code Enforcement Division, the County Health Department and the Police Department to monitor compliance with the City's regulatory requirements and to ensure that they do not operate in a manner so as to constitute a public nuisance.

Q: Where can we get more information and updates regarding the tattoo/body piercing studios?

A: Additional information is available from the City's Community Development Department at (310) 318-0242.

ATTACHMENT 1- C-3 ZONES
ORDINANCE NO. 10-XXXX U

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA,
APPROVING A ZONE TEXT AMENDMENT TO THE MUNICIPAL CODE
TO ALLOW TATTOO/BODY PIERCING STUDIOS IN C-3 ZONES (AND
ZONES THAT ALLOW C-3 USES) AND DECLARING THE URGENCY
THEREOF

The City Council of the City of Hermosa Beach does hereby ordain as follows:

SECTION 1. Section 17.04.050 of Title 17, Chapter 17.04 of the Hermosa Beach Municipal Code
is amended by adding the following definitions to the alphabetical list of commercial land use definitions to
read as follows:

“Body piercing” means to puncture, perforate, or penetrate a human body part or tissue with
an object, appliance, or instrument for the purpose of placing a foreign object in the perforation to
prevent the perforation from closing. This includes, but is not limited to, creating such an opening
in the lip, tongue, nose, eyebrow or navel for the purpose of inserting jewelry or other
decorations. Body piercing does not include piercing of the ear lobe or outer portion of the ear.

“Permanent make-up” means the application of pigment to or under the skin of a person for
the purpose of permanently or semi-permanently changing the color or appearance of the skin.
This includes, but is not limited to, permanent or semi-permanent eyeliner or lip color.

“Tattoo/tattooing” means to insert pigment, ink or dye under the surface of the skin of a
person by pricking with a needle or otherwise, to permanently change the color or appearance of
the skin or to produce an indelible mark or figure visible through the skin. Tattooing does not
include application of permanent make-up that is performed as an incidental service in a beauty
shop, day spa, or other service or retail establishment.

“Tattoo/body piercing studio” means any establishment where tattooing and/or body piercing
takes place.

SECTION 2. Section 17.26.030 of Title 17, Chapter 17.26 of the Hermosa Beach Municipal
Code is amended by adding Tattoo/body piercing studios to the alphabetical table of uses permitted in
commercial zones to read as follows:

USE	C-1	C-2	C-3	See Section
Tattoo/body piercing studios	-	-	P	17.26.070

SECTION 3. A new Section 17.26.070 shall be added to Title 17, Chapter 17.26 of the Hermosa Beach Municipal Code to read as follows:

17.26.070 Tattoo/Body Piercing Studios – Standards and Limitations.

Every tattoo/body piercing studio shall be subject to the following in addition to all other requirements of law:

A. The exterior walls of the establishment are located more than one thousand (1,000) feet from the exterior walls of any other tattoo/body piercing tattoo/body piercing establishment.

B. The operator of the tattoo/body piercing tattoo/body piercing establishment shall obtain and maintain in compliance all permits required by the County of Los Angeles, Department of Public Health.

C. Tattoo/body piercing establishments shall not operate between the hours of 11:00 p.m. and 7:00 a.m.

D. Temporary or mobile establishments or events are not authorized by this section.

SECTION 4. Prior to the expiration of fifteen (15) days after the date of its adoption, the City Clerk shall cause this Ordinance to be published in the Easy Reader, a weekly newspaper of general circulation published and circulated, in the City of Hermosa Beach in the manner provided by law.

SECTION 5. The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original Ordinances of said city, and shall make minutes of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted.

SECTION 6. Upon the effective date of the ruling of the Ninth Circuit Court of Appeal in the

1 case of *Johnny Anderson v City of Hermosa Beach*, the City will be required to lift its total ban on tattoo
2 studios. In the absence of regulations, tattoo studios may be established in locations or in a manner
3 contrary to the public welfare. Though the Ninth Circuit decision has declared tattooing to be a form of
4 protected speech, it acknowledges that the City has some measure of regulatory authority through the
5 exercise of its police powers. It is necessary for the City to enact zoning regulations governing tattoo
6 studios immediately in order to avoid a temporal gap between the effectiveness of the court's decision and
7 the the effective date of a regularly adopted ordinance; otherwise, applicants may seek to establish tattoo
8 studios at a time when no regulations at all are in effect. The immediate preservation of the public peace,
9 health, and safety requires that this ordinance take effect immediately. In the absence of immediate
10 effectiveness, tattoo studios may be established in an unregulated environment. Accordingly, this
11 ordinance is an urgency ordinance adopted pursuant to California Government Code Section 36937 and
12 shall take effect immediately upon its adoption.
13

14
15 PASSED, APPROVED, and ADOPTED THIS ____ day of _____, 2010.
16

17 _____
18 PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

19 ATTEST:

APPROVED AS TO FORM:

20 _____
21 CITY CLERK

22 _____
23 CITY ATTORNEY
24
25
26
27
28
29

ORDINANCE NO. 10-XXXX

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA,
APPROVING A ZONE TEXT AMENDMENT TO THE MUNICIPAL CODE
TO ALLOW TATTOO/BODY PIERCING STUDIOS IN C-3 ZONES (AND
ZONES THAT ALLOW C-3 USES)

The City Council of the City of Hermosa Beach does hereby ordain as follows:

SECTION 1. Section 17.04.050 of Title 17, Chapter 17.04 of the Hermosa Beach Municipal Code is amended by adding the following definitions to the alphabetical list of commercial land use definitions to read as follows:

“Body piercing” means to puncture, perforate, or penetrate a human body part or tissue with an object, appliance, or instrument for the purpose of placing a foreign object in the perforation to prevent the perforation from closing. This includes, but is not limited to, creating such an opening in the lip, tongue, nose, eyebrow or navel for the purpose of inserting jewelry or other decorations. Body piercing does not include piercing of the ear lobe or outer portion of the ear.

“Permanent make-up” means the application of pigment to or under the skin of a person for the purpose of permanently or semi-permanently changing the color or appearance of the skin. This includes, but is not limited to, permanent or semi-permanent eyeliner or lip color.

“Tattoo/tattooing” means to insert pigment, ink or dye under the surface of the skin of a person by pricking with a needle or otherwise, to permanently change the color or appearance of the skin or to produce an indelible mark or figure visible through the skin. Tattooing does not include application of permanent make-up that is performed as an incidental service in a beauty shop, day spa, or other service or retail establishment.

“Tattoo/body piercing studio” means any establishment where tattooing and/or body piercing takes place.

SECTION 2. Section 17.26.030 of Title 17, Chapter 17.26 of the Hermosa Beach Municipal Code is amended by adding Tattoo/body piercing studios to the alphabetical table of uses permitted in commercial zones to read as follows:

USE	C-1	C-2	C-3	See Section
Tattoo/body piercing studios	-	-	P	17.26.070

SECTION 3. A new Section 17.26.070 shall be added to Title 17, Chapter 17.26 of the Hermosa Beach Municipal Code to read as follows:

17.26.070 Tattoo/Body Piercing Studios – Standards and Limitations.

Every tattoo/body piercing studio shall be subject to the following in addition to all other requirements of law:

A. The exterior walls of the establishment are located more than one thousand (1,000) feet from the exterior walls of any other tattoo/body piercing tattoo/body piercing establishment.

B. The operator of the tattoo/body piercing tattoo/body piercing establishment shall obtain and maintain in compliance all permits required by the County of Los Angeles, Department of Public Health.

C. Tattoo/body piercing establishments shall not operate between the hours of 11:00 p.m. and 7:00 a.m.

D. Temporary or mobile establishments or events are not authorized by this section.

SECTION 4. This Ordinance shall become effective and be in full force and in effect from and after thirty (30) days of its final passage and adoption on _____, 2010.

SECTION 5. Prior to the expiration of fifteen (15) days after the date of its adoption, the City Clerk shall cause this Ordinance to be published in the Easy Reader, a weekly newspaper of general circulation published and circulated, in the City of Hermosa Beach in the manner provided by law.

SECTION 6. The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original Ordinances of said city, and shall make minutes of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and

1 adopted.

2 SECTION 7. The City Clerk shall insert the effective date of this ordinance in the blank in

3 Section 4 above.

4 PASSED, APPROVED, and ADOPTED THIS ____ day of _____, 2010.

5
6 _____
PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

7
8 ATTEST:

APPROVED AS TO FORM:

9
10 _____
CITY CLERK

11
12 _____
CITY ATTORNEY

ATTACHMENT 2- C-2 AND C-3 ZONES
ORDINANCE NO. 10-XXXX U

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA,
APPROVING A ZONE TEXT AMENDMENT TO THE MUNICIPAL CODE
TO ALLOW TATTOO/BODY PIERCING STUDIOS IN C-2 AND C-3 ZONES
(AND ZONES THAT ALLOW C-3 USES) AND DECLARING THE URGENCY
THEREOF

The City Council of the City of Hermosa Beach does hereby ordain as follows:

SECTION 1. Section 17.04.050 of Title 17, Chapter 17.04 of the Hermosa Beach Municipal Code is amended by adding the following definitions to the alphabetical list of commercial land use definitions to read as follows:

“Body piercing” means to puncture, perforate, or penetrate a human body part or tissue with an object, appliance, or instrument for the purpose of placing a foreign object in the perforation to prevent the perforation from closing. This includes, but is not limited to, creating such an opening in the lip, tongue, nose, eyebrow or navel for the purpose of inserting jewelry or other decorations. Body piercing does not include piercing of the ear lobe or outer portion of the ear.

“Permanent make-up” means the application of pigment to or under the skin of a person for the purpose of permanently or semi-permanently changing the color or appearance of the skin. This includes, but is not limited to, permanent or semi-permanent eyeliner or lip color.

“Tattoo/tattooing” means to insert pigment, ink or dye under the surface of the skin of a person by pricking with a needle or otherwise, to permanently change the color or appearance of the skin or to produce an indelible mark or figure visible through the skin. Tattooing does not include application of permanent make-up that is performed as an incidental service in a beauty shop, day spa, or other service or retail establishment.

“Tattoo/body piercing studio” means any establishment where tattooing and/or body piercing takes place.

SECTION 2. Section 17.26.030 of Title 17, Chapter 17.26 of the Hermosa Beach Municipal Code is amended by adding Tattoo/body piercing studios to the alphabetical table of uses permitted in commercial zones to read as follows:

1	USE	C-1	C-2	C-3	See Section
2					
3	Tattoo/body piercing studios	-	P	P	17.26.070
4					

5

6 **SECTION 3.** A new Section 17.26.070 shall be added to Title 17, Chapter 17.26 of the Hermosa

7 Beach Municipal Code to read as follows:

8 **17.26.070 Tattoo/Body Piercing Studios – Standards and Limitations.**

9 Every tattoo/body piercing studio shall be subject to the following in addition to all other

10 requirements of law:

11 A. The exterior walls of the establishment are located more than one thousand (1,000) feet

12 from the exterior walls of any other tattoo/body piercing tattoo/body piercing establishment.

13 B. The operator of the tattoo/body piercing tattoo/body piercing establishment shall obtain

14 and maintain in compliance all permits required by the County of Los Angeles, Department of

15 Public Health.

16 C. Tattoo/body piercing establishments shall not operate between the hours of 11:00 p.m.

17 and 7:00 a.m.

18 D. Temporary or mobile establishments or events are not authorized by this section.

19

20

21 **SECTION 4.** Prior to the expiration of fifteen (15) days after the date of its adoption, the City

22 Clerk shall cause this Ordinance to be published in the Easy Reader, a weekly newspaper of general

23 circulation published and circulated, in the City of Hermosa Beach in the manner provided by law.

24 **SECTION 5.** The City Clerk shall certify to the passage and adoption of this Ordinance, shall

25 enter the same in the book of original Ordinances of said city, and shall make minutes of the passage and

26 adoption thereof in the records of the proceedings of the City Council at which the same is passed and

27 adopted.

28 **SECTION 6.** Upon the effective date of the ruling of the Ninth Circuit Court of Appeal in the

29

1 case of *Johnny Anderson v City of Hermosa Beach*, the City will be required to lift its total ban on tattoo
2 studios. In the absence of regulations, tattoo studios may be established in locations or in a manner
3 contrary to the public welfare. Though the Ninth Circuit decision has declared tattooing to be a form of
4 protected speech, it acknowledges that the City has some measure of regulatory authority through the
5 exercise of its police powers. It is necessary for the City to enact zoning regulations governing tattoo
6 studios immediately in order to avoid a temporal gap between the effectiveness of the court's decision and
7 the the effective date of a regularly adopted ordinance; otherwise, applicants may seek to establish tattoo
8 studios at a time when no regulations at all are in effect. The immediate preservation of the public peace,
9 health, and safety requires that this ordinance take effect immediately. In the absence of immediate
10 effectiveness, tattoo studios may be established in an unregulated environment. Accordingly, this
11 ordinance is an urgency ordinance adopted pursuant to California Government Code Section 36937 and
12 shall take effect immediately upon its adoption.
13

14
15 PASSED, APPROVED, and ADOPTED THIS ____ day of _____, 2010.
16

17 _____
18 PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California
19

20 ATTEST:

APPROVED AS TO FORM:

21 _____
22 CITY CLERK
23
24
25
26
27
28
29

CITY ATTORNEY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

ORDINANCE NO. 10-XXXX

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA,
APPROVING A ZONE TEXT AMENDMENT TO THE MUNICIPAL CODE
TO ALLOW TATTOO/BODY PIERCING STUDIOS IN C-2 and C-3 ZONES
(AND ZONES THAT ALLOW C-3 USES)

The City Council of the City of Hermosa Beach does hereby ordain as follows:

SECTION 1. Section 17.04.050 of Title 17, Chapter 17.04 of the Hermosa Beach Municipal Code is amended by adding the following definitions to the alphabetical list of commercial land use definitions to read as follows:

“Body piercing” means to puncture, perforate, or penetrate a human body part or tissue with an object, appliance, or instrument for the purpose of placing a foreign object in the perforation to prevent the perforation from closing. This includes, but is not limited to, creating such an opening in the lip, tongue, nose, eyebrow or navel for the purpose of inserting jewelry or other decorations. Body piercing does not include piercing of the ear lobe or outer portion of the ear.

“Permanent make-up” means the application of pigment to or under the skin of a person for the purpose of permanently or semi-permanently changing the color or appearance of the skin. This includes, but is not limited to, permanent or semi-permanent eyeliner or lip color.

“Tattoo/tattooing” means to insert pigment, ink or dye under the surface of the skin of a person by pricking with a needle or otherwise, to permanently change the color or appearance of the skin or to produce an indelible mark or figure visible through the skin. Tattooing does not include application of permanent make-up that is performed as an incidental service in a beauty shop, day spa, or other service or retail establishment.

“Tattoo/body piercing studio” means any establishment where tattooing and/or body piercing takes place.

SECTION 2. Section 17.26.030 of Title 17, Chapter 17.26 of the Hermosa Beach Municipal Code is amended by adding Tattoo/body piercing studios to the alphabetical table of uses permitted in commercial zones to read as follows:

USE	C-1	C-2	C-3	See Section
Tattoo/body piercing studios	-	P	P	17.26.070

SECTION 3. A new Section 17.26.070 shall be added to Title 17, Chapter 17.26 of the Hermosa Beach Municipal Code to read as follows:

17.26.070 Tattoo/Body Piercing Studios – Standards and Limitations.

Every tattoo/body piercing studio shall be subject to the following in addition to all other requirements of law:

A. The exterior walls of the establishment are located more than one thousand (1,000) feet from the exterior walls of any other tattoo/body piercing tattoo/body piercing establishment.

B. The operator of the tattoo/body piercing tattoo/body piercing establishment shall obtain and maintain in compliance all permits required by the County of Los Angeles, Department of Public Health.

C. Tattoo/body piercing establishments shall not operate between the hours of 11:00 p.m. and 7:00 a.m.

D. Temporary or mobile establishments or events are not authorized by this section.

SECTION 4. This Ordinance shall become effective and be in full force and in effect from and after thirty (30) days of its final passage and adoption on _____, 2010.

SECTION 5. Prior to the expiration of fifteen (15) days after the date of its adoption, the City Clerk shall cause this Ordinance to be published in the Easy Reader, a weekly newspaper of general circulation published and circulated, in the City of Hermosa Beach in the manner provided by law.

SECTION 6. The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original Ordinances of said city, and shall make minutes of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and

1 adopted.

2 SECTION 7. The City Clerk shall insert the effective date of this ordinance in the blank in
3 Section 4 above.

4 PASSED, APPROVED, and ADOPTED THIS ____ day of _____, 2010.

5
6 _____
7 PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

8 ATTEST:

APPROVED AS TO FORM:

9
10 _____
11 CITY CLERK

12 _____
13 CITY ATTORNEY

Attachment 3



City of Hermosa Beach

Zoning Map

