



**SARAGA/LIPSHY, PL**  
*Value Added Lawyering™*

**BRIAN LOUIS LIPSHY, ESQ.**

ALSO ADMITTED IN WASHINGTON D C

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January 17, 2018

**Via Courier – Hand Delivery**

Kimberly Wynn, City Clerk  
City of Delray Beach  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

RE: Request for Waiver of Prohibition by frequency prescribed by Ordinance 33-16 as codified in City of Delray Beach Land Regulations §4.3.3 (ZB)(6) for Solid Image Tattoo Co., Inc., a Florida corporation ("**Solid Image**") for that certain real property located 306 N.E. 4<sup>th</sup> Street, Delray Beach, Florida 33444 ("**Property**").

Dear Ms. Wynn,

Please be advised that the undersigned represents Solid Image in their efforts to obtain a waiver from the prohibition contained in Section 4.1.3(ZB)(6) of the Land Development Regulations of the City of Delray Beach ("**LDR**") for the Property. This correspondence shall serve as Solid Image's application for a waiver from the 750 foot prohibition contained in Section 4.1.3(ZB)(6) of the LDR to the City Commission of the City of Delray Beach pursuant to Section 2.4.7 (B) of the LDR. We have included our firm's trust account check number 31903 in the amount of One Thousand (\$1,000.00) Dollars, representing the filing fee for said waiver.

On August 15, 2017 Solid Image obtained a zoning letter from the City of Delray Beach signed by Timothy R. Stillings confirming that the Property was properly zoned for the use of the Property as a tattoo establishment. Thereafter, on August 18, 2017, the City of Delray Beach issued a temporary business receipt which document provides that a regular validated business receipt would be mailed. Solid Image relied upon the temporary business receipt to conduct its business as further specified below. It appears that subsequent to the issuance of the temporary business receipt and the initial zoning letter, on August 30, 2017 the City of Delray Beach issued a new letter stating that the Property could not in fact be used as a tattoo establishment due to the prohibition contained in Section 4.1.3(ZB)(6) of the LDR as there was a presently existing tattoo parlor within 750 feet as measured from lot line to lot line in a straight.

Our client expended substantial sums of monies obtaining a leasehold interest in the Property and improving the Property in reliance upon the zoning letter and the temporary business receipt. It should be noted that Solid Image did not receive a copy of the August 30, 2017 correspondence until code enforcement proceedings were commenced as the address provided in said correspondence is not the address contained in said August 30, 2017 correspondence or in the temporary business receipt. In fact, the first time that our client even knew that there was an issue with the usage of the Property as a tattoo establishment was when the City of Delray Beach issued a general violation notice in November, 2017.



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While it is true that the property line of the Property and the other tattoo establishment is less than the 750 foot requirement (when measured from the nearest property lines in a straight line), the actual walking distance from the front door from the existing establishment and Solid Image is more than 750 feet. The two establishments are on separate streets but due to the depth of the properties, they are physically closer in a straight line than in actual walking accessibility. It appears that when the City of Delray Beach issued the initial zoning letter and the temporary business receipt, the City of Delray Beach officials interpreted the LDR in a different manner than espoused in the August 30, 2017 correspondence. Given that the actual entrances to each establishment are more than 750 feet apart when measured by walking distance, Solid Image hereby requests a waiver from the prohibition by frequency contained in Section 4.1.3(ZB)(6) pursuant to Section 2.4.7 (B) of the LDR.

Prior to filing this waiver, our firm conferred with the City Attorney's office. The City Attorney's Office and Planning and Zoning Department of the City of Delray Beach have both recommended the waiver process as a means to remedy the use of the Property by Solid Image as a tattoo establishment.

In addition to the foregoing, this correspondence shall serve as a notice of a claim against the City of Delray Beach on behalf of Solid Image in accordance with Section 768.28, Florida Statutes for Solid Image's reliance on the initial zoning letter and temporary business receipt issued by the City of Delray Beach.

Should the City of Delray Beach wish to discuss this matter, please contact the undersigned.

Sincerely,

Brian Louis Lipshy

BLL:cah

cc: Client  
Janice Rustin, Esq.  
Max Lohman, Esq.