

# **Attachment C**

July 22, 2021 Planning Commission Staff Report



## **CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT**

July 22, 2021  
Agenda Item No. 3

**SUBJECT:** Tattoo Establishment Ordinance Update (PA2020-030)  
▪ Zoning Code Amendment No. CA2020-002  
▪ Local Coastal Program Amendment No. LC2020-002

**SITE LOCATION:** Citywide

**APPLICANT:** City of Newport Beach

**PLANNER:** Matt Schneider, Principal Planner  
949-644-3219, [mschneider@newportbeachca.gov](mailto:mschneider@newportbeachca.gov)

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### **PROJECT SUMMARY**

The proposed code amendments to Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code ("NBMC") would update development standards related to tattoo establishments. Specifically, Zoning Code Amendment No. CA2020-002 and Local Coastal Program Amendment No. LC2020-002 ("Code Amendment") would define this previously undefined land use category and establish objective standards to regulate its use.

### **RECOMMENDATION**

- 1) Conduct a public hearing;
- 2) Find this project categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment and pursuant to Section 15265(a)(1), which exempts local governments from the requirements of CEQA in connection with the adoption of a Local Coastal Program;
- 3) Adopt Resolution No. PC2021-018 (Attachment No. PC 1) recommending the City Council approve Zoning Code Amendment No. CA2020-002 updating development standards related to tattoo establishments; and
- 4) Adopt Resolution No. PC2021-019 (Attachment No. PC 2) recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2020-002 to the California Coastal Commission.

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## **DISCUSSION**

### **Background**

This project was previously presented to the Planning Commission at the May 6, 2021 meeting. During the meeting, staff presented a summary of recent legal decisions related to the zoning of tattoo establishments and the court's view that tattooing is a purely expressive activity protected under the First Amendment of the U.S. Constitution. Staff reviewed a Code Amendment designed to address the recent court decisions and establish reasonable time, place and manner restrictions for tattoo establishments. Commissioners expressed an interest in gaining a better understanding of the calls for service for the City's existing tattoo establishments, as well as exploring smoking limitations, an annual review, larger buffers, hours of operation (including appointment-only) and focusing the use within zones intended for medical uses. Based on the Commission's desire for additional information, the item was continued by a vote of 7-0.

Staff has researched the topics/questions raised during the May 6, 2021 meeting and provides the following responses to the questions that were raised by the Commission.

### **Calls for Service**

The Police Department conducted a review of dispatch events related to the City's five existing tattoo establishments (Attachment No. PC 4). The review indicated that there was no notable correlation with regards to day or time of dispatch events at existing tattoo establishments. It did not find any troublesome establishments or specific burden on police resources.

### **Smoking**

In response to Commissioner concerns, staff added a provision into the proposed ordinance that would prohibit clients, guests or staff from smoking within 20 feet of the tattoo establishment.

### **Annual Review**

Under the Code Amendment, tattoo establishments would be permitted ministerially. The ministerial permit process does not afford opportunities for "annual review" in the same manner that the Commission may annually review discretionary approvals such as conditional use permits. That said, violations of the proposed development and operational standards would be addressed via the City's progressive code enforcement model. Tattoo establishments with code violations could ultimately result in their closure if not addressed by the operator in a timely and satisfactory manner.



## Buffers

Staff analyzed the proposed locational requirements and found that in addition to the five existing tattoo establishments currently operating in the City, there are approximately 150 to 200 potentially available sites for the establishment of new tattoo establishments when factoring in the locational requirements under the Code Amendment and number of existing suites/offices provided at these locations (Attachment No. PC 5). However, the number of potentially available sites would be reduced if a new establishment is approved. With this in mind, staff does not recommend increasing the separation requirements in order to ensure there are an adequate number of viable locations for tattoo establishments to operate.

## Medical Zoning

The Commission expressed an interest in focusing tattoo establishments into zones intended for medical uses. The City's existing zoning structure does not include a distinct zone for medical uses. Medical and dental uses are allowed in the majority of the City's office and commercial zoning designations, including the OG (Office General), OR (Office Regional) and CG (Commercial General) zones, where tattoo establishments are proposed to be permitted under the Code Amendment.

Exhibit "A" of the draft resolution has been updated to reflect the smoking limitation and appointment-only requirement, which were incorporated into the project in response to Commission input and subsequent research (Attachment No. PC 1).

## General Plan Consistency

The Code Amendment does not introduce any new zoning districts or General Plan Land Use Plan categories in which tattoo establishments would be permitted. The General Commercial and Regional Commercial Office are the two General Plan Land Use categories under which tattoo establishments would continue to be allowed. These two designations allow for a range of uses and are consistent with the Code Amendment.

## Local Coastal Program (LCP)

Similar to Title 20 (Planning and Zoning), Title 21 (Local Coastal Program Implementation Plan) currently regulates tattoo establishments. Therefore, if adopted by the City Council, staff will submit corresponding amendments (Attachment No. PC 2) to the LCP for review and approval of the California Coastal Commission.

## Alternatives

The Planning Commission may recommend revisions to the Code Amendment, such as changing location, separation requirements, and hours of operation with the proviso that

any revisions would be reasonable time, place and manner restrictions that provide sufficient opportunities for tattoo establishments to operate.

### Environmental Review

The Code and LCP Amendments are exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. While this Code Amendment would allow tattoo establishments as a permitted use within the City, it does not authorize new development that would directly result in physical changes to the environment. There is no evidence that amending the regulations for tattoo establishments would result in any new effects on the environment. Additionally, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program.

### Public Notice

Notice of this amendment was published in the Daily Pilot as an eighth-page advertisement, consistent with the provisions of the Municipal Code. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website. Additionally, notice was sent to the property owners of the five existing tattoo establishment currently operating in the City.

Prepared by:

  
Matt Schneider  
Principal Planner

Submitted by:

  
Jim Campbell  
Deputy Community Development Director

### ATTACHMENTS

- PC 1 Resolution No. PC2021-018, recommending City Council approve Zoning Code Amendment No. CA2020-002
- PC 2 Resolution No. PC2021-019, recommending approval of submission of Local Coastal Program Amendment No. LC2020-002
- PC 3 May 6, 2021 Planning Commission Staff Report
- PC 4 May 6, 2021 Planning Commission Minutes
- PC 5 June 9, 2021 Memorandum from Police Department
- PC 6 Map of Existing and Proposed Tattoo Establishment Locations

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# **Attachment No. PC 1**

Planning Commission Resolution No. PC2021-018  
(Zoning Code)

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## RESOLUTION NO. PC2021-018

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING THE CITY COUNCIL ADOPT ZONING CODE AMENDMENT NO. CA2020-002 UPDATING DEVELOPMENT STANDARDS RELATED TO TATTOO ESTABLISHMENTS (PA2020-030)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (“NBMC”) authorizes Restricted Personal Service uses which includes day spas, healing arts, tanning salons, tattoo and body piercing establishments in office, commercial (with the exception of the Commercial Recreational and Marine [CM] zone), and mixed-use zones subject to approval of a minor use permit.
2. Two (2) Ninth Circuit federal court decisions determined that tattooing constitutes speech such that it is protected under the First Amendment of the United States Constitution (“First Amendment”). Specifically, in Anderson v. City of Hermosa Beach, (9<sup>th</sup> Cir. 2010) 621 F.3d 1051, the court struck Hermosa Beach’s ban on tattoo parlors justified on the basis of a risk of infection. In Real v. City of Long Beach, (9<sup>th</sup> Cir. 2017) 852 F.3d 929, the court held that Long Beach’s conditional use permit requirement for tattoo establishments vested unbridled discretion in a government official over whether to permit or deny expressive activity constituted a prior restraint on speech in violation of the First Amendment.
3. These decisions limit a local jurisdiction’s ability to require discretionary permits approval for this protected class of free speech, however, cities may apply time, place and manner restrictions through the application of objective standards such as hours of operation, separation requirements and appropriate zoning districts for new applications.
4. On April 14, 2020, the City Council adopted Resolution No. 2020-35 to initiate a code amendment related to tattoo services.
5. A telephonic public hearing was held by the Planning Commission on May 6, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

6. After receiving a presentation from staff and discussing the item, the Planning Commission voted (7-0) to continue the item to allow staff additional time to research and respond to the Commission's questions.
7. A public hearing was held by the Planning Commission on July 22, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This action is exempt from environmental review under the California Environmental Quality Act ("CEQA") Section 15061(b)(3) of the California Code of Regulations, Title 14, Chapter 3 ("CEQA Guidelines"), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. While this amendment would allow tattoo establishments as a permitted use within the City, it does not authorize new development that would directly result in physical changes to the environment. There is no evidence or known special circumstances that amending the regulations for tattoo establishments would result in any new effects on the environment.

## SECTION 3. FINDINGS.

1. The City, through Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan), promotes the orderly development of the City; promotes the public health, safety, peace, comfort, and general welfare; protects the character, social and economic vitality of neighborhoods; and ensures the beneficial development of the City. Zoning Code Amendment No. CA2020-002 authorizes tattoo establishments in commercial zones including the OG (Office General), OR (Office Regional), and CG (Commercial General) zoning districts where they are compatible with other commercial uses.
2. A buffer between tattoo establishments and sensitive land uses such as residential zones, schools, and parks is appropriate and will continue to allow a wide range of potential alternative sites. These buffer provisions will serve to: (1) protect the quality of life and neighborhoods in the City, (2) protect the City's retail and commercial trade, (3) minimize the potential for nuisances related to the operation of tattoo establishments, (4) protect the well-being, tranquility and privacy of the home with the residential buffer, and (5) protect the peace, welfare, and privacy of persons who own, operate and/or patronize tattoo establishments.
3. Establishing distance requirements between other tattoo establishments ensures the City maintains an adequate number of establishments to serve residents and visitors while avoiding overconcentration and maintaining a diversity of uses to serve the community. For example, Newport Beach is comprised of several villages with distinct and unique commercial cores that serve families and visitors. It is important that the

character of these commercial core areas remain family- and tourist-oriented. Moreover, Zoning Code Amendment No. CA2020-002 ensures that adequate sites are available for the establishment and operation of tattoo establishments in the City as approximately 150 to 200 sites would be available for a tattoo establishment to operate when factoring in the locational requirements proposed under this ordinance amendment and number of existing suites/offices provided at these locations. The distance requirements ensure that there are adequate sites available to provide this use while also ensuring a diversity of uses within the City.

4. Maintaining adequate separation between establishments as well as locating said establishments in commercial zones is appropriate in that tattoo establishments may cause negative secondary effects in the community including the potential to attract criminal activity. Specifically, data from the Newport Beach Police Department's Calls for Service ("CFS") which compares the number of CFS during the preceding five (5) years shows a disparity in the number of calls for tattoo establishments when compared with other Restricted Personal Services. The City's data shows that since January 2015, Newport Beach Police Department has received 49 CFS for four (4) tattoo establishments, in comparison to 12 CFS (when excluding calls for alarms) for three (3) non-tattoo establishments operating during the same period of time. In addition, there were no CFS at non-tattoo establishments for incidents recorded as: disturbance, theft/fraud, drunk in public or battery/fighting in comparison to 22 such incidents recorded at tattoo establishments. The CFS data for the City of Oceanside (another coastal city with publicly available CFS data), shows a similar pattern, with substantially higher CFS for tattoo establishments and recorded incidents of disturbances and violent crimes in comparison to non-tattoo establishments.
5. Zoning Code Amendment No. CA2020-002 is appropriate to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created. Buffer requirements are a legitimate and reasonable means of ensuring against the negative secondary effects of tattoo facilities and to balance the various land uses in order to protect the health, safety and welfare of Newport Beach residents, preserve the quality of life, and preserve the character of surrounding neighborhoods. The buffer requirements of the City do not unreasonably restrict the establishment or operation of constitutionally protected businesses in Newport Beach. The City recognizes that these buffer requirements do not preclude reasonable alternative avenues of communication and that there are approximately 150 to 200 potentially available sites for tattoo establishments in addition to the City's five (5) existing tattoo establishments.
6. Zoning Code Amendment No. CA2020-002 is appropriate to protect the health and well-being of adolescents within the community. A study titled "Tattooing and High-Risk Behavior in Adolescents" established an association between adolescents who obtain tattoos and their involvement in high-risk behaviors that are detrimental to their health and welfare including gang affiliation, substance abuse, and violence. Adopting time, place and manner restrictions that protect minors is appropriate (Sable Commission of California, Inc. v. FCC, [1989] 492 U.S. 115).



7. Zoning Code Amendment No. CA2020-002 is appropriate to protect customer health. Tattooing carries the risk of infection and transmission of disease if unsanitary conditions are present or unsterile equipment is used. The Centers for Disease Control and Prevention (CDC) and the United States Food and Drug Administration confirm the significant health risks of tattooing (CDC, Body Art: Tattoos and Piercings [Jan. 21, 2008] [noting risks of infection, tuberculosis, Hepatitis B and C, and HIV]). Zoning Code Amendment No. CA2020-002 which requires all licenses and permits including compliance with the State's Safe Body Art Act and registration/licensing with the Orange County Health Department is appropriate.
8. Zoning Code Amendment No. CA2020-002 sets appropriate time, place and manner restrictions on tattoo establishments. The City has considered the following decisions: Anderson v. Hermosa Beach, (9th Cir. 2010) 621 F.3d 1051; Real v. City of Long Beach, (9th Cir. 2017) 852 F.3d 929; Garcia v. City of Torrance Case No. 2:15-cv-03810-SVW-RAO; Ward v. Rock Against Racism, (1989) 491 U.S. 78; and City of Renton v Playtime Theaters, (1986) 475 U.S. 41.

#### SECTION 4. DECISION.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby finds Zoning Code Amendment No. CA2020-002 is exempt from the CEQA pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. While the code amendment would allow tattoo establishments as a permitted use within the City, it does not authorize new development that would directly result in physical changes to the environment.
2. The Planning Commission of the City of Newport Beach hereby recommends approval of Code Amendment No. CA2020-002 as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

#### **PASSED, APPROVED, AND ADOPTED THIS 22nd DAY OF JULY, 2021.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Lee Lowrey, Chairman

BY: \_\_\_\_\_  
Curtis Ellmore, Secretary

Attachment: Exhibit A – Zoning Code Amendment No. CA2020-002

**EXHIBIT “A”**  
**Zoning Code Amendment No. CA2020-002**

**Section 1:** Tables 2-4 and 2-5 (Allowed Uses and Permit Requirements) of Section 20.20.020(C) (Commercial Zoning Districts Land Uses and Permit Requirements) of the NBMC are amended to read as follows:

TABLE 2-4 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Office Zoning Districts Permit Requirements *				
	P	Permitted by Right			
	CUP	Conditional Use Permit (Section <a href="#">20.52.020</a> )			
	MUP	Minor Use Permit (Section <a href="#">20.52.020</a> )			
	LTP	Limited Term Permit (Section <a href="#">20.52.040</a> )			
	—	Not allowed *			
Land Use See Part 7 of this title for land use definitions. See Chapter <a href="#">20.12</a> for unlisted uses.	OA	OG	OM	OR	Specific Use Regulations
Service Uses—General					
<a href="#">Tattoo Establishments</a>	=	<u>P</u>	=	<u>P</u>	<a href="#">Section 20.48.230</a>

TABLE 2-5 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Retail Zoning Districts Permit Requirements *						
	P Permitted by Right CUP Conditional Use Permit (Section <a href="#">20.52.020</a> ) MUP Minor Use Permit (Section <a href="#">20.52.020</a> ) LTP Limited Term Permit (Section <a href="#">20.52.040</a> ) — Not allowed *						
Land Use  See Part 7 of this title for land use definitions.  See Chapter <a href="#">20.12</a> for unlisted uses.	CC	CG	CM	CN	CV	CV-LV	Specific Use Regulations
Service Uses—General							
<a href="#">Tattoo Establishments</a>	=	<u>P</u>	=	=	=	=	<a href="#">Section 20.48.230</a>

**Section 2:** Section 20.48.230 (Standards for Specific Land Uses – Tattoo Establishments) of the NBMC is added to read as follows:

**A. Development Standards.**

1. Zoning Districts. Tattoo establishments are authorized within the Commercial Zoning Districts identified in Chapter 20.20 (Commercial Zoning Districts (OA, OG, OM, OR, CC, CG, CM, CN, CV, CV-LV)).

2. Site and Floor Plans. The site and floor plans shall incorporate design features to ensure the activities and operation, including seating and waiting areas, are conducted entirely within the building or structure.
3. Parking. Parking shall comply with Chapter 20.40 (Off-Street Parking). The Personal Services parking requirement from Table 3-10 (20.40.040 Off Street Parking Spaces Required) shall apply to all tattoo establishments.
4. Signs. Signs shall comply with Chapter 20.42 (Sign Standards). In addition, a sign shall be visible at all entrances stating, "No tattoo service will be provided to any person under the age of 18."
5. Location Restrictions. Tattoo establishments shall maintain the following separation requirements:
  - i. One thousand (1,000) feet from another tattoo establishment;
  - ii. Five hundred (500) feet from any primary or secondary school or park or playground as measured from lot line to lot line; or
  - iii. Five hundred (500) feet from the boundary of any residential structure or residential use, including residential uses in mixed-use zoning districts.

**B. Operating Standards.**

1. Hours of Operation. Operating hours must not extend outside the hours of 10:00 a.m. to 10:00 p.m. scheduled by appointment only. No walk-ins shall be accepted.
2. Maintenance. The owner or operator shall:
  - i. Maintain the exterior of the premises free of litter and graffiti at all times; and
  - ii. Provide for daily removal of trash, litter, debris and graffiti from the premises and abutting sidewalks within twenty (20) feet of the premises.
3. Noise. The owner or operator shall be responsible for the control of noise generated by the tattoo establishment. All noise generated by the use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code.
4. Security. The owner or operator shall maintain security cameras covering all entrances and exits to/from the establishment, the public right-of-way fronting the establishment and the parking facility serving the establishment. The recording shall be retained for no less than thirty (30) days and shall be made available to the Police Department upon request.
5. Consumption. The service or use of alcohol or marijuana shall be prohibited. Clients, guests, visitors, or staff shall not smoke within twenty (20) feet of the premises.
6. Screening. All tattoo services shall be screened so as not to be visible to the exterior of the business.

**C. Other Licenses and Permits.** The owner or operator shall comply with all applicable State, County and City Health and Human Services regulations including, but not limited to the State Safe Body Art Act regarding the establishment and operation of businesses engaged in tattooing, body piercing and permanent cosmetic application. Each artist shall

be registered and licensed with the Orange County Health Department. Said license shall be made available upon request of the City's Code Enforcement Division at any time.

**Section 3:** Section 20.70.020 (Definitions of Specialized Terms and Phrases) of the NBMC is amended to revise the definition of “Personal Services (Land Use)” and add the definition of “Tattoo Establishment” to read as follows:

Personal Services (Land Use).

1. General. Establishments that provide recurrently needed services of a personal nature. Illustrative examples of these uses include:

- a. Barber and beauty shops.
- b. Clothing rental shops.
- c. Dry cleaning pick-up stores with limited equipment.
- d. Laundromats (self-service laundries).
- e. Locksmiths.
- f. Shoe repair shops.
- g. Tailors and seamstresses.

These uses may also include accessory retail sales of products related to the services provided.

2. Restricted. Personal service establishments that may tend to have a blighting and/or deteriorating effect upon surrounding areas and that may need to be dispersed from other similar uses to minimize adverse impacts, including:

- a. Day spas.
- b. Healing arts (acupuncture, aromatherapy, etc.) with no services qualifying under “Massage establishments.”
- c. Tanning salons.
- d. ~~Tattoo services and~~ Bbody piercing studios.

These uses may also include accessory retail sales of products related to the services provided.

“Tattoo Establishment” (Land Use) means an establishment where the insertion of pigment, ink or dye is applied under the surface of the skin by a person 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 in exchange for financial or other valuable consideration. It does not include the application of permanent make-up that is performed as an incidental service in a beauty shop, day spa, or dermatology office.

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## **Attachment No. PC 2**

Planning Commission Resolution No. PC2021-019  
(Local Coastal Program)



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## RESOLUTION NO. PC2021-019

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING THE CITY COUNCIL AUTHORIZE SUBMITTAL OF A LOCAL COASTAL PROGRAM AMENDMENT NO. LC2020-002 TO THE CALIFORNIA COASTAL COMMISSION TO UPDATE DEVELOPMENT STANDARDS RELATED TO TATTOO ESTABLISHMENTS (PA2020-030)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code ("NBMC") authorize Restricted Personal Service uses which includes day spas, healing arts, tanning salons, tattoo and body piercing establishments in office, commercial (with the exception of the Commercial Recreational and Marine [CM] zone), and mixed-use zones subject to approval of a minor use permit.
2. Two (2) Ninth Circuit federal court decisions determined that tattooing constitutes speech such that it is protected under the First Amendment of the U.S. Constitution ("First Amendment"). Specifically, in Anderson v. City of Hermosa Beach, (9<sup>th</sup> Cir. 2010) 621 F.3d 1051 the court struck Hermosa Beach's ban on tattoo parlors justified on the basis of a risk of infection. In Real v. City of Long Beach, (9<sup>th</sup> Cir. 2017) 852 F.3d 929 the court held that Long Beach's conditional use permit requirement for tattoo establishments vested unbridled discretion in a government official over whether to permit or deny expressive activity constituted a prior restraint on speech in violation of the First Amendment.
3. These decisions limit a local jurisdiction's ability to require discretionary permits approval for this protected class of free speech, however, cities may apply time, place and manner restrictions through the application of objective standards such as hours of operation, separation requirements and appropriate zoning districts for new applications.
4. On April 14, 2020, the City Council adopted Resolution No. 2020-35 to initiate a code amendment related to tattoo services.
5. A telephonic public hearing was held by the Planning Commission on May 6, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

6. After receiving a presentation from staff and discussing the item, the Planning Commission voted (7-0) to continue the item to allow staff additional time to research and respond to the Commission's questions.
7. A public hearing was held by the Planning Commission on July 22, 2021, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This action is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the California Code of Regulations, Title 14, Chapter 3 ("CEQA Guidelines"), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. While this amendment would allow tattoo establishments as a permitted use within the City, it does not authorize new development that would directly result in physical changes to the environment. There is no evidence that amending the regulations for tattoo establishments would result in any new effects on the environment. Additionally, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program (LCP).

## SECTION 3. FINDINGS.

1. The City, through Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan), promotes the orderly development of the City; promotes the public health, safety, peace, comfort, and general welfare; protects the character, social and economic vitality of neighborhoods; and ensures the beneficial development of the City. Tattoo establishments are not a coastal dependent or visitor serving use. Implementation of this code revision will allow tattoo establishments in the CG (General Commercial) and OG (Office General) Coastal Zoning Districts while preserving opportunities for visitor serving or coastal dependent uses in the CM (Commercial Recreational and Marine) and CV (Commercial Visitor-Serving) Coastal Zoning Districts.
2. Local Coastal Program Amendment No. LC2020-002 authorizes tattoo establishments in coastal commercial zones where they are compatible with other commercial uses.
3. A buffer between tattoo establishments and sensitive land uses such as residential zones, schools, and parks is appropriate and will continue to allow a wide range of potential alternative sites. These buffer provisions will serve to: (1) protect the quality of life and neighborhoods in the City, (2) protect the City's retail and commercial trade, (3) minimize the potential for nuisances related to the operation of tattoo establishments, (4) protect the well-being, tranquility and privacy of the home with the residential buffer,

and (5) protect the peace, welfare, and privacy of persons who own, operate and/or patronize tattoo establishments.

4. Establishing distance requirements between other tattoo establishments ensures the City maintains an adequate number of establishments to serve residents and visitors while avoiding overconcentration and maintaining a diversity of uses to serve the community. For example, Newport Beach is comprised of several villages with distinct and unique commercial cores that serve families and visitors. It is important that the character of these commercial core areas remain family- and tourist-oriented. Currently, four (4) of the five (5) tattoo establishments in the City are located within the coastal zone. Therefore, 80 percent of the City's existing tattoo establishment are located within 63 percent of the City's land area that comprises the City's coastal zone. The existing establishments adequately serve coastal zones and ensure community compatibility.
5. Maintaining adequate separation between establishments as well as locating said establishments in commercial zones is appropriate in that tattoo establishments may cause negative secondary effects in the community including the potential to attract criminal activity. Specifically, data from the Newport Beach Police Department's Calls for Service ("CFS") which compares the number of CFS during the preceding five (5) years shows a disparity in the number of calls for tattoo establishments when compared with other Restricted Personal Services. The City's data shows that since January 2015, Newport Beach Police Department has received 49 CFS for four (4) tattoo establishments, in comparison to 12 CFS (when excluding calls for alarms) for three (3) non-tattoo establishments operating during the same period of time. In addition, there were no CFS at non-tattoo establishments for incidents recorded as: disturbance, theft/fraud, drunk in public or battery/fighting, in comparison to 22 such incidents recorded at tattoo establishments. The CFS data for the City of Oceanside (another coastal city with publicly available CFS data) shows a similar pattern, with substantially higher CFS for tattoo establishments and recorded incidents of disturbances and violent crimes in comparison to non-tattoo establishments.
6. Local Coastal Program Amendment No. LC2020-002 and Zoning Code Amendment No. CA2020-002 are appropriate to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created. Buffer requirements are a legitimate and reasonable means of ensuring against the negative secondary effects of tattoo facilities and to balance the various land uses in order to protect the health, safety and welfare of Newport Beach residents, preserve the quality of life, and preserve the character of surrounding neighborhoods. The buffer requirements of the City do not unreasonably restrict the establishment or operation of constitutionally protected businesses in Newport Beach.
7. Local Coastal Program Amendment No. LC2020-002 and Zoning Code Amendment No. CA2020-002 are appropriate to protect the health and well-being of adolescents within the community. A study titled "Tattooing and High-Risk Behavior in Adolescents" established an association between adolescents who obtain tattoos and their

involvement in high-risk behaviors that are detrimental to their health and welfare including gang affiliation, substance abuse, and violence. Adopting time, place and manner restrictions that protect minors is appropriate (Sable Commission of California, Inc. v. FCC, [1989] 492 U.S. 115).

8. Local Coastal Program Amendment No. LC2020-002 and Zoning Code Amendment No. CA2020-002 are appropriate to protect customer health. Tattooing carries the risk of infection and transmission of disease if unsanitary conditions are present or unsterile equipment is used. The Centers for Disease Control and Prevention (CDC) and the United States Food and Drug Administration confirm the significant health risks of tattooing (CDC, Body Art: Tattoos and Piercings [Jan. 21, 2008] [noting risks of infection, tuberculosis, Hepatitis B and C, and HIV]). Local Coastal Program Amendment No. LC2020-002 which requires all licenses and permits including compliance with the State's Safe Body Art Act and registration/licensing with the Orange County Health Department is appropriate.
9. Local Coastal Program Amendment No. LC2020-002 and Zoning Code Amendment No. CA2020-002 set appropriate time, place and manner restrictions on tattoo establishments. The City has considered the following decisions: Anderson v. Hermosa Beach, (9th Cir. 2010) 621 F.3d 1051; Real v. City of Long Beach, (9th Cir. 2017) 852 F.3d 929; Garcia v. City of Torrance Case No. 2:15-cv-03810-SVW-RAO; Ward v. Rock Against Racism, (1989) 491 U.S. 78; and City of Renton v Playtime Theaters, (1986) 475 U.S. 41.
10. Local Coastal Program Amendment No. LC2020-002 shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.
11. The LCP, including Local Coastal Program Amendment No. LC2020-002, will be carried out fully in conformity with the California Coastal Act.

#### SECTION 4. DECISION.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby finds Local Coastal Program Amendment No. LC2020-002 is exempt from the CEQA pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. While the LCP amendment would allow tattoo establishments as a permitted use within the City, it does not authorize new development that would directly result in physical changes to the environment.

2. The Planning Commission of the City of Newport Beach hereby recommends submittal of Local Coastal Program Amendment No. LC2020-002, as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference, to the California Coastal Commission.

**PASSED, APPROVED, AND ADOPTED THIS 22nd DAY OF JULY, 2021.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Lee Lowrey, Chairman

BY: \_\_\_\_\_  
Curtis Ellmore, Secretary

Attachment: Exhibit A - Local Coastal Program Amendment No. LC2020-002

**EXHIBIT “A”**  
**Local Coastal Program Amendment No. LC2020-002**

**Section 1:** Table 21.20-1 in Newport Beach Municipal Code (NBMC) Section 21.20.020(C) (Commercial Coastal Zoning Districts Land Uses) is amended, in part to the “Tattoo Establishments” row as follows:

TABLE 21.20-1 ALLOWED USES	Commercial Coastal Zoning Districts							
	<div style="text-align: center;"> <b>A</b> Allowed  <b>—</b> Not Allowed * </div>							
Land Use	CC	CG	CM (3)	CN	CV (3)	CV- LV (3)	OG	Specific Use Regulations
See Part 7 of this Implementation Plan for land use definitions. See Chapter <a href="#">21.12</a> for unlisted uses.								
Service Uses—General								
<u>Tattoo Establishments</u>	=	A	=	=	=	=	A	

**Section 2:** Amend NBMC Section 21.70.020 (Definitions of Specialized Terms and Phrases) to read as follows, with all other provisions of Chapter 21.70 remaining unchanged:

Personal Services (Land Use).

1. General. Establishments that provide recurrently needed services of a personal nature. Illustrative examples of these uses include:

- a. Barber and beauty shops.
- b. Clothing rental shops.
- c. Dry cleaning pick-up stores with limited equipment.
- d. Laundromats (self-service laundries).
- e. Locksmiths.
- f. Shoe repair shops.
- g. Tailors and seamstresses.

These uses may also include accessory retail sales of products related to the services provided.

2. Restricted. Personal service establishments that may tend to have a blighting and/or deteriorating effect upon surrounding areas and that may need to be dispersed from other similar uses to minimize adverse impacts, including:

- a. Day spas.
- b. Healing arts (acupuncture, aromatherapy, etc.) with no services qualifying under "Massage establishments."
- c. Tanning salons.
- d. ~~Tattoo services and~~ Bbody piercing studios.

These uses may also include accessory retail sales of products related to the services provided.

Tattoo Establishment (land use) means a business where the insertion of pigment, ink or dye is applied under the surface of the skin by a person 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 in exchange for financial or other valuable consideration. It does not include the application of permanent make-up that is performed as an incidental service in a beauty shop, day spa, or dermatology office.



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## **Attachment No. PC 3**

May 6, 2021 Planning Commission Staff Report

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## **CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT**

May 6, 2021  
Agenda Item No. 5

**SUBJECT:** Tattoo Establishment Ordinance Update (PA2020-030)  
▪ Zoning Code Amendment No. CA2020-002  
▪ Local Coastal Program Amendment No. LC2020-002

**SITE LOCATION:** Citywide

**APPLICANT:** City of Newport Beach

**PLANNER:** Matt Schneider, Principal Planner  
949-644-3219, [mschneider@newportbeachca.gov](mailto:mschneider@newportbeachca.gov)

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### **PROJECT SUMMARY**

The proposed code amendments to Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code ("NBMC") would update development standards related to tattoo establishments. Specifically, Zoning Code Amendment No. CA2020-002 and Local Coastal Program Amendment No. LC2020-002 would define this previously undefined land use category and establish objective standards to regulate its use.

### **RECOMMENDATION**

- 1) Conduct a public hearing;
- 2) Find this project categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment and pursuant to Section 15265(a)(1), which exempts local governments from the requirements of CEQA in connection with the adoption of a Local Coastal Program;
- 3) Adopt Resolution No. PC2021-012(Attachment No. PC 1) recommending the City Council approve Zoning Code Amendment No. CA2020-002 updating development standards related to tattoo establishments; and
- 4) Adopt Resolution No. PC2021-013(Attachment No. PC 2) recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2020-002 to the California Coastal Commission.

## **DISCUSSION**

### **Background**

Over the past decade, cities have seen a rapid increase in the number of tattoo establishments given the rise in popularity of tattooing. In 2011, then Governor Jerry Brown signed into law the Safe Board Art Act which set uniform standards for the body art industry which includes tattooing. These regulations are codified in California Health and Safety Code Section 119300 *et seq.* requires body art practitioners to complete a registration process, obtain annual bloodborne pathogen training, provide documentation of vaccination status, and obtain relevant health information and informed consent from clients.

Many cities have adopted zoning ordinances related to the use ranging from an all-out ban to requiring a conditional use permit with conditions to mitigate impacts associated with the use. In Newport Beach's case, Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan) of the NBMC classify tattoo businesses as a Restricted Personal Service, which is permitted in all office zones, commercial zones (except the CM zone) and mixed-use zones subject to a minor use permit ("MUP"). An MUP is a discretionary permit requiring a public hearing and is appealable to the Planning Commission and ultimately to the City Council.

Over time, prospective operators have challenged cities' zoning codes applicable to tattoo establishments on the basis that tattooing is protected speech under the First Amendment of the United States Constitution ("First Amendment").

In Anderson v. City of Hermosa, (9<sup>th</sup> Cir. 2010) 621 F.3d 1051, a prospective operator challenged Hermosa Beach's ban on tattoo parlors. The city justified the ban based upon the risk of infection and the possibility of diseases. At the time, the county health official responsible for inspecting tattoo establishments testified to being overwhelmed by the number of inspections required. On appeal, the 9<sup>th</sup> Circuit overturned the district court's decision and held that tattoos are purely expressive activity protected under the First Amendment. The court took a rather expansive view as to what aspects of tattooing was protected by the First Amendment to include "the tattoo itself, the process of tattooing and the *business of tattooing*."

Seven years later, a challenge was brought against Long Beach's tattoo ordinance that required a conditional use permit; separation requirements from adult entertainment, arcade, fortunetelling, tattoo parlors and taverns; and hours of operation between 7 a.m. and 10 p.m. Similar to conditional use permit findings in other jurisdictions, the Long Beach Municipal Code included a finding that the proposed use will not be detrimental to the surrounding community including public health, safety or general welfare, environmental quality or quality of life. Real v. City of Long Beach, (9<sup>th</sup> Cir. 2017) 852 F.3d 929. While Long Beach argued that the petitioner lacked standing to sue (because he had not applied for a conditional use permit) and that the ordinance did not restrict speech,

but rather, placed reasonable time, place and manner restrictions on the use, the court disagreed. With respect to the standing argument, the court held that when a licensing ordinance vests unbridled discretion in a government official over whether to permit or deny expressive activity, a prospective operator has standing to challenge the ordinance in spite of never having applied for a conditional use permit. With respect to Long Beach's argument that the ordinance did not unduly restrict expressive activity, but rather, consisted of time, place and manner restrictions, the court reasoned that the ordinance was not narrowly tailored to serve a significant governmental interest and allow ample alternative channels for expression.

These two decisions serve as a guide to Newport Beach in updating its zoning provisions related to tattoo establishments.

### Summary of Current Regulations

Sections 20.70.020 and 21.70.020 of the NBMC define tattoo services as a Restricted Personal Service use which are permitted in all office zones, commercial zones (except the CM zone) and mixed-use zones subject to MUP. This use classification is intended for personal service establishments that may need to be dispersed from other similar uses to minimize adverse impacts. Other personal service uses classified under this category include day spas, healing arts and tanning salons. In order to approve the MUP, the Zoning Administrator must find:

1. The use is consistent with the General Plan and any applicable specific plan;
2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;
3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;
4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and
5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

The above criteria required for approving a tattoo establishment are subjective in nature and raise concerns that a court would find these standards vest unbridled discretion in granting a permit to operate and whether they are narrowly tailored to serve a significant

governmental interest and allow ample alternative channels for expression in accordance with the *Long Beach* decision.

### Proposed Amendment

The proposed code amendment would allow ministerial approval of tattoo establishments in commercial zones of the City subject, however, to separate requirements and other development and operational standards delineated below. The proposed code amendment would serve the objectives of creating reasonable time, place and manner restrictions as required by the First Amendment while also ensuring tattoo establishments are compatible with the surrounding area, do not result in an overconcentration and maintain the quality and character of the community. The limitations on tattoo establishments set forth in the proposed code amendment are supported by the additional data on secondary effects of such establishments in Attachment No. PC3.

### Definition and Table Revision

The proposed code amendment defines tattoo establishments as its own use type (Attachment No. PC 1, Exhibit A) separate and distinct from other Restricted Personal Service Use types and modifies relevant tables demonstrating the zoning districts where tattoo establishments are permitted.

### Development Standards

The proposed code amendment incorporates development standards for the operation of a tattoo establishment including zones where the use is allowed, site and floor plan requirements to ensure the operation is fully contained within the building and does not spillover to the outdoors, parking requirements, signage requirements as well as separation requirements. With respect to the zones where the use would be allowed, tattoo establishments would be authorized in the CG (Commercial General), OG (Office General), and OR (Office Regional) zones.

With respect to the separation requirements, a tattoo establishment could not operate within 1,000 feet of another tattoo establishment, 500 feet of sensitive uses such as schools or playgrounds, and 500 feet from residential. The proposed zoning districts along with the separate requirement ensures ample locations for tattoo establishments to locate while preventing overconcentration, ensuring compatibility with surrounding uses and mitigating secondary effects. Staff analyzed the proposed locational requirements and found that in addition to the five existing tattoo establishments currently operating in the City, there are approximately 150-200 potentially available sites for the establishment of new tattoo business when factoring in the locational requirements under the proposed code amendment and number of existing suites/offices provided at these locations. It is important to note that the proposed 1,000-foot separation requirement between tattoo establishments will diminish the availability sites as new tattoo business are opened.

### Operating Standards

The proposed ordinance would establish hours of operation, ensure the operation and the area within its vicinity is properly maintained, in compliance with Chapter 10.26 (Community Noise Control) noise requirements, require security cameras and screening, as well as limiting the consumption of alcohol or marijuana on the premises.

Finally, tattoo establishments and artists operating within the establishment are required to comply with all other applicable license and permitting requirements.

### Existing Tattoo Establishments

There are five existing tattoo establishments within the City that are legally permitted to operate under the City's current zoning regulations. These five establishments would become legal non-confirming uses as a result of adopting the proposed code amendment based upon the zoning district in which they are located or the locational/separation requirements of the proposed ordinance. As non-confirming uses, these establishments would be able to continue operating but would be required to obtain a conditional use permit in order to expand or intensify their use in accordance with Section 20.38.050 (Nonconforming Uses) of the NBMC. Non-confirming rights to operate would cease in the event the tattoo establishment use is discontinued for one hundred eighty (180) consecutive days.

### General Plan Consistency

The proposed code amendment does not introduce any new Zoning Districts or General Plan Land Use Plan Categories in which tattoo establishments would be permitted. The General Commercial and Regional Commercial Office are the two General Plan Land Use Categories under which tattoo establishments would continue to be allowed. These two designations allow for a range of uses and are consistent with the proposed Zoning Code amendment.

### Local Coastal Plan

Similar to Title 20 (Planning and Zoning), Title 21 (Local Coastal Program Implementation Plan) currently regulates tattoo establishments. Therefore, subsequent to City Council adoption of this Zoning Code Amendment, staff will submit corresponding amendments (Attachment No. PC2) to the LCP for review and approval of the California Coastal Commission.

### Alternatives

The Planning Commission may recommend revisions to the proposed code amendment, such as changing location, separation requirements, and hours of operation with the proviso that any revisions would be reasonable time, place and manner restrictions that provide sufficient opportunities for tattoo establishments to operate.



### Environmental Review

The proposed action is exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. While this amendment would allow tattoo establishments as a permitted use within the City, it does not authorize new development that would directly result in physical changes to the environment. There is no evidence that amending the regulations for tattoo establishments would result in any new effects on the environment. Additionally, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program.

### Public Notice

Notice of this amendment was published in the Daily Pilot as an eighth page advertisement, consistent with the provisions of the Municipal Code. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website. Additionally, notice was sent to the property owners of the four existing tattoo establishment currently operating in the City.

Prepared by:

  
Matt Schneider  
Principal Planner

Submitted by:

  
Jim Campbell  
Deputy Community Development Director

### ATTACHMENTS

- ~~PC 1 Resolution No. PC2021-012 recommending City Council approve Zoning Code Amendment No. CA2020-002~~
- ~~PC 2 Resolution No. PC2021-013 recommending approval of submission of Local Coastal Program Amendment No. LC2020-002~~
- C Background Research - Secondary Effects of Tattoo Establishments

# **Attachment C**

Background Research

The Newport Beach Police Department provided Calls for Service (CFS) data for the City's existing Restricted Personal Service uses dating back to January 1, 2015. A summary of the data is provided below to provide a comparison of tattoo establishments versus non-tattoo establishments. It should be noted that one tattoo establishment and two non-tattoo establishments were excluded from the summary table as they were located in large centers and the data collected did not specify which suite/tenant in the center the CFS was attributed to. The City's data shows that since January 2015, Newport Beach Police Department has received 49 CFS for four tattoo establishments; in comparison to 12 CFS (when excluding calls for alarms) for three non-tattoo establishments operating during the same period of time. In addition, there were no CFS at non-tattoo establishments for incidents recorded as: disturbance, theft/fraud, drunk in public or battery/fighting in comparison to 22 such incidents recorded at tattoo establishments. The CFS data for the City of Oceanside, (another coastal city with publicly available CFS data) shows a similar pattern, with substantially higher CFS for tattoo establishments and recorded incidents of disturbances and violent crimes in comparison to non-tattoo establishments.

**Table-1 City of Newport Beach Calls for Service Summary Table**

Location	Use Type	Calls for Service	Alarm	Disturbance	Theft/Fraud	Drunk in Public	Battery/Fight
3413 Newport Blvd	Tattoo	7	0	1	1	0	0
2611 Newport Blvd	Tattoo	34	0	10	0	3	1
365 Old Newport Blvd	Tattoo	8	0	1	1	0	0
6000 West Coast Hwy	Tattoo	23	0	2	1	0	1
20280 Acacia Street	Non-Tattoo	14	8	0	0	0	0
4101 Birch Street	Non-Tattoo	6	0	0	0	0	0
1220 Bison Street	Non-Tattoo	0	0	0	0	0	0

Data provided by Wendy Joe, Investigator – Newport Beach Police Department

In addition to the CFS data analyzed several studies and article were reviewed (see references below) regarding the secondary effects of tattoo establishments. Among the impacts disclosed, it was reported that tattooing carries the risk of infection and transmission of disease including tuberculosis, Hepatitis B and C and HIV if unsanitary conditions are present or unsterile equipment is used. Additionally, a link between the tattooing of high school aged people and a propensity to engage in high-risk behaviors including gang affiliation, substance abuse and violence has been found.

Based upon a review of the available data and studies cited below there is a reasonable basis to conclude that tattoo establishments may result in negative impacts on sensitive uses such as residential areas and schools and parks which attract and serve minors.

#### References Documenting the Secondary Effects of Tattoo Establishments

CDC Study: Body Art: Tattoos and Piercings (Jan. 21, 2008)

[https://www.cdc.gov/niosh/topics/body\\_art/more-info.html](https://www.cdc.gov/niosh/topics/body_art/more-info.html)

Koch, J. R., Roberts, A. E., Armstrong, M. L., & Owen, D. C. (2010). Body art, Deviance, and American College students. Social Science Journal, <https://psycnet.apa.org/record/2010-02170-009>

Memorandum from Christi Helm, City of Oceanside Crime and Intelligence Analyst regarding Calls for Service Data (Tattoo Establishments v. Non-Tattoo Establishments) (July 27, 2016) Pages 16-17,

<https://www.ci.oceanside.ca.us/civicax/filebank/blobdload.aspx?blobid=42802>

Shelley, J. M. (2012). Who gets tattoos? Demographic and behavioral correlates of ever being tattooed in a representative sample of men and women. *Annals of Epidemiology*,  
<https://pubmed.ncbi.nlm.nih.gov/22153289/>

Study of Timothy A. Roberts, MD and Sheryl Ryan, MD entitled "Tattooing and High-Risk Behavior in Adolescents (2002), <https://pediatrics.aappublications.org/content/110/6/1058>

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## May 6, 2021, Planning Commission Item 5 Comments

These comments on a Newport Beach Planning Commission [agenda](#) item are submitted by:

Jim Mosher ( [jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) ), 2210 Private Road, Newport Beach 92660 (949-548-6229).

### ***Item No. 5. TATTOO ESTABLISHMENT ZONING ORDINANCE UPDATE (PA2020-030)***

One hopes the proposed code language has been reviewed by someone in the City Attorney's Office, but the staff report does not say so and the attachments are not signed by anyone saying they have reviewed them.

As to **Exhibit "A" of Attachment A** (starting on handwritten page 17):

**Section 1:** The "allowed use" tables being amended are divided into business categories. Exhibit "A" appears to be leaving it to the codifier's imagination as to where the "Tattoo Establishments" line should be placed. I would guess under "Service Uses—General" – but shouldn't that be specified?

#### **Section 2:**

- Under **A.1**, reciting the title of Chapter 20.20 makes it confusingly appear that Tattoo Establishments are allowed in *all* the Commercial Zoning Districts identified in that chapter. Should it perhaps say they are "*authorized within the Commercial Zoning Districts where they are identified as a permitted use in Chapter 20.20*" (without quoting the chapter title)?
- In **A.5**, in one of the three categories the method of measuring the separation distance is objectively specified ("*measured from lot line to lot*" – probably meant to read "*measured from lot line to lot line*"). In the other two, it is not. Shouldn't it be?
- **B.1**, as proposed, seems to be a command that tattoo establishments operate from 10:00 a.m. to 10:00 p.m., even if the applicant asks for lesser hours. Shouldn't the objective standard be "*Operating hours ~~shall be between~~ must not extend outside the hours of 10:00 a.m. ~~and to~~ 10:00 p.m.*"?
- **B.4** was probably intended to read "*The owner or operator shall maintain security cameras ~~of covering~~ all entrances and exits to/from the establishment, the public right-of-way fronting the establishment and the parking facility serving the establishment.*"

As to **Exhibit "A" of Attachment B** (starting on handwritten page 29):

**Section 1:** Why is the opening sentence written differently from the corresponding Section 1 in Attachment A (which seemed more accurate)? In addition, it seems exceedingly strange to place "Tattoo Establishment" in the "Industry, Manufacturing and Processing, and Warehousing Uses" category. It does not seem to be any of those. Shouldn't it be under "Service Uses—General"?

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## Memorandum

**To:** Planning Commission  
**From:** Matt Schneider, Principal Planner  
**Date:** May 6, 2021  
**Re:** Item No. 5 Tattoo Establishment Zoning Update (PA2020-030)

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Attached please find updated excerpts of Exhibit “A” of Resolution No. PC2021-012(Zoning) and Resolution No. PC2021-013(LCP). The edits that have been incorporated into the exhibit are highlighted.

**Attachment:**

Excerpts of Exhibit “A” of Resolution No. PC2021-012(Zoning) and Resolution No. PC2021-013(LCP)



**EXHIBIT “A”**  
**Zoning Code Amendment No. CA2020-002**

**Section 1:** Tables 2-4 and 2-5 (Allowed Uses and Permit Requirements) of Section 20.20.020(C) (Commercial Zoning Districts Land Uses and Permit Requirements) of the NBMC are amended to read as follows:

TABLE 2-4 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Office Zoning Districts Permit Requirements *				
	P	Permitted by Right Conditional Use Permit (Section <a href="#">20.52.020</a> ) MUP Minor Use Permit (Section <a href="#">20.52.020</a> ) LTP Limited Term Permit (Section <a href="#">20.52.040</a> ) — Not allowed *			
Land Use See Part 7 of this title for land use definitions. See Chapter <a href="#">20.12</a> for unlisted uses.	OA	OG	OM	OR	Specific Use Regulations
Service Uses—General					
<a href="#">Tattoo Establishments</a>	=	P	=	P	<a href="#">Section 20.48.230</a>

TABLE 2-5 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Retail Zoning Districts Permit Requirements *					
	P	Permitted by Right CUP Conditional Use Permit (Section <a href="#">20.52.020</a> ) MUP Minor Use Permit (Section <a href="#">20.52.020</a> ) LTP Limited Term Permit (Section <a href="#">20.52.040</a> ) — Not allowed *				
Land Use See Part 7 of this title for land use definitions. See Chapter <a href="#">20.12</a> for unlisted uses.	CC	CG	CM	CN	CV	CV-LV Specific Use Regulations
Service Uses—General						
<a href="#">Tattoo Establishments</a>	=	P	=	=	=	<a href="#">Section 20.48.230</a>

**Section 2:** Section 20.48.230 (Standards for Specific Land Uses – Tattoo Establishments) of the NBMC is added to read as follows:

**A. Development Standards.**

1. Zoning Districts. Tattoo establishments are authorized within the Commercial Zoning Districts identified in Chapter 20.20 (Commercial Zoning Districts (OA, OG, OM, OR, CC, CG, CM, CN, CV, CV-LV)).
2. Site and Floor Plans. The site and floor plans shall incorporate design features to ensure the activities and operation, including

seating and waiting areas, are conducted entirely within the building or structure.

3. Parking. Parking shall comply with Chapter 20.40 (Off-Street Parking). The Personal Services, General parking requirement from Table 3-10 (20.40.40 Off Street Parking Spaces Required) shall apply to all tattoo establishments.
4. Signs. Signs shall comply with Chapter 20.42 (Sign Standards). In addition, a sign shall be visible at all entrances stating, "No tattoo service will be provided for any person under the age of 18."
5. Location Restrictions. Tattoo establishments shall maintain the following separation requirements:
  - i. One thousand (1,000) feet from another tattoo establishment;
  - ii. Five hundred (500) feet from any primary or secondary school or park or playground as measured from lot line to lot line; or
  - iii. Five hundred (500) feet from the boundary of any residential structure or residential use, including residential uses in mixed-use zoning districts.

B. Operating Standards.

1. Hours of Operation. Operating hours must not extend outside the hours of 10:00 a.m. to 10:00 p.m.
2. Maintenance. The owner or operator shall:
  - i. Maintain the exterior of the premises free of litter and graffiti at all times; and
  - ii. Provide for daily removal of trash, litter, debris and graffiti from the premises and abutting sidewalks within twenty (20) feet of the premises.
3. Noise. The owner or operator shall be responsible for the control of noise generated by the tattoo establishment. All noise generated by the use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code.
4. Security. The owner or operator shall maintain security cameras covering all entrances and exits to/from the establishment, the public right-of-way fronting the establishment and the parking facility serving the establishment. The recording shall be retained for no less than thirty (30) days and shall be made available to the Police Department upon request.
5. Consumption. The service or use of alcohol or marijuana shall be prohibited.
6. Screening. All tattoo services shall be screened so as not to be visible to the exterior of the business.

**EXHIBIT “A”**  
**Local Coastal Program Amendment No. LC2020-002**

**Section 1:** Table 21.20-1 in Newport Beach Municipal Code (NBMC) Section 21.20.020(C) (Commercial Coastal Zoning Districts Land Uses) is amended, in part to the “Tattoo Establishments” row as follows:

TABLE 21.20-1 ALLOWED USES	Commercial Coastal Zoning Districts							
					A Allowed — Not Allowed *			
Land Use See Part 7 of this Implementation Plan for land use definitions. See Chapter <a href="#">21.12</a> for unlisted uses.	CC	CG	CM (3)	CN	CV (3)	CV- LV (3)	OG	Specific Use Regulations
Service Uses—General								
<u>Tattoo Establishment</u>	=	A	=	=	=	=	A	

To the Newport Beach Planning Commission,

My name John Gargan as an advocate and professional artist I am speaking for our local tattoo community. I was born and raised in Newport Beach and have a large appreciation for this city. Today I would like to address a few topics in regards to the current Tattoo Establishment Ordinance Update.

As a local artist I have always had a goal to open a shop of my own within the allowed areas of the city. After following the city's proposed updates I believe that the planning commission is fully segregating tattooing and pushing it away from the most viable locations. As I understand all businesses must be regulated within their rights I have found some of the material to be offensive. Tattooing is an ancient art form that has become a largely growing professional industry. With so much dedication to this craft I must express the fact that we deserve equal rights to any other business.

The Federal court has found Tattooing to be a purely expressive activity entitled to full First Amendment protection. I have also followed similar cases of discrimination from surrounding cities. The standards that are being used to define the secondary effects of tattoo shops are not imposed on other businesses. The supporting facts also seem to be outdated. Tattooing does not pose any threat to the community, an example of this can be seen through the low volume of safety calls to tattoo establishments. I also find it completely offensive that the city of Newport Beach has openly stated a link between tattooing and high risk behaviors such as gang affiliation, substance abuse and violence. The profession of tattooing has no direct link to any of these activities. As a professional tattoo artist, father and active member of our community I do not believe these descriptions to be true. The city of Newport Beach should greatly consider how these actions can contradict the protection of our civil rights. As the tattoo industry will continue to grow, the cooperation of the cities remains important. We truly hope you will consider these facts before putting the updates into place.

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# Zoning and Local Coastal Program Amendment (PA2020-030) Tattoo Establishments



**Planning  
Commission**

**May 6, 2021**

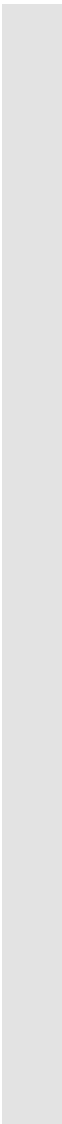
## Background

- Over the past decade there have been several legal decisions related to the zoning of tattoo establishments
  - Anderson v. City of Hermosa Beach
  - Real v. City of Long Beach
- Tattooing is considered protected speech under the First Amendment of the United States Constitution
- Reasonable time, place and manner restrictions

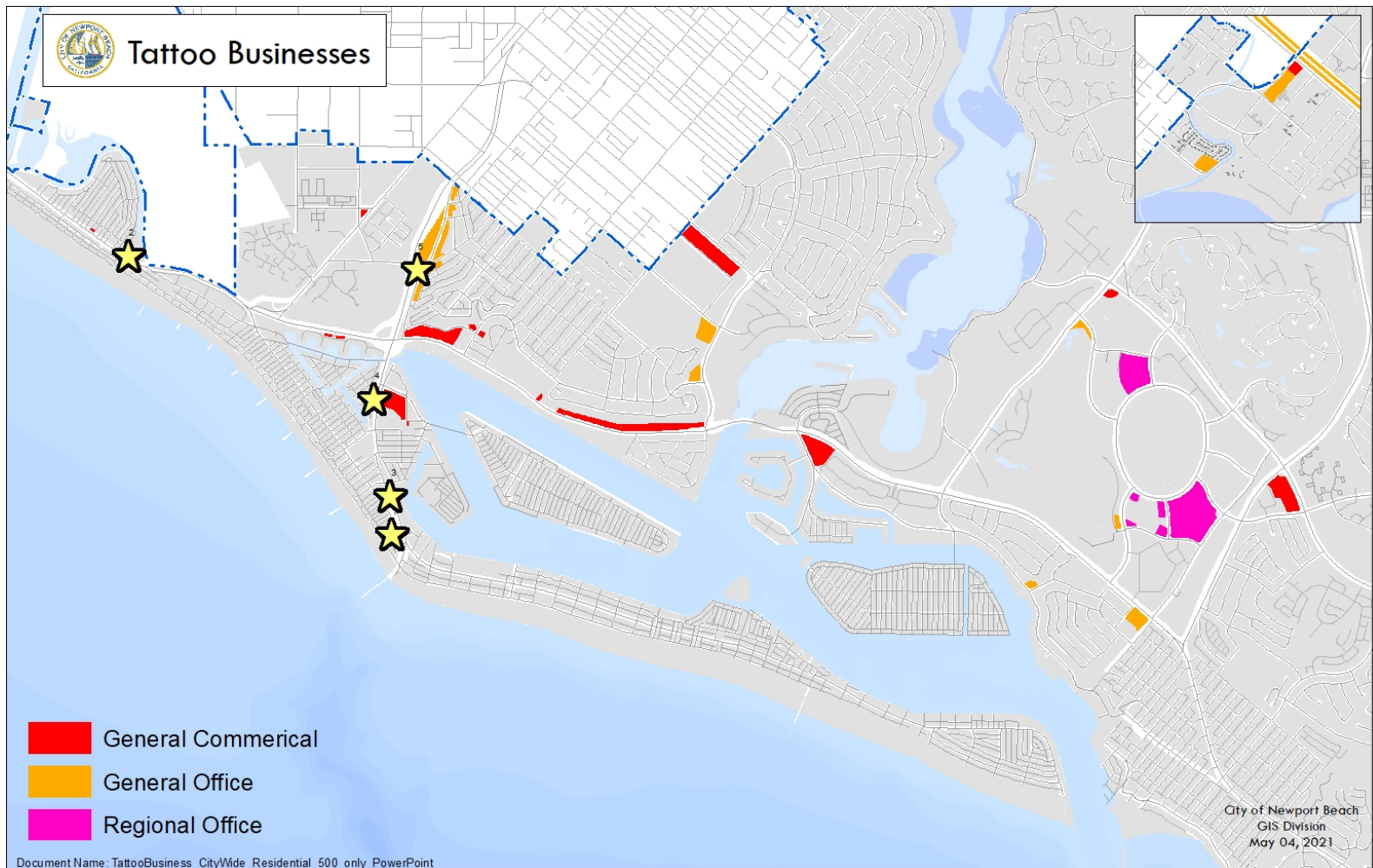
## Background

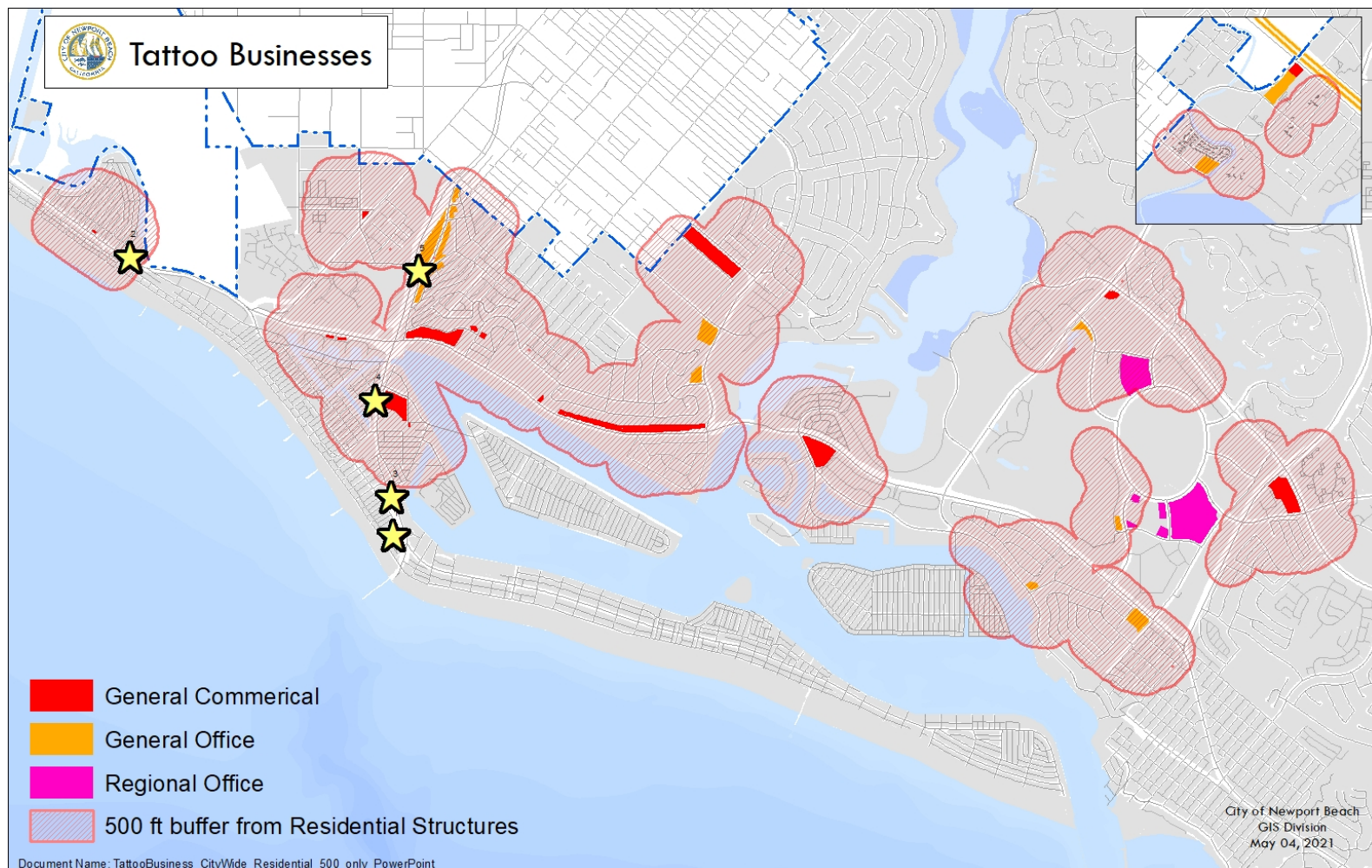
- Current regulations define tattoo services as a Restricted Personnel Services Use
- Allowed in all office zones, commercial zones(except CM zone) and mixed-use zones subject to a Minor Use Permit
- April 14, 2020 - Zoning amendment initiated by City Council
  - Ministerial process
  - Objective standards



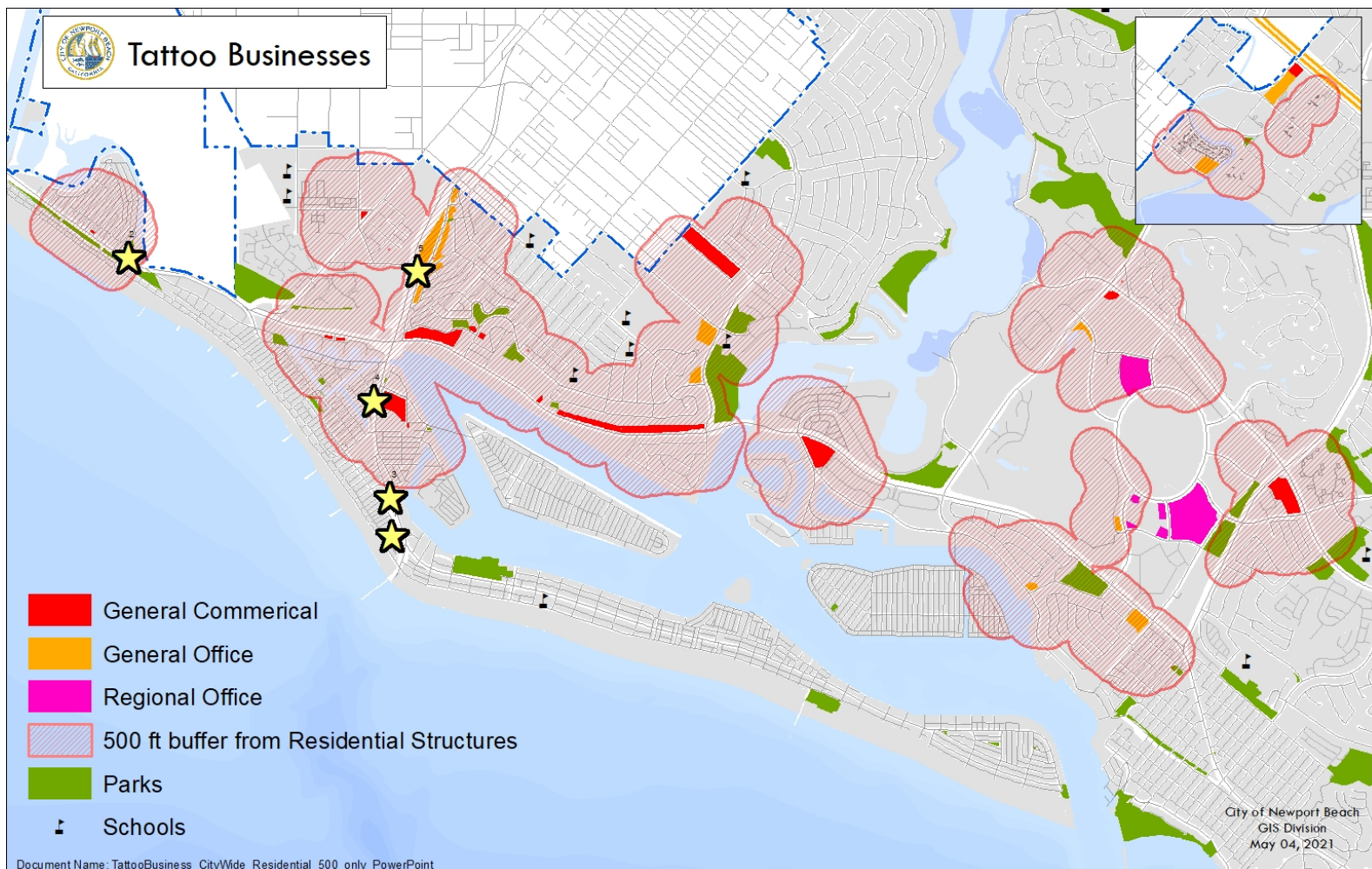


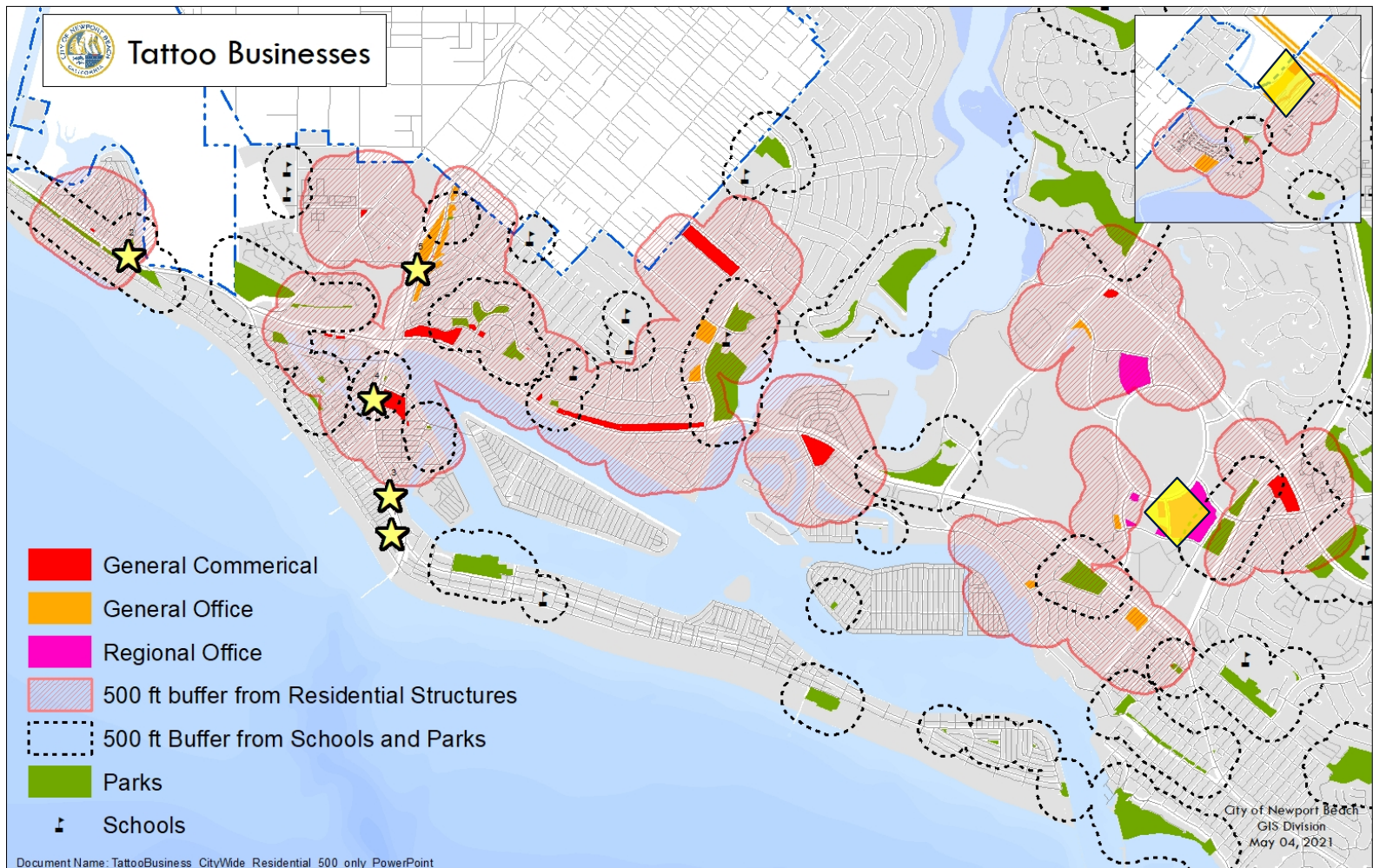
- One thousand (1,000) feet from another tattoo establishment;
  - Five hundred (500) feet from any primary or secondary school or park or playground as measured from lot line to lot line; or
  - Five hundred (500) feet from the boundary of any residential structure or residential use, including residential uses in mixed-use zoning districts.
- 
- Hours 10 a.m. - 10 p.m.
  - Security camera system required
  - Screen from public view, no outdoor seating/waiting areas
  - Alcohol and marijuana use prohibited
  - Noise, signs and parking
  - All applicable State, County and City Health regulations





















## Existing Tattoo Establishments

- Notice was provided to the property owner and business operators of the City's five existing Tattoo Establishments
- Existing tattoo establishments would become legal non-conforming uses as a result of adopting the proposed code amendment
  - May continue to operate
  - Require discretionary approval to expand or intensify their use

## Recommended Actions

- Find the project exempt from CEQA (Section 15061(b)(3))
- Adopt Resolution No. PC2021-012, recommending the City Council adopt Zoning Code Amendment No. CA2020-002
- Adopt Resolution No. PC2021-013, recommending the City Council adopt Local Coastal Program Amendment No. LC2020-002 and authorize staff to submit the amendment to the California Coastal Commission

**For more  
information  
Contact**

Matt Schneider

949-644-3219

[mschneider@newportbeachca.gov](mailto:mschneider@newportbeachca.gov)

[www.newportbeachca.gov](http://www.newportbeachca.gov)

# Questions?

## **Attachment No. PC 4**

May 6, 2021 Planning Commission Minutes

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## 3. Adopt Resolution No. PC2021-010 approving Use Permit No. UP2020-191.

Assistant Planner Patrick Achis reported the existing suite is located within the Newport North Shopping Center. The former tenant was a retail use. Uses to the north and south of the site are multifamily residences. The Bluffs Shopping Center is located east of the site, and industrial uses and a U.S. Post Office are located west of the site. The project is consistent with the General Plan and zoning designations, which are commercial in nature. The applicant proposes a small-scale, full-service animal clinic offering wellness exams, preventative care, vaccinations, surgeries, and other services. Most services will be offered by appointment. Only animals in critical condition will remain onsite overnight. The applicant does not propose to board animals. To provide future flexibility, staff recommends hours of operation of 8 a.m. to 6 p.m. daily. The suite measures approximately 3,400 square feet. Tenant improvements consist of repartitioning walls and installing equipment. The rear of the site contains a walk area. Only clinic staff will walk animals but not on residential properties. Staff will promptly pick up and dispose of animal waste. A 30-foot drive aisle, landscaping, and an 8-foot-tall wall separate the animal clinic from residences. The shopping center provides 269 onsite parking spaces when 265 spaces are required. Typically, an animal clinic requires one parking space per 400 square feet. The project will be a more intensive use, and a requirement of one space per 250 square feet is more appropriate. The higher requirement results in no change to parking demand from the existing retail use. The project complies with additional requirements for animal service. Staff recommends approval of the project.

Chair Weigand felt a closing time of 6 p.m. was early and proposed a closing time of 8 p.m. to provide some flexibility for the applicant.

Commissioners reported no ex parte communications.

Chair Weigand opened the public hearing.

Rajat Garhwal, business owner, concurred with the proposal for extending the closing time to 8 p.m. even though he plans to limit hours of operation initially.

In response to Commissioner Koetting's inquiry, Mr. Garhwal advised that animals in critical condition will be either transferred to an emergency clinic or monitored by staff.

Mr. Garhwal agreed to the proposed conditions of approval.

Chair Weigand closed the public hearing.

**Motion** made by Secretary Kleiman and seconded by Commissioner Rosene to approve the staff recommendation with the amendment to the hours of operation.

AYES: Ellmore, Klaustermeier, Koetting, Rosene, Kleiman, Lowrey, Weigand

NOES:

RECUSED:

ABSENT:

**ITEM NO. 5 TATTOO ESTABLISHMENT ZONING ORDINANCE UPDATE (PA2020-030)**  
**Site Location: Citywide**

**Summary:**

Amendments to Sections 20.20.020, 20.70.020 and the addition of Section 20.48.230 of Title 20 (Planning and Zoning) and amendments to Sections 21.20.020 and 21.70.020 of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) to define tattoo establishments (a previously undefined use) as a land use category and establish objective standards to regulate its use

**Recommended Action:**

1. Conduct a public hearing;
2. Find this project categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3), the general rule that CEQA applies only to projects, which have

the potential for causing a significant effect on the environment and pursuant to Section 15265(a)(1), which exempts local governments from the requirements of CEQA in connection with the adoption of a Local Coastal Program;

3. Adopt Resolution No. PC2021-012 recommending the City Council approve Zoning Code Amendment No. CA2020-002 updating development standards related to tattoo establishments; and
4. Adopt Resolution No. PC2021-013 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2020-002 to the California Coastal Commission.

Principal Planner Matt Schneider reported staff analyzed legal decisions related to the zoning of tattoo establishments. Tattoos are considered protected speech under the First Amendment. A jurisdiction is allowed to implement reasonable time, place, and manner restrictions for tattoo establishments. Current regulations define tattoo services as a restricted personal services use. Tattoo establishments are allowed in all office zones, commercial zones, with the exception of Commercial Marine (CM) zones, and mixed-use zones subject to approval of a minor use permit. On April 14, 2020, the Council directed staff to initiate a zoning amendment to create a ministerial process and establish objective standards. Other jurisdictions' regulations for tattoo establishments, Police Department calls for service, and case law informed the proposed amendments. Staff proposes to define a tattoo establishment as its own use type, permit a tattoo establishment in Commercial General (CG), Office General (OG), and Office Regional (OR) zoning districts, allow tattoo establishments as a ministerial use subject to standards for specific land uses, and require a 1,000-foot buffer between other tattoo establishments, a 500-foot buffer between schools, parks, and playgrounds, and a 500-foot buffer from residential structures or uses including residential uses in mixed-use zoning districts. Staff proposes operating hours of 10 a.m. to 10 p.m.; a requirement for a security camera system; screening tattoo artists while they work; prohibition of outdoor seating/waiting areas and alcohol and marijuana use; noise, signs, and parking be subject to NBMC standards; and a requirement for tattoo establishments to comply with all applicable State, County, and City health regulations. Staff sent notice of the public hearing to the property owners and business operators for the five existing tattoo establishments. If the proposed amendments are adopted, the five existing tattoo establishments will become legal non-conforming uses. Staff recommends adoption of the two proposed resolutions as amended by a memorandum distributed earlier in the day.

In reply to Commissioner Klaustermeier's inquiry, Principal Planner Schneider noted owners of the existing tattoo establishments may sell their businesses, and the establishments may continue to operate under a new owner because entitlements run with the land. If the businesses are vacant for 180 days, the owners lose their vested right in the business.

In response to Commissioner Koetting's questions, Principal Planner Schneider indicated the expansion of a non-conforming use requires a conditional use permit. The existing tattoo establishments would have to amend their conditional use permits to expand the business. Based on ordinances implemented in other jurisdictions after the legal decisions, the buffer distances seem to be best practices. The City has to provide viable sites for tattoo establishments in order to preserve the First Amendment right. The buffer distances may be increased or decreased. An increase or decrease will affect the areas of the City where tattoo establishments may locate. Assistant City Attorney Yolanda Summerhill advised that a 1,000-foot buffer is probably sufficient to address the secondary impacts of tattoo establishments.

In answer to Secretary Kleiman's queries, Principal Planner Schneider indicated the Planning Commission has the discretion to call for a review of businesses with conditional use permits. Staff relies on Code Enforcement officers and the Police Department to refer businesses for review. Staff has not received any referrals. Community Development Director Seimone Jurjis added that staff will investigate the calls for service for the establishment located at 2611 Newport Boulevard and, if warranted, place an item on the Planning Commission's agenda. Principal Planner Schneider reported CG, OG, and OR zones allow medical and dental uses by right. The Office Medical zone is located primarily around Hoag Hospital, but the buffer from residential uses would preclude tattoo establishments in that zone. A combination of zones could reduce the areas in which tattoo establishments may locate, which raises a legal question of whether the City is providing sufficient viable sites. Staff proposed the hours of operation based on hours of operation allowed for the existing tattoo establishments and in other jurisdictions. Assistant City Attorney Summerhill indicated staff will review the hours that calls for service were made.

Secretary Kleiman did not believe the proposed buffer between tattoo establishments and schools is sufficient. Restricting tattoo establishments to daytime hours will likely reduce their negative secondary effects.

Vice Chair Lowrey related his review of ordinances and concerns in other jurisdictions. Riverside prohibited tattoo establishments within 500 feet of any business that sells alcohol. Treating future tattoo establishments as medical offices may balance Constitutional issues with concerns. Taking a couple of weeks to consider the methods that other jurisdictions utilized to address legal issues is a good idea.

Assistant City Attorney Summerhill noted the Private Institutional zone, where many medical uses are located, has the same classification as private schools. Staff may have to create a new subcategory for tattoo establishments. Staff's proposed buffers are more restrictive than those implemented in Oceanside.

Secretary Kleiman clarified that tattoo establishments do not have to be associated with medical or private institution uses, but their hours of operation should be similar to those of a medical use.

Assistant City Attorney Summerhill interpreted Secretary Kleiman's comments as staff is to analyze medical zones and properties zoned for medical-type uses. She requested Commissioners review operational standards and ensure the standards are consistent with Commissioners' wishes.

Secretary Kleiman wanted to hear from the Police Department as to their experiences with existing tattoo establishments so that the Commission can address concerns.

In answer to Commissioner Rosene's query, Deputy Community Development Director Campbell indicated staff provided a map of potential locations for tattoo establishments based on proposed standards. Staff can explore buffers for daycares, preschools, and alcohol uses. The area for tattoo establishments gets smaller as more separation standards are imposed. Most medical uses have daytime office hours, not because of regulations but because of owners' preferences. Perhaps staff can create business-friendly daytime hours of operation for tattoo establishments. The City needs to avoid eliminating all areas where tattoo establishments can locate.

Chair Weigand stated he originally thought 10 p.m. was too early for tattoo establishments to close. After some internet research, he learned that 10 p.m. is an appropriate closing time. People want to visit tattoo establishments that are not located in medical areas. Therefore, requiring tattoo establishments to locate in medical areas is too restrictive. In response to his questions, Principal Planner Schneider related that more than one tattoo establishment could conceivably locate in the Irvine Avenue area, but that scenario is not likely. Zoning is fluid and can become more or less restrictive based on residential zoning changes. As proposed, tattoo establishments may locate in only one or two sites. Chair Weigand concurred with obtaining clarification of the calls for service and proposed restricting tattoo establishments to operating by appointment only. It is important not to restrict the sites so severely that a lawsuit arises as a result. Perhaps somebody from the industry could present the industry's viewpoint at the next Commission discussion.

In reply to Vice Chair Lowrey's inquiry, Assistant City Attorney Summerhill reported the Planning Commission cannot call for review a permit approved ministerially.

In answer to Chair Weigand's query, Community Development Director Jurjis indicated the Commission can call for review the existing tattoo establishments.

Chair Weigand opened and closed the public hearing with no public comment.

In response to Commissioner Rosene's question, Principal Planner Schneider explained that the Zoning Administrator's decision is discretionary and may be appealed to the Planning Commission. The proposed code would establish a ministerial permit process. If an application for a new tattoo establishment meets objective standards, the permit would be approved by staff and issued. Ministerial decisions are not appealable to the Planning Commission.

**Motion** made by Commissioner Ellmore and seconded by Secretary Kleiman to continue the item to a date uncertain.

AYES: Ellmore, Klaustermeier, Koetting, Rosene, Kleiman, Lowery, Weigand



NOES:  
RECUSED:  
ABSENT:

**X. DISCUSSION ITEMS**

**ITEM NO. 6     DIRECTOR'S INTERPRETATION FOR ACCESSORY RESIDENTIAL USES ASSOCIATED WITH HOTELS (PA2021-096)**  
**Site Location: Citywide**

**Summary:**

The Community Development Director has issued a determination that residential uses are allowable as an accessory use to resort hotels under certain parameters. This determination is consistent with City Council Policy K-4 (Reducing the Barriers to the Creation of Housing).

**Recommended Action:** Receive and file.

Community Development Director Jurjis reported the item is presented to the Planning Commission in order to provide transparency for the Planning Commission and community. Local travel is returning, but international and group travel will return over many years. Business travel is questionable due to the use of virtual meetings. To support the hotel industry, the Council adopted Policy K-4 that covers accessory dwelling units (ADU), mixed-use, and resort hotels. The Director's Determination looks at the conversion of hotel units, a maximum of 30 percent on a one-to-one basis to residential units. The Determination does not trigger Section 423 but recognizes a land use. Residential can be an accessory use to a resort hotel. Limiting conversion to a maximum of 30 percent of units preserves the primary use as a hotel.

In answer to Commissioner Rosene's inquiries, Community Development Director Jurjis advised that a hotel can increase or decrease a room's size. The Determination does not focus on floor area. Trip count is a sensitive issue, and a one-to-one conversion does not increase the trip count. The conversion is tied to room count. The Determination also applies to the demolition and rebuilding of hotel units.

Jim Mosher did not understand how the Director made the Determination of what has or does not have resort-like qualities. One-third of a hotel could be demolished and replaced with a completely residential building. The Determination seems to be inconsistent with Greenlight, the General Plan, and history. Council Policy K-4 is inconsistent with Policy A-18.

In reply to Commissioner Koetting's query, Community Development Director Jurjis indicated the units may be sold or leased but not time shared.

In response to Commissioner Ellmore's questions, Community Development Director Jurjis indicated the Director's Determination is consistent with Council policy. Section 423 specifically relates to General Plan amendments.

Chair Weigand stated the Director's Determination helps the hotel industry, provides housing, and creates funding that can be used for homeless programs, transitional housing, or affordable housing.

**XI. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 7     MOTION FOR RECONSIDERATION**

None

**ITEM NO. 8     REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.**

Deputy Community Development Director Campbell reported the City Council reviewed the draft Housing Element in a study session and directed staff to increase the number of ADUs and adjust the density and

## **Attachment No. PC 5**

June 9, 2021 Memorandum from Police Department

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**NEWPORT BEACH POLICE DEPARTMENT  
DETECTIVE DIVISION**

**MEMORANDUM**

**TO:** Matthew Schneider, Principal Planner  
**FROM:** Wendy Joe, Police Civilian Investigator  
**DATE:** June 9, 2021  
**SUBJECT:** Tattoo Establishment Dispatch Events

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At your request, the Police Department has conducted a detailed review of dispatch events related to the tattoo establishments within the City of Newport Beach. The below locations were reviewed:

Red Buddha Tattoo: 3413 Newport Blvd.  
Newport Tattoo: 2611 Newport Blvd.  
Stay True Tattoo: 365 Old Newport.  
Balboa Tattoo: 2233 W. Balboa Blvd. Ste. 106  
English Ink Tattoo Company 6000 Coast Hwy W Ste. E

Dispatch events and police calls for service are electronically recorded by geographic location. If a call for police services is made from a residence or business, the police department's computer aided dispatch database will geographically record the information by postal address to facilitate a swift police response. For the same reason, a traffic collision or vehicle stop that occurs in front of a business will be geographically attributed to the business' postal address as well. Both calls are recorded as a dispatch event at that location, but both are not directly related to the location. In some situations, an increased amount of dispatch events in a neighborhood can either be attributed to one problem location, or can be the result of several contributing factors and not the direct result of a specific problem location.

After reviewing dispatch events related to tattoo establishments within the City of Newport Beach, the police department concludes that the majority of events were either unrelated to the tattoo businesses or were unable to be directly attributed to the businesses by the notes or disposition of the call. Additionally, the Police Department found there was no notable correlation of day or time of dispatch events, indicating no problem location or specific burden on police resources.

If you have any questions as to the content of this memorandum, please contact Investigator Wendy Joe at (949) 644-3705 or [wjoe@nbpd.org](mailto:wjoe@nbpd.org).

A handwritten signature in blue ink, appearing to read "Wendy Joe", is written over a circular blue ink stamp.

Wendy Joe  
Police Civilian Investigator, Special Investigations Unit

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## **Attachment No. PC 6**

Map of Existing and Proposed Tattoo Establishment Locations

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## July 22, 2021, Planning Commission Item 3 Comments

These comments on a Newport Beach Planning Commission [agenda](#) item are submitted by:

Jim Mosher ( [jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) ), 2210 Private Road, Newport Beach 92660 (949-548-6229).

### ***Item No. 3. TATTOO ESTABLISHMENT ZONING ORDINANCE UPDATE (PA2020-003)***

I am no fan of tattoos, but there is much I don't understand about this.

1. **Calls for Service:** The staff report (handwritten page 3) cites Attachment No. PC 4 from the police department to *"It did not find any troublesome establishments or specific burden on police resources."* Yet, Finding 4 on handwritten page 11 of the proposed resolution describes in detail the anomalously high number of tattoo-establishment-related calls for police service that require "adequate separation." How can these be reconciled?
2. **Smoking:** I am also not a fan of smoking, but can a restriction to tattoo establishments (and not to other businesses that might have an attractive allure to minors) be justified?
3. **Buffers:** Handwritten page 4 says *"staff does not recommend increasing the separation requirements."* It would have seemed more helpful to tell the Commission (and public) how many establishments would be theoretically possible with larger buffers. But am I understanding

But am I understanding Attachment No. PC 6 (Map of Existing and Proposed Tattoo Establishment Locations), that even with the staff-proposed buffers, all existing tattoo establishments will become non-conforming, and there will be only two small allowed areas, one in Newport Center (soon to be reduced in size or eliminated entirely if the "car wash" condo proposal is approved) and one along Irvine Avenue in East Santa Ana Heights, near the airport? And, with the 1,000 foot rule, it would appear those could accommodate at most one each for a total of two?

4. **Medical Zoning:** The staff report says *"The City's existing zoning structure does not include a distinct zone for medical uses."* But doesn't NBMC [Subsection 20.20.010.C](#) describe the "OM (Office—Medical) Zoning District" – where, according to the proposal on handwritten page 14, tattoo establishments will specifically *not* be allowed?<sup>1</sup>
5. I continue to think the proposed statement in the code (at the bottom of handwritten page 14) that *"Tattoo establishments are authorized within the Commercial Zoning Districts identified in Chapter 20.20 (Commercial Zoning Districts (OA, OG, OM, OR, CC, CG, CM, CN, CV, CV-LV))"* is extremely confusing. It appears to state clearly they are authorized in all ten districts listed when, in fact, they are allowed in only three of them.

As best I can tell, none of the other sections in [Chapter 20.48](#) have this problem. Why should this one?

<sup>1</sup> In this connection, it strikes me as slightly ironic that tattoo establishments are also proposed to be banned in the "CM (Commercial Recreational and Marine) Zoning District" since I thought tattoos were once associated primarily with sailors. Likewise, are the tattoo establishments intended primarily to serve Newport Beach residents or visitors from other cities? If the latter, banning from visitor-serving districts might also be difficult to justify.

# Zoning and Local Coastal Program Amendment (PA2020-030) Tattoo Establishments



**Planning  
Commission**

**July 22, 2021**

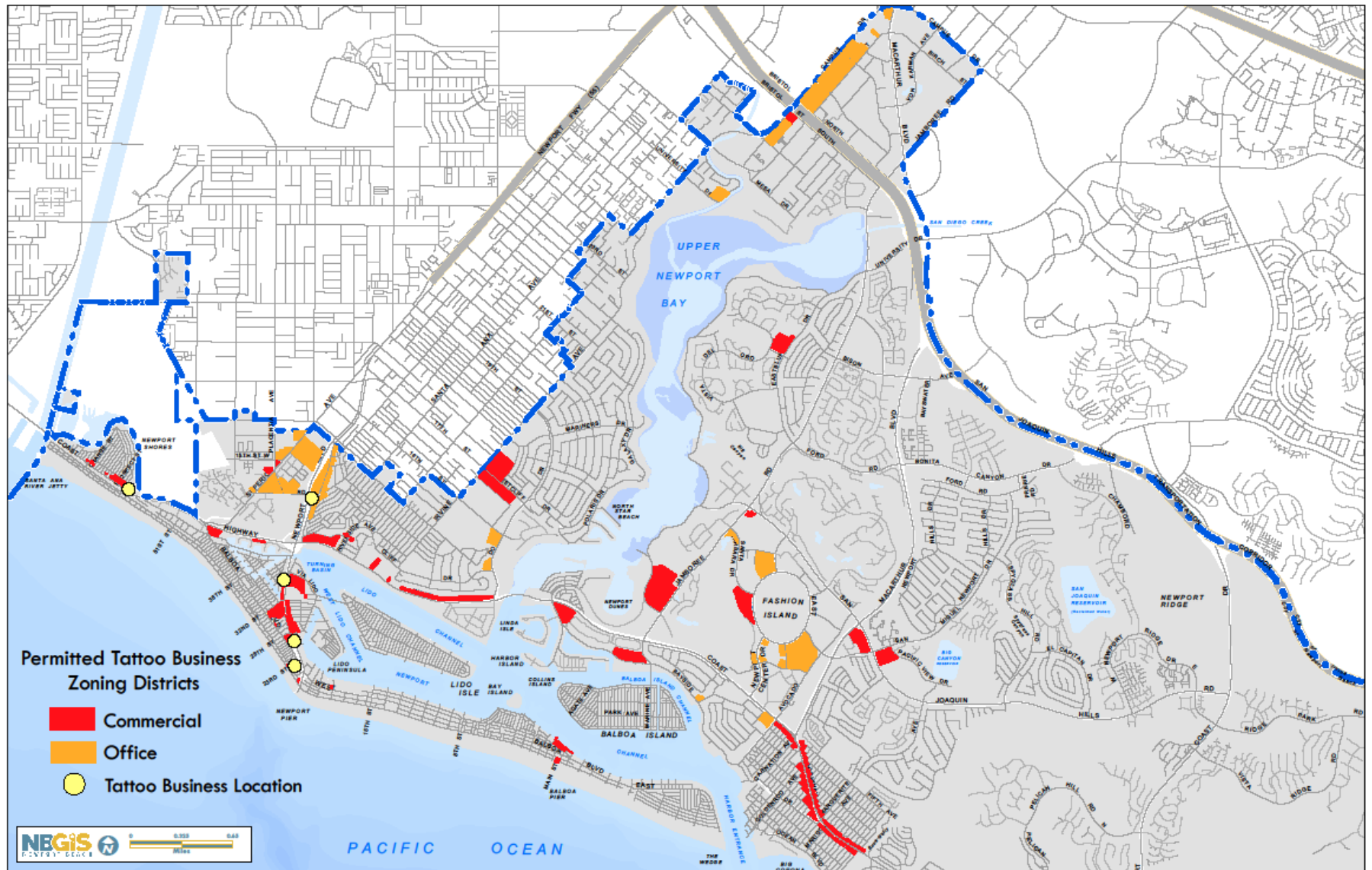
## Background

- Project was originally presented to the Planning Commission on May 6, 2021
- Over the past decade there have been several legal decisions related to the zoning of tattoo establishments
  - Anderson v. City of Hermosa Beach
  - Real v. City of Long Beach
- Tattooing is considered protected speech under the First Amendment of the United States Constitution
- Reasonable time, place and manner restrictions

## Follow-up Topics

- Calls for Service
  - June 9, 2021, Police Dept. Memo
- Smoking
  - Prohibited within 20 feet of the establishment
- Annual Review
- Buffers
- Medical Zoning
  - Office General, Office Regional and Commercial General Zones

- One thousand (1,000) feet from another tattoo establishment;
  - Five hundred (500) feet from any primary or secondary school or park or playground as measured from lot line to lot line; or
  - Five hundred (500) feet from the boundary of any residential structure or residential use, including residential uses in mixed-use zoning districts.
- 
- Hours 10 a.m. - 10 p.m. **Appointment Only**
  - Security camera system required
  - Screen from public view, no outdoor seating/waiting areas
  - Alcohol and marijuana use prohibited
  - **No Smoking within 20 feet of premises**
  - Noise, signs and parking
  - All applicable State, County and City Health regulations

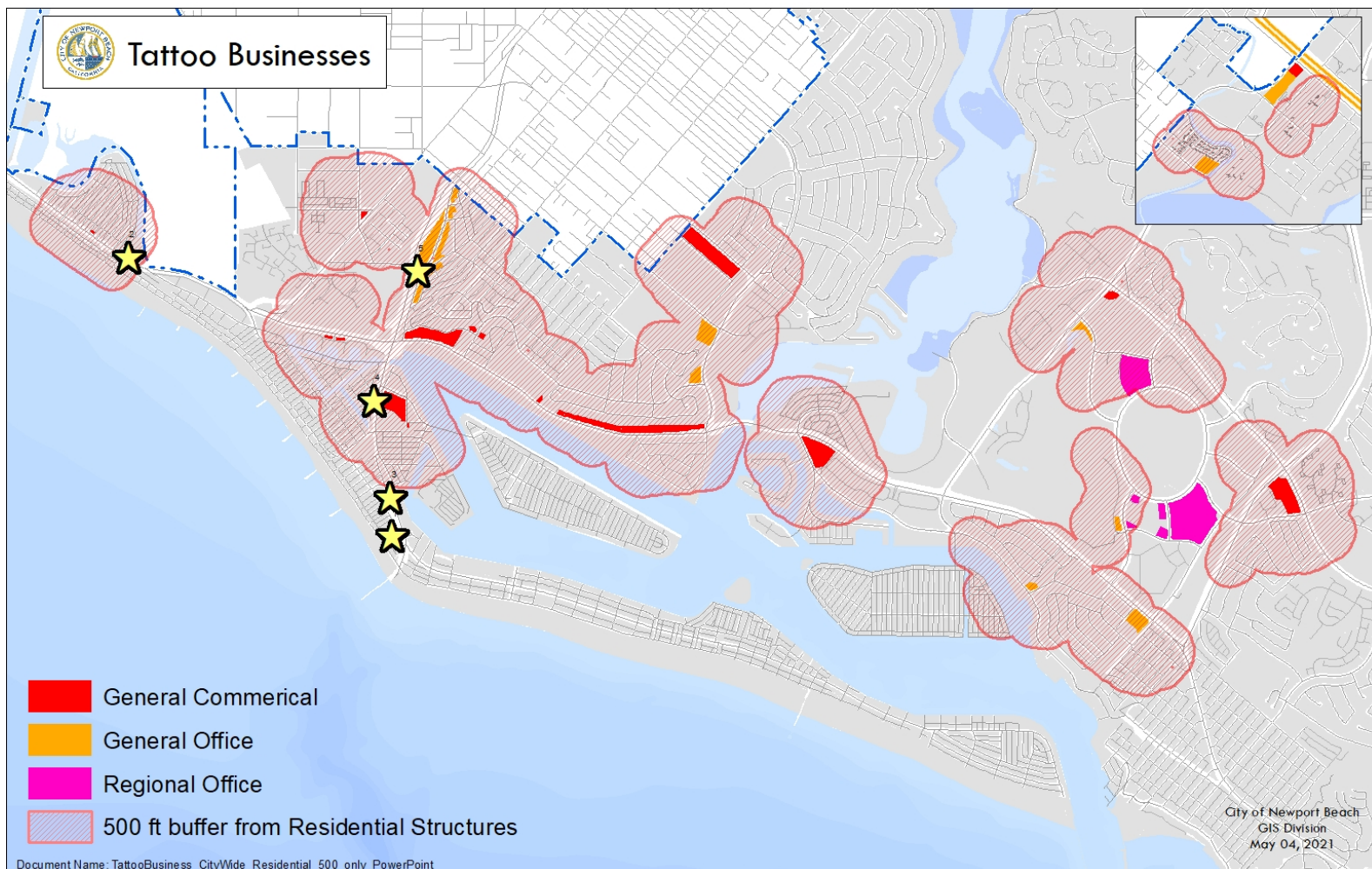


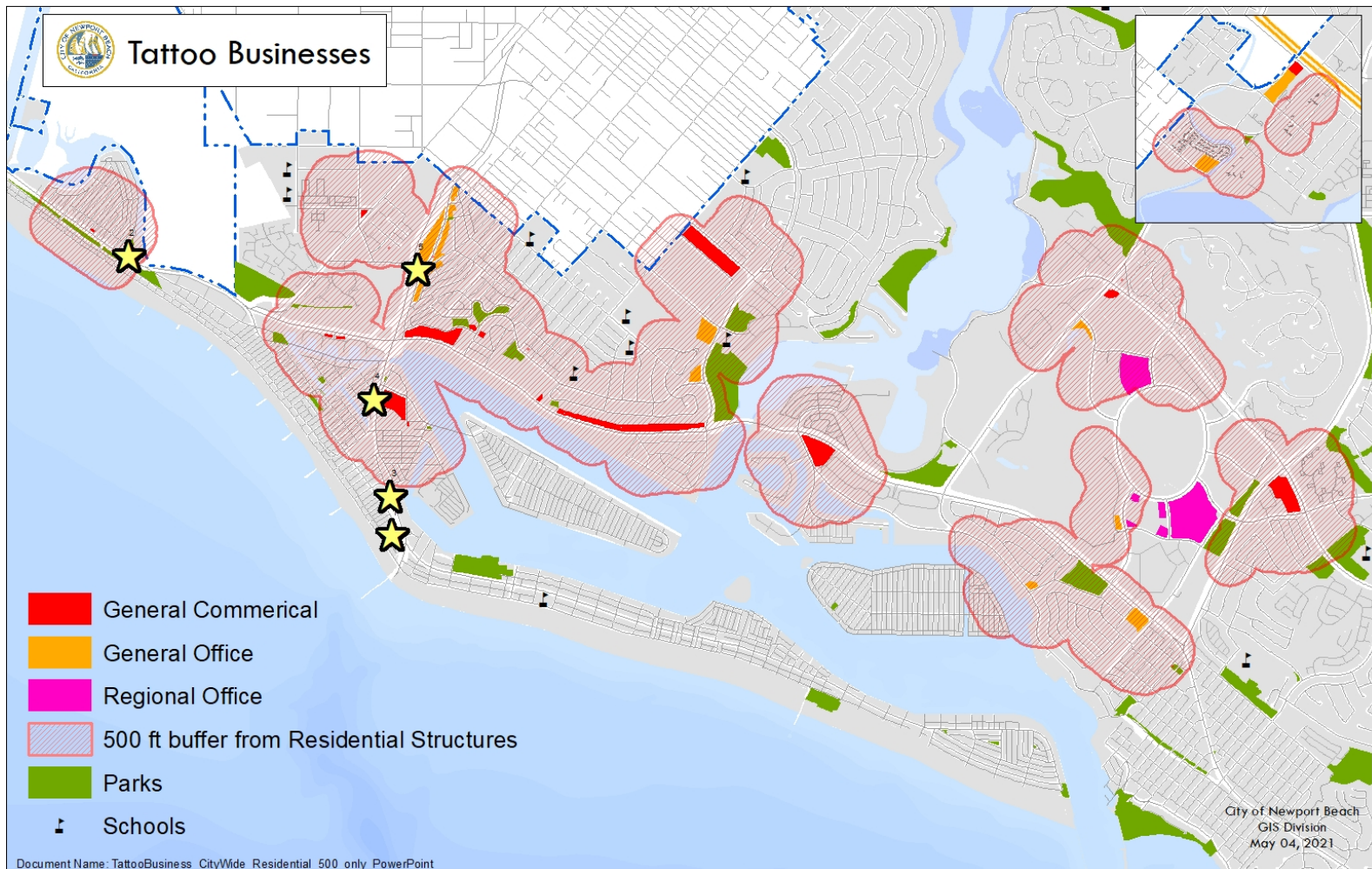




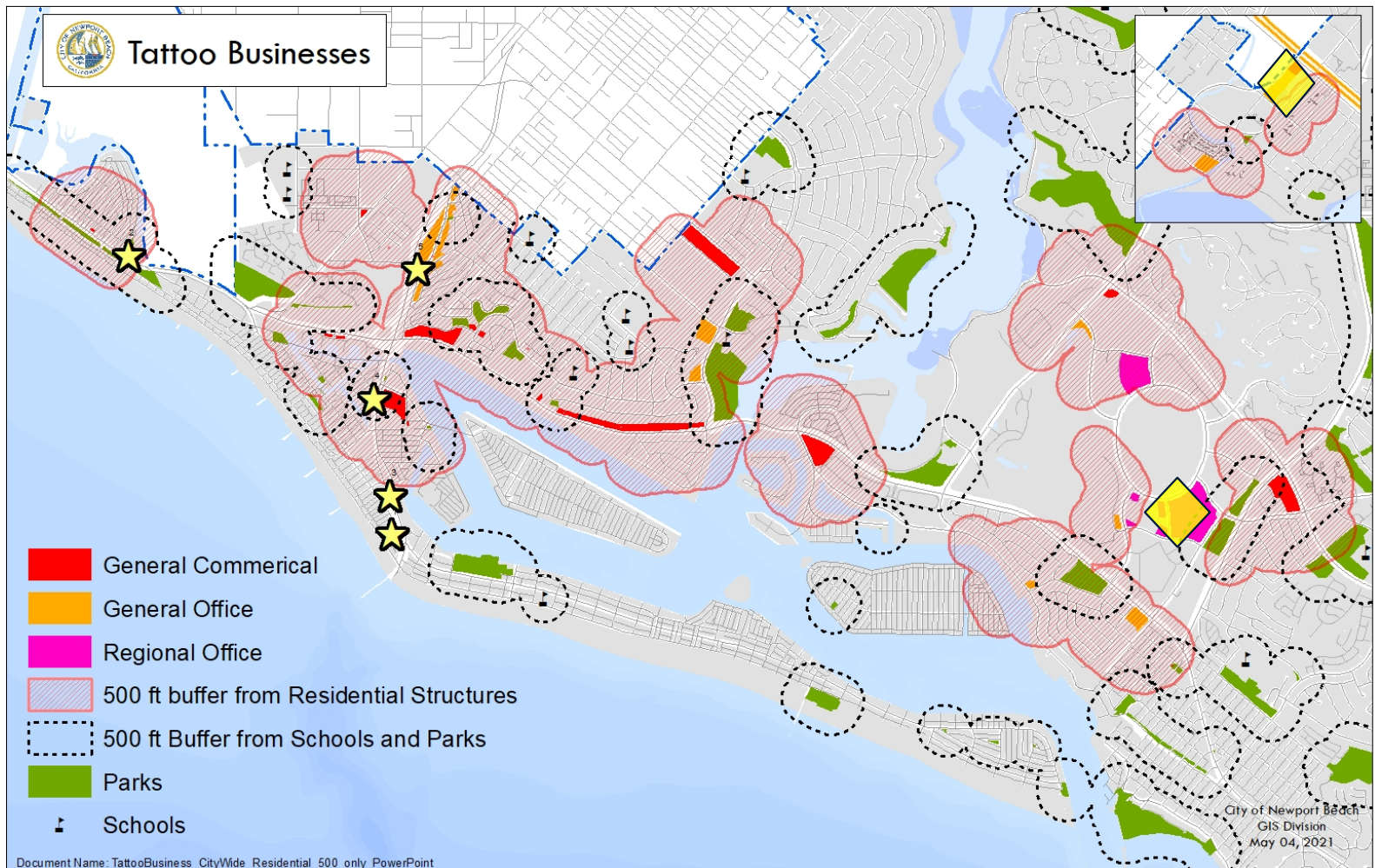




















## Existing Tattoo Establishments

- Notice was provided to the property owner and business operators of the City's five existing Tattoo Establishments
- Existing tattoo establishments would become legal non-conforming uses as a result of adopting the proposed code amendment
  - May continue to operate
  - Require discretionary approval to expand or intensify their use

## Recommended Actions

- Find the project exempt from CEQA (Section 15061(b)(3))
- Adopt Resolution No. PC2021-018, recommending the City Council adopt Zoning Code Amendment No. CA2020-002
- Adopt Resolution No. PC2021-019, recommending the City Council adopt Local Coastal Program Amendment No. LC2020-002 and authorize staff to submit the amendment to the California Coastal Commission

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Contact**

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949-644-3219

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# Questions?