

# **Attachment D**

May 6, 2021 Planning Commission Minutes

## 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 Juris 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