

# **Attachment F**

Planning Commission Resolution No. PC2021-18

## 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.
- 3.

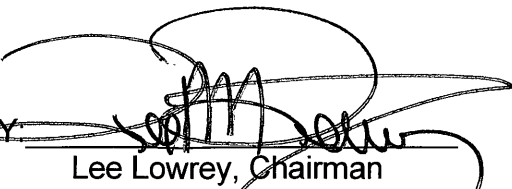
#### **PASSED, APPROVED, AND ADOPTED THIS 22nd DAY OF JULY, 2021.**

AYES: Ellmore, Koetting, Lowrey, Rosene, and Weigand

NOES:

ABSTAIN:

ABSENT: Klaustermeier and Kleiman

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.