

Attachment G

Planning Commission Resolution No. PC2021-19

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, (9th 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, (9th 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: Ellmore, Koetting, Lowrey, Rosene, and Weigand

NOES:

ABSTAIN:

ABSENT: Klaustermeier and Kleiman

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="display: flex; justify-content: space-between; align-items: center;"> A Allowed </div> <div style="display: flex; justify-content: space-between; align-items: center;"> — 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 21.12 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.