

Attachment A

Ordinance No. 2021- 27

ORDINANCE NO. 2021-27

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING ZONING CODE AMENDMENT NO. CA2020-002 TO AMEND TITLE 20 (PLANNING AND ZONING) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO TATTOO ESTABLISHMENT DEVELOPMENT STANDARDS (PA2020-030)

WHEREAS, Section 200 of the City of Newport Beach (“City”) Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, 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 zone), and mixed-use zones subject to approval of a minor use permit;

WHEREAS, two 9th Circuit opinions struck the City of Hermosa Beach’s ban on tattoo establishments based upon the risk of infection¹ and the City of Long Beach’s conditional use permit requirement for the establishment of a tattoo parlor² as violating the First Amendment of the U.S. Constitution;

WHEREAS, the 9th Circuit 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;

WHEREAS, on April 14, 2020, the City Council adopted Resolution No. 2020-35 to initiate a code amendment related to tattoo services (“ZCA No. CA2020-002”);

¹ Anderson v. City of Hermosa Beach, (2010) 621 F.3d 1051.

² Real v. City of Long Beach, (2017) 852 F.3d 929.

WHEREAS, 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;

WHEREAS, 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 Planning Commission's questions;

WHEREAS, 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 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. At the conclusion of the public hearing and after deliberations, the Planning Commission adopted Resolution Nos. PC2021-018 and PC2021-019; recommending the City Council adopt ZCA No. CA-2020-002; and

WHEREAS, a public hearing was held by the City Council on November 30, 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 Ralph M. Brown Act and Chapter 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The City Council does hereby approve ZCA No. CA2020-02 to amend Title 20 (Planning and Zoning) of the NBMC updating development standards for tattoo establishments, attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the introduction and adoption of this ordinance is categorically exempt from the California Environmental Quality Act ("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 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 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 6: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 30th day of November, 2021, and adopted on the 14th day of December, 2021, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

BRAD AVERY, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachment(s): Exhibit A – Zoning Code Amendment No. CA2020-02

EXHIBIT A
Zoning Code Amendment No. CA2020-02

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 add “Tattoo Establishments” under Service Uses - General with all other portions of Tables 2-4 and 2-5 remaining unchanged:

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

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

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 set forth in 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 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; and
 - iii. Five hundred (500) feet from the boundary of any residential structure or residential use, including residential uses in mixed-use zoning districts excluding legal non-conforming residential properties within the Santa Ana Heights Specific Plan

B. Operating Standards.

1. Hours of Operation. Operating hours shall be limited to 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: The definition of "Personal Services (Land Use)" in 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. Body piercing studios.

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

Section 4: The definition of "Tattoo Establishment (land use)" is added to Section 20.70.020 (Definition of Specialized Terms) to read as follows:

"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.