

# **Attachment B**

Resolution No. 2021-127

## **RESOLUTION NO. 2021-127**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, TO AUTHORIZE SUBMITTAL OF LOCAL COASTAL PROGRAM AMENDMENT NO. LC2020-002 TO THE CALIFORNIA COASTAL COMMISSION TO AMEND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) 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**, Section 30500 of the California Public Resources Code requires each county and city to prepare a local coastal program (“LCP”) for the portion of the coastal zone within its jurisdiction;

**WHEREAS**, in 2005, the City of Newport Beach (“City”) adopted the City of Newport Beach Local Coastal Program Coastal Land Use Plan (“Local Coastal Program”) as amended from time to time including most recently on September 14, 2021, via Resolution No. 2021-79;

**WHEREAS**, the California Coastal Commission effectively certified the City’s Local Coastal Program Implementation Plan on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) (“Title 21”) to the Newport Beach Municipal Code (“NBMC”) whereby the City assumed coastal development permit-issuing authority as of January 30, 2017;

**WHEREAS**, Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the 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 zone), and mixed-use zones subject to approval of a minor use permit;

**WHEREAS**, two 9<sup>th</sup> Circuit opinions struck the City of Hermosa Beach's ban on tattoo establishments based upon the risk of infection<sup>1</sup> and the City of Long Beach's conditional use permit requirement for the establishment of a tattoo parlor<sup>2</sup> as violating the First Amendment of the U.S. Constitution;

**WHEREAS**, the 9<sup>th</sup> Circuit decisions limit a local jurisdiction's ability to require discretionary permits 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 ("LCP Amendment No. LC2020-002");

**WHEREAS**, pursuant to Section 13515 (Public Participation and Agency Coordination Procedures) of the California Code of Regulations, Title 14, Division 5.5, Chapter 8, review of the draft LCP Amendment No. LC2020-002 was made available and a Notice of the Availability was distributed on September 28, 2021, which is a minimum of six weeks prior to the final action date;

**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 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;

**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 the Planning Commission's questions;

---

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

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



**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 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. At the conclusion of the public hearing and after deliberations, the Planning Commission adopted Resolution Nos. PC2021-018 and PC2021-019; recommending the adoption of LCP Amendment No. 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 21.62 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 authorize submittal of LCP Amendment No. LC2020-002 to amend Section 21.20.020(C) (Commercial Coastal Zoning Districts Land Uses) and Section 21.70.020 (Definitions of Specialized Terms and Phrases) of Title 21 (Local Coastal Program Implementation Plan) of the NBMC as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference, to the California Coastal Commission.

**Section 2:** LCP Amendment No. 2020-002 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.

**Section 3:** The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

**Section 4:** The Local Coastal Program Coastal Land Use Plan and Title 21 (Local Coastal Program Implementation Plan), including LCP Amendment No. 2020-002, if approved, will be carried out fully in conformity with the California Coastal Act.

**Section 5:** If any section, subsection, sentence, clause or phrase of this resolution 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 resolution. The City Council hereby declares that it would have passed this resolution, 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 6:** The City Council finds the introduction and adoption of this resolution is exempt pursuant to California Environmental Quality Act ("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 LCP Amendment No. LC2020-0002 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 an LCP.

**Section 7:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

**ADOPTED** this 30<sup>th</sup> day of November 2021.

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: Local Coastal Program Amendment No. LC2020-002  
(PA2020-030)



## EXHIBIT A

### Proposed Local Coastal Program Amendment No. LC2020-002 related to Tattoo Establishment Development Standards (PA2020-030)

**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 to add “Tattoo Establishments” under Service Uses – General to read as follows with all other portions of Table 21.20-1 remaining unchanged:

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								
Tattoo Establishments	—	A	—	—	—	—	A	

**Section 2:** The definition of “Personal Services (Land Use)” in Section 21.70.020 of the NBMC (Definitions of Specialized Terms and Phrases) is amended 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. Body piercing studios.

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

**Section 3:** The definition of "Tattoo Establishment (land use)" is added to Section 21.70.020 (Definition of Specialized Terms) to read as follows:

"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.