



Legislation Text

File #: 18-0258, **Version:** 2

Recommendation to declare ordinance amending the Long Beach Municipal Code by amending Section 21.15.2990, Table 32-1 and Table 32-1A of Chapter 21.32, Section 21.52.273; and by adding Section 21.45.166, all related to tattoo parlors, read and adopted as read. (Citywide)

In 2010, the United States 9th Circuit Court of Appeals ruled that the act of tattooing is a federally-protected form of Freedom of Speech under the First Amendment of the U.S. Constitution. Following this ruling, a number of California cities, including Oceanside, Torrance, and Hermosa Beach, were determined to be in violation of the First Amendment by placing too many restrictions and locational requirements on prospective tattoo parlors and artists. Similarly, in March 2017, *Real v. City of Long Beach*, the U.S. 9th Circuit Court of Appeals ruled that Title 21 of the Long Beach Municipal Code (Zoning Ordinance) violates the First Amendment by unreasonably restricting prospective tattoo artists from establishing tattoo parlors in Long Beach.

Pursuant to *Real v. City of Long Beach*, the City Attorney's Office requested that staff prepare a Zoning Code Amendment with tattoo regulations that are content-neutral, uphold the First Amendment rights, and provide reasonable performance and locational standards, and an administrative approval and relief process that considers existing land uses.

On February 1, 2018, the Planning Commission (Exhibit A - Planning Commission Report) held a public hearing on the proposed Zoning Code Amendment on tattoo parlors. The Planning Commission received a staff presentation, deliberated, closed the public hearing, and in its advisory capacity to the City Council, found the amendment consistent with the General Plan. Following the hearing and discussion, the Planning Commission unanimously recommended that the City Council approve the Zoning Code Amendment. This recommendation is consistent with the General Plan, specifically upholding the Land Use Element's emphasis on expanding Citizen Opportunity and Economic Development. The following provides an overview of the proposed regulations in the draft Ordinance, as recommended by the Planning Commission (Draft Ordinance).

Under the current Zoning Ordinance, tattoo parlors are only permitted in the CHW (Regional Highway District) and in limited specific plan/planned development areas with a Conditional Use Permit (CUP). The permitted CHW zone represents one out of eleven commercial zones in the City (including the Highway Commercial District (CH) and Tourist and Entertainment Commercial District (CT)). The proposed Zoning Code Amendment would amend Table 32-1 of the Zoning Ordinance to allow new tattoo parlors in all commercial zoning districts by-right, with the exception of the Commercial Storage District zoning district (CS), which is intended

for storage uses. Tattoo parlors would also be permitted in equivalent commercial zones within the Downtown Plan, Midtown Specific Plan, and the Southeast Area (SEADIP) Specific Plan (see Exhibit B - Tattoo Parlor GIS Buffer Map Analysis).

The Zoning Code Amendment includes locational requirements consisting of 500 feet of separation between a new tattoo parlor and another tattoo parlor. Additionally, a new requirement of a 500-foot separation from a public or private school is proposed in Sections 21.45.166(2) and 21.45.166(3) to address potential compatibility issues with sensitive land uses (uses that serve children and minors under the age of 18).

Tattoo parlors will be subject to a staff-level review through a ministerial review process. This process is common to other ministerial uses, whereby approval can be granted for a permitted use when an established set of criteria is met. Ministerial applications are decided upon based on established regulations, with no discretion, and do not require a public hearing. Furthermore, the use of a ministerial process will allow tattoo parlors to be reviewed based on established criteria, without potential for uncertainty, to meet the 9th U.S. Circuit Court of Appeals ruling that tattoos are a protected form of freedom of speech. The use of a ministerial process meets this intent because the regulations provide clarity and certainty as to the time, place, and manner. Furthermore, if a requirement is unclear, the applicant may request a Zoning Administrator interpretation.

The Zoning Code Amendment further provides for administrative relief from the ministerial review process if the location and distance requirements cannot be met. This is proposed to be handled through the existing Administrative Use Permit process, with specific findings required to demonstrate that the proposed tattoo parlor will not create added impacts to a certain area.

In addition to zoning regulations, tattoo parlors in Long Beach are currently subject to regulation and oversight from the City's Department of Health and Human Services (Health Department), pursuant to the State Body Art Act (AB 300). Under AB 300, all body art practitioners are required to annually register with the City, obtain annual bloodborne pathogen training, provide documentation of Hepatitis B vaccination status, obtain specific health information from clients, and obtain "informed consent" from clients. AB 300 also requires the owner of a body art facility to obtain a Health Permit, operate the facility in a safe and clean manner, maintain written procedures for the operation of the facility, and maintain records of training and equipment sterilization.

In review of public safety, the City's Police Department tracked their calls-for-service and confirmed that tattoo parlors do not generate any additional calls when compared to professional, medical, or other clinical offices in similar locations.

Public hearing notices were published in the Long Beach Press-Telegram, posted in three public locations, and distributed on March 1, 2018, and no responses were received as of the date of preparation of this report. Any responses and comments received will be conveyed to

the City Council prior to the public hearing.

In accordance with the Guidelines for implementation of the California Environmental Quality Act (CEQA), a Negative Declaration (ND 04-17) was prepared for the proposed Tattoo Parlor Ordinance (Exhibit C). The Negative Declaration was made available for a 30-day public review and comment period that began on December 18, 2017, and ended on January 18, 2018. California Native American tribes were also given additional notice of the proposed Zoning Code Amendment, starting January 4, 2018.

This matter was reviewed by Assistant City Attorney Michael J. Mais on February 15, 2018 and by Budget Analysis Officer Julissa Josè-Murray on March 2, 2018.

City Council action is requested on March 20, 2018, to comply with a 60-day transmittal period requirement, which expires on April 1, 2018, per Zoning Code 21.25.103.

There is no fiscal or local job impact associated with this recommendation.

Approve recommendation.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SECTION 21.15.2990, TABLE 32-1 AND TABLE 32-1A OF CHAPTER 21.32, SECTION 21.52.273; AND BY ADDING SECTION 21.45.166, ALL RELATED TO TATTOO PARLORS

TOM MODICA
INTERIM DIRECTOR OF DEVELOPMENT SERVICES

APPROVED:

PATRICK H. WEST
CITY MANAGER