



Zoning Gets Under Your Skin

By Chris Burke

Over the past three years, tattoo parlors and body massage parlors have proliferated rapidly. Once regarded as a novelty popular in warm climates and seedy commercial strips, tattoo parlors have been springing up everywhere, from large commercial strips to the quiet confines of suburbia. Body massage parlors are following close behind and becoming increasingly popular in both cities and suburban areas. This issue of Zoning News discusses the complex issues associated with regulating these businesses.

Tattoo Parlors

Tattooing, by definition, refers to the "method of placing designs, letters, scrolls, figures, symbols or any other marks upon or under the skin with ink or any other substance resulting in the coloration of the skin by the aid of needles or any other instruments designed to touch or puncture the skin" (Denver Municipal Code, Ordinance No. 212-97). This art has existed for centuries, but recently its popularity has increased. Want proof? Watch any professional basketball or football game, or look at any music video and count the number of people donning tattoos. Go to any local mall or college and take notice of arms, shoulders, and legs covered with graphic designs. Tattooing is not limited to the age group between 18 and 25, but it would be safe to assume that it is more prevalent with them than with people over 30.

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In the past, tattoos were perceived as a symbol of gang or club affiliation. That perception may still be accurate, but, according to a source at the National Tattoo Association, tattoos are seen as having sex appeal and have become increasingly popular with women. Following a similar growth pattern for spandex in the 1980s, tattoo parlors were initially most popular in warmer climates but eventually expanded throughout the country. Tattoo businesses have also moved from urban commercial strips to smaller suburban areas. This growth in smaller municipalities has caused public officials to rethink their zoning ordinances.

Currently, there is no available estimate concerning the growth or number of tattoo establishments. A source at the Professional

Tattoo Artist Guild, a membership organization for tattoo artists, estimated 1,000 percent growth in the industry over the past five years. Although this figure is high, it suggests how fast the industry has grown. Tattoo parlors are increasingly locating in suburban areas where commercial regulations may be less stringent. States regulate the procedures tattoo parlors must follow, but local governments determine where they may locate. Because tattoo establishments provide a service for a fee, they usually are considered commercial enterprises, though some municipalities classify them differently. Because some tattoo parlors offer other services such as body piercing and drug paraphernalia, it is



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Prominently placed tattoo signs, like this one in suburban Chicago, can either raise eyebrows or pique curiosity.

common for them to be grouped as adult entertainment uses or required to obtain conditional use permits to operate.

Tattoo parlors traditionally have been considered an eccentric, exotic type of business. People have a mental image of the shops, the types of patrons they attract, and where they should be permitted. This mental image often overlooks the fact that tattoo parlors face many of the same restrictions as local clinics. Unlike most commercial businesses, tattoo parlors raise medical and hygiene concerns. Because they use needles and razors, tattoo proprietors handle biohazardous waste and pose potential health hazards.

Tattooing is a minor surgical procedure that uses needles to inject ink under the skin's surface. Because the skin is broken, hygiene is a primary concern not only for the customer and shop owner, but for the municipality as well. Local officials must be concerned with the possible transmission of communicable diseases such as hepatitis and human immunodeficiency virus (HIV). Maintaining the idea that tattooing is a surgical procedure, some cities such as Ocean City, Maryland, and Oak Harbor, Washington, prohibit the practice unless it is performed by a licensed physician or osteopath. Oak Harbor's ordinance clearly states that tattooing

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falls under the practice of medicine because it “penetrates the tissue of human beings,” which falls under the city’s definition of surgery. Oak Harbor regards the prohibition of tattoo parlors as a measure to protect residents’ public health. Ocean City’s ordinance does not clearly state the reasoning for its strict restrictions, but the ordinance is detailed enough to discourage the most immaculate proprietor.

While prohibiting tattoo parlors may seem an extreme regulatory measure, many communities implement legislation with very clear guidelines for operations. For example, the Mission Viejo, California, ordinance prohibits tattooing on certain skin surfaces, lists what type of antiseptic and dressing must be used, addresses sterilization procedures, and states very specific guidelines for equipment, tattooing procedures, and surfaces. In addition, the business owner is required to submit in writing to the state health department the sources of all dyes or inks used in the operation prior to receiving a permit. Though the regulations appear strict, Mission Viejo’s ordinance resembles most ordinances that allow tattoo parlors.

While many regulations are strict, they generally don’t require tattoo artists to have a professional permit to practice unless the ordinance requires physicians or osteopaths to perform the procedure. In fact, there are no official tattoo organizations certifying professionals. Tattoo artists have associations that serve as membership organizations, but artists are not required, for example, to take a minimum number of credit hours in tattoo artistry at their local college. This may not seem significant to someone deciding what color of dragon to install on his or her shoulder, but it is of concern to state officials trying to determine what constitutes a legitimate tattoo business.

Most tattoo artists are not licensed physicians or osteopaths. Therefore, one might conclude that ordinances that require tattoo owners and operators to be licensed in the medical field may as well prohibit them, but that assumption would be wrong. The state of Maryland requires tattoo parlor owners to be licensed physicians or osteopaths, but tattoo parlors operate in College Park, Landover Hills, Prince Frederick, and Silver Spring. This suggests that stringent regulations don’t totally deter such businesses.

For communities that allow tattoo parlors, regulations are similar to those for clinics. Most regulations include strict guidelines for hygiene and for disposing of and sterilizing the necessary equipment. All ordinances reviewed by *Zoning News* require, as a matter of state law, that any patron be at least 18 years of age or in the company of a legal parent or guardian before being tattooed. Tattoo operators must submit their personal medical records to the health department and maintain records of all their clients. Further restrictions require tattoo parlors to adhere to those regulations listed in

the local ordinance for commercial districts. In addition, some ordinances allow the parlors only in light industrial districts or require them to obtain conditional use permits to locate in a commercial district.

Massage Parlors

Massage parlors are also experiencing growth. While many of today’s massage businesses call themselves day spas, massage parlors have not always been popular or viewed in a positive light. Historically, they have been associated with prostitution and fronts for other illicit behavior. In contrast, today’s parlors or spas are providing services for models, corporate executives, athletes, and anyone willing to spend \$100 or more to feel good. Although this business has found a legitimate niche in today’s service industry, the negative image has not totally disappeared.

As the day spas continue to grow and find success within the service industry, the massage industry’s darker side, adult massage parlors, share in the success. How can one distinguish them? Unlike adult theaters and book stores, adult massage parlors will not advertise or appear different on the outside. Just last month as a prank, San Francisco 49ers teammates referred wide



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Massage parlors can be inconspicuously located, like this one that shares a quiet suburban residential area.

receiver Jerry Rice to a massage parlor that was raided by police. Rice mistakenly thought it was a legitimate business until police showed up. This mistake can happen to anyone, including those municipalities trying to regulate massage parlors.

Massage parlors are another business typically found under the adult use umbrella and sometimes are required to have a conditional use permit to operate. As previously reported in *Zoning News* (“Massaging the Regulations,” October 1997), massage parlors can be unwanted in communities because of the difficulty of clearly defining the type of massage permitted. Most ordinances classify legitimate therapeutic massage businesses as those associated with health clubs, physical therapy clinics, full service beauty salons, hotels, and medical facilities. This type of massage presents no problem because it is affiliated with a larger commercial use. However, massage can exist as an exotic adult use with scantily dressed masseuses