



CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

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Long Beach, CA 90802

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January 18, 2018

CHAIR AND PLANNING COMMISSIONERS

City of Long Beach
California

RECOMMENDATION:

Recommend that the City Council accept Negative Declaration ND 04-17, and approve Zoning Code Amendment (ZCA17-016) and Local Coastal Program Amendment (LCPA17-006) to revise provisions relating to the regulation of tattoo parlors, specifically pertaining to locational requirements, performance standards, and administrative review procedures. (Citywide)

APPLICANT: City of Long Beach, Long Beach Development Services
333 West Ocean Boulevard, 3rd Floor
Long Beach, CA 90802
(Application 1712-10)

DISCUSSION

In 2010, the 9th U.S. Circuit Court of Appeals ruled that tattooing is a protected form of speech under the First Amendment. In 2017, a civil rights action was brought against the City of Long Beach challenging the City's regulation of tattoo parlors. In *Real v. City of Long Beach* (9th Cir. March 29, 2017), the 9th Circuit reversed a district court decision, holding 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 the federal court's rulings, the City Attorney's office requested that staff prepare proposed amendments to the Zoning Ordinance to regulate tattoo parlors in a manner that is content-neutral and narrowly tailored to serve a substantial government interest (Exhibit A – Draft Code Amendment with redlines). The proposed amendments address locational requirements and performance standards for new tattoo parlors, and establish revised procedures to administer the proposed standards. A procedure for administrative relief is also provided under the proposed review process.

The proposed Zoning Code Amendment will retain and not change the existing definition for "Tattoo Parlor" under Section 21.15.2990 of the Zoning Code, which states:

"Tattoo parlor" means a commercial land use where the marking or coloring of the skin is performed by pricking in coloring matter or by producing scars, and which is conducted

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in exchange for financial or other valuable consideration. It does not include tattooing when applied by a licensed dermatologist on premises licensed as a dermatological office. (Ord. C-6533 § 1 (part), 1988)

Under the current Zoning Ordinance, tattoo parlors are permitted only with a minor Conditional Use Permit (CUP) in select commercial zoning districts and specific plan areas and are not permitted at locations within one thousand feet (1,000') of any existing adult entertainment, arcade, fortunetelling, another tattoo parlor, or tavern use. Tattoo parlors are further regulated by special conditions prescribing locational requirements and hours of operation in Section 21.52.273. Special conditions of approval are applied to each approved CUP on a case by case basis. Additionally, all CUP applications are subject to a public hearing by the Planning Commission, which can take several months to complete. As a result, the CUP process, coupled with the limited number of zoning districts permitting tattoo parlors, were determined to be too restrictive and in conflict with the First Amendment's freedom of speech, as determined by *Real v. City of Long Beach* (9th Cir. March 29, 2017).

In developing the new regulations, staff consulted regulations recently established in other California cities, including Oceanside, Torrance, and Hermosa Beach. In order to balance a constitutionally protected activity with local regulation, the Zoning Ordinance amendments described herein are recommended to regulate the time, manner, and place of new tattoo parlor uses.

Background

As of January 2018, our records indicate that there are nine (9) licensed tattoo parlors in the City of Long Beach; of which, only four (4) were required to obtain CUPs, leaving the other five (5) as legal-non-conforming. These five non-conforming tattoo parlors were approved prior to the existing CUP requirement.

The City's existing Zoning Ordinance and CUP requirements are holdover regulations from earlier attitudes regarding tattoo parlors. According to the American Planning Association (APA), many municipalities experienced wide proliferation of tattoo parlors, especially in suburban areas, during the 1990s. At the time, tattoo parlors across the U.S. were often co-located or adjacent to other adult entertainment uses such as body piercing and massage parlors, giving them the image of an eccentric or exotic type of business targeting clients over 18 years of age. There were general fears that tattoo parlors would have a negative impact on local communities and surrounding uses, especially if they were located in close proximity to each other. However, the APA acknowledged that this negative image of tattoo parlors ignored the fact that all tattoo parlors are subject to additional County and State health regulations, similar to medical clinics. Because they offer a service that is considered a minor surgical procedure, all tattoo parlors must submit their records to the relevant oversight agencies (Exhibit B – APA Zoning News). This additional level of regulation, coupled with local regulations, has resulted in tattoo parlors in the City of Long Beach being a highly-regulated land use with no clear evidence of nuisance or negative externalities for the surrounding community.

Despite the total number of tattoo parlors, over the three-year period from January 2014 to December 2016, a total of 87 calls for service were received by the Long Beach Police Department for six of the nine tattoo establishments. Among these calls for service, 45 calls were for parking violation complaints at a single location, and 11 calls were for audible burglar alarms. Setting aside these routine non-violent calls for service, a total of 31 calls for service were received over the three-year period.

As a point of comparison, there are 71 chiropractic offices operating in the City of Long Beach. A sampling of six chiropractic offices from various districts throughout the City was analyzed for calls for service. Over the same three-year period, a total of 23 calls for service were received by the Long Beach Police Department for these establishments.

The data does not indicate a significantly disproportionate number of calls for service originating from tattoo parlors relative to chiropractic offices. The Long Beach Police Department Vice Investigations unit also confirms that there are no recurring issues with any of the City's existing tattoo parlors. The City's generally positive experience with tattoo parlors in recent years may be attributed at least in part to the rigorous land use entitlement process.

Zoning District Amendment

The current Zoning Ordinance allows tattoo parlors in the CHW, CH, CT, PD-1 "Midtown Specific Plan" (permitted in the Transit Node and Corridor Districts only), and PD-30 "Downtown Plan" (not including the Downtown-Neighborhood Overlay) zoning districts only with the issuance of a Conditional Use Permit. The proposed 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 CS zoning district, which is intended for storage uses. New tattoo establishments would be subject to specific locational requirements and performance standards.

Locational Requirements

There is an existing body of research documenting the potential adverse effects of tattoo parlors on sensitive land uses. In a 2002, *Pediatrics* journal published a national study evaluating the association between tattooing and several high-risk behaviors in adolescents, and concluded that, "Permanent tattoos are strongly associated with high-risk behaviors among adolescents. In the clinical setting, the presence of a tattoo noted during clinical examination of an adolescent should prompt in-depth assessment for a variety of high-risk behaviors." Some of the high-risk behaviors found more prevalent in adolescents with tattoos included: increased sexual activity, substance abuse, violence, and school failure (see Exhibit C – *Pediatrics: Tattooing and high-risk behavior in adolescents*, 2002). Based on these facts, staff proposes the following separation requirements for new tattoo parlors with respect to potentially incompatible businesses and sensitive land uses.

The proposed separation standards have been updated to include previously unpermitted commercial zoning districts and to address potential incompatibilities with nearby land

uses. The proposed amendment would require five hundred feet (500') of separation between a new tattoo parlor and another tattoo parlor. Additionally, a new requirement of a five-hundred-foot (500') 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. For the purposes of this amendment, distance measurements are taken from the property line of a proposed tattoo parlor business parcel to the property line of the other use in question. See Exhibit D for a GIS Analysis of parcels eligible for Tattoo Parlors.

Performance Standards

In order to ensure good business practices and prevent nuisance activity, certain performance standards are proposed for new tattoo parlors in Sections 21.45.166(4) through 21.45.166(17) of the Zoning Ordinance. These include the following proposed standards:

- Hours of operation shall be between 7:00 a.m. and 10:00 p.m.
- Service of alcohol, marijuana-based substances, or other controlled substances, shall not be permitted in conjunction or within the premises of a tattoo parlor use.
- Storefront entrance and glazing is to be clear of any tinting or other obstructions.
- Patrons receiving tattoos shall not be indecently exposed to public view.
- Loitering at the business and vicinity shall be prevented at all times.
- Minimum age of customers shall be enforced. State law establishes a minimum age of 18 for any individual seeking tattoo services.
- Lighting standards for the exterior of the building.
- Security standards including audible burglar alarm and security cameras.
- Health regulations of State and County entities are to be observed.
- Property is to be maintained in good order at all times.
- Exterior security bars and roll-up doors are prohibited.
- Graffiti removal shall occur within 24 hours of its appearance.

The proposed performance standards herein were informed by research into numerous cities including Oceanside, Torrance and Hermosa Beach. These cities represent some of the first cities in California to adopt and approve new zoning ordinances for tattoo parlors in response to similar federal court cases (*Yvon v. City of Oceanside*, 9th Cir. June 27, 2016; *Garcia v. City of Torrance*, CA Central Dist. May 20, 2015; *Anderson v. City of Hermosa Beach*, 9th Cir. March 29, 2017). Collectively, these cities and court cases provided a range of ordinance language and regulation precedence for Long Beach to propose performance standards that balance a constitutionally protected activity with local governmental regulation.

Administration/Procedures

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 locational 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.

PUBLIC HEARING NOTICE

This action was noticed through publication in the Press Telegram on December 26, 2017, in accordance with the provision of the Zoning Ordinance. Additionally, written notices were sent to the California Coastal Commission and all City libraries, and three public hearing notices were posted in public places throughout the City.

ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA), a Negative Declaration was prepared for the Tattoo Parlor Ordinance. The Negative Declaration was posted on the City's website and has been circulated for comment. As of the date of preparation of this report, the City has received one phone call in support of updated tattoo parlor regulations. The Negative Declaration is available as an attachment to this report (Exhibit E – Negative Declaration 04-17).

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Respectfully submitted,



LINDA F. TATUM, AICP
PLANNING BUREAU MANAGER



TOM MODICA
INTERIM DIRECTOR OF DEVELOPMENT SERVICES

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Attachments:

- Exhibit A – Draft Code Amendment with redlines
- Exhibit B – American Planning Association. (Apr 1998). Zoning News: Zoning Gets Under Your Skin
- Exhibit C – Pediatrics (2002). Tattooing and high-risk behavior in adolescents. Roberts, Tim A. and Ryan, Sheryl A.
- Exhibit D – Tattoo Parlor GIS Buffer Map Analysis
- Exhibit E – Negative Declaration ND 04-17
- Exhibit F – Public Comments and Testimony