



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

May 6, 2021
Agenda Item No. 5

SUBJECT: Tattoo Establishment Ordinance Update (PA2020-030)
▪ Zoning Code Amendment No. CA2020-002
▪ Local Coastal Program Amendment No. LC2020-002

SITE LOCATION: Citywide

APPLICANT: City of Newport Beach

PLANNER: Matt Schneider, Principal Planner
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PROJECT SUMMARY

The proposed code amendments to Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code ("NBMC") would update development standards related to tattoo establishments. Specifically, Zoning Code Amendment No. CA2020-002 and Local Coastal Program Amendment No. LC2020-002 would define this previously undefined land use category and establish objective standards to regulate its use.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find this project categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to 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 and pursuant to Section 15265(a)(1), which exempts local governments from the requirements of CEQA in connection with the adoption of a Local Coastal Program;
- 3) Adopt Resolution No. PC2021-012(Attachment No. PC 1) recommending the City Council approve Zoning Code Amendment No. CA2020-002 updating development standards related to tattoo establishments; and
- 4) Adopt Resolution No. PC2021-013(Attachment No. PC 2) recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2020-002 to the California Coastal Commission.

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DISCUSSION

Background

Over the past decade, cities have seen a rapid increase in the number of tattoo establishments given the rise in popularity of tattooing. In 2011, then Governor Jerry Brown signed into law the Safe Board Art Act which set uniform standards for the body art industry which includes tattooing. These regulations are codified in California Health and Safety Code Section 119300 *et seq.* requires body art practitioners to complete a registration process, obtain annual bloodborne pathogen training, provide documentation of vaccination status, and obtain relevant health information and informed consent from clients.

Many cities have adopted zoning ordinances related to the use ranging from an all-out ban to requiring a conditional use permit with conditions to mitigate impacts associated with the use. In Newport Beach's case, Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan) of the NBMC classify tattoo businesses as a Restricted Personal Service, which is permitted in all office zones, commercial zones (except the CM zone) and mixed-use zones subject to a minor use permit ("MUP"). An MUP is a discretionary permit requiring a public hearing and is appealable to the Planning Commission and ultimately to the City Council.

Over time, prospective operators have challenged cities' zoning codes applicable to tattoo establishments on the basis that tattooing is protected speech under the First Amendment of the United States Constitution ("First Amendment").

In Anderson v. City of Hermosa, (9th Cir. 2010) 621 F.3d 1051, a prospective operator challenged Hermosa Beach's ban on tattoo parlors. The city justified the ban based upon the risk of infection and the possibility of diseases. At the time, the county health official responsible for inspecting tattoo establishments testified to being overwhelmed by the number of inspections required. On appeal, the 9th Circuit overturned the district court's decision and held that tattoos are purely expressive activity protected under the First Amendment. The court took a rather expansive view as to what aspects of tattooing was protected by the First Amendment to include "the tattoo itself, the process of tattooing and the *business of tattooing*."

Seven years later, a challenge was brought against Long Beach's tattoo ordinance that required a conditional use permit; separation requirements from adult entertainment, arcade, fortunetelling, tattoo parlors and taverns; and hours of operation between 7 a.m. and 10 p.m. Similar to conditional use permit findings in other jurisdictions, the Long Beach Municipal Code included a finding that the proposed use will not be detrimental to the surrounding community including public health, safety or general welfare, environmental quality or quality of life. Real v. City of Long Beach, (9th Cir. 2017) 852 F.3d 929. While Long Beach argued that the petitioner lacked standing to sue (because he had not applied for a conditional use permit) and that the ordinance did not restrict speech,

but rather, placed reasonable time, place and manner restrictions on the use, the court disagreed. With respect to the standing argument, the court held that when a licensing ordinance vests unbridled discretion in a government official over whether to permit or deny expressive activity, a prospective operator has standing to challenge the ordinance in spite of never having applied for a conditional use permit. With respect to Long Beach's argument that the ordinance did not unduly restrict expressive activity, but rather, consisted of time, place and manner restrictions, the court reasoned that the ordinance was not narrowly tailored to serve a significant governmental interest and allow ample alternative channels for expression.

These two decisions serve as a guide to Newport Beach in updating its zoning provisions related to tattoo establishments.

Summary of Current Regulations

Sections 20.70.020 and 21.70.020 of the NBMC define tattoo services as a Restricted Personal Service use which are permitted in all office zones, commercial zones (except the CM zone) and mixed-use zones subject to MUP. This use classification is intended for personal service establishments that may need to be dispersed from other similar uses to minimize adverse impacts. Other personal service uses classified under this category include day spas, healing arts and tanning salons. In order to approve the MUP, the Zoning Administrator must find:

1. The use is consistent with the General Plan and any applicable specific plan;
2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;
3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;
4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and
5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

The above criteria required for approving a tattoo establishment are subjective in nature and raise concerns that a court would find these standards vest unbridled discretion in granting a permit to operate and whether they are narrowly tailored to serve a significant

governmental interest and allow ample alternative channels for expression in accordance with the *Long Beach* decision.

Proposed Amendment

The proposed code amendment would allow ministerial approval of tattoo establishments in commercial zones of the City subject, however, to separate requirements and other development and operational standards delineated below. The proposed code amendment would serve the objectives of creating reasonable time, place and manner restrictions as required by the First Amendment while also ensuring tattoo establishments are compatible with the surrounding area, do not result in an overconcentration and maintain the quality and character of the community. The limitations on tattoo establishments set forth in the proposed code amendment are supported by the additional data on secondary effects of such establishments in Attachment No. PC3.

Definition and Table Revision

The proposed code amendment defines tattoo establishments as its own use type (Attachment No. PC 1, Exhibit A) separate and distinct from other Restricted Personal Service Use types and modifies relevant tables demonstrating the zoning districts where tattoo establishments are permitted.

Development Standards

The proposed code amendment incorporates development standards for the operation of a tattoo establishment including zones where the use is allowed, site and floor plan requirements to ensure the operation is fully contained within the building and does not spillover to the outdoors, parking requirements, signage requirements as well as separation requirements. With respect to the zones where the use would be allowed, tattoo establishments would be authorized in the CG (Commercial General), OG (Office General), and OR (Office Regional) zones.

With respect to the separation requirements, a tattoo establishment could not operate within 1,000 feet of another tattoo establishment, 500 feet of sensitive uses such as schools or playgrounds, and 500 feet from residential. The proposed zoning districts along with the separate requirement ensures ample locations for tattoo establishments to locate while preventing overconcentration, ensuring compatibility with surrounding uses and mitigating secondary effects. Staff analyzed the proposed locational requirements and found that in addition to the five existing tattoo establishments currently operating in the City, there are approximately 150-200 potentially available sites for the establishment of new tattoo business when factoring in the locational requirements under the proposed code amendment and number of existing suites/offices provided at these locations. It is important to note that the proposed 1,000-foot separation requirement between tattoo establishments will diminish the availability sites as new tattoo business are opened.

Operating Standards

The proposed ordinance would establish hours of operation, ensure the operation and the area within its vicinity is properly maintained, in compliance with Chapter 10.26 (Community Noise Control) noise requirements, require security cameras and screening, as well as limiting the consumption of alcohol or marijuana on the premises.

Finally, tattoo establishments and artists operating within the establishment are required to comply with all other applicable license and permitting requirements.

Existing Tattoo Establishments

There are five existing tattoo establishments within the City that are legally permitted to operate under the City's current zoning regulations. These five establishments would become legal non-confirming uses as a result of adopting the proposed code amendment based upon the zoning district in which they are located or the locational/separation requirements of the proposed ordinance. As non-confirming uses, these establishments would be able to continue operating but would be required to obtain a conditional use permit in order to expand or intensify their use in accordance with Section 20.38.050 (Nonconforming Uses) of the NBMC. Non-confirming rights to operate would cease in the event the tattoo establishment use is discontinued for one hundred eighty (180) consecutive days.

General Plan Consistency

The proposed code amendment does not introduce any new Zoning Districts or General Plan Land Use Plan Categories in which tattoo establishments would be permitted. The General Commercial and Regional Commercial Office are the two General Plan Land Use Categories under which tattoo establishments would continue to be allowed. These two designations allow for a range of uses and are consistent with the proposed Zoning Code amendment.

Local Coastal Plan

Similar to Title 20 (Planning and Zoning), Title 21 (Local Coastal Program Implementation Plan) currently regulates tattoo establishments. Therefore, subsequent to City Council adoption of this Zoning Code Amendment, staff will submit corresponding amendments (Attachment No. PC2) to the LCP for review and approval of the California Coastal Commission.

Alternatives

The Planning Commission may recommend revisions to the proposed code amendment, such as changing location, separation requirements, and hours of operation with the proviso that any revisions would be reasonable time, place and manner restrictions that provide sufficient opportunities for tattoo establishments to operate.

Environmental Review

The proposed action is exempt 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 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 a Local Coastal Program.

Public Notice

Notice of this amendment was published in the Daily Pilot as an eighth page advertisement, consistent with the provisions of the Municipal Code. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website. Additionally, notice was sent to the property owners of the four existing tattoo establishment currently operating in the City.

Prepared by:


Matt Schneider
Principal Planner

Submitted by:


Jim Campbell
Deputy Community Development Director

ATTACHMENTS

- PC 1 Resolution No. PC2021-012 recommending City Council approve Zoning Code Amendment No. CA2020-002
- PC 2 Resolution No. PC2021-013 recommending approval of submission of Local Coastal Program Amendment No. LC2020-002
- PC 3 Background Research - Secondary Effects of Tattoo Establishments

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Attachment A

Planning Commission Resolution No. PC2021-012 (Zoning)

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RESOLUTION NO. PC2021-012

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING THE CITY COUNCIL ADOPT ZONING CODE AMENDMENT NO. CA2020-002 UPDATING DEVELOPMENT STANDARDS RELATED TO TATTOO ESTABLISHMENTS (PA2020-030)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. 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 (except the CM zone), and mixed-use zones subject to approval of a minor use permit.
2. Two 9th Circuit federal court decisions determined that tattooing constitutes speech such that it is protected under the First Amendment of the United States Constitution (“First Amendment”). Specifically, in Anderson v. City of Hermosa Beach, (9th Cir. 2010) 621 F.3d 1051 the court struck Hermosa Beach’s ban on tattoo parlors justified on the basis of a risk of infection. In Real v. City of Long Beach, (9th Cir. 2017) 852 F.3d 929 the court held that Long Beach’s conditional use permit requirement for tattoo establishments vested unbridled discretion in a government official over whether to permit or deny expressive activity constituted a prior restraint on speech in violation of the First Amendment.
3. The decisions limit 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.
4. On April 14, 2020, the City Council adopted Resolution No. 2020-35 to initiate a code amendment related to tattoo services.
5. 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.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This action is exempt from environmental review under the California Environmental Quality Act ("CEQA") Section 15061(b)(3) of the California Code of Regulations, Title 14, Chapter 3 ("CEQA Guidelines"), 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 3. FINDINGS.

1. The City, through Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan), promotes the orderly development of the City; promotes the public health, safety, peace, comfort, and general welfare; protect the character, social and economic vitality of neighborhoods; and ensure the beneficial development of the City. Zoning Code Amendment No. CA2020-002 authorizes tattoo establishments in commercial zones including the OG, OR, and CG, zoning districts where they are compatible with other commercial uses.
2. A buffer between tattoo establishments and sensitive land uses such as residential zones, schools, and parks is appropriate and will continue to allow a wide range of potential alternative sites. These buffer provisions will serve to: (1) protect the quality of life and neighborhoods in the City; (2) protect the City's retail and commercial trade; (3) minimize the potential for nuisances related to the operation of tattoo establishments; (4) protect the well-being, tranquility and privacy of the home with the residential buffer; and (5) protect the peace, welfare, and privacy of persons who own, operate and/or patronize tattoo establishments.
3. Establishing distance requirements between other tattoo establishments ensures the City maintains an adequate number of establishments to serve residents and visitors while avoiding overconcentration and maintaining a diversity of uses to serve the community. For example, Newport Beach is comprised of several villages with distinct and unique commercial cores that that serve families and visitors. It is important that the character of these commercial core areas remain family and tourist-oriented. Moreover, Zoning Code Amendment No. CA2020-002 ensures that adequate sites are available for the establishment and operation of tattoo establishments in the City as approximately 150-200

sites would be available for a tattoo establishment to operate when factoring in the locational requirements proposed under this ordinance amendment and number of existing suites/offices provided at these locations. The distance requirements ensure that there are adequate sites available to provide this use while also ensuring a diversity of uses within the City.

4. Maintaining adequate separation between establishments as well as locating said establishments in commercial zones is appropriate in that tattoo establishments may cause negative secondary effects in the community including the potential to attract criminal activity. Specifically, data from the Newport Beach Police Department's Call for Service ("CFS") which compares the number of CFS during the preceding five (5) years shows a disparity in the number of calls for tattoo establishments when compared with other Restricted Personal Services. The City's data shows that since January 2015, Newport Beach Police Department has received 49 CFS for four (4) tattoo establishments; in comparison to 12 CFS (when excluding calls for alarms) for three (3) non-tattoo establishments operating during the same period of time. In addition, there were no CFS at non-tattoo establishments for incidents recorded as: disturbance, theft/fraud, drunk in public or battery/fighting in comparison to 22 such incidents recorded at tattoo establishments. The CFS data for the City of Oceanside, (another coastal city with publicly available CFS data) shows a similar pattern, with substantially higher CFS for tattoo establishments and recorded incidents of disturbances and violent crimes in comparison to non-tattoo establishments.
5. Zoning Code Amendment No. CA2020-002 is appropriate to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created. Buffer requirements are a legitimate and reasonable means of ensuring against the negative secondary effects of tattoo facilities and to balance the various land uses in order to protect the health, safety and welfare of Newport Beach residents, preserve the quality of life, and preserve the character of surrounding neighborhoods. The buffer requirements of the City do not unreasonably restrict the establishment or operation of constitutionally protected businesses in Newport Beach. The City recognizes that these buffer requirements do not preclude reasonable alternative avenues of communication and that there are approximately 150-200 potentially available sites for tattoo establishments in addition to the City's five (5) existing tattoo establishments.
6. Zoning Code Amendment No. 2020-002 is appropriate to protect the health and well-being of adolescents within the community. A study titled "Tattooing and High-Risk Behavior in Adolescents" established an association between adolescents who obtain tattoos and their involvement in high-risk behaviors that are detrimental to their health and welfare including gang affiliation, substance abuse, and violence. Adopting time, place and manner restrictions that protect minors is appropriate. Sable Commission of California, Inc. v. FCC, (1989) 492 U.S. 115.

7. Zoning Code Amendment No. CA2020-002 is appropriate to protect customer health. Tattooing carries the risk of infection and transmission of disease if unsanitary conditions are present or unsterile equipment is used. The Centers for Disease Control and Prevention and the United States Food and Drug Administration confirm the significant health risks of tattooing. CDC, Body Art: Tattoos and Piercings (Jan. 21, 2008) (noting risks of infection, tuberculosis, Hepatitis B and C, and HIV). Zoning Code Amendment No. CA2020-002 which requires all licenses and permits including compliance with the State Safe Body Art Act and registration/licensing with the Orange County Health Department is appropriate.

8. Zoning Code Amendment No. CA2020-002 sets appropriate time, place and manner restrictions on tattoo establishments. The City has considered the following decisions: Anderson v. Hermosa Beach, (9th Cir. 2010) 621 F.3d 1051; Real v. City of Long Beach, (9th Cir. 2017) 852 F.3d 929; Garcia v. City of Torrance Case No. 2:15-cv-03810-SVW-RAO; Ward v. Rock Against Racism, (1989) 491 U.S. 78; and City of Renton v Playtime Theaters, (1986) 475 U.S. 41.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds Zoning Code Amendment No. CA2020-002 is exempt from the 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 the code 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.

2. The Planning Commission of the City of Newport Beach hereby recommends approval of Code Amendment No. CA2020-002 as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED THIS 6TH DAY OF May, 2021.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Erik Weigand, Chairman

BY: _____
Lauren Kleiman, Secretary

Attachment(s): Exhibit A – Zoning Code Amendment No. CA2020-002

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**EXHIBIT “A”
Zoning Code Amendment No. CA2020-002**

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 read as follows:

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
Tattoo Establishments	=	P	=	P	Section 20.48.230

TABLE 2-5 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Retail 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.	CC	CG	CM	CN	CV	CV-LV	Specific Use Regulations
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.

- 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 from Table 3-10 (20.40.40 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; or
 - iii. Five hundred (500) feet from the boundary of any residential structure or residential use, including residential uses in mixed-use zoning districts.

B. Operating Standards.

1. Hours of Operation. Operating hours shall be between the hours of 10:00 a.m. and 10:00 p.m.
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 of 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.
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: 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. ~~Tattoo services and~~ Bbody piercing studios.

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

“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.

Attachment B

Planning Commission Resolution No. PC2021-013(LCP)

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RESOLUTION NO. PC2021-013

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING THE CITY COUNCIL AUTHORIZE SUBMITTAL OF A LOCAL COASTAL PROGRAM AMENDMENT NO. LC2020-002 TO THE CALIFORNIA COASTAL COMMISSION TO UPDATE STANDARDS TO REGULATE TATTOO ESTABLISHMENTS (PA2020-030)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (“NBMC”) authorize Restricted Personal Service uses which includes day spas, healing arts, tanning salons, tattoo and body piercing establishments in office, commercial (except the CM zone), and mixed-use zones subject to approval of a minor use permit.
2. Two 9th Circuit federal court decisions determined that tattooing constitutes speech such that it is protected under the First Amendment of the U.S. Constitution (“First Amendment”). Specifically, in Anderson v. City of Hermosa Beach, (9th Cir. 2010) 621 F.3d 1051 the court struck Hermosa Beach’s ban on tattoo parlors justified on the basis of a risk of infection. In Real v. City of Long Beach, (9th Cir. 2017) 852 F.3d 929 the court held that Long Beach’s conditional use permit requirement for tattoo establishments vested unbridled discretion in a government official over whether to permit or deny expressive activity constituted a prior restraint on speech in violation of the First Amendment.
3. The decisions limit local jurisdictions 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.
4. On April 14, 2020, the City Council adopted Resolution No. 2020-35 to initiate a code amendment related to tattoo services.
5. 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.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This action is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of the California Code of Regulations, Title 14, Chapter 3 (“CEQA Guidelines”), 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 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 a Local Coastal Program.

SECTION 3. FINDINGS.

1. The City, through Titles 20 (Planning and Zoning) and 21 (Local Coastal Program Implementation Plan), promotes the orderly development of the City; promotes the public health, safety, peace, comfort, and general welfare; protect the character, social and economic vitality of neighborhoods; and ensure the beneficial development of the City. Tattoo establishments are not a coastal dependent or visitor serving use. Implementation of this code revision will allow tattoo establishments in the CG (General Commercial) and OG (Office General) Coastal Zoning Districts while preserving opportunities for visitor serving or coastal dependent uses in the CM (Commercial Recreational and Marine) and CV (Commercial Visitor-Serving) Coastal Zoning Districts.
2. Local Coastal Program Amendment No. LC2020-002 authorizes tattoo establishments in coastal commercial zones where they are compatible with other commercial uses.
3. A buffer between tattoo establishments and sensitive land uses such as residential zones, schools, and parks is appropriate and will continue to allow a wide range of potential alternative sites. These buffer provisions will serve to: (1) protect the quality of life and neighborhoods in the City; (2) protect the City’s retail and commercial trade; (3) minimize the potential for nuisances related to the operation of tattoo establishments; (4) protect the well-being, tranquility and privacy of the home with the

residential buffer; and (5) protect the peace, welfare, and privacy of persons who own, operate and/or patronize tattoo establishments.

4. Establishing distance requirements between other tattoo establishments ensures the City maintains an adequate number of establishments to serve residents and visitors while avoiding overconcentration and maintaining a diversity of uses to serve the community. For example, Newport Beach is comprised of several villages with distinct and unique commercial cores that serve families and visitors. It is important that the character of these commercial core areas remain family and tourist-oriented. Currently, four (4) of the five (5) tattoo establishments in the City are located within the coastal zone. Therefore, 80 percent of the City's existing tattoo establishments are located within the 63 percent of the City's land area that comprises the City's coastal zone. The existing establishments adequately serve coastal zones and ensure community compatibility.
5. Maintaining adequate separation between establishments as well as locating said establishments in commercial zones is appropriate in that tattoo establishments may cause negative secondary effects in the community including the potential to attract criminal activity. Specifically, data from the Newport Beach Police Department's Call for Service ("CFS") which compares the number of CFS during the preceding five years shows a disparity in the number of calls for tattoo establishments when compared with other Restricted Personal Services. The City's data shows that since January 2015, Newport Beach Police Department has received 49 CFS for four (4) tattoo establishments; in comparison to 12 CFS (when excluding calls for alarms) for three non-tattoo establishments operating during the same period of time. In addition, there were no CFS at non-tattoo establishments for incidents recorded as: disturbance, theft/fraud, drunk in public or battery/fighting in comparison to 22 such incidents recorded at tattoo establishments. The CFS data for the City of Oceanside, (another coastal city with publicly available CFS data) shows a similar pattern, with substantially higher CFS for tattoo establishments and recorded incidents of disturbances and violent crimes in comparison to non-tattoo establishments.
6. Local Coastal Program Amendment No. LC2020-002 and Zoning Code Amendment No. CA2020-002 are appropriate to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created. Buffer requirements are a legitimate and reasonable means of ensuring against the negative secondary effects of tattoo facilities and to balance the various land uses in order to protect the health, safety and welfare of Newport Beach residents, preserve the quality of life, and preserve the character of surrounding neighborhoods. The buffer requirements of the City do not unreasonably restrict the establishment or operation of constitutionally protected businesses in Newport Beach.

7. Local Coastal Program Amendment No. LC2020-002 and Zoning Code Amendment No. CA2020-002 are appropriate to protect the health and well-being of adolescents within the community. A study titled “Tattooing and High-Risk Behavior in Adolescents” established an association between adolescents who obtain tattoos and their involvement in high-risk behaviors that are detrimental to their health and welfare including gang affiliation, substance abuse, and violence. Adopting time, place and manner restrictions that protect minors is appropriate. Sable Commission of California, Inc. v. FCC, (1989) 492 U.S. 115.
8. Local Coastal Program Amendment No. LC2020-002 and Zoning Code Amendment No. CA2020-002 are appropriate to protect customer health. Tattooing carries the risk of infection and transmission of disease if unsanitary conditions are present or unsterile equipment is used. The Centers for Disease Control and Prevention and the United States Food and Drug Administration confirm the significant health risks of tattooing. CDC, Body Art: Tattoos and Piercings (Jan. 21, 2008) (noting risks of infection, tuberculosis, Hepatitis B and C, and HIV). Zoning Code Amendment No. CA2020-002 which requires all licenses and permits including compliance with the State Safe Body Art Act and registration/licensing with the Orange County Health Department is appropriate.
9. Local Coastal Program Amendment No. LC2020-002 and Zoning Code Amendment No. CA2020-002 set appropriate time, place and manner restrictions on tattoo establishments. The City has considered the following decisions: Anderson v. Hermosa Beach, (9th Cir. 2010) 621 F.3d 1051; Real v. City of Long Beach, (9th Cir. 2017) 852 F.3d 929; Garcia v. City of Torrance Case No. 2:15-cv-03810-SVW-RAO; Ward v. Rock Against Racism, (1989) 491 U.S. 78; and City of Renton v Playtime Theaters, (1986) 475 U.S. 41.
10. Local Coastal Program Amendment No. LC2020-002 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.
11. The LCP, including Local Coastal Program Amendment No. LC2020-002, will be carried out fully in conformity with the California Coastal Act.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds Local Coastal Program Amendment No. LC2020-002 is exempt from the 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 the code 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.
2. The Planning Commission of the City of Newport Beach hereby recommends submittal of Local Coastal Program Amendment No. LC2020-002, as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference, to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 6TH DAY OF MAY, 2021.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Erik Weigand, Chairman

BY: _____
Lauren Kleiman, Secretary

Attachment(s): Exhibit A - Local Coastal Program Amendment No. LC2020-002

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EXHIBIT “A”
Local Coastal Program Amendment No. LC2020-002

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, in part to the “Tattoo Establishments” row as follows:

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 21.12 for unlisted uses.	CC	CG	CM (3)	CN	CV (3)	CV-LV (3)	OG	Specific Use Regulations	
Industry, Manufacturing and Processing, and Warehousing Uses									
<u>Tattoo Establishment</u>	=	A	=	=	=	=	A		

Section 2: Amend NBMC Section 21.70.020 (Definitions of Specialized Terms and Phrases) 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. ~~Tattoo services and~~ Bbody piercing studios.

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

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.

Attachment C

Background Research

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Background Research
Secondary Effects of Tattoo Establishments

The Newport Beach Police Department provided Calls for Service (CFS) data for the City’s existing Restricted Personal Service uses dating back to January 1, 2015. A summary of the data is provided below to provide a comparison of tattoo establishments versus non-tattoo establishments. It should be noted that one tattoo establishment and two non-tattoo establishments were excluded from the summary table as they were located in large centers and the data collected did not specify which suite/tenant in the center the CFS was attributed to. The City’s data shows that since January 2015, Newport Beach Police Department has received 49 CFS for four tattoo establishments; in comparison to 12 CFS (when excluding calls for alarms) for three non-tattoo establishments operating during the same period of time. In addition, there were no CFS at non-tattoo establishments for incidents recorded as: disturbance, theft/fraud, drunk in public or battery/fighting in comparison to 22 such incidents recorded at tattoo establishments. The CFS data for the City of Oceanside, (another coastal city with publicly available CFS data) shows a similar pattern, with substantially higher CFS for tattoo establishments and recorded incidents of disturbances and violent crimes in comparison to non-tattoo establishments.

Table-1 City of Newport Beach Calls for Service Summary Table

Location	Use Type	Calls for Service	Alarm	Disturbance	Theft/ Fraud	Drunk in Public	Battery/ Fight
3413 Newport Blvd	Tattoo	7	0	1	1	0	0
2611 Newport Blvd	Tattoo	34	0	10	0	3	1
365 Old Newport Blvd	Tattoo	8	0	1	1	0	0
6000 West Coast Hwy	Tattoo	23	0	2	1	0	1
20280 Acacia Street	Non-Tattoo	14	8	0	0	0	0
4101 Birch Street	Non-Tattoo	6	0	0	0	0	0
1220 Bison Street	Non-Tattoo	0	0	0	0	0	0

Data provided by Wendy Joe, Investigator – Newport Beach Police Department

In addition to the CFS data analyzed several studies and article were reviewed (see references below) regarding the secondary effects of tattoo establishments. Among the impacts disclosed, it was reported that tattooing carries the risk of infection and transmission of disease including tuberculosis, Hepatitis B and C and HIV if unsanitary conditions are present or unsterile equipment is used. Additionally, a link between the tattooing of high school aged people and a propensity to engage in high-risk behaviors including gang affiliation, substance abuse and violence has been found.

Based upon a review of the available data and studies cited below there is a reasonable basis to conclude that tattoo establishments may result in negative impacts on sensitive uses such as residential areas and schools and parks which attract and serve minors.

References Documenting the Secondary Effects of Tattoo Establishments

CDC Study: Body Art: Tattoos and Piercings (Jan. 21, 2008)
https://www.cdc.gov/niosh/topics/body_art/more-info.html

Koch, J. R., Roberts, A. E., Armstrong, M. L., & Owen, D. C. (2010). Body art, Deviance, and American College students. Social Science Journal, <https://psycnet.apa.org/record/2010-02170-009>

Memorandum from Christi Helm, City of Oceanside Crime and Intelligence Analyst regarding Calls for Service Data (Tattoo Establishments v. Non-Tattoo Establishments) (July 27, 2016) Pages 16-17,
<https://www.ci.oceanside.ca.us/civicax/filebank/blobdload.aspx?blobid=42802>

Background Research
Secondary Effects of Tattoo Establishments

Shelley, J. M. (2012). Who gets tattoos? Demographic and behavioral correlates of ever being tattooed in a representative sample of men and women. *Annals of Epidemiology*,
<https://pubmed.ncbi.nlm.nih.gov/22153289/>

Study of Timothy A. Roberts, MD and Sheryl Ryan, MD entitled "Tattooing and High-Risk Behavior in Adolescents (2002), <https://pediatrics.aappublications.org/content/110/6/1058>