

City of Brisbane

Agenda Report

TO: Mayor and City Council

FROM: Hal Toppel, City Attorney

SUBJECT: Moratorium on Body Art Establishments

DATE: For Council Meeting on November 1, 2010

City Council Goals:

To provide for effective and efficient delivery of City services [1].

To provide public service that assures the safety of property and citizens residing, working, or visiting in Brisbane [9].

Purpose:

The purpose of the urgency ordinance is to impose a temporary moratorium on the establishment of any body art establishment (tattoo parlor) in the City in order to provide time for the City to study these operations and determine the manner in which they should be regulated.

Recommendation:

Adopt Ordinance No. 550. A two-thirds vote will be required.

Background and Discussion:

The City received an inquiry concerning the requirements, if any, for establishment of a tattoo parlor in the City. At the present time, the Brisbane Municipal Code contains no provisions to regulate these operations and it could be argued that they should be classified as "personal service establishments" under the Zoning Ordinance and allowed to operate in most zoning districts. Moreover, a very recent ruling by the California Court of Appeals held that tattoo parlors are engaged in a form of expression that is protected by the First Amendment of the U.S. Constitution and the California Constitution. As such, they cannot be totally banned from the City but can be made subject to reasonable regulation with regard to time, place and manner of operations.

The proposed ordinance will impose a moratorium on the establishment of any body art establishment in the City for an initial period of 45 days. The ordinance will become effective immediately upon adoption by a 2/3 vote. The moratorium can then be extended for an additional 10 months and 15 days, plus another year after that if the City needs more time to complete the legislative process.

Fiscal Impact:

None.

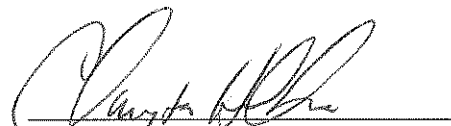
Measure of Success:

The determination and adoption of regulations concerning body art establishments.

Attachments:

Proposed Ordinance No. 550


City Attorney


City Manager

ORDINANCE NO. 550

AN INTERIM URGENCY ORDINANCE OF THE CITY OF BRISBANE IMPOSING A MORATORIUM UPON THE ESTABLISHMENT OR OPERATION OF BODY ART ESTABLISHMENTS

The City Council of the City of Brisbane does hereby ordain as follows:

SECTION 1: Findings and Declaration of Intent.

The City Council finds and determines that:

(a) The City recently received an inquiry as to what requirements, if any, needed to be satisfied in order to establish and operate a tattoo parlor within the City.

(b) At the present time, the Brisbane Municipal Code does not contain any provisions regulating the establishment and operation of tattoo parlors, also referred to as "body art establishments." Consequently, it is possible that a person seeking to establish a tattoo parlor could argue that it should be classified as a "personal service" and allowed as a permitted use in most of the zoning districts of the City, with no special regulations or restrictions governing its operation.

(c) The establishment of an unregulated tattoo parlor would create an immediate and serious risk of adverse health and safety impacts that could otherwise be mitigated through the adoption of appropriate regulations pertaining to sanitation of premises and equipment, qualification of operators, location of establishments, and hours of operation.

(d) It is the intention of the City Council to study and review the health, public safety, and planning issues concerning tattoo parlors to determine the manner in which such establishments should be regulated in order to mitigate any potential adverse impacts that may be created by this activity, recognizing that tattoo parlors are engaged in a form expression protected by the Constitution and may not be prohibited entirely from conducting business within the City.

(e) Unless a moratorium is adopted, there is a serious risk that a tattoo parlor could be established without any form of regulation by the City. Once established, the City may be unable to regulate or eliminate the activity and irreparable damage may be caused to the surrounding neighborhood and suffered by the community in general. A current and immediate threat to the public health, safety, and welfare therefore exists which requires the imposition of a moratorium in order to preserve the status quo until further studies are conducted and until further legislative action is accomplished.

SECTION 2: Purpose of Ordinance.

This Ordinance is enacted pursuant to Section 65858 of the California Government Code. The purpose of this Ordinance is to prohibit, for a period of forty-five (45) days, the establishment or operation of any body art establishment within any zoning district of the City.

SECTION 3: Definition.

As used in this Ordinance, the term "body art establishment" means any place or premise, whether public or private, temporary or permanent in nature or location, where tattooing, body piercing and/or permanent cosmetics, as those terms are defined in Section 119300 of the California Health and Safety Code, are performed, whether or not for profit.

SECTION 4: Prohibition.

During the effective period of this Ordinance, no business license, building permit, design permit, use permit, or other form of permit, approval or entitlement shall be issued or granted for the establishment or operation of, and no person shall otherwise establish or operate, a body art establishment within the City.

SECTION 5: Effective Period of Ordinance.

This Ordinance shall be effective for a period of forty-five (45) days from the date of its adoption. However, this Ordinance may be extended for additional periods of time in the manner provided in Section 65858 of the California Government Code.

SECTION 6: Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 7: Effective Date.

This Ordinance is an urgency ordinance for the immediate preservation of the public health, safety, and welfare and shall become effective immediately upon its passage and adoption.

The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Brisbane held on the 1st day of November, 2010, by the following vote, which vote constitutes no less than a four-fifths (4/5ths) vote of the entire City Council, as required by Section 65858 of the California Government Code.

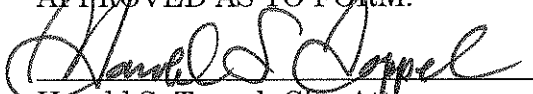
AYES:

NOES:

ABSENT:

W. Clarke Conway, Mayor

APPROVED AS TO FORM:



Harold S. Toppel, City Attorney

ATTEST:

Sheri Marie Spediacci, City Clerk