

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Zoning Text Amendment RZ-2-10 to Amend Title 17 of the Brisbane Municipal Code to Define "Body Art Establishment" and to Permit Such Uses in the NCRO-1 Brisbane Village and NCRO-2 Downtown Brisbane Neighborhood Commercial Districts (Draft Ordinance No. 549); City of Brisbane, applicant

DATE: For Council Meeting on October 18, 2010

**City Council Goals:**

To promote economic development that stabilizes and diversifies the tax base.

**Purpose:**

The proposed ordinance will permit businesses that perform tattooing, body piercing and permanent cosmetics, under the term "body art establishment," in the NCRO-1 Brisbane Village and NCRO-2 Downtown Brisbane Neighborhood Commercial Districts.

**Recommendation:**

Introduce Ordinance No. 549.

**Background:**

In response to an inquiry regarding zoning regulations for tattoo parlors, the City Council directed that the Zoning Ordinance be amended to specifically address this land use category. The San Mateo County Health Department already regulates the sterilization, sanitation and other safety aspects of businesses that do tattooing, body piercing and permanent cosmetics as "body art establishments," so the purpose of the Zoning Ordinance amendment would be to identify where and when such uses would be allowed.

**Discussion:**

Following up on the Council's action in July, the Planning Commission considered two approaches to allowing tattoo parlors in Brisbane. The recommended alternative would

define a new category of land use, “body art establishments,” which would only be permitted in the NCRO-1 and NCRO-2 Districts. Tattoo parlors and other body art establishments would be subject to the same existing regulations regarding night operations, noise, signage and parking as apply to other businesses in these districts. All commercial uses in these two districts are only allowed to operate until 10 p.m., unless approved otherwise by the Planning Commission. This alternative was supported by the Police Chief.

The Commission rejected a second alternative that would have expanded the definition of “personal services” to include tattoo parlors and other body art establishments. As personal services, tattoo parlors would have been allowed in the NCRO-1 District, NCRO-2 District, SP-CRO Sierra Point Commercial District and TC-1 Crocker Park Trade Commercial District and would have been conditionally permitted in the SCRO-1 Southwest Bayshore Commercial District and MLB Marsh Lagoon Bayfront District. In the SP-CRO District and portions of the TC-1 District, tattoo parlors could have operated 24 hours a day, a public safety concern due to the lack of foot and vehicular traffic and visibility at night.

**Fiscal Impact:**

None.

**Measure of Success:**

The effectiveness of the ordinance would be monitored to assure that such uses do not over-proliferate or adversely impact surrounding uses.

**Attachments:**

Draft Ordinance

Planning Commission Resolution RZ-2-10

Draft Planning Commission Action Minutes of September 23, 2010 [Excerpt]

Planning Commission Agenda Report for the Meeting of 9/23/10



Community Development Director



City Manager

RESOLUTION NO. RZ-2-10

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING ZONING TEXT AMENDMENT RZ-2-10 TO THE CITY COUNCIL,  
SUCH AMENDMENTS PERTAINING TO  
CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING,  
REGARDING ADOPTING A DEFINITION OF "BODY ART ESTABLISHMENT" AND  
ALLOWING SUCH USES IN THE NCRO-1 AND NCRO-2 DISTRICTS

WHEREAS, on July 6, 2010, the City Council initiated a Zoning Text Amendment to specifically address tattoo parlors in the Zoning Ordinance; and

WHEREAS, the proposed amendment is not subject to the California Environmental Quality Act (CEQA) per the general rule contained in State CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

WHEREAS, on September 9 and 23, 2010, the Planning Commission held public hearings on the Zoning Text Amendment and draft ordinance; and

WHEREAS, the minutes of the Planning Commission meetings of September 9 and 23, 2010, are attached and incorporated by reference as part of this resolution; and

WHEREAS, the Planning Commission has determined that the draft ordinance is consistent with Brisbane General Plan Policies 12 and 14.

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached Ordinance.



CAROLYN PARKER  
Acting Chairperson

I hereby certify that the foregoing Resolution No. RZ-2-10 was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on September 23, 2010, by the following roll call vote:

AYES: Cunningham, Maturo, Reinhardt, Parker  
NOES: None  
ABSENT: Munir



JOHN SWIECKI  
Community Development Director

draft  
**ORDINANCE NO. 549**

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 17.02 OF  
THE ZONING REGULATIONS PERTAINING TO DEFINITIONS AND CHAPTER  
17.14 REGARDING THE NCRO NEIGHBORHOOD COMMERCIAL DISTRICTS**

**The City Council of the City of Brisbane hereby ordains as follows:**

**SECTION 1:** Section 17.02.095 of Chapter 17.02 of Title 17 of the Brisbane Municipal Code is added to read as follows:

**17.02.095 Body Art Establishment.** "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, whether or not for profit, are performed.

**SECTION 2:** Section 17.14.020 of Chapter 17.14 of Title 17 of the Brisbane Municipal Code is amended to read as follows:

**17.14.020 Permitted uses.** The following uses are permitted uses in the NCRO-1 and NCRO-2 districts, if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

- A. Body art establishments, operating in compliance with the most recently adopted provisions of Chapter 4.110 of the San Mateo County Ordinance Code.
- B. Financial institutions.
- C. Medical facilities.
- D. Offices.
- E. Personal services.
- F. Restaurants.
- G. Retail sales and rental.
- H. Home occupations, in the NCRO-2 District only.

**SECTION 3:** 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 4:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

\* \* \* \*

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the \_\_\_ day of \_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

W. Clarke Conway, Mayor

ATTEST:

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Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:



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Harold S. Toppel, City Attorney

Exhibit A.

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 17.02 OF  
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A. Body art establishments, operating in compliance with Chapter 4.110 of the San Mateo County Ordinance Code.

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- C. Medical facilities.
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- E. Personal services.
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AYES:  
NOES:  
ABSENT:  
ABSTAIN:

W. Clarke Conway, Mayor

ATTEST:

\_\_\_\_\_  
Sheri Marie Speciaicei, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Harold S. Toppel, City Attorney

**BRISBANE PLANNING COMMISSION**  
Action Minutes of September 23, 2010  
Regular Meeting  
[excerpts]

CALL TO ORDER

Acting Chairperson Parker called the meeting to order at 7:33 p.m.

ROLL CALL

Present: Commissioners Cunningham, Maturo and Reinhardt and Acting Chairperson Parker (Chairman Munir absent)  
Staff Present: Community Development Director Swiecki, Senior Planner Tunc and Associate Planner Johnson

ADOPTION OF AGENDA

Commissioner Maturo moved to adopt the agenda. The motion was seconded by Commissioner Cunningham and approved 4-0.

CONSENT CALENDAR

1. Approval of Draft Action Minutes of September 9, 2010 Regular Meeting  
Commissioner Maturo moved to approve the Minutes. The motion was seconded by Commissioner Cunningham and approved 3-0 (Commissioner Reinhardt abstained).

ORAL COMMUNICATIONS

None.

WRITTEN COMMUNICATIONS

No correspondence was received regarding items on the agenda.

OLD BUSINESS

1. **CONTINUED PUBLIC HEARING: Zoning Text Amendment RZ-2-10; Amend Title 17 of the Brisbane Municipal Code to Modify the Definition of "Personal Services" to Include Tattoo Parlors and Other Body Art Establishments**  
Senior Planner Tunc summarized the agenda report, noting that an alternative version of the ordinance was being presented that would only allow "body art establishments" in the NCRO-1 and NCRO-2 Districts.

There being no questions for staff from the Commission, Acting Chairperson Parker opened the public hearing. There being no one wishing to speak, Commissioner Maturo made the motion to close the public hearing, which was seconded by Commissioner Cunningham and approved, 4-0.

Commissioner Maturo supported the alternative version of the ordinance recommended by the Police Department. The other Commissioners agreed.

Commissioner Maturo made a motion to recommend that the City Council adopt the draft alternative ordinance that would permit body art establishments only in the NCRO-1 and NCRO-2 Districts. The motion was seconded by Commissioner Cunningham and approved 4-0.

NEW BUSINESS

1. **PUBLIC HEARING: 600 Tunnel Avenue; Interim Use Permit UP-14-10; Interim Use Permit for Outdoor Storage of Lumber and Parking Vehicles Associated with Sierra Point Lumber and for Parking of Dump Trucks and Trailers on a Combined 3 Acre +/- Previously Gravel Surfaced Portion of this Parcel, Universal Paragon Corporation, owner/applicant, on behalf of Mary Petrin, D.B.A. MK Trucking, and Sierra Point Lumber, APN 005-340-040-040**

Associate Planner Johnson presented the item and responded to questions from the Commission regarding the number of dump trucks that could be parked and the length of the term of the Interim Use Permit.

In response to a question, Director Swiecki updated the Commission on the status of the previously approved shuttle bus yard located up the street.

Acting Chairperson Parker opened the public hearing.

Matthew Hurst, property manager for Universal Paragon Corporation, explained that Sierra Point Lumber was proposing to continue its past operations and that MK Trucking was using a portion of the site that had been used similarly in the past.

Mr. Hurst and Director Swiecki responded to questions from Commissioner Cunningham regarding security. Associate Planner Johnson explained the recommended condition regarding street upgrades.

A motion to close the public hearing was made by Commissioner Maturo, seconded by Commissioner Cunningham and approved, 4-0.

In response to a comment from Acting Chairperson Parker, Associate Planner Johnson said that the proposed 6 ft. tall security fencing is the standard height for which no Fence Exception is required.

# City of Brisbane

## Planning Commission Agenda Report

RZ-2-10  
9/23/10 Meeting  
Page 2

### Planning Commission Agenda Report

**Staff Analysis:** Pursuant to State Health & Safety Code Sections 119.00-1103.09, San Mateo County adopted Ordinance No. 04285 to give the County Health Department jurisdiction over the sterilization, sanitation and safety aspects of businesses that do tattooing, body piercing and permanent cosmetics (see attached). The ordinance refers to these uses as "body art establishments" and includes detailed health and safety standards for such uses.

Given the detailed operational requirements enforced by the County Health Department, the Planning Commission preliminarily did not find that additional City regulations are necessary to ensure that tattoo parlors are operated in a manner not detrimental to public health and safety (Brisbane Municipal Code Section 17.40.050.B). Existing night operations restrictions, noise ordinance standards, signage regulations and parking requirements that already apply to other businesses in the various commercial zoning districts would also apply to tattoo parlors and other body art establishments (see attached chart). The Police Department notes, though, that without specific Use Permit control, the City would have no means to further regulate the hours of operation of tattoo parlors where appropriate to avoid potential problems with some of their clientele who may have been patronizing nearby bars.

The approach preliminarily recommended by the Planning Commission is similar to that of the Cities of South San Francisco, San Bruno, Pacifica and Menlo Park and the Town of Colma, which in practice consider tattoo parlors to be akin to other "personal services" or "commercial services" that do not require Use Permit approval, according to a survey of other jurisdictions in the County (see attached). In contrast, only the City of Daly City specifically requires Use Permit approval for tattoo parlors. The City of Redwood City in practice considers tattoo parlors to be similar to those uses which are conditionally permitted in commercial districts and so indirectly requires Use Permit approval. This is also the approach apparently taken by the Cities of San Mateo, San Carlos and Belmont.

At its study session, the Planning Commission preliminarily did not consider separation requirements between like businesses necessary at this time to prevent an overproliferation or overconcentration of similar businesses. Should the number of tattoo parlors actually established appear to threaten the diversified mix of uses that best serves the needs of the community per General Plan Policies 12 and 14, the matter can be addressed, for example, through adoption of a moratorium at that time.

The Planning Commission, on the other hand, preliminarily found at its August 26<sup>th</sup> study session that, given the San Mateo County Health Department's existing health and safety regulations for "body art establishments" throughout the County, there appeared to be no need for the City to regulate tattoo parlors any differently from personal service uses. The attached draft ordinance would add "tattoo parlors and other body art establishments" to the list of types of businesses that qualify as "personal services" as cited in the definition contained in Brisbane Municipal Code Section 17.02.610.

**Recommendation:** Recommend that the City Council adopt the draft ordinance, via adoption of Resolution RZ-2-10.

**Environmental Determination:** Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to the California Environmental Quality Act (CEQA). This general rule is contained in State CEQA Guidelines Section 15061(b)(3).

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G.1.2.

assure public safety for patrons of these establishments and their neighbors during the day and night, as compared to other zoning districts. An alternative version of the draft ordinance, defining the use, based upon the County's definitions of "body art" and "body art establishment," and specifically permitting body art establishments in the NCRO-1 and NCRO-2 Districts, is attached for the Commission's consideration.

Attachments:

- Draft Resolution RZ-2-10
- Draft Ordinance
- Draft Alternative Ordinance
- Chart of "Personal Services" Regulations by Zoning District
- 7/6/10 City Council Agenda Report
- California Health and Safety Code Section 1193.00
- San Mateo County Ordinance No. 04285
- 8/11/10 City of Brisbane Memo

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING ZONING TEXT AMENDMENT RZ-2-10 TO THE CITY COUNCIL,  
SUCH AMENDMENTS PERTAINING TO  
CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING,  
REGARDING MODIFYING THE DEFINITION OF "PERSONAL SERVICES"  
TO INCLUDE TATTOO PARLORS AND OTHER BODY ART ESTABLISHMENTS

WHEREAS, on July 6, 2010, the City Council initiated a Zoning Text Amendment to specifically address tattoo parlors in the Zoning Ordinance; and

WHEREAS, the proposed amendment is not subject to the California Environmental Quality Act (CEQA) per the general rule contained in State CEQA Guidelines Section 1506(b)(3), because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

WHEREAS, on September 9 and 23, 2010, the Planning Commission held public hearings on the Zoning Text Amendment and draft ordinance; and

WHEREAS, the minutes of the Planning Commission meetings of September 9 and 23, 2010, are attached and incorporated by reference as part of this resolution; and

WHEREAS, the Planning Commission has determined that the draft ordinance is consistent with Brisbane General Plan Policies 12 and 14.

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached Ordinance.

JAMEEL MUNIR  
Chairman

I hereby certify that the foregoing Resolution No. RZ-2-10 was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on September 23, 2010, by the following roll call vote:

AYES:  
NOES:  
ABSENT:

JOHN SWIECKI  
Interim Community Development Director

G.1.3.

G.1.4.

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING  
CHAPTER 17.02 OF THE ZONING REGULATIONS PERTAINING TO  
DEFINITIONS**

The City Council of the City of Brisbane hereby ordains as follows:

**SECTION 1:** Section 17.02.610 of Chapter 17.02 of Title 17 of the Brisbane  
Municipal Code is amended to read as follows:

**17.02.610 Personal services.** "Personal services" means services of a personal convenience nature involving the care of an individual or his or her personal goods or apparel, including, but not limited to, barber and beauty shops; tattoo parlors and other body art establishments; shoe, luggage and small appliance repair; photographers; laundry and drop-off cleaning services; copying, repair and alteration of clothes; and similar services. The term also includes personal services rendered by a tradesperson or contractor, such as a plumber, electrician or heating and cooling equipment contractor, including the incidental storage of materials, supplies, products, parts and other items of personal property related to the furnishing of such services. Services provided to a commercial establishment would not usually be classified as personal services.

**SECTION 2:** 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 3:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

\* \* \*

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-1-  
G.I.G.

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**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING  
CHAPTER 17.02 OF THE ZONING REGULATIONS PERTAINING TO  
DEFINITIONS**

**SECTION 1:** Section 17.02.610 of Chapter 17.02 of Title 17 of the Brisbane  
Municipal Code is amended to read as follows:

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**SECTION 3:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

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Draft Alternative  
ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING  
CHAPTER 17.02 OF THE ZONING REGULATIONS PERTAINING TO  
DEFINITIONS**

The City Council of the City of Brisbane hereby ordains as follows:

**SECTION 1:** Section 17.02.095 of Chapter 17.02 of Title 17 of the Brisbane Municipal Code is added to read as follows:

**17.02.095 Body Art Establishment.** "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 118300 of the California Health and Safety Code, whether or not for profit, are performed.

**SECTION 2:** Section 17.14.020 of Chapter 17.14 of Title 17 of the Brisbane Municipal Code is amended to read as follows:

**17.14.020 Permitted uses.** The following uses are permitted uses in the NCRO-1 and NCRO-2 districts, if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

A. Body art establishments, operating in compliance with Chapter 4.110 of the San Mateo County Ordinance Code.

- B. Financial institutions.
- C. Medical facilities.
- D. Offices.
- E. Personal services.
- F. Restaurants.
- G. Retail sales and rental.
- H. Home occupations, in the NCRO-2 District only.

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**SECTION 4:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

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The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the \_\_\_\_ day of \_\_\_, 2010, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSENT: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_

W. Clarke Conway, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

Harold S. Toppel, City Attorney

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G.1.7

-2-  
G.1.8

DISTRICT	PERSONAL SERVICES	HOURS OF OPERATION	NOISE	SIGNAGE	PARKING
R-1 Residential	Per Home Occupation Permit*	Per Home Occupation Permit*	Per BMC Section 8.28.030	3 sq. ft.	No additional required
R-2 Residential	Per Home Occupation Permit*	Per Home Occupation Permit*	Per BMC Section 8.28.030	3 sq. ft.	No additional required
R-3 Residential	Per Home Occupation Permit*	Per Home Occupation Permit*	Per BMC Section 8.28.030	3 sq. ft.	No additional required
R-BA Brisbane Acres Residential	Per Home Occupation Permit*	Per Home Occupation Permit*	Per BMC Section 8.28.030	3 sq. ft.	No additional required
C-1 Commercial Mixed Use	Not permitted	N/A	N/A	N/A	N/A
NCRO-1 Brisbane Village Commercial	Allowed	5 a.m. to 10 p.m. (later requires Use Permit approval)	Per BMC Section 8.28.040	Per sign program and BMC Chapter 17.36**	1 space per 300 sq. ft. (BMC Section 17.34.010)
NCRO-2 Downtown Brisbane Commercial	Allowed	5 a.m. to 10 p.m. (later requires Use Permit approval)	Per BMC Section 8.28.040	Per BMC Chapter 17.36**	Per BMC Chapter 17.36**
HC Beauty Heavy Commercial	Not permitted	N/A	N/A	N/A	N/A
SCRO-1 Southwest Bayshore Commercial	Per Use Permit	5 a.m. to 10 p.m. (later requires Use Permit approval)	Per BMC Section 8.28.040	Per BMC Chapter 17.36**	1 space per 300 sq. ft. (BMC Section 17.34.010)
SP-CRO Sierra Point Commercial	Allowed	No restrictions	Per BMC Section 8.28.040	Per sign program and BMC Chapter 17.36**	1 space per 300 sq. ft. (BMC Section 17.34.010)
TC-1 Crocker Park Trade Commercial	Allowed	Within 300 ft. of residential property, 5 a.m. to 10 p.m. (later requires Use Permit approval); no restrictions otherwise	Per BMC Section 8.28.040	Per BMC Chapter 17.36**	1 space per 300 sq. ft. (BMC Section 17.34.010)
M-1 Manufacturing	Not permitted	N/A	N/A	N/A	N/A
MLB Marsh Lagoon Bayfront	Per Use Permit	Per Use Permit	Per Use Permit	Per Use Permit	1 space per 300 sq. ft. (BMC Section 17.34.010)
O-S Open Space	Not permitted	N/A	N/A	N/A	N/A
PD Planned Development	Per PD Permit (BMC Section 17.28.090.A)	Per PD Permit (BMC Section 17.28.090.G)	Per PD Permit (BMC Section 17.28.090.G)	Per PD Permit (BMC Section 17.28.090.D)	1 space per 300 sq. ft. (BMC Section 17.34.010)

\*Subject to the performance standards in BMC Section 17.44.040 that:

- A. The home occupation shall be conducted entirely within an enclosed structure; provided, however, the planning director may grant an exception to this standard if the planning director determines that the activity to be conducted outside of the structure:
  - 1. Shall not create a nuisance or in any way adversely affect neighboring properties or the public welfare; and
  - 2. Shall not create the appearance of a nonresidential use on the site.
- B. A home occupation conducted in a garage shall not reduce the parking required for the building site.
- C. The home occupation shall not generate pedestrian or vehicular traffic beyond that normal to the zoning district in which it is located.
- D. The home occupation shall not involve employees at the site other than those who reside at the dwelling unit; provided, however, the planning director may grant an exception to this standard if the planning director determines that:
  - 1. Occasional trips to the site by employees who generally work off the premises do not exceed the trip generations that would normally be expected for single family dwellings; and
  - 2. There are sufficient parking places available for employees visiting the; and
  - 3. Vehicles and equipment used by employees who generally work off the premises are not stored at the site.
- E. Commercial vehicles making deliveries to or from the premises shall be no larger than a step-van or similar vehicle normally used for making small package deliveries to residential neighborhoods.
- F. Stock in trade may be kept on the site provided the stock in trade is sold off the premises or by limited appointment.
- G. The home occupation shall not be conducted and the premises shall not be altered or used in a manner that would give the dwelling unit the appearance of a nonresidential use.
- H. No mechanical or electrical equipment shall be used on the premises which causes undue noise, electrical interference, or other adverse impact upon any adjacent properties.
- I. Signs for the home occupation shall comply with the regulations set forth in Chapter 17.36.
- J. The home occupation shall not involve the use of any toxic, hazardous, flammable, or other material or waste that may cause a threat to the public health or safety.

\*\*Illuminated signs require Zoning Administrator approval after 10-days public notice to surrounding properties.

# City of Brisbane Agenda Report

TO: Honorable Mayor and City Council  
FROM: Interim Community Development Director via City Manager  
SUBJECT: Zoning Regulations for Tattoo Parlors  
DATE: Meeting of July 6, 2010

City Council Goals:

To provide for effective and efficient delivery of City services (Goal #1).

To provide public service that assures the safety of property and citizens residing, working or visiting in Brisbane (Goal #9).

Purpose:

To initiate a zoning ordinance amendment to specifically address tattoo parlors.

Recommendation:

Authorize staff to initiate a zoning code amendment for the regulation of tattoo parlors.

Background and Discussion:

The City has received an inquiry regarding which zoning districts within the City allow tattoo parlors. Tattoo parlors are not specifically listed as permitted or conditional uses in any zoning district, but many jurisdictions treat them as "personal services," which are included as permitted or conditional uses in a number of Brisbane's zoning districts.

Brisbane Municipal Code Section 17.01.080 B gives the Planning Director authority to interpret general categories of uses or to refer any administrative interpretation to the Planning Commission for a final determination. General Plan Program 12a directs that "When evaluating land uses, consider whether a use would result in adverse impacts on existing and proposed land uses nearby, and whether those impacts can be mitigated." In cases where it is uncertain or ambiguous as to how a proposal would be consistent with adopted City policy, City Council Resolution No. 2004-43 specifies that the matter should be referred to the City Council for appropriate direction on the policy to be followed, before a decision is made on the proposal. Staff believes that the operational characteristics of tattoo parlors are distinct from typical "personal services" such as

barbershops or nail salons, and it would be appropriate for the zoning regulations to specifically address tattoo parlors.

Pursuant to State Health & Safety Code Sections 119300-119309 ("Tattooing, Body Piercing, and Permanent Cosmetics"), San Mateo County adopted Ordinance No. 04285 which gives the County Health Department jurisdiction over the sterilization, sanitation and safety aspects of tattoo parlors (referred to in the ordinance as "body art establishments"). The ordinance includes detailed health and safety standards for such uses. The ordinance specifically does not preempt local land use control or zoning regulation applicable to body art establishments.

Fiscal Impact:

None.

Measure of Success:

The adoption of appropriate regulations concerning tattoo parlors as determined through the Zoning Code Amendment process.

Joe Sjorup  
Interim Community Development Director

City Manager

H & S C § 118950 bans the nonsale distribution of cigarettes at events held on public property where adults and minors are present. People ex rel. Lockyer v. R.J. Reynolds Tobacco Co. (2005) 37 Cal 4th 707, 36 Cal Rptr 3d 814, 124 P3d 408, 2005 Cal LEXIS 14241, modified (2006, Cal) 2006 Cal LEXIS 332, modified (2006, Cal) 2006 Cal LEXIS 1400. Although ignorance of the law is not a defense to a violation of H & S C § 118950, a defendant's good faith or bad faith is relevant to the evaluation of a fine assessed against the defendant for violating the statute. People ex rel. Lockyer v. R.J. Reynolds Tobacco Co. (2005) 37 Cal 4th 707, 36 Cal Rptr 3d 814, 124 P3d 408, 2005 Cal LEXIS 14241, modified (2006, Cal) 2006 Cal LEXIS 332, modified (2006, Cal) 2006 Cal LEXIS 1400.

Tobacco company's conduct in distributing free cigarettes at six different events held on public property was not protected by a safe harbor provision provided in H & S C § 118950(f) because minors were not excluded from the events, even though they were excluded from booths or tents where the cigarettes were distributed. People ex rel. Lockyer v. R.J. Reynolds Tobacco Co. (2005) 37 Cal 4th 707, 36 Cal Rptr 3d 814, 124 P3d 408, 2005 Cal LEXIS 14241, modified (2006, Cal) 2006 Cal LEXIS 332, modified (2006, Cal) 2006 Cal LEXIS 1400.

## CHAPTER 6

### Chlorofluorocarbons

#### § 119150. Prohibited manufacture or sale of aerosol products utilizing saturated chlorofluorocarbons not containing hydrogen; Time

**Collateral References:**  
12 Within Summary (10th ed) Real Property  
§ 898.

## CHAPTER 7

### Tattooing, Body Piercing, and Permanent Cosmetics

[Added Stats 1997 ch 742 § 1.]

Section	Section
119300. Definitions	119305. County regulations
119301. Standards for persons doing tattooing, body piercing, or permanent cosmetics	119306. Civil penalty for failing to register or violating standards
119302. Distribution of standards	119307. Date for compliance with chapter
119303. Registration with county health department	119308. Task force to recommend protective legislation
119304. Inspections	119309. Physicians and surgeons

#### § 119300. Definitions

For purposes of this chapter, the following definitions shall apply:

- (a) "Tattooing" means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, to produce an indelible mark or figure visible through the skin.
- (b) "Body piercing" means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of an ear, lip, tongue, nose, or eyebrow. "Body piercing" does not, for the purpose of this chapter, include piercing an ear with

a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

(c) "Permanent cosmetics" means the application of pigments to or under the skin of a human being for the purpose of permanently changing the color or other appearance of the skin. This includes, but is not limited to, permanent eyeliner, eye shadow, or lip color.

(d) "Department" means the State Department of Health Services.

Added Stats 1997 ch 742 § 1. (AB 186).

#### § 119301. Standards for persons doing tattooing, body piercing, or permanent cosmetics

The California Conference of Local Health Officers shall establish sterilization, sanitation, and safety standards for persons engaged in the business of tattooing, body piercing, or permanent cosmetics. The department shall provide the necessary resources to support the development of these standards. The California Conference of Local Health Officers shall consult and adopt, to the extent appropriate, the Bloodborne Pathogen Standard (Section 5193 of Title 8 of the California Code of Regulations) of the Department of Industrial Relations, Division of Occupational Safety and Health. The standards shall be directed at establishment and maintenance of sterile conditions and safe disposal of instruments. The standards may be modified as appropriate to protect consumers from transmission of contagious diseases through cross-contamination of instruments and supplies. The standards shall be submitted to the department for review and consultation by July 1, 1998.

Added Stats 1997 ch 742 § 1. (AB 186).

#### § 119302. Distribution of standards

Within 30 days after standards are adopted by the department, the department shall distribute those standards in written form to all county health departments.

Added Stats 1997 ch 742 § 1. (AB 186).

#### § 119303. Registration with county health department

(a) Every person engaged in the business of tattooing, body piercing, or permanent cosmetics shall register by December 31, 1998, with the county health department of the county in which that business is conducted. A registrant shall do all of the following:

- (1) Obtain a copy of the department's standards from the county health department, sign an acknowledgment upon receipt of the standards, and commit to meet the standards.
- (2) Provide the county health department with his or her business address and the address at which the registrant performs any activity regulated by this article.
- (3) Pay a one-time registration fee of twenty-five dollars (\$25), to be paid directly to the county health department.
- (4) Pay an annual inspection fee of one hundred five dollars (\$105) to the county health department.

**ORDINANCE NO. 04285**  
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA  
\* \* \* \* \*

**AN ORDINANCE ADDING CHAPTER 4.110 TO TITLE 4 OF THE SAN MATEO  
COUNTY ORDINANCE CODE ESTABLISHING STANDARDS FOR BODY ART  
AND PIERCING**

The Board of Supervisors of the County of San Mateo, State of California,  
ORDAINS as follows:

**SECTION 1.** Chapter 4.110, Sections 4.110.010 to 4.110.170, is hereby added to Title  
4 of the San Mateo County Ordinance Code as follows:

**Chapter 4.110 STANDARDS FOR BODY ART AND PIERCING**

**SECTION 4.110.010 PURPOSE**

This ordinance is enacted to establish standards for the design, construction, operation, and maintenance of body art establishments in order to prevent disease transmission and meet consumer expectations of the safety of body art establishments. It sets forth regulations of the persons owning body art establishments, the individuals performing body art procedures, and the establishments where body art procedures are performed.

**SECTION 4.110.020 DEFINITIONS**

- (a) "Aftercare" means written instructions given to the client, specific to the procedure(s) rendered, on caring for the body art and surrounding area.
  - (b) "Antiseptic" means an agent that destroys disease-causing microorganisms on human skin or mucosa.
  - (c) "Blood" means human blood or any human body fluid or tissue that is visibly contaminated.
  - (d) "Body Art" means physical body adornment using, but not limited to, the following techniques: body piercing, tattooing, and permanent cosmetic tattooing.
  - (e) "Body Art Establishment" means any place or premise, whether public or private, temporary or permanent in nature or location, where the practices of body art, whether or not for profit, are performed.
  - (f) "Body Piercing" means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of an ear, lip, tongue, nose, or eyebrow as defined in the California Health and Safety Code.
  - (g) "Contaminated Waste" means any material to be disposed of that has been soiled by blood or other potentially infectious material in the process of tattooing, body piercing, or the application of permanent cosmetics.
- (h) "Disinfection" means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering the objects safe for use or handling.
  - (i) "Equipment" means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in the operation of a body art establishment.
  - (j) "Establishment Plan" means a drawing of the establishment's layout illustrating the requirements of this ordinance.
  - (k) "Exposure Control Plan" means a written plan, applying to all those who perform tattooing, application of permanent cosmetics, or body piercing within a facility pursuant to Cal/OSHA Title 8, section 3204.9(e) and section 5193 Bloodborne Pathogens and Federal OSHA 29CFR 1910.1030. It is designed to eliminate or minimize employee and client exposure to bloodborne pathogens and other communicable diseases.
  - (l) "Hot Water" means water at least 120° F or as specified by the local building authority.
  - (m) "Jewelry" means any personal ornament inserted into a newly pierced area.
  - (n) "Liquid Chemical Germicide" means a disinfectant or sanitizer registered with the Environmental Protection Agency.
  - (o) "Local Enforcement Agency (LEA)" means the County of San Mateo Health Department, its designated employees, or other designated agents.
  - (p) "Owner" means and includes a lessee and every person who operate, control or has custody of any place of business or employment.
  - (q) "Permanent Cosmetics" means the application of pigments to or under the skin of a human being for the purpose of permanently changing the color or other appearance of the skin. This includes, but is not limited to, permanent eyeliner, eye shadow, or lip color, as defined in the California Health and Safety Code Section 119300(c).
  - (r) "Permit" means written approval by the Local Enforcement Agency to operate a body art establishment. Approval is given in accordance with these standards, and is separate from any other licensing requirements that may exist within the local jurisdiction.
  - (s) "Person" means any individual, partnership, corporation, or association.
  - (t) "Practitioner" means any individual who controls, operates, manages, conducts or practices body art activities at a body art establishment. The term includes practitioners who work under the direction of the operator and perform body art activities.
  - (u) "Procedure Surface" means the surface area of furniture or accessories that may come into contact with the client's clothed or unclothed body during a body art procedure. "Procedure Surface" also means the area of the client's skin where the body art procedure is to be performed and the surrounding area of the skin.
  - (v) "Remodel" means any change to the current body art establishment requiring either a building or trades permit for the work to proceed. "Remodel" does not include changes to the front desk area, waiting area, painting, wallpapering, or carpeting, even if a permit is otherwise required. Adding a new workstation, plumbing changes, or expanding into an adjacent space to add workstations are

examples of remodeling. "Remodeling" also means any changes to an establishment plan previously submitted to the Local Enforcement Agency.

"Sanitization" means a process of reducing the numbers of microorganisms on clean surfaces and equipment to a safe level.

- (w) "Sharps" means items described in Cal/OSHA Title 8, Section 5193.  
(x) "Sharps Container" means a puncture-resistant, leak-proof container that is closed for handling, storage, transportation and disposal. The "Sharps Container" shall be labeled with the international biohazard symbol as defined in the Medical Waste Management Act of the California Health and Safety Code.  
(y) "Single Use" means products or items intended for one time use and are disposed of after use on each client. Examples of "Single Use" items include cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, tattoo needles, scalpel blades, stencils, ink cups, and protective gloves.

(aa) "Standard Precautions" means a set of guidelines and controls, published by the Center for Disease Control (CDC) as "guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers" in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as "recommendation for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures," in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HVB and other blood pathogens. Precautions include, hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.

(bb) "Sterilization" means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.  
(cc) "Tattooing" means any method of placing ink or other pigments into or under the skin or mucosa with needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This includes all forms of cosmetic tattooing, as defined in the California Health and Safety Code.  
(dd) "Temporary Event" means any place or premises operating at a fixed location where an operator performs body art procedures for no more than 21 days in conjunction with a single event or celebration.

#### SECTION 4.110.030 JURISDICTION

This ordinance shall apply to all individuals performing body art procedures and all body art establishments located within the County of San Mateo. This ordinance is not intended to preempt any local zoning or health ordinances applicable to body art establishments.

#### SECTION 4.110.040 EXEMPTIONS

This ordinance shall not apply to: Board-certified medical or dental personnel that tattoo or pierce as part of a medical or dental procedure or to any individuals piercing only the

outer perimeter or lobe of the ear using a pre-sterilized single use stud and clasp ear-piercing system.

#### SECTION 4.110.050 PROHIBITIONS.

- (a) No person shall own or operate a body art establishment in violation of any state or federal law.  
(b) No person shall own or operate a body art establishment without a current valid LEA permit.  
(c) No permittee shall allow an individual who does not possess a valid LEA registration to perform body art procedures at that establishment.  
(d) No individual shall perform body art procedures without a valid LEA registration.  
(e) No individual shall perform body art procedures in violation of any state or federal law.  
(f) No individual shall perform body art procedures at any place other than a LEA permitted body art establishment.  
(g) No permittee or individual shall perform body art procedures without complying with the regulations set forth in Section 4.110.090.  
(h) No individual shall perform body art procedures in violation of the standards set forth in Section 4.110.110.

#### SECTION 4.110.060 PERMITS AND REGISTRATION

- (a) **Permit Procedure.** All applicants for a permit to operate a body art establishment shall submit to the LEA all of the following:  
(1) Completed LEA application form;  
(2) Establishment plan in sufficient detail to ascertain compliance with conditions in this ordinance;  
(3) An Exposure Control Plan;  
(4) Such other information as the LEA determines is necessary for implementation of this ordinance; and  
(5) All applicable fees.  
(b) **Annual Permits.** Permits are valid for one year and shall be renewed annually.  
(c) **Prominent Display.** Permits must be prominently displayed within the body art establishment.  
(d) **Practitioner Registration Procedure.** All practitioners shall submit to the LEA all of the following:  
(1) Completed LEA registration form;  
(2) Current proof of successful completion of LEA approved courses on blood borne pathogens and prevention of disease transmission as set forth in Cal/OSHA Title 8, Section 5193 and Federal OSHA 29CFR 1910.1030;  
(3) Such other information as the LEA determines is necessary for implementation of this ordinance; and  
(4) All applicable fees.  
(e) **Transfer of Permit or Registration.** A permit or registration shall not be transferable as to person or place.

#### SECTION 4.110.070 SUSPENSION OF PRACTITIONER REGISTRATION.

- (a) **Grounds for Suspension.** An individual's registration may be suspended, as set forth below in subdivision (b), by the LEA upon a finding, after notice and opportunity to be heard, that:
- (1) After the registration was issued it was determined that the application for the registration is incomplete or inaccurate; or
  - (2) The individual has violated this chapter or any federal or state related law.
- (b) **Time Period of Suspension of Registration.**
- (1) Upon the first time that the LEA makes the finding that either (a)(1) or (2) exist, the registration shall be suspended for up to 30 days.
  - (2) Upon the second time that the LEA makes the finding set forth in subdivision (a)(1) and (2) within twelve months of the first determination, the registration shall be suspended for up to 90 days.
  - (3) Upon the third and each subsequent time that the LEA makes the finding set forth in subdivision (a)(1) and (2) within twelve months of the prior determination, the registration shall be suspended for up to one year.
  - (c) Appeal of Suspension. The decision of the LEA may be appealed to the Director of Health Services or his or her designee.

#### **SECTION 4.110.080 TEMPORARY EVENTS**

Temporary body art establishments and individuals conducting body art procedures at a temporary event must meet all requirements of this ordinance. Permit applications for temporary events shall be submitted to the LEA at a minimum of seven (7) calendar days prior to the start of the event. Temporary event permits shall be issued for the specific days and hours of operation specified on the application and approved by the LEA.

- (a) **Establishments.**
- (1) Any new or remodeled establishment shall obtain the appropriate planning and building permits from the local building authority.
  - (2) There shall be no less than forty-five (45) square feet of floor space for each procedure area. The procedure areas(s) must be separated from the retail sales area, hair salon area, or any other area that may cause potential cross-contamination of work surfaces. Items such as dividers, curtains, or partitions shall separate multiple procedure areas.
  - (3) Each establishment shall have a readily accessible handsink that is not in a public restroom and is equipped with:
    - i. Hot and cold running water under pressure;
    - ii. "No touch" faucet controls such as wrist or foot operated;
    - iii. Liquid hand soap;
    - iv. Single use paper towels; and
    - v. A garbage can.
  - (4) Every body art establishment shall have at least one available bathroom equipped with a toilet and a hand lavatory. The hand lavatory shall be supplied with:
    - i. Hot and cold running water under pressure;
- (b) **Equipment and Instruments.**
- (1) All jewelry used as part of a piercing procedure shall be sterilized before use. All reusable instruments shall be thoroughly washed to remove all organic matter, rinsed, and sterilized before and after use. All needles shall be single use needles and sterilized before use. All sterilization shall be conducted using steam heat. Steam heat sterilization units shall be operated according to the manufacturer's specifications.
  - (2) At least once a month, but not to exceed 30 days between tests, a spore test shall be conducted on the sterilizer to ensure that it is working properly. If a positive spore test result is received, the sterilizer cannot be used until a negative result is obtained.
  - (3) Jewelry must be made of surgical implant grade stainless steel, solid 14k or 18k white or yellow gold, niobium, titanium or platinum, and/or a dense low-porosity plastic. Jewelry must be free of nicks, scratches or irregular surfaces and must be properly sterilized prior to use.
  - (4) All inks, dyes, and other pigments shall be specifically manufactured for tattoo procedures and FDA approved. The mixing of approved inks, dyes, or pigments, or their dilution with distilled water or alcohol is acceptable.
  - (5) Immediately before applying a tattoo or permanent cosmetic, the quantity of the dye used shall be transferred from the dye bottle and placed into

single use paper or plastic cups. Upon completion of the application, these single use cups and their contents shall be discarded.

- (6) All tables, chairs, furniture or other procedure surfaces that may be exposed to blood or body fluids during the tattooing or piercing procedure shall be constructed of stainless steel, or other suitable material that will allow complete sanitization, and shall be sanitized between uses with a liquid chemical germicide.

- (7) Single use towels or wipes shall be provided to the client. These towels shall be dispensed in a manner that precludes contamination and disposed of in a cleanable garbage container with a liner.
- (8) All bandages and surgical dressings used shall be sterile or bulk-packaged clean and stored in a clean, closed container.
- (9) All equipment and instruments shall be maintained in good working order and in a clean and sanitary condition.
- (10) All instruments and supplies shall be stored clean and dry in covered containers.

**(c) Skin Preparation.**

- (1) Whenever it is necessary to shave the skin, a new disposable razor must be used for each client.
- (2) The skin area subject to a body art procedure must be thoroughly cleaned with soap and water, rinsed thoroughly, and swabbed with an antiseptic solution. Only single use towels or wipes shall be used in the skin cleaning process.

- (3) No body art procedure shall be performed on any area of the skin where there is an evident infection, irritation, or open wound.

**(d) Hand Washing and Hygiene.**

- (1) Each practitioner shall scrub his or her hands and wrists thoroughly for 20 seconds before and after performing a body art procedure.
- (2) Practitioners with skin infections of the hand shall not perform body art procedures.
- (3) The practitioner must wash his or her hands after contact with the client receiving the procedure or after contact with potentially contaminated articles.

- (4) Practitioners shall wear clean clothing and use a disposable barrier such as a lap cloth when performing body art procedures.

- (5) For each client, single use disposable barriers shall be provided on all equipment used as part of the procedure that cannot be sterilized. Examples may include, but not limited to spray bottles, procedure light fixture handles, and tattoo machines.

- (6) Practitioners shall not smoke, eat, or drink while performing body art procedures.

**(e) Glove Use.**

- (1) Single use gloves of adequate size and quality as to preserve dexterity shall be used for touching clients, for handling sterile instruments, or for handling blood or body fluids.
- (2) Gloves must be changed if:

i. They become damaged;

ii. They come in contact with any non-clean surface or objects; or

iii. They come in contact with a third person.

(3) Gloves shall be discarded after the completion of a procedure on a client.

(4) Hands and wrists must be washed before putting on a clean pair of gloves and after removing a pair of gloves.

(5) Gloves shall not be reused.

**(f) Proper Handling And Disposal Of Medical Waste.**

- (1) Contaminated waste that may release liquid blood or body fluids when compressed or that may release dried blood or body fluids when handled, must be placed in an approved "red" bag that is marked with the international biohazard symbol. It must be disposed of by a licensed waste hauler at an approved site, or at a minimum, in accordance with the requirements contained in the California Medical Waste Management Act.
- (2) Waste that does not release any liquid blood or bodily fluids when compressed or handled, may be placed in a covered receptacle and disposed of through normal, solid waste disposal methods.
- (3) Sharps ready for disposal shall be disposed of in an approved sharps container as specified in the California Medical Waste Management Act.
- (4) Storage of contaminated waste on-site shall not exceed the period specified in the California Medical Waste Management Act.

**SECTION 4.110.180 RECORD MAINTENANCE**

- (a) Practitioner Information.** Each Body Art Establishment, for each practitioner, shall keep on file for two years and available for inspection by the LEA:
- (1) Full name of practitioner;
- (2) Home address;
- (3) Home phone number;
- (4) Date of birth;
- (5) Identification photo;
- (6) Proof of a valid LEA registration; and
- (7) Proof of approved Blood borne Pathogen Course, pursuant to Section 4.110.060.

- (b) Client Information.** The body art establishment operator shall maintain proper records for each client. The records of the procedure shall be kept for two years and shall be available for inspection by the LEA upon request. The records shall include the following:
- (1) The date of the procedure;
- (2) The appropriate consent forms;
- (3) Record of information on picture identification showing name, age, and current address of the client;
- (4) The type of the body art procedure performed; and
- (5) The name and registration number of the practitioner performing the procedure.

- (c) Establishment Information.** The following information shall be kept on file for three years on the premises and available for inspection by the LEA:

- (1) A description of all the body art procedures available to be performed in the body art establishment.
- (2) An inventory of instruments, body jewelry, sharps, and inks or pigments used for all procedures including the names of manufacturers, serial and lot numbers, invoices or orders shall satisfy this requirement.
- (3) Copies of spore tests conducted on the sterilizer and maintenance records as per manufacturer's guidelines.

#### **SECTION 4.110.110 PRACTITIONER PROFESSIONAL STANDARDS**

(a) **Client Limitations.** No practitioners shall perform body art procedures on individuals with:

- (1) Diabetes;
  - (2) A history of hemophilia;
  - (3) A history of skin diseases, skin lesions, or skin sensitivities to soap or disinfectants;
  - (4) A history of allergies to metals;
  - (5) A history of epilepsy, seizures, fainting or narcolepsy;
  - (6) A condition where the client takes medications, such as anticoagulants, that thin the blood and/or interferes with blood clotting;
  - (7) Any evidence of unhealthy conditions without the clearance by a physician licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business Professions Code; or
  - (8) Any evidence to be under the influence of alcohol or controlled substances.
- (b) **Written Consent.** No practitioner may perform body art without the client's written consent. The consent form shall at a minimum state the following information:
- (1) That any tattoo or permanent cosmetic should be considered permanent; it may only be removed with a surgical procedure; and any effective removal may leave scarring; or
  - (2) That any piercing may leave scarring; and
  - (3) Complications such as allergic reactions, potential skin infections, or other tissue damage may occur to the site where the piercing, tattooing, or application of permanent cosmetic is to be performed.
- (c) **Aftercare.** Practitioners shall provide each client with printed instructions on recommended care of the body art during the healing process. These instructions shall include information on when to seek medical treatment.

#### **SECTION 4.110.120. REQUIRED NOTIFICATIONS**

Permittee and individuals shall notify the LEA immediately of any information that they have or receive regarding potential bloodborne pathogen transmission.

#### **SECTION 4.110.130 INSPECTION AND CLOSURE OF ESTABLISHMENTS.**

- (a) **Access to Premises and Records.** Any permittee or individual who is operating a body art establishment shall, upon request of the LEA permit access to all parts of the establishment at any reasonable time, for the purpose of inspection. Permittee or individual who is operating a body art establishment shall allow review of any records necessary for the LEA to ascertain compliance to this

- (1) A description of all the body art procedures available to be performed in the body art establishment.
- (2) An inventory of instruments, body jewelry, sharps, and inks or pigments used for all procedures including the names of manufacturers, serial and lot numbers, invoices or orders shall satisfy this requirement.
- (3) Copies of spore tests conducted on the sterilizer and maintenance records as per manufacturer's guidelines.

(b) **Interference with the LEA.** No individual shall interfere with or hinder the LEA in the performance of its duties, or refuse to permit the LEA to make such inspections pursuant to state law.

(c) **Removal and Correction of Violations.** Each permittee and individual shall correct or remove each violation upon receipt of an inspection report giving notification of one or more violations of this ordinance in a reasonable length of time as determined by the LEA. Failure to remove or correct each violation within the time period noted on the inspection report shall constitute a separate violation of this ordinance.

(d) **Grounds for Closure.** LEA may order a permittee or individual to discontinue all operations of the body art establishment if any of the following conditions exist:

- (1) Failure to possess a permit required by this ordinance;
- (2) Evidence of a sewage backup in an area of the establishment where body art activities are conducted;
- (3) Lack of potable, plumbed, hot or cold water to the extent that hand washing, or toilet facilities are not operational;
- (4) Lack of electricity or gas service to the extent that hand washing, lighting, or toilet facilities are not operational;
- (5) Significant damage to the body art establishment due to tornado, fire, flood, or other disasters;
- (6) Evidence of an infestation of rodents or other vermin;
- (7) Evidence of contamination, filthy conditions, untrained staff or poor personal hygiene;
- (8) Any time a public health nuisance exists;
- (9) Using instruments or jewelry that are not sterile;
- (10) Failure to maintain required records;
- (11) Failure to use gloves as required;
- (12) Failure to properly dispose of sharps, blood or body fluids, or blood or body fluid contaminated items;
- (13) Failure to properly report complaints of potential blood borne pathogen transmission to the LEA; or
- (14) Evidence of a positive spore test on the sterilizer.

(e) **Reopening After Closure.** Permittee may only reopen the body art establishment with written permission from the LEA.

#### **SECTION 4.110.140 FEES**

The fee for a body art establishment permit and practitioner registration shall be contained in Ordinance Code Chapter 5.64.

#### **SECTION 4.110.150 SEPARABILITY**

If any provision or application of this ordinance is held invalid, that invalidity shall not affect other provisions or applications of this ordinance.

#### **SECTION 4.110.160 PENALTY**

Any individual who fails to register and violates the sterilization, sanitation, and safety

standards shall be guilty of a misdemeanor and subject to a civil penalty of five hundred dollars (\$500) per violation pursuant to the Health and Safety Code Section 119306 provided if he/she:

- (a) Violates this ordinance;
- (b) Permits a violation to exist on the premises under his/her control; or
- (c) Fails to take action to abate the existence of the violation(s) within a specified time period, when ordered or notified to do so by the LEA.

#### **SECTION 4.110.170 ADMINISTRATIVE FINE.**

In addition to the prohibitions set forth in Section 4.110.160, any individual may be subject to an administrative fine as set forth in this section.

- (a) **Grounds for Fine.** Upon findings made by the LEA, that any individual does not have a valid LEA registration and performs body art procedures, the individual shall be subject to an administrative fine as follows:
  - (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
  - (2) A fine not exceeding two hundred dollars (\$200) for a second violation.
  - (3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations.
- (b) Each day that a body art procedure is performed without a registration shall constitute a separate violation.
- (c) **Fire Procedures.** Notice of the fine shall be served on the owner, individual, or entity who is owner of the establishment by certified mail. The notice shall contain an advisement of the right to request a hearing before the LEA contesting the imposition of the fine. Said hearing must be requested within ten days of the date of the notice of the fine.
- (d) **Review.** An individual who is subject to a fine may request a review of such fine by the Director of Health Services or his or her designee. Said review will be limited to the evidence considered by the LEA. Further review may be sought pursuant to section 53069.4 of the Government Code.
- (e) **Outstanding Fines.** Any outstanding fines must be paid prior to the issuance of any permit by the San Mateo County Environmental Health Division.

**SECTION 2.** This Ordinance shall be effective thirty (30) days from the passage date thereof.

\* \* \* \* \*

# City of Brisbane

## Memo

To: John Swiecki  
From: Rob Bartoli  
CC: Tim Tunc  
Date: 8/11/2010  
Re: Regulation of Tattoo Parlors with Land Use Controls in San Mateo County

There are various ways that tattoo (body art) parlors are regulated through the use of the zoning and municipal code throughout San Mateo County. In the entire County there are nine tattoo parlors that I have been able to find. The list is: 3 in San Bruno, 2 in Redwood City, 1 in Belmont, 1 in San Carlos, 1 in Colma and 1 in North Fair Oaks (Unincorporated San Mateo County).

**Redwood City:** Has a list of permissible uses that do not need a conditional use permit (CUP) for each commercial zone. However, if the use is not explicitly stated as permissible, but is similar nature to those that are allowed, then the use is acceptable after review. The municipal code states that "Any other use not otherwise listed in the code which is determined by the Zoning Administrator, after public hearing, to be of the same general character as the uses permitted in the code" is acceptable. This is a catch all category for uses that do not need a CUP.

There is also a list of uses that always need a CUP. If a use that is similar in nature to a use that it is in this group but does not fall into a precise category then a CUP will also be needed. This serves as a catch all for uses that do not fall into the very specific list of uses. After talking with a planner from the City, it was learned that tattoo parlors are in the catch all category and need a CUP.

The cities of San Mateo, San Carlos and Belmont all have language very close to this in their municipal codes. The City of Daly City also uses a list of permissible uses and has a catch all phrase. However, unlike the other cities, Daly City specifically states that a tattoo parlor must have a CUP.

**City of Brisbane:** Does not have a very extensive list of what is permitted and what is not in commercial zones. It also does not have a catch all phrase for uses that do not fall within specific categories. Tattoo parlors would probably fall into the category of "personal services."

The Brisbane municipal code defines personal services as it relates to tattoo parlors as "services of a personal convenience nature involving the care of an individual or his or her personal goods or apparel, including, but not limited to, barber and beauty shops, shoe, luggage and small appliance repair; photographers, laundry and drop-off cleaning services, copying, repair and alteration of clothes and similar services." This use does not require a CUP.

The cities of South San Francisco, San Bruno, Pacifica and Menlo Park also use a very similar definition of "personal services" that Brisbane uses. The Town of Colma uses the term "commercial services" which closely resembles the "personal services" explanation.

**City of South San Francisco:** Recently had a request for a tattoo parlor. The City classified the use as "personal service." No CUP was needed for the application. The only thing that was needed by the applicant was to meet the parking requirements because the location was in the