

ATTACHMENT 1

ORDINANCE NO. 2012-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, AMENDING CHAPTER 5 OF THE HESPERIA MUNICIPAL CODE PERTAINING TO BODY ART FACILITIES.

WHEREAS, On January 5, 1998, the City Council of the City of Hesperia adopted its Ordinance No. 250, thereby adopting the Hesperia Municipal Code; and

WHEREAS, the City of Hesperia currently does not regulate body art facilities; and

WHEREAS, California Assembly Bill 300 signed into law on October 9, 2011 and effective July 1, 2012, regulates body art facilities and requires health permits and certificates of registration from the County of San Bernardino Environmental Health Services Department; and

WHEREAS, The proposed Municipal Code amendment is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines, as it is certain that the Municipal Code revisions pertaining body art facilities can have no significant adverse effects on the environment; and

WHEREAS, On July 18, 2012 the City Council Advisory Committee reviewed the proposed ordinance and conducted a duly noticed public hearing pertaining to the proposed Code Amendment and concluded said hearing on that date after which it recommended the Ordinance Amendment to the City Council; and

WHEREAS, On September 18, 2012 the City Council of the City of Hesperia conducted a duly noticed public hearing pertaining to the proposed Code Amendment and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, HEREBY DOES ORDAIN, DECLARE, RESOLVE AND FIND AS FOLLOWS:

Section 1. The City Council hereby specifically finds that all of the facts set forth in this Ordinance are true and correct.

Section 2. Based upon substantial evidence presented to the Council, including written and oral staff reports, the Council specifically finds that the proposed Ordinance is consistent with the goals and objectives of the adopted General Plan.

Section 3. Based on the findings and conclusions set forth in this Ordinance, this Council hereby adopts the Code Amendment, amending Titles 1 and 5 of the Municipal Code as shown on Exhibit "A."

Section 4. This Ordinance shall take effect thirty (30) days from the date of adoption.

Section 5. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Ordinance 93-78.

ADOPTED AND APPROVED on this 2nd day of October 2012.



Russell Blewett, Mayor

ATTEST:



Melinda Sayre-Castro
Assistant City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF HESPERIA)

I, Melinda Sayre-Castro, Assistant City Clerk of the City of Hesperia, California, do hereby certify that Ordinance No. 2012-06 was introduced at a Regular Meeting of the City of Hesperia City Council held on the 18th day of September, 2012 by the following vote to wit:

AYES: Bosacki, Holland, Leonard, Blewett and Smith
NOES: None
ABSTAIN: None
ABSENT: None

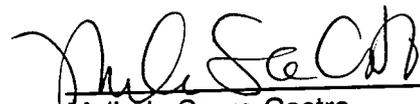


Melinda Sayre-Castro
Assistant City Clerk

Seal

I, Melinda Sayre-Castro, Assistant City Clerk of the City of Hesperia, California, do hereby certify that Ordinance No. 2012-06 was duly and regularly adopted at a Regular Meeting of the City of Hesperia City Council held on the 2nd day of October, 2012 by the following vote to wit:

AYES: Bosacki, Holland, Leonard, Blewett and Smith
NOES: None
ABSTAIN: None
ABSENT: Vogler



Melinda Sayre-Castro
Assistant City Clerk

Seal

I, _____, Assistant City Clerk of the City of Hesperia, California, do hereby certify that the foregoing Ordinance No. 2012-06 is a full, true and correct copy of that now in file in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Hesperia, California, this _____ day of _____.

Melinda Sayre-Castro
Assistant City Clerk

Seal

EXHIBIT "A"

The following definitions are hereby added to Title 1 (Section 1.04.50) of the Hesperia Municipal Code.

1.04.50 Definitions.

"Body art" means body piercing, tattooing, branding, or application of permanent cosmetics.

"Body art facility" means the specified building, section of a building, or vehicle in which a practitioner performs body art, decontamination and sterilization area.

"Body piercing" means the creation of an opening in a human body for the purpose of inserting jewelry or other decoration. "Body piercing" includes, but is not limited to, the piercing of an ear, including the tragus, lip, tongue nose, or eyebrow. "Body piercing" does not include the piercing of the ear with a disposable, single-use, presterilized clasp and stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

"Branding" means the process in which a mark or marks are burned into human skin tissue with a hot iron or other instrument, with the intention of leaving a permanent scar.

"Local enforcement agency" means the local health agency of the county, the San Bernardino County Environmental Health Services (EHS) Department.

"Owner of a body art facility" means either of the following:

- (1) The person or persons whose name or names appear on the health permit, business license, property deed or rental agreement of the body art facility.
- (2) A person, acting as a principal of a corporation or partnership.

"Permanent cosmetics" means the application of pigments in human skin tissue for the purpose of permanently changing the color or other appearance of the skin. This includes, but is not limited to, permanent eyeliner, eyebrow, or lip color.

"Practitioner of a body art facility" means a person who performs body art on a client.

"Procedure area of a body art facility" means a room, or designated portion of a room, that is set apart and only used to perform body art.

"Tattooing" means the insertion of pigment in human skin tissue via piercing with a needle.

Chapter 5.22 entitled “Body Art Facilities” shall be added to Title 5 of the Hesperia Municipal Code, as follows

- 5.22.010 Exemptions.**
- 5.22.020 License application.**
- 5.22.030 Investigation by City**
- 5.22.040 Required facilities.**
- 5.22.050 Temporary Body Art Facilities.**
- 5.22.060 License procedures.**
- 5.20.070 Prohibited conduct.**
- 5.22.080 Abatement.**
- 5.22.090 Inspection and enforcement.**
- 5.22.010 Exemptions.**

This Chapter shall not apply to the following classes of individuals and or businesses:

- A. Acupuncturists or acupressurists who are duly certified and licensed to practice their profession in the state of California;
- B. Businesses that do piercing of an ear with a disposable, single-use, presterilized stud and clasp or solid needle that is applied using a mechanical device to force the needle or stud through the ear. Tragus piercings are not exempt.

5.22.020 License application.

- A. Any person, firm, corporation or partnership desiring to obtain a permit to operate a body art facility shall file a complete application with all required documentation under penalty of perjury of the laws of the state. The application shall include a copy of the health permit issued by the local enforcement agency and a copy of certificate of registration for all practioners performing body art in that facility.
- B. A health permit is valid only for the location of the facility and the time period indicated on the permit and may not be transferred to another owner or facility.
- C. No application for renewal of a license shall be accepted earlier than ninety (90) days prior to expiration of the license. The application for renewal of a license shall include copy of a health permit, issued by the local enforcement agency, and a copy of certificate of registration for all practitioners performing body art in that facility.
- D. The City shall promptly reject as incomplete any application which does not meet all the requirements of this chapter, and upon written request of the applicant, shall notify the applicant in writing, by first class mail, postage prepaid, to the address supplied to the City by the applicant, of the deficiencies in the application.
- E. Any person, firm, corporation or partnership desiring to obtain a permit to operate a body art facility shall file a complete application with all required documentation under penalty of perjury of the laws of the state.

5.22.030 Investigation by City.

A. Upon receipt of a complete application, all supplemental required information, and payment of all required fees, the City shall refer the application to all appropriate City and county agencies including the building, planning, fire and police departments, and the county environmental health department. The departments shall review the application and, if necessary, the structure shall be inspected. The departments may request any further information which is reasonably related to the licensing requirements of this chapter. The departments shall determine whether the premises and practitioners comply with the applicable laws, including appropriate zoning and land use district designations.

B. If the City, following investigation of the applicant, determines that the applicant does not fulfill the requirements set forth in this chapter, the City shall deny said application by dated, written notice by U.S. mail. Following the denial or revocation of a body art facility license, no application for a body art facility may be filed by such applicant, at the same or substantially same location for at least one year following the date of such denial or revocation.

5.22.040 Required facilities.

No license to conduct a new body art facility or any renewal license shall be issued unless an inspection by the affected departments discloses that the facility premises and operation will comply with each of the following minimum requirements:

- A. Have floors, walls, and ceilings that are smooth, free of open holes, and washable.
- B. Procedure areas in a body art facility shall meet all of the following standards:
 - 1. Be equipped with a light source that provides adequate light at the procedure area.
 - 2. Be separated, by a wall or ceiling-to-floor partition, from nail and hair activities.
 - 3. Be equipped with a sink supplied with hot and cold running water, containerized liquid soap, and single-use paper towels that are dispensed from a wall-mounted, touchless dispenser that is accessible to the practitioner.
- C. Decontamination and sanitation areas within a body art facility shall meet all of the following requirements:
 - 1. Be separated from procedure areas by a space of at least five feet or by a cleanable barrier.
 - 2. Be equipped with a sink, hot and cold running water, liquid soap in a wall mounted dispenser, and single-use paper towels dispensed from a wall-mounted, touchless dispenser that is readily accessible to the practitioner.
- D. Each procedure area and decontamination and sterilization area shall have lined waste containers.
- E. Each procedure area and decontamination and sterilization area shall have a container for the disposal of sharps waste that meets the following requirements:

1. The sharps waste container shall be portable, if portability is necessary to ensure that the sharps waste container is within arm's reach of the practitioner.
 2. The sharps waste container shall be labeled with the words "sharps waste" or with the international biohazard symbol and the word "BIOHAZARD".
 3. All sharps produced during the process of tattooing body piercing, or the application of permanent cosmetics shall be disposed by either of the following methods:
 - a. Removal and disposal by a company, or removal and transportation through a mail-back system approved by the department pursuant to (Section 118245) subdivision (b) of the Health and Safety Code.
 - b. A solid waste, after being disinfected by a method approved by the department pursuant to paragraph (3) of subdivision (a) of the Health and Safety Code. (Section 118215).
- F. The health permit shall be posted in a conspicuous place at the body art facility.
- G. Certificates of registration for all practitioners performing body art in that facility shall be prominently displayed either near the health permit or at the individual practitioner's procedure area if each practitioner has a designated area.
- H. No animals shall be allowed in the procedure area or the decontamination and sterilization area.

5.22.050 Temporary Body Art Facilities.

A practitioner, registered in the City may practice in a temporary demonstration booth for no more than seven days in a 90-day period. The demonstration booth shall meet all of the following requirements:

- A. Provide a valid health permit from the San Bernardino County Environmental Health Services (EHS) Department and a business license from the City.
- B. Be located within a building that has hand washing facilities with hot and cold running water, soap, and single-use paper towels to which practitioners have direct access.
- C. Constructed with a partition of at least three feet in height separating the procedure area from the public.
- D. Used exclusively for performing body art.
- E. Equipped with adequate light available at the level where the practitioner is performing body art.
- F. Equipped with hand washing equipment that, at a minimum, consists of containerized liquid soap, single-use paper towels, a five-gallon or larger container of potable water accessible via spigot, and a wastewater collection and holding tank of corresponding size. Potable water shall be refilled and the holding tank evacuated at least every four procedures or every four hours, whichever occurs first.

- G. Animals shall not be allowed within the confines of the demonstration booth.
- H. Be operating with all necessary permits to conduct business, including, but not limited to valid permits issued by the San Bernardino Environmental Health Services (EHS) Department.
- I. The name, telephone number, and directions to an emergency room near the temporary body art event shall be posted in a conspicuous location.
- J. Each practitioner working in a booth at a temporary body art event shall display his or her certificate of registration, or keep the certificate in a folder that is available for inspection upon request of the enforcement officer or a client.

5.22.060 License procedures.

- A. Upon payment of all fees and successful verifications of the qualifications of the applicant, a body art facility license shall be issued to the applicant by the City, except as provided in this Chapter. A body art facility license shall be denied if the applicant has not met the requirements of this chapter and applicable laws.
- B. Any person denied a license pursuant to this Chapter may appeal the denial in writing pursuant to the provisions specified in Section 5.04.200.
- C. All body art facility licenses issued under this Chapter are nontransferable, both as to location and as to the person holding a license. All licenses issued under this chapter are nontransferable as to the person holding the license.
- D. Any body art facility with a valid business license issued prior to the effective date of this chapter may continue to operate under the previous regulations indefinitely, provided that their license remains continuously in effect with fees paid.

5.20.070 Prohibited conduct.

In addition to the procedures specified in Section 5.04.210, a license issued under this chapter may be revoked upon one or more of the following grounds:

- A. That the licensee, or any of its partners, corporate officers, directors, shareholder, employees, agents or representatives, violated any provision of the Hesperia Municipal Code.
- B. That the facilities and operations of the body art facility are not kept in compliance with the provisions of this chapter and this code at all times.
- C. That the license was issued in error.
- D. Body art work done in specified anatomical areas defined in 16.20.320 (C) must be done in an enclosed area out of plain view of the other patrons in the facility.

5.22.080 Abatement.

Any body art facility operated, conducted or maintained contrary to the provisions of this chapter shall be and the same is declared to be unlawful and a public nuisance and the City Attorney or City Prosecutor may in addition to, or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law; and shall take such other steps, and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such body art facility and restrain and enjoin any person from operating, conducting or maintaining a body art facility contrary to the provisions of this chapter.

5.22.090 Inspection and enforcement.

Officers of the police department, the department of environmental health services, the building and safety division and the fire department shall have the right to enter any body art facility during regular business hours to make reasonable inspection to ascertain whether the provisions of this chapter are being met.

A body art facility or practitioner whose certificate of registration or health permit has been suspended or revoked shall cease doing business until the certificate or permit has been reinstated or a new one has been issued. Suspension of the registration of one practitioner in a body art facility does not affect the status of other practitioners in the facility unless the violation or violations are for conditions or equipment that affects the ability of all the practitioners in the facility to comply with the provisions of this chapter.