



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Tell and Members of the City Council

THROUGH: David N. Carmany, City Manager

FROM: Richard Thompson, Director of Community Development
Laurie Jester, Planning Manager
Esteban Danna, Assistant Planner
Christi Hogan, Special Counsel

DATE: July 19, 2011

SUBJECT: Consideration of Adoption of an Urgency Ordinance Establishing a Moratorium on Tattoo Studios in Order to Study and Complete New Zoning Code Amendments

RECOMMENDATION:

Staff recommends that the City Council conduct the public hearing, waive further reading, and adopt Urgency Ordinance No. 2148U establishing a Moratorium on approval of tattoo studios.

FISCAL IMPLICATION:

There is no fiscal impact from adoption of this ordinance.

BACKGROUND:

At its 2011-2012 Work Plan meeting the City Council directed Staff to review and make recommendations concerning regulation of tattoo studios in the City. There are no applications pending for such use at the present time, however the Planning Division has received inquiries from several businesses interested in locating in the City. The Municipal Code does not presently make provision for such use. The necessity to amend the existing Municipal Code to allow tattoo studios makes it prudent to impose a moratorium on such uses until a scheme of regulation appropriate to applicable law can be developed and adopted.

DISCUSSION:

Currently, tattoo studios are not listed as a permitted use of property under the City's Zoning Ordinance. Manhattan Beach Municipal Code Section 10.08.030 provides that "[a]ny new use, or any use that cannot be clearly determined to be in an existing use classification, may be incorporated into the zoning regulations by a Zoning Ordinance text amendment...."

Before the City Council may adopt a Zoning Ordinance amendment, the Planning Commission must hold a duly noticed public hearing and make a recommendation to the City Council. The City Council then conducts a public hearing and may take action on the Zoning Ordinance text amendment. Given notice requirements, under the most ambitious hearings schedule, the

soonest that a zoning text amendment may be considered by the City Council is September or October. Amendment to the Local Coastal Program will also require review and certification by the California Coastal Commission. In order to avoid a violation of the United States Constitution's First Amendment, the City must make every effort to avoid any unreasonable delay in establishing reasonable time, place and manner regulations for tattoo studios.

Until recently, all published court opinions addressing tattoo studios as a land use have concluded that they are not entitled to special protection under the constitution, the way adult businesses or news racks are protected. The Ninth Circuit Court of Appeals recently held in the case of *Johnny Anderson v. City of Hermosa Beach* that the City's total ban on tattoo studios is unconstitutional, and that tattooing is [a] "purely expressive activity fully protected by the First Amendment, and that a total ban on such activity is not a reasonable "time, place, or manner" restriction. The opinion states, "regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests but . . . it need not be the least restrictive or least intrusive means of doing so. . . . So long as the means chosen are not *substantially broader than necessary* to achieve the government's interest . . . the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech restrictive alternative." The Ninth Circuit's *Anderson* opinion departs from the assumptions that most cities have relied on in excluding tattoo studio uses and necessitates a zone text amendment.

No applications have been made to the City for a new tattoo studio; however, Staff has received a few telephone and e-mail inquiries indicating interest in establishing such businesses in Manhattan Beach. Hermosa Beach and other cities' regulations will be studied through the Zoning Text Amendment process.

Government Code 65858 permits an initial moratorium for 45 days. Subsequently it may be extended for up to an additional 22 months and 15 days. Passage of a moratorium must be by a four-fifths majority of the legislative body. The ordinance is authorized as an urgency ordinance and goes into effect immediately. In order to have sufficient time to develop a permanent ordinance regulating tattoo studios, Staff will request an extension to the proposed moratorium at the August 2, 2011 regular City Council meeting. The length of the extension will be proposed at said meeting and will be in accordance with all applicable laws. The extension will be a noticed public hearing and will be subject to City Council review and approval.

ALTERNATIVES:

- (1) Adopt the interim ordinance and direct Staff to (a) notice a public hearing in accordance with Government Code 65858 to extend the moratorium for the minimum time necessary to process a zoning text amendment to accommodate new tattoo studios in the City and (b) initiate a zoning text amendment which considers which zones such uses are most compatible and whether any additional time, place and manner restrictions are warranted.
- (2) Do not adopt the urgency interim ordinance and instead direct Staff to interpret tattoo studio uses as similar to other personal service uses, such as hair salons, which are allowed as a permitted use in all commercial zones.

Attachments: A. Ordinance No. 2148U

ORDINANCE NO. 2148U

AN INTERIM ORDINANCE OF THE CITY OF
MANHATTAN BEACH PURSUANT TO
GOVERNMENT CODE SECTION 65858 TO
MAINTAIN STATUS QUO BY PROHIBITING
APPROVAL OF TATTOO STUDIOS WHILE THE
CITY ENACTS NEW REGULATIONS IN
ACCORDANCE WITH NEW CASE LAW AND
DECLARING THE URGENCY THEREOF.

The City Council of the City of Manhattan Beach does hereby ordain as follows:

Section 1. Purpose and findings. Currently, tattoo studios are not listed as a permitted use of property under the City's Zoning Ordinance and pursuant to Manhattan Beach Municipal Code 10.08.020 any use that cannot be clearly determined to be in an existing use classification is prohibited unless the zoning code is amended to permit the use. Because tattoo studios is not a permitted use currently, the Code does not contain any development or operating standards for tattoo studios to provide the appropriate location and safe operation of these establishments. The Ninth Circuit Court of Appeal recently held Hermosa Beach's zoning ordinance which similarly did not permit tattoo studios in any zone (amounting to a total ban on tattoo studios) to be unconstitutional. The court held that the business of tattooing is a form of speech protected by the first amendment, which can be subject only to time, place and manner regulations necessary to address secondary impacts of such businesses, if any. The City now faces an immediate threat to the health, safety and welfare in that these facilities could operate anywhere in the City, without operating restrictions or regard for appropriate zoning districts. Further, without any time, place or manner regulations, there is an immediate threat of an inundation of unregulated tattoo studios in Manhattan Beach.

The City is currently studying new time, place and manner regulations for tattoo studios. Due to the lack of any regulation on these uses and because time will be required to prepare and adopt new regulations and update the zoning ordinance, this Ordinance is intended to place an interim prohibition on the establishment of tattoo studios in all zoning districts as of the date of adoption hereof until new permanent regulations are prepared and adopted by the City Council.

Section 2. The establishment of tattoo studios in all zoning districts in the City of Manhattan Beach is hereby prohibited for the limited duration of this Ordinance while the City enacts reasonable time, place and manner regulations. Notwithstanding any provision of the Manhattan Beach Municipal Code to the contrary, no zoning permits or approvals, subdivision maps or building permits for tattoo studios shall be approved or issued in the City during the pendency of this Ordinance or any extension thereof.

EXHIBIT A
CC MTG 7-19-11

Section 3. Definitions. For purposes of this Ordinance, a “tattoo studio” shall be defined as any establishment where tattooing takes place. “Tattooing” means the act of indelibly marking or coloring the skin with a needle by injecting ink, dye, or other coloring material upon or under the skin so as to leave a permanent mark or designs on the skin.

Section 4. Penalties. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$1,000 or by imprisonment in County jail for not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

Section 5. Severability. If any part or provision of this Ordinance or the application to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of such part of provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

Section 6. Urgency. Based on the findings set forth in Section 1 hereof, the potential for an inundation of tattoo studios for which the City has no time, place and manner restrictions in place, poses a current and immediate threat to the public health, safety and welfare. This Ordinance is necessary to alleviate and address that threat by prohibiting the establishment of tattoo studios that may be inconsistent with new zoning standards currently being developed until those regulations can be established and adopted. This ordinance is adopted pursuant to California Government Code Section 65858 and shall take effect immediately upon adoption by a four-fifths vote of the City Council. This ordinance shall be in full force and effect for a period of forty-five (45) days from the date of its adoption unless extended by the City Council in accordance with the provisions of California Government Code Section 65858.

Section 7. Conflicting Laws. For the term of this Ordinance, or any extension thereof, the provisions of this Ordinance shall govern over any conflicting provisions of any other City code, ordinance, resolution or policy.

PASSED, APPROVED AND ADOPTED this 19th day of July, 2011.

Mayor

ATTEST:

City Clerk