

**CITY OF MANHATTAN BEACH
[DRAFT] PLANNING COMMISSION
MINUTES OF REGULAR MEETING
AUGUST 24, 2011**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 24th day of August, 2011, at the hour of 6:30 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

1. ROLL CALL

Present: Andreani, Conaway, Gross, Seville-Jones, Chairperson Paralusz
Absent: None
Staff Present: Richard Thompson, Director of Community Development
Esteban Danna, Assistant Planner
Christi Hogin, Interim City Attorney
Recording Secretary, Sarah Boeschen

2. APPROVAL OF MINUTES – August 10, 2011

Commissioner Andreani requested that the last sentence of the eighth paragraph on page 8 of the August 10 minutes be revised to read: “She commented that she would like for the issue to come before the Council and the public, as it is a potential long term issue ~~of concern to~~ regarding land use within the community.”

A motion was MADE and SECONDED (Gross/Conaway) to **APPROVE** the minutes of August 10, 2011, as amended.

AYES: Andreani, Conaway, Gross, Seville-Jones, Chairperson Paralusz
NOES: None
ABSENT: None
ABSTAIN: None

3. AUDIENCE PARTICIPATION

No speakers.

4. PUBLIC HEARING

08/24/11-2 Consideration of Zoning Text and Local Coastal Program Amendments to Allow Tattoo Studios to Operate Within the City

Assistant Planner Danna summarized the staff report.

In response to a question from Commissioner Conaway, Interim City Attorney Hogin said that the decision from the Ninth Circuit Court of Appeals applies to tattoos and does not address body piercing. She indicated that as a result of the court decision, tattoo studios are protected under the First Amendment of the Constitution as are adult businesses. She pointed out that the court decision did not address body piercing. She commented that the City would need to show a legitimate government purpose for restricting body piercing, and it would need to be clearly defined. She indicated that State law does not allow people under 18 to get a tattoo without parental consent. She stated that the court decision that applies in California was from the Ninth Circuit federal appeals court, which covers several western states. She commented that other circuit courts have ruled differently regarding the issue of regulating tattoo studios. She

said that the image of tattoos has been transformed over the last 50 years to become more mainstream. She indicated that the issue is being brought before the Commission to allow the Commissioners to make a considered decision because of the change in the law. She commented that the presumption with the current Code is that tattoo studios are prohibited in the City because they are not specifically included in the language.

In response to a question from Commissioner Seville-Jones, Interim City Attorney Hogin said that the conditions of the court ruling are met as long as tattoo studios are allowed somewhere in the City. She commented that the City is allowed to restrict tattoo studios in areas where there could be significant impacts, but they are not allowed to be completely restricted in all areas. She commented that different commercial zones are distinct depending on the types of uses. She indicated that the question for the Commission is to determine the areas in the City that tattoo studios would fit in and be most appropriate given that they must be able to be located somewhere.

Commissioner Seville-Jones indicated that her understanding is that there must be a compelling reason to limit tattoo studios given that they are to be permitted as a First Amendment right. She commented that she is not certain of how tattoo studios can be limited for certain commercial areas and not others. She also asked regarding the justification of the regulation in Hermosa Beach that tattoo studios cannot expand further once they are built.

Interim City Attorney Hogin pointed out that tattoo studios are a contentious issue in Hermosa Beach. She said that restricting tattoo studios from expanding was part of the compromise of allowing the businesses to locate in Hermosa Beach. She indicated that restricting square footage for tattoo studios and requiring a distance between them allows for a mix of uses and prevents tattoo studios from becoming a dominant business in any one block.

In response to a question from Commissioner Seville-Jones, Interim City Attorney Hogin commented that she is not aware of any information regarding crime effects resulting from tattoo studios. She indicated that the court ruled that cities may establish health standards as appropriate for tattoo studios; however, cities cannot restrict such uses because sufficient public money has not been provided for inspectors to enforce the standards.

Commissioner Andreani said that she would like to see what other cities such as Santa Monica and Beverly Hills have done to regulate tattoo studios. She commented that she also questions the urgency of enacting legislation to regulate tattoo studios before an application has been received. She commented that she would prefer to wait on enacting legislation in order to see the restrictions that are passed for other cities such as Hermosa Beach.

Interim City Attorney Hogin commented that the net effect of the Ninth Circuit decision is that tattoo studios would be allowed anywhere in the City currently if restrictions have not placed on them because they are protected under the First Amendment. She said that the City may receive applications for tattoo studios, as any applicant that is not able to locate in Hermosa Beach due to its restrictions may decide to locate in Manhattan Beach.

Commissioner Andreani stated that she understands that staff did not receive any responses to the notice for this hearing. She asked whether there would be time to ask the Chamber of Commerce, businesses, organizations, and clubs within the City their opinion regarding regulations for tattoo studios.

Director Thompson pointed out that he has talked to a number of business owners and residents within the City, and tattoo studios do not seem to be a large concern. He commented that the

City Council is interested in the opinion of the Commissioners as to how they feel tattoo studios should be regulated and limited within the community.

In response to a question from Commissioner Gross, Interim City Attorney Hogin commented that tattoo studios could be restricted to a single commercial area, provided that such a use can realistically locate within the City and that they are regulated with good reason.

In response to a question from Chairperson Paralusz, Interim City Attorney Hogin commented that the market will ultimately determine the number of applications for tattoo studios that are received. She said that the City has not received applications to open tattoo studios because there is not a great demand in the City.

In response to a question from Chairperson Paralusz, Director Thompson indicated that it is common for businesses to provide both tattoo and body piercing services. He said that the definition of body piercing can be addressed in the Code in order to differentiate piercing of other parts of the body from ear piercing if it is felt important to the Commissioners.

In response to a question from Chairperson Paralusz, Director Thompson said that the suggestion was made to restrict tattoo studios within a certain distance specifically from Mira Costa High School in order to reduce the attraction for high school students to get tattoos. He indicated that it was felt high school students were more likely to get tattoos than younger students. He commented that some of the suggestions provided by staff are ideas and not necessarily strong recommendations.

In response to a question from Chairperson Paralusz, Director Thompson commented that other types of personal services are permitted in all commercial zones. He indicated that staff would suggest that tattoo studios be placed in their own classification if they are considered a personal service. He pointed out that different types of commercial uses are permitted differently in specific zones as specified in the Zoning Code.

Chairperson Paralusz opened the public comment portion of the public hearing.

There being no one in the audience wishing to speak on the issue, Chairperson Paralusz closed the public comment portion of the public hearing.

Commission Discussion

Commissioner Gross said that he would like for tattoo studios to be made as compatible with the City as possible. He indicated that he would like for tattoo studios to be included in a separate category in the Code and for them to require a Use Permit. He commented that he would suggest tattoo studios be permitted within the Manhattan Village. He indicated that the businesses within the Manhattan Village are regulated under a single ownership in a manner that is compatible with the City.

Chairperson Paralusz pointed out that only allowing them in Manhattan Village would limit the ability for more than one tattoo studios to open in the City and could open up the City ordinance to legal challenge.

Commissioner Gross indicated that it would be possible to allow two tattoo studios to locate within the Manhattan Village. He commented that the issue could be addressed at the time if an application were received for a third tattoo studio.

Commissioner Andreani stated that she feels tattoo studios should be considered as a unique business and should be required to receive a Use Permit. She suggested possibly limiting tattoo studios to at least two commercial areas in the City including the North End Business District and the Metlox Plaza. She commented that the Metlox Plaza is oriented towards pedestrians.

Commissioner Seville-Jones indicated that the court case does protect tattoo studios under the First Amendment as determined by the Ninth Circuit Court. She indicated that it is appropriate for the City to regulate health standards for tattoo studios, as needles are used. She said, however, that the Court has ruled that health concerns are not justification for cities to prohibit tattoo studios. She pointed out that state law prohibits people under 18 from getting a tattoo without parental consent. She indicated that there is a government interest in the City helping to enforce the rule that underage people may not get a tattoo without parental consent by not allowing studios to be located close to schools. She stated that she also feels there is a government interest in not allowing studios to be concentrated in one area which may draw traffic to that particular area. She indicated that she would like for tattoo studios to be located a substantial distance from all schools.

Commissioner Seville-Jones said that she has a concern regarding disposal of the needles and monitoring the health effects. She commented that the City may impose their own standards for inspecting tattoo businesses. She commented that she also would want to restrict spectators from watching people get tattoos. She indicated that she would like for there to be as much space as possible between tattoo studios and for animals to be restricted from being inside tattoo studios. She commented that it would be too restrictive for studios to be limited to Manhattan Village, and it would be putting too much of a burden on the operators of the shopping center. She suggested that they be permitted in Commercial General properties located away from residential neighborhoods. She said that she feels body piercing could be considered as another means of expression that is protected by the First Amendment; however, it was not addressed in the case before the Ninth Circuit.

Commissioner Conaway indicated that he is also concerned with the urgency of enacting legislation. He commented that enacting zoning ordinances out of fear generally results in bad planning. He stated that the regulations that the City enacts should allow tattoo studios to be successful with the least amount of opposition. He pointed out that it is difficult to argue that tattoo studios provide a necessary convenience, as the City has never had a tattoo studio. He commented that tattoo and body piercing do not meet the definition of personal services. He said that tattoo studios do have a negative stigma attached to them which could impact property values. He said that proximity to residential neighborhoods and all schools should be considered in determining areas where tattoo studios should be permitted.

Commissioner Conaway commented he would not support allowing studios the commercial North End, as it is adjacent to the highest concentration of residential properties. He indicated that Sepulveda corridor and Manhattan Beach Boulevard corridor in the Commercial General zone are the gateway to the City, and allowing tattoo studios in those areas would not contribute in a positive manner to the City's identity. He stated that he would support allowing studios in the Commercial Community zone that includes the Manhattan Village. He said that the Manhattan Village management would be very responsible in promoting tattoo studios that would meet the standards of the City. He suggested that the industrial park also would be a possible location for permitting tattoo studios, as the area is separated from residential uses. He commented that the Planned Development area along Rosecrans Boulevard would be another possible area for tattoo studios to be located.

Chairperson Paralusz pointed out that the Ninth Circuit Court determined that tattoo businesses are protected under the First Amendment. She indicated that she would want to be certain that

there is a government interest in the regulations that are placed on tattoo businesses and in restricting them in certain commercial areas but not in others. She commented that there is a government interest in providing public health and safety. She indicated that she would agree that health standards for such operations should be monitored by the City in addition to the County. She stated that there is also a government interest in regulating the proximity of the operations to all schools and not only the high school. She pointed out that younger kids are aware of what it means to get a tattoo. She commented that she is also concerned about having a cluster of tattoo businesses in one area, and she feels it is important to maintain a mix of uses in the commercial areas.

Chairperson Paralusz indicated that she would want to prevent spectators from watching people get a tattoo, as it could cause a safety hazard with pedestrians blocking the sidewalk. She said that she also would want to restrict animals from being inside the operations, as it could create a health and safety concern. She commented that she feels it would be overly restrictive only to allow tattoo businesses in Manhattan Village. She commented that she believes that only one tattoo business would be able to locate in the City if they were only permitted in Manhattan Village. She also said that it should not be the responsibility of the operator of the shopping center to regulate such operations. She commented that a tattoo business would not be very visible to customers if it were located in the industrial area. She stated that she would be concerned that including restrictions that would make it very difficult to locate a tattoo business in the City would subject the City to legal challenge. She indicated that she does not feel that such operations should be located near residences. She pointed out that it is possible that a tattoo business may never locate in the City. She said that she would support allowing them in the Commercial General, Manhattan Village, Planned Development, and the industrial zones.

Commissioner Conaway commented that he arrived at his suggestion to locate tattoo businesses in the Manhattan Village and industrial areas because of the quality of the operators of those properties. He stated that the intent of the suggestion is not to make it impractical to open such an operation in the City.

Chairperson Paralusz said that it should be the responsibility of the City to ensure the quality of the operations that are approved.

Commissioner Conaway indicated that he feels Manhattan Village and the industrial area are the best options for locating tattoo studios in considering the zoning map of the City.

Commissioner Seville-Jones stated that she would be concerned in giving two landlords control over allowing people to exercise their First Amendment rights. She indicated the rights of people to open such businesses would be less impacted if they are allowed to locate in the Commercial General area.

Interim City Attorney Hogin pointed out that permitting such uses in the Commercial General zone would not allow them on any property within the zone if restrictions are also placed on the proximity of such businesses to schools and residences.

Commissioner Gross indicated that he is satisfied with the opinion of the City Attorney in addressing First Amendment rights. He pointed out that the decisions of the Ninth Circuit court have been overturned by the Supreme Court more than any other court in the country. He indicated that he is not certain how long the court's decision will remain the interpretation regarding First Amendment rights for tattoo studios. He stated that he would want the City's regulations to start modestly and to maintain the character of the City. He commented that Manhattan Beach is an upscale community. He indicated that his preference would be for tattoo studios to be permitted in Manhattan Village. He stated that he would next choose tattoo

studios to be permitted within the Rosecrans Corridor and then the downtown area. He commented that massage studios can have a negative connotation; however the spa located in the upper level of the Metlox Plaza that includes massaging is considered very upscale.

Commissioner Conaway pointed out that Lawndale put a restriction on tattoo studios based on the population of the City, which is an option to consider. He commented that the Commission does need to be respectful of the decision of the Ninth Circuit Court regarding First Amendment rights; however, he would not want for the court ruling to overly influence the City's planning decisions. He pointed out that cities do have a right to regulate their businesses. He commented that he would feel that the City would have a right to determine that tattoo studios would not enhance the Manhattan Beach corridor and Sepulveda corridor and should not be permitted in those areas.

Commissioner Andreani indicated that she would support allowing tattoo studios within the Manhattan Village, the Rosecrans Corridor, the Metlox Plaza, and the Planned Development zone. She pointed out that the City was previously considering a separate zone for Raleigh Studios, which might impact allowing a tattoo business in that area. She said that she would not object to allowing tattoo studios in the Commercial General zone provided that the number can be limited within that area.

Director Thompson indicated that his understanding is that the majority of the Commissioners would support allowing tattoo studios within the Commercial General zone with distance requirements from schools, residences, and other tattoo businesses. He indicated that his understanding is that the majority of Commissioners would also support allowing tattoo businesses to locate within the Planned Development zone and the Manhattan Village. He commented that the Commissioners also indicated that they would support limiting the hours for tattoo studios; establishing a minimum distance between the studios and schools, residences and other tattoo businesses; restricting spectators from being able to watch people get tattoos; and not allowing any animals within the businesses. He indicated that staff will address the health issues in the regulations. He said that staff will also address the issue of body piercing. He stated that staff will provide the Commissioners with further information at the next hearing regarding the issue.

Commissioner Seville-Jones commented that she would like for staff to provide a clear statement of the legal standard that the Commission is to use on placing time, place and manner restrictions on tattoo businesses, given that they have been determined to be protected under the First Amendment.

Action

A motion was MADE and SECONDED (Andreani/Conaway) to **REOPEN** the public hearing and **CONTINUE** consideration of Zoning Text and Local Coastal Program Amendments to allow tattoo studios to operate within the City to the meeting of September 28, 2011.

AYES: Andreani, Conaway, Gross, Seville-Jones, Chairperson Paralusz
NOES: None
ABSENT: None
ABSTAIN: None

Chairperson Paralusz suggested that the item be renoticed and that the Chamber of Commerce be notified regarding the next hearing.

5. DIRECTORS ITEMS.

6. PLANNING COMMISSION ITEMS

7. TENTATIVE AGENDA September 14, 2011

A. Sign Adjustment

8. ADJOURNMENT

The meeting was adjourned at 8:15 p.m. to Wednesday, September 14, 2011, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN
Recording Secretary

ATTEST:

RICHARD THOMPSON
Community Development Director