

ORDINANCE NO. 10219 (N.S.)

AN ORDINANCE AMENDING PORTIONS OF THE COUNTY CODE OF
REGULATORY ORDINANCES RELATING TO THE
CALIFORNIA SAFE BODY ART ACT

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1: Prior state law imposing requirements on tattooing, body piercing, and permanent cosmetics was repealed and replaced in 2011. The replacement Safe Body Art Act (codified at Health and Safety Code 119300 and following) mandates that local body art programs based on state law be implemented by July, 2012. This ordinance implements the Safe Body Art Act (“the SBAA” or “the Act”), establishes additional local requirements, and establishes fees to support this program, in order to prevent communicable disease and protect the public health and safety in San Diego County. The Act addresses body piercing, tattooing, branding, and the application of permanent cosmetics, and provides statewide health and sanitation standards for those practices. The Act designates local health officers and directors of environmental health as enforcement officials, and allows a local election as to which of these officials will implement this program. This ordinance assigns that responsibility to the Director of the County Department of Environmental Health. The Director of the County Department of Environmental Health (DEH) is also the director of environmental health in all of the incorporated cities in the County, and therefore will enforce the standards in the Act Countywide. Municipal ordinances are not required to implement this aspect of the Act. The SBAA also allows a city or county to adopt local regulations or ordinances that do not conflict with or are more stringent than the provisions of the SBAA, except that standard applicable to mechanical stud and clamp ear piercing must be uniform statewide. This chapter establishes additional local requirements for body art regulation, to be administered by the Director DEH in the unincorporated portion of the County and in any city that adopts these additional requirements for implementation by the County.

Section 2: Subsection (f) of Section 65.107 of the County Code is amended to read as follows:

SEC. 65.107. FEES.

The fee for each permit, plan review, license or registration issued or investigation performed pursuant to the provisions of this division is set forth herewith:

(a)–(e) [No Change]

(f)

(1)-(3) No change

(4) Body Art Facilities: \$279

Body Art Practitioners (annual registration): \$95

Body Art Temporary Event Sponsor \$465

Body Art/Temporary Event Late or revised application fee (Less than 14 days prior to event.) \$83

Body Art Temporary Event Booth \$52

Body Art Reinspection Fee (assessed if repeated noncompliance makes reinspection necessary): Hourly Environmental Health Specialist rate

Notification fee for single-use-needle mechanical ear-piercing only facilities: \$45

(5) No change

(g) – (m) [No change]

Section 3. Chapter 3 of Division 6 of Title 6 of the County Code (Tattoo Parlors and Mobile Tattoo Vehicles) is repealed.

Section 4. Chapter 3 of Division 6 of Title 6 of the County Code is enacted to read as follows:

CHAPTER 3. BODY ART

ARTICLE 1. PURPOSE, DEFINITIONS AND AUTHORITY

SEC. 66.301. STATEMENT OF PURPOSE.

This chapter implements state law provisions for body art facilities and their employees, and establishes additional local requirements to prevent communicable disease transmission and to protect public health and safety in San Diego County. Health and Safety Code (H & S Code) sections 119300 et seq., also referred to as the Safe Body Art Act (SBAA), provides statewide health and sanitation standards for body art to include body piercing, tattooing, branding, or application of permanent cosmetics. These sections designate local health officers and directors of environmental health as enforcement officials, allowing a local election of which official enforces this program. The Director of the County Department of Environmental Health (DEH) shall implement this program. The Director of DEH is also the director of environmental health in all of the incorporated cities in the County, and therefore will enforce the body art standards in state law Countywide. The SBAA also allows a city or county to adopt local regulations or ordinances that do not conflict with or are more stringent than the provisions of the SBAA, except for mechanical stud and clasp ear piercing. This chapter establishes additional local requirements for body art regulation, to be administered by DEH in the unincorporated portion of the County and in any city that adopts these additional requirements for implementation by the County.

SEC. 66.302. DEFINITIONS.

Except as provided below, terms defined in section 119301 of the California Health and Safety Code shall have the same meaning when used in this chapter as is set out in that section. Defined terms used in this chapter include the following: body art facility, client, instrument, local enforcement agency, owner, potable water, practitioner, procedure area, procedure site, sponsor, sterilization, tattooing, vehicle, and workstation.

The following terms when used in this chapter shall have the following meaning:

- a) APPROVED means acceptable to the Director or the County Health Officer if the Health Officer is specified.
- b) BODY ART shall have the meaning set out in Section 119301 of the California Health and Safety Code but as provided elsewhere in that act does not include mechanical stud and clasp ear piercing, i.e., piercing 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.
- c) DEH means the Department of Environmental Health.
- d) DIRECTOR means the Director of DEH and any person appointed or hired by the Director to enforce or administer this chapter.
- e) ENFORCEMENT OFFICER means the Director of DEH and duly authorized Registered Environmental Health Specialists and Environmental Health Specialist Trainees employed by the County.
- f) MAYO STAND means an adjustable stand with stainless steel tray for holding body art implements
- g) MOBILE BODY ART VEHICLE means a non-permanent, mobile body arts establishment, operating at locations remote from the permanent body art facility, from which body art practitioners do body art for a fee or for other consideration.
- h) PERMIT means an annual permit issued to a body art facility including a mobile body art vehicle by DEH. Permit also includes the permit issued for each body art temporary event.
- i) SBAA means the Safe Body Art Act, codified at California Health and Safety Code sections 119300 and following.
- j) SINGLE SERVICE means one-time, one person use.

SEC. 66.303. DEPARTMENT OF ENVIRONMENTAL HEALTH TO ADMINISTER AND ENFORCE BODY ART PROGRAMS

DEH shall be the Local Enforcement Agency for the Safe Body Art Act countywide. DEH shall

also administer and enforce the additional requirements adopted in this chapter within the unincorporated areas of the County, and shall administer and enforce any similar requirements adopted by municipalities for enforcement by the County. The Director of DEH is the Enforcement Officer when acting in the unincorporated area of the County, and when acting in a municipality to enforce the SBAA or any additional requirements enacted by that municipality.

ARTICLE 2. PRACTITIONERS, FACILITIES AND EVENTS

SEC. 66.304. REGISTRATION OF PRACTITIONERS

- a) It shall be unlawful for any person to perform body art without first registering as a body art practitioner with DEH.
- b) The registration process is not complete until DEH confirms that the requirements of the SBAA and of this chapter have been met, and a certificate of registration is issued.
- c) In addition to complying with the requirements of the SBAA including section 119306 of the Health and Safety Code, every person applying for registration as a practitioner shall pay the annual permit fee set forth in Title 6, Division 5, Section 65.107 of this Code.
- d) Practitioners shall only perform body art from a permitted body art facility.

SEC. 66.305. PERMITS FOR FACILITIES AND EVENTS

- a) Body Art procedures shall be the only activity conducted in a body art facility.
- b) It shall be unlawful for any person to operate a body art facility, including a mobile body art vehicle or a body art temporary event, without first applying for and receiving a health permit from DEH.
- c) The permit required by the SBAA and this chapter shall be applied for and issued as prescribed in section 119312 of the California Health and Safety Code, using the County permitting procedures set out in Title 6, Division 5 of this Code.
- d) Plan submissions for body art facilities shall address the requirements in this chapter and the SBAA, and shall include a finish schedule for sanitary walls, floors and ceiling as approved by DEH. Written approval by DEH is required in advance of the issuance of any building, plumbing or electrical permit by the County or any other local jurisdiction. Written DEH approval and any applicable local permits are required prior to commencing work.
- e) An "Infection Prevention Control Plan" shall be provided at the time of application for a new permit. In addition to addressing the requirements of the SBAA including section 119313 of the Health and Safety Code, the Infection Prevention Control Plan shall include procedures for dressing of the procedure site.
- f) In addition to submitting required plans, applicants shall pay the plan review fee required in Title 6, Division 5 at the time the person submits plans and specifications.

- g) Every person applying to receive or renew a body art facility permit shall pay the annual permit fee set forth in Title 6, Division 5, Section 65.107 of this Code.
- h) The sponsor or organizer of a body art temporary event shall submit an application to DEH 14 days prior to the start of the event. Late fees are applicable thereafter.

SEC. 66.306. PREVENTION OF INFECTIONS.

In addition to complying with the requirements of the SBAA including section 119308 of the Health and Safety Code, practitioners must comply with these requirements:

- a) No body art procedure shall be done on skin surfaces which have rash, pimples, boils, infections or manifest any evidence of unhealthful conditions.
- b) The practitioner shall be free of communicable diseases and have no pustule skin lesions.
- c) The Director may from time to time notify practitioners and facilities that additional or modified procedures are required in an Infection Prevention Control Plan. These notifications may be provided when infection control issues, changes in the practice of body art, or new technology warrant procedural changes. Upon receipt of such notice, practitioners and facilities shall update any applicable Infection Prevention Control Plan to incorporate the Director's specifications, and shall comply with the updated plan.

SEC. 66.307. SANITATION REQUIREMENTS.

In addition to meeting the requirements of the SBAA, including sections 119309, 119311, 119314, 119315, 119317 (for mobile facilities) and 119310 (for temporary facilities) of the Health and Safety Code, body art facilities shall meet the following requirements:

- a) As stated in section 66.305(a), body art procedures shall be the only activity conducted in a body art facility.
- b) The premises of a body arts facility shall be maintained in a clean and sanitary manner at all times, free from vermin or rodent infestation and excessive dust and dirt.
- c) Clean toilet rooms in good repair shall be provided and conveniently located and accessible for use by employees during all hours of operation. The number of toilet facilities required shall be in accordance with applicable local building and plumbing ordinances, or where applicable temporary event ordinances. Toilet tissue, soap, and sanitary single-use towels or an air hand drying device shall be provided in permanently installed dispensers conveniently located at each toilet room, or as applicable under local ordinances for temporary events. For mobile body art facilities, these toilet rooms must be located as set out in section 66.309(h) of this chapter.
- d) Adequate lighting and ventilation shall be provided. Workstations must be provided with at least fifty (50) foot-candles of artificial light at the procedure site.

- e) Operating tables or mayo stands shall be constructed of stainless steel or equivalent. The workstation area and equipment shall be separated from observers and waiting customers by at least ten feet.
- f) Except at temporary body art events, a workstation handwash sink shall be readily accessible and visible no more than 25 feet from the procedure area. For mobile body art facilities, this sink must be located in the vehicle, as specified in section 66.309(e) of this chapter.
- g) At a temporary body art event, the practitioners shall have a portable handwash sink with warm running water available with soap in a dispenser and single use paper towels. The handwash sink shall be made available for use by no more than 15 booths and be no more than 35 feet from the furthest workstation.
- h) Instruments, dyes, inks, pigments, carbon, stencils and other paraphernalia used in the body art facility shall be stored exclusively in approved closed cabinets.

SEC. 66.308. RECORDS AND REPORTING

- a) The permit holder shall maintain proper records of each customer. In addition to the records required in SBAA, including sections 119303(c), 119307(e), 119313(e) and 119315(f) of the Health and Safety Code, a log of the following information shall be maintained:
 - (1) The date when the body art procedure was applied.
 - (2) The name, address and age of the client.
 - (3) The design and/or the location of the procedure site.
 - (4) The name of the Body Art Practitioner.
- b) The information required in subsection (a) shall be permanently recorded, in ink or indelible pencil, in an organized file or bound book kept solely for this purpose. This book shall be available at reasonable hours for examination by the Enforcement Officer and shall be kept in the establishment for a minimum of six months. The confidentiality provisions of section 119303(c) of the Health and Safety Code shall be applied to these records.
- c) All complaints of infections resulting from the practice of body art shall be reported to the County Health Officer by the person owning or operating the body art facility.
- d) A facility that only provides mechanical stud and clasp ear piercing services using a single-use, presterilized, stud and clasp for jewelry in compliance with 119310 (a) & (b) of the SBAA shall submit a notification form. The form will be provided by DEH in compliance with Article 7 of the SBAA.

ARTICLE 3. ADDITIONAL REQUIREMENTS FOR MOBILE BODY ART VEHICLES

SEC. 66.309. MOBILE BODY ART VEHICLES.

In addition to complying with the requirements of Article 2 and requirements for vehicle found in the SBAA, including section 119316 and when applicable section 119317 of the Health and Safety Code, practitioners working from a mobile body art vehicle shall comply with all of the following requirements:

(a) Mobile body art vehicles which do not have on board sterilization equipment shall have sufficient utensils and equipment on hand in each mobile body art vehicle to handle one day's tattooing without having to re-sterilize.

(b) Body art procedures performed pursuant to this section shall be done only from an enclosed vehicle such as a trailer or mobile-home. No body art procedure shall be performed outside of the enclosed vehicle.

(d) The mobile body art vehicle shall be used only for the purposes of performing body art.

(e) The mobile body art vehicle shall be equipped with a sink for the exclusive use of the tattoo artist/body arts technician for handwashing and preparing customers for tattooing. The sink shall be supplied with warm running water under pressure, a soap dispenser with soap and single use paper towels from a dispenser. An adequate supply of potable water shall be maintained for the Mobile Body Art Vehicle at all times tattooing is being performed.

(f) All liquid wastes shall be stored in an adequate storage tank with a capacity at least fifty percent greater than the capacity of the on-board potable water. Liquid wastes shall be disposed of at approved trailer dump sites.

(g) The mobile body art vehicle shall be maintained in a clean and sanitary condition free of vermin, at all times. Doors to procedure area shall be tight-fitting and kept closed. Openable windows shall have tight-fitting screens.

(h) There shall be approved restroom facilities within 200 feet of the mobile body art vehicle.

(i) There shall be adequate light and ventilation in each mobile body art vehicle. Workstations must be provided with at least fifty (50) foot-candles of artificial light at the procedure site.

ARTICLE 4. ENFORCEMENT

SEC. 66.310. PENALTIES FOR VIOLATIONS

In addition to the enforcement provisions of the SBAA, including section 119319 and 119323 of the Health and Safety Code, the following penalties and remedies apply:

- a) Any violation of the SBAA within the County of San Diego and any violation of this chapter shall be a misdemeanor. Each day on which a violation occurs or continues shall

constitute a separate offense.

- b) Any violation of the SBAA within the County of San Diego and any violation of this chapter shall be subject to the administrative penalties set out in section 119323 of the Health and Safety Code. The provisions of Title 1 of this code shall apply to the assessment of administrative penalties and to the appeal of such assessments.

ARTICLE 5. PERMIT SUSPENSION OR REVOCATION

Section 66.311. PERMIT SUSPENSION OR REVOCATION

In addition to permit suspension or revocation for violations of the SBAA as provided in sections 119320 and 119322 of the Health and Safety Code, permits may be suspended or revoked for violations of this chapter. Except as provided in section 119321 of the Health and Safety Code (for cases of an imminent health hazard), suspensions or revocations shall take effect only after notice and an opportunity for a hearing.

Section 66.312. HEARINGS, APPEALS

(a) If DEH proposes to suspend or revoke a body art facility permit or registration pursuant to the SBAA or this chapter, or if DEH temporarily closes a body art facility for an imminent health hazard, and a hearing is requested within 15 days of receiving notice as specified in section 119320 of the Health and Safety Code, that hearing shall be scheduled by the Director. The hearing officer shall be a DEH employee, at the supervisor level or higher, who was not involved in the decision to propose to modify, suspend or revoke the permit or to temporarily close the facility.

(b) The permit holder may appeal the decision made at the hearing to the Appellate Hearing Board as provided in Chapter 1 of Division 6 of Title 1 of this Code. Filing an appeal shall stay the decision of the DEH hearing officer, unless the DEH hearing officer determined that an imminent health hazard required closure of the facility.

(c) The Clerk shall endeavor to schedule the appeal hearing on an expedited basis if the body art facility must remain closed until that appeal is heard.

Section 66.313. ADMINISTRATIVE PROBATION.

(a) A permit holder or practitioner and DEH may enter into a written administrative probation agreement to modify a decision by a hearing officer to suspend a permit or registration.

(b) If a permit holder or Practitioner fails to comply with the terms of an administrative probation agreement DEH may reinstate the original permit or registration suspension and enforce any additional violation of the SBAA. The Director shall be the sole judge of whether the permit holder or Practitioner failed to comply with the agreement.

Section 66.314. NOTICE OF CLOSURE OF BODY ART FACILITY.

(a) If the Director determines that a Body Art facility is operating without a permit required by the SBAA the Director may order the person who owns or operates the facility to close immediately. In addition to taking any legal action authorized by law to compel a facility owner

or operator to cease operating without a permit, the Director may post a notice of closure at or on a Body Art facility operating without a permit, advising the public that the facility does not have a permit to perform body art procedures.

(b) The Director may also post a notice of closure on a Body Art facility:

(1) When the Director orders the facility to close due to an imminent health hazard that the Body Art facility does not immediately correct.

(2) When the Director suspends or revokes the facility's permit.

(c) No person other than the Director shall remove a notice posted by the Director pursuant to this section.

SEC. 66.315. SUNSET REVIEW.

This chapter shall be subject to sunset review pursuant to Board Policy A-76.

Section 5: This ordinance shall take effect and be in force thirty days after its passage and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the San Diego Commerce a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 25th day of July, 2012.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL
BY

Rodney F. Lorang, Senior Deputy