

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

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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.
- (w) **"Sanitization"** means a process of reducing the numbers of microorganisms on clean surfaces and equipment to a safe level.
 - (x) **"Sharps"** means items described in Cal/OSHA Title 8, Section 5193.
 - (y) **"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.
 - (z) **"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.

SECTION 4.110.090 STANDARDS FOR HEALTH AND SAFETY.

- (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 area(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;

- ii. Liquid hand soap;
 - iii. Single use paper towels;
 - iv. A garbage can;
 - v. A door that open and closes; and
 - vi. Adequate ventilation.
- (5) The body art establishment shall have an artificial light source equivalent to 20 foot-candles at three feet above the floor. At least 100 foot-candles of light shall be provided at the level where body art procedures are performed, where sterilization takes place, and where instruments and sharps are assembled.
 - (6) All procedure surfaces shall be smooth, nonabsorbent and easily cleanable. Procedure surfaces shall be cleaned and sanitized after each client.
 - (7) All ceilings shall be in good condition.
 - (8) All walls and floors shall be free of open holes or cracks and washable.
 - (9) All facilities shall be maintained in good working order.
 - (10) All facilities shall be maintained in a clean and sanitary condition.
 - (11) No establishment shall be used or occupied for living or sleeping quarters.
 - (12) Only service animals or service animals in training may be allowed in the establishment. No animals shall be allowed in the procedure area(s).
 - (13) Effective measures shall be taken by the operator to prevent entrance, breeding, and harborage of insects, vermin, and rodents in the establishment.
 - (14) No smoking shall be allowed inside of establishment or procedure area pursuant to Section 6404.5 of the California State Labor Code.
 - (15) A copy of this ordinance shall be available at all times on the premises.
- (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 4.110.100 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 manufacture'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

- ordinance.
- (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 for 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.

Each day that a body art procedures is performed without a registration shall constitute a separate violation.

- (b) **Fine 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.
- (c) **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.
- (d) **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.

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