

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD., SUITE 300
LONG BEACH, CA 90802
(562) 590-5071



W11d

February 24, 2022

To: COMMISSIONERS AND INTERESTED PERSONS

**From: KARL SCHWING, DEPUTY DIRECTOR, SOUTH COAST DISTRICT
AMBER DOBSON, DISTRICT MANAGER
LILIANA ROMAN, COASTAL PLANNER**

**Subject: STAFF RECOMMENDATION ON CITY OF NEWPORT BEACH MAJOR
AMENDMENT NO. LCP-5-NPB-20-0060-2 Part B (Tattoo Establishments)
for Commission Meeting of March 9, 2022**

SUMMARY OF LCP AMENDMENT REQUEST

The Coastal Commission certified the City of Newport Beach Local Coastal Program (LCP) on January 13, 2017. The City of Newport Beach is requesting that the Commission certify an amendment to the Implementation Plan (IP) portion of the LCP. Amendment Request No. LCP-5-NPB-21-0084-3 Part B constitutes a major amendment as it requests a modification to define tattoo establishments as its own use type separate and distinct from other Restricted Personal Service Use types and would restrict the location (i.e., zoning district) where tattoo establishments would be allowed. Part A of the LCP amendment submittal is a minor amendment and is also scheduled for Commission action at this March 9, 2022 meeting. This staff report addresses Part B of the LCP amendment submittal.

The Newport Beach Planning Commission held two public hearings on May 6, 2021, and July 22, 2021, and recommended approval of the proposed amendment to the City Council. The Newport Beach City Council adopted Resolution No. 2021-127 (**Exhibit 1**) authorizing City staff to submit the LCP amendment to the Coastal Commission at a public hearing on November 30, 2021. The City submitted the subject LCP amendment request on December 22, 2021, and Commission staff deemed the submission to be complete on January 5, 2022. The City's submittal is consistent with the procedural requirements of the Coastal Act and the regulations which govern such submittals (Sections 30510, 30513, and 30514 of the Coastal Act, and Sections 13551, 13552 and 13553 of Title 14 of the California Code of Regulations). The 60-working day deadline for Commission action on this IP-only amendment is at this March 9, 2022 Commission meeting unless, if pursuant to Coastal Act Section 30517, the Commission grants a one-year time extension (which is also requested at this March 9, 2022 meeting). If that time extension is approved and

action is not taken on this item, the deadline for Commission action on this item would be April 4, 2023.

STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, **certify the LCP Amendment request as submitted**. After review and analysis, staff finds that as submitted, the City's IP Ordinances conform with, and are adequate to carry out, the provisions of the certified LUP. The resolution and motion are on **Page 5**. The findings for approval of the LCP amendment begin on **Page 6**.

ADDITIONAL INFORMATION

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and following California Assembly Bill 361 and the Governor's Executive Orders N-1-22, N-15-21, N-29-20, and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

Further information on the City of Newport Beach LCP Amendment LCP-5-NPB-21-0084-3 Part B may be obtained from Liliana Roman, Coastal Program Analyst, at (562) 590-5071. If you wish to comment on the proposed amendment, please do so via regular mail (directed to the South Coast District Office) or email (by emailing southcoast@coastal.ca.gov) by 5pm on Friday, March 4, 2022.

TABLE OF CONTENTS

SUMMARY OF LCP AMENDMENT REQUEST	1
STAFF RECOMMENDATION	2
I. PROCEDURAL ISSUES.....	4
A. STANDARD OF REVIEW	4
B. PUBLIC PARTICIPATION.....	4
C. PROCEDURAL REQUIREMENTS	4
D. DEADLINE FOR COMMISSION ACTION	5
II. MOTION AND RESOLUTIONS	5
III. FINDINGS FOR CERTIFICATION OF THE LCPA AS SUBMITTED	6
A. LCP AMENDMENT DESCRIPTION	6
B. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	9

EXHIBITS

Exhibit 1 – Newport Beach City Council Resolution No. No. 2021-127

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The standard of review for the proposed amendment to the LCP Implementation Ordinances (IP), pursuant to Sections 30513 and 30514(b) of the Coastal Act, is whether the proposed IP amendment conforms with, and is adequate to carry out, the provisions of Newport Beach's certified Land Use Plan (LUP).

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in LCP development. It states: "During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission."

The City held a Planning Commission meeting on February 20, 2020 and a City Council meeting on April 14, 2020 regarding Part A of the subject amendment request. The City held a Planning Commission meeting on June 18, 2020 and a City Council meeting on July 28, 2020 regarding Part B of the subject amendment request. Both of those local hearings for Parts A and B were duly noticed to the public. Notice of this subject LCP amendment has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that an LCP Amendment will either require formal local government adoption after the Commission approval, or that it is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. Here, if the Commission certifies the LCP amendment as submitted, no further City Council action will be necessary. The City's submittal resolution indicates that the ordinance will only become final after certification by the Commission, but no formal action is required. Should the Commission deny the LCP amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City, and the LCP amendment is not effective. Should the Commission deny the LCP amendment, as submitted, but then approve it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City's acceptance is consistent with the Commission's action. In that scenario, the modified LCP amendment will become final at a subsequent Commission meeting if the Commission concurs with the Executive Director's Determination that the City's action in accepting the suggested modifications approved by the Commission for LCP Amendment LCP-5-NPB-21-0084-3 Part B is legally adequate. If the City does not accept the

suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and not effective within the coastal zone.

D. DEADLINE FOR COMMISSION ACTION

The City submitted the subject LCP amendment request on December 22, 2021 and Commission staff deemed the submission to be complete on January 5, 2022. Pursuant to Sections 30513 and 30514 of the Coastal Act, an LCP amendment that includes changes to the IP portion of a certified LCP must be scheduled for a public hearing within sixty (60) working days of a complete submittal. Sixty working days from January 5, 2022, is April 4, 2022. As such, the deadline for Commission action on this item is at this March 9, 2022 Commission meeting unless if pursuant to Coastal Act Section 30517, the Commission grants a one-year time extension (which is also requested at this March 9, 2022 meeting). If that time extension is approved and action is not taken on this item, the deadline for Commission action on this item would be April 4, 2023.

II. MOTION AND RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolution and findings.

MOTION I: *I move that the Commission reject the City of Newport Beach LCP Amendment No. LCP-5-NPB-21-0084-3 Part B as submitted.*

Staff recommends a **NO** vote. Failure of the motion will result in certification of the Implementation Plan amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY IMPLEMENTATION PLAN AMENDMENT

The Commission hereby certifies the LCP Plan Amendment No. LCP-5-NPB-21-0084-3 Part B as submitted by the City of Newport Beach and adopts the findings set forth below on grounds that the Implementation Program conforms with and is adequate to carry out the provisions of the certified LUP, and certification of the Implementation Program will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant

adverse impacts on the environment that will result from certification of the Implementation Program.

III. FINDINGS FOR CERTIFICATION OF THE LCPA AS SUBMITTED

The Commission hereby finds and declares as follows:

A. LCP AMENDMENT DESCRIPTION

Amendment Related to Tattoo Establishment Development Standards

LCP Amendment No. LCP-5-NPB-21-0084-3 Part B proposes to amend IP Chapter 21.70 – Definitions, Section 21.70.020 (Definition of Specialized Terms) specifically to strikeout “tattoo services” from the definition of “Personal Services (Land Use)” and add the definition of “Tattoo Establishment (Land Use)” to the same definitions section. Table 21.30-1 in IP Section 21.20.020(C) is also proposed to be amended to indicate that “Tattoo Establishments” as newly defined would now only be allowed in Commercial General (CG) and Office General (OG) Coastal Zoning Districts. The City’s proposed language changes are shown in red with deletions in strikethrough and new language in underline as follows:

Change #1 - Remove “tattoo services” from Personal Services definition:

Personal Services (Land Use).

1. General. Establishments that provide recurrently needed services of a personal nature. Illustrative examples of these uses include:

- a. Barber and beauty shops.
- b. Clothing rental shops.
- c. Dry cleaning pick-up stores with limited equipment.
- d. Laundromats (self-service laundries).
- e. Locksmiths.
- f. Shoe repair shops.
- g. Tailors and seamstresses.

These uses may also include accessory retail sales of products related to the services provided.

2. Restricted. Personal service establishments that may tend to have a blighting and/or deteriorating effect upon surrounding areas and that may need to be dispersed from other similar uses to minimize adverse impacts, including:

- a. Day spas.

City of Newport Beach LCP Amendment
 No. LCPA 5-NPB-21-0084-3 Part B

- b. Healing arts (acupuncture, aromatherapy, etc.) with no services qualifying under “Massage establishments.”
- c. Tanning salons.
- d. ~~Tattoo services and~~ body piercing studios.

These uses may also include accessory retail sales of products related to the services provided.

Change #2 – Add new “Tattoo Establishment” definition:

“Tattoo Establishment (land use)” means a business where the insertion of pigment, ink or dye is applied under the surface of the skin by a person pricking with a needle or otherwise, to permanently change the color or appearance of the skin or to produce an indelible mark or figure visible through the skin in exchange for financial or other valuable consideration. It does not include the application of permanent make-up that is performed as an incidental service in a beauty shop, day spa, or dermatology office.

Change #3 – Change Table 21.20-1 to indicate that the newly defined Tattoo Establishment use is only allowed in the CG and OG commercial coastal zoning districts:

TABLE 21.20-1 ALLOWED USES	Commercial Coastal Zoning Districts							
	A Allowed — Not Allowed *							
Land Use See Part 7 of this Implementation Plan for land use definitions. See Chapter 21.12 for unlisted uses.	CC	CG	CM (3)	CN	CV (3)	CV-LV (3)	OG	Specific Use Regulations
Industry, Manufacturing and Processing, and Warehousing Uses								
<u>Tattoo Establishment</u>	=	A	=	=	=	=	A	

Currently, the certified IP contains a definition for Restricted Personal Service establishments that “may tend to have a blighting and/or deteriorating effect upon surrounding areas and that may need to be dispersed from other similar uses to minimize adverse impacts” tattoo services are included under this definition of restricted personal services. To date, the City has treated tattoo establishments as service businesses and allowed them in coastal zoning districts CC (Commercial Corridor), CG (Commercial General), CN (Neighborhood Commercial), CV (Commercial Visitor-Serving), OG (Office-General), MU-V (Mixed-Use Vertical), MU-MM (Mixed-Use Mariners’ Mile), MU-CV/15th St. (Mixed-Use Cannery Village and 15th Street) MU-W (Mixed-Use Water). Tattoo

establishments are not allowed in CM (Commercial Recreational and Marine) and in the CV-LV (Commercial Visitor-serving – Lido Village). Currently, there are five legally permitted tattoo establishments in the City, all within the City’s coastal zone, these are located within different commercial coastal zoning districts such as CV, CC, MU-W.

The proposed LCP Amendment would allow ministerial approval of tattoo establishments in the CG (Commercial-General) and OG (Office-General) commercial coastal zoning districts only and would make tattoo establishments subject to separate requirements and development and operational standards than other uses under the “Personal Services” definition. The proposed amendment harmonizes First Amendment protections of free expression while also ensuring tattoo establishments are compatible with the surrounding area, do not result in an overconcentration, and maintain the quality and character of the community.

The five existing legal, conforming tattoo establishments in the Coastal Zone, would become legal non-conforming uses as a result of the proposed LCP Amendment based upon the zoning district in which they are located or the locational/separation requirements. As non-conforming uses, these establishments would be able to continue operating (a conditional use permit would be required in order to expand or intensify their use). Non-conforming rights to operate would cease in the event the tattoo establishment use is discontinued for 180 consecutive days.

Additionally, as part of its efforts to update tattoo establishment regulations, the City has recently modified its Zoning Code (not part of the IP) to incorporate development standards for the operations of a tattoo establishment including site and floor plan, parking, signage, and separation requirements. With respect to separation requirements, a tattoo establishment may now not operate within 1,000 feet of another tattoo establishment, 500 feet from a school or playground, or residential use. The City also established new operating standards including hours of operation, noise requirements, security camera and screening requirements. The City’s goal was to ensure ample availability for tattoo establishments while preventing overconcentration, ensuring compatibility with surrounding uses, and mitigating secondary effects city-wide.

B. CONSISTENCY WITH CERTIFIED LUP

The standard of review for the proposed amendment to the LCP Implementing Ordinances (IP), pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed IP amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan (LUP). The certified LUP contains policies that aim to maximize shoreline access, protect recreation and visitor serving facilities, preserve extant neighborhoods, and balance human use of coastal resources with ecological concerns. While there are no

LUP policies that explicitly mention tattoo establishments, there are broad policies that allow commercial development in portions of the coastal zone. The proposed IP amendment is not in conflict with these policies or any other policy in the certified LUP because it proposes to change only the type of commercial activities allowed in commercially zoned areas and, as proposed, will not result in any adverse impacts to coastal resources. Thus, the proposed changes conform with, and are adequate to carry out, the provisions of the certified LUP.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As set forth in Section 21080.9 of the California Public Resources Code, the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. (14 CCR § 15251(f).) Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP conforms with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. The Commission finds that, for the reasons discussed in this report, the proposed LCP amendment complies with the California Environmental Quality Act because 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment as applicable, and 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the LCP Amendment may have on the environment. The Commission finds that the proposed LCP amendment will be consistent with Section 21080.5(d)(2)(A) of the Public Resources Code. Therefore, the Commission certifies LCP Amendment request LCP-5-NPB-21-0084-3 Part B to the City of Newport Beach's Implementation Plan of the certified LCP.