

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) X *Waiver of First Requested*
 X Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: Scott R. Niehaus, Village Manager
DATE: August 11, 2014 (B of T) Date: August 21, 2014
TITLE: PC 14-18; Text Amendments to the Zoning Code – Tattoo Studios
SUBMITTED BY: Department of Community Development *MA*

BACKGROUND/POLICY IMPLICATIONS:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioner, requests the following text amendments to the Lombard Zoning Ordinance:

1. An amendment to Section 155.802 (and any other relevant sections for clarity) of the Lombard Zoning Ordinance regarding the addition of a definition for “tattoo studio;”
2. An amendment to Sections 155.416 (C) of the Lombard Zoning Ordinance to allow “tattoo studio” to be listed as a conditional use within the B4 Zoning District; and
3. For consistency purposes, the Village seeks an amendment to Section 155.415 (C) and 155.417 (G)(2)(b) of the Lombard Zoning Ordinance to allow “tattoo studio” to also be listed as a conditional use within the B3 and B4A Zoning Districts. (DISTRICTS - ALL)

The Plan Commission recommended approval of this petition by a voted 4 to 0 vote.

The petitioner requests a waiver of first reading of the Ordinance.

Fiscal Impact/Funding Source:

Review (as necessary):
Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development *WJH*

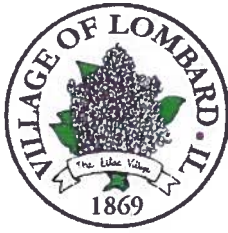
DATE: August 21, 2014

SUBJECT: PC 14-18; Text Amendment to the Zoning Ordinance – Tattoo Studios

Please find the following items for Village Board consideration as part of the August 21, 2014 Board meeting:

1. Plan Commission referral letter;
2. IDRC report for PC 14-18; and
3. An Ordinance granting approval of Text amendments to Sections 155.802 (and any other relevant sections for clarity) and 155.415 (C), 155.416 (C), and 155.417 (G)(2)(b) of the Village of Lombard Zoning Ordinance to define and allow “tattoo studio” to be listed as a conditional use within the B3, B4, and B4A Zoning Districts.

The Plan Commission recommended approval of this petition by a vote of 4-0. Please place this petition on the August 21, 2014 Board of Trustees agenda with a waiver of first reading, as requested by the petitioner (attached).



VILLAGE OF LOMBARD

255 E. Wilson Ave.
Lombard, Illinois 60148-3926
(630) 620-5700 Fax (630) 620-8222
www.villageoflombard.org

August 21, 2014

Village President
Keith T. Giagnorio

Village Clerk
Sharon Kuderna

Trustees
Dan Whittington, Dist. 1
Michael A. Fugiel, Dist. 2
Reid Foltyniewicz, Dist. 3
Peter Breen, Dist. 4
Laura A. Fitzpatrick, Dist. 5
William "Bill" Ware, Dist. 6

Village Manager
Scott R. Niehaus

"Our shared Vision for Lombard is a community of excellence exemplified by its government working together with residents and businesses to create a distinctive sense of spirit and an outstanding quality of life."

"The Mission of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

Mr. Keith T. Giagnorio,
Village President, and
Board of Trustees
Village of Lombard

Subject: PC 14-18; Text Amendments to the Zoning Code

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioner, requests the following text amendments to the Lombard Zoning Ordinance:

1. An amendment to Section 155.802 (and any other relevant sections for clarity) of the Lombard Zoning Ordinance regarding the addition of a definition for "tattoo studio;"
2. An amendment to Sections 155.416 (C) of the Lombard Zoning Ordinance to allow "tattoo studio" to be listed as a conditional use within the B4 Zoning District; and
3. For consistency purposes, the Village seeks an amendment to Section 155.415 (C) and 155.417 (G)(2)(b) of the Lombard Zoning Ordinance to allow "tattoo studio" to also be listed as a conditional use within the B3 and B4A Zoning Districts.

Chairperson Ryan asked if any person would like to speak in favor or against this petition, or for public comment. Sworn in to present the petition was Jennifer Ganser, Assistant Director of Community Development, and the petitioner's Gregory Ladle, Chicago, IL; Jamie Munoz, Itasca, IL; Gerald Cross, Addison, IL; and Frank LaVere, Lombard, IL.

Mr. Ladle explained that the current Village of Lombard code does not list tattoo studios or body art as a permitted or conditional use in any zoning district, therefore a text amendment would be required. After reviewing adjacent suburbs and municipalities they are seeking

a conditional use, and to be conservative, suggested B4 zoning. They are aware some people may have concerns due to the nature of tattoo body art and body piercing. In 2007, the State of Illinois enacted the Tattoo and Body Piercing Establishment Registration Act to regulate such businesses. This Act set forth administrative regulations for the safety and security for patrons and customers. It provides for health inspections, training, hygiene, sterilization and proficiency standards, and blood born pathogen testing. With regard to their petition, they referenced body art because this is the term used in the health department code. However most tattoo studios will also provide body piercing services. Body piercing is neither the primary service nor the primary source of income. The body art code defines body piercing as a different term and as piercing outside the ear lobe. He stated the fact that 410 ILCS 54/10 includes in its definition an "establishment" means a body piercing operation, a tattooing operation, or combination of both operations in a multiple-type establishment. He said this definition could clear up an ambiguity so there are no concerns or questions down the road.

Chairperson Ryan asked if any person would like to speak in favor or against this petition, or for public comment. Hearing none, he asked for the staff report.

Ms. Ganser presented the staff report, which was submitted to the public record in its entirety. She stated the petitioner has submitted this request for a text amendment in the B4 zoning district along with a companion request for a conditional use for a tattoo studio. After reviewing surrounding communities, staff is also proposing to add tattoo studios as a conditional use in the B3 and B4A zoning districts.

As the Zoning Ordinance does not list tattoo studios as a permitted or conditional use in any zoning district, a text amendment would be required.

Since the Tattoo and Body Piercing Establishment Registration Act regulates such businesses, staff is comfortable with the regulations.

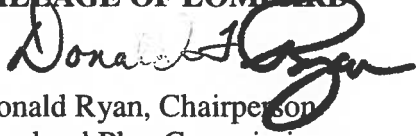
Ms. Ganser said the Inter-Departmental Review committee had no issues or concerns regarding the project at this time. She noted the staff report outlines the definition of tattooing as well as a tattoo studio and borrowed language from the State of Illinois. Chairperson Ryan asked about body piercing and referenced that the petitioner stated it is in the code for similar uses. Ms. Ganser explained the Village doesn't regulate piercing because it is an ancillary use. Their primary use is a tattoo studio and they are in compliance as long as they follow the rules and guidelines set by the State of Illinois.

Chairperson Ryan asked for public comment, and, hearing none, opened the meeting for comments among the Commissioners.

On a motion by Commissioner Flint, and a second by Commissioner Olbrysh, the Plan Commission voted 4-0 that the Village Board approve the petition associated with PC 14-18.

Respectfully,

VILLAGE OF LOMBARD

A handwritten signature in black ink, appearing to read "Donald Ryan", written over the printed name.

Donald Ryan, Chairperson
Lombard Plan Commission

c. Lombard Plan Commission

H:\CD\WORDUSER\PCCASES\2014\PC 14-18\PC 14-18_Referral Letter.docx

July 21, 2014

Title

PC 14-18

Petitioner

Midwest Collective Inc.
Jamie Munoz
6N412 Lloyd Avenue
Itasca, IL 60143

Property Location

B3, B4, and B4A Zoning
Districts

Approval Sought

Text amendments to Sections 155.802 (and any other relevant sections for clarity) and 155.415 (C), 155.416 (C), and 155.417 (G)(2)(b) of the Village of Lombard Zoning Ordinance to define and allow "tattoo studio" to be listed as a conditional use within the B3, B4, and B4A Zoning Districts.

Submittals

1. Petition for a public hearing, submitted April 21, 2014; and
2. Response to Standards for a Text Amendment.

Prepared By

Jennifer Ganser
Assistant Director

DESCRIPTION

The petitioner has submitted this request along with a companion request for a conditional use for a tattoo studio (if PC 14-18 is approved) at 1047 E. St Charles Road (Case No. PC 14-19). Staff is also proposing to add tattoo studios as a conditional use in the B3 and B4A zoning districts.

Over the past few years, staff has been contacted by parties interested in opening a tattoo studio in Lombard. As the Zoning Ordinance does not list tattoo studios as a permitted or conditional use in any zoning district, a text amendment would be required.

The Tattoo and Body Piercing Establishment Registration Act (410 ILCS 54/1 et seq.) regulates such businesses. Business must register with the State Department of Public Health and an inspection is conducted to make sure the business is in compliance with the Act.

The proposed zoning regulations for a tattoo studio are similar to, and even borrow language from, many surrounding communities and the State of Illinois regulations.

INTER-DEPARTMENTAL REVIEW

Building Division:

The Building Division has no issues or concerns regarding the proposed text amendments to the Zoning Ordinance.

Fire Department:

The Fire Department has no issues or concerns regarding the proposed text amendments to the Zoning Ordinance.

Private Engineering Services:

Private Engineering Services has no issues or concerns regarding the proposed text amendments to the Zoning Ordinance.

Public Works:

The Department of Public Works has no issues or concerns regarding the proposed text amendments to the Zoning Ordinance.

EXISTING & PROPOSED REGULATIONS

New Text ~~Deleted Text~~

§155.802 Rules and Definitions

Tattoo studio

Any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.

Tattooing

means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. Tattooing includes imparting permanent makeup on the skin, such as permanent lip coloring and permanent eyeliner. Tattooing does not include any of the following:

- (1) The practice of electrology as defined in the Electrology Licensing Act.**
- (2) The practice of acupuncture as defined in the Acupuncture Licensing Act.**
- (3) The use, by a physician licensed to practice medicine in all its branches, of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes.**

§155.415 B3 Community Shopping District Requirements

(C) Conditional Uses

Subject to the provisions of Section 155.103 (F) of this Ordinance, any conditional use in the B1 District shall be a conditional use in the B3 District and in addition, the following conditional uses may be allowed:

1. Amusement establishments indoor only, including bowling alleys, pool halls, swimming pools and skating rinks
2. Bus station
3. Catering services
4. Collection Centers, Attendant
5. Day Care Centers
6. Drive-through and drive-in establishments/services
7. Funeral homes
8. Furniture upholstery, as the principal use of the property

9. Gasoline sales (or any expansion of a principal, secondary or ancillary use on the same lot as a gasoline sales establishment)
10. Hotel and Convention Halls
11. Hotels and motels
12. Learning Centers, with outdoor component
13. Medical and dental laboratories
14. Meeting hall
15. Motor vehicle repair
16. Motor vehicle sales
17. Motor vehicle service
18. Off-site parking, in conformance with Section 155.602 (A) (3) (b) of this Ordinance
19. Outside display and sales of products the sale of which is a permitted or conditional use in this district
20. Outside service areas for other permitted or conditional uses in this district
21. Parking lots, open, as the principal use of the property
22. Parking garages or structures, as the principal use of the property
23. Physical culture and massage establishments (as defined and regulated by Chapter 12, Section 122 of the Code of Ordinances)
24. (Psychics, ESP Readers, and fortune Tellers
25. Public recreational and social facilities, as defined in the R1 District
26. Public utility and governmental service uses
27. Religious institutions
28. Restaurants including entertainment, dancing, and/or amusement devices when conducted as part of the restaurant operations and secondary to the principal use
29. **Tattoo studio**
- ~~29-30.~~ Taverns and cocktail lounge

~~30-31.~~ Accessory uses and buildings, incidental to and on the same zoning lot as the conditional use, which are constructed and operated in conformance with Section 155.210 of this Ordinance

~~31-32.~~ Dwelling Units, located above the first floor, where all the requirements of Section 155.412(B)(1) of this Code are not met.

§155.416 B4 Corridor Commercial District Requirements

(C) Conditional Uses

Subject to the provisions of Section 155.103 (F) of this Ordinance, the following conditional uses may be allowed:

1. Amusement establishments, outdoor, including: archery ranges, shooting galleries (with no retail sales of associated product), and other similar outdoor amusement facilities
2. Amusement parks, including: permanent carnivals, kiddie parks, golf driving ranges, pitch and putt, miniature golf courses, and other similar outdoor amusement facilities
3. Animal hospitals and kennels
4. Boat showrooms, sales and repairs
5. Building material and products sales and storage
6. Clubs and lodges, nonprofit and fraternal
7. Collection Centers, Attendant
8. Contractor construction offices, shops, and yards
9. Day Care Center
10. Drive-through and drive-in establishments/services
11. Dwelling Units, located above the first floor, where all the requirements of Section 155.413(B)(17) of this Code are not met.
12. Gasoline sales (or any expansion of a principal, secondary or ancillary use on the same lot as a gasoline sales establishment
13. Learning Centers, with outdoor component
14. Machinery sales
15. Model homes and garage displays
16. Motor Vehicle repair
17. Motor vehicle sales
18. Motor vehicle service
19. Off-site parking, in conformance with Section 155.602 (A) (3) (b) of this Ordinance
20. Outside display and sales of products the sale of which is a permitted or conditional use in this district

21. Outside service areas for other permitted or conditional uses in this district
22. Photographic processing business
23. Physical culture and massage establishments (as defined and regulated by Chapter 12, Section 122 of the Code of Ordinances)
24. Planned developments in conformance with Section 155.500 of this Ordinance
25. Psychics, ESP Readers, and fortune tellers
26. Public utility and governmental service uses
27. Religious Institutions
28. Restaurants, which include entertainment, dancing, and/or amusement devices when conducted as part of the restaurant operations and secondary to the principal use
29. Stadiums, auditoriums, and arenas—open or enclosed
30. Storage centers, provided that the use fronts along an arterial roadway with an average daily trip volume (ADTV) of less than 25,000
31. **Tattoo Studio**
- ~~31-32~~ Theaters, drive-in
- ~~32-33~~ Trailer and camper trailer sales and rental for use with private passenger motor vehicles
- ~~33-34~~ Four (4) story buildings and buildings which are forty feet (40') to forty-five feet (45') in height.
- ~~34-35~~ Accessory uses and buildings, incidental to and on the same zoning lot as the conditional use, which are constructed and operated in conformance with Section 155.210 of this Ordinance

§155.417 Roosevelt Road Corridor B4A District Requirements

2. Conditional Uses. The following uses are considered conditional uses and shall be subject to the provisions set forth in Section 155.103 (F) of this Ordinance.

a. Retail Uses

1. Amusement establishments, outdoor, including: archery ranges, shooting galleries (with no retail sales of associated product), and other similar outdoor amusement facilities
2. Gasoline sales (or any expansion of a principal, secondary or ancillary use on the same lot as a gasoline sales establishment)
3. Motor vehicle sales
4. Outside display and sales of products the sale of which is a permitted or conditional use in this district
5. Outside service areas for other permitted or conditional uses in this district

6. Restaurants, including entertainment, dancing, and/or amusement devices when conducted as part of the restaurant operations and secondary to the principal use
7. Recreational vehicle sales
8. Secondhand stores and rummage shops (with a minimum floor area of 5,000 square feet)

b. Service Uses

1. Animal hospitals and kennels
2. Banks and financial institutions
3. Clubs and lodges, nonprofit and fraternal
4. Collection Center, Attendant
5. Day Care Center
6. Drive-through and drive-in establishments/services
7. Learning Centers, with outdoor component
8. Motor vehicle repair
9. Motor vehicle service
10. Photographic processing business
11. Therapeutic massage establishments (as defined and regulated by Chapter 12, Section 122 of the Code of Ordinances)
12. Religious Institutions
13. Smoking Establishments (in conformance with Illinois Smoke Free Act, 410 ILCS 82/1 et seq)
14. **Tattoo Studio**

STANDARDS FOR TEXT AMENDMENTS

The petitioner has provided responses to the standards for a text amendment which are attached to this document. Staff offers the following:

1. *The degree to which the proposed amendment has general applicability within the Village at large and not intended to benefit specific property;*

Staff supports amending the Zoning Ordinance to allow for tattoo studios within the B3 and B4A zoning districts. This would benefit Village properties in those zoning districts, and not a specific property.

2. *The consistency of the proposed amendment with the objectives of this ordinance and the intent of the applicable zoning district regulations;*

From a land use perspective, staff finds the proposed use is suitable for the B3, B4, and B4A Districts. Staff finds the use similar in nature to other permitted and conditional uses such as hair salons and massage establishments. Due to changing perceptions on tattoos studios, staff recommends amending the Zoning Ordinance to allow for tattoo studios as a conditional use. Staff finds the B3, B4 and B4A could be suited for this service business due to the larger area of shoppers the district draws from and location on commercial corridors. These districts also call for a wider range of uses than the B1 and B2.

3. *The degree to which the proposed amendment would create nonconformity;*

As the proposed text amendment is additive in nature and does not remove any existing permitted or conditional uses from the above mentioned zoning districts. Staff is unaware of any existing legal conforming uses that would be made nonconforming by the proposed text amendment.

4. *The degree to which the proposed amendment would make this ordinance more permissive;*

The proposed amendment is more permissive to the extent that it is intended for a new business type, but the terms of the amendment are tailored closed to said business type and create a very specific application. Since tattoo studios would be added as a conditional use a public hearing process would still be required.

5. *The consistency of the proposed amendment with the Comprehensive Plan; and*

The Comprehensive Plan does not specifically mention tattoo studios but it does hope for continued strength in existing retail and service corridors. The text amendment was specifically drafted to include zoning districts which are service oriented in nature and include other uses, similar in a land use perspective, such as hair salons and massage establishments.

6. *The degree to which the proposed amendment is consistent with village policy as established in previous rulings on petitions involving similar circumstances.*

They have been no petitions before the Plan Commission for a tattoo studio. Adding this use as a conditional use would require future petitions to go before the Plan Commission for a public hearing process.

FINDINGS & RECOMMENDATIONS

Staff finds the proposed amendments to be consistent with the objectives of the Zoning Ordinance. The proposed amendments are also consistent with the intent of the Comprehensive Plan in general.

Based on the above findings, the Inter-Departmental Review Committee has reviewed the petition and finds that it meets the standards required by the Zoning Ordinance. As such, the Inter-Departmental Review Committee recommends that the Plan Commission make the following motion recommending **approval** of this petition:

Based on the submitted petition and the testimony presented, the requested text amendments **comply** with the standards required by the Village of Lombard Zoning Ordinance; and, therefore, I move that the Plan Commission accept the findings and recommendations of the Inter-Departmental Report as the findings of the Plan Commission and I recommend to the Corporate Authorities **approval** of PC 14-18.

Inter-Departmental Review Committee Report approved by:



William J. Heniff, AICP
Director of Community Development

c. Petitioner

H:\CD\WORDUSER\PCCASES\2014\PC 14-18\PC 14-18_IDRC Report.docx



MEMORANDUM

TO: LOMBARD PLAN COMMISSION
Donald Ryan, Plan Commission Chairperson

FROM: Jennifer Ganser, Assistant Director
Department of Community Development

DATE: June 16, 2014

SUBJECT: Workshop – Tattoo Studio Text Amendment

Over the past few years, staff has been contacted by parties interested in opening a tattoo studio in Lombard. As the Zoning Ordinance does not list tattoo studios as a permitted or conditional use in any zoning district, a text amendment would be required. Staff is bringing this item to the Plan Commission to discuss if a text amendment would be appropriate, and if so, what zoning districts could be amended to allow for a tattoo studio.

Legal Aspects of Regulating Tattoo Businesses

Staff has discussed this use with Village legal counsel and their memo is attached for review. Tree cases were summarized:

In 2008, *Hold Fast Tattoo, LLC v. City of North Chicago* the court found the requirement for a special use permit to operate a tattoo parlor was valid, and the “denial was justified where there was a finding that such planning goals would not be met”. Conversely, in 2010, *Anderson v. City of Hermosa Beach* the court found that tattooing is fully protected by the First Amendment and the municipal ordinance banning tattooing was unconstitutional. In 2012 *Coleman v. City of Mesa* the court found that tattooing was protected by the First Amendment. The recent trend is to apply First Amendment protections.

Surrounding Communities

Staff completed a survey of nearby communities. Many are like Lombard, in that the Zoning Ordinance does not mention tattoo studios. As with the Lombard Zoning Ordinance, these communities would consider such uses prohibited uses, as they are not listed.

- Downers Grove
- Glen Ellyn
- Oak Brook
- Oakbrook Terrace
- Bloomingdale
- Carol Stream

- Darien
- Elmhurst
- Hinsdale
- Lisle
- Wheaton
- Woodridge

Staff found four nearby communities that permit tattoo studios by right.

- Aurora (B2, B3, M1, M2, Downtown Core, and Downtown Fringe Districts). Aurora does regulate tattoo parlors through a business license process.
- Plainfield (B3 highway business district)
- Villa Park (M1 light industrial district). However, the tattooing may be performed within such licensed tattoo establishment but shall be done only by a physician or osteopath or in the physical presence and under the direct supervision of a physician or osteopath authorized to practice medicine or osteopathic medicine in the State of Illinois as set forth in the Illinois Medical Practice Act of 1987 (225 ILCS 60/1 et seq.) or any amendment thereof.
- Wood Dale (I-2 industrial district)

Multiple communities allowed for tattoo studios with a conditional use or special use permit.

- DuPage County (conditional use in the B1 and B2 Districts)
- Franklin Park (conditional use along Grand Avenue from the eastern side of Mannheim Road east to the western side of Martens Street, and no such uses shall be granted within five thousand two hundred eighty feet (5,280') of any preexisting body art shop)
- Geneva (special use in the B5 commercial district on Randall Road)
- Naperville (conditional use in the B3 General Commercial District)
- Westmont (special use in the M Manufacturing District)

Zoning Ordinance Definitions

Should a text amendment be brought forth, a definition of tattoo studio will need to be added. Sample definitions are below.

Villa Park:

Body piercing means any procedure whereby a part or parts of the human body are pierced by a sharp instrument in order to allow insertion of a piece or pieces of jewelry, a ring(s) or other ornamental device(s) through the orifice(s) thus created.

Operator means any individual, firm, company, corporation or association that owns or operates an establishment where tattooing is performed and any individual who performs or practices the art of tattooing other human beings.

Tattoo, tattooed or tattooing means any method of placing designs, letters, scrolls, figures, symbols or any other marks upon or under the skin by the aid of needles or other instruments designed to touch or puncture the skin.

Plainfield:

BODY ART. The practice of physical body adornment by establishments or artists using, but not limited to, the techniques of body piercing and tattooing. For the purposes of this code, body art does not include the use of a mechanized, pre-sterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

Westmont:

Body piercing means any procedure whereby a part of the human body is pierced by a sharp instrument in order to allow insertion of a piece of jewelry, a ring or other commercial device through the orifice thus created.

Operator means any individual, firm, company, corporation or association that owns or operates an establishment where tattooing is performed, and any individual who performs or practices the art of tattooing other human beings.

Tattoo, tattooed or tattooing mean any method of placing designs, letters, scrolls, figures, symbols or any other marks upon or under the skin by the aid of needles or other instruments designed to touch or puncture the skin.

Naperville

TATTOO PARLOR: Any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.

TATTOO, TATTOOED, TATTOOING: Any method of placing designs, letters, scrolls, figures, symbols, or any other marks upon the skin with ink or any other substance resulting in the coloration of the skin by the aid of needles or any other instrument designed to touch or puncture the skin.

Aurora

Tattoo, tattooed or tattooing means any method of placing designs, letters, scrolls, figures, symbols or any other marks upon or under the skin by the aid of needles or other instruments designed to touch or puncture the skin.

Business Regulations

The Tattoo and Body Piercing Establishment Registration Act (410 ILCS 54/1 et seq.) regulates such businesses. Business must register with the State Department of Public Health and an inspection is conducted to make sure the business is in compliance with the Act. As the State regulates and licenses tattoo establishments, therefore no business regulations or licensing are needed from the Village.

Definitions from the State Act, (410 ILCS 54/1):

Body piercing means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature. Body piercing does not include practices that are considered medical procedures or the puncturing of the outer perimeter or lobe of the ear using a pre-sterilized, single-use stud and clasp ear piercing system.

Tattooing means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. Tattooing includes imparting permanent makeup on the skin, such as permanent lip coloring and permanent eyeliner. Tattooing does not include any of the following:

- (1) The practice of electrology as defined in the Electrology Licensing Act.
- (2) The practice of acupuncture as defined in the Acupuncture Licensing Act.
- (3) The use, by a physician licensed to practice medicine in all its branches, of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes.

Operator means an individual, partnership, corporation, association, or other entity engaged in the business of owning, managing, or offering services of body piercing or tattooing

Staff Recommendations

Due to changing perceptions on tattoos studios, staff recommends amending the Zoning Ordinance to allow for tattoo studios as a conditional use. Staff finds the B3, B4 and B4A could be suited for this service business due to the larger area of shoppers the district draws from and location on commercial corridors. These districts also call for a wider range of uses than the B1 and B2.

Staff is comfortable with the definition from the State and notes that surrounding communities use similar definitions.

Action Requested

Staff is bringing this item to the Plan Commission for informational purposes and discussion as a workshop session. Specially, staff is seeking direction from the Plan Commission on the following:

1. What zoning districts are appropriate for tattoo uses?
2. Would such activities be deemed to be more appropriate as conditional uses or permitted as of right?



20 N. Wacker Drive, Ste 1660
Chicago, Illinois 60606-2903
T 312 984 6400 F 312 984 6444

15010 S. Ravinia Avenue, Ste 10
Orland Park, Illinois 60462-5353
T 708 349 3888 F 708 349 1506

tpbayer@ktjlaw.com
312-984-6422

www.ktjlaw.com

MEMORANDUM

TO: Thomas P. Bayer
FROM: Howard C. Jablecki
DATE: April 29, 2014
RE: Zoning and Tattoo Parlors

You have asked for research on the regulation of tattoo parlors under applicable state and federal law. This memo summarizes a few pertinent cases on the issue, as well as the state regulations related to tattoo parlors.

Case Law

The most recent case addressing regulation of tattoo establishments in the Seventh Circuit was *Hold Fast Tattoo, LLC v. City of North Chicago*, 580 F. Supp. 2d 656 (N.D. Ill. 2008). In this case, a prospective tattoo establishment, Hold Fast Tattoo, applied for a special use permit under North Chicago’s zoning ordinance to operate a tattoo studio there. The permit was ultimately denied because the North Chicago city council decided a tattoo establishment was “not the kind of business” the council wanted in its city. Hold Fast filed suit under Section 1983 for an equal protection violation, a substantive due process violation, a procedural due process violation, and an unconstitutional exercise of the state’s police power.

In addressing the purported constitutional violations, the court first noted that the nature of the right to draw tattoos has not been directly addressed by the Seventh Circuit or the Supreme Court. It then held that the act of tattooing is not constitutionally-protected free speech because it is “not intended to convey a particularized message.” The act of tattooing “is one step removed from actual expressive conduct,” and “may be used by customers to convey a message, but it is not protected by the First Amendment in and of itself.” In other words, the court distinguished between the tattoo itself and the act of tattooing, finding the latter is not expressive conduct itself. The court likened the situation to a sound truck vehicle: the message conveyed by the sound truck is protected speech, but the sound truck itself, the “mode of speech” and not the speech itself, is not protected by the First Amendment.

In the case of tattoos, the court held the act of tattooing implicates no First Amendment right. Consequently, the court noted that “[w]here no fundamental right or suspect class is at issue, ‘legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.’” It found that North Chicago’s zoning ordinance was “substantially related to its municipal planning goals,” such as the “character, stability, or intended development of the city’s business district,” and “protection of the health and/or safety of the community.” As such, the requirement for a special use permit to operate a tattoo parlor was valid, and the denial was justified where there was a finding that such planning goals would not be met.

In 2010, the Ninth Circuit dealt with a similar issue and directly disagreed with the holding and reasoning in *Hold Fast*. In *Anderson v. City of Hermosa Beach*, 621 F.3d 1051 (9th Cir. 2010), a tattooist seeking to open a tattoo parlor filed a § 1983 action in response to a municipal

ordinance which effectively banned tattoo establishments. Unlike the *Hold Fast* court the Ninth Circuit held that tattooing is “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 court found no distinction between the “tattooing process” and the tattoo itself, holding “the entire purpose of tattooing is to produce the tattoo, and the tattoo cannot be created without the tattooing process any more than the Declaration of Independence could have been created without a goose quill, foolscap and ink.” *Id.* at 1062.

Finding a fundamental First Amendment right to be invoked, the court looked at the reasonable time, place, or manner test, which requires any such restriction to be: 1. justified without reference to the content of the regulated speech; 2. narrowly tailored to serve a significant governmental interest; and 3. leave open ample alternative channels for communication of the information. *Id.* at 1064. The court did not take issue with the contention that the ban was justified based on health and safety concerns, but held that it was not narrowly tailored nor did it leave open ample alternative channels for communication of the information. As such, the municipal ordinance banning tattoo parlors was held unconstitutional.

A more recent case from the Supreme Court of Arizona agreed with the 9th Circuit’s holding in *Anderson*. In *Coleman v. City of Mesa*, 284 P.3d 863 (2012), the court held that the process of tattooing is expressive activity protected by the First Amendment, and allowed a claim to proceed against the City of Mesa’s ordinance requiring a conditional use permit for operation of a tattoo parlor. The court concluded the plaintiffs had stated a claim where they alleged the city’s planning and zoning code approval criteria did not sufficiently guide or limit the city’s discretion in rendering decisions, which allowed for arbitrary application inconsistent with a valid time, place and manner regulation. *Id.* at 871-872.

Clearly, the trend in these cases is to move away from the *Hold Fast* decision finding the process of tattooing is not protected activity, although *Hold Fast* is still the law in the Seventh Circuit and would still apply to tattoo establishments in Illinois until overturned by a subsequent Seventh Circuit or US Supreme Court case. Nonetheless, in looking at zoning regulations of tattoo parlors, the Village would be better served to consider such uses in line with the more recent cases, and seek to ensure any regulations imposed on the same are valid time, place and manner restrictions in compliance with the First Amendment.

State Regulations

It is important to note that tattoo and body piercing establishments are regulated by the State through the Tattoo and Body Piercing Establishment Registration Act. 410 ILCS 54/1 *et seq.* (the “Act”). The Act requires all establishments performing tattooing or body piercing be registered with the Illinois Department of Public Health (the “Department”). Before issuing any certificate of registration, the Department must conduct an inspection of the establishment to ensure compliance with the requirements of the Act. Each establishment must comply with certain health requirements including and ensure that:

1. All body piercing and tattooing procedures are performed in a clean and sanitary environment, consistent with sanitation techniques established by the Department.
2. All body piercing and tattooing procedures are performed in a manner that is consistent with an aseptic technique established by the Department.
3. All equipment and instruments used in body piercing and tattooing procedures are either single use and pre-packaged instruments or in compliance with

sterilization techniques established by the Department.

4. The ink used in all tattooing procedures is used for one person only.

In addition, the Department has promulgated rules for tattoo and body piercing establishments (77 Ill.Admin.Code Section 797.100 *et seq.*) These rules require that:

1. The operator of any establishment report any infections or diseases resulting from a tattooing or body piercing procedure.
2. All employees performing any tattoo or body piercing procedure complete bloodborne pathogen training.
3. Each establishment must maintain an emergency procedure for dealing with sickness or injury to patients including adverse reactions and accidental needle sticks.
4. The establishment maintain certain sanitation and health standards in performing its services including sanitation requirements for the premises, use of single use gloves, disposal of bodily fluids, cleaning of the area where the tattoo or piercing will occur, sterilization of instruments, etc.
5. Each patient must provide answers to certain medical history questions prior to receiving a tattoo or body piercing.

The regulations also prohibit:

1. Performing any tattooing or body piercing on anyone under the age of 18 years without parental consent.
2. Performing any tattooing or body piercing on anyone who has any skin rashes or lesions or infection.

Violators are subject to fines of up to \$1,000 per day and revocation of registration. 410 ILCS 54/80. Moreover, any operation of an establishment in violation of the Act is deemed a public nuisance, and any person convicted of knowingly maintaining a public nuisance commits a Class A Misdemeanor, with subsequent offenses qualifying as a Class 4 Felony. 410 ILCS 54/85

Nowakowski, Tamara

From: Ganser, Jennifer
Sent: Monday, August 11, 2014 1:15 PM
To: Nowakowski, Tamara
Subject: FW: PC 14-18 and PC 14-19

From: gladle-law@att.net [<mailto:gladle-law@att.net>]
Sent: Wednesday, July 23, 2014 4:08 PM
To: Ganser, Jennifer; jimmymunozart@yahoo.com; tattoosbyjerrycross@gmail.com
Subject: Re: PC 14-18 and PC 14-19

Jennifer,

Thank you for all your work and if this works please let this serve as the waiver of the first reading.

One issue of clarification - the parking lot is approximately 26 spaces in front and 20 in the back which is employee parking basically. From the staff's report it seems that the Village wants 3 handicapped spots - does the back parking count towards the public? Since it is still under 50 shouldn't it be 2 (or do you have a different method of calculating or a different number of spots?) Any insight would be appreciated.

Gregory F. Ladle, Esq.

John L. Ladle, P.C.
177 N. State St., 3rd Fl
Chicago, IL 60601
Tel: (312) 782-9026
Fax: (312) 782-0287

From: "Ganser, Jennifer" <GanserJ@villageoflombard.org>
To: "jimmymunozart@yahoo.com" <jimmymunozart@yahoo.com>; "gladle-law@att.net" <gladle-law@att.net>; "tattoosbyjerrycross@gmail.com" <tattoosbyjerrycross@gmail.com>
Sent: Tuesday, July 22, 2014 8:14 AM
Subject: PC 14-18 and PC 14-19

All,

Since you received a recommendation of approval from the Plan Commission your item will go on Consent Agenda at the August 21st Board of Trustees meeting. Usually items on consent agenda will be read and voted on with other ordinances, but there is always a chance an item can be pulled off for discussion, therefore you should attend the meeting in case there are questions. I will email you the agenda for the August 21st Board of Trustees meeting when available. The meeting is at 7:30pm at Village Hall (same room as the Plan Commission meeting).

ORDINANCE _____

**AN ORDINANCE APPROVING TEXT AMENDMENTS
TO THE LOMBARD ZONING ORDINANCE
TITLE 15, CHAPTER 155, SECTIONS 155.415(C), 155.416(C),
155.417(G)(2)(b), AND 155.802
OF THE LOMBARD VILLAGE CODE**

PC 14-18: Tattoo Studio Definition and Regulations

WHEREAS, the Village of Lombard maintains a Zoning Ordinance which is found in Title 15, Chapter 155 of the Lombard Code; and,

WHEREAS, the Board of Trustees deem it reasonable to periodically review said Zoning Ordinance and make necessary changes; and,

WHEREAS, a public hearing to consider text amendments to the Zoning Ordinance has been conducted by the Village of Lombard Plan Commission on July 21, 2014 pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the text amendments described herein; and,

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That Title 15, Chapter 155, Section 155.415(C) of the Lombard Village Code is hereby amended as follows:

- A. Subsections (29) through (31), inclusive, are hereby renumbered as subsections (30) through (32), respectively.
- B. A new subsection (29) shall be added thereto, to read in its entirety as follows:

“(29) Tattoo Studio.”

SECTION 2: That Title 15, Chapter 155, Section 155.416(C) of the Lombard Village Code is hereby amended as follows:

A. Subsections (31) through (34), inclusive, are hereby renumbered as subsections (32) through (35), respectively.

B. A new subsection (31) shall be added thereto, to read in its entirety as follows:

“(31) Tattoo Studio.”

SECTION 3: That Title 15, Chapter 155, Section 155.417(G)(2)(b) of the Lombard Village Code is hereby amended by adding a new subsection (xiv) thereto, which shall read in its entirety as follows:

“(xiv) Tattoo Studio “

SECTION 4: That Title 15, Chapter 155, Section 155.802, of the Lombard Village Code, is hereby amended by inserting the following definitions for “body piercing”, “tattoo studio” and “tattooing” at the appropriate alphabetical location therefor:

“Body piercing means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature. Body piercing does not include practices that are considered medical procedures or the puncturing of the outer perimeter or lobe of the ear using a pre-sterilized, single-use stud and clasp ear piercing system.”

“Tattoo studio is any room or space where tattooing or body piercing, or a combination thereof, is practiced or where the business of tattooing or body piercing is conducted, or any part thereof.”

“Tattooing means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. Tattooing includes imparting permanent makeup on the skin, such as permanent lip coloring and permanent eyeliner. Tattooing does not include any of the following:

- (1) The practice of electrology as defined in the Electrology Licensing Act.**
- (2) The practice of acupuncture as defined in the Acupuncture Licensing Act.**
- (3) The use, by a physician licensed to practice medicine in all its branches, of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes.”**

SECTION 5: That this ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Ordinance No. _____

Re: PC 14-18

Page 3

Passed on first reading this ____ day of _____, 2014.

First reading waived by action of the Board of Trustees this ____ day of _____, 2014.

Passed on second reading this ____ day of _____, 2014.

Ayes: _____

Nays: _____

Absent: _____

Approved this ____ day of _____, 2014.

Keith T. Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Published in pamphlet from this ____ day of _____, 2014.

Sharon Kuderna, Village Clerk