

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Department of Environmental Health

SUBMITTAL DATE:
December 4, 2012

SUBJECT: Revision of Riverside County Ordinance No. 907 Regulating Body Art Facilities, Permanent Cosmetics and Body Piercing Facilities

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Introduce and set for public hearing Revised Ordinance No. 907, an Ordinance of the County of Riverside Regulating Body Art Facilities, Permanent Cosmetics and Body Piercing Facilities;
- 2) Authorize the Clerk of the Board to place an advertisement for a public hearing in the appropriate local publications; and
- 3) Upon the close of the public hearing, adopt amended Ordinance No. 907.

(continued)

Steve Van Stockum, Director

SVS:JW

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|-----------------------|-------------------------------|--------|-------------------------|-------|
| FINANCIAL DATA | Current F.Y. Total Cost: | \$ N/A | In Current Year Budget: | Yes |
| | Current F.Y. Net County Cost: | \$ 0 | Budget Adjustment: | No |
| | Annual Net County Cost: | \$ 0 | For Fiscal Year: | 12/13 |

| | | |
|--|----------------------------------|--------------------------|
| SOURCE OF FUNDS: Contract revenue and Department budget | Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
| | Requires 4/5 Vote | <input type="checkbox"/> |

C.E.O. RECOMMENDATION:

APPROVE

BY:
Michael R. Shetler

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: ERIC STOPHER
DATE: 12/4/12
Departmental Concurrence

Policy
 Policy
 Consent
 Consent

Dep't Recomm.:
 Per Exec. Ofc.:

BACKGROUND:

In August of 2011, Ordinance 907 was passed by the Board of Supervisors to create a defined set of standards for health and safety at body art facilities within Riverside County due to the minimal state-wide regulations. On July 1, 2012, the State of California implemented the Safe Body Art Act which greatly increased the state-wide standards for the regulation of the body art industry. The new State regulations control a large portion of the body art industry. However, the state laws also provide for local jurisdictions to create additional regulations so long as the local regulations do not conflict with and/or limit state law.

Accordingly, Ordinance 907 is being revised to remove any sections that conflict with the Safe Body Art Act and to make reference to the Safe Body Art Act as the lead statute for body art regulation. The revised Ordinance 907 contains only those items that are particular to the County of Riverside and those areas that were not addressed in the Safe Body Art Act.

FISCAL:

The approval of this ordinance amendment will result in no cost to the County; implementation expenses will be paid through fees.

1 ORDINANCE NO. 907.1

2
3 AN ORDINANCE OF THE COUNTY OF RIVERSIDE
4 AMENDING ORDINANCE NO. 907 REGULATING
5 BODY ART FACILITIES, PERMANENT COSMETICS
6 AND BODY PIERCING FACILITIES

7 The Board of Supervisors of the County of Riverside ordains as follows:

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9 Section 1. Ordinance No. 907 is amended in its entirety to read as follows

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12 “ORDINANCE NO. 907

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14 AN ORDINANCE OF THE COUNT OF RIVERSIDE
15 REGULATING BODY ART FACILITIES, PERMANENT COSMETICS
16 AND BODY PIERCING FACILITIES

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19 Section 1. FINDINGS. The Board of Supervisors finds that there are significant
20 health concerns implicated by the practice of Body Art, including the danger of spreading infectious
21 diseases through the use of unsterilized equipment. Because of these dangers inherent in the practice of
22 Body Art, Practitioners must protect themselves and their clients by following safe and healthy practices.
23 Additionally, California Penal Code Section 653 prohibits tattooing individuals under the age of 18, and
24 Penal Code Section 652 prohibits body piercing on minors without a parent’s consent as specified in that
25 section. Accordingly, in addition to regulation for health and safety purposes, the practice of Body Art
26 requires additional regulation to assure that it does not unduly attract minors.

1 Section 2. PURPOSE. The purpose of this Ordinance is to establish minimum
2 standards that apply to Body Art Facilities and Practitioners for the safe practice of Body Art in Riverside
3 County. These regulations are intended to protect both the Practitioner and the Client from transmission
4 of infectious diseases through the application of proper Body Art procedures and the control of Cross-
5 contamination of Instruments and supplies.

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7 Section 3. JURISDICTION. This Ordinance shall apply to all individuals performing
8 Body Art procedures and all Body Art Facilities located within the County of Riverside. Riverside County
9 hereby adopts, and incorporates by reference, the provisions related to Body Art as codified in California
10 Health and Safety Code Section 119300, *et seq.* Additionally, pursuant to the authority granted in
11 California Health and Safety Code Section 119324, all Body Art Practitioners and all Body Art facilities
12 located within the County of Riverside shall meet the additional requirements listed below. This
13 Ordinance shall be administered and implemented by the Riverside County Department of Environmental
14 Health.

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16 Section 4. DEFINITIONS. The following definitions shall apply in the interpretation
17 and enforcement of this ordinance

- 18 A. “Body Art” shall have the same definition as in California Health and Safety Code Section
19 119301 (c).
- 20 B. “Body Art Facility” shall have the same definition as in California Health and Safety Code
21 Section 119301 (d).
- 22 C. “Body Art Practitioner” shall have the same definition as in California Health and Safety
23 Code Section 119301 (t)
- 24 D. “Department” shall mean the Riverside County Department of Environmental Health
- 25 E. “Enforcement Officer” shall mean the Director of Environmental Health and his or her
26 duly authorized designees.
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1 Section 5. INSPECTION RESULTS.

2 A. All Body Art Facilities shall be inspected using an Official Inspection Form. The results
3 of each inspection shall be represented by a placard posted by the Enforcement Officer.
4 The placards shall be presented as either "PASS" or "RE-INSPECTION DUE".

5 1. The "PASS" placard shall be used to indicate that the Body Art Facility has been
6 inspected to the standards of the California Health and Safety Code Sections
7 119300, et seq. and this ordinance, and no items on the most recent inspection form
8 are noted as requiring re-inspection.

9 2. The "RE-INSPECTION DUE" placard shall be used to indicate the Body Art
10 Facility has conditions that require additional inspection(s) by the Enforcement
11 Officer.

12 3. The placards shall be provided by the Enforcement Officer.

13 4. The placards shall be posted in a conspicuous place within the facility as
14 determined by the Enforcement Officer, shall be publicly viewable and shall be
15 removed only by the Enforcement Officer.

16 5. The placards shall contain the Signature of the Enforcement Officer and Date of the
17 most recent inspection.

18 B. The Body Art Facility shall make a copy of the most recent Inspection Report available to
19 the public upon request. The public report availability shall be noted on the placard.

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21 Section 6. FACILITY AND PRACTITIONER REQUIREMENTS Notwithstanding

22 the operational requirements set forth in California Health and Safety Code Section 119300, et seq, a
23 body art facility or practitioner operating within Riverside County shall also comply with the following
24 requirements:

25 A. Sterile gloves shall be used by a practitioner at the point of puncturing the skin and
26 inserting the pre-sterilized jewelry in the pierced area.

1 B. The Body Art Facility owner shall be responsible to report to the Department any
2 accidental needle or device penetration of the skin affecting a Practitioner, employee,
3 customer or any other member of the public within 72 hours of the incident.

4 C. The Body Art Facility owner shall be responsible for notifying the Department, in writing,
5 within seven (7) days of a practitioner leaving or a new practitioner beginning work at the
6 facility.

7 D. The Body Art Facility owner shall maintain records related to medical waste disposal for
8 three years from date of generation.

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10 Section 7. PERMITS. No person shall act as a Body Art Practitioner or operate a
11 Body Art Facility without holding a valid permit issued by the Department, except where excluded by
12 California Health and Safety code. Application for a permit shall be made to the Department upon a form
13 issued by the Department, and shall be accompanied by a fee as listed below:

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| 14 | • Permanent Body Art Facility Annual Permit | \$200.00 |
| 15 | • Mobile Body Art Facility Annual Permit | \$200.00 |
| 16 | • Body Art Practitioner Annual Registration | \$50.00 |
| 17 | • Body Art Practitioner Initial Registration (one time) | \$50.00 |
| 18 | • Temporary Body Art Facility Permit (per event) | \$150.00 |

19 In addition to the fees listed above, the following fees shall also apply to any Body Art Practitioner or
20 Body Art Facility:

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| 21 | • Body Art Re-Inspection – Charged at the current rate listed in Ordinance 640 | |
| 22 | • Duplicate Practitioner Registration Card | \$30.00 |

23 The fees listed in this Section shall be valid until such time as Ordinance 640 is revised past version
24 640.13. Any annual permit or registration shall be valid for no more than one year from the month of
25 issue.

1 Section 8. ENFORCEMENT Notwithstanding the remedies set forth in California

2 Health and Safety code Section 119300 et seq., the Department reserves the right to issue Administrative
3 Citations in accordance with Government Code Section 53069.4. An administrative citation may be
4 issued for any violation of this Ordinance. The following procedures shall govern the imposition,
5 enforcement, collection and administrative review of administrative citations and penalties.

6 A. Notice of Violation. If the violation is not corrected within the period stated in the notice of
7 violation, or if the violation creates an immediate danger to health or safety, an
8 administrative citation may be issued by the Enforcement Officer. The notice of violation
9 shall specify the manner in which the conditions of the Body Art Facility or the actions of
10 the Practitioner violate the provisions of this Ordinance and the corrective actions required
11 to correct the condition or conduct. The notice shall also state that failure to come into
12 compliance with this Ordinance could subject the permittee, Practitioner, or other person
13 who owns, controls or operates a Body Art Facility to civil, administrative and criminal
14 penalties. The failure of the notice to set forth all required contents shall not affect the
15 validity of the proceedings.

16 B. Content of Citation. The administrative citation shall be issued on a form approved by
17 County Counsel and shall contain the information listed below. The failure of the citation
18 to set forth all required contents shall not affect the validity of the proceedings.

- 19 1. Date, location and approximate time the violation was observed.
20 2. The Ordinance section violated and a brief description of the violation.
21 3. The amount of the administrative penalty imposed for the violation.
22 4. Instructions for the payment of the penalty, the time period by which it shall be
23 paid, and the consequences of failure to pay the penalty within this time period.
24 5. Instructions on how to appeal the citation.
25 6. The signature of the Enforcement Officer.
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1 C. Service of Citation.

- 2 1. If the permittee, Practitioner, or other person who has violated the Ordinance is
3 present at the scene of the violation, the Enforcement Officer shall attempt to obtain
4 their signature on the administrative citation and shall deliver a copy of the
5 administrative citation to them.
- 6 2. If the permittee, Practitioner, or other person who has violated the Ordinance is a
7 business, and the business owner is on the premises, the Enforcement Officer shall
8 attempt to deliver the administrative citation to them. If the Enforcement Officer is
9 unable to serve the business owner on the premises, the administrative citation may
10 be left with the manager or employee of the business. If left with the manager or
11 employee of the business, a copy of the administrative citation shall also be mailed
12 to the business owner by certified mail, return receipt requested.
- 13 3. If no one can be located at the property, then the administrative citation shall be
14 posted in a conspicuous place on or near the property and a copy mailed by
15 certified mail, return receipt requested to the Owner, permittee, Practitioner, or
16 other person who has violated the Ordinance. The citation shall be mailed to the
17 property address and/or the address listed for the Owner on the last County
18 Equalized Assessment Roll.
- 19 4. The failure of any interested person to receive the citation shall not affect the
20 validity of the proceedings.

21 D. Administrative Penalties.

- 22 1. The penalties assessed for each violation shall not exceed the following amounts:
- 23 a. \$100.00 for a first violation;
- 24 b. \$200.00 for a second violation of the same Ordinance within one year; and
- 25 c. \$500.00 for each additional violation of the same Ordinance within one
26 year.
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2. Notwithstanding the penalty scheme outlined above, a Practitioner who fails to register with the Department or who violates any sterilization, sanitation, and safety standards adopted under Health and Safety Code Section 119301, shall be subject to a civil penalty of one thousand dollars (\$1,000) per violation (California Health & Safety Code Section 119323).
3. If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.
4. Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action.
5. The penalties assessed shall be payable to the County of Riverside.

E. Administrative Appeal.

1. Notice of Appeal. The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the Department. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall contain the following information:
 - a. A brief statement setting forth the appellant's interest in the proceedings;
 - b. A brief statement of the material facts which the appellant claims supports his/her contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
 - c. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by mail.
 - d. The notice of appeal must be signed by the appellant.

- 1 2. Administrative Hearing. Upon a timely written request by the recipient of the
2 administrative citation, an administrative hearing shall be held as follows:
- 3 a. Notice of Hearing. Notice of the administrative hearing shall be given at
4 least ten (10) days before the hearing to the person requesting the hearing.
5 The notice may be delivered to the person or may be mailed to the address
6 listed in the notice of appeal.
- 7 b. Hearing Officer. The administrative hearing shall be held before the
8 Director. The hearing officer shall not be the Enforcement Officer who
9 issued the administrative citation or their immediate supervisor or
10 subordinate. The Director may contract with a qualified provider to conduct
11 administrative hearings or to process administrative citations.
- 12 c. Conduct of the Hearing. Except as may be required by the hearing officer,
13 the Enforcement Officer who issued the administrative citation shall not
14 participate in the administrative hearing. The contents of the Enforcement
15 Officer's file in the case shall be admitted as prima facie evidence of the
16 facts stated therein. The hearing officer shall not be limited by the technical
17 rules of evidence. If the person requesting the appeal fails to appear at the
18 administrative hearing, the hearing officer shall make his or her
19 determination based on the information contained in the notice of appeal.
- 20 d. Hearing Officer's Decision. The hearing officer's decision following the
21 administrative hearing shall be delivered to the person requesting the
22 hearing personally or sent by mail. The hearing officer may allow payment
23 of the administrative penalty in installments, if the person provides evidence
24 satisfactory to the hearing officer of an inability to pay the penalty in full.
25 The hearing officer's decision shall contain instructions for obtaining
26 review of the decision by the superior court.
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1 F. Review of Administrative Hearing Officer's Decision.

- 2 1. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of
3 the hearing officer's decision, a person may contest that decision by filing an
4 appeal to be heard by the superior court. The fee for filing the notice of appeal is
5 twenty-five dollars (\$25.00). The failure to file the written appeal and to pay the
6 filing fee within this period shall constitute a waiver of the right to an appeal and
7 the decision shall be deemed confirmed. A copy of the notice of appeal shall be
8 served in person or by first class mail upon the issuing agency by the contestant.
- 9 2. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and
10 may be performed by traffic trial commissioners and other subordinate judicial
11 officials at the direction of the presiding judge of the court. The appeal shall be
12 heard de novo, except that the contents of the issuing agency's file in the case shall
13 be received in evidence. A copy of the document or Instrument of the issuing
14 agency providing notice of the violation and imposition of the administrative
15 penalty shall be admitted into evidence as prima facie evidence of the facts stated
16 therein. The court shall request that the issuing agency's file on the case be
17 forwarded to the court, to be received within fifteen (15) days of the request.
- 18 3. Judgment. The court shall retain the twenty-five dollar (\$25.00) fee regardless of
19 the outcome of the appeal. If the court finds in favor of the contestant, the amount
20 of the fee shall be reimbursed to the contestant by the Department. Any deposit of
21 the fine or penalty shall be refunded by the issuing agency in accordance with the
22 judgment of the court. If the fine or penalty has not been deposited and the decision
23 of the court is against the contestant, the issuing agency may proceed to collect the
24 penalty pursuant to any manner provided by law.
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1 Section 11. RECOVERY OF ATTORNEYS' FEES IN NUISANCE ABATEMENT

2 CASES. In any action, administrative proceeding, or special proceeding to abate a nuisance,
3 attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or
4 special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable
5 attorneys' fees incurred by the County in the action or proceeding.
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8 Section 12. REMEDIES AND PENALTIES. All remedies and penalties provided

9 for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder
10 shall not relieve such person from the responsibility of correcting, removing or abating the violation, nor
11 prevent the enforced correction, removal or abatement thereof. Each and every day during any portion of
12 which any violation of this Ordinance or the rules, regulations, orders, Permits or conditions of approval
13 issued thereunder is committed, continued, or permitted by such person, shall be deemed a separate and
14 distinct offense.
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16 Section 13. SEVERABILITY. If any provision, clause, sentence or paragraph of this

17 Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity
18 shall not affect the other provisions or applications of the provisions of this Ordinance which can be given
19 effect without the invalid provision or application, and to this end, the provisions of this Ordinance are
20 hereby declared to be severable.”
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