

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

902



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

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

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

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.

SUMMARY OF PROPOSED ORDINANCE NO. 907.1

AN ORDINANCE OF THE COUNTY OF RIVERSIDE
AMENDING ORDINANCE NO. 907 REGULATING
BODY ART FACILITIES, PERMANENT COSMETICS
AND BODY PIERCING FACILITIES

This summary is presented pursuant to California Government Code Section 25124(b); a certified copy of the full text of Ordinance No. 907.1 may be examined at the Office of the Clerk of the Board of Supervisors of the County of Riverside located at 4080 Lemon Street, 1st Floor, Riverside, California.

Ordinance No. 907.1 amends Ordinance 907, regulating Body Art Facilities, Permanent Cosmetics and Body Piercing Facilities (generally referred to as “Body Art”), in order to ensure Ordinance 907 is consistent with state law. Body art includes body piercing, branding, permanent cosmetics, and tattooing. Ordinance 907 required owners, operators, and practitioners to follow safe and healthy practices, including the use of sterilized equipment and the maintenance of a sterile work environment and established minimum standards that applied to body art facilities, both permanent and temporary, and practitioners of body art to help protect both the practitioner and the client from transmission of infectious diseases.

Ordinance 907 was adopted by the Board of Supervisors of Riverside County on August 16, 2011. Subsequent to this adoption, the state of California enacted AB 300 which expanded the existing state statutes that govern body art. AB 300 became effective July 1, 2012. As a result of the enactment of AB 300, Riverside County’s ordinance is amended to delete sections that are duplicative and/or contradict state law and is amended to add further regulations that are permissible under state law.

The major components of Ordinance No. 907.1 amend Ordinance 907 to do the following:

Delete sections that are duplicative and/or contradictory of state law.

Incorporate, by reference, the entirety of the statutory scheme resulting from the enactment of AB 300, including the restriction on performance of body art, registration requirements, ear piercing, and enforcement of the regulations.

Adds permissible, and stricter, regulations that do not conflict with state law as allowable pursuant to state law.

Sets forth the associated fees for permits, inspections, and practitioner registrations.

Contains the penalties for violations of the ordinance requirements, which include criminal infractions, misdemeanors, monetary administrative penalties, injunctive relief, abatement, and other civil remedies and defines a violation as a nuisance.

1 from transmission of infectious diseases through the application of proper Body Art procedures and the
2 control of cross-contamination of instruments and supplies.

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

12
13 Section 4. DEFINITIONS. The following definitions shall apply in the interpretation
14 and enforcement of this ordinance

- 15 A. "Body Art" shall have the same definition as in California Health and Safety Code Section
16 119301, subdivision (c).
- 17 B. "Body Art Facility" shall have the same definition as in California Health and Safety Code
18 Section 119301, subdivision (d).
- 19 C. "Body Art Practitioner" shall have the same definition as in California Health and Safety
20 Code Section 119301, subdivision (t)
- 21 D. "Department" shall mean the Riverside County Department of Environmental Health
- 22 E. "Enforcement Officer" shall mean the Director of Environmental Health and his or her
23 duly authorized designees.

24
25 Section 5. INSPECTION RESULTS.

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

1. The "PASS" placard shall be used to indicate that the Body Art Facility has been inspected to the standards of the California Health and Safety Code Sections 119300, et seq. and this ordinance, and no items on the most recent inspection form are noted as requiring re-inspection.
2. The "RE-INSPECTION DUE" placard shall be used to indicate the Body Art Facility has conditions that require additional inspection(s) by the Enforcement Officer.
3. The placards shall be provided by the Enforcement Officer.
4. The placards shall be posted in a conspicuous place within the Body Art Facility as determined by the Enforcement Officer, shall be publicly viewable and shall be removed only by the Enforcement Officer.
5. The placards shall contain the Signature of the Enforcement Officer and date of the most recent inspection.

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

Section 6. FACILITY AND PRACTITIONER REQUIREMENTS. Notwithstanding

the operational requirements set forth in California Health and Safety Code Section 119300, et seq, a Body Art Facility or Body Art Practitioner operating within Riverside County shall also comply with the following requirements:

- A. Sterile gloves shall be used by a Body Art Practitioner at the point of puncturing the skin and inserting the pre-sterilized jewelry in the pierced area.
- B. The Body Art Facility owner or operator shall be responsible to report to the Department any accidental needle or device penetration of the skin affecting a Body Art Practitioner, employee, customer or any other member of the public within 72 hours of the incident.
- C. The Body Art Facility owner or operator shall be responsible for notifying the Department, in writing, within seven (7) days of a Body Art Practitioner leaving or a new Body Art Practitioner beginning work at the facility.

1 D. The Body Art Facility owner or operator shall maintain records on site related to medical
2 waste disposal for three years from date of generation.

3
4 Section 7. PERMITS. No person shall act as a Body Art Practitioner or own or
5 operate a Body Art Facility without holding a valid permit issued by the Department, except where
6 excluded by California Health and Safety Code. Application for a permit shall be made to the Department
7 upon a form issued by the Department, and shall be accompanied by a fee as listed below:

- | | | |
|----|---|----------|
| 8 | • Permanent Body Art Facility Annual Permit | \$200.00 |
| 9 | • Mobile Body Art Facility Annual Permit | \$200.00 |
| 10 | • Body Art Practitioner Annual Registration | \$50.00 |
| 11 | • Body Art Practitioner Initial Registration (one time) | \$50.00 |
| 12 | • Temporary Body Art Facility Permit (per event) | \$150.00 |

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

- | | | |
|----|---|---------|
| 15 | • Body Art Re-Inspection – Charged at the current rate listed in Ordinance 640. | |
| 16 | • Duplicate Practitioner Registration Card | \$30.00 |

17 The fees listed in this Section shall be valid until such time as Ordinance 640 is amended to revise or
18 include the fees set forth above. Any annual permit or registration shall be valid for no more than one
19 year from the month of issue.

20
21 Section 8. ENFORCEMENT. Notwithstanding the remedies set forth in California
22 Health and Safety Code Section 119300 et seq., the Department reserves the right to issue administrative
23 citations in accordance with Government Code Section 53069.4. An administrative citation may be issued
24 for any violation of this ordinance. The following procedures shall govern the imposition, enforcement,
25 collection and administrative review of administrative citations and penalties.

26 A. Notice of Violation. If the violation is not corrected within the period stated in the notice of
27 violation, or if the violation creates an immediate danger to health or safety, an
28 administrative citation may be issued by the Enforcement Officer. The notice of violation

1 shall specify the manner in which the conditions of the Body Art Facility or the actions of
2 the Body Art Practitioner violate the provisions of this ordinance and the corrective actions
3 required to correct the condition or conduct. The notice shall also state that failure to come
4 into compliance with this ordinance could subject the permittee, Body Art Practitioner, or
5 other person who owns, controls or operates a Body Art Facility to civil, administrative
6 and criminal penalties. The failure of the notice to set forth all required contents shall not
7 affect the validity of the proceedings.

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

- 11 1. Date, location and approximate time the violation was observed.
- 12 2. The ordinance section violated and a brief description of the violation.
- 13 3. The amount of the administrative penalty imposed for the violation.
- 14 4. Instructions for the payment of the penalty, the time period by which it shall be
15 paid, and the consequences of failure to pay the penalty within this time period.
- 16 5. Instructions on how to appeal the citation.
- 17 6. The signature of the Enforcement Officer.

18 C. Service of Citation.

- 19 1. If the permittee, Practitioner, or other person who has violated the ordinance is
20 present at the scene of the violation, the Enforcement Officer shall attempt to obtain
21 their signature on the administrative citation and shall deliver a copy of the
22 administrative citation to them.
- 23 2. If the permittee, Practitioner, or other person who has violated the ordinance is a
24 business, and the business owner is on the premises, the Enforcement Officer shall
25 attempt to deliver the administrative citation to them. If the Enforcement Officer is
26 unable to serve the business owner on the premises, the administrative citation may
27 be left with the manager or employee of the business. If left with the manager or
28 employee of the business, a copy of the administrative citation shall also be mailed

1 to the business owner by certified mail, return receipt requested.

- 2 3. If the permittee, Body Art Practitioner, business owner or other person cannot be
3 located at the property, then the administrative citation shall be posted in a
4 conspicuous place on or near the property and a copy mailed by certified mail,
5 return receipt requested to the owner, permittee, Body Art Practitioner, or other
6 person who has violated the Ordinance. The citation shall be mailed to the property
7 address and/or the address listed for the Owner on the last County Equalized
8 Assessment Roll.
- 9 4. The failure of any interested person to receive the citation shall not affect the
10 validity of the proceedings.

11 D. Administrative Penalties.

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

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1 E. Administrative Appeal.

2 1. Notice of Appeal. The recipient of an administrative citation may appeal the
3 citation by filing a written notice of appeal with the Department. The written notice
4 of appeal must be filed within twenty (20) days of the service of the administrative
5 citation. Failure to file a written notice of appeal within this time period shall
6 constitute a waiver of the right to appeal the administrative citation. The notice of
7 appeal shall contain the following information:

- 8 a. A brief statement setting forth the appellant's interest in the proceedings;
9 b. A brief statement of the material facts which the appellant claims supports
10 his/her contention that no administrative penalty should be imposed or that
11 an administrative penalty of a different amount is warranted;
12 c. An address at which the appellant agrees notice of any additional
13 proceeding or an order relating to the imposition of the administrative
14 penalty may be received by mail.
15 d. The notice of appeal must be signed by the appellant.

16 2. Administrative Hearing. Upon a timely written request by the recipient of the
17 administrative citation, an administrative hearing shall be held as follows:

- 18 a. Notice of Hearing. Notice of the administrative hearing shall be given at
19 least ten (10) days before the hearing to the person requesting the hearing.
20 The notice may be delivered to the person or may be mailed to the address
21 listed in the notice of appeal.
22 b. Hearing Officer. The administrative hearing shall be held before the Board
23 of Supervisors, the County Hearing Officer or the County Hearing Board.
24 The hearing officer shall not be the Enforcement Officer who issued the
25 administrative citation or their immediate supervisor or subordinate. The
26 Board of Supervisors, the County Hearing Officer or the County Hearing
27 Board may contract with a qualified provider to conduct administrative
28 hearings or to process administrative citations.

1 c. Conduct of the Hearing. Except as may be required by the hearing officer,
2 the Enforcement Officer who issued the administrative citation is not
3 required to participate in the administrative hearing. The contents of the
4 Enforcement Officer's file in the case shall be admitted as prima facie
5 evidence of the facts stated therein. The hearing officer shall not be limited
6 by the technical rules of evidence. If the person requesting the appeal fails
7 to appear at the administrative hearing, the hearing officer shall make his or
8 her determination based on the information contained in the notice of
9 appeal.

10 d. Hearing Officer's Decision. The hearing officer's decision following the
11 administrative hearing shall be delivered to the person requesting the
12 hearing personally or sent by mail. The hearing officer may allow payment
13 of the administrative penalty in installments, if the person provides evidence
14 satisfactory to the hearing officer of an inability to pay the penalty in full.
15 The hearing officer's decision shall contain instructions for obtaining
16 review of the decision by the superior court.

17 F. Review of Administrative Hearing Officer's Decision.

- 18 1. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of
19 the hearing officer's decision, a person may contest that decision by filing an
20 appeal to be heard by the superior court. The fee for filing the notice of appeal is
21 twenty-five dollars (\$25.00). The failure to file the written appeal and to pay the
22 filing fee within this period shall constitute a waiver of the right to an appeal and
23 the decision shall be deemed confirmed. A copy of the notice of appeal shall be
24 served in person or by first class mail upon the issuing agency by the contestant.
- 25 2. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and
26 may be performed by traffic trial commissioners and other subordinate judicial
27 officials at the direction of the presiding judge of the court. The appeal shall be
28 heard de novo, except that the contents of the issuing agency's file in the case shall

1 be received in evidence. A copy of the document or instrument of the issuing
2 agency providing notice of the violation and imposition of the administrative
3 penalty shall be admitted into evidence as prima facie evidence of the facts stated
4 therein. The court shall request that the issuing agency's file on the case be
5 forwarded to the court, to be received within fifteen (15) days of the request.

- 6 3. Judgment. The court shall retain the twenty-five dollar (\$25.00) fee regardless of
7 the outcome of the appeal. If the court finds in favor of the contestant, the amount
8 of the fee shall be reimbursed to the contestant by the Department. Any deposit of
9 the fine or penalty shall be refunded by the issuing agency in accordance with the
10 judgment of the court. If the fine or penalty has not been deposited and the decision
11 of the court is against the contestant, the issuing agency may proceed to collect the
12 penalty pursuant to any manner provided by law.

13
14 Section 9. PUBLIC NUISANCE DECLARATION. Any Body Art Facility or Body
15 Art Practitioners found in violation of this ordinance are hereby declared to be a public nuisance and
16 dangerous to the health and safety of Riverside County.

17
18 Section 10. CIVIL ACTIONS.

- 19 A. Injunctive Relief and Abatement. Whenever, in the judgment of the Enforcement Officer,
20 any person is engaged in or about to engage in any act or practice which constitutes or will
21 constitute a violation of any provision of this Ordinance, or any rule, regulation, order,
22 permit or conditions of approval issued thereunder, upon the request of the Enforcement
23 Officer, the County Counsel or District Attorney may commence proceedings for the
24 abatement, removal, correction and enjoinder thereof, and require the violator to pay civil
25 penalties and/or abatement costs.
- 26 B. Civil Remedies and Penalties. Any person, whether acting as principal, agent, employee,
27 Owner, lessor, lessee, tenant, occupant, operator, contractor or otherwise, who willfully
28 violates the provisions of this ordinance or any rule, regulation, order or conditions of

1 approval issued thereunder, shall be liable for a civil penalty not to exceed \$1,000.00 for
2 each day or portion thereof, that the violation continues to exist. In determining the amount
3 of the civil penalty to impose, the court shall consider all relevant circumstances,
4 including, but not limited to, the extent of the harm caused by the conduct constituting a
5 violation, the nature and persistence of such conduct, the length of time over which the
6 conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or
7 individual, and any corrective action taken by the violator.

8
9 Section 11. COSTS AND DAMAGES. Any person, whether acting as a principal,
10 agent, employee, Owner, lessor, lessee, tenant, occupant, operator or contractor, or otherwise, violating
11 any provisions of this Ordinance or the rules, regulations, orders, Permits or conditions of approval issued
12 thereunder, shall be liable to the County of Riverside for costs of abatement and any damages suffered by
13 the County, its agents and agencies, as a result of such violations.

14
15 Section 12. RECOVERY OF ATTORNEYS' FEES IN NUISANCE ABATEMENT
16 CASES. In any action, administrative proceeding, or special proceeding to abate a nuisance,
17 attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or
18 special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable
19 attorneys' fees incurred by the County in the action or proceeding.

20
21 Section 13. REMEDIES AND PENALTIES. All remedies and penalties provided
22 for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder
23 shall not relieve such person from the responsibility of correcting, removing or abating the violation, nor
24 prevent the enforced correction, removal or abatement thereof. Each and every day during any portion of
25 which any violation of this ordinance or the rules, regulations, orders, permits or conditions of approval
26 issued thereunder is committed, continued, or permitted by such person, shall be deemed a separate and
27 distinct offense.

