

DATE: January 31, 2018
TO: Mayor & City Council
FROM: Planning Director KA
SUBJECT: Body Art Establishments



SUGGESTED ACTION

Zoning Ordinance Amendment

1. Revise table 4.1 of the zoning ordinance to allow body art establishments under the general business (BG) zoning classification with a special use permit.
2. Update associated definitions and use restrictions to incorporate additional requirements for body art.

Municipal Code

Revise municipal code to incorporate local licensing procedures.

Planning Commission Recommendation

The Planning Commission held a scheduled public hearing on 12-18-17. There were no other public comments.

Planning Commission recommends leaving tattoo and body piercing establishments a permitted use in the HM-2 district with a special use permit; changing special use restrictions #2 to 500 feet required from tract or land licensed to sell alcoholic beverages and asked staff to work with the city attorney to update the language for restriction #8 (12/17/2017) dealing with signs. (3-1) Chairman Jeremy White opposed.

DISCUSSION

- A public hearing for the proposed zoning ordinance amendments was originally scheduled for the January 8th, 2018 city council meeting. This public hearing was tabled and instructions were given to planning staff to consider more comprehensive updates to the zoning ordinance and city code.
- The current zoning ordinance requires a special use permit and heavy industrial (HM2) zoning classification.
- Most other nearby municipalities categorize body art establishments under their neighborhood commercial or general business zoning classification.
- Planning staff recommends allowing body art establishments under BG zoning as a special use permit with restrictions.
- The current City of Sugar Hill license requirements follow the body art ordinance adopted and enforced by Gwinnett County Health Department (GCHD).
- Sugar Hill does not provide for local licensing of body art establishments deferring all administration and enforcement to GCHD.
- Planning staff has worked with the leadership team to provide a comprehensive policy update for body art.
- Proposed policy includes a framework for the city to issue body art licenses to operators and artists upon satisfying minimum qualifications and application requirements such as health department permits/approvals and background checks.

Chapter 18

Article IX.

Tattoo and Body Piercing Establishments

Division 1. Generally

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Body art means the practice of physical body adornment by piercing, tattooing and cosmetic tattooing. This definition for the purposes of this article does not include piercing of the outer perimeter or lobe of the ear with pre-sterilized single use stud and clasp ear piercing systems.

Body artist or practitioner means any person who performs the work of body art, body piercing or tattooing.

Body art establishment or studio means any permanent building, structure or suite located in a planned commercial center on a permanent foundation which contains at least one body art parlor, holding a valid body art studio permit from the county health department and all other required city permits, licenses, certificates and approvals.

Body art operator means any person, firm, or entity which controls, operates, conducts or manages any body art establishment, whether performing body art and associated procedures or not.

Body art parlor means a single room within a body art studio where a body artist performs body art and associated procedures.

Body piercing means puncturing or penetrating the skin or mucosa of a person with any sharp instrument and/or the insertion of jewelry or other adornment into the opening. This definition for the purposes of this article does not include piercing of the outer perimeter or lobe of the ear with pre-sterilized single use stud and clasp ear piercing systems.

Cosmetic tattoo means to mark or color the skin by pricking in, piercing, or implanting indelible pigments or dyes under the skin or mucosa. Cosmetic tattooing shall include permanent cosmetics, micropigmentation, permanent color technology, and micropigment implantation.

Tattoo means to mark or color the skin, by pricking in, piercing or implanting indelible pigments, dyes or coloring matter into or under the skin or mucosa to form indelible marks or figures, or by the production of scars; provided, however, that the term "tattoo" does not mean a

mark placed upon the skin by a licensed physician for medical identification purposes. Includes the definition of tattoo as defined in O.C.G.A § 31-40-1(1) as may hereafter be amended and all forms of cosmetic tattooing.

Sec. 18-600. Scope of regulations.

- (a) This article shall apply to any person, corporation or other organization which, for a fee, performs body art, applies any tattoo or other needle-driven processes involving the manipulation of the superficial tissues of the human body, including, but not limited to, tattoos, body paint, body piercing and similar treatment of the human body within the city limits. The rules and regulations promulgated by the Gwinnett County Board of Health titled "Rules of Gwinnett County Board of Health Body Art Studios and Artists" are hereby adopted by the City of Sugar Hill, Georgia and incorporated by reference into the law of this city.
- (d) All licenses issued under this article shall constitute a mere privilege to conduct the business so authorized during the term of the certificate or permit only and subject to all terms and conditions imposed by the city, county and state law.

Sec. 18-601. Exemptions.

These rules shall not apply to a physician or osteopath licensed under Chapter 34 of Title 43 of the Official Code of Georgia Annotated (O.C.G.A.), or a technician acting under the direct on-site supervision of such licensed physician or osteopath.

Sec. 18-602. General operating provisions.

- (a) ***Filing of employee information.*** It shall be the duty of all persons holding a license under this article to annually file, along with the renewal application for the license, the name of all employees, their home address, home telephone number and place of employment. The holder of a license issued under the provisions of this article must additionally report changes in the list of employees with the names and require supplement information for new employees to be filed with the city clerk within ten days from the date of such change.
- (b) ***Records of client information to be maintained and subject to inspection.*** It shall be the duty of any person granted a license under this article to maintain correct and accurate records of the name and address of the persons receiving treatment at such establishment; the type of treatment administered; and the name of the person at the establishment administering the treatment. The records shall be subject to inspection at any time by the city clerk, county police department or county health department.
- (c) ***Operator to be on premises.*** The establishment shall have a licensed body art operator on premise during operating hours. If during an inspection there is no licensed operator on

premise the establishment must cease operations and close to the public until a licensed body art operator is on-premises.

- (d) ***Period of time records to be maintained.*** Records required to be maintained under this article shall be kept for a minimum of two years beyond the expiration date of a license. Records shall be made available to the city clerk, during business hours, at the certificate holder's business location in the city, within ten business days of any such request.
- (e) ***Premises subject to inspection.*** The establishment shall be subject to inspection at any time during business hours by the city clerk, county police department and county health department, to ensure compliance with this article.
- (f) ***Hours of business.*** No business of a body artist shall be engaged in and no body art establishment shall be open for business except within and between the hours of 10:00 a.m. and 10:00 p.m.
- (g) ***Alcoholic beverages.*** It shall be unlawful for any establishment licensed under this article to engage in the sale of alcoholic beverages or to allow the consumption of alcohol by any person on the premises of said establishment. Body artists shall not be under the influence of drugs or alcohol while performing body art procedures.
- (h) ***Minors.*** No tattoo procedure shall be performed on a person under the age of eighteen (18) except that a licensed physician or osteopath or a technician acting under the direct on-site supervision of such licensed physician or osteopath, and in compliance with O.C.G.A. Chapter 9 of Title 31 shall be authorized to mark or color the skin of any person under the age of 18 by pricking in coloring matter or by producing scars for medical or cosmetic purposes. No body piercing procedure shall be performed on a person under the age of eighteen (18) without the written consent of a parent or guardian. The parent or guardian must provide proper identification and must be present when the piercing procedure is performed. It shall be the duty of the operator of the establishment to determine the age of the persons patronizing the establishment using proper identification.

Secs. 18-603--18-619. Reserved.

Division 2. License

Sec. 18-620. Required: application; information to be given.

- (a) In addition to obtaining an occupation tax certificate as referenced in article II of chapter 70 for each body art establishment, all persons, firms or corporations desiring to engage in the practice, business, trade or profession of body artist or body art operator or similar trade or business shall, before engaging in such practice, business, trade or profession, make application for and obtain a body art license in the form and manner prescribed in

this article. The application shall include the information required on all license returns, along with the following additional information:

- (1) A copy of current unredacted body art studio permit from the Gwinnett County Board of Health;
- (2) A copy of current unredacted body artist permit from the Gwinnett County Board of Health;
- (3) Each applicant must be fingerprinted by the Gwinnett County Police Department and a character reference supplied for all persons to operate as a body art operator or body artist or practitioner;
- (4) Name and address of body art operator(s) and body artist(s);
- (5) Name and address of any person having previously employed the operator(s) and operator(s) for a space of two years or longer;
- (6) Qualifications must be plainly stated together with required exhibits annexed to the application;
- (7) A certificate certifying as to the good moral character of the operator(s) and artist(s), signed by three currently qualified and registered voters of good moral character of the city. These letters shall only be required for initial applications. For this division, the term "good moral character" means that the person to whom the phrase refers shall not have been convicted of a felony or crime involving moral turpitude;
- (8) Fingerprints must be submitted to the city at least 60 days prior to issuance of license to allow for investigation and processing of fingerprints by GCIC;
- (9) If the applicant is a corporation or partnership, such corporation or partnership shall submit the foregoing information and exhibits with regard to each employee, independent contractor agent and partner, general or limited associated with the operation of the body art establishment.
- (10) If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of said corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in Gwinnett County.
- (11) If the applicant is a corporation, such corporation must be chartered under the laws of the state or authorized by the secretary of state to do business in Georgia.

- (12) If the applicant is an individual, the applicant must submit a copy of a valid driver license or a valid I.D. card as reliable proof thereof. Additionally, if the applicant does not reside in Gwinnett County, the applicant must provide the name and address for an agent who resides in Gwinnett County authorized to receive legal process and notices under this article on behalf of the applicant.
- (b) No person, firm or corporation or its officers shall be granted a body art license unless it shall appear to the satisfaction of the city clerk that such person, partners in the firm, officers, directors and shareholders of the corporation have not been convicted or plead guilty or entered a plea of nolo contendere under any federal, state or local law of any crime involving illegal gambling, any felony, criminal trespass, public indecency, disorderly conduct, misdemeanor involving any type of sexual related crime, any theft or violence against person or property, any crime of possession, sale or distribution of illegal drugs, distribution of material depicting nudity or sexual conduct as defined under state law, criminal solicitation to commit any of these listed offenses, attempts to commit any of these listed offenses, for a period of the ten years prior to the date of application for such certificate and has been released from parole or probation. No person, partner or officer under the age of 18 shall be granted a body art license. No body art license shall be granted to any person who is not a citizen of the United States or an alien lawfully admitted for permanent residence.

Sec. 18-621. - License requirements; restrictions; issuance; fee.

- (a) **Qualifications.** Each operator and all employees under this division, prior to making application for a license must have the following qualifications:
 - (1) Must be of good moral character, and in case the operator is a corporation, it must be created in or domesticated by the laws of the State of Georgia.
 - (2) Must be at least 18 years of age and have received a high school diploma or graduate equivalency diploma.
 - (3) Must furnish a current health certificate from a medical doctor which shall accompany the application as an exhibit. Should the operator be a corporation, it shall furnish a certificate for all its agents and employees actually engaged and working under the license. The certificate shall recite that the operator or employee is in good health and is free from infectious or contagious disease.
 - (4) The operator must submit proof of licensure, certification or permitting pursuant to O.C.G.A. § 31-40-1 et seq.

Sec. 18-622. – Regulatory fee; expiration and renewal.

- (a) There shall be an annual regulatory fee for each license issued under this article in the amount of \$60.00. The regulatory fee shall be paid with each license application.

- (b) All licenses granted hereunder shall expire on December 31 of each year. Licensees who desire to renew their license shall file application with the city clerk on the form provided for renewal of the license for the ensuing year along with the requisite fee. Applications for renewal must be filed before November 30 of each year. Any renewal applications received after November 30 shall pay in addition to said annual fee, a late charge of 20 percent. If license application is received after January 1, such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.
- (c) All licenses granted hereunder shall be for the calendar year and the full regulatory fee must be paid for a license application filed prior to July 1 of the license year. One half of a full regulatory fee shall be paid for a license application filed after July 1 of the license year.
- (d) Any person renewing any license issued hereunder who shall pay the required fee, or any portion thereof, after January 1, shall, in addition to said annual fee and late charges, pay simple interest on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.

Sec. 18-623. Issuance.

- (a) When a license application is submitted in proper form, including all information and exhibits required herein and accompanied by the correct fees, the application shall be accepted and a review of the application and an inspection and investigation shall be conducted by the city clerk. The city clerk shall transmit a copy of the completed application to the county police department. Upon the payment by the applicant of the required fees, the county police department, or its designee, shall cause to be conducted a background investigation of the police record of the applicant, and shall transmit a summary of the investigation results to the city clerk.
- (b) Upon receipt of the background investigation, and completion of review of the application in accordance with the terms of this article, the city clerk shall act on the application. The city clerk shall deny any application that:
 - (1) Fails to meet each of the application requirements and qualifications specified herein.
 - (2) Fails to meet each of the minimum standards specified in Section 18-620 and Section 18-621 of this article.
 - (3) Contains false information in the application or attached documents.

Sec. 18-624. - Grounds for suspension or revocation; notice; hearings; refund.

- (a) No license which has been issued or which may hereafter be issued by the city to any licensee hereunder shall be suspended or revoked except for due cause as defined herein, except that the suspension or revocation of the state or county permit or license shall cause the city license to be suspended or revoked automatically.
- (b) Due cause for the suspension or revocation of the license shall consist of the violation of any laws or ordinances regulating the business, or violation of regulations made pursuant to authority granted for regulating the business.
- (c) The city clerk is delegated the authority to suspend any license issued under this article for due cause in any emergency situation and said suspension may be made effective immediately and remain in force until the city clerk or zoning board of appeals releases the suspension.
- (d) When a license is revoked under any of the provisions of this section, the city shall not be required to refund any portion of the business tax or regulatory fee.

Sec. 18-625. Hearings.

- (a) No license issued under this article shall be denied, suspended or revoked without the opportunity for a hearing.
- (b) The city clerk shall provide written notice to the applicant or license holder of the order to deny, suspend or revoke the license. Such written notification shall set forth in reasonable detail the reasons for such action and shall notify the applicant or license holder of the right to appeal under the provisions of this chapter. Any applicant or license holder who is aggrieved or adversely affected by a final action of the city clerk may have a review thereof by appeal to the zoning board of appeals. Such appeal shall be by written petition filed in the office of the city clerk within 15 days after the final order or action of the city clerk and to defray administrative costs, must be accompanied by a filing fee of \$500.00. The city clerk, may waive or reduce the filing fee amount if it is determined the fee would create a hardship on the individual filing such appeal. The zoning board of appeals may at the request of the appellant, refund the filing fee by a majority vote.
- (c) A hearing shall be conducted on each appeal within 30 days of the date of filing with the city clerk unless a continuance of such date is agreed to by the appellant and the city clerk. The appellant at such hearing shall have the right to be represented by an attorney, at the expense of the appellant, and to present evidence and cross-examine witnesses. Should the appellant desire an official transcript of the appeal proceedings, then such request must be made at least three days prior to such hearing. The appellant shall have the burden of proof on any such appeal.

- (d) The findings of the zoning board of appeals shall be forwarded to the city clerk within 15 days after the conclusion of the hearing, and it shall be the duty of the city clerk to notify the appellant and the county police department of the action of the zoning board of appeals.
- (e) The findings of the zoning board of appeals shall not be set aside unless found to be:
 - 1. Contrary to law or ordinances;
 - 2. Unsupported by an evidence on the records as a whole; or
 - 3. So unreasonable as to constitute a gross abuse of discretion.
- (f) The findings of the zoning board of appeals shall be final unless appealed within 30 days of the date of such finding by certiorari to the superior court of the county. An aggrieved party shall have all other remedies provided by law or at equity to all ordinances.

Sec. 18-626. - Inspections.

- (a) Current unredacted health department permit(s) and city license(s) for each operator and artist under this article shall be prominently displayed in public view.
- (b) The most current inspection report(s) shall be prominently displayed in public view.
- (c) It shall be the responsibility of each license holder to forward a copy of all health department inspections to the city within three (3) days of receipt.

Secs. 18-627—18-699. - Reserved.