

**TOWNSHIP OF HAMILTON
COUNTY OF MERCER, NEW JERSEY**

ORDINANCE

No. **21-003**

1ST READING JAN 19, 2021

DATE TO MAYOR _____

2ND READING & PUBLIC HEARING Feb 2, 2021

DATE RESUBMITTED TO COUNCIL _____

WITHDRAWN _____ LOST _____

DATE EFFECTIVE _____

APPROVED AS TO FORM AND LEGALITY

FACTUAL CONTENTS CERTIFIED TO BY

TOWNSHIP ATTORNEY

TITLE

ORDINANCE ESTABLISHING THE *CODE OF THE TOWNSHIP OF HAMILTON, NEW JERSEY, PART II, GENERAL LEGISLATION, CHAPTER 133, BODY ART ESTABLISHMENTS*

Be It Ordained by the Council of the Township of Hamilton, in the County of Mercer and State of New Jersey, that the *Code of the Township of Hamilton, New Jersey, Part II, General Legislation, Chapter 133, Body Art Establishments*, be established as follows:

CHAPTER 133. – BODY ART ESTABLISHMENTS

§ 133-1. Declaration of policy.

It is hereby declared that the business of operating a tattoo and body piercing studio, as defined in this chapter, is a business affecting the public health, safety and general welfare of the Township of Hamilton.

§ 133-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BRANDING

The scarification through the application of a heated material (usually but not always metal) to the skin, creating a serious burn which eventually results in a scar.

BODY ART

The practice of physical body adornment in permitted establishments by operators utilizing, but not limited to, the following techniques: 1. body piercing; 2. tattooing; and 3. permanent cosmetics. Branding, Cutting and Implants are not permitted forms of body art pursuant to this Chapter.

BODY ART ESTABLISHMENT

Any place or premises, whether public or private, where the practices of body art, whether or not for profit, are performed.

BODY PIERCING

The puncturing or penetration of the skin of a person using pre-sterilized single use needles and the insertion of pre-sterilized or disinfected jewelry or other adornment thereto in the opening.

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CERTIFICATE OF INSPECTION

The written approval from the health officer or his or her representative that said tattooing and/or body piercing establishment has been inspected and meets all of the terms of this chapter.

CUTTING

A design cut into the skin or other scar tissue using a sharp blade, leaving a scar. Often the design is immediately rubbed with ink leaving a colored scar.

DIVISION OF HEALTH

The Hamilton Township Division of Health.

EAR PIERCING

The puncturing of the ear lobe and the trailing edge of the ear using a pre-sterilized single use stud and clasp ear piercing system following the manufacturer's instructions.

EMANCIPATED MINOR

Any person under eighteen (18) years of age that has been freed from the legal authority, care, custody and control of another by the effect of a written law or court order.

HEALTH OFFICER

The Township of Hamilton Health Officer or his or her authorized representative.

IMPLANT

Any object implanted fully under the skin.

OPERATOR

Any individual, partnership, firm, corporation or otherwise, or the aforesaid's designee, having ownership, control or custody of any place of business or employment and who manages the day-to-day operations of a body art establishment.

PERMANENT COSMETICS, MICROPIGMENTATION OR DERMAL PIGMENTATION

The implanting of inert pigments, colors, and/or dyes intradermally which results in permanent alteration of tissue to gain a cosmetic effect.

PERSON

One or more individuals, legal representatives, partnerships, joint ventures, associations, corporations, business trusts, or any organized group of persons.

PERSONAL IDENTIFICATION

A document or other written or memorialized instrument setting forth the presenter's true name, address, correct age, or other identifying data, examples of which include, but are not limited to, a driver's license, credit card issued by a national company, birth certificate, passport, employment identification card, or any instrument issued by a governmental agency setting forth the pertinent and required information.

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PRACTITIONER

Any person that performs the act of tattooing, permanent cosmetics and/or ear and body piercing.

SANITIZE

To reduce or eliminate pathogenic agents on surfaces by a process which is effective in reducing the number of microorganisms to a safe level.

SINGLE USE

Products or items that are disposed of after use on each client, including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary covering, razors, needles, scalpel blades, stencils and ink cups.

STERILIZATION

The antimicrobial destruction of all forms of micro-biotic life, bacterial, viral, fungi or otherwise, including spores, through the use of a steam sterilizer or autoclave.

TATTOO, TATTOOED, OR TATTOOING

Any method of placing ink or other inert pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This includes all forms of permanent cosmetics.

TOWNSHIP

The Township of Hamilton, County of Mercer.

§ 133-3. License required.

No person shall engage in the business of operating a body art establishment unless or until such person has obtained a license for such body art establishment from the Division of Health in accordance with the terms and provisions of this chapter.

§ 133-4. Renewals.

- A. All licenses shall be valid for a period of one (1) year and shall be renewed annually.
- B. Licensees may renew their licenses prior to expiration by filing a new application with the Division of Health in the manner prescribed in this chapter and accompanied by the requisite fee.
- C. All licenses issued pursuant to this chapter shall expire at the end of the respective calendar year. Renewal applications are due by December 31 of that year the license expires.

§ 133-5. Application for license.

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A. An application for a license under this chapter shall be made to the Division of Health, in writing, upon such printed forms as provided by the Division of Health. The application shall be signed by the applicant under oath and shall contain the following information:

- (1) Applicant's legal name, home address and telephone number.
- (2) Full business name, business address, post office address and business telephone number.
- (3) Type of ownership of the business, i.e., whether individual, partnership, firm, corporation or otherwise.
- (4) If the applicant is a partnership, the names and addresses of the partners.
- (5) If the applicant is a corporation, the names and addresses of all corporate officers.
- (6) Copy of Business Registration Certificate.
- (7) The apprenticeship, training and/or business experience of the applicant in the business or occupation for which the license is sought.
- (8) The length of time that the applicant has engaged in such business or occupation.
- (9) Plans and specifications illustrating the location of the proposed body art establishment and a floor plan of the body art establishment as it is proposed to be operated. Plans shall indicate the layout of the reception area, the procedure areas, the cleaning and sterilization area, the storage area and the toilet facilities.
- (10) An exact inventory of all processing equipment as it is to be used.
- (11) Statement of approval from the Township Zoning Board of Adjustment for the proposed construction or expansion of the body art establishment.
- (12) Complete description of all services to be provided.
- (13) Proposed hours of operation.
- (14) Name of the operator and the names of all practitioners to be initially employed to conduct the body art services.
- (15) Copy of the informed consent for each procedure offered.
- (16) Names and addresses of all manufacturers of processing equipment, instruments, jewelry, and inks used for any and all body art procedures.
- (17) Make, model and serial number of the applicant's steam autoclave printed on the back of a photograph of the autoclave.

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- (18) Copy of the manufacturer's specifications for the operation of the autoclave.
- (19) Proof of professional malpractice liability insurance for each operator and practitioner.
- (20) Current copy of a negative biological indicator test result required pursuant to N.J.A.C. 8:27-1 et seq., or as same may be amended.
- B. Any license or renewal thereof granted under the provisions of this chapter shall not be assignable or transferable. Any change of ownership shall require a new application and license with payment of fees.
- C. Body art establishments existing at the time of the enactment of this chapter shall be required to submit an application within thirty (30) days after the effective date of this chapter. Body art establishments failing to apply within the specified time period will be subject to the penalty provisions of this chapter.
- D. License holders shall notify the Division of Health by mail within five (5) calendar days of a change in the following information:
- (1) Business name or ownership.
 - (2) Area code and telephone number.
 - (3) Address change resulting from city or postal service action.
 - (4) License status, whether from active to inactive practice or from inactive to active practice.
 - (5) Closure or sale of body art establishment.
 - (6) Change in procedures or personnel.
- E. In addition to requirements for any land use applications, persons constructing or renovating a body art establishment shall submit plans to the Division of Health and the applicant will be required to comply with the chapter, as well as all other applicable codes, regulations or laws.
- F. All body art establishments shall handle, store, package, label, transport and dispose of contaminated (body fluids) contact waste materials as medical waste in accordance with the provisions and standards found within N.J.A.C. 7:26-3A, or as same may be amended.
- G. At the time the application is filed a fee as established in § 133-7 shall be paid to the Division of Health to cover the cost of processing the application and investigating the facts stated therein.

§ 133-6. Investigation; issuance of license.

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- A. When said application is complete, signed by the applicant and has been filed with the Division of Health with all accompanying information, the Division of Health shall review the application for compliance with this chapter and N.J.A.C. 8:27-2.1 et seq., or as same may be amended. and conduct an inspection in accordance with § 133-12.
- B. If as a result of such investigation and inspection the applicant is found to be in compliance with this chapter and N.J.A.C. 8:27-2.1 et seq., or as same may be amended, the Division of Health shall approve the application, so mark the application in writing, and shall execute and deliver to the applicant the license. A copy and any renewals, suspensions or revocations of the license shall be kept on file in the Hamilton Township Division of Health.
- C. If as a result of such investigation and inspection the applicant is found to not be in compliance with this chapter and N.J.A.C. 8:27-2.1 et seq., or as same may be amended, the Division of Health shall deny such application, so mark the application in writing and indicate reasons for same and shall notify the applicant that the application is denied. The applicant shall be notified of its right to appeal the denial.
- D. The Division of Health shall either approve or disapprove of the application in writing within thirty (30) days from the date of submission of the application to the Division of Health
- E. Any applicant denied a license, pursuant to the provisions set forth in this chapter and N.J.A.C. 8:27-2.1 et seq., or as same may be amended, may appeal to the Division of Health, in writing, and request an opportunity for a hearing within a reasonable time, not to exceed fifteen (15) business days from the date of the Division of Health's disapproval of the application.

§ 133-7. Fees.

Applications for licenses and annual licenses for all Body Art Establishments are set forth in Chapter 215, Fees, of the Township Code.

§ 133-8. Revocation of license.

- A. Licenses issued under this chapter may be revoked by the Division of Health, after notice and a hearing, when in the Division's opinion such action is necessary to abate a present or threatened menace to the public health.
- B. The following shall be reason(s) for revocation:
- (1) Failure or lack of properly functioning equipment;
 - (2) Unsanitary or unsafe conditions which may adversely impact the health of the public;

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- (3) The Division of Health has reasonable cause to suspect that a communicable disease is, or may be, transmitted by an operator or practitioner;
 - (4) The operator or practitioner has demonstrated gross incompetence in performing tattooing, body piercing, ear piercing, or micropigmentation;
 - (5) The operator obtained or attempted to obtain a license by means of fraud, misrepresentation or concealment;
 - (6) The operator or practitioner has been convicted in this or any other state of a crime directly related to the practice of tattooing, body piercing, ear piercing, or micropigmentation;
 - (7) The operator or practitioner has permitted a genital piercing upon a person under eighteen (18) years of age; and
 - (8) The operator has failed to prevent implants, branding and cutting to be performed in an establishment.
- C. Notice for the hearing for the revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be served pursuant to § 133-15 at least five (5) days prior to the date set for the hearing.
- D. Such license may, pending revocation proceedings, be suspended for not more than ten (10) days by the Division of Health when, in its opinion, the conduct of the operator is detrimental to the health, safety and general welfare of the Township.
- E. The Health Officer or his or her designee shall serve as the hearing officer for any hearing pursuant to this section.

§ 133-9. Criteria for immediate suspension.

Notwithstanding the provisions of § 133-8(D), the following shall be cause for, at a minimum, a seven (7) day suspension:

- A. Failure to report to the Division of Health within twenty-four (24) hours any infection or injury requiring a medical referral;
- B. Performing a body art procedure on any person under the age of eighteen (18) years of age, without the presence, written consent, and proper identification of a parent or legal guardian;
- C. Failure to notify the Division of Health within twenty-four (24) hours of a positive biological indicator test result of the autoclave; and
- D. Using an ear piercing instrument for any part of the body other than the ear lobes and trailing edge of the ear.

§ 133-10. Relicensing after revocation.

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A. Any operator whose license has been revoked under the provisions of this chapter may apply to be relicensed upon filing of proof that all loss caused by the acts or omissions for which the license was revoked have been fully satisfied and that all conditions imposed by the decision of the revocation have been complied with.

B. Payment of a license fee as established in § 133-7.
§ 133-11. Display of license and inspection placard.

The license and inspection placard shall be displayed in a conspicuous place readily visible to the clients upon entering the main entrance.

§ 133-12. Inspection requirements.

A. The Division of Health, upon receiving an application for a license, shall review the application for compliance with this chapter and N.J.A.C. 8:27-2.1 *et seq.*, or as same may be amended, for such body art establishment.

B. No body art establishment shall be issued a license or be operated, established or maintained in the Township unless inspections by the appropriate municipal departments reveal that the body art establishment complies with the minimum requirements of the Uniform Construction Code, this chapter and N.J.A.C. 8:27-2.1 *et seq.*, or as same may be amended.

C. Once a license has been approved the Division of Health shall inspect every body art establishment as often as it deems necessary using an inspection report form approved by the New Jersey Department of Health.

(1) A representative of the Division of Health shall provide proper identification.

(2) The operator shall permit access to all parts of the body art establishment and all pertinent records required for the inspection shall be made available to the Division of Health representative for review.

(3) An inspection report shall identify in a narrative form any violations of this chapter and N.J.A.C. 8:27-2.1 *et seq.*, or as same may be amended, and shall be cross-referenced to the section of the chapter and regulation being violated.

(4) Results of the inspection shall be made available to the public upon request.

§ 133-13. Operating requirements.

Every establishment shall comply with the following:

A. The requirements set forth in N.J.A.C. 8:27-1 *et seq.*, or as same may be amended.

B. Hours of operation – No such body art establishment shall begin operations before 8:00 a.m. or continue after 9 p.m. Sunday through Thursday, or continue after 10 p.m. on Friday and Saturday.

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§ 133-14. Prohibited acts.

A. The following actions shall be prohibited:

- (1) Implants under the skin shall not be performed in a body art establishment.**
- (2) Scarification such as branding and cutting shall not be performed in a body art establishment.**
- (3) No operator or practitioner shall perform any body piercing procedure upon a person under eighteen (18) years of age without the presence, written consent, and proper identification of a parent or legal guardian.**
- (4) No operator or practitioner shall perform genital piercing upon a person under eighteen (18) years of age regardless of parental consent.**
- (5) No tattoo or permanent cosmetics shall be applied to any person under eighteen (18) years of age, without the presence, written consent, and proper identification of a parent or legal guardian.**
- (6) No operator or practitioner shall practice or attempt to practice body art in a non-licensed establishment.**
- (7) No practitioner shall operate a body art establishment unless it is at all times under the direct supervision of an operator.**
- (8) No operator shall display a sign or in any way advertise or purport to be a practitioner or to be engaged in the business of body art without first obtaining a license from the Division of Health pursuant to this chapter.**

B. An emancipated minor shall be exempt from A.3 and A.5 above upon legal proof documenting said emancipation.

§ 133-15. Service of notices.

Whenever notice is given pursuant to this chapter, such notice may be effected by personal service upon the licensee if the licensee is an individual, upon any general partner if the licensee is a partnership, or upon any corporate officer, if the licensee is a corporation, by certified mail, return receipt requested, to the last address listed in the Division of Health's office in conjunction with the license information. It shall be the duty of each licensee to keep the Division of Health advised of any subsequent change of address. Upon failure of a licensee to comply with this requirement, any notice returned with the notation "unknown", "moved", or "not claimed" shall be deemed proper service of all notices required by this chapter.

§ 133-16. Exceptions.

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The provisions of this chapter shall not apply to any physician who is authorized by the State Board of Medical Examiners to practice medicine pursuant to N.J.S.A. 45:9-1 et seq. and N.J.S.A. 26:1A-9 et seq., or as same may be amended.

§ 133-17. Violations and penalties.

An operator or practitioner who violates any provision of this chapter shall be subject to enforcement action authorized by this chapter, N.J.A.C. 8:27-1 et seq., civil penalties as provided by N.J.S.A. 26:1A-10 and all other applicable law and/or injunctive action as provided by law, including but not limited by Chapter §1-2 of the Township Code.

§ 133-18. Repealer.

In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance deemed severable there from shall not be affected.

Any Ordinance or Ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

This Ordinance shall become law effective immediately upon final adoption and publication thereof according to law.

PRESIDENT

MUNICIPAL CLERK

RECORD OF VOTE													
First Reading							Second Reading						
COUNCIL	AYE	NAY	NV	AB	ORD	SEC	COUNCIL	AYE	NAY	NV	AB	ORD	SEC
ANTHONY P. CARABELLI, JR.	✓	✓					ANTHONY P. CARABELLI, JR.						
RICHARD L. TIGHE, JR.	✓	✓				✓	RICHARD L. TIGHE, JR.						
CHARLES F. WHALEN					✓	✓	CHARLES F. WHALEN						
NANCY PHILLIPS						✓	NANCY PHILLIPS						
PASQUALE "PAT" PAPERIO, JR.							PASQUALE "PAT" PAPERIO, JR.						

X - Indicates Vote A.B. - Absent N.V. - Not Voting RES. - Moved SEC. - Seconded

REJECTED _____

JEFFREY S. MARTIN, MAYOR

DATE

APPROVED _____

RECONSIDERED BY COUNCIL _____ OVERRIDE VOTE AYE _____ NAY _____