

PROPOSED HUTT CITY COUNCIL APPEARANCE INDUSTRIES BYLAW

Bylaw made under section 145 of the Local Government Act 2002 and section 64 of the Health Act 1956.

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1. TITLE

This proposed bylaw is the Appearance Industries Bylaw 2019.

2. COMMENCEMENT

This bylaw will come into force on (TBC). Existing operators will have a 12 month transition period with which to meet the proposed standards.

3. APPLICATION

This bylaw applies to the Lower Hutt District and Upper Hutt District

4. PURPOSE

PRELIMINARY PROVISIONS

- (1) The purpose of this bylaw is to promote and protect public health by —
 - (a) requiring certain services with the following health risks to comply with minimum standards, including —
 - (i) any commercial service that pierces the skin or tissue;
 - (ii) any commercial service that risks breaking the skin or tissue;
 - (iii) any commercial service that risks burning the skin or tissue;
 - (iv) any tattooing or traditional tools tattooing that has recognised cultural significance;
 - (b) requiring a licence for certain services, including —
 - (i) any commercial service that pierces the skin or tissue;
 - (ii) any commercial service that risks breaking the skin or tissue;
 - (iii) any commercial service that risks burning the skin or tissue; or
 - (iv) any tattooing or traditional tools tattooing that has recognised cultural significance.

5. INTERPRETATION

In this bylaw, unless the context otherwise requires, -

(1) In this bylaw, unless the context otherwise requires —

Acupuncture means a practice involving the insertion of filiform (very narrow) needles through the skin and tissues for the intended purpose of alleviating ailments or injuries.

Body piercing means a practice of piercing the skin for decorative purposes, inserting jewellery or implants to alter the appearance of the skin.

Commercial ear-piercing means a practice of piercing the ear for decorative purposes, inserting jewellery or implants to alter the appearance of the skin.

Commercial service means a service (whether from permanent premises, temporary premises or mobile premises) provided by one or more persons for another person for monetary payment or any other consideration.

Council means the governing body of the Hutt City Council, Upper Hutt City Council or any person delegated to act on its behalf.

□

Customer or client means a person on whom a service is being, or is to be, carried out.

Derma rolling / stamping means a practice of using micro needles to create tiny punctures in the skin intended to stimulate growth factors to enhance collagen production and better alignment of the collagen fibres.

Electrolysis means a practice involving the insertion of a sterilised needle into individual hair follicles to the root. An electric impulse is passed through the needle to the root area to aid in the removal of hair.

Exfoliation means a practice that intends to remove dead skin and can be performed using microdermabrasion, physical peels that have an abrasive action and chemical peels such as glycolic or enzyme.

Extractions means a practice for the removal of comedones (blackheads), pimples and ingrown hairs by manipulating the pores of the skin, either with fingertips or a tool, to remove sebum. Some extractions can involve penetration of the skin using sharp equipment such as a metal tool or lance.

Eyeball Tattooing means a practice of piercing any part of the eye (including but not limited to the sclera and surrounding tissues) and inserting pigments, dyes or any object.

Hair removal means the removal of hair by waxing (pulling the hair from the skin using soft wax, hot wax or glucose); threading (lifting the hair out from the follicle by entwined thread); or tweezing (grasping hairs and pulling them out of the skin, including epilation - a mechanical means of tweezing).

Health practitioner means a person who is, or is deemed to be, registered under the Health Practitioners Competence Assurance Act 2003 as a practitioner of a particular health profession.

Related information

Health practitioners include professionals working as doctors, nurses, physiotherapists, ophthalmologists, optometrists, podiatrists, chiropractors and osteopaths.

Laser treatment means a practice involving the use of a laser device, which amplifies light and usually produces an extremely narrow beam of a single wavelength (one colour), intended to remove hair or for skin photo-rejuvenation.

Licence means a licence, permit or approval to do something under this bylaw and includes all conditions to which the licence is subject.

Manager means

- (a) a person who has effective control over operators; or
- (b) if no person meets the description in (a), **manager** has the same meaning as **operator**.

Manicure means beautification or enhancement of the hands and fingernails, including shaping and polishing.

Mobile premises means any location other than a permanent premises where any service is undertaken on an ongoing and regular basis by any person.

Operator means a person who carries out a service.

Pedicure means beautification or enhancement of the feet and toenails by shaping and polishing toenails and exfoliation of skin or tissue from the feet.

Permanent premises means any land, dwelling, storehouse, warehouse, shop, cellar, yard, building, or part of the same, or enclosed space separately occupied where any service is undertaken on an on-going and regular basis by any person. All lands, buildings, and places adjoining each other and occupied together are deemed to be the same premises.

Pulsed light means a practice using a powerful flash of broad spectrum, non-coherent light intended to remove hair and/or for skin photo-rejuvenation, and may include but is not limited to Intense Pulsed Light and Variable Pulsed Light.

Red vein treatment means a practice of piercing a vein with a needle along the length of a damaged capillary, causing little dams or blockages along the vessel.

Skin is included in the definition of **tissue** and means the outer surface covering the body and is made up of the outer epidermis, middle dermis and deep subcutaneous tissue.

Tattooing means a practice of making indelible marks in human skin or tissue by inserting pigments or dyes into punctures made in the skin or tissues. Tattooing includes the process known as pigment implantation permanent makeup, microbladding and micropigmentation

Temporary premises means any location where any service is undertaken by any person on an irregular basis and the primary purpose of that location is not ordinarily the provision of that service.

Related information

Temporary premises include, for example, residential dwellings, apisā at a fale or maota, events or markets.

Tissue means a collection of similar cells that together carry out a specific function. It includes connective tissue, such as blood, bones and ligaments, muscular tissue, nervous tissue, membranes and skin.

Traditional tools tattooing means a practice of making indelible marks in the human skin or tissue by inserting pigments or dyes into punctures made in the skin or tissue using tools that are culturally traditional in structure and used in procedures such as tā moko, tatau, uhi or any other traditional tattooing practice that has recognised cultural significance.

- (2) Related information does not form part of this Bylaw and may be inserted, changed or removed without any formality.
- (3) The Interpretation Act 1999 applies to this bylaw.

6. REGULATION OF CERTAIN SERVICES FOR HEALTH PROTECTION

A. SERVICES ALLOWED SUBJECT TO MINIMUM STANDARDS

- (1) The operator of any of the following services must comply with relevant standards set by the council in a code of practice made under clause 10 —
 - (a) any commercial service that pierces the skin or tissue, including but not limited to tattooing, traditional tools tattooing, body piercing, acupuncture, electrolysis, extractions, red vein treatment, or derma rolling;
 - (b) any commercial service that risks breaking the skin or tissue, including but not limited to hair removal, manicure, pedicure, or exfoliation;
 - (c) any commercial service that risks burning the skin or tissue, including but not limited to pulsed light, or laser treatment;
 - (d) any tattooing or traditional tools tattooing that has recognised cultural significance but not undertaken under the authority of a marae.

B. SERVICES REQUIRING A LICENCE

- (1) This clause applies to the following services -
 - (a) any commercial service that pierces or risks piercing the skin or tissue, including but not limited to, tattooing, traditional tools tattooing, body piercing, skin modification acupuncture, electrolysis, extractions, red vein treatment, or derma rolling;

- (b) any commercial service that risks breaking the skin or tissue, including but not limited to, hair removal, manicure, pedicure, or exfoliation;
 - (c) any commercial service that risks burning the skin or tissue, including but not limited to, pulsed light, or laser treatment; or
 - (d) any tattooing or traditional tools tattooing that has recognised cultural significance and is not undertaken under the authority of a marae.
- (2) The manager of any service to which this clause applies must -
- (a) obtain a licence from the council before commencing operation; and
 - (b) hold a valid and unexpired licence from the council at all times that the commercial service is offered;
 - (c) conspicuously display a copy of a valid licence at the principal entrance or reception of any permanent premises or mobile premises in full and unobscured view to the satisfaction of the council; and
 - (d) ensure operators carry a copy of a valid licence on their person at all times when providing a service at a temporary premises and show the licence to the customer prior to providing a service.

C. RESTRICTED SERVICES

- (1) Commercial services that pierce the eyeball (including eyeball tattooing) are prohibited unless undertaken by appropriately qualified health practitioners covered by the Health Practitioners Competence Assurance Act 2003 in the practice of their profession.

Related information

Ophthalmologists (eye specialists) are the only health practitioners that can currently carry out eyeball tattoo.

- (2) Commercial services requiring or using prescription medicine must be undertaken by appropriately qualified health practitioners covered by the Health Practitioners Competence Assurance Act 2003 in the practice of their profession.
- (3) Due to the risks associated with dermal filler procedures. This procedure must be undertaken by appropriately qualified health practitioners covered by the Health Practitioners Competence Assurance Act 2003 in the practice of their profession.
- (4) Commercial services which use heel blades or razors to cut or shave thickened skin may only be undertaken by appropriately qualified health practitioners covered by the Health Practitioners Competence Assurance Act 2003 in the practice of their profession.

D. EXEMPTIONS

- (1) Clauses 6 and 7 do not apply to —
 - (a) any commercial service undertaken by health practitioners covered by the Health Practitioners Competence Assurance Act 2003 in the practice of their profession;
 - (b) acupuncture undertaken by members of the New Zealand Register of Acupuncturists or members of the New Zealand Acupuncture Standards Authority;
 - (c) commercial ear-piercing services undertaken in a pharmacy licenced by the Ministry of Health.

- (2) Ko ngā mahi tā moko a te kaitāmoko me whakamana e tētahi marae nō roto i te rohe o Te Kaunihera o Tāmaki Makaurau he ai ki te tikanga Māori ka noho wātea i ngā here o tēnei ture ā-rohe. Heoi anō rā me whaiwhakaaro tonu pea te marae ki te itinga rawa o ngā paerewa takinga ā-mahi i raro i te whiti 10, me te whakawhāiti i te roanga o te wā e mau ai te whakamana.

Related information

Clause 9(2) in English means tā moko (traditional Māori tattooing) undertaken by artists authorised by a marae in Lower Hutt and in accordance with tikanga- Māori (traditional Māori customs) is exempt from compliance with this bylaw. Marae should consider the minimum standards in the code of practice made under clause 10 and a limit to the duration of the authorisation. Tā moko are a taonga (or cultural treasure) and are protected under the Treaty of Waitangi Principles.

7. CONTROLS AND LICENCES

A. HEALTH PROTECTION CODE OF PRACTICE

- (1) The council may make, amend or revoke a code of practice about any services in clause 6.
- (2) Every code of practice adopted under (1) may specify —
- (a) minimum standards for the operation of those services, including (but not limited to):
 - (i) operator conduct, training and qualifications;
 - (ii) premises construction, facilities and maintenance;
 - (iii) equipment, supplies and products used;
 - (iv) cleaning, sterilisation and disposal of waste products;
 - (v) customer age restrictions, consent and after care advice;
 - (vi) record keeping; and
 - (b) recommended best practice for the operation of those services.

B. PROCEDURE FOR MAKING A CODE OF PRACTICE

- (1) The council must, before making, amending or revoking a code of practice in clause 10 —
 - (a) comply with the requirements under Subpart 1 of Part 6 of the Local Government Act 2002.
 - (b) consult with —
 - (i) medical officers of health in the Hutt Valley region; and
 - (ii) any affected operators;
 - (c) be satisfied that —
 - (i) the standards are the minimum necessary to ensure that the purpose of the Bylaw will be met; and
 - (ii) the recommendations for best practice (if any) are appropriate.
 - (d) have regard to —
 - (i) the feasibility and practicality of effecting a transition from current practices to new practices and any adverse effects that may result from such a transition; and
 - (i) any other matters considered relevant by the council.
- (2) A code of practice made, amended or revoked under subclause (1) must be publicly notified.

C. HEALTH PROTECTION LICENCES

- (1) The Council may make controls and set fees for the following matters with respect to any licence required by clause 7 —
 - (a) applying for a licence, including forms and information;
 - (b) assessing an application for a licence, including inspection;
 - (c) granting or declining an application for a licence;
 - (d) the conditions that may be imposed on a licence;
 - (e) the duration of the licence;
 - (f) objecting about a decision to decline a licence, including the objection period;
 - (g) objecting about a condition of a licence, including the objection period;
 - (h) conducting inspections to ensure that a licence and its conditions are complied with;

- (i) reviewing a licence or its conditions;
 - (k) refunding or waiving fees;
 - (l) suspending or cancelling a licence; and
 - (m) objecting about a decision to suspend or cancel a licence, including the objection period.
- (2) At the discretion of the council and having regard to any controls made under subclause (1), licences may be declined, or granted subject to any conditions.
- (3) If no controls are made about the duration of a licence under subclause (1)(e), a licence has a duration of 12 months from the date granted.

A licence is personal to the holder and is not transferable.

8. CONTROLS AND LICENCES ENFORCEMENT POWERS, OFFENCES, PENALTIES

A. COMPLIANCE WITH THE BYLAW

- (1) The council may use its powers under the [Local Government Act 2002](#) and the [Health Act 1956](#) to enforce this bylaw.
- (2) Without limiting subclause (1), any person authorised by the council to undertake inspections under this Bylaw may take or remove a sample or thing for analysis, for the purpose of determining whether or not this Bylaw is being complied with.

Related information

Local Government Act 2002 enforcement powers include: court injunction ([section 162](#)), seizure and disposal of property (sections [164](#), [165](#), [168](#)), powers of entry (sections [171](#), [172](#), [173](#)), and power to request name and address ([section 178](#)) (as reprinted on 1 July 2018).

Health Act 1956 enforcement powers include: court orders ([section 33](#)), cost recovery for council to abate nuisance ([section 34](#)), requiring the cleaning of premises ([section 41](#)), powers of entry ([section 128](#)), and power to request name and address ([section 134](#)) (as reprinted on 2 March 2018).

B. BYLAW BREACHES

- (1) A person who fails to comply with this Bylaw commits a breach of this Bylaw and is liable to a penalty under the [Local Government Act 2002](#) or the [Health Act](#)

[1956.](#)

C. RELATED INFORMATION

A person who is convicted of an offence against a bylaw can be:

- fined a maximum of \$20,000 under the Local Government Act 2002 (section 242, as reprinted on 1 July 2018)
- fined a maximum of \$500 under the Health Act 1956 (section 66, as reprinted on 2 March 2016)
- where the offence is continuing, fined a maximum of \$50 every day the offence continues under the Health Act 1956 (section 66, as reprinted on 2 March 2016)

PART 2

FEES

9. FEES PAYABLE

There are three costs which can be charged under this bylaw

1. An annual registration fee will be in the vicinity of \$240, which is comparable to fees charged by other councils. The registration fee will cover administration costs, maintaining a database of businesses and an annual inspection by our environmental health staff of up to one hour (including travel time). For businesses with 'dual registration' i.e. a hair and nail salon, the annual registration fee will be in the vicinity of \$320. The registration fee will cover administration costs, including maintaining a database of businesses and an annual inspection by our environmental health staff of up to one and a half hours (including travel time).
2. Annual inspections by our environmental health staff that take more than the above times will be charged an hourly rate which will be around \$160 per hour.
3. Investigations of justified complaints may also incur a fee based on the above hourly rate.
4. Fees may be changed by Council resolution.

10. RELEVANT LEGISLATION

<p>Local Government Act 2002</p>	<p>Part 8 of the Local Government Act 2002 provides powers for local authorities for the making of bylaws. The Act contains general bylaw making provisions and provisions that are specific to bylaw</p>	<p>www.legislation.govt.nz</p>
<p>Health Act 1956</p>	<p>Section 64 of the Health Act provides powers for local authorities for the making of bylaws for the following relevant matters:</p> <ul style="list-style-type: none"> a. Improving, promoting, or protecting public health, and preventing or abating nuisances: t. Prescribing the sanitary precautions to be adopted in respect of any business or trade 	<p>S64 applies</p>