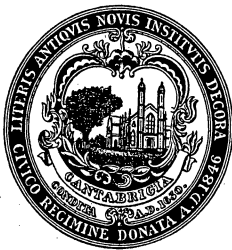


Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Nancy E. Glowa
First Assistant
City Solicitor



6
Arthur J. Goldberg
Supervising Legal Counsel

Legal Counsel
Birge Albright
Vali Buland
Cheryl Anne Watson
Nancy B. Schlacter
Christine E. McGinn

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

January 17, 2001

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Tattoo Establishments

Dear Mr. Healy:

This letter is in response to your request for information regarding the possibility of tattoo establishments being sited within the City of Cambridge, and any legal issues that may be associated with the same. Accordingly, I advise of the following.

As you know, the Commonwealth of Massachusetts, by its Attorney General, was pursuing enforcement under the criminal laws to prohibit tattooing by persons other than registered physicians, but such enforcement was ruled impermissible as unconstitutional and was struck down by the Massachusetts Superior Court. After the Commonwealth lost on the issue of its right to enforce under the criminal laws, a declaratory action was brought against the Commonwealth by plaintiffs who asserted that the Massachusetts statute prohibiting tattooing except by registered physicians violated their rights under the First Amendment of the United States Constitution. A different Superior Court judge ruled that the statute violated the plaintiffs' First Amendment rights and is thus unconstitutional. The Attorney General then sought and was granted a ninety-day stay, in order to draft proposed state wide health regulations. During the ninety-day period of the stay, the Attorney General instead promulgated model health regulations for proposed adoption by each municipality in Massachusetts.

You referred the model regulations, which you were provided a copy of, to the Cambridge Health Commissioner, who is taking the necessary steps to promulgate health regulations to assure safe practices at any such establishment in the City of Cambridge.

We have reviewed the Zoning Ordinance with the zoning specialists from both the Community Development and Inspectional Services Departments, and have concluded that such an establishment would fall within the retail use category which includes a "barber

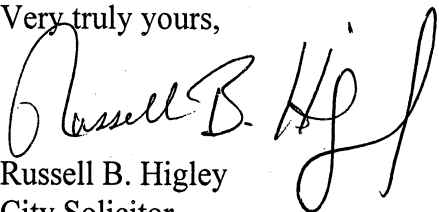
shop, beauty shop ... or other similar establishment" under Article 4, Section 4.35, of the Ordinance, entitled "Retail Business and Consumer Service Establishments." The uses set forth in that section of the Ordinance are permitted in all of the business districts and most of the industrial districts, but are not permitted as of right in any of the residential or office districts.

Based upon the recent court decisions in which the Attorney General's efforts to prohibit the operation of such establishments under the criminal laws and the constitutionality of the statute itself were struck down by the courts, we believe a court would conclude that this use would be considered an "other similar establishment" and thus a permitted use under this category. For example, in one of the recent cases, a Justice of the Superior Court quoted an article on the status of tattooing as art, which found that today's "tattoo art studios" "most frequently feature custom, fine art design; the ambiance of an upscale beauty salon; marketing campaigns aimed at middle- and upper-class professionals; and "by-appointment" services only.... [which draw] the same kind of clientele as a custom jewelry store, fashion boutique, or high-end antique shop."¹

Once the new health regulations are in place and the ninety day period of the stay has expired, which we understand will be January 31, 2001, such an establishment will be permitted as of right in any district in which the uses set forth in Article 4, Section 4.35c of the Zoning Ordinance are permitted, so long as the establishment is in compliance with the health regulations and any other applicable laws, ordinances, rules, or regulations.

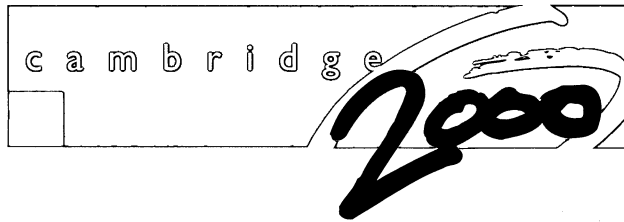
I hope that this addresses the questions you have raised about whether and where tattoo establishments will be permitted within the City of Cambridge due to the recent developments in the law.

Very truly yours,



Russell B. Higley
City Solicitor

¹ *Commonwealth of Massachusetts v. Meuse*, 10 Mass. L. Rptr. 661, Nov. 29, 1999, 1999 L.W. 1203793, *1 (Mass. Super.), quoting "The Changing Cultural Status of Tattoo Art", a 1998 Synopsis by Hoag Levins.



6.

CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

Robert W. Healy, City Manager

Richard C. Rossi, Deputy City Manager

January 22, 2001

To The Honorable, The City Council:

Enclosed for your information is a document relative to the status of the tattoo establishments as related to recent court decisions, which will result in these establishments operating in Massachusetts.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy".

Robert W. Healy
City Manager

RWH/mec
Attachment



2000 Things 2 Do in 2000

185

Consent Agenda #6

The status of tattoo establishments as related to recent court decisions which will result in these establishments operating in Massachusetts.

In City Council January 22, 2001

PLACED ON FILE