TOWN OF DEWEY BEACH

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ORDINANCE NO. 361

AN ORDINANCE TO AMEND CHAPTER 14, SECTION 14-503.4 OF THE MUNICIPAL CODE OF THE TOWN OF DEWEY BEACH, DELAWARE TO PROVIDE FOR TATTOO AND BODY PIERCING ESTABLISHMENTS AS A CONDITIONAL USE IN THE RB RESORT BUSINESS DISTRICT AND TO AMEND CHAPTER 10 TO ENACT A NEW SECTION 1060 TO PROVIDE FOR THE REGULATION AND LICENSING OF TATTOO AND BODY PIERCING ESTABLISHMENTS

WHEREAS, in order to promote the health, safety, and welfare of the present and future inhabitants of Dewey Beach, it is appropriate to amend Chapter 14, Section 14-503.4 of the Municipal Code of the Town of Dewey Beach, Delaware by adding Sub-section 13 to provide for tattoo and body piercing establishments as a Conditional Use in the RB Resort Business District and to amend Chapter 10 to enact a new Section 1060 to provide for the regulation and licensing of tattoo and body piercing establishments;

NOW THEREFORE;

BE IT ENACTED AND ORDAINED, by the Commissioners of the Town of Dewey Beach, Sussex County, Delaware that:

SECTION 1. Chapter 14, Section 14-503.4 is hereby amended by adding the following language:

(13) Tattoo establishments and body piercing establishments, provided that the tattoo and\or body piercing establishment meets the regulations and licensing requirements of Chapter 10, Section 1060.

SECTION 2. Chapter 10, is hereby amended by adding the following:

SECTION 1060: TATTOO AND BODY PIERCING ESTABLISHMENTS.

Section 1. Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases as used in this Section.

(a) **Certificate of inspection** shall mean the written approval from the Building Official or his\her designated representative that the tattooing establishment has been inspected and meets all the requirements of this Article relating to physical facilities, equipment and layout for the operation of a tattoo and body

piercing establishment.

(b) **Operator** shall mean any individual, firm, company, corporation or association that owns or operates an establishment where tattooing and body piercing is performed, and any individual who performs or practices the art of tattooing and body piercing on the person of another.

(c) **Physician** shall mean and include any person authorized to practice medicine pursuant to the laws of the State of Delaware.

(d) **Osteopath** shall mean and include any person authorized to practice osteopathic medicine pursuant to the laws of the State of Delaware.

(e) **Registered Nurse** shall mean and include any person licensed as a registered nurse pursuant to the laws of the State of Delaware.

(f) **Tattoo, tattooed and tattooing** shall refer to any method of placing designs, letters, scrolls, figures, symbols or any other marks upon or under the skin with ink or any other substance resulting in the coloration of the skin by the aid of needles or any other instruments designed to touch or puncture the skin.

(g) **Employee** shall mean any person over eighteen (18) years of age, other than an operator who renders any service in connection with the operation of a tattoo and body piercing establishments and receives compensation from the operator of the business or its patrons.

(h) **Patron** shall mean any person over sixteen (16) years of age who receives a tattoo under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.

(i) **Piercing or body piercing** means penetration of the skin for the express intention of the insertion of any object, including but not limited to jewelry; provided, however, that the piercing of the lobes of the ears shall be specifically excluded from the purview of this section.

Section 2. Permit required.

(a) No person shall engage in or carry on the business of operating a tattoo or body piercing establishment unless that person or entity (hereinafter "licensee") has:

1. a valid certification from a licensed medical facility or is authorized to practice medicine or osteopathic medicine pursuant to the laws of the State of Delaware or

2. evidence that a duly licensed physician or osteopathic practitioner has been retained by the licensee, provided that such retained physician or osteopath shall maintain an office within five miles of the place of business of the licensee and shall maintain office hours or be on call at all hours that the licensee

is open for business, and

3. evidence that a duly licensed physician, osteopathic practitioner, or registered nurse has been retained by the licensee to conduct an inspection of the licensed premises on a weekly basis to certify compliance with the Section 11 hereinbelow.

(b) No person shall engage in or carry on the business of operating a tattoo or body piercing establishment unless that person or entity (hereinafter "licensee") has been issued a valid permit by Town pursuant to the provisions of this Section for each and every separate office or place of business conducted by such person within the Town.

Section 3. Application for tattoo and body piercing establishment permit.

Any person desiring a permit to operate a tattoo or body piercing establishment shall file a written application with the Town Manager on a form to be furnished by the Town Manager. The applicant shall accompany the application with a tender of the correct permit fee, as hereinafter provided and shall, in addition, furnish the following:

(a) The type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise.

(b) The name, style and designation under which the business or practice is to be conducted.

(c) The business address and all telephone numbers of the business to be conducted.

(d) The following personal information concerning the applicant, if an individual, and concerning each stockholder holding more than ten percent (10%) of the stock of the corporation, each officer and each director, if the applicant is a corporation, and concerning the partners, including limited partners, if the applicant is a partnership, and concerning the manager or other person principally in charge of the operation of the business:

(1) Name, complete residence address and residence telephone number.

(2) The two (2) previous addresses immediately prior to the present address of the applicant.

(3) Written proof of age.

(4) Height, weight and color of hair and eyes.

(e) Certificate or other written proof that the physician or osteopath is authorized to practice medicine or osteopathic medicine, as the case may be, within the State of Delaware or certification that the licensee has retained the services of a physician or osteopath as required by Section 2 (a) 2 hereinabove.

(f) Certificate or other written proof that a physician, osteopath, or registered nurse has been retained by licensee to conduct weekly inspections pursuant to Section 2 (a) 3.

(g) Authorization for the Town, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application on the qualifications of

the applicant for the permit.

(h) The names and addresses of three (3) adult residents of the county who will serve as character references. These references must be persons other than relatives and business associates.

(i) Written declaration by the applicant, under penalty of perjury, that the information contained in the application is true and correct, with said declaration being duly dated and signed in the Town.

Section 4. Application for operator's permit.

Any person desiring a permit to preform tattoos or engage in body piercing shall file a written application with the Town Manager on a form to be furnished by the Town Manager. The applicant shall tender with the application the correct permit fee, as hereinafter provided, and shall, in addition, furnish the following:

(a) The business: address and all telephone numbers where the tattoo or body piercing establishment is to be operated.

(b) The following personal information concerning the applicant:

(1) Name, complete residence address, and residence telephone numbers.

(2) The two (2) previous addresses immediately prior to the present address of the applicant.

(3) Written proof of age.

(4) Height, weight and color of hair and eyes.

(5) Name, complete residence address and residence and all office telephone numbers of the physician or osteopath who is to be in charge of the tattoo or body piercing establishment.

(6) A statement, in writing, from a licensed physician, other than the physician or osteopath who is to be in charge of the tattoo or body piercing establishment, that he has examined the applicant within, thirty (30) days of the date of the application and believes the applicant to be free of all communicable diseases.

(c) Authorization for the Town, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.

(d) Written declaration by the applicant, under penalty of perjury, that the information contained in the application is true and correct, with said application being duly dated.

Section 5. Approval of application by Town Manager.

(a) Upon receiving the application for a tattoo or body piercing establishment or for a permit to do tattooing or body piercing, the Town Manager shall review the application.

(b) In the case of applications for a tattoo or body piercing establishment permit, the Town Manager shall conduct or cause to be conducted an investigation of the premises where the tattoo or body

piercing establishment is to be located for the purpose of assuring that the premises comply with all the sanitation requirements set forth in this Section and with all due regard of public health, safety and welfare.

(c) Before any permit shall be issued under this Article, the Town Manager shall first sign his approval of the application.

Section 6. Issuance or denial of tattoo or body piercing establishment permit.

The Town Manager shall issue a tattoo or body piercing establishment permit within forty-five (45) days of receipt of the application, unless he finds that:

(a) The correct permit fee has not been tendered to the Town and, in the case of a check or bank draft, honored with payment upon presentation.

(b) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including but not limited to the town's building, zoning and health regulations.

(c) The applicant has knowingly made any false, misleading or fraudulent statement of fact in the application for the permit or in any document required by the town in connection therewith.

(d) The applicant has operated a tattoo or body piercing establishment and has had a license denied, revoked or suspended for any of the above causes by the town or any other state or local agency within two (2) years prior to the date of the application.

(e) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, and the manager or other person principally in charge of the operation of the business is not over the age of twenty-one (21) years.

(f) The manager or other person principally in charge of the operation of the tattoo or body piercing establishment is not a physician or osteopath licensed to practice medicine or osteopathic medicine, as the case may be, pursuant to the laws of the State of Delaware or the licensee has not retained the services of a physician or osteopath as required by Section 2 (a) 2 hereinabove.

(g) The manager or other person principally in charge of the operation of the tattoo or body piercing establishment has not retained or has failed to retain the services of a duly licensed physician, osteopathic practitioner, or registered nurse to conduct an inspection of the licensed premises on a weekly basis to certify compliance with the Section 11 hereinbelow.

Section 7. Display of permits.

The tattoo or body piercing establishment licensee shall display its permit and that of each and every person employed in the establishment in an open and conspicuous place on the premises of the tattoo or body piercing establishment.

Section 8. Permit fees.

The permit fee for a tattoo or body piercing establishment shall be One Thousand dollars ($1000.00) per year or any part thereof. The permit fee for each person employed on the premises who will do tattooing or body piercing shall be Fifty dollars ($50.00) per year or any part thereof. If a premises has both body piercing and tattooing, there shall be a separate fee for body piercing as well as tattooing. In addition to the permit fee identified hereinabove, the licensee shall be required to pay for the costs of inspection of a duly licensed physician, osteopathic practitioner, or registered nurse to conduct an inspection of the licensed premises on a weekly basis as required pursuant to Section 11 hereinbelow.

Section 9. Revocation or suspension of permit.

Any permit issued pursuant to this Article shall be subject to suspension or revocation by the Town Manager for violation of any provision of this Article or for any grounds that would warrant the denial or issuance of such permit in the first place. The Town Manager, upon such revocation or suspension, shall state his reasons in writing, specifying the particular grounds for such revocation or suspension.

Section 10. Permits not transferable.

No tattoo or body piercing establishment permit shall be transferable, separable or divisible, and such authority as a permit confers shall be conferred only on the permittee named therein.

Section 11. Health and sanitary requirements.

Each tattoo or body piercing establishment shall comply with the following requirements:

(a) The room in which tattooing or body piercing is done shall have an area of not less than one hundred (100) square feet. The walls, floors and ceilings shall have an impervious, smooth and washable surface.

(b) A water closet shall be located in the establishment and shall be accessible at all times that the tattoo or body piercing establishment is open for business. The lavatory shall be supplied with hot and cold running water, soap and sanitary towels.

(c) All tables and other equipment shall be constructed of easily cleanable material, shall be painted or finished in a light color with a smooth, washable finish and shall be separated from waiting customers or observers by a panel at least six (6) feet or one and eighty-three hundredths (1.83) meters high or by a door.

(d) The entire premises and equipment shall be maintained in a clean, sanitary condition and in good repair.

(e) The operator who shall apply the tattoo or perform the body piercing shall wash his\her hands thoroughly with soap and water before starting to tattoo or body pierce. The hands shall be dried

with individual, single-use towels.

(f) No tattooing or body piercing shall be done on any skin surface that has a rash, pimples, boils or infections or manifests any evidence of any other unhealthy condition.

(g) No skin area shall be penetrated, abraded or treated with chemicals for the purpose of removing, camouflaging or altering any blemish, birthmark, scar or tattoo.

(h) Only safety razors with a new, blade for each customer or patron may be used and shall be properly disposed of pursuant to the requirements of this Section.

(i) The area to be tattooed or body pierced shall first be thoroughly washed for a period of two (2) minutes with warm water to which has been added an antiseptic liquid soap. A sterile, single-use sponge shall be used to scrub the area. After shaving and before tattooing has begun, a solution of seventy percent alcohol shall be applied to the area with a single-use sponge used and applied with a sterile instrument.

(j) Only petroleum jolly in collapsible metal or plastic tubes, or its equivalent shall be used on the area to be tattooed, and it shall be applied with sterile gauze.

(k) The use of styptic pencils, alum blocks or other solid styptics to check the flow of blood is prohibited.

(l) Inquiry shall be made, and anyone giving a history of recent jaundice or hepatitis shall not be tattooed or body pierced.

(m) Single-service or individual containers of dye or ink shall be used for each patron, and the container therefor shall be discarded immediately after completing work on a patron, and any dye in which the needles were dipped shall not be used on another person. Excess dye or ink shall be removed from the skin with an individual sterile sponge or a disposable paper tissue which shall be used only on one (1) person and then immediately discarded. After completing work on any person, the tattooed area shall be washed with sterile gauze and saturated with an antiseptic soap solution or a seventy-percent alcohol solution. The tattooed area shall be allowed to dry, and petroleum jelly from a collapsible or plastic tube shall be applied, using sterile gauze. A sterile gauze dressing shall then be fastened to the tattooed area with adhesive.

(n) All clean and ready-to-use needles and instruments shall be kept in a closed glass or metal case or storage cabinet when not in use. Such cabinets shall be maintained in a sanitary manner at all times.

(o) A steam sterilizer (autoclave) shall be provided for sterilizing all equipment and instruments before use on any patron. Sterilization of equipment shall be accomplished by exposure to live steam for at least thirty (30) minutes at a minimum pressure of fifteen (15) pounds per square inch at a temperature of two hundred forty degrees Fahrenheit (240' F.) or one hundred sixteen degrees Celsius (116' C.).

(p) The instruments required to be sterilized shall be so used, handled and temporarily placed during tattooing or body piercing that they will not be contaminated.

(q) A new pair of disposable latex gloves shall be worn with any procedure that involves contact with a patron.

(r) No body piercing or tattooing of the tongue shall be permitted.

(s) Immediately after piercing or tattooing, the patron shall be advised on the care of the site so body pierced or tattooed and to consult a physician at the first sign of infection.

(t) Forceps, accessory equipment and all operator's jewelry must be disinfected with a chemical disinfectant approved by the United States Food and Drug being tuberculocidal when used at recommended dilutions.

(u) Needles shall not be bent or broken prior to disposal. Operator shall take precautions to prevent injuries from contaminated needles.

(v) Needles shall be disposed of directly into a solid puncture-resistant container.

(w) Needles as well as gloves, gauze and other materials exposed to patrons' or operators' blood or used in the tattooing and piercing process shall be placed into sealable plastic containers specifically designated and labeled for medical hazardous waste disposal prior to off-site disposal. A written agreement for disposal of such waste shall be with an authorized service for disposal of medical waste and a copy of said written agreement shall be provided to the Town Manager.

Section 12. Records.

Each tattoo or body piercing establishment shall maintain permanent records for each patron. Before the tattooing or body piercing operation begins, the patron shall be required personally to enter on a record form provided for such establishments, the date, his or her name, his or her address, his or her age and his or her signature. The records shall also provide that the patron does not have any jaundice or hepatitis and if so, the date of such jaundice or hepatitis. Such records shall be maintained in the tattoo or body piercing establishment and shall be available for examination by the Town Manager. Such records shall be maintained by the tattoo or body piercing establishment for a period of not less than two (2) years.

Section 13. Report of infections.

No patron having any skin infection or any disease of the skin or any communicable disease whatsoever shall be tattooed. All infections resulting from the practice of tattooing or body piercing which become known to the tattooing or body piercing establishment shall be promptly reported to the Town Manager by the operator of the tattoo or body piercing establishment, and the infected patron shall be referred immediately to a physician.

Section 14. Pigments and dyes.

All pigments, dyes, colors and any other material used in tattooing shall be sterile and free from bacteria, virus particles and

noxious agents and substances, and the pigments, dyes and colors used from stock solutions for each patron shall be placed in a single-service receptacle, and such receptacle and remaining solution shall be discarded as provided in Section 11 (w) hereinabove after use on each patron.

Section 15. Bandages and surgical dressings.

All bandages and surgical dressings used in connection with the tattooing or body piercing of a person shall be sterile and shall be discarded as provided in Section 11 (w) hereinabove after use on each patron.

Section 16. Certain persons prohibited from being patrons.

No tattoo or body piercing shall be performed on any person under the age of eighteen (18) years, unless accompanied by a parent or legal guardian.

Section 17. Alcoholic beverages prohibited.

No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept any alcoholic beverage on the premises of any tattoo or body piercing establishments,

Section 18. Violations and penalties.

Any person, firm or corporation violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars ($50.) nor more than two hundred dollars ($200.) for each offense, and for the purposes of this Article, a separate offense shall be deemed to be committed on each day during or on which a violation occurs or continues. Notwithstanding the above provisions, the Town may take action in any Court of competent jurisdiction to restrain or cause the termination of any operation or establishment not in compliance with the provisions of this Section.

Section 19. Severability.

If any clause, sentence or provision of this Article shall be declared invalid by a court of competent jurisdiction, such declaration shall not affect the remaining provisions hereof.

Section 20. Applicability.

The health, safety, and welfare provisions of this Section shall apply to any operation or establishment that is engaged in the activities described hereinabove, and no exemptions from the provisions of this section for pre-existing operations or

enterprises shall be in effect at the time of adoption of this Ordinance.

Ordained and enacted into law this 8th day of February, 1997.

Robert G. Frederick, Mayor

William Rutherford, Town Manager