

ORDINANCE NO. 1166

AN ORDINANCE TO AMEND AND REENACT CHAPTER 15-13 OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO RELATING TO TATTOOS, BODY ART AND BODY PIERCING

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WEST FARGO, NORTH DAKOTA:

SECTION 1. Chapter 15-13 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, is hereby amended and reenacted to read as follows:

CHAPTER 15-13

TATTOOS, BODY ART AND BODY PIERCING

Section:

- 15-1301. Definitions.
  - 15-1302. Regulation by Health Department.
  - 15-1303. Health Department Approval of Construction Plans.
  - 15-1304. Unlawful to Operate Body Art Establishment Without License - Exemptions.
  - 15-1305. License to Operate Body Art Establishment Issued Annually - Fee - Application Form - Display of License Required - Adoption of Regulations.
  - 15-1306. Inspections by Health Department.
  - 15-1307. Licenses - Termination, Suspension, Revocation.
  - 15-1308. Unlawful Practices.
  - 15-1309. Penalty.
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15-1301. DEFINITIONS. As used in this ordinance, unless the context otherwise indicates, the following definitions shall apply:

1. "Bloodborne pathogen" means a micro-organism that is present in human blood or in other bodily fluid or tissue which can cause a disease in humans, including the hepatitis B virus, the hepatitis C virus, and the human immunodeficiency virus, and for which testing is recommended by the United States public health service.
2. "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.

3. "Gross incompetence" means any serious lack of ability of knowledge to perform one's duty in a sanitary manner, or failure to comply with these regulations. It also means any conduct which endangers the public's health or safety.
4. "Health Department" shall mean Fargo Cass Public Health Department and its authorized designees and representatives.
5. "License" means written approval issued by the Health Department or any designee of the Health Department to operate a body art establishment.
6. "Procedure room" means the physical space or room used for performing body art procedures.
7. "Scarification" means altering the skin texture by cutting the skin and controlling the body's healing process in order to produce wounds, resulting in permanently raised wheals or bumps known as keloids.
8. "Temporary body art event" shall mean any event to promote body art which lasts no longer than five (5) consecutive days.

15-1302. REGULATION BY HEALTH DEPARTMENT. The Health Department, its agents and employees, shall have authority to regulate the public health and safety in the City of West Fargo concerning use, design, operation, and maintenance of body art establishments and shall have such authority to adopt regulations, rules, standards, and practices. Such regulations, rules, standards, and practices shall be approved by the Health Department, are hereby adopted by reference, and fully incorporated herein, including any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the Health Department.

15-1303. HEALTH DEPARTMENT APPROVAL OF CONSTRUCTION PLANS. Before work is commenced on the construction of a body art establishment, the plans and specifications must be approved by the Health Department.

15-1304. UNLAWFUL TO OPERATE BODY ART ESTABLISHMENT WITHOUT LICENSE - EXEMPTIONS. It shall be unlawful to operate a body art establishment unless a license is first obtained from the Health Department. The provisions of this chapter do not apply to physicians nor to individuals who pierce only the non-cartilaginous perimeter and lobe of the ear with a pre-sterilized, single-use, stud-and-clasp ear-piercing system; provided, however, that such individuals shall not be exempt from the applicable U.S. Food and Drug Administration requirements.

15-1305. LICENSE TO OPERATE BODY ART ESTABLISHMENT ISSUED ANNUALLY - LICENSE FOR INDIVIDUAL TECHNICIAN - TEMPORARY LICENSE FEE - APPLICATION FORM - DISPLAY OF PERMIT REQUIRED - HEALTH DEPARTMENT TO ENFORCE REGULATIONS. After an inspection and approval of the proposed body art establishment by the Health Department or designee, the license described in Section 15-1304 hereof shall be issued annually by the Health Department. The fee therefor shall be as established by the Board of City Commissioners. The license shall be non-transferable and displayed prominently in the body art establishment where it may be readily observed by clients.

The Health Department is authorized to promulgate regulations creating minimum standards for body art establishments pertaining to the facilities, preparation and care of the body art area, education and information for prospective clients, professional standards for the body art operators/technicians, sanitation and sterilization procedures, requirements for single use items, maintenance and retention of records of body art procedures, and requirements for posting of notices and information regarding body art, which regulations may be enforced by the Health Department or its designee after such regulations are approved by the city commission. A copy of such regulations must be posted in all body art establishments in a prominent location so that they may be read by clients and by operators and technicians of a body art establishment.

Each individual body art technician shall be required to first obtain a license from the Health Department. The fee therefor shall be established by the Health Department, and applicants shall complete and sign an application form furnished by the Health Department. Each individual body art technician must be working under a permitted body art establishment. If the body art establishment has only one (1) technician, only the establishment license needs to be obtained.

Body art establishments and body art technicians not otherwise licensed in the City who wish to practice body art at a temporary body art event, shall obtain a temporary license through the Health Department. The fee therefor shall be established by the Health Department, and the applicant shall complete and sign an application form furnished by the Health Department.

15-1306. INSPECTIONS OF LICENSED PREMISES. The Chief of Police, any officer of the police department, or any health officer of the Health Department may, at any time, enter upon any licensed premises for the purpose of inspection or to determine whether the licensed premises are in compliance with any and all ordinances and regulations adopted by the City of West Fargo. A copy of the inspection report must be furnished to the license holder or operator of the body art establishment.

15-1307. LICENSES - TERMINATION, SUSPENSION, REVOCATION. All licenses issued under the provisions of this chapter, unless otherwise specifically provided, shall terminate on December 31 following the date of issuance; provided, however, that any license issued under the provisions of this chapter may, under certain circumstances, be terminated, suspended, or revoked by the Health Department.

1. The Health Department may, in its discretion, suspend or revoke for cause any license issued under the provisions of this chapter. The grounds for suspension or revocation shall, among others, include the following:
  - a. The licensee has filed a petition in bankruptcy.
  - b. The licensee does not remit the annual renewal fee.
  - c. An individual licensee, one (1) of the partners in a partnership licensee, or one of the officers in a corporation licensee, or any individual in active management of the licensed business is convicted of violating any of the provisions of this chapter.
  - d. The licensee has been convicted of a felony under the laws of the United States or under the laws of one (1) of the several states.
  - e. The licensee has made any false statement in his application for a license.
  - f. The licensee has demonstrated gross incompetence and/or has violated one (1) or more of the regulations created pursuant to Section 15-1305.
  - g. The licensee interferes with the Health Department or its agents and assistants in the performance of its duties.
2. The Health Department may temporarily suspend the license and order the establishment immediately closed if immediate danger to the public health or safety is found, unless the danger is immediately corrected.
3. The grounds enumerated in subsection 1 of this section shall not be deemed to be exclusive, and any license issued under the provisions of this chapter may be suspended or revoked by the Health Department for any other reason deemed by the Health Department to be sufficient in order to promote and protect the health, safety, and welfare of the public. When any license is suspended or revoked by the Health Department pursuant to the provisions of this section, or when the licensee

voluntarily ceases business, no portion of the license fee previously paid shall be returned to the licensee or to anyone claiming under or through the licensee.

4. No license issued under the provisions of this chapter shall be suspended or revoked for cause by the Health Department without a public hearing. In the event that the Health Department intends to consider the suspension or revocation of any license for cause, it shall notify the licensee of its intention to consider the same. The notice shall specify the time and place of the suspension or revocation hearing and shall be served upon the licensee or his managing agent in the same manner as provided by law for the service of a summons in a civil action. No suspension or revocation hearing shall be held before the expiration of fifteen (15) days after the date of the service of the notice upon the licensee.

If, upon such hearing, it appears to the Health Department that sufficient cause exists for the suspension or revocation of a license issued pursuant to the provisions of this chapter, the Health Department shall make its order suspending or revoking the said permit.

15-1308. UNLAWFUL PRACTICES. In addition to such other prohibitions as are contained in this chapter:

1. No person shall perform body art on any body part of a person under the age of eighteen (18) without the written consent of the parent or legal guardian of such minor and without said parent or legal guardian being present during such procedure.
2. No person shall obtain or attempt to obtain any body art establishment license by means of fraud, misrepresentation, or concealment.
3. No person shall perform body art procedures unless such procedures are performed in a body art establishment with a current license.
4. No person shall perform body art procedures unless they are at least eighteen (18) years of age.
5. No person shall interfere with an appropriate enforcement officer in the performance of an inspection or in the performance of any other duties.
6. Willful failure by the licensee to post regulations which are required to be posted pursuant to Section 15-1305 of this chapter shall be unlawful.

15-1309. PENALTY. A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm, or corporation violating this ordinance shall be punished by a fine not to exceed \$1,500 or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof. In addition to such fine and/or imprisonment, the court, in its discretion, may assess a fee in an amount not to exceed \$25.00 as provided in section 27-01-10, N.D.C.C.

SECTION 2. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.

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President of Board of City  
Commissioners of the City of  
West Fargo, North Dakota

ATTEST:

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City Auditor

Date of First Reading:

Date of Second Reading:

Date of Publication: