



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
April 18, 2012**

TO: Mayor and City Council

FROM: Dina Tasini, Contract Planner

SUBJECT: Appeal of the Planning Commission determination that the applicable zoning classification for Lice Removal Salon business is similar to Beauty and Barber shops and permitted within Commercial Zoning Districts (NC, CC, SC).

DATE: April 18, 2012

RECOMMENDATION:

Hold a public hearing and take public testimony, discuss the recommendations of the Planning Commission, and adopt a resolution denying an appeal and upholding the Planning Commission's determination that Lice Removal Salons are permitted within the Commercial Districts (NC, CC and SC).

BACKGROUND:

Staff received a request for a business license to operate a lice hair removal salon in March 2012. The Zoning Ordinance does not include this use in any zoning district. The Zoning Ordinance does not include an exhaustive list of uses and therefore staff and Planning Commission are called upon and permitted to make determinations regarding proposed uses throughout the City. In this case, staff believed that the use was somewhat unusual, and there was concern expressed by neighboring commercial businesses, which made it necessary for staff to request that the Planning Commission make a determination.

On March 13, 2012 the Planning Commission held a public hearing to make a zoning determination regarding Lice Removal Salons and the appropriate zoning districts in which this business might operate. The Planning Commission held the public hearing, received public testimony and determined that a Lice Removal Salon business is within the classification for and are similar to beauty and barber shops which are permitted in the Commercial Districts (NC, CC, SC). On March 23, 2012 the Deputy City Clerk received an appeal of the Planning Commission determination.

DISCUSSION:

Together several businesses submitted one appeal, on March 23, 2012, of the Planning Commission determination. Staff has provided the following outline to provide the basis of appeal and staff response for Council review and discussion:

Discussion - Basis of appeal

A. Head Lice Removal Salon is not a Beauty Salon nor a Barber Shop

The Planning Commission determined that a lice removal salon use was similar to a beauty salon or barber shop in that they operate in a similar fashion. Beauty salons, barber shops and lice hair removal salons operate their businesses in a similar manner in that each requires appointments and in the end each client wishes to leave the establishment with a clean head of hair. The only difference is that the customer of a head lice removal salon visits the business to remove lice rather than solely for beauty.

Lice hair removal salons are not regulated by the State because the business uses no toxic chemicals that are harmful to eyes or skin and there are no fumes. Staff did contact the County Health Department and they were aware of the existence of such businesses but did not feel that regulation was necessary since there are no chemicals used and lice are not considered a communicable disease.

After a lengthy discussion, the Planning Commission made the determination that Lice Removal Salons are similar to beauty and barber shops because it is a personal service like nail salons, day spas, skin care consultants and tanning salons all which have been permitted within the Commercial District under the barbershops and beauty shops use classification. Furthermore the Planning Commission determined the use to be similar to beauty and barber shops, because of the method of operation, not licensure or State regulations. The barbershops and beauty shops use or designation has been applied globally to incorporate and permit personal services as permitted uses within the Commercial Districts because the Municipal Code does not have an exhaustive list of uses nor does it provide a definition for every business.

B. Head Lice Removal Salon is Closest to an Exterminator Use

Extermination businesses deal with the eradication or control of rodents, insects and other pests by using chemical processes at off-site locations. The extermination of pests is accomplished through the use of fumigators and pesticides. Exterminator uses are permitted with the Service Commercial (SC) Zoning District that includes Sunrise Drive and Howe Road.

Hair lice removal salons use non-toxic products and water to remove lice at the business location, in a fashion similar to other personal beauty and health services. Therefore, the Planning Commission did not consider "Exterminator" a similar use.

C. The Planning Commission Should Have Considered Head Lice Removal a Conditional Use

The Planning Commission did discuss the possibility of making this use a conditional use. The Planning Commission decided that many uses within the Commercial Districts are not listed and have no regulatory oversight yet they are permitted with the Commercial Districts and this use is no different. In addition, in order to consider this use as a conditional use staff would be required to draft an ordinance to include this use, conditions of approval and findings and return to the Planning Commission and City Council for adoption of an Ordinance. The delay of approximately three months to draft an Ordinance was determined to be a hardship on a proposed business ready to begin operation.

Staff provided the Planning Commission with information regarding similar operations in other jurisdictions that permit the use within the Commercial District. No jurisdiction requires a Use Permit for lice hair removal salons. Based on the information provided and the discussion about the operation of Lice Removal Salons the Planning Commission determined a Use Permit was not an appropriate method of review for this use.

Therefore, the Planning Commission determined that the use and its proposed method of operation is similar to beauty and barber shops and should be permitted within Commercial Districts. The Commission did request that staff look into adding a personal services use to the Commercial Zoning District that would include this and many other uses.

D. Consideration of an Ordinance

The appellants proposed several conditions or regulations that should be included within an Ordinance if the Council wishes to direct staff in that manner. The Planning Commission's determination is the only action appealable by the appellants. If directed to draft an Ordinance, staff would draft the Ordinance and issues such as conditions and findings would be reviewed and discussed before the Planning Commission and City Council with ample opportunity for public comment.

FISCAL IMPACT:

No impact – upholding of the Planning Commission determination would result in the possible operation of Lice Removal Salon(s) within the City, resulting sales tax revenue.

ACTION:

Motion adopting a resolution denying an appeal and upholding the Planning Commission's determination that Lice Removal Salons are permitted within the Commercial Districts (NC, CC and SC).

Attachments:

- A. Resolution
- B. Planning Commission staff report, March 13, 2012
- C. Planning Commission minutes March 13, 2012
- D. Letter of Appeal received March 23, 2012

APPROVED BY:


City Manager

RESOLUTION NO. -12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DETERMINATION THAT LICE REMOVAL SALONS ARE PERMITTED USES WITHIN THE COMMERCIAL DISTRICTS (NC, CC AND SC)

WHEREAS, on March 13, 2012 the Planning Commission held a public hearing to determine that lice removal salons are within the classification for and are similar to beauty and barber shops and therefore permit such use within the Commercial Districts (NC, CC and SC); and

WHEREAS, on March 23, 2012 the appellants (David Fisher, Charlene West, Ernie Guerrero, Pat English and Anne Mobley) filed a timely appeal; and

WHEREAS, the Record of Proceedings ("Record") upon which the City Council bases its decision regarding the Zoning Determination includes, but is not limited to: (1) all staff reports, City files and records and other documents prepared for and/or submitted to the Planning Commission, and the City Council related to the Determination; and

WHEREAS, the Project is consistent with General Plan policies and with Commercial development standards and policies set forth in the Downtown Specific Plan encouraging a mix of commercial development within the Historic Core; and

WHEREAS, the Project is categorically exempt from the requirements of CEQA, under Sections 15061 (b)(3)

WHEREAS, the City Council held a duly noticed public hearing on April 18, 2012, to consider the appeal and considered public testimony on the matter and all other substantial evidence in the record.

NOW, THEREFORE, BE IT RESOLVED:

1. That the above recitals are found to be true and constitute part of the findings upon which this Resolution is based.
2. The Zoning Determination is consistent with the General Plan and Downtown Specific Plan in that permitting lice hair removal salons will support commercial activity within downtown Martinez and maintain a vibrant mixed commercial development with a myriad of uses.
3. The Zoning Determination is exempt pursuant to Section 15061 (b) (3) of the California Environmental Quality Act.
4. The Planning Commission hereby makes the following findings with respect to the Appeal:

(a) Appeal Issue #1

Allegation of the Appeal Issue #1: "A Head Lice Removal Salon is neither a Beauty nor a Barbershop"

Finding to Deny Appeal Issue #1: The Planning Commission

determined that a lice removal salon use was similar to a beauty salon or barbershop in that they operate in a similar fashion. Beauty salons, barbershops and lice hair removal salons operate their businesses in a similar manner in that each requires appointments and in the end each client wishes to leave the establishment with a clean head of hair. The only difference is that the customer of a head lice removal salon visits the business to remove lice rather than solely for beauty.

Lice hair removal salons are not regulated by the State because the business uses no toxic chemicals that are harmful to eyes or skin and there are no fumes. Staff did contact the County Health Department and they were aware of the existence of such businesses but did not feel that regulation was necessary since there are no chemicals used and lice are not considered a communicable disease.

The Planning Commission made the determination that Lice Removal Salons are similar to beauty and barber shops because it is a personal service like nail salons, day spas, skin care consultants and tanning salons all of which have been permitted within the Commercial District under the barbershops and beauty shops use classification. Furthermore the Planning Commission determined the use to be similar to beauty and barber shops, because of the method of operation, not licensure or State regulations. The barbershops and beauty shops use or designation has been applied globally to incorporate and permit personal services as permitted uses within the Commercial Districts because the Municipal Code does not have an exhaustive list of uses nor does it provide a definition for every business.

(b) Appeal Issue #2

Allegation of the Appeal Issue #2: "If a head lice removal salon must be placed in an existing category, it is closest to an exterminator use."

Finding to Deny Appeal Issue #2: Extermination businesses deal with the eradication or control of rodents, insects and other pests by using chemical processes at off-site locations. The extermination of pests is accomplished through the use of fumigators and pesticides. Exterminator uses are permitted with the Service Commercial (SC) Zoning District that includes Sunrise Drive and Howe Road.

Hair lice removal salons use non-toxic products and water to remove lice at the business location, in a fashion similar to other personal beauty and health services. Therefore, the Planning Commission did not consider "Exterminator" a similar use.

(c) Appeal Issue #3

Allegation of the Appeal Issue #3: "The Planning Commission should have determined that a head lice removal hair salon requires a conditional use permit."

Finding to Deny Appeal Issue #3: The Planning Commission did discuss the possibility of making this use a conditional use. The Planning Commission decided that many uses within the Commercial Districts are not listed and have no regulatory oversight yet they are permitted within the Commercial Districts and this use is no different. In addition, in order to consider this use as a conditional use staff would be required to draft an ordinance to include this use, conditions of approval and findings and return to the Planning Commission and City Council for adoption of an Ordinance. The delay of approximately three months to draft an Ordinance was determined to be a hardship on a proposed business ready to begin operation.

Staff provided the Planning Commission with information regarding similar operations in other jurisdictions that permit the use within the Commercial District. No jurisdiction requires a Use Permit for lice hair removal salons. Based on the information provided and the discussion about the operation of Lice Removal Salons the Planning Commission determined a Use Permit was not an appropriate method of review for this use.

Therefore, the Planning Commission determined that the use and its proposed method of operation are similar to beauty and barbershops and should be permitted within Commercial Districts. The Commission did request that staff look into adding a personal services use to the Commercial Zoning District that would include this and many other uses.

(d) Appeal Issue #4

Allegation of the Appeal Issue #4: "Consider an Ordinance, instead of approving a zoning determination."

Finding to Deny Appeal Issue #4: The appellants proposed several conditions or regulations that should be included within an Ordinance if the Council wishes to direct staff in that manner. The Planning Commission's determination is the only action appealable by the appellants. If directed to draft an Ordinance, staff would draft the Ordinance and issues such as conditions and findings would be reviewed and discussed before the Planning Commission and City Council with ample opportunity for public comment.

BE IT FURTHER RESOLVED that based on the findings set forth herein and the Record as a whole, the City Council hereby denies the appeal and upholds the Planning Commission's determination that lice removal salons are within the classification for and

are similar to beauty and barber shops and should be permitted in the Commercial Districts.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 18th day of April, 2012, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ



STAFF REPORT

TO: PLANNING COMMISSION

PREPARED BY: Dina Tasini, Contract Planner

GENERAL INFORMATION

PROPOSAL: Request a zoning determination of the Planning Commission as to the operation of Lice Removal Salons within Commercial Zoning Districts Citywide

LOCATION: Citywide within Commercial Zoning Districts (NC, CC, SC)

RECOMMENDATION

Provide a determination regarding the operation of Lice Removal Salons within the City of Martinez.

PROJECT DISCUSSION

Staff was made aware through a business license request that a lice removal salon was poised to open within the downtown commercial district. Staff reviewed the proposal and found lice removal salons were not listed within the Zoning Ordinance as a use. The business owner requested staff consider this use so that they can begin operation. Since staff does not have the authority to add new uses to the Zoning Ordinance and/or determine whether this use is permitted as a subset of a use covered under an existing use classification, the Planning Commission has the authority, and can make such a determination. Therefore, staff is requesting the Planning Commission make such a determination for lice removal salons.

STAFF ANALYSIS

While the City of Martinez Municipal Code does not specifically identify "lice removal salons" as a use, lice removal salons may appear to be consistent with barbershops and beauty shops that are permitted within the Neighborhood Commercial District. The use will operate in a similar fashion to beauty salons in that appointments are made (an occasional drop in) and customers show up at a designated time for service. There will be no waiting for an appointment outside the salon or long waits in a waiting room. The customer arrives and begins treatment and returns for visits treatments to eradicate the

2a

lice.

Staff surveyed Lafayette, Oakland and San Francisco where there are lice removal salons and found that all three jurisdictions permitted the use and determined the use to be consistent with personal services or hair salons. Each jurisdiction has received no complaints from adjacent businesses and the businesses are hugely successful.

In order to better understand the lice removal salon standard business operation, staff contacted several salons. Staff found the majority of lice removal salons operated in a similar fashion in that they did not have sinks for washing hair, since they request that the customer wash hair prior to the appointment, they apply water via a spray bottle and a conditioning cream which kills the fleas. The fleas are then combed out of the hair. The combs and brushes are disinfected and the towels are washed and dried. Only one lice removal salon had on site washer and dryer, by and large the business operation is simple and requires a clean well-lit place. In addition there is one service that is by appointment only and comes to the customers homes. Staff has provided a number of attachments from the interested business operator to assist in understanding how lice removal salons operate.

The Planning Commission does have several options that are as follows:

- Determine that Lice Removal Salons is within the classification for and are similar to Beauty and Barber shops and therefore permitted within Commercial Zoning Districts (NC, CC, SC).
- Determine that the use is not consistent with any use in the Municipal Code and direct staff to draft an Ordinance to address this new use.
- Find this proposed use is consistent with another activity (not beauty or barbershops) that is either permitted or conditionally permitted.
- Finally, the Planning Commission can determine lice removal salons are not consistent with any existing use and should not be permitted within any Zoning District.

ATTACHMENTS

1. Submittal received March 7, 2012 from Ladybugs Lice Removal Salon



LadyBugs Lice Removal - Facts of Lice

I - Hair

- Wash your hair at least twice in the next week using the Lice Repel Shampoo and Conditioner that you purchased.
- Wear your hair up daily to prevent infestation.
- All Hair accessories and tools such as combs, barrettes, etc. should be cleaned after each use. Soak them in rubbing alcohol for one hour (be sure to rinse well after); or boil your items for 10 minutes in hot water.
- Make sure every member of the family has their own comb, brush, etc., and a place to store it where there will be no cross contamination.
- Be sure to wash your hair prior to your next appointment.

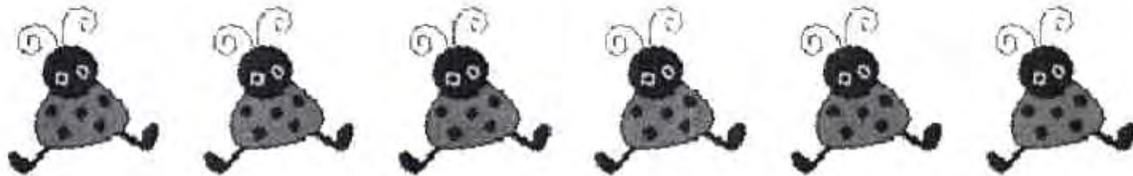
II - Laundry

- Wash all bedding, towels and previously worn clothing in hot water. Dry on high heat.
- Change pillowcases and towels used to dry hair after each use.

III - Environment

- Pack away stuffed animals in a garbage bag for 10 days. If this is not possible, then wash the stuffed animal daily as you would the pillow case.
- Treat carpets, drapes, throw pillows, and headrests on furniture and in car with Spray, and do not forget to vacuum.

- **Call LadyBugs Lice Removal if you have any questions or concerns.**



Standard Operations for Ladybugs Lice Removal

Appointment and Walk-ins welcome

Hours of operations 9AM – 7PM 7 days a week

Ladybugs use only organic non-toxic products. We believe that by methodically removing the Head Lice is the best and safest way. Our business is very private and kid friendly. We have toys, books and individual hand held DVD players for each client. Our blinds are never open while clients are receiving treatment.

The following are steps taken when a parent discovers their child could possibly have lice.

STEP ONE:

- Parent will contact Ladybugs Lice Removal to schedule an appointment.
- Upon arrival, parent will fill out an informational form. Information will be entered into our computer database.

STEP TWO: (3-4 possible treatments)

- Client is seated in chair; a salon cape and towel are placed around client's neck.
- Client's hair is sprayed with water to dampen it
- Organic lice repellent conditioner is spread evenly throughout the individual's hair.
- The individual's hair is combed out with a plastic brush and a large tooth comb to remove any tangles.
- A Nit/Lice removal comb is then used to gently graze the scalp to remove the lice. This is done on the entire head. A small white towel is used to wipe off the Nit/Lice removal comb after each pass through the individual's hair. You continue this process until the entire head is done and lice are no longer found.
- The client's hair is then put into a ponytail / braid.

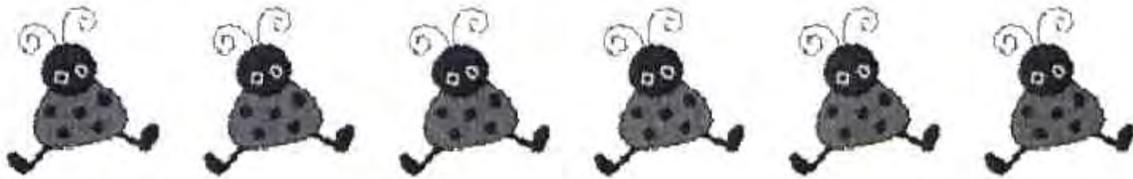
STEP THREE:

- We take the towels and capes and carefully place them in an enclosed laundry bin.
- Immediately after completion, all combs, clips and any other items used to clean the individual's hair are placed in barbicide disinfectant.

STEP FOUR:

- We provide the individual's parents with at home care instructions to insure that this issue does not continue, while educating our client on how to prevent this issue in the future.

At the end of business day, the hair utensils are removed from the barbicide and thoroughly washed in hot water and placed on a clean towel to dry. The laundry baskets are then taken home, washed in hot water & dried on high heat.



Ladybugs Lice Removal Client Information Sheet

Date: _____

Name (Parent/Guardian): _____

Address: _____ City: _____ Zip Code: _____

Home Phone: _____ Cell Phone: _____

Email: _____

Where were you diagnosed? School Home Pediatrician Other _____

How did you hear about us? _____

Please list all members of your household:

Name: _____

Name: _____

Age: _____

Age: _____

Sex: F M

Sex: F M

School _____

School _____

Appointment today? Yes No

Appointment today? Yes No

Name: _____

Name: _____

Age: _____

Age: _____

Sex: F M

Sex: F M

School _____

School _____

Appointment today? Yes No

Appointment today? Yes No

Ladybugs Lice Removal



Business Plan

Martinez, CA

Owners,

Pamela Gay and Sofia Deleuse



Welcome to Ladybugs Lice Removal.

We are a Lice Removal Service based in Martinez, CA. We take a very chemical free and natural approach to lice removal.

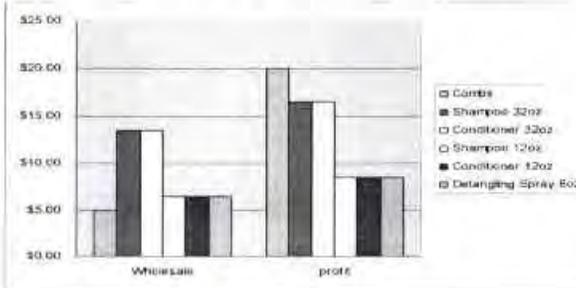


Ladybugs Lice Removal

- **Mission** – Ladybugs takes a very chemical free and natural approach to Lice Removal. We want to educate the community on the “real facts of lice”.
- **Vision** - Within the next three years, Ladybugs Lice Removal would like to grow into a creative, vibrant company that is dedicated to eliminating the persistent lice problem while educating the community on the use of safe and effective treatments.



Products/Sales



Packages	Wholesale	Ladybugs sale price	profit
Large pack with combs	\$41.50	\$90.00 with \$20.00 discount	\$48.50
Large pack no combs	\$39.50	\$65.00 with \$10.00 discount	\$26.50
Small pack with combs	\$24.50	\$60.00 with \$10.00 discount	\$35.50
Small pack no comb	\$19.50	\$40.00 with \$5.00 discount	\$20.50

Product	Wholesale	Ladybugs sale price	profit
Combs	\$5.00	\$25.00	\$20.00
Shampoo 32oz	\$13.50	\$30.00	\$18.50
Conditioner 32oz	\$13.50	\$30.00	\$18.50
Shampoo 12oz	\$6.50	\$15.00	\$8.50
Conditioner 12oz	\$6.50	\$15.00	\$8.50
Detangling Spray 8oz	\$6.50	\$15.00	\$8.50



Products/Sales Continued

Visits		Teacher discount	
First visit First Hour	each additional 15 min	First visit First Hour	each additional 15 min
\$95.00	\$23.75	\$47.50 per hour	11.87
Second visit First Hour	each additional if needed	Second visit First Hour	each additional if needed
\$95.00	\$23.75	\$47.50 per hour	11.87
Third visit First Hour		Third visit First Hour	
\$95.00		\$47.50 per hour	



Other company revenue

Revenue Sales from other Lice Removal Company			
Month	2009	2010	2011
January	N/A	16,317.71	17,653.08
February	N/A	10,394.34	11,197.39
March	N/A	12,579.07	15,318.84
April	N/A	12,195.03	13,790.74
May	(First month open) 3,894.28	12,159.44	10,021.79
June	13,688.03	21,628.36	10,702.70
July	17,995.90	14,990.94	13,891.56
August	15,301.81	14,975.65	12,325.29
September	23,471.59	16,430.70	16,872.68
October	24,159.53	20,667.49	14,584.95
November	15,288.18	21,157.57	19,202.88
December	13,113.49	15,442.11	14,454.44



Ways of Promoting our Business

- Advertise
 - Local newspaper
 - Magazines (M Magazine, Parenting magazine)
 - Yellow Pages
 - Online business directory
- Mailings to local schools, Dr. offices, Dental offices and Salons
- Offering Free local school head checks
- Donations to local business and school fund raisers
- Ladybugs Website to purchase products.

Planning Commission
Regular Meeting
March 13, 2012
Martinez, CA

CALL TO ORDER

The meeting was called to order at 7:02 p.m. by Chair with all members present.

ROLL CALL

PRESENT: Harriett Burt, Commissioner, Rachael Ford, Commissioner, Jeffrey Keller, Commissioner, Paul Kelly, Commissioner, Sigrid Waggener, Commissioner, Kimberley Glover, Commissioner, and Donna Allen, Commissioner.
EXCUSED: Jim Blair.
ABSENT: None.

Staff present included contract planner Dina Tasini and Associate Planner Anjana Mepani.

AGENDA CHANGES - None.

PUBLIC COMMENT

Mike Alford discussed the power of council members to change actions taken by the Planning Commission. He commented on the need for honesty in public service.

CONSENT ITEMS

1. [Minutes of December 13, 2011, meeting.](#)

[December 13, 2011, minutes](#)

On motion by Donna Allen, Commissioner, seconded by Kimberley Glover, Commissioner, to approve the Minutes of December 13, 2011, meeting. Motion unanimously passed 4 - 0. Yes: Harriett Burt, Commissioner Sigrid Waggener, Commissioner Kimberley Glover, Commissioner, Donna Allen, Commissioner, Abstain: Rachael Ford, Commissioner, Jeffrey Keller, Commissioner, Paul Kelly, Commissioner.

REGULAR ITEMS

2. [Citywide - Planning Commission hearing to determine applicable zoning classifications, for Lice Removal Salon business, which the Zoning Code does not specifically define.](#)

Staff Report

Contract Planner Dina Tasini presented the staff report, discussing how other jurisdictions handle similar businesses. There was also a 10 minute video explaining the process for treating/removing lice.

Ms. Tasini discussed the information presented on the video and told the Planning Commission the actions they could take related to the item.

Commissioner Glover asked, and Ms. Tasini confirmed that the Hair Lice Removal Salon in Montclair is next door to a Round Table Pizza. When the City of Oakland was contacted to ask about issues or problems, they have never received a complaint.

Commissioner Waggener asked what happens to the towels after they are used. Ms. Tasini explained that one of the other lice removal salons has a washer/dryer, the others place towels in a closed container or sealed plastic bags and wash and dry them at home or at a Laundromat.

Commissioner Burt commented that this is the first time she has heard of this type of business.

The Commission discussed with staff how long other existing shops had been operating, existing uses, whether the products used were toxic, and whether an existing beauty shop could add lice removal to the permit. Staff said no, and the Commission discussed the pros and cons of such a business, the steps taken to prevent cross-contamination.

Chair Ford opened the public hearing.

ELLEN HEATHCOAT said she didn't think this was an appropriate location for such a business; it does not fit in such a quaint block on Main St.

MIKE ALFORD said this is a unique service, and it will bring revenue to the City. He asked about flea & tick removal service which is located around the corner from Starbucks. He thought it would provide a valuable, needed service.

BARBARA KAPSALIS said it would be a viable service, but she didn't think it belongs on Main St. She would rather see a yogurt shop or something like that.

Seeing no further speakers, Chair Ford closed the public hearing.

Commissioner Kelly asked in what zoning classification pet grooming falls. Staff stated that there is no pet grooming classification. Staff discussed difficulty in finding the best category for different uses, without creating a new one each time. Staff further stated that the Municipal Code does not have a long and or varied list of uses and so staff does evaluate many uses and determine the appropriate zoning districts.

Commissioner Allen said she wasn't opposed to the use per se, but she did not think beauty salon/barber was the best fit. She asked about tattoo parlors or piercing businesses. Staff confirmed they were conditional uses.

Commissioner Allen asked what a category like "Personal Services" might include. Staff discussed day spas, nail salons and similar uses.

Commissioner Burt suggested allowing the Lice Salon as a conditional use. Staff acknowledged that could be done, if the Commission desired, and staff could bring back applicable conditions for consideration.

Chair Ford expressed concern about the City being too restrictive about telling businesses how to operate. Commissioner Burt said by suggesting a conditional use, she was hoping to find a solution and make it possible by having a safety valve if the issue is that it doesn't fit or conform to beauty salons and barber shops, etc. She thought it was a service that could work and might be helpful.

Commissioner Waggener asked about the process of creating a new category, ordinance, definition. Ms. Tasini said it would take at least 3 months, and the business would have to wait until the hearing processes are completed.

Chair Ford asked how other jurisdictions were placing the use, and staff reviewed the varied ways of handling it - either through a "personal services" category in some, and others were allowing it in all commercial districts. The Commission discussed the possibilities at length.

On motion by Sigrid Waggener, Commissioner, seconded by Paul Kelly, Commissioner, to approve creation of a new category, Personal Services, including Lice Removal Salon businesses, for the Zoning Code which requires a Draft Ordinance and definition be brought before the Planning Commission and City Council. Motion failed 2 - 5. Yes: Paul Kelly, Commissioner, Sigrid Waggener, Commissioner, No: Harriett Burt, Commissioner Rachael Ford, Commissioner Jeffrey Keller, Commissioner Kimberley Glover, Commissioner, Donna Allen, Commissioner, Absent: Jim Blair, Commissioner (Alternate).

On motion by Jeffrey Keller, Commissioner, seconded by Kimberley Glover, Commissioner, to determine that inclusion of Lice Removal Salons is within the classification for and are similar to Beauty and Barber shops and therefore permitted within Commercial Zoning Districts (NC, CC, SC). And Made a recommendation that Staff looks into adding Personal Services to the Commercial Zoning District. Motion passed 6 - 1. Yes: Harriett Burt, Commissioner Rachael Ford, Commissioner Jeffrey Keller, Commissioner Paul Kelly, Commissioner Sigrid Waggener, Commissioner, Kimberley Glover, Commissioner, No: Donna Allen, Commissioner, Absent: Jim Blair, Commissioner (Alternate).

Chair Ford and Staff reviewed the process for appealing to the City Council, within the next ten days.

Commissioner Burt noted that some neighboring businesses were not opposed to the concept of the Lice Removal Salon and urged those opposed to reconsider. Commissioner Allen agreed - she clarified she was not opposed to the use itself, simply to the finding that it is similar to beauty salons and barber shops.

COMMISSION ITEMS

The Commission discussed potential items that could be upcoming.

STAFF ITEMS - None.

COMMUNICATIONS

Chair Ford adjourned the meeting at 8:15 p.m. to the next regularly scheduled meeting, April 24, 2012.

Respectfully Submitted,

Approved by the Planning Commission
Chairperson

Transcribed by Mary Hougey

Rachael Ford

DAVID R. FISCHER, President
SOUTHPORT LAND AND COMMERCIAL COMPANY
P.O. BOX 1997
MARTINEZ, CA 94553
(925) 372-7798

CHARLENE WEST, Owner
CHAR'S FLOWER SHOPPE
516 MAIN STREET
MARTINEZ, CA 94553

ERNIE GUERRERO, Owner
LA TAPATIA
MEXICAN CUISINE
536 MAIN STREET
MARTINEZ, CA 94553
(925) 229-3866

PAT ENGLISH, Proprietor
Haute Stuff
521 MAIN STREET
MARTINEZ, CA 94553
(925) 229-0521

ANNE MOBLEY, Owner
White Rabbit Boutique
529 MAIN STREET
MARTINEZ, CA 94553
(925) 229-1900

March 23, 2012

City Clerk
City of Martinez
525 Henrietta Street
Martinez, CA 94553

Re: March 13, 2012 Decision of Planning Commission, Request
for a zoning determination as to the operation of Lice
Removal Salons within Commercial Zoning Districts

To whom it may concern:

The undersigned, representing Southport Land and Commercial
Company, Char's Flower Shoppe, La Tapatia Mexican Cuisine, Haute
Stuff and White Rabbit Boutique, ("appellants"), hereby appeal,
to the City Council, the Planning Commission's decision of March
13, 2012 with regard to the zoning determination of Head Lice
Removal Salons within Commercial Zoning Districts.

*C: City Mgr
Corey Simon
Ayoana H.*



BACKGROUND & INTRODUCTION

At its March 13th meeting the Planning Commission was faced with the task of determining how to deal with a new land use in Martinez: A Head Lice Removal Salon. City Staff recommended four alternatives:

- (1) Determine that Lice Removal Salons are within the classification for and are similar to Beauty and Barber shops and therefore permitted within Commercial Zoning Districts (NC, CC, SC).
- (2) Determine that the use is not consistent with any use in the Municipal Code and direct staff to draft an Ordinance to address this new use.
- (3) Find the proposed use to be consistent with another activity (not beauty or barber shops) that is either permitted or conditionally permitted.
- (4) Determine that Lice Removal Salons are not consistent with any existing use and should not be permitted within any Zoning District.

The Planning Commission chose Alternative #1, and decided that a Head Lice Removal Salon was the same as a Beauty Salon or Barber Shop.

Although City staff identified the above four alternatives, there may be a fifth: Find that a Head Lice Removal Salon is subject to a conditional use permit without finding it to be consistent with another activity.

As will be shown below, Appellants are advocating, in the order of preference, Alternative #2 (the creation of a new ordinance to address this new use), Alternative #3 (find it to be another activity, specifically, an exterminator use), Alternative #5 (conditional use permit), or, very reluctantly and as a last resort, Alternative #4, (total prohibition).

Appellants wish to make it clear that they are not advancing the position that the City of Martinez should prohibit Head Lice Removal Salons altogether. Appellants' position is that a separate ordinance should be drafted to regulate Head Lice Removal Salons within the City of Martinez, rather than classifying them as a type of Beauty Salon or Barber Shop.

Before detailing Appellant's positions, one point must be kept in mind, and that is the stated purposes of the zoning regulations in the Commercial Zoning Districts. Specifically, one those purposes is to allow businesses to "concentrate ... in a mutually beneficial relationship to each other." (Section 22.16.020 of the Martinez Municipal Code.) In other words, a determination of the pending issue should take into consideration the concentration of businesses already allowed in the District, (here, for example, restaurants and clothing stores). Therefore, any decision of the Council on the pending appeal should be made in accordance with a goal of fostering the above quoted purpose from the Martinez Municipal Code.

BASIS FOR APPEAL #1: A HEAD LICE REMOVAL SALON IS NOT A BEAUTY SALON NOR A BARBER SHOP.

A Head Lice Removal Salon is not the equivalent of a Beauty Salon nor a Barber Shop.

First, one cannot classify a Head Lice Removal Salon to be a Beauty Salon or a Barber Shop because Beauty Salons and Barber Shops are expressly prohibited, by state law, from serving patrons with a head lice infestation. (Title 16, Division 9, Article 12, Section 984 of the California Code of Regulations; see EXHIBIT attached hereto.) In other words, if State Law prohibits it, it can't be.

Second, the distinction is also evident when one analyzes why a customer goes to each type of business. When a customer patronizes a Beauty Salon or Barber Shop, they are seeking to beautify themselves. When one patronizes a Head Lice Removal Salon, they are seeking to exterminate communicable parasites on the body.

Third, another distinction lies in the fact that Beauty Salons and Barber Shops are regulated businesses. You have to have a license from the State of California to operate those businesses. In contrast, a Head Lice Removal Salon is not regulated by any agency. You can simply set-up shop one day and call yourself a head lice removal technician with no training, no rules for cleanliness, no rules to prevent the spread of head lice to others, etc.

The fact that Beauty Salons and Barber Shops, on the one hand, and Head Lice Removal Salons, on the other hand, both deal with hair is not enough to justify the Planning Commission's decision. If that logic were correct, tattoo parlors, tanning salons and dermatologists would all be treated the same because

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they all deal with skin. And, oil refineries, pipeline companies and gasoline stations would be treated the same because they all deal with gasoline and oil.

BASIS FOR APPEAL #2: IF A HEAD LICE REMOVAL SALON MUST BE PLACED IN AN EXISTING CATEGORY, IT IS CLOSEST TO AN EXTERMINATOR USE.

The Merriam-Webster dictionary defines "exterminate" as:

"to get rid of completely usually by killing off."

Although the proponents of the proposed Head Lice Removal Salon did not use the word "exterminate" in their paperwork filed with the Planning Commission, they did claim that their services "continue ... until the entire head is done and lice are no longer found." A rose by any other name is still a rose, and this is clearly an exterminator use.

Accordingly, the Council should find that a Head Lice Removal Salon is an "exterminator" use under the Martinez Municipal Code.

BASIS FOR APPEAL #3: THE PLANNING COMMISSION SHOULD HAVE DETERMINED THAT A HEAD LICE REMOVAL SALON REQUIRES A CONDITIONAL USE PERMIT.

Martinez Municipal Code section 22.40.010 deals with the purposes of Conditional Use permits. It states, in part:

"Because of their unusual characteristics, conditional uses require special consideration, so they may be located properly with respect to their effects on surrounding properties. In order to achieve these purposes, the Board of Adjustments is empowered to grant and to deny applications for use permits and to impose reasonable conditions upon the granting of use permits, subject to review by the Board of Appeals."

Appellants advocate that a Head Lice Removal Salon requires "special consideration, so they may be located properly with respect to their effects on surrounding properties."

For example, they should be required to be discrete, and not have offensive signage that will cause potential customers of nearby businesses to avoid the area. This is the "stigma" or "yuck" factor. Although that "stigma factor" or "yuck factor" is probably not justified in reality, it is a well established element of consumer sentiment. Consumers of certain goods and

services will avoid areas where such factors exist. Accordingly, a proper condition, tailored to address that issue, should be imposed upon any Head Lice Removal Salon that desires to open in close proximity of a business that could be adversely affected (such as a restaurant or clothing store).

Additionally, a condition should be imposed that requires a Head Lice Removal Salon to adhere to basic standards of cleanliness and safety. Although the proponents of the proposed business apparently showed, at the Planning Commission hearing, a video of the proper way to run such an enterprise, there is no way, absent a local regulation such as a condition in a permit, to ensure that the citizens of Martinez and nearby businesses will be protected. The business owners have offered nothing more than an unenforceable promise as to how they will conduct their business. If the business is run in the manner that was depicted in the video, that is great; however, without a condition, there is no guarantee that the proponents or their successors at some time in the future, will continue to adhere to good business practices and standards.

OTHER GROUND FOR APPEAL

Appellants reserve the right to raise other grounds for the appeal at the hearing on this matter.

THE SCOPE OF LOCAL REGULATION UNDER A SEPARATE ORDINANCE

If the Council decides that a separate ordinance should be drafted, this appeal is not the proper place to determine what the extent and scope of any local regulations should be. That issue will have to be left to future determination, at a public hearing after City staff has proposed an appropriate ordinance. That being said, City Staff may find it appropriate to regulate Head Lice Removal Salons in ways such as:

- **Location.** Perhaps not all zoning districts are appropriate locations for a Head Lice Removal Salon. Or, perhaps they need to be located a certain distance from businesses that will be adversely impacted by their presence. (Some jurisdictions do not allow stores selling pornography to be located within a certain distance of a school or park, and perhaps a Head Lice Removal Salon should not be located within a certain distance of a restaurant or a clothing store.)
- **Signage.** It may be found that Head Lice Removal Salons are a proper use in some sensitive locations, provided

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their on-site signage is discrete. For example, it may be inappropriate for a Head Lice Removal Salon to put up a big sign that says "GET YOUR HEAD LICE REMOVED HERE." If a restaurant were located in close proximity, that would be the consumer's equivalent of putting up a sign that said "DON'T EAT IN NEARBY RESTAURANTS." The only way to properly address such an issue is with a an ordinance tailored to the specific use, and/or a conditional use permit.

- **Operational Standards.** Since these businesses are totally unregulated, nothing but an unenforceable promise protects the public. Operational standards dealing with such things as cleanliness and safety should be addressed in any ordinance.

REQUESTED DECISION

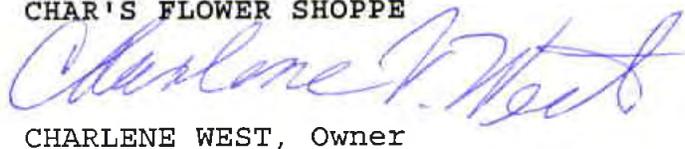
Appellants ask that Alternative #2 from the Planning Commission Staff Report (separate ordinance) be adopted. If the Council does not feel that such an ordinance can be drafted, then, Appellants ask that a Head Lice Salon be classified as an exterminator. If neither a separate ordinance nor classifying the business as an exterminator use is appropriate, then Appellants ask that it be found that the use requires a Conditional Use Permit. Reluctantly, if none of the above are proper, then Appellants will advocate Alternative #4 (total prohibition).

Sincerely,

SOUTHPORT LAND AND COMMERCIAL COMPANY

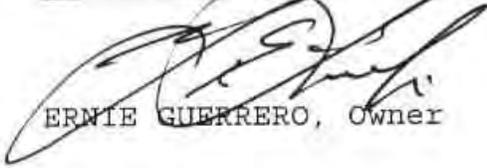

DAVID R. FISCHER, President

CHAR'S FLOWER SHOPPE

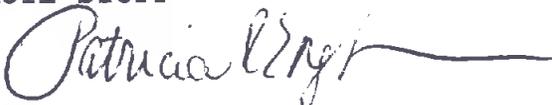

CHARLENE WEST, Owner

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LA TAPATIA MEXICAN CUISINE


ERNIE GUERRERO, Owner

HAUTE STUFF


PAT ENGLISH, Proprietor

WHITE RABBIT BOUTIQUE


ANNE MOBLEY, Owner

**Title 16, Division 9
Article 12 (Health and Safety)
of the
California Code of Regulations
(Board of Barbering and Cosmetology)**

<u>Section</u>	<u>Description</u>
978.	Minimum Equipment and Supplies
979.	Disinfecting Non-Electrical Instruments and Equipment
980.	Disinfecting Electrical Instruments
980.1.	Procedures for Cleaning and Disinfecting Whirlpool Footspas and Air-Jet Basins
980.2	Procedures for Cleaning and Disinfecting Pipe-less Footspas
980.3	Procedures for Cleaning and Disinfecting Non-Whirlpool Foot Basins or Tubs
981.	Instruments and Supplies
982.	Sterilizing Electrolysis Instruments
983.	Personal Cleanliness
984.	Disease and Infestation
985.	Neck Strips
986.	Neck Dusters and Brushes
987.	Towels
988.	Liquids, Creams, Powders and Cosmetics
989.	Prohibited Hazardous Substances/Use of Products
990.	Headrests and Treatment Tables
991.	Invasive Procedures
992.	Skin Peeling
993.	Prohibited Instruments
994.	Cleanliness and Repair
995.	Building Standards

978. Minimum Equipment and Supplies

(a) Establishments and schools shall have and maintain the following minimum equipment and supplies:

- (1) At least one covered waste receptacle for the disposal of hair.
- (2) Closed receptacles to hold all soiled towels, gowns and sheets in public areas.
- (3) Closed, clean cabinets to hold all clean towels.
- (4) Containers for disinfectant solution for instruments and equipment to be disinfected.
- (5) Each container shall contain sufficient disinfectant solution to allow for the total immersion of tools and instruments.
- (6) If electrolysis is performed, a steam or dry heat sterilizer that meets the requirements of Section 982.

(b) Establishments and schools shall have disinfectant solution mixed according to manufacturer's directions, available for use at all times.

(c) A manufacturer-labeled container for the disinfectant used must be available at all times in the establishment or school.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

979. Disinfecting Non-Electrical Instruments and Equipment

(a) Before use upon a patron, all non-electrical instruments shall be disinfected in the following manner:

- (1) Clean with soap or detergent and water.
- (2) Then totally immerse in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, used according to manufacturer's instructions.

(b) The disinfectant solutions specified in subdivision (a) shall:

- (1) Remain covered at all times.
- (2) Be changed at least once per week or whenever visibly cloudy or dirty.

(c) All instruments that have been used on a patron or soiled in any manner shall be placed in a properly labeled receptacle.

(d) All disinfected instruments shall be stored in a clean, covered place which is labeled as such.

(e) If instruments and equipment specified in this section are sterilized in accordance with the requirements outlined in Section 982, the requirements of this section will be deemed to have been met.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

980. Disinfecting Electrical Instruments

(a) Clippers, vibrators, and other electrical instruments shall be disinfected prior to each use by:

- (1) First removing all foreign matter; and
- (2) Disinfecting with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity used according to manufacturer's instructions.

(b) All disinfected electrical instruments, excluding curling irons and hot combs, shall be stored in a clean, covered place.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

980.1. Procedures for Cleaning and Disinfecting Whirlpool Footspas and Air-Jet Basins.

(a) As used in this section, "whirlpool footspa" or "spa" is defined as any basin using circulating water.

(b) An air-jet basin is defined as any basin using an air jet stream system to move water.

(c) After use upon each patron, each whirlpool footspa or air-jet basin shall be cleaned and disinfected in the following sequential manner:

- (1) All water shall be drained from the basin.
- (2) The inside walls of the basin shall be scrubbed and cleaned of all visible residue with a clean brush and liquid soap (labeled as such on soap product) and water.
- (3) The spa basin shall be rinsed with water.
- (4) The spa basin shall be refilled with clean water.
- (5) The water in the basin shall be circulated with the correct amount (read manufacturer label for mixing instructions) of the EPA-registered hospital liquid disinfectant that is labeled as a bactericide, fungicide and virucide, through the basin for at least 10 minutes.
- (6) The spa basin must be drained, rinsed, and wiped dry with a clean paper towel.

(7) Record this procedure in the pedicure-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.

(d) At the end of each day and after the last client, each whirlpool footspa or air-jet basin shall be cleaned and disinfected in the following sequential manner:

(1) The screen and any other removable parts shall be removed.

(2) Scrub all visible residue from the screen, inside walls of the basin, any other removable parts, and the area behind them with a clean brush and liquid soap and water.

(3) Reinsert the clean screen and any other removable parts.

(4) Fill the basin with warm water and detergent (labeled as such on detergent product) and circulate the detergent through the spa system for at least 10 minutes (follow manufacturer's instructions).

(5) Drain the detergent solution and rinse the basin.

(6) Refill the basin with clean water and circulate the correct amount (read the label for mixing instructions) of the EPA-registered Hospital liquid disinfectant which the label claims is a bactericide, fungicide, and virucide through the basin for at least 10 minutes.

(7) Drain, rinse, wipe the basin dry with a clean paper towel and allow basin to dry completely.

(8) Record this procedure in the pedicure-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done at the end of the day.

(e) At least once each week, after completing the procedures provided in subsection (d) (1 through 6) each whirlpool footspa and air-jet basin shall not be drained and the following sequential procedures shall be followed:

(1) Do not drain the disinfectant solution. The unit shall be turned off and the disinfecting solution shall be left undisturbed in the unit for 6 to 10 hours.

(2) After the disinfectant solution has been sitting between 6 to 10 hours, drain and rinse the basin with clean water.

(3) Refill the basin with clean water and flush the system.

(4) Record this procedure in the pedicure-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done weekly.

(f) The pedicure-cleaning log shall be made available upon request by either a patron or a board representative.

(g) A violation of this section may result in an administrative fine and/or disciplinary

action. Each footspa or air-jet basin not in compliance with this section may result in a separate violation.

NOTE: Authority cited: Section 7312, and 7406 Business and Professions Code.
Reference: Section 7312(e), Business and Professions Code.

980.2. Procedures for Cleaning and Disinfecting Pipe-less Footspas

(a) As used in this section, "Pipe-Less" footspa is defined as any unit with footplates, impellers, impeller assemblies and propellers.

(b) After use upon each patron, each Pipe-less footspa shall be cleaned and disinfected in the following sequential manner:

(1) All water shall be drained from the spa basin.

(2) Remove footplate, and any other removable components according to the manufacturer's instructions.

(3) Scrub all visible residue from the impeller, footplate, inside walls of the basin, and/or other components and the areas behind or under each with a clean brush and liquid soap (labeled as such on soap product) and water. Rinse with clean water.

(4) Reinsert the properly cleaned impeller, footplate, and/or other components.

(5) Refill the basin with clean water and circulate the correct amount (read the label for mixing instructions) of the EPA-registered hospital-liquid disinfectant which the label claims is a bactericide, fungicide, and virucide, through the basin for at least 10 minutes.

(6) Drain, rinse and wipe the basin dry with a clean paper towel.

(7) Record this procedure in the pedicure-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.

(c) At the end of every day and after performing the procedures provided in subsection (b) (1 through 7) and after the last client, each pipe-less footspa shall be cleaned and disinfected in the following sequential manner:

(1) Fill the basin with warm water and detergent (labeled as such on detergent product) and circulate the detergent through the spa system for at least 10 minutes (follow manufacturer's instructions).

(2) Drain the detergent solution and rinse the basin.

(3) Refill the basin with clean water and circulate the correct amount (read the label for mixing instructions) of the EPA-registered hospital-liquid disinfectant which the label claims is a bactericide, fungicide, and virucide, through the basin for at least 10 minutes.

(4) Drain, rinse and wipe the basin dry with a clean paper towel.

(5) Allow the basin to dry completely.

(6) Record this procedure in the pedicure-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done at the end of the day.

(d) At least once each week, after completing the procedures provided in subsection (c) (1 through 3), and the disinfectant solution in each pipe-less footspa shall not be drained and the following sequential procedures shall be followed:

(1) The unit shall be turned off and the disinfecting solution shall be left in the unit undisturbed for 6 to 10 hours.

(2) After the disinfectant solution has been sitting between 6 to 10 hours, rinse and wipe the basin dry with a clean paper towel.

(3) Record this procedure in the pedicure-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done weekly.

(e) The pedicure-cleaning log shall be made available upon request by either a patron or a board representative.

(f) A violation of this section may result in an administrative fine and/or disciplinary action. Each pipe-less footspa not in compliance with this section may result in a separate violation.

NOTE: Authority cited: Section 7312, and 7406 Business and Professions Code.
Reference: Section 7312(e), Business and Professions Code.

980.3. Procedures for Cleaning and Disinfecting Non-Whirlpool Foot Basins or Tubs

(a) As used in this section, "Non-Whirlpool Foot Basin" or "Tubs" are defined as any basin, tub, footbath, sink and bowl – and all non-electrical equipment that holds water for a client's feet during a pedicure service.

(b) After use upon each patron, each Non-Whirlpool Basin or Tub shall be cleaned and disinfected in the following sequential manner:

(1) All water shall be drained from the foot basin or tub.

(2) The inside surfaces of the foot basin or tub shall be scrubbed and cleaned of all visible residues with a clean brush and liquid soap (labeled as such on soap product) and water.

(3) The foot basin or tub shall be rinsed with clean water.

(4) Refill the foot basin or tub with clean water and the correct amount (read the label for mixing instructions) of the EPA-registered hospital-liquid disinfectant which the label claims is a bactericide, fungicide, and virucide. Leave the disinfecting solution in the foot basin or tub for at least 10 minutes.

(5) Drain, rinse and wipe the basin dry with a clean paper towel.

(6) Record this procedure in the pedicure-cleaning log. The log shall contain the date and time of each cleaning, initials of the person who completed the procedure, and shall indicate that the cleaning was done after a client.

(c) The pedicure-cleaning log shall be made available upon request by either a patron or a board representative.

(d) A violation of this section may result in an administrative fine and/or disciplinary action. Each non-whirlpool foot basin or tub not in compliance with this section may result in a separate violation.

NOTE: Authority cited: Section 7312, and 7406 Business and Professions Code.
Reference: Section 7312(e), Business and Professions Code.

981. Instruments and Supplies

(a) All instruments and supplies which come into direct contact with a patron and cannot be disinfected (for example, cotton pads, sponges, emery boards, and neck strips) shall be disposed of in a waste receptacle immediately after use.

(b) No person working or training in an establishment or school shall be permitted to carry any instrument or supplies in or on a garment or uniform while practicing any of the acts as defined in Section 7316 of the Business and Professions Code.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

982. Sterilizing Electrolysis Instruments

(a) Before use upon a patron in schools and establishments, each electrolysis needle or tweezers shall be first cleaned with detergent and water (which may include the use of ultrasonic equipment) and then be sterilized by one of the following methods:

(1) Steam sterilizer, registered and listed with the federal Food and Drug Administration, used according to manufacturer's instructions.

(2) Dry heat sterilizer, registered and listed with the federal Food and Drug Administration, used according to manufacturer's instructions.

(b) Sterilization equipment shall be checked weekly to ensure that it is reaching the temperature required by manufacturer's instructions.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

983. Personal Cleanliness

(a) The person and attire of a licensee serving a patron shall at all times be clean.

(b) Every licensee performing services shall thoroughly wash his or her hands with soap and water or any equally effective cleansing agent immediately before serving each patron.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

984. Disease and Infestation

(a) No establishment or school shall knowingly permit a person afflicted with an infection or parasitic infestation capable of being transmitted to a patron to serve patrons or train in the establishment or school.

(b) No establishment or school shall knowingly require or permit a licensee or student to work upon a person with an infection or parasitic infestation capable of being transmitted to the licensee or student.

(c) Infections or parasitic infestation capable of being transmitted between licensee or student and patron include, but are not limited to, the following:

- Cold, influenza or other respiratory illness accompanied by a fever, until 24 hours after resolution of the fever.
- Streptococcal pharyngitis ("Strep throat"), until 24 hours after treatment has been initiated, and 24 hours after resolution of fever.
- Purulent conjunctivitis ("pink eye"), until examined by a physician and approved for return to work.
- Pertussis ("whooping cough"), until five days of antibiotic therapy has been completed.
- Varicella ("chicken pox"), until the sixth day after onset of rash or sooner if all lesions have dried and crusted.
- Mumps, until nine days after onset of parotid gland swelling.
- Tuberculosis, until a physician or local health department authority states that the individual is noninfectious.
- Impetigo (bacterial skin infection), until 24 hours after treatment has begun.
- Pediculosis (head lice), until the morning after first treatment.
- Scabies ("crabs"), until after treatment has been completed.

(d) Blood-borne diseases, such as HIV/AIDS and hepatitis B (HBV), shall not be considered infectious or communicable diseases for the purpose of this section.

(e) No person working or training in an establishment or school shall massage any person upon a surface of the skin or scalp where such skin is inflamed, broken (e.g., abraded, cut) or where a skin infection or eruption is present.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

985. Neck Strips

A sanitary neck strip or towel shall be used to keep the protective covering from coming in direct contact with a patron's neck.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

986. Neck Dusters and Brushes

Neck dusters and all other brushes used in an establishment or school on a patron shall be maintained in a clean and sanitary condition.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(d), Business and Professions Code.

987. Towels

(a) After a towel has once been used it shall be deposited in a closed receptacle and not used until properly laundered and sanitized.

(b) Towels shall be laundered either by regular commercial laundering or by a noncommercial laundering process which includes immersion in water at least 140oF for not less than fifteen (15) minutes during the washing or rinsing operation.

(c) All clean towels shall be stored in closed cabinets.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

988. Liquids, Creams, Powders and Cosmetics

(a) All liquids, creams, and other cosmetic preparations shall be kept in clean and closed containers. Powders may be kept in clean shakers.

(b) All bottles and containers shall be distinctly and correctly labeled to disclose their contents. All bottles and containers containing poisonous substances shall be additionally and distinctly marked as such.

(c) When only a portion of a cosmetic preparation is to be used on a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

(d) Pencil cosmetics shall be sharpened before each use.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

989. Prohibited Hazardous Substances/Use of Products

No establishment or school shall have on the premises cosmetic products containing hazardous substances which have been banned by the U. S. Food and Drug Administration for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride. No product shall be used in a manner that is disapproved by the FDA.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

990. Headrests and Treatment Tables

(a) The headrest of chairs shall be covered with a clean towel or paper sheet for each patron.

(b) Shampoo trays and bowls must be cleansed with soap and water or other detergent after each shampoo, kept in good repair and in a sanitary condition at all times.

(c) Treatment tables must be covered with a clean sheet of examination paper for each patron.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

991. Invasive Procedures

(a) No licensee may perform any act which affects the structure or function of living tissue of the face or body. Any such act shall be considered an invasive procedure.

(b) Invasive procedures include, but are not limited to, the following:

(1) Application of electricity which contracts the muscle.

(2) Application of topical lotions, creams, or other substances which affect living tissue.

(3) Penetration of the skin by metal needles, except electrolysis needles.

(4) Abrasion of the skin below the non-living, epidermal layers.

(5) Removal of skin by means of a razor-edged instrument.

NOTE: Authority cited: Sections 7312, Business and Professions Code. Reference: Sections 7312(e), 7316, 7320, 7320.1, Business and Professions Code.

992. Skin Peeling

(a) Only the non-living, uppermost layers of facial skin, known as the epidermis, may, by any method or means, be removed, and then only for the purpose of beautification.

(b) Skin removal techniques and practices which affect the living layers of facial skin, known as the dermis, are prohibited and constitute the practice of medicine.

(c) Only commercially-available products for the removal of facial skin for the purpose of beautification may be used. Mixing or combining skin removal products is prohibited except as it is required by manufacturer instructions.

NOTE: Authority cited: Sections 7312, Business and Professions Code. Reference: Sections 7312(e), 7316, and 7320, Business and Professions Code.

993. Prohibited Instruments

(a) No establishment or school shall have on the premises any razor-edged or other device or tool which is designed to remove calluses.

(b) No establishment or school shall have on the premises any needle-like instrument which is used for the purpose of extracting skin blemishes and other similar procedures.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312(e), 7320, and 7320.1, Business and Professions Code.

994. Cleanliness and Repair

(a) Establishments and schools shall keep the floors, walls, woodwork, ceilings, furniture, furnishing, and fixtures clean and in good repair.

(b) No establishment or school shall permit an accumulation of waste or refuse.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Section 7312(e), Business and Professions Code.

995. Building Standards

(a) Establishments and schools shall have a system of adequate ventilation in accordance with Part 2, Section 1203, Title 24, California Code of Regulations.

(b) A supply of hot and cold running water shall be provided in accordance with Part 5, Section 601.5.1, Title 24, California Code of Regulations.

(c) Establishments and schools shall supply potable drinking water in accordance with Part 5, Section 601.5.3, Title 24, California Code of Regulations.

(d) Establishments and schools shall provide hand washing facilities in accordance with Part 5, Section 601.5.2, Title 24, California Code of Regulations.

(e) Establishments and schools shall provide public toilet rooms in accordance with Part 5, Sections 412.7, 412.8, and Table No. 4-1, Title 24, California Code of Regulations.

NOTE: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7312(e) and 7352, Business and Professions Code.