



LICENSING COMMITTEE

Monday 15 July 2019

SKIN PIERCING BYELAWS

EXECUTIVE SUMMARY

1. The Council is responsible for registering businesses that carry out certain skin piercing activities such as acupuncture, tattooing, electrolysis and ear piercing and inspect these businesses to ensure that the premises and practices are hygienic and there are controls in place to prevent the risk of blood-borne infection.
2. Following the creation of East Suffolk Council we have two sets of byelaws which need to be consolidated and brought in line with national model byelaws produced by the Department of Health.
3. This report seeks Committee approval to recommend that Council:
 - i) agree to make a consolidated set of byelaws for the regulation of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis in East Suffolk for submission to the Secretary of State for Health for confirmation;
 - ii) agree that the current byelaws relating to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis and hairdressing be revoked on confirmation of new consolidated byelaws.

Is the report Open or Exempt?	Open

Wards Affected:	All
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Cabinet Member:	Cllr Mary Rudd Cabinet Member for Community Health
Supporting Officer:	Phil Gore Head of Environmental Services & Port Health 01394 444286 Phil.gore@eastsuffolk.gov.uk

1 INTRODUCTION

- 1.1 The Council is required under the Local Government (Miscellaneous Provisions) Act 1982, Part VIII to register business and individuals who provide certain skin piercing services such as tattooing, electrolysis and ear piercing. On receipt of an application for registration of a business and/or an individual an inspection is carried out to ensure that individuals and the premises they operate from are hygienic and exercise appropriate controls to prevent the spread of blood-borne infections.
- 1.2 Byelaws provide defined roles and responsibilities for operators and proprietors at relevant businesses. They also define minimum hygiene standards for registered premises and for persons carrying out relevant practices. Clearly defined standards provided by byelaws help businesses to provide and maintain premises and practices that are safe, hygienic and minimise risk of potentially serious infection to customers. Of particular concern are blood-borne viral infections including HIV and Hepatitis C.
- 1.3 In the absence of byelaws, the Council would have to rely on the goalsetting aims of the Health and Safety at Work etc Act 1974 to regulate skin piercing businesses. This Act places general duties on employers etc. to ensure the health, safety and welfare of those affected by their undertaking allowing an open approach to how this is done. This approach is not compatible with the strict hygiene standards expected of skin piercing businesses to prevent the risk of infection.

2 ADOPTING NEW CONSOLIDATED BYELAWS

- 2.1 A prescribed procedure for adoption of byelaws is specified in section 236 of the Local Government Act 1972 as follows:
 - i) The Council makes the byelaws under common seal;
 - ii) An advert is placed in the press stating that the Council intends to apply for confirmation of the byelaws, and a copy of the byelaws is to be deposited at East Suffolk Council's offices and made available for public inspection at reasonable hours;
 - iii) Consultation with interested parties also takes place;
 - iv) After the expiry of the notice period an application is made to the Secretary of State for Health for confirmation of the byelaws;
 - v) If the byelaws are confirmed, the Secretary of State for Health will give the date for the new byelaws to come into force, or alternatively the byelaws will come into force one month after confirmation.

3 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?

- 3.1 This proposal supports the Council's key theme of community health, enabling people to take responsibility for their own mental and physical health and well-being, helping them to live active and healthy lives, while remaining safe within their homes and communities.
- 3.2 New consolidated byelaws covering skin piercing activities across the district will ensure a common standard is applied and public health is protected.

4 FINANCIAL AND GOVERNANCE IMPLICATIONS

- 4.1 A registration fee for skin piercing practitioners and premises allows the Council to recover the cost of registration and the initial inspection. Fees are reviewed by the Licensing Committee and set annually. The criteria for registration are set out in the Local Government (Miscellaneous Provisions) Act 1982 and these criteria are not changed by the consolidation of the byelaws. There are no additional financial implications for the Council from the recommendation in this report and the financial implications for businesses that will need to comply with the new byelaws is considered to be very small as most, if not all, meet the standard being proposed.
- 4.2 The results of the consultation will enable a more informed assessment of the impact on businesses.

5 OTHER KEY ISSUES

- 5.1 This report has been prepared having taken into account the results of an Equality Impact Assessment. No significant issues have been identified.

6 CONSULTATION

- 6.1 The Council's Legal Team has been consulted on the draft byelaws and, subject to Committee approval, a wider consultation with businesses affected by the proposed change will take place the results of which will be reported to Council.

7 OTHER OPTIONS CONSIDERED

- 7.1 The option of retaining the two existing standards has been considered but ruled out as being inequitable, confusing and not setting a suitable standard for the hygiene of skin piercing operations.

8 REASON FOR RECOMMENDATIONS

- 8.1 To ensure that the Council has a single set of clear and up to date byelaws covering skin piercing activities within the district.

RECOMMENDATIONS

That the Licensing Committee agrees to recommend to Full Council:

- 1. That it approves the adoption of the byelaws set out in Appendix A of this report;
- 2. That it authorises the Head of Environmental Services and Port Health to carry out the necessary procedure in relation to the creation of new byelaws and to apply to the Secretary of State for confirmation;
- 3. That it authorises the affixing of the common seal of the Council to the new byelaws;

4. That it approves the revocation of the existing byelaws referred to at paragraphs 6 to 10 of the byelaws set out in Appendix A of this report, upon the coming into force of the new byelaws.

APPENDICES

Appendix A	Draft Skin Piercing Byelaws
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BACKGROUND PAPERS

Please note that copies of background papers have not been published on the Council's website www.eastsuffolk.gov.uk but copies of the background papers listed below are available for public inspection free of charge by contacting the relevant Council Department.

Date	Type	Available From
13 Dec 2007	Acupuncture, Tattooing & Semi-permanent Skin Colouring, Cosmetic Piercing and Electrolysis (Waveney District Council)	https://www.eastsuffolk.gov.uk/business/licensing/other-licences/registration-of-skin-piercing-businesses/
13 March 1984	Ear Piercing & Electrolysis Byelaws (Suffolk Coastal District Council)	https://www.eastsuffolk.gov.uk/business/licensing/other-licences/registration-of-skin-piercing-businesses/
13 March 1984	Tattooing Byelaws (Suffolk Coastal District Council)	https://www.eastsuffolk.gov.uk/business/licensing/other-licences/registration-of-skin-piercing-businesses/
7 Feb 1996	Hairdressers and Barbers Byelaws (Waveney District Council)	phil.gore@eastsuffolk.gov.uk
27 Aug 1980	Hairdressers and Barbers Byelaws (Suffolk Coastal District Council)	https://www.eastsuffolk.gov.uk/business/licensing/other-licences/registration-of-skin-piercing-businesses/

EAST SUFFOLK COUNCIL

Acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis

Byelaws for the purposes of securing the cleanliness of premises registered under sections 14(2) or 15(2) or both of the Local Government (Miscellaneous Provisions) Act 1982 and fittings in such premises and of persons registered under sections 14(1) or 15(1) or both of the Act and persons assisting them and of securing the cleansing and, so far as appropriate, sterilization of instruments, materials and equipment used in connection with the practice of acupuncture or the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis, or any two or more of such practice and businesses made by East Suffolk Council in pursuance of sections 14(7) or 15(7) or both of the Act.

Interpretation

1.—(1) In these byelaws, unless the context otherwise requires—

“The Act” means the Local Government (Miscellaneous Provisions) Act 1982;

“client” means any person undergoing treatment;

“hygienic piercing instrument” means an instrument such that any part of the instrument that touches a client is made for use in respect of a single client, is sterile, disposable and is fitted with piercing jewellery supplied in packaging that indicates the part of the body for which it is intended, and that is designed to pierce either—

- (a) the lobe or upper flat cartilage of the ear, or
- (b) either side of the nose in the mid-crease area above the nostril;

“operator” means any person giving treatment, including a proprietor;

“premises” means any premises registered under sections 14(2) or 15(2) of the Act;

“proprietor” means any person registered under sections 14(1) or 15(1) of the Act;

“treatment” means any operation in effecting acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis;

“the treatment area” means any part of premises where treatment is given to clients.

(2) The Interpretation Act 1978 shall apply for the interpretation of these byelaws as it applies for the interpretation of an Act of Parliament.

2.—(1) For the purpose of securing the cleanliness of premises and fittings in such premises a proprietor shall ensure that—

- (a) any internal wall, door, window, partition, floor, floor covering or ceiling is kept clean and in such good repair as to enable it to be cleaned effectively;
- (b) any waste material, or other litter arising from treatment is handled and disposed of in accordance with relevant legislation and guidance as advised by the local authority;
- (c) any needle used in treatment is single-use and disposable, as far as is practicable, or otherwise is sterilized for each treatment, is suitably stored after treatment and is disposed of in accordance with relevant legislation and guidance as advised by the local authority;
- (d) any furniture or fitting in premises is kept clean and in such good repair as to enable it to be cleaned effectively;
- (e) any table, couch or seat used by a client in the treatment area which may become contaminated with blood or other body fluids, and any surface on which a needle, instrument or equipment is placed immediately prior to treatment has a smooth impervious surface which is disinfected—
 - (i) immediately after use; and
 - (ii) at the end of each working day.

- (f) any table, couch, or other item of furniture used in treatment is covered by a disposable paper sheet which is changed for each client;
- (g) no eating, drinking, or smoking is permitted in the treatment area and a notice or notices reading “No Smoking”, and “No Eating or Drinking” is prominently displayed there.

(2)(a) Subject to sub-paragraph (b), where premises are registered under section 14(2) (acupuncture) or 15(2) (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the 1982 Act, a proprietor shall ensure that treatment is given in a treatment area used solely for giving treatment;

(b) Sub-paragraph (a) shall not apply if the only treatment to be given in such premises is ear-piercing or nose-piercing using a hygienic piercing instrument.

(3)(a) Subject to sub-paragraph (b), where premises are registered under section 15(2) (tattooing, semi-permanent skin-colouring and cosmetic piercing) of the 1982 Act, a proprietor shall ensure that the floor of the treatment area is provided with a smooth impervious surface;

(b) Sub-paragraph (a) shall not apply if the only treatment to be given in such premises is ear-piercing or nose-piercing using a hygienic piercing instrument.

3.—(1) For the purpose of securing the cleansing and so far as is appropriate, the sterilization of needles, instruments, jewellery, materials and equipment used in connection with treatment—

(a) an operator shall ensure that—

- (i) any gown, wrap or other protective clothing, paper or other covering, towel, cloth or other such article used in treatment—
 - (aa) is clean and in good repair and, so far as is appropriate, is sterile;
 - (bb) has not previously been used in connection with another client unless it consists of a material which can be and has been adequately cleansed and, so far as is appropriate, sterilized.
- (ii) any needle, metal instrument, or other instrument or equipment used in treatment or for handling such needle, instrument or equipment and any part of a hygienic piercing instrument that touches a client is sterile;
- (iii) any jewellery used for cosmetic piercing by means of a hygienic piercing instrument is sterile;
- (iv) any dye used for tattooing or semi-permanent skin-colouring is sterile and inert;
- (v) any container used to hold dye for tattooing or semi-permanent skin-colouring is either disposed of at the end of each treatment or is cleaned and sterilized before re-use.

(b) a proprietor shall provide—

- (i) adequate facilities and equipment for—
 - (aa) cleansing; and
 - (bb) sterilization, unless only pre-sterilized items are used.
- (ii) sufficient and safe gas points and electrical socket outlets;
- (iii) an adequate and constant supply of clean hot and cold water on the premises;
- (iv) clean and suitable storage which enables contamination of the articles, needles, instruments and equipment mentioned in paragraphs 3(1)(a)(i), (ii), (iii), (iv) and (v) to be avoided as far as possible.

4.—(1) For the purpose of securing the cleanliness of operators, a proprietor—

(a) shall ensure that an operator—

- (i) keeps his hands and nails clean and his nails short;
- (ii) keeps any open lesion on an exposed part of the body effectively covered by an impermeable dressing;
- (iii) wears disposable examination gloves that have not previously been used with another client, unless giving acupuncture otherwise than in the circumstances described in paragraph 4(3);
- (iv) wears a gown, wrap or protective clothing that is clean and washable, or alternatively a disposable covering that has not previously been used in connection with another client;
- (v) does not smoke or consume food or drink in the treatment area; and

(b) shall provide—

- (i) suitable and sufficient washing facilities appropriately located for the sole use of operators, including an adequate and constant supply of clean hot and cold water, soap or detergent; and
- (ii) suitable and sufficient sanitary accommodation for operators.

(2) Where an operator carries out treatment using only a hygienic piercing instrument and a proprietor provides either a hand hygienic gel or liquid cleaner, the washing facilities that the proprietor provides need not be for the sole use of the operator.

(3) Where an operator gives acupuncture a proprietor shall ensure that the operator wears disposable examination gloves that have not previously been used with another client if—

- (a) the client is bleeding or has an open lesion on an exposed part of his body; or
- (b) the client is known to be infected with a blood-borne virus; or
- (c) the operator has an open lesion on his hand; or
- (d) the operator is handling items that may be contaminated with blood or other body fluids.

5. A person registered in accordance with sections 14 (acupuncture) or 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the Act who visits people at their request to give them treatment should observe the requirements relating to an operator in paragraphs 3(1)(a) and 4(1)(a).

6. The byelaws relating to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis that were made by Waveney District Council on the *13 December 2007* and were confirmed by the Secretary of State for Social Services on 11 April 2008 are revoked.

7. The byelaws relating to ear piercing and electrolysis that were made by Suffolk Coastal District Council on the 13 March 1984 and were confirmed by the Secretary of State for Social Services on 25 July 1984 are revoked.

8. The byelaws relating to tattooing that were made by Suffolk Coastal District Council on the 13 March 1984 and were confirmed by the Secretary of State for Social Services on 25 July 1984 are revoked.

9. The byelaws relating to Hairdressers and Barbers that were made by Suffolk Coastal District Council on 27 August 1980 and were confirmed by the Secretary for State for Environment on 20 October 1980 are revoked.

10. The byelaws relating to Hairdressers and Barbers that were made by Waveney District Council on 7 February 1996 and were confirmed by the Secretary for State for Environment on 12 April 1996 are revoked.

COUNCIL’S SIGNATURE

COUNCIL’S SEAL

The foregoing byelaws are hereby confirmed by the Secretary of State for Health
on _____ and shall come into operation on _____

Member of the Senior Civil Service
Department of Health

NOTE – THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

Proprietors shall take all reasonable steps to ensure compliance with these byelaws by persons working on premises. Section 16(9) of the Local Government (Miscellaneous Provisions) Act 1982 provides that a registered person shall cause to be prominently displayed on the premises a copy of these byelaws and a copy of any certificate of registration issued to him under Part VIII of the Act. A person who contravenes section 16(9) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale (see section 16(10)).

Section 16 of the Local Government (Miscellaneous Provisions) Act 1982 also provides that any person who contravenes these byelaws shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. If a person registered under Part VIII of the Act is found guilty of contravening these byelaws the Court may, instead of or in addition to imposing a fine, order the suspension or cancellation of the person's registration. A court which orders the suspension of or cancellation of a person's registration may also order the suspension or cancellation of the registration of the premises in which the offence was committed if such premises are occupied by the person found guilty of the offence. It shall be a defence for the person charged under the relevant sub-sections of section 16 to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

Nothing in these byelaws extends to the practice of acupuncture, or the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis by or under the supervision of a person who is registered as a medical practitioner, or to premises in which the practice of acupuncture, or business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis is carried out by or under the supervision of such a person.

Nothing in these byelaws extends to the practice of acupuncture by or under the supervision of a person who is registered as a dentist, or to premises in which the practice of acupuncture is carried out by or under the supervision of such a person.

The legislative provisions relevant to acupuncture are those in section 14. The provisions relevant to treatment other than acupuncture are in section 15.

The key differences in the application of requirements in respect of the various treatments are as follows:

The references in the introductory text to provisions of section 14 (acupuncture) of the Local Government (Miscellaneous Provisions) Act 1982 only apply to acupuncture.

The references in the introductory text to provisions of section 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the Local Government (Miscellaneous Provisions) Act 1982 do not apply to acupuncture.

The references in paragraph 1(1) in the definition of "premises" to provisions of section 14 (acupuncture) only apply to acupuncture.

The references in paragraph 1(1) in the definition of "premises" to provisions of section 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) do not apply to acupuncture.

The requirement in paragraph 2(2) that treatment is given in a treatment area used solely for giving treatment applies to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis but not to ear-piercing or nose-piercing using a hygienic piercing instrument.

The requirement in paragraph 2(3) that the floor of the treatment area be provided with a smooth impervious surface applies to tattooing, semi-permanent skin-colouring and cosmetic piercing but not to acupuncture or electrolysis or ear-piercing or nose-piercing using a hygienic piercing instrument.

The requirements relating to dye or a container used to hold dye used for treatment in paragraphs 3(1) (a) (iv) and (v) apply to tattooing and semi-permanent skin-colouring.

The requirement in paragraph 4(1)(a)(iii) that an operator wears disposable examination gloves that have not previously been used with another client does not apply to acupuncture otherwise than in the circumstances described in paragraph 4(3).

The provisions of paragraph 4(2) in relation to washing facilities apply to cosmetic piercing using only a hygienic piercing instrument.

The exception whereby the byelaws do not apply to treatment carried out by or under the supervision of a dentist applies only to acupuncture (see section 14(8) of the Act).