



PACIFIC LEGAL FOUNDATION

September 9, 2021

City of Redding City Council
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Sent via Email and First Class Mail

Re: City of Redding Restriction on Tattoo Studios in Downtown Area

Dear Members of the Redding City Council:

We are attorneys with Pacific Legal Foundation, a public interest legal organization that fights for individual liberty, economic opportunity, and freedom of speech for all Americans.

We write this letter on behalf of Ms. Delia Fields, the co-owner of Velvet Orange Bodycraft. Velvet Orange is a body art studio located at 1272 Oregon Street, Redding, California 96001. After losing everything in the 2018 Camp Fire in Paradise, Ms. Fields relocated to Redding to rebuild her life. At first, she worked full-time at a local restaurant while apprenticing for a well-known local tattoo artist. Upon completing her apprenticeship, she and a respected local body piercer decided to combine their talents and open their own woman-owned, appointment-only body art studio in downtown Redding. Unfortunately, rather than seeing her diverse new business welcomed into the community, Ms. Fields ran into a legal roadblock that threatens her livelihood.

Earlier this year, Ms. Fields and Velvet Orange were denied a Body Art Facility Permit for tattooing by the Shasta County Environmental Health Division of the Department of Resource Management due to the City of Redding's Downtown Redding Specific Plan Update of 2018. According to Table 6-1 n.4 of that plan, no personal services businesses that primarily perform tattooing are permitted

within the downtown area as delineated by the Specific Plan. Velvet Orange is located one block within the northwest corner of the specified downtown area.

As detailed below, the Specific Plan’s restriction on tattooing—and the County’s enforcement of that restriction by denying Ms. Fields a permit to tattoo at her downtown business—violates the First Amendment to the United States Constitution. Therefore, we request that the City of Redding amend the Specific Plan to remove the restriction on tattooing. By separate letter, we are also requesting that the Shasta County Environmental Health Division issue Ms. Fields and Velvet Orange a revised permit authorizing tattooing, consistent with the First Amendment.

Municipal Bans on Tattooing Violate the First Amendment

The United States Court of Appeals for the Ninth Circuit has held that tattooing, as well as the business of tattooing, is purely expressive activity fully protected by the First Amendment, and that a total ban on such activity is not a reasonable “time, place, or manner” restriction. *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1059–60, 1065 (9th Cir. 2010). In that case, the Ninth Circuit held that an ordinance banning all tattoo studios within the City of Hermosa Beach was not narrowly tailored to serve the city’s stated health and safety interests, and was unconstitutional as a result. *Id.* at 1064–65.

Subsequent to *Anderson*, two other California tattoo artists successfully obtained preliminary injunctions against municipal ordinances restricting their ability to open tattoo shops.

In *Yvon v. City of Oceanside*, a tattoo artist challenged city ordinances requiring a conditional use permit for tattoo businesses, and a buffer between tattoo studios and other specified properties. 202 F. Supp. 3d 1147, 1153 (S.D. Cal. 2016). In defending the ordinances, the city articulated its interest in establishing the buffer zone as limiting “harmful secondary effects” stemming from “regulated uses” in the city. *Id.* at 1155. The court considered those defenses and noted that the city must produce “any evidence that is reasonably believed to be relevant for demonstrating a connection between speech and a substantial, independent

government interest.” *Id.* at 1156–57 (quoting *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438 (2002) (O’Connor, J., plurality) (internal quotation omitted). The court held that the city failed to produce such evidence because it relied on post-enactment evidence, and because the evidence did not address any secondary effects attributable to tattooing. *Yvon*, 202 F. Supp. 3d at 1156–57.

Similarly, in *Weaver v. City of Montebello*, a city ordinance required tattoo studios be at least 1,000 feet from any “sensitive use” establishment like a school. 370 F. Supp. 3d 1130, 1133 (C.D. Cal. 2019). As justification, the city claimed that the buffer “furthers the public health, safety, and general welfare of the community,” and “is necessary and appropriate to ensure body art establishments are operated in a manner that is compatible with and not detrimental to other land uses in the vicinity.” *Id.* at 1137. However, the court held those rationales insufficient because they did “not explain why a tattoo studio’s presence outside the [permitted areas] would harm the ‘public health, safety, or welfare of the community’ or why a tattoo studio, operated responsibly, would be incompatible or detrimental to other neighboring land uses.” *Id.* at 1138.

The United States Court of Appeals for the Eleventh Circuit also recently considered a ban on new tattoo studios. In *Buehrle v. City of Key West*, new tattoo studios in the historic district of Key West, Florida, were banned on the grounds that allowing additional tattoo studios “to operate in the historic district would adversely impact the ‘character and fabric’ of the district and thus the tourism that the district attracts.” 813 F.3d 973, 978 (11th Cir. 2015). The court held that the city failed to adequately support those interests with sufficient pre-enactment evidence and declared the restriction unconstitutional. *Id.* at 978–79.

The Downtown Specific Plan Is Unlikely To Survive Judicial Scrutiny

We are unaware of any rationale the City of Redding has offered to justify its prohibition on new tattoo studios in the downtown area. With that in mind, because Shasta County grants permits for tattooing only after a health inspection, the City will not succeed in defending its prohibition by pointing to

the health and safety concerns raised in the *Anderson* case noted above. *See* 621 F.3d at 1065 (that Los Angeles County did not have sufficient resources to inspect and monitor all 850-plus tattoo artists in the County was an inadequate reason for Hermosa Beach to ban new tattoo studios). Likewise, the City cannot rely on “character and fabric” of the community grounds like those raised in *Buehrle*, or the prevention of harmful secondary effects as in the *Yvon* case, because the City has not produced sufficient evidence to support either interest.

Here, like in *Buehrle*, there is already an existing tattoo studio in the downtown area (Nathan’s Anthems), as well as one other studio across the street from the border for the downtown zone and a block from Velvet Orange (Splendacious Tattoo). We are unaware of any evidence of Nathan’s Anthems creating problems that led the City to limit additional tattoo studios from opening in the downtown area, nor are we aware of any evidence that the approximately ten tattoo studios in Redding generally create health and safety problems or tear at the “character and fabric” of the community. Indeed, the Downtown Specific Plan only mentions tattoo shops in a single footnote, without any explanation as to the rationale for the ban. The City’s zoning ordinance is itself devoid of any mention of tattooing or tattoo studios. Thus, we are unaware of any pre-enactment evidence supporting any legitimate rationales for limiting tattoo studios. As a result, a court is likely to declare the restriction unconstitutional and enjoin its enforcement.

Accordingly, we request that the Redding City Council take immediate action to amend the Downtown Redding Specific Plan Update of 2018 to remove the restriction on personal services businesses that primarily perform tattooing. Further, we have requested that the Shasta County Environmental Health Division issue Ms. Fields and Velvet Orange a revised Body Art Facility Permit authorizing her to tattoo in addition to her current authorization for piercing. If the City and County insist on continuing to enforce the restrictions on new tattoo studios in the downtown area, then we will be required to take further action to secure Ms. Fields’ right to speak and practice her chosen calling in her new hometown.

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We request a formal response to this letter by October 15, 2021. Responses can be directed to us at Pacific Legal Foundation, 930 G Street, Sacramento, California 95814. We can also be reached by phone at 916-419-7111, or by email at ctrotter@pacificlegal.org and jmanley@pacificlegal.org.

Sincerely,



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Attorney



JAMES M. MANLEY
Attorney

cc: Redding City Attorney Barry E. DeWalt, attorney@cityofredding.org
Director Jim Whittle, Shasta County Department of Resource Management,
Environmental Health Division