THE CITY OF WINNIPEG

BY-LAW NO. 40/2005

A By-law of The City of Winnipeg to regulate Body Modification.

WHEREAS Council has determined that body modification may be a health hazard and that it is necessary to protect the safety, health and well-being of persons;

AND WHEREAS *The City of Winnipeg Charter* S.M. 2002 c. 39 authorizes Council to enact by-laws respecting the safety, health and well-being of persons;

NOW THEREFORE The City of Winnipeg in Council assembled enacts as follows:

Title

1. This By-law may be referred to as the "Body Modification By-law".

Definitions

2. In this by-law

"Aftercare" means the minimum type of information specified in Appendix "A" to be given and explained to a client following the body modification to promote healing.

"Antiseptic" means an agent that destroys disease-causing microorganisms on human skin or mucosa.

"Autoclave" means a sterilizing apparatus using superheated steam under high pressure.

"Body Modification" means the practice of physical body adornment by body piercing or tattooing including scarification and the insertion of implants but excluding piercing of the ear.

"Body Modification Establishment" means any place or premise in which body modifications are performed.

"Body Modification Technician" means any person licensed to conduct or practice body modification at a body modification establishment.

"Body Piercing" means puncturing or penetration of the skin or mucosa of a person and the insertion of jewellery or other adornment in the opening.

"Cleaning & Sterilizing Room" means a room in a body modification establishment that is used exclusively for the cleaning, packaging and sterilizing of equipment.

"Communicable Disease" means an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly or indirectly.

"Easily cleanable" means surfaces that are readily accessible and made of such material and finish that residue may be completely removed by normal cleaning methods.

"Equipment" means all machinery, tools, fixtures, devices and implements which are not included in the definition of "Instruments"

"Hand Sink" means a basin equipped with hot and cold running water under pressure and used solely for washing hands, arms, or other portions of the body.

"Implants" means any foreign object inserted completely under the skin.

"Insanitary Condition" means a condition or circumstance:

(a) that is offensive, or
(b) that is or may be injurious to health, or
(c) that contaminates or pollutes or may contaminate or pollute food, air or water, or
(d) that may render food, air or water injurious to the health of any person and includes a nuisance, or
(e) that is or may be a substantial or imminent danger or hazard to public health.

"Instruments" means hand pieces, needles, needle bars and other devices that may come in contact with skin or mucosa or may be exposed to body fluids during a body modification and includes any jewellery or other adornment that is inserted.

"License" means a license issued under the City of Winnipeg License By-law to operate a body modification establishment or perform a body modification as the context requires.

"Operator" means any person who controls, operates, manages or who is responsible for compliance with this by-law, whether actually performing body modification activities or not and includes a person in charge.

"Person" includes an individual, partnership, corporation, firm, association, operator, owner or person in charge.

"Person in Charge" means the operator or the individual present in a body modification establishment who is the apparent supervisor or owner of the body modification establishment and if no individual is the apparent supervisor, then any employee present shall be conclusively deemed to be the person in charge.

"Premises" means any building or other structure, or portion thereof, used as a body modification establishment, and includes the walls, floor, ceiling, furnishings and any surface used in connection with body modification.

"Public Health Inspector" means a Public Health Inspector appointed under *The Public Health Act* or *The Department of Health Act.*

"Reception Area" means the public space for receiving clients or other persons and which is physically separate from any other area of the body modification establishment by a partition of substantial construction.

"Sanitization" means the use of heat and/or chemicals to reduce the number of micro-organisms on cleaned surfaces and equipment to a level whereby the number of organisms does not cause infection.

"Scarification" means the practice of cutting, abrading or burning the skin in order to bring about permanent scarring and includes branding and permanently marking the skin without the use of pigments.

"Sharps" means needles, syringes, scalpel or razor blades and glass.

"Sharps Container" has the same meaning as in the Biomedical Waste Sharps By-law as amended from time to time.

"Single Use" means products or items that are used once on a client and are disposed of after use including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, needles, scalpel blades, stencils, ink cups and protective gloves.

"Sterilization" means autoclaving in accordance with the manufacturers' instructions so as to ensure that all micro organisms are destroyed.

"Tattooing" means any method of placing ink or other pigment into or under the skin or mucosa resulting in permanent coloration of the skin or mucosa.

"Work Station" means the area(s) of the body modification establishment used for performing body modification on a client.

Prohibition

3. (1) No person may operate a body modification establishment, or perform a body modification, except in compliance with the provisions of this by-law.

(2) No body modification establishment or any person performing a body modification may insert any implant or perform any scarification on any person.

Licensing

4. (1) (a) No person may commence the operation of a body modification establishment without obtaining a permit from the Public Health Inspector and without complying with the provisions of The City of Winnipeg License By-law as amended from time to time;

(b) Prior to issuance of a permit, the Public Health Inspector must inspect the body modification establishment and determine compliance with this By-law;

(c) No person may transfer or assign a permit to another person;

(d) The permit must be renewed annually and may be suspended or withheld by the Public Health Inspector where any provision of this By-law is found to have been violated;

(e) The permit must be posted in a conspicuous location within the body modification establishment.

(2) (a) No person may perform body modification or permit any person to perform a body modification, without obtaining a license under, and complying with the provisions of, The City of Winnipeg License By-law;

(b) Any license or permit must be posted in a conspicuous location within the body modification establishment.

Premises

5. (1) Every body modification establishment must:

(a) be located in a building or portion thereof and not be constructed, altered, converted or extensively remodelled except in accordance with plans and specifications previously approved by a Public Health Inspector. The plans and specifications must indicate the proposed layout, arrangement, mechanical plans and construction materials to be used, and the type and model of proposed equipment and facilities;

(b) be entirely separated by solid partitions from any area used for living, dining or sleeping purposes;

(c) be entirely separated by solid partitions from any business, eating or drinking place or establishment;

(d) have a reception area;

(e) have work station(s) in which all body modification shall be performed;

(f) have at all times a constant and adequate supply of hot and cold water and all plumbing, drainage and sewerage constructed and maintained in accordance with the Manitoba Building Code as amended from time to time;

(g) have adequate toilet facilities in accordance with the Manitoba Building Code as amended from time to time and shall also provide a hand sink, soap, soap dispenser, disposable towels and a dispenser for the towels;

(h) be provided with an artificial light source equivalent to at least 50 foot candles 3 feet off the floor, except that at least 100 foot candles shall be provided at the level where a body modification is being performed and where instruments and sharps are assembled, cleaned and sterilized;

(i) be well ventilated;

(j) have all walls, floors, ceilings and work stations smooth, free of open holes or cracks, and light colored, non-absorbent, easily cleanable and in good repair;

(k) have a cleaning and sterilizing room which must be located separately from any work station, washroom or other area accessible to the public;

(l) prohibit all animals in the premises excepting guide dogs trained to assist disabled persons and fish tanks are permitted within the reception area only.

(2) The reception area must be provided with furnishings for customer use which must be kept clean and in a good state of repair at all times.

(3) Each Work Station must:

(a) have an easily accessible hand basin with hot and cold running water under pressure and tempered by means of a mixing valve or combination faucet, and a supply of disposable towels and liquid antibacterial soap;

(b) have floors, walls and ceiling surfaces made of easily cleanable materials and kept clean and in a good state of repair at all times;

(c) have a minimum floor area of 50 square feet;

(d) have all cabinets, tables and other furniture constructed of durable and easily cleanable material, with smooth, non-absorbent surfaces and at all times be kept clean and sanitary and in a good state of repair at all times;

(e) have sufficient cabinets with doors provided for the storage of supplies and materials;

(f) have at least one covered waste receptacle;

(g) be separated from any other work station by a partition wall of substantial construction;

(h) be sanitized after each use by each client;

(i) have a sharps container;

(j) have a door at its entrance;

(k) not be carpeted.

Body Modification Technician Practice and Procedures:

6. Every Body Modification Technician must:

(1) wear new disposable medical gloves during each body modification which must be discarded after each body modification or immediately upon becoming pierced, torn or contaminated by other than the body modification procedure;

(2) ensure that any product applied or used on the skin is single use and is disposed of after each use;

(3) ensure that any product or instrument which becomes contaminated by other than the body modification procedure is immediately replaced;

(4) perform a body modification only in a work station which complies with the provisions of this by-law;

(5) not engage or perform a body modification if the body modification technician has a communicable disease or any rash,

open sore or infection which may pose a health risk to any person;

(6) maintain a high degree of personal hygiene;

(7) wear a clean outer garment when performing a body modification;

(8) thoroughly wash their hands and exposed portions of their arms with liquid soap and hot running water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking or using the toilet;

(9) not use an ear piercing gun except on the lobe of the ear;

(10) ensure that prior to commencing a body modification:

(a) the skin surrounding the site of the body modification is free of any rash or break in the skin and is washed with soap and water or skin antiseptic;

(b) where shaving is necessary, use a single use disposable razor;

(c) the person on whom the body modification is to be performed is not under the influence of drugs or alcohol;

(d) that the person on whom the body modification is to be performed is over the age of 18 years and, if not, is accompanied by a parent or guardian and also has provided written consent in the form set out in Appendix "B";

(e) advise each person on whom a body modification is to be performed that the following conditions may pose a risk:

(i) diabetes;

(ii) skin sensitivities to soaps, disinfectants, pigments or dyes;

(iii) history of haemophilia or bleeding;

(iv) use of medications such as blood thinners;

(f) that the client is informed as to the nature of the procedure, the signs and care of infection and is provided

with a written copy of the information in Appendix "A" to this by-law.

(11) ensure that tattoo pigments are obtained from a licensed commercial manufacturer or supplier and are chemically pure, non-toxic and non-sensitising.

(12) pour any pigments used in a body modification into single use containers, with the container and any unused pigment being discarded after the body modification.

(13) ensure that no smoking, eating or drinking occurs in the work station area.

(14) wash the completed tattoo with sterile gauze or cotton which has been saturated with tincture of green soap or equivalent and then apply sterile dressing to the area.

Equipment, Supplies and Instruments

7. (1) All instruments must be sterilized prior to each use in an autoclave which must be located inside the cleaning and sterilization room. Prior to autoclaving they must be cleansed in a sink large enough to accommodate the instruments using hot water so as to remove all external blood, tissues, fluids and residue.

(2) No cleansing or sterilization may take place except within the cleaning and sterilizing room, which room must not be used for any other purpose.

(3) Prior to sterilizing, all instruments must be packed individually in packages. After being sterilized, the packages must only be opened in front of a customer on whom a body modification is to be performed.

(4) All sterilized equipment and instruments must be stored so as to prevent contamination.

(5) A body modification establishment must have a monthly spore detection test performed on any autoclave by an independent laboratory which certifies that the autoclave is performing correctly. A copy of the certification must be provided forthwith to the City's Environmental Health Services Branch or its successor. Any autoclave which is not so certified shall not be used.

(6) The exterior of all equipment must be kept in a sanitary condition. Any equipment in a work station must be sanitized prior to each body modification being performed.

(7) As of the date this by-law is enacted, no autoclave which does not have accurate temperature and pressure gauges shall be purchased.

Waste Disposal

8. (1) Any waste which contains or may release any blood, skin or bodily fluids must be placed in plastic garbage bags.

(2) All sharps must be handled and disposed of in accordance with The Biomedical Waste Sharps By-law as amended from time to time.

(3) All waste receptacles must be emptied daily.

Records

9. (1) Every operator must maintain on the premises an accurate, complete and up to date record in a bound volume with numbered pages:

(a) of each transaction with every client including the client's name, address, phone number, date of birth, the date, time and nature of the procedure performed and copies of any information or consents given to or by the client and the technician's name;

(b) of every employee's name, date of birth, address and home phone number;

(c) of the original monthly certification issued under subsection 7(5);

which must be produced on demand for inspection by a public health inspector.

Enforcement

10. A Public Health Inspector may conduct inspections to take steps to enforce this by-law or remedy a contravention of this by-law in accordance with *The City of Winnipeg Charter* and for those purposes has the powers of a "designated employee" under *The City of Winnipeg Charter* which powers shall not be further delegated by the Public Health Inspector.

Responsibility

11. The owner, operator or person in charge of a body modification establishment must comply with the terms of this By-law, and are jointly and severally liable for any contravention, breach or failure to obey any of the provisions of this By-law and may be charged therefor.

Inspections

12. The Public Health Inspector may enter any body modification establishment for the purpose of making inspections to determine compliance with this By-law in accordance with *The City of Winnipeg Charter*.

Orders

13. The Public Health Inspector may serve an order on the operator or the person in charge, to correct violations listed in or attached to said order within the period specified.

Notices, Orders and Appeals

14. (1) An order to remedy a contravention of this By-law must be issued in accordance with *The City of Winnipeg Charter*.

(2) A notice, decision or order must contain the information required by and be served in accordance with *The City of Winnipeg Charter*.

(3) Where an address for sending a notice, order, decision or other document is required, one of the following must be used:

(a) if the person to be served is the owner of the real property, the address maintained by the tax collector for the purpose of issuing the tax notice for that property; or

(b) the street address shown on the permit or application; and

(c) if the person to be served is the occupant of real property, the street address for that property.

(4) Notwithstanding subsection 14(1), when an emergency arises that effects the health of persons, the Public Health Inspector may:

(a) condemn any material which in his opinion is insanitary or creates, or may create, an insanitary condition and order its immediate destruction in a manner satisfactory to the Public Health Inspector; or

(b) where an insanitary condition exists in a body modification establishment

(i) serve a closing notice on the operator or the person in charge;

(ii) placard the premises;

(iii) post a copy of said closing notice in a conspicuous place in the office of the Public Health Inspector;

(c) upon service of such a notice, the body modification establishment must be closed immediately and not re-opened until authorization in writing by the Public Health Inspector is given;

(d) no person may operate or allow the operation of a body modification establishment which has been closed;

and there shall be no appeal from such an order or notice. Service of such an order or notice will be effective once served in person on the owner, operator or person in charge.

(5) Subject to subsection (4), an appeal from an order to remedy a contravention of this by-law or a notice or decision under section 4 or sections 13 or 14 may be made in accordance with *The City of Winnipeg Charter* to the Standing Policy Committee on Protection and Community Services.

Penalty

15. (1) A person or corporation who contravenes a provision of the By-law is guilty of an offence and is liable upon summary conviction:

(a) for a first offence, to a fine of not less than One Hundred ($100.00) Dollars in the case of an individual and Five Hundred ($500.00) Dollars in the case of a corporation or partnership;

(b) for a second offence, to a fine of not less than Two Hundred ($200.00) Dollars in the case of an individual and Seven Hundred ($700.00) Dollars in the case of a corporation or partnership;

(c) for a third or subsequent offence, to a fine not less than Three Hundred ($300.00) Dollars in the case of an individual and One Thousand ($1,000.00) Dollars in the case of a corporation or partnership;

(d) notwithstanding the penalties prescribed in clause (a), (b) and (c):

(i) an individual may also be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine of not more than $1,000.00, or both;

(ii) a corporation may be liable on summary conviction to a fine of not more than $5,000.00;

(2) If any provision of this By-law is held to be invalid by any court of competent jurisdiction, the remaining provisions of this By-law shall not be invalidated.

Practice of Medicine and Dentistry excepted

16. Nothing in this By-law applies to

(a) the practice of medicine in accordance with *The Medical Act*; or

(b) the practice of dentistry in accordance with *The Dental Association Act*.

Repeal

17. The Tattoo Studio By-law No. 4653/87 is repealed.

Consequential Amendments

18. The License By-law No. 6551/95 is amended as follows:

(1) in section 2 by inserting after the definition of "billiard parlour":

"Body Modification" means the practice of physical body adornment by body piercing or tattooing including scarification and the insertion of implants but excluding piercing of the ear.

"Body Modification Establishment" means any place or premise in which body modifications are performed.

"Body Modification Technician" means any person licensed to conduct or practice body modification at a body modification establishment.

(2) in clause (c) of subsection 4(4) by adding after "Billiard Parlour":

Body Modification Establishment
Body Modification Technician

(3) in subsection 4(8) by adding after "Beauty Parlour":

Body Modification Establishment

(4) by adding at the end of section 4:

"(18) No license may be issued to carry on the trade of a body modification technician unless the applicant first files with the Chief License Inspector evidence that the applicant holds a certificate issued by a Public Health Inspector not more than three years prior to the effective date of the certificate."

(5) by repealing section 37 and its heading and substituting:

BODY MODIFICATION ESTABLISHMENT or BODY MODIFICATION TECHNICIAN

"37. Every person carrying on the trades of Body Modification Establishment or Body Modification Technician must comply with the requirements of the Body Modification By-law."

(6) by adding to Schedule A:

SCHEDULE A TO BY-LAW NO. 6551/95 OF THE CITY OF WINNIPEG					
ALL LICENSE FEES IN THIS SECTION ARE ANNUAL FOR LICENSE YEAR JUNE 01 TO MAY 31 OF THE FOLLOWING YEAR					
ITEM NO.	**TRADE TO BE LICENSED**	**LICENSE FEE** (Annual unless otherwise specified)			
		2005/2006	**2006/2007**	**2007/2008**	**2008/2009**
67.	*Body Modification Establishment*	460	474	488	503
68.	*Body Modification Technician*	110	113	117	120

Effective Date

19. This By-law comes into force and effect on January 1, 2006.

DONE AND PASSED in Council assembled this day of 2005.

_____
Mayor

_____
City Clerk

Certified as to details:

_____
Director of Community Services

Certified as to form:

_____
for City Solicitor/

Manager of Legal Services

APPENDIX "A"

AFTERCARE INSTRUCTIONS

Aftercare Instructions are to be provided both verbally and in writing and are to include:

1. General aftercare recommendations:

    1. Handwash with soap and water before cleaning or handling any piercing.
    2. Clean the site twice a day.
    3. Ensure that the site stays dry.
    4. Wear clean, comfortable and loose-fitting clothing over the site.
    5. Showering is generally preferred to bathing until the site is healed.
    6. Pay attention to changes in the site that are unexpected.
    7. Consider seeking medical attention
        - If there is evidence of infection. Signs of infection may include:
            i. Discharge that is green or yellow from the piercing;
            ii. Swelling and redness after the first few days;
            iii. Pain and redness or red streaks radiating out from the piercing;
            iv. Splitting, oozing or cracking and bleeding of a piercing received more than one week ago;
            v. Migration (movement of the piercing) up through the layers of skin;
            vi. A lump or bump forming at the base of the piercing.

        - If there is evidence of an allergic reaction. Signs may include:
            - Difficulty breathing and swelling of the tongue within hours of a piercing, especially an oral piercing;
            - A rash or hives soon after a piercing.

2. Information on specific procedures regarding estimated time for healing to occur and any care or advice specific to that procedure.

APPENDIX "B"

CONSENT FORM

PARENT OR GUARDIAN Consent for Body Modification Procedure
(Required for persons under the age of eighteen (18) years)

I, _____ am the parent or legal guardian of

_____ who is _____ years of age and

consent to permitting the following body modification procedures _____

_____

on _____ and will be present during the entire

procedure.

Signature of Parent or Legal Guardian:

_____ Date _____