

To the Members of the Licensing Committee.

Your attendance is requested at a meeting of the Licensing Committee to be held in the Council Chamber, Pippbrook, Dorking on **WEDNESDAY 21st MARCH at 7.00pm** for the transaction of the business set out in the following agenda.

KAREN BRIMACOMBE
Chief Executive
13th February 2018

Members of the Committee: Councillors John Chandler (Chairman), Paul Elderton (Vice Chairman), Tim Ashton, Stephen Cooksey, Mary Cooper, Metin Huseyin, Bridget Kendrick, David Mir, Wayne Monkman, Patricia Wiltshire and Charles Yarwood.

The Chairman would like to remind Members that they have the opportunity to ask Officers questions, in respect of issues concerning matters of detail or for further clarification, prior to the meeting.

AGENDA

1. Minutes

To approve as a correct record the minutes of the meeting of the Licensing Committee held on 31st January 2018.

2. Apologies for Absence

To receive apologies for absence.

3. Disclosure of Interests

To receive any disclosures of interests from Members (either disclosable pecuniary interests or non pecuniary interests) in relation to any items included on the agenda for this meeting in accordance with the Council's Code of Conduct.



4. Adoption of Byelaws for Special Treatments

3

The Licensing Committee is asked to recommend to the Council that:

1. The Acupuncture, Tattooing, Semi-Permanent Skin Colouring, Cosmetic Piercing and Electrolysis Byelaws are adopted; and
2. That the Council's common seal be affixed to the Byelaws and that following advertisement, the Byelaws be submitted to the Secretary of State for Health for approval.

5. Urgent Items

To consider any items of business, other than those shown on this agenda and which, by reason of special circumstances to be stated at the meeting, in the opinion of the Chairman, should be considered at the meeting as a matter of urgency.

If you require a copy of this agenda, any of the reports within it or a large print version of the agenda, please telephone Shaun Hughes on **01306 879331** or e-mail: Shaun.Hughes@molevalley.gov.uk

NOTE: This meeting will be webcast for live or subsequent broadcast via the Council's internet site (www.molevalley.gov.uk). The whole of the meeting will be filmed except where there are confidential or exempt items. Generally the public seating areas are not filmed. However, by entering the meeting room and using the public seating area, you are consenting to being filmed. Members of the press/public may film or record proceedings, blog or tweet proceedings and take photographs providing they do not disturb the conduct of the meeting. The Chairman of the meeting has the discretion to terminate or suspend filming/recording if in his/her opinion continuing to do so would prejudice the proceedings of the meeting or, on advice, considers that continued filming/recording might infringe the rights of any individual.

Agenda Item 4

Executive Member	Councillor David Mir – Executive Member for Environment and Parking
Strategic Management Team Lead Officer	Patrick McCord – Interim Corporate Head of Service
Author	Jemma Malyon – Commercial Team Leader
Telephone	01306 879138
Email	Jemma.malyon@molevalley.gov.uk
Date	21 st March 2018

Ward (s) affected	All
--------------------------	-----

Subject	Adoption of Byelaws for Special Treatments
----------------	---

Recommendations

The Licensing Committee is asked to recommend to the Council that:

1. The Acupuncture, Tattooing, Semi-Permanent Skin Colouring, Cosmetic Piercing and Electrolysis Byelaws (attached as Appendix A to this report) are adopted; and
2. That the Council's common seal be affixed to the Byelaws and that following advertisement, the Byelaws be submitted to the Secretary of State for Health for approval.

The reason for the recommendations is to ensure the greater protection to those undergoing these treatments by ensuring that businesses providing any of the above mentioned treatments operate hygienically and in a manner which will minimise the risk of infection to their customers.

Executive Summary

The Committee is asked to consider adopting Byelaws to regulate cosmetic piercing and semi permanent skin colouring, acupuncture, tattooing, electrolysis and ear piercing under one set of consolidated model Byelaws.

It is important that this industry is effectively regulated due to the risks associated with the treatments being offered. There is the potential risk of transmission of blood borne viruses (BBV) such as Hepatitis B and C and HIV, as well as other infections, and potential physical damage and bleeding if the treatment is completed incorrectly. The recommendations will ensure the greater protection to those undergoing these treatments by ensuring that businesses providing any of the above mentioned treatments operate hygienically and in a manner which will minimise the risk of infection to their customers.

The Local Government Act 2003 amended the Local Government (Miscellaneous Provisions) Act 1982 to include cosmetic (body) piercing and semi permanent skin colouring within the list of treatments the Local Authority can regulate. Earlier Byelaws adopted in 1985 covering acupuncture, tattooing, electrolysis and ear piercing were not updated.

The Council may levy a reasonable fee for registration (which can include the initial

inspection costs and advising of businesses and associated administration) and it is proposed that the current fee for special treatments operations already qualifying for registration (premises registration £75 and personal registration £58) be applied to ensure a consistent and fair approach to all such applicants.

Corporate Priority Outcomes

Prosperity

A vibrant local economy with thriving towns and villages

- Work with rural communities and businesses to build on their unique strengths and address their challenges, helping them thrive and become more sustainable

Owing to the checks that will be carried out prior to issuing the registrations (including covering topics such as infection control and hygiene of the premises), businesses and practitioners will be provided with advice and support to assist them in the satisfactory compliance with health and safety law; a resource not routinely available to the businesses since the change in national priorities regarding health and safety interventions by the Health and Safety Executive (Local Authority Circular LA 67/2 Revision 6 (Setting priorities and targeting interventions).

- Look for innovative ways to minimise the cost to taxpayers of Mole Valley District Council whilst protecting services.

There is a fee associated with the registering of premises and persons (currently £75 and £58 respectively) offering special treatments, which act as a cost recovery (not just the administration but also the initial inspection/assessment).

Community Wellbeing

Active communities and support for those who need it

- Improve opportunities for residents to live safe and healthy lives

The Department of Health has recognized that there is a risk associated with the provision of these treatments specifically associated with the transmission of blood borne viruses such as HIV, Hepatitis B and C and other infections. Additionally there is the risk of physical damage and bleeding if the treatment is completed incorrectly. By regulating these activities, the local authority can ensure the practitioners and premises are regulated and following sufficient practices to control the spread of infection, and such treatments are provided in premises, by practitioners and equipment, that are clean and hygienic.

The Licensing Committee has the authority to determine the Recommendations.

1.0 Introduction

1.1 The Local Government Act 2003 amended the Local Government (Miscellaneous Provisions) Act 1982 to include cosmetic (body) piercing and semi permanent skin colouring within the list of treatments the Local Authority can:

- a) Regulate such treatments through the registering of associated practitioners and procedures; and
- b) Ensure practitioners and premises observe the bylaws relating to the cleanliness and hygiene of premises.

- 1.2 Byelaws, which were adopted by MVDC in 1985 covering acupuncture, tattooing, electrolysis and ear piercing were not updated to include cosmetic (body) piercing and semi permanent skin colouring., Therefore MVDCI do not currently have powers to regulate cosmetic (body) piercing and semi permanent skin colouring in the same way (through the use of registration). Whilst powers are available to address non-compliances through the use of the Health and Safety at Work etc. Act 1974, and the Public Health (Control of Disease) Act 1984, these are only applied on a reactive basis (e.g. receipt of complaints) and often result in enforcement action, such as the service of formal Notices, which is burdensome for the Local Authority and businesses. This proposal seeks to bring the regulation of cosmetic (body) piercing and semi-permanent skin colouring in line with other special treatments currently regulated by MVDC using the Byelaws.
- 1.3 This proposal will ensure the greater protection to those undergoing these treatments by ensuring that businesses providing any of the above mentioned treatments operate hygienically and in a manner which will minimise the risk of infection to their customers prior to the commencement of the operation(s).
- 1.4 Currently there are three sets of MVDC Byelaws; Ear Piercing and Electrolysis; Acupuncture; and Tattooing, and a copy of the relevant Byelaws has to be issued for each treatment offered (which could mean one premises has to display three sets of Byelaws). For practitioners and premises already registered, they will only be required to display one set of byelaws and certification. Their registrations will be updated with the new Byelaws and their certificates of registration reissued at no additional expense to them.
- 1.5 The Health and Safety Executive amended the requirement to regularly assess premises, at a frequency based on the risk posed by the premises. Instead, the HSE target their resources using guidance and tools as detailed in the Local Authority Circular LA 67/2 Revision 6 (Setting priorities and targeting interventions) to ensure Local Authorities meet the requirements of the National Local Authority Enforcement Code. As such, Officers are no longer regularly attending such premises to ensure satisfactory compliance with relevant health and safety law. The adoption of the Byelaws and the registering of such premises and practitioners will give MVDC the opportunity to ensure sufficient controls are in place to control the risk of infection and physical damage to persons receiving treatment. Additionally, the Local Authority has available powers for dealing with contraventions of the Byelaws, thus enabling them to more readily secure the safety of the public. However, registration is a one off requirement as long as the practitioner and/or premises do not move; therefore the regulatory burden is minimal and proportionate to the risks presented by the activities in question.
- 1.6 For practitioners and premises currently supplying cosmetic (body piercing) and/or semi permanent skin colouring, they will be able to apply for a Certificate of Registration subject to their compliance with the Byelaws, demonstrating their skills, knowledge and suitability to carry out these treatments, and securing the hygiene of the treatment, the practitioner and the treatment room.
- 1.7 The persons receiving such treatments are afforded greater protection from the risks associated with such treatments, including the transmission of blood borne viruses

(BBV), such as HIV, Hepatitis B and C, as well as other infections, and potential physical damage and bleeding if treated incorrectly.

2.0 Financial Implications

- 2.1 The Council may levy a fee for registration (as long as it's a reasonable charge, which can include the initial inspection costs and advising of businesses and associated administration) and it is proposed that the current fee for special treatments operations already qualifying for registration (premises registration £75 and personal registration £58) be applied to ensure a consistent and fair approach to all such applicants. The fees will be reviewed on an annual basis.
- 2.2 As the Council already registers skin piercing and electrolysis, tattooing and acupuncture, the required processes and procedures are already in place, and staff members are already familiar with the requirements pertaining to hygiene and cleanliness of the premises, practitioner and equipment, therefore the financial burden will be minimal.

3.0 Legal Implications

- 3.1 The provisions in section 120 of the Local Government Act 2003 essentially add cosmetic piercing and semi permanent skin-colouring businesses to section 15 of the 1982 Act (attached to this report as Appendix B) so that local authorities can compel persons carrying on such businesses to register themselves and their premises and may make Byelaws in respect of matters related to cleanliness of such businesses. As MVDC has already brought into force section 15 of the 1982 Act, once the updated Byelaws are adopted, it will automatically trigger the registration and the application of the updated Byelaws to cosmetic piercing and semi-permanent skin colouring.

4.0 Corporate Implications

Monitoring Officer

- 4.1 The Monitoring Officer is satisfied that all relevant legal implications have been taken into account.

S151 Officer

- 4.2 The S.151 Officer confirms that there are no direct financial implications arising from this report.

Risk Implications

- 4.3 Whilst the introduction of the regulating of semi permanent skin-colouring and cosmetic (body) piercing is likely to increase the amount of applications for the registering of special treatments, all required documentation and procedures are already in place and used for the regulating of tattooing, acupuncture, electrolysis and ear piercing. MVDC uses the .GOV.UK website for the receiving of application forms, as well as our public website for the communication and provision of the Byelaws and relevant information associated with the process.
- 4.4 The service already receives a steady stream of enquiries from businesses that will be impacted by the adoption of the Byelaws, all wishing to register. The registering of semi

permanent skin-colouring and cosmetic (body) piercing will explicitly outline the controls required to be in place when providing such treatments. The controls focus on infection control as well as health and safety and are more specific than the general health and safety legislative requirements. The persons receiving such treatments are therefore likely to receive the maximum protection from the risks associated with such treatments.

- 4.5 The regulating of such treatments will extend to those provided in a domestic setting, a location that MVDC cannot enforce against for health and safety legislation, thus capturing and therefore protecting a wider portion of the community.

Equalities Implications

- 4.6 There are no specific equalities implications as a direct consequence of this report.

Employment Issues

- 4.7 There are no employment implications arising from these proposals.

Sustainability Issues

- 4.8 There are no sustainability implications arising from these proposals.

5.0 Consultation

- 5.1 If agreed by Committee, and subsequently by Council, there is a prescribed procedure to follow prior to the adoption of the model Byelaws. In summary, MVDC will need to advertise the intention to adopt the Byelaws in at least one local newspaper, and have a copy available at no charge in named Council offices. After not less than a calendar month the submissions can then be made to the Secretary of State for confirmation.

- 5.2 The Strategic Partnership Manager has been consulted assisted in the production of this report.

6.0 Communications

- 6.1 The Communications Team will be asked to arrange for the publication of the intention to adopt the Byelaws in at least one local newspaper. They will also be asked to advertise on the Local Authority's public website.

- 6.2 Relevant businesses and persons will be written to directly to inform them of the impending changes.

7.0 Background Papers

- 7.1 Department of Health's *Local Government Act 2003 Regulation of Cosmetic Piercing and Skin-Colouring Businesses* (2004).

- 7.2 Health and Safety Executive's *LAC 67-2 (Revision 6) Setting Priorities and Targeting Interventions*.

MODEL BYELAWS

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 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 *state subject matter* that were made by *insert name* on the *insert date* and were confirmed by *insert name of confirmation authority* on *insert date* 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).***

