

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Environmental Services

AGENDA DATE: July 17, 2012 – Introduction
July 31, 2012 – Public Hearing

CONTACT PERSON NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 621-6719

DISTRICT(S) AFFECTED: All

SUBJECT:

An ordinance amending Chapters 5.10 (Tattooing and Body Piercing Licenses) and 9.32 (Tattooing and Body Piercing) of the El Paso City Code, by repealing these chapters in their entirety and adopting a new Chapter 5.10 (Tattoo and Body Art Studio Registration and Artist License) in its place, the penalty as provided in Section 5.10.180 of the El Paso City Code.

BACKGROUND / DISCUSSION:

In an effort to more efficiently regulate the public health and safety concerns related to the application of tattoos and body art in the City, and to allow for the free movement of licensed artists to conduct these activities at registered studios, a public discussion was initiated by the tattoo and body art community in 2010.

The first of three public meetings was conducted on October 14, 2010, followed by a presentation to the LRC on May 19, 2011, and concluded with a meeting of tattoo artists and studio owners on June 27, 2011.

The following three major concepts were discussed and have received concurrence from the LRC, stakeholders and ESD staff: 1) registration of studios with the City to coincide with a state-issued studio license, 2) the allowance of an artist to secure a single license from the City and conduct tattooing or body art at any registered studio, and 3) the adoption of state and federal regulations for health and sanitation standards rather than a City-specific standard.

By adopting the ordinance as proposed, Chapter 9.32 of the City Code will be repealed, and the revised Chapter 5.10 will include standards both for studio registration and the artist license within a single ordinance.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

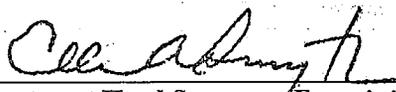
N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), CHAPTER 5.10 (TATTOOING AND BODY PIERCING LICENSES) OF THE EL PASO CITY CODE TO RENAME THE CHAPTER AS TATTOO AND BODY ART STUDIO REGISTRATION AND ARTIST LICENSE, AND TO AMEND THE CHAPTER IN ITS ENTIRETY; THE PENALTY AS PROVIDED IN SECTION 5.10.180 OF THE EL PASO CITY CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

Section 1. That Title 5 (Business License and Permit Regulations), Chapter 5.10 (Tattooing and Body Piercing Licenses) be retitled and amended in its entirety to read as follows:

Chapter 5.10 Tattoo and Body Art Studio Registration and Artist License

Article I. General Provisions

Section 5.10.010. Compliance Required.

A. A person shall not operate or maintain a tattoo or body art studio unless the person holds either a tattoo or body piercing studio license issued by the Texas Department of State Health Services.

B. All persons subject to regulation by this Chapter 5.10 shall also comply with all health standards regulating tattooing and the application of body art, including, but not limited to those found in the Texas Administrative Code, Title 25, Health Services, Part I, Texas Department of State Health Services, Chapter 229, Food and Drug, Subchapter V, Minimum Standards for Licensure of Tattoo and Certain Body Piercing Studios, Sections 229.401 et seq., the Texas Health and Safety Code, Chapter 146, Tattoo and Certain Body Piercing Studios, Sections 146.001 et seq., and 29 CFR 1910.1030 Bloodborne Pathogens. These standards are in addition to any municipal, state or federal laws applicable to the operation and facility use and maintenance of a business offering tattoo or body art services.

5.10.020 - Definitions.

A. "Artist" means a person who performs tattooing, intradermal cosmetics and/or the application of body art, and who is responsible for complying with the provisions of this Chapter.

B. "Body art" means a form of permanently modifying a part of the human body, including but not limited to body piercing, scalpel, scarring, and branding.

C. "Body piercing" means the creation of an opening in an individual's body, other than in an individual's earlobe, to insert jewelry or another decoration.

ORDINANCE NO. _____

- D. "Branding" means the permanent marking of the skin by burning with a hot or cold branding iron.
- E. "Department" means the Department of Environmental Services.
- F. "Director" means the Director of the Department of Environmental Services or designee.
- G. "Ear piercing" means the creation of an opening in an individual's ear with an ear piercing gun to insert jewelry or other decoration, without using scalpelling.
- H. "Ear piercing gun" means a device that pierces an individual's ear using a single-use (one-time, one-person use) stud and clasp ear piercing system. An ear-piercing gun shall not be used to pierce any other part of the body except the ear.
- I. "Intoxicated" means: not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body.
- J. "Jewelry" means any personal ornament inserted into a pierced area, which must be made of surgical implant grade stainless steel (minimum of 316L or 316LVM), solid 14k or 18k gold, niobium, titanium (minimum of 6A14V), or platinum, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.
- K. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- L. "Piercing" means puncturing a part of the body for the purpose of the insertion of jewelry or adornments.
- M. "Scalpelling" means a procedure similar to piercing; however, a scalpel or sharp instrument is used for the piercing in place of a needle.
- N. "Scarring" means the scratching, etching, or superficial cutting of the skin with designs, patterns, pictures or images.
- O. "Studio" means a building or portion of a building, designated by a license holder and located and occupied in accordance with applicable local zoning and building codes where tattooing is performed and/or body art or intradermal cosmetics is applied, completely separated from living quarters; hereafter referred to as studio, and includes a location that is identified or permitted as a temporary location under state law.
- P. "Supplies" means any item used for the purpose of tattooing or applying body art or items used for hygienic purposes while tattooing or applying body art, including but not limited to needles, scalpels, branding implements, inks or pigments, gloves, towels, soap, and autoclaves.

ORDINANCE NO. _____

Q. "Tattoo" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment. The term includes the application of permanent cosmetics.

R. "Tattooing" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels or other related devices including intradermal cosmetics.

Article II. Studio Registration

5.10.030 –Studio Registration Required.

A. A studio registration shall be required for any studio where tattooing or the application of body art is performed. No studio shall be allowed to perform tattooing or the application of body art without first having obtained and paid for a valid registration from the permit official.

B. The studio registration certificate shall be displayed inside the studio during regular operation of the studio and shall be visible for inspection by artists, clients and city officials.

C. The registration requirements of this Chapter do not apply to:

1. a studio or temporary operation located within a medical facility which is licensed under another law, or an office or clinic of a person licensed by the Texas State Board of Medical Examiners; or
2. a facility in which only ear piercing is performed.

D. A registered studio shall only employ and/or allow the use of its studio by artists in possession of a current, valid artist license issued by the City of El Paso, and must adhere to the following:

1. the studio must at all times maintain and have available for inspection a list, on a form provided by the City, with the name of each artist employed by and/or allowed the use of the studio;
2. any artist no longer employed by or allowed use of the studio shall be recorded as a strikeout on the list; and
3. each strikeout shall be shown on said list for a period of two years from the date that the strikeout is made.

E. Studio shall adhere to the following hygiene requirements:

1. Studio shall maintain studio hygiene, public health and safety standards in accordance with applicable state and federal regulations.

ORDINANCE NO. _____

PL Matter #11-1005-031; PL Doc #109811 v4 TATTOO ORD AMEND TITLE 5 CHAPTER 5.10 – JF

2. Studio shall supply, at minimum, one (1) hand-washing station, in accordance with applicable state and federal law, and the following requirements:
 - a. hand-washing station shall be labeled with a permanent sign “HAND-WASHING ONLY” with black print letters at least two (2) inches in height on a white background in a clearly visible location directly above the station; and
 - b. cleaning, sterilization or storage of supplies in or at the hand-washing station is prohibited.
3. Studios offering or allowing branding in their facility must comply with all of the city, state and federal health and safety regulations applicable to tattooing and body piercing that are mentioned in Subsection 5.10.010 of this City Code.

F. Studio shall offer to licensed artists only those supplies that conform to the hygiene, public health and safety standards required by applicable state and federal regulations, and may not, at any time, offer these supplies for use by an artist that is not in possession of a current, valid artist license as described in this Chapter.

G. Studio shall, at a minimum, conform to the following standards when storing supplies at the studio:

1. supplies shall be stored in accordance with manufacturer’s specifications; and
2. supplies shall not be stored directly on the floor unless stored in a fully-enclosed storage container that is kept closed at all times when not adding to or removing supplies from container.

H. No studio shall offer solely branding; branding shall only be allowed in a studio that also offers either tattooing and/or the application of body art other than branding.

5.10.040 –Studio Registration Application.

A. A studio owner seeking to perform tattooing and/or the application of body art shall submit a signed, verified application, with the established application fee(s), to the permit official. Applications shall be on forms obtained from the permit official and shall contain, as a minimum, the following information:

1. full name of owner of studio;
2. address of owner of studio;
3. address of studio;
4. indication if existing studio (in operation for the preceding twelve months) or new studio;

ORDINANCE NO. _____

5. copy of current tattoo or body piercing license issued by the Texas Department of State Health Services;
6. a current, valid certificate of occupancy issued by the building official for the studio; and
7. any other information as required by the application.

5.10.050 – Studio Registration Application Processing.

- A. Upon receipt of a proper application as provided in this Chapter and payment of the established fee, the permit official shall review and process the application.
- B. The permit official shall issue the registration unless he finds that the registration should be denied as provided in Section 5.10.140 of this code.
- C. The term of a registration issued under this Chapter shall be for such period of time that coincides with the studio's tattoo or body piercing license issued by the Texas Department of State Health Services. Upon the issuance of a renewal of a tattoo or body piercing license by the state, the registrant shall, within twenty (20) days of receiving such renewal, apply to the permit official for renewal of the city's registration. Applications for a renewal shall be processed in the same manner as an original application.
- D. In the event the permit official denies the application, the applicant shall be notified in writing as to the reason(s) for the denial, as set forth in Section 5.10.140 of this code.

5.10.060 – No transfer of Registration. A studio registration shall not be transferred to any person for any use or benefit. Any change in ownership or registered studio location shall require a new studio registration application and registration.

Article III. Artist License

5.10.070 – Artist License Required.

- A. An artist license shall be required for any artist that performs tattooing or the application of body art. No person shall engage in the practice of tattooing or the application of body art without first having obtained and paid for a valid license from the permit official.
- B. Licensed artists shall be required to have said license and valid state-issued photographic identification in their possession and available for inspection by studio owners, clients and city officials at all times when performing tattooing or body art.
- C. The license requirements of this chapter do not apply to persons who engage only in performing ear piercing.

D. A licensed artist shall only perform tattooing or the application of body art at a studio that has obtained a current, valid studio registration from the City of El Paso.

E. When performing tattooing or the application of body art, an artist shall use only supplies, whether provided by the registered studio or the licensed artist, that conform to the health and safety standards required by applicable state and federal law.

5.10.080 – Artist License Application.

A. Each artist seeking to perform tattooing and/or body art shall submit a signed, verified application annually, with the appropriate application fee(s), to the permit official. Applications shall be on forms obtained from the permit official and shall contain, at a minimum, the following true and correct information:

1. full name of artist;
2. address of artist;
3. proof of identification of artist, in the form of a government -issued photographic identification; and,
4. any other information as required by the application.

5.10.090 - Application Processing.

A. Upon receipt of a proper application as provided in this chapter and payment of the established fee, the permit official shall review and process the application.

B. The permit official shall issue the license unless he finds that the registration should be denied as provided in Section 5.10.140 of this code.

C. The license shall be valid for the term of one (1) year. Artists in possession of an artist license must apply to the permit official for renewal no more than sixty (60) days and no less than thirty (30) days prior to the expiration of the license to prevent a lapse in licensing. Applications for renewal shall be processed in the same manner as an original application.

D. In the event the permit official denies the application, the applicant shall be notified in writing as to the reason(s) for the denial, as set forth in Section 5.10.140 of this code.

5.10.100 - License Transfer.

An artist license cannot be transferred to another person for any use or benefit. An artist may, however, utilize the same valid artist license at more than one registered studio.

ORDINANCE NO. _____

Article IV. Enforcement and Fees

5.10.110 - Enforcement Authority. The permit official and the director of the department of environmental services and their designees or any duly authorized representative or inspector, shall be authorized to administer and enforce the provisions of this Chapter and to issue citations to any person violating the provisions of this Chapter.

5.10.120 - Inspection.

A. The director or designee may enter at all reasonable times any studio to inspect, enforce, investigate any unsafe condition or violation and perform any duty imposed under this Chapter or by state or federal law. If such studio is occupied the director shall first present proper credentials and request entry. If unoccupied, an effort shall be made to locate the owner or other person responsible for the premises to request entry.

B. If such entry is denied or permission cannot be obtained, the director shall have recourse to every remedy provided by law to secure entry.

C. When the director obtains a legal inspection warrant or other remedy to secure entry, the owner, occupant or person having charge, care or control of the building or premise shall, upon a proper request, promptly permit the director entrance to inspect and investigate pursuant to this Chapter or other applicable state or federal law.

D. The director shall record all findings on an inspection report and furnish a copy of the report to the owner or person in charge.

E. The director shall provide a written notice, by means of the inspection report or otherwise, to the owner or person in charge of the studio when a violation of any provision of this Chapter or other applicable state or federal law is determined, which shall include:

1. a description of each violation;
2. a specific, reasonable time period for correction of each violation; and
3. a statement that the registration is subject to suspension or revocation and that legal action may be taken for failure to comply with the notice.

F. An artist may be subject to inspection either during the studio inspection described in this Subsection 5.10.120, or as a result of a scheduled inspection arranged by the director.

5.10.130 - Fees. The studio registrant or artist shall pay to the city all established fees for the registration and license provided in accordance with this Chapter.

ORDINANCE NO. _____

PL Matter #11-1005-031; PL Doc #109811 v4 TATTOO ORD AMEND TITLE 5 CHAPTER 5.10 - JF

Article V. Denial, Suspension, Revocation, and Appeals

5.10.140 – Denial. The permit official shall deny an application for studio registration or artist license, whether original or renewal, by serving the applicant with written notice by hand-delivery or certified mail, return-receipt requested, if:

A. The applicant is found to be in violation of this Chapter or found, in the opinion of the director, to pose a significant health risk to the public for failure to meet the minimum health standards set forth in this chapter; or

B. The permit official finds:

1. that the applicant has supplied false or incorrect information on any application for a registration or license;
2. that the applicant has failed to supply all information required on the application form;
3. that the applicant has failed to pay the application fee; or
4. in the case of the registration applicant, that the registration applicant is not in possession of a current, valid state of Texas-issued tattoo or body piercing license.

C. In the event that an applicant's current or prior registration or license is under suspension, no new license or suspension shall be issued until the term of such suspension has expired.

D. In the event that an applicant's current or prior registration or license is revoked, no new license or suspension shall be issued until the term of such revocation has expired.

E. The permit official shall issue the written notice of denial of a registration or license to the applicant which shall contain, as a minimum, the following:

1. the name of the applicant;
2. statement that the registration or license is denied; and,
3. reason(s) for the denial.

5.10.150 – Suspension and Revocation.

A. Suspension or Revocation. The director may issue a written notice of intent to suspend for not more than sixty (60) days or a written notice of intent to revoke an original or renewal registration or license subject to this Chapter if the director determines that any of the following is true:

1. the registration or license holder supplied false or misleading information on any application for a registration or license;

ORDINANCE NO. _____

2. the Texas Department of State Health Services has suspended or revoked the registrant's tattoo or body piercing registration or license;
3. the registration or license holder is found, after notice and opportunity for hearing, to be in violation of a provision of this Chapter or a rule adopted under this Chapter;
4. the registration or license holder is indebted to the City for fees or payment of penalties imposed by this Chapter or by a rule adopted under this Chapter; or
5. the license holder is found, after notice and opportunity for hearing, to have been intoxicated on the licensed premises.

B. The director may issue a written notice of intent to revoke a studio registration or an artist license, as applicable, if the studio owner or licensed artist violates this chapter on two or more occasions within a twelve-month period.

C. A studio registrant or licensed artist that has had his registration or license suspended or revoked shall be required to surrender the registration certificate or artist license to the director within seven (7) calendar days of receiving notice from the City of suspension or revocation, regardless of whether the registrant or licensed artist requests an appeal in accordance with Section 5.10.160 of this code. In the case of suspension, failure to surrender registration certificate or artist license within seven (7) days of notice shall cause the director to revoke the registration or license. In the case of revocation, registrant's or licensee's period of revocation shall be extended to eighteen (18) months before they can apply for a new registration or license.

1. A studio registrant or licensed artist shall not commence operations after the term of suspension has ended without first retrieving their registration or license from the director; and
2. A studio registrant or licensed artist shall not continue operations during the period of suspension or revocation of their registration or license.

D. Notice. The director shall issue a written notice of suspension or revocation of a registration or license to the registrant or artist, or a proposed suspension or revocation pursuant to subsection A 3, 4 or 5 of this section, which shall contain, as applicable, the following:

1. name and address of the registrant and studio, or name and address of the artist;
2. statement of whether the registration or license is suspended or revoked;
3. reason(s) for the suspension or revocation;
4. where applicable, order that the studio be closed;

5. recommendation of corrective measures to bring the studio or artist into compliance with the requirements of this Chapter;
6. reasonable time limit for the completion of the corrective measures;
7. statement that the registration or license, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time;
8. order that the registration certificate or artist license be surrendered to the director within seven (7) days of receipt of notice;
9. statement that the registration or license, if suspended, is subject to revocation for failure to surrender registration certificate or artist license within the allotted time; and
10. statement that the suspension or revocation may be appealed under the provisions set forth in Section 5.10.160 of this code.

E. The director shall post a sign at any location where a studio registration has been suspended or revoked pursuant to this chapter. Said sign shall contain the following statement:

TATTOO OR BODY ART STUDIO CLOSED BY ORDER OF THE CITY OF EL PASO DEPARTMENT OF ENVIRONMENTAL SERVICES. VIOLATORS OF THIS ORDER ARE SUBJECT TO PROSECUTION PURSUANT TO TITLE 5 AND ANY OTHER APPLICABLE PROVISIONS OF THE EL PASO CITY CODE.

F. A studio registrant or licensed artist may not reapply for a new registration or license for a period of twelve (12) months after said registration or license has been revoked.

5.10.160 - Appeals. The right to appeal a registration or license denial, suspension or revocation shall be in accordance with Chapter 5.01.090 of the City Code. A hearing held by the director pursuant to section 5.10.150 3, 4 or 5 shall be held in the same manner, provided however, such hearing shall be heard by the director.

Article VI – Violation, penalty.

5.10.170 - Immediate Closure by Director.

A. The director may order the immediate closure of a studio when there is a reasonable basis to believe that an individual contracted or was exposed to any communicable disease or disease of the skin while receiving a tattoo and/or application of body art at the studio. Immediately following such closure, the director shall proceed as appropriate under Section 5.10.150 of this code regarding the status of the studio registration and licenses issued to any involved artists.

ORDINANCE NO. _____

B. Failure to promptly comply with the notice of immediate closure shall subject the studio to other legal remedies as are available to the city.

C. Upon information that the Texas Department of State Health Services has suspended or revoked a tattoo or body piercing license of a registered studio, the director shall immediately suspend or revoke the studio registration, in accordance with Section 5.10.150 of this code, for the period not to exceed the suspension or revocation specified by Department of State Health Services.

5.10.180 - Violation and Penalties. Any person who violates a provision of this Chapter shall, upon conviction, be guilty of a misdemeanor and punished by a fine not to exceed two thousand dollars. Each day the violation occurs shall constitute a separate offense. In addition to any penalties provided for herein, this chapter is enforceable by injunction.

Section 2. This ordinance shall take effect on January 1, 2013.

Section 3. Except as herein provided, Title 5 (Business License and Permit Regulations) shall remain in full force and effect.

(Signatures appear on following page)

ORDINANCE NO. _____

Signature Page

ADOPTED this _____ day of _____, 2012. .

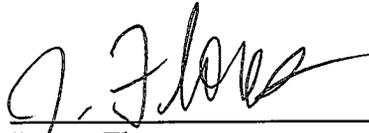
CITY OF EL PASO

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Environmental Services Department

ORDINANCE NO. _____

PL Matter #11-1005-031; PL Doc #109811 v4 TATTOO ORD AMEND TITLE 5 CHAPTER 5.10 – JF