

ORDINANCE NO. _____

CITY CLERK DEPT.
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AN ORDINANCE AMENDING TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.46 (ASSISTED LIVING FACILITIES), OF THE EL PASO CITY CODE, TO CREATE THE CHAPTER RELATING TO STATE LICENSING, INSPECTION AND ENFORCEMENT ASSISTANCE REGARDING ASSISTED LIVING FACILITIES; THE PENALTY BEING AS PROVIDED IN SECTIONS 1.08.010-1.08.030 OF THE CITY CODE.

WHEREAS, the Section 247.031 of the Texas Health and Safety Code provides for certain types of municipal enforcement relating to the state requirement for the licensing of assisted living facilities;

WHEREAS, the City of El Paso has an important governmental interest in protecting the health, safety, and welfare of the public, including the residents of assisted living facilities;

WHEREAS, the matters addressed in this ordinance are also within the mission of the El Paso City-County Health and Environmental District; and

WHEREAS, it is the desire of the City of El Paso to implement the provisions of Chapter 247, Texas Health and Safety Code, for such purposes.

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

Section 1. That Chapter 5.46 (Assisted Living Facilities) of the El Paso City Code shall be created as follows.

Section 2. That Section 5.46.010 (Purpose) of the El Paso City Code shall be created to read as follows:

Section 5.46.010. Purpose.

A. The purpose of this chapter is to implement the provisions of Chapter 247, Texas Health and Safety Code, as amended, which establish regulations for the protection of the health and safety of residents of assisted living facilities, by providing for municipal enforcement to the extent permitted by that state law. In the event of a conflict, this chapter must be construed so as to comply with Chapter 247, Texas Health and Safety Code.

B. It is the intent and purpose of the city to administer and enforce this chapter to ensure quality care and the protection of the health and safety of assisted living facility residents

by requiring assisted living facilities operating within the city limits to comply with state regulations.

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Section 3. That Section 5.46.020 (Definitions) of the El Paso City Code shall be created to read as follows:

Section 5.46.020. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Assisted living facility” has the meaning given that term in Section 247.002 of the Texas Health and Safety Code.

“Enforcement official” means the director of the city department designated by the city manager to enforce and implement this chapter or those person’s designated representative.

“Immediate threat” means a situation in which there is a high probability that serious harm or injury to a resident of an assisted living facility could occur at any time, or has already occurred and may occur again, if the resident is not protected effectively from the harm or if the threat is not removed.

“License” means a current, valid license to operate an assisted living facility issued by the Texas Department of Human Services pursuant to Chapter 247, Texas Health and Safety Code, as amended.

“Person” means an individual, partnership, company, corporation, association, firm, organization, institution, or similar entity.

“Personal care services” has the meaning given that term in Section 247.002 of the Texas Health and Safety Code.

Section 4. That Section 5.46.030 (State License Required) of the El Paso City Code shall be created to read as follows:

Section 5.46.030. State License Required.

All health, safety, and construction standards established by the city in this code, the fire code, the building codes, and any other applicable city ordinance or regulation apply to all personal care facilities located within the city.

Section 5. That Section 5.46.040 (Inspection) of the El Paso City Code shall be created to read as follows:

Section 5.46.040. Inspection.

A. The enforcement official may inspect any facility purporting to be providing personal care services to persons who are unrelated to the owner or proprietor of the facility at reasonable times as necessary to determine if it is an assisted living facility and to ensure compliance with this chapter and Chapter 247, Texas Health and Safety Code, as amended.

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B. Upon the request of the Texas Department of Human Services, the city attorney may petition a court for the appropriate order to allow for the entry into and inspection of a facility that is allegedly required to be licensed as an assisted living facility and that is operating without a license, when admission to the facility cannot otherwise be obtained by the enforcement official.

C. The enforcement official shall report to the Texas Department of Human Services any assisted living facility that the enforcement official finds:

1. is established or operating in the city without a license;
2. poses an immediate threat to the health and safety of a resident of the assisted living facility; or
3. is otherwise violating a provision of Chapter 247, Texas Health and Safety Code, as amended, or any rule, regulation, or standard governing assisted living facilities promulgated by the Texas Department of Human Services under Chapter 247, Texas Health and Safety Code.

Section 6. That Section 5.46.050 (Injunction) of the El Paso City Code shall be created to read as follows:

Section 5.46.050. Injunction.

Upon the request of the Texas Department of Human Services, in accordance with Section 247.044 of the Texas Health and Safety Code, the city attorney may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements for assisted living facilities under Chapter 247 of the Texas Health and Safety Code, as amended,

Section 7. That Section 5.46.060 (Civil Penalties) of the El Paso City Code shall be created to read as follows:

Section 5.46.060. Civil Penalties.

The city attorney shall, upon being referred a case by the Texas Department of Human Services, file suit in district court to collect and retain the civil penalty provided in Section 247.045, Texas Health and Safety Code, as amended. The city attorney and the Texas Department of Human Services shall work in close cooperation throughout any legal proceedings requested by the Texas Department of Human Services.

Section 8. That Section 5.46.070 (Offenses and Criminal Penalties) of the El Paso City Code shall be created to read as follows:

Section 13.34.070. Offenses and Criminal Penalties.

A. A person commits an offense if he:

1. violates section 5.46.030 of this code; or
2. refuses to allow or interferes with an inspection authorized under 5.46.040A of this code.

B. An offense under this chapter is punishable by a fine of up to \$2,000.00. A separate offense occurs each day or part of a day that the violation is committed, continued, or permitted.

C. Prosecution in municipal court for an offense under this section does not prevent the use of other enforcement remedies or procedures provided by another city ordinance or state or federal laws that are applicable to the person charged with or the conduct involved in the offense.

Section 9. Except as herein amended, Title 5 of the El Paso Code (Business Taxes, Licenses and Regulations) shall remain in full force and effect.

ADOPTED this _____ day of December 2006.

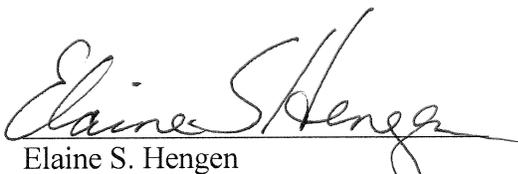
CITY OF EL PASO

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Elaine S. Hengen
Senior Assistant City Attorney

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