

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

DEPARTMENT: Department of Public Health

AGENDA DATE: Introduction – December 11, 2007
Public Hearing – December 18, 2007

CONTACT PERSON/PHONE: Elaine S. Hengen (915) 541-4550—for the department

DISTRICT(S) AFFECTED: ALL

SUBJECT:

An Ordinance amending Title 5 (Business Taxes, Licenses and Regulations) of the El Paso City Code to change the references to and assign the duties of the City-County Health District to the Department of Public Health or the Department of Environmental Services, as appropriate; to revise definitions; to correct titles and code references; and to revise the permitting and appeal processes prescribed in Chapters 5.32: (Public Swimming Pool Licenses), 5.48 (Laundries), and 5.96 (Tattooing and Body Piercing Licenses); the penalty as is provided in sections 1.08.010-1.08.030, 5.32.160, and 5.96.110 of the El Paso City Code.

BACKGROUND / DISCUSSION:

On December 31, 2007, the El Paso City-County Health and Environmental District will cease to exist. Most of the duties under this Title are being reassigned to the Department of Environmental Services. A few duties will fall under the new Department of Public Health. The permitting and appeal processes in the three named chapters are being revised, so that they will be uniform within Title 5, as well as with provisions in Titles 7 and 9 of the Code.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE EL PASO CITY CODE TO CHANGE THE REFERENCES TO AND ASSIGN THE DUTIES OF THE CITY-COUNTY HEALTH DISTRICT TO THE DEPARTMENT OF PUBLIC HEALTH OR THE DEPARTMENT OF ENVIRONMENTAL SERVICES, AS APPROPRIATE; TO REVISE DEFINITIONS; TO CORRECT TITLES AND CODE REFERENCES; AND TO REVISE THE PERMITTING AND APPEAL PROCESSES PRESCRIBED IN CHAPTERS 5.32: (PUBLIC SWIMMING POOL LICENSES), 5.48 (LAUNDRIES), AND 5.96 (TATTOOING AND BODY PIERCING LICENSES); THE PENALTY AS IS PROVIDED IN SECTIONS 1.08.010-1.08.030, 5.32.160, AND 5.96.110 OF THE EL PASO CITY CODE.

WHEREAS, the El Paso City-County Health and Environmental District ("Health District") will cease to exist after December 31, 2007; and

WHEREAS, the City Council has created a City Department of Public Health to provide for public health and other services following the dissolution of the Health District; and

WHEREAS, some of the environmental services and code compliance functions of the Health District are being moved to the existing City Department of Environmental Services; and

WHEREAS, a state agency referenced in Title 5 has changed its name, so it is now necessary to change and correct those names; and

WHEREAS, it is appropriate to revise the permitting and appeal processes contained in various chapters of the title to achieve uniformity in the processes; and

WHEREAS, the El Paso City Code contains many references to the Health District and to individuals or positions at the Health District by their job or other official title, so it is now necessary to change and correct those names and titles so that the responsibilities and references are properly directed to the Department of Public Health and/or the Department of Environmental Services and divisions or sections thereunder.

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

Section 1. That all references in Title 5 (Business taxes, licenses and regulations) to the term "Texas Department of Health" shall be substituted with the term "Texas Department of State Health Services."

Section 2. That all references in Title 5 (Business taxes, licenses and regulations), Chapter 5.08 (Alcoholic Beverages), Sections 5.08.110 (Certification of compliance with requirements), and 5.08.120 (City protest of permit/license) of El Paso City Code to the term "City-county health department" shall be substituted with the term "department of public health".

Section 3. That all references in Title 5 (Business taxes, licenses and regulations), Chapter 5.32 (Public swimming pool licenses), of El Paso City Code to the term "health authority" shall be substituted with the term "director of the department of environmental services".

Section 4. That the following definitions contained in Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.020 (Definitions) be deleted, and that the following subsections be renumbered: B renumbered as A; D renumbered as C; and that subsection G be marked as reserved after its deletion.

Section 5.32.020 Definitions (delete the following definitions).

A. "Board" means the El Paso city-county board of health.

G. "Health authority" means the director of the El Paso city-county health and environmental district or designate.

Section 5. That the following definitions contained in Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.020 (Definitions), be amended:

Section 5.32.020 Definitions (amend the following definitions).

B. "Department" means the department of environmental services.

D. "Director of the department of environmental services" means the director of the department of environmental services, or his designee.

Section 6. That Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.060, Subsection D (Application processing), be deleted. The remainder of Section 5.32.060 remains in full force and effect.

Section 7. That Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.070, Subsection A (License Issuance) be amended, and Subsection F added, as follows:

Section 5.32.070, Subsections A and F License Issuance.

A. Subject to the approval of the director of the department of environmental services, and upon receipt of the required fees, the building permits and inspections director shall issue the license, unless he finds:

1. One or more of the statements made in the application are not true;
2. That applicant has made or caused to be made false statements or misrepresentations on the application;
3. The applicant has failed to submit a complete application;
4. The required fee has not been paid; or
5. The requirements of the applicable city code provision in this title relating to permit requirements or issuance are not met.

F. A person may appeal a denial of a permit to the city manager as provided in section 5.32.130 of this code.

Section 8. That Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.110, Subsections B 9 and C (Suspension of license), be amended as follows:

Section 5.32.110, Subsections B 9 and C Suspension of license.

B. 9. State that the suspension may be appealed to the City Manager.

C. The director of the department of environmental services shall post the facility with a suspended license with the following sign at each entrance to the facility and in a prominent location within the pool/spa area: POOL/SPA CLOSED BY ORDER OF THE CITY OF EL PASO DEPARTMENT OF ENVIRONMENTAL SERVICES –NO SWIMMING—VIOLATIONS ARE SUBJECT TO PROSECUTION UNDER SECTION 5.32.160 OF THE EL PASO CITY CODE.

Section 9. That Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.120, Subsections B 9 and C (Revocation of license), be amended as follows:

Section 5.32.120, Subsections B 9 and C Revocation of license.

B. 9. State that the revocation may be appealed to the City Manager.

C. The director of the department of environmental services shall post the facility with a revoked license with the following sign at each entrance to the facility and in a prominent location within the pool/spa area: POOL/SPA CLOSED BY ORDER OF THE CITY OF EL PASO DEPARTMENT OF ENVIRONMENTAL SERVICES –NO SWIMMING—VIOLATIONS ARE SUBJECT TO PROSECUTION UNDER SECTION 5.32.160 OF THE EL PASO CITY CODE.

Section 10. That Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.130 (Appeals), be amended as follows:

Section 5.32.130 Appeals.

A. The owner or operator of the licensed public swimming pool or public spa that has been served with a suspension or revocation notice, may appeal the action of the director of the department of environmental services to the city manager as provided herein. Within ten business days of taking such action, such director shall prepare a report indicating the reasons for the suspension or revocation, and shall provide a copy to the owner or operator. Such director's decision is final unless within ten calendar days from the date of receiving such director's report, the owner or operator files with the city clerk a written appeal to the city manager specifying reasons for the appeal. Said appeal shall also include a written rebuttal to such director's report.

B. The city manager or his designated deputy city manager shall review the report of the director of the department of environmental services and the appellant's rebuttal. The city manager or designee may allow the appellant to make an oral presentation or submit additional rebuttal. The city manager or designee shall make a ruling on the appeal within a reasonable period of time after the appeal has been filed.

C. The city manager or designee shall sustain, reverse or modify the action of the director of the department of environmental services and shall notify the appellant of his decision in writing. The decision of the city manager or designee is final.

Section 11. That Chapter 5.32 (Public Swimming Pool Licenses), Section 5.32.160, (Violations and penalties), be amended as follows:

Section 5.32.160 Violations 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.

Section 12. That Chapter 5.44 (Kindergartens), Section 5.44.260 (Inspections), be amended as follows:

Section 5.44.260 Inspections.

The directors of the building permits and inspections department and the department of environmental services and their designees, and the fire chief or designee, shall from time to time inspect all kindergartens and see that all safety and health requirements are met.

Section 13. That all references in Title 5 (Business taxes, licenses and regulations), Chapter 5.48 (Laundries), Sections 5.48.130 (Plumbing and drainage facilities), 5.48.160 (Boiling and sterilization) and 5.48.190 (Inspections), of El Paso City Code to the term "city-county health unit" shall be substituted with the term "department of environmental services".

Section 14. That Chapter 5.48 (Laundries), Section 5.48.020 (License--Required--Application--Investigation--Issuance), be amended as follows:

Section 5.48.020 License--Required--Application--Investigation--Issuance.

A. It is unlawful for any person to conduct any laundry within the city without first obtaining a license therefore. Application for such license shall be made in writing to the building permits and inspections department on a form to be provided by him for that purpose, together with the required application fee, as provided by ordinance or resolution of the City Council. The application shall be sworn to by the applicant, and shall contain the following information:

1. The full name and the city address of the individual(s) or organization applying for the license;
2. Information relating to compliance with the physical requirements for a laundry facility, as required in this chapter; and
3. Such other information, attachments, and submissions that are requested on the application form as reasonably necessary for a fair determination as to whether the license should be issued.

B. It is unlawful for any person to solicit laundry business within the city for any laundry, whether such laundry is conducted within or without the city, without such person having first obtained a license as provided herein and having complied with all the provisions of this chapter and paid the license fee therein provided.

C. Upon receipt of a proper application as provided in this chapter, the building permits and inspections director or his designee shall review the application and forward a copy of the application to the director of the environmental services department. The two directors shall cause an investigation to be made of the premises described in such application for the purpose of determining whether the conditions therein conform with the provisions of this chapter and whether a license should be issued. Such investigation shall be completed within 30 days after the date of receipt of the application.

D. The building permits and inspections director in accordance with applicable provisions of this chapter, shall issue the license applied for within 10 days of the completion of his investigation, unless such director finds:

1. One or more of the statements made in the application are not true;
2. That applicant has made or caused to be made false statements or misrepresentations on the application;
3. The applicant has failed to submit a complete application;
4. The required fee has not been paid; or

5. The conditions of the proposed laundry do not conform with the provisions or requirements of this chapter.

E. A person may appeal a denial of a license to the city manager as provided in section 5.48.050 of this code.

Section 15. That Chapter 5.48 (Laundries), Section 5.48.050 (License—Revocation), be amended as follows:

5.48.050 License—Denial—Suspension—Revocation

A. The building permits and inspections director, upon consultation with the director of the department of environmental services as appropriate, may suspend or revoke any license granted under the terms of this chapter for violation of any of the provisions of this chapter, or because such laundry is dangerous or detrimental to the health of the city or the health of the persons employed therein.

B. A license holder who has been served with a denial, suspension, or revocation notice, may appeal the building permits and inspections director's action to the city manager as provided herein. Within ten business days of taking such action, such director shall prepare a report indicating the reasons for the denial, suspension, or revocation, and shall provide a copy to the license holder. Such director's decision is final unless within ten calendar days from the date of receiving his report, the license holder files with the city clerk a written appeal to the city manager specifying reasons for the appeal. Said appeal shall also include a written rebuttal to the report.

C. The city manager or his designated deputy city manager shall review the building permits and inspection director's report and the appellant's rebuttal. The city manager or designee may allow the appellant to make an oral presentation or submit additional rebuttal. The city manager or designee shall make a ruling on the appeal within a reasonable period of time after the appeal has been filed.

D. The city manager or designee shall sustain, reverse or modify the action of the building permits and inspections director and shall notify the appellant of his decision in writing. The decision of the city manager or designee is final.

Section 16. That all references in Title 5 (Business taxes, licenses and regulations), Chapter 5.96 (Tattooing and body piercing licenses), Sections 5.96.050 (Application processing), and 5.96.060 (License denial, suspension and revocation), of El Paso City Code to the term "health authority" shall be substituted with the term "director".

Section 17. That Chapter 5.96 (Tattooing and body piercing licenses), Section 5.96.010 (Compliance required), be amended as follows:

Section 5.96.010 Compliance required.

A person shall not conduct, operate or maintain a studio unless the person holds a license issued by the Texas Department of State Health Services. In addition, a license must be approved by the director and issued by the building permits and inspections director if it is determined that the studio complies with the zoning codes and all construction and health requirements as set forth in Title 18 (Building and Construction) and Title 9 (Health and Safety) of this code.

Section 18. That the following definitions contained in Chapter 5.96 (Tattooing and body piercing licenses), Section 5.96.020 (Definitions) be deleted, and that subsection C be renumbered as B, and subsection D be renumbered as C, and that subsection F be marked as reserved upon its deletion.

Section 5.96.020 Definitions (delete the following definitions).

B. "Board" means the El Paso city-county board of health.

F. "Health authority" means the director of the El Paso city-county health and environmental district or designate.

Section 19. That the following definitions contained in Chapter 5.96 (Tattooing and body piercing licenses), Section 5.96.020 (Definitions), be amended:

Section 5.96.020 Definitions (amend the following definitions).

D. "Department" means the department of environmental services.

F. "Director of the department of environmental services" means the director of the department of environmental services, or his designee.

Section 20. That Chapter 5.96 (Tattooing and body piercing licenses), Section 5.96.070, Subsection C (License denial, suspension and revocation), be amended as follows:

Section 5.96.070, Subsection C License denial, suspension and revocation.

C. The director of the department of environmental services shall post a sign at any location where a license or permit has been suspended or revoked pursuant to this chapter or Title 9 (Health and Safety) of this code. Said sign shall contain the following statement:

TATOO AND BODY PIERCING STUDIO/BOOTH 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, TITLE 9 AND ANY OTHER APPLICABLE PROVISIONS OF THE EL PASO CITY CODE.

Section 21. That Chapter 5.96 (Tattooing and body piercing licenses), Section 5.96.080 (Appeals), be amended as follows:

Section 5.96.080 Appeals.

A. The applicant or license holder who has been served with a denial, suspension or revocation notice, may appeal the action to the city manager as provided herein. Within ten business days of taking such action, the building permits and inspections director, in consultation with the director of the department of environmental services as appropriate, shall prepare a report indicating the reasons for the denial, suspension or revocation, and shall provide a copy to the owner or operator. The building permits and inspections director's decision is final unless within ten calendar days for the date of receiving his report, the owner or operator files with the city clerk a written appeal to the city manager specifying reasons for the appeal. Said appeal shall also include a written rebuttal to the report.

B. The city manager or his designated deputy city manager shall review the building permits and inspections director's report and the appellant's rebuttal. The city manager or designee may allow the appellant to make an oral presentation or submit additional rebuttal. The city manager or designee shall make a ruling on the appeal within a reasonable period of time after the appeal has been filed.

C. The city manager or designee shall sustain, reverse or modify the action of the building permits and inspections director and shall notify the appellant of his decision in writing. The decision of the city manager or designee is final.

Section 22. That Chapter 5.96 (Tattooing and body piercing licenses), Section 5.96.100 (Enforcement authority), be amended as follows:

Section 5.96.100 Enforcement authority.

The director of the department of environmental services and the building permits and inspections director and their designees shall be authorized to administer and enforce the provisions of this chapter and Chapter 9.32 of this code.

Section 23. That Chapter 5.96 (Tattooing and body piercing licenses), Section 5.96.110 (Violations and penalties), be amended as follows:

Section 5.96.110 Violations 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.

Section 24. This ordinance shall take effect at 12:00:01 a.m., January 1, 2008.

Section 25. It is the intent of the City of El Paso that the changes directed by this ordinance in Sections 1, 2, 3, 13 and 16 shall not apply to any ordinance passed on or after the date this ordinance is passed and any changes in terms that are necessary for any ordinance passed on or after the date this ordinance is passed shall be included within such other ordinance. Therefore, these changes directed to be made by the publisher of the City Code by this ordinance shall not apply to any section of the El Paso City Code enacted or amended by the El Paso City Council on and after January 1, 2008.

Section 26. Except as herein amended, Title 5 (Business Taxes, Licenses and Regulations) shall remain in full force and effect.

ADOPTED this 18th day of December 2007.

CITY OF EL PASO

CITY CLERK DEPT.
07 DEC -6 AM 9:44

ATTEST:

John F. Cook, Mayor

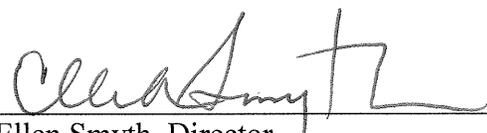
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Elaine S. Hengen
Senior Assistant City Attorney



Ellen Smyth, Director
Department of Environmental Services