

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

**DEPARTMENT:** Fire Department

**AGENDA DATE:** April 9, 2024

**PUBLIC HEARING DATE:** April 23, 2024

**CONTACT PERSON NAME AND PHONE NUMBER:** Jonathan P. Killings, 915-212-5665

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:** Goal 2: Set the Standard for a Safe and Secure City

**SUBGOAL:** 2.3 Increase public safety operational efficiency

**SUBJECT:** An Ordinance Amending Title 9 (Health and Safety) Chapter 9.85 (Emergency and Transfer Ambulance Services), Section 9.85.060 (Franchise – Application – Contents) To add a process for Denial of Franchise application; Section 9.85.070 (Franchise – Application; Review; Hearing) To add factors considered for Public convenience and necessity; Section 9.85.130 (Violation – Penalty) To move to Section 9.85.140 and be replaced with (Suspension; Revocation: Appeal) Giving Due Process after suspension or revocation, of the El Paso City Code.

**BACKGROUND / DISCUSSION:**

The City wishes to amend Title 9, Chapter 9.85, Sections 9.85.060, 9.85.070, 9.85.130 and add Section 9.85.140 to deliver the need for a more detailed process for ambulance franchise applications. In the interest of the economy, a mechanism for denying a deficient application needs to be put in place that will allow the department to only bring viable application to city council for hearing that will allow all parties to have a productive discussion.

**PRIOR COUNCIL ACTION:**

Yes, Ordinance No. 018547 was passed and adopted August 9, 2016

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO


**PRIMARY DEPARTMENT:** Fire Department

**SECONDARY DEPARTMENT:**

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.85 (EMERGENCY AND TRANSFER AMBULANCE SERVICES), SECTION 9.85.060 (FRANCHISE – APPLICATION - CONTENTS) TO ADD A PROCESS FOR DENIAL OF FRANCHISE APPLICATION; SECTION 9.85.070 (FRANCHISE—APPLICATION; REVIEW; HEARING) TO ADD FACTORS CONSIDERED FOR PUBLIC CONVENIENCE AND NECESSITY; SECTION 9.85.130 (VIOLATION —PENALTY) TO MOVE TO SECTION 9.85.140 AND BE REPLACED WITH (SUSPENSION; REVOCATION; APPEAL) GIVING DUE PROCESS AFTER SUSPENSION OR REVOCATION, OF THE EL PASO CITY CODE.**

**WHEREAS**, the City of El Paso wishes to amend Title 9, Chapter 9.85, Sections 9.85.060, 9.85.070, 9.85.130 and add Section 9.85.140; and

**WHEREAS**, the need for a more detailed process for ambulance franchise applications has become evident; and

**WHEREAS**, the factors that city council considers to determine “public convenience and necessity” at hearing for a franchise application must be clearly defined in order for all parties to have a productive discussion; and

**WHEREAS**, in the interest of economy, a mechanism for denying a deficient application will provide the department a means of bringing only viable applications to city council for hearing; and

**WHEREAS**, a process for suspending or revoking a franchise is necessary to ensure that service to the public conforms to an acceptable standard; and

**WHEREAS**, in order to effectuate due process, franchises given a notice of suspension or revocation are afforded a hearing.

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

**SECTION 1.** That Title 9 (Health and Safety), Chapter 9.85 (Emergency and Transfer Ambulance Services), Section 9.85.060 (Franchise Application - Contents), is hereby amended to read as follows:

**9.85.060 - Franchise application—Contents; denial.**

- A. Application for a franchise shall be filed with the city clerk upon forms furnished by the city clerk along with the applicable application fee. The applicant shall furnish the following information:
  - 1. A statement that the applicant has obtained liability insurance in accordance with the requirements provided by this article before commencing service;

2. A statement of the number of vehicles which the applicant proposes to operate and the make, model and vehicle identification number of each transfer vehicle;
  3. A statement that each vehicle is supplied with minimal emergency equipment as set forth in Section 9.85.110 C;
  4. A list of persons who will act as ambulance attendants and drivers, their current State of Texas Department of State Health Services certificate status, and their date of employment, current driver's license issued by a U.S. state or the U.S. federal government and expiration date, defensive driving or current emergency vehicle operators course certificate, and physician release; and
  5. A statement that the safety mechanism of the vehicle is operative and is in good repair; including, but not limited to, headlights, tail-lights, turn signals, brakes, brake lights, emergency lights, windshield wipers, wiper blades, handles opening doors and windows, and tires and spare tires.
- B. Copies of each application for a franchise shall be forwarded to the chief of the fire department or designee for acceptance or denial, and the chief of the fire department shall review applications for ambulance service and make recommendations to the City Council.
- C. Any person who gives false information regarding any statements made in subsections A.1 through A.5 of this section, shall have his or her application denied, and be guilty of a misdemeanor and subject to the punitive measures set forth in Section 1.08.010.
- D. The chief of the fire department may deny an application for a franchise, whether original or renewal, by serving the applicant with written notice by hand-delivery or certified mail, return-receipt requested, if the chief of the fire department finds:
1. That the applicant has supplied false or incorrect information on the franchise application;
  2. That the applicant has failed to supply all information required on the franchise application form; or
  3. That the applicant has failed to pay the franchise application fee.
- E. In the event that the applicant's franchise is under suspension or revocation, no new franchise shall be granted until the term of such suspension or revocation has expired.
- F. The chief of the fire department shall issue written notice of denial of a franchise application to the applicant which shall contain, as a minimum, the following:
1. The name of the applicant;
  2. Statement that the application is denied; and
  3. Reason(s) for the denial.

**SECTION 2.** That Title 9 (Health and Safety), Chapter 9.85 (Emergency and Transfer Ambulance Services), Section 9.85.070 (Application; review; hearing), is hereby amended to read as follows:

**9.85.070 - Franchise—Application; factors considered; review; hearing.**

- A. Upon acceptance of an application for a franchise, the city council will set the time for a public hearing thereon and receive evidence as to whether the public convenience and necessity justify granting the franchise, whether the applicant is qualified to render good service and has or will have sufficient equipment of suitable type and condition, and to any other relevant facts bearing on whether the franchise will be in the public interest. The city council shall grant the franchise and determine upon what terms and conditions it will be granted, or shall refuse to grant it, in accordance with the council's findings as to whether considering the above standards, the public interest will be served.
- B. In all hearings, the burden of proof shall be upon the applicant to establish that a need in the community exists for the services.
- C. Factors considered. In determining public convenience and necessity, the City Council may consider but not be limited to the following:
  - 1. The need for an additional franchise. The number of providers available to provide service in the area in which the applicant proposes to furnish services, and whether granting the franchise will adversely affect existing service providers;
  - 2. The distance from the operational address at which the applicant proposes to operate the franchise to hospitals and other medical providers serving the public;
  - 3. Response times, total number of calls for service, and total number of completed transfers for the franchises already serving the area;
  - 4. The reasonableness of the proposed rates to be charged by the applicant;
  - 5. Financial responsibility of the applicant; and
  - 6. Whether the applicant has performed such service in a satisfactory manner in the past.

**SECTION 3.** That Title 9 (Health and Safety), Chapter 9.85 (Emergency and Transfer Ambulance Services), Section 9.85.130 (Violation—Penalty), is hereby amended to read as follows:

### **9.85.130 - Franchise—Suspension; revocation; appeal.**

- A. Suspension. The chief of the fire department may issue a written notice of suspension or deferred suspension not to exceed sixty days subject to this chapter if the director determines that any of the following is true:
1. The franchisee has breached a provision of the franchise agreement;
  2. The franchisee has had its provider license revoked, suspended, reprimanded or placed on probation by the Texas Department of State Health Services;
  3. The franchisee is in violation of a provision of this chapter or a rule adopted under this chapter;
  4. The franchisee is indebted to the city for fees or payment of penalties imposed by this chapter or by a rule adopted under this chapter;
  5. The franchisee is not fit, willing, or able to continue operating the franchise in accordance with the license, this article, the rules and regulations established by the chief of the fire department, and other applicable state and federal laws;
  6. The franchise is operating under a trade name other than the one granted to the franchise;
  7. The franchisee was convicted of any felony offense while the franchise was granted; or
  8. Continued operation of the franchise poses a risk to the health and safety of the community.
- B. Revocation. The chief of the fire department may issue a written notice of revocation a franchise if the franchisee violates this chapter on two or more occasions within a twelve-month period or if the chief of the fire department determines:
1. The franchisee supplied false or misleading information on the application for the franchise, provider license, or any other license provided by the State.
- C. Notice. The chief of the fire department shall issue a written notice of suspension, deferred suspension, or revocation of a franchise to the franchisee, which shall contain, as applicable, the following:
1. Name and address of the franchise;
  2. Statement of whether the franchise is suspended or revoked;
  3. Reason(s) for the suspension or revocation;

4. In the case of a suspension, a recommendation for corrective measures to bring the franchise into compliance with the requirements of this chapter;
  5. Reasonable time limit for the completion of the corrective measures;
  6. Statement that the franchise, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time; and
  7. Statement that the suspension or revocation may be appealed.
- D. A franchisee may not reapply for a new franchise for a period of twelve months after said franchise has been revoked.
- E. A franchisee whose franchise has been suspended shall not work for another franchise as an employee, representative, or ambulance personnel during the suspension period. This subsection shall not apply to an employee exclusively earning a wage or salary.
- F. Appeal. Within ten business days of denial, suspension or revocation, the chief of the fire department shall prepare a report indicating the reasons for the suspension or revocation, and shall provide a copy to franchisee at the address given in the franchise agreement. The decision of the chief of the fire department is final unless within ten calendar days from the date of receiving such official's report, the franchisee 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 chief of the fire department's report.
- G. The city manager or a designee other than the chief of the fire department shall review the report of the chief of the fire department and the appellant's rebuttal. The city manager or designee may allow the appellant to make an oral argument or submit additional rebuttal. The city manager or designee shall make a ruling on the appeal within 14 days after the appeal has been filed.
- H. The city manager or a designee other than the chief of the fire department shall sustain, reverse or modify the action of the chief of the fire department and shall notify the appellant of the decision in writing. The decision of the city manager or designee is final.

**SECTION 4.** That Title 9 (Health and Safety), Chapter 9.85 (Emergency and Transfer Ambulance Services), Section 9.85.140, is hereby added and reads as follows:

**9.85.140 - Violation—Penalty.**

Any violation of any section of this chapter shall constitute a misdemeanor punishable by a fine up to five hundred dollars in accordance with Sections 1.08.010, 1.08.020 and 1.08.030 of the El Paso City Code.

**SECTION 5.** Except as herein amended, Title 9 of the El Paso City Code shall remain in full force and effect.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leeser  
Mayor

**ATTEST:**


\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**



Carlos L. Armendariz  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
Jonathan P. Killings, Chief  
El Paso Fire Department

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.85 (EMERGENCY AND TRANSFER AMBULANCE SERVICES), SECTION 9.85.060 (FRANCHISE - APPLICATION – CONTENTS) TO ADD A PROCESS FOR DENIAL OF FRANCHISE APPLICATION; SECTION 9.85.070 (FRANCHISE—APPLICATION; REVIEW; HEARING) TO ADD FACTORS CONSIDERED FOR PUBLIC CONVENIENCE AND NECESSITY; SECTION 9.85.130 TO ADD SUSPENSION, REVOCATION, AND APPEAL LANGUAGE; SECTION 9.85.140 TO CLARIFY VIOLATION LANGUAGE; THE PENALTY AS PROVIDED IN SECTION 9.85.140 OF THE EL PASO CITY CODE.

**WHEREAS**, the City of El Paso wishes to amend Title 9, Chapter 9.85, Sections 9.85.060, 9.85.070, 9.85.130 and add Section 9.85.140 of the El Paso City Code; and

**WHEREAS**, the need for a more detailed process for ambulance franchise applications has become evident; and

**WHEREAS**, the factors that City Council considers to determine “public convenience and necessity” at hearing for a franchise application must be clearly defined in order for all parties to have a productive discussion and understanding; and

**WHEREAS**, in the interest of economy, a mechanism for denying a deficient application will provide the Fire Department a means of bringing only viable applications to City Council for hearing; and

**WHEREAS**, a process for suspending or revoking a franchise is necessary to ensure that service to the public conforms to an acceptable standard; and

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  2. A statement of the number of vehicles which the applicant proposes to operate and the make, model and vehicle identification number of each transfer vehicle;
  3. A statement that each vehicle is supplied with ~~a first-aid kit and other~~ minimal emergency equipment as set forth in Section 9.85.110 C;
  4. A list of persons who will act as ambulance attendants and drivers, their current State of Texas Department of State Health Services certificate status, and their date of employment, current ~~Texas or New Mexico~~ driver's license issued by a U.S. state or the U.S. federal government and expiration date, defensive driving or current emergency vehicle operators course certificate, and physician release; and
  5. A statement that the safety mechanism of the vehicle is operative and is in good repair; including, but not limited to, headlights, tail-lights, turn signals, brakes, brake lights, emergency lights, windshield wipers, wiper blades, handles opening doors and windows, and tires and spare tires.
- B. Copies of each application for ~~ambulance service~~ a franchise shall be forwarded to the chief of the fire department or designee for acceptance or denial, and the chief of the fire department shall review applications for ambulance service and make recommendations to the ~~Ceity~~ Ceouncil.
- C. Any person who gives false information regarding any statements made in subsections A.1 through A.5 of this section, shall have his or her application denied, and be guilty of a misdemeanor and subject to the punitive measures set forth in Section 1.08.010.
- D. The chief of the fire department may deny an application for a franchise, whether original or renewal, by serving the applicant with written notice by hand-delivery or certified mail, return-receipt requested, if the chief of the fire department finds:
1. That the applicant has supplied false or incorrect information on the franchise application;
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- E. In the event that the applicant's franchise is under suspension or revocation, no new franchise shall be granted until the term of such suspension or revocation has expired.
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- B. In all hearings, the burden of proof shall be upon the applicant~~s~~ to establish that a need in the community exists for the~~ir~~ services.
- C. Factors considered. In determining public convenience and necessity, the City Council may consider but not be limited to the following:
  1. The need for an additional franchise. The number of providers available to provide service in the area in which the applicant proposes to furnish services, and whether granting the franchise will adversely affect existing service providers;
  2. The distance from the operational address at which the applicant proposes to operate the franchise to hospitals and other medical providers serving the public;
  3. Response times, total number of calls for service, and total number of completed transfers for the franchises already serving the area;
  4. The reasonableness of the proposed rates to be charged by the applicant;
  5. Financial responsibility of the applicant; and

6. Whether the applicant has performed such service in a satisfactory manner in the past.

**SECTION 3.** That Title 9 (Health and Safety), Chapter 9.85 (Emergency and Transfer Ambulance Services), Section 9.85.130 (Violation—Penalty), is hereby amended to read as follows:

**9.85.130 -Violation—Penalty. Franchise—Suspension; revocation; appeal.**

~~Any violation of any section of this chapter shall constitute a misdemeanor punishable in accordance with Sections 1.08.010, 1.08.020 and 1.08.030 of the El Paso City Code.~~

A. Suspension. The chief of the fire department may issue a written notice of suspension or deferred suspension not to exceed sixty days subject to this chapter if the director determines that any of the following is true:

1. -The franchisee has breached a provision of the franchise agreement;
2. -The franchisee has had its provider license revoked, suspended, reprimanded or placed on probation by the Texas Department of State Health Services;
3. The franchisee is in violation of a provision of this chapter or a rule adopted under this chapter;
4. The franchisee is indebted to the city for fees or payment of penalties imposed by this chapter or by a rule adopted under this chapter;
5. The franchisee is not fit, willing, or able to continue operating the franchise in accordance with the license, this article, the rules and regulations established by the chief of the fire department, and other applicable state and federal laws;
6. The franchise is operating under a trade name other than the one granted to the franchise;
7. — The franchisee was convicted of any felony offense while the franchise was granted; or
8. Continued operation of the franchise poses a risk to the health and safety of the community.

B. -Revocation. The chief of the fire department may issue a written notice of revocation a franchise if the franchisee violates this chapter on two or more occasions within a twelve-month period or if the chief of the fire department determines:

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1. Name and address of the franchise;
  2. Statement of whether the franchise is suspended or revoked;
  3. Reason(s) for the suspension or revocation;
  4. In the case of a suspension, a recommendation for corrective measures to bring the franchise into compliance with the requirements of this chapter;
  5. Reasonable time limit for the completion of the corrective measures;
  6. Statement that the franchise, if suspended, is subject to revocation for failure to complete the corrective measures within the allotted time; and
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**SECTION 4.** That Title 9 (Health and Safety), Chapter 9.85 (Emergency and Transfer Ambulance Services), Section 9.85.140, is hereby added and reads as follows:

**9.85.140 - Violation—Penalty.**

Any violation of any section of this chapter shall constitute a misdemeanor punishable by a fine up to five hundred dollars in accordance with Sections 1.08.010, 1.08.020, and 1.08.030 of the El Paso City Code.

**SECTION 5.** Except as herein amended, Title 9 of the El Paso City Code shall remain in full force and effect.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leaser  
Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_

\_\_\_\_\_

Carlos L. Armendariz  
Assistant City Attorney

Jonathan P. Killings, Chief  
El Paso Fire Department