

DRAFT: 7.7.2009

ORDINANCE NO. 2009- _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF McALLEN TO ESTABLISH LICENSING AND OTHER REGULATORY REQUIREMENTS FOR AMBULANCE SERVICES OPERATING IN THE CITY; CREATING THE POSITION OF PERMIT OFFICER TO ADMINISTER AND ENFORCE SUCH REQUIREMENTS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR PUBLICATION; PROVIDING FOR SEVERABILITY, AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, several ambulance services currently provide transfer services within the limits of the City of McAllen from time to time and they may or may not provide emergency services;

WHEREAS, in order to preserve public health, peace and safety of the citizens of the City of McAllen, Texas, the City of McAllen needs to know which ambulance services are currently providing services in the City of McAllen and to the citizens of the City of McAllen; and [...]

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of McAllen, Texas, that:

SECTION 1. The Code of Ordinances of the City of McAllen, Texas is hereby amended at Chapter 42 (“Emergency Services”), Article III (“Ambulances”) to read as follows:

DIVISION 1. GENERALLY

Sec. 42-75. Scope.

Any ambulance service or transportation originating in the City of McAllen shall comply with the provisions of this article, and it shall be unlawful for anyone to provide ambulance service or transportation originating in the City of McAllen except when there is compliance with the provisions of this article. Ambulance service or transportation originates in the City of McAllen when a patient is attended, or a patient's transportation begins, within the City's corporate limits.

Sec. 42-76. Definitions.

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

Ambulance means any vehicle used for the transportation of wounded, injured or sick persons to or from a destination within the corporate boundaries of the City of McAllen , but specifically excludes funeral coaches and wheelchair vans.

Emergency ambulance means an ambulance used ~~; —designed— or redesigned for the purpose of transporting the sick or injured, the rendering of first aid, or the performance of rescue work while the vehicle is being operated under emergency conditions~~ to render emergency services, and which may also be used to render transport services .

Emergency circumstances means the existence of circumstances in which the element of time in transporting the sick, injured or wounded for medical treatment is essential to the health or life of such person.

Emergency service means ~~the emergency~~ any ambulance service rendered under ~~trip to the place of~~ emergency circumstances, including the trip to the the place of emergency, ~~and rendering of first aid and assistance, and the trip to the hospital or other specified destination~~ qualified emergency treatment destination.

Permit Officer means the Permit Officer or designee.

Safety-sensitive position means a position the duties of which create, or are accompanied by, a risk of injury to persons or to property of such a magnitude that even a monetary lapse of attention, judgment, or dexterity could have disastrous consequences, which may include, without limitation, a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances or hazardous materials, or operate motor vehicles, machinery, or equipment.

Transport Ambulance means an ambulance used to render transport services.

Transport Service means the transportation of sick, injured or wounded persons under other than emergency circumstances. Such transport vehicles at all times during the transportation of a patient shall be staffed with the minimum certified personnel required by state law for the vehicle authorization.

Sec. 42-78. Penalty for violation of article ; fines, suspensions, revocations, and appeals .

(a) Any person who violates any provision of this article shall, upon conviction, be fined ~~in the sum not less than the minimum nor the maximum fine as provided for under the provisions of section 1-14 as such section relates to public health and sanitation ordinances~~ as provided in section 1-14 of this code. Each day any violation shall continue shall constitute a separate offense .

(b) Any violation of the Emergency Health Care Act, Chapter 773 of the Texas Health and Safety Code, or of any regulation applicable to emergency medical services providers, shall constitute a violation of this article. Upon conviction for any such violation the fine shall be \$250.00 and \$500.00 for any other violation within one year of any previous violation.

(c) If a licensee violates any provision in this article or of the Texas Emergency Health Care Act, the Permit Officer is authorized to

suspend a license or permit for any period of time not to exceed thirty (30) days or until the violation is abated. In the event of any repeat or a serious violation, the Permit Officer may revoke the license or permit, as the case may be.

1. Every license or permit suspension or revocation shall be in writing, dated, and state the reason for the revocation or the period of the suspension, as the case may be.
2. The suspension or revocation order shall immediately be personally served upon the licensee or any of its employees or agents, and mailed to the licensee addressed to the most recent address of record.
3. Such order of suspension or revocation shall be effective immediately upon personal service.
4. Whenever the license of a transport service licensee is suspended or revoked the licensee shall so notify in writing all of its patients requiring life-sustaining treatment or care, including but not limited to dialysis, no later than by the end of the day following its receipt of notice from the Permit Officer, and shall make adequate alternative arrangements for those patients.
5. A decision or an order of the Permit Officer denying, suspending or revoking a license or permit may be appealed by the affected party in writing to the City Manager or designee no later than within ten (10) business days after the date such decision or order becomes effective. A hearing shall be scheduled to take place no later than five (5) business days after receipt of the appeal, and a written decision shall be rendered no later than five (5) business days following the hearing. The City Manager's decision shall be final.

(d) In the event of a violation of this article or any of its provisions by any person or any other type of business entity, its agents, servants or

employees, the city may, in addition to other remedies, institute any appropriate action or proceedings to prevent such violation, including the right to restrain, enjoin, correct or abate such violation in any court of competent jurisdiction in accordance with the laws of the state.

Sec. 42-79. Permit officer; duties and powers; citation authority .

There is hereby created the position of Permit Officer within the City's Health Department. In addition to any other duties and powers granted under this chapter, the Permit Officer:

- 1. Shall obtain a criminal background check of all individuals applying for any permit or license issued under this chapter, and may do so for anyone employed by any such individual.**
- 2. May investigate or verify any permit or license applicant's education and training, extent and quality of performance in previous ambulance-related jobs or businesses, or any other information required to be furnished in or with the application.**
- 3. Shall inspect the ambulance vehicles and equipment of every ambulance licensee prior to issuance of a vehicle permit and thereafter inspect such ambulance vehicles and equipment at least annually. Any deficiency found by the Permit Officer shall be forwarded to Department of State Health Services.**
- 4. May, with or without prior notice, inspect permitted ambulance vehicles or the equipment contained therein at any time and at any reasonable location for the purpose of determining whether the requirements of this chapter or the rules and regulations of the Department of State Health Services are being met, as well as inspect during regular business hours such books and records of each licensee as reasonably necessary to the same end.**
- 5. Shall enforce the provisions of this chapter. To aid in enforcement the Permit Officer is authorized to issue citations for violations of any such provision.**

Sec. 42-80. Ambulance license.

- (a) No person shall operate or allow the operation of any ambulance service or vehicle regulated by this article within the City of McAllen until the Permit Officer verifies compliance with all rules and regulations prescribed by the City and with the applicable state statutes pertaining to the operation of ambulances, and issues any required licenses and permits.**
- (b) A licensed emergency ambulance service may operate transport service ambulances without a separate transport service ambulance permit or license.**

Sec. 42-81. License application; duty to update information.

- (a) Application for license hereunder shall be made to the Permit Officer and shall contain the following:**
- 1. The name and address of the applicant.**
 - 2. The number and description of all ambulances, including the make, model, year of manufacture, state license number for the current year, motor and chassis number.**
 - 3. The physical location and description of all places of business within the Trauma Service Area "V" (T.S.A.V.).**
 - 4. The names, age and sex of the person who will operate such vehicles along with the number and date of issue of all licenses held by each such persons pertaining to the ambulance business, as required by state laws.**
 - 5. The maximum rates proposed to be charged for emergency or transport ambulance service by the operator, which shall not thereafter be raised with the prior approval of the City Commission.**
 - 6. A statement by the applicant agreeing to comply with this article, and all applicable state laws relating to ambulance service, vehicles, and required equipment, allowing inspections as provided for under Section Sec. 42-79(4)**

hereof, agreeing to assist when requested by the city in the event of a disaster or emergency and to participate in emergency preparedness drills. Failure to comply with any of these representations will be cause for suspension or revocation of the license.

7. Documentary proof that applicant implements and enforces a drug and alcohol policy for its employees that is equivalent to or stricter than what is required of the City under the Drug Free Workplace Act of 1988 (41 U.S.C. 701, et seq.) . A certification shall be required from applicant's designated drug testing center that none of applicant's safety-sensitive employees has failed any drug test it has administered. Except when and to the extent it may be prohibited by law, these records shall be made available to the Permit Officer upon written request.
8. Information as specified in the application form relating to whether any employee within the categories listed therein has ever been convicted of a felony at any time, or convicted of a misdemeanor in the past five (5) years (including a traffic offense), and if so, when and where and for what cause.
9. The initial and renewal ambulance license fees will be \$500.00.
10. A copy of every insurance policy or other proof of financial responsibility covering any vehicle owned or operated by the applicant for any liability imposed on such owner or operator, regardless of whether the vehicle is being driven by an employee, agent or lessee, which coverage shall be in at least the following amounts:

 - (i) Liability for injury to any one person, \$1,000,000.

- (ii) Liability arising out of one occurrence, for injury to one or more persons arising out of one occurrence, \$1,000,000.**
- (iii) Property damage, per occurrence, \$1,000,000.**
- (iv) Malpractice for injury to any one person, \$500,000.**
- (b) Any change in the information required in a license application or a renewal thereof shall be reported by licensee to the Permit Officer within five (5) working days after the change occurs, unless otherwise provided in this chapter.**
- (c) Licenses and permits must be renewed annually and renewal applications must comply with all the requirements of an initial application , as per subsection (a) hereof. Ambulance vehicles shall be submitted for inspection before their permits are renewed.**

Sec. 42-82. Vehicle permits; inspections; suspension or revocation; appeals.

- (a) It shall be unlawful to operate or allow the operation of an ambulance vehicle unless it has a valid, unexpired vehicle permit and has passed its most recent vehicle inspection.**
- (b) The ambulance licensee shall apply for a vehicle permit for each ambulance vehicle prior to placing the same in operation. Vehicle permit applications must be submitted on such form as the Permit Officer shall determine, together with an application fee of \$25.00 per vehicle. Ambulance licensee shall submit each ambulance vehicle for inspection at the time of initial permit application, renewal and at all other times required by the permit officer pursuant to this article. Approval of a vehicle permit shall be contingent upon passing a vehicle inspection. Vehicle permits shall be valid for no more than one (1) year, shall expire at the time the ambulance license expires, and shall be suspended if it fails any vehicle inspection .**
- (c) Vehicle permits may only be issued to licensees and are not transferable, except as authorized by the Permit Officer. It shall be unlawful for anyone to use an ambulance vehicle permitted to another**

or for anyone to allow another to use his permitted vehicle, without the specific, written authorization of the Permit Officer.

(d) Upon finding that a permitted ambulance vehicle is unsafe or otherwise in violation of any applicable ordinance, the Permit Officer is authorized to suspend a vehicle permit for any period of time not to exceed thirty (30) days or until the violation is abated, or in the event of any repeat or serious violations, to revoke the same. To the full extent applicable, suspensions and revocations of vehicle permits shall be governed by the requirements and procedures as provided in Sec. 42-78(c).

Sec. 42-83. Procedure upon request for emergency ambulance service from other than city; operation of emergency lights and sirens.

(a) Notification to the City's 9-1-1 communications center: When any ambulance operator, its agent or employees, receives a request for emergency ambulance service from any person other than the city police or fire departments, the City's 9-1-1 communications center or other appropriate entity, if applicable, it shall immediately notify the city dispatcher of the reported emergency. The ambulance operator receiving such a direct call shall not proceed to the scene of the emergency unless authorized by the City's 9-1-1 communications center.

(b) Emergency Response: It shall be unlawful for any person other than the city-contracted emergency service provider, to operate an ambulance within the corporate limits of the city using emergency lights or siren without authorization from the City's 9-1-1 communications center.

Secs. 42- 79 ~~84~~ -- 42-90. Reserved.

**DIVISION 3. ~~CONTRACT REQUIRED~~ CONTRACT FOR CITY
EMERGENCY AMBULANCE SERVICE**

Sec. 42-106. Required Emergency calls .

It shall be unlawful for any person having management, ownership or control of any ambulance to operate or to suffer permitting such ambulance to be operated ~~upon the streets of~~ **in** the city in response to emergency calls initiated by the city police or fire departments or initiated by the **City's 9-1-1 communications center** or **other** appropriate entity, if applicable, unless such service is specifically contracted for with the city as provided for in this division , **except where such service is specifically requested by the City or its contracted emergency service provider in the event of a disaster, or emergency or mutual aid request** . Proof of the following shall constitute prima facie evidence of violation of this section:

(1) That an ambulance which is owned or controlled by the person charged with an offense under this section provided emergency service within the city limits;

(2) That the police or fire departments of the city , **City's 9-1-1 communications center or other appropriate entity** dispatched some other ambulance to the scene of such emergency; and

(3) That the person or company charged did not operate under a valid contract with the city **for emergency ambulance service** pursuant to the provisions of ~~section 42-111~~ **this division** .

It shall be an affirmative defense to any prosecution brought under this section that the emergency service in question was provided in response to a call or request from a private citizen.

SECTION II: This Ordinance shall be and remain in full force and effect from and after its passage by the Board of Commissioners, and execution by the Mayor.

SECTION III: The City Secretary of the City of McAllen is hereby authorized and directed to cause the caption of this ordinance to be published in a newspaper having general circulation in McAllen, Hidalgo County, Texas in accordance with the Code of Ordinances of the City of McAllen, Section 2-56. Publication of ordinances.

SECTION IV: The City Secretary of the City of McAllen is hereby authorized and directed to cause the language at Chapter 42 (“Emergency Services”), Article III (“Ambulances”) of the McAllen Code of Ordinances, as amended by Section I, hereinabove, to be published in the appropriate location in the said Code of Ordinances.

SECTION V: If any part or parts of this Ordinance are found to be invalid or unconstitutional by a court having competent jurisdiction, then such invalidity or unconstitutionality shall not affect the remaining parts hereof and such remaining parts shall remain in full force and effect, and to that extent this Ordinance is considered severable.

CONSIDERED, PASSED and APPROVED this ____ day of _____, 2009, at a regular meeting of the Board of Commissioners of the City of McAllen, Texas at which a quorum was present and which was held in accordance with Chapter 551 of the Texas Government Code, and Chapter 102 of the Texas Local Government Code.

SIGNED this ____ day _____, 2009.

CITY OF McALLEN

By: _____
Richard F. Cortez, Mayor

Attest:

Annette Villarreal, City Secretary

Approved as to form:

Kevin D. Pagan, City Attorney