Agenda Item Form

Agenda Date: *March 9, 2004*

Districts Affected: All

Dept. Head/Contact Information: Jorge C. Magaña, MD, FAAP, Director

Type of Agenda Item:

- ☐ Resolution
- ☐ Tax Installment Agreements
- ☐ RFP/ BID/ Best Value Procurement
- ☐ Application for Facility Use
- ☐ Interlocal Agreements
- ☐ Other _____
- ☐ Staffing Table Changes
- ☐ Tax Refunds
- ☐ Budget Transfer
- ☐ Bldg. Permits/Inspection
- ☐ Contract/Lease Agreement
- ☐ Board Appointments
- ☐ Donations
- ☐ Item Placed by Citizen
- ☒ Introduction of Ordinance
- ☐ Grant Application

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☐ Other Source: _____

Legal:

☐ Legal Review Required Attorney Assigned (please scroll down): Teresa Garcia ☐ Approved ☐ Denied

Timeline Priority: ☐ High ☐ Medium ☐ Low # of days:_____

Why is this item necessary:

Public Hearing to be held on March 23, 2004

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

_____

Statutory or Citizen Concerns:

_____

Departmental Concerns:

_____

El Paso City-County Health and Environmental District

Jorge C. Magaña, M.D., F.A.A.P., Director
Mark A. Everett, M.B.A., Public Health Administrator

March 3, 2004

TO: CITY CLERK

FROM: JORGE C. MAGAÑA, MD, FAAP, DIRECTOR
5115 EL PASO DR. EL PASO, TEXAS 79905
[MARIA ELENA CHAVEZ (915) 771-5702]

Please place the following item on the REGULAR AGENDA for the City Council meeting of March 9, 2004 **INTRODUCTION OF ORDINANCE.**

An Ordinance to amend Title 9 (Health & Safety), by adding a new Chapter 9.32 (Tattooing and Body Piercing), to provide for the regulation of tattooing and Body Piercing. The penalty being as provided herein.

Special Notations: Public Hearing will be held on March 23, 2004.

CITY CLERK DEPARTMENT
2004 MAR 4 PM 2 56

ORDINANCE NO. _____

AN ORDINANCE TO AMEND TITLE 9 (HEALTH & SAFETY), BY ADDING A NEW CHAPTER 9.32 (TATTOOING AND BODY PIERCING), TO PROVIDE FOR THE REGULATION OF TATTOOING AND BODY PIERCING. THE PENALTY BEING AS PROVIDED HEREIN.

WHEREAS, the State of Texas Legislature has modified the regulations governing the operation of Tattooing and Body Piercing Studios, and

WHEREAS, the El Paso City-County Board of Health has recommended the revision of the local ordinance governing the operation and work of Tattooers, and

WHEREAS, the Building Permits and Inspections Department and the El Paso City-County Board of Health have favorably recommended adding regulations governing the operation of Tattoo and Body Piercing Artists and Studios in Title 9 of the El Paso Municipal Code; and

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

1. **That Title 9 (Health & Safety), shall be and hereby is amended by adding Chapter 9.32 (Tattooing and Body Piercing) which shall read as follows:**

CHAPTER 9.32
TATTOOING AND BODY PIERCING

Article I. General Provisions

Section 9.32.010 Purpose
Section 9.32.020 Definitions

Article II. License

Section 9.32.030 License Required
Section 9.32.040 License Investigation

Article III. Compliance Standards

Section 9.32.050 Facility Requirements
Section 9.32.060 Personnel Requirements
Section 9.32.070 Sterilization Requirements
Section 9.32.080 Reporting and Record-keeping Requirements

Article IV. Prohibitions

Section 9.32.090 Tattooing and Body Piercing diseased, intoxicated or drugged persons
Section 9.32.100 Tattooing and Body Piercing Minors
Section 9.32.110 Alcoholic Beverages
Section 9.32.120 Animals

Article V. Enforcement

Section 9.32.130 Inspection
Section 9.32.140 Immediate Closure by Health Authority
Section 9.32.150 Penalty

ARTICLE I. GENERAL PROVISIONS

Section 9.32.010 Purpose

Establish minimum standards for the licensure of Tattooing and Body Piercing. These standards are based in part on the Texas Administrative Code; Title 25, Health Services, Part I, Texas Department of Health, Chapter 229, Food and Drug, Subchapter V, Minimum Standards for Licensure of Tattoo and Certain Body Piercing Studios, Sections 229.402 through 229.412. These standards implement the Texas Health and Safety Code; Chapter 146, Tattoo and Certain Body Piercing Studios, Sections 146.001 through 146.020 and are consistent with good pubic health. These standards are in addition to any municipal, state or federal laws applicable to the building, operation and maintenance of a business offering these services.

Section 9.32.020 Definitions

A. Antiseptic - An agent that kills disease-causing microorganisms on human skin or mucous.

B. Artist - A person who performs tattooing, intradermal cosmetics, and/or certain body piercing, and who is responsible for complying with the provisions of this Chapter.

C. Board - El Paso City-County Board of Health

D. Body piercer - A person who performs body piercing and who is responsible for adherence to the provisions of this Chapter; hereafter referred to as artist.

E. Body piercing - The creation of an opening in an individual's body, other than in an individual's earlobe, to insert jewelry or another decoration.

F. Booth – An area in the studio or temporary location where tattooing and/or body piercing is performed.

G. Cosmetic--An article or substance intended to be rubbed, poured, sprinkled, or sprayed on or introduced into or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness or altering appearances; or an article or substance for use as a component of such an article, except that the term does not include soap.

H. Disinfectant - An agent that kills disease-causing microorganisms on inanimate objects or surfaces.

I. Ear piercing--The creation of an opening in an individual's ear with an ear piercing gun to insert jewelry or other decoration.

J. Ear piercing gun--A device that pierces an individual's ear using a single-use stud and clasp ear piercing system. An ear-piercing gun shall not be used to pierce any other part of the body besides the ear.

K. Facility – A building or structure that contains an area where tattooing and/or body piercing is performed.

L. Germicidal soap - An agent designed for use on the skin that kills disease-causing microorganisms, including but not limited to, products containing povidone-iodine, chloroxylenol, triclosan, and chlorhexidine gluconate.

M. Hand washing facility - Sink equipped with hot and cold or tempered running water under pressure, used for washing hands, arms, or other portions of the body.

N. Health Authority –The Director of the El Paso City-County Health and Environmental District or designee.

O. Instruments - Hand pieces, needles, needle bars, hemostats, forceps, pliers, and other items that may come in contact with a client's body or possible exposure to bodily fluids during the tattoo and body piercing procedures.

P. Jewelry--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.

Q. License holder – An artist operating in a studio or temporary location within the city limits in compliance with this Chapter.

R. Managing conservator--A person, licensed child-placing agency, or authorized agency designated by a court as having the right to possession of the child, and the right to consent to medical, surgical, dental, and psychological treatment of the child.

S. Sanitize--To treat a clean surface and kill pathogenic microorganisms.

T. Sharps--Any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, needles, scalpel blades, and razor blades.

U. Sharps container--A puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the International Biohazard Symbol.

V. Single-use--Articles intended for one-time, one-person use and which are to be discarded after such use.

W. Sterilization area--A separate room or area separate from workstations with restricted client access in which tattoo and body piercing instruments are cleaned, disinfected, and sterilized.

X. Tattooing--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.

Y. Tattoo and body piercing area--The portion of the tattoo or body piercing studio or temporary location used for applying tattoos or performing body piercing, including all surrounding areas which are likely to come into contact with contaminated waste.

Z. Tattooer--A person who performs tattooing or applies intradermal cosmetics and who is responsible for adherence to the provisions of these sections; hereafter referred to as artist; hereafter referred to as artist.

AA. Temporary location – A fixed location at which an individual operator/artist performs tattooing and/or body piercing for a specified length of time of not more than seven days in conjunction with a single event or celebration, where the primary function of the event is tattooing and/or body piercing.

BB. Studio - A permanent, nondwelling building or portion of a building, designated by a license holder and located in accordance with applicable local zoning codes where body piercing, tattooing or intradermal cosmetic application is performed, completely separated from living quarters.

CC. T.A.C. - Texas Administrative Code.

ARTICLE II. LICENSE REQUIREMENTS

Section 9.32.030 License Required

A. A person shall not conduct, operate or maintain a studio or temporary location for tattooing and/or body piercing unless the person holds a license issued by the Director of the Building Permits and Inspections Department that is approved by the Health Authority pursuant to the provisions of Chapter 5.96 of this Code.

B. Each artist seeking to perform tattooing and/or body piercing shall submit a signed, verified license application(s) to the Director of the Building Permits and Inspections Department with the appropriate application fee(s) as designated in Chapter 5.96 of this Code.

C. The license shall be displayed in a prominent place in the studio or temporary location.

D. Tattooing and body piercing are permitted only at a location that is in compliance with this Chapter, Chapter 5.96, the zoning code and Title 18 (Building and Construction) of the El Paso Municipal Code, in addition to any other applicable municipal, state or federal laws or regulations applicable to the operation of this business.

E. The license requirements of this Chapter do not apply to persons who engage only in the following:

1. A studio located within a medical facility which is licensed under other law, or an office or clinic of a person licensed by the Texas State Board of Medical Examiners; or
2. A person who performs only ear lobe piercing; or
3. A facility in which only ear lobe piercing is performed.

Section 9.32.040 License Investigation

A. The Director of the Building Permits and Inspections Department, after investigation and approval of the studio or temporary location, shall refer the application to the Health Authority who shall conduct an investigation to determine if:

   1. The applicant is sufficiently skilled in the practice of tattooing and/or body piercing; and
   2. If the applicant has engaged in conduct which has or could endanger the public health & safety of individuals receiving tattoos and/or body piercing.

B. Upon approval by the Health Authority, the license shall be issued for a period of one year. The license must be renewed before the 31st day of August of every year.

C. Should either the Director of the Building Permits and Inspections Department or the Health Authority deny the application, the applicant shall be notified in writing as to the reason(s) for the denial and the applicant shall have the recourse to appeal as provided in Chapter 5.96 of this Code.

ARTICLE III. COMPLIANCE STANDARDS

Section 9.32.050 Facility Requirements

A. The studio or temporary location must conform to all local building and zoning codes. The studio or temporary location shall not be used as living quarters and shall be kept in good repair and sanitary conditions.

B. The tattoo or body piercing area in a studio must have 75 square feet area for each artist. Walls and ceilings shall be of light colored and easily cleanable surfaces. Must have adequate lighting and mechanical ventilation.

C. Each studio or temporary location shall be equipped with a hand washing facility for its artists with unobstructed access to the tattoo and body piercing area such that artists may return to the area or booth without touching anything with their hands. The hand washing facility shall be equipped with hot and cold or tempered running water under pressure; liquid germicidal soap; disposable towels or other approved hand-drying devices; and a covered trash container.

D. Tattoo and body piercing operating equipment such as tables, chairs and work surfaces shall be constructed of smooth, non-absorbent and easily cleanable material. All operating and related working surfaces shall be cleaned and disinfected

after each use with a germicidal solution. Other working surfaces shall be cleaned with an all-purpose disinfectant.

E. All studios must provide an area for client(s) who which to have privacy when tattooing or body piercing is being perform.

Section 9.32.060 Personnel Requirements

A. All artists shall wash their hands using hot or tempered water with germicidal soap prior to and after performing tattooing and body piercing operations; wear single-use examination gloves while handling instruments and performing tattooing and body piercing; and, if a session is interrupted or gloves become torn or perforated, immediately discard gloves, wash hands and use a fresh pair of gloves. The artist shall wear light colored, clean outer garments, maintain a high degree of personal cleanliness, and conform to good hygienic practices while on duty.

B. All artists shall attend a training course on Bloodborne Pathogens and Aseptic Techniques. To attend the course offered by the El Paso City/County Health and Environmental District the appropriate fee must be paid pursuant to Chapter 5.96 of the Municipal Code. Artists must attend said course within ninety (90) days of obtaining a tattoo or body-piercing license. Thereafter, the artist shall attend the course every three (3) years. All artists, prior to receiving a temporary permit must provide documentation verifying they have attendance at a Bloodborne Pathogens and Aseptic Techniques course.

Section 9.32.070 Sterilization Requirements

A. Each facility shall be equipped with proper sterilization equipment. Each artist shall be able to demonstrate the correct sterilization procedures, and the proper operation of autoclave or dry heat sterilization equipment. Sterilization equipment shall be functioning properly at all times of operation.

B. Equipment/Instruments shall be stored in a dust proof container and placed inside a single-use plastic bag, while not in use as to prevent from being contaminated.

C. Single-plastic covers shall be used to cover spray bottles or other reusable accessories for multiple client use that are handled by the artist during tattooing and body piercing.

D. Tattooing instrument shall be placed inside a single-use plastic bag while in use to prevent the contamination of bodily fluids.

E. Instruments/needles requiring sterilization shall be packed in packages approved for the sterilization unit. These packages shall have a chemical indicator that changes color when the required temperature has been reached.
   1. Each package shall be labeled with the date of sterilization and the initials of the person sterilizing the instruments. The date shall not exceed 30 days from the date sterilization. Instruments may not be used without being re-sterilized and repackaged.
   2. Instruments/needles purchased as pre-sterilized shall be re-sterilized utilizing the same procedure for all equipment/needles.

3. All instruments/equipment shall be sterilized after each use.

E. Needles shall be only single-use, and must be discarded after each tattooing and body piercing procedure into a sharps container.

F. Sealed autoclave bags containing any instruments, equipment, or needles required to be sterile, shall be opened in front of the client and the autoclave bag discarded.

G. To maintain a sterile environment and due to associated health risks, body piercing jewelry may not be returned or exchanged. The studio or temporary location must post a sign in a prominent location informing the public of the non-refundable policy regarding body piercing jewelry.

H. Each artist shall maintain sterilization logs and records for a minimum of two years at the studio location. The log shall contain the following information:
   1. Date of sterilization.
   2. Quantity
   3. Type of instruments/equipment to be sterilized.
   4. Name or initials of the individual sterilizing the instruments/equipment.

Section 9.32.080 Reporting and Record-keeping Requirements

A. An artist shall report in writing to the Health Authority any case known to him/her of infection or other bodily injury resulting from tattoo and body piercing operations. The report is to aide the Health Authority in efforts to identify the source of the adverse reaction(s) and to prevent its recurrence. The report shall include:

   1. The name of the affected client; the name and address of the studio or temporary location where the tattoo or body piercing was performed;
   2. The name of the artist;
   3. The date the tattoo or body piercing was performed;
   4. The specific color or colors of the tattoo or type of jewelry used for the body piercing and, when available, the manufacturer's catalogue or identification number of each color or type of jewelry used;
   5. The location of the infection and the location on the body where the tattoo or body piercing was applied;
   6. The name and address of the health care practitioner, if any; and
   7. Any other information considered relevant to the situation.

B. The artist shall verify and document the client's age and date of birth by maintaining, in a permanent client record, a copy of a valid, government issued, positive identification card including, but not limited to, a driver's license, passport, or military identification. The identification must contain a photograph of the individual and a printed date of birth.

C. The artist shall inform each client, verbally and in writing, regarding the possible risks and dangers associated with receiving a tattoo and/or body piercing. A copy of this document, signed by the client, acknowledging the client received and understood these warnings shall be maintained in the permanent client record. These warnings shall include, but are not limited to, the following:

1. The possibility of discomfort or pain;
2. The risk of infection;
3. The permanence of tattoo markings;
4. The possibility of allergic reaction to the tattoo pigments or other materials used;
5. The possibility of scarring, bleeding, swelling and/or nerve damage associated with body piercing; and
6. The increased risk for adolescents receiving body piercing during certain stages of development.

D. The artist shall provide each client with verbal and written instructions on the care of the area tattooed and/or pierced. A copy of this document, signed by the client, acknowledging the client received and understood these instructions shall be maintained in the permanent client record. These instructions shall include, but are not limited to, the following:

1. For at least two weeks, the need to minimize exposure to the sun, and to discourage swimming in fresh, salt or chlorinated water;
2. The need to properly cleanse the tattooed and/or pierced area by using antibacterial or antimicrobial soap for the external skin and/or an antiseptic or carbamide peroxide mouthwash in the case of a piercing in the oral cavity;
3. The need to use sterile bandage(s) or other sterile dressing(s) when necessary;
4. The name of the artist, and the name, address, and telephone number of the studio; and
5. The instructions for the client to consult a health care practitioner at the first sign of infection or an allergic reaction, and to report any diagnosed infection, allergic reaction, or adverse reaction resulting from receiving the tattoo or body piercing to the artist and to the El Paso City-County Health and Environmental District.

E. The studio and artist shall maintain proper records of each client. The information shall be permanently recorded and made available for examination by the Health Authority. Records shall be maintained for at least two years following the date of the last entry. These permanent records shall include the following:

1. The name, address and telephone number of the client;
2. The name of the artist;
3. The date tattooing and/or body piercing was performed;
4. The location on the body where the tattoo and/or body piercing was performed;
5. The specific color or colors of the tattoo and/or type of jewelry used for the body piercing and, when available, the manufacturer's catalogue or identification number of each color or type of jewelry used;
6. The client's age verification, warnings and instructions as provided under subsections (B), (C) and (D) of this section;

ARTICLE IV. PROHIBITIONS

Section 9.32.090 Tattooing and Body Piercing diseased, intoxicated or drugged persons.

An artist shall not tattoo or body pierce any person who is known to have, or who shows recognizable signs of having any communicable disease, disease of the skin, or appears to be under the influence of alcohol or drugs.

Section 9.32.100 Tattooing and Body Piercing Minors.

A. An artist shall not tattoo a person younger than 18 years of age unless an order is issued by a district court or other court with jurisdiction of a suit affecting the parent-child relationship or a civil proceeding brought under Title 3 or 4 of the Texas Family Code which allows an artist to cover a tattoo on a person younger than 18 years of age.

B. An artist shall not perform body piercing on a person younger than 18 years of age without the consent of a parent, managing conservator or guardian of the individual. The consent may be satisfied by:

1. The individual's parent, managing conservator or guardian being physically present at the time the body piercing is performed; and

2. Presenting identification for both the parent, managing conservator or guardian, and the individual who will receive the body piercing, pursuant to subsection (B) of section 5.96.140 of this Chapter; and

3. Presenting a birth certificate or court order that establishes the person's status as parent, managing conservator or guardian of the individual who will receive the body piercing.

Section 9.32.110 Alcoholic Beverages

Alcoholic beverages shall be prohibited in tattoo and body piercing studios or temporary locations.

Section 9.32.120 Animals

Animals are not permitted in a studio or temporary location, except for guide or service animals accompanying persons with disabilities, or no mammalian animals in enclosed glass containers such as fish aquariums, which shall be outside the tattooing, body piercing and sterilization area(s).

ARTICLE V. ENFORCEMENT

Section 9.32.130 Inspection

A. The Health Authority or designated representative may enter at all reasonable times any studio or temporary location to inspect, enforce, investigate any unsafe condition or violation and perform any duty imposed under this chapter. If such studio or temporary location is occupied the inspector 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 Health Authority shall have recourse to every remedy provided by law to secure entry.

C. When the Health Authority 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 Health Authority entrance to inspect and investigate pursuant to this Chapter.

D. The inspector shall record all findings on an inspection report, which summarizes the requirements of this chapter and furnish a copy of the report to the owner or person in charge.

E. The inspector shall provide a written notice, by means of the inspection report or otherwise, to the owner or person in charge of the studio or temporary location when a violation of any provision of this Chapter is determined, which shall include:

1. Description of each violation;
2. A specific, reasonable time period for correction of each violation;
3. A statement that the license is subject to suspension or revocation and that legal action may be taken for failure to comply with the notice; and
4. A statement that the person receiving the notice may appeal by following the procedures provided in Chapter 5.96 of this Code.

Section 9.32.140 Immediate Closure by Health Authority

A. The Health Authority may order the immediate closure of a studio or temporary location 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 body piercing at the studio or temporary location.

B. Failure to promptly comply with the notice of immediate closure shall subject the studio or temporary location to other enforcement provisions of this Chapter and Chapter 5.96 of this Code.

Section 9.32.150 Penalty

Any person violating any provision of this chapter may be cited for a Class C misdemeanor, which is punishable by a fine not to exceed Two Thousand Dollars ($2,000). If the violation continues, each day constitutes a separate offense.

2. Except as amended herein, Title 9 (HEALTH & SAFETY) of the El Paso Municipal Code shall remain in full force and effect.

PASSED AND APPROVED this 23rd day of March, 2004.

(ALL SIGNATURES FOLLOW ON NEXT PAGE)

CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:

Teresa Garcia,
Assistant City Attorney

APPROVED AS TO CONTENT:

Jorge C. Magana, M.D., F.A.A.P., Director
City-County Health & Environmental District

BOARD OF HEALTH:

John M. Tune, M.D.
Chairperson

APPROVED AS TO CONTENT:

R. Alan Shubert, Director
Building Permiting & Inspections Dept.