

**City Council
Agenda Memo**



**City Council
Meeting Date: May 28, 2015**

TO: Robert Hanna, City Manager

FROM: Ken Dozier, Fire Chief

SUBJECT: First Reading on Amending Chapter 5 "Ambulance" Ordinance; and setting a public hearing for June 11, 2015

GENERAL INFORMATION

There have been numerous changes and improvements in the EMS delivery system within the City of Abilene. These improvements include the implementation of an Emergency Medical Dispatch (EMD) program, increased ambulance units in service, and a focus on the efficient use of all EMS resources. The current Ambulance Ordinance needs to be amended in order to reflect these changes and improvements.

STAFF RECOMMENDATION

Staff recommends approval.

ATTACHMENT

Ordinance

Prepared by:

Name: Ken Dozier

Title: Fire Chief

Item No. 6.5

Disposition by City Council

- Approved Ord/Res# _____
 Denied
 Other

City Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE DELETING AND REPLACING CHAPTER 5, “AMBULANCES” OF THE ABILENE CODE OF ORDINANCES AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, the City has a duty to protect the health, safety, and welfare of the citizens of the City of Abilene; and

WHEREAS, to meet that duty, it is the policy of the City to promote efficient, safe, reliable, and quality ambulance service in the City of Abilene; and

WHEREAS, the City of Abilene currently has an ordinance that governs the licensing and operation of ambulances in the City of Abilene; and

WHEREAS, the last comprehensive update of that ordinance occurred in 1997; and

WHEREAS, this ambulance ordinance update provides for the regulations of ambulance services to be carried out in a manner that protects the public health and safety, promotes public convenience, and respects free enterprise.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 5, “Ambulances” is hereby deleted in its entirety and replaced as set out in Exhibit A, attached and made a part of this ordinance for all purposes.

PART 3: That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

PART 4: That any person, firm, or corporation violating the provisions of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.

PART 5: Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance,

becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING this 28th day of May, 2015.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on 31 day of May, 2015, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of June, 2014, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING this 11th day of June, 2015.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

Replace CHAPTER 5 “Ambulances” of the Abilene Code of Ordinances in its entirety with the following:

ARTICLE I. IN GENERAL

Sec. 5-1. Definitions.

The following words and phrases as used in this article, unless a different meaning is plainly required by context, shall have the following meanings:

Ambulance: Any privately owned vehicle equipped or used for transporting the sick or injured and including, but not restricted to, emergency or transfer vehicles used for such purpose, and invalid coaches, but does not include funeral coaches used for the transportation of the dead or air ambulance service.

Ambulance service: Any transportation of patients or persons for hire or gratuitously, either for emergency or non-emergency reasons performed by an ambulance, but does not include funeral coaches used for the transportation of the dead or air ambulance service.

Attendant: A trained and/or qualified individual responsible for the operation of an ambulance and the care of the patients, whether or not the attendant also serves as driver.

Designated Call Type: Emergency Medical Dispatch designated call types are as follows:

Alpha: An ambulance only response with no lights or sirens.

Bravo: An ambulance only response with lights and sirens.

Charlie: An ambulance and fire department response with no lights or sirens.

Delta/Echo: An ambulance and fire department response with lights and sirens.

~~Echo: An ambulance and fire department response with lights and sirens.~~

Emergency: Any condition that requires for immediate action and in which the element of time in transporting the sick, or injured for medical treatment is essential to the health or life of the person.

Emergency Medical Dispatch (EMD): A system whereby emergency call takers can narrow down the caller’s type of medical or trauma situation so as to better dispatch emergency services and provide quality instruction to the caller before help arrives.

Formatted: No underline

License: A license of public convenience and necessity.

License officer: The city manager or his designee.

Permit: The operating permit which an operator is required to obtain hereunder for each and every ground transport vehicle operated under the terms of this chapter.

Transfer: Any ambulance transport in which a patient is transported from a location within the city limits of the City of Abilene, Texas, to a location outside the city limits of the City of Abilene, Texas.

Sec. 5-2. Exceptions.

The provisions of this chapter shall not apply to any ambulance or ambulance service or to the driver or attendant of any ambulance:

- (a) Which is rendering assistance to patients in case of a major catastrophe or emergency with which the licensed ambulances of the city are unable to cope; or
- (b) Which is transporting a patient who is picked up from a location beyond the limits of the city and transported to a location within the city; or
- (c) Which is transporting a patient who is picked up from a location beyond the limits of the city and transported to a location beyond the limits of the city and only incidentally passing through the city; or
- (d) Which is transporting a patient who is picked up from a location within the city limits and transported to a location beyond the limits of the city; or
- (f) Which is transporting a non-emergency care patient from one (1) location of a hospital's operations within the city to another location of the same or other hospital's operations within the city; or
- (g) Which is transporting a non-emergency hospice care patient from one (1) location within the city to another location within the city.
- (h) Which is operated by an agent or employee of the federal or state government if such service is done in performance of his official duties.

Comment [ncw1]: Missing "e"

Sec. 5-3. Schedule of emergency rates; posting.

- a) Rates to be charged for emergency ambulance services within the city shall be determined by the council upon application of the operator.
- b) Any changes or revision to such rates shall be accomplished in a like manner after notice and public hearing before the council.

- c) A true and correct copy of the authorized rates shall be filed with the City Secretary's office and maintained therein for inspection by interested members of the public.
- d) Every ambulance shall have posted, in a conspicuous place readily visible to the occupants, a statement showing the base rate and the mileage charge per loaded mile. Such rates, as posted, shall be the same as those contained in the schedules filed with the City Secretary's office.

Secs. 5-10–5-21. Reserved.

ARTICLE II. LICENSE

Sec. 5-22. Required.

No person shall operate an ambulance or ambulance service upon the streets of the city without first obtaining a license of public convenience and necessity from the city council. No such license shall be granted until after publication of notice and public hearing under the procedures set forth in this article. An applicant granted permission to operate emergency ambulance service may also perform non-emergency ambulance service.

Sec. 5-23. Application and fee.

- a) Every application for a license required by this article shall be in writing, signed and sworn by the applicant, and shall be filed by the License Officer.
- b) A fee as adopted by Council and kept on file with the City Secretary and a schedule of proposed rates to be charged by the applicant shall accompany the application.
- c) The application shall be on a form provided by the License Officer and shall contain any information the Licenses Officer considers necessary for implementation and enforcement of these regulations.
- d) A copy of applicant's state emergency medical service license and a certificate of insurance shall be filed with the License Officer prior to operation.

Comment [ncw2]: Remove period.

Sec. 5-24. Fee.

The annual fee for a license required by the provisions of this article shall be determined by Council and kept on file with the City Secretary. The amount of such fee shall not be prorated for fractional parts of a calendar year.

Sec. 5-25. Public hearing; notice.

- a) Within sixty (60) calendar days after the receipt of an application for a license under this article, the city council shall cause a public hearing to be held concerning such application.
- b) Notice of such hearing shall be given in writing to the applicant and to all persons holding licenses for ambulance service in the city.
- c) Notice shall be given to the public by publication in a newspaper published in the city, not less than ten (10) calendar days prior to the date of such public hearing.

Sec. 5-26. Ascertaining public convenience, necessity.

In determining whether public convenience and necessity require the licensing of a proposed ambulance service, the city council shall consider:

- a) Whether the public is, at any time, adequately served.
- b) The financial responsibility of the applicant.
- c) The number, kind and type of equipment to be operated by the applicant.
- d) A schedule of rates proposed to be charged.
- e) Whether the safe use of the streets by the public, both vehicular and pedestrian will be preserved.
- f) Any such other facts as the city council shall consider relevant.

Sec. 5-27. Prerequisites to issuance.

The city council shall not grant any license under this article unless it finds the following:

- a) That the public convenience and necessity require the proposed ambulance service for which the application has been submitted, and that such service would not adversely affect total ambulance service to the people of this city nor adversely affect the overall costs or quality.
- b) That the ambulance service for which the application has been submitted is needed to enhance service.
- c) That the applicant has demonstrated a financial and business stability by and through financial documentation and/or previous experience in providing the same or similar ambulance service in other locations. If said applicant is a new provider, evidence of financial resources to supply all equipment and services shall be submitted.

- d) That the applicant possesses or has submitted a binding agreement to provide ambulance vehicles and equipment, complying with the standards required by this Chapter.
- e) That the applicant has procured or submitted a binding agreement to secure the insurance, as required by this article.
- f) That the applicant and all attendants, drivers and attendant drivers are fit and proper persons to conduct the proposed ambulance service.
- g) That all the requirements of this chapter, all other applicable ordinances of the city, and all applicable state laws have been met by the applicant.

Sec. 5-28. Conditional licenses.

- a) In the event that there is no service available, a conditional license may be granted by the City Manager subject to the applicant complying with all of the conditions of this chapter.
- b) All conditional licenses granted subject to the fulfillment of the conditions of this chapter, shall expire and be null and void, if the applicant has not complied with all the conditions in ten (10) days, from the date of the issuance of the license.
- c) If the conditions are not met in ten (10) days, the applicant must reapply ~~to the city council~~ for new conditional license.
- d) Should a question arise as to the applicant's compliance with this chapter, ~~where a license has been granted subject to certain conditions being met,~~ the applicant may request a hearing before the city council, which shall consider the applicant's conditional license, and may revoke or grant said license, ~~if the applicant has complied with all of this chapter.~~
- e) The conditional license shall remain in effect until such time that city council grants a license of convenience and necessity as required by Section 5-22 of this chapter. ~~An applicant who previously has been given a conditional license subject to meeting certain conditions and has failed to meet those conditions, will not be issued another conditional license, but can apply for license if he has met all the requirements of this chapter.~~

Sec. 5-29. Performance security.

Applicant shall establish a ten thousand dollar (\$10,000) performance security. The performance security shall be provided on an annual basis. The performance security will be fulfilled by a letter of credit or performance bond. The purpose of the performance security is to recover costs to the City for accepting and administering applications for an ambulance service in the event the license is revoked. This will be required with each annual license fee. Said performance security shall be forfeited for any of the following conditions:

(1) Failure to give one hundred twenty (120) days advance written notice of termination of business.

(2) Failure to correct a material breach of the terms and conditions of this ordinance within a ten (10) day period, after receiving written notice of same. A material breach is one that is of urgent public necessity (i.e., applicant's license permitting it to conduct its business has been fully and finally adjudicated revoked by the Texas Department of State Health Services, failing to provide the proper number of or properly operating units, failing to provide liability insurance, engaging in discriminatory practices, any unsafe or illegal activity that might affect the citizens of Abilene).

~~An applicant shall provide performance security valued at eight hundred fifty thousand dollars (\$850,000.00). The performance security will be fulfilled by a letter of credit. The letter of credit shall be provided on an annual basis. The value of the performance security letter of credit can be reduced by \$50,000 for each year the applicant has operated with a license from the City of Abilene. The minimum value of the letter of credit shall not be lower than \$500,000. This will be required with each annual license fee. Said performance security shall be forfeited for any of the following conditions:~~

~~(1) Failure to give one hundred twenty (120) days advance written notice of termination of business.~~

~~(2) Failure to correct a material breach of the terms and conditions of this ordinance within a ten (10) day period, after receiving written notice of same. A material breach is one that is of urgent public necessity (i.e., applicant's license permitting it to conduct its business has been fully and finally adjudicated revoked by the Texas Department of State Health Services, failing to provide the proper number of or properly operating units, failing to provide liability insurance, engaging in discriminatory practices, any unsafe or illegal activity that might affect the citizens of Abilene).~~

Sec. 5-30. Insurance—Minimum coverage.

- a) An applicant for a license required by this article must provide proof of insurance approved by the city manager which evidences required coverage types and amounts. Required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. An original certificate of insurance or a certified copy of the insurance policy is required.
- b) At the minimum this insurance:
 - 1. Must provide workers' compensation employer's liability coverage, or its equivalent, as statutorily required; commercial (public) liability in the amount of one million dollars (\$1,000,000.00); and business automobile liability in the amount of one million dollars (\$1,000,000).

2. Must name the city as an additional insured.
 3. Insurance provided must be primary insurance and not contributing with any other insurance available to the city.
 4. Must provide for thirty (30) days advance written notice of cancellation or material change of coverage.
- c) If an applicant is granted a license, the city may increase the minimum required amount of insurance coverage by giving the operator ninety (90) days notice.

Comment [ncw3]: Change to 120 days to match requirements listed above.

Sec. 5-31. Same–Continuance after recovery.

Every policy of insurance shall continue to the full amount, notwithstanding any recovery thereon, and the liability of the insurer shall not be affected by the insolvency or bankruptcy of the insured. The policy shall run to the city for the benefit of any and all judgment creditors.

Sec. 5-32. Same–Coverage period.

Each insurance policy required by this article must extend for the license period. In the event a required policy is cancelled, expires or is otherwise terminated, and the Licensee does not provide the city with proof of an alternative policy meeting the provisions of this article with no break in coverage, the license issued is automatically revoked and terminated.

Sec. 5-33. Revocation or suspension of license.

Every license issued under this article shall be subject to revocation or suspension by the city council where it shall appear that any of the following has occurred:

- (a) The Licensee has failed or neglected to render the full service authorized by his license, including the performance of all emergency responses.
- (b) The Licensee has been convicted of a felony or any criminal offense involving moral turpitude.
- (c) The license was obtained by an application of which any material fact was omitted or stated falsely.
- (d) The Licensee has persisted in permitting his vehicles to be operated in violation of any law.
- (e) The Licensee has failed to comply with any of the provisions hereof, or has willfully or knowingly violated any of the provisions hereof.

(f) The Licensee has given or allowed a rebate commission or any reduced rate discount not provided for in the rates established and prescribed herein, or as otherwise acceptable by Medicare and/or Medicaid.

(g) The Licensee or his agent has induced or sought to induce a change of destination to or from a hospital or other place specified by the person hiring the ambulance, provided, however, this shall not apply to emergencies.

(h) The Licensee or his agent has knowingly received any payment, favor or gratuity from any mortuary operating in the city for the purpose of inducing any person transported by said operator or his agent to utilize the services of said mortuary, and no Licensee shall engage in or have any financial interest in a mortuary service.

(i) The Licensee allows his insurance as provided in this article to be canceled, withdrawn or terminated.

(j) The Licensee allows his vehicles or equipment to become damaged, deteriorated or unclean to the extent that it is, in the judgment of the city council, unfit for public use.

(k) Performance security as outlined in [section 5-29](#) has not been secured or is allowed to be revoked or canceled.

(l) The Licensee files for, or is voluntarily placed in, bankruptcy.

(m) The Licensee's license is suspended or revoked by the Texas Department of State Health Services.

(n) Payments owed by a Licensee to the city, including payment in advance for service charges, become delinquent or in arrears.

A license may be temporarily suspended by the city manager for a period not to exceed (ten) 10 business days while the city investigates allegations against the operator of charges of negligence, gross conduct and/or criminal activity.

Sec. 5-34. Revocation proceedings.

- a) Proceedings for the revocation or suspension of a license shall be undertaken by the city council in the same manner as proceedings for issuance of a license.
- b) All complaints shall be referred to the city manager, who shall cause an investigation to be made prior to any action for revocation or suspension, the License Officer shall give ten (10) business days notice by certified mail to the operator holding the license, that the

same will be considered at a certain date which shall be not less than thirty (30) business days from the date of the notice.

- c) The city council shall thereupon undertake to consider the complaint and either revoke or suspend the license or dismiss the complaint.

Secs. 5-35–5-45. Reserved.

ARTICLE III. CONDUCT OF BUSINESS

Sec. 5-46. Number of units.

Each Licensee must operate appropriate number of units to meet the requirements of public convenience and necessity. The minimum requirements are presumed to be:

- (a) Maintain, staff and operate not less than ~~five~~ (5) MICU-staffed ambulances on a twenty-four (24) hour basis, dedicated to 911 calls only.
- (b) All units must meet all applicable state standards.

Sec. 5-47. Personnel.

Each Licensee must provide fully certified personnel, as defined in Chapter 773 of the Texas Health and Safety Code, as amended, to operate its ambulance vehicles.

Sec. 5-48. Joint response.

- a) ~~Each~~ Any Licensee must refer all calls for emergency medical assistance in life-threatening situations and all other emergency ambulance requests to the City of Abilene's emergency services (police and/or fire) dispatcher for joint response excluding calls from Dyess AFB or Texas Department of Corrections prison units, French Robertson Prison unit, and Middleton Prison Unit.
- b) Each Licensee must dispatch its units in response, and acknowledge its response to the city's dispatcher.
- c) On all joint responses, the responder arriving first must begin emergency medical procedures as necessary.

Sec. 5-49. Certification of attendants.

Any person ~~servicing~~ employed as an emergency ambulance attendant within the city must be currently certified by the Texas Department of State Health Services as an emergency medical technician, emergency medical technician-intermediate, or emergency medical technician-paramedic as appropriate for the units which the person is staffing.

Comment [ncw4]: Add Licensed Paramedic

~~a) Current copies of state certification or licensure must be filed with the License Officer.~~

Sec. 5-50. Twenty-four (24) hour emergency ambulance service.

Every Licensee shall be required to provide ambulance service twenty-four (24) hours daily, each and every day.

Sec. 5-51. Promptness of service.

The City of Abilene's dispatch center will process all medical calls using the Emergency Medical Dispatch (EMD) system. The designated call type will be communicated to the licensee's dispatcher. The following promptness requirements are in place:

a) Ninety (90) percent of all "Bravo", "Delta", and "Echo" calls will have a response time in under ten (10) minutes as measured from time of notification to arrival on the scene. Any response to a "Bravo", "Delta", or "Echo" call greater than thirty (30) minutes will be reported to the Fire Chief or his designee within the timeframe designated by the Fire Chief.

b) Ninety (90) percent of all "Alpha" and "Charlie" calls will have a response time in under thirty (30) minutes as measured from time of notification to arrival on the scene. Any response time to an "Alpha" or "Charlie" call greater than sixty (60) minutes will be reported to the Fire Chief or his designee within the timeframe designated by the Fire Chief.

c) Licensee must provide the Fire Chief or his designee with a quarterly report indicating its total emergency responses in the city limits, demonstrating its quarterly compliance with the promptness requirement, and indicating its overall average response time for all emergency calls in the city limits.

d) Exception. The requirements of this section do not include emergency responses to ~~the French Robertson Prison, the John Middleton Prison, or Dyess AFB~~ or any Texas Department of Corrections prison units.

Sec. 5-52. Identification.

- a) Every Licensee shall adopt and use, after approval by the Fire Chief or his designee, a distinctive uniform color scheme, ~~which shall not infringe upon any color scheme already in use by another ambulance operator or the Abilene Fire Department.~~
- b) Each ambulance shall be identified with the Licensee's business name and in accordance with the rules and regulations set forth by the Texas Department of State Health Services or other regulating agency.
- c) No other type of advertising may be used on the vehicle.

Sec. 5-53. Sanitary procedures.

Each Licensee must comply with all applicable state and federal laws, rules and regulations regarding infectious disease prevention, personnel inoculation, and blood-borne and airborne pathogen disposal.

Sec. 5-54. Dispatch.

- (a) Licensee must operate a dispatch center twenty-four (24) hours per day, each and every day, to properly answer service calls, promptly dispatch ambulances, and handle communications with other agencies and entities.
- (b) During all City of Abilene regular business hours, Licensee shall, ~~Monday through Friday, between the hours of 8:00 a.m. to 5:00 p.m.,~~ have stationed at the central place of business, a person who must properly answer calls and be generally responsible for the conduct of the business.

Sec. 5-55. No assignment.

The operation or ownership of an ambulance service shall not be assigned or transferred in whole or part without prior written consent of the city.

Sec. 5-56. Right to inspect books, records and facilities.

- a) Upon giving reasonable notice to the Licensee, the city is permitted to inspect the books and records of the Licensee at a reasonable time but only as to business relating to the provision of emergency medical services.
- b) The city is allowed to make inspections of the Licensee's facilities during regular business hours, or such other times as are mutually agreeable. Such inspection shall not unduly interfere with the Licensee's business.

Comment [ncw5]: Operational records

Sec. 5-57. Financial records and audit.

- a) Each Licensee must keep all of its financial records in a manner consistent with generally accepted accounting principles as followed by the American Institute of Certified Public Accountants.
- b) Within six (6) months of close of the fiscal year of each year, each Licensee must, at its expense, present to the City of Abilene Director of Finance an audit report and consolidated financial statement of the business, whether sole proprietorship, company, partnership or corporation and its subsidiaries, together with an auditor's opinion that the financial records are kept in conformity with generally accepted accounting principles and that the audit present fairly the financial position of the business.
- c) The provisions of this section do not apply to a licensee that does not receive a subsidy from the City of Abilene.