



MEMORANDUM CITY MANAGER MEMO NO. MC12-012

DATE: MAY 10, 2012
TO: MAYOR AND CITY COUNCIL
THRU: RICH DLUGAS, CITY MANAGER RD
FROM: JEFF CLARK, FIRE CHIEF ^(H)
SUBJECT: ADOPTION OF ORDINANCE NO. 4361 AMENDING CHAPTER 1 OF THE CHANDLER CITY CODE TO ADD A NEW SECTION 1-13, CONCERNING LICENSING INSPECTION PROCEDURES.

RECOMMENDATION: Staff recommends approval of Ordinance No. 4361 amending Chapter 1 of the Chandler City Code to add a new Section 1-13, concerning Licensing Inspection Procedures.

BACKGROUND: During the 2011 Arizona Legislature session, Senate Bill 1598 (SB 1598) established a Regulatory Bill of Rights. The bill itself became effective on July 28, 2011, but certain provisions are not in effect until later dates in order to allow municipalities time to make any changes needed to City Codes or operational procedures.

One such provision relates to inspections and becomes effective after June 30, 2012. This section of the bill establishes certain procedures for regulatory inspections including presentation of proper identification by the inspector, providing of notification to the person being inspected of his/her rights to information related to the inspection, (including copies of any documents or samples taken from the premises), a name and contact phone number, and a description of the person's rights to appeal any determination made during the inspection.

The bill also requires that the person whose property was inspected must be provided with the inspection report within a specified period of time, an update as to the progress in bringing the premises into compliance, and failure of any employee to follow these regulations may be cause for disciplinary action or dismissal or considered by a judge as grounds for a reduction in any fine or civil penalty.

Ordinance No. 4361 brings the City of Chandler Code requirements into compliance with SB 1598.

FINANCIAL IMPLICATIONS: None

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PROPOSED MOTION: Move to introduce and tentatively approve Ordinance No. 4361 amending Chapter 1 of the Chandler City Code to add a new Section 1-13, concerning Licensing Inspection Procedures.

Attachment: Ordinance No 4361

ORDINANCE NO. 4361

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING CHAPTER 1 OF THE CHANDLER CITY CODE TO ADD A NEW SECTION 1-13, CONCERNING LICENSING INSPECTION PROCEDURES.

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

SECTION 1. Chapter 1 of the Chandler City Code is hereby amended to add a new Section 1-13, Licensing Inspection Procedures, to read as follows:

1-13. Licensing Inspection procedures

1-13.1. Definitions. In this Section 1-13, unless the context otherwise requires:

City inspector means an employee of the City whose job duties include the conducting of inspections authorized, required or allowed by law.

License means the whole or part of any municipal permit, certificate, approval, registration, charter or similar form of permission required by law.

Licensing means the municipal processes respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

Licensing inspection means a legally authorized inspection involving entry upon the premises of a regulated person where: (a) the inspection is necessary for either (i) the issuance of a license or (ii) to determine compliance with licensure requirements; and (b) the inspection is not done at the request of the regulated person.

Premises means land and any buildings or structures located thereon.

Premises of a regulated person means land owned, lawfully possessed, or lawfully occupied by a regulated person and any buildings or structures located thereon, but does not include any public sidewalks, streets or other public right-of-way adjacent thereto.

Regulated person means a person who is applying for a license from the City or is subject to the requirements of a license already issued by the City.

Request means to ask one to do something.

Working day means any day of the week when the Chandler City Hall at 175 S. Arizona Ave, Chandler, Arizona, is open to the public for conduct of city business.

1-13.2. Application.

A. A city inspector shall follow the inspection procedures set out in this Section 1-13 when conducting any type of licensing inspection for the City. An inspection conducted by or on behalf of the City, other than a licensing inspection, is not subject to the inspection procedures set out in this Section.

B. The inspection procedures under this Section 1-13 do not apply:

1. To criminal investigations and undercover investigations that are generally or specifically authorized by law;
2. If the city inspector has reasonable suspicion to believe that the regulated person may be or has been engaged in criminal activity;
3. Inspections by a county board of health or a local health department pursuant to ARS § 36-603; or
4. Where the inspection is done at the request of the regulated person.

1-13.3. Procedures. A licensing inspection shall be conducted in accordance with the following procedures:

A. *Verbal information.* A city inspector who enters the premises of a regulated person for the purpose of conducting a licensing inspection shall:

1. Present photo identification.
2. State the purpose of the inspection and the specific legal authority for conducting the inspection.
3. Disclose any applicable inspection fees.
4. Except for a food or swimming pool inspection, afford an opportunity for the regulated person to have an authorized on-site representative accompany the inspector during the inspection, but not during any confidential interviews.
5. Provide notice of the right to have: (a) copies of original documents taken from the premises; (b) a split or duplicate of any samples taken from the premises; and (c) copies of any analysis performed on samples taken from the premises.
6. Inform each person whose conversation during the inspection is tape recorded that the conversation is being tape recorded.

7. Inform each person interviewed during the inspection that statements made by the person may be included in the inspection report.

B. *Written or electronic notice.* The City inspector conducting the licensing inspection shall provide to the regulated person written or electronic notice of the following:

1. All of the regulated person's rights described in Subsection A above;
2. The name and phone number of the City contact person available to answer questions regarding the inspection; and
3. The due process rights relating to an appeal of a final decision of the City based on the results of the inspection, including the name and phone number of a person to contact within the City and any appropriate city, county or state government ombudsman.

Such notice shall be provided on initiation of the licensing inspection or at least two (2) working days before the inspection, except that, for a food and swimming pool licensing inspection, notice may be provided up to 1 working day after the inspection.

C. *Signature of the regulated person.* The city inspector shall obtain the signature of the regulated person or the on-site representative on the notice prescribed in Subsection B to confirm that the regulated person or the on-site representative has read the written or electronic notice and has been notified of the relevant inspection and due process rights. The city inspector shall maintain a copy of this signature with the inspector's inspection report. Unless the regulated person at the time of inspection is informed how the report can be located electronically, the city inspector shall leave a copy of the report with the regulated person or on-site representative at the conclusion of the inspection. If the regulated person or the on-site representative is not at the premises or if they refuse to sign the notice prescribed in Subsection B, the City inspector shall note that fact on the notice.

D. *Inspection Report.* The city inspector shall give a copy of, or provide electronic access to, the inspection report to the regulated person or the on-site representative either: (i) at the time of inspection; (ii) within 30 working days after the inspection; or (iii) as may otherwise be required by federal law.

E. *Deficiencies.* The inspection report shall contain any deficiencies identified during the inspection. Unless otherwise provided by law, the city inspector may provide the regulated person an opportunity to correct the deficiencies within a reasonable period of time unless the city inspector and the city inspector's supervisor determine that the deficiencies are: (i) committed intentionally; (ii) not correctable within a time that they deem to be reasonable; (iii) evidence of a pattern of noncompliance; or (iv) a risk to any person, the public health, safety or welfare or the environment.

1. If an opportunity to correct the deficiencies is allowed, the regulated person shall notify the city inspector when the deficiencies have been corrected.
2. Within 30 days of receipt of notification, the city inspector shall determine if the regulated person is in substantial compliance and notify the person, in writing or electronically, whether or not the regulated person is in substantial compliance, unless the determination is not possible due to conditions of normal operations at the premises.
3. If the regulated person fails to correct the deficiencies or the city inspector determines the deficiencies have not been corrected within a reasonable period of time, the City may take any enforcement action authorized by law for the deficiencies.
4. Both a decision by the city inspector and the inspector's supervisor not to provide an opportunity to correct the deficiencies for one or more of the reasons set out in Subsection E above or a decision by the city inspector that the deficiencies have not been adequately corrected (or have not been corrected within a reasonable period of time) and the regulated person is not in substantial compliance are decisions that are not appealable.

F. *Status.* At least once a month after commencement of the licensing inspection, the city inspector shall provide the regulated person with an update, in writing or electronically, on the status of any City action resulting from an inspection of the regulated person. There is no requirement to provide an update after the regulated person is notified in writing or electronically that no action will result from the licensing inspection or after the completion of the action resulting from the inspection.

G. *Failure to comply.* If the city inspector gathers evidence in violation of this Section 1-13, the violation shall not be the basis to exclude the evidence in a civil or administrative proceeding, if the penalty sought is denial, suspension or revocation of a license or a civil penalty of more than \$1000. Section 1-13 shall not be used to exclude evidence in a criminal proceeding. If a City employee fails to comply with this Section 1-13, the failure (i) shall constitute cause for disciplinary action or dismissal pursuant to adopted City personnel policy and (ii) shall be considered by a judge or administrative law judge or hearing officer as grounds for reduction of any fine or civil penalty imposed in connection with a delinquency discovered during a licensing inspection.

INTRODUCED AND TENTATIVELY APPROVED by the City of Chandler, Arizona, this _____ day of _____, 2012.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this _____ day of _____, 2012.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4361 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on _____ day of _____, 2012, and that a quorum was present thereat.

CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

CITY ATTORNEY GAB