

ORDINANCE NO. 2102

AN ORDINANCE REGULATING GROUP TOUR FRANCHISES

WHEREAS, in 1996 the City Council of the City of Eureka Springs adopted Article V of Chapter 54 of the Municipal Code providing for the definition and regulation of Group Tour Franchises; and WHEREAS, franchises granted pursuant to this ordinance were deemed to exist for a period of five years unless revoked by the City Council; and WHEREAS, there has been a decline in the ridership and an increase in costs in connection with the enforcement of this ordinance; and WHEREAS, as a result of said declining ridership and increasing costs it is now necessary for the City Council to modify the Group Tour Franchise Ordinance.

NOW, THEREFORE, BE IT HEREBY ORDAINED THAT:

Section 1. Chapter 4.20 of the Eureka Springs Municipal Code is hereby amended in its entirety to read as follows:

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

City-owned Vehicle,“ refers to any vehicle used by the Eureka Springs Transit Department (hereinafter referred to as Transit) for sightseeing services along a route that includes the Historic Loop or a part thereof;

Group Tour Customer means any person who is a part of an organized group that is traveling together for which a Group Tour Operator arranges a narrated tour services along a route that includes the Historic Loop or a part thereof on a City-owned Vehicle;

Group Tour Operator means any person who is in the business of arranging and selling travel-related products to groups that have been organized for the purpose of traveling together;

Individual Tour Customer means (1) any person who arranges with and pays Transit directly for sightseeing services along a route that includes the Historic Loop or a part thereof on a City-owned vehicles and (2) any person who uses a credit voucher from a person or entity that has been approved by Transit, including a Group Tour Franchisee, to arrange for sightseeing services along a route that includes the Historic Loop or a part thereof on a City-owned Vehicle;

Transit-booked Groups refers to any group of ten (10) or more individuals that has arranged with Transit for same-day sightseeing services along a route that includes the Historic Loop or a part thereof on a City-owned vehicle. The fee charged may be discounted from the Individual Customer Fee by an amount not to exceed ten (10%) percent;

Group Tour Franchisee,“ refers to any one holding a Group Tour Franchise;

Group Tour Franchise,“ means the agreement, as set forth in this article, between the City and a Group Tour Franchisee;

Group Tour Guide,“ means any person (1) who is either the owner of Group Tour Franchise or who is affiliated therewith and (2) who holds a current group tour guide certificate as set forth in this article;

Group Tour Guide Certificate means a nontransferable certificate with a unique number that is issued by the City to certify persons who have attended a tour guide seminar sponsored by the City;

Historic Loop,“ means former U.S. Highway 62B, now marked by street signage as The Historic Loop, as bounded by the intersections of Spring Street and Main Street and Kingshighway at U.S. Highway 62 West at the Eureka Springs Public High School;

Transit,“ means the Eureka Springs Transit Department; and

Streets and Public Ways,“ means all streets and highways under the exclusive jurisdiction of the City.

4.20.02 Grant of Authority No person shall engage in or carry on the business of group tours over or upon the streets and public ways of the Historic Loop of the City utilizing City transit vehicles without first procuring from the City Council a franchise authorizing such business and operation. No person may be the sole holder of more than one franchise. Franchises shall be transferable.

4.20.03 Number of Franchises The number of Group Tour Franchises shall be no more than two (2).

4.20.04 Duration The rights, privileges and authority granted hereunder to any Group Tour Franchisee shall exist and continue until December 21, 2011.

4.20.05 Compliance All Group Tour Franchisees shall be subject to the lawful exercise of the police powers by the City. Further, all Group Tour Franchisees shall be bound to such reasonable regulations as the City or State may provide. Failure to comply with any or all terms hereunder may result in the revocation of the Franchisee,“ right to use a City-owned Vehicle.

4.20.06 Application and Fee Before any person shall be qualified as a Group Tour Franchisee, such person shall pay an application fee of One-hundred Fifty (\$150) Dollars for each year or part thereof until the date set forth Section 4.20.05. In addition, such person shall file with the City Clerk an application that sets forth the following information. The City Council shall have the sole authority to review any application submitted hereunder and thereafter to award such franchise or franchises is it deems to be in the best interests of the City of Eureka Springs.

A. Trade name of the Applicant and, if a partnership, its name and names of all partners and, if a corporation, its name and the names of all directors.

- B. Applicant,Ä local business office address, telephone number, email address and business website address.
- C. A Statement that Applicant will comply with all rules of operation as set out herein and with all regulations that the City or State may provide.
- D. A Statement that the Applicant or that his/her agent will instruct customers about pertinent safety precautions.
- E. The name, address and telephone number for the person designated to receive notices from the City.
- F. A certificate of insurance that the Applicant has applicable insurance in the same amount as is required by the State.
- H. An occupation license issued by the City to the Applicant as a Group Tour Franchisee.
- I. A Statement describing the Applicant,Ä activities and efforts during the previous Three (3) years to develop group tour business, including, but not by way of limitation, advertisements, attendance at trade shows, membership in trade organizations, and at least two (2) business references.
- J. A Statement that the Applicant (1) is in the business of arranging and selling travel-related products to groups and (2) will devote the time and resources necessary for promotion of its Group Tour business in Eureka Springs.

#### 4.20.08 Rules of Operation

- A. The hours of operation of City-owned Vehicles shall be as prescribed by the City Transit Department.
- B. All tours under this Chapter must be accompanied by a Group Tour Guide certified by the City as set forth herein.
- C. In case of an accident, the Group Tour Franchisee or the agent therefore shall submit to the City Clerk not later than the close of the following business day a written report about the accident, including the names of the parties involved, where and when the accident occurred, injuries if any and property damage if any.

#### 4.20.09 Fee for Use

- A. For the privilege of using the streets and highways of the City, to help defray the costs of monitoring under this Chapter and for the use of City-owned Vehicles, each Group Tour

Franchisee shall pay a fee as prescribed by the City Transit Department. Such fee is due and payable not later than the 20th day of the each month for the preceding month. These fees shall be in addition to any and all fees and taxes, of whatever kind or nature (except general ad valorem taxes) now in effect and which shall go into effect during the term hereof.

B. As of January 1, 2009, the fee for (1) the privilege of using the streets and public ways of the city; (2) helping to defray the cost of monitoring under this Chapter; and (3) for the use of City-owned vehicles, shall be determined as follows:

(1) For each Group Tour Customer for whom a Group Tour Franchisee has arranged for seating on a City-owned Vehicle, Transit shall be entitled to a fee equal to Forty (40%) Percent of the published Individual Customer Fee.

(2) For each Individual Customer for whom Transit arranges seating on a City-owned Vehicle, Transit shall be entitled to a fee equal to Sixty (60%) Percent of the published Individual Customer Fee.

(3) For Groups of ten (10) or more that have made arrangements directly with Transit for seating on a City-owned Vehicle, Transit shall be entitled to a fee equal to Fifty (50%) Percent of the published Individual Customer Fee as discounted as provided hereinabove in 4.20.01.

(4) For Groups of less than ten (10) that have made arrangements directly with Transit for seating on a City-owned Vehicle, Transit shall be entitled to a fee equal to Sixty (60%) Percent of the published Individual Customer Fee.

#### 4.20.10 Revocation

A. After written notice, the City Transit Department shall have the right to rescind or revoke the rights granted in this Chapter to any Group Tour Franchisee upon the violation of any obligation or requirement contained in this Chapter or the cessation of operations of the Group Tour Franchisee.

B. Such notice shall specify the reasons why the rights are being rescinded or revoked and, if not protested by the Group Tour Franchisee in writing and filed with the City Clerk within fifteen (15) days of receipt of the notice, the Group Tour Franchisee shall cease operations as directed.

C. If the Group Tour Franchisee protests the rescission or revocation within the time frame hereinabove in 4.20.10(B), such protest shall immediately stay the cessation of operations; and the matter will be placed on the agenda of the City Council at its next regular meeting to hear any evident, testimony or information the Group Tour Franchisee may deem pertinent to the matter; and the City Council may affirm, reverse or modify the decision of the City Transit Department to revoke or rescind the Group Tour Franchisee.

4.20.11 Seminars All tour guide applicants shall attend such seminars as required

by the City Transit Department.

Section 2. Conflicts: All Ordinances or Resolutions, and parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. Severability: In the event any one or more of the provisions contained in this Ordinance shall for any reason be held by a Court of Law to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Ordinance, and this Ordinance shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

PASSED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

APPROVED:

\_\_\_\_\_  
Dani D. Joy, Mayor

Attest:

\_\_\_\_\_  
Mary Jean Sell, City Clerk