

AGENDA REQUEST FORM

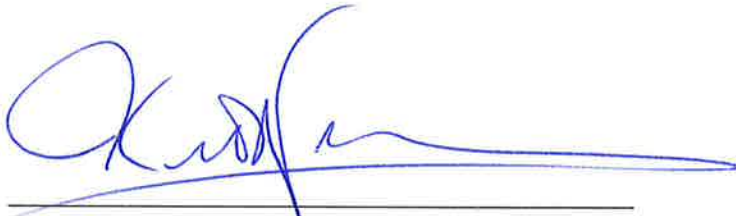
FOR: Council Meeting of December 1, 2020

FROM: City Attorney Kit Williams

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO CLARIFY THAT CORONAVIRUS SAFETY PROTECTIONS AND IMPROVEMENTS MAY BE REQUIRED BEFORE RENEWING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND TO APPROVE AN EMERGENCY CLAUSE

APPROVED FOR AGENDA:



City Attorney Kit Williams

November 17, 2020

Date



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: Mayor Jordan
City Council
Kara Paxton, City Clerk Kara Paxton

CC: Susan Norton, Chief of Staff
Chief Reynolds

FROM: Kit Williams, City Attorney

DATE: November 20, 2020

RE: Coronavirus Safety Regulations for Horse Drawn Carriage
Operations

The City Administration wants to ensure persons or companies desiring to furnish holiday carriage rides for our citizens and visitors will follow CDC, State Department of Health, City Board of Health and other reasonable guidelines to protect the health and safety of their customers. In order to clarify the City's inherent power to require these necessary pandemic safety measures before an applicant can renew a Certificate of Public Convenience and Necessity, I have drafted a short amendment to **Article VII Nonmotorized Passenger Transport Vehicles**.

I am recommending that the City Council amend **§117.18 License Fees** not only to require a fee, but to include a provision requiring reasonable pandemic emergency regulations in order to renew a Certificate of Convenience and Necessity. This proposed regulation would require an applicant or holder of a Certificate to require face mask wearing of all customers during their ride. It would also require occupancy limits to a single household family and social distancing for customers waiting to ride the carriage. It would also require an operator to disinfect the carriage after each ride.

I have also included an Emergency Clause so these regulations would become effective immediately.

Nonmotorized passenger transport service. The business of offering or providing transportation of persons for hire, either in a nonmotorized transport vehicle or on horseback, camelback or dromedaryback, when:

- (1) A driver or handler is furnished as part of the service; and
- (2) The service is offered only in accordance with a pre-approved route.

Nonmotorized passenger transport vehicle drivers permit. A permit issued to an individual by the Chief of Police to operate a nonmotorized passenger transport vehicle or hire in the city.

Operate. To drive or be in physical control of a nonmotorized passenger transport vehicle.

Permittee. An individual who has been issued a nonmotorized passenger transport vehicle driver's permit under this article.

Person. An individual, corporation, governmental subdivision or an agency, trust, partnership, or two or more persons having a common economic interest.

Preapproved route. Nonmotorized passenger transport service operating on a predetermined schedule with fixed pickup and destination points located on a route approved by and on file with the Traffic Superintendent.

(Ord. No. 3931, §2, 10-3-95; Ord. No. 4396, §1, Ex. A, 5-21-02; Code 1991, §117.80; Ord. No. 4939, 10-17-06; Ord. No. 5346, 8-17-10)

117.81 Certificate Of Public Convenience And Necessity

- (A) No person shall operate a nonmotorized passenger transport service within the city without first obtaining a current Certificate of Public Convenience and Necessity from the Public Transit Board established by § 33.320 of the Code of Fayetteville.
- (B) To obtain a Certificate of Public Convenience and Necessity for a nonmotorized passenger transport service, a person who owns, controls or operates a proposed nonmotorized passenger transport service, must submit a proposal which shall be verified and contain the following information:
 - (1) A statement of the type of nonmotorized passenger transport service for which application is made;
 - (2) The form of business of the applicant; if the business is a corporation or association, a copy of the documents establishing the business, and the name and address of each person with a direct interest in the business;
 - (3) The name, address, and verified signature of the applicant;
 - (4) A description of any past business experience of the applicant, particularly in providing passenger transportation service;
 - (5) The number and description of vehicles the applicant proposes to use in the operation of the service including year, make, model, manufacturer's rated seating capacity, and state license registration number for each vehicle;

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- (6) The number of horses, camels, or dromedaries the applicant proposes to use in the operation of the passenger transport service with a description, including age, color and breed or photograph and a state certificate of veterinarian inspection of each horse, camel or dromedary;
 - (7) A description of the proposed service, including routes, rates or fares to be charged, and schedules, where applicable;
 - (8) Documentary evidence from an insurance company indicating a willingness to provide liability insurance as required by this chapter.
 - (9) Such additional information as the applicant desires to include to aid in the determination of whether the requested operating authority should be granted; and,
 - (10) Such additional information as may be determined to be necessary to assist or promote the implementation or enforcement of this ordinance, or the protection of the public safety.
- (C) In deciding whether to issue or deny an application for a Certificate of Public Convenience and Necessity to operate a nonmotorized passenger transport service, the Public Transit Board shall consider, but not be limited to, the following:
- (1) Whether the public convenience and necessity requires the proposed service;
 - (2) Whether the applicant has complied with all requirements of this ordinance for providing the service applied for;
 - (3) The current safety record of the applicant, and the previous safety record, if the applicant has operated a nonmotorized passenger transport service in the past.
 - (4) Number and description of all nonmotorized passenger transport vehicles to be used, where applicable;
 - (5) Number and description of all horses, camels and dromedaries to be used;
 - (6) If nonmotorized passenger transport vehicles are employed, the number of passengers that may be safely transported in each vehicle based on the size of the vehicle and the type of horse pulling it;
 - (7) Customers to be served;
 - (8) Places for loading or unloading passengers;
 - (9) Hours of operation;
 - (10) Schedules and routes to be followed;
 - (11) Rates to be charged;
 - (12) The use of special safety equipment.
 - (13) The use of the special sanitary devices and special care procedures for horses, camels and dromedaries; and
 - (14) Special conditions or limitations.

- (D) The Public Transit Board shall issue a Certificate of Public Convenience and Necessity to the applicant, if it is determined that:
- (1) The applicant has complied with all requirements for issuance of the certificate;
 - (2) That public convenience and necessity require the operation of the proposed service; and
 - (3) The applicant has not made a false statement as to a material matter in an application for a certificate.
- (E) If the Public Transit Board determines that the requirements set forth above have not been met, the Public Transit Board shall deny the certificate.
(Ord. No. 3931, §4, 10-3-95; Ord. No. 4396, §1, Ex. A, 5-21-02; Code 1991, §117.81; Ord. No. 4939, 10-17-06)

117.82 Route Approval

- (A) All routes shall be approved by the city's Traffic Superintendent.
- (B) Holders shall submit to the city's Traffic Superintendent all requests for temporary changes in authorized routes, hours of operation, or for participation in special events such as festivals, parades or weddings, not less than three (3) days before the effective date of the change or event.
(Ord. No. 3931, §5, 10-3-95; Ord. No. 4396, §1, Ex. A, 5-21-02)

117.83 Nonmotorized Passenger Transport Vehicle Drivers Permit

- (A) No person shall operate a nonmotorized passenger transport vehicle for hire upon the streets of the city, and no person who owns or controls a nonmotorized passenger transport vehicle shall permit it to be so operated, and no nonmotorized passenger transport vehicle licensed by the city shall be so operated at any time for hire, unless the driver of said vehicle shall have first obtained and shall have then in force a nonmotorized passenger transport vehicle drivers permit issued under the provisions of this article.
- (B) Drivers Permit Required.
- (1) An application for a nonmotorized passenger transport vehicle drivers permit shall be filed with the Chief of Police on forms provided by the city and such application shall be verified under oath and shall contain the following information:
 - (a) The names and addresses of four (4) residents of the county, who have known the applicant for a period of one (1) year and who will vouch for the sobriety, honesty, and general good character of the applicant; and
 - (b) A concise history of his/her employment;
- (C) The Police Department shall conduct an investigation of each applicant for a nonmotorized passenger transport vehicle driver's permit, and a report of such investigation with a copy of the traffic and police record of the applicant, if any, shall be attached to the application for the consideration of the Chief of Police.

- or qualified animal service officer is in imminent danger. To reinstate a horse, camel or dromedary removed from service the animal must be re-examined and a new State Certificate of Veterinarian Inspection must be submitted to the animal control officer.
- (4) For purposes of this section, a horse, camel or dromedary is considered to be working any time it is on the public street or sidewalk, or other public right-of-way, during any hour of operation of the nonmotorized passenger transport service that is authorized by and on file with the Traffic Superintendent.
- (B) *Vehicle Inspection and Maintenance.* Each vehicle shall comply with all the safety requirements imposed by all state, federal or local laws applicable to the vehicle involved.
- (C) *Required Equipment.*
- (1) *Nonmotorized Passenger Transport Vehicles.*
- (a) A holder or driver shall, at all times, provide and maintain in good operating condition the following equipment for each nonmotorized passenger transport vehicle:
- (i) Headlights;
 - (ii) Tail lights;
 - (iii) Flashing lights;
 - (iv) Approved braking system;
 - (v) Rubber on all wheels;
 - (vi) A "slow moving vehicle" sign attached to the rear of the vehicle;
 - (vii) Evidence of insurance;
 - (viii) A copy of this article.
- (2) *Helmets.* Unless the operator, holder, or handler of a pony, horse, camel or dromedary ride keeps all of its mounted ponies, horses, camels or dromedaries adequately and safely tethered to a ring apparatus, the operator, holder or handler shall ensure that every rider wears an equestrian or bicycle-type safety helmet while riding on horseback, camelback or dromedaryback.

(Ord. No. 3931, §9, 10-3-95; Ord. No. 4396, Ex. A, 5-21-02; Code 1991, §117.87; Ord. No. 4497 06-17-03; Ord. No. 4939, 10-17-06)

117.88 Transfer Of Certificate

No Certificate of Public Convenience and Necessity may be sold, assigned, mortgaged, or otherwise transferred without the consent of the Public Transit Board.

(Ord. No. 3931, §10, 10-3-95; Ord. No. 4396, Ex. A, 5-21-02; Code 1991, §117.88)

117.89 License Fees

No certificate shall be issued or continued in operation unless the holder thereof has paid annual license fee of \$250.00 for the right to operate a nonmotorized passenger transport service under a

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Certificate of Public Convenience and Necessity. The license fees shall be for the calendar year and shall be in addition to any other license fees or charges established by proper authority and applicable to the holder.

(Ord. No. 3931, §11, 10-3-95; Ord. No. 4396, Ex. A, 5-21-02; Code 1991, §117.89)

117.90 Suspension, Revocation Of Certificate

(A) A certificate issued under the provisions of this article may be revoked or suspended by the Public Transit Board if the holder thereof has:

- (1) Violated any of the provisions of this article;
- (2) Violated any ordinances of the city, or the laws, federal or state, the violations of which reflect unfavorably on the fitness of the holder to offer public transportation.

(B) Prior to suspension or revocation, the holder shall be given notice of the proposed action to be taken and shall have an opportunity to be heard.

(Ord. No. 3931, §12, 10-3-95; Ord. No. 4396, Ex. A, 5-21-02)

117.91 A.D.A. Compliance

Holder shall comply with all applicable provisions of the Americans with Disabilities Act.

(Ord. No. 3931, §13, 10-3-95; Ord. No. 4396, Ex. A, 5-21-02; Code 1991, §117.91)

117.92 Authority To Summon Veterinarian

The Police Department is hereby authorized to immediately summon the City Veterinarian (or other licensed veterinarian as available) if at any time an officer reasonably believes a horse, pony, camel or dromedary is ill, overtired, undernourished, overloaded, injured, or lame or whose health or life may otherwise be in imminent danger.

(Ord. No. 3931, §14, 10-3-95; Ord. No. 4396, Ex. A, 5-21-02; Code 1991, §117.92; Ord. No. 4939, 10-17-06)

ARTICLE VIII LIGHTS OF THE OZARKS

117.93 Lights Of The Ozarks

(A) *Establishment, Location and Parking Restrictions.* The Lights of the Ozarks celebration is hereby established in the city as an annual celebration beginning after the end of Farmers' Market (around Thanksgiving) and running through January 1 of the next year. This event shall be located on those interior parking spaces (adjoining the Old Post Office) of the Downtown Square and on the sidewalks adjoining those parking spaces as well as those portions of the Town Center Plaza needed for this event's success. The block of East Avenue between Mountain Street and Center Street may be restricted to horse-drawn carriages, pony rides, or other event vendors. No vendor shall obstruct pedestrian traffic on public sidewalks nor shall more parking spaces be utilized for vendors than absolutely necessary. The Fayetteville