

ORDINANCE NO. 09-23

**AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 78 OF THE CODE OF ORDINANCES BY AMENDING SECTION 78-1 TO ADD DEFINITIONS OF "SIGHTSEEING MOTOR VEHICLES OPERATED PURSUANT TO FRANCHISE" AND "SIGHTSEEING MOTOR VEHICLES OPERATED PURSUANT TO BUSINESS LICENSE"; AMENDING THE DEFINITION OF "VEHICLE FOR HIRE" TO DELINEATE THE TYPES AND CLASSES OF VEHICLES REGULATED BY CHAPTER 78; RENUMBERING SECTION 78-5 "BUSINESS LICENSE OR FRANCHISE REQUIRED FOR ALL VEHICLES FOR HIRE"; DELETING SECTION 78-61; DELETING SECTION 78-231; ADDING ARTICLE V "SIGHTSEEING VEHICLES PURSUANT TO FRANCHISE" TO INCLUDE A FORMALIZED PROCESS FOR APPLYING FOR, GRANTING AND RENEWING SIGHTSEEING VEHICLE FRANCHISES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the City Commission desires to revise the Vehicle For Hire Ordinance, chapter 78 of the Code of Ordinances, to make changes to its regulations to reflect current conditions in the vehicles for hire industry in Key West;

WHEREAS, the City Commission finds it desirable to revise Chapter 78 in light of various court rulings regarding the City's existing Sightseeing Franchise Ordinances;

WHEREAS, the City Commission finds that a revision to Chapter 78 would promote the health, safety and welfare of the citizens of Key West; and

WHEREAS, municipalities in the State of Florida are authorized to regulate commercial traffic upon municipal streets. *Pennington v. Quigg*, 114 So. 859 (Fla. 1927); *Jarrell v. Orlando Transit Co.*, 167 So. 664 (Fla. 1936); *City of Coral Gables v. City of Miami*, 190 So. 427 (Fla. 1939); *City of Miami v. South Miami Coach Lines, Inc.*, 59 So. 2d 52 (Fla. 1952); *Pratt v. City of Hollywood*, 78 So. 2d 697 (Fla. 1955).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST FLORIDA:

Section 1: That section 78-1 of the Code of Ordinances is hereby amended as follows\*:

**Section 78-1. Definitions.**

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

*Compensation* means payment by a passenger of a vehicle for hire or contract vehicle for hire which may be in the form of a fare, a gratuity, or any other form of consideration.

*Contract* means a written agreement between a passenger and the contract vehicle for hire that originates with the passenger at least 24 hours in advance of the service and

states: (i) the time of origin of the contact; (ii) the names of specific passengers to be transported; (iii) the schedule of transportation; and (iv) the contact person, address, and phone number of the passenger or group that is paying the compensation. A contract will not be considered valid unless signed by both a passenger or passenger group representative and the contract vehicle for hire company representative. A reasonable change in time or itinerary due to weather or other delays does not invalidate a contract.

*Contract vehicle for hire (C.V.H.)* means any van with seating capacity of up to 14 persons, other than the driver, engaged in the transportation of such persons and their accompanying baggage, if any, for compensation over the public streets of the city and not operating on a fixed route. A contract vehicle for hire shall not include vehicles owned by the city, passenger vehicles for hire, sightseeing vehicles as defined in section 78-231, limousines as defined in section 78-4, or motorized entertainment vehicles as defined in section 6-116. A contract vehicle for hire has neither a taximeter installed nor undertakes any transportation on demand or in response to a street hail.

*Cruising* means the driving of a passenger vehicle for hire on the streets, alleys or public right-of-ways in search of or soliciting prospective passengers for hire.

*Dispatch system* means a communication system which receives requests for service and transmits this information to licensed passenger vehicles for hire.

*Manifest* means a daily record prepared by a driver of all trips made by such driver showing the time and place of origin, the destination, the number of passengers, and the amount of fare of each trip.

*Passenger* means a person who is not permitted to drive, but may only ride within any vehicle.

*Passenger vehicle for hire* means any vehicle for hire engaged in the transportation of persons and their accompanying baggage, if any, for compensation over the public streets, not operated on a fixed route, and not including vehicles owned by the city, contract vehicles for hire, sightseeing motor vehicles as defined in section 78-231, or motorized entertainment vehicles as defined in section 6-116.

*Passenger vehicle for hire driver permit (P.V.H. driver permit)* means the authorization granted by the city to a stated person to operate any duly licensed passenger vehicle for hire for a period of one calendar year from the

date of issuance, which authorization shall be reflected in a document issued by the city identifying the permittee and the expiration date thereof.

*Passenger vehicle for hire vehicle license (P.V.H. vehicle license)* means the authorization granted by the city to a stated person to operate a specific vehicle as a passenger vehicle for hire. This authorization shall be reflected in a document issued by the city identifying the vehicle, the licensee, and the expiration date thereof.

*Prearranged transportation* means transportation for compensation on the public right-of-way by a contract vehicle for hire arranged at least 24 hours in advance of the service. Prearranged transportation shall be by contract with the specific passenger.

*Seating capacity* means the maximum number of passengers allowed in a vehicle for hire, which shall be as determined by the manufacturer of the vehicle.

*Sightseeing motor vehicles operated pursuant to franchise* means and includes every motor vehicle designed primarily for the purpose of carrying passengers for sightseeing for hire or shuttle transportation, including vehicles operated for amphibious tours, and operating under a franchise ordinance granted by the City pursuant to article V of this chapter.

Sightseeing motor vehicles operated pursuant to business license means and includes every motor vehicle designed primarily for the purpose of carrying passengers for sightseeing for hire, operated on a scheduled route, and operated pursuant to article IV of this chapter.

*Standing by* and *stand by* mean the parking, waiting or standing of a contract vehicle for hire in front of any business or along any public right-of-way for the purpose of soliciting or inducing passengers without a prearranged contract.

Stop, with respect to sightseeing vehicles, shall mean a location utilized solely for the loading and unloading of passengers. A stop shall not be utilized for the purpose of waiting, soliciting or inducing passengers who have not previously purchased a ticket for transport.

*Taximeter* means an electronic or mechanical device attached to a vehicle for hire which measures the distance driven and the waiting time upon which the fare is based.

*Vehicle* means any wheeled device by which any person or property may be transported or drawn upon any public road, and which is propelled wholly or in part by a motor or engine.

*Vehicle for hire* means any vehicle offered for rent or lease, or within which space is offered for rent or lease,

including, but not limited to, passenger vehicles for hire, contract vehicles for hire, sightseeing motor vehicles operated pursuant to business license, and sightseeing motor vehicles operated pursuant to franchise.

*Waiting time* means the elapsed period between the moment of acceptance of a passenger and the moment of discharge of the passenger during which a passenger vehicle for hire is held motionless.

(Code 1986, § 92.01)

**Cross references:** Definitions generally, § 1-2.

Section 2. Creating this section to include all of previous section 78-61, as amended\*:

**Sec. 78-5. Business License or Franchise Required for All Vehicles for Hire.**

(a) Before any person shall conduct or maintain a business of renting, leasing or providing any vehicle for hire within the territorial boundaries of the city as set forth in section 2.01 of the Charter, entitled "Boundaries," such person shall, as applicable make application with, and receive from, (i) the city manager for a license, or, (ii) the city commission for a franchise, to operate such business. The pickup of a passenger for compensation within the territorial

boundaries of the city shall constitute conducting or maintaining such a business. The application shall conform to all applicable requirements of this chapter and shall state the exact location of the intended place of business and any intermediate or way stations. No such business shall be conducted or maintained unless such license or franchise is duly issued, upon fees paid, in conformance with this chapter, as applicable, and unless the applicant has caused to be executed and shall maintain in full force and effect a liability insurance policy for each vehicle in amounts as prescribed in this chapter, the terms of which shall provide protection for all persons or property suffering injury, damage or loss because of the negligent operation of such vehicle by any person.

(b) The operation of a vehicle for hire within the territorial boundaries of the city is prohibited unless the vehicle is:

(1) Licensed as a contract vehicle for hire;

(2) Engaged in motor transportation of passengers which is within the stream of interstate commerce within the scope of 49 CFR 1047.45;

(3) Licensed as a sightseeing motor vehicle operating pursuant to a business license under article IV of this chapter, or licensed as a sightseeing motor vehicle

operating pursuant to a franchise under article V of this chapter; or

(4) Licensed as a passenger vehicle for hire pursuant to sections 78-4, 78-31, 78-32 and 78-64 and divisions 3, 4 and 5 of article II of this chapter.

(c) Both a passenger vehicle for hire and a contract vehicle for hire are limited to a maximum capacity of 14 passengers. Any vehicle for hire with a capacity in excess of 14 passengers is prohibited to conduct business on the city streets, unless it is a sightseeing motor vehicle operated pursuant to business license, a vehicle in the stream of interstate commerce, a city-operated bus, or a sightseeing motor vehicle operated pursuant to franchise.

(d) Operating a vehicle for hire without a license shall be punishable pursuant to section 1-15.

Section 3. Delete sec. 78-61 in its entirety , as it is now the "new" section 78-5\*.

~~Sec. 78-61. Required.~~

~~(a) Before any person shall conduct or maintain a business of renting, leasing or providing any vehicle for hire within the territorial boundaries of the city as set forth in section 2.01 of the Charter, entitled "Boundaries," such person shall make application with the~~

~~city manager for a license to operate such business. The pickup of a passenger for compensation within the territorial boundaries of the city shall constitute conducting or maintaining such a business. The application shall conform to all applicable requirements of this chapter and shall state the exact location of the intended place of business and any intermediate or way stations. No such business shall be conducted or maintained unless such license is duly issued, upon fees paid, in conformance with this chapter, as applicable, and unless the applicant has caused to be executed and shall maintain in full force and effect a liability insurance policy for each vehicle in amounts as prescribed in section 78-63, the terms of which shall provide protection for all persons or property suffering injury, damage or loss because of the negligent operation of such vehicle by any person.~~

~~(b) The operation of a vehicle for hire within the territorial boundaries of the city is prohibited unless the vehicle is:~~

- ~~(1) Licensed as a contract vehicle for hire;~~
- ~~(2) Engaged in motor transportation of passengers which is within the stream of interstate commerce within the scope of 49 CFR 1047.45;~~

~~(3) Licensed as a sightseeing vehicle under article IV of this chapter or has a duly authorized franchise from the city to operate sightseeing/shuttle vehicles; or~~

~~(4) Licensed as a passenger vehicle for hire pursuant to sections 78-4, 78-31, 78-32 and 78-64 and divisions 3, 4 and 5 of this article.~~

~~(c) Both a passenger vehicle for hire and a contract vehicle for hire are limited to a maximum capacity of 14 passengers. Any vehicle for hire with a capacity in excess of 14 passengers is prohibited to conduct business on the city streets, unless it is a licensed sightseeing vehicle, a vehicle in the stream of interstate commerce, a city-operated bus, or a licensed vehicle whose owner holds a franchise granted by the city commission.~~

~~(d) Operating a vehicle for hire without a license shall be punishable pursuant to section 1-15.~~

Section 4. Amend the title to article IV as follows\*:

**ARTICLE IV. SIGHTSEEING VEHICLES OPERATED PURSUANT TO BUSINESS LICENSE**

Section 5. Delete section 78-231 to reflect the relocation of the definition of sightseeing motor vehicle to sec. 78-1\*:

~~**Sec. 78-231. Definition.** The following words, terms and phrases, when used in this article, shall have the~~

~~meanings ascribed to them in this section, except where the context clearly indicates a different meaning.~~

~~*Sightseeing motor vehicle* means and includes every motor vehicle designed primarily for the purpose of carrying passengers for sightseeing for hire, operated on a scheduled route, and not operated under a franchise~~

Section 6: Add a new article V, as follows:

**ARTICLE V. SIGHTSEEING VEHICLES OPERATING PURSUANT TO FRANCHISE**

Sec. 78-250. Pursuant to applicable law, the city commission may regulate vehicles for hire, including, but not limited to, sightseeing motor vehicles operating within the Key West City limits.

Other than sightseeing motor vehicles operating pursuant to business licenses, as outlined in article IV, above, all other sightseeing motor vehicles operating within the City of Key West must operate pursuant to a franchise ordinance approved by the Key West City Commission pursuant to article 7.01(4) of the City Charter.

The Commission may, from time to time, enter into franchise agreements with particular grantee(s), granting the right, privilege, and franchise to use designated streets, avenues and other public highways, together with other public property designated by the city commission in

said city, for and during periods of up to ten (10) years.  
Said franchise agreements shall be for the purpose of a  
particular grantee's operating and maintaining sightseeing  
motor vehicles in said city, the enjoyment and exercise of  
the right so granted to be at all times in conformity with,  
and subject to, all provisions, terms and conditions of  
this article. A grantee's right to use the city's streets,  
alleys, public ways and places for the purposes herein  
shall not be exclusive, and the city reserves the right to  
grant the use of all streets, alleys, public ways and  
places to any person at any time during the period of any  
franchise granted pursuant to this article.

This article V shall apply to any franchise issued  
after the effective date of this ordinance, whether a  
renewal of an existing franchise or otherwise.

**Sec. 78-251. Franchise Application Process.**

(a) Any person or corporation desiring to obtain a  
new or renewal franchise to operate sightseeing motor  
vehicles pursuant to this article V shall file an  
application with the City Manager, along with an  
application fee of five thousand dollars (\$5,000.00) made  
payable to the City of Key West to subsidize the costs of  
processing applications.

(b) In order for a franchise application to be considered by the City Commission, the application shall contain the following (all submitted in electronic and paper format) to the City Manager:

(1) proposed franchise ordinance meeting the requisites of sec. 78-252(a);

(2) if the applicant is a corporation, a letter of good standing issued by the Florida Department of State, Division of Corporations, certifying that the applicant is either a Florida corporation, or a foreign corporation, which is duly registered with the Florida Division of Corporations;

(3) proposed number of vehicles to be operated under the franchise, with true and accurate color photographs of the vehicles to be used in the operation, along with accurate dimensions, fully loaded weight and turning radius of such vehicles;

(4) proposed fixed route, schedules, stops and hours of the operation delineated on a Key West City map and a plan to minimize noise and traffic impacts on the residents and guests of the City of Key West; and

(5) proposed script of the sightseeing tour to be given to passengers.

(c) Upon receipt of all of the items listed in this section, the City Manager shall deem an application "duly submitted" and the City Manager shall place the item as an ordinance for first reading to appear on the agenda for a regularly scheduled City Commission meeting occurring within sixty (60) days of the City Manager's designation of the application as being "duly submitted."

**Sec. 78-252. City Commission Consideration of Duly Submitted Application.**

The Key West City Commission has plenary authority regarding any duly submitted franchise application.

Consistent with the requirements specified in this Chapter, the City Commission may grant any application, deny any application, or grant any application with amendments, or conditions, upon any reason in which the City Commission deems appropriate for the protection of health, safety and welfare and which advances the public convenience.

(a) Subject to the above plenary authority, the City Commission shall not approve a proposed franchise ordinance hereunder unless such franchise ordinance includes:

(1) A provision requiring: that the Franchisee shall, at all times, maintain liability insurance in an amount of not less than ten million dollars (\$10,000,000.00) per

occurrence. Such insurance shall comply with the laws and regulations of the State of Florida. All insurance policies insuring said sightseeing / shuttle vehicles shall be issued by an insurance company registered to do business in the State of Florida, subject to the laws and regulations of the State of Florida. Insurers issuing the above referenced policies must maintain an A.M. Best rating of no less than "A". The City of Key West shall be named as an additional insured on all liability policies . The Policies shall contain a waiver of subrogation provision whereas the Franchisee's insurer waives any claim against the City of Key West. Certificates of insurance shall be filed and maintained with the City Clerk evidencing the minimum limits of insurance cited above. All policies shall provide they may not be terminated or modified without the insurer providing the City at least thirty (30) days advance notice. The Franchisee shall immediately notify the City of any cancellation of such insurance.

At the request of the City Manager, the Franchisee shall meet with the City's representatives to review the extent and amount of insurance coverage provided hereunder. Should the City Manager believe that the coverage provided is not sufficient to protect its interest, it may specify the increased level of insurance required. If Franchisee

objects to the level of coverage, City and Franchisee shall enter into a binding arbitration within fifteen (15) days of the date of the dispute to resolve the issue. If City and Franchisee are unable to agree on a neutral arbitrator, each party shall select an arbitrator who will then appoint a third arbitrator to resolve the matter. If an arbitrator is not selected through no fault of the City, the coverage required by the City shall be placed.

(2) a provision requiring an annual franchise fee be paid to the City of Key West in an amount equal to the greater of (i) five percent (5%) of gross revenues it receives from all sources derived from operations pursuant to the franchise agreement, or (ii) seven thousand five hundred dollars (\$7,500.00) per vehicle authorized in the franchise agreement (this amount shall be referred to as the "minimum guarantee"). The seven thousand five hundred dollar (\$7,500.00) per vehicle fee shall be increased yearly in an amount equal to the increase in the United States consumer price index (CPI-U) as published by the Bureau of Labor Statistics. Said five percent (5%) shall be paid at the end of each calendar month with a fifteen (15) day grace period. The yearly guaranteed minimum payment of \$7,500.00 per vehicle shall be payable at the

end of each twelve (12) month period with a 10-day grace period. Failure to pay any sum due shall result in imposition of interest at the rate of eighteen percent (18%) per annum of the delinquent amount per month or such maximum amount permitted by law until paid in full.

3) a provision which includes, with detail and specificity, each and every location where vehicles operated pursuant to the franchise will pick up or drop off passengers (hereinafter referred to as "stop(s)");

(4) a provision requiring that the City Manager shall have the authority to disapprove any stop, which in the City Manager's opinion disrupts traffic, City operations, or is otherwise unreasonably injurious to the public welfare. Should Franchisee or any affected party or entity disagree with the decision of the City Manger, it shall, by filing written notice with the City Clerk appeal the decision to the City Commission.

Should Franchisee disagree with the decision of the City Manger, it shall, by filing written notice with the City Clerk within three (3) days of the City Manager's written determination, appeal the decision to the City Commission.

Upon the establishment of any proposed stop, the City Manager shall mail notice to all property owners and

franchisees located within three-hundred (300) feet of the proposed stop. Such property owners and franchisees shall have twenty days from the mailing of the notice to appeal the decision of the City Manager to the City Commission in accordance with the provisions of this chapter. The City Manager shall also cause notice to be mailed to all property owners and franchisees located within three-hundred (300) feet of any location that the City Manger has denied the Franchisee an opportunity to establish a stop, and for which the Franchisee has appealed, informing them of the City Commission meeting at which such appeal will be considered.

The City Commission shall set the matter for hearing with appropriate public notice for the next regularly scheduled Commission meeting. By majority vote, the Commission may affirm, reverse or modify the decision of the City Manager based upon the factors considered by the City manager and those contained in subsection (b) below.

Such authorized stops shall be for the loading and unloading of passengers only. The Franchisee shall not solicit persons or transact ticket sales on the City streets or sidewalks. The City Manager shall have the authority to move stops and to reasonably regulate their use by the Franchisee, including requiring of the sharing

of stops with other franchisees. The location of stops may be marked on City Streets in accordance with the City Code of Ordinances by the City for the benefit of the Franchisee. The Franchisee, with the consent of the City Manager, may install signage at such stops subject to any applicable City regulations. If the City should lawfully decide to alter or change the grade of any street or to make any other public improvements which, in the City Manager's sole discretion, requires the Franchisee to relocate, modify, or otherwise alter its operations under this Franchise, the City Manager shall give the Franchisee at least forty-eight (48) hours notice of such decision and may require the Franchisee to remove its signs, vehicles, or other property in order to facilitate such City project. The Franchisee shall acknowledge and agree to release the City from any losses, injuries, or damages it may suffer as a result of such decision by the City. The movement or relocation of any stops on public property shall be applied equally to all operators under City franchises. The City shall not require a franchisee to relocate, temporarily or otherwise, unless the same request is made to all similarly situated franchisees.

(5) a provision which delineates, with detail and specificity, the fixed route of the operation;

(6) if the franchise permits shuttle operations, a provision which requires all such shuttle operations to be subject to the franchise fee provisions;

(7) a provision including the duration and term of the franchise, which duration or term shall not exceed ten (10) years;

(8) a provision which, subject to due process considerations, authorizes the City, upon reasonable notice, to terminate the franchise ordinance upon a finding that the operator has defaulted under, or otherwise violated, the franchise agreement and has not corrected the default after reasonable notice;

(9) a provision requiring the franchisee to indemnify the City of Key West for any and all claims related to the franchisee's operations;

(10) a provision whereby the operator expressly acknowledges that the operator is prohibited from transacting ticket sales on the streets or sidewalks of the City; and

(11) a provision requiring that all vehicles operated pursuant to the franchise agreement use propane fuel or some other environmentally sensitive alternative fuel. If a proposed vehicle presently does not utilize an environmentally sensitive fuel, the franchisee shall submit

a plan specifying that such franchisee will do so within one year of the commencement of its franchise as an agreed upon condition of continued operation.

(12) A provision requiring the Franchisee to have its gross revenues and payments to the City audited at least every three years by a Certified Public Accounting firm pursuant to generally accepted accounting principles, and the results of said audit be promptly transmitted to the City. City shall also retain the right to have gross revenues and payments to the City audited at its own expense by a Certified Public accounting firm selected by City upon fourteen (14) days written notice to Franchisee and further provided that the results of such audit be immediately transmitted to Franchisee promptly upon completion. Upon fourteen (14) days written notice to Franchisee, City shall be permitted to inspect Franchisee's books, records and other pertinent financial information to ensure compliance with the provisions of paragraph 2 above.

(b) Subject to the plenary authority of the City Commission regarding the issuance and renewal of franchise hereunder, factors which the City Commission may take into consideration in acting upon a duly submitted franchise application include, but are not limited to, the following:

- (1) public safety;
- (2) traffic impacts, including whether the grant of a franchise would unreasonably increase congestion in the historic district;
- (3) performance history of the applicant, if applicable;
- (4) financial responsibility and wherewithal of applicant;
- (5) consistency of vehicle aesthetics and City environment;
- (6) consistency between vehicle aesthetics and historical neighborhoods;
- (7) environmental impacts;
- (8) capacity and volume of non-commercial and commercial traffic;
- (9) public input; and
- (10) any other factors in which legislative bodies would normally consider in acting upon proposed ordinances.

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**\*(Coding: Added language to original code section is underlined; deleted language is ~~struck through~~.)**

Section 6. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or

unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable there from and shall be construed as reasonable as necessary to achieve the lawful purposes of this Ordinance.

Section 7: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

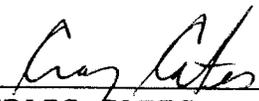
Section 8: That this Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 5th day of November, 2009.

Read and passed on final reading at a regular meeting held this 3rd day of December, 2009.

Authenticated by the presiding officer and Clerk of the Commission on 5th day of January, 2010 .

Filed with the Clerk January 5, 2010 .

  
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CRAIG CATES, MAYOR

ATTEST:

  
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CHERYL SMITH, CITY CLERK