

ORDINANCE NO. 1832

**AN ORDINANCE AMENDING CHAPTER 4.08.10 OF THE
MUNICIPAL CODE OF THE CITY OF EUREKA SPRINGS,
ARKANSAS FIXING THE AMOUNT OF FRANCHISE
FEES TO BE PAID TO THE CITY BY ARKANSAS
WESTERN GAS COMPANY; AND PRESCRIBING OTHER
MATTERS PERTAINING THERETO.**

WHEREAS, pursuant to Chapter 4.08.10 of the Municipal Code of the City of Eureka Springs, Arkansas (the "City"), the City has fixed the franchise fees to be paid by Arkansas Western Gas Company for the right, privilege and franchise of using the streets, highways and other public places in the City for the operation of a natural gas system; and

WHEREAS, the franchise fees are authorized pursuant to Arkansas Code Annotated §§ 14-200-101, et. seq. (the "Authorizing Legislation"); and

WHEREAS, it is necessary to make certain technical changes to Chapter 4.08.10 of the Municipal Code of the City in order to comply with the Authorizing Legislation and to clarify that the charges fixed by Chapter 4.08.10 of the Municipal Code are fees and not taxes;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Eureka Springs, Arkansas:

Section 1. Chapter 4.08.10 of the Municipal Code of the City is hereby amended to read as follows:

"4.08.10 Franchise Fee. During the life of this franchise, Grantee shall pay to Grantor each year a franchise fee in an amount equal to five percent (5%) of Grantee's revenues before taxes for residential and commercial customers located within the corporate limits of the City. Payments shall be made by Grantee to Grantor in quarterly installments and Grantee shall have thirty (30) days after the end of each calendar quarter within which to make such payment. Residential and commercial gas revenues are those revenues so classified pursuant to Grantee's uniform classification standards. Grantor shall have the right to examine and verify, from the records of Grantee, any data relating to the gross revenues of Grantee from customers on which said franchise fee is due. In the event of a controversy between Grantor and Grantee as to the amount of gross revenues received by Grantee in the City upon which said fee is due, such controversy shall be referred to the Arkansas Public Service Commission, or such successor regulatory agency which may have jurisdiction over Grantee, for final determination, and the decision of said Commission shall be binding upon both parties hereto.

It is expressly agreed and understood by Grantor and Grantee that the aforesaid payment shall constitute and be considered as complete payment and discharge by Grantee, its successors and assigns, of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees, improvement districts, special millage taxes, and the general ad valorem taxes) which are now or might in the future be imposed by the Grantor under authority conferred upon Grantor by law. In the event such other tax or taxes are imposed by Grantor, the obligation of Grantee set forth in Section 4.08.10 hereof, to pay the franchise fee annually shall immediately terminate."

Section 2. Chapter 4.08.10 of the Municipal Code, as amended hereby, shall remain and be in full force and effect.

Section 3. All ordinances and resolutions or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED: February 17, 2000.

ATTEST:

City Clerk

APPROVED:

Mayor

(SEAL)

CERTIFICATE

The undersigned, City Clerk of Eureka Springs, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 1832, passed at a regular session of the City Council of Eureka Springs, Arkansas, held at the regular meeting place of the City Council at 7:00 o'clock p.m., on the 17th day of February 2000, and that the Ordinance is of record in the Ordinance Record Book now in my possession.

GIVEN under my hand and seal this _____ day of February, 2000.

City Clerk

(SEAL)