

Agenda
Shady Cove Regular City Council Meeting
Wednesday, July 21, 2021
6 PM

<https://us02web.zoom.us/j/85418669111?pwd=eTcvWdQTUFYTTVTZjdPNFRYTGNFZz09>

Meeting ID: 854 1866 9111

Passcode: 398208

One tap mobile

+13462487799,,85418669111#,,, *398208# US (Houston)

+16699006833,,85418669111#,,, *398208# US (San Jose)

I. Call to Order

- A. Roll Call
- B. Pledge of Allegiance
- C. Announcements by Presiding Officer

- 1. This meeting is being digitally recorded.
- 2. The next regularly scheduled meeting of the City Council will be held on August 5 at 6 PM, with Council members present in Council Chambers and the public to attend via Zoom (Tentatively).
- 3. The next regularly scheduled meeting of the Planning Commission is July 29 at 6 PM, with Commission members present in Council Chambers and the public to attend via Zoom.
- 4. The next meeting of the Parks and Rec Commission is not scheduled at this time.
- 5. The next meeting of the Emergency Management Commission is on August 10 at 10 AM to be held at a location yet to be decided.
- 6. Public may comment on agenda items - Public must state name, address and standing to discuss an issue. Issues must have a City-wide impact and not be personal issues. Depending on number of comments and time constraints, Council may limit the amount of time to 3 minutes per speaker.
- 7. These meeting dates and times are subject to change.

II. Public Comment on Agenda Items

III. Consent Agenda

- A. Bills Paid Report 7/1/21-7/8/21 \$32,305.09
- B. Bills Paid Report 6/17/21-6/30/21 \$14,605.17
- C. Minutes of June 3, 2021

D. Minutes of June 17, 2021

IV. Items Removed from Consent Agenda

V. Staff Reports

- A. City Administrator
- B. Jackson County Deputy
- C. Fire Chief Winfrey, FD4

VI. New Business

- A. Appointments to the Planning Commission
- B. Appointment to the Emergency Management Commission

VII. Old Business

- A. Movies in the Park
- B. ROW Ordinance Draft
- C. Audit Presentation/Update
- D. Community Benches Update

VIII. Written Communication

IX. Public Comment on Non-Agenda Items

X. Council Comments on Non-Agenda Items

- A. Mayor Tarvin
- B. Councilor McGregor
- C. Councilor Nuckles
- D. Councilor Evertt

Adjournment

Check Issue Date	Check	Payee	Description	Amount
06/26/2021	45307	City of Shady Cove - Petty Cash	1539.01 Indian Ck 04/2021	-44.00
06/26/2021	45307	City of Shady Cove - Petty Cash	1538.01 City Hall 04/2021	-46.00
06/26/2021	45307	City of Shady Cove - Petty Cash	2300.01 Shop 04/2021	-46.00
06/24/2021	45336	AT&T Mobility	Cell phones 06/06/21-07/05/21	166.52
06/24/2021	45337	Banner Bank	master keyed padlock-City Hall	70.53
06/24/2021	45337	Banner Bank	master lock-Parks	70.53
06/24/2021	45337	Banner Bank	master padlock-Streets	70.53
06/24/2021	45337	Banner Bank	Internet radio 05/07-06/06	10.90
06/24/2021	45337	Banner Bank	Apple phone prot app	2.99
06/24/2021	45337	Banner Bank	Apple phone prot app	.99
06/24/2021	45337	Banner Bank	Rackspace Council	55.48
06/24/2021	45337	Banner Bank	Rackspace Admin	33.29
06/24/2021	45337	Banner Bank	Rackspace Parks	11.10
06/24/2021	45337	Banner Bank	Rackspace Planning	11.10
06/24/2021	45337	Banner Bank	Amazon - Elec prot plan	47.29
06/24/2021	45337	Banner Bank	Amazon - Inflatable movie screen	368.88
06/24/2021	45337	Banner Bank	Amazon - Projector	158.99
06/24/2021	45337	Banner Bank	Amazon - Projector tripod	29.55
06/24/2021	45337	Banner Bank	Amazon - Pruning sealer Parks	4.50
06/24/2021	45337	Banner Bank	Amazon - Pruning sealer streets	4.49
06/24/2021	45337	Banner Bank	Staples - lens cleaner	12.75
06/24/2021	45337	Banner Bank	finance charges	20.54
06/24/2021	45338	Canon Financial Services, Inc.	Copier Lease 06/01/21-06/30/21	203.82
06/24/2021	45339	CIS Trust	Work Comp Ins 07/01/21-06/30/22	3,581.10
06/24/2021	45340	City of Eagle Point	CPR class - S McMahan	25.00
06/24/2021	45340	City of Eagle Point	CPR class - S McMahan	25.00
06/24/2021	45341	City of Shady Cove - Utilities	22451 Hwy. 62 04/2021	46.00
06/24/2021	45341	City of Shady Cove - Utilities	2501 Indian Creek Rd 04/2021	44.00
06/24/2021	45341	City of Shady Cove - Utilities	1008 Celtic Cir 04/2021	46.00
06/24/2021	45342	CNA Surety	OR P.E. Position Schedule (1) Acct #61093724	455.00
06/24/2021	45343	Danny Byrd Trucking	Fill dirt-Aunt Caroline's	750.00
06/24/2021	45344	David Christian	Radio 06/14-06/18	90.00
06/24/2021	45345	Ewing Irrigation	Fertilizer - Parks	166.70
06/24/2021	45346	Hornecker Cowling, LLP	File 37076-001	221.19
06/24/2021	45347	Hunter Communications	Phone/Internet 07/01/21-07/31/21	599.06
06/24/2021	45348	Jackson County Recycling Partnership	Recycling program 2021-2022	189.00
06/24/2021	45349	Postmaster	Sewer Billing postage 06/2021	342.20
06/24/2021	45350	Richard W Brewster CPA PC	Q4 2021 payroll svcs	2,820.00
06/30/2021	45351	Aaron Prunty	Reimburse for cc payment	17.38
06/30/2021	45352	Criterion Pictures USA	Movie in the park 7/02/21	200.00
06/30/2021	45352	Criterion Pictures USA	Movie in th epark 07/02/21	50.00
06/30/2021	45353	David Christian	Radio 6/21-6/24	90.00
06/30/2021	45354	Robert & Cleo Lewis	Refund overpayment	47.67
06/30/2021	45355	SAIF Corporation	CIS 07/01/21-07/01/22	3,581.10
Grand Totals:				14,605.17

Check Issue Date	Check	Payee	Description	Amount
07/08/2021	45357	Accurate Plumbing Solutions, Inc.	City Hall water line repair	3,730.00
07/08/2021	45358	Avista Corporation	Natural Gas 05/20-06/21	23.36
07/08/2021	45359	Banner Bank	Shoutcheap 06/2021	10.90
07/08/2021	45359	Banner Bank	Rackspace Planning	11.10
07/08/2021	45359	Banner Bank	Rackspace Council	55.46
07/08/2021	45359	Banner Bank	Rackspace Admin	33.29
07/08/2021	45359	Banner Bank	Rackspace Parks	11.10
07/08/2021	45359	Banner Bank	Staples-Dividers (Budget)	49.80
07/08/2021	45359	Banner Bank	Staples-Binders (Budget)	65.76
07/08/2021	45359	Banner Bank	Apple-Phone prot	.99
07/08/2021	45359	Banner Bank	Apple-Phone prot	2.99
07/08/2021	45359	Banner Bank	Bmatrix-Radio	59.99
07/08/2021	45359	Banner Bank	Amazon Prime membership	12.99
07/08/2021	45359	Banner Bank	Adobe Acro monthly	14.99
07/08/2021	45359	Banner Bank	Amazon-Movie in the Park	26.95
07/08/2021	45359	Banner Bank	finance charges	21.42
07/08/2021	45360	Banner Bank	Bill's Glass-Windshield	100.00
07/08/2021	45360	Banner Bank	Criterion-Movie in the Park	250.00
07/08/2021	45360	Banner Bank	Lowes-City Hall fountain pump	39.98
07/08/2021	45361	Canon Solutions America, Inc.	Maint/Copies 06/2021	71.64
07/08/2021	45362	Celtic Circle, LLC	Shop Rental 06/2021	865.00
07/08/2021	45363	Christine Theriault	Refund sewer overpayment	73.45
07/08/2021	45364	City of Shady Cove - Utilities	#1538.01 22451 Hwy. 62	46.00
07/08/2021	45364	City of Shady Cove - Utilities	2501 Indian Creek Rd 06/2021	44.00
07/08/2021	45364	City of Shady Cove - Utilities	1008 Celtic Cir 06/2021	46.00
07/08/2021	45365	Confident Staffing, Inc.	J. Farris 6/29-7/2 & background chk	681.51
07/08/2021	45366	Crystal Fresh	City Hall bottled water 5/18/21	44.00
07/08/2021	45367	David Christian	Radio 06/28-07/02	90.00
07/08/2021	45368	KAS & Associates, Inc.	SCA Cleveland St-Prelim Engineering	120.00
07/08/2021	45369	KDP Certified Public Accountants LLP	Mgt advisory - RVSS annexation	15,810.00
07/08/2021	45370	League of Oregon Cities	LOC Annual Membership 07/2021-06/2022	2,794.60
07/08/2021	45371	Pacific Power	Street lights 06/2021	640.47
07/08/2021	45371	Pacific Power	City Hall 05/24-06/23	266.79
07/08/2021	45371	Pacific Power	Aunt Carolines 05/21-06/22	42.46
07/08/2021	45371	Pacific Power	Nork Lane 05/24-06/23	37.73
07/08/2021	45372	Perfection Cleaning	City Hall office cleaning 06/2021	300.00
07/08/2021	45373	RVCOG	N. Hart-Brinkley - Lands/Environmental	622.92
07/08/2021	45373	RVCOG	R Nolan - 05/2021	2,834.79
07/08/2021	45374	Shady Cove Hardware, LLC	Valve flap	34.98
07/08/2021	45374	Shady Cove Hardware, LLC	Sign-Nails/screws/bolts/drill bit	15.72
07/08/2021	45374	Shady Cove Hardware, LLC	Drill bit/nails/screws	6.47
07/08/2021	45374	Shady Cove Hardware, LLC	Gas can, 9 gal tub	64.97
07/08/2021	45374	Shady Cove Hardware, LLC	Lithium battery	9.98
07/08/2021	45375	SOREDI	Annual membership	1,125.00
07/08/2021	45376	Sorenson Ransom Ferguson & Clyde LLP	Audit - Sewer	87.50
07/08/2021	45377	Southern Oregon Sanitation	490 Nork Ln 06/2021	40.22
07/08/2021	45377	Southern Oregon Sanitation	2501 Indian Cr Rd 06/2021	58.50
07/08/2021	45377	Southern Oregon Sanitation	22451 Hwy 62 06/2021	40.22
07/08/2021	45378	Teamster Local 223	06/2021 dues	153.00
07/08/2021	45379	Tom Corrigan	Water/Totes-Movie in the Park	48.92
07/08/2021	45379	Tom Corrigan	Totes-Emergency supp	25.47
07/08/2021	45379	Tom Corrigan	Ice-Movie in the Park	8.80
07/08/2021	45380	TouchPoint Networks, LLC	Firewal 06/2021	31.00
07/08/2021	45381	Upper Rogue Independent	Public Notice - Budget	405.00
07/08/2021	45382	USACE	Water Storage	87.98
07/08/2021	45383	WECO - Carson	Gas/Diesel 06/18-06/29	108.93

Check Issue Date	Check	Payee	Description	Amount
Grand Totals:				32,305.09

City of Shady Cove
City Council Regular Meeting Minutes

Thursday, June 3, 2021, 6:00 PM

Meeting was held via Zoom with members of Council being present at City Hall.

I. CALL TO ORDER

Mayor Tarvin called the Regular City Council Meeting to order at 6:00 PM

Council Present: Mayor Tarvin and Councilor Evertt, with Councilor McGregor and Councilor Nuckles attending via Zoom.

Staff Present: Thomas J. Corrigan, City Administrator

The Council recited the Pledge of Allegiance.

I.B. ANNOUNCEMENTS

The Mayor made the announcements on the agenda

II. PUBLIC COMMENT ON AGENDA ITEMS

No public comment.

III. CONSENT AGENDA

Items in Consent Agenda

- A. Bills Paid Report – 4/27/21-5/12/21 \$144,021.96
- B. Minutes of May 6, 2021

Motion to Accept Items of the Consent Agenda

Motion: Councilor Nuckles

Second: Councilor Evertt

Motion Carried 4-0

IV. ITEMS REMOVED FROM CONSENT AGENDA

None.

V. STAFF REPORTS

A. Deputy Heise

- CSO Deputies have been focusing on weed abatement program
- Deputies continue with traffic enforcement

B. Fire Chief Winfrey, FD4

- Fire Danger going up to moderate
- Water rescues in full swing, reminder to wear safety vests correctly

- One fire fighter is being replaced, bringing on four summer fire fighters
- District 3 responded to fire on Antelope to assist ODF

C. City Administrator

- Report on CSO on weed abatement violations
- Various complaints: blackberry complaints, dog complaints
- Two bridges into river
- Waiting to receive last shipment of PPE from State
- Officially set up with Chase Bank, experiencing excellent customer service
- Grants: Commercial Rental Relief available to community; Commercial Small Business Assistance: closes June 6; Housing Inventory Grant; Feasibility Grants - \$20,000 approved for infrastructure; Hazard Mitigation Grant – through Business Oregon, \$11,000 - Estimates for limbing and underbrush clearing range from \$55,000 to \$80,000, discussion ensued; No word from AARP grant; Two small city allotment grants: Oil Train & Cleveland Street Sidewalk Program
- Portable generator is repaired

VI. NEW BUSINESS

Councilor McGregor posed question on email regarding Go Gov

A. Audit Presentation/Update

- Reading of letter from KDP – Discussion of changes to accounting procedures and appearance of audit report

B. Appointment(s) to Planning Commission – Discussion of two applicants, one of which already serving on separate commission and is not yet out of term; Councilors McGregor and Nuckles speak to qualifications of remaining candidate Hohenstein.

Motion to Appoint Hank Hohenstein to Planning Commission

Motion: Councilor Nuckles

Second: Councilor McGregor

Motion Carried 4-0

Welcome to Mr. Hohenstein to the Planning Commission. Thanks and welcoming story.

VII. OLD BUSINESS

A. Fireworks Signage/Enforcement – Discussion of signage and wording options;

Motion to purchase 2 larger 1/8" thick aluminum and a smaller one (price tbd)

Motion: Councilor Evertt

Second: Councilor Nuckles

Motion Carried 4-0

- Estimate for enforcement (extra deputy) for 4th of July to just do fireworks, night-shift: \$250.00 - \$300.00 (min. 6 hrs.); Discussion regarding additional coverage

Motion to pay for extended Sheriff's office coverage (up to \$1,000) to cover over the 4th of July holiday weekend (to include Friday, Saturday, and Sunday)

Motion: Councilor Evertt

Second: Councilor McGregor

Motion Carried 4-0

- B. Avista Franchise Agreement – Proposed agreement with Avista's comments and City attorney comments on it provided to Council; City Attorney has suggested creating a right of way ordinance for consistency; Reading of Purpose and Intent; Council Consensus and Direction to Staff to look into language of ROW ordinance; Issue tabled until further information on ordinance is obtained
- C. Special Election to fill Council Vacancy
 - Discussion on costs of special election, both options will be considered special elections as they would both be in an odd-numbered year
 - Discussion on violation of City Charter and appointment of new member

Motion to hold Special Election for 5th Council Member Seat at the November Special Election Date

Motion: Councilor Nuckles

Second: Councilor McGregor

Motion Carried 4-0

The Special Election to fill the Council vacancy for the November Special Election will be held on November 2, 2021.

VIII. WRITTEN COMMUNICATION

Discussion regarding letters to Council. Letters were not read.

IX. PUBLIC COMMENT ON NON-AGENDA ITEMS

None.

X. COUNCIL COMMENTS ON NON AGENDA ITEMS

- A. Councilor McGregor: Pleased with productivity and civility demonstrated amongst Council members this evening, and thanks.
- B. Councilor Nuckles: Agreed with Councilor McGregor that the night's meeting was an exception to the fighting and dissension. Commentary on state of Council and lack of productivity.
- C. Councilor Evertt: None
- D. Mayor Tarvin: Agrees that this evening went well, and promotes positivity and Council working together as a whole for the betterment of the community.

XI. ADJOURNMENT

There being no further business before the Council, the Mayor adjourned the meeting at 7:52 PM.

Approved:

Attest:

Shari Tarvin
Mayor

Thomas J. Corrigan
City Administrator

Council Vote:

Mayor Tarvin
Councilor McGregor
Councilor Nuckles
Councilor Evertt

DRAFT

City of Shady Cove
City Council Regular Meeting Minutes

Thursday, June 17, 2021, 6:00 PM

Meeting was held via Zoom with members of Council being present at City Hall.

I. CALL TO ORDER

Mayor Tarvin called the Regular City Council Meeting to order at 6:00 PM

Council Present: Mayor Tarvin and Councilor Evertt, with Councilor McGregor and Councilor Nuckles via Zoom

Staff Present: Thomas J. Corrigan, City Administrator

The Council recited the Pledge of Allegiance.

I.B. ANNOUNCEMENTS

The Mayor made the announcements on the agenda. Budget Meeting and Public Hearing will be June 23 at 6 PM. Mayor would like to start opening up meetings.

II. PUBLIC COMMENT ON AGENDA ITEMS

No public comment.

III. CONSENT AGENDA

Move Item B down to #4.

Motion to Accept Item A Bills Paid Report, May 13-June 17, 2021, \$46,096.28.

Motion: Councilor Nuckles
Motion Carried 4-0

Second: Councilor Evertt

IV. ITEMS REMOVED FROM CONSENT AGENDA

Table minutes of June 3 until next meeting.

V. STAFF REPORTS

- A.** Fire District 4 Chief Winfrey gave a report. Activity report for May - 123 calls and one building fire. 5 small grass fires and one car fire. 571 calls this year as opposed to 449 calls last year. Medical calls have gone up dramatically. Response time is steady at 5.2 minutes.
- B.** Deputy Heise is on a call right now.
- C.** City Administrator
 - Fireworks signs are installed, the northern sign will cover the radio sign during July 4 holiday. Rogue River Dr sign was actually more expensive than the large sign. The City went with the older sign we had.

- Chlorine shortage is affecting the Valley.
- Numerous calls from neighbors in regard to Riparian and Flood Plain
- Emergency Management Commission met, seeking to sign people up for Emergency Notifications.
- Jackson County is increasing cannabis enforcement.
- RVSS annual mailing was confusing for numerous citizens. You are NOT able to pay your Shady Cove invoice on their site. It is also a \$1 increase not a \$45 increase. There is an opening on Em Mgt Comm now.
- Defensible Living Space grant project has a final draft. We were approved to have the Environmental Study included in the grant. This is the precursor to the Hazard Mitigation Grant under FEMA's Wildfire Fuels Reduction. We have had four contractors work with us on the amounts for which to apply.
- AARP grant paid out 80 grants with 3,565 applications.
- More PPE came in from the State. Demonstration of how new liquid sanitizer works. Basically bottled alcohol which flows too freely in dispensers.

VI. NEW BUSINESS

None

VII. OLD BUSINESS

- A. Fireworks Enforcement – Sheriff's Office update. We are waiting for an update on how many deputies have signed up for the Overtime.
- B. Avista Franchise Agreement – ROW agreement forthcoming per direction of Council.
- C. Audit Presentation/Update – Conversation with Managing Partner. Still not done. Fund 2 is causing consternation with transition. We said we would not do a 6/30 audit.

VIII. WRITTEN COMMUNICATION

None

IX. PUBLIC COMMENT ON NON-AGENDA ITEMS

- Sue Pemberton questioned the Mayor on previous letters submitted to Council not being read into the record.
- Steve Mitchell requested an update on benches.

X. COUNCIL COMMENTS ON NON AGENDA ITEMS

- A. Councilor Evertt attended his first budget meeting and thinks we will adopt a good budget even with the auditors lagging behind.
- B. Councilor Nuckles commented to Sue Pemberton on public forums. She chaired the Budget Committee meeting and gave kudos to the members of the committee and

the process. She requested again to meet with the Mayor. She thanked everyone for their support and for attending.

- C. Councilor McGregor reported he attended RVACT meeting and the Planning Commission Chair requested a liaison to the meeting. He also questioned an update on the benches that were previously mentioned. The City Administrator commented that we could purchase the benches and trash cans with money left in the budget this year. Concurrence was given to him in regard to two 6' benches with dividers and trash cans with sand tops to a max of \$1000.

D. Mayor Tarvin:

- Thanks for Staff for getting the flags changed.
- City Hall is open, just knock on the door.
- Opening on Emergency Management Commission until 5PM on July 12.
- Also accepting applications on committees for CJ's Hope, volunteers for Crafter's Market in the park, 2 positions open on Planning Commission until July 12 at 5PM.
- Covid risk drops from High to Moderate tmw.
- The City is very serious and has a 0 tolerance for all fireworks.
- Mayor met in regard to Festival on the Rogue which will be in person at the County park on 9/11 from 10-4. All committee/commission members and Staff are welcome to come out and man the City table at the Festival. Chuck Huntington and Sue Krupa requested the City assist with the festival in the amount of \$500, radio advertising and some PPE. Council concurred.

Movie in the Park will be at Aunt Caroline's Park on 7/2, with chalk art at 8 PM and movie starting around 9 PM.

Reminder to Council about LOC annual conference 10/21-10/23. Registration opens August 2 so please notify the City Administrator in July. Stay Safe!

XI. ADJOURNMENT

There being no further business before the Council, the Mayor adjourned the meeting at 6:50 PM.

Approved:

Attest:

Shari Tarvin
Mayor

Thomas J. Corrigan
City Administrator

Council Vote:

Mayor Tarvin _____
Councilor McGregor _____
Councilor Nuckles _____
Councilor Evertt _____

DRAFT

**CITY OF SHADY COVE**

22451 Highway 62 • P.O. Box 1210 • Shady Cove, OR 97539

Phone: 541.878.2225 • Fax: 541.878.2226

APPLICATION FOR COMMISSION OR COMMITTEE

PLEASE PRINT

DATE: 6/24/21 POSITION APPLIED FOR: Planning Commission #3

APPLICANT INFORMATION

Name: MARY MAGILLPhysical Address: 31 JAMES PLACECity: SHADY COVEState: ORZip: 97539Mailing Address: PO BOX 647City: SHADY COVEState: ORZip: 97539Home Phone: 541-878-3068Cell Phone: 206-910-5700Email Address: Mary@magill.comCurrent Occupation: Administration
(If retired or unemployed, state your general or past profession.)

How long have you lived in Shady Cove?

7 years

How long have you lived in Jackson County?

7 years

Are you available to attend both daytime and evening meetings when necessary?

yes

Are you an employee of the City of Shady Cove, an occasional or potential contract employee, or do you have any other real or potential conflict of interest in working or serving in this capacity?

☐ Yes☒ No

If yes, please describe:

QUALIFICATIONS

I believe that I am qualified for and should be considered for the above position(s) for the following reasons
(continue on next sheet if necessary):- Current commissioner seeking
to new term.- interest in volunteering to serve
the city.- logical + fair.

Qualifications continued (if necessary):

Please use this space to summarize why you are applying for this position:

seeking additional term to serve the city

Please use this space to add any additional information you would like to share:

By signing this application, electronically or otherwise, I affirm that all information included is true and accurate to the best of my knowledge. I authorize the City of Shady Cove to publically review and discuss the information provided herein and to assist in responding to any questions asked which are relevant to this position.

Signature of applicant

Mary Magiel

Date

6/24/21

How to Submit:

By email: admin@shadycove.net
In person: City of Shady Cove, City Hall, 22451 Highway 62. Monday through Friday, 8:00 AM to 5:00 PM
By mail: P.O. Box 1210, Shady Cove, OR 97539
By fax: 541.878.2226

Questions?

Call City Hall at 541.878.2225 or send an email to Bonnie Picket as listed above.

CITY OFFICE USE ONLY

DATE RECEIVED

6/24/21

INITIALS

DMJ

Application for Appointment Planning Commission

Please type or print answers to the following questions and submit to Shady Cove City Hall, or email admin@shadycove.net. If you have any questions, please feel free to contact the City at 541- 878-3757. **Attach additional sheets if necessary.**

Name Mary Magill

Requesting to serve on: Shady Cove Planning Commission

Address 31 James Place

(Mailing, if different from above) PO Box 677

Occupation Retired

Hm Ph: 541-878-3068

Cell: 206-910-5700

Work: _____

Email mary@magill.com

Fax: _____

1. Education Background

2 years college

None

What additional training or education have you had that would apply to this position?

I worked for the City Attorney of the City of San Jose, CA for 6 years so I am aware of how a City functions.

2. Related Experience

What prior work experience have you had that would help you if you were appointed to this position?

None

Do you feel it would be advantageous for you to have further training in this field, such as attending conferences or seminars? Why?

Only if needed

3. Interests

Why are you applying for this position?

I am applying because of my general interest in being helpful to the planning process and the City of Shady Cove in general. It seems there is a need and I am willing to help fill it.

4. Availability

Are you available to attend special meetings, study sessions, or committee meetings in addition to the regularly scheduled meetings? Do you prefer day or evening meetings?

Somewhat available to attend meetings outside of the 2 Planning Commission meetings per month.

5. Additional Information

Do you live inside the city limits of Shady Cove? Yes

How long? Since July, 2014

Are you an active registered voter in the Shady Cove district? Yes

Are you willing to commit to a 4-year term? Yes

Have you had an opportunity to read the Job Description and Commissioner's Code for the Planning Commission? Yes _____ No X _____

Please write a statement as to why you wish to serve on this Commission. Use the Back side of this application or attach a statement if necessary.

As stated above, I am willing to assist the City in this position. I have recently attended several Council meetings and understand that there is a need for community citizens to step up. In general, it's hard to criticize the process if you are not willing to be part of the process. I am very interested in how the City works and how it applies to my life as a citizen of Shady Cove.

I authorize the City of Shady Cove to publicly review and discuss the information provided herein and to assist in responding to any questions asked which are relevant to this position.

11/23/18
Date

/s/ Mary Magill
Signature



CITY OF SHADY COVE
22451 Highway 62 • P.O. Box 1210 • Shady Cove, OR 97539
Phone: 541.878.2225 • Fax: 541.878.2226

APPLICATION FOR COMMISSION OR COMMITTEE

PLEASE PRINT

DATE: 6-3-21 POSITION APPLIED FOR: Planning Commission #1

APPLICANT INFORMATION

Name: Jonathan Ball

Physical Address: 120 Penny Lane

City: Shady Cove

State: OR

Zip: 97539

Mailing Address: Same

City:

State:

Zip:

Home Phone: N/A

Cell Phone: 805-358-7444

Email Address: jonball1900@gmail.com

Current Occupation: Semi Retire Bus. Owner - Plt SC Hardware
(If retired or unemployed, state your general or past profession.)

How long have you lived in Shady Cove? 3 1/2 yrs

How long have you lived in Jackson County? 3 1/2 yrs

Are you available to attend both daytime and evening meetings when necessary? Yes

Are you an employee of the City of Shady Cove, an occasional or potential contract employee, or do you have any other real or potential conflict of interest in working or serving in this capacity?

☐ Yes

☒ No

If yes, please describe:

QUALIFICATIONS

I believe that I am qualified for and should be considered for the above position(s) for the following reasons (continue on next sheet if necessary):

- Over 30 yrs owning and running small businesses and working with multiple city planning boards to open and operate them.
- Completed "Small Water Systems" Course and currently in the Chairperson role of Sumburst Acre HOA. Maintaining Water Services for the HOA.
- Familiar with City Zoning and Riparian Codes, Budding Codes etc. (and would further educate myself in these areas.)
- A strong desire to get involved and help support the City Council

Qualifications continued (if necessary):

with input and direction in Planning Commission decisions.

Please use this space to summarize why you are applying for this position:

After attending meetings, both Planning and Council Meetings Prior to the Pandemic and Watchman meetings since, I strongly feel there is a need for younger (fresh), more energetic members on this commission. At 58 yrs. old with my past experience in business and my growing knowledge of water usage in our area along with my desire to get involved and

Please use this space to add any additional information you would like to share:

be a vital part of the Shady Cove Community, I feel that I would be a good addition to the Planning Commission. Thank You

By signing this application, electronically or otherwise, I affirm that all information included is true and accurate to the best of my knowledge. I authorize the City of Shady Cove to publically review and discuss the information provided herein and to assist in responding to any questions asked which are relevant to this position.

Signature of applicant

J. Ball

Date

6-3-21

How to Submit:

By email: TCorrigan@shadycove.org
In person: City of Shady Cove, City Hall, 22451 Highway 62, Monday through Friday, 8:00 AM to 5:00 PM
By mail: P.O. Box 1210, Shady Cove, OR 97539
By fax: 541.878.2226

Questions?

Call City Hall at 541.878.2225 or send an email to the email as listed above.

CITY OFFICE USE ONLY

DATE RECEIVED

6-3-21

INITIALS

DMJ

The City of Shady Cove is an Equal Opportunity Provider.

City of Shady Cove Municipal Code

Chapter 4.18 (#'s TBD)

Utility Right of Way

- 4.18.010 Purpose and Intent
- 4.18.020 Jurisdiction and Management of the Public Rights-of-way
- 4.18.030 Regulatory Fees and Compensation Not a Tax
- 4.18.040 Definitions
- 4.18.050 Business Licenses
- 4.18.060 Licenses
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- 4.18.080 Location of Facilities
- 4.18.090 Leased Capacity
- 4.18.100 City's Use of Operator Facilities
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- 4.18.120 Vacation
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- 4.18.140 Audits
- 4.18.150 Insurance and Indemnification
- 4.18.160 Compliance
- 4.18.170 Confidential/Proprietary Information
- 4.18.180 Penalties
- 4.18.190 Severability and Preemption
- 4.18.200 Application to Existing Agreements

City of Shady Cove Municipal Code

4.18.010 Purpose and Intent

The purpose and intent of this Chapter is to:

- A. Permit and manage reasonable access to the public rights of way of the City for utility purposes and conserve the limited physical capacity of those public rights of way held in trust by the City consistent with applicable state and federal law;
- B. Assure that the City's current and ongoing costs of granting and regulating access to and the use of the public rights of way are fully compensated by the persons seeking such access and causing such costs;
- C. Secure fair and reasonable compensation to the City and its residents for permitting use of the public rights of way;
- D. Assure that all utility companies, persons and other entities owning or operating facilities and/or providing services within the City register and comply with the ordinances, rules and regulations of the City;
- E. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
- F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City on a competitively neutral basis; and
- G. Comply with applicable provisions of state and federal law.

4.18.020 Jurisdiction and Management of the Public Rights of Way

- A. The City has jurisdiction and exercises regulatory management over all public rights-of-way within the City under authority of the City Charter, its Municipal Code, and state law.
- B. The City has jurisdiction and exercises regulatory management over each public right of way whether the City has a fee, easement, or other legal interest in the right of way, and whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation,



City of Shady Cove Municipal Code

condemnation, annexation, foreclosure or other means.

- C. The exercise of jurisdiction and regulatory management of a public right of way by the City is not official acceptance of the right of way and does not obligate the City to maintain or repair any part of the right of way.

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- D. The provisions of this Chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

4.18.030 Regulatory Fees and Compensation Not a Tax

- A. The fees and costs provided for in this Chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this Chapter, are separate from, and in addition to, any and all federal, state, local, and City charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.
- B. The City has determined that any fee provided for by this Chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners.
- C. The fees and costs provided for in this Chapter are subject to applicable federal and state laws.

4.18.040 Definitions

For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

- A. "Cable Service" is to be defined consistent with federal laws and means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- B. "City" means the City of Shady Cove, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.
- C. "City Council" is the elected governing body of the City of Shady Cove, Oregon.
- D. "City Facilities" means City or publicly owned structures or equipment located within the right of way or public easement used for governmental purposes.

- E. "License" means the authorization granted by the City to a utility operator pursuant to this Chapter.
- F. "Person" includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint stock company, trust, limited liability company, association or other organization, including any natural person or any other legal entity.
- G. "Private Communications System" means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private communications system" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.
- H. "Public Utility Easement" means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. "Public utility easement" does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities. "Public Utility Easement" includes City utility easements described in Shady Cove Municipal Code Chapter 9.01. This definition only applies to the extent of the City's right, title and interest in said easement.
- I. "Right of way" for purposes of this ordinance, means any land or interest therein by deed, conveyance, agreement, dedication, usage or other process of law has been reserved or dedicated to the City for use of the general public and which includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks or parkland. This definition applies only to the extent of the City's right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.
- J. "State" means the State of Oregon.
- K. "Telecommunications Services" means the transmission for hire, of information in electromagnetic frequency, electronic or optical form, including, but not limited to, voice, video or data, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. Telecommunications service includes all forms of telephone services and voice, data and video transport, but does not include: (1) cable service; (2) open video system service, as

defined in 47 C.F.R. 76; (3) private communications system services; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996.

- L. "Utility Facility or Facility" means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.
- M. "Utility Service" is the provision, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, telecommunications services, cable services, water, sewer, and/or transportation utility to or from customers within the corporate boundaries of the City, and/or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions.
- N. "Utility Operator or Operator" means any person who owns, places, operates or maintains a utility facility within the rights of way of the City.
- O. "Work" means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

4.18.050 Business Licenses

- A. Business License Required. Except as provided in Subsection (B) of this Section, every person providing utility services to customers within the City shall be considered a "business" as defined in Chapter 4.04.020 and shall be subject to the requirements set forth therein.
- B. Exceptions. Utility operators that have a valid franchise from the City or that obtain a license pursuant to Section 4.18.060 of this Chapter are exempt from the business license requirement of this Section and Chapter 4.04 with respect to the services provided over the facilities subject to the franchise or license.

4.18.060 Licenses

A. License Required.

1. Except those utility operators with a valid franchise agreement from the City, every utility operator shall obtain a license from the City prior to constructing, placing or locating any utility facilities in the right of way.
2. Every person that owns or controls utility facilities in the right of way as of the effective date of this Chapter shall apply for a license from the City within 45 days of the later of (1) the effective date of this Chapter or (2) the expiration of a valid franchise from the City, unless a new franchise is granted by the City prior to the expiration date or other date agreed to in writing by the City.

B. License Application. The license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this Chapter.

C. License Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the City Council in an amount sufficient to fully recover all of the City's costs related to processing the application for the license.

D. Determination by City. The City shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this Chapter, the continuing capacity of the right of way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Franchise Agreements. If the public interest warrants, the City and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this Chapter with the review and approval of City Council. The franchisee shall be subject to the provisions of this Chapter to the extent such provisions are not in conflict with the franchise.

F. Rights Granted.

1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the Municipal Code and other applicable provisions of state or federal law, to construct, place, maintain and operate utility facilities in the rights-of-way for the term of the license.
2. The license granted pursuant to this Chapter shall not convey equitable or legal title in the rights of way and may not be assigned or transferred except as permitted in Section 4.18.060 (K) of this Chapter.
3. Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power or regulatory power of the City as may exist at the time the license is issued or thereafter obtained.

G. Term. Subject to the termination provisions in Section 4.18.060 (M) of this Chapter, the license granted pursuant to this Chapter will remain in effect for a term of five (5) years.

H. License Non-Exclusive. No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

I. Reservation of City Rights. Nothing in the license shall be construed to prevent the City from grading, paving, repairing and/or altering any right of way, constructing, laying down, repairing, relocating or removing City water, transportation or sewer facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any right of way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in Sections 4.18.080 (C), (D) and (E) of this Chapter, in a manner acceptable to the City, and

subject to industry standard engineering and safety codes.

J. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and privilege tax requirements of this Chapter for the portion of the facilities and extent of services delivered over those facilities.
2. A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license for each utility service; provided that it gives notice to the City of each utility service provided or transmitted and pays the applicable privilege tax for each utility service.

K. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee shall become responsible for all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

L. Renewal. At least 90, but no more than 180, days prior to the expiration of a license granted pursuant to this Section, a licensee seeking renewal of its license shall submit a license application to the City, including all information required in Section 4.18.060 (B) and the application fee required in Section 4.18.060 (C). The City shall review the application as required by Section 4.18.060 (D) and grant or deny the license within 90 days of submission of the application. If the City determines that the licensee is in violation of the terms of this Chapter at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

1. Revocation or Termination of a License. The City Council may terminate or revoke the license granted pursuant to this Chapter for any of the following reasons:
 - (a) Violation of any of the provisions of this Chapter;
 - (b) Violation of any provision of the license;
 - (c) Misrepresentation in a license application;
 - (d) Abandonment of facilities without approval to abandon in place as described in Section 4.18.080 D. 2 (b);
 - (e) Failure to pay taxes, compensation, fees or costs due the City after final determination of the taxes, compensation, fees or costs;
 - (f) Failure to restore rights-of-way after construction as required by this Chapter or other applicable state and local laws, ordinances, rules and regulations;
 - (g) Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
 - (h) Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.
2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:
 - (a) The egregiousness of the misconduct;
 - (b) The harm that resulted;
 - (c) Whether the violation was intentional;
 - (d) The utility operator's history of compliance; and/or
 - (e) The utility operator's cooperation in discovering, admitting and/or curing the violation.
3. Notice and Cure. The City shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a

violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the City Manager or designee determines that the utility operator's response is inadequate, the City Manager or designee shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked.

4.18.070 Construction and Restoration.

- A. Utility facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including the National Electrical Code and the National Electrical Safety Code and shall comply with the encroachment provisions set forth in Chapter 6.36 of the Shady Cove Municipal Code.

No person shall construct, install, or perform any work on utility facilities within the rights-of-way without first obtaining all required permits in accordance with Municipal Code Chapter 6.36. The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received the license required by this Chapter, or has a current franchise with the City, and all applicable fees have been paid.

In the event that an emergency impacts public health or safety or an unplanned interruption in utility service requires repairs, the utility operator shall immediately notify the City of the need for such repair. The utility operator may immediately initiate such immediate repairs and shall apply for appropriate permits within three business days following discovery of the emergency.

- B. Unless otherwise provided in a franchise agreement or as set forth in subparagraph 3 below, a performance bond or other form of surety acceptable to the City equal to at least 100% of the estimated cost of the work within the right of way of the City shall be provided before construction is commenced.

1. The performance bond or other form of surety acceptable to the City shall remain in force until 60 days after substantial completion of the work, as determined in writing by the City, including restoration of rights of way and other property affected by the construction.

2. The performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:
 - (a) Timely completion of the work;
 - (b) That the work is performed in compliance with applicable plans, permits, technical codes and standards;
 - (c) Proper location of the facilities as specified by the City;
 - (d) Restoration of the rights of way and other property affected by the work; and
 - (e) Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.
3. Upon request by a utility operator, the City Manager may waive the bonding requirement for work performed in the right of way by (i) utility operators regulated by the Oregon Public Commission; or (ii) contractors on such utility's behalf and under the utility's control, when the utility has adequately performed to the City's satisfaction its obligations under prior franchises or licenses with the City for the immediately preceding three (3) years prior to the request. In the event the City determines that measures are required to repair the rights-of-way as a result of work performed by a contractor on behalf of a utility operator, the utility operator shall take necessary corrective measures on behalf of the independent contractor and satisfactory to the City, within 60 days following notice from the City, except in situations corrective measures are in order to protect public health or safety, in which case corrective measures will be made immediately following notice from the City. Any waiver granted shall be effective for the duration of the license issued pursuant to Section 4.18.060 or at such time as the utility or its contractors ceases to adequately perform to the City's satisfaction the utility's obligations under its license, whichever first occurs. In the event of inadequate performance, the City shall notify the utility in writing describing the inadequate performance and specifying a date certain (not less than 30 days) by which the inadequate performance will be remedied to the City's satisfaction or a bond or other form of surety described in Section 4.18.070 B shall be provided.

- C. A utility operator shall preserve and protect from injury other utility operators' facilities in the rights-of-way, the public using the rights-of-way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or utilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.
- D. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection and testing by the City to determine compliance with the provisions of this Chapter and all other applicable state and City codes, ordinances, rules and regulations. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request of the City.
- E. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the rights of way.
 - 1. Prior to January 1 of each year, utility operators shall provide the City with a schedule of known proposed large capital construction and/or facility maintenance for that year in, around or that may affect the rights-of-way.
 - 2. Utility operators shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in rights-of-way to minimize public inconvenience or disruption.
 - 3. All construction locations, activities and schedules within rights-of-way shall be coordinated as ordered by the City Manager or designee, to minimize public inconvenience, disruption, or damages.

4.18.080 Location of Facilities

- A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a right of way of the City, any other utility operator with permission to occupy the same right of way shall locate its facilities underground. This requirement shall not apply to:
 - 1. Facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts;

2. or to pedestals, cabinets or other above-ground equipment; and
3. to other new facilities provided that the City grants prior written approval for overhead placement. The City reserves the right to require written approval of the location of any such above-ground equipment.

B. Interference with rights of way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the rights of way. All use of the rights of way shall be consistent with City codes, ordinances and regulations.

C. Relocation of Utility Facilities.

1. A utility operator shall, at no cost to the City, relocate its aerial utility facilities underground when requested to do so in writing by the City, consistent with applicable state and federal laws, regulations and tariffs.
2. A utility operator shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right of way when requested to do so in writing by the City. Nothing herein shall be deemed to preclude the utility operator from requiring or requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs, and agreements, or otherwise provided that such reimbursement or compensation shall not delay the utility operator's obligation to comply with this section in a timely manner.
3. Except in the case of an emergency impacting public health or safety or an unplanned interruption of Utility Service, the City shall provide at least 120 days prior written notice of the amount of time for removal, relocation, change, alteration or undergrounding. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the City and by the date established by the City, the City may cause the utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within 120 days.

D. Removal of Unauthorized Facilities.

1. Except in the case of an emergency impacting public health or safety or an unplanned interruption of Utility Service and unless otherwise agreed to in writing by the City Manager or designee, within 120 days following written notice from the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a right of way shall, at its own expense, remove the facility and restore the right of way.
2. A utility system or facility is unauthorized under any of the following circumstances:
 - (a) The utility facility is outside the scope of authority granted by the City under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.
 - (b) The facility has been abandoned and the City has not been provided prior written notice of such abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of 15 months. A utility operator may overcome this presumption by presenting plans for future use of the facility.
 - (c) The utility facility is improperly constructed or installed or is in a location not permitted by the license, franchise or this Chapter.
 - (d) The utility operator is in violation of a material provision of this Chapter and fails to cure such violation within 30 days of the City sending written notice of such violation, unless the City extends such time period in writing.

E. Removal by City.

1. The City retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the public rights of way of the City, without notice, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency.
2. If the utility operator fails to remove any facility when required to do so under this Chapter, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within 30 days. The obligation to remove shall survive the termination of the license or franchise.
3. The City shall not be liable to any utility operator for any damage to utility facilities by the City or its contractor in removing, relocating or altering the facilities pursuant to paragraphs (B), (C) or (D) of this Section 4.18.080 or undergrounding its facilities as required by paragraph (A) of this Section 4.18.080, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those paragraphs.

F. As Built Drawings. The utility operator shall provide the City with two updated complete sets of as built plans annually, upon request of the City.

4.18.090 Leased Capacity

A utility operator may lease capacity on or in its systems to others, provided that, upon request, the utility operator provides the City with the name and business address of any lessee.

4.18.100 City's Use of Operator Facilities

- A. The City shall have the right, at the City's sole expense with prior written notice to and approval of the utility operator to suspend and maintain alarms, wires, control boxes and such other equipment as the City may require for fire, police, emergency or other municipal purposes on poles placed by the utility within the right of way. All City installed overhead and/or underground equipment shall be installed by qualified personnel and shall be in compliance with Oregon State Electrical Codes and the National Electric Safety Code at all times.

- B. The City shall install such equipment so as not to interfere with the electric power and light service of the utility operator or pose a danger to the public utility's facilities, employees, customers or customers property. The City shall not sell or lease space on the utility operator's poles, conduits, or other equipment to other entities. The City shall indemnify, defend and save the operator harmless from any and all loss sustained by the utility operator on account of any suit, judgment, execution, claim, or demand whatsoever arising out of the City's installation, operation and maintenance of such equipment.

4.18.110 Maintenance

- A. Every utility operator shall install and maintain all facilities in a manner that prevents injury to the right of way or public utility easements, the City's property or the property belonging to another person. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.
- B. When an underground excavation or construction and installation of facilities has been completed, the utility operator shall remove all debris from the project site and restore the portion of the right of way, property or place to the same condition or as near as practicable to its previous condition prior to such construction work in accordance with restoration standards established by the City Public Works Director. If the utility operator fails to do so within a reasonable time, the City may restore the site at the utility operator's expense.
- C. The City shall provide written notice to the utility operator of any facility that requires maintenance and repair. Unless an emergency condition exists, the maintenance and repair shall be completed within 120 days following notice. If the utility operator fails to provide necessary maintenance or repair as requested by the City and by the date set by the City, the City may perform such maintenance or repair at the utility operator's sole expense. Upon a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within 120 days.

4.18.120 Vacation

If the City vacates any right of way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the right of way unless the City reserves a public utility easement, which the City shall make a reasonable effort to do provided that there is no cost or expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within 120 days after a right of way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within 30 days.

4.18.130 Privilege Tax

A. Privilege Tax.

1. Except as set forth in Section 4.18.130.B and 4.18.130.C, every utility operator shall pay the privilege tax calculated as a percentage of gross revenues earned from the provision of utility service to customers within the City at the following rates for each service provided during the term of the license:

Electric	7%
Natural Gas	7%
Telecommunications	7%
Cable	7%
Water	7%
Sanitary Sewer	7%

2. Unless otherwise agreed to in writing by the City, the privilege tax shall be paid quarterly, in arrears, for each quarter during the term of the license, within 30 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable.
3. Except as set forth in Section 4.18.130.A.4, for purposes of this Section 4.18.130.A, "gross revenues" means any and all revenue, of any kind, nature or form, derived from the provision of retail utility services to customers within the City, less net uncollectibles.
4. For purposes of this Section 4.18.130.A, "gross revenues" for a telecommunications utility, as defined in ORS 759.005, shall be limited to the revenues defined in ORS 221.515.

- B. **Transmission Line Fee.** A utility operator that does not earn gross revenues from the provision of utility service to customers within the City shall pay the transmission line fee set by Council resolution or set forth in the license granted by the City. The fee may be a flat fee per lineal foot of utility facilities in the City or such other fee determined by the Council after consideration of the utility operator's use or proposed use of the right of way. Unless otherwise agreed to in writing by the City, the fee shall be paid annually, in arrears, for each year during the term of this license within 30 days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.
- C. **Attachment Fee.** A utility operator whose only facilities in the right of way are facilities mounted on structures within the right of way, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the right of way, shall pay the attachment fee set by Council resolution or set forth in the license granted by the City. The fee may be a flat fee per structure, or such other fee determined by the Council after consideration of the utility operator's use or proposed use of the right of way. Unless otherwise agreed to in writing by the City, the fee shall be paid annually, in arrears, for each year during the term of this license within 30 days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.
- D. **Privilege tax payments** required by this section shall be reduced by any franchise fee payments received by the City, but in no case will be less than \$0.
- E. The utility operator shall pay interest at the rate of nine percent (9%) per year for any payment due pursuant to this section made after the due date.
- F. The calculation of the privilege tax or other fees required by this section shall be subject to all applicable limitations imposed by federal or state law. The City reserves the right to enact any and all other taxes and fees applicable to the utilities subject to the Chapter.

4.18.140 Audits

- A. Within 30 days of a written request from the City, or as otherwise agreed to in writing by the City, the provider of utility service shall:

1. Furnish the City with information sufficient to demonstrate that the utility operator is in compliance with all the requirements of this Chapter and its franchise agreement, if any, including but not limited to the privilege tax payments required by Section 4.18.130 and the franchise fee required in any franchise.
 2. Make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the public rights of way or public utility easements. Access shall be provided within the City, unless prior arrangement for access elsewhere has been made with the City.
- B. If the City's audit of the books, records and other documents or information of the utility operator demonstrate that the utility operator has underpaid the privilege tax or franchise fee by five percent (5%) or more in any one year, the utility operator shall reimburse the City for the cost of the audit, in addition to any interest owed pursuant to Section 4.18.130 (E) or as specified in a franchise.
- C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within 30 days of the City's notice to the utility service provider of such underpayment.
- D. In the event that the City reasonably estimates that the cost of the audit will exceed \$10,000, the utility operator shall have the option to select a neutral and qualified auditor mutually acceptable to the City and the utility operator to perform the audit.

4.18.150 Insurance and Indemnification

- A. Insurance.
1. All utility operators shall maintain in full force and affect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:
 - (a) Comprehensive general liability insurance with limits not less than:
 - (i) Three million dollars (\$3,000,000) for bodily injury or death to each person;
 - (ii) Three million dollars (\$3,000,000) for property damage resulting from any one accident; and
 - (iii) Three million dollars (\$3,000,000) for all other types of

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- (b) Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000) for each person and three million dollars (\$3,000,000) for each accident.
- (c) Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000).
- (d) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000).

2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The Certificate of Insurance shall provide that the insurance shall not be canceled or materially altered without 30 days prior written notice first being given to the City. If the insurance is canceled or materially altered, the utility operator shall provide a replacement policy with the terms as outlined in this section. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self insure any or all of the above coverage.

3. The utility operator shall maintain on file with the City a Certificate of Insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

B. Financial Assurance. The utility operator shall provide a performance bond or other financial security, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by Section 4.18.070 (B) of this Chapter for construction of facilities. The provisions of this Subsection B shall not apply to utility operators who, in the City's sole discretion, have adequately performed to the City's satisfaction their obligations under prior franchises or licenses with the City for the immediately preceding three (3) years prior to application for a new franchise or license.

C. Indemnification

1. Each utility operator shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a franchise agreement. The acceptance of a license under Section 4.18.060 shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.
2. Every utility operator shall also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights of way or easements in a timely manner, unless the utility operator's failure arises directly from the City's negligence or willful misconduct.

4.18.160 Compliance

Every utility operator shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license granted under this Chapter.

4.18.170 Confidential/Proprietary Information

If any utility operator is required by this Chapter to provide books, records or information to the City that utility operator reasonably believes to be confidential or proprietary, the City shall take reasonable steps to protect the confidential or proprietary nature of the books, records or information, to the extent permitted by Oregon public records laws, provided that they are clearly designated as such by the utility operator at the time of disclosure to the City. The City shall not be required to incur any costs to protect such document, except as to the City's routine internal procedures for complying with Oregon public records law.

4.18.180 Penalties

- A. Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be fined not less than \$100 nor more than \$1,000 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. Fine shall be due and payable no later than 30 days from receipt of the City's notification of the offense. Interest on unpaid fines shall accrue at the rate of nine percent (9%) per annum from the due date.
- B. Nothing in this Chapter shall be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Chapter.

4.18.190 Severability and Preemption

- A. The provisions of this Chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.
- B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this Chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to

end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

4.18.200 Application to Existing Agreements

To the extent that this Chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this Chapter shall apply to all existing franchise agreements granted to utility operators by the City.

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