

Agenda
Shady Cove Regular City Council Meeting
Thursday, August 5, 2021
6 PM
At Council Chambers and also via Zoom

<https://us02web.zoom.us/j/89545204427?pwd=Zys5bi9GUfd1N2w4Wk9ZbzF1WkVqZz09>

Meeting ID: 895 4520 4427

Passcode: 674698

One tap mobile

+13462487799,,89545204427#,,,,*674698# US (Houston)

+16699006833,,89545204427#,,,,*674698# 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 19 at 6 PM, both in Council Chambers and via Zoom
- 3. The next regularly scheduled meeting of the Planning Commission is August 12 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

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department at (541) 878-2225. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title II).

Shady Cove City Council Regular Meeting

August 5, 2021

Page 2 of 2

A. Bills Paid Report 7/8/21-7/22/21 \$45,563.37

B. Minutes of July 21, 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

None

VII. Old Business

A. Ordinance #298, an Ordinance of the City of Shady Cove establishing a Right of Way Procedure.

B. Movies in the Park

C. Audit 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

Report Criteria:

Report type: Summary

GL Period	Invoice Date	Check Issue Date	Check Number	Vendor Number	Payee	Check GL Account	Amount
07/21	05/03/2021	07/08/2021	45357	TTTT	Accurate Plumbing Solutions, Inc.	10-2000	3,730.00
07/21	06/22/2021	07/08/2021	45358	TTTT	Avista Corporation	10-2000	23.36
07/21	06/30/2021	07/08/2021	45359	TTTT	Banner Bank	10-2000	377.73
07/21	06/30/2021	07/08/2021	45360	TTTT	Banner Bank	10-2000	389.98
07/21	06/25/2021	07/08/2021	45361	TTTT	Canon Solutions America, Inc.	10-2000	71.64
07/21	06/30/2021	07/08/2021	45362	TTTT	Celtic Circle, LLC	01-2000	865.00
07/21	07/07/2021	07/08/2021	45363	TTTT	Christine Theriault	10-2000	73.45
07/21	06/30/2021	07/08/2021	45364	TTTT	City of Shady Cove - Utilities	10-2000	136.00
07/21	07/04/2021	07/08/2021	45365	TTTT	Confident Staffing, Inc.	10-2000	681.51
07/21	05/31/2021	07/08/2021	45366	TTTT	Crystal Fresh	10-2000	44.00
07/21	07/02/2021	07/08/2021	45367	TTTT	David Christian	10-2000	90.00
07/21	06/25/2021	07/08/2021	45368	TTTT	KAS & Associates, Inc.	01-2000	120.00
07/21	06/30/2021	07/08/2021	45369	TTTT	KDP Certified Public Accountants LLP	10-2000	15,810.00
07/21	07/01/2021	07/08/2021	45370	TTTT	League of Oregon Cities	10-2000	2,794.60
07/21	07/01/2021	07/08/2021	45371	TTTT	Pacific Power	01-2000	987.45
07/21	07/01/2021	07/08/2021	45372	TTTT	Perfection Cleaning	10-2000	300.00
07/21	06/30/2021	07/08/2021	45373	TTTT	RVCOG	10-2000	3,457.71
07/21	06/30/2021	07/08/2021	45374	TTTT	Shady Cove Hardware, LLC	01-2000	132.12
07/21	06/24/2021	07/08/2021	45375	TTTT	SOREDI	10-2000	1,125.00
07/21	07/07/2021	07/08/2021	45376	TTTT	Sorenson Ransom Ferguson & Clyde LL	02-2000	87.50
07/21	06/25/2021	07/08/2021	45377	TTTT	Southern Oregon Sanitation	10-2000	138.94
07/21	07/02/2021	07/08/2021	45378	TTTT	Teamster Local 223	10-2000	153.00
07/21	07/01/2021	07/08/2021	45379	TTTT	Tom Corrigan	10-2000	83.19
07/21	07/01/2021	07/08/2021	45380	TTTT	TouchPoint Networks, LLC	10-2000	31.00
07/21	07/01/2021	07/08/2021	45381	TTTT	Upper Rogue Independent	10-2000	405.00
07/21	06/12/2021	07/08/2021	45382	TTTT	USACE	10-2000	87.98
07/21	06/30/2021	07/08/2021	45383	TTTT	WECO - Carson	10-2000	108.93
07/21	07/05/2021	07/22/2021	50001	TTTT	AT&T Mobility	10-2000	166.56
07/21	07/13/2021	07/22/2021	50002	TTTT	Canon Financial Services, Inc.	10-2000	203.82
07/21	07/09/2021	07/22/2021	50003	TTTT	Cantel of Medford, Inc.	01-2000	172.00
07/21	07/18/2021	07/22/2021	50004	TTTT	Confident Staffing, Inc.	10-2000	1,179.94
07/21	07/09/2021	07/22/2021	50005	TTTT	David Christian	10-2000	90.00
07/21	07/13/2021	07/22/2021	50006	TTTT	Hornecker Cowling, LLP	10-2000	969.00
07/21	08/01/2021	07/22/2021	50007	TTTT	Hunter Communications	10-2000	606.84
07/21	07/08/2021	07/22/2021	50008	TTTT	Jackson County Health & Human Servic	10-2000	75.09
07/21	03/31/2021	07/22/2021	50009	TTTT	Local Government Law Group P.C.	10-2000	84.00
07/21	06/30/2021	07/22/2021	50010	TTTT	Local Government Law Group, P.C.	10-2000	149.04
07/21	07/22/2021	07/22/2021	50011	TTTT	Margie Gimenez	10-2000	127.90
07/21	07/08/2021	07/22/2021	50012	TTTT	Pitney Bowes, Inc.	10-2000	84.99
07/21	07/22/2021	07/22/2021	50013	TTTT	Postmaster	10-2000	356.07
07/21	07/15/2021	07/22/2021	50014	TTTT	Project A, Inc.	10-2000	200.00
07/21	07/14/2021	07/22/2021	50015	TTTT	RVCOG	10-2000	7,813.31
07/21	06/25/2021	07/22/2021	50016	TTTT	US Bank St. Paul	02-2000	700.00
07/21	06/30/2021	07/22/2021	50017	TTTT	WECO - Carson	01-2000	279.72
Grand Totals:							45,563.37

Summary by General Ledger Account Number

City of Shady Cove
City Council Regular Meeting Minutes
Wednesday, July 21, 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.

II. PUBLIC COMMENT ON AGENDA ITEMS

No public comment.

III. CONSENT AGENDA

Adding Item E, Minutes from 6/23 and Item F, Minutes from 06/29.
Councilor Nuckles requested Items A and B be moved to Section IV

Motion to Accept Consent Agenda, Minutes from 6/3, 6/17, 6/23 and 6/29

Motion: Councilor Nuckles Second: Councilor Evertt

Motion Carried 4-0

IV. ITEMS REMOVED FROM CONSENT AGENDA

Discussion involving Movies in the Park ensued including costs and advertising.

Motion to Accept Bills Paid 6/17-6/30, \$14,605.17 and 7/1-7/8, \$32,305.09.

Motion: Councilor Nuckles Second: Councilor McGregor

Motion Carried 4-0

V. STAFF REPORTS

Jackson County Deputy is not available.

Chief Winfrey, FD4 – Busy month, 124 calls. 3 fires, one of which on the edge of City from lightning strike. Open House was well attended. Summer firefighters onboard. People trying to reach FD by stopping by or calling station. Encourage everyone to call Dispatch.

City Administrator echoed the Fire Chief's statement regarding people coming by City Hall looking for a deputy. Dispatch is the best option. Camp Fires East of I-5 are now illegal. Work on Train, Cora, and Hall under the Small City Allotment grant will occur in mid-August. Water trucks allegedly taking water out of river are under a BLM contract. County is concerned about them doing further damage to the boat ramp. City is utilizing Chase Bank now with credit cards, deposits, checks, etc. Secondary credit card acceptance is now working. Climbing wall is being repaired as a liability issue. ODF has "Powered Driven Machinery Permits" for work being done on trees during Extreme Fire Danger. Hazmat Mitigation Grant map will be blown up. FEMA is next step for actual work. American Rescue Fund - \$694,606.84 divided into two payments of \$347,303.42 Well at City Hall and the Library is having difficulties at 2 gpm. There are actually 2 wells. Looking at temp holding tank followed by concrete tank. The Infrastructure Feasibility study on the Business Oregon grant might be the answer to the City, the Library, URCC and the School. PPE went out once again to a lot of businesses and non-profits. Gloves biggest request from restaurants. Waiting for photo releases of PPE use.

Steve Mitchell questioned the procedures for the holding tank. The Mayor asked about using the grant for multiple agencies. Councilor McGregor questioned the Brophy St complaint over fence height. Councilor McGregor questioned the use of the boat ramp. City Administrator read the email from the County relative to the use of the boat ramp. Commissioner Roberts said she would look into it.

VI. NEW BUSINESS

Motion to Appoint Mary Magill to Planning Commission Seat #3 for a term to end of 6/30/25.

**Motion: Councilor Nuckles
Motion Carried 4-0**

Second: Councilor McGregor

Motion to Appoint Jon Ball to Planning Commission Seat #1 for a term to end of 6/30/25.

**Motion: Councilor Nuckles
Motion Carried 4-0**

Second: Councilor McGregor

No applications for the Emergency Management Commission

VII. OLD BUSINESS

Discussion ensued regarding Movies in the Park, will be discussed at next meeting.

ROW Ordinance – Recommendation from City Attorney to change to a Right of Way Ordinance similar to the City of Grants Pass and other cities. Consensus from Council for City Administrator to work with Attorney to bring back in form of Ordinance. Bob Bellah commented on the process.

Audit Update – Point of discussion between the City, RVSS and the auditors in regard to Tax Certification for sewer billing. City and RVSS and City Attorney feel that Tax Certification is responsibility of the City. Steve Mitchell commented on the process.

Community Bench Update – The City may be able to use grant funds for this project. City Attorney will need to sign off on the grant usage.

VIII. WRITTEN COMMENT

Jared Considine requested a trailer to be sent on “The West is Burning” for Council to approve use of the Park to offer this video to citizens and use City equipment. Council would like to preview movie prior to approving.

IX. PUBLIC COMMENT ON NON-AGENDA ITEMS

Steve Mitchell commented on the procedure of the Mayor’s Facebook page. (See attached submission).

Bob Bellah questioned a proposed meeting between Councilor Nuckles and the Mayor.

X. COUNCIL COMMENTS ON NON AGENDA ITEMS

- A. Councilor Evertt – Appreciated Steve Mitchell bringing up Facebook issue. He will be asking his followers for comments. Movie in the Park was awesome, he will not be at the next one, believes the \$200 fee is well worth it.
- B. Councilor McGregor – No comment
- C. Councilor Nuckles – Commented on previous comments in regard to the Mayor’s Facebook posts. Issued a 4th request to meet with Mayor. Congratulated the Planning Commission appointees. URCC has Community Market this Saturday and a music event Rockin’ on the Rogue at the County Park on 7/31. Information on the website. Thanks for all of those who logged in to the meeting.
- D. Mayor Tarvin – Reminder meeting on August 5 will be an open meeting and also on Zoom. Movie in the Park will be Saturday, August 7. Movie starts at dusk. Thanks to everyone who attended and volunteered at the last movie.

XI. ADJOURNMENT

There being no further business before the Council, the Mayor adjourned the meeting at 7:51 PM.

Approved:

Attest:

Shari Tarvin
Mayor

Thomas J. Corrigan
City Administrator

Council Vote:

Mayor Tarvin

Councilor McGregor

Councilor Nuckles

Councilor Evertt

DRAFT

January 2019 - Virginia

American Civil Liberties Union Published on American Civil Liberties Union (<https://www.aclu.org>)

Court Rules Public Officials Can't Block Critics on Facebook ^[1]

Author(s):

Vera Eidelman

One of the core purposes of the First Amendment is to allow people, regardless of their views, to hold the government accountable through expression. So, if your elected representative has an official Facebook page where she invites comments, can she block you from commenting because you criticize her work?

According to a federal appeals court, the answer is a resounding no.

~~On Monday~~, the Fourth Circuit Court of Appeals ruled ^[2] that the interactive portion of a public official's Facebook page is a "public forum," so an official cannot block people from it because of the opinions they hold.

The case arose after the chair of a local board of supervisors in Virginia, Phyllis Randall, briefly blocked a critic from her official Facebook page and deleted a comment he made about her colleagues' management of public funds.

The critic, Brian Davison, represented by the Knight First Amendment Institute, filed a lawsuit arguing that Randall had violated his First Amendment rights by removing him from a public forum — space the government makes available for people's expressive activity — because she disagreed with his views. Randall countered that she has the authority to control the page's content — including the comments. (President Trump has used some of the same arguments in a lawsuit ^[3] against him for blocking people on Twitter.)

We filed a friend-of-the-court brief ^[4] in support of Davison, arguing that officials cannot prevent people from joining in a public conversation because of their viewpoints, and the three-judge appeals court panel agreed.

It is important to remember that people who hold public office can wear two hats: Sometimes, they act as private individuals, and other times they are government actors. While they maintain their First Amendment rights ^[5] when acting as private individuals, they are subject to the limits the First Amendment places on the government whenever they're doing government work.

As the court rightly held, that includes any time that they're controlling a Facebook page they maintain in their official roles. Specifically, the court recognized that when a public official uses a Facebook page as a tool of governance — that is, when she uses it to inform the public about her government work, solicits input on policy issues through the page, and swathes it "in the trappings of her office" — she is controlling the page as a government actor.

and if she opens that page to public comment, the interactive space of the Facebook page constitutes a public forum. The fact that the page exists on a website owned by a private company doesn't change that.

That means that, when a public official blocks critics from the page because of their viewpoints, she violates the Constitution. Indeed, the right to criticize the government is at the heart of the First Amendment. The court specifically recognized blocking as infringing on that right, noting that blocking someone in order to silence criticism of government work is itself evidence of government action.

The Fourth Circuit is the first appellate court to opine on this issue, and its order controls public officials and agencies in Virginia and nearby states. Elsewhere around ^[5] the country, ^[6] public officials have also stopped censoring critics on their social media pages thanks to the work of the ACLU.

These cases help to ensure that our First Amendment rights remain protected as our democracy increasingly moves online. The fact that a public official disagrees with you on an issue doesn't mean she can silence you. Indeed, it means the opposite -- and that holds true whether you're speaking out in a public park, at a town hall meeting, or on a Facebook page.

Sign up for the ACLU's Best Reads ^[8] and get our finest content from the week delivered to your inbox every Saturday.

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- [1] <https://www.aclu.org/blog/free-speech/internet-speech/court-rules-public-officials-cant-block-critics-facebook>
- [2] <https://www.aclu.org/legal-document/fourth-circuit-court-decision-davison-v-randall>
- [3] <https://knightcolumbia.org/content/knight-institute-v-trump-lawsuit-challenging-president-trumps-blocking-critics-twitter>
- [4] <https://www.aclu.org/legal-document/aclu-amicus-brief-davison-v-randall>
- [5] <https://www.aclu.org/blog/free-speech/employee-speech-and-whistleblowers/government-employees-get-have-opinions-too>
- [6] <https://www.wbur.org/news/2018/12/10/aclu-maine-governor-paul-lepage-facebook-settlement>
- [7] <https://www.aclu-md.org/en/press-releases/aclu-wins-free-speech-settlement-over-governor-hogans-facebook-censorship>
- [8] <https://action.aclu.org/signup/sign-aclu-weekly-newsletter>

An Ordinance of the City of Shady Cove, Oregon

An Oregon Municipal Corporation

ORDINANCE # 298

AN ORDINANCE ESTABLISHING A RIGHT OF WAY PROCEDURE AND REPLACING NEW FRANCHISE
FEE AGREEMENTS

- 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
- 4.18.070 Construction and Restoration
- 4.18.080 Location of Facilities
- 4.18.090 Leased Capacity
- 4.18.100 City's Use of Operator Facilities
- 4.18.110 Maintenance
- 4.18.120 Vacation
- 4.18.130 Privilege Tax
- 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

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, 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.

- 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, on an 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 law.

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 Shady Cove City Code 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 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 of 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 4.18.050 C. 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 Administrator or designee determines that the utility operator's response is inadequate, the City Administrator 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 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. 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 1 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 Administrator 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 Administrator 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 Administrator 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 18 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 90 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 Administrator. 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 liability.

- (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 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, committing, 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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