

**Agenda**  
Shady Cove Regular City Council Meeting  
Thursday, September 2, 2021  
6 PM

<https://us02web.zoom.us/j/85834830656?pwd=TXcrbERPcy9XQ01pMWp3R1RzWVEydz09>

Meeting ID: 858 3483 0656

Passcode: 507993

One tap mobile

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**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 September 16 at 6 PM, both in Council Chambers and via Zoom
3. The next regularly scheduled meeting of the Planning Commission is September 9 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 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 7/23/21-8/4/21, \$ 200,700.68
- B. Bills Paid Report 8/5/21-8/23/21, \$ 72,610.15
- C. Minutes of August 5, 2021

**IV. Items Removed from Consent Agenda**

**V. Staff Reports**

- A. Jackson County Deputy
- B. Fire Chief Winfrey, FD4
- C. Commissions/Committees
- D. City Administrator

**VI. New Business**

None

**VII. Old Business**

- A. Second Reading - Ordinance #298, an Ordinance of the City of Shady Cove Establishing a Right of Way Procedure.
- B. Audit 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
08/04/2021	50019	Avista Corporation	Natural Gas 06/21/21-07/21/21	19.36
08/04/2021	50020	Cantel of Medford, Inc.	No parking/No skateboarding signs	172.00
08/04/2021	50021	Celtic Circle, LLC	Aug rent 1008 Celtic Circle	865.00
08/04/2021	50022	CIS Trust	Aug Long Term Disability	66.39
08/04/2021	50022	CIS Trust	Aug Life Ins	41.95
08/04/2021	50023	City of Shady Cove - Utilities	22451 Hwy. 62 07/2021	46.00
08/04/2021	50023	City of Shady Cove - Utilities	2501 Indian Creek Rd 07/2021	45.00
08/04/2021	50023	City of Shady Cove - Utilities	1008 Celtic Cir 07/2021	46.00
08/04/2021	50024	Crystal Fresh	City Hall bottled water 06/2021	64.00
08/04/2021	50024	Crystal Fresh	Shop bottled water 06/2021	12.00
08/04/2021	50025	David Christian	Radio 07/12-07/16	90.00
08/04/2021	50025	David Christian	Radio 07/19-07/23	90.00
08/04/2021	50025	David Christian	Radio 07/26-07/30	90.00
08/04/2021	50026	Hart Insurance Agency	2021-2022 Cyber/Network Liability Policy	1,672.00
08/04/2021	50027	J & J Tree Service, LLC	Tree Removal Heather Ln	7,000.00
08/04/2021	50028	Jackson County Sheriff	Law Enforcement Mar-Jun 2021	173,707.69
08/04/2021	50028	Jackson County Sheriff	CSO Mar-Jun 2021	14,135.67
08/04/2021	50029	Pacific Power	Aunt Carolines 06/22-07/22	41.62
08/04/2021	50030	Perfection Cleaning	City Hall office cleaning 07/2021	375.00
08/04/2021	50031	Pitney Bowes Purchase Power	meter postage	604.50
08/04/2021	50032	SOS Alarm	City Hall 08/01-10/31	152.85
08/04/2021	50032	SOS Alarm	(Shop) 08/01-10/31	118.35
08/04/2021	50033	Southern Oregon Sanitation	22451 Hwy 62 07/2021	40.22
08/04/2021	50033	Southern Oregon Sanitation	490 Nork Ln 07.2021	40.22
08/04/2021	50033	Southern Oregon Sanitation	2501 Indian Cr Rd 07.2021	58.50
08/04/2021	50034	Teamster Local 223	Dues 08/2021	153.00
08/04/2021	50035	TouchPoint Networks, LLC	Firewal 08.2021	31.00
08/04/2021	50036	URCC	Storage and Office Use Jul-Dec 2021	840.00
08/04/2021	50037	WECO - Carson	Gas/Diesel 07/09/21	82.36
Grand Totals:				<u>200,700.68</u>

Check Issue Date	Check	Payee	Description	Amount
8/23/2021	50038	AT&T Mobility	Cell phones 08/06-09/05	164.10
8/23/2021	50039	Banner Bank	Ferguson-mesh filters, bio bags	118.60
8/23/2021	50039	Banner Bank	Shoutcheap	10.90
8/23/2021	50039	Banner Bank	Apple phone prot	0.99
8/23/2021	50039	Banner Bank	Rackspace-Council	55.48
8/23/2021	50039	Banner Bank	Rackspace-Admin	33.27
8/23/2021	50039	Banner Bank	Rackspace-Parks	11.10
8/23/2021	50039	Banner Bank	Rackspace-Planning	11.10
8/23/2021	50039	Banner Bank	Apple phone prot	2.99
8/23/2021	50039	Banner Bank	Bmatrix internet radio	59.99
8/23/2021	50039	Banner Bank	Amazon prime monthly	12.99
8/23/2021	50039	Banner Bank	Amazon-Battery backup, planning	64.99
8/23/2021	50039	Banner Bank	Staples-Bankers boxes	16.52
8/23/2021	50039	Banner Bank	Adobe Acro monthly	14.99
8/23/2021	50039	Banner Bank	Staples-office supplies	20.43
8/23/2021	50039	Banner Bank	Service charge	13.85
8/23/2021	50040	Banner Bank	Ferguson-mesh filter, bio bags	110.00
8/23/2021	50040	Banner Bank	Phil's Frosty-gift cert	30.00
8/23/2021	50040	Banner Bank	Lowes-tools shop	31.22
8/23/2021	50040	Banner Bank	Lowes-tools City Hall	31.22
8/23/2021	50040	Banner Bank	Mill Casino-Mayor hotel reservation 07/28-07/30	482.85
8/23/2021	50041	Bow Wow Waste Products	3000 Single Pull Bags	163.47
8/23/2021	50042	Canon Financial Services, Inc.	Contract 08/01-08/31	203.82
8/23/2021	50043	Canon Solutions America, Inc.	Copies 06/25-07/24	133.81
8/23/2021	50044	Confident Staffing, Inc.	M. Rowden 08/16-08/20	882.20
8/23/2021	50044	Confident Staffing, Inc.	M. Rowden 08/04-08/06	560.21
8/23/2021	50045	David Christian	Radio 08/02-08/06	90.00
8/23/2021	50045	David Christian	Radio 08/09-08/13	90.00
8/23/2021	50045	David Christian	Radio 08/16-08/20	90.00
8/23/2021	50046	Grabowski Paving LLC	Grading-Train Ln, Hall Ln, Cora Ln	59,825.00
8/23/2021	50047	Hornecker Cowling, LLP	File No 32076-001-MSB	255.00
8/23/2021	50048	Hunter Communications	Phone/Internet 09/01-09/30	749.40
8/23/2021	50049	KAS & Associates, Inc.	Cleveland St rdway design/Engineering	1,380.00
8/23/2021	50050	Lori & Thomas Saunders	Overpayment refund	31.82
8/23/2021	50051	Monkey Business Landscape & Ma	Aunt Caroline's Park - Irrigation Repairs	975.00
8/23/2021	50052	Pacific Power	Street lights 07/27/21	640.89
8/23/2021	50052	Pacific Power	City Hall 06/23/21-7/26/21	416.39
8/23/2021	50053	Postmaster	PO Box 2021-2022	120.00
8/23/2021	50054	Project A, Inc.	Word Press Development and Hosting shadycove.org	200.00
8/23/2021	50055	Rogue Shred, LLC	65 gal shred bin July 2021	39.15
8/23/2021	50056	RVCOG	Technical Services Specialist - Benton June 2021	54.86
8/23/2021	50056	RVCOG	Technology Services Coordinator, Principal Planner & Mileage, Photocop	3,831.37
8/23/2021	50057	Shady Cove Hardware, LLC	Starter Fluid	6.59
8/23/2021	50057	Shady Cove Hardware, LLC	Shelf	33.15
8/23/2021	50057	Shady Cove Hardware, LLC	Nails, screws, nuts and bolts	1.60
8/23/2021	50057	Shady Cove Hardware, LLC	Nails, screws, nuts, bolts	4.87
8/23/2021	50057	Shady Cove Hardware, LLC	tools	3.00
8/23/2021	50057	Shady Cove Hardware, LLC	nails, screws, nuts and bolts	1.72
8/23/2021	50057	Shady Cove Hardware, LLC	Paint Brush	13.98
8/23/2021	50057	Shady Cove Hardware, LLC	Tire cleaner and armor all	22.17
8/23/2021	50057	Shady Cove Hardware, LLC	Nails, screws, nuts and bolts	3.03
8/23/2021	50057	Shady Cove Hardware, LLC	Sprinkler	79.96
8/23/2021	50058	Shari Tarvin	Reimburse for Mill Casino hotel reservation 07/31/21	160.95
8/23/2021	50059	Sorenson Ransom Ferguson & Clyde LLP	File No. 20180.0004	17.50
8/23/2021	50060	WECO - Carson	Gas/Diesel 07/27/21	120.67
8/23/2021	50060	WECO - Carson	Gas/Diesel 08/11/21	110.99

Grand Totals:

72,610.15

City of Shady Cove  
**City Council Regular Meeting Minutes**

Thursday August 5, 2021, 6:00 PM

Meeting was held via Zoom with some 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**

Steve Mitchell – Would like all comments to be included in minutes. Per City Administrator we do not do verbatim minutes, only action minutes.

Paige Winfrey – Movies in the Park. Put out a donation jar, ask businesses to sponsor movies, and sell snacks.

### **III. CONSENT AGENDA**

Adding Item E, Minutes from 7/21

Councilor Nuckles requested Items A and B be moved to Section IV

Motion to Accept Consent Agenda, Minutes from 7/21

Motion: Councilor Evertt      Second: Councilor McGregor

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 7/8-7/22, \$45,563.37

Motion: Councilor Nuckles      Second: Councilor McGregor

Motion Carried 4-0

## V. STAFF REPORTS

Sgt Weaver attended. He would like feedback to improve their activities.

Steve Mitchell commented on cars with expired tags. Sgt Weaver said multiple extensions have been given to people by DMV. Governor has extended these due to Covid.

Julie Barnes – Thanked Deputy Mateo for his assistance at The Music Festival.

Chief Winfrey, FD4 – Slow month for calls. Engaged on the Buck Rock Fire and 5 lightning fires. It is 100% lined. Next closest fire is Roundtop Fire, 100% lined and in containment stage. Activity on the river is up but not the call volume. Smoke is coming from all directions, but majority is coming from California. 70 fires across Jackson County. Douglas County has a lot fires currently.

Julie Barnes questioned how many volunteer firefighters we have. Chief said we have 4 volunteers and are managed by paid firefighter. Our volunteers are 18+, no volunteer opportunity for under 18.

Mayor has question on the water trucks that are taking water out of hydrants. Is that a concern if we are in an emergency situation? Chief said that it could be a possibility that we could run out of water. Chief said we have the option to suck water from the river in an emergency. Hiland water is in charge of allowing water trucks to pull water from hydrants.

City Administrator's Report –

PPE - Jacksonville gave the City some of their PPE. County gave us 20 boxes of disinfectant. City is bringing it directly to the businesses. We are light on gloves. We have a lot of masks.

Flags have been put up.

Oiling and asphalt to be done on Train, Cora, and Hall starting 8/9

Holding tank will go in at City Hall on Monday. Attempted to utilize old well but it was depleted just by cleaning out the lines. Irrigations lines need to be replaced, including the PVC, funny pipe and drip lines.

Jackson County Code Enforcement was called out to assist with trash issues and infestation. They have also been called out for excessive marijuana and hemp. County is working with deputies and CSO's to patrol those areas.

Report from a property owner where someone was clear cutting by the river. CSO responded, gave warning. Resident applied for permit.

Weed abatement was halted because of fire danger. Staff suggested to Council to mandate year round weed abatement procedures.

ODF has "Powered Driven Machinery Permits" for work being done on trees during Extreme Fire Danger. We are employing one for two trees on Castaline. With the wind we wanted to get it taken care of on Tuesday 8/10.

Fence issue on Brophy – former City Planner approved. City sent a letter to the owner to address and awaiting outcome.

League of Cities Conference in October – need to know who would like to attend.

New grant comes from same pot as American Rescue Funds. It is for Travel, Tourism and Outdoor Recreation. Went through Business Oregon. It is a competitive grant. Soredi could do it as a regional approach or individual. Colleen Padilla is seeking City input for potential regional approach for outdoor recreation, nature base, cultural arts and tourism facility, workforce training, accessibility enhancement, country wide tourism promotion or storm and waste water improvements. Council would like to put on the agenda.

America Rescue Fund – Josephine County and GP to assist local businesses.

ODF does not recommend battery operated machines as a rock could spark. Companies can be used if they have a permit from the ODF.

Steve Mitchell - comment in regards to marijuana. Ordinance allows for up to 6 plants with medical. State has a guideline and the City should compare its Ordinance. Recreational has not been addressed with the current ordinance.

Councilor McGregor – asked which option for grant is most competitive, individual or regional. We will need to see what plays out.

Siskiyou Pump is putting in temporary 1550 gallon holding tank.

Mayor received email from Pacific Power – due to wildfire and drought they have taken additional precautions. Additional patrols have been provided. Outages may occur and are intended for public safety. If you have medical devices make a plan with your medical provider when outages occur.

Emergency notification sign up – Sue Pemberton says Em Mgt Commssion has had little sign up. Banner will be put up so that they know what is trying to be accomplished. New 541-777-8888 Jackson evac which hooks them up with general alert notifications. Some residents won't sign up because they will not evacuate next time. Julie Barnes would like to invite Emer Mgt Comm to the food bank to have people sign up there. It was the most successful sign up.

## **VI. NEW BUSINESS**

None

## VII. OLD BUSINESS

- A. Ordinance 298 – Right of Way procedure. Requires two readings. Next step is to take this agreement to all utilities. Ordinance is not effective until 30 days after signing. Council would like to ask the attorney to change the preview verbiage to a fee instead of tax.  
Motion to accept with the possibility to change wording from tax to fee if legally allowed.  
Motion: Councilor Nuckles                      Second: Councilor Evertt  
Motion Carried 4-0
- B. Movies in the Park - Councilor McGregor commented that total value of the cost was not presented. Also, volunteers need to be vetted by the City. Council Nuckles recommends at minimum of 4 volunteers at each event. Parks and Recreation should be engaged to participate and take over the event. September movie in the park will continue if volunteers are vetted. Parks and Recreation Commission applications will be opened until November 15th. City to invest \$200.  
Motion to move forward with Movies in the park – City to provide \$200, no City payroll hours, cleared volunteers and applications open to Parks and recreation to be opened.  
Motion: Councilor Nuckles                      Second: Councilor McGregor  
Motion Carried 4-0
- C. Audit Update –City Administrator stated that we are still waiting for KDP but have already talked to RVSS and City Attorney we are ready to proceed.
- D. Community Benches – City Administrator said City Attorney confirmed American Rescue funds can be utilized to pay for a series of benches along the business corridor of Hwy 62. Councilor Nuckles would like to take another review of the overall plan. Councilor McGregor would like to consider specific subject matters that prioritize items. He would also like to expand the project to the community members so they have participation in what is developed.  
Motion to Table Community Bench Program.  
Motion: Councilor Evertt                      Second: Councilor Nuckles  
Motion Carried 4-0

## VIII. WRITTEN COMMENT

Commissioner Roberts and Steve Lambert are aware of the water trucks being used at the boat ramp.

Elizabeth Higgs – Movies in the park are worth the expense and should continue to be in place.

Debby Leach – Movies in the park are a great idea, very few things for family and kids in Shady Cove.

Susan Hall – Movies in the park is well worth the \$200 per event and hopes it continues.



Carlos Adams – Controversy over the Movies in the park should be least of concern for the Council. He said to keep it going the more things to bring the citizens together the better. As far as those that are opposed to such events, I pity your pettiness.

Sydney B – Movies in the park should continue. Unforeseen expenses minimal compared to the benefits. Hopefully all councilors will continue to support movies in the park for the citizens and not vote against it as the majority has done with music in the park, two Councilors letting the people down but then totally supporting URCC for Rocking the Rogue.

Julie Barnes – Movie in the Park is a great asset to the community. The community needs this. By having these events you keep crime down. People will come out and own your streets. Kids will have ownership. Kids will continue traditions. Appreciated the URCC event, it's about uniting as a whole. We don't have to agree to work as a team. Thank you for your service to the community.

Mary Stirling – The following is written communication for the August 5<sup>th</sup> 2021 City Council meeting. As a resident of Shady Cove I am concerned with what I see as inaction on part of the Mayor, the Council and City Administration to fill vacancy on the Parks and Recreation Commission. Although the first posting of vacancy resulted in no applications being submitted, I have not seen any other efforts to solicit applications for this important commission. I encourage the council to fill these vacancies.

Letter from Mr. Barnes from the Planning Commission. Due to family issues he is resigning effective August 31<sup>st</sup>. Mayor is sorry to see Mr Barnes go. He was a good asset to the City. Applications will be open for 30 days.

#### **IX. PUBLIC COMMENT ON NON-AGENDA ITEMS**

Susan Pemberton. – Questioned Mayor's post on Facebook concerning use of Zoom for attendance.

Ruth Marie Strozewski – Questioned attendance by Councilors via Zoom. City Administrator again voice that it has been deemed a "reasonable accommodation" by City Attorney during Covid.

Terry Weyers – Commented on use of volunteers and paperwork for City liability.

Steve Mitchell – Inquired as to the ADA requirements of the bench program.

Art Stirling – Questioned if City Planner has been involved for any potential bench placement. Also questioned use of Hiland Water at City Hall. The City has already begun a feasibility study in regard to this.

#### Motion to extend the meeting.

Motion: Councilor Evertt  
Motion Carried 4-0

Second: Councilor McGregor

Julie Barnes – Asked questions involving background checks from other agencies and use of Staff during Movies. Questioned Councilor Nuckles on the issue of overseeing of Movies by Mayor.

Mary Stirling – Said that agencies cannot share background checks or references.

#### **X. COUNCIL COMMENTS ON NON AGENDA ITEMS**

- A. Councilor Evertt – Thank everyone for attending. He would like to mention Goebel's Country Store is putting on an event on 8/10 from 11-3pm. They are selling a bbq plate for \$10. All this money will go to the family for a Shady Cove resident who was injured in an ATV accident.
- B. Councilor McGregor – Shout out to URCC group. The volunteers did a spectacular job and presented such a wonderful event for the community. Strength of the entire program is that of the volunteers and the responsibility. That was the reason for the success. Great job URCC.
- C. Councilor Nuckles – Thanked Julie Barnes and Mary Stirling for their letters as they offered to be a part of the solution. Believes that the Mayor should be involved in all recreation events but the details of the event should be carried about by Parks and Rec. Thanked URCC and their volunteers for putting on a great music event. She is a member of the URCC and a volunteer. That was the best day Shady Cove at a community event in a long time. The Mayor stated she would not meet with her because of negativity. Stressed that is exactly why there should be a meeting. She asked for the 5<sup>th</sup> time to meet. Thank you to everyone who attended tonight's meeting in person and online. Likes the dual format with Zoom and in person. Stay cool and safe.
- D. Mayor Tarvin – Attended the Oregon Mayor's conference. It was a great experience. Able to work with the other mayors in the state and learned a lot from every single class. Glad to see everyone sitting here and appreciated everyone coming out tonight. Please be careful with the smoke out there and fires. Keep an eye on everyone out there with the heat.

#### **XI. ADJOURNMENT**

There being no further business before the Council, the Mayor adjourned the meeting at 8:09 PM.

Approved:

Attest:

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Shari Tarvin  
Mayor

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Thomas J. Corrigan  
City Administrator

**Council Vote:**

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

DRAFT

### **What types of COVID-19 response, mitigation, and prevention activities are eligible?**

A broad range of services are needed to contain COVID-19 and are eligible uses, including vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses. Capital investments in public facilities to meet pandemic operational needs are also eligible, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics.

### **How do I know if a specific use is eligible?**

Fiscal Recovery Funds must be used in one of the four eligible use categories specified in the American Rescue Plan Act and implemented in the Interim Final Rule: a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers; c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and d) To make necessary investments in water, sewer, or broadband infrastructure.

### **What types of services are eligible as responses to the negative economic impacts of the pandemic?**

Eligible uses in this category include assistance to households; small businesses and nonprofits; and aid to impacted industries. Assistance to households includes, but is not limited to: food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. Assistance to small business and non-profits includes, but is not limited to: • loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs; • Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and • Technical assistance, counseling, or other services to assist with business planning needs

### **May recipients use funds for general economic development or workforce development?**

Generally, not. Recipients must demonstrate that funding uses directly address a negative economic impact of the COVID-19 public health emergency, including funds used for economic or workforce

development. For example, job training for unemployed workers may be used to address negative economic impacts of the public health emergency and be eligible.

**How can recipients use funds to assist the travel, tourism, and hospitality industries?**

Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel and hospitality industries and to districts that were closed during the COVID-19 public health emergency, as well as aid a planned expansion or upgrade of tourism, travel and hospitality facilities delayed due to the pandemic.

Eligible services include: • Addressing health disparities and the social determinants of health, including: community health workers, public benefits navigators, remediation of lead paint or other lead hazards, and community violence intervention programs; • Building stronger neighborhoods and communities, including: supportive housing and other services for individuals experiencing homelessness, development of affordable housing, and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity; • Addressing educational disparities exacerbated by COVID-19, including: early learning services, increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, and supports for students' social, emotional, and mental health needs; and • Promoting healthy childhood environments, including: child care, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth.

**May recipients use funds to pay for vaccine incentive programs (e.g., cash or in-kind transfers, lottery programs, or other incentives for individuals who get vaccinated)?**

Yes. Under the Interim Final Rule, recipients may use Coronavirus State and Local Fiscal Recovery Funds to respond to the COVID-19 public health emergency, including expenses related to COVID-19 vaccination programs. See 31 CFR 35.6(b)(1)(i). Programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable use of funds so long as such costs are reasonably proportional to the expected public health benefit.

**May recipients use funds to establish a public jobs program?**

Yes. The Interim Final Rule permits a broad range of services to unemployed or underemployed workers and other individuals that suffered negative economic impacts from the pandemic. That can include public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker's occupation or level of training. The broad range of permitted services can also include other employment supports, such as childcare assistance or assistance with transportation to and from a jobsite or interview. The Interim Final Rule includes as an eligible use re-hiring public sector staff up to the government's level of pre-pandemic employment. "Public sector staff" would not include individuals participating in a job training or subsidized employment program administered by the recipient.

**The Interim Final Rule states that "assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category." Are recipients AS OF JULY 19, 2021 10 required to demonstrate that each**

**individual or business experienced a negative economic impact for that individual or business to receive assistance?**

Not necessarily. The Interim Final Rule allows recipients to demonstrate a negative economic impact on a population or group and to provide assistance to households or businesses that fall within that population or group. In such cases, the recipient need only demonstrate that the household or business is within the population or group that experienced a negative economic impact.

For assistance to small businesses, the Interim Final Rule states that assistance may be provided to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, to respond to the negative economic impacts of the COVID-19 public health emergency. In providing assistance to small businesses, recipients must design a program that responds to the negative economic impacts of the COVID-19 public health emergency, including by identifying how the program addresses the identified need or impact faced by small businesses. This can include assistance to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency.

**Would investments in improving outdoor spaces (e.g. parks) be an eligible use of funds as a response to the public health emergency and/or its negative economic impacts?**

There are multiple ways that investments in improving outdoor spaces could qualify as eligible uses; several are highlighted below, though there may be other ways that a specific investment in outdoor spaces would meet eligible use criteria. First, in recognition of the disproportionate negative economic impacts on certain communities and populations, the Interim Final Rule identifies certain types of services that are eligible uses when provided in a Qualified Census Tract (QCT), to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. These programs and services include services designed to build stronger neighborhoods and communities and to address health disparities and the social determinants of health. The Interim Final Rule provides a non-exhaustive list of eligible services to respond to the needs of communities disproportionately impacted by the pandemic, and recipients may identify other uses of funds that do so, consistent with the Rule's framework. For example, investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments and outdoor recreation and socialization to mitigate the spread of COVID-19. Second, recipients may provide assistance to small businesses in all communities. Assistance to small businesses could include support to enhance outdoor spaces for COVID-19 mitigation (e.g., restaurant patios) or to improve the built environment of the neighborhood (e.g., façade improvements). Third, many governments saw significantly increased use of parks during the pandemic that resulted in damage or increased maintenance needs.

**Can funds be used for eviction prevention efforts or housing stability services?**

Yes. Responses to the negative economic impacts of the pandemic include "rent, mortgage, or utility assistance [and] counseling and legal aid to prevent eviction or homelessness." This includes housing stability services that enable eligible households to maintain or obtain housing, such as housing counseling, fair housing counseling, case management related to housing stability, outreach to households at risk of eviction or promotion of housing support programs, housing related services for

survivors of AS OF JULY 19, 2021 13 domestic abuse or human trafficking, and specialized services for individuals with disabilities or seniors that supports their ability to access or maintain housing. This also includes legal aid such as legal services or attorney's fees related to eviction proceedings and maintaining housing stability, court-based eviction prevention or eviction diversion programs, and other legal services that help households maintain or obtain housing. Recipients may transfer funds to, or execute grants or contracts with, court systems.

**May recipients use funds to replenish a budget stabilization fund, rainy day fund, or similar reserve account?**

No. Funds made available to respond to the public health emergency and its negative economic impacts are intended to help meet pandemic response needs and provide immediate stabilization for households and businesses. Contributions to rainy day funds AS OF JULY 19, 2021 19 and similar reserves funds would not address these needs or respond to the COVID-19 public health emergency, but would rather be savings for future spending needs. Similarly, funds made available for the provision of governmental services (to the extent of reduction in revenue) are intended to support direct provision of services to citizens. Contributions to rainy day funds are not considered provision of government services.

**How can I use CSFRF/CLFRF funds to prevent and respond to crime, and support public safety in my community?**

Under Treasury's Interim Final Rule, there are many ways in which the State and Local Fiscal Recovery Funds ("Funds") under the American Rescue Plan Act can support communities working to reduce and respond to increased violence due to the pandemic. Among the eligible uses of the Funds are restoring of public sector staff to their pre-pandemic levels and responses to the public health crisis and negative economic impacts resulting from the pandemic. The Interim Final Rule provides several ways for recipients to "respond to" this pandemic-related gun violence, ranging from community violence intervention programs to mental health services to hiring of public safety personnel. Below are some examples of how Fiscal Recovery Funds can be used to address public safety:

- In all communities, recipients may use resources to rehire police officers and other public servants to restore law enforcement and courts to their pre-pandemic levels. AS OF JULY 19, 2021 22 Additionally, Funds can be used for expenses to address COVID-related court backlogs, including hiring above pre-pandemic levels, as a response to the public health emergency. See FAQ 2.19.
- In communities where an increase in violence or increased difficulty in accessing or providing services to respond to or mitigate the effects of violence, is a result of the pandemic they may use funds to address that harm. This spending may include:
  - o Hiring law enforcement officials – even above pre-pandemic levels – or paying overtime where the funds are directly focused on advancing community policing strategies in those communities experiencing an increase in gun violence associated with the pandemic
  - o Community Violence Intervention (CVI) programs, including capacity building efforts at CVI programs like funding and training additional intervention workers
  - o Additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels
  - o Investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic

As discussed

in the Interim Final Rule, uses of CSFRF/CLFRF funds that respond to an identified harm must be related and reasonably proportional to the extent and type of harm experienced.

**May Coronavirus State and Local Fiscal Recovery Funds be used to make loans or other extensions of credit (“loans”), including loans to small businesses and loans to finance necessary investments in water, sewer, and broadband infrastructure?**

Yes. Coronavirus State and Local Fiscal Recovery Funds (“Funds”) may be used to make loans, provided that the loan is an eligible use and the cost of the loan is tracked and reported in accordance with the points below. See 31 CFR 35.6. For example, a recipient may use Coronavirus State and Local Fiscal Recovery Funds to make loans to small businesses. See 31 CFR 35.6(b)(6). In addition, a recipient may use Funds to finance a necessary investment in water, sewer or broadband, as described in the Interim Final Rule. See 31 CFR 35.6(e). Funds must be used to cover “costs incurred” by the recipient between March 3, 2021, and December 31, 2024, and Funds must be expended by December 31, 2026. See Section III.D of the Interim Final Rule; 31 CFR 35.5. Accordingly, recipients must be able to determine the amount of Funds used to make a loan.

**What types of water and sewer projects are eligible uses of funds?**

The Interim Final Rule generally aligns eligible uses of the Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency’s Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF). Under the DWSRF, categories of eligible projects include: treatment, transmission and distribution (including lead service line replacement), source rehabilitation and decontamination, storage, consolidation, and new systems development. Under the CWSRF, categories of eligible projects include: construction of publicly owned treatment works, nonpoint source pollution management, national estuary program projects, decentralized wastewater treatment systems, stormwater systems, water AS OF JULY 19, 2021 28 conservation, efficiency, and reuse measures, watershed pilot projects, energy efficiency measures for publicly-owned treatment works, water reuse projects, security measures at publicly-owned treatment works, and technical assistance to ensure compliance with the Clean Water Act. As mentioned in the Interim Final Rule, eligible projects under the DWSRF and CWSRF support efforts to address climate change, as well as to meet cybersecurity needs to protect water and sewer infrastructure. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury also encourages recipients to consider projects to replace lead service lines.

**Can recipients use funds for administrative purposes?**

Recipients may use funds to cover the portion of payroll and benefits of employees corresponding to time spent on administrative work necessary due to the COVID–19 public health emergency and its negative economic impacts. This includes, but is not limited to, costs related to disbursing payments of Fiscal Recovery Funds and managing new grant programs established using Fiscal Recovery Funds.



# An Ordinance of the City of Shady Cove, Oregon

## ORDINANCE # 298

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

Purpose and Intent  
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**DRAFT**

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.

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.

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.

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.

#### 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 the Licenses section 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.

## 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 the License portion 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 the License 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 (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 (B) and the application fee required in (C). The City shall review the application as required by (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 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 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.

#### 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 C 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 requirements 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 4.12.060 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 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.

#### 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 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.

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.

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.

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.



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.

Privilege Tax

A. Privilege Tax.

1. Except as set forth in previous sections, 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 previous chapters, "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, "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.

### 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 this Ordinance 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 this Ordinance 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.

#### Insurance and Indemnification

A. Insurance.

1. All utility operators shall maintain in full force and effect 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 or easements in a timely manner, unless the utility operator's failure arises directly from the City's negligence or willful misconduct.

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.

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.

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.

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.

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.

**Adopted by the City Council of the City of Shady Cove this 19<sup>th</sup> day of August, 2021.**

Approved:

\_\_\_\_\_  
Shari Tarvin, Mayor

\_\_\_\_\_  
Thomas J. Corrigan, City Administrator

Council Vote:

Councilor McGregor \_\_\_\_\_

Councilor Nuckles \_\_\_\_\_

Councilor Evertt \_\_\_\_\_

**DRAFT**