

Agenda

City of Shady Cove City Council Workshop
Thursday, August 21, 2025 at 10 AM – 12 NOON

[Join the meeting now](#) Meeting ID: 972 292 3260

Call Work Session to Order

1. Roll Call and Pledge of Allegiance
2. Announcements/Proclamations by Presiding Officer
 - A. This meeting is being digitally recorded.
 - B. There may be members of other committees/commission present, but there will be no voting by those entities.
3. Work Session Topic(s)
 - A. Review and Discussion of the City of Shady Cove, Rights-of-Way Licensing Ordinance and Resolution Fee Schedule versus franchise agreements.
4. Adjournment

**CITY OF SHADY COVE
ORDINANCE NO. 315**

AN ORDINANCE OF CITY OF SHADY COVE ESTABLISHING A UTILITY LICENSE FOR UTILITY PROVIDERS LOCATED WITHIN THE CITY'S PUBLIC RIGHT-OF-WAY; REQUIRING UTILITIES TO APPLY FOR AND OBTAIN A LICENSE FROM THE CITY; AND ESTABLISHING RATES FOR LICENSEES.

WHEREAS, City of Shady Cove ("City") has all the powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, City has jurisdiction and exercises regulatory management over all right-of-way within City under authority of the City of City Cove Charter and state law; and

WHEREAS, City has typically granted individually negotiated franchises to each utility using City's right-of-way to provide utility service, which franchises set forth the terms of use and compensation to be paid for such use; and

WHEREAS, City has determined that it can more effectively, efficiently, fairly and uniformly manage City's right-of-way and provide consistent standards for utility use of the right-of-way through licenses rather than franchises; and

WHEREAS, City finds it is in the public interest to establish a utility license for all utility providers located in City.

NOW, THEREFORE, THE CITY OF SHADY COVE ORDAINS AS FOLLOWS:

1. Findings. The above-stated findings are hereby adopted.
2. Title. This Ordinance No. 315 (this "Ordinance") may be referred to as the "Utility Licensing Ordinance."
3. Purpose. The purpose of this Ordinance include, without limitation, the following: (a) permitting and managing reasonable access to City right-of-way for utility purposes and conserving the limited physical capacity of the right-of-way held in trust by City; (b) ensuring that City is fully compensated for its current and ongoing costs of granting and regulating access to and the use of the right-of-way; (c) ensuring that all utility companies, persons, and other entities owning and/or operating facilities and/or providing utility service within City operate in a uniform and consistent manner subject to and in accordance with all applicable City ordinances, rules, and regulations, including, without limitation, this Ordinance; (d) ensuring that City can continue to fairly and responsibly protect the public health, safety, and welfare of its citizens; and (e) encouraging the provision of advanced and competitive utility service on the widest possible basis to businesses and residents of City on a nondiscriminatory basis.

4. Definitions. Unless defined elsewhere in this Ordinance, terms and phrases contained in this Ordinance have the meanings assigned to them below:

"Aboveground facilities" means utility poles and other facilities above the surface of the ground and includes, without limitation, the underground supports and foundations for such facilities.

"Accounting statement" means the sworn statement filed with City pursuant to Section 10.4 describing the total gross revenues that the licensee received during the immediately preceding quarter.

“ADA” means the Americans with Disabilities Act of 1990 (“ADA”) and any regulations of any administrative agency thereof.

“Administrator” means City’s city administrator (or his or her designee).

“Applicant(s)” means the person applying for a license to use the right-of-way within City pursuant to this Ordinance.

“Cable service” means the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction if any, which is required for the selection or use of such video programming or other programming service.

“City” has the meaning assigned to such term in the recitals.

“Council” means the Shady Cove City Council.

“City property” means all real property owned or controlled by City except right-of-way and all property held in a proprietary capacity by City. For purpose of this Ordinance, “City property” includes, without limitation, City parks, open spaces, trails, paths, access ways, parking lots, and public buildings and access easements, driveways, or access ways located upon such property; City-owned street lights and street light poles will be considered City property.

“Conduit” means any structure, or section thereof, containing one or more ducts, conduits, manholes, handholes, bolts, or other facilities used for any telegraph, telephone, cable service, electrical, or communications conductors, or cable right-of-way, owned or controlled, in whole or in part, by one or more utilities.

“Construction work” means any construction activity in, on, over, and/or under any right-of-way, including, without limitation, any excavation, demolition, installation, maintenance, improvement, repair, replacement, extension, and/or relocation work concerning a facility.

“Days” means calendar days unless otherwise specified.

“Duct” means a single enclosed raceway for conductors or cable.

“Facilities” means the plant, equipment and property, including, without limitation, the poles, pipes, mains, apparatus, amplifiers, appliances, conduits, ducts, guys, anchors, cable, wires, wireless communication devices, and/or other plant and equipment located under, on, or above the surface of the ground within the right-of-way of City and used or to be used for the purpose of transmitting or otherwise providing services in City, including, without limitation, telecommunication services.

“Franchise” means an ordinance or agreement between City and a franchisee which grants a privilege to use right-of-way within City for a dedicated purpose and for specific compensation.

“Gross revenue(s)” means all revenues a utility receives directly or indirectly from the utility’s operations and/or gross revenues derived from the provision of services within City, less net uncollectibles, including, without limitation, revenues from the use, rental, and/or lease of any facilities; provided, however, the term “gross revenues” does not include revenue paid directly by the United States of America (or any of its agencies) and/or revenues received directly by a licensee for the licensee’s provision of internet access services when prohibited under applicable law. For purposes of this Ordinance, revenue from joint pole use includes any revenue collected by a utility from other utilities, franchises, permittees, and/or licensees of the utility for the right to attach wires, cables, and/or other facilities or equipment to the utility’s poles or place them in, on, and/or attached to the utility’s facilities.

“Internet access service(s)” means a service that enables users to access content, information, electronic mail, and/or other services offered over the internet and may include access to proprietary content, information, and/or other services as part of a package of services offered to consumers.

“Law(s)” means all applicable federal, state, county, and/or local laws, rules, regulations, codes, and ordinances, including, without limitation, the ADA, and all regulations of any administrative agency thereof, the Shady Cove Development Code, all as heretofore or hereafter adopted, promulgated, and/or established from time to time.

“License(s)” means the permission granted, on a non-exclusive basis, by City under this Ordinance to the licensee to use right-of-way within City for a specified and dedicated purpose.

“Licensee(s)” includes any person that operates a utility and locates any facilities in the right-of-way pursuant to a license issued by City in accordance with this Ordinance.

“License fee(s)” means the license fees described under Section 10 of this Ordinance.

“Person” means any natural person, corporation, limited liability company, partnership, joint venture firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity.

“Private telecommunications network” means a system, including the construction, maintenance, or operation of the system, for the provision of a service or any portion of a service, by a person for the exclusive use of that person and not for resale, directly or indirectly. For purposes of this Ordinance, "private telecommunications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and ORS 283.140.

“Public utility easement(s)” means an easement conveyed, granted, or dedicated to City or the public and acquired, established, dedicated, or devoted to utility purposes, whether designated as a public easement, utility easement, general utility easement, public utility easement, or similar term. For purposes of this Ordinance, "public utility easement" does not include an easement solely for the construction, reconstruction, operation, maintenance, inspection and repair of City facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to City.

“Right-of-way(s)” means the space in, upon, above, along, across, over and/or under the public streets, roads, alleys, avenues, thoroughfares, highways, paths, trails, sidewalks, bicycle lanes, public utility easements, grounds, and all other public ways or areas located within City which are owned and/or controlled by City, including the subsurface under and air space over these areas, but not including City property not generally open to the public for travel purposes.

“Right-of-way permitting ordinance” means City Ordinance No.315, as amended.

“State” means the State of Oregon.

“Telecommunications” means the transmission between and among points specified by the user, of information of the user's choosing, without change in the content of the information as sent and received.

“Telecommunications carrier” means any provider of telecommunications services including, without limitation, every person that directly or indirectly owns, controls, operates, uses, or manages telecommunications facilities within City and also includes a telecommunications utility.

“Telecommunications facility(ies)” means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services. “Telecommunication

facility(ies)” includes conduits, duct, and/or aboveground facilities, underground facilities, and items identified in the definition of facilities contained herein to the extent such items are used for providing telecommunication services.

“Telecommunications service” means two-way switched access and transport of voice, video, and/or data communications, including, without limitation, local exchange service, long distance telephone service, and internet access. Telecommunications service does not include the following: (a) services provided by radio common carrier; (b) one-way transmission of television signals; (c) surveying; (d) private telecommunications networks; and/or (e) communications of the customer which take place on the customer side of on-premises equipment.

“Telecommunications utility” has the meaning assigned to such term under ORS 759.005(9)(a).

“Temporary adjustment” refers to whenever it becomes necessary to temporarily rearrange, remove, lower, and/or raise any utility’s aerial cables, wires, and/or other apparatus to permit the passage of any building, machinery, and/or other object moved over any right-of-way.

“Underground facility(ies)” means facilities located under the surface of the ground, excluding the underground foundations or supports for aboveground facilities.

“Utility(ies)” means any person, or its lessees or trustees of record that owns, operates, manages and/or controls all or a part of any facility in City for the production, transmission, delivery, conveyance or function of gas, heat, steam, light, wastewater, stormwater, water, power, electricity, cable service, communication, data transmission, and/or telecommunication service.

“Utility service” or “service” means the provision, by means of facilities located within, under, or and/above the right-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 City, and/or the transmission of any of the aforementioned services through City whether or not customers within City are served by those transmissions.

5. Utility License Required. No person operating a utility within City may construct, place, erect, lay, maintain, and/or operate in, on, under, and over any facility in, upon, over, and/or under right-of-way without first applying for and obtaining a license and paying the prescribed fee in accordance with this Ordinance. Operating a utility includes, without limitation, (a) placing facilities in the right-of-way, (b) using facilities owned or operated by other utilities, and/or (c) attaching or locating facilities to, on, upon, or within the facilities of another. Without otherwise limiting the generality of the preceding, no person may operate a private telecommunications network, or any portion thereof in the right-of-way without first applying for and obtaining a license and paying the prescribed license fee. No person with actual, present supervisory control of any utility for which a license is required under this Ordinance may permit, direct, and/or allow the operation or continuation of such utility in the right-of-way at any time when there is not then in full force and effect a license issued pursuant to and in accordance with the provisions of this Ordinance.

6. Compliance with Laws. No license will be issued to any person concerning any utility that is prohibited by federal, state, and/or local law, regulation, and/or ordinance. Each utility must be operated and comply with all applicable laws. The issuance of a license does not authorize a utility to operate in violation of any applicable law. Issuance of a license by City is not evidence that the applicant and/or utility is in compliance with, or exempt from, any applicable law.

7. Application Requirements. Any person desiring to operate a utility in the right-of-way in City must apply for a license on such forms and in such manner as the administrator may then prescribe. The application must be accompanied by the applicable application fee prescribed by resolution of the council. The

application must be filed with the administrator and, in addition to any other information reasonably requested by the administrator, must include, without limitation, the following information:

7.1 The name and address of the applicant, the address(es) where the applicant will have its office(s) within City, and the address of the principal office of the applicant.

7.2 A general description of the utility and the type of facilities that will be located by the applicant in the right-of-way.

7.3 The area(s) of City the applicant desires to place facilities in the right-of-way which may include the entire City, and, if the applicant has not previously served City, a preliminary construction schedule for build-out of the facilities it will locate in the right-of-way.

7.4 Information to establish that the applicant has obtained all other governmental approvals, authorizations, and/or permits to operate in City.

7.5 Whether any local, city, county, state, and/or federal licenses, certificates, registrations, and/or permits are required for the utility (and the identification of such licenses, certificates, registrations, and/or permits).

7.6 If the applicant is a foreign person or a non-resident of the State of Oregon and no permanent office location is proposed to be created in City, the applicant must appoint a local person, acceptable to the administrator, as an agent for accepting service of process, notice, and/or demand. The applicant must submit with the application the agent's consent to acceptance of service of process, notice, and/or demand.

7.7 The date of the application and the amount of money tendered with the application.

7.8 Any other information that the administrator deems necessary or appropriate to enable City to review the application and determine whether the applicant qualifies for the issuance of a license.

8. Review; Determination by City.

8.1 An application for a license required by this Ordinance will be reviewed by the administrator. The administrator is authorized to make an investigation into the applicant utility, review the application, and conduct whatever investigation the administrator deems necessary or appropriate to determine whether the application is complete, the statements made therein are true and accurate, and whether the utility complies with this Ordinance.

8.2 After completion of the administrator's review of the application (and the administrator's receipt of reports from all persons and departments designated by the administrator to review the application), the administrator will determine whether the applicant qualifies for the issuance of a license. If the applicant qualifies for a license, the administrator will issue the license to the applicant.

8.3 If, on the basis of the review of the application, the administrator determines that the applicant does not qualify for a license, the administrator will notify the applicant in writing that the application has been denied. The administrator may deny the issuance of a license for any of the following nonexclusive reasons: (a) the utility does not or will not comply with applicable law; (b) the utility and/or facility(ies) does or will endanger or damage the health, safety, and/or general welfare of persons or property; (c) the applicant fails to supply the information required, or submits misleading or false information, in connection with the application for the license; (d) insufficient capacity of the right-of-way to accommodate the applicant's proposed facilities; and/or (e) prior to making the application, the utility operated within City while this Ordinance was in effect without a current, valid license (unless an additional amount equal to the license fee for the period during which the utility operated is paid).

8.4 In lieu of the administrator's denial of a license, the administrator may refer the application to the council for review by filing the application with City's city recorder together with a statement of the findings of any investigation authorized or required by the provisions of this Ordinance. The administrator's decision on any given matter will not set any precedent nor bind future decisions of the administrator.

9. Rights Granted. A license granted pursuant to this Ordinance will not convey any right, title, and/or interest in the right-of-way, but will be deemed permission to use and occupy the right-of-way for the limited purposes and term, and upon the conditions stated in the license. The person granted the license will have no property interest or other right in the license except as provided by this Ordinance. A license granted pursuant to this Ordinance is not (and will not be construed as) a contract.

10. License Fee; Privilege Tax.

10.1 License Fee; Transmission Line Fee. In consideration of the rights, privileges, and license granted by City under this Ordinance, each licensee will pay a license fee in accordance with this Ordinance and in an amount set by council resolution from time to time. If a licensee only owns or operates within City one or more transmission lines that use right-of-way and such line or lines' primary purpose is to serve customers outside City, then the licensee will not pay a license fee under required herein, but will instead pay a transmission line license fee in an amount or calculated by a method determined by council resolution. Notwithstanding anything contained in this Ordinance to the contrary, City may modify the license fee (and the transmission line license fee) payable under this Ordinance from time to time, subject to applicable laws. The license fee will be effective and payable commencing on July 17, 2025. Council will set such fees as are necessary to implement the provisions of the Ordinance via council resolution.

10.2 License Fee Amounts.

(a) The license fee for utilities, including, without limitation, general communications, gas (including natural, manufactured, renewable, and/or mixed gases), electric, municipal, public utility district(s), special district(s), and telecommunication utilities and telecommunications carriers, will be a percentage of the gross revenue collected by the licensee concerning utility operations within City, or such other method as determined by the council. For purposes of this Section 10.2, "gross revenue(s)" means all revenues a utility receives directly or indirectly from the utility's operations within City, less net uncollectibles, but including, without limitation, revenues from the use, rental, and/or lease of any facilities; provided, however, "gross revenues" does not include revenues received directly by a licensee for the licensee's provision internet services if prohibited under applicable law. For purposes of this Ordinance, revenue from joint pole use includes any revenue collected by a utility from other utilities, franchises, permittees, and/or licensees of the utility for the right to attach wires, cables, and/or other facilities or equipment to the utility's poles or place them in, on, and/or attached to the utility's facilities.

(b) Unless City adopts a volumetric rate, gross revenues for an electric utility will include electricity provided by the electric utility or an electricity service provider if bills are consolidated as provided by ORS Chapter 757 related to direct access regulation. City may elect to establish a volumetric rate as provided by state law for electric distribution utilities.

(c) Gross revenues of a telecommunication carrier that provides telecommunication services using facilities owned or operated by other utilities may be reduced by the amount paid for the use of such facilities if the utility that owns or operates the facilities report the amount paid to them for such use as gross revenue as required by this section 10.2.

10.3 Privilege Tax. Any utility that operates without a license for a period of thirty (30) days or more within City and uses right-of-way in City for any purpose other than travel will pay a privilege tax in an amount set by council resolution from time to time. For purposes of this Section 10.3, utility includes, without limitation, an electricity service supplier using the facilities of an electric utility that does not consolidate bills with the electric utility pursuant to Section 10.2(b). To the extent that separate fees are charged for use of the right-of-way, including, without limitation, license applications, street opening, construction, inspection, and/or maintenance of fixtures or facilities, pursuant to ORS 221.515(3), as amended, such fees will be paid by telecommunication utilities but may be deducted from the privilege tax. In lieu of requiring payment of fees by telecommunication utilities, City may waive or establish a system of internal transfers of revenues for such fees. Notwithstanding anything contained in this Ordinance to the contrary, a utility's payment of the privilege tax does not operate to waive and/or release the utility from the obligation to perform and comply with the provisions of this Ordinance; the utility is obligated to perform and comply with all provisions contained in this Ordinance to the extent required of a licensee, including, without limitation, those licensee obligations provided under Sections 11 through 17 of this Ordinance. The privilege tax will be effective and payable commencing on July 17, 2025.

10.4 Payment of Fees; Late Payment. License fees and privilege taxes will be due and payable in quarterly installments, which quarterly installment will be due on or before the last day of the month immediately following the end of each calendar year quarter. Contemporaneously with each quarterly payment, each utility will file with City a sworn statement describing the total gross revenues that the utility received during the immediately preceding quarter. City's acceptance of any payments under this Section 10.4 will not constitute a waiver by City of any violation under this Ordinance. A utility operating without a license that commences operations during a quarter will make the initial payment on or before the payment date following the quarter during which operations are commenced. In the event of a termination of operations, the final payment will be made on or before the forty-fifth (45th) day following the date of such termination. If the license fee or privilege tax is not paid to City on or before the date due, a late payment charge will be owed from the due date to the date on which City receives payment, compounded monthly. The late payment charge will be due at the same time that the utility makes the delinquent payment to City. Payment of fees required by this Section 10 will be in addition to any application fee, and any other fees required by this Ordinance. If any person operates without a license as required by this Ordinance, operates during a period of suspension after licensee has exhausted all due process rights, and/or materially under reports the license fee or privilege tax which is due, such person will be liable for an additional penalty, computed at two percent of the gross revenues received during the applicable period, which will be paid in addition to the applicable license fee or privilege tax.

10.5 Inspection of Books and Records. Upon ten (10) days' advance written notice to a utility, City may review such utility books, records, documentation, and/or information, including, without limitation, all maps, diagrams, plans, and other documents, maintained by the utility that describe and/or locate facilities within the right-of-way, that City reasonably determines necessary or appropriate to audit an accounting statement and/or ascertain a utility's compliance with this Ordinance. Each utility will cooperate with City in conducting any inspection and/or audit and will correct any discrepancies affecting City's interest in a prompt and efficient manner. City will bear the cost of any audit provided no irregularities are found (if City discovers any irregularities, the licensee will bear the cost of City's audit). Each utility will keep all its books, records, documentation, and/or information at its Shady Cove, Oregon office. If a utility provides any books, records, and/or information to City that the utility reasonably believes to be confidential or proprietary, and the utility clearly and specifically identifies such books, records, and/or information as confidential or proprietary upon initial submission to City, City will take reasonable steps to protect the confidentiality of such books, records, and/or information subject to City's obligations under Oregon's Public Records Law (ORS 192.311-192.431). City will not be required to incur any costs to protect any confidential or proprietary books, records, and/or information, other than City's routine internal procedures for complying with Oregon's Public Records Law.

10.6 Multiple Licenses; Other Utilities; Costs. A utility that provides more than one type of utility service will pay a license fee on each type of utility service as provided in this Ordinance. Issuance of a license to occupy right-of-way for the new type of utility service will be subject to the provisions of this Ordinance.

If a utility is not specifically listed herein and/or in a resolution adopted by council establishing the license fee amount and/or privilege tax amount, the administrator will determine the most appropriate category and the utility will pay that license fee. Each licensee will, within thirty (30) days after written demand, reimburse City for all reasonable costs and expenses, including, without limitation, reasonable attorney fees, incurred by City in connection with any modification, amendment, renewal, transfer, termination, revocation, and/or lesser sanction of the license consistent with applicable state, federal, and local laws, rules, regulations, and/or ordinances.

10.7 Compensation for City Property. If any right is granted by lease, permit, or other manner, to use and/or occupy City property for the installation and operation of facilities, the compensation to be paid for such right and use will be fixed by City. Such compensation for the use of City property will be in addition to the license fee or privilege tax for use of the right-of-way unless the use of City property.

10.8 Deductions. Subject to the provisions of this Ordinance, City will apply any franchise fee amounts paid by a utility under an existing and then effective franchise granted by City to the utility for use of right-of-way against the license fee amounts paid or payable under this Ordinance for the subject utility service, including, without limitation, any amounts paid or payable under Sections 10.1 and 10.3; provided, however, in no event will an offset result in an amount paid or payable under this Ordinance less than zero dollars (\$0.00). A licensee may not deduct amounts paid to City for interest charges, fines, and/or penalties. This Section 10.8 will not relieve any utility from paying in accordance with the provisions of a franchise, temporary revocable permit, and/or ordinance when the amount to be paid thereunder exceeds the amount of the utility license fee required under this Ordinance.

11. General License Terms.

11.1 Term and Location of License. Unless otherwise specified in a license, a license granted pursuant to this Ordinance will be in effect until June 30 of the year which is ten years from the issuance of the license. Unless otherwise specified in a license, a license will be for the entire City and the right-of-way necessary to serve the entire City.

11.2 Additional Terms; Existing Franchise Agreements. The administrator may, in the administrator's sole discretion, require additional terms and/or conditions in a license to clarify, enhance, expand, waive, and/or vary the provisions of this Ordinance. Additional terms and conditions may conflict with the terms of this Ordinance with the review and approval of the council. Notwithstanding anything contained in this Ordinance to the contrary, this Ordinance will apply to all utilities operating under franchise agreements granted by City. If a conflict between the provisions of this Ordinance and a franchise occurs, the provisions of this Ordinance will control and supersede the conflicting franchise provision. Without otherwise limiting the generality of the immediately preceding sentence, nothing contained in this Ordinance and/or a franchise agreement will relieve a utility of its payment obligations under Section 10.

11.3 Maps. Upon request by City, and in a generally recognized format acceptable to City, each licensee will provide City with an accurate map(s) certifying the horizontal and vertical location, size, and type of material of the licensee's underground facilities within the right-of-way or any portion thereof. The map(s) need not include details of the nature of the facilities. The map(s) will show the horizontal and vertical location of the facilities to the extent such information is available. A licensee will not be required to "pothole" or conduct "vertical locates" to satisfy a mapping request unless reasonably required for the design of a city public improvement project.

12. License Amendment; Renewal; or Transfer.

12.1 Amendment; Renewal. Subject to the provisions of this Ordinance, an application will be required of any licensee that desires to amend and/or renew its existing license. An application will be required of any licensee that desires to occupy right-of-way to provide a type of utility service that was not included in a franchise or license previously issued by City. Within ninety (90) days after receiving a complete application, City

will issue a written determination granting or denying the amended and/or renewal application in whole or in part. If the amended and/or renewal application is denied, the written determination will include the reasons for non-issuance or nonrenewal. City's review and determination will be based on the factors identified in Section 8 of this Ordinance. Unless otherwise provided in the license, the licensee will reimburse City for all direct and indirect fees, costs, and expenses reasonably incurred by City in considering an amended or renewal license. Any application required by this section will include an application fee in an amount set by council resolution. Notwithstanding anything contained in this Ordinance to the contrary, any license (new, amended, renewal, or otherwise) may be issued only if the licensee is in compliance with its existing franchise and/or license.

12.2 Obligation to Cure; Transfer. No license will be amended and/or renewed until all violations of the applicable license, agreement, and/or provision of this Ordinance have been cured to City's satisfaction. No transfer or assignment of any license issued under this Ordinance is permitted and any attempted transfer or assignment will render the license null and void. Upon sale or other transfer of a license holder, the new owner(s) must apply for and obtain a new license and pay the prescribed fees.

13. License Revocation; Appeal.

13.1 Grounds for Suspension; Revocation. The administrator may suspend and/or revoke a license for any of the following reasons: (a) construction in the right-of-way without a permit required by City's right-of-way permitting ordinance; (b) construction and/or operation at an unauthorized location in City; (c) failure to comply with the requirements of this Ordinance with respect to amendment, renewal, or transfer of a license; (d) fraud, misrepresentation, and/or false statement(s) contained in the application for a license and/or willful withholding of information or incomplete disclosure concerning any matter required to be furnished in connection with any such application; (e) abandonment of facilities in the right-of-way except as authorized by City; (f) failure to locate, relocate, and/or remove facilities as required by City; (g) failure to pay taxes, compensation, fees, or costs when and as due to City under this Ordinance; (h) a violation of this Ordinance and/or the terms and conditions imposed under a license; and/or (i) noncompliance with any other City ordinances or regulations or violations of federal, state, and/or local laws, rules, regulations, and/or ordinances.

13.2 Notice and Duty to Cure. In the event that the administrator determines that grounds exist for revocation of a license, the administrator will provide the licensee written notice of the apparent violation or noncompliance. The notice will contain a short and concise statement of the nature and general facts of the violation or noncompliance and provide the licensee a reasonable period of time not exceeding thirty (30) days to furnish evidence that: (a) corrective action has been, or is being, actively and expeditiously pursued to remedy the violation or noncompliance; (b) rebuts the alleged violation or noncompliance; and/or (c) it would be in the public interest to impose some penalty or sanction less than revocation. If the licensee fails to respond to the notice, fails to cure the violation or noncompliance as required by the notice, and/or if the administrator determines that the licensee's response is inadequate, the administrator may suspend or revoke the license.

13.3 Standards for Revocation or Lesser Sanctions. In determining whether suspension, revocation, and/or a lesser sanction is appropriate, the administrator will consider factors, including, without limitation, the nature, circumstances, extent, and/or severity of the violation as reflected by one or more factors including, without limitation, the following: (a) the misconduct was egregious; (b) substantial harm resulted from the violation; (c) the violation was intentional; (d) there is a history of prior violations of the same or other requirements; (e) there is a history of overall non-compliance; and/or (f) the licensee's cooperation in discovering, admitting, and/or curing the violation.

13.4 Appeal. A decision to deny, suspend, and/or revoke a license may be appealed by delivering written notice of appeal to the administrator within ten (10) days of the notice of denial, suspension, and/or revocation. Failure to file notice of appeal within the aforementioned ten-day appeal period is deemed a waiver of all rights to object to a permit denial, suspension, and/or revocation determination. Unless the administrator has declared that immediate danger to the health, safety, and/or general welfare of persons or property exists, the administrator's decision to revoke or suspend is stayed pending appeal. The administrator will

transmit the notice of appeal together with the file of the appealed matter to the council. Upon receipt of the notice and file, the council will fix a time and place for hearing the appeal. The council will give the appellant not less than ten (10) days' prior written notice of the time and place of hearing the appealed matter. The council will hear and determine the appeal on the basis of the written statement and any additional evidence the council considers appropriate or relevant, including any information provided by the administrator. At the hearing, the appellant may present testimony and oral argument, personally or through legal counsel, and any additional evidence; provided, however, the rules of evidence as used by courts of law do not apply. The decision of the council is final and conclusive.

14. Facilities Location, Relocation, and Removal.

14.1 Location of Facilities. For any new construction of facilities concerning or impacting any new construction or development within City, a utility, with permission from City to occupy such right-of-way, will locate its facilities underground; provided, however, a utility will not be required to locate the facilities underground if all other utilities in the subject right-of-way are located aboveground. Whenever facilities and/or utility services are located and/or relocated underground within a particular right-of-way, each utility will relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the right-of-way. Notwithstanding anything contained in this Ordinance to the contrary, (a) a utility will not be permitted to place, erect, lay, maintain, and/or operate its facilities in, upon, over, and/or under any City park, trail, open space, and/or similar areas, and (b) City will have the authority to prescribe which right-of-way will be used by a utility for the facilities, and the location of the facilities within the right-of-way (whether such facilities are newly constructed, replaced, repaired, or otherwise). No person will locate and/or maintain facilities so as to unreasonably interfere with the use of the right-of-way by City, the general public, and/or by other persons authorized to use or be present in or upon the right-of-way. All use of right-of-way will be consistent with the laws, including, without limitation, this Ordinance, and all City codes, ordinances, public works standards, and/or regulations.

14.2 Relocation of Facilities. Except in the case of an emergency, within thirty (30) days after City's request, a utility will, at the utility's cost and expense, remove, relocate, change, and/or alter the position or location of any facilities within the right-of-way whenever City has determined that such removal, relocation, change, and/or alteration is necessary for any of the following reasons: (a) an emergency; (b) the construction, repair, installation, and/or maintenance of any City project or other public work or improvement; (c) the operations of City or other governmental entity in or upon the right-of-way requires the removal, relocation, change, and/or alteration of the facilities; (d) the removal, relocation, change, and/or alteration is necessary to ensure compliance or conformance with applicable law and/or pursuant to a beautification, streetscape, and/or other City improvement project; and/or (e) public convenience and/or necessity (as determined by City). If any moving and/or relocation work is done for or at the request of a private individual, entity, developer, or development, the costs of such moving or relocation work will be borne by the requesting private individual, entity, developer, or development. Nothing contained in this Ordinance will be construed in any way to prevent City from sewerage, grading, planking, rocking, paving, repairing, altering, and/or improving any right-of-way in and/or upon which facilities are or will be placed; provided, however, all such work and/or improvements will be done if possible so as not to obstruct and/or prevent the use of the facilities. If an emergency occurs, each utility will, at the utility's cost and expense, remove, relocate, change, and/or alter the position or location of any facilities within the right-of-way within seventy-two (72) hours after City's request. City acknowledges that an emergency relocation may result in temporary installation. The term "emergency" means a human created or natural event or circumstance that causes or threatens loss of life, injury to person or property, human suffering, or significant financial loss.

14.3 Moving Aerials. Notwithstanding anything contained in this Ordinance to the contrary, whenever it becomes necessary to temporarily rearrange, remove, lower, and/or raise any utility's aerial cables, wires, and/or other apparatus to permit the passage of any building, machinery, and/or other object moved over any right-of-way, the utility will perform such temporary adjustment within seven days after the utility's receipt of written notice from the owner or contractor-mover desiring to move such building, machinery, and/or other

object. Such move notice will (a) bear the approval of City, (b) detail the route of movement of the building, machinery, and/or object, (c) provide that the costs incurred by the utility in making the temporary adjustment will be borne by the contractor-mover, (d) provide that the contractor-mover will indemnify and hold the utility harmless for, from, and against any and all damages, claims, or causes of action whatsoever caused directly or indirectly from the temporary adjustment, and (e) if required by the utility, will be accompanied by cash deposit or a good and sufficient bond to pay any and all such costs as estimated by the utility.

14.4 Removal of Unauthorized Facilities. A license may authorize a utility to place one or more types of facilities on, over, and/or under City right-of-way. A licensee will not place on, over, and/or under City right-of-way any type of facilities not authorized by the license. Except in the case of an emergency, or as otherwise agreed to by City, within thirty (30) days following written notice from City, any person that owns, controls, and/or maintains any unauthorized utility system, facility, and/or related appurtenances within the right-of-way will remove such facilities or appurtenances from the right-of-way of City. A person may request that City permit such facilities to be abandoned in place subject to such terms and conditions City may prescribe. A utility system, facility, or appurtenance is unauthorized and subject to removal in any of the following circumstances:

(a) One year after the expiration or termination of the utility's applicable license, franchise, or permit. City may, in City's sole discretion, stay the one-year period if an application for renewal has been submitted to City.

(b) Upon abandonment of a facility within the right-of-way of City. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and/or authorized purpose for a period of ninety (90) days or longer unless a longer period is approved by City. Excess capacity intended for future use will not be considered abandoned. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced.

(c) If the system or facility was constructed or installed without the appropriate prior authority at the time of installation and such authority has not subsequently been granted.

(d) If the system or facility was constructed or installed at a location not permitted by license, franchise, or other legally sufficient permit and has not subsequently been authorized.

(e) If the system and/or facility is not removed or relocated as required by subsection 14.3.

14.5 Failure to Remove or Relocate. If facilities are not relocated or removed pursuant to subsection 14.2, 14.3, or 14.4, the administrator may declare the facility(ies) a nuisance. In addition to any other remedies provided herein, violation of any section of this Ordinance may be enforced in any manner authorized by law.

14.6 Damage to Licensee's Facilities. City will not be liable for any damage to or loss of any facility within the right-of-way as a result of and/or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the right-of-way by or on behalf of City, or pursuant to a permit issued by City, or for any consequential losses resulting directly or indirectly therefrom.

15. Construction; Installation; and Operation.

15.1 Facilities. Notwithstanding anything contained in this Ordinance to the contrary, each utility will construct facilities in a manner not to interfere with City's water mains, sewer mains, gas mains, and/or any other City use of the right-of-way. Facilities will be erected and located so not to unreasonably interfere with the public's use of the right-of-way. Each utility will maintain, at the utility's expense, all facilities in good and safe order and condition. City may attach and maintain traffic signals, wires, control boxes, and similar items or equipment to facilities; provided, however, City will not be required to pay a fee or rent for the co-location.

15.2 Construction Work. Except in the case of an emergency, no less than fifteen (15) days prior to a utility commencing (or causing any person to commence) any construction work within City, the utility will (a) obtain all necessary permits, approvals, and/or authorizations, including any construction permits and/or a permit issued by City pursuant City's right-of-way permitting ordinance, concerning the proposed construction work, if any, and (b) file with City maps, materials, documentation, a copy of the proposed work order, any necessary construction permits, and all other information or documentation required under applicable laws. City reserves the right to require utilities to obtain performance bonds in connection with any proposed construction. If the utility is required to perform any construction work due to the occurrence of an emergency, the utility will be required to comply with Section 15.2(a) and (b) as soon as practicable (but in no event later than five (5) days after the occurrence of the emergency). Each utility will conduct its operations and will perform all construction work, including, without limitation, any excavation or restoration work, in accordance with the following: (w) all construction work will be completed in a safe manner, taking into account all applicable traffic control rules and procedures; (x) all construction work will be completed so as to minimize disruption and interference of the right-of-way; (y) all construction work will be completed in accordance with this ordinance and applicable laws, including, without limitation, all City codes, ordinances, rules, and regulations applicable to City streets and/or construction, operation, and/or maintenance of utilities facilities in City; and (z) all construction work will be completed in a good workmanlike manner. City may inspect all construction work and may, in City's sole discretion, demand correction of any incomplete and/or improper construction work. To the extent that this Ordinance is not in conflict with and can be implemented consistent with the right-of-way permitting ordinance, the provisions of this Ordinance will apply to all construction and excavation by utilities in City.

15.3 Restoration of Property. If a utility disturbs and/or causes another to disturb any right-of-way, the utility will, at the utility's cost and expense, replace and/or restore the right-of-way to the same condition to which the right-of-way existed prior to the utility's disruption (and/or causing another to disturb), as soon as practicable and without unreasonable delay. If the utility fails to timely replace or restore any right-of-way to the same condition to which the right-of-way existed prior to the disruption, City may cause the replacement or restoration to be made at the expense of the utility. The utility will pay City all costs and expenses incurred by City to replace or restore the right-of-way immediately on City's demand.

15.4 Trimming of Trees and Shrubbery. Subject to the terms and conditions contained in this Ordinance, a utility will have the authority to trim or cut trees and other natural growth located in the right-of-way if necessary to satisfy applicable provisions of the National Electrical Safety Code and applicable state law. All cutting and trimming will be done at the utility's cost and expense. A licensee will trim or cut trees according to ANSI A300 Part 1, pruning standards, and in conformity with any City regulations as heretofore or hereafter adopted, promulgated, and/or established from time to time. Trees and shrubs will not be removed without City's prior written authorization. Except as required to satisfy the standards of the National Electrical Safety Code or applicable state law, each utility will adhere or perform the following: (a) the utility will not damage the roots of any tree by compacting or filling on or around its base or make excavations in the soil within a foot of the tree's roots unless appropriate measures are taken to prevent the exposed soil from drying out; (b) the utility will not top trees or shrubs (i.e., cut back limbs of a tree or shrub within the tree's or shrub's crown to such a degree as to remove the natural canopy and/or disfigure the tree or shrub); and/or (c) the utility will ensure that the root system of any live or dead tree, shrub, and/or other vegetation that is removed will be at a depth of not less than twelve inches (12") below the ground surface. After any excavation or grinding work, the ground will be restored to a smooth and level surface. Any required grinding of a stump will be completed contemporaneously with the removal of the tree or shrub. All "pruning" will be performed in a careful and systematic manner so as not to damage other parts of the plant or tree as a whole.

15.5 Permits and General Obligations. Notwithstanding anything contained in this Ordinance to the contrary, each utility will be responsible for obtaining, at its cost and expense, all permits, licenses, and/or other forms of approval or authorization necessary to construct, operate, maintain, and/or repair the utility's facilities, or any part thereof, prior to the commencement of any such activity.

16. Coordination of Construction Activities. Each utility is required to make a good faith effort to cooperate with City concerning any utility construction work. Prior to January 1 of each year, each licensee will provide City with a schedule of their proposed construction work and/or activities for the coming year in, around, and/or that may affect the right-of-way. When requested by City, each licensee will meet with City to schedule and coordinate construction work in the right-of-way subject to the provisions of this Ordinance. Subject to the provisions of this ordinance, all construction work, locations, activities, and schedules will be coordinated to minimize public inconvenience, disruption, and/or damages.

17. Regulatory Fees and Compensation Not a Tax; Jurisdiction.

17.1 City may set such fees as are necessary to implement the provisions of this Ordinance and to compensate City for the use of the right-of-way by resolution of the council. The regulatory fees, taxes, and costs provided for in this Ordinance, and any compensation charged and paid for the use of right-of-way, are separate from, and in addition to, all applicable federal, state, local, and City fees, taxes, and/or costs as may be levied, imposed, or due from a utility, its customers, and/or subscribers, for purposes other than the use of right-of-way. Notwithstanding anything contained in this Ordinance to the contrary, the fees provided in this Ordinance are (a) not a charge against property, (b) premised on the direct and indirect benefit derived from use of the right-of-way, and (c) not a property tax or subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution.

17.2 City has jurisdiction and exercises regulatory management over all right-of-way within City under authority of the City's charter, City's municipal code, and state law. City has jurisdiction and exercises regulatory management over each right-of-way notwithstanding (a) whether City has a fee, easement, or other legal interest in the right-of-way, and (b) whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, and/or other means. The exercise of jurisdiction and regulatory management of a right-of-way by City does not obligate City to maintain and/or repair any part of the right-of-way.

18. Insurance; Indemnification.

18.1 Insurance. Each licensee, at its cost and expense, will obtain and keep in full force and effect during the term of a license issued pursuant to this Ordinance, the following insurance coverage and their respective minimum limits: (a) workers' compensation insurance within statutory limits; (b) employer's liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (c) comprehensive general liability insurance with limits of not less than \$3,000,000 for bodily injury or death to each person, \$3,000,000 for property damage resulting from any one accident, and \$3,000,000 for all other types of liability; and (d) automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by licensee and its employees with a limit of \$1,000,000 for each person and \$3,000,000 for each accident. Each liability insurance policy a licensee is required to obtain and maintain under this Section 18.1 will name City and its officers, representatives, agents, and employees as additional insureds. A licensee will not cancel, modify, and/or reduce in amount or scope the insurance coverage required to be maintained under this Ordinance without first providing City thirty (30) days' prior written notice. All insurance required to be obtained and maintained under this Section 18.1 will be issued only by insurance companies licensed in Oregon. Prior to City's issuance of a license, and at any other time thereafter within thirty (30) days after City's written request, a licensee will provide City with certificates of insurance evidencing the utility's compliance with this Section 18.1. Notwithstanding anything contained in this Ordinance to the contrary, each licensee will acknowledge and agree that upon written notice to each licensee, City may increase the minimum insurance limits as then may be allowed under applicable laws.

18.2 Indemnification. Each licensee will defend, indemnify, and hold City, and each employee, officer, agent, and representative of City, harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, losses, and expenses, including, without limitation, reasonable attorney fees, resulting from or arising out of the following: (a) the acts or omissions of the licensee and/or its affiliates, officers,

directors, shareholders, members, administrators, employees, agents, contractors, and/or subcontractors in the construction, operation, maintenance, repair, and/or removal of the facilities in the right-of-way and/or in providing or offering services over, under, and/or through the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance; and/or (b) a licensee's breach and/or failure to perform any licensee representation, warranty, covenant, and/or obligation under this Ordinance.

19. Miscellaneous.

19.1 Severability; Preemption. If any section, subsection, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason 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 the Ordinance will not be affected thereby but will be deemed as a separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Ordinance will be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision will be read to be preempted only to the extent required by law. In the event such federal or state law, rules or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision will thereupon return to full force and effect, and will thereafter be binding, without the requirement of further action on the part of City.

19.2 Governing Law; Venue. This Ordinance and any license issued pursuant to this Ordinance is subject to all applicable laws. Any action or proceeding arising out of or concerning this Ordinance will be litigated in courts located in Jackson County, Oregon. Each licensee consents and submits to the jurisdiction of any local, state, or federal court located in Jackson County, Oregon.

19.3 Written License or Permit; Nonexclusive Grant. No license will be granted under this Ordinance unless the license is in writing. No license granted under this Ordinance will confer any exclusive right, privilege, franchise, and/or permission to occupy or use the right-of-way for delivery of utility services or any other purposes. City expressly reserves the right to grant licenses, franchises, permits, and/or other rights to other persons, as well as City's right to use the right-of-way, for similar or different purposes.

19.4 Enforcement; Remedies. Any person violating any provision of this Ordinance will be subject to a civil penalty not to exceed the sum of \$1,000.00 for each violation. Each violation of a provision of this Ordinance, and every day that such Ordinance violation exists, will be considered a separate violation. In addition to the foregoing civil penalties, City may seek, in a court of competent jurisdiction, such other and additional relief (including all legal and equitable relief and remedies) available under applicable law as well as recovery of its costs and attorney fees. City will be entitled to collect from any person violating or otherwise failing to comply with this Ordinance City's reasonable attorney fees and other fees, costs, and expenses incurred by city to enforce this Ordinance. The remedies provided in this Section 19.4 are not exclusive and will not prevent City from exercising any other rights and/or remedies available under law. Compliance with this Ordinance will in no way be a substitute for or eliminate the necessity of compliance with the Laws including any relating to the public health as now in force or hereafter amended.

19.5 Interpretation; Termination. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The words "include," "includes," and "including" are not limiting. The word "or" is not exclusive. Reference to "days" means calendar days, with any deadline falling on a day other than a business day being extended to the next business day. This Ordinance may be corrected by order of the council to cure editorial and/or clerical errors.

APPROVED AND ADOPTED by the City Council of the City of Shady Cove and signed by the Mayor this 24 day of July, 2025.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

By: Lena Richardson, Mayor

ATTEST:

Michele Parry, City Administrator

RESOLUTION NO. 25-14

A RESOLUTION ESTABLISHING APPLICATION AND LICENSE FEES FOR UTILITIES OPERATING IN THE CITY OF SHADY COVE PUBLIC RIGHTS-OF-WAY.

WHEREAS, on July 24, 2025, the City of Shady Cove, an Oregon municipal corporation (“City”), adopted Ordinance No. 25-14, (the “Ordinance”), pursuant to which City established a utility license for all utility provides located within City’s public rights-of-way; and

WHEREAS, Sections 7 and 12.1 of the Ordinance provide that the City Council (the “Council”) will prescribe the amounts of the initial license application fee and license renewal, amendment, and transfer application fees, respectively, from time to time by Council resolution; and

WHEREAS, Sections 10.1 and 10.3 of the Ordinance provide that the Council will determine the license fee and the privilege tax, respectively, from time to time by Council resolution; and

WHEREAS, Section 10.4 of the Ordinance provides that the Council will establish a late payment charge by Council resolution; and

WHEREAS, Section 17 of the Ordinances provides that the Council will set such fees as are necessary to implement the provisions of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by and through the Council meeting in regular session, the following:

1. The above-stated findings contained in this Resolution No. 25-14 (this “Resolution”) are hereby adopted.
2. Pursuant to Section 7 of the Ordinance, the Council establishes an initial utility license application fee of \$250.00.
3. Pursuant to Section 12.1 of the Ordinance, the Council establishes a utility license renewal application fee of \$150.00, a utility license and an amended application fee of \$150.00.
4. Pursuant to Section 10.4 of the Ordinance, the late payment charge is \$75.00.
5. Pursuant to Section 10.2 of the Ordinance, the Council establishes the following utility license fees:

Utilities	7% of gross revenues
Transmission Line	\$2.50 per lineal foot of transmission line within the public right-of-way per year (for line that uses public rights-of-way but whose primary purpose is not to serve customers within City)

5. Pursuant to Section 10.3 of the Ordinance, the Council establishes the following privilege tax rate:

Privilege Tax	The applicable amount described above or, if none are applicable, 7% of gross revenues for
	utility operations in City (for utility operating without a license)

6. Pursuant to Section 10.4 of the Ordinance, the Council establishes a late payment charge of \$75.00.

7. The provisions of this Resolution are severable. Unless the context requires otherwise, terms contained in this Resolution that are defined in the Ordinance have the meanings assigned to them in the Ordinance. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Resolution. This Resolution will be in full force and effect on July 24, 2025.

APPROVED AND ADOPTED by the City Council on July 24, 2025.

Lena Richardson, Mayor

ATTEST:

Michele Parry, City Administrator