



CITY COUNCIL AGENDA
March 13, 2017, 6:30PM
Regular Meeting
 CITY COUNCIL CHAMBERS, CITY HALL
 29592 ELLENSBURG AVE
 GOLD BEACH OR 97444

NOTE: The City of Gold Beach City Council will meet in executive session immediately following the regular meeting pursuant to ORS 192.660 (2)(e) to conduct deliberations with staff designated to negotiate real property transactions.

Call to order: Time: _____

1. **The pledge of allegiance**
2. **Roll Call:**

	Present	Absent
Mayor Karl Popoff		
Council Position #1 Melinda McVey		
Council Position #2 Larry Brennan		
Council Position #3 Becky Campbell		
STARTING VOTE		
Council Position #4 Doug Brand		
Council Position #5 Tamie Kaufman		
City Administrator Jodi Fritts		
Student Liaison VACANT		

3. **Special Orders of Business:**
 NONE SCHEDULED

4. **Consent Calendar:**
 TRANSCRIPTIONS – July 2016 and February 2017 regular meetings
 NOTE: due to size transcripts sent in separate file

5. **Citizens Comments**
 As presented to the Mayor at the beginning of the meeting

6. **Public Hearing**
 - a. Ordinance No. 663 Use & Occupation of Public Right of Way

7. **Citizen Requested Agenda Items**
 - a. Lindy Mcclean from Coastline Neighbors

The City of Gold Beach is dedicated to enhancing quality of life, while promoting health, safety, and welfare of our citizens, businesses, and visitors in the most fiscally responsible manner. In doing this, the City will respect the past, respond to current concerns, and plan for the future, while maintaining environmental sensitivity in our beach oriented community

8. Public Contracts and Purchasing

NONE SCHEDULED

9. Ordinances & Resolutions

- a. First Reading Ordinance No. 663 - Use & Occupation of the Public Right of Way and Establishing an Application Process, Fee, and Terms of Such Use

10. Miscellaneous Items (including policy discussions and determinations)

- a. Library Community Building Project and UR Plan
- b. Discussion Request by Councilor Campbell regarding County support request
- c. Request by local restauranteurs to restrict chain restaurants within the City
- d. Continued Discussion on FOG loan compliance program

11. City Administrator's Report

To be presented at the meeting

12. Mayor and Council Member Comments

- a. Mayor Karl Popoff
- b. Councilors
 - 1) Melinda McVey
 - 2) Larry Brennan
 - 3) Becky Campbell
 - 4) Doug Brand
 - 5) Tamie Kaufman
- c. Student Liaison, Vacant

13. Citizens Comments

As permitted by the Mayor

14. Executive Session

The City of Gold Beach City Council will meet in executive session immediately following the regular meeting pursuant to ORS 192.660 (2)(e) to conduct deliberations with staff designated to negotiate real property transactions.

The next regularly scheduled City Council meeting is **Monday, April 10, 2017, at 6:30PM** in the Council Chambers of City Hall, 29592 Ellensburg Avenue, Gold Beach, Oregon.

15. Adjourn Time: _____

The City of Gold Beach is dedicated to enhancing quality of life, while promoting health, safety, and welfare of our citizens, businesses, and visitors in the most fiscally responsible manner. In doing this, the City will respect the past, respond to current concerns, and plan for the future, while maintaining environmental sensitivity in our beach oriented community



CONSENT CALENDAR

(Meeting transcripts sent in separate email)



PUBLIC HEARING



SECTION 6. Public Hearing

GOLD BEACH CITY COUNCIL AGENDA REPORT

Agenda Item No.

6 a.

Council Meeting Date: March 13, 2017

TITLE: Public Hearing on Ordinance No. 663-Use & Occupation of Public Right-of-way and establishing an application process, fees, and terms of such use

SUMMARY AND BACKGROUND:

We had the first public hearing on this proposed ordinance in January. At that time we had received no testimony either prior to or at the meeting. After initial review there were some specific questions the Council asked me to consult with the attorney on. I have discussed those points with our Legal Counsel, Christy Monson, and she has some changes to the original document. The draft ordinance attached to this report incorporates those changes. Ms. Monson will be on the phone this evening to answer any additional questions the Council may have. I have put the first reading of the ordinance in the Ordinance & Resolutions section of the agenda. If the Council is satisfied with the proposed changes after discussing with legal counsel we can proceed with that first reading, otherwise we can skip it when we get to that section of the agenda.

Since the January meeting written testimony was received from Robin Smith from Charter. I have attached her letter and our below is our response in consultation with Ms. Monson.

NEEDED ACTION:

This is another public hearing on the proposed ordinance. Legal Counsel (Christy Monson) will be on the phone for the hearing portion and can direct the Council on how to proceed after the hearing. The final attorney reviewed draft is included in the Ordinance & Resolution section if the Council wishes to proceed with the first reading tonight.



SECTION 6. Public Hearing

RESPONSE TO SMITH:

Thank you for your comments on proposed Ordinance no. 663. I'll make sure that the City Councilors review your correspondence as part of their consideration process. We'll also notify you if and when the ordinance is scheduled to be heard. Below I address your questions.

Is it the City's goal to manage right-of-way usage and recover its costs, or something more? The City's goal is to manage and protect its right-of-way, which is a valuable public asset. It is important to understand that without City right-of-way, private companies like yours would not be able to reach your end users without having to pay for easements through private property. We want to work hand and hand with Charter so that our residents have access to modern day technology and cable. In order to do so, we have to protect and manage the right-of-way from crowding, improper construction, improper repairs and unauthorized use. Streets are one of a city's most valued property and a big part of our expenses. Your franchise fee does not come near to covering our costs for street and ROW maintenance. Further, it's important to remember that the right-of-way is publicly- owned property. As responsible city managers, we are legally prohibited from allowing private businesses to profit from their use of publicly-owned property without seeking compensation for that use.

What affect, if any, does the City believe the Ordinance will have on the parties' ongoing franchise renewal discussions under Section 626 of the Cable Act? The City will continue its good faith negotiations for a franchise agreement with Charter in compliance with federal, state and city law. The ordinance will ensure that we treat similar providers similarly and will establish uniform process for routine municipal functions such as: evaluating franchise applications, monitoring construction practices, issuing permits.

How does the City envision the ordinance applying to an entity like Charter who already has franchise authority to access the right-of-way and already fully compensates the City for use of the right-of-way by paying the maximum 5% cable franchise fee? I believe that your franchise authority has expired and the City is negotiating in good faith with you to establish a new franchise agreement. The City recognizes that you already pay a maximum 5% cable franchise fee for your cable services. However, can you please clarify if you are providing other services besides cable within the City?

Does the City intend for Charter to register and apply for separate franchises and pay separate franchise fees for its cable, voice and internet services or any other advance communication service Charter might decide to offer over its cable system in the future? If adopted, the Telecommunications Ordinance would require a minimal registration process and would require Charter to enter into a franchise agreement for all the services you provide.



SECTION 6. Public Hearing

THE FOLLOWING IS A REPRINT OF PRIOR COUNCIL REPORT(S) FOR ADDITIONAL BACKGROUND

From January Council Report:

I apologize for this draft taking such a long time to come to you. In the past year we have had 2 executive sessions on this matter and the Council directed me at the last one to work with legal counsel on a draft ROW Ordinance. There has been other higher priority ordinances that we needed to deal with in the meantime (marijuana, zoning code amendments, and regular code amendments) so this one has been somewhat on the back burner.

I gave you a large binder last February related to this topic. If you need me to provide that information again just let me know. Otherwise we will proceed with review of the draft the attorney provided. The model ROW ordinance that is the base of this draft was provided in the big binder last year.

Pursuant to your direction from the previous executive session, I have worked with Public Works Superintendent, Will Newdall, and our legal counsel on this matter, Christy Monson, off and on for the past year to iron out the provisions specific to our ordinance. I realize it's a meaty ordinance, but we have discussed the topic twice previously. If you have questions about specific provisions within the ordinance that I can't answer at the meeting we can have Ms. Monson available for our February meeting to answer those questions. Keep in mind thought that the ordinance before you is not significantly different from the one we discussed with legal counsel last year.



January 24, 2017

Ms. Jodi Fritts-Matthey
City Administrator
City of Gold Beach
29592 Ellensburg Ave.
Gold Beach, OR 97444

Re: Proposed Right-of-Way/Utility License Ordinance

Dear Ms. Fritts-Matthey:

Thank you for giving Charter Communications ("Charter") the opportunity to comment on the City's proposed Ordinance No. 663 establishing, amongst other things, an application process, fees, and terms for the use of the City's public rights-of-way. Before offering line-by-line suggestions or a proposed mark-up of the Ordinance, we first want to make sure we understand the City's goals and how it envisions the Ordinance working with Charter's existing contractual right to occupy the right-of-way and its federal rights under the Cable Act. To that end, we identify below several items for clarification and discussion we believe will help the City and Charter work together toward a mutually satisfactory result.

1. Is the City's goal to manage right-of-way users and recover its costs, or something more?
2. What effect, if any, does the City believe the Ordinance will have on the parties' ongoing franchise renewal discussions under Section 626 of the Cable Act? The process and terms of Charter's federal renewal rights are well established. Charter is willing to work with the City to ensure the Ordinance is compatible with those rights.
3. How does the City envision the Ordinance applying to an entity like Charter who already has franchise authority to access the right-of-way, and already fully compensates the City for its use of the right-of-way by paying the maximum 5% cable franchise fee?
4. Does the City intend for Charter to register, apply for separate franchises, and pay separate franchise fees for each of its cable, voice, and Internet services, or any other advanced communications service Charter might decide to offer over its cable system in the future?

There are a few overarching principles that the City should consider as it addresses the issues raised above and considers whether to proceed with adopting the Ordinance:

First, adopting separate fee requirements on each of Charter's services would impose a significant new tax upon City residents. This is because the Ordinance, if adopted, would dramatically increase the amounts the City's residents must pay to receive important communications services, including broadband. Any fees imposed upon Charter would be passed through to Charter's customers as line-items on their bills—as is already the case with franchise fees paid on Charter's cable service.

Second, Charter's cable and non-cable services use the same Cable System facilities in the City's rights-of-way, and its provision of non-cable services imposes no additional burden or cost on the City or its

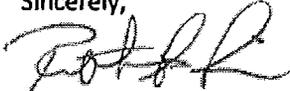
residents. Charter's Cable System should be subject to a single set of requirements under a negotiated Cable Franchise Agreement. Requiring Charter to operate its Cable System under a negotiated Cable Franchise Agreement (per Sections 29 and 51) while also complying with multiple additional, and potentially inconsistent, franchises granted under the Ordinance for its other services (per Section 30 and 37(B)) would create unworkable practical problems (not to mention serious legal ones).

Third, any additional fee requirements imposed by the Ordinance would far exceed the amounts needed to recover the City's regulatory costs associated with administering Charter's use of the rights-of-way, which are fully compensated by the 5% franchise fee. The additional fee requirements also would violate state and federal law.

Finally, the City should consider whether the Ordinance's terms are consistent with broader policy goals of supporting broadband deployment and adoption in the City. The imposition of new and additional fees on customers would discourage—not encourage—the adoption and deployment of advanced broadband services to its residents.

We look forward to working with the City to better understand the City's goals, and to ensure the Ordinance meets those goals in a manner that accommodates Charter's federal, state, and local rights and minimizes the burdens on Charter's customers.

Sincerely,



Robin Smith
Senior Manager of Government Affairs
Charter Communications

ORDINANCE NO. 663

**AN ORDINANCE GOVERNING THE USE AND OCCUPATION OF THE PUBLIC RIGHT OF WAY
AND ESTABLISHING AN APPLICATION PROCESS, FEES, AND TERMS FOR SUCH USE**

Section 1. Short Title. This Ordinance shall be referred to as the “Right of Way Management Ordinance.”

Section 2. Jurisdiction and Management of the Public Rights of Way.

- A. The City has jurisdiction and exercises regulatory management authority over all City Public Rights of Way pursuant to the City Charter and State law. The City’s purpose for exerting its management authority over the Public Rights of Way is to protect and efficiently manage the public’s resources and to ensure fair and non-discriminatory access to the Public Right of Way.
- 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. The City has jurisdiction and regulatory management of each Right of Way whether the legal interest in the Right of Way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. No Person may occupy or encroach on a Public Right of Way without the permission of the City. The City grants permission to use Rights of Way through Franchise Agreements and Construction permits.
- D. 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.
- E. The City retains the right and privilege to cut or move any Facilities located within the Public Rights of Way as the City may determine to be necessary, appropriate or useful in response to a public health or safety Emergency.
- D. This exercise of jurisdiction and regulatory management of the City’s Right of Way is a generally-applicable Ordinance affecting all users and occupiers of the Right of Way.**
- E. The City retains the right and privilege to cut or move any Facilities located within the Public Rights of Way as the City may determine to be necessary, appropriate or useful in response to a public health or safety Emergency.**

- F. The City desires champion the ready-availability of Communication, Cable, or Utility services for all its residential and commercial citizens by providing infrastructure and amenities that make Garibaldi a better place to do business. The City is committed to authorizing the private access and use of the Public Right of Ways for such services so long as such use is consistent with and does not unduly burden or interfere with the principal purpose of the Public Ways, which is to facilitate the free transit of Persons and goods in commerce.
- G. The City holds the public health, safety, and welfare, as well as such physical assets such as the Public Right of Way, in trust for all of its citizens. The City has a fiduciary responsibility to assure that any use of City resources, especially its Public Ways, benefits all of the citizens and, where it is deemed appropriate, allows for the recovery of a fair and reasonable compensation from private entities using public resources.
- H. If Communications, Cable or Utility Providers make “percentage of gross revenue” payments which include only portion of the Services they provide within the City, then they are not compensating the City fairly for their private use and enjoyment of public assets and resources. Such Providers may derive an unfair advantage. Unfair competition does not foster the City’s desired technological and business growth. Among the purposes of this chapter is not only to ensure that the public is properly compensated for the private use of City resources, but also to ensure that all similarly-situated Providers are treated similarly and fairly in order to foster technological growth and innovation.

Section 3. Regulatory Fees and Compensation Not a Tax.

- A. The fees and costs addressed in this Ordinance, and any compensation charged and paid for regarding the use of the Public Rights of Way addressed in this Ordinance, are separate from and in addition to any and all other federal, State, local, and City fees, taxes, or charges as may be levied, imposed, or due from a Provider, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of Services.
- B. The City has determined that any fee provided for by this Ordinance 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 Ordinance are subject to applicable federal and State laws.

DEFINITIONS

Section 4. Definitions. For the purpose of this Ordinance 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. Words not defined herein shall be given the meaning set forth in the Communications Act of 1934, as amended, the Cable Act, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act. If not defined there, the words shall be given their common and ordinary meaning.

Cable Act - shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, *et seq.*

Cable Service - is to be interpreted consistent with federal law and means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, required for the selection or use of such video programming or other programming service.

Cable Service Provider - means a Person providing Cable Services.

City - means the City of Gold Beach, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.

City Council - means the elected governing body of the City of Gold Beach, Oregon.

Control - means actual working control in whatever manner exercised.

City Property - means and includes all real property owned by the City and all property held in a proprietary capacity by the City but does not include Public Rights of Way and Utility Easements as defined herein.

Communications Facilities or Facilities - means all plant, equipment and systems, other than customer premises equipment, used by any Communications Provider. For the purposes of this Ordinance, Facilities used by Cable Service Providers to provide Cable Service are Communications Facilities.

Communications Provider or Provider - means any provider of Communications Services and includes, but is not limited to: every Person who directly or indirectly owns, controls, operates or manages Communications Facilities within the City..

Communications Service(s) or Service(s) - any Service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without

regard to the transmission protocol employed, whether or not the transmission medium is owned by the Provider itself and whether or not the transmission medium is wireline. Communications Services includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) open video system service, as defined in 47 C.F.R. 76; (2) private Communications System services provided without using the Public Rights of Way; (3) 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 (4) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

Conduit - means any structure, or portion thereof, containing one or more Ducts, Conduits, manholes, bolts, cables, fiber, or other infrastructure used by or for any telegraph, telephone, electrical utility, conductors, or Cable Service.

Construction - means any activity in the Public Rights of Way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing Facilities.

Days - means calendar Days unless otherwise specified.

Duct - means a single enclosed raceway for conductors or cable.

Emergency - has the meaning provided for in ORS 401.025.

Facilities – means the plant, equipment and property, including but not limited to poles, pipes, mains, Conduits, Ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the Public Right of Way of the City which is used or proposed to be used for the purpose of providing Services.

Federal Communications Commission - means the federal administrative agency, or its lawful successor, authorized to regulate and oversee Communications or Cable Service Providers on a national level.

Franchise or Franchise Agreement - means an agreement between the City and a Provider which grants a privilege to the Provider to use Public Right of Way within the City for a limited, dedicated purpose and in return for specific compensation.

Franchisee – means a Provider who is a non-breaching party to a valid, unexpired Franchise Agreement with the City.

OPUC - means the statutorily created State agency in the State of Oregon responsible for licensing and regulation of certain Communications Providers as set forth in Oregon law, or its lawful successor.

Overhead Facilities - means utility poles and Facilities above the surface of the ground, including the underground supports and foundations for such Facilities.

Person - means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

Private Communications 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 which is owned or operated exclusively by a Person for their own use and not for resale, directly or indirectly. "Private communications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

Provider – means any Person using the Public Rights of Way to provide Cable Services, Communications Services, or Utility Services, whether such Services are provided within the City or to areas outside of the City using the Public Rights of Way.

Public Rights of Way or Right of Way - include, but are not limited to: City streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and other public ways generally open to travel, including the subsurface under and air space over these ways; but does not include parks, parkland or other City Property not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest or authority to grant a Franchise to occupy and use such areas for Facilities. “Public Rights of Way or Right of Way” shall also include Utility Easements as defined below.

Right of Way Use Fee- means the fee imposed upon a Provider for its occupation of or use of the City’s Public Right of Way without a valid Franchise Agreement which imposes a Franchise Fee.

Services – means Cable Services, Communications Services, and Utility Services as defined herein.

State - means the State of Oregon.

Telecommunications Act - means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*

Underground Facilities - means Facilities located under the surface of the ground, but does not include underground foundations or supports for "Overhead Facilities."

Utility Easement - means any easement granted to or owned by the City and acquired, established, dedicated, or devoted for public utility purposes. “Utility Easement” does not

include any easement dedicated solely for City use or Facilities or any easement where the proposed use is inconsistent with the terms and conditions of the easement granted to or owned by the City.

Utility Services - is to be interpreted consistently with state law and means any service for the transmission, generation, supply or distribution of electric energy, gas, or water or other similar service.

Utility Service Provider(s) - A Utility Service Provider means a Person providing Utility Services.

REGISTRATION OF PROVIDERS

Section 5. Purpose. The purpose of registration is:

- A. To assure that all Providers who have Facilities within the City and/or who provide Services within the City using the Public Right of Way comply with the ordinances, rules and regulations of the City.
- B. To provide the City with accurate and current information concerning Providers who offer Services within the City or who own or operate Facilities within the City.
- C. To assist the City in the enforcement of this Ordinance, **the management and caretaking of the Public Right of Way** and the collection of any City Franchise Fees or Right of Way Use Fees or charges.

Section 6. Registration Required.

- A. Unless exempted, all Providers who own, operate or use Facilities within the City's Public Right of Way and all Providers who provide Services to any customer within the City, shall register with the City, on a form provided by the City, within forty-five (45) Days of the effective date of this Ordinance. Any prospective Providers who want to install or use Facilities within the City's Public Right of Way or want to provide Services within the City after the effective date of this Ordinance shall register with the City, on a form provided by the City, prior to installing Facilities or providing Services.
- B. Unless exempted in this Section 6, after registering with the City pursuant to subsection 6.A of this Section, the Provider shall, by December 31st of each year, file with the City a new registration form if it intends to maintain Facilities or provide Services at any time in the following calendar year.

- C. In lieu of filing the City's registration form, a Provider may submit to the City a copy of the its application and approved license from either: a) the Oregon Public Utility Commission (PUC); or b) the Federal Communications Commission. To the extent not included in the application and license materials submitted pursuant to this subsection 6.C, registrants also shall provide the following information:
1. The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information.
 2. The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an Emergency.
 3. A description of the registrant's existing or proposed Facilities within the City, a description of the Facilities that the registrant intends to construct, and a description of the Service that the registrant intends to offer or provide to Persons, firms, businesses, or institutions within the City.
 4. Information sufficient to determine whether the transmission, origination or receipt of the services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to the City's business license requirements, if applicable. A copy of the business license or the license number must be provided.

Section 7. Exceptions to Registration. The following Providers and Facilities are exempted from the registration requirements in subsections 6A and 6B of this Ordinance **as more specifically detailed below:**

- A. Facilities owned and operated exclusively by the State or a political subdivision of this State, for their own use.
- B. A Private Communications Network, provided in a manner that does not occupy any Public Rights of Way.
- C. Providers who file an initial registration pursuant to subsection 6.A on or after September 30th shall not be required to file an annual registration until December 31st of the following year.
- D. **Providers who are a non-breaching party to an unexpired Franchise Agreement with the City shall not be required to file an annual registration during the term of the Franchise Agreement.**

CONSTRUCTION STANDARDS

Section 9. General. No Person shall commence or continue with the Construction, installation or operation of Facilities within a Public Right of Way except as provided in Sections 12 through 28, and in compliance with all applicable City and State codes, rules, and regulations.

Section 10. Construction Codes. 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.

Section 11. Facility Permit Requests. Except in the event of an emergency, no Person shall construct or install any Facilities within a Public Right of Way without first obtaining a Facility permit from the Public Works Superintendent and paying the Facility permit fee as established by Council resolution. In addition to the Facility Permit fee, the applicant may be subject to costs incurred by the City for review of the applicant's permit. No permit shall be issued for the Construction or installation of Facilities within a Public Right of Way unless:

- A. The requestor has first filed a registration form with the City as required by Sections 5 through 8 of this Ordinance; and
- B. The requestor has applied for and received a Franchise pursuant to Sections 29 through 45 of this Ordinance.

In the event of an emergency and in compliance with City Code, a permittee or its contractor may perform work on its Facilities to address the emergency without first obtaining a permit from the City provided it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City and pays any applicable permit fee as soon as reasonably practicable. As used in this Section 11, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning Facilities is necessary to restore lost service or prevent immediate harm to Persons or property.

Section 12. Facility Permits. Requests for permits to construct Facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

- A. That the Facilities will be constructed in accordance with all Federal, State, and City applicable codes, rules and regulations.

- B. That the Facilities will be constructed in accordance with any applicable Franchise Agreement.
- C. The location and route of all Facilities to be installed aboveground or on existing utility poles.
- D. The location and route of all Facilities on or in the Public Rights of Way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route within the City. Existing Facilities shall be differentiated on the plans from new Construction. If requested, a cross section shall be provided showing new or existing Facilities in relation to the street, curb, sidewalk or Right of Way.
- E. The Construction methods to be employed for protection of existing structures, fixtures, and Facilities within or adjacent to the Public Rights of Way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

Section 13. Verification. All Construction permit requests shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative affirming that the drawings, plans and specifications submitted comply with applicable technical codes, rules and regulations.

Section 14. Construction Schedule. All Facility permit applications shall be accompanied by a written Construction schedule, which shall include an estimated date for completion of Construction. The Construction schedule is subject to approval by the Public Works Director.

Section 15. Facility Permit Fee. Unless otherwise provided in an unexpired Franchise Agreement, prior to issuance of a Facility permit, the requestor shall pay a permit fee in an amount to established by Council resolution. Such fee shall be designed to defray the costs of City administration of the requirements of this Ordinance.

Section 16. Issuance of Permit. If satisfied that the plans and documents submitted comply with all requirements of this Ordinance and with any applicable Franchise Agreement, the Public Works Director shall issue a permit authorizing Construction of the Facilities, subject to such further conditions affecting the time, place and manner of performing the work.

Section 17. Notice of Construction. Except in the case of an Emergency, the permittee shall notify the Public Works Director not less than two (2) working Days in advance of any excavation or Construction in the Public Rights of Way.

Section 18. Compliance with Permit. All Construction practices and activities shall be in accordance with the permit and the approved final plans and specifications for the Facilities. The Public Works Director and representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

Section 19. Noncomplying Work. Subject to the notice requirements in Section 27, all work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Ordinance, shall be removed at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with the provision of this Ordinance.

Section 20. Completion of Construction. The permittee shall promptly complete all Construction activities so as to minimize disruption of the Public Rights of Way and other public and private property. All Construction work within Public Rights of Way, including restoration, must be completed within one hundred twenty (120) Days of the date of issuance of the Construction permit unless an extension or an alternate schedule has been approved by the appropriate City official.

Section 21. As-Built Drawings. Unless otherwise provided in an unexpired Franchise Agreement, if requested by the City, the permittee shall furnish the City with up to two (2) complete sets of plans drawn to scale and accurately depicting the location of all Facilities constructed pursuant to the permit. These plans shall be submitted to the City Engineer or designee within sixty (60) Days after completion of Construction, in a format acceptable to the City.

Section 22. Restoration of Public Rights of Way and City Property.

- A. When a permittee, or any Person acting on its behalf, does any work in or affecting any Public Rights of Way or City Property, it shall at its own expense promptly restore such ways or property to as good an order and condition as existed prior to the work, unless otherwise directed by the City.
- B. If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore the affected Rights of Way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. If the permittee fails to restore Rights of Way or property to good order and condition, the City shall give the permittee written notice and provide the permittee

a reasonable period of time not exceeding thirty (30) Days to restore the Rights of Way or property. If, after notice, the permittee fails to restore the Rights of Way or property to as good an order and condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.

- D. A permittee or other Person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle or property by reason of such work in or affecting such Rights of Way or property.

Section 23. Performance and Completion Bond. Unless otherwise provided in an unexpired Franchise Agreement, a performance bond or other form of surety acceptable to the City equal to at least 100% of the estimated total cost of Constructing permittee's Facilities within the Public Rights of Way of the City shall be provided to the City before Construction is commenced.

- A. Unless otherwise provided in an unexpired Franchise Agreement, the surety shall remain in force until sixty (60) Days after substantial completion of the work, as determined in writing by the City, including restoration of Public Rights of Way and other property affected by the Construction.
- B. Unless otherwise provided in an unexpired Franchise Agreement, the surety shall guarantee, to the satisfaction of the City:
 - 1. Timely completion of Construction;
 - 2. Construction in compliance with applicable plans, permits, technical codes and standards;
 - 3. Proper location of the Facilities as specified by the City;
 - 4. Restoration of the Public Rights of Way and other property affected by the Construction; and
 - 5. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

LOCATION OF FACILITIES

Section 24. Location of Facilities. All Facilities located within the Public Right of Way shall be constructed, installed and located in accordance with the terms of the Construction permit and approved final plans and specifications for the Facilities, and all applicable City codes, rules and regulations. Whenever any existing electric utilities or Facilities are within a Public Right of Way and are required to be located underground by City Code, a Provider occupying or proposing to occupy the same Public Right of Way must also locate its Facilities underground at its own expense.

Section 25. Interference with the Public Rights of Way. No Provider may locate or maintain its Facilities so as to interfere with the City's use of the Public Rights of Way or to unreasonably interfere with use by the general public or by other Persons authorized to use or occupy the Public Rights of Way. All use of Public Rights of Way shall be consistent with City codes, ordinances and regulations.

Section 26. Relocation or Removal of Facilities.

- A. A Provider shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any Facilities within the Public Rights of Way, including relocation of aerial Facilities underground, when requested to do so in writing by the City.
- B. Nothing in this Section 26 shall be deemed to preclude a Provider from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the Provider shall timely comply with the requirements of this Section 26 regardless of whether or not it has requested or received such reimbursement or compensation.
- C. Unless due to an emergency, the City shall provide at least ~~forty-five (45) days~~ written notice of the time by which the Provider must remove, relocate, change, alter or underground its Facilities. The City may grant extensions upon the Provider's request. If a Provider fails to remove, relocate, alter or underground any Facility as requested by the City and by the date established by the City, the Provider shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays. Upon such failure, the City may cause the Facility to be removed, relocated, altered or undergrounded at the Provider's sole expense and shall use qualified personnel or contractors consistent with applicable State and federal safety laws and regulations. Upon receipt of a detailed invoice from the City, the Provider shall reimburse the City for the costs the City incurred within thirty (30) Days.

Section 27. Removal of Unauthorized Facilities. Unless otherwise provided in an unexpired Franchise Agreement, within forty-five (45) Days following written notice from the City or at a later date agreed upon by the parties, any Provider or other Person who owns, controls or maintains any unauthorized system, Facility, or related appurtenances within the Public Rights of Way shall, at its own expense, remove such system, Facilities and/or appurtenances from the City Public Rights of Way. A system, Facility, or appurtenance is subject to removal under this Section in the following circumstances:

- A. One (1) year after the expiration or termination of the Provider's Franchise Agreement, unless the City has provided written authorization for abandonment in place.
- B. Upon abandonment of a Facility within the Public Rights of Way. A Facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety (90) Days or longer. 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. The City shall contact the Provider before concluding that a Facility is abandoned. A Facility may be abandoned in place and not removed if the City authorizes such abandonment and non-removal in writing and there is no apparent risk to the public safety, health, or welfare.
- C. If the Facility was Constructed or installed without the appropriate prior authority at the time of Construction or installation.
- D. If the Facility was Constructed or installed at a location not authorized by the Provider's Franchise or other legally sufficient permit.

Section 28. Coordination of Construction Activities. A Provider is required to make a good faith effort to cooperate with the City.

- A. By January 1 of each year, a Provider shall provide the City with a schedule of their known proposed Construction activities in or near the Public Rights of Way or affecting the Right of Way.
- B. If requested by the City, a Provider shall meet with the City to schedule and coordinate Construction in the Public Rights of Way.
- C. All Construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

FRANCHISE AGREEMENTS REQUIRED

Section 29. Registration, Franchise Application and Franchise Agreement Required.

- A. Prior to occupying City Public Rights of Way, all Providers shall register with the City pursuant to Section 6, shall file a Franchise Application with the City pursuant to Section 30 below, and shall enter into a Franchise Agreement with the City.
- B. **Multiple Franchises Not Required. Notwithstanding anything to the contrary in this Ordinance, a Provider who is a non-breaching party to an unexpired Franchise Agreement for a Service it provides within the City shall not be required to enter into multiple or different Franchise Agreements for its provision of a different Service within the City as long as the Provider has registered all its Services with the City pursuant to Section 6 of this Ordinance. Further, nothing in this subsection waives a Provider's duty to pay Franchise Fees or Right of Way Use Fee as required under Sections 36 and 29 C of this Ordinance.**
- C. Any Person whose Facilities occupy the Public Right of Way, with or without a valid Franchise Agreement from the City, must comply with all provisions of this Ordinance, specifically including payment of the Right of Way Fee pursuant to Section 36.

Section 30. Franchise Application.

- A. Any Person who desires a Franchise Agreement with the City must first file a Franchise application with the City Manager. The purpose of a Franchise Application is to provide the City with necessary information regarding the Communications Provider's Services and Public Right of Way needs. The Franchise Application shall include, at minimum, the following information:
1. The identity of the applicant.
 2. A description of the services to be offered or provided by the applicant over its Facilities, including an indication of whether the applicant will provide solely Cable Service.
 3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the Facilities located or to be located within the Public Rights of Way in the City, including the location and route requested for applicant's proposed Facilities.
 4. The area or areas of the City the applicant desires to serve and a preliminary Construction schedule for build-out to the entire Franchise area.

5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the Facilities and to offer or provide the Service proposed.
 6. An accurate map showing the location of any existing Facilities in the City that applicant intends to use or lease.
- B. Any Provider occupying the Public Rights of Way without an unexpired Franchise Agreement as of the effective date of this Ordinance shall file a Franchise Application pursuant to this Section within forty-five (45) Days of the effective date of this Ordinance.

Section 32. Determination by the City. The City shall issue a written preliminary determination granting or denying the Franchise application in whole or in part. If the Franchise Application is denied, the written determination shall include the reasons for denial. The City shall evaluate the Franchise Application based upon: the continuing capacity of the Public Rights of Way to accommodate the prospective Franchisee's proposed Facilities; the prospective Franchisee's legal, technical and financial ability to comply with the provisions of this Ordinance; and the prospective Franchisee's compliance with applicable Federal, State and local laws, rules, contractual obligations and regulations.

Section 33. Scope of Franchise Agreement; Effect of Ordinance on Franchise Agreement.

- A. No Franchise granted pursuant to this Ordinance shall convey any right, title or interest in the Public Rights of Way, but shall be a non-exclusive grant to use and occupy the Public Rights of Way for the limited purposes, terms, and conditions provided in the Franchise Agreement.
- B. The rights granted by any Franchise Agreement are limited to the right to use the Public Rights of Way for the provision of Communications Services as defined herein. Nothing in the Franchise shall be construed to prevent the City from grading, paving, repairing and/or altering any Public Rights of Way, constructing, laying down, repairing, relocating or removing City infrastructure or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City Infrastructure. If a Franchisee's Facilities interfere with the Construction, repair, replacement, alteration or removal of any Public Rights of Way, public work, City utility, City improvement or City infrastructure, except those used to provide competing Services, such Facilities shall be removed or relocated as provided in Section 26 and 27 of this Ordinance, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

- C. Application to Franchise Agreements Adopted After this Ordinance. A Franchise Agreement granted hereunder shall at all times comply with the requirements of this Ordinance unless this Ordinance expressly authorizes different Franchise Agreement terms. In this Ordinance, such authorization is indicated by the introductory phrase, “Unless otherwise provided in an unexpired Franchise Agreement...” In the event of a conflict between this Ordinance and a Franchise Agreement adopted after this Ordinance, this Ordinance shall prevail.
- D. Application to Franchise Agreements Adopted Prior to this Ordinance. To the extent that this Ordinance is not in express conflict with and can be implemented consistently with unexpired Franchise Agreements adopted prior to this Ordinance, this Ordinance shall prevail. To the extent that this Ordinance expressly conflicts with and cannot be implemented consistently with an unexpired Franchise Agreement adopted prior to this Ordinance, the terms of the unexpired Franchise Agreement shall prevail.

Section 34. Term of Grant. Unless otherwise specified in a Franchise Agreement, a Franchise granted hereunder shall be in effect for an initial term of five (5) years and may be renewed subject to Sections 38 and 39 of this Ordinance.

Section 35. Franchise Territory. Unless otherwise specified in a Franchise Agreement, a Communications Franchise granted hereunder shall be limited to a specific geographic area of the City to be served by the Franchisee and the Public Rights of Way necessary to serve such areas and may include the entire City.

Section 36. Franchise Fee and Right of Way Use Fee.

A.A Franchise Agreement granted hereunder shall require the Franchisee to pay a Franchise Fee in an amount determined by resolution of the City Council.

B. Right of Way Use Fee Imposed. Every Provider occupying or using the Public Rights of Way, whether or not the Provider owns the Facilities and whether or not such Services are provided inside the City, shall pay a Right of Way Use Fee, which shall be based upon all the Services it provides within the City. Such Right of Way Use Fee shall be in an amount determined by resolution of the City Council.

C. Credit. The City shall provide a Right of Way Use Fee Credit to any Provider who, pursuant to a Franchise Agreement, agrees to pay Franchise Fees to the City. The amount of the Right of Way Use Fee Credit shall be equal to the Franchise Fees paid to the City during that Right of Way Use Fee billing period.

- D.
- E. If the Provider's sole use of the Public Right of Way is to place wireless Facilities above the ground on existing poles or similar structures in the Public Right of Way and the Provider does not install or use lines, wires or cables, a Provider is not required to pay a Right of Way Use Fee or a Franchise Fee under this Section, as long as it complies with all other applicable requirements of this Ordinance and all other applicable City codes, regulations and rules. Nothing in this Subsection C limits the City's authority to charge reasonable rental or pole attachment rates for the private use of City property.
- C. Unless otherwise provided in an unexpired Franchise Agreement, the Franchise Fees required by this Section shall be paid within thirty (30) Days after the end of each calendar year. Each payment shall be accompanied by an accounting of gross revenues and a calculation of the amount payable. The Franchisee shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date.
- D. The Franchise Fee or Right of Way Use Fee required in this Section remains subject to all applicable limitations imposed by federal or State statutes.

Section 37. New Facilities or Services.

- A. A new **registration** shall be required of any Franchisee who desires to extend or locate its Facilities within Public Rights of Way of the City if such Facilities were not previously authorized in an unexpired Franchise Agreement with the City.
- B. A new **registration** shall be required of any Franchisee who desires to provide an additional Service or Services which were not previously authorized in an unexpired Franchise Agreement with the City.

Section 38. Franchise Term Renewals. Unless otherwise provided in an unexpired Franchise Agreement, a Franchise, if renewed, shall be renewed in the following manner.

- A. Franchisees who desire to renew a non-expired, valid Franchise under this Ordinance shall, not less than one hundred eighty (180) Days before expiration of the current Franchise Agreement, file a request for renewal with the City, which shall include the following information:
 - A. The information required pursuant to Section 30 of this Ordinance.

B. Any additional information required pursuant to the existing Franchise Agreement between the City and the Franchisee.

C. Any desired amendments to the existing Franchise Agreement, including the desired renewal term, provided that such amendments do not violate or conflict with this Ordinance.

Section 39. Renewal Determinations. Unless otherwise provided in an unexpired Franchise Agreement, within ninety (90) Days after receiving a complete renewal request under Section 38, the City shall issue a written determination granting or denying the renewal request in whole or in part. Such renewal shall be for a renewal term or terms to be mutually decided on by the parties. If the renewal request is denied, the written determination shall provide the reasons for non-renewal. The City shall evaluate the renewal based upon the capacity of the Rights of Way to accommodate the Franchisee's Facilities; the Franchisee's legal, technical and financial ability to comply with the provisions of this Ordinance; and Franchisee's compliance with any applicable federal, State and local laws, contractual obligations, rules, or regulations.

Section 40. Obligation to Cure As a Condition of Renewal. The City shall not renew a Franchise Agreement unless the Franchise has cured any violations or defaults in the Franchisee's performance of the Franchise Agreement, or of the requirements of this Ordinance or has provided the City with a City-approved plan detailing the corrective action to be taken.

Section 41. Assignments or Transfers of Franchise. A Franchise granted under this Ordinance may not be directly or indirectly transferred, assigned or disposed of by sale, lease, merger, consolidation or by other act of the Franchisee, by operation of law or otherwise, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. City consent conditions may include, but shall not be limited to:

A. The Franchisee and the proposed assignee or transferee of the Franchise shall agree in writing to assume and abide by all of the provisions of the Franchise Agreement.

B. No transfer shall be approved unless the City determines the assignee or transferee has the legal, technical and financial ability to comply with the provisions of this Ordinance and applicable Federal, State and local laws, rules, regulations.

C. Unless otherwise specified in an unexpired, valid Franchise Agreement, the Franchisee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a Franchise.

- D. Any transfer or assignment of a Franchise, system or integral part of a system without prior City approval or without a valid Franchise Agreement shall be void and is cause for termination of the Franchise.

Section 42. Termination of Franchise Agreement. A Franchise Agreement to use or occupy Public Rights of Way may be terminated by the City for the following reasons:

- A. Construction or operation in the City or in the Public Rights of Way without a Construction permit.
- B. Construction or operation at an unauthorized location or in violation of City approvals or permits.
- C. Failure to comply with Section 41 herein with respect to sale, transfer or assignment of a system or Franchise.
- D. Misrepresentation by or on behalf of a Franchisee to the City in any Registration request or Franchise Application or Franchise renewal request.
- E. Unauthorized abandonment of Facilities in the Public Rights of Way.
- F. Failure to relocate or remove Facilities as required in this Ordinance.
- G. Failure to pay taxes, compensation, fees or costs when and as due the City under this Ordinance or under an applicable Franchise Agreement.
- H. Insolvency or bankruptcy of the Franchisee.
- I. Violation of material provisions of this Ordinance.
- J. Violation of the material terms of a Franchise Agreement.

Section 43. Notice and Duty to Cure. In the event that the City believes that grounds exist for termination of a Franchise Agreement, the City shall give the Franchisee written notice of the alleged violation and shall provide a short and concise statement of the nature and general facts of the violation. City shall provide the Franchisee a reasonable period of time, not exceeding thirty (30) Days, to furnish evidence that:

- A. Corrective action has been or is being expeditiously pursued to remedy the violation;
- B. Rebutts the alleged violation; and/or
- C. Explains why it would be in the public interest to impose a penalty or sanction less than termination.

Section 44. Public Hearing. In the event that a Franchisee fails to provide evidence reasonably satisfactory to the City as provided in Section 43, the City Manager shall refer the alleged violation to the City Council. The City Council shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.

Section 45. Standards for Termination or Lesser Sanctions. If persuaded that the Franchisee has violated a material provision of this Ordinance or of a Franchise Agreement, the City Council may terminate the Franchise or may establish some lesser sanction and cure, including but not limited to the assessment of penalties pursuant to Section 60. In doing so, the City Council shall consider the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors, whether:

- A. The violation was egregious.
- B. Substantial harm resulted.
- C. The violation was intentional or repeated.
- D. There is a history of prior violations of the same or other requirements.
- E. There is a history of overall compliance.
- F. The violation was voluntarily disclosed, admitted or cured.

Section 46. Other City Costs. All Franchisees or Providers shall, within thirty (30) Days after City's written demand therefore, reimburse the City for all reasonable direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the Franchise or any Franchise Agreement consistent with applicable State and federal statutes.

Section 47. Damage to Provider's Facilities. Unless otherwise provided in an unexpired Franchise , the City shall not be liable for any damage or injury to or loss of any Facility, property, or Person as a result of or in connection with any City public works, public improvements, Construction, excavation, grading, filling, or work of any kind in the Public Rights of Way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom. **This limitation on liability shall apply unless such damage is directly caused by the City's negligent, intentional or malicious acts, and shall at all times be limited by the Oregon statutory and constitutional tort claim limits without exception.**

Section 48. Duty to Provide Information.

- A. Except in Emergencies, within sixty (60) Days of the City’s written request, a Provider shall provide the City with the following:
1. Information sufficient to demonstrate that Provider has complied with all requirements of this Ordinance and any applicable Franchise Agreement, including but not limited to the Franchise fee or Right of Way use fee payments required by Section 36.
 2. Unless otherwise provided in an unexpired Franchise Agreement, all books, records, maps, and other documents, maintained by the Provider with respect to its Facilities within the Public Rights of Way.
- B. Unless otherwise provided in an unexpired Franchise Agreement, If the City’s audit or review of the Communications Provider’s books, records and other documents or information demonstrates that the Provider has underpaid the applicable Franchise fee or the Right of Way use fee by three percent (3%) or more in any one year, the Provider shall reimburse the City for the cost of the audit or review.
- C. Provider shall correct the underpayment and pay any interest or penalties owed. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) Days of the City’s notice to Provider of such underpayment, or as otherwise specified in a Franchise Agreement or other written agreement between the parties.

Section 49. City Use of Provider’s Services or Facilities. If the City contracts for the use of a Provider’s Facilities, services, installation, or maintenance, the , the Provider may deduct the applicable charges from the Franchise Fee or Right of Way Use Fee payments, subject to the terms and conditions of an unexpired Franchise Agreement or other agreement..

Section 50. Compensation for City Property. If any right is granted by lease, Franchise Agreement, or other manner, to use and occupy City Property for the installation of Facilities or other infrastructure, the compensation to be paid for such right and use shall be fixed by the City through a separate agreement with the Provider.

Section 51. Cable Franchise. Cable Service Providers shall be subject to this Ordinance to the extent it is not inconsistent with the Cable Act. The City and the Cable Provider shall enter into a Cable Franchise Agreement pursuant to Section 29 of this Ordinance and such Franchise Agreement shall be subject to all applicable provisions of City, State and federal law, including the Cable Act.

Section 52. Leased Capacity. A Provider may, without prior City approval, offer or provide capacity or bandwidth to its customers by lease, use agreements or otherwise, provided

that the Provider shall notify the City of the following: that such lease or use agreement has been granted and the type or nature of the use or lease granted.

Section 53. Insurance. Unless otherwise provided in an unexpired Franchise Agreement, each Provider shall, as a condition of the grant, secure and maintain liability insurance policies in amounts and types satisfactory to the City which insures both the Provider and the City and its elected and appointed officers, officials, agents and employees as additional insured. The liability insurance policies required by this Section shall be maintained by the Provider throughout the term of the Franchise Agreement, and any such other period of time during which the Provider is operating or has Facilities within the Public Rights of Way. Each Provider shall maintain continuous uninterrupted coverage and shall provide such policies upon City's request. As an alternative to the insurance requirements contained herein, a Provider may provide evidence of self-insurance, subject to written acceptance by the City.

Section 54. General Indemnification. Each Franchise Agreement shall include, to the extent not prohibited by law, Franchisee's express promise to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, relating to, resulting from or alleged to arise out of, relate to or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Franchisee or its affiliates, officers, employees, agents, contractors or subcontractors in the Construction, operation, maintenance, repair or removal of its Facilities or related to the Provider's provision of Services, whether or not such acts or omissions are authorized, allowed or prohibited by this Ordinance or by a Franchise Agreement.

Section 55. Performance Surety. Unless provided in an unexpired Franchise Agreement, Provider shall provide a performance bond, in form and substance acceptable to the City, as security for the full and complete performance of a Franchise granted under this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Franchisee to comply with the City Code, ordinances, rules, regulations or permits. This obligation is in addition to the performance surety required by Section 23 for Construction of Facilities.

GENERAL PROVISIONS

Section 56. Governing Law. Any Franchise Agreement granted under this Ordinance is subject to the provisions of the constitutions and laws of the United States and the State of Oregon and the ordinances and Charter of the City.

Section 57. Written Agreement. No Franchise Agreement shall be granted hereunder except by a writing duly executed by the Franchisee and the City.

Section 58. Nonexclusive Grant. No Franchise Agreement granted under this Ordinance shall confer any exclusive right, privilege, license or Franchise to occupy or use the Public Rights of Way for delivery of Service or any other purposes.

Section 59. Severability and Preemption. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, or superseded by State or federal legislation, rules, regulations or decision, the remainder of the Ordinance 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 of the Ordinance, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Ordinance shall 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 shall be read to be preempted only to the extent required by law. In the event such federal or State law, rule, 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 shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the City.

Section 60. Penalties. Any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Ordinance or a valid Franchise Agreement shall be subject to the abatement and penalties procedures of the City Nuisance Code. A separate and distinct offense shall be deemed committed each day on which a violation occurs.

Section 61. Other Remedies. Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance.

Section 62. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

Section 63. Compliance with Laws. Any Provider under this Ordinance 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 Franchise granted under this Ordinance.Facilities .

NOW THEREFORE, THE CITY OF GOLD BEACH ORDAINS AS FOLLOWS:

SECTION 1. Ordinance No. 663 , an ordinance governing the use and occupation of the City of Gold Beach Public Rights-of-Way by utility and communication providers and establishing an application process, fees, and terms for such use is hereby adopted.

SECTION 2. SEVERABILITY. Any provision of this Ordinance which proves to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Ordinance, and the remaining provisions of this Ordinance shall remain in full force and effect.

SECTION 3. CODIFICATION. The City Recorder is hereby authorized and directed to codify Section 1 of this ordinance in an appropriate Title of the Gold Beach Municipal Code and to change the word "Ordinance" to "Chapter" as appropriate when codified.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect on the 30th day after its adoption (2nd Reading) by the Gold Beach City Council.

Passed and Adopted by the City Council of the City of Gold Beach, Oregon, State of Oregon, on this _____ day of _____, 2017

APPROVED:

Karl Popoff, Mayor

ATTEST:

Jodi Fritts, City Administrator

1st READING	DATE
2nd READING	DATE



CITIZEN REQUESTED AGENDA ITEMS



SECTION 7.

Citizen Requested Agenda Items

**GOLD BEACH CITY COUNCIL
AGENDA REPORT**

Agenda Item No. 7. a.
Council Meeting Date: March 13, 2017

TITLE: Request to address Council: Coastline Neighbors

SUMMARY AND BACKGROUND:

Lindy Mcclean from Coastline Neighbors asked to address the Council about their organization and the services they provide to our area. I have attached some info from their website www.coastlineneighbors.org

ACTION NEEDED

None at this time, FYI only

\$0.00

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FOUNDERS

Lindy McClean

Lindy lives in Brookings and loves her retirement. She enjoys spending time with elderly folks, hiking, reading and gardening. As a Baby Boomer, Lindy is excited about the Village Movement and co-founding Coastline Neighbors.

Diane Moffit

Diane has lived in the Brookings area for a 20 plus years. She loves to read, travel, knit, crochet as well as hang with her grandchildren. Although, she is a retired middle school math educator she remains active in the community. Because of this, she has seen gaps in local services and believes Coastline Neighbors will fill those gaps.

Pattie Slagle

Pattie lives in Gold Beach and has over 25 years in the healthcare industry. She enjoys spending time with her family. Her 4 grandbabies are the pride and joy of her life. Pattie's passion is

YOUR HOME...YOUR COMMUNITY...YOUR CHOICE.

A movement whose time has come!

Coastline Neighbors is part of the nationwide "village movement" where individuals are taking charge of their future as they age. Research has shown that people want to live safely, confidently and independently in the home of their choice and enjoy the neighborhoods they love. However, few community resources are available to make this possible for most people.

The "Village Movement" is a concept where a community of people pool resources by paying membership dues and volunteering their skills and time to support the Village infrastructure and to assist one another. The first Village was founded in Boston in 2001 (Beacon Hill Village). Currently 190 villages are operational in the United States; with over 150 more, including **Coastline Neighbors**, in the development stage. Each village is unique to its location but provides support and resources to one another through The Village-to-Village Network.

The members of **Coastline Neighbors** can use services in a variety of ways:

- As a form of insurance when a little help is needed to continue living in their own home.
- Having the convenience of calling one number for different types of services; whether it is a plumber, a driver or to change a light bulb.
- Enjoy the value of being part of a mutually supportive community by volunteering to assist others.

Members of **Coastline Neighbors** will enjoy benefits that enrich life today while also developing peace of mind about the future.



providing quality services for Aging in Place and believes Coastline Neighbors will do just that.

Clearly, Coastline Neighbors is onto something!



Who We Are

Coastline Neighbors is a grassroots nonprofit membership organization currently in development.



How We Do It

Help will be provided by volunteers and members. Referrals will be made to trusted businesses and organizations.



What We Do

Coastline Neighbors will assist Curry County residents to continue living safely in the home of their choice.



When Do We Start

Our goal is to be operational in late 2017.



Why We Do It

Sometimes, folks just need a little help to stay in the home and community they love!



\$0.00

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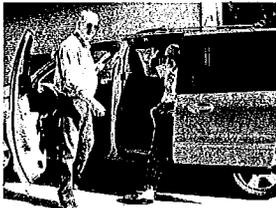
Volunteer?
Services

[Home / Services](#)

One call does it all-541-313-6490

Coastline Neighbors is an all-volunteer organization managed by members and non-member volunteers. While we cannot guarantee each and every service at all times, we are confident that we will be able to consistently meet the requests of our members as we grow.

Ready To Go?



Coastline Neighbors takes pride in our transportation program. It is truly *Neighbors helping Neighbors!*



Volunteers pick up and drive members to and from shopping, local appointment, events or social activities.



Coastline Neighbors will coordinate rides with public transportation when necessary.



If transportation to a neighboring county for medical treatment is needed, let's talk!

Searching For?

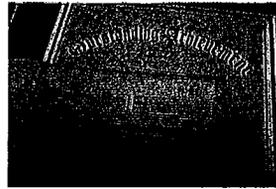




Home repair, plumber, electrician, housekeepers, yard maintenance, personal care or something else, our referral list might be helpful.



Coastline Neighbors maintains a list of member recommended local service providers.



All of our service providers are vetted to assure they are licensed, insured, reliable and provide quality service.

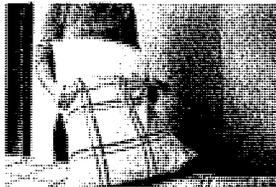


Need help finding local activities, vacation spots, support groups, educational info... our volunteers may be able to help!

Need A Hand?



Coastline Neighbors' volunteers offer the same assistance that a neighbor would



Hanging curtains, grocery shopping, returning library books, changing bed sheets, light bulbs or smoke detector batteries, plant and pet care in emergencies...



If a smart phone, TV, computer or social media has you puzzled, we've got you covered! Our volunteers have the skills to offer assistance.



All of our volunteers have been vetted using background and driving record checks. They also receive ongoing training.

Hello?



There's nothing like knowing someone cares and contacts you regularly by phone, just to say hello and see what's happening.



If you are socially isolated you can stay connected with the outside world with our friendly visitors.



Need a walking buddy or concert companion? How about lunch? We can arrange the outing.



Coastline Neighbors offers a sense of community that allows friendships to develop among the members and volunteers!





ORDINANCES & RESOLUTIONS



SECTION 9.

Ordinances & Resolutions

**GOLD BEACH CITY COUNCIL
AGENDA REPORT**

Agenda Item No. 9. a.
Council Meeting Date: March 13, 2017

TITLE: First Reading Ordinance 663 - Right of Way Use & Occupation ordinance

SUMMARY AND BACKGROUND:

Please see earlier Public Hearing staff report for specifics on this ordinance. Depending on the earlier public hearing the 1st reading may occur this evening.

ACTION REQUESTED:

Ordinances require two readings to adopt. However, the Council has the option to adopt any ordinance in one meeting—the process for one meeting adoption is listed below the standard two meeting adoption process. All the members of the council present tonight must, by motion, agree to adopt the ordinance in one meeting otherwise it will require two meetings. Either action will require two motions respectively.

There isn't really any urgency to this particular ordinance so staff recommends just having the 1st and 2nd readings in consecutive months.

SUGGESTED MOTIONS

Standard Two Meeting Adoption:

I make the motion that the Council adopts Ordinance 663 and approve the 1st reading by title only.

If the motion passes, the CA will read the ordinance title into the record to complete the 1st reading. The 2nd reading will occur at the next council meeting.



SECTION 9.

Ordinances & Resolutions

If the Council wishes to adopt in one meeting tonight:

MOTION #1

I make the motion that the Council adopts Ordinance 663 in one meeting tonight.

If the motion passes UNANIMOUSLY please use this language for Motion #2:

I make the motion that the Council adopts Ordinance 663 and approve the 1st and 2nd readings of the ordinance tonight by title only.

If the motion passes, the CA will read the ordinance title into the record for the 1st reading and then read the title again into the record for the 2nd reading.

The ordinance becomes effective 30 days from this evening.



MISC. ITEMS

**INCLUDING POLICY DISCUSSIONS &
DETERMINATIONS**



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

GOLD BEACH CITY COUNCIL AGENDA REPORT

Agenda Item No. 10 a.

Council Meeting Date: March 13, 2017

TITLE: Library Community Building Project

SUMMARY AND BACKGROUND:

When the City was going through the Urban Renewal planning process we invited all the small districts that would be affected to participate. The only district that came to the meetings was the Curry Public Library District. As a result, we incorporated the library property and one of their future projects into the UR adopted plan.

The library is now at the point of pre-construction on their Community Building concept. I recently spoke with the Library Director, Jeremy Skinner, about the funding for their project. I have attached a copy of their project budget and funding sources (I redacted names of persons/groups I wasn't sure would want their names published). The City Urban Renewal Fund is listed as a pending/planned source of income at \$15,000.

The Library Community Center is one of five projects approved for funding through UR (see attached portion of the adopted UR report). The total approved UR expenditures for Community/Tourist Attraction Facilities is roughly \$2.9 million dollars. Evenly split that would fund each of the five projects at \$570K respectively. Of course it is up to the Urban Renewal Agency (the Council acting as the URA) to decide how to actually divide up those \$2.9 million project dollars, but I believe it's safe to say that funding for the Library Community Building would be much more than the \$15K they have put into their budget.

No decision can be made this evening on actual dollar amounts the URA will commit to the Library Community Building project, but I wanted to suggest we schedule an URA meeting for next month (it can be part of regular April meeting or could be the 4th Monday, April 24th) and make a formal decision. The URA wouldn't need to give the dollars immediately to the Library, but if they have a formal dollar amount committed they can use those committed dollars as collateral to leverage other funding dollars.

I have also included some of the project plan pages for the Council/URA review. It's an exciting project and a much needed social/community infrastructure asset to our community.

From Jeremy

12/23/2016 Project Budget including architectural fees and contingency costs	\$2,182,865
--	-------------

Committed Funding as of 12/17/2016

Library Building Fund	\$1,200,000
Curry Public Library Maintenance Fund	\$80,000
[REDACTED]	\$94,000
[REDACTED]	\$20,000
[REDACTED]	\$250,000
[REDACTED]	\$5,000
[REDACTED]	\$50,000
[REDACTED]	\$20,000
[REDACTED]	\$20,000
Southwest Oregon Workforce Development	\$25,000
Curry Public Library of Gold Beach Foundation	\$200,000
Total Committed Funding - 88% of budget =	\$1,964,000

Balance remaining to meet budget =	\$218,865
---	------------------

Grants Pending and Planned as of 12/17/2016

Umpqua Bank (pending)	\$6,000
Coquille Tribal Community Fund (will apply fall 2017)	\$5,000
[REDACTED]	\$5,000
Gold Beach Urban Renewal Fund (will apply)	\$15,000
[REDACTED]	\$93,000
Individual Gifts (seeking)	\$50,000
Room Naming Rights (seeking)	\$50,000
Total Pending Funding	\$224,000

[REDACTED] = redacted by staff
I wasn't sure if the individuals were
OK with their name(s) being published
online

IV. THE RELATIONSHIP BETWEEN URBAN RENEWAL PROJECTS AND THE EXISTING CONDITIONS IN THE URBAN RENEWAL AREA

The projects identified for the Area are shown in Table 10, below. The descriptions of the projects and how they relate to the existing conditions in the Area are as follows:

Streetscape Improvements: Streetscape improvements to sidewalks, including but not limited to benches, trash receptacles, plantings, lighting, and other improvements to enhance the transportation system

Existing Conditions: There is not a cohesive set of streetscape improvements throughout the Area. Streetscape improvements are a way of establishing district identity and a sense of place within a business district.

Property Assistance/Redevelopment Opportunity Program: Create grant or loan programs for the rehabilitation of buildings. Projects could include façade improvements, remodels, fire/safety compliance, American Disability Act (ADA) accessibility, etc.

Existing Conditions: No funding presently exists for property assistance/development opportunity programs, although there are a great number of businesses that could benefit from planning and development assistance.

Signage: Facilitate a unified signage plan for the city and businesses. Way finding signs will assist visitors in locating attractions; gateway signage will welcome visitors to Gold Beach. This project could include a Pole Sign Program to assist business owners with removal and replacement for more pedestrian friendly (and visually appealing) signage.

Existing Conditions: No funding presently exists for a signage program. Unified signage can help establish district identity and create a sense of place in a community. Good signage will help to increase visits to local businesses and help grow the economy.

Port/Airport Way Bike-Pedestrian Improvements: The Port is the gateway into Gold Beach. There is a road system from Highway 101 that passes through the Port, past the jetty and parallels the airport (Port Drive, South Jetty Road, Oceanside Drive). This system gets utilized heavily by locals, but is in poor condition. This route could provide good beach access and be made into a scenic byway for tourists and residents. Signage and sidewalk/trail improvements would help accomplish this goal.

Existing Conditions: The existing sidewalks are not unified and in some places are in poor repair. There is no existing bicycle pathway.

Attractive Public Parking: Develop attractive public parking and signage to encourage visitors to park and walk to different areas.

Existing Conditions: There is on-street parking throughout the area, but as businesses grow, additional parking will be needed.

 Community/Tourist Attraction Facilities:

Improvements to the Event Center on the Beach (Fairgrounds): Assistance for capital improvements as this is the primary meeting center and it supports the economic health of the town.

Existing Conditions: The Event Center (Fairgrounds) is the main meeting place for Gold Beach. Improvements are needed to keep it a viable option for a meeting facility.

Family Entertainment/Recreation Project: Assist in the development of a family entertainment/recreation project potentially including a cinema and one or two other activities (bowling alley, recreation center, etc.) that would provide entertainment opportunities for locals and tourists alike. This project is a private/public partnership opportunity.

Existing Conditions: These entertainment options do not exist in Gold Beach. There is a definite need for increased recreational activities.

 Community Center: Provide a space for meetings and activities in partnership with the public library.

Existing Conditions: There is no community meeting facility in Gold Beach. There is a definite need for increased recreational activities that could occur in a community meeting center.



Performing Arts Facility: Upgrade this existing facility to make it an asset to the community and an attraction for visitors.

Existing Conditions: The city of Gold Beach presently has a community theater located in a building that could use upgrading. The non-profit group has made steady progress, but could use assistance in their fundraising for building improvements.

Pocket Parks: Create pocket parks to provide gathering spaces for residents and visitors.

Existing Conditions: There are no pocket parks in the urban renewal area and no funding to develop them.

Property Acquisition: Acquisition from willing seller for private development. Focus funds on projects that will provide a major attractor for the town.

Existing Conditions: There are properties within the Area that are presently privately or publicly owned that the Agency may wish to acquire in the future. (Any acquisition must be done through a Plan amendment that specifies those properties to be acquired.)

Small Business/Restaurant Program: Small grants or loans to new businesses to help them get started, or a space lease program during the first year to help new businesses get on their feet.

Existing Conditions: No funding presently exists for a small business/restaurant program, although there is a need to develop additional business opportunities in Gold Beach.

Sidewalk Program: Grants or loans to assist property owners. Better walkability to help visitors enjoy the town more.

Existing Conditions: No funding presently exists to assist in sidewalk improvements. There are existing sidewalks that are in disrepair or that could be made more attractive to help create a sense of place in the Gold Beach commercial district.

URA Administrative Costs:

Administrative Costs are incurred to prepare and implement the Urban Renewal Plan.

Existing Conditions: The funding for preparation has come from the general fund. This allows for reimbursement and funding future administrative costs, if desired.

V. THE ESTIMATED TOTAL COST OF EACH PROJECT AND THE SOURCES OF MONEYS TO PAY SUCH COSTS

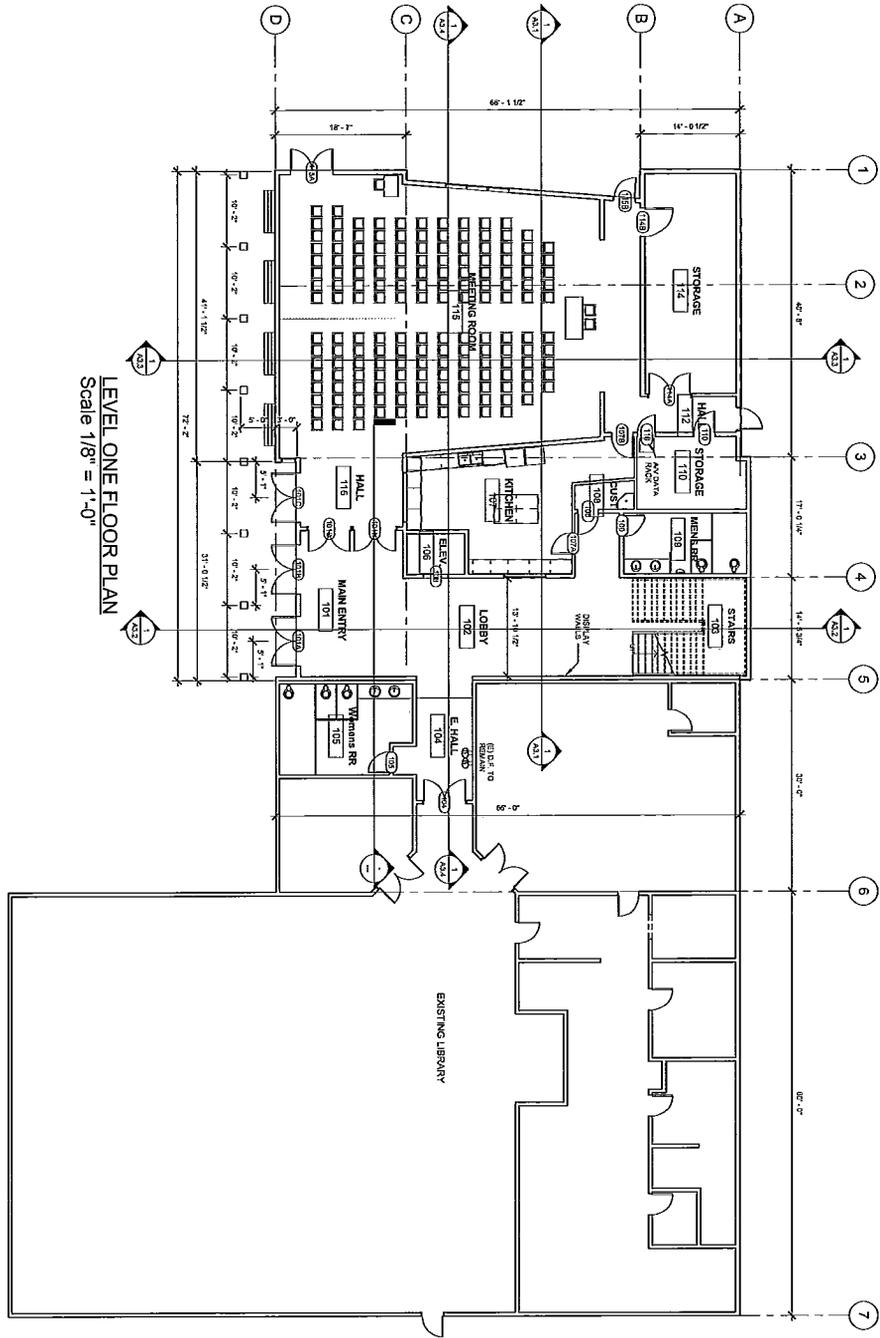
The present value of the costs of the projects are shown in Table 10 below. The sources of funds are tax increment revenues.

Table 10 - Estimated Cost of Projects

Project	Present Value Tax Increment
Streetscape Improvements	\$335,000
Property Assistance	\$170,000
Signage	\$50,000
Port/Airport Way Bike-Pedestrian Improvements	\$265,000
Public Parking	\$665,000
Community/Tourist Attraction Facilities	\$2,874,000
Property Acquisition	\$200,000
Small Business/Restaurant	\$100,000
Sidewalk Program	\$255,000
Administration	\$84,791
Total Projects	\$4,998,791

Source: ECONorthwest and Elaine Howard Consulting, LLC





LEVEL ONE FLOOR PLAN
Scale 1/8" = 1'-0"

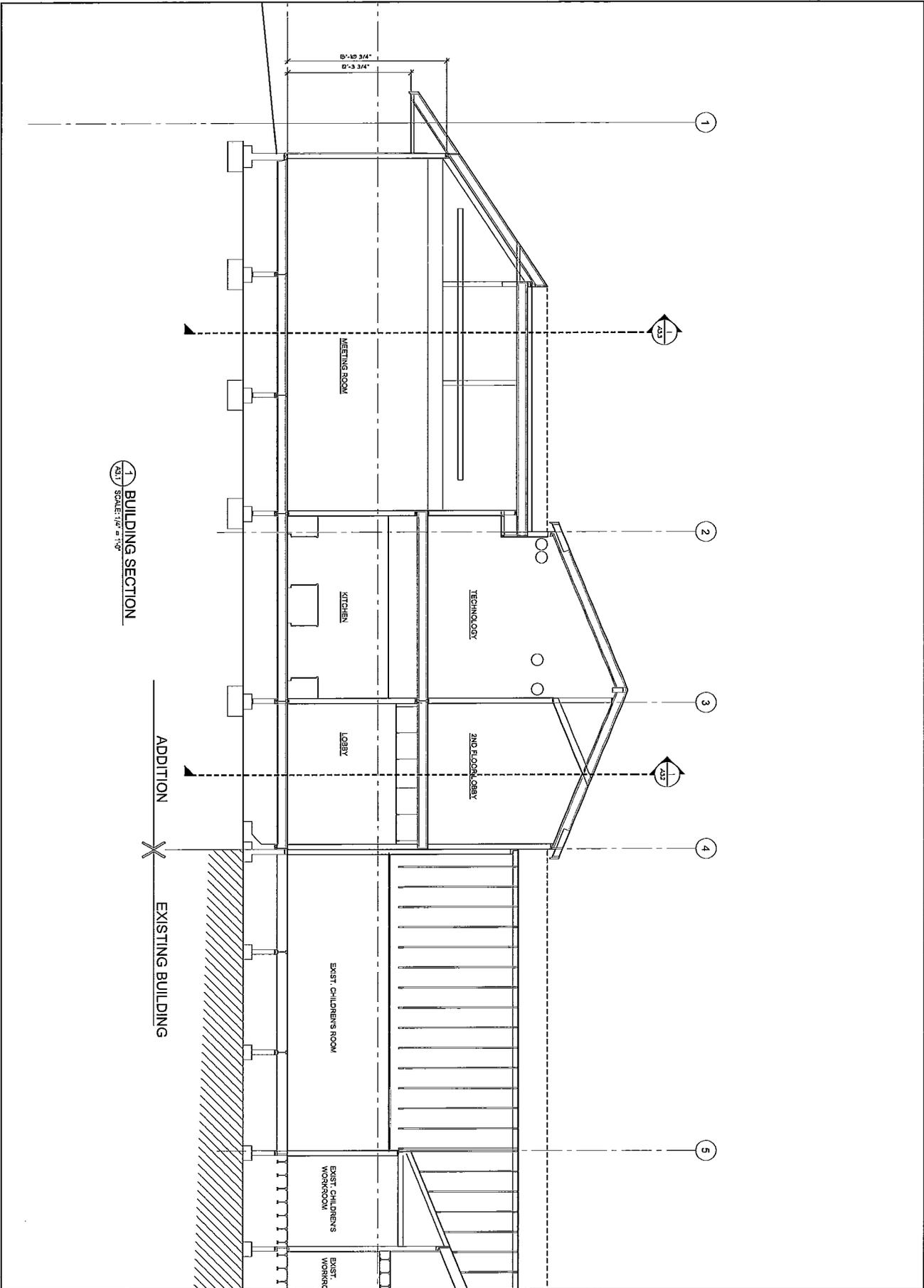
DESIGN/DEV.	
PROJECT NO.	18-21
DATE	JAN. 2017
REVISIONS	
DATE	
BY	
CHKD	JAS
DRAWN BY	JAS
SHEET NO.	A2.1

CURRY PUBLIC LIBRARY -
BUILDING ADDITION



ARCHITECTS
ENGINEERS
PLANNERS

333 S. 4TH STREET
COOS BAY, OREGON
97420
P: 541.269.1166
F: 541.269.1833
www.hge1.com



1 BUILDING SECTION
 1/4" = 1'-0"

ADDITION X EXISTING BUILDING

DATE: MARCH 2017	REVISIONS:	NO.:	BY:
PROJECT NO.: 1621	DESIGN DEVELOPMENT DRAWINGS		
<p>PREPARED FOR CONSTRUCTION</p>			
<p>DRAWING SHEET NO. A3.1</p>			
<p>Copyright © 2017, HGE, Inc.</p>			

PROJECT: CURRY PUBLIC LIBRARY BUILDING ADDITION
 94321 3RD STREET GOLD BEACH, OR



ARCHITECTS ENGINEERS PLANNERS

333 S. 4TH STREET
 COOS BAY,
 OREGON 97420
 P: 541.269.1166
 F: 541.269.1833
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SECTION 10.

MISC ITEMS (including policy discussions & determinations)

GOLD BEACH CITY COUNCIL AGENDA REPORT

Agenda Item No. 10 b.

Council Meeting Date: March 13, 2017

TITLE: Discussion Request from Councilor Campbell regarding County support request

SUMMARY AND BACKGROUND:

Councilor Becky Campbell is our City alternate representative to the Local Public Safety Coordinating Council (LPSCC). She recently attended a meeting and a request was made to her to ask the Council to send a letter of support for the Sheriff's Office budget to the Curry County Commissioners.

Councilor Campbell asked for my opinion regarding this matter which I will share with the rest of the Council. Please note this is my **opinion** as the city administrator and I recognize policy decisions are not my purview. The Council's decision to send a letter to the Board of Commissioners is a POLICY decision, so please feel free to take/leave my opinion. Whatever decision the Council makes I will support and act upon.

ADMINISTRATOR'S OPINION

It is my opinion that first and foremost an agency has the duty to fund and provide state and federally mandated services before any other services. If, after funding those mandated services, there are funds left, then additional services can be added. If there are not funds left after mandated services then those other "want to have" or "nice to have" services can't be provided.

The primary mandated duty of the Sheriff's Office is to provide a jail. That should be funded at the highest level possible first. Everything else is secondary.

It is my understanding that a proposal has been made to further reduce the already reduced jail beds down to 10. Five of those 10 would be reserved for parole/probation violations. That effectively would leave only 5 beds for offenders—county wide. That is unacceptable. Especially to our city since those offenders that will be cited and released will be released into our city. The arresting agencies certainly aren't going to transport those released offenders back to where they were arrested, so our police officers and citizens will have to deal with these offenders—even more so than we do presently.



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

Another proposal that I have heard (and it has been brought up in the past) is that the cities pay to reserve jail beds exclusively for us. I will counter with the argument we have always made: the cities *already* pay for jail services. Each of our citizens (and us as individuals) pays the same county tax rate as citizens in the unincorporated areas of the county. Why should county citizens that live in incorporated cities pay for jail services at a higher rate than the county unincorporated citizens? And the argument that the city citizens commit more crimes hence we should pay more is just not valid. Our officers may arrest offenders within the City but those offenders often *reside* in the county.

Other services have to be reduced or eliminated before the jail is further reduced.

Regarding law enforcement services, Commissioner Boice (and others) has proposed that the 3 cities contract with the County to provide the cities with law enforcement services. Again, that is unacceptable. The *CITIES* are in a better position to provide contract law enforcement services to the County rather than the other way around. Each of the 3 city managers has separately discussed this option with Commissioner Boice. By contract, Port Orford could cover the north county line to Humbug, Gold Beach could cover Humbug to Pistol River, and Brookings could cover Pistol River south to the border. At a significant savings to the County entity and tax payers, and provide a higher level of service than is currently provided. The County is rarely in a position to provide mutual aid when we need it now so how can they even consider that they could offer full-time services? We have a total of 6 sworn officers that provide 20/7 coverage. I find it highly unlikely that the County is going to provide us with 6 deputies at 20/7 coverage. So unlikely that I would call it: impossible.

Reduce jail beds to 5, and contract with the cities to provide us with law enforcement? The proposal in one word: lunacy.

So my opinion about a letter to the Board of Commissioners (and again I say feel free to take it or leave it): I would make the suggestion that we let the Commissioners know that the City strongly supports the Sheriff's mandated jail service and urge them to fund the jail at the highest level possible. All other services are secondary and should be funded accordingly.

REQUESTED ACTION

None from staff—Councilor requested topic



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

GOLD BEACH CITY COUNCIL AGENDA REPORT

Agenda Item No. **10 c.**

Council Meeting Date: March 13, 2017

**TITLE: Request by local restauranteurs to restrict chain
restaurants within the City**

SUMMARY AND BACKGROUND:

I was approached by one of our local restauranteurs (representing himself and two other restaurant owners) about the possibility of the Council restricting or banning chain restaurants from locating within the City.

I think we all know that running a business in a small town—especially in our economically distressed area—is a challenge at best. Restaurants even more so. The point this business owner was making is that chains like McDonalds or Taco Bell have vast buying power and can easily absorb losses—and often times need those losses as a write off. The single small business owner can't compete.

There is precedence for this type of restriction. As an example the City of Cannon Beach (about the same population size as Gold Beach) prohibits what they call Formula Food Restaurants. I've attached some info from their code.

REQUESTED ACTION

Discuss and give staff direction

Cannon Beach Municipal Code

Up Previous Next Main Search Print No Frames
[Title 17 ZONING](#)
[Chapter 17.22 LIMITED COMMERCIAL \(C1\) ZONE](#)

17.22.040 Prohibited uses.

In a C1 zone the following uses are prohibited:

- A. Amusement arcade;
- B. Drive-in restaurant, formula food restaurant, or mobile food vending wagon;
- C. Other drive-in facilities such as a car wash;
- D. Private parking lot. (Ord. 97-13 § 3; Ord. 94-06 § 2; Ord. 88-12 § 2; Ord. 79-4 § 1 (3.080)(2a))

View the [mobile version](#).

Cannon Beach Municipal Code

Up Previous Next Main Search Print No Frames
[Title 17 ZONING](#)
[Chapter 17.04 DEFINITIONS](#)

17.04.265 Formula food restaurant.

“Formula food restaurant” means a restaurant required by contractual or other arrangements to offer standardized menus, ingredients, food preparation, interior or exterior design, or uniforms. (Ord. 86-16 § 1 (42); Ord. 86-10 § 1 (42))

View the [mobile version](#).



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

GOLD BEACH CITY COUNCIL AGENDA REPORT

Agenda Item No. 10 d.

Council Meeting Date: March 13, 2017

TITLE: Decision on FOG Loan/Grant Compliance Program

SUMMARY AND BACKGROUND:

We initially discussed this at the February meeting (that report is appended to the end of this report) and came up with a few different scenarios. Council also had some tasks for staff. I did some further research and have the following additional information.

We would treat the loan portion of assistance in fashion similar to a local improvement district (LID) assessment or systems development charge (SDC) payment plan. For SDC financing we charge 4% + current Federal Reserve prime. State statute for LIDs (excerpts below) permit us to do installment plans with interest and servicing fees and set the number of years for repayment. It does NOT appear we can turn people over to collections—we can only lien properties so we would need to ensure loans are secured against the properties and that the property owners—if not the same as the FOG producer—are in agreement.

We can include loan payments in the monthly utility bills through Caselle. Once set up we would not have to continually track each account or have a separate billing—the software would do that for us.

I did some research on how similar entities help end users and found examples from electric cooperatives which I have attached. I think we can create a similar process. In February we talked about various grant/loan percentages, and private business vs public entities (like the fairgrounds and schools) compliance.

Staff would like to make the following suggested options—keeping in mind that FOG compliance is our goal. Compliance equates to less City dollars spent on repairs, maintenance, and daily operations:

- Each private requester automatically qualifies for a 25% grant
- Each public entity requester automatically qualifies for a 50% grant

The difference (in staff's opinion) is we (as tax payers) will ultimately be paying for the public entity improvements and those agencies have no way to pass the compliance cost on to their "customers"



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

- Each requester must provide a 25% match (so they have skin in the game)
- 50% of total cost (materials, labor, inspections, etc.) is eligible for loan
- Loans can be for 1, 5, or 10 years—loan length is dependent on loan amount, for example:
 - \$500-\$1500 can be amortized for 1 year
 - \$1500-\$5000 can be amortized for up to 5 years
 - \$5000 and greater can be amortized for up to 10 years
- The property owner must agree to the assessment and property lien if the FOG producer is not the property owner
- We will create a program form similar to the ones attached. If the FOG producer wants assistance they will be required to obtain approval PRIOR to the improvements—this will ensure our Public Works staff is in on the project from the beginning.

REQUESTED ACTION AND SUGGESTED MOTION

Decision on FOG grant/loan program and direct staff to initiate the program

CITY AND STATE STATUTE INFO REGARDING FINANCING OF IMPROVEMENTS

CITY SDC CODE

3.525 Collection.

(3) The owner of the parcel of land for which a Systems Development Charge is due may apply, upon forms provided by the City, for the voluntary imposition upon the parcel of a lien for the full amount of the Systems Development Charge and the payment of that lien in twenty (20) semi-annual installments plus interest. The burden of showing the identity of the owner of record or of the contract purchaser of record of the parcel shall be upon the applicant. Upon receipt of such an application, the City Administrator shall compute the amount of the Systems Development Charge and shall report to the City Recorder the amount of the charge, the date upon which that charge is due, the name of the owner of record or the purchaser of record, and the description of the property, and upon receiving that report the City Recorder shall docket the lien in the City's docket of liens and record it in the Curry County deed records, and from the time that docketing is completed, ***the City shall have a lien upon that described land for the amount of the charge and interest upon that charge at the rate of 4% + federal reserve prime rate on the date of the lien.*** That lien shall be enforced in the manner provided in ORS chapter 223 and shall have priority over all other liens and encumbrances.

PORTIONS OF ORS 223 FINANCING LOCAL IMPROVEMENTS (Authority to enter into installments)



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

223.210 Right of property owners to apply for installment payment of assessment. (1) If the governing body of a local government has proceeded to cause any local improvement to be constructed or made within the corporate limits of the local government, and has determined the final assessment for the local improvement against the property benefited thereby or liable therefor, according to applicable law, the local government shall cause notice of the final assessment to be published. The notice shall identify the local improvement for which the assessment is to be made, each lot to be assessed and the final assessment for each lot. In addition, the notice shall state that the owner of any property to be assessed shall have the right to make application to the local government for payment of the final assessment in installments as provided in this section. A copy of the notice shall be mailed or personally delivered to the owner of each lot to be assessed.

(2) The owner of any property to be so assessed, at any time within 10 days after notice of final assessment is first published, may file with the recorder a written application to pay:

(a) The whole of the final assessment in installments; or

(b) If part of the final assessment has been paid, the unpaid balance of the assessment in installments.

(3) At the option of the local government, an installment application may be filed more than 10 days after notice of the final assessment is first published. [Amended by 1957 c.103 §2; 1957 c.397 §1; 1967 c.239 §1; 1991 c.902 §9; 2003 c.802 §5]

223.215 Contents of application to pay in installments; computation of installments. (1)(a) The installment application shall state that the applicant does thereby waive all irregularities or defects, jurisdictional or otherwise, in the proceedings to cause the local improvement for which the final assessment is levied and in the apportionment of the actual cost of the local improvement.

(b) The application shall provide that the applicant agrees to pay the final assessment over a period of not less than 10 years nor more than 30 years and according to such terms as the governing body of the local government may provide. The governing body may provide that the owner of the assessed property may elect to have the final assessment payable over a period of less than 10 years and according to such terms as the governing body may provide.

(c) The application shall also provide that the applicant acknowledges and agrees to pay interest at the rate provided by the governing body of the local government on all unpaid assessments, together with an amount, determined by the governing body, sufficient to pay a proportionate part of the cost of administering the bond assessment program and issuing the bonds authorized under ORS 223.235, including but not limited to legal, printing and consultant's fees.

(d) The application shall also contain a statement, by lots or blocks, or other convenient description, of the property of the applicant assessed for the improvement.

(2) In connection with the final assessments for any local improvement, the governing body of the local government may establish a procedure by which an owner of any property to be assessed may irrevocably elect in writing to have the final assessment levied for a number of years less than 10, which shall be determined by the governing body. The written election shall:

(a) Be signed by the owner or a duly authorized representative of the owner;



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

(b) Contain a description of the assessed property and the local improvement for which the assessment is made; and

(c) Contain a statement by the owner acknowledging that the improvement is a local improvement as described under ORS 223.001 (9), that payment of the final assessment against the properties benefited by the local improvement plus interest may be spread over at least 10 years and that, notwithstanding any provision of law, the owner consents to make payments over a period of less than 10 years and to have the assessment levied on the benefited property accordingly.

(3) The election under subsection (2) of this section shall be recorded in the bond lien docket for the local improvement to which the assessment relates. From and after the time at which the written election is so recorded, it shall be valid and binding upon all subsequent owners of the property or any part thereof. [Amended by 1957 c.103 §3; 1959 c.653 §2; 1969 c.531 §1; 1971 c.100 §1; 1975 c.320 §1; 1981 c.322 §1; 1985 c.656 §1; 1991 c.902 §11; 2003 c.802 §6]

223.220 [Amended by 1957 c.103 §4; 1957 c.397 §2; 1975 c.642 §2; repealed by 1991 c.902 §121]

223.225 Record of application to be kept. The recorder of the local government shall:

(1) Keep all applications filed under ORS 223.210 in convenient form for examination. The applications received for each local improvement shall be separate.

(2) Enter in a book kept for that purpose, under separate heads for each local improvement, the date of filing of each application, the name of the applicant, a description of the property and the amount of the final assessment, as shown in the application. [Amended by 1957 c.103 §5; 1991 c.902 §12; 2003 c.802 §7]

223.230 Lien docket; interest; priority; public access. (1) After expiration of the time for filing application under ORS 223.210, the local government shall enter in a docket kept for that purpose, under separate heads for each local improvement, by name or number, a description of each lot or parcel of land or other property against which the final assessment is made, or which bears or is chargeable for a portion of the actual cost of the local improvement, with the name of the owner and the amount of the unpaid final assessment. The entries shall be made as of the date of initial determination and levy of the final assessment.

(2) The docket shall stand thereafter as a lien docket as for ad valorem property taxes assessed and levied in favor of the local government against each lot or parcel of land or other property, until paid, for the following:

(a) For the amounts of the unpaid final assessments therein docketed, with interest on the installments of the final assessments at the rate determined by the governing body of the local government under ORS 223.215; and

(b) For any additional interest or penalties imposed by the local government with respect to any installments of final assessments that are not paid when due.

(3) All unpaid final assessments together with accrued and unpaid interest and penalties are a lien on each lot or parcel of land or other property, respectively, in favor of the local government, and the lien shall have priority over all other liens and encumbrances whatsoever.

(4) For a local improvement district assessment lien or system development charge installment payment contract lien to continue, each local government shall make the appropriate



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

lien record, as prescribed by this section and ORS 223.393, available on hard copy or through an online electronic medium. [Amended by 1957 c.103 §6; 1959 c.653 §3; 1969 c.531 §2; 1975 c.642 §2a; 1981 c.94 §10; 1981 c.322 §2; 1991 c.902 §13; 1995 c.709 §2; 1997 c.840 §2; 2003 c.195 §10; 2005 c.46 §1]

223.262 Assessment contracts; transfer of contract rights by local government; use of proceeds. (1) As used in ORS 223.205 and 223.210 to 223.295:

(a) "Assessment contract" means the obligation to pay final assessments in installments that arise when a property owner submits an application to pay assessments in installments under ORS 223.210 or a similar provision of a local charter.

(b) "Assessment contract rights" includes the right to receive installment payments of final assessments, with interest, made under an assessment contract, and the right to enforce the lien of the final assessment.

(2) Any local government that receives or expects to receive assessment contracts may:

(a) Sell or assign to third parties all or any portion of its assessment contract rights.

(b) Create corporations or other business entities to factor assessment contract rights.

(c) Create grantor trusts and transfer to the trusts assessment contract rights.

(d) Contract to service assessment contracts and assessment liens for the owners of assessment contract rights, or contract with third parties to service assessment contracts and assessment liens for the owners of assessment contract rights.

(e) Serve as a trustee for the owners of assessment contract rights.

(f) Enter into contracts necessary to carry out the provisions of this section.

(3) Any trust created under this section may fractionalize and sell assessment contract rights.

(4) Assessment contract rights, any interests therein and any interests in trusts secured primarily by assessment contract rights shall be exempt from registration under ORS 59.055.

(5) If assessment contract rights that secure outstanding obligations of a local government are sold or assigned under this section, an amount shall be placed irrevocably in escrow that is calculated to be sufficient to pay all principal and interest on the outstanding obligations as they mature or are irrevocably called for prior redemption. Any sale proceeds not required to fund the escrow may be placed in the general fund of the local government. If only a portion of the contract rights securing outstanding obligations is sold, then the amount of outstanding obligations that must be defeased pursuant to this subsection shall be that proportion of the principal amount of the outstanding obligations that the principal amount of the contract rights that are sold represents to the total principal amount of the contract rights that secure the outstanding obligations. [1989 c.603 §2; 1991 c.902 §17; 2003 c.802 §11; 2007 c.783 §75]

223.265 Payment of installments; due dates. (1) The installments due and payable under an assessment contract shall be due and payable periodically as the governing body of the local government shall determine but shall not be due and payable over a term in excess of 30 years. Each installment is due and payable with interest as described under subsection (3) of this section.

(2) The installments and interest are payable to the treasurer by the property owner whose application to pay the cost of the local improvement by installments has been filed as provided in ORS 223.210.



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

(3) The amount of each installment (percentage of the total final assessment) shall be determined by the governing body of the local government and shall be as appears by the bond lien docket described in ORS 223.230. Each installment shall be due and payable with the accrued and unpaid interest on the unpaid balance of the final assessment amount at the rate per annum determined by the governing body of the local government under ORS 223.215.

(4) The first payment shall be due and payable on the date that the governing body shall determine, and subsequent payments shall be due and payable on subsequent periodic dates thereafter as shall have been determined by the governing body. [Amended by 1957 c.103 §10; 1959 c.653 §6; 1969 c.531 §3; 1971 c.100 §3; 1975 c.320 §4; 1981 c.322 §4; 1991 c.902 §18; 2003 c.802 §12]

223.270 Procedure for collection on default. (1) If the owner neglects or refuses to pay installments under ORS 223.265 as they become due and payable for a period of one year, then the governing body of the local government may, by reason of the neglect or refusal to pay the installments, and while the neglect and refusal to pay continues, pass a resolution:

(a) Giving the name of the owner then in default in the payment of the sums due;
(b) Stating the sums due, either principal or interest and any unpaid late payment penalties or charges;

(c) Containing a description of the property upon which the sums are owing; and

(d) Declaring the whole sum, both principal and interest, due and payable at once.

(2) The governing body may then proceed at once to collect all unpaid installments and to enforce collection thereof, with all unpaid late payment penalties and charges added thereto, in the same manner in which delinquent property taxes are collected under applicable law or, in the case of a city, in the same manner as street and sewer assessments are collected pursuant to the terms of the city charter. [Amended by 1991 c.902 §19; 2003 c.802 §13]

223.275 Notice to pay; receipts and entries on lien docket. The recorder of a local government shall, when installments and interest on any final assessment in the bond lien docket are due, make the proper extensions of the installments and interest on the bond lien docket and turn the same over to the treasurer of the local government. The treasurer then shall notify the property owner that the installments are due and payable, but a failure of any owner to receive the notice shall not prevent collection of the installment as provided in ORS 223.270. The treasurer shall issue a receipt to the person paying the installments and interest, and shall file duplicates of the receipts with the recorder. When the treasurer returns the bond lien docket, the recorder shall make the proper entries on the bond lien docket showing the amount of each payment and the date of the payment. [Amended by 1991 c.902 §20; 2003 c.802 §14]

223.280 Right of owner to prepay balance and discharge lien. At any time after issuance of bonds under ORS 223.235, any owner of a lot against which the final assessment is made and lien docketed may pay into the treasury of the issuing local government the whole amount of the final assessment for which the lien is docketed, together with the full amount of interest and late payment penalties and charges accrued thereon to the date of payment. Upon producing to the recorder of the local government the receipt of the treasurer, the recorder shall enter in the lien docket opposite the entry of the lien the fact and date of the payment and that the lien is discharged. [Amended by 1991 c.902 §21; 2003 c.802 §15]



SECTION 10.

MISC ITEMS (including policy discussions & determinations)

223.290 Payments entered on lien docket; lien discharge. Entries of payments of installments, interest and late payment penalties or charges, made under the Bancroft Bonding Act, shall be made in the lien docket as they are received, with the date of payment. The payments so made and entered shall discharge the lien to the amount of the payment and from the date of the payment. [Amended by 1991 c.902 §23; 1995 c.709 §3; 1997 c.840 §3]

THE FOLLOWING IS A REPRINT OF PRIOR COUNCIL REPORT(S) FOR ADDITIONAL BACKGROUND

From February Council Report:

We finally got the info out to all the FOG producers in town notifying them of required compliance. We have had good feedback from the producers and so far everyone is on board for compliance. We had our first request for financial assistance for installation/upgrade to a producer's FOG collection system. It occurred to me that we have budget approved the \$150,000 set aside for loans/grants, but we never came up with a process. Staff is requesting direction from the Council on how you wish to address the grant/loan program requests.

STAFF QUESTIONS:

- Grants AND loans or just loans?
- What is the most an individual producer can request?
- Flat amount or percentage of total cost?
- What is the longest we will go for repayment?

Below are some staff suggestions and attached is a basic request for installment plan form.

STAFF SUGGESTIONS:

- If we offer grants, I would suggest \$500-\$1000
- The loan amounts can be added to the monthly utility bill—there is a section in Caselle specifically for this type of utility related financing—that would eliminate staff having to separately track and bill accounts.
- Financing time based on the amount financed but no more than 5 years total.

**Residential Ductless Heat Pump Program
Coos Curry Electric Cooperative, Inc.**



What's required to qualify for an incentive / rebate?

A ductless heat pump (DHP) installed in an existing residential single family home that has permanently installed electric resistance zonal heat or manufactured home that is heated by an electric furnace as its primary means of heat. No incentives are available if converting from an air source heat pump to a DHP.

All installations must be performed by a registered Performance Tested Comfort Systems Technician (PTCS Certified). The technician must have received his/her training from the manufacturer of the equipment that he/she installs. The technician must be able to document successful completion of this training. The DHP must be a split-system heat pump system employing an inverter-driven outdoor compressor unit with an inverter-driven or variable speed blower.

Homes with a non-functioning heat pump will need to discuss options with the Conservation Program Manager

Purchase and installation must have been on or after October 1 2015. Limit one (1) reimbursement per household.

- Rebates up to \$720.00 for conversion where baseboard/Zonal heat was the primary heat source
- Rebates up to \$920.00 for Furnace conversions

Incentives are paid after completion. The contractor or member is required to submit all requested documentation for approval to the goingductless.com registry. Failure to provide all the necessary documentation and receive the goingductless.com "Approved" status will delay or prevent any incentive. Rebates can take 12 weeks or longer to be processed. All rebates are subject to change or cancelation without notice and are based on funding availability.

Homes must be occupied year round; homes with seasonal or part time occupancy are not eligible for the program. All previous rebate forms are invalid and will not be accepted.

Return completed application and all necessary documentation to any local office or mail to:

Coos-Curry Electric Cooperative, Inc. Attn: Member Rebate Program PO Box 1268 Port Orford Or 97465
Allow 12 weeks for processing and payment.

Date of installation: _____ Member Name: _____

Service Address: _____ City: _____

Coos Curry Electric Cooperative **Account Number required**, rebate will be applied here: _____

Members Signature: _____ Date: _____





WEATHERIZATION PROGRAM DISCOUNT APPLICATION

Please Note: This program is funded by the Bonneville Power Administration and is subject to change without notice.

- 1. Read and understand the Residential Weatherization Program Description.
2. Send a copy of your chosen bid, from one of the contractors on Central Electric Cooperative's (CEC's) list, and this application to CEC Weatherization Program, P.O. Box 846, Redmond, OR 97756 (fax 548-0366).
3. DO NOT BEGIN WORK UNTIL THE BID PROPOSAL HAS BEEN REVIEWED AND APPROVED BY CEC.
4. Once the application has been reviewed and approved by CEC, a copy of the approval will be sent to you and your contractor.
5. Your contractor will notify CEC when the work is complete by submitting an invoice to CEC.

Owner Name (Please Print) _____ Date _____
Building Address _____ City _____ Zip _____
Mailing Address _____ City _____ Zip _____
Daytime Phone (H) _____ (W) _____ (Email) _____

Type of Electric Heat: [] Furnace [] Heat Pump [] Zonal Year home was built _____
[] Site built or [] Manufactured Home Sq. footage of home _____

Calculate Your Discount [Job Cost - Discount = Your Cost]

Table with 4 columns: Weatherization Measures, Job Cost, Discount, Your Cost. Rows include Replacement Windows, Ceiling Insulation, Floor Insulation, Duct Sealing & Repair, and a TOTAL row.

- Owner, by executing this agreement, waives any and all claims against CEC that may arise from the installations of said improvements.
Owner understands and agrees that CEC's financial incentives will be computed according to the actual installed approved measures.
Owner has read the CEC Residential Weatherization Program Description, understands and agrees to the provisions of the program.

Owner Signature _____ Date _____

CEC Representative _____ Date _____