

MYRTLE POINT CITY COUNCIL AGENDA
Regular Meeting
Monday, May 1, 2023, 7:30 p.m.
OSU Extension Meeting Room | 631 Alder Street, Myrtle Point

For those wishing to attend remotely, please use one of the following options:

Join Zoom Meeting: <https://zoom.us/j/7532272341>

Meeting ID: 753 227 2341 | Password: Myrtle

or

Dial-in: 1 (253) 215-8782 | Meeting ID: 753 227 2341 | Passcode: 851522

- I. CALL TO ORDER – Mayor Clayburn
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL – City Council
- IV. CONSENT ITEMS
 - A. Minutes of April 3, 2023 Regular Meeting
- V. ACTION/DISCUSSION ITEMS
 - A. Public Comment – Camping Regulations**
 - B. Ordinance No. 1290 – Establishing Camping Regulations
 - C. Declaring a Dangerous Building – 908 Hermann Street
 - D. Draft Ordinance Granting a Non-Exclusive Franchise to Douglas Fast Net
- VI. PETITIONS FROM THE AUDIENCE

This is a public meeting and the media may use information presented.
- VII. UPCOMING MEETINGS AND EVENTS:
 - A. Myrtle Point Public Library Foundation Meeting – May 2, 2023, 5:00 p.m.
 - B. Myrtle Point Budget Committee Meeting – Monday, May 8, 2023, 7:30 p.m.**
 - C. Flora M. Laird Memorial Library Board Meeting – May 9, 2023, 11:00 a.m.
- VIII. INFORMATION ITEMS
 - A. Myrtle Point Public Library Foundation Meeting Agenda – May 2, 2023
 - B. Myrtle Point Public Library Foundation Meeting Minutes – April 4, 2023
- IX. OTHER COMMUNICATIONS
 - A. Staff Reports
 - B. Council Concerns and Comments*
- X. ADJOURNMENT

Notice given this 27th day of April 2023 – Darin Nicholson, City Manager

* indicates no material included in packet

**CITY OF MYRTLE POINT
CITY COUNCIL MEETING MINUTES
Regular Meeting
Monday, April 3, 2023 – 7:30 p.m.,
OSU Extension Service Meeting Room
631 Alder Street, Myrtle Point**

Council Members

Present:

Samantha Clayburn, Mayor
Gary Sullivan, City Councilor
Berea Gibbons, City Councilor*
Kim Krantz, City Councilor

Michael Hogan, City Councilor*
Mike Wood, City Councilor
Ivan Hawker, City Councilor

Absent:

None

Staff and Others

Scott Robinson, Chief of Police
Darin Nicholson, City Manager
Willy Burris, Fire Chief*
Kathy Lewis*
Justin Clayburn
Chuck LaRue
Jeannie Fosdick
Aaron Gilbert, Police Officer (arrived ~7:32)

Wayne Ramsey, Public Works
Amy Bruno, Library Director
Ginny Groce, Accountant*
Tim Groce*

Terry LaRue
Andy Harless

(* indicates remote attendance)

CALL TO ORDER

Mayor Clayburn called the City Council meeting to order at 7:30 p.m. and led those present in the Pledge of Allegiance.

ROLL CALL

Mayor Clayburn asked the City Council members to state their names for the roll.

CONSENT ITEMS

- A. Mayor Clayburn announced the Consent Items – Minutes of the March 6, 2023 Regular Meeting. Councilor Sullivan moved to receive, accept and approve the minutes from the last City Council meeting. Councilor Wood seconded the motion which carried unanimously.

ACTION/DISCUSSION ITEMS

A. Public Comment – Camping Regulations

Mayor Clayburn announced the public comment opportunity on the proposed camping regulations. Manager Nicholson explained that during the 2021 legislative session, the State legislature passed a law requiring cities to adopt camping ordinances which have allowances for homeless people to sleep and otherwise exist. The underlying reason for the legislation was that it was determined that homelessness can't be criminalized. Manager Nicholson then reviewed questions which had been discussed at the previous City Council meeting and answers that the City Attorney had provided. The questions and the attorney's answers were provided in the City Council packets. Manager Nicholson stated that, based on the attorney's answers to the questions, he did not make any changes to the draft

ordinance. He also shared that the City Attorney was not available to attend the meeting that night but she would be available for the May 1st meeting if the City Council had additional questions for her. Manager Nicholson also explained that the ordinance did not state an effective date, and without such a statement it would go into effect 30 days after passage. He asked if the council would like to add an effective date.

Mayor Clayburn opened the subject for public comment. Andy Harless addressed the City Council and reported a problem with a relative who had been camping on their property and would not leave until a restraining order was obtained. He said that he felt that the City Council should be aware of that situation while considering passage of the proposed ordinance. There was some related discussion. Manager Nicholson pointed out that the City Attorney had answered a similar question about what would happen when a property owner, who has allowed a camper to stay on their property for a period of time, wants the camper to leave and the camper refuses. The attorney indicated that she did not think eviction laws would apply as they do to tenants of a rental property. Councilor Sullivan suggested that a camping agreement may help prevent problems that property owners would encounter when trying to get a camper to leave. Police Officer Gilbert commented that the Police Department will not be able to determine whether a person is a resident or not, whether they have an agreement or if it is valid. The police will not be able to get in the middle of that, so the homeowner is going to take on that risk themselves. There was also discussion that landlord-tenant agreements are civil and the police cannot get in the middle of disputes that arise in those agreements either. Chief Robinson pointed out that hotels and motels have a financial agreement and there are specific laws for that type of temporary lodging. This is entirely outside those laws. There was some related discussion about how a person establishes residency and what that means in terms of camping on either public or private property. Chief Robinson pointed out that we can make valid arguments about the problems that are likely to arise where homeless camping is allowed to take place, but because of the legislation, we have to adopt local camping regulations. Mayor Clayburn pointed out that we can't prohibit camping everywhere because we would end up with a lawsuit. There was additional discussion on the matter, including the requirement for the city to store certain items for 30 days if they are believed to have value or utility. Justin Clayburn spoke and described how the Sheriff's Office handled a problem with people camping on county property in Lakeside. Ultimately, they were trespassed from the area after they damaged the property. There was also more discussion about how long a person has to remain at a residence in order to establish residency. Councilor Gibbons expressed concern about allowing camping in the parks since they are frequented by children. She asked about designating the lot at the west end of Spruce Street as available for camping. There was some related discussion and concern was raised that by doing so, it would potentially constitute a "state created danger."

B. Ordinance No. 1290 – Establishing Camping Regulations

Mayor Clayburn announced Ordinance No. 1290 Establishing Camping Regulations and asked if the City Council would like to move forward with it or table it until the next month when the attorney would be available for questions. Councilor Hawker moved to table the matter until the next month. The City Council unanimously agreed to table the matter.

C. Public Hearing – Dangerous Building 1030 Harris Street

Mayor Clayburn announced the Public Hearing on the Dangerous Building at 1030 Harris Street and called on the City Manager for background. Manager Nicholson gave a brief history on the property in question and City Council's options moving forward. Mayor Clayburn then closed the Regular Meeting at 8:03 p.m. and opened the Public Hearing.

Andy Harless addressed the City Council and stated that the property just got put into probate on the previous Monday. Due to the delay, they are still unable to start doing anything related to obtaining a building permit. He then stated that they had come to the conclusion that they would like to demolish the remains of the structure and place a manufactured home on the site. He said it's a hard decision but that's what they are thinking now. Mayor Clayburn called for any other public comment and, hearing none, closed the Public Hearing at 8:04 p.m. and reopened the Regular Meeting.

D. Resolution 2023-04 – Declaring a Dangerous Building at 1030 Harris Street and Ordering Its Abatement

Mayor Clayburn announced Resolution 2023-04 Declaring a Dangerous Building at 1030 Harris Street and Ordering Its Abatement. Councilor Sullivan moved to approve Resolution 2023-04 Declaring a Dangerous Building at 1030 Harris Street and ordering its removal and the site be cleaned, and to set a timeframe of 75 days for completion of the work. Councilor Hogan seconded the motion. There was some discussion on the suggested timeframe and whether the occupants could have the site cleaned more quickly than 75 days due to safety concerns. Andy Harless explained that the probate papers had just been filed the previous week, so they are just now able to start legally working on the property. There was some related discussion about the circumstances at the property. Mayor Clayburn addressed Mr. Harless and Ms. Fosdick and stated that she was glad they had made the decision to tear down the structure. She expressed that she hoped that the probate would be completed by the end of the 75 days so that they could move forward. Mr. Harless indicated that they would start working on financing for the placement of a manufactured home. Mayor Clayburn then asked the City Manager about the status of the Temporary Dwelling Permit. Manager Nicholson indicated that the Temporary Dwelling Permit would expire near the end of the month. He indicated that the occupants would need to request an extension, and he also explained that they would need to abide by conditions of the original Temporary Dwelling Permit if they wished to be granted an extension. There was some related discussion. Following discussion, Mayor Clayburn called for a vote on the motion to approve Resolution 2023-04 Declaring a Dangerous Building at 1030 Harris Street and ordering its removal and the site be cleaned within a timeframe of 75 days. The motion carried unanimously.

Mr. Harless asked if the fire department would do a controlled burn to remove the rest of the structure. Chief Burris said a hazardous materials survey would need to be completed.

E. Public Hearing – Proposed Supplemental Budget to the 2022-23 Budget

Mayor Clayburn announced the Public Hearing for the proposed Supplemental Budget to the 2022-23 Budget. Manager Nicholson explained the legal requirement for a Public Hearing because the Water Fund and State Tax Streets Fund were proposed to change by more than 10% in expenditures. Following the explanation, Mayor Clayburn closed the Regular Meeting and Opened the Public Hearing at 8:13 p.m. There was no public comment. Mayor Clayburn closed the Public Hearing and reopened the Regular Meeting at 8:14 p.m.

F. Resolution 2023-05 – Adopting a Supplemental Budget to the 2022-23 Budget

Mayor Clayburn called for a motion on the Supplemental Budget. Councilor Wood moved to approve Resolution 2023-05 Adopting a Supplemental Budget to the 2022-23 Budget to Adjust Revenue and Appropriations in Various Funds due to Circumstances not Anticipated at the Time of Adoption. Councilor Hawker seconded the motion which carried unanimously.

G. Resolution 2023-06 – Adopting a Job Description for the Position of Student Intern in the Library

Mayor Clayburn announced Resolution 2023-06 Adopting a Job Description for the Position of Student Intern in the Library. Manager Nicholson deferred to Library Director Bruno for explanation. Director Bruno explained that she had received an LSTA grant from the state which will allow the library to hire a 17 to 19 year-old student intern part-time from May through August. She plans to have the intern help with the Summer Reading Program and develop a teen project, preferably with a teen advisory committee. The grant is repeatable and Director Bruno is hopeful to get the grant in future years if it is successful this year. Following the explanation, Mayor Clayburn called for a motion. Councilor Wood moved to approve Resolution 2023-06 Adopting a Job Description for the Position of Student Intern in the Library. Councilor Hogan seconded the motion which carried unanimously.

H. Engineering Scope of Services – Harris Street Improvements

Mayor Clayburn announced the Engineering Scope of Services for Harris Street Improvements. Manager Nicholson explained that the scope of services was for design of the planned street and sidewalk improvements along Harris Street from 4th Street to Hwy 42 under the grant received from ODOT. He indicated that in the cost estimate developed at the time of the grant application, he had estimated about \$32,000 for engineering. The proposal is for a fee not to exceed \$31,000 and therefore he recommended approval of the scope of services. Manager Nicholson pointed out that the proposal indicated a timeline of design during the summer, with bidding and construction in the fall. He noted the challenge it would be to have construction going on while school is in session and suggested delaying construction until spring 2024. The grant has a 2-year timeframe. Councilor Hawker moved to approve the Engineering Scope of Services submitted by Civil West Engineering Services, Inc. for the design of Harris Street Improvements – 4th Street to Hwy 42 for a fee not to exceed \$31,000. Councilor Krantz seconded the motion. Councilor Gibbons asked if the city had gotten more than one bid for the design work. Manager Nicholson explained that there had not been other bids because Civil West Engineering Services is the city's Engineer of Record and, per OAR 137-048-0200, professional services contracts up to \$100,000 may be awarded by the process of direct appointment. Councilor Gibbons asked about Civil West's qualifications and Manager Nicholson explained their services and the city's relationship with them. There was also some discussion about the best time for construction to take place. Following discussion, Mayor Clayburn called for a vote on the motion to approve the Engineering Scope of Services. The motion carried unanimously.

PETITIONS FROM THE AUDIENCE

Mayor Clayburn called for petitions from the audience. There were none.

UPCOMING MEETINGS AND EVENTS

- A. Myrtle Point Public Library Foundation Monthly Meeting – April 4, 2023, 5:00 p.m.
- B. Flora M. Laird Memorial Library Board Meeting – April 11, 2023, 11:00 a.m.
- C. Myrtle Point Budget Committee Meeting – April 24, 2023, 7:30 p.m.

INFORMATION ITEMS

- A. Myrtle Point Public Library Foundation Meeting Agenda – April 4, 2023
- B. Myrtle Point Public Library Foundation Meeting Minutes – March 7, 2023

OTHER COMMUNICATIONS

- A. Staff Reports:
 - 1. Manager Nicholson reported on the following:

- a. DEQ Meeting – On March 9th, representatives from DEQ met and toured the wastewater treatment plant. The City of Myrtle Point has been on DEQ's schedule for several years for an updated National Pollutant Discharge Elimination System (NPDES) permit for the wastewater plant. In October 2022 we were notified that a draft permit had been written and we had two weeks to comment on it. Several of the proposed pollutant limits were below what our treatment plant is able to achieve. This was noted in the response to DEQ. It was then discovered by management at DEQ that the permit writing process had been performed without consulting the city (apparently a requirement). Once that came out, management indicated that they would start the process over, with a new draft to be written in consultation with the city and/or the city's engineer.
 - b. EnBiorganics – The city was contacted by EnBiorganics, a Canadian environmental science company, regarding a possible pilot study in which specific, naturally occurring bacteria would be introduced into the wastewater collection system to consume nutrients before they reach the wastewater treatment plant. They claim that the process will measurably reduce the amount of biosolids produced in the treatment process, in turn saving money in processing and disposal costs.
 - c. Former Library Director – On March 21st, mediation was conducted for two lawsuits filed by former Library Director Shanna (Lou, Murphy) Allen regarding employment with the city and a Workers Compensation claim. Attorneys from CIS and SAIF were involved in the matter. A settlement offer was reached, however at the time of writing this report, the settlement agreement has not been signed.
 - d. New City Website – EPUERTO built a new website for the city which recently went live. The webpages appear to meet ADA accessibility requirements but the posted documents from the old website were moved over without any update.
2. Accountant Groce reported that staff is working on getting the budget together.
 3. Fire Chief Burris reported that the Fire Department has been pretty busy – there was a fire at Jack's Fountain in Powers which the department assisted on; a few days later there was a four-plex apartment in Coquille which the department assisted on; and then just a few nights ago there was a fire at the feed store in Myrtle Point. Building damage in Powers was pretty bad, but in both Coquille and Myrtle Point they were able to get the fires stopped early and prevented extensive damage. He said the Auto Aid Agreement is working very well to get quicker response from multiple departments when fires occur. Chief Burris also reported that the new ambulance, which had been ordered about a year-and-a-half earlier was scheduled to be picked up on May 2nd. Chief Burris also reported that in December he had applied for a grant through the State Fire Marshal's Office for a new water tender. We were fortunate to be selected to receive a new water tender. The truck is valued at about \$350,000. Chief Burris reported that there are currently two Paramedic positions open and he plans to advertise to fill those soon.
 4. Police Chief Robinson reported that Officer Angove had surgery on March 7th and now he is back on light-duty. Officer Lance Pierce just started the third week at the Police Academy. Chief Robinson also reported on a recent high-profile burglary in town. Officer Gilbert made two arrests and got a confession. The department is still trying to track down some of the stolen property.
 5. Senior Maintenance Worker Ramsey reported that hydrant flushing would occur during the month of April. He also reported that the department had obtained another one-ton work truck. The sewer treatment plant is doing OK with occasional washouts. The water treatment plant is doing great. He also reported that the city had purchased a three-foot double-drum roller so that some in-house pavement patching can be performed. Mayor Clayburn asked about the sidewalk at 4th and Maple Street. Sr. Maint. Ramsey said that he has been removing the old sidewalk so that the church can replace the sidewalks around the property. He also commented on plans to remove and

replace sidewalks around the North Bend Medical Center office. There was then some discussion about ongoing projects at the city parks.

6. Library Director Bruno reported thanked the City Council for approving the job description for the summer intern. She then reported on a new seed library and explained how it works. The seed library was started with grant funds. Director Bruno reported that the Summer Reading Program is planned to be held on Wednesdays at 11:00 a.m. at Rotary Park beginning on June 21st. She also has coordinated with the school lunch program to have meals available for kids at noon following story time. The Library Foundation will be providing supplemental food to make sure there is enough for all the children. Director Bruno also reported on plans for the East Egg hunt scheduled for Saturday, April 8th at noon.
7. Senior Maint. Worker Ramsey also reported on some recent volunteer work by youth from a church in Meridian, ID. The group cleaned and painted all of the city's park benches/tables and picked up trash around Lenherr Park.

B. City Council Concerns & Comments

1. Councilor Sullivan commented on the recent fire at Schrader's Farm & Outdoor store and stated he would be seeking ways to help them out at this time. Councilor Sullivan also asked Police Chief Robinson about the latest developments from Ballot Measure 114. Chief Robinson reported that Senate Bill 348 is now on the Senate floor and has all the provisions as the ballot measure and more. He indicated that the legislature is planning to circumvent the courts with the legislation.

ADJOURNMENT

Having no further business for the City of Myrtle Point, Mayor Clayburn adjourned the Regular Meeting at 8:58 p.m.

05/01/2023

Samantha Clayburn, Mayor
City of Myrtle Point

City of Myrtle Point Agenda Item Report

To: Mayor Clayburn and City Council
From: Darin Nicholson, City Manager
Date: May 1, 2023
Re: Ordinance No. 1290 – Establishing Camping Regulations, Definitions, Prohibited Camping, Permitted Overnight Sleeping, Penalties and Enforcement; and Repealing Existing Camping Regulations



BACKGROUND

As was discussed at the last several City Council meetings, an update is needed to the city's camping regulations in order to bring them into compliance with the provisions of House Bill 3115, passed during the 2021 legislative session. The city has until July 1, 2023 to comply with the provisions of the bill. The City Attorney reviewed a draft ordinance initially presented at the February 6th City Council meeting and made some changes and additions. Ordinance No. 1290 incorporates the changes and additions recommended by the attorney. The attorney also answered additional questions that came up at the March 6th City Council meeting. It is planned to have the City Attorney available at the May 1st City Council meeting to discuss the content of the ordinance and answer any additional questions. The ordinance has now been amended to state an effective date of July 1, 2023.

RELATED CITY POLICIES

None.

COUNCIL OPTIONS

- **Adopt the Ordinance:** This requires a two-step process.
 1. SAMPLE MOTION – *"I move to read Ordinance No. 1290 by title only."* (Approve 1st motion and read ordinance by title only.)
 2. SAMPLE MOTION – *"I move to adopt Ordinance No. 1290 Establishing Camping Regulations, Definitions, Prohibited Camping, Permitted Overnight Sleeping, Penalties and Enforcement; and Repealing Existing Camping Regulations."*
- **Make Changes:** SAMPLE MOTION – *"I move to make the following changes to the ordinance and resubmit it to the City Attorney for further review: _____."*

CITY MANAGER'S RECOMMENDATION

Approve Ordinance No. 1290.

ATTACHMENTS

- Ordinance No. 1290 – Establishing Camping Regulations

ORDINANCE NO. 1290

AN ORDINANCE OF THE CITY OF MYRTLE POINT, OREGON ESTABLISHING CAMPING REGULATIONS, DEFINITIONS, PROHIBITED CAMPING, PERMITTED OVERNIGHT SLEEPING, PENALTIES AND ENFORCEMENT; AND REPEALING EXISTING CAMPING REGULATIONS

THE CITY OF MYRTLE POINT ORDAINS AS FOLLOWS:

Section 1. Purpose

The purpose of this ordinance is to protect the safety of citizens and regulate use of public and private property by establishing time, place and manner guidelines concerning camping and overnight sleeping.

Section 2. Definitions

For the purpose of this ordinance, the following definitions shall apply unless the content clearly indicates or requires a different meaning:

- (1) "To camp" means to set up or to remain in or at a campsite.
- (2) "Campsite" means any place where any bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed, established or maintained for the purpose of maintaining a temporary place to live, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.
- (3) "Emergency Circumstances" means that local conditions, whether related to a human conflict, the weather, or labor disputes, have reached a level of magnitude high enough to cause the Mayor to issue a declaration making the Emergency official.
- (4) "Family" means two or more persons related by blood, marriage, adoption, legal guardianship, or other duly authorized custodial relationship, or not more than two unrelated adults.
- (5) "Motor vehicle" means a vehicle that is self-propelled or designed for self-propulsion.
- (6) "Parking lot" means a developed location that is designated for parking motor vehicles, whether surfaced with asphalt, concrete, gravel or other material.
- (7) "Publicly owned property" means any real property or structures owned, leased, or managed by the city or other government agency including public rights-of-way.
- (8) "Public rights-of-way" means any real property owned by the city that is used for the free and unimpeded passage of the public. Public rights-of-way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, public trails and paths,

and all other easements which provide the public with a right of access or give the city the right to construct, maintain, repair and operate a public improvement.

- (9) “Recreational vehicle” means a vehicle, whether self-propelled or towed, that is designed for use as temporary living quarters.
- (10) “Solid waste” means any garbage, trash, debris, yard waste, food waste, or other discarded materials.
- (11) “Store” or “storage” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

Section 3. Prohibited Camping

- (1) It is found and declared that:
 - (a) From time-to-time persons establish campsites on sidewalks, public rights-of-way, in parks or other public properties, under bridges, and so forth;
 - (b) Such persons, by camping in the public rights-of-way, create unsafe conditions, and by camping on public properties without camping facilities and without regulation, create unsanitary living conditions which pose a threat to the peace, health and safety of themselves and the community; and,
 - (c) Camping, lying, or sleeping on a playground or sports field during the day fundamentally undermines the public’s ability to use that public property for its intended purpose;
 - (d) This section’s regulations are meant strictly to regulate the use of publicly owned property, and are not intended to regulate activities on private property; and
 - (e) The enactment of this provision is necessary to protect the peace, health, and safety of the City and its inhabitants.
- (2) No person shall camp in or upon any sidewalk, street, alley, lane, or other public right-of-way, unless otherwise allowed by declaration of the Mayor in emergency circumstances.
- (3) Lying or sleeping in a city owned park during hours of closure is not prohibited so long as the individual is experiencing homelessness, is not on a playground or sports field, and is not violating any other provision of this section. No person shall lie, sleep, or otherwise occupy a particular location for more than 24 hours consecutively. No person shall camp in publicly owned locations if those locations are without sufficient sanitation facilities.

- (4) Upon finding it to be in the public interest and consistent with council goals and policies, the council may, by motion, exempt a special event from the prohibitions of this section. The motion shall specify the period of time and location covered by the exemption.

Section 4. Permitted Overnight Sleeping

- (1) Notwithstanding the above prohibitions or any other regulation of the City of Myrtle Point:
- (a) Persons may sleep overnight in a vehicle or tent in a parking lot of a religious institution, place of worship, business or public entity that owns or leases property on which a parking lot and occupied structure are located, with written permission of the property owner. The property owner may not grant permission for more than three vehicles or tents used for sleeping at any one time. For purposes of this subsection (1), the term “vehicle” includes a car, camper, and trailer.
 - (b) Property owners wishing to allow more than three vehicles or tents used for sleeping on their property may submit a request in writing to the city. The request should identify the number of vehicles and/or tents planned to occupy the site, the size and location of the site; availability of sanitary facilities and any special circumstances necessitating the additional vehicles or tents, and the anticipated duration.
 - (c) Persons may sleep overnight in the back yard of a single-family residence, with permission of the owner and tenant of the residence. Not more than one family may sleep in any back yard, and not more than one tent may be used for sleeping in the back yard. As an alternative, but not in addition to sleeping overnight in the back yard, not more than one family may sleep in a vehicle parked in the driveway of a single-family residence, with permission of the owner and tenant of the residence.
 - (d) Persons may sleep overnight in a vehicle, on a paved or graveled surface located on a vacant or unoccupied parcel, with the permission of the property owner, if the owner registers the site with the city. The city may require the site to be part of a supervised program operated by the city. The property owner may not grant permission for more than three vehicles used for sleeping at any one time.
- (2) A property owner who allows a person or persons to sleep overnight on a property pursuant to subsections (1)(a), (1)(b) or (1)(c) of this section shall:
- (a) Provide or make available sanitary facilities;
 - (b) Provide garbage disposal services so that there is no accumulation of solid waste on the site;

- (c) Provide a storage area for campers to store any personal items so the items are not visible from any public street;
 - (d) Require a tent or camping shelter in a backyard to be not less than five feet away from any property line; and
 - (e) Not require or accept the payment of any monetary charge nor performance of any valuable service in exchange for providing the authorization to camp on the property; provided, however, that nothing in this section will prohibit the property owner from requiring campers to perform services necessary to maintain safe, sanitary, and habitable conditions at the campsite.
- (3) A property owner who permits overnight sleeping pursuant to subsection (1) and (2) of this section may revoke that permission at any time and for any reason. Any person who receives permission to sleep on that property as provided in this section shall leave the property immediately after permission has been revoked.
- (4) Notwithstanding any other provision of this section, the city manager or the manager's designee may:
- (a) Prohibit overnight sleeping on a property if the city finds that such an activity on that property is incompatible with the uses of adjacent properties or constitutes a nuisance or other threat to the public welfare; or
 - (b) Revoke permission for a person to sleep overnight on city-owned property if the city finds that the person has violated any applicable law, ordinance, rule, guideline or agreement, or that the activity is incompatible with the use of the property or adjacent properties.
- (5) The city manager or the manager's designee may impose administrative civil penalties on property owners who fail to comply with the requirements of subsections (1) and (2) of this ordinance.
- (6) In addition to any other penalties that may be imposed, any campsite used for overnight sleeping in a manner not authorized by this section or other provisions of this code shall constitute a nuisance and may be abated as such.
- (7) With authorization from the city manager or designee in connection with a specific special event, persons may sleep overnight on public property at which a special event is being held. The authorization shall be limited to no more than eight days in any two-week period.

- (8) Nothing in this ordinance creates any duty on the part of the city or its agents to ensure the protection of persons or property with regard to permitted overnight sleeping.

Section 5. Removal of Established Campsites

Any campsite established or maintained in violation of this ordinance shall be removed in accordance with the provisions of ORS 195.505.

Section 6. Penalties and Enforcement

- (1) Any person who violates any provision of this chapter shall, upon conviction, be subjected to a fine in the amount not to exceed \$25. Each day a violation is committed or permitted to continue shall constitute a separate offense.
- (2) In addition to any other penalties that may be imposed, any campsite or camp facilities or camp paraphernalia used for overnight sleeping in a manner not authorized by this section or other provisions of this code shall constitute a public nuisance and may be abated as such. Movement from one location within city limits to another does not constitute abatement by the owner.

Section 7. Severability

The sections and subsections of this Ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 8. Repealer

Section 19 of Ordinance No. 1282 of the City of Myrtle Point, adopted on the 4th day of September 2018, is hereby repealed.

Section 9. Effective Date

The provisions of this ordinance shall become effective July 1, 2023.

First Read: February 6, 2023

Amended: March 6, 2023; May 1, 2023

Adopted by the City Council of the City of Myrtle Point this ____ day of _____ 2023.

Ayes: _____

Nays: _____

Absent: _____

ATTEST:

Samantha Clayburn, Mayor

Darin Nicholson, City Manager/Recorder

Memorandum

To: City Council
From: Darin Nicholson
Date: May 1, 2023
Re: Declaring a Dangerous Building – 908 Hermann Street

A structure fire occurred at the shop building addressed 908 Hermann Street on October 5, 2022. No repairs or demolition have occurred to date. Fire Chief Burris is concerned about the condition of the building and recommends declaring it a dangerous building.

Ordinance 1181 of the City of Myrtle Point identifies procedures for the declaration and abatement of dangerous buildings within the city limits. Step 1 in the process is to report the situation to the City Council; this Memo accomplishes that first step. Step 2 is for the City Council to set a date for a Public Hearing regarding the building. It is hereby requested that a Public Hearing be set for June 5th, 2023 at the regular City Council meeting for the matter of the building at 908 Hermann Street. This date will allow for sending notice to the property owner of record and publishing notice in the local newspaper as required under the Ordinance.

City of Myrtle Point Agenda Item Report

To: Mayor Clayburn and City Council
From: Darin Nicholson, City Manager
Date: May 1, 2023
Re: Draft Ordinance Granting a Non-Exclusive Franchise
to Douglas Fast Net



BACKGROUND

Comspan Communications was granted a franchise in 2007 to construct, operate and maintain a fiber optic telecommunications network in Myrtle Point. Over the intervening years, the network has sold multiple times. Douglas Fast Net (DFN) purchased the Comspan Communication network in 2020. At the time, it was determined that the existing franchise agreement with Comspan was transferrable to DFN and operations continued with very little change. It was recently discovered that the preexisting franchise agreement has now expired and must be renegotiated. The attached draft franchise agreement was developed based on DFN's existing franchise agreement with the City of Coos Bay.

RELATED CITY POLICIES

None

COUNCIL OPTIONS

- **Approve the draft franchise agreement and direct the City Manager to have it reviewed by the City Attorney:** SAMPLE MOTION – *"I move to approve the draft Ordinance Granting a Non-Exclusive Franchise to Douglas Fast Net and direct the City Manager to have it reviewed by the City Attorney."*
- **Suggest changes to the draft ordinance before having it reviewed by the City Attorney.**

CITY MANAGER'S RECOMMENDATION

Approve the draft ordinance and have it reviewed by the City Attorney.

ATTACHMENTS

- Draft Ordinance Granting a Non-Exclusive Franchise to Douglas Services, Inc., an Oregon Corporation, dba Douglas Fast Net to Construct, Operate and Maintain a Telecommunications Network

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MYRTLE POINT GRANTING A NON-EXCLUSIVE FRANCHISE TO DOUGLAS SERVICES, INC., AN OREGON CORPORATION, dba DOUGLAS FAST NET TO CONSTRUCT, OPERATE, AND MAINTAIN A TELECOMMUNICATIONS NETWORK

This Franchise Agreement (the "Franchise") is between the City of Myrtle Point, hereinafter referred to as the "City" and Douglas Services, Inc., an Oregon Corporation, dba Douglas Fast Net, hereinafter referred to as the "Franchisee."

WHEREAS, the Franchisee owns and operates a fiber optic network (the "Network") which offers certain businesses and residents of Myrtle Point access to broadband telecommunications services;

WHEREAS the City finds that the Franchisee has the financial, legal and technical ability to provide services, facilities and equipment necessary to meet the current and future telecommunications needs of the community;

WHEREAS, the City and the Franchisee have complied with all federal and state-mandated procedural and substantive requirements pertinent to this franchise;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MYRTLE POINT HEREBY ORDAINS:

Section 1: Definitions.

City: The City of Myrtle Point.

Franchisee: Douglas Services, Inc., an Oregon Corporation, dba Douglas Fast Net.

Gross Revenues: Revenues received by Franchisee from the use of its Telecommunications network within the City Limits for the provision of Telecommunications Service, less net uncollectibles, and excluding proceeds from the sale of bonds, securities or stocks, or mortgages or other evidence of indebtedness. Gross revenues shall include revenues from the use, rental, or lease of Franchisee's telecommunications network for the provision of Telecommunications Service, except when those revenues have been paid to the Franchisee by another franchisee of the City and the paid revenues are used in the calculation of the franchise fee for the operations of the other franchisee within City limits. Any *net uncollectibles*, bad debts, or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected.

Rights-of-Way: The present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including rights-of-way held in fee or by virtue of an easement or dedication.

Telecommunications: The transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Network: Infrastructure owned by Franchisee utilizing one or more facilities located within the City's rights-of-way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, necessary and convenient to the provision of access to the Internet and telecommunications service.

Telecommunications Service: The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities' uses.

Section 2: Grant of Franchise. The City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and franchise to erect, construct, operate, repair and maintain in, under, upon, along, and over the City's rights-of-way, its lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining a competitive telecommunications network within the City.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other rights-of-way, by franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.

Section 4: Term and Termination.

- (a) This franchise shall become effective after its enactment, upon the date the Franchisee files with the City Recorder an unconditional acceptance of all provisions of this Franchise. If the Franchisee fails to file such written acceptance within the thirty days after the date the Franchise is enacted, then this Franchise shall be of no further force or effect. If accepted by the Franchisee, the right, privilege, authority and franchise herein granted shall continue until June 30, 2028 (the "Initial Term"). Thereafter, this Franchise shall continue in full force and effect on a year-to-year basis until validly canceled or terminated as provided herein. Either party may terminate this Franchise after the expiration date of the Initial Term, or any renewal term thereof, by providing not less than ninety days' notice.
- (b) This Franchise shall continue for a period of not more than twenty years following the effective date of this ordinance. Upon termination or expiration of the Franchise, if not further renewed, Franchisee shall, within one hundred and eighty days, remove all its facilities from the City's rights-of-way. During such period, Franchisee shall remit to the City any payments due under this Franchise, as if this Franchise were in full force and effect. Should the Franchisee fail to remove its facilities within such one-hundred-and-eighty-day period, the City may do so, and the Franchisee shall immediately remit to the City the costs of such removal.

Section 5: No Limitation of City Authority.

- (a) Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its rights-of-way, or granting other franchises for use of rights-of-way, or of adopting general ordinances regulating use of or activities in the rights-of-way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its rights-of-way, whether now owned or hereinafter acquired.
- (b) In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its rights-of-way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City. If relocation of Franchisee's infrastructure is necessary to accommodate a request made by a third party, Franchisee may charge such third party for the cost of relocation.
- (c) Except as otherwise provided by law, and subject to Section 6 herein, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Competitively Neutral Application. The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of telecommunications services operating within the City. Any requirement imposed on Franchisee that is determined not in compliance with this Section 6 shall be unenforceable against Franchisee.

Section 7: Construction, Maintenance and Repair of Infrastructure.

- (a) Franchisee may make all needful excavations in any right-of-way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same as reasonably possible to the condition that existed prior to such excavation. Franchisee shall obtain all necessary permits for such excavation and construction and pay any applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans (1) to be evaluated by the standards applied to the construction of other similar telecommunications systems in the City, and (2) maintained by the City as confidential and exempt from public disclosure to the maximum extent allowed by law. Such work shall be performed in a good and workmanlike manner, and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over rights-of-way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

- (b) In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may immediately initiate such emergency repairs. Franchisee shall give notice to the City's Public Works Department by telephone, electronic data transmittal or other appropriate means as soon as is practicable after commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.
- (c) Franchisee shall construct and maintain its telecommunications system in such a manner so as to not interfere with City water or sewer systems, or other City facilities.

Section 8: Insurance.

- (a) **General.** At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.
- (b) **Evidence Required.** Within thirty (30) days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.
- (c) **Notice of Cancellation, Reduction, or Material Change in Coverage.** Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than thirty (30) calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.
- (d) **Insurance Required.** During the term of this contract, Franchisee shall maintain in force, at its own expense, insurance in the following minimum amounts:
 - (1) workers' compensation insurance for all subject workers in compliance with ORS 656.017;
 - (2) Commercial General Liability – \$1,000,000 per occurrence, Combined Single Limit (C.S.L.); \$2,000,000 General Aggregate
 - (3) Auto Liability (including coverage on all owned, non-owned hired autos) – \$1,000,000 per occurrence C.S.L.
 - (4) Umbrella Liability – \$1,000,000 per occurrence C.S.L.
- (e) The City shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- (f) The Franchisee shall furnish the City with current certificates of insurance.

Section 9: Transfers and Change in Control.

- (a) **Transfer.** This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer and shall request consent of the transfer by the City. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

Any transfer of ownership effected without the written consent of the City shall render this Franchise subject to revocation. The City shall have 60 days to act upon any request for approval of a transfer. If the City fails to render a final decision on the request within said 60 days, the request shall be deemed granted unless the Franchisee and the City agree to an extension of time.

The Franchisee, upon any transfer as heretofore described, shall within sixty (60) days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Franchisee shall, within sixty (60) days after the same shall have been made, file such certified copy as is required.

The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a telecommunications system of the Franchisee or any affiliate of the Franchisee. However, the telecommunications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is telecommunications system operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

Section 10: Indemnification. Subject to the limitations of the Oregon Tort Claims Act, the Oregon Constitution and the Charter of the City of Myrtle Point, each party shall indemnify, defend and hold harmless the other, and the other's officials, officers, agents and employees, against any and all claims, demands, causes of action, suits, proceedings, damages, costs, reasonable attorney's fees or liabilities (Claims) arising out of, pertaining to, or occurring through the exercise of, the rights and privileges retained by, granted to, or exercised by that party pursuant to this Franchise. Each party shall give to the other notice in writing of any such Claims

within twenty (20) days of the date that party receives notice of any such Claims. Neither party shall settle, compromise, or take any action prejudicial to the other's defense of or interest in such Claims without the express written consent of the other. Neither party shall be liable for or obligated to indemnify the other party for damage or injury caused by third parties who are not acting as the contractor, agent or employee of the first party.

Section 11: Compensation.

- (a) **Franchise Fee.** In consideration of permission to use the streets and rights-of-way of the City for the construction, operation, and maintenance of a telecommunications system within the Franchise area and to defray the costs of Franchise regulation, the Franchisee shall pay to City during the term of this Franchise an amount equal to five percent (5%) of the Franchisee's Gross Revenues ("Franchise Fee").
- (b) **Modification Resulting from Action by Law.** Upon thirty days' notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.
- (c) **Payment of Franchise Fees.** Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than forty-five (45) days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.
- (d) **Interest; No Accord.** Late franchise fee payments will be subject to late fees calculated on the basis of nine percent (9%) per annum of the amount past due. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by City.
- (e) The Franchise Fee includes all compensation for the use of the City's right-of-way. Franchisee may offset against the Franchise Fee the amount of any fee or charge paid to the City in connection with the Franchisee's use of the right-of-way when the fee or charge is not imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.
- (f) **Favored Customer Provision.** In the event the Franchisee enters into a franchise agreement with another municipality in the State of Oregon for a term comparable to this Franchise and Franchisee agrees to pay a franchise fee that is higher than the fees set out in this Franchise, Franchisee shall notify City in writing of the details of this arrangement within sixty (60) days of its effective date. Upon receipt by the City of this

notice, both the City and Franchisee may elect to renegotiate the franchise fee for this Franchise and require payment of a similar fee as provided to the third party. Any change in the franchise fee under this section shall become effective on January 1st of the following calendar year.

Section 13: Right to Inspect Records. In order to manage the Franchisee's use of rights-of-way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's telecommunications system; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications network; the character and extent of the Telecommunications Service rendered therefor to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The information or a signed statement verifying that no such information exists, along with any further directly related data which may be required by the City to adequately understand the information, shall be furnished by the Franchisee to the City within thirty days of when the City provides notice requesting such information, at the Franchisee's cost and expense. The City agrees that such information is confidential, and that the City will use such information only for the purpose of managing its rights-of-way, determining compliance with the terms of this Franchise, and verifying the adequacy of Franchisee's fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law.

Section 14: Right to Perform Franchise Fee Audit or Review; Default. In addition to all rights granted under Section 13, the City shall have the right to have performed, upon advance written notice of not less than 30 days, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of telecommunications services under this Franchise and the accuracy of amounts paid as Franchise fees to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than three (3) years after the date on which franchise fees for any period being audited or reviewed were due. Any such audit or review shall be conducted during normal business hours. The cost of any such audit or review shall be borne by the City, except that if it is established that the Franchisee has made underpayment of 5% or more of the total Franchise fees due during the year or years subject to the audit required by this Franchise, then the Franchisee shall, within 30 days of being requested to do so by the City, reimburse the City for the full cost of the audit or review. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by Oregon law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder.

If such formal audit or a professional review of the Franchisee's books and records indicates that there has been a transfer of revenues from the Franchisee to any other entity such that such amounts that should have been calculated as part of the franchise fee have not been so calculate and have not been previously paid or have not been paid within 90 days after written notice of the City to the Franchisee, then an event of default under the agreement shall have occurred.

Section 15: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's rights-of-way.

Section 16: Right to Require Removal of Property. At the expiration of the Initial Term for which the Franchise is granted, or the last renewal thereof, or upon forfeiture or revocation as provided for herein, the City shall have the right to require the Franchisee to remove, at Franchisee's own expense, all or any part of the telecommunications system from rights-of-way within the Franchise area. If the Franchisee fails to do so within one hundred and eighty (180) days after receipt of notice from the City, the City may perform the work and collect the cost thereof from the Franchisee. Notwithstanding the other provisions of this Section, the Franchisee, by written notice to the City, may elect to abandon underground cable in place, in which event the Franchisee shall have no further obligation hereunder as to the abandoned cable; except that the City may nevertheless, by written notice, require the Franchisee to remove cable, at Franchisee's own expense, as deemed necessary by the City to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes.

Section 17: Limitation of Liability. The City and the Franchisee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 18: Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS 646.750-646.836, or the Oregon Unlawful Trade Practices Act, ORS 646.650-646.652. Nothing contained in this section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Section 19: Revocation.

(a) **General.** In addition to any rights set out elsewhere in this document, the City reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, under the following circumstances:

- (1) Following a hearing as provided herein, the Franchisee is determined to be in violation of any material provision of this Franchise and fails to correct the violation after written notice of the violation, proposed forfeiture and reasonable opportunity thereafter to cure;
- (2) the Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;
- (3) the Franchisee is found to have engaged in fraud or deceit upon the City or any other persons;

- (4) the Franchisee fails to obtain and maintain any permit required by any federal or state regulatory body for the construction, maintenance and operation of its telecommunications system; provided, however, that the Franchisee shall be allowed a reasonable time to cure failure to obtain any permit, and that such permit is material to the operation of Franchisee's telecommunications system or the City's management of its rights-of-way; or
 - (5) the Franchisee fails to maintain the full amount of its insurance as required under the terms of this Franchise. Upon the occurrence of one of the events set out above, and following not less than 30 days written notice, the City shall conduct a hearing upon the proposed forfeiture. The Franchisee shall be afforded due process rights as if the hearing were a contested case hearing subject to ORS Chapter 183, including the right to present evidence, to subpoena and cross-examine witnesses, to subpoena documents, and to require that all testimony be on the record. Findings from the hearing shall be written and shall stipulate the reasons for the City's decision. If the City finds that the Franchise should be forfeited, the City shall by ordinance declare a forfeiture of the Franchise. In the event that the Franchisee believes that the City has improperly declared a forfeiture, the Franchisee may file such proceeding as is appropriate in a court of competent jurisdiction to determine whether the City has properly declared a forfeiture. If a forfeiture is lawfully declared by a court of competent jurisdiction, all rights of the Franchisee shall immediately be divested without a further act upon the part of the City.
- (b) **Receivership.** In addition to its other rights and remedies as set forth in this Franchise, the City shall have the right, subject to federal law, to declare a forfeiture of this Franchise one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Franchisee's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless: a) within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by a City Council resolution; and b) within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the City, duly approved by the City and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

Section 20: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address, or such other address as each party may specify in writing:

City Manager
City of Myrtle Point
424 5th Street
Myrtle Point, OR 97458
Phone: (541) 572-2626
Facsimile: (541) 572-3838

Manager
Douglas Fast Net
2350 NW Aviation Dr.
Roseburg, OR 97470
Phone: (541) 673-4242
Facsimile: (541) 391-4185

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 21: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 22: Severability. The provisions of this Franchise are severable; if any section, subsection, sentence or clause shall be found by a court of competent jurisdiction to be invalid, unconstitutional, or is clearly and specifically preempted by federal or state laws, the remaining sections, subsections, sentences, or clauses shall remain in full force and effect, unless the effect of such invalidity, unconstitutionality or preemption effects a material alteration in the benefit of a party's bargain contained herein. Should any provision be declared invalid or unconstitutional, or be preempted, the parties shall enter into negotiations within ten days of final judgment or effective date of the law regarding any such matter, and make a good faith effort to reform or replace such provision or part thereof with a valid and enforceable provision that comes as close as possible to providing the parties the benefit of its bargain as originally expressed herein.

Section 23: Waiver.

- (a) The City is vested with the power and authority to reasonably regulate, and manage, its rights-of-way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.
- (b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Franchisee gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the City fails to object within a reasonable time after receipt of such notice, such provision shall be deemed waived.

Section 24: Repealer. Ordinance No. 1249 of the City of Myrtle Point, adopted on the 4th day of September 2007, is hereby repealed.

Ayes: _____

Nays: _____

Adopted by the City Council of the City of Myrtle Point this ____ day of _____ 2023.

ATTEST:

Samantha Clayburn, Mayor

Darin Nicholson, City Manager

MYRTLE POINT PUBLIC LIBRARY FOUNDATION

MONTHLY MEETING

MAY 02, 2023

5:00 pm

LIBRARY MEETING ROOM



Note
attendance
options

AGENDA

*To attend this meeting remotely: dial: (425) 436-6345 and enter the Access Code: 4097605 followed by the pound (#) sign.

CALL TO ORDER

MINUTES

TREASURER'S REPORT

AUDIENCE PARTICIPATION

CONSTRUCTION PROJECT

LIBRARY EVENTS

OTHER BUSINESS

NEXT MEETING

ADJOURN

THE CITY OF MYRTLE POINT IS A DRUG FREE WORKPLACE.
The Library meeting room is handicapped accessible. If you need assistance to attend or participate in this meeting, please contact the Library at 572-2591.

MYRTLE POINT PUBLIC LIBRARY FOUNDATION

MONTHLY MEETING

APRIL 04, 2023

5:00 pm

MINUTES

President Huntley called the meeting to order at 5:00 pm. Directors attending: Barbara Carter, Debbie Bushnell, and Barbara Caffey. Director attending remotely: Linda Kirk. Also attending: Amy Bruno, Library Director.

MINUTES: Debbie moved the minutes be approved as written. Barbara Carter seconded. Motion passed.

TREASURER' REPORT: The treasure reported revenue including: sale of furniture in March: \$35.00: Amazonsmile: \$32.76; and interest for February: \$54.00.

Expenditures included: Upper Valley Builders: \$68,400; Robertson/Sherwood architects: \$2,945.

The day of the meeting the funds in one of the cds was moved to the checking account. A check was written to Upper Valley Builders for \$92,374. This check will be on next month's financial report.

CONSTRUCTION: One of the flooring choices – for the bathrooms – is no longer available. A similar selection in roll vinyl has been selected. During a heavy rain, there was a leak in the roof in the area where the new construction joins the building. Amy rescued the tools in the area and public works and Upper Valley dealt with the situation quickly and efficiently. A beam was added above the doorway of the bathroom off the meeting room. Upper Valley Builders has impressed Amy with their professionalism and ability to clean up as they go.

There have been some phone and internet outages that may be construction related. There may need to be some lines replaced. The components for the circulation desk have been ordered and will be received in May, allowing Upper Valley to plan for the size of the furniture. A solid wood conference table has been ordered to serve as Amy's desk.

LIBRARY EVENTS: Amy distributed a list of events that happened at the library and beyond during the month of March. Events included: a grant to hire a teen intern, the beginning of a seed library, the updating of the Summer schedule for children's activities, the selection of Easter prizes to give out in connection with the Lions' Easter Egg Hunt, Rain Drop stickers around the library that finders can redeem for prizes, a binder with the title of classic books that are available in this and other Coastline libraries, signed up 13 business for the Where's Waldo program, looking into buying about 70 of the books on the Dolly Parton list that are not currently held by the library, preparing a crime/mystery basket for the Rotary Auction, giving

out 12 Boredom Buster bags during March and 2 dozen made up for April, and preparing grab and go bags for the library closure period – the bags will be available at City Hall.

The library proposed budget has been turned into City staff. Amy made a 7% cut in the overall budget to plan for changes to the distribution formulas, planned for some time in the future.

The next meeting was set for May 02, 2023 at 5:00 pm. The meeting will be held in the Library meeting room with the option of remote dial in.

There being no other business, the meeting adjourned at 6:30 pm.

Submitted by, Barbara Caffey, secretary

CITY MANAGER'S REPORT



TO: MAYOR & CITY COUNCIL
FROM: DARIN NICHOLSON, CITY MANAGER
DATE: MAY 1, 2023

EnBiorganics

As reported at the last City Council meeting, the city was contacted by EnBiorganics, a Canadian environmental science company, regarding a possible pilot study for use of naturally occurring bacteria in the wastewater collection system to consume nutrients before they reach the wastewater treatment plant, reduce the amount of biosolids produced, and thus reduce processing and disposal costs. DEQ is now reviewing the request to conduct the study.

Notice of Civil Penalty

On April 20th, the City of Myrtle Point received a Notice of Civil Penalty Assessment and Order from Oregon DEQ regarding NPDES permit violations at the wastewater treatment plant between approximately June 2020 and October 2022. Work is underway to review the alleged violations in order to determine whether to request a contested case hearing on the matter. In any case, the city will be liable to pay fines and agree to a plan to address inflow and infiltration in the sewer collection system which is believed to be the primary underlying cause of the violations.

July Meeting Date

Looking ahead, the first scheduled City Council meeting date in July falls on Monday, July 3rd. Does this date work for everyone or should we plan to meet mid-month on Monday, July 17th?