

March 9, 2021 – Presented for 1st Reading

1 **2021-12 (1ST READING): GRANTING A FRANCHISE AGREEMENT FOR**
 2 **OPERATION OF RENTAL BUSINESS OF CONVEYANCES REGULATED BY**
 3 **CHAPTER 12, ARTICLE V OF THE CODE OF ORDINANCES OF MYRTLE**
 4 **BEACH TO BAYLISS SPIVEY D/B/A/ KOA CAMPGROUND, LOCATED AT 613**
 5 **5TH AVENUE SOUTH, MYRTLE BEACH, SC 29577, FOR A PERIOD OF ONE**
 6 **YEAR. THE AGREEMENT INCLUDES 50 VEHICLES.**

7 **Applicant/Purpose:** Staff/to regulate the # & location of golf cart & moped rental businesses
 8 by franchising their operations.
 9

10 **Brief:**

- 11 • After experiencing several weekends when the # of moped/golf cart rentals & conduct
 12 of the operators became a serious issue, Council imposed a moratorium on increasing
 13 the # of such conveyances.
 - 14 ▪ For 2021 franchisee is requesting 50 golf cart plates, the same # as was
 15 awarded in 2020.
 - 16 ▪ For 2017 the # of mopeds was capped at the # that each company had in
 17 service during the summer of 2016.
 - 18 ▪ For 2017 the # of golf carts was capped at the # each company had in service
 19 for 2016 + the # already ordered at the time the moratorium was imposed.
- 20 • Ordinance 2017-56, approved 1/9/18 in consultation w/ the business owners, approved
 21 the framework of a franchise agreement similar to the system in place for taxis.
- 22 • The franchise ordinance requires annual renewals.

23
 24 **Issues:**

- 25 • Franchising allows Council to restrict the # of mopeds & golf carts available for rental,
 26 as well as the location of each rental business.
- 27 • Under the franchise terms each conveyance will be issued a City “plate” similar to a
 28 license plate. These plates assist law enforcement to track operational violations.
- 29 • This proposed ordinance:
 - 30 ▪ Sets the location for rental conveyances.
 - 31 ▪ Sets the # of rental conveyances allowed/location.
- 32 • Agreement is for a 1-year period, & must be re-approved annually.

33
 34 **Public Notification:** Normal meeting notification
 35

36 **Alternatives:**

- 37 • Modify proposed ordinance.
- 38 • Deny ordinance.

39
 40 **Financial Impact:** Annual franchise fee of \$10/plate issued.
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42 **Manager’s Recommendation:** I recommend 1st reading (3/9/2021).
 43

44 **Attachment(s):** Ordinance, franchise agreement, & franchise application.
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**CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA**

**GRANTING A FRANCHISE AGREEMENT
FOR OPERATION OF RENTAL BUSINESS
OF CONVEYANCES REGULATED BY
CHAPTER 12, ARTICLE V OF THE CODE
OF ORDINANCES OF MYRTLE BEACH TO
BAYLISS SPIVEY D/B/A KOA
CAMPGROUND LOCATED AT 613 5TH
AVENUE SOUTH, MYRTLE BEACH, SC
29577, FOR A PERIOD OF ONE YEAR.
THE AGREEMENT INCLUDES 50
VEHICLES.**

WHEREAS, pursuant to the exercise of its police power the City shall require a franchise for the rental and operation of rental conveyances on the highways, streets, alleys and public ways within its police power jurisdiction; and

WHEREAS, the City had determined that the delivery of these services can be provided most effectively and efficiently through the grant of a non-exclusive franchise; and

THEREFORE, PURSUANT TO THE FRANCHISE POWER OF THE CITY OF MYRTLE BEACH, the City of Myrtle Beach grants a Franchise Agreement for Operation of Conveyances to BAYLISS SPIVEY, D/B/A KOA CAMPGROUND, LOCATED AT 613 5TH AVENUE SOUTH, MYRTLE BEACH, SC 29577, FOR A PERIOD OF ONE YEAR. THE AGREEMENT INCLUDES 50 VEHICLES.

This ordinance shall take effect immediately upon adoption.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER ADKINS, CITY CLERK

First reading: 3-9-2021
Second reading:

1 **FRANCHISE AGREEMENT FOR OPERATION OF RENTAL BUSINESS OF CONVEYANCES**
2 **REGULATED BY CHAPTER 12, ARTICLE V OF THE CODE OF ORDINANCES OF MYRTLE**
3 **BEACH.**

4
5 **WHEREAS**, pursuant to the exercise of its police power the City shall require a
6 franchise for the rental and operation of rental conveyances on the highways, streets,
7 alleys and public ways within its police power jurisdiction; and

8
9 **WHEREAS**, the City had determined that the delivery of these services can be
10 provided most effectively and efficiently through the grant of a non-exclusive
11 franchise; and

12
13 **WHEREAS**, the City Council, by Ordinance duly adopted on _____, 2021, has
14 authorized the City Manager to execute this franchise for the thirteen (13) companies
15 that replied to the City’s Requests for Proposal, provided however, that signatures to
16 this agreement and compliance with the requirements of any Request for
17 Qualifications, Requests for Proposals and this franchise document.

18
19 **NOW, THEREFORE, PURSUANT TO THE FRANCHISE POWER OF THE CITY OF MYRTLE**
20 **BEACH and MYRTLE BEACH KOA CAMPGROUND** in consideration of the foregoing
21 premises and mutual promises of each, the parties agree as follows:

22
23 Subject to the terms and conditions set forth herein, the City of Myrtle Beach grants
24 to, a non-exclusive franchise to provide moped and golf cart rental over the streets,
25 public rights-of-way and other public and private property for a period of one (1) year,
26 beginning to commence not later than March 1, 2021, and ending on that same month
27 and day in 2022, subject to the following terms and conditions:

28
29 **Findings.**

- 30 a) The primary purpose of the public streets is the use by vehicular, bicycle
31 and pedestrian traffic.
- 32 b) Offering mopeds and golf carts for rent on the public streets within the City
33 of Myrtle Beach where not otherwise restricted by law promotes the public
34 interest by providing the public with alternative means of transportation
35 within the city, reducing automobile traffic congestion and parking
36 congestion.
- 37 c) Reasonable regulation of moped and golf cart rentals is necessary to
38 protect the public health, safety and welfare.
- 39 d) The granting of franchises for the use of public streets and the making of
40 charges therefor are authorized by S.C. Code 1976, § 5-7-30, and are
41 subject to such conditions as the city council may impose to protect the
42 public interest, welfare and convenience.

43
44 **Permitted rental mopeds or golf carts.**

45 No rental conveyance shall be offered for rent by a rental company except for the
46 vehicles approved for the specific locations the business identifies in the franchise.
47 All vehicles offered for rent under this Division must meet the specifications under
48 state law, be equipped as required by state law, and must be properly labeled under

1 state law. Should a conflict arise between application of state law and requirements
2 contained herein, state law shall prevail.
3

4 **Franchise and license required; franchise fee; transfer of franchise.**

- 5 a) It shall be unlawful to rent, or offer to rent a conveyance as identified
6 herein within the city right-of-way without first obtaining a franchise and
7 business license therefor.
- 8 b) A nonexclusive franchise for not more than one year, commencing not later
9 than March 1 of every year, may be granted for the operation of each
10 rental location specified by city council. Notice of availability and nature
11 of the franchises shall be given by conspicuously posting at least one notice
12 at the proposed location. At least one such notice shall be visible from
13 each public thoroughfare that is within 100 feet of the proposed location.
14 Such notice shall be posted 10 days prior to the public hearing.
- 15 c) An annual franchise fee of \$10 per vehicle per location, to be capped at
16 \$2000 per business license holder, shall be paid before they are placed in
17 service. One business license for each franchisee shall be required at the
18 applicable rate pursuant to Article II of this chapter.
- 19 d) "Plates" are transferable from one approved franchise holder to another,
20 upon approval of the City Manager or designee.
- 21 e) Evidence of the award of each franchise would be a numbered "plate"
22 identifier similar in size to a license plate which would be fixed to the back
23 of each vehicle in an easily visible location. Such identifiers shall be
24 furnished by the City.
- 25 f) After the initial award of moped/golf cart franchises are made, any increase
26 beyond the total number of conveyances approved initially will require
27 approval by City Council. Applicants must demonstrate that the additional
28 conveyances will not significantly impact traffic congestion or public safety,
29 and are justified under public convenience and necessity considerations as
30 with other vehicles for hire.
- 31 g) After the initial awards are made, new franchise requests will require a
32 specific finding and approval of City Council. New applicants must
33 demonstrate that the additional conveyances will not significantly impact
34 traffic congestion or public safety.
- 35 h) After the initial award are made, applications for new locations for existing
36 businesses will require City Council approval. Applicants must demonstrate
37 that the proposed new locations are consistent with all zoning restrictions;
38 will not significantly impact traffic congestion or public safety; and will not
39 negatively affect other businesses located on the same block.
40

41 **Application to Police Department for franchise.**

42 The application to the Police Department for a rental franchise shall include the
43 following information:

- 44 a) The name, home and business address of the applicant, and the name and
45 address of the owner, if other than the applicant, of the vehicle to be
46 used in the operation of the rental business.

- 1 b) The names of the persons managing, supervising or conducting the
2 applicant's business in any places proposed to carry on business; the
3 addresses of such persons; the driver's license number of such persons;
4 the capacity in which such persons will act, that is, whether as proprietor,
5 agent or otherwise; the name and address of the person, firm or
6 corporation for whose account the business will be carried on, if any; and
7 if a corporation, the state of incorporation.
- 8 c) Upon receipt of such application for a permit, the local law enforcement
9 agency shall cause an investigation of such person's business and personal
10 background to be made. Such investigation shall be limited to
11 information pertinent to the purpose of this chapter. If, as a result of the
12 investigation, the background is found to be unsatisfactory, the franchise
13 shall be denied. The franchise shall be denied or issued within thirty days
14 from the date of application. The permit issued under this chapter shall
15 be valid for a period of one year from the date issued.
- 16 d) The proposed location of the rental station for which a franchise is sought.
- 17 e) A description, including all specifications and equipment provided to the
18 renter, ~~and~~ of the vehicle proposed to be used.
- 19 f) The names, addresses and percentage of stock owned by shareholders in a
20 corporate applicant, and the percentage interest of each partner in a
21 partnership applicant.
- 22 g) A certificate of public liability insurance with a limit of not less than
23 \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 24 h) The city shall be named as an additional insured under the public liability
25 insurance policy.
- 26 i) The insurance policies shall be endorsed to state that coverage shall not be
27 changed or cancelled except after 30 days prior written notice (including
28 by email)
- 29 j) Prior to the issuance of a franchise, and at all times while the permit is in
30 effect, the applicant shall maintain on file with the Police Department a
31 certificate of insurance showing evidence of the required coverage limits
32 and naming the city as additional insured.
- 33 k) If the insurance policies issued to the rental company are cancelled for any
34 reason, the franchise is automatically suspended. To reinstate the permit,
35 the rental company shall provide new certificates of insurance to the city.
- 36 l) Proof of insurance for each vehicle as may be required by state law.
- 37 m) Such other information as the applicant may choose or as may be
38 requested by the city council to demonstrate that the applicant has the
39 financial ability to perform the conditions of a franchise.

40
41 **Issuance of franchise.**

- 42 a) The franchise required may be granted by ordinance in accordance with a
43 showing approved by City Council, after notice and a public hearing on the
44 issuance of the franchise. The grant or denial shall be by public vote within
45 45 days of said hearing, to include the date of hearing. Any franchise
46 granted pursuant to this article shall be subject to modification by
47 ordinance at any time deemed necessary by the city council for protection

1 of public health, safety and welfare. Any franchise shall be granted as a
2 privilege and not as a matter of right. Franchises shall not be issued after
3 March 1 of every year, except upon a finding by City Council of public
4 convenience and necessity.

5 b) In determining the acceptability of an application, the city council may
6 consider any factors presented in the application, at a public hearing, or in
7 any staff report or investigation of matters related to the past record and
8 ability of the applicant to perform conditions of this division and the
9 franchise agreement in a manner that serves the public interests.

10 c) Not later than 30 days after the filing of a completed application for a
11 rental company's franchise, the applicant shall be notified by the city
12 manager of the date of the public hearing on the issuance or denial of the
13 franchise.
14

15 **Operating requirements.**

16 a) The rental company shall only accept vehicles at and return vehicles to
17 the approved rental station locations for which it has a franchise.
18 Dimensions of drop-off and return locations and appropriate marking and
19 signage of rental stations may be determined by the City Manager or
20 designee, should public travel be negatively impacted. The rental
21 company shall reimburse the city for any and all costs of marking the
22 pavement designating the franchise area.

23 b) The rental company shall post in a conspicuous location at the rental
24 station the location number assigned to it by the city. The location
25 number and franchise shall be on file and available for inspection in the
26 office of the business license division.

27 c) The rental company renting mopeds shall make available to each renter
28 and passengers a safety helmet appropriate for the use.

29 d) The rental company shall offer to rent only those vehicles that are in all
30 respects in good operating condition and fully equipped as required by
31 state and federal law.

32 e) The rental company shall not authorize the renter of a vehicle to permit
33 another person to operate the vehicle, unless the person is also listed as a
34 renter and has complied with the provisions of this division.

35 f) The rental company shall be responsible for paying all towing costs and
36 associated storage fees, incurred by its rental vehicles. The city shall send
37 to the rental company every week a list of parking citations, fees and/or
38 fines incurred by its rental units. The rental company shall provide the
39 City with the contact information associated with such citations, fees and
40 fines within seven days after receipt of the list of citations, fees and fines
41 incurred by its rental units.
42

43 **Advertising.**

44 No advertising shall be permitted on any moped or at any rental station except to
45 identify the name and contact information of the franchise holder.
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47

1 **Renewal of franchise.**

2 All franchises granted under this division are valid for the entire franchise period
3 unless revoked or suspended prior to expiration. An application to renew a franchise
4 shall be made not later than 60 days before the expiration of the current franchise.
5

6 **Denial, suspension or revocation of franchise.**

7 Any franchise granted under this division may be denied, suspended or revoked by
8 the city council for any of the following reasons:

- 9 a) Fraud or misrepresentation contained in the application for a franchise.
- 10 b) Fraud or misrepresentation made in the course of carrying on the
11 business of vending.
- 12 c) Conduct of the franchised business in such manner as to create a public
13 nuisance or constitute a danger to the public health, safety, welfare or
14 morals.
- 15 d) Conduct which is contrary to the provisions of this division or the
16 franchise.
- 17 e) Failure to use the franchise fully in accordance with its terms within 90
18 days after notice of the grant of franchise, or within 15 days after
19 notice of non-use, during the term of the franchise.
- 20 f) Failure to qualify for a business license or determination that any
21 condition exists in denial, suspension or revocation.
- 22 g) A determination that the applicant is not able or qualified, by reason of
23 background, medical limitations, financial condition or conditions
24 related to the rental business, to render acceptable service to the
25 public pursuant to this division.
- 26 h) A determination that a more qualified applicant for the same location
27 will accept a franchise.
- 28 i) A determination that no franchise should be granted to any applicant
29 and that a location should be removed from the approved franchise list.
- 30 j) Any franchise granted under this division may be temporarily suspended
31 by the Police Chief/designee for a two-hour period if, at the sole
32 discretion of the Police Chief/designee the continued operation of
33 rental businesses represents a traffic or public safety concern, under the
34 standards of Chapter 19, Article VII. The duration of this temporary
35 suspension may be extended or modified for an additional two hours,
36 subject to immediate appeal to the City Manager or his designee's.
37

38 **Indemnification.**

39 The franchisee agrees to indemnify, hold harmless, release and defend (even if the
40 allegations are false, fraudulent, or groundless), the city, its officers and employees,
41 from any and all liability, loss, suits, claims, damages, costs, judgments, and
42 expenses (including attorney's fees and costs of litigation) which in whole or in part
43 result from, or arise out of:

- 44 a) Any act or omission of the franchisee's employees;
- 45 b) The operations of the franchisee;
- 46 c) Any condition of property used in the operation of the franchise; or
- 47 d) Any acts, errors, or omissions of the franchisee.
48

1 **Conformance with applicable laws.**

2 Nothing in this article authorizes or is intended to authorize the parking and/or
3 operation of a moped in a manner contrary to applicable laws of the State of South
4 Carolina and parking and traffic regulations of the city.

5
6 **Notices:** Notices provided for in this Agreement shall be in writing, delivered by hand
7 or sent via certified mail, return receipt requested to the parties at the following
8 addresses, or such other address as the parties may, from time to time, designate in
9 writing:

10
11 **City: City of Myrtle Beach**
12 **Jonathan "Fox" Simons, Jr., City Manager**
13 **P.O. Box 2468**
14 **Myrtle Beach, South Carolina 29578**

15
16
17 **Company: Myrtle Beach KOA Campground**
18 **Bayliss Spivey, Owner**
19 **613 5th Avenue South**
20 **Myrtle Beach, SC 29577**

21
22 **Amendment or Modification:** This Agreement shall not be amended or modified
23 except by written instrument executed in the same manner as this Agreement.

24
25 **Governing Law and Venue:** This Agreement shall be governed in all respects by the
26 law of the State of South Carolina and shall be subject to the jurisdiction of the
27 Fifteenth Judicial Circuit, Horry County, South Carolina.

28
29 WITNESS the due execution hereof this _____ day of _____, 2021.

30
31
32 In the presence of: **CITY OF MYRTLE BEACH**
33
34 _____ By: _____
35 Jonathan 'Fox' Simons, Jr., City Manager
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37
38
39 In the presence of: **KOA CAMPGROUND**
40
41 _____ By: _____
42 Bayliss Spivey
43
44 _____ Its: OWNER
45