February 12, 2019 - 1st Reading
February 26, 2019 - presented for 2nd Reading

2019-11 (2nd READING): ORDINANCE 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 DERRICK AND BARBARA HAYNES D/B/A/ KICKBACK KORNER LLC, KICKBACK CORNER GOLF CARTS, LOCATED AT 506 YAUPON DRIVE, MYRTLE BEACH, SC 29577, FOR A PERIOD OF ONE YEAR. THE AGREEMENT INCLUDES 20 VEHICLES.

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

Brief:

- After experiencing several weekends when # of moped/golf cart rentals & conduct of the operators became a serious issue, Council imposed a moratorium on increasing the # of such conveyances.
    - For 2019 franchisee requests the same number of golf cart plates awarded in 2018 (20).
    - For 2017 the # of mopeds was capped at the # that each company had in service during the summer of 2016.
    - For 2017 the # of golf carts was capped at the # each company had in service for 2016 + the # already ordered at the time the moratorium was imposed.
- Council also directed staff to work out a permanent solution w/ company owners.
- Ordinance 2017-56, approved 1/9/18 in consultation w/ the business owners, approved the framework of a franchise agreement similar to the system in place for taxicabs.
- The franchise ordinance requires annual renewals.
- This franchisee is awarded a franchise for 20 golf carts.

Issues:

- Franchising allows Council to restrict the # of mopeds & golf carts available for rental, as well as the location of each rental business.
- Under the franchise terms each conveyance will be issued a City "plate" similar to a license plate. These plates would assist law enforcement to track operational violations.
- This proposed ordinance:
    - Sets the location for rental conveyances.
    - Sets the # of rental conveyances allowed/location.
- Agreement is for a 1-year period.

Public Notification: Normal meeting notification

Alternatives:

- Modify proposed ordinance.
- Deny ordinance.

Financial Impact: Annual franchise fee of $10/plate issued.

Manager's Recommendation:

- I recommend 1st reading (2/12/19)
- I recommend 2nd reading & approval (2/26/19).

Attachment(s): Ordinance, franchise agreement, & franchise application.

ORDINANCE 2019-11

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

AN ORDINANCE 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 DERRICK AND BARBARA HAYNES D/B/A KICKBACK KORNER LLC, KICKBACK CORNER GOLF CARTS, LOCATED AT 506 YAUPON DRIVE, MYRTLE BEACH, SC 29577, FOR A PERIOD OF ONE YEAR. THE AGREEMENT INCLUDES 20 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 DERRICK AND BARBARA HAYNES D/B/A KICKBACK KORNER LLC, KICKBACK KORNER GOLF CARTS, LOCATED AT 506 YAUPON DRIVE, MYRTLE BEACH, SC 29577, FOR A PERIOD OF ONE YEAR. THE AGREEMENT INCLUDES 20 VEHICLES.

This ordinance shall take effect immediately upon adoption.

_____
BRENDA BETHUNE, MAYOR

ATTEST:

_____
JENNIFER STANFORD, CITY CLERK

First reading: 2-12-19
Second reading: 2-26-19

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

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

WHEREAS, the City Council, by Ordinance duly adopted on _____ __, 2019, has authorized the City Manager to execute this franchise for the twelve (12) companies that replied to the City's Requests for Proposal, provided however, that signatures to this agreement and compliance with the requirements of any Request for Qualifications, Requests for Proposals and this franchise document.

NOW, THEREFORE, PURSUANT TO THE FRANCHISE POWER OF THE CITY OF MYRTLE BEACH and DERRICK AND BARBARA HAYNES D/B/A KICKBACK KORNER LLC, KICKBACK KORNER GOLF CARTS in consideration of the foregoing premises and mutual promises of each, the parties agree as follows:

Subject to the terms and conditions set forth herein, the City of Myrtle Beach grants to, a non-exclusive franchise to provide moped and golf cart rental over the streets, public rights-of-way and other public and private property for a period of one (1) year, beginning to commence not later than March 1, 2019, and ending on that same month and day in 2020, subject to the following terms and conditions:

Findings.

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

Permitted rental mopeds or golf carts.

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

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

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

a) It shall be unlawful to rent, or offer to rent a conveyance as identified herein within the city right-of-way without first obtaining a franchise and business license therefor.

b) A nonexclusive franchise for not more than one year, commencing not later than March 1 of every year, may be granted for the operation of each rental location specified by city council. Notice of availability and nature of the franchises shall be given by conspicuously posting at least one notice at the proposed location. At least one such notice shall be visible from each public thoroughfare that is within 100 feet of the proposed location. Such notice shall be posted 10 days prior to the public hearing.

c) An annual franchise fee of $10 per vehicle per location, to be capped at $2000 per business license holder, shall be paid before they are placed in service. One business license for each franchisee shall be required at the applicable rate pursuant to Article II of this chapter.

d) "Plates" are transferable from one approved franchise holder to another, upon approval of the City Manager or designee.

e) Evidence of the award of each franchise would be a numbered "plate" identifier similar in size to a license plate which would be fixed to the back of each vehicle in an easily visible location. Such identifiers shall be furnished by the City.

f) After the initial award of moped/golf cart franchises are made, any increase beyond the total number of conveyances approved initially will require approval by City Council. Applicants must demonstrate that the additional conveyances will not significantly impact traffic congestion or public safety, and are justified under public convenience and necessity considerations as with other vehicles for hire.

g) After the initial awards are made, new franchise requests will require a specific finding and approval of City Council. New applicants must demonstrate that the additional conveyances will not significantly impact traffic congestion or public safety.

h) After the initial award are made, applications for new locations for existing businesses will require City Council approval. Applicants must demonstrate that the proposed new locations are consistent with all zoning restrictions; will not significantly impact traffic congestion or public safety; and will not negatively affect other businesses located on the same block.

Application to Police Department for franchise.

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

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

b) The names of the persons managing, supervising or conducting the applicant's business in any places proposed to carry on business; the addresses of such persons; the driver's license number of such persons; the capacity in which such persons will act, that is, whether as proprietor, agent or otherwise; the name and address of the person, firm or corporation for whose account the business will be carried on, if any; and if a corporation, the state of incorporation.

c) Upon receipt of such application for a permit, the local law enforcement agency shall cause an investigation of such person's business and personal background to be made. Such investigation shall be limited to information pertinent to the purpose of this chapter. If, as a result of the investigation, the background is found to be unsatisfactory, the franchise shall be denied. The franchise shall be denied or issued within thirty days from the date of application. The permit issued under this chapter shall be valid for a period of one year from the date issued.

d) The proposed location of the rental station for which a franchise is sought.

e) A description, including all specifications and equipment provided to the renter, ~~and~~ of the vehicle proposed to be used.

f) The names, addresses and percentage of stock owned by shareholders in a corporate applicant, and the percentage interest of each partner in a partnership applicant.

g) A certificate of public liability insurance with a limit of not less than $1,000,000 per occurrence and $2,000,000 aggregate.

h) The city shall be named as an additional insured under the public liability insurance policy.

i) The insurance policies shall be endorsed to state that coverage shall not be changed or cancelled except after 30 days prior written notice (including by email)

j) Prior to the issuance of a franchise, and at all times while the permit is in effect, the applicant shall maintain on file with the Police Department a certificate of insurance showing evidence of the required coverage limits and naming the city as additional insured.

k) If the insurance policies issued to the rental company are cancelled for any reason, the franchise is automatically suspended. To reinstate the permit, the rental company shall provide new certificates of insurance to the city.

l) Proof of insurance for each vehicle as may be required by state law.

m) Such other information as the applicant may choose or as may be requested by the city council to demonstrate that the applicant has the financial ability to perform the conditions of a franchise.

Issuance of franchise.

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

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

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

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

Operating requirements.

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

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

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

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

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

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

Advertising.

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

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

Denial, suspension or revocation of franchise.
Any franchise granted under this division may be denied, suspended or revoked by the city council for any of the following reasons:

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

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

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

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

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

City: City of Myrtle Beach
John Pedersen, City Manager
P.O. Box 2468
Myrtle Beach, South Carolina 29578

Company: Kickback Korner, LLC, Kickback Korner Golf Carts
Derrick and Barbara Haynes, Owners
506 Yaupon Drive
Myrtle Beach, SC 29577

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

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

WITNESS the due execution hereof this _____day of _____, 20__.

In the presence of:

_____

CITY OF MYRTLE BEACH

By: _____
John G. Pedersen, City Manager

In the presence of:

_____

_____

KICKBACK KORNER, LLC, KICKBACK KORNER GOLF CARTS

By: _____
Derrick Haynes

By: _____
Barbara Haynes

Its: OWNERS