

Council Business Meeting

August 2, 2022

Agenda Item	First Reading of Ordinance 13.03.300 Amendments to add Standards for Small Wireless Facilities in the Public Rights-Of-Way	
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SUMMARY

The City Council is being asked to review the proposed ordinance amendments intended to guide the review and approval of small wireless facility applications (generally including and labeled 5G equipment) consistent with FCC regulations.

PREVIOUS COUNCIL ACTION

The City Council received a project update and presentation at the January 4, 2021, regular meeting.

BACKGROUND AND ADDITIONAL INFORMATION

The city has been approached by citizens with special concerns for present and an increasing demand for the deployment of telecommunication facilities within the city boundaries. Not only are there aesthetic concerns for these mechanical structures and components but some citizens have voiced concern over the technology and the unknown or disputed effects from radiation that emanate from these facilities.

The city also recognizes that small wireless facilities are needed to deliver wireless access and capacity for advanced technology uses including broadband, for first responder services to homes and businesses, and for health care, public safety and educational services providers within the city

Whether negative effects from these facilities are factual or not, the city must still provide a safe and aesthetically pleasing environment, which these facilities could potentially impact negatively. Thus, it is in the city's interest to regulate for the sheer increase in numbers of these facilities in order to mitigate or avoid adverse visual impacts, encourage the deployment of infrastructure consistent with the surrounding built and natural environment, and preserve the City's historic and environmental resources to the extent feasible. Also important is to understand that Federal law prohibits state and local governments from imposing more restrictive regulations on small cell wireless facilities than imposed on other similar types of infrastructure (such as wireline communications or cable facilities). This means that state and local governments cannot prohibit the installation of small cell facilities in areas where similar types of infrastructure are allowed.

Although many communities have historically handled wireless facility siting through the land use process, new FCC regulations effectively prohibit these procedures. As a result, the current best practice is to place new regulations for small wireless facilities within the public rights-of-way in the city's streets and highways code rather than its land development code. The city has adopted the model ordinance developed by the League of Oregon Cities to incorporate into the city's present AMC Chapter 13.02 PUBLIC RIGHTS-OF-WAY ordinance. Where further specificity is needed to guide placement and other aesthetic considerations, the city will adopt additional specific design guidelines periodically for Small Wireless Facilities by resolution to remain responsive to changing laws and technology.

FISCAL IMPACTS

The City will collect fees for the review of small wireless facilities, as permitted by the FCC. The FCC has determined that the following fees are considered fair and reasonable:

- \$500.00 for non-recurring fees, including a single, up-front application for up to five small wireless facility sites, with an additional \$100.00 for each additional small wireless facility site beyond the initial five sites
- \$1,000 for non-recurring fees for a new pole to support one or more small wireless facility
- \$270.00 per year for all recurring fees² including any right-of-way access fee (e.g., encroachment permit) or fee for attachment to a municipality-owned structure in the public right-of-way

STAFF RECOMMENDATION

Staff recommends approval for first reading of proposed AMC 13.03.300 amendments for small wireless facility applications.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

Alternative Motions:

- I move approval for first reading of the AMC 13.03.300 amendments to include small wireless facility applications and advance it to second reading.
- I move to decline approval of the AMC 13.03.300 amendments to include small wireless facility applications.

REFERENCES & ATTACHMENTS

Ordinance 13.03.300 Amendments for Small Wireless Facility Applications

ORDINANCE NO. _____

AN ORDINANCE AMENDING AMC CHAPTER 13.02 PUBLIC RIGHTS-OF-WAY AND ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE CITY OF ASHLAND

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **underlined**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the City desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are needed to deliver wireless access and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as health care, public safety and educational services providers within the City; and

WHEREAS, the City recognizes that the wireless industry needs small wireless facilities, including facilities commonly referred to as small cells, deployed in the public rights-of-way; and

WHEREAS, the City further recognizes that the City must balance the benefits from small cell infrastructure with its aesthetic impact on the community in order to mitigate or avoid adverse visual impacts, encourage the deployment of infrastructure consistent with the surrounding built and natural environment, and preserve the City's historic and environmental resources to the extent feasible; and

WHEREAS, the City intends to adopt a new code consistent with local, state and federal laws, standards and requirements.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 13.02 PUBLIC RIGHTS-OF-WAY of the Ashland Municipal Code is hereby amended and by adding the following Sections as follows:

Chapter 13.02 PUBLIC RIGHTS-OF-WAY

Sections:

- **13.02.010 Definitions**
- **13.02.020 Jurisdiction**
- **13.02.030 Scope of Regulatory Control**
- **13.02.040 Right-of-Way Encroachment**
- **13.02.050 Encroachment Permits**
- **13.02.060 Standards and Conditions**
- **13.02.070 Permit Issuance**
- **13.02.090 Revocation of Permits**
- **13.02.100 Removal of Encroachment**
- **13.02.110 Liability**
- **13.02.130 Obligations of the City of Ashland**
- **13.02.200 Appeals**
- **13.02.300 Standards For Small Wireless Facilities In The Rights-Of-Way.**
- **13.02.900 Penalties**

13.02.010 Definitions



(1) For the purpose of Sections 13.02.010 – 13.02.200 in this chapter, the following mean:

A. *Encroach.* The act of a private individual extending from their abutting private property into a public right-of-way, public easement or public property.

B. *Encroachment.* Area in a public right-of-way, public easement or public property that is being encroached upon by a private individual.

C. *Encroachment Permit.* A revocable permit granted by the Public Works Director to allow permittee to encroach upon a public right-of-way, public easement or public property where compliance with this chapter can be demonstrated.

D. *Person.* Individual, corporation, association, firm, partnership, joint stock company, and similar entities.

E. *Public Easement.* An easement granted to the City for a public purpose, including, but not limited to the purpose of installing or maintaining public or private utility infrastructure for the provision of water, power, heat or telecommunications to the public.

F. *Public Property*. Real property owned by the City and open to the public for public use.

G. *Public rights-of-way*. Include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including subsurface and air space over these areas.

H. *Public Works Director*. The City Public Works Director or his/her authorized designee.

I. *Within the City*: Territory over which the City now has or acquires jurisdiction for the exercise of its powers.

(2) For purposes of Sections 13.02.300 – 13.02.200 in this chapter, the following mean:

(A) “Antenna” means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded. The term includes an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.

(B) “Antenna Equipment” means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(C) “Antenna Facility” means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated antenna equipment.

(D) “Applicable codes” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.

(E) “Applicant” means any person who submits an application as or on behalf of a wireless provider.

(F) “Application” means requests submitted by an applicant (i) for permission to collocate small wireless facilities; or (ii) to approve the installation, modification or replacement of a structure on which to collocate a small wireless facility in the rights-of-way, where required.

(G) “City Structure” means a structure located in the rights-of-way within the City’s jurisdictional boundaries that is owned, managed or operated by the City or any subdivision or instrumentality thereof, including municipal electric utilities. Including,

but not limited to streetlights, traffic signals, utility poles, or building.

(H) “Collocate” means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. “Collocation” has a corresponding meaning.

(I) “Day” means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day.

(J) “Decorative pole” means a city structure that is specially designed and placed for aesthetic purposes.

(K) “Historic district” means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or, (2) a locally designated historic district as of the effective date of this Chapter or in a locally designated historic district existing when an application is submitted.

(L) “Permissions” means City authorized permits, agreements or licenses necessary for small wireless deployment.

(M) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

(N) “Pole” means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.

(O) “Rights-of-Way” or “ROW” has the same definition as section (1)(G) in this Section.

(P) “Routine Maintenance” means inspections, testing, repair, and modifications subject to Section 6409(a) that maintain functional capacity, aesthetic and structural integrity of a small wireless facility and/or the associated pole or structure.

(Q) “Small wireless facility” means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

(1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are

located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,

(2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,

(3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,

(4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

(R) “Structure” means the same as defined in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines that term as a pole, tower, or base station, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).

(S) “Wireless Infrastructure Provider” means any person, including a person authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, but that is not a wireless services provider.

(T) “Wireless Provider” means a wireless infrastructure provider or a wireless services provider.

(U) “Wireless Services Provider” means a person who provides personal wireless services (whether or not it is comingled with other services).

13.02.020 Jurisdiction



As relates to this Chapter 13.02, the City has jurisdiction and exercises regulatory control over all public rights-of-way within the City under the authority of the City charter and state law.

13.02.030 Scope of Regulatory Control



The City has jurisdiction and exercises regulatory control over each public right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way. The City has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or other means. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.



A. *Prohibition.* Except as provided in subsection C of this section, no person or entity may occupy or encroach on a public right-of-way without the permission of the City. The City grants permission to use public rights-of-way, by franchises, licenses, concessions and permits.

B. *Standard Forms.* Franchises, licenses, concessions and permits for use of public rights-of-way shall comply with all applicable requirements for occupancy or encroachment of such areas as set forth in AMC Chapter 13.03 and other applicable provisions of the Ashland Municipal Code. Franchises, licenses, concessions and permits shall be submitted on a City standard form franchise, license, concession, or permit template, together with required fees, if any. Such standard fees may be adopted and amended by resolution of the City Council.

C. *City Functional Items.* The City of Ashland is not required to obtain permits or other City authorizations to place City utilities, facilities or other structures in the right-of-way, including “functional items” intended for public usage. City functional items include, but are not limited to, a City standard bench, water fountain, planter box, garbage receptacle, ash can, bike rack, bollard, publication box, or other functional items identified by resolution of the City Council. The City Council resolution shall identify functional items and establish minimum standards for such items.

D. *Donated or Loaned Functional Items.* An abutting property owner together with the occupant may donate or loan to the City of Ashland a City standard functional item for use in an adjacent sidewalk permit area. Other persons or entities may also donate or loan functional items, for use in nonadjacent public areas. Items accepted on loan require insurance and a maintenance/hold harmless/indemnity agreement in a form approved by the City. Donated items do not require insurance or a maintenance agreement, but the donations must be accepted by the City to be eligible for placement. The City Manager is delegated authority to accept or reject donations and loans for purposes of this chapter, in the Manager’s sole discretion. After demonstrated compliance with this section, the City Public Works Director may authorize in writing the placement of a donated or loaned City standard functional item, in locations meeting, at a minimum, the clearance requirement of AMC Chapter 10.64 or in approved locations shown on an adopted Downtown Sidewalk Usage Map. Items not strictly complying with minimum standards for such City functional items, (e.g., a decorative art bench) may be permitted through the public art process in AMC Chapter 2.17. (Ord. 3192 § 91, amended, 11/17/2020; Ord. 3137, amended, 2017; Ord. 3028, amended, 08/03/2010; Ord. 2989, amended, 11/01/2009)



A. *Permits Required for Encroachment; Exemptions.*

1. *Permits Required.* It shall be unlawful for any person to do any of the following without first obtaining a encroachment permit from the Public Works Director:

a. Erect or cause to be erected any structure, retaining wall, or fence in a public right-of-way, public easement, or public property, or

b. Place or maintain any landscaping materials or any type of fill in, over or upon any dedicated public right-of-way, public easement or public property.

c. Permits for a small wireless facility are subject to sections AMC Chapter 13.02.300 – 315.

2. *Specific Exemptions.* Certain encroachments are exempt from the permit requirement of AMC [13.02.020](#). Exempt encroachments are those which would have a minor impact on the present or planned use of the public right-of-way, public easement or public property and those which are expressly exempted herein. The following encroachments are exempt encroachments as long as they do not create a vision clearance hazard as defined in AMC [18.68.020](#):

- a. Mailboxes and their enclosing structures,
- b. Temporary signs and banners permitted by the Sign Code (AMC [18.96](#)),
- c. Guard/handrails along edges of driveway approaches, walks, stairs, etc. that encroach in public right-of-way, and
- d. Lawns, plants and approved street trees encroaching in public right-of-way that do not obstruct visibility for pedestrians, bicyclists and motorists.

3. *Additional Exemptions.* The Public Works Director may grant additional exemptions as long as the encroachment does not create a vision clearance hazard as defined in AMC [18.68.020](#).

B. Application and Fee Required.

1. Any person desiring to locate or maintain an encroachment shall submit an application to the Director of Public Works. The application shall include a description of the proposed encroachment and a scale drawing illustrating the nature and extent of the proposed encroachment and its relationship to adjoining properties. If the applicant is not the owner of the property that will be benefitted by the encroachment, the owner of the benefitted property shall also sign the application as a co-applicant. The Public Works Director may require an actual survey to determine the exact location of any public or private improvements that will be encroaching in the right-of-way.

2. A fee in the amount established by resolution of the City Council shall be paid at the time of the application.

C. *Review of Application.* The Public Works Director shall conduct a review of the application for an encroachment permit to determine its compliance with the standards in AMC [13.02.060](#), and the Public Works Director shall request comments from affected City departments, utility companies and agencies regarding the impact of the proposed encroachment. (Ord. 3040, added, 11/16/2010; Ord. 3028, amended, 08/03/2010; Ord. 3009, amended, 04/20/2010)

The Public Works Director may approve the issuance of an encroachment permit for an encroachment where compliance with the following standards can be demonstrated or specific findings are made that the standard is not applicable. The Public Works Director may attach any conditions to the issuance of the permit that are required in any applicable planning approvals or reasonably related to ensuring compliance with this section, or other applicable City codes.

A. Standards for Approval.

1. Horizontal clearances of at least five (5) feet shall be maintained on all sides of all utilities including electrical power, communications, sewer, storm drain, and water. This distance shall be measured between proposed encroachments and existing or proposed utility lines, manholes, appurtenances, and fixtures, including but not limited to fire hydrants, above ground transformers, cabinets, and other structures. Clearances around water meters shall be at least one (1) foot behind and two (2) feet from the sides when measured from the outside edges of the box. A larger horizontal clearance may be required if utilities mandate larger clearances for specific structures; for example, additional clearance may be required in front of electrical cabinets and transformers. Requests by utility providers for larger horizontal clearances or additional conditions shall be considered for inclusion into the permit. The applicant shall pay for relocation of the existing utility lines, manholes, appurtenances, and fixtures if this standard cannot be met.
2. Vertical clearances between utilities and natural landscape materials or structures placed below or above those facilities shall be the distance required by the affected utilities. Conditions requested by the utility providers shall be considered for inclusion into the permit.
3. Proposed encroachments, improvements and temporary measures shall not cover, prevent access to, or block the flow of water into inlets, basins, ditches, or drainage ways. Grading changes shall not otherwise alter the drainage patterns in the right-of-way without written approval of a grading and erosions control plan by the Public Works Director.
4. Sufficient space for off-street parking, loading, and pedestrian travel shall be maintained. The encroachment shall not result in a loss of area needed for parking, vehicular maneuvering, or pedestrian travel.
5. It is determined that the requested encroachment is consistent with the current use of the public right-of-way, easement or public property.

B. Conditions.

1. When the Public Works Director determines that allowing the requested encroachment may subject the City to potential liability, a condition of permit issuance shall be the filing with the City Risk Manger of a policy of insurance and form of policy by an insurance company licensed to do business in the State of Oregon. The policy shall protect the City, its officers, agents, and employees, and the abutting property owners, lessees and tenants from any and all claims for injury or damage to persons or property that might result from the placing and/or maintenance of the permitted encroachment. The amount of the insurance policy shall be at least the limits of public body liability under the Oregon Tort Claims Act. The policy shall also contain a provision that the City Risk Manager shall be notified at least 30 days prior to any cancellation of such

insurance. The permittee shall maintain the insurance for the term of the permit issued. Failure to maintain the insurance shall result in automatic revocation of the permit.

2. All work within the public right-of-way, public easement, or public property shall be consistent with engineering plans, profiles, specifications, and standards approved by the Public Works Director in accordance with City requirements.

3. The Public Works Director may place a limit on the time the proposed encroachment may be located in or on the right-of-way, public easement or public property.

4. To ensure that encroachments do not contribute to visual blight or create a safety hazard, conditions of permit approval may include a requirement that the encroachment be appropriately maintained.

5. The City may impose a charge for the use of the public right-of-way, public easement or public property. (Ord. 3040, added, 11/16/2010)

13.02.070 Permit Issuance



A. The Public Works Director may approve, modify and approve, or deny the application for an encroachment permit.

B. Ministerial decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval standards. Ministerial decisions include, but are not limited to, site plan approval of building or other specialty permits and final subdivision and planned unit development plans where there are no material deviations from the approved preliminary plans. Because no discretion is involved, ministerial decisions do not qualify as land use or limited land use decisions. The process requires no notice to any party other than the applicant. The Public Works Director's decision is final and not appealable by any party through the normal land use process. Ministerial decisions may be appealed as provided in AMC [13.02.040](#). (Ord. 3040, added, 11/16/2010)

13.02.090 Revocation of Permits



All right-of-way, easement or public property encroachment permits shall be revocable by the City at any time such revocation would be in the public interest. No grant of any permit, expenditure of money in reliance thereon, or lapse of time shall give the permittee any right to the continued existence of an encroachment or to any damages or claims against the City arising from a revocation.

Any permit issued under this section shall be automatically revoked if the permittee fails comply with any conditions of the permit, or fails to begin installation of the allowed encroachment within ninety (90) days after issuance of the permit unless an extension is requested prior to the expiration of the ninety (90) day period. (Ord. 3040, added, 11/16/2010)

13.02.100 Removal of Encroachment



Upon revocation, the permittee or any successor permittee shall, at the permittee's own expense, remove the permitted encroachment within thirty (30) days after written notice has been provided by the City unless a shorter period is specified in the notice of revocation.

If the permittee does not remove the encroachment and return the right-of-way, public easement or public property area to a condition satisfactory to the Public Works Director, the City shall do so and the permittee shall be personally liable to the City for any and all costs of returning the right-of-way, public utility easement or public property to a satisfactory condition, including the removal of structures and reconstruction of streets and/or pathways. If the permittee fails to pay the City for the costs incurred after the City bills permittee, the costs shall be imposed as a lien upon the property. Payment of such costs shall not prevent the City from pursuing any other remedy available at law or pursuing any other penalty. (Ord. 3040, added, 11/16/2010)

13.02.110Liability



The permittee, and owner of the benefitted property if different than the permittee, shall be liable to any person who is injured or otherwise suffers damage by reason of any encroachment allowed in accordance with the provisions of this section. Furthermore, the permittee shall be liable to the City of Ashland, its officers, agents and employees, for any judgment or expense incurred or paid by the City, its officers, agents and employees, by reason of the existence of an approved encroachment. (Ord. 3040, added, 11/16/2010)

13.02.130Obligations of the City of Ashland



The exercise of jurisdiction and regulatory control over a public right-of-way by the City is not official acceptance of the right-of-way for public access and does not obligate the City to open or improve any part of the right-of-way. Upon improvement of any public right-of-way to city street standards, the City shall accept by resolution the improvement and maintain and repair such improvement to the standard to which it has been improved. For purposes of nuisance-type ordinances imposing obligations upon property owners, (e.g. snow removal, weeds and noxious vegetation, sidewalk maintenance) the City shall be responsible for compliance with such ordinances in public rights-of-way adjacent to or abutting city-owned or controlled real property. (Ord. 3040, amended, 11/16/2010)

13.02.200Appeals



The Uniform Administrative Appeals Process outlined in AMC [2.30](#) shall apply to all protests of encroachment permits. Failure to strictly comply with the applicable appeal requirements, including but not limited to the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the summary dismissal of the appeal. The Hearing Officer's decision is final and not appealable by any party through any land use process. The Hearing Officer's decision may only be appealed through a writ of review proceeding in Jackson County Circuit Court. (Ord. 3137, amended, 2017; Ord. 3040, added, 11/16/2010)

13.02.300 Standards For Small Wireless Facilities In The Rights-Of-Way. Where otherwise not provided in or contrary to this subsection for Wireless Facilities, all other provisions of AMC 13.02 Public Rights of Way remain applicable. The city will adopt additional specific design guidelines periodically for Small Wireless Facilities by resolution to remain responsive to changing laws and technology.

13.02.301 Permitted Use; Application and Fees

(A) Permitted Use. The following uses within the rights-of-way shall be a permitted use, subject to compliance with the city's applicable design standards, administrative review only and issuance of a permit as set forth in this Chapter:

(1) Collocation of a small wireless facility; and,

(2) Placement of a new, modified, or replacement pole to be used for collocation of a small wireless facility.

(B) Permissions Required. Except as otherwise provided in this Chapter, no person shall place any small wireless facility described in Section 3(A) in the rights-of-way, without first filing an application for the facility and obtaining a city's permit, license, or agreement.

(C) Application Requirements. Application requirements and forms are subject to AMC 13.02.050 (B) and (C).

(D) Routine Maintenance and Replacement. An application shall not be required for: (1) routine maintenance; or (2) the replacement of a small wireless facility with another small wireless facility that is the same, substantially similar or smaller in size and weight and height. The City may require a permit for work within the right of way. Such a permit must be issued to the applicant on a non-discriminatory basis upon terms and conditions applied to any other person performing similar activities, regardless of technology, in the ROW.

(E) The City shall have the right to employ qualified city staff or third-party RF engineer to conduct an annual random and unannounced test of small wireless facility installations located within the City to certify their compliance with all FCC radio-frequency transmission power limits as they pertain to exposure of the general public at maximum operating power. The reasonable cost of such tests shall be paid by the Permittee.

(1) In the event that such city or independent tests reveal that any small wireless is transmitting RF radiation or is contributing to RF radiation in excess of FCC exposure guidelines as they pertain to the general public, the City shall notify the Wireless Provider and all residents living within 1500 feet of the small cell installation(s) of the violation, and the Wireless Provider shall have forty-eight (48) hours to bring the SCF(s) into compliance. Failure to bring the SCF(s) into compliance and the City shall have the right to require the removal of such installation(s), as the City in its sole discretion may determine is in the public interest.

(F) Information Updates. Any amendment to non-material information contained in an application shall be submitted in writing to the City within thirty (30) days of the change.

(G) Application Fees. Application fees shall be set by resolution, but in no case shall fees exceed the following:

(1) \$500 for up to the first five small wireless facilities in the same application, with an additional \$100 for each small wireless facility beyond five in the same application, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory.

(2) \$1000 for the installation, modification or replacement of a pole together with the collocation of an associated small wireless facility in the rights-of-way that is a permitted use in accordance with this Chapter, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory.]

13.02.303 Action on Administrative Permit Applications On Wireless Facilities

(A) The City must process all applications on a nondiscriminatory basis and may deny an application subject to this Chapter if the proposed small wireless facility or new, modified, or replaced pole:

- (1) Fail to comply with AMC 13.02.060 Standards and Conditions.**
- (2) Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;**
- (3) Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;**
- (4) Fails to comply with applicable codes, standards and regulations, including the City's design standards; or**
- (5) Fails to comply with the provisions in this AMC 13.02.300 – 315.**

(B) The City must act on an application within the applicable shot clock and provide written notice to the applicant if the application is denied. The written notice shall state the reasons for denial, with reference to specific code provisions, ordinance, application instruction or otherwise publicly stated procedures on which the denial was based, and be sent to the applicant within five (5) days after the City denies the application or before the applicable shot clock expires, whichever occurs first.

(C) Batch Applications.

13.02.305 Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

(A) Maximum Size of Permitted Use. Any wireless provider that seeks to install, modify, or replace facilities on a pole in the rights-of-way that exceeds the height limits contained in Section 13.02.010(2)(R), shall be subject to applicable requirements.

...

(B) Decorative Poles. Subject to this code and applicable design standards, a wireless provider is permitted to collocate on or replace a decorative pole when necessary to collocate a small wireless facility; provided that any such replacement pole shall, to the extent feasible, replicate the design of the pole being replaced.

(C) Historic District. Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to have a similar appearance, including coloring and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation. Any such design or concealment measures may not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility.

(D)

13.02.307 Effect of Construction/Work Permit

(A) Permit Duration.

(1) A permit for construction granted pursuant to this Section shall be valid for a period of _____ days after issuance unless the City agrees to extend this period for good cause, including but not limited to delay caused by the lack of commercial power or communications facilities, or by other events outside of the reasonable control of the wireless provider.

(2) The installed facility is subject to applicable relocation requirements, termination for material non-compliance after notice and a reasonable opportunity to cure, and an applicant's right to terminate a permit at any time.

13.02.309 Removal, Relocation or Modification of Small Wireless Facility in the ROW

A. Notice. Notice of removal of encroachment is subject to AMC 13.02.100.

B. Removal or relocation of Facilities. If the City plans a project that would require utilities that includes small wireless facilities (together, the "parties") to remove or relocate their facilities that are located in the highway right of way, the city shall notify affected parties of the project in writing as soon as is practicable. The city will coordinate with the affected parties to discuss the project's scope, planning, design phase, costs, and schedule to minimize or eliminate costs to the public body and the parties. The city is

not required to avoid or minimize costs to the parties in a way that materially affects performance of the project.

- C. *Emergency Removal or Relocation of Facilities.* The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City in the event of an emergency, as the City may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider promptly after cutting or removing a small wireless facility.
- D. *Damage and Repair.* The City may require a wireless provider to repair all damage to the rights-of-way directly caused by the activities of the wireless provider and return the rights-of-way to its functional equivalence before the damage pursuant to the competitively neutral, reasonable requirements and specifications. If the wireless provider fails to make the repairs within days after written notice, the City may affect those repairs and charge the applicable party the actual, documented cost of such repairs.
- E. *Abandonment of Facilities.* Any small wireless facility that is no longer in use shall be removed by the Permittee within 30 days of deactivation.

13.02.311 Collocation on City Structures in the ROW

(A) *Collocation on City Structures.* Small wireless facilities may be collocated on city structures in the rights-of-way pursuant to this Chapter. No person will be permitted an exclusive arrangement or an arrangement which excludes otherwise qualified applicants to attach to city structures in the rights-of-way. A person who purchases or otherwise acquires a City structure is subject to the requirements of this section.

(b) *Make-Ready.* The rates, fees, terms and conditions for the make-ready work to collocate a small wireless facility on a pole owned or controlled by the City must be nondiscriminatory, competitively neutral, reasonable, comply with this Chapter and be subject to the following:

- (1) *The City or any person owning, managing, or controlling the poles owned by the City will provide a good faith estimate for any make-ready work reasonably necessary to make a specific city pole suitable for attachment of the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant.*

- (2) The City or any person owning, managing, or controlling the poles owned by the city shall not require more make-ready work than required to meet applicable codes or may be reasonably necessary to avoid interference with other attachments on the pole . Fees for make-ready work shall not include costs related to pre-existing or prior damage and non-compliance. Fees for makeready work including any pole replacement shall not exceed actual and direct costs, or the amount charged to others for similar work and shall not include any revenue or Contingency based consultant fees or expenses of any kind.

13.02.315 Rates for ROW and Collocation on City Structures in the ROW

(A) The recurring rate for use of the ROW and attachment of small wireless facilities to a city structure in the ROW shall be subject to the following requirements:

- (1) Annual Rate. A wireless provider authorized to place small wireless facilities and any related pole in the rights-of-way will pay to the City compensation for use of the rights-of-way and collocation on city structures in the ROW a rate that is based on (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory. This rate, together with the one-time application fees, shall be the total compensation that the wireless provider is required to pay the city for the deployment of each small wireless facility in the ROW and any associated pole. The FCC's safe harbor rate is an aggregate annual rate not to exceed \$270 per small wireless facility. This fee is subject to change
- (2) Payment Obligation Upon or After Facility Removal. A wireless provider may remove one or more of its small wireless facilities at any time from the rights-of-way and city structures in the ROW with the required permits. The wireless provider will cease owing the City compensation, as of the date of removal, for such removed facilities.

13.02.900Penalties



Any person who violates any provision of this Chapter is subject to Section [1.08.020](#) of the Ashland Municipal Code. In addition to other legal and equitable remedies available to the City of Ashland:

A. Unless otherwise provided herein, violation of any section of this chapter AMC [13.02](#) is a Class II violation.

B. A knowing violation of [13.02.040](#) is punishable of not more than 30 days jail and/or \$500 fine. (Ord. 3137, amended, 2017)

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ____ day of July, 2022, and duly PASSED and ADOPTED this ____ day of August, 2022.

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ____ day of August, 2022.

Julie Akins, Mayor

Reviewed as to form:

Douglas M McGeary, City Attorney