



# CITY COUNCIL WORKSHOP

January 07, 2025 at 6:00 PM

Boardman City Hall Council Chambers

## AGENDA

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1. **CALL TO ORDER**
2. **FLAG SALUTE**
3. **ROLL CALL/EXCUSED ABSENCES**
4. **REPORTS, CORRESPONDENCE, AND DISCUSSION**
  - A.** Business License
  - B.** Shipping Container
  - C.** Addressing Ordinance
  - D.** Drainage Swale Sidewalk
  - E.** Right of Way License Ordinance and Amendments to Underground District
5. **ADJOURNMENT**

Zoom Meeting Link: <https://us02web.zoom.us/j/2860039400?omn=89202237716>

This meeting is being conducted with public access in-person and virtually in accordance with Oregon Public Meeting Law. If remote access to this meeting experiences technical difficulties or is disconnected and there continues to be a quorum of the council present, the meeting will continue.

The meeting location is accessible to persons with disabilities. Individuals needing special accommodations such as sign language, foreign language interpreters or equipment for the hearing impaired must request such services at least 48 hours prior to the meeting. To make your request, please contact a city clerk at 541-481-9252 (voice), or by e-mail at [city.clerk@cityofboardman.com](mailto:city.clerk@cityofboardman.com).

Title 5 – BUSINESS REGULATIONS

**CHAPTER 5.04 – BUSINESS LICENSE REGULATIONS**

Sections:

- 5.04.010 – Purpose and Scope.
- 5.04.020 – Definitions.
- 5.04.030 – Businesses or Activities Required to be Licensed.
- 5.04.040 – Exemptions.
- 5.04.050 – Application Requirements.
- 5.04.060 – Application Review.
- 5.04.070 – Fee Schedule.
- 5.04.080 – Approval Process.
- 5.04.090 – Denial, Suspension, or Revocation.
- 5.04.100 – Appeal.
- 5.04.110 – Posting and Display of License.

**5.04.010 – Purpose and Scope.**

This Chapter is enacted to ensure that each business is conducted in compliance with applicable federal, state, and local laws, regulations and ordinances and in a manner comporting with the public health, safety, and general welfare; and to obtain valuable information for emergency responders, planning and building personnel, and economic development.

The regulations of the chapter are not intended to permit any violation of the provisions of any other law or regulation and apply to activities within the City of Boardman, including City-owned and leased property.

These regulations shall not apply to sales conducted by municipal, government, religious, charitable, educational, or other similar organizations, provided that the sale is conducted on premises owned or leased by the applicant for the regular conduct of its business or affairs. Exemption of a use from the provisions of this chapter shall not exempt the use from other applicable provisions of this Code.

**5.04.020 – Definitions.**

“Business” means any activity, trade, profession, occupation, or pursuit operated, engaged, conducted, or carried on for profit, gain, livelihood, or any other purpose, regardless of the form under which the activity, trade, profession, occupation, or pursuit is operated, engaged, conducted, or carried on within the City.

“Business License” is an annual or period specific license, issued by the City Manager which is required for persons and entities conducting business for profit within the City.

“Business License Administrator” is the City appointed authority for reviewing, approving, or denying business license applications.

**5.04.030 – Businesses or Activities Required to be Licensed.**

- A. It shall be unlawful for any person to conduct business within the City without first having obtained the necessary license for the current year as provided under this chapter.
- B. A person engaged in business in more than one location, or in more than one business licensed under this Chapter shall make a separate application and pay a separate license fee for each

business or location.

- C. If more than one business is conducted on the same premises, each business must obtain a separate license.
- D. A person representing him or herself or exhibiting any sign or advertisement that he or she is engaged in a business within the City of which a license fee is levied by this Chapter shall be deemed to be engaged in such business and shall be liable for the payment of such license fee and will be subject to the penalties for failure to comply with the requirements of this Chapter.
- E. The City may require proof of state registration. An applicant shall possess any county or state license or permit required or shall be awaiting final approval by the state before a City license will be issued.
- F. No person shall do business within the City as the employee, agent, or representative of another person unless either the principal or the employee, agent or representative has a current, valid City business license for the business, no matter where the principal offices of that business are situated.
- G. Home occupations, as permitted uses or conditional uses in the Boardman Development Code, shall be required to obtain any necessary license in accordance with the provisions of this chapter.
- H. Bed and Breakfast, Vacation Rentals, and Short-Term Rental uses, meeting the applicable provisions of the Boardman Development Code, shall be required to obtain a business license in accordance with the provisions of this chapter.

**5.04.040 – Exemptions.**

The following are exempt from the licensing requirements:

- A. A service business operated by a person under the age of 18, such as a lawn mowing business, a newspaper delivery business, a lemonade stand, and the like.
- B. Individuals who work only on the premises of, and as part of, a licensed business that includes the activity of the individual. Examples include barbers, beauticians, medical care providers, attorneys, accountants, realtors, and others who perform services as part of the overall licensed business. This exemption does not apply if the overall business operation has not obtained a business license.
- C. Garage sales, yard sales and other similar activity conducted, carried on or operated by an individual, provided, however, such exemption will not apply if either of the following conditions are met:
  - 1. The individual conducts, carries on, or operates more than five such sales within any calendar year; or
  - 2. Any one such sale has a duration of more than 72 consecutive hours.
- D. Rental of just one dwelling unit for periods of 30 consecutive days or more.
- E. Activities that qualify as hobbies or passive holding of property for investment purposes under the United States Internal Revenue Code.
- F. Persons providing day care services for children in the person's home and in compliance with state law.
- G. Any person who goes into the home of a child to give care during the temporary absence of the parent, legal guardian, or custodian.
- H. Merchants who exclusively or primarily sell to, deliver to, and/or solicit orders from local retailers, businesses, governments, schools, and/or wholesale firms.
- I. The occasional sales of goods and/or services by local school students related to their school and/or school activities, and/or fundraising sales by local service clubs, groups, and/or charitable nonprofit organizations.
- J. Any political group seeking funds or membership.
- K. The following must obtain a business license but are exempt from payment of the license fee:
  - 1. Any entity registered with the Oregon Secretary of State as a not-for-profit corporation.

2. Any business exempt from paying local business license fees or taxes by Federal or State constitution or law.
3. Any business exempt from paying property tax.

**5.04.050 – Application Requirements.**

Each person desiring to engage in doing business must apply for a license to operate, engage, conduct, or carry on the business on such forms and in such manner as the Business License Administrator may prescribe. Applications are submitted online via the City of Boardman website, through an online application portal. The application must be accompanied by the applicable license fee as established in the City of Boardman Fee Schedule. The application submitted through the online portal shall include the following information:

- A. The date of the application;
- B. The name and physical address of the business, the address where the business will be located or have its office within the City, and the address of the principal office of such business;
- C. A brief description of the nature of the business, including its primary or predominant business activity;
- D. The date that business operations will commence;
- E. The name and address of the applicant and, if the applicant is an entity, the name and address of the authorized agent applying on behalf of the applicant;
- F. The average number of persons regularly employed;
- G. The person who may be contacted in case of an emergency and the phone number at which that person may be reached;
- H. The types of hazardous materials, if any, regularly maintained on the premises as defined under ORS 466.605;
- I. Identify any local, state, or federal licenses, certificates, registrations, or permits that are required for the business and submit those licenses, certificates, registrations or permits as part of the application;
- J. A verification by signature of the applicant, or authorized agent submitting the application on behalf of the applicant, of the following:
  1. The information stated in the application is true, accurate and complete;
  2. The business complies with all applicable federal, state, and local laws, regulations, and ordinances;
  3. The applicant or authorized agent has read, understands, and agrees to abide by this Chapter; and
  4. If the applicant is an entity, the authorized agent has the requisite power and authority to sign and submit the application on behalf of the applicant;
- K. A notice that the application is a public record, and that the City will exempt from disclosure only information of a sensitive and confidential nature to the extent required by the Oregon Public Records Law (ORS 192.410-192.505) and other applicable laws; and
- L. Any other information necessary to enable the Business License Administrator or designee to review the application to determine whether the application should be approved.
- M. Once the application is received the application fee will be requested and shall be paid prior to any license under this chapter will be issued.
- N. The following business types may be requested to provide additional information as part of their application for a business license:
  1. Merchant Police
  2. Detective Business
  3. Pawnbrokers

4. Antique Dealers, Precious Metal and Gem Dealers, Scrap Metal Dealers, and Secondhand Dealers

#### **5.04.060 – Application Review.**

The Business License Administrator may refer each application to the persons or departments designated by the Business License Administrator for review. The license may not be issued if the business as described in the application would not comply with this Title, or other City Codes. Issuance of the license itself does not mean the applicant has complied with all Federal or State laws, and if it is later determined that the applicant has failed to comply with any Federal or State law and fails to correct such violation within thirty (30) days the applicant's license may be revoked as described herein.

#### **5.04.070 – Fee Schedule**

- A. An annual license fee is imposed on the act of doing business within the city. The City Council will annually establish the fees provided for in this chapter as part of the Fee Schedule.
- B. Fees are due at the time of the initial application. Renewal fees are due annually by January 15 of the respective year.
- C. Nothing contained in this chapter shall vest any right in a license as a contract obligation on the part of the city as the amount of the fee. The fees required by this Title may be increased or decreased, additional fees may be imposed, and classifications may be changed.
- D. A person operating more than one business shall pay the license fee prescribed for each of the businesses, except as specifically provided by this Title.

#### **5.04.080 – Approval Process.**

Approval of Application.

- A. The Business License Administrator shall issue a decision on an application for a license within 30 days of the submission of a complete application and required fee upon a finding that the applicant has submitted all the necessary application material, met all the requirements of this Title, and complied with applicable federal, state, and local laws.
- B. The Business License Administrator shall issue a license renewal upon finding that the applicant has submitted all of the necessary application material, met all the requirements of this Title, and complied with applicable federal, state, and local law.
- C. If an application for a new license is approved, the Business License Administrator shall notify the applicant through the online application portal. The notice shall state any conditions or limitations placed on the license as a condition of maintaining the license which the Business License Administrator or other review staff deems necessary to protect the public health, safety, or welfare which is required by this Title and applicable federal, state, or local law.

#### **5.04.090 – Denial, Suspension, or Revocation.**

- A. Denial, Suspension, or Revocation of Application. The Business License Administrator may deny, suspend, or revoke a license issued under this Title upon finding that:
  1. The licensee fails to meet the requirements of, or is doing business in violation of this Title and/or federal, state, or local laws;
  2. The applicant has provided false or misleading material information, or has omitted disclosure of a material fact on the applications, related materials, or license;
  3. The applicant's past or present violation of law presents a reasonable doubt about their ability to perform the licensed activity without endangering property or the public health or safety;
  4. The information supplied for the review does not indicate that the applicant has the special knowledge or skill required to perform the licensed activity; or

5. The licensed activity would endanger property or the public health or safety.
- B. Notice. The Business License Administrator shall provide written notice to the applicant or licensee of the denial, suspension, or revocation. The notice shall state the reason for the action taken and shall inform the applicant or licensee of the right to appeal under 5.04.100 of this Title. For suspensions or revocations, the notice shall be given at least 15 days before the action becomes effective. If the violation ends within 15 days, the Business License Administrator may discontinue the suspension or revocation proceedings.
- C. Reapplication. A person whose application for a business license that has been denied, suspended, or revoked, may, after 90 days from the date of the denial, suspension, or revocation, apply for a license or reinstatement upon payment of the application fee and submission of a complete application.
- D. Disqualification. A person whose application for any license under this Title that has been denied or whose license has been revoked for a total of two times within one year, or who has a total of four denials, suspensions, or revocations, shall be disqualified from applying for a license or reinstatement for a period of two years from the date of the final denial, suspension, or revocation.
- E. Summary Suspension. Upon determining that a licensed activity presents an immediate danger to a person or property, the Business License Administrator or designee may summarily suspend the license for the activity. The suspension takes effect immediately upon notice of the suspension being received by the licensee or being delivered to the licensee business address as stated on the application for the license being suspended. Such a notice shall state the reason for the suspension and inform the licensee of the provisions for appeal as outlined in 5.04.150.

#### **5.04.100 – Appeal.**

In the event an applicant for a license under this Title is denied such license, or in the event a license is suspended or revoked, the applicant or licensee shall have the right to appeal.

- A. The written notice of appeal to the City Manager shall be filed with the Business License Administrator within 14 days after the license denial, suspension, or revocation.
- B. The appeal shall state:
1. The name and address of the applicant;
  2. The nature of the determination being appealed;
  3. The reason the determination is incorrect; and
  4. What the correct determination of the appeal should be.
- C. The City Manager or designee shall review and decide regarding the appeal within 15 days of filing.
- D. Final appeal, if filed by the applicant, shall be filed with the City Manager's office to be heard by the Boardman City Council. The Boardman City Council will hear the appeal at the next regular meeting of the City Council for which there is adequate time to include the appeal information in the Council Packet. The decision of the City Council on the appeal shall be final and conclusive.

#### **5.04.110 – Posting and Display of License.**

A licensee shall post the license in a conspicuous place upon the business premises, available for inspection by the public and any employees and prospective employees of the business. When the licensee has no office, business premises or other established place of business within the City, the license must be in the possession of the agent or representative of the business who is present in the City at all times during which business is being transacted by the agent or representative in the City. If a licensed business is based in a motor vehicle, a photocopy of the license must be carried in the motor vehicle.

**GLENDALE, OR**

**CHAPTER 110: BUSINESSES LICENSES**

Section

- 110.01 Purpose and scope
- 110.02 Definitions
- 110.03 Business license required
- 110.04 Applications
- 110.05 Application fee
- 110.06 License issuance
- 110.07 License procedures
- 110.08 Enforcement
- 110.99 Penalty

§ 110.01 PURPOSE AND SCOPE.

(A) This chapter is intended to protect public health, safety, and general welfare. It provides the city with a process to collect information on merchants and persons conducting business within the city.

(B) This chapter does not apply to the activities of transient merchants, event sponsors, solicitors, and peddlers that are defined and regulated under Chapters 111 and 112 of this code of ordinances.

(C) The fees imposed by this chapter are for revenue purposes. Neither payment of the fee, nor issuance of a license; permits a person to engage in activity otherwise prohibited by law, nor waives any other regulation imposed by the city.

(Ord. 01-2019, passed 8-12-2019)

§ 110.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BUSINESS.** The offering for sale, offering to purchase, sale, purchase, or exchange of goods or services to, with, or from the general public or specific clients or customers. The profit motive is immaterial.

LICENSEE. The person, entity, or owner of the business in whose name the business license provided by this chapter is issued.

(Ord. 01-2019, passed 8-12-2019)

§ 110.03 BUSINESS LICENSE REQUIRED.

(A) No person, whether as proprietor, agent, employee, or otherwise, shall conduct business in the city without first obtaining and thereafter holding a valid annual business license pursuant to this chapter, except as otherwise provided. All business licenses expire December 31 of the then current year. A new business license is required each calendar year.

(B) The following activities do not require a business license under this chapter:

(1) Activities of transient merchants, event sponsors, solicitors, and peddlers as defined and regulated under Chapters 111 and 112 of this code of ordinances;

(2) Churches, in the conduct of their worship, community outreach, and social service activities;

(3) In-home activities that involve no personal contact with members of the general public within the city and no activity outside the home, such as on-line internet activities (eBay), writing, consulting, and design services for clients or customers outside the city;

(4) Youth non-profit activities for which admission is not customarily charged, such as scouts, sports, and 4H;

(5) Traditional fundraising activities conducted by persons under the age of 18 years for the benefit of youth non-profit activities, such as church bake sales, door-to-door cookie sales, raffle ticket sales, and donation car washes;

(6) Rental of three or fewer dwelling units. For this purpose, the dwelling units available for rental are counted for all real property owned by the applicant or entity within the city, and include all real property owned by any other entity under common control of the applicant or the owners of the subject entity; and

(7) The activities of government organizations such as the United States federal government and its instrumentalities, the state, the county, the city, school districts, fire districts, water districts, and ambulance districts.

(C) Except as provided above, business activities by non-profit organizations (such as thrift stores) and privately owned public utilities (such as power, telecommunications) do not fall under these exclusions and do require a business license.

(Ord. 01-2019, passed 8-12-2019)



§ 110.04 APPLICATIONS.

(A) Applications for a business license shall be made on forms available from the City Recorder. The application shall be signed by the owner or the owner's authorized agent and filed with the City Recorder upon payment of the fee provided therefor by law.

(B) The applicant shall provide the following information:

(1) The true name of the person(s) who owns and operates the business, along with the driver's license or identification card number of the person submitting the application;

(2) For businesses owned or operated by a corporate entity such as business corporations, limited liability companies, limited partnerships, partnerships, cooperatives, and associations, the following:

(a) The entity's true name and authorizing jurisdiction (such as state of incorporation);

(b) The true name and address of the chief executive officer of the entity; and

(c) The true names and addresses of all owners or members of the entity, except for publicly traded entities.

(3) Any assumed business name used, which must be registered with the Oregon Secretary of State;

(4) Physical address of the business premises, mailing address of the business, telephone and email contact information;

(5) Nature of the business - a description of the goods or services the business will offer for sale, exchange, or purchase, and the outward appearance and format of operations (such as storefront, business office, in-home);

(6) Number of employees, agents, owners, and other persons who will be operating the business during normal operations;

(7) Proposed hours and days of operation;

(8) Any prior denial, suspension, or revocation of a business or professional license issued to, or applied for, by the applicant or the business for which a license is sought;

(9) Any prior criminal conviction of the owner, applicant, or entity for which a license is sought that relates to fraud, theft, or the business activity being conducted;

(10) Any consumer complaints filed against the owner, applicant, or entity with any local or state consumer agency in this state or elsewhere;

(11) Proof of compliance with any federal and state licensing and bonding requirements for the activity; and

(12) Any other information that the City Recorder reasonably determines is necessary to accomplish the purposes of this chapter.

(Ord. 01-2019, passed 8-12-2019)

§ 110.05 APPLICATION FEE.

The applicant shall submit with the application a non-refundable fee in an amount set by Council ordinance or resolution. The fee shall be reduced by 25% for applications for the current year filed after March 31, by 50% for those filed after June 30, and by 75% for those filed after September 30. There is no reduction in fees for applications filed in advance of the year for which the license is requested.

(Ord. 01-2019, passed 8-12-2019)

§ 110.06 LICENSE ISSUANCE.

(A) Upon receiving the application and the non-refundable fee, the City Recorder shall promptly review the application for completeness. The applicant shall have 30 days to correct any deficiencies identified by the City Recorder.

(B) Upon determining the application is complete, the City Recorder shall forward the application to the Mayor and Council for review.

(1) For applications that seek a new business that was not licensed in the previous year, the applicant shall personally appear before the Mayor and Council at a scheduled public meeting.

(2) Applications that request renewal of an existing business license are not required to personally appear unless the Mayor and Council place the renewal application on the consent agenda.

(3) On review, the Mayor and Council shall determine whether the application and proposed business comply with this chapter. The Mayor and Council may set reasonable conditions on the licensee to ensure compliance with this chapter. The decision of the Mayor and Council is final.

(C) Upon the Mayor and Council's determination that the application and proposed business comply with this chapter, with or without conditions, the City Recorder shall issue a business license valid until December 31 of the year for which it is effective. The license shall set forth the name of the licensee, the name of the business if different, the address of the premises, the nature of the business, the date of issuance, and any conditions imposed on the licensee.

(D) The business license must be posted at all times in a conspicuous place upon the business premises, available for inspection by the public, employees, prospective employees, and city agents.

(Ord. 01-2019, passed 8-12-2019)

### § 110.07 LICENSE PROCEDURES.

(A) Change of ownership. Licensees must notify the City Recorder ten days before any change of ownership of the business. The new owner must file a new business application and obtain a license under the new owner's name. Licenses are not transferrable.

(B) Moving or terminating business. Licensees must notify the City Recorder 30 days prior to relocating the business, and promptly upon terminating the business. The Mayor and Council may require a new application if the business will have a substantial change in character at its new location.

(C) Multiple businesses. A business conducted at two or more locations shall be deemed to be separate businesses, each requiring a separate license. An owner conducting two or more businesses at one location shall be deemed one business under one license, except that any business activity operated under concession, franchise, or by a different owner at the same location as a licensed business shall require its own license.

(D) Inspections. The City Recorder or designee is authorized to make lawful inspections of business premises and records to ensure compliance with this chapter.

(E) Evidence of conducting business. In any proceeding concerning violation of this chapter, a person or entity's public representation by way of advertisement or solicitation by mail, newspaper, radio, telephone, television, internet, social media, similar media, or any signs displayed in public view, that such business is being conducted, expressly or implied, offering to sell, exchange, or purchase goods or services in the course of such business to the public or a segment thereof, shall constitute prima facie evidence that the person or entity was transacting the business suggested by such public representation within the city when such representation was made.

(Ord. 01-2019, passed 8-12-2019)

### § 110.08 ENFORCEMENT.

(A) Application denial. The Mayor and Council may deny an application on the following grounds:

- (1) Materially false, misleading, or omitted information in the application;
- (2) Failure to provide proof of compliance with, or violation of, federal and state licensing and bonding requirements;
- (3) Previous ownership or operation of a business under this chapter that has been found to constitute a public nuisance which was ordered abated;
- (4) Conviction of the applicant or owner within the past seven years of any crime relating to fraud, theft, or the business activity being conducted, or any crime which in the opinion of the Mayor and Council bears unfavorably on the character and ability of the person to conduct business with the general public;

(5) The proposed business is not lawful; and

(6) The applicant or owner owes the city any fees or fines, whether related to this chapter or not.

(B) Summary suspension. Upon determination that the conduct of the business creates an imminent threat to life, public health, or property, the City Recorder may summarily suspend the business license for a period not to exceed 30 days, upon issuing a notice to the licensee stating the reason therefor. The notice shall be delivered to the licensee. Suspension takes effect immediately. The licensee may appeal the suspension to the Mayor and Council. The City Recorder may rescind the suspension if the business conduct is remedied. The Mayor and Council shall be promptly informed of the suspension and shall promptly consider whether to revoke the business license.

(C) Revocation. Upon suspension of a business license, or whenever grounds appear, the Mayor and Council may revoke a business license at a scheduled public meeting upon finding that the licensee has violated provisions constituting grounds for denial of an application under this chapter, fails to allow a lawful inspection of the business premises of records, or otherwise violates any provision of this chapter. The City Recorder shall promptly provide written notice of the revocation to the licensee. Notice of revocation shall be given at least 15 days before the revocation effective date unless an appeal or writ of review is filed. The Mayor and Council may suspend a license, or continue a suspension, until the revocation date if the licensee's noncompliance threatens life, public health, or property.

(D) Late renewal. If a licensee with a license that expired December 31 in the prior year fails to renew the license for the current year, and is conducting business in the current year without a new annual license but is otherwise in compliance with this chapter, the City Recorder may accept a late application for renewal with a one-time late charge of \$100 for each calendar month or part thereof that the person conducted business without a license in the current year in lieu of any other penalty.

(E) Legal enforcement. The city may obtain relief, including an injunction, for violations of this chapter.

(Ord. 01-2019, passed 8-12-2019)

§ 110.99 PENALTY.

In addition to, or instead of, imposing any other enforcement remedy available, the Mayor and Council may, upon determining a violation of this chapter, impose a fine of not more than \$100 for every full business day during which a person conducts business in violation of this chapter.

(Ord. 01-2019, passed 8-12-2019)



SHOP



# Model Business License Ordinance

MARCH 2018

Last reviewed by LOC attorneys April 2023

## **FOREWORD**

A city’s power to license derives from the home rule charter granted by Article XI, Section 2 of the Oregon Constitution. A city may impose a business or occupation license fee based on its police power alone or in combination with its taxing power. Business license ordinances are established either to raise revenue, to regulate business, or both. A city with this ordinance may intend to protect the health, safety and welfare of the general public. By raising revenue from business licenses—usually through an annual licensing fee—a city can more easily pay for services such as police and fire protection. A city can also use business licenses to maintain a list of existing businesses operating in the city. This allows the city to ensure that business activities comply with applicable city ordinances, state laws, and federal laws. It can also provide business contact information for city public safety officials in the event of local emergencies.

Although the power to license may include the authority to prohibit activities that may be harmful to the public welfare, health, or safety, there are certain limits to this power. The Oregon Supreme Court held that the power to regulate does not authorize an absolute prohibition of any legitimate business.<sup>1</sup> Enforcing a reasonable regulation may include securing a license to participate in a specific occupation. It may also be unlawful if there is a failure to pay a stipulated fee to procure the requisite evidence of authority to conduct said business.

A frequent claim raised by businesses is that a city’s license fee violates either the Equal Protection or Due Process clauses of the United States and Oregon constitutions. These claims typically arise when cities charge different fees to different types of businesses. The Oregon Court of Appeals has noted that the constitutionality of an ordinance must be sustained against the Equal Protection and Due Process claims unless it is impossible to discern any substantial difference between the separate occupation classifications.<sup>2</sup>

## **DISCLAIMER**

Any model document provided by the League is intended to be used as a starting point in an individual city’s development of its own documents. Each city is unique, and any adopted document or policy should be individually tailored to meet a city’s unique needs.

This model is not intended as a substitute for legal advice. Cities should consult with their city attorney before adopting a business license ordinance to ensure that the ordinance submitted complies with all aspects of federal, state and local law.

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<sup>1</sup> *City of Portland v. Western Union Tel. Co.*, 75 Or 37 (1915).

<sup>2</sup> *City of Idanha v. Consumers Power*, 8 Or App 551 (1972).

**MODEL BUSINESS LICENSE ORDINANCE**

**SECTIONS**

1. Purpose
2. Applicability
3. Definitions
4. License Required
5. Exemptions
6. Business License Application Requirements
7. Posting and Display of License
8. Fees Imposed
9. Transfers and Relocations, Terms of License
10. Approval, Denial, Revocation and Suspension
11. Appeal
12. Violations and Penalties
13. Severability Clause
14. Savings Clause
15. Effective Date

[Insert your City’s Ordaining Clause, e.g., “*The People of the City of \_\_\_\_\_ ordain as follows*”]

**Section 1. Purpose.** This ordinance is enacted, except as otherwise specified, to:

- A. Ensure that each business is conducted in compliance with applicable federal,<sup>3</sup> state, and local laws, regulations, and ordinances and in a manner comporting with the public health, safety, and general welfare;
- B. Secure revenue to assist in defraying the City’s cost of administering and enforcing its laws and ordinances and the City’s provision of certain municipal services; and
- C. Obtain valuable information for emergency responders, planning and building personnel, and economic development.

**Section 2. Applicability.** Nothing in this ordinance shall be construed to apply to any person transacting and carrying on any business within the City of [City] which is exempt from taxation or regulation by the city by virtue of the constitutions of the United States or the State of Oregon, or applicable federal or state law.

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<sup>3</sup> Compliance with federal law may not be an appropriate standard for those cities wishing to allow marijuana businesses. The League recommends seeking the advice of the city attorney to determine the appropriate language.

**Section 3. Definitions.** As used in this ordinance:

- A. “Applicant” means the person applying for a license to conduct a particular business within the City.
- B. “Business” means any activity, trade, profession, occupation, or pursuit operated, engaged, conducted, or carried on for profit, gain, livelihood, or any other purpose, regardless of the form under which the activity, trade, profession, occupation, or pursuit is operated, engaged, conducted or carried on within the City.
- C. “Day” means a calendar day unless otherwise noted.
- D. “Doing business” means to engage in any activity in pursuit of profit, gain, livelihood or any other purpose.
- E. “Income” means the net income arising from any business, as reportable to the State of Oregon for personal income, corporation excise or income tax purposes, before any allocation or apportionment for operation out of state, or deduction for net operating loss carry-forward or carry-back.
- F. “License” means the permission granted by the City under this ordinance to operate, engage, conduct or carry on a business within the City.
- G. “Licensee” means an applicant who has received a business license.
- H. “Non-profit organization” means any business or organization which is exempt from taxation under the United States Internal Revenue Code and produces a determination letter of proof thereof.
- I. “Person” means an individual, partnership, corporation, limited company, joint venture, cooperative or any other entity in law or in fact.
- J. “Special event” means any special event receiving the prior approval of the City Administrator to be exempt from the license requirements under this ordinance.

**Section 4. License Required.**

- A. Except as exempt under Section 5 below, it shall be unlawful for any person to conduct business within the City without first having obtained a license for the current year as provided under this ordinance.
- B. A person engaged in business in more than one location, or in more than one business licensed under this ordinance shall make a separate application and pay a separate license fee for each business or location, except as otherwise provided in this ordinance. Only one license under this ordinance is required for mobile businesses such as housekeeping services, food trucks, and other related businesses which that travel throughout the city.



- C. If more than one business is conducted on the same premises, each business must obtain a separate license.
- D. A person representing him or herself, or exhibiting any sign or advertisement that he or she is engaged in a business within the City of which a license fee is levied by this ordinance shall be deemed to be actually engaged in such business and shall be liable for the payment of such license fee and subject to the penalties for failure to comply with the requirements of this ordinance.
- E. The City may require proof of state registration. An applicant shall possess any county or state license required or shall be awaiting final approval by the county or state, if City approval is a prerequisite, before a City license will be issued.<sup>4</sup>
- F. No person shall do business within the City as the employee, agent or representative of another person unless either the principal or the employee, agent or representative has a current, valid City business license for the business, no matter where the principal offices of that business are situated.

### **Section 5. Exemptions.**

The following are exempt from the licensing requirement:

- A. A service business operated by a person under the age of 18, such as a lawn mowing business, a newspaper delivery business, a lemonade stand, and the like.
- B. Individuals who work only on the premises of, and as part of, a licensed business that includes the activity of the individual. Examples include barbers, beauticians, medical care providers, attorneys, accountants, relators and others who perform services as part of the overall licensed business. This exemption does not apply if the overall business operation has not obtained a business license.
- C. Garage sales, yard sales, and other similar activity conducted, carried on, or operated by an individual; provided, however, such exemption will not apply if either of the following conditions are met:
  - 1. The individual conducts, carries on, or operates more than five (5) such sales within any calendar year; or
  - 2. Any one such sale has a duration of more than 72 consecutive hours.
- D. An organizer or participant in a special event, but only with respect to that particular special event.

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<sup>4</sup> Cities may also choose to require proof of bonding. Bonding acts as a form of insurance to protect the business and its customers from theft, damage and other losses.

- E. Activities that qualify as hobbies or passive holding of property for investment purposes under the United States Internal Revenue Code.

The following must obtain a business license but are exempt from payment of the license fee:

- A. Any business exempt from paying local business license fees or taxed by Federal or State constitution or law.
- B. Any business exempt from paying property tax.
- C. Any entity registered with the Oregon Secretary of State as a not-for-profit corporation.

**Section 6. Business License Application Requirements.** Each person desiring to engage in doing business must apply for a license to operate, engage, conduct or carry on the business on such forms and in such manner as the City Administrator may prescribe. The application must be accompanied by the applicable license fee provided in Section 7 below. The application must be filed with the City Administrator and, in addition to any other information reasonably required by the City Administrator, must contain the following information:

- A. The date of the application;
- B. The name and physical address of the business, the address where the business will be located or have its office within the City, and the address of the principal office of such business;
- C. A brief description of the nature of the business, including its primary or predominant business activity;
- D. The date that business operations will commence;
- E. The name and address of the applicant and, if the applicant is an entity, the name and address of the authorized agent submitting an application on behalf of the applicant;
- F. The average number of persons regularly employed;
- G. The person who may be contacted in case of an emergency and the phone number at which that person may be reached;
- H. The types of hazardous materials, if any, regularly maintained on the premises as defined under ORS 466.605;
- I. Whether any local, state or federal licenses, certificates, registrations or permits are required for the business and the identification of such licenses, certificates, registrations or permits;
- J. The license fee tendered with the application;

- K. A verification by signature of the applicant, or authorized agent submitting the application on behalf of the applicant of the following:
  - 1. The information stated in the application is true, accurate, and complete;
  - 2. The business is in compliance with all applicable federal, state, and local laws, regulations and ordinances;
  - 3. The applicant or authorized agent has read, understands, and agrees to abide by this ordinance; and
  - 4. If the applicant is an entity, the authorized agent has the requisite power and authority to sign and submit the application on behalf of the applicant;
  
- L. A notice that the application is a public record and that the City will exempt from disclosure only information of a sensitive and confidential nature to the extent required by the Oregon Public Records Law (ORS 192.331-192.338<sup>5</sup>) and other applicable laws; and
  
- M. Any other information necessary to enable the City Administrator or designee to review the application to determine whether the application should be approved.

**Section 7. Posting and Display of License.** Licensee shall post the license in a conspicuous place upon the business premises, available for inspection by the public and any employees and prospective employees of the business. When the licensee has no office, business premises or other established place of business within the City, the license must be in the possession of the agent or representative of the business who is present in the City at all times during which business is being transaction by the agent or representative in the City. If a licensed business is based in a motor vehicle, a photocopy of the license must be carried in the motor vehicle.

**Section 8. Fees Imposed.**

- A. An annual license fee is imposed on the act of doing business within the City according to the following table:

1-10 employees:	\$50.00
11-50 employees:	\$100.00
51 or more employees	\$200.00 <sup>6</sup>

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<sup>5</sup> Formerly numbered ORS 192.410-192.505. Renumbering effective January 1, 2018.

<sup>6</sup> The fees provided in this model ordinance are only a suggestion. Cities may choose to set their own fee schedule.

- B. Fees are due at the time of the initial application. Renewal fees are due annually by January 1 of the respective year.
- C. A person doing business in the City, for whom payment of a business license fee is delinquent, shall pay as a penalty for delinquency the additional sum of \$100.00 for each calendar month or fraction thereof for which payment remains delinquent.
- D. Nothing contained in this ordinance shall vest any right in a license as a contract obligation on the part of the city as the amount of the fee. The fees provided for in this ordinance may be increased or decreased, additional fees may be imposed, and classifications may be changed.
- E. A person operating more than one business shall pay the license fee prescribed for each of the businesses, except as specifically provided by ordinance.

### **Section 9. Transfers and Relocations, Terms of License.**

- A. Transfer of License. In the event of the transfer of ownership of a business, the applicable business license may be transferred by application to the City Administrator. The City Administrator may approve the transfer upon finding that the new applicant meets the requirements of this ordinance.
- B. Relocation of an Existing Business. In the event a business is relocated, the licensee shall reapply to the City Administrator to transfer the business license. The City Administrator may issue the license upon finding that the new location meets the requirements of this ordinance and other applicable federal, state, and local regulations.
- C. License Term. A business license issued under this ordinance shall be valid from the date of issuance until the following January 1.

### **Section 10. Approval, Denial, Revocation and Suspension.**

- A. Approval of Application.
  1. The City Administrator shall issue a decision on an application for a new business license within 30 days of the submission of a complete application and required fee upon a finding that the applicant has met all requirements of federal, state and local laws.
  2. The City Administrator shall issue a license renewal upon finding that the applicant has met all requirements of federal, state, and local law.
  3. If an application for a new license is approved, the City Administrator shall notify the applicant in writing. The notice shall state any condition or limitation placed on the license as a condition of maintaining the license which the city Council deems necessary to protect the public health, safety, or welfare which is required

by federal, state, or local law.

- B. Denial, Suspension, Revocation of Application. The City Administrator may deny, suspend or revoke a business license upon finding that:
1. The licensee fails to meet the requirements of, or is doing business in violation of federal, state, or local laws;
  2. The applicant has provided false or misleading material information, or has omitted disclosure of a material fact on the applications, related materials, or license;
  3. The applicant's past or present violation of law presents a reasonable doubt about his or her ability to perform the licensed activity without endangering property or the public health or safety;
  4. The information supplied for the review does not indicate that the applicant has the special knowledge or skill required to perform the licensed activity; or
  5. The licensed activity would endanger property or the public health or safety.
- C. Notice. The City Administrator shall provide written notice to the applicant or licensee of the denial, suspension or revocation. The notice shall state the reason for the action taken and shall inform the application or licensee of the right to appeal under Section 11 of this ordinance. The notice shall be given at least 15 days before the suspension or revocation becomes effective. If the violation ends within the 15 days, the City Administrator may discontinue the suspension or revocation proceedings.
- D. Reapplication. A person whose application for a business license that has been denied, suspended or revoked, may, after 90 days from the date of the denial, suspension or revocation, apply for a license or reinstatement upon payment of the application fee and submission of an application form and related documents.
- E. Disqualification. A person whose application for any business license that has been denied or whose license has been revoked for a total of two times within one year, or who has a total of four denials, suspensions or revocations, shall be disqualified from applying for a license or reinstatement for a period of two years from the date of the denial, suspension or revocation.
- F. Summary Suspension. Upon determining that a licensed activity presents an immediate danger to person or property, the City Administrator may summarily suspend the license for the activity. The suspension takes effect immediately upon notice of the suspension being received by the licensee or being delivered to the licensee's business address as stated on the licensee's application for the license being suspended. Such a notice shall state the reason for the suspension and inform the licensee of the provisions for appeal under Section 11 of this ordinance. Within 15 days of the summary suspension the City

Council shall review the pertinent facts which resulted in the suspension and shall determine whether said facts deem it necessary to continue the suspension in order to protect the health, safety and welfare of the citizens of the city, or to otherwise ensure that the requirements of this ordinance are complied with. The City Council may continue a suspension as long as the reason for the suspension exists or until a determination on appeal regarding the suspension is made under Section 11 of this ordinance.

**Section 11. Appeal.** In the event an application for a license under this ordinance is denied such license, or in the event a license is suspended or revoked, the applicant or licensee shall have the right to appeal.

- A. The written notice of appeal to the City Council shall be filed with the City Administrator within 15 days after the license denial, suspension or revocation.
- B. The City Council shall hear and make a determination in regard to the appeal at its next regular meeting immediately following the filing of the notice of appeal.
- C. The decision of the City Council on the appeal shall be final and conclusive.

**Section 12. Violations and Penalties.**

- A. Any person convicted of violating any of the provisions of this ordinance shall be punished by a fine not to exceed \$600.00 for any one offense, each day constituting a separate offense.
- B. **Inspection and Right of Entry.** Whenever they shall have cause to suspect a violation of any provisions of this ordinance, or when necessary to investigate an application to, or revocation of a license under any of the procedures prescribed in this ordinance, officials for the enforcement or administration of this ordinance, or their duly authorized representatives, may enter on any site, or into any structure, for the purpose of investigation providing they do so in a reasonable manner. If an owner or occupant denies access for an inspection, the city will seek a warrant. No secured building shall be entered without the consent of the owner or occupant unless under authority of a lawful warrant.
- C. **Abatement.** Any business which is established, operated, moved, altered, enlarged or maintained contrary to the licensing requirements shall be, and is hereby declared to be, unlawful and a public nuisance, and may be abated as such.
- D. **Legal Proceedings by City Attorney.** In addition to the enforcement provisions of this ordinance, upon request by the City Council, the City Attorney may institute any additional proceedings, including, but not limited to, seeking injunctive relief to enforce the provisions of this ordinance.

**Section 13. Severability Clause.** A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this ordinance shall not affect the validity of the remaining parts to this ordinance.

**Section 14. Savings Clause.** A prosecution that is pending on the effective date of this ordinance and arose from a violation of an ordinance repealed by this ordinance, or a prosecution started within one year after the effective date of this ordinance arising from a violation of an ordinance repealed by this ordinance, shall be tried and determine exactly as if the ordinance had not been repealed.

**Section 15. Effective Date.** This ordinance is effective on \_\_\_\_\_.

SAMPLE – CITY BUSINESS LICENSE APPLICATION

All information must be completed before the application will be accepted.

Business Name \_\_\_\_\_ Business Phone \_\_\_\_\_

Business Street Address \_\_\_\_\_

Business Mailing Address \_\_\_\_\_

Type of Business Conducted \_\_\_\_\_ Date Operations Will Commence \_\_\_\_\_

Applicant’s Full Name \_\_\_\_\_ Applicant’s Email Address \_\_\_\_\_

Applicant’s Residential Address \_\_\_\_\_ Home Phone \_\_\_\_\_

Number of Employees in Business (including owner) \_\_\_\_\_

Building Owner’s Name \_\_\_\_\_ Phone \_\_\_\_\_

Please attach copies of all other business licenses, certificates and registrations required by other local, state or federal jurisdictions.

EMERGENCY CONTACT INFORMATION

Name Phone

1. \_\_\_\_\_

2. \_\_\_\_\_

Alarm System Company \_\_\_\_\_ Phone \_\_\_\_\_

Type: Audible \_\_\_\_\_ Silent \_\_\_\_\_ Hold-up \_\_\_\_\_ Fire \_\_\_\_\_ Other \_\_\_\_\_

Fire Insurance Company \_\_\_\_\_ Phone \_\_\_\_\_

Is this a home based business  Yes  No Does the building have a fire sprinkler system  Yes  No

Are there hazardous materials stored or used on premises?  Yes  No

If yes, please list materials and the location stored on a separate sheet.

PLEASE RETURN THIS COMPLETED FORM TO City of [city] [address] WITH YOUR APPLICATION FEE

NOTICE: The information provided on this application is public record. The City will exempt from disclosure only information of a sensitive and confidential nature to the extent require by state and other applicable law.

By signing this, I am representing that the information stated on this application is true, accurate and complete. I agree to comply with all applicable federal, state and local laws.

Date Submitted \_\_\_\_\_ Print Applicant’s Name \_\_\_\_\_ Applicant’s Signature \_\_\_\_\_



## Chapter 5.05

### BUSINESS REGISTRATION

Sections:

- 5.05.010 Definitions.
- 5.05.020 Registration required – Fee.
- 5.05.030 Fee set by resolution – Expiration.
- 5.05.040 Forms – Contents and conditions.
- 5.05.050 Exemptions.
- 5.05.060 Violation – Penalty.

**5.05.010 Definitions.**

(1) “Business,” as used in this chapter, means and includes any manufacturing, trade, occupation, profession, pursuit or business, whether or not carried on or engaged in for profit, including permanent, temporary, or itinerant business.

(2) “Permanent business” means professions, trades, occupations, shops, stores, and including all other businesses carried on at a permanent building or site located inside the city limits of Veneta.

(3) “Temporary business” means professions, trades, occupations, shops, and stores, including all types of businesses that sell or deliver from stock on hand, which operate for a period not to exceed 90 cumulative days in any calendar year, do business in much the same manner as a permanent business, and do not solicit door-to-door on private property.

(4) “Itinerant business” means any business carried on within the city involving the canvassing, sale, or solicitation for sale of products or services by going from door to door on private property within the city either selling, offering for sale, or taking orders for any goods, services, wares, or merchandise for future delivery, or soliciting to do any work or labor upon any personal property. (Ord. 497 § 1, 2010)

**5.05.020 Registration required – Fee.**

No person shall engage in or carry on any business within the limits of the city without registering said business with the city and paying the registration fee, unless exempt under VMC 5.05.050. (Ord. 497 § 2, 2010)

**5.05.030 Fee set by resolution – Expiration.**

The registration fee shall be established by council resolution, and shall register said business through December 31st of that year, at which time said registration shall expire and a new registration fee shall be payable. Any permanent business which registers after June 30th of any year shall pay one-half the registration fee, which shall register such business for the remainder of that calendar year. In addition to the business registration fee, each business shall be required to reimburse the city in full for any and all administrative overhead and enforcement expenses incurred by city, including court costs and attorneys’ fees, to obtain that business’s compliance with this chapter. (Ord. 497 § 3, 2010)

**5.05.040 Forms – Contents and conditions.**

(1) Contents.

(a) Registration forms shall contain the name of the business, the names of its owners, its street location address, its mailing address, its telephone number, and the nature of such business.

(b) Itinerant businesses shall provide the following additional information:

(i) A list of the names, street address, mailing address, and photo identification for all individuals working for the business within the city limits of Veneta.

(ii) If vehicles are used by the itinerant business and by individuals working on behalf of the business within the city limits of Veneta, vehicle license plate numbers, proof of insurance, and driver's license numbers of all operators.

(iii) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, and the proposed method of delivery. Post office box addresses shall not be accepted to meet this requirement.

(2) Conditions.

(a) Business registrations issued by the city of Veneta must be openly displayed in the place of business or in the case of an itinerant business a copy shall be kept on the person of each individual solicitor.

(b) Temporary businesses not subject to obtaining a temporary use permit shall provide written proof of permission to operate from a specific location, signed by the owner of the building or property from which the temporary business will be operated. Temporary businesses lasting more than two days also require a temporary use permit.

(c) Business registrations are not transferable.

(d) Conduct of business operations shall conform to statements made in the application and with any special conditions of operation imposed upon the business by the city or other regulatory agency.

(e) Business operators and/or customers shall not obstruct traffic along any sidewalk, bike path, or street unless granted by the city through a right-of-way permit, land use permit, or other written approval.

(f) Neither the acceptance of the registration fee by the city nor the issuance of the applicable business registration shall be construed to constitute a permit to engage in any activity otherwise prohibited by federal, state, or local law, or a waiver of any regulatory licensing requirement imposed by federal, state, or local law.

(g) Employees working for itinerant businesses are:

(i) Limited to operating between the hours of 9:00 a.m. and 7:00 p.m.

(ii) Prohibited from entering upon private property that has been posted "no trespassing" or "no soliciting."

(iii) Prohibited from continuing to solicit a person who has declined a request.

(h) The city officials responsible for administering the business registration process are directed and empowered to investigate and examine all places of registered businesses at any and all reasonable times for the purpose of determining whether such place of business is in compliance with all city codes and is safe, sanitary, and suitable for the business so registered or for which such application is made. In the event it is determined by such officers or their agents that such place of business is dangerous to public health or safety, likely to become a menace, or is in violation of city codes, a report of such determination and the reasons therefor shall be made in writing to the city administrator. Such investigation shall not be used in the initial approval or denial of a business registration license, although the report shall be considered in the evaluation of a business license renewal application, to the extent the report bears upon the accuracy of the application contents. (Ord. 512 § 1, 2014; Ord. 497 § 4, 2010)

**5.05.050 Exemptions.**

This chapter shall not apply to the following:

(1) Insurers, their agents and other representatives;

(2) Persons or businesses whom the city is prohibited from licensing or taxing under the Constitution or laws of the United States, the Constitution or laws of the state or Oregon, or the charter of the city;

- (3) Nonprofit or charitable, religious or educational organizations which have received a tax exempt certificate from the Internal Revenue Service, and which devote the net proceeds from the sale of goods or services to the purpose of the organization;
- (4) Pari-mutuel betting establishments;
- (5) Any city, county, state agency, public utility, special district, school district, or other government agency;
- (6) City-sponsored activities and events;
- (7) Garage sales permitted under Chapter 5.15 VMC;
- (8) Domestic help and care providers;
- (9) Newspaper carriers;
- (10) Wholesale selling or delivering of goods to merchants of the city for the purpose of resale. This exception pertains only if the wholesaler does not maintain a place of business within the city and also does not engage in retail trade within the city;
- (11) Persons or companies engaged in the delivery of goods or services from points outside the city, providing sales contacts and actual sales take place outside the city or are solicited by a registered business or resident of the city by phone, Internet, or other means;
- (12) Individuals such as repairmen or carpet cleaners hired on a casual basis by a household or business to supply labor and/or service only and whose place of business is not located within the city limits of Veneta;
- (13) Building or electrical contractor or subcontractor licensed by the state of Oregon and whose place of business is not located within the city limits of Veneta;
- (14) Businesses operating under a city franchise;
- (15) A warehouse used in conjunction with a registered business but at a separate location or additional locations for a registered business operated by the same owner or franchisee;
- (16) Temporary businesses operating for two calendar days a year or less;
- (17) Property rentals, apartments, and manufactured home parks; and
- (18) Any unincorporated business activity carried on by individuals under the age of 18. (Ord. 497 § 5, 2010)

**5.05.060 Violation – Penalty.**

Violation of this chapter is a violation as defined in Chapter 1.10 VMC. (Ord. 497 § 7, 2010)

**MEMORANDUM**

To: Mayor Keefer and members of the City Council  
cc: Brandon Hammond, City Manager  
From: Carla McLane, Planning Official  
Date: December 30, 2024  
RE: Addressing Ordinance

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It has come to my attention that Boardman does not have an Ordinance that regulates how addressing occurs. Such an Ordinance would dictate baselines, suffixes (street, avenue, boulevard, etc), prefixes or directionals, street name requirements, how to change a street name, how numbers are assigned and should be posted, and other requirements to carry out the issuance and management of addresses. This proposed Ordinance is designed to address a variety of problems and to create a system to issue addresses going forward.

The draft attached to this memorandum also been provided to the users of our addressing system: the Police chief, the Fire Chief and Fire Marshall, the Sheriff’s Office, and the local Post Master. With nearly 20 years of experience in issuing addresses in Morrow County, most residents and users of the addressing system believe that its primary purpose is to allow FedEx and Amazon to get packages to their door. The real reason that addressing exists is to ensure that in times of emergency first responders can find you at the address you share within the E911 system.

This is an early heads up that work is needed in this process and this Ordinance will only be a first step. Once adopted there will be many residents and businesses that will see a change to their address whether it be a prefix or suffix or even a change in number. My intent is that, going forward, there will be fewer mistakes made when issuing addresses and that emergency services will have an easier time navigating Boardman to get them where they need to be in time of emergency.

Please reach out with any questions or concerns.

## Chapter X.XX ADDRESSING OF STRUCTURES

## Sections:

## X.XX.XXX Purpose.

To establish and enforce a permanent, systematic and Citywide address and street naming system that is necessary for the protection of health, safety, and welfare of the residents of the City. A systematic addressing plan will facilitate the location by emergency services and others of dwellings, businesses, and other buildings of interest and importance by a site address and identifiable street name. Naming or renaming private lanes or public roads not currently in the City's maintenance system shall not mean that the City accepts or will maintain these streets or roads.

## X.XX.XXX Uniform System.

All streets shall be designated and all structures fronting on streets, except accessory structures, shall be numbered in accordance with this chapter and the maps and plans on file in the office of the City Planner or designee.

## X.XX.XXX Base Lines.

Main Street shall be the north-south base line; Interstate 84 shall constitute the east-west base line for the establishment of quadrants, with each base line extended to the city limits.

## X.X.XXX Suffixes.

- (A) All streets running northerly and southerly shall be denominated by numbers, that is, First Street, and shall be designated as "streets".
- (B) A street lying between numbered streets shall be denominated by number and designated "place", for example, First Place. The exception being the street network south of Interstate 84 that was in place at the time this Ordinance was adopted with names including Olson, Anderson, Tatone, Falser, and Juniper. This Ordinance also will change the designator of those and other streets that run northerly and southerly to "street".
- (C) All streets running in an easterly and westerly direction shall be named and designated "drives," "avenues," or "boulevards." "Drives" and "avenues" will typically run for several blocks while "boulevards" are designed to run for a significant length. Examples of "drives" and "avenues" include Columbia Avenue, Marine Drive and Willo Fork Drive. "Boulevards" include Oregon Trail, Wilson, and Kunze within the City Limits.
- (D) Circular and semi-circular streets shall be designated as "courts."
- (E) Streets that connect twice to a single "street," "avenue," "drive," or "boulevard" shall be designated as "loops."

## X.XX.XXX Prefixes.

To indicate the general location of any street, it shall bear the prefix of the quadrant in which it is located, for example, "N.E. Third Street"; and for the same purpose, each drive, avenue, or boulevard shall bear the prefix of the half in which it is located, for example, "East Hurlburt Avenue."

#### X.XX.XXX Street Naming.

The City Administrator shall approve all street names proposed on subdivision plats or requested by property owners, based on the standards set forth in this Article. At the City Administrator's discretion, a street naming proposal may be referred to the City Council for decision. Any affected party may appeal the City Administrator's decision to the City Council.

- A. Existing street names shall be retained, modified as to directional reference, and extended when appropriate to the urban growth boundary area.
- B. When a street crosses jurisdiction lines, the existing street name shall be maintained unless the City and neighboring jurisdiction agree to a change in name.
- C. Streets shall have the same name throughout their entire length except that:
  - 1. A separate name for a street segment may be applied if there is a major direction change and at least three (3) buildings require an address on that segment.
  - 2. The street is interrupted or separated by a major barrier such as a major highway or topographical feature, where street connection is unlikely and confusion would be minimized by
- D. The proposed street name shall be limited by a maximum of fifteen (15) letters and shall not duplicate or sound similar to a street name within the City.
- E. Street names shall utilize and maintain historical references when possible.
- F. Private lanes with three (3) or more buildings may be named in accordance with provisions of this Article. The cost and maintenance of a street sign shall be the responsibility of the property owners abutting the private lane.

#### X.XX.XXX Changes to Street Names.

A change to a street name may be initiated by the City or other public agency or by an abutting property owner. The City Administrator may approve a change to a street name if requested by all property owners abutting the street and if the proposed name complies with standards of Section X.XX.XXX of this Article and other provisions of this Code. Abutting property owners shall pay any costs relating to the name change, including the cost of a new street sign.

#### X.XX.XXX Numbering of Structures.

A structure fronting a street shall be numbered as follows:

- (A) Even numbers shall be assigned to structures on the north side of streets directionally running east and west and on the west side of streets directionally running north and south. Odd numbers shall be assigned to structures on the south side of streets directionally running east and west and on the west side of streets directionally running north and south.
- (B) Numbers shall be fixed by grids as established by the maps and plans on file in the office of the City Planner or designee. Whenever feasible, each grid section shall encompass a square block and each grid's length shall be allowed 100 numbers. Numbers shall run consecutively with a new 100, starting at each grid line.
- (C) Owner(s) of groups of dwelling units may place an assigned number upon the principal building or office of the group and use numbers or letters to designate each of the units as may be required.

#### X.XX.XXX Address System.

The City Administrator shall assign addresses to all new buildings and structures within the City in accordance with standards of this Article. Address numbers shall be displayed on a building or structure in a manner, form, and size that is clearly visible from the public street.

- A. Consistent With Current System: All addresses assigned within the City shall be numbered consistent with the current numbering system and generally based upon a grid established by the base lines and following the established block pattern in the older part of City, with the number "1" beginning at the base line and extending east-west from the base line.
- B. Numbers Assigned: A number shall be assigned for each building or structure, with one number for each ten feet (10') of frontage.
- C. Consecutive: All numbers shall run consecutively.
- D. Blocks: A new "100" shall begin with each block or approximately every two hundred feet (200'). Ease of locating a lot or building shall guide establishing a new address, rather than strict adherence to an arbitrary grid pattern.
- E. Even, Odd Numbers: Lots or buildings on the south and west side of each street shall bear even numbers and on the north and east side shall bear odd numbers.
- F. Annexed Properties: Annexed properties shall change addresses to become consistent to the City's addressing system.

#### X.XX.XXX Address Changes.

The City or other agency or a property owner may request a change of address number. The City Administrator may grant the request if it is consistent with the standards of this Article. The City Administrator may refer any request for change of address number to the City Council for decision and any decision of the City Administrator may be appealed to the City Council.

#### X.XX.XXX Authority to Assign Numbers.

In conformity with the provisions of this subchapter, the City Planner or designee shall assign numbers to all structures now or hereafter to be constructed. A person who obtains a Development Review permit for construction of a new building shall, at the time of application of the permit, shall also apply for an Access and Address in conformance with the Development Code.

#### X.XX.XXX Location and Type of Numbers.

Numbers assigned shall be at least 3 1/2 inches high including background and shall be of a nature, including lighting, and location as to be easily legible from the center line of the street, and shall be installed within 60 days from the date of issue of the number.

#### X.XX.XXX Notification.

Notification of naming or renaming of streets and the issuance of addresses shall be sent to the following, and any other agencies or jurisdictions deemed necessary:

- A. Public Works Department.

- B. Assessor's office.
- C. Post office.
- D. County Clerk's office.
- E. Utility companies including, but not limited to, telephone, electrical service provider, gas company, sewer and water districts, and television cable company.
- F. Affected Fire Department or district.
- G. Local school district.
- H. County Surveyor.
- I. Police agency.
- J. 911 dispatch.
- K. Building Department.
- L. Hospital(s).
- M. Ambulance services.



## MEMORANDUM

To: Mayor Keefer and members of the City Council  
cc: Brandon Hammond, City Manager  
From: Carla McLane, Planning Official  
Date: December 30, 2024  
RE: Drainage Swales (and by extension Sidewalks, Streets and Curbs)

---

With the development of the River Ridge and Tuscany subdivisions a new street and stormwater standard was developed that incorporated drainage swales into the design to address stormwater management without the costly installation and maintenance of dry wells. But if those installations are not maintained they will cease to do the job that they were intended to do. The development of this new section of the Municipal Code treats the installation and maintenance of a drainage swale in the same or similar manner as sidewalks, streets and curbs and is proposed to be included in the same section with similar requirements.

Included with this memorandum are the following:

- Chapter 12.16 Drainage Swale Construction and Maintenance (new)
- A flyer on How to Maintain Your Grass Drainage Swale from Anne Arundel County in Maryland to provide some context and background information
- Chapter 12.04 Sidewalk Construction and Maintenance (with minor changes discussed below)
- Chapter 12.12 Streets and Curbs (with minor changes discussed below)

The changes that are identified in Chapters 12.04 and 12.12 address three items:

1. The first being the notice process to remove the City Recorder from a process that can and should be done by the staff member (currently the Code Enforcement Officer) that has responsibility and to better reflect what practice should be.
2. The second being to identify the penalty for violation that is found within the Municipal Code at Chapter 1.16 and not Oregon Revised Statute.
3. The third being to remove redundancy and errors in how abatement is accomplished referring to Chapter 8.04 and not attempting to recreate the process within this Chapter.

I am seeking your input and willingness to move these proposed changes forward to adoption at the next City Council meeting. Please reach out if you have any questions.

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## **Chapter 12.16 DRAINAGE SWALE CONSTRUCTION AND MAINTENANCE**

### **Sections:**

#### **12.16.010 Duty of owners to construct drainage swales, power of council.**

It is made the duty of all owners of land adjoining any street in the city to construct the drainage swales in front of such land if that is the type of stormwater control selected. The council has the power and authority to determine the design of all drainage swales in the city, the material to be used, and the specifications for the construction thereof. The council has the authority to initiate and order to complete drainage swales through a hearings process or to waive drainage swale construction for those circumstances where drainage swales may not be warranted.

(Ord. XXX)

#### **12.16.020 Timing of construction of drainage swales.**

Drainage swales shall be constructed for each parcel of land adjoining a public street when approved at the time of initial development.

(Ord. XXX)

#### **12.16.030 Duty of owners to make drainage swale repairs, power of council.**

It is made the duty of all owners of land adjoining any street in the city to maintain in good repair the drainage swales if installed at the time of street development in front of such land.

(Ord. XXX)

#### **12.16.040 Maintaining free and unobstructed drainage swales.**

It is the duty of all owners or tenants of land adjoining a street in the city to maintain free and unobstructed drainage swales which are designed to be part of the stormwater collection system.

(Ord. XXX)

#### **12.04.050 Notice of obstructed drainage swales.**

If the owner or tenant of any lot or part thereof or parcel of land shall cause any obstruction of the drainage swale, it shall be the duty of the city manager or their designee to notify the owner or tenant of the violation. It shall be the duty of the owner or tenant to remove the identified obstruction.

(Ord. XXX)

#### **12.04.060 Penalty for violation of obstruction of drainage swales.**

A violation of obstruction of drainage swales shall constitute a Class D violation as defined in Chapter 1.16 General Penalty; Violations and Fines; Procedure in Criminal Matters Generally of this Municipal Code and the fine

for such a violation shall be as set forth in that same Chapter for a Class D violation as presently defined or as hereafter amended.

(Ord. XXX)

**12.04.070 Notice of defective drainage swales.**

If the owner of any lot or part thereof or parcel of land shall suffer any drainage swale along the same to become out of repair, it shall be the duty of the city manager or their designee, or any person appointed by the council for that purpose, to post a notice on the adjacent property headed "Notice to Repair Drainage Swale," and such notice shall direct the owner, agent, or occupant of such property immediately to repair the same in a good and substantial manner. The person posting the notice shall file an affidavit of the posting of such notice, stating the date when and the place where it was posted. They shall also send such notice by mail, postpaid, notice to repair such drainage swale to the owner, if known, and directed to the post-office address of such owner or agent, when such post-office address is known to the city. If such post-office address be unknown to the city, such notice shall be directed to such owner or agent at Boardman, Oregon. A mistake in the name of the owner or agent, or a name other than that of the true owner or agent of such property, shall not render such notice void. In such case, the posted notice shall be sufficient. Repairs shall be made within ninety (90) days from the posting of the notice.

(Ord. XXX)

**12.04.080 Permit for repairs.**

Prior to making drainage swale repairs, the owner, agent, or occupant shall obtain from the Planning Official with input from the City Engineer a permit prescribing the kind of repair to be made, the material to be used, and the specifications therefore.

(Ord. XXX)

**12.04.090 Repairs by city, record and report.**

If the owner, agent, or occupant of a lot, part of a lot, or parcel of land fails, neglects, or refuses to make the drainage swale repairs within the time designated, the city may make the repairs. The city engineer shall keep an accurate account of the cost of the labor and materials used in making the repairs and use the abatement process outlined in Title 8 Health and Safety Chapter 8.04 Nuisances as needed.

(Ord. XXX)

**12.04.100 Liability of owners.**

The owner or owners of land adjoining any street in the city shall be liable to any person suffering injury by reason of any defect in the drainage swales in front of such land.

(Ord. XXX)

# HOW TO MAINTAIN YOUR GRASS DRAINAGE SWALE

## What is a grass drainage swale?

A grass drainage swale is an open channel that collects water from hard surfaces and allows it to percolate into the ground, reducing the amount of runoff leaving the road or property. The grass covering the side slopes and swale bottom provides a filtration surface for the water and helps to reduce the flow velocity. In steeper areas, some swales have stone or concrete ‘check dams’ across the width to help slow the flow rate, promote infiltration, and prevent erosion. Swales are commonly found along roads, parking lots, or between properties of some residential lots.

Typical grass swale



### Who is responsible for this maintenance?

As the property owner, you are responsible for mowing & maintenance of your grass drainage swale. Some grass swales are structurally maintained by Anne Arundel County.

## SUGGESTED MAINTENANCE ACTIONS\*

### MONTHLY

- Inspect your swale during and after storms to make sure that rainwater has drained and there is no erosion.
- Remove sediment and debris from in and around the swale.
- Remove weeds and plants that do not belong.
- Check for any obstruction or blockage of flow along inflow areas or pipes, including trash, debris, or sediment.

### SEASONALLY

- Mow grass no shorter than 3 to 6 inches. Remove and compost all grass clippings.
- Adjust mower height to avoid scalping the edges of the side slopes.
- Remove and compost leaves in the fall and spring. Leaves may smother the grass and block the flow of rainwater.

### AS NEEDED

- Reseed bare areas to avoid erosion. Be sure to water during the initial establishment period.
- Inspect and maintain or repair components.
- After rainfall, check the swale to ensure the water does not pond longer than 2 or 3 days after a rain storm.

### DO NOT:

- Use excessive fertilizer or pesticides in your swale.

## WHY IT'S IMPORTANT TO MAINTAIN YOUR GRASS DRAINAGE SWALE

An unmaintained grass drainage swale area may:

- Stop filtering the rainwater and allow trash and pollutants to enter into our local streams.
- Block the flow of rainwater and cause local flooding.
- Allow water to pool on the surface long enough to allow mosquitoes or other insects to breed (longer than 3 days).

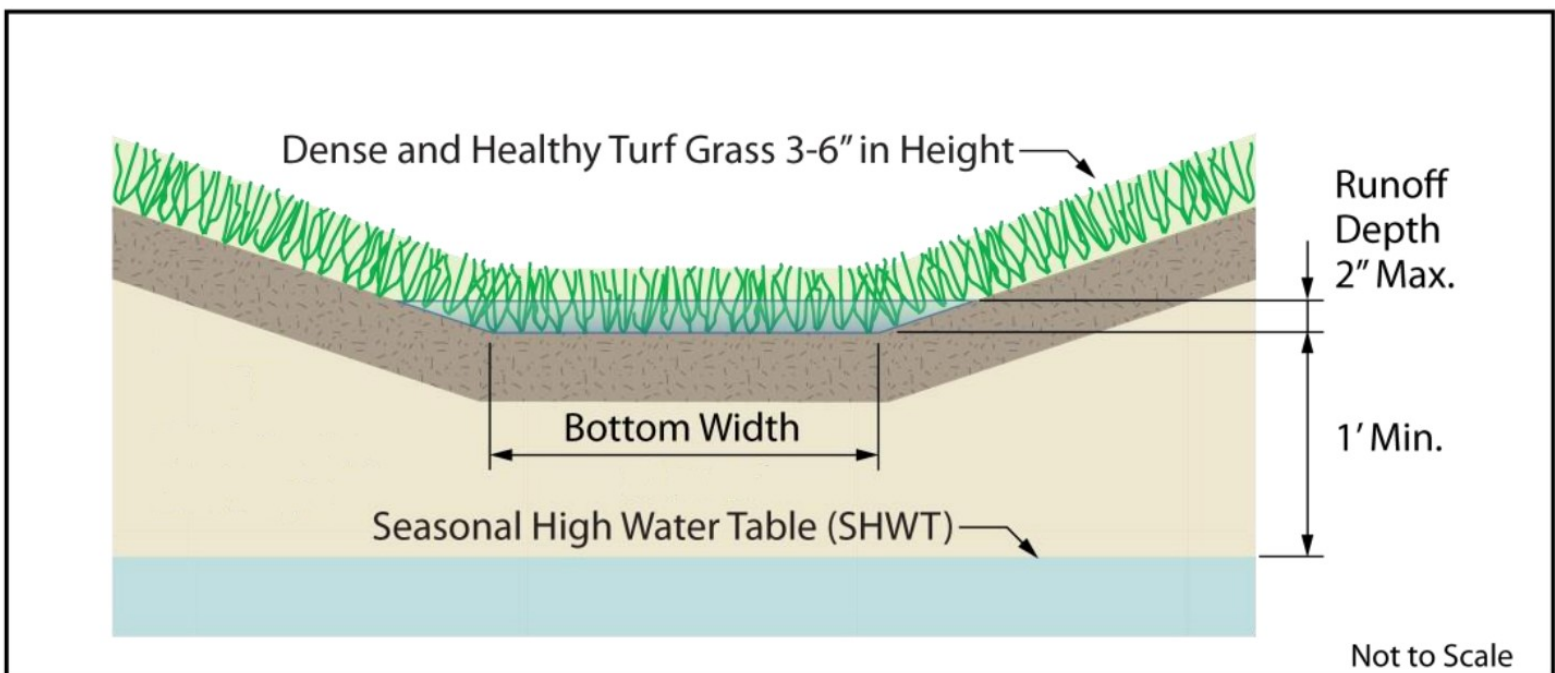
*\* Please refer to the Maryland Stormwater Design Manual, Volumes I and II for minimum requirements and procedures for maintaining BMPs. This document serves as the official guide for stormwater management principles, methods, and practices in the State of Maryland. Visit <http://bit.ly/MDESWDM>.*

Symptom	Possible Cause	Solution
Poor grass health	You grass may be the wrong type for your shade and moisture conditions or they may be smothered by weeds.	Remove dead or disease grass and plant new vegetation as needed. Also be sure to regularly remove weeds and other invasive plants.
Standing water for over 48 hours after a rain event.	Clogging due to leaf litter, grass clippings sediment, or debris accumulation.	Remove any visible debris from the surface. Depending on severity, the swale may need to be tilled and replanted.
Erosion or bare soil	The rainwater is moving too fast and/or vegetation is lacking or nonexistent.	Stabilize the eroded areas by planting new vegetation. Consider using rocks to slow the flow of rainwater.

Recommended timeframes for routine maintenance

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Remove sediment, leaves and debris		•			•			•			•	
Remove trash	•	•	•	•	•	•	•	•	•	•	•	•
Mowing				•	•	•	•	•	•	•	•	
Watering, replanting, erosion control	— As needed —											

Typical Grass Swale Cross-Section (for illustrative purposes only)



## Chapter 12.04 SIDEWALK CONSTRUCTION AND MAINTENANCE\*

### Sections:

#### 12.04.010 Duty of owners to construct and maintain sidewalks, power of council.

It is made the duty of all owners of land adjoining any street in the city to construct and maintain the sidewalks in front of such land. The council has the power and authority to determine the grade and width of all sidewalks in the city, the material to be used, and the specifications for the construction thereof. The council has the authority to initiate and order to complete sidewalks through a hearings process or to waive sidewalk construction for those circumstances where sidewalks may not be warranted.

(Ord. 5-2008 § 3 (part), 2007)

#### 12.04.020 Timing of construction of sidewalks.

Sidewalks shall be constructed for each parcel of land adjoining a public street at the time of initial development and in no case more than ninety (90) days after the initial development of the property with approval of the city manager or their designee with the circumstances listed in subsections A through E of this section.

- A. Weather conditions would not allow proper construction of the sidewalk;
- B. The property is part of a local improvement district for sidewalks already approved;
- C. The city has a pending project which would preclude construction at the time of initial development;
- D. There are topographical grade issues which would preclude the installation of a sidewalk;
- E. Where the construction of the sidewalk would not enhance or meet approved connectivity plans of pedestrian pathways.

(Ord. 5-2008 § 3 (part), 2007)

#### ~~12.04.030 Duty of owners to make sidewalk repairs, power of council.~~

~~It is made the duty of all owners of land adjoining any street in the city to maintain in good repair the sidewalks in front of such land. The council has the power and authority to determine the grade and width of all sidewalks in the city, the material to be used, and the specifications for the repair thereof.~~

(Ord. 5-2008 § 3 (part), 2007)

#### 12.04.~~040~~030 Maintaining free and unobstructed sidewalks.

It is the duty of all owners or tenants of land adjoining a street in the city to maintain free and unobstructed sidewalks which are designed to be pedestrian pathways.

- A. No owner shall affix to, or place on or over, the sidewalk in a manner to create an obstruction any of the following items:
  1. Sports or other stanchions or appurtenances (e.g., basketball baskets and supporting structures, etc.);

2. Fencing;
  3. Retaining walls;
  4. Trees or shrubs;
  5. Passenger vehicles, trucks, trailers or recreational vehicles;
  6. Garbage cans other than noted in subsection B of this section;
  7. Other items which impair full unobstructed pedestrian access to the sidewalk or create diminished safety of the pedestrian.
- B. Exceptions include the following:
1. Garbage cans within twenty-four (24) hours prior to or after pickup;
  2. Temporary advertising sandwich board signs which meet the provisions of Boardman Development Code Chapter 3.6.500(E)(6);
  3. Other similar temporary obstructions deemed appropriate by the city manager or their designee.

(Ord. 5-2008 § 3 (part), 2007)

#### **12.04.050-040 Notice of obstructed sidewalks.**

If the owner or tenant of any lot or part thereof or parcel of land shall cause any obstruction of the sidewalk, it shall be the duty of the city manager or their designee to notify the owner or tenant of the violation. It shall be the duty of the owner or tenant to remove the identified obstruction.

(Ord. 5-2008 § 3 (part), 2007)

#### **12.04.060-050 Penalty for violation of obstruction of sidewalks.**

A violation of obstruction of sidewalks shall constitute a Class D violation as defined in Chapter ~~153 of the Oregon Revised Statutes or as hereafter amended and the fine for such a violation shall be as set forth in Chapter 153 of the Oregon Revised Statutes for a Class D violation as presently defined or as hereafter amended~~ 1.16 General Penalty; Violations and Fines; Procedure in Criminal Matters Generally of this Municipal Code and the fine for such a violation shall be as set forth in that same Chapter for a Class D violation as presently defined or as hereafter amended.

(Ord. 5-2008 § 3 (part), 2007)

#### **12.04.070-060 Notice of defective sidewalks.**

If the owner of any lot or part thereof or parcel of land shall suffer any sidewalk along the same to become out of repair, it shall be the duty of the city manager or their designee, or any person appointed by the council for that purpose, ~~when ordered to do so by the council,~~ to post a notice on the adjacent property headed "Notice to Repair Sidewalk," and such notice shall direct the owner, agent, or occupant of such property immediately to repair the same in a good and substantial manner. The person posting the notice shall file ~~with the city recorder~~ an affidavit of the posting of such notice, stating the date when and the place where it was posted. ~~The city recorder~~ They shall, ~~upon receiving the affidavit of the person posting such notice, also~~ send such notice by mail, postpaid, a notice to repair such sidewalk to the owner, if known, and directed to the post-office address of such owner or agent, when such post-office address is known to the city ~~recorder~~. If such post-office address be unknown to the city ~~recorder~~, such notice shall be directed to such owner or agent at Boardman, Oregon. A

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mistake in the name of the owner or agent, or a name other than that of the true owner or agent of such property, shall not render such notice void. In such case, the posted notice shall be sufficient. Repairs shall be made within ninety (90) days from the posting of the notice.

(Ord. 5-2008 § 3 (part), 2007)

#### **12.04.080-070 Permit for repairs.**

Prior to making sidewalk repairs, the owner, agent, or occupant shall obtain from the Planning Official with input from the City Engineer a permit prescribing the kind of repair to be made, the material to be used, and the specifications therefore.

(Ord. 5-2008 § 3 (part), 2007)

#### **12.04.090-080 Repairs by city, record and report.**

If the owner, agent, or occupant of a lot, part of a lot, or parcel of land fails, neglects, or refuses to make the sidewalk repairs within the time designated, the city engineer may make the repairs. The city engineer shall keep an accurate account of the cost of the labor and materials used in making the repairs, ~~report monthly to the council the cost of the repairs, and prepare a description of the lot or parcel of land fronting on the repaired sidewalk and use the abatement process outlined in Title 8 Health and Safety Chapter 8.04 Nuisances as needed.~~

(Ord. 5-2008 § 3 (part), 2007)

#### **~~12.04.100 Assessment for repairs by city.~~**

~~The council shall, at least once each year, by ordinance assess the cost of making such repairs or laying the same including legal, administrative, and engineering costs attributable thereto upon each lot or part thereof or parcel of land fronting upon sidewalks which have been so repaired or laid. All such assessments may be combined in one assessment roll and the city recorder shall enter in the docket of city liens a statement of the amounts assessed on each lot or part thereof or parcel of land, together with the name of the owners and the date of the assessment ordinance. Upon such entry in the lien docket, the amount so entered shall become a lien and charge upon the lot or part thereof or parcel of land that has been assessed for the sidewalk repair. Such assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state of Oregon permit. Interest shall be charged at the rate of six percent per annum until paid on all amounts not paid within thirty (30) days from the date of the assessment ordinance. After expiration of thirty (30) days from the date of such assessment ordinance, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state of Oregon.~~

~~(Ord. 5-2008 § 3 (part), 2007)~~

#### **12.04.110-090 Liability of owners.**

The owner or owners of land adjoining any street in the city shall be liable to any person suffering injury by reason of any defect in the sidewalks in front of such land.

(Ord. 5-2008 § 3 (part), 2007)



## Chapter 12.12 STREETS AND CURBS

### Sections:

#### 12.12.010 Duty of owners.

It is made the duty of all owners of land adjoining any street in the city:

- A. To keep the on-street parking area free of obstructions other than on-street parking as intended by design;
- B. To protect from damage the area of on-street parking and curbs for those portions of the street abutting such land.

(Ord. 4-2008 § 3 (part), 2007)

#### 12.12.020 Maintaining free and unobstructed streets and curbs.

It is the duty of all owners or tenants of land adjoining a street in the city to maintain free and unobstructed streets ~~which are designed to be pedestrian pathways.~~

- A. No owner shall affix to, or place on or over, the street in a manner to create an obstruction any of the following items:
  1. Sports or other stanchions or appurtenances (e.g., basketball baskets and supporting structures, etc.);
  2. Fencing;
  3. Retaining walls;
  4. Trees or shrubs;
  5. Garbage cans other than noted in subsection B of this section;
  6. Other items which impair full unobstructed on-street parking access to the street or create diminished safety of the pedestrian or vehicular traffic.
- B. Exceptions include the following:
  1. Garbage cans within twenty-four (24) hours prior to or after pickup;
  2. Other similar temporary obstructions deemed appropriate by the city manager or their designee.

(Ord. 4-2008 § 3 (part), 2007)

#### 12.12.030 Notice of obstructed street or curbs.

If the owner or tenant of any lot or part thereof or parcel of land shall cause any obstruction of the street or curbs, it shall be the duty of the city manager or their designee to notify the owner or tenant of the violation. It shall be the duty of the owner or tenant to remove the identified obstruction.

(Ord. 4-2008 § 3 (part), 2007)

### 12.12.040 Penalty for violation of obstruction of streets or curbs.

A violation of obstruction of street or curbs shall constitute a Class D violation as defined in Chapter ~~153 of the Oregon Revised Statutes or as hereafter amended and the fine for such a violation shall be as set forth in Chapter 153 of the Oregon Revised Statutes for a Class D violation as presently defined or as hereafter amended~~1.16 General Penalty; Violations and Fines; Procedure in Criminal Matters Generally of this Municipal Code and the fine for such a violation shall be as set forth in that same Chapter for a Class D violation as presently defined or as hereafter amended.

(Ord. 4-2008 § 3 (part), 2007)

### 12.12.050 Protecting streets and curbs from damage.

It shall be the responsibility of the owner of land abutting a street to protect the curb and area of on-street parking from damage to the pavement or curb from the following practices resulting in damage to those structures:

- A. Vehicle fluid leaks such as oil, transmission fluid, hydraulic fluid, antifreeze, acids, and other damaging fluids;
- B. Parking on the curb creating structural damage to the curbs;
- C. Digging, grinding, or other activities which degrade pavement surface;
- D. Preventing tree or shrubbery roots from uplifting curbs and streets causing structural damage;
- E. Other practices by the owner which may cause structural damage to the street of curbs beyond normal wear and tear.

(Ord. 4-2008 § 3 (part), 2007)

### 12.12.060 Notice of street or curb damage.

If the owner of any lot or part thereof or parcel of land shall suffer any street or curb damage along the same, it shall be the duty of the city manager or their designee, or any person appointed by the council for that purpose, ~~when ordered to do so by the council,~~ to post a notice on the adjacent property headed "Notice to Repair Damaged Streets and Curbs," and such notice shall direct the owner, agent, or occupant of such property immediately to repair the same in a good and substantial manner. The person posting the notice shall file ~~with the city recorder~~ an affidavit of the posting of such notice, stating the date when, and the place where it was posted. ~~The city recorder~~They shall, ~~upon receiving the affidavit of the person posting such notice also,~~ send ~~such notice~~ by mail, postpaid, a notice to repair such streets and curbs to the owner, if known, and directed to the post-office address of such owner or agent, when such post-office address is known to the city ~~recorder~~. If such post-office address be unknown to the city ~~recorder~~, such notice shall be directed to such owner or agent at Boardman, Oregon. A mistake in the name of the owner or agent, or a name other than that of the true owner or agent of such property, shall not render such notice void. In such case, the posted notice shall be sufficient. Repairs shall be made within twenty (20) days from the posting of the notice.

(Ord. 4-2008 § 3 (part), 2007)

**12.12.070 Permit for repairs.**

Prior to making street or curb repairs, the owner, agent, or occupant shall obtain from the Planning Official with input from the City Engineer a permit prescribing the kind of repair to be made, the material to be used, and the specifications therefore.

**12.12.070-080 Assessment for repairs Repairs by city, record and report.**

~~The council shall, at least once each year, by ordinance assess the cost of making such repairs or laying the same including legal, administrative, and engineering costs attributable thereto upon each lot or part thereof or parcel of land fronting upon streets which have been so repaired. All such assessments may be combined in one assessment roll and the city recorder shall enter in the docket of city liens a statement of the amounts assessed on each lot or part thereof or parcel of land, together with the name of the owners and the date of the assessment ordinance. Upon such entry in the lien docket, the amount so entered shall become a lien and charge upon the lot or part thereof or parcel of land that has been assessed for the sidewalk repair. Such assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state of Oregon permit. Interest shall be charged at the rate of six percent per annum until paid on all amounts not paid within thirty (30) days from the date of the assessment ordinance. After expiration of thirty (30) days from the date of such assessment ordinance, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state of Oregon.~~

If the owner, agent, or occupant of a lot, part of a lot, or parcel of land fails, neglects, or refuses to make the street or curb repairs within the time designated, the city may make the repairs. The city engineer shall keep an accurate account of the cost of the labor and materials used in making the repairs and use the abatement process outlined in Title 8 Health and Safety Chapter 8.04 Nuisances as needed.

(Ord. 4-2008 § 3 (part), 2007)

**12.12.080 Liability of owners.**

The owner or owners of land adjoining any street in the city shall be liable to any person suffering injury by reason of any defect in the streets or curb in front of such land.

(Ord. 4-2008 § 3 (part), 2007)

## MEMORANDUM

To: Mayor Keefer and members of the City Council  
cc: Brandon Hammond, City Manager  
From: Carla McLane, Planning Official  
Date: December 30, 2024  
RE: Right-of-Way Licenses

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Back in October Nancy Werner joined a City Council Workshop and introduced this topic. The two-page summary that she provided for that evening's presentation can be found in the October 1, 2024, Workshop [Packet](#) and the [video](#) from that evening is also available and informative should you want to remind yourself of the conversation.

For this evening's conversation attached to this memorandum are the proposed changes to the Boardman Municipal Code as follows:

1. The addition of a new Title 12 Streets, Sidewalks and Public Places – Chapter 12.16 Utility Use of the Rights-of-Way; and
2. Minor changes to Title 12 Chapter 12.08 Excavations; and
3. More significant changes to Title 13 Public Services Chapter 13.12 Underground Wiring Control District.

Nancy drafted these proposed changes based on input from the Council Workshop and conversation with staff about what we perceive as concerns and what the overarching objectives are. You will notice that there are many 'comments' that Nancy has proposed that staff will need to work through. Should the Council has any input to those areas it would be appreciated to hear from you during the Workshop.

For some context to the two Chapters proposed for amendment Nancy shared the following concerning the Underground Wiring Control District, "...attached is a draft ordinance to update the underground wiring district chapter. Many of the provisions will be covered by the ROW ordinance so they were no longer necessary and show up as deleted." The changes to Chapter 12.08 Excavations are very minor and will again push readers to the proposed ROW License Chapter as appropriate.

Prior to adoption there are still several items to work through, but staff are motivated to get to completion timely to address a potential application for a small cell installation. To achieve adoption do look for a final draft in February to allow for adoption in March.

Do reach out should you have any questions or want to discuss this in more detail.

**CITY OF BOARDMAN  
ORDINANCE \_\_-2025**

**AN ORDINANCE TO APPROVE AN AMENDMENT TO THE BOARDMAN  
MUNICIPAL CODE ADDING TITLE 12, CHAPTER 12.16 UTILITY USE OF THE  
RIGHTS-OF-WAY**

WHEREAS, the City of Boardman has the authority pursuant to its Charter and the Oregon Constitution and statutes to manage its rights-of-way and to receive compensation for use of the rights-of-way consistent with applicable state and federal law; and

WHEREAS, the City has identified the need to establish uniform requirements for use of the rights-of-way by utilities, including requiring licenses rather than individually negotiated franchise agreements, to better ensure transparent, consistent and efficient management of the public rights-of-way; and

WHEREAS, the adoption of Chapter 12.16 requires related conforming amendments to Chapter 12.08 Excavations; and

WHEREAS, the City finds it is in the public interest to enact the updates to the Municipal Code as set forth in this Ordinance.

**NOW THEREFORE, THE PEOPLE OF BOARDMAN DO ORDAIN AS FOLLOWS:**

Section 1. Boardman Municipal Code Title 12 shall be amended to add Chapter 12.16 as set forth in Exhibit A.

Section 2. Boardman Municipal Code Chapter 12.08.050 shall be amended as follows (additions in underline; deletions in ~~striketrough~~):

**12.08.010 - Permit required.**

No person, firm or corporation shall excavate, cut, break, dig up, damage in any manner, undermine or tunnel under a public street or alley without first securing a permit and depositing security as provided in this chapter and Boardman Municipal Code Chapter 12.16.

**12.08.050 - Utilities.**

Cuts or excavations in the city streets made by a ~~franchised public utility operator~~ shall be subject to Boardman Municipal Code Chapter 12.16. ~~repaired within a reasonable time according to the standards set out in this chapter, including the placement of~~

~~a temporary patch within twenty-four (24) hours as provided in Section 12.08.040. If the utility fails to repair after written notice by the city, the city may make the repairs and restore the street and charge the costs to the utility at the prevailing rate for the work in the city, plus ten (10) percent to cover administration.~~

Section 3. This Ordinance shall become effective on the 30th day after its adoption.

Passed by the Council and approved by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Paul Keefer – Mayor

\_\_\_\_\_  
Amanda Mickles – City Clerk

## EXHIBIT A

### 12.16.010 – Jurisdiction and management of the public rights-of-way.

- A. The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the city Charter and state law.
- B. The city has jurisdiction and exercises regulatory management over each public right-of-way whether the city has a fee, easement, or other legal interest in the public right-of-way. The city has jurisdiction and regulatory management of each public right-of-way whether the legal interest in the public right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use public rights-of-way by licenses, franchises and permits.
- D. The exercise of jurisdiction and regulatory management of a public right-of-way by the city is not official acceptance of the public right-of-way, and does not obligate the city to maintain or repair any part of the public right-of-way.
- E. The city retains the right and privilege to cut or move any utility facilities located within the public rights-of-way in the city, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency.

### 12.16.020 – Regulatory fees and compensation not a tax.

- A. The fees and costs provided for in this chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this chapter, are separate from, and in addition to, any and all federal, state, local, and city charges as may be levied, imposed, or due from a utility operator or provider, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.
- B. The city has determined that any fee provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners.
- C. The fees and costs provided for in this chapter are subject to applicable federal and state laws.

### 12.16.030 – Definitions.

For the purpose of this code the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

- A. "Antenna" means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded, which defines the term to mean 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. "Cable service" is to be defined consistent with federal laws and means the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- E. "City" means the city of Boardman, an Oregon municipal corporation, and individuals authorized to act on the city's behalf.
- F. "City council" means the elected governing body of the city of Boardman, Oregon.
- G. "City property" means and includes all real property owned by the city, other than public rights-of-way and public utility easements as those are defined in this chapter, and all property held in a proprietary capacity by the city, which are not subject to public right-of-way licensing or franchising as provided in this code.
- H. "Collocate" or "Collocation" means mounting or installing an antenna facility on a preexisting pole or structure.
- I. "Communications services" means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. "Communications service" includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) public communications systems; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56 (1996).
- J. "Days" means calendar days unless otherwise specified.



- K. “Decorative Pole” means a pole that is specially designed and placed for aesthetic purposes.
- L. “Emergency” means a circumstance, as determined by the city, in which immediate work to utility facilities is necessary to restore lost service or prevent immediate harm to persons or property.
- M. “Federal Communications Commission” means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.
- N. “Franchise” means an agreement between the city and a utility operator which grants a privilege to use public rights-of-way within the city for a dedicated purpose and for specific compensation.
- O. “Grantee” or “licensee” means the person to which a franchise or license is granted by the city.
- P. “Person” means an individual, corporation, company, association, joint stock company or association, firm, partnership, limited liability company or governmental entity.
- Q. “Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the State of Oregon pursuant to ORS 283.140. “Public communications system” does not include any system used for sale or resale, including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.
- R. “Public rights-of-way” means and includes the streets, roads, highways, bridges, alleys, sidewalks, public utility easements, and all other public ways or areas, including the subsurface under and air space over these areas, that are generally open to the public for vehicular and pedestrian travel, but does not include parks, parkland or other city property. This definition applies only to the extent of the city’s right, title, interest or authority to grant a license or franchise to occupy and use such areas for utility facilities.
- S. “Public utility easement” means any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes. “Public utility easement” does not include an easement solely for the construction, reconstruction, operation, maintenance, inspection and repair of city facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the city.
- T. “Small wireless facility” means the same as defined in 47 C.F.R § 1.6002(l), as may be amended or superseded, which defines the term to mean antenna facilities that meet the following conditions:
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 require antenna structure registration under 47 C.F.R. Part 17; and
  5. The facilities are not located on Tribal lands, as defined under 36 C.F.R. 800.16(x); and
  6. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).
- U. "State" means the state of Oregon.
- V. "Utility facilities" or "facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located or to be located under, on, or above the surface of the ground within the public right-of-way in the city and used or to be used for the purpose of providing utility services.
- W. "Utility operator" means any person who owns, operates or controls a utility facility within the public rights-of-way in the city.
- X. "Utility services" means the provision, by means of utility facilities permanently located within, under or above the public rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer or storm sewer to or from customers within the corporate boundaries of the city, or the transmission of any of these services through the city whether or not customers within the city receive those transmissions or services.
- Y. "Work" means the construction, demolition, installation, replacement, repair, maintenance, or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance, or relocation.

**12.16.040 – Construction standards.**

- A. General. No person shall commence or continue with any work or operation of utility facilities within any portion of the public rights-of-way except as provided in this chapter.
- B. Construction Codes. Utility facilities shall be constructed, installed, operated and maintained in accordance with, and permittees shall at all times comply with, all applicable federal, state and local laws, codes, ordinances, rules and regulations, including the National Electrical Code and the National Electrical Safety Code and the requirements of the city's applicable design and construction standards.
- C. Construction Permits.

1. Except as provided in subsection C.2 or as otherwise agreed to in writing by the city, no person shall construct or install any utility facilities or perform any work within any portion of the public rights-of-way without first obtaining all applicable construction permits and paying the construction permit fees established pursuant to subsection G of this section.
  2. In the event of an emergency, a utility operator with a license pursuant to this chapter or a valid franchise agreement, or the utility operator's contractor, may perform work on its utility facilities without first obtaining a permit from the city; provided, that, to the extent reasonably feasible, it attempts to notify the city prior to commencing the emergency work and in any event applies for a permit from the city and pays all applicable permit fees as soon as reasonably practicable, but not more than 48 hours after commencing the emergency work.
  3. No permit shall be issued for the construction or installation of utility facilities or any work within the public rights-of-way unless the utility operator has first applied for and received a license pursuant to section 12.16.060 or holds a valid franchise from the city.
- D. Permit Applications. Applications for construction permits shall be submitted upon forms to be provided by the city and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:
1. That the construction, installation or other work in the public rights-of-way related to utility facilities will be in accordance with all applicable laws, codes, ordinances, rules and regulations and the license or franchise agreement.
  2. The location and route of all utility facilities to be installed above ground, including on existing utility poles.
  3. The location and route of all new utility facilities on or in the public rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights-of-way. Existing facilities shall be differentiated on the plans from new construction.
  4. The location of all of applicant's existing underground utility facilities, including conduits, ducts, pipes, mains and installations which are within the public rights-of-way along the underground route proposed by the applicant. A cross-section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or public right-of-way.
  5. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.
  6. The applicant has an adequate traffic control plan to protect bicyclists, pedestrians, construction personnel, and vehicular traffic, and to warn and safeguard the public against injury or damage resulting from the work.

7. To the extent the proposed utility facility involves collocation, (i) a structural report performed by a duly licensed engineer demonstrating that the pole or structure will structurally support the additional load and meet any applicable spacing requirements, or that describes how the pole or structure will be modified to meet such requirements; and (ii) a copy of the authorization for use of the property from the pole or structure owner on which the antenna facility will be placed or attached.
  8. To the extent the proposed utility facility includes antenna facilities or a new pole, accurate visual depictions or representations of the proposed new facilities.
  9. To the extent the proposed utility facility includes antenna facilities, reports or similar documentation confirming that the proposed antenna facilities are in compliance with all applicable FCC regulations relating to radio frequency emissions.
  10. Whether the proposed work is subject to ministerial review or administrative review as provided in section 12.16.040.H and I.
- E. Applicant's Verification. All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical laws, codes, ordinances, rules and regulations.
- F. Construction Schedule. All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city.
- G. Construction Permit Fee. Prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount determined by resolution of the city council.
- H. Issuance of Permit.
1. Ministerial Review. For applications the **public works director** determines to be permitted uses subject to ministerial review, the public works director shall issue a permit authorizing construction or installation of the utility facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he or she may deem necessary or appropriate, provided that the proposed facility:
    - a. Complies with the provisions of this chapter and the license or franchise;
    - b. Does not materially interfere with sight lines or clear zones for transportation or pedestrians;
    - c. Complies with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;
    - d. Complies with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not result in RF exposures that

**Commented [NW1]:** This uses PW Director throughout simply because that was in the sample I used for the draft. It can be any staff person, or it could be "city manager or designee" so that Brandon can pick who it will be.

- exceed the FCC's maximum permissible exposure level for the general population;
- e. Is designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards; and
  - f. Complies with city codes, standards and regulations, including, without limitation, the city's public works construction standards, building and electrical codes, and any other codes, rules, or laws that the city determines are applicable.
2. Permits Subject to Ministerial Review The following uses within the public rights-of-way shall be permitted uses subject to ministerial review.
- a. Installation of a utility facility where the installation is installed underground or is exempt from underground placement as provided in Boardman Municipal Code 13.12.030.
  - b. Collocation of a small wireless facility that complies with the City's small wireless facilities design standards without any deviations, including deviations allowed pursuant to the deviation provisions of the design standards, and that does not exceed the maximum height set forth in Boardman Development Code 3.6.200.A.
  - c. Collocation of a small wireless facility, including modification or replacement of a pole for collocation of a small wireless facility, where the collocation, modification or replacement qualifies as an eligible facilities request as defined in 47 C.F.R. § 1.6100(b)(3), as may be amended or superseded, provided that the public works director may include conditions with the permit to ensure that the collocation, modification or replacement is consistent with applicable provisions of this chapter and the city's small wireless facilities design standards to the extent consistent with applicable law.
  - d. Placement of a new, modified, or replacement pole to be used for collocation of a small wireless facility that (i) does not modify or replace a decorative pole; (ii) complies with the city's small wireless facilities design standards without any deviations, including deviations allowed pursuant to the deviation provisions of the design standards, and (iii) does not exceed the maximum height set forth in Boardman Development Code 3.6.200.A.
3. Administrative Review. For applications subject to administrative review, the public works director may issue a permit authorizing construction of the utility facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate, if the public works director determines in his or her sole discretion that:

**Commented [NW2]:** This is from the Ashland ordinance. There was a lot of concern about fires caused by wireless equipment, which I think was based on reports of arson at wireless towers, but in any event they wanted to address it in the code. For Boardman, this will apply to electric services, too, which was not the case for Ashland (it was telecom only). I don't know what reaction you might get from the electric provider who might read this to require a higher level of design than they currently include in permit applications.

**Commented [NW3]:** These vary by zone, with shorter heights allowed in residential and larger in other zones. These heights are for towers on private property, whereas this ordinance addresses poles in the ROW, so the City could opt for different height limits for these poles.

**Commented [NW4]:** This is intended to reference separate design standards for small wireless facilities that would apply in addition to the design standards below. The City does not have to also have separate standards, but any standards you want to apply must be "published" before you get an application for small wireless facilities if you want to be sure you can enforce them. The FCC has said cities cannot enforce standards that are not published in advance of the small cell application being submitted.

Here is a link to Ashland's standards: <http://records.ashland.or.us/WebLink/DocView.aspx?id=134708&dbid=0&repo=CITY-RECORDS> The deviation process in Ashland's standards is referenced in this draft. We may want to include something similar here if you do not want to adopt separate design standards for small cells, which we could add to the deviation process in this draft.

**Commented [NW5]:** Again, this is intended to refer to separate standards. This reference to the deviation process is to the one in the separate design standards. There is also a deviation process in this draft because it applies to more than just small cells. That might be a bit confusing. As mentioned above, we could try to consolidate all design standards here, though if there are going to be a number of requirements specific to just small cells, it probably makes more sense to keep them separate because this is intended to be utility neutral as much as possible.

- a. The proposed utility facility complies with the provisions of subsection H.1.a-f of this section 12.16.040, except to the extent deviations are expressly granted in writing by the public works director;
  - b. The proposed utility facility, as proposed or with the conditions imposed by the public works director, will comply with all applicable city design standards, or the public works director has expressly granted in writing a deviation from the city design standards or determined that a deviation from the design standards shall be allowed pursuant to the deviation process in the city's small wireless facilities design standards;
  - c. The proposed utility facility would violate the underground location requirements provided in Boardman Municipal Code 13.12.030, but a deviation is appropriate because:
    - (i) The topography is such, due to terrain, rock, etc., as to make compliance physically impractical;
    - (ii) Underground installation is economically not feasible; or
    - (iii) The utility lines are of such voltage, size or capacity that underground installation is not feasible;
  - d. The proposed utility facility, as proposed or with the conditions imposed by the public works director, will comply with all applicable city design standards, or the public works director has determined that the proposed facility avoids the intangible public harm of unsightly or out-of-character deployments and the negative impact of the proposed facility on the surrounding uses and public facilities is minimized;; and/or
  - e. The denial of the permit will prohibit or effectively prohibit the provision of telecommunications service or personal wireless service.
4. Permits Subject to Administrative Review. All uses of the public rights-of-way for utility facilities other than those set forth in subsection H.2 of this section 12.16.040, including uses described in subsection H.2 that do not fully comply with the city's applicable design and/or public works standards without a deviation, shall be subject to administrative review as provided in subsection 12.16.040.H.4.
5. Use of Consultants. Where deemed reasonably necessary by the city, the city may retain the services of professional consultants to assist the city in carrying out its duties in reviewing and making decisions on permit applications. The applicant shall be responsible for payment of all the actual costs incurred by the city for such services. The city shall provide the applicant with a detailed invoice of time spent and the nature of the review, and the applicant shall submit payment to the city within 30 days of receipt of the invoice.
- I. Design Standards.

**Commented [NW6]:** Do we want to include criteria for allowing an deviation?

**Commented [NW7]:** These are from chapter 13.12, though edited to exclude provisions applicable only to developments.

**Commented [NW8]:** This is a strange phrase, but it comes from the FCC small cell rules so I suggest using it in the ordinance.

**Commented [NW9]:** This is the standard under federal law (47 USC Sec. 253 and Sec. 332(c)(7)).

1. Maximum Size of Permitted Use. No person may install, modify, or replace small wireless facilities on a pole in the public rights-of-way that exceeds the height limits contained in Boardman Development Code 3.6.200.A, or install, modify or replace a pole in the public rights-of-way with a new pole that will be more than 10 percent taller than other adjacent poles, unless the public works director approves the installation, modification or replacement after administrative review.
  2. Decorative Poles. No person may attach any utility facilities or collocate an antenna facility on a decorative pole, or replace a decorative pole, including with a new decorative pole, unless the public works director approves the attachment, collocation or replacement after administrative review.
  3. Notwithstanding any other provision of this chapter, the city manager shall have the authority to waive any provision of this chapter if the city manager determines in his or her sole discretion that the denial of an application would prohibit or effectively prohibit the provision of telecommunications services or personal wireless services in violation of the Telecommunications Act of 1996. An applicant may appeal the denial of a request for a waiver to the city council, whose decision shall be final.
- J. Notice of Construction. Except in the case of an emergency, the permittee shall notify the city not less than two working days in advance of any work in the public rights-of-way.
- K. Compliance with Permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.
- L. Noncomplying Work. All work that does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this code, shall be promptly removed or corrected at the sole cost and expense of the permittee.
- M. Completion of Construction. The permittee shall promptly complete all construction activities so as to minimize disruption of the public rights-of-way and other public and private property. All construction work within the public rights-of-way, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate city official as provided in subsection F of this section.
- N. As-Built Drawings. If requested by the city, the permittee shall furnish the city with two complete sets of plans in a format acceptable to the city drawn to scale and certified to the city as accurately depicting the location of all utility facilities constructed pursuant to the permit. These plans shall be submitted to the public works director or designee within 60 days after completion of construction, in a format acceptable to the city.

**Commented [NW10]:** We talked about having the City Council issue waivers but for non-controversial waivers, it will be easier for the city and the applicant if the CM can do it, so I'm suggesting the CM has the first opportunity with the ability for the applicant to appeal to the Council. We could also allow anyone (e.g., the public) to appeal the decision to the Council if that's the preference. Or we can just have the appeal go directly to the Council.

As drafted the PW Director has authority to waive permit requirements as well, but this provision is a larger catch-all for any requirement that allegedly violates the Telecom Act. s

- O. Restoration of Public Rights-of-Way.
1. When a permittee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or city property, it shall, at its own cost and expense, promptly remove any obstructions therefrom and, unless otherwise directed by the city, restore such public rights-of-way or property to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations as determined by the public works director or designee.
  2. If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected public rights-of-way or property. Such temporary restoration shall be at the permittee's sole cost and expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the city.
  3. If the permittee fails to restore any portion of the public rights-of-way or property as required in this chapter, the license and the permit issued by the city, the city shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding 30 days to restore the public rights-of-way or property. If, after said notice, the permittee fails to restore the public rights-of-way or property to as good a condition as existed before the work was undertaken or as otherwise directed by the city pursuant to this subsection O, the city shall cause such restoration to be made at the sole cost and expense of the permittee.
  4. A permittee or other person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such public rights-of-way or property.
- P. Performance and Completion Bond. Unless otherwise agreed to by the city, a performance bond or other form of surety acceptable to the city equal to at least 100 percent of the estimated cost of permittee's work within the public rights-of-way in the city shall be provided before work is commenced.
1. The surety shall remain in force until 60 days after substantial completion of the work, as determined in writing by the city, including restoration of public rights-of-way and other property affected by the construction.
  2. The surety shall guarantee, to the satisfaction of the city:
    - a. Timely completion of construction;
    - b. Construction in compliance with applicable plans, permits, technical codes and standards;
    - c. Proper location of the facilities as specified by the city;



- d. Restoration of the public rights-of-way and other property affected by the construction; and
- e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

**12.16.050 – Location of utility facilities.**

- A. Facilities. Upon request, each grantee shall provide the city with an accurate map or maps, in a format acceptable to the city, certifying the location of all of its utility facilities within the public rights-of-way in the city.
- B. Location of Facilities. All facilities shall be located underground as provided in Boardman Municipal Code 13.12.030, except as provided therein or in this subsection B. This requirement shall not apply to the installation of facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts, or to antennas, pedestals, cabinets or other equipment of any utility operator where underground operation is not technically feasible and the city, in its sole discretion, has approved an above-ground location. If a grantee proposes to install an antenna facility in an area where all wireline utility facilities in the public rights-of-way are underground, the city and grantee shall work to find a location for such antenna facility that is technically feasible and avoids the intangible public harm of unsightly or out-of-character deployments.
- C. Interference with the Public Rights-of-Way. No grantee may locate or maintain its utility facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with city codes, ordinances, rules and regulations.
- D. Relocation or Removal of Facilities.
  - 1. When requested to do so in writing by the city, a utility operator shall, at no cost or expense to the city, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a public right-of-way, including relocation of aerial facilities underground; provided that underground relocation shall not be required for facilities for which underground operation is not technically feasible and the city, in its sole discretion, has approved the continued use of the above-ground location.
  - 2. The city will cooperate with the utility operator in securing alternate locations in the public rights-of-way; provided that the city shall bear no responsibility or cost to secure any alternate location either within or outside the public rights-of-way, or otherwise compensate or assist the utility operator in relocation of the facilities.
  - 3. The city shall coordinate the schedule for relocation of utility facilities and shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities, which shall not be less than 30 days except as provided in subsection D.4 of this section. If a utility operator fails to remove, relocate, change, alter or underground any

utility facility as required by the city, the utility operator shall pay all costs and expenses incurred by the city due to such failure, including but not limited to costs related to project delays, and the city may cause the utility facility to be removed, relocated, changed, altered or undergrounded at the utility operator's sole cost and expense using qualified workers in accordance with applicable state and federal laws and regulations. The utility operator shall reimburse the city within 30 days of receipt of an invoice from the city.

4. In the event of a public health or safety emergency, as determined by the city, the city may require a utility operator to immediately remove, relocate, change or alter the position of any utility facility within a public right-of-way. The city retains the right and privilege to cut or remove, relocate, change or alter the position of any utility facility within a public right-of-way, without notice, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency, as determined by the city. The city will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the city's response to the emergency.

E. Removal of Unauthorized and Abandoned Facilities.

1. Within 30 days following written notice from the city, any utility operator or other person that owns, operates or controls any unauthorized utility facility or related appurtenances within the public rights-of-way in the city shall, at its own cost and expense, remove such facilities or appurtenances from the public rights-of-way in the city. If a utility operator or other person fails to remove any abandoned facilities or appurtenances, the utility operator or person shall pay all costs and expenses incurred by the city due to such failure, including but not limited to costs related to project delays, and the city may cause the utility facility or appurtenances to be removed at the utility operator's or other person's sole cost and expense using qualified workers in accordance with applicable state and federal laws and regulations. The utility operator or person shall reimburse the city within 30 days of receipt of an invoice from the city.
2. A utility facility is unauthorized and subject to removal in the following circumstances:
  - a. One year after the expiration, revocation or termination of the grantee's license or franchise without renewal thereof.
  - b. Upon abandonment of a utility facility within the public rights-of-way in the city. All or any portion of a utility facility will be considered abandoned when it is deactivated, out of service, or not used for its authorized purpose for a period of 90 days or longer. A utility facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced.
  - c. If the utility facility was constructed or installed without the appropriate prior authority at the time of installation.

- d. If the utility facility was constructed or installed at a location not permitted by the utility operator's license or franchise, or the permit issued pursuant to this chapter.
- F. Relocation or Removal by City. The city shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the city or its contractor in removing, relocating or altering the facilities pursuant to this section, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by this section, unless such damage arises solely and directly from the city's negligence or willful misconduct.
- G. Coordination of Construction Activities. All grantees are required to make a good faith effort to cooperate with the city in coordinating construction activities in the public rights-of-way.
  1. By January 1<sup>st</sup> of each year, grantees shall provide the city with a schedule of their proposed construction activities in, around or that may affect the public rights-of-way.
  2. If requested by the city, each grantee shall meet with the city annually or as determined by the city, to schedule and coordinate construction in the public rights-of-way. At that time, city will provide available information on plans for local, state, and/or federal construction projects.
  3. All construction locations, activities and schedules shall be coordinated, as ordered by the public works director or designee, to minimize public inconvenience, disruption or damage.

**12.16.060 – Utility license.**

- A. Utility License. Every person that owns, operates or controls utility facilities as of the effective date of this chapter shall apply for a license from the city within 30 days of the later of:
  1. The effective date of this chapter, or
  2. The expiration of a valid franchise agreement granted by the city, unless a new franchise agreement is granted by the city pursuant to subsection K of this section.
- B. Application. The license application shall be on a form provided by the city, and shall be accompanied by any additional documents required by the application or the city to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the utility facilities in the public rights-of-way or to be installed in the public rights-of-way, a description of type of utility service provided or to be provided by the applicant, if any, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter.
- C. Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the city council.

- D. Determination by the City. The city shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. The application shall be evaluated based upon the provisions of this chapter, the continuing capacity of the public rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.
- E. Scope of Grant.
1. A license shall authorize the licensee, subject to the provisions of the city codes, including this Chapter, and other applicable provisions of state or federal law, as amended from time to time, to construct, place, maintain, upgrade, repair and operate utility facilities in the public rights-of-way for the term of the license for the provision of the utility service(s) authorized in the license. In the event the licensee, or another person using the licensee's facilities, offers different utility service(s) than those authorized in the license, the licensee shall inform the city of such changes no later than 30 days after the provision of such services.
  2. No license granted pursuant to this chapter shall convey any right, title or interest in the public rights-of-way, but shall be deemed a non-exclusive grant to use and occupy the public rights-of-way for the limited purposes and term provided in this chapter. The license is subject to all recorded deeds, easements, dedications, covenants, restrictions, encumbrances and claims of title of record that may affect the public rights-of-way.
  3. No license granted pursuant to this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights-of-way for utility facilities, delivery of utility services or any other purpose. The city expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the city's right to use the public rights-of-way, for similar or different purposes.
  4. Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, including, without limitation, the police power or regulatory power of the city.
- F. Term. Subject to the revocation and termination provisions in subsection J of this section, a utility license granted hereunder shall be in effect for a term of five years.
- G. Multiple Services.
1. A utility operator that provides or transmits or allows the provision or transmission of utility services and non-utility services over its utility facilities is subject to the license and fee requirements of this chapter for the portion of the utility facilities and extent of utility services delivered by the utility operator over those facilities.
  2. A utility operator that provides or transmits more than one utility service to customers in the city is not required to obtain a separate license or franchise

for each utility service, but is required to pay the rights-of-way use fees due for each utility service the utility operator provides.

- H. **Renewal Applications.** A licensee that desires to renew its license under this code shall, not less than 30 days but no more than 180 days before expiration of the current license, submit an application with the city, including all information required in section 12.16.060.B and the application fee required in section 12.16.060.C. The city shall review the application as required by section 12.16.060.D and grant or deny the license within 90 days of submission of the application. If the city determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the city may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the city, before the city will consider the application and/or grant the license. If the city requires the licensee to cure or submit a plan to cure a violation, the city will grant or deny the license application within 90 days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.
- I. **Assignments or Transfers of System or License.** Except as otherwise provided by applicable State and federal law, ownership or control of a majority interest in utility facilities or a license may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city.
1. Licensee and the proposed assignee or transferee of the license or facilities shall agree, in writing, to assume and abide by all of the provisions of the license.
  2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the utility facilities pursuant to this code and otherwise meets the criteria for all license applicants set forth in section 12.16.060.D.
  3. Unless expressly prohibited by applicable state or federal law, the licensee shall reimburse the city for all direct and indirect fees, costs and expenses reasonably incurred by the city in considering a request to transfer or assign a utility license.
  4. Any transfer or assignment of a utility license or utility facilities without prior approval of the city under this code shall be void and is cause for revocation of the license.
- J. **Revocation or Termination of License.**
1. The city may, subject to applicable notice and cure provisions of this subsection J, revoke a license to use or occupy the public rights-of-way in the city for one or more of the following reasons:
    - a. Construction or operation in the city or in the public rights-of-way in the city without applicable permit(s);
    - b. Construction or operation at an unauthorized location;

- c. Failure to comply with subsection I of this section with respect to sale, transfer or assignment of utility facilities or a license;
  - d. Misrepresentation by or on behalf of a grantee in any application to the city;
  - e. Abandonment of utility facilities in the public rights-of-way;
  - f. Failure to relocate or remove facilities as required in this chapter;
  - g. Failure to pay taxes, compensation, fees or costs when and as due the city under this code;
  - h. Insolvency or bankruptcy of the grantee;
  - i. Violation of material provisions of this code; and/or
  - j. Violation of the material terms of the license.
2. Notice and Duty to Cure. In the event that the city believes that grounds exist for revocation of a license, the city shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding 30 days, to furnish evidence that:
    - a. Corrective action has been taken, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
    - b. Rebutts the alleged violation or noncompliance; and/or
    - c. It would be in the public interest to impose some penalty or sanction less than revocation.
  3. Public Hearing. In the event that a grantee fails to provide evidence reasonably satisfactory to the city of its compliance with the license or with this code, the city staff shall refer the apparent violation or noncompliance to the city council. The city council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.
  4. Standards for Revocation or Lesser Sanctions. If persuaded that the grantee has violated or failed to comply with material provisions of this code, or of a license, the city council shall determine whether to revoke the license, or to establish some lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:
    - a. The misconduct was egregious;
    - b. Substantial harm resulted;
    - c. The violation was intentional;
    - d. There is a history of prior violations of the same or other requirements;
    - e. There is a history of overall compliance;
    - f. The violation was voluntarily disclosed, admitted or cured;
    - g. Grantee has failed to cure the violation after notice.
  5. The provisions of this subsection J are in addition to, and in no way limit, the other penalties provided in this chapter and any other remedies the city may have at law or in equity.

- K. Franchise Agreements. If the public interest warrants, as determined by the city in its sole discretion, the city and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this chapter with the review and approval of city council. The franchisee shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with the express provisions of any such franchise. In the event of a conflict between the express provisions of a franchise and this chapter, the franchise shall control.

**12.16.070 – License terms.**

- A. Maintenance. The utility operator shall be solely responsible for any repairs or maintenance required to keep its facilities in a clean, safe and code-compliant condition. The operator, at its sole cost and expense, shall repair any damage to its facilities within: (1) 30 days after the permittee discovers or receives notice (written or verbal) that such damage exists or (2) immediately if such repairs are necessary to preserve life or property. If, after notice from the city of the need for repair or maintenance as required in this subsection, a utility operator fails to repair and maintain utility facilities as requested by the city and by the date reasonably established by the city, the city may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole cost and expense. Within 30 days of receipt of a detailed invoice from the city, the utility operator shall reimburse the city the full invoiced amount.
- B. Reservation of City Rights. Nothing in the license shall be construed to prevent the city from grading, paving, repairing and/or altering any public rights-of-way, constructing, laying down, repairing, relocating or removing city facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, relocation, replacement, alteration or removal of any public rights-of-way, public work, city utility, city improvement or city facility, licensee's facilities shall be removed or relocated as provided in section 12.16.050.
- C. Damage to Grantee's Facilities. Unless directly and proximately caused by negligence or willful misconduct by the city, the city shall not be liable for any damage to or loss of any utility facility within the public rights-of-way in the city as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights-of-way by or on behalf of the city, or for any consequential losses resulting directly or indirectly therefrom.
- D. Duty to Provide Information. Within 30 days of a written request from the city, each grantee shall furnish the city with the following:

1. Information sufficient to demonstrate that grantee has complied with all requirements of the license and this code, including but not limited to payment of any applicable fees.
  2. Any books, records, maps, and other documents maintained by the grantee with respect to its facilities within the public rights-of-way that the city may request.
- E. .Compensation for City Property. If any right is granted, by lease or other manner, to use and occupy city property for the installation of utility facilities, the compensation to be paid for such use shall be fixed by the city. No license issued pursuant to this chapter shall grant any right, license or authority to install utility facilities or otherwise use or occupy city property.
- F. Cable Franchise. Utility operators providing cable service shall be subject to the separate cable franchise requirements of the city and other applicable authority, subject to applicable law.
- G. Leased Capacity. A grantee shall have the right, without prior city approval, to offer or provide capacity or bandwidth to its customers; provided that (i) the use of the utility facilities does not require or involve any additional equipment owned or operated by the lessee to be installed in or on the facility (unless the lessee has obtained a ROW license or franchise from the city); and (ii) the grantee provides the city with the name and business address of any lessee within 30 days of the effective date of the lease or other agreement to provide capacity or bandwidth.
- H. Grantee Insurance.
1. Each grantee shall, as a condition of the license, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:
    - a. Comprehensive general liability insurance with limits of not less than:
      - i. Three million dollars (\$3,000,000) for bodily injury or death to each person;
      - ii. Three million dollars (\$3,000,000) for property damage resulting from any one accident; and;
      - iii. Three million dollars (\$3,000,000) for all other types of liability.
    - b. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.
    - c. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
    - d. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.
  2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing.



3. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the license, and such other period of time during which the grantee is operating without a license, or is engaged in the removal of its utility facilities.
  4. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled or materially altered, nor the intention not to renew be stated, until 30 days after receipt by the City, by registered mail, of a written notice addressed to the City of such intent to cancel or not to renew.
  5. Prior to said cancellation or material alteration, the grantee shall obtain and furnish to the city evidence that the grantee continues to meet the requirements of this section.
  6. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the city.
  7. A grantee shall maintain on file with the city a certificate of insurance, or proof of self-insurance acceptable to the city, certifying the coverage required above.
- I. General Indemnification. To the fullest extent permitted by law, each grantee shall defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all damages, losses, costs and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from, or alleged to arise out of or result from, the negligent, careless or wrongful acts, or any acts, omissions, failures to act or misconduct, of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its utility facilities, and/or in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this code or by a license granted pursuant to this code.
  - J. Performance Surety. Unless otherwise agreed to in writing by the city, before a license granted pursuant to this chapter is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the city, as security for the full and complete performance of a license granted under this chapter, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance bond or surety required for construction of facilities.

**12.16.080 – Rights-of-Way use fees.**

- A. Every person that owns, operates or controls utility facilities in the city shall pay the rights-of-way use fee in the amount determined by resolution of the city council.
- B. Fees required by this section shall be reduced by any franchise fees, but in no case shall be less than zero dollars (\$0).

- C. 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 the city may have for further or additional sums payable.
- D. Unless otherwise agreed to in writing by the city, the fees set forth under this section shall be paid quarterly, in arrears, within 45 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of the basis for the calculation of the amount payable on a remittance form provided by the city. The utility operator shall provide to the city any additional reports or information the city deems necessary to ensure compliance with this section. Any person who fails to remit any fees when due under this section shall pay interest at the rate of one and one-half percent (1.5%) per month or fractions thereof, without proration for portions of a month, on the total amount due, from the date on which the payment first became delinquent, until received by the city.
- E. The calculation of the fees required by this section shall be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.
- F. The city reserves the right to enact other fees and taxes applicable to person(s) subject to this Chapter. Unless expressly permitted by the city in enacting such fee or tax, or required by applicable state or federal law, no person may deduct, offset, or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the fees required under this Chapter.
- G. Within 30 days of a written request from the city, or as otherwise agreed to in writing by the city, every utility operator shall furnish the city, at no cost to the city, information sufficient to demonstrate compliance with this section. If the city's review or audit of the books, records and other documents or information of the utility operator demonstrates that the utility operator has underpaid the rights-of-way use fee by three percent (3%) or more, the utility operator shall reimburse the city for the cost of the review or audit, in addition to any interest and penalties owed under this chapter. Any underpayment, including any interest, penalties or audit cost reimbursement, shall be paid within 30 days of the city's notice to the utility operator of such underpayment. The utility operator shall maintain records subject to this subsection for not less than six years.
- H. Rights-of-way usage fees not received by the city on or before the due date are subject to the following penalties:
1. Any person who has not remitted the correct fees when due as provided in this section shall pay the following penalty, as applicable, in addition to the amount due:
    - a. First occurrence during any one calendar year: 10 percent of the amount owed, or \$25.00, whichever is greater.
    - b. Second occurrence during any one calendar year: 15 percent of the amount owed, or \$50.00, whichever is greater.

- c. Third occurrence during any one calendar year: 20 percent of the amount owed, or \$75.00, whichever is greater.
  - d. Fourth occurrence during any one calendar year: 25 percent of the amount owed, or \$100.00, whichever is greater.
2. If the city determines that the nonpayment of any remittance due under this section is due to fraud or intent to evade the provisions hereof, an additional penalty of 25 percent of the amount owed, or \$500.00, whichever is greater, shall be added thereto in addition to other penalties stated in this section.

**Commented [NW11]:** Do you want to keep these, which are in addition to the general penalties allowed in this chapter?

**12.16.090 – General provisions.**

- A. Governing Law. Any license granted under this chapter is subject to the provisions of the Constitution and laws of the United States, and the state of Oregon and the ordinances and Charter of the city.
- B. Severability and Preemption. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this code is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the code shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this code shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this code, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the city.

**C. Penalties.**

- 1. Any person found in violation of any provision of this chapter or the license shall be subject to a penalty of not less than \$150.00 nor more than \$2,500 per day for each day the violation has existed. Each violation of any provision of this chapter or the license shall be considered a separate violation for which separate penalties can be imposed. A finding of a violation of this chapter or a license and assessment of penalties shall not relieve the responsible party of the obligation to remedy the violation.
- 2. The public works director is authorized to find a person in violation of this chapter or a license and establish the amount of the penalties as provided in this subsection C. Prior to imposing any penalties, the public works director shall provide such person with notice of the violation and an opportunity to refute the assertion of a violation, provide evidence that the violation has

**Commented [NW12]:** Please review this section in terms of amounts of penalties and the process for finding violations. This is from another city's code and may not reflect what the city wants to do.

been cured, or provide information relevant to the determination of the amount of any penalty as provided in this subsection C. The public works director shall provide written findings stating the basis for the finding of a violation and for the amount of the penalty imposed.

3. In establishing the amount of any penalty, the public works director shall consider any of the following factors that the public works director deems relevant:
    - a. The actions taken by the person to mitigate or correct the violation;
    - b. Whether the violation is repeated or continuous in nature;
    - c. The magnitude or gravity of the violation;
    - d. The cooperativeness of the person with the city;
    - e. The cost to the city of investigating, correcting, attempting to correct and/or prosecuting the violation; and
    - f. Any other factor deemed by the public works director to be relevant.
  4. A person subject to penalties under the provisions of this subsection C may appeal the public works director's decision to the city manager by filing a written notice of appeal with the city manager within 14 days after the receipt of the public works director's written findings. A person subject to penalties under the provisions of this subsection C may seek judicial review of the city manager's decision by way of writ of review as provided in ORS 34.010-34.100 and not otherwise.
  5. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the city.
- D. Other Remedies. Nothing in this chapter shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this chapter.
- E. Compliance with Laws. Any grantee under this code shall comply with all federal and state laws, rules and regulations, including regulations of any administrative agency thereof, as well as all codes, ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term any license granted under this code, which are relevant and relate to the construction, maintenance and operation of a utility system or the provision of utility services.
- F. Application to Existing Ordinance and Agreements. To the extent that this chapter is not in conflict with and can be implemented with existing ordinances and franchise agreements, this code shall apply to all existing ordinances and franchise agreements for use of the public right-of-way for utility facilities.

**CITY OF BOARDMAN  
ORDINANCE \_\_-2025**

**AN ORDINANCE TO APPROVE AN AMENDMENT TO THE BOARDMAN  
MUNICIPAL CODE ADDING CHAPTER 13.12 UNDERGROUND WIRING  
CONTROL DISTRICT**

WHEREAS, since 1976, the City of Boardman has required all utilities in the City to be installed underground pursuant to the Underground Wiring Control District established in what is now Boardman Municipal Code Chapter 13.12; and

WHEREAS, the City desires to maintain the Underground Wiring Control District with updates to clarify the obligations of developers, property owners and utilities; and

WHEREAS, the City has enacted Ordinance \_\_-2025, adopting a new Chapter 12.16 of the Boardman Municipal Code, relating to utility facilities in the rights-of-way, which requires related conforming amendments to Chapter 13.12; and

WHEREAS, the City finds it is in the public interest to enact the updates to the Municipal Code as set forth in this Ordinance.

**NOW THEREFORE, THE PEOPLE OF BOARDMAN DO ORDAIN AS FOLLOWS:**

Section 1. Boardman Municipal Code Chapter 13.12 shall be amended as provided in Exhibit A.

Section 2. This Ordinance shall become effective on the 30th day after its adoption.

Passed by the Council and approved by the Mayor this \_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Paul Keefer – Mayor

\_\_\_\_\_  
Amanda Mickles – City Clerk

EXHIBIT A

13.12.010 - Findings.

The council finds that a program for the establishment of an underground wiring control district is highly desirable to beautify the city and to promote its orderly development; that the underground wiring shall be required for installation of underground utility facilities in the city, except as hereinafter provided; that such a program is in the public interest and will allow property owners who must provide on-premises facilities to make such plans as are necessary to take the underground service; that such a program is in conformity with ORS Chapter 221, which provides that the city may prescribe by ordinance the character of service to be furnished by any public utility and the conditions upon which such utility may be permitted to occupy the ~~streets-public rights-of-way~~ and public property within the city; and that such an underground wiring program is necessary in such area in order to protect and promote the public health, safety and welfare.

(Prior code § 3-2.1)

13.12.020 - Boundaries.

The underground wiring control district shall mean and include the entire city of Boardman.

(Prior code § 3-2.2)

13.12.030 - Overhead wires prohibited.

It is unlawful for any person to erect, construct or maintain on or over the surface of any of the ~~streets-public rights-of-way, as defined in Boardman Municipal Code 12.16.030,~~ in the underground wiring control district any wires, poles, cables, appliances, or apparatus of any kind, on, through, or by means of which electric current is transmitted or which is used for operating to provide any ~~telephone, telegraph, telecommunications, television, cable television, messenger,~~ or other communications service, electric light or power, ~~system~~ or for any other purpose, ~~excepting~~ as hereinafter provided specifically and by variance procedures.

(Prior code § 3-2.3)

13.12.040 - Subdivision utilities.

A. Wire utilities to subdivisions and lots ~~which,~~ in addition to being underground as ~~above~~ provided ~~for in section 13.12.030,~~ shall be in common trenches and at the rear of lots where practicable, and where easements are provided by the subdivider or property owner of not less than ten (10) feet in width for installation and maintenance. ~~That~~ The property owner and possessor of the property shall be obligated to maintain the easement and shall be prohibited from placing permanent improvements and improvements that would interfere with ~~the~~ access to the utilities for service and maintenance.

Commented [NW1]: Is this the current practice and what you'd like to do going forward?

B. It is the duty of the city building inspector to enforce the building restrictions on the utility easement ~~right of way~~. Should the enforcement of the building restrictions on the ~~right of way easement~~ be impractical, ~~such substitution shall be sufficient for the developer or utility to~~ may obtain a variance ~~upon applications provided in section 13.12.070.~~

(Prior code § 3-2.3A)

**Commented [NW2]:** Should this be “shall be entitled to” a variance? The current language indicate it’s a “shall” so that the variance must be given. I used “may” with the idea that they need to go through the process because it is not clear what “impractical” means or who decides. The implication is that it’s the building inspector, but I think there’s room in the current language for a utility or developer to argue that they think it is impractical and want a variance.

**13.12.050 — Utilities in Rights-of-Way Application for permit.**

~~The provisions of this Chapter shall apply to Any every person owning-granted a franchise, license or privilege to erect, construct, or maintain any wires or facilities in the public rights-of-way or on public property. wires, cables, poles, appliances or apparatus on, over, or by means of which electric current is transmitted or used for any purpose on, over, and along any of the streets, public property, or parts thereof in the underground wiring control district, shall file with the clerk of the city a written application for a permit to install and maintain such wires, cables, appliances, and apparatus in conduits, subways or trenches beneath the surface of the streets and public property, or such parts thereof as may be required, together with an agreement to promptly repave and repair any of the streets, public property, or portions thereof that may be disturbed or undermined by such applicant, either upon original construction or installation of wires underground or upon repairing, altering, or maintaining the same thereafter.~~

(Prior code § 3-2.4)

**13.12.060 — Designation of space by council. —**

~~Upon the filing of such application, the council will designate that portion, or those portions, of space in such streets, public property, or parts thereof in the underground wiring control district that such applicant shall use. No person shall have any right or privilege to use any part or parts of such streets or public property in the district except as designated by the council.~~

(Prior code § 3-2.5)

**13.12.070 — Filing plans and specifications. —**

~~Within a reasonable time after space in such streets or public property has been designated, such applicant shall file with the clerk for approval by the council, plans and specifications for a system of underground conduits, subways or trenches for wires, cables, and appliances, including the necessary manholes, service boxes and transformer enclosures, and in addition thereto shall file a map showing the general route and location of such conduits, subways or trenches.~~

(Prior code § 3-2.6)

**13.12.080 — Permits. —**

~~If the plans, specifications, and map of the general route of underground utility installations are satisfactory, the council will approve the same and thereupon issue to such applicant a permit to enter upon the streets, public property, or parts thereof, in the~~

~~district to make such excavation therein as may be necessary for the construction of conduits, subways or trenches, the laying of wires, cables and appliances therein, and for building manholes or service boxes underground within the space theretofore designated for the applicant.~~

~~(Prior code § 3-2.7)~~

~~13.12.090 — Repair of streets. —~~

~~Upon the installation and completion of such underground system of wires, cables and appliances, the person installing the same shall put the surface of the parts of such streets or public property which were disturbed in as good order and condition as the same were prior thereto.~~

~~(Prior code § 3-2.8)~~

~~13.12.100 — Excavation and restoration of streets. —~~

~~A. It is unlawful to make any excavation in any of the streets in the district for the purposes mentioned herein without such permit from the council. However, in case of an emergency, when service to subscribers or customers is interrupted by accident and immediate repairs are necessary, such repairs may be begun without such permit after notice to the department of public works. B. All excavations for the purpose of placing wires or cables under such streets and public property, or for the purpose of making repairs, additions and changes thereto, and all work upon pavements and the foundations thereof where excavations are made shall be under the supervision of the department of public works and only after notice to such department.~~

~~(Prior code § 3-2.9)~~

~~13.12.110 — Use of sidewalk space and building fronts.~~

~~Any person owning or operating underground wires, cables, conduits, or subways in compliance with this chapter may connect the same at the side lines of the street, and to that end may use such space under the streets and sidewalks as may be necessary or convenient, and may also have access to all area ways under sidewalks, and may place and maintain such wires, cables, and appliances in proper conduits in and through such area ways or spaces. If wires or cables are run up the sides or in front of any building, such wires or cables shall be placed in proper tubes so as to prevent danger to life or property. No wire, cable, or the supports therefor shall cross any window or opening in any building.~~

~~(Prior code § 3-2.10)~~

~~13.12.120 — Location maps. —~~

~~Every person to whom a permit has been granted pursuant to this chapter shall, upon completion of the installation of underground wires, cables, and appliances, file with the clerk of the city a map showing the location of the conduits, subways, trenches, wires, cables, manholes, and service boxes under such streets, public property or parts thereof in the underground wiring control district. The clerk shall thereupon record such~~



~~maps in a book kept for such purpose and shall enter in appropriate indexes the name of the owner of such conduits or subways with a reference to the volume and page where such map is recorded.~~

~~(Prior code § 3-2.11)~~

13.12.~~060430~~ - Exemptions.

The provisions of this chapter with respect to underground utility construction or installation shall not apply to the following:

A. Wires, poles and appliances for lighting the ~~streets-public rights-of-way~~ of the city under contract with the city, or under private contracts, connected with wires or cables in such conduits, subways, or trenches, but all such wires for street lighting above the surface of the ~~public rights-of-way streets~~ shall be placed inside or on the outside of poles used in connection with such street lighting and shall be connected underground from the foot or base of such respective poles directly with the nearest wires or cables placed in such conduits, subways or trenches. Such wires for street lighting if put on the outside of such poles shall be placed in proper tubes so as not to be dangerous to life or property, excepting, however, wires above the ground connecting such poles and the wires thereof with the electric lamp, or lamps, used on such pole.

B. Wires, cables and appliances for electric signs, advertisements, and decorative lighting, connected with wires or cables in such conduits, subways or trenches; but all such wires for electric signs, advertisements, and decorative lighting shall be carried from or connected with the building. If such wires are placed on the sides or front of any such building, they shall be placed in proper tubes so as not to be dangerous to life or property, and such wires shall be connected underground from the foundations or basement of such respective buildings directly with the nearest wires or cables placed in such conduits, subways or trenches. No such wire for electric signs, advertisements, or decorative lighting shall cross any ~~street-public rights-of-way~~ above ground.

C. Enclosed electric transformers and pedestals used in connection with underground wiring and mounted on the surface of the ~~streets-public rights-of-way~~ and public property, provided that the city reserves the right to approve the location of such facilities and to require underground placement where technically feasible.

D. Those installations of utilities ~~presently completed as of the effective date providing for overhead wiring shall not be subject to the provisions~~ of this chapter. However, this chapter does not preclude such ~~installations~~ from being subject to future ordinances.

~~E. Feeder Lines. That line that serves the system but not a specific customer. Feeder lines to be placed underground by council order shall be put underground at the expense of the city by crediting franchise fees in the amount of the actual cost differential between overhead and underground installation.~~

~~(Prior code § 3-2.12)~~

13.12.~~070440~~ - Variances.

A. Variances with the provisions of this chapter ~~for subdivisions and lots~~ may be allowed upon written application for the same being first made to the city planning commission. ~~Within ten (10) days thereof~~ the city planning commission shall then make a

**Commented [NW3]:** Does 10 days work? That seems pretty short.

recommendation to the city council concerning the requested variances. It shall then be the duty of the city council to grant or deny a request for variance on or before the next regular council meeting.

B. Variances for subdivisions and lots shall be allowed upon a finding by the city council that:

1. The topography is such, due to terrain, rock, etc., as to make compliance physically impractical;
2. It is economically not feasible;
3. The size, shape or design of the plat or subdivision does not lend itself to underground or rear lot placement; or
4. The utility lines are of such voltage, size or capacity that common trenching, underground or back lot installation is not feasible.

C. Variances for utilities that are not installed as part of a subdivision, lot, or new development shall be considered through the administrative review process provided in Boardman Municipal Code Chapter 12.16.

(Prior code § 3-2.12A)

13.12.~~080450~~ - Joint use of conduits permitted.

Nothing in this chapter shall be construed to prevent or impair any agreement between or among any persons affected by this chapter designed to provide for joint ownership, control, or use of conduits, subways or trenches.

(Prior code § 3-2.13)

~~13.12.160 – Control of electrical currents. ———~~

~~It is the duty of all persons using or employing electrical currents to provide and put in use such means and appliances as will, as far as practicable, control and effectually contain such currents in their proper channels and on their own wires, cables and other structures so as to prevent injury to pipes and other structures belonging to the city or to any other person; to repair and renew such means and appliances; and from time to time to change and improve the same as may be necessary to accomplish such purpose, all at his or her charge and expense, and at his or her own risk, selecting and adopting such means and appliances as shall prevent injury to the pipes and other structures belonging to the city as aforesaid, or to any other person.~~

~~(Prior code § 3-2.14)~~

13.12.~~090470~~ - Traffic signal installations.

The provisions of this chapter relating to underground wiring shall not be applicable to traffic signal installations made and maintained by the city. When deemed appropriate by the city engineer, agreements may be made with private property owners permitting attachment of such traffic signal installations to privately owned buildings, and the council may direct entry into or to approve agreements relating thereto, such agreements having first been approved as to form by the city attorney.

(Prior code § 3-2.15)

13.12.~~100480~~ - Violation.

Violation of this chapter shall constitute the creation of a nuisance and the procedure for abating the same and the penalties shall be as provided in Sections 8.04.2~~190~~ through 8.04.2~~320~~ of this code.

(Prior code § 3-2.16)

**Carla McLane**

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**From:** Spence, Scott E <Scott.Spence@uscellular.com>  
**Sent:** Monday, January 6, 2025 2:29 PM  
**To:** Carla McLane; Ben Herrick  
**Cc:** Spence, Scott E  
**Subject:** RE: [EXTERNAL]:RE: Small Cell wireless project

Carla,  
Thanks for sending the link to the draft! Our team did a quick review of the ordinance and had a few thoughts.

1. Section 12.16.070 J. Performance Surety-There is no end date. Is the intent for the surety to be in perpetuity?
2. Ashland’s Municipal Code contains info about the FCC Shot Clocks that don’t seem to be included in the Boardman draft. The FCC offered the following in the Declarator Ruling and 3<sup>rd</sup> Report and Order which clarified Section 332 of the Federal Telecommunications Act, providing a reasonable time to review and approve applications:
  - 60 days to review and approve applications for collocation to existing infrastructure.
  - 90 days to review and approve applications for new poles.

Additionally, the Ashland Municipal Code contains the following:

*C. Permits Subject to FCC Shot Clocks.*

1. In addition to the process set forth in subsections **A** and **B** of this section, for permits subject to an FCC shot clock, the Public Works Director may take such steps as may be required for the City to comply with the applicable shot clock, including entering into agreements with applicants to extend the time for action on the application.
2. The applicant may not submit additional information not contained in its initial application, other than information expressly requested by the City, unless the City expressly agrees to consider such supplemental information and, if requested by the City, the applicant agrees to toll the shot clock.

Thanks!  
Scott



**Scott Spence, PMP**  
Sr. Project Manager - Engineering  
Ph# 515-202-7408  
[uscellular.com](http://uscellular.com)

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**From:** Carla McLane <mclanec@cityofboardman.com>  
**Sent:** Thursday, January 2, 2025 11:28 AM  
**To:** Spence, Scott E <Scott.Spence@uscellular.com>; Ben Herrick <Ben.Herrick@faulkandfoster.com>  
**Subject:** RE: [EXTERNAL]:RE: Small Cell wireless project