

# Council Communication

## May 3, 2016, Business Meeting

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### Second Reading of An Ordinance Amending AMC Chapter 10.64 Obstructing Sidewalks and Passageways

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**FROM:**

David Lohman, city attorney, david.lohman@ashland.or.us

**SUMMARY**

The purpose of this ordinance amendment is to minimize blockage of pedestrian passageways by outlawing unpermitted obstructions by persons – in addition to the already-existing prohibitions on unpermitted obstructions by objects and dogs. At its April 19, 2016 business meeting, Council voted to approve first reading of a version that has been modified for second reading as shown in the attached version and described briefly below.

**BACKGROUND AND POLICY IMPLICATIONS:**

Amendment of the City’s current ordinance on obstruction of pedestrian passageways has been discussed by Council as a possible measure for reducing the incidence of offensive conduct on public property in Ashland. The version presented for second reading has the following main features:

- A Findings and Purpose section to make clear that the proposed Council enactment is a targeted response to a significant City problem.
- A prohibition on intentional exclusive occupation of a pedestrian passageway for longer than a reasonable period of time and in no event longer than 5 minutes and a requirement to immediately cease blocking the way of a person with an ambulatory disability. Note that this provision has been significantly modified in the ordinance version presented for second reading. Text proposed to be deleted is shown in stricken-through text within brackets and highlighted in red; text proposed to be inserted is shown within brackets and highlighted in yellow. These proposed modifications stem partly from suggestions by several councilors to better accommodate persons in wheelchairs. The change of the allowable blockage time from 5 minutes to “no longer than a reasonable period of time, and in no event longer than 5 minutes” reflects staff reconsideration and warrants further discussion.
- Citation only after distinct indication of intent to obstruct a pedestrian passageway, which can be shown by continuing to obstruct a pedestrian passageway after having been warned of the possible violation by a law enforcement official.
- Specific exceptions from application of the ordinance, three of which have been added to the ordinance version presented for second reading (shown within brackets and highlighted in yellow in Section 10.64.020E).
- A maximum fine of \$138.00, plus applicable fees.
- “Pedestrian passageway” includes:
  - Entryways to public or private property from an abutting public sidewalk;



- The portion of a public sidewalk that is within 6 feet of the outer edge of any roadway, within 6 feet of any City owned or controlled fixture or structure; or within 10 feet of any crosswalk.
- An area of unobstructed passage 6 feet in width on any sidewalk, walkway, or path improved to City standards.

At first reading, Council approved a revision of the definition of “pedestrian passageway” to make it clearer than had been originally proposed. The portion of the definition Council specifically voted to include as 10.64.020C(2) is now proposed to be revised (shown in the stricken-through text within brackets and highlighted in red). Responding to a suggestion from at least one Councilor, staff has also included in the attached version those areas within 10 feet of any crosswalk. The attached version further revises the definition of pedestrian passageway as shown in 10.64.020C(3). Text proposed to be deleted is shown in stricken-through text within brackets and highlighted in red; text proposed to be inserted is shown within brackets and highlighted in yellow. This proposed revision is intended to clarify that walkways such as Chautauqua Park and Old Masonic Walkway -- which the City does not classify as sidewalks – as well as private sidewalks improved to City standards, are to be included in the definition of a pedestrian passageway.

The proposed changes from the version of the ordinance presented at first reading will, of course, be read aloud at second reading. The excerpts to be read aloud are those highlighted in red or yellow and enclosed in brackets in the attached version of the ordinance, with deletions noted by stricken-through text highlighted in red.

**COUNCIL GOALS SUPPORTED:**

Public Safety

23. *Support innovative programs that protect the community.*

**FISCAL IMPLICATIONS:**

N/A

**STAFF RECOMMENDATION AND REQUESTED ACTION:**

Staff recommends approval of this ordinance following consideration of whether to adopt the suggested revision of Section 10.64.020C(3).

**SUGGESTED MOTION:**

I move to approve second reading by title only of an ordinance titled, “An Ordinance amending AMC Chapter 10.64 Obstructing Sidewalks and Passageways” [*with the following changes...*] and adopt the ordinance.

**ATTACHMENTS:**

Ordinance



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING AMC CHAPTER 10.64  
OBSTRUCTING SIDEWALKS AND PASSAGEWAYS**

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

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

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

**WHEREAS**, Ashland Municipal Code Chapter 10.64.010A, first enacted in 1968, currently prohibits using public streets and sidewalks for selling, storing, or displaying merchandise or equipment, with exceptions for specific permitted uses.

**WHEREAS**, Ashland Municipal Code Chapter 10.64.010C, first enacted in 1994, prohibits placing any object on a public sidewalk which restricts clear passageway for pedestrians, sets the minimum dimensions for clear passageway, and distinguishes exceptions permitted by ordinance.

**WHEREAS**, Ashland Municipal Code Chapter 9.16.070A.9, enacted in 2015, declares obstruction of a City sidewalk by a dog to be a public nuisance.

**WHEREAS**, The City has received numerous complaints from residents, tourists, other visitors and business owners about persons obstructing pedestrian passageways on public sidewalks and entryways to private and public buildings, particularly in the downtown area.

**WHEREAS**, Current City ordinances restrict blockage of pedestrian passageways by merchandise, equipment, other objects and dogs, but do not specifically address obstructing pedestrian passageway by persons.

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

**SECTION 1.** Chapter 10.64 Obstructing Sidewalks and Passageways is amended as follows:

**SECTION 10.64.010 Findings and Purpose**

**A. Findings.**

1. Ashland's economic vitality depends significantly on attracting tourists and other visitors who want to recreate in a pedestrian-friendly environment.
2. Ashland is a singular destination for tourists and other visitors in part because many of its public spaces and cultural and commercial attractions are readily accessible on foot via public sidewalks and other walkways.
3. The space available for pedestrians upon Ashland's public sidewalks and certain other walkways typically ranges from 8 to 12 feet in width. Pedestrian entryways to private and public buildings from public sidewalks are typically even narrower.
4. To retain the unique character of Ashland, preserve its status as a tourist attraction, foster commercial and cultural activity, preserve some sidewalk space for street performers, and ensure the safety of residents and visitors, the City has a significant governmental interest in establishing limits on the obstruction of sidewalks and certain other walkways.

**B. Purpose. The purpose of this chapter is to ensure that public pedestrian passageways are accessible and safe for persons walking and in wheelchairs by regulating the aggregation of objects, animals, and people on City sidewalks, walkways and entryways to private and public buildings from City sidewalks.**

**SECTION 10.64.010 10.64.020 Obstructing passageways**

A. Except as otherwise permitted by ordinance or by a conditional use permit or by a special event permit, no person shall use a street or public sidewalk for selling, storing, or displaying merchandise or equipment.

~~B. The provisions of this section shall not apply to the delivery of merchandise or equipment, provided the owner or person in charge of the merchandise or equipment or the property abutting on the street or sidewalk upon which the merchandise or equipment is located removes the merchandise or equipment within a reasonable time.~~

~~C. Except as otherwise permitted by ordinance, no person shall place any object on a public sidewalk which restricts the clear passageway for pedestrians to less than eight feet, except when the sidewalk is less than eleven feet in width, then the measure shall be six feet, or place any object on a public sidewalk at a street corner or within five feet of the curb return.~~

~~B. [Except as otherwise permitted by ordinance or by a conditional use permit or by a special event permit, no person shall physically preclude other persons' use of obstruct free pedestrian passageway by exclusively occupying or placing an object or animal thereon for longer than 5 minutes with the intent to interfere with free passage thereon.]~~

[No person shall obstruct travel on a pedestrian passageway for longer than a reasonable period of time, and in no event longer than 5 minutes, by exclusively occupying or placing an object or animal thereon with the intent to interfere with free pedestrian passage. Anyone blocking a pedestrian passageway must cease doing so immediately after observing or otherwise having been made aware that a person with an ambulatory disability is waiting for obstruction-free travel thereon.]

C. As used in this Chapter 10.64, a pedestrian passageway is:

1. The entryway to public or private property from an abutting public sidewalk;
2. [The area of a public sidewalk that is within 6 feet of the outer edge of any roadway or any City owned or controlled fixture or structure; and] [The area of a public sidewalk that is (a) within 6 feet of the outer edge of any roadway, (b) within 6 feet of

any City owned or controlled fixture or structure, or within 10 feet of any crosswalk; and]

3. [~~That portion of any public walkway that is 6 feet in width.~~] [An area of unobstructed passage 6 feet in width on any sidewalk, walkway, or path improved to City standards.]

D. Without excluding other possible forms of evidence, a person is deemed to act with intent to interfere with free passage on a pedestrian passageway as defined in Section 10.64.020C if the person continues obstructing a pedestrian passageway after having once been informed or warned by a law enforcement official of the conduct proscribed in this chapter.

E. Exceptions. The provisions of [~~Chapter 10.64~~] [Section 10.64.02B] shall not apply to a person:

1. Delivering merchandise or equipment, provided the owner or person in charge of the merchandise or equipment or the property abutting on the street or sidewalk upon which the merchandise or equipment is located removes the merchandise or equipment within a reasonable time.
2. Unable to comply due to suffering a medical emergency;
3. Unable to comply due to physical or mental incapacitation;
4. Performing a City-approved public safety, maintenance or construction function;
5. Waiting in line for goods or services or for a performance, unless the person refuses to comply with a lawful order of a law enforcement official to form the line in a way that moderates impact on the pedestrian passageway;
- [6. Sitting on a bench shown on the City's Downtown Sidewalk Usage Map;
7. Permitted by ordinance or by a conditional use permit or by a special event permit to temporarily block a pedestrian passageway; or
8. Exercising the constitutionally protected right of freedom of speech or assembly.]

#### SECTION 10.64.030 Penalty for Violation

Any person who violates any provision of this Chapter shall be punished as set forth in Section 1.08.020 of the Ashland Municipal Code. Sidewalk and Passageway obstruction is a Class I IV violation.

SECTION 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code, and the word "ordinance" may be changed to "code", "article", "section", or another word, and the sections of this Ordinance may be renumbered or re-lettered, provided however, that any Whereas clauses and boilerplate provisions, *i.e.*, Sections Nos. 3-4, need not be codified, and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2016, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Barbara M. Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
John Stromberg, Mayor

Reviewed as to form:

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David H. Lohman, City Attorney