

Council Communication

February 2, 2016, Business Meeting

First Reading of an Ordinance Creating AMC Chapter 9.30 to Prohibit Smoking in Places of Employment, in Enclosed Areas Open to the Public, and in Downtown Ashland

FROM:

Dave Kanner, city administrator, dave.kanner@ashland.or.us

SUMMARY

This is an ordinance that codifies the Oregon Indoor Clean Air Act (ORS 433.835 et seq.) into the Ashland Municipal Code. Doing so allows the Ashland Police Department to enforce the provisions of the Act, which is otherwise enforced by local public health departments and property owners. The Indoor Clean Air Act prohibits smoking or the use of inhalants in all public places and places of employment. Public places are defined as any enclosed area open to the public. In addition this ordinance prohibits smoking or the use of inhalants in downtown Ashland.

BACKGROUND AND POLICY IMPLICATIONS:

At Councilor Seffinger's request, the Council at its November 2, 2015, study session, discussed the potential for an ordinance to limit or prohibit smoking in downtown Ashland. At the conclusion of that discussion, Council directed staff to draft an ordinance that codifies the Oregon Indoor Clean Air Act ([ORS 433.835](#), et seq). By codifying the state law the Ashland Police Department can enforce the terms of the act as a violation of the city code.

The ordinance as drafted goes beyond the Indoor Clean Air Act in two important respects. First, it prohibits smoking or the use of inhalants anywhere in downtown Ashland. Downtown Ashland is defined in AMC chapter 10.120, the persistent violator ordinance. In addition, the ordinance provides a means by which holders of an Oregon Liquor Control Commission license can apply for a limited exception to the downtown smoking ban in order to allow smoking in front of their establishments.

Otherwise, the basic terms of the Clean Air Act and this proposed ordinance are as follows:

1. Smoking or the use of inhalants is prohibited in any public place or a place of employment except in designated smoking areas as defined in the clean air act. A public place means any enclosed area that is open to the public. Designated areas typically relate to sleeping rooms in hotels and motels where smoking is permitted.
2. Smoking is prohibited within 10 feet of entrances, exits, windows that open and ventilation intakes that serve an enclosed area of a public place or a place of employment.

COUNCIL GOALS SUPPORTED:

7. Keep Ashland a family-friendly community.



FISCAL IMPLICATIONS:

Some outlay of funds would be required for signage downtown should the Council choose to prohibit smoking downtown. This expenditure would likely be relatively small; certainly less than \$3,000.

STAFF RECOMMENDATION AND REQUESTED ACTION:

Staff recommends approval of this ordinance on first reading.

SUGGESTED MOTION:

I move approval on first reading by title only of an ordinance creating AMC Chapter 9.30 to prohibit smoking in places of employment, in enclosed areas open to the public and in downtown Ashland, and moving the ordinance to second reading.

ATTACHMENTS:

Ordinance



ORDINANCE NO. _____

AN ORDINANCE CREATING AMC CHAPTER 9.30 TO PROHIBIT SMOKING IN PLACES OF EMPLOYMENT, IN ENCLOSED AREAS OPEN TO THE PUBLIC, AND IN DOWNTOWN ASHLAND

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

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

WHEREAS, the exposure to secondhand smoke is known to cause cancer and other chronic diseases such as heart disease, asthma and bronchitis.

WHEREAS, reducing exposure to smoke on public property with concentrated pedestrian activity, in enclosed areas open to the public, and in places of employment in the City of Ashland would benefit the well-being of its citizens.

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

SECTION 1. Chapter 9.30 is hereby added to read as follows:

9.30.010 Definitions

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

- A. “Cigar bar” has the meaning provided in ORS 433.835(1).
- B. “Downtown” has the meaning provided in AMC 10.120.010(B)(1).
- C. “Enclosed area” means all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling.
- D. “Inhalant” means nicotine, a cannabinoid or any other substance that is in a form that allows the nicotine, cannabinoid or substance to be delivered into a person’s respiratory system by inhalation and is not approved by, or emitted by a device approved by, the United States Food and Drug Administration for a therapeutic purpose.
- E. “Inhalant delivery system” means a device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device.
- F. “Place of employment” means every enclosed area under the control of a public or private employer that employees frequent during the course of employment, including but not limited to work areas, employee lounges, vehicles that are operated in the course of an employer’s business that are not operated exclusively by one employee, rest

rooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways. "Place of employment" includes privately-owned and publicly-owned enclosed areas where volunteers perform work typically done by employees. "Place of employment" does not include a private residence unless it is used as a child care facility as defined in ORS or a facility providing adult day care as defined in ORS 410.490.

G. "Plaza" means the area bounded by and including East Main Street, North Main Street, and Winburn Way.

H. "Smoke shop" means a business that is certified with the authority as a smoke shop pursuant to the rules adopted under ORS 433.847.

I. "Smoking instrument" means any cigar, cigarette, pipe or other instrument or inhalant delivery system used to smoke tobacco, marijuana or any other inhalant.

9.30.020 Smoking Prohibited

A. Except as allowed in AMC 9.30.040, a person may not smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument in a place of employment, in an enclosed area open to the public, on any sidewalk in Downtown Ashland, on the Plaza, or on the area at the corner of East Main Street and South Pioneer Street known as Chautauqua Square.

B. A person may not smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument within 10 feet of the following parts of places of employment or enclosed areas open to the public:

- 1) Entrances;
- 2) Exits;
- 3) Windows that open; and
- 4) Ventilation intakes that serve an enclosed area.

C. A person may not smoke or carry any lighted smoking instrument in a room during the time that jurors are required to use the room.

9.30.030 Smoke Free Place of Employment

A. An employer shall provide a place of employment that is free of tobacco smoke for all employees.

B. Except in those places described in AMC 9.30.040A to E, an employer shall post signs that provide notice of the provisions of ORS 433.835 to 433.875.

9.30.040 Exemptions from Smoking Prohibition

A. The owner or person in charge of a hotel or motel may designate up to 25 percent of the sleeping rooms of the hotel or motel as rooms in which smoking is permitted.

B. Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces designated for traditional ceremonies in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996.

C. Smoking is permitted in a smoke shop.

D. Smoking is permitted in a cigar bar that generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006.

E. A performer may smoke or carry a lighted smoking instrument that does not contain tobacco while performing in a scripted stage, motion picture or television production if:

- 1) The production is produced by an organization whose primary purpose is producing scripted productions; and
- 2) Smoking is an integral part of the production.

F. A business or property owner in Downtown Ashland may apply annually for an exemption to the provisions of AMC 9.30.020A subject to the following:

- 1) An application for an exemption must be made on a form approved by the City Administrator.
- 2) The exemption may be granted only to those businesses and properties licensed to serve alcoholic beverages by the Oregon Liquor Control Commission.
- 3) The exemption shall be for a period of one year and may be renewed upon re-application.
- 4) The exemption shall apply only between the hours of 8 p.m. and 2 a.m.
- 5) The exemption shall not mitigate or otherwise alter the smoking prohibition in AMC 9.30.020B.
- 6) An exempted business or property must provide and maintain a cigarette disposal container in front of the business. Such container must be of a type and design approved by the City Administrator.
- 7) An exempted business or property must provide signage inside the business or property advising that smoking is prohibited in downtown Ashland, but is permitted in front of the business or property, consistent with all other provisions of the Ashland Municipal Code.

SECTION 2. Savings. Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinances(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

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”, “chapter” 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 2-3) 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:

David H. Lohman, City Attorney