

Council Business Meeting

March 21, 2017

Title: An Ordinance Extending Smoking Ban
From: David H. Lohman City Attorney
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Summary:

This agenda item is the First Reading of an amendment to Chapter 9.30.020 of the Ashland Municipal Code to extend the current smoking ban to include 175 Lithia Way and any space within 20 feet of pathways for smoke to enter places of employment or enclosed spaces open to the public.

Actions, Options, or Potential Motions:

1. I move to approve First Reading by title only of an ordinance titled, “An Ordinance Amending AMC 9.30.020 to extend the current smoking ban to include 175 Lithia Way and any space within 20 feet of pathways for smoke to enter places of employment or enclosed spaces open to the public” [*with the following changes...*] and move the ordinance on to Second Reading.
2. Council could take no action, leaving the current smoking restrictions as is.
3. Council could make other revisions to the areas affected by the smoking ban.

Staff Recommendation:

Staff recommends approval of this ordinance.

Resource Requirements:

Passage of the ordinance is not likely to have any direct fiscal impact.

Policies, Plans and Goals Supported:

Quality of Life (Administrative Goal)

Provide, promote and enhance the security/safety, environmental health, and livability of the community.

Background and Additional Information:

The no smoking ordinance for the City’s downtown area became effective in 2016. The ordinance generally has been positively received. From trial and error, however, city officials have learned that the 10 foot buffer around smoke sensitive areas is not sufficient enough to effectively disperse smoke and effectuate the purposes of the ordinance. The proposed ordinance amendment simply enlarges that distance from 10 to 20 feet with the intention of reducing conflicts between smokers and persons sensitive to smoke.

Additionally, increasing numbers of complaints have been reported by persons seeking to park in the public parking lot at 175 Lithia Way and neighbors. Groups of people congregate in the parking lot and smoke tobacco, marijuana and other smoking products, the smoke from which is intense and drifts into these properties and makes use of the parking lot for its intended purposes less desirable, especially for persons with sensitivities to smoke. The proposed amendment would expand the downtown no-smoking area to include 175 Lithia Way Public parking lot.

Expanding the downtown no-smoking area to include the Lithia Way parking lot should help address smoking-related problems at that particular location. But, as Council members know, such a change probably would only partially serve to resolve downtown smoking-related problems generally. For example, some concerned citizens have complained to the City that the downtown smoking ban pushes smokers into adjoining areas, with the result that smoking-related problems are merely moved rather than solved. Such displacement may have been a factor in the Lithia Way parking lot becoming a gathering spot for persons wishing to smoke near the downtown business area. Addressing displacement concerns by further expanding the no-smoking area could have similar consequences, as well as making enforcement necessarily more sporadic and eliciting concerns about government intrusion.

Attachments:
Ordinance

ORDINANCE NO. _____

**AN ORDINANCE AMENDING AMC 9.30.020 TO INCREASE
SMOKING DISTANCE FROM BUSINESSES AND PROPERTIES
SENSITIVE TO SMOKE**

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, the overall effect of the recent smoking restrictions within the downtown area has reportedly been received positively by business and property owners and citizens living, working and traveling within the City's no smoking zone; and

WHEREAS, nevertheless, the original ten foot no-smoking area around building entries do not provide a sufficient buffer to prevent smoke from drifting directly into building doorways, windows and other enumerated entrances in the ordinance that negatively affect the occupants inside; and

WHEREAS, increasing the restricted distance for smoking around building doorways and windows and other enumerated entrances in the ordinance for smoke to twenty feet would likely reduce the negative impacts of smoke odors to occupants of downtown buildings and passersby.

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

SECTION 1. Chapter 9.30.020 is amended as follows:

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 or on any public or private property within ~~ten~~ **twenty** (~~10~~ **20**) feet of a sidewalk in Downtown Ashland, on the City property commonly referred to as the Theater Corridor Walkway (Assessor's Map no. 391E09BC, Tax Lot 901) except for that

portion of the property controlled by leasehold right of the Oregon Shakespeare Festival (commonly known as the Thomas Theater); on the sidewalk on North Main Street between Granite Street and the Plaza, on sidewalks on Winburn Way abutting Lithia Park, in the public walkway between 150 and 166 East Main, on the Plaza; ~~or~~ on the area at the corner of East Main Street and South Pioneer Street known as Chautauqua Square; **or in the public parking lot at 175 Lithia Way.**

B. A person may not smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument within **twenty** ~~(10 20)~~ feet of the following parts of places ~~or~~ of employment or enclosed areas open to the public:

1. Entrances;
2. Exits;
3. Windows that open;
4. Ventilation intakes that serve an enclosed area; and
5. Outdoor dining **areas**

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.

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”, 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 2-4 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 _____, 2017, and duly PASSED and ADOPTED this ____ day of _____, 2017.

Barbara M. Christensen, City Recorder

SIGNED and APPROVED this ____ day of _____, 2017.

Ordinance No. _____

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney

Ordinance No. _____

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