

Council Business Meeting

October 17, 2017

Title: Amending AMC 9.30 to Clarify the Linear Limitation of Smoking Prohibition
From: David H. Lohman City Attorney
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Summary:

This amendment would delete AMC 9.30.010J, which provides an unusual definition for “within 20 feet of,” and which has caused compliance confusion and now seems unnecessary.

Actions, Options, or Potential Motions:

1. A Councilor could move to approve on first reading by title only of, “An ordinance amending AMC Section 9.30.010 to clarify the linear limitation of smoking prohibition” and move the ordinance to second reading.
2. Alternatively, Council could move to re-word the current definition to make it clearer or take no action, leaving the current definition as is.

Staff Recommendation:

Staff recommends approval of this proposed ordinance on first reading.

Resource Requirements:

N/A

Policies, Plans and Goals Supported:

- Keep Ashland a family-friendly community. (Council Goal 7)
- Provide, promote, and enhance the security/safety, environmental health, and livability of the community. (Quality of Life Administrative Goal)

Background and Additional Information:

The no smoking ordinance for the City’s downtown area initially became effective in 2016. The original ordinance began by adopting the Oregon Indoor Clean Air act (ORS 433.835 et seq.) so as to make it a violation of City code to fail to comply with the key terms of the Act, which may be summarized 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.

The original ordinance also prohibited smoking or the use of inhalants anywhere in downtown Ashland.

In April, 2017, the ordinance was amended to include the public parking lot at 160 N. Pioneer Street in the downtown no smoking area and to expand the 10 foot no smoking buffer from enclosed outdoor dining areas open to the public and specified features of places of employment to a buffer of 20 feet.

The change to a 20-foot buffer was accompanied by the addition of a definition of “within 20 feet of” in order to avoid unintended impacts on smokers less than 20 feet above (or below) such enclosed outdoor dining areas or places of employment. The wording of that added definition, however, has caused confusion and provided no discernible benefit.

Accordingly, the amendment proposed for approval on First Reading simply deletes the confusing definition in Section 9.30.010J. With this deletion, the term “within 20 feet of” in 9.30.020A and B would retain its ordinary meaning: *20 linear feet away from, whether measured horizontally, vertically, or diagonally.*

Attachments:
Ordinance

ORDINANCE NO. _____

**AN ORDINANCE AMENDING AMC SECTION 9.30.010
TO CLARIFY THE LINEAR LIMITATION OF SMOKING PROHIBITION**

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 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, Section 9.30.010 Definitions is hereby amended to read as follows:

9.30.010 Definitions

The following words and phrases whenever used in this chapter shall be construed as defined 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 two or more sides by permanent or temporary walls or windows, exclusive of doors, passageways or gaps. If no ceiling is present, “enclosed area” means all space that is included by three or more sides by permanent or temporary walls or windows, exclusive of doors, passageways or gaps.
- 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 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 deliver system used to smoke tobacco, marijuana or any other inhalant.

J. ~~“Within 20 feet of” means no closer than 20 feet away from a physical feature specified in this chapter, as measured horizontally and fewer than eight feet above ground level.~~

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 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; 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 130 N. Pioneer Street.

B. A person may not smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument within 20 feet of the following parts of places 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.

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 9.30.040 A to E, an employer shall post signs that provide notice of the provision of ORS 433.835 to 433.875.

9.30.040 Exemptions from Smoking Prohibition

A. The owner of 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.

9.30.050 Penalties for Violation

Violations of this chapter are Class IV violations as described in AMC 1.08.

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 _____, 2017, and duly PASSED and ADOPTED this ____ day of _____, 2017.

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ____ day of _____, 2017.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney