

ADMINISTRATIVE ORDER NO. 21-18-07
of the
City Manager

**ADOPTION OF EMERGENCY RULES CONCERNING PROHIBITING
SMOKING ON PUBLIC RIGHTS-OF-WAY OUTSIDE OF DOWNTOWN
CORE (OPT-IN), AND ALLOWING SMOKING IN DESIGNATED AREAS
INSIDE OF DOWNTOWN CORE (OPT-OUT), PURSUANT TO
ORDINANCE NO. 20603.**

The City Manager of the City of Eugene finds that:

A. Section 2.019 of the Eugene Code, 1971 (“EC”), authorizes the City Manager or designee to adopt rules for implementation of any provisions of the Eugene Code, 1971. EC 2.019(6) authorizes the City Manager to adopt emergency rules without prior notice or hearing.

B. On July 23, 2018, the City Council adopted Ordinance No. 20603 which amended EC 6.230 to: (1) provide that the City Manager may approve requests to create smoke-free areas on the public right-of-way adjacent to smoke-free properties outside of the downtown core (opt-in); (2) expand smoke-free areas in the City to include the public spaces (sidewalks, alleys, and plazas) within the defined area of the downtown core and provide that the City Manager may approve requests to create designated smoking areas in the downtown core (opt-out); and (3) provide that requests to “opt-out” or “opt-in” shall comply with Rules adopted by the City Manager under EC 2.019. Ordinance No. 20603 will become effective on August 24, 2018.

C. Establishment of Emergency Rules are necessary in order to implement the Code provisions adopted by Ordinance No. 20603 which are intended to promote community health by reducing the exposure and impacts of secondhand smoke and cigarette litter. The Emergency Rules should be adopted without prior public notice pursuant to EC 2.019(6) due to time constraints in adopting permanent Rules by August 24, 2018 (the effective date of Ordinance No. 20603) in accordance with the provisions of EC 2.019.

NOW, THEREFORE, based upon the above findings and pursuant to the authority of EC 2.019(6), I order that these Emergency Rules shall become effective immediately and remain in effect for a period of 180 days from the date this Order is signed unless replaced earlier by an emergency rule, temporary rule, or permanent rule adopted in accordance with the provisions of EC 2.019.

SMOKING PROHIBITION OPT-IN AND OPT-OUT
ADMINISTRATIVE RULE

I. OPT-IN TO SMOKING PROHIBITION

A. This rule implements Section 1 of Ordinance No. 20603 by setting out how a property owner of a property where smoking is prohibited by subsections 6.230(2)(a) – (p), or a

representative of a smoke free publicly owned property, can obtain approval to prohibit smoking on rights-of-way adjacent to the property.

B. A request to prohibit smoking on adjacent rights-of-way shall be submitted on a form provided by the City and shall contain the information, acknowledgements, and agreements required in Exhibit A.

C. There is no fee for submitting a request to prohibit smoking on adjacent rights-of-way.

D. A request to prohibit smoking on adjacent rights-of-way shall be approved, approved with modifications, or denied by the City Manager or Manager's designee. It is in the City's sole, unfettered discretion whether to approve, approve with modifications, or deny a request, however, the City's approval will not be unreasonably withheld. A reason for approving with modification or denying a request includes, but is not limited to, the reasonable likelihood that prohibiting smoking in the requested location will have an adverse impact on nearby properties.

II. OPT-OUT OF DOWNTOWN CORE SMOKING PROHIBITION


A. This rule implements Section 2 of Ordinance No. 20603 by setting out how a representative of a private establishment located within the downtown core (as that term is defined in EC 4,871) can obtain approval to allow smoking on public rights-of-way adjacent to the private establishment.

B. A request to allow smoking within the downtown core on adjacent rights-of-way shall be submitted on a form provided by the City and shall contain the information, acknowledgements, and agreements required in Exhibit B.

C. There is no fee for submitting a request to allow smoking in the downtown core on adjacent rights-of-way.

D. A request to allow smoking in the downtown core on adjacent rights-of-way shall be approved, approved with modifications, or denied by the City Manager or the Manager's designee. It is in the City's sole, unfettered discretion whether to approve, approve with modifications, or deny a request, however, the City's approval will not be unreasonably withheld. A reason for approving with modification or denying a request includes, but is not limited to, the requested location abuts multiple properties and not all of the abutting properties are requesting to opt-out of the smoking prohibition.

Dated and effective this 16th day of August, 2018.


Jon R. Ruiz
City Manager

Request to Prohibit Smoking on Adjacent Rights-of-Way (Opt-In Request)

*Please complete, sign, and submit this Opt-In form to the City Manager's Office at 125 East 8th Avenue, 2nd Floor, Eugene, OR 97401, Attn: Opt-In Request.

*There are no fees associated with this request.

1. Requester/Property Owner Information:

Name of Requester/Property Owner: _____

Type of property where smoking is currently prohibited: _____

Address: _____ City/Zip: _____

E-Mail Address: _____ Phone: _____

2. Requested Non-Smoking Location:

Please attach a map, photograph, or diagram showing the right-of-way area(s) adjacent to the property where you are requesting that people be prohibited from smoking.

3. Impacts to Neighboring Properties:

Are there designated smoking areas on your property? Yes No If no, please attach a map, photograph, or diagram showing the neighboring properties where smoking is unrestricted.

4. Signature:

I certify that I am the owner or an authorized representative of the above-referenced property. I acknowledge that the City approving my request to prohibit smoking on adjacent rights-of-way does not alleviate my responsibility to comply with all other applicable local and state laws, including Eugene Code 6.225 – 6.240 and Administrative Order No. 21-18-07. I also acknowledge that the City approving my request to prohibit smoking on adjacent rights-of-way does not obligate the City, including the Eugene Police Department, to take any specific action to enforce the approved smoking prohibition.

Signature

Date

Print Name

The above request to opt-out of the Downtown Core smoking prohibition is:

Approved Denied

Approved with Modification(s) _____

By: _____ Date: _____

Copy sent to BPS.

Downtown Core Smoking Prohibition Opt-Out Request

*Please complete, sign, and submit this Opt-Out form to the City Manager’s Office at 125 East 8th Avenue, 2nd Floor, Eugene, OR 97401, Attn: Opt-Out Request.

*There are no fees associated with this request.

1. Requester Information:

Name of Requester: _____

Name of Downtown Core Private Establishment: _____

Address: _____ City/Zip: _____

E-Mail Address: _____ Phone: _____

2. Requested Smoking Location:

Please attach a map, photograph, or diagram showing the right-of-way area(s) adjacent to your private establishment where you are requesting that people be allowed to smoke.

3. Opt-Out Request (choose one)

All Day After 9:00 p.m.

4. Signature

I certify that I am an authorized representative of the above-referenced private establishment. I acknowledge that the City approving my request to allow smoking within the downtown core on adjacent rights-of-way does not alleviate my responsibility to comply with all other applicable local and state laws, including Eugene Code 6.225 – 6.240 and Administrative Order No. 21-18-07. I understand that, in addition to the penalties provided in City Code, any violation of the applicable regulations may result in the City revoking the permission granted me to allow smoking within the downtown core adjacent to the above-identified property. I agree to encourage patrons to use any cigarette disposal receptacle near the property provided by the City and I agree to work cooperatively with the City in placing the cigarette disposal receptacle in an optimum location for maximum usage.

Signature

Date

Print Name

The above request to opt-out of the Downtown Core smoking prohibition is:

Approved Denied

Approved with Modification(s) _____

By: _____ Date: _____

Copy sent to BPS.