

**CITY AND BOROUGH OF SITKA**

**ORDINANCE NO. 2005-29**

**BALLOT PROPOSITION OCTOBER 2005**

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING TITLE 9, HEALTH AND SANITATION, OF THE SITKA GENERAL CODE TO CONTROL ENVIRONMENTAL TOBACCO SMOKE IN PUBLIC PLACES AND PLACES OF EMPLOYMENT, AND PROVIDING FOR A PENALTY**

1. **CLASSIFICATION.** This ordinance, which shall be known as the Sitka Clean Indoor Air Law of 2005, is of a permanent nature and is intended to become part of the Sitka General Code.

2. **SEVERABILITY.** If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

3. **FINDINGS AND PURPOSE.** The City and Borough of Sitka does hereby find that:

- a. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 53,000 Americans annually. In Alaska, tobacco use claims 500 lives annually, with 120 lives lost to secondhand smoke.
- b. The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen with no safe level of exposure.
- c. Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

- d. The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.
- e. The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.
- f. The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.
- g. A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.
- h. Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.
- i. Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.
- j. Smoking is a cause of many fires. Additionally cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.

Based on these findings, the Assembly of the City and Borough of Sitka finds and declares that the purposes of this ordinance are:

- (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and
- (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka, Alaska that a new Chapter 9.20, Smoking in Public Places and Places of Employment is added to the Sitka General Code, to read as follows:

## Chapter 9.20

### Smoking in Public Places and Places of Employment

#### Sections:

9.20.005	Definitions.
9.20.010	Application to City and Borough-owned facilities.
9.20.015	Prohibition of smoking in public places.
9.20.020	Prohibition of smoking in places of employment.
9.20.025	Reasonable distance.
9.20.030	Where smoking is not regulated.
9.20.035	Declaration of establishment as nonsmoking; prohibition of children in places of employment where smoking is permitted.
9.20.040	Posting of signs.
9.20.045	Non-retaliation.
9.20.050	Enforcement.
9.20.055	Violations and penalties.
9.20.060	Other applicable laws.
9.20.070	Popular name.

#### 9.20.005 Definitions

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

1. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
2. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit.

3. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
4. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
5. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
6. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
7. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
8. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.
9. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

10. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
11. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
12. "Smoking" means inhaling, exhaling, burning, or carrying any lighted Tobacco product in any form, with the exemption of religious ceremonies.
13. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar enclosed places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

9.20.010 Application to City and Borough-owned facilities.

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City and Borough of Sitka shall be subject to the provisions of this Chapter.

9.20.015 Prohibition of smoking in public places.

Smoking shall be prohibited in all enclosed public places within the City and Borough of Sitka including but not limited to, the following places:

1. Aquariums, fish hatcheries, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, Laundromats, hotels, and motels.
3. Areas and/or buildings that host youth agencies.
4. Bingo facilities.
5. Convention facilities.
6. Elevators.

7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
8. Health care facilities.
9. Licensed child care and adult day care facilities.
10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
11. Polling places.
12. Public transportation facilities, including buses and taxicabs, under the authority of the City and Borough of Sitka and ticket, boarding, and waiting areas of public transit depots.
13. Restaurants.
14. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
15. Retail stores.
16. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City and Borough of Sitka or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City and Borough of Sitka.
17. Service lines.
18. Shopping malls.
19. Sports arenas, including enclosed places in outdoor arenas.
20. Vessels inspected by the U.S. Coast Guard which are day boats with no overnight accommodations and are larger in capacity than a "six-pack" but have a capacity of less than 150 passengers.

9.20.020 Prohibition of smoking in places of employment.

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this chapter and to all prospective employees upon their application for employment.

9.20.025 Reasonable distance.

Smoking shall be prohibited near entrances, windows and ventilation systems of all work sites of public places where smoking is prohibited by this regulation. Any individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this regulation shall establish a no smoking area which extends a reasonable distance from any entrance, windows and ventilation systems to any enclosed area where smoking is prohibited; such reasonable distance shall be a distance sufficient to insure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and to insure that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means. All smoking trash receptacles shall be placed outside the no smoking area in order to discourage smoking within the established boundaries.

9.20.030 Where smoking is not regulated.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of sections 9.20.015 and 9.20.020:

- 1. Private residences, except when used as a licensed child care, adult day care, or health care facility.
- 2. Private vehicles.
- 3. Marine vessels, except vessels inspected by the U.S. Coast Guard which are day boats with no overnight accommodations and are larger in capacity than a "six-pack" but have a capacity of less than 150 passengers.
- 4. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20) of rooms rented to guests in a hotel or motel may be so designated.

5. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.
6. Outdoor areas of places of employment except those covered by the provisions of section 9.20.025.
7. Any bar, defined as an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, as long as such bar is in a "stand-alone building" and the bar shares no common entries, exits, or internal doors with any public places subject to Sections 9.20.015 and 9.20.020.
8. Private clubs, including but not limited to the Elks, Moose, and American Legion, as long as each such private club is in a "stand-alone building" and the private club shares no common entries, exits, or internal doors with any public places subject to Sections 9.20.015 and 9.20.020.

9.20.035. Declaration of establishment as nonsmoking; prohibition of children in places of employment where smoking is permitted.

Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of section 9.20.040 is posted. Children under the age of 18 shall not be permitted in any place of employment where smoking is allowed.

9.20.040. Posting of signs.

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter by the owner, operator, manager, or other person in control of that place.
- B. Every public place and place of employment where smoking is prohibited by this Chapter shall have posted at every exterior entrance a conspicuous sign clearly stating that smoking is prohibited.

9.20.045 Non-retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

#### 9.20.050 Enforcement

- A. This chapter shall be enforced by the Sitka Police Department or by other officials so authorized by the City and Borough Administrator.
- B. Notice of the provisions of this chapter shall be given to all applicants for a business license in the City and Borough of Sitka.
- C. Any citizen who desires to register a complaint under this chapter may request/solicit enforcement from/with the Sitka Police Department.
- D. The Public Works Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.
- E. An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.
- G. In addition to the remedies provided by the provisions of this section, the City and Borough Administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

#### 9.20.055 Violations and penalties.

- A. A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who willfully fails to comply with the provisions of this chapter shall be guilty of an infraction, punishable by:
1. A fine not exceeding one hundred dollars (\$ 100) for a first violation.
  2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
  3. A fine not exceeding three hundred dollars (\$300) for each additional violation within one (1) year.
- C. Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

9.20.060 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

9.20.070 Popular name.

This law shall be known as the Sitka Clean Indoor Air of 2005.

5. The ballot measure shall read as follows:

Shall the City and Borough of Sitka pass a law that would prohibit smoking in public places and places of employment?

**Yes**       **No**

**Informational:** See Chapter 9.20 of proposed Ordinance 2005-29 for definitions, application, prohibitions, reasonable distance, where smoking is not regulated, posting, enforcement and violations.

6. **EFFECTIVE DATE.** This ordinance shall become effective forty-five (45) days from the date of October 4, 2005 if a majority of voters voting on this ordinance approve it.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 12th day of July, 2005.

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Valorie Nelson, Deputy Mayor

**ATTEST:**

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Colleen Pellett, CMC  
Municipal Clerk