

Presented by: The Manager
Introduced: 08/20/2001
Drafted by: J.R. Corso

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2001-40(am)

An Ordinance Amending the Health and Sanitation Code to Control Environmental Tobacco Smoke in Enclosed Public Places and in the Workplace, and Providing for a Penalty.

WHEREAS, in a 1992 report entitled *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders* the United States Environmental Protection Agency found that exposure to environmental tobacco smoke, also known as “secondhand smoke”:

1. can cause lung cancer in adult nonsmokers,
2. is linked to an increased risk of heart disease among nonsmokers,
3. causes about 3,000 lung cancer deaths annually among adult nonsmokers,
4. causes coronary heart disease and death in nonsmokers,
5. accounts for as many as 62,000 deaths from coronary heart disease annually in the United States,
6. causes respiratory problems in children, such as greater number and severity of asthma attacks and lower respiratory tract infections,
7. increases children's risk for sudden infant death syndrome and middle ear infections, and
8. annually causes as many as 300,000 lower respiratory tract infections, such as pneumonia and bronchitis in children, and

WHEREAS, the Assembly finds that in order to protect the public health it is necessary to control the amount of tobacco smoke in public places, and

WHEREAS, in exercising this control pursuant to its home rule authority, it is the intent of the Assembly to supplement and extend the values and policies inherent in the AS 18.35.300-18.35.365, and not to interfere or conflict with them.

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NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough code.

Section 2. New Chapter. There is adopted a new chapter 36.60, reading:

Chapter 36.60

Smoking in Public Places

Sections:

36.60.005 Definitions.

36.60.010 Smoking prohibited.

36.60.020 Smoking in enclosed places of employment.

36.60.025 Reasonable distance.

36.60.030 Where smoking not regulated.

36.60.035 Posting of signs.

36.60.040 Non-retaliation.

36.60.045 Violations and penalties.

36.60.050 Other applicable laws.

36.60.005 Definitions. In this chapter,

“Bar” means a beverage dispensary, other than a bar restaurant, licensed by the State of Alaska under AS 04.11.090 or AS 04.11.400(d)

“Bar Restaurant” means a beverage dispensary authorized to include a dining room by a license, the issuance or transfer of which was approved pursuant to AS 04.11.090 but not 04.11.400(d) by the State of Alaska prior to the effective date of the ordinance codified at this chapter.

“Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes.

“Employee” means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who provides volunteer services for a nonprofit entity.

“Employer” means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, but not including the state or federal government, who employs the services of one or more individual persons.

“Enclosed area” means a space which is inside a building and surrounded on all sides by impermeable surfaces, whether or not equipped with doors, windows, skylights, passageways, or similar apertures, including all space therein screened by partitions, office landscaping, or similar structures which do not extend to a ceiling or are not impermeable.

“Enclosed place of employment” means an enclosed area or a vehicle under the control of an employer normally used by employees in the course of employment, including work areas, private offices, lounges and restrooms, conference and classrooms, cafeterias, elevators, stairways, and hallways.

“Enclosed public place” means an enclosed area or portion thereof open to the public, including:

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- (a) retail stores, shops, banks, laundromats, garages, salons, or other businesses selling goods or services,
- (b) the waiting rooms and offices of businesses providing legal, medical, dental, engineering, accounting, or other professional services,
- (c) hotels, motels, boarding houses, hostels, and bed and breakfast facilities, provided that the owner may designate by a permanently affixed sign a maximum of 25% of the rooms as exempt from this definition,
- (d) universities, colleges, schools, and commercial training facilities,
- (e) arcades, bingo halls, pull-tab parlors, and other places of entertainment,
- (f) health clubs, dance studios, aerobics clubs, and other exercise facilities,
- (g) hospitals, clinics, physical therapy facilities,
- (h) any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or similar performance,
- (i) public areas of fish hatcheries, galleries, libraries and museums,
- (j) polling places,
- (k) elevators, restrooms, lobbies, reception areas, waiting rooms, hallways and other common-use areas, including those in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities,
- (l) restaurants, coffee shops, cafeterias, sandwich stands, private or public schools cafeteria, and any other eating establishment which offers food for sale to the public, guests, or employees, including any kitchen or catering facility in which food is prepared for serving off the premises,
- (m) sports and exercise facilities, including sports pavilions, gymnasias, health spas, boxing arenas, swimming pools, pool halls, billiard parlors, roller and ice rinks, bowling alleys, and similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events,
- (n) any line in which two or more persons are waiting for or receiving goods or services of any kind, whether or not in exchange for money,
- (o) areas used for and during the course of meetings subject to the Alaska Open Meetings Act.

“Retail tobacco store” means a retail store the primary business of which is the sale of tobacco products and accessories.

“Smoking” means inhaling or exhaling tobacco smoke, or carrying any lighted tobacco product.

36.60.010 Smoking prohibited. (a) Smoking is prohibited in

- (1) enclosed public places,
- (2) enclosed places of employment,
- (3) vehicles and enclosed areas owned by the City and Borough of Juneau, including the Juneau School District,
- (4) commercial passenger vehicles regulated by the City and Borough under CBJ 20.40.

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36.60.020 Smoking in enclosed places of employment. (a) By the effective date of this chapter, any employer subject to this ordinance shall adopt and enforce a written policy prohibiting smoking in all enclosed places of employment and all vehicles owned or operated by that employer and used by those employees.

(b) The smoking policy shall be communicated to all employees prior to its adoption.

(c) All employers shall supply a written copy of the smoking policy upon request to any current or prospective employee or to an employee of the City and Borough engaged in enforcing this chapter.

36.60.025 Reasonable distance. No person may smoke within ten feet of any entrance, open window, or ventilation system intake of any building area within which smoking is prohibited by this chapter.

36.60.030 Where smoking not regulated. (a) This chapter does not apply to:

1. private residences, including those used as places of employment, but this exception does not apply at any time the residence is open for use as a child care, adult care or health care facility,
2. places of employment with a total of four or fewer employees and owners working at the place, provided that this exception shall not apply to a place of employment which is an enclosed public place,
3. private enclosed areas in nursing homes or assisted living facilities,
4. retail tobacco stores,
5. performers smoking as part of a stage performance,
6. enclosed areas used for conferences or meetings in restaurants, service clubs, hotels, or motels while the spaces are in use for private functions admission to which is determined at least three days in advance,
7. bars and bar restaurants, provided that for bars, no tobacco smoke may infiltrate into a dining room through a passageway, ventilation system, or otherwise, or into any area where smoking is prohibited,
8. federal or state property, or those portions of buildings leased by the federal or state government,
9. private property used for residential incarceration under contract to a federal or state correctional agency.

(b) the owner, operator, or manager of property may by permanently affixing a sign thereon, waive any exemption provided by subsection (a) of this section.

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36.60.035 Posting of signs. (a) Signs prohibiting smoking shall be prominently posted by the owner, operator, manager or other person having control on every building or other area where smoking is prohibited by this chapter.

(b) Every place where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) The owner, operator, manager or other person having control of any area where smoking is prohibited by this chapter shall remove therefrom all ashtrays and other smoking paraphernalia.

36.60.040 Non-retaliation. No person or employer shall discharge, refuse to hire, refuse to serve, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right or seeks any remedy afforded by this chapter.

36.60.045 Violations. (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions. Violation of this subsection is an infraction.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter. Violation of this subsection is an infraction.

(c) In addition to the penalties and remedies available under this Code, any person aggrieved by a violation or threatened violation of this chapter may bring a civil action to enjoin that violation.

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

Section 3. Amendment of Section. CBJ 03.30.053, the Health and Sanitation Code Fine Schedule, is amended by the addition of new fines reading:

CBJ	Offense	No. of Offenses	Fine
36.60.045(a)	Failure to maintain smoke-free premises	1st	\$200.00
		2nd within 2 years	\$250.00
		3rd & subseq. within 2 years	\$300.00
36.60.045(b)	Smoking where prohibited	Any	\$50.00

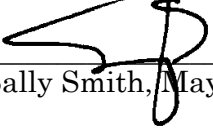
Section 4. Exemptions, Implementation Review. (a) The Manager may in writing exempt any enclosed place from compliance with this section for up to 180 days past the effective date of this section upon satisfactory proof by the owner that the owner has made substantial progress but due to circumstances beyond the owner's control has been unable to fully comply. For purposes of this section "circumstances beyond the owner's control" does not include a lack of funds.

(b) One year after the initial implementation of this ordinance, the mayor shall convene a task force to review it and to report and make recommendations to the Assembly concerning its effectiveness. The report shall specifically include the following information:

- (1) the effectiveness of public information programs and ongoing efforts to work with affected businesses and individuals,
- (2) overall economic impact to affected businesses,
- (3) the effect on reducing secondhand smoke exposure,
- (4) the practicality of enforcing the ordinance and any problems with enforcement,
- (5) number of violations and amount of penalties, and
- (6) proposed revisions to the ordinance.

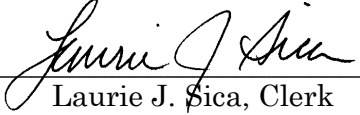
Effective Date. This ordinance shall be effective 90 days after its adoption.

Adopted this 1st day of October, 2001.



Sally Smith, Mayor

Attest:



Laurie J. Sica, Clerk