

## **POSSIBLE MOTION**

**I MOVE TO** renew the motion to approve Ordinance 2014-02 on second and final reading.

### **Ordinance History**

- The motion to approve was first postponed on 1/28 so that the Human Services Commission could weigh in and then again on 2/25 until a full assembly could be present.
- The main motion made on 1/28 is still on the floor and ready to be voted on you can renew it if you wish.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2014-02

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA  
GENERAL CODE AT CHAPTER 9.20 ENTITLED "SMOKING IN PUBLIC PLACES AND  
PLACES OF EMPLOYMENT" TO MODIFY SECTION 9.20.035 REGARDING  
PROHIBITION OF CHILDREN IN PLACES WHERE SMOKING IS PERMITTED

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code ("SGC").

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstance shall not be affected.

3. **PURPOSE.** This ordinance is to modify SGC 9.20.035 entitled "Declaration of establishment as nonsmoking – Prohibition of children in places of employment where smoking is permitted" by prohibiting children under the age of 18 to be permitted in any place where smoking is permitted. This ordinance also clarifies presence of children in a club or bar where smoking is allowed.

4. **NOW, THEREFORE, BE IT ENACTED** by the Assembly of the City and Borough of Sitka that SGC 9.20.035 is amended as follows (new language underlined; deleted language stricken):

**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 eighteen shall not be permitted in any place of employment under 9.20.020, or club or bar where smoking is allowed under Section 9.20.030G. and H. Furthermore, no cessation of smoking within the smoking facility shall render this section inapplicable unless such facility permanently deems and declares themselves to be a non-smoking facility. Once the declaration of an establishment, facility, or outdoor area as smoking has been made under this section, it shall not be changed for temporary or special functions.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 28th day of January, 2014.

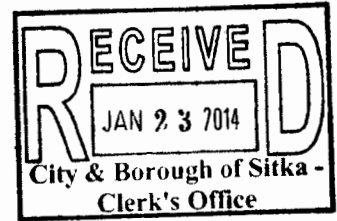
\_\_\_\_\_  
Mim McConnell, Mayor

**ATTEST:**  
\_\_\_\_\_  
Sara Peterson, CMC  
Acting Municipal Clerk

**Colleen Ingman**

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**Subject:** FW: To whom it may concern



-----Original Message-----

**From:** Margaret Peterson [<mailto:margaretp66@yahoo.com>]

**Sent:** Wednesday, January 22, 2014 9:21 PM

**To:** Mim McConnell; Matthew Hunter; Phyllis Hackett; Pete Esquiro; Mike Reif; Benjamin Miyasato; Aaron Swanson; Mark Gorman

**Subject:** To whom it may concern

Assembly members,

It has come to my attention that someone has put a request to revise the smoking ordinance. The American Legion, Sons of the Legion and American Legion Auxiliary ask that you vote against this amendment or put it up for a vote with the public.

The reason we ask this, is because we are a smoking private club and over the christmas holiday, we apparently made someone mad. The person doing this request called us up Friday, 2 days before our party; called at 4pm threatening to call the police and have us shut down if we had the party. She gave a fake name, misrepresented herself, said she was a city official and if we had the party, than she was changing the ordinance. We do not appreciate her being rude to our bartender, whom she yelled at and threatened.

It is not our intention to make anyone mad or to hurt anyone. That is why; when we have any occasions here, we take time to completely air the place out along with spraying air fresheners to smoke eaters running all night. We DID NOT let anyone smoke in there at all, we announced that the bar was closed and had signs of no smoking. We even had a curtain over the bar area, to cover the liquor bottle. The children could not see the bottles or pull tab bins. By the time of the party, you could not tell we smoked in there. We had a grandma that has asthma that it did not even bother her. We had another grandma that uses an oxygen tank. Did not bother her.

We had 80 children signed up for our party and 74 came with their family. We fed them turkey and ham with all the works for a wonderful christmas dinner with plenty for people to take home. The children got to see santa and get a present with a candy bag. The children all got a brand new jacket and decorated their pictures with santa and decorated cookies.

We also have memorials for families that have lost a loved one who has served for our country. We are available for funerals as well. The bar is closed and aired out completely when we have these occasions.

It is not our intentions to put anyone in danger of any kind. Therefore, we believe the smoking ordinance is fine the way it. So we are asking you to vote against this. Thank you.

Respectfully yours,

The American Legion, Sons of the Legion and American Legion Auxiliary

## Smoking

L@ ~ Lauren Allen [sealaska86@gmail.com]

**Sent:** Wednesday, January 29, 2014 4:53 PM

**To:** assembly

Dear Sitka Assembly Members:

I heard the Raven Radio news report regarding interpreting the smoking ordinance.

I would like you to know that I voted for the smoking ban, and am so thankful it passed. However, it was never my intent as a voter to never allow children into a building that allows smoking.

Please consider dropping this issue, or merely change the ordinance to allow smoking establishments to hold memorials and special parties and ban smoking for those events.

The American Legion & other establishments in Sitka host a number of fantastic fundraisers and events for kids. I don't want to see them punished.

I understand Mr. Hunter's concerns regarding second hand smoke. However, this is getting quite deep into personal rights. I am sure all parents who bring their children to these events are keenly aware that the establishments allow smoking other than at the "special" occasions.

Thank you for your time.

Lauren Allen

907.738.3285

## Colleen Ingman

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**From:** Bobbi Daniels <ravenfrogfibers@hotmail.com>  
**Sent:** Tuesday, February 25, 2014 9:04 AM  
**To:** assembly  
**Subject:** Anti smoking amendment

Thank you for your consideration of this amendment, and let me start by saying that there is not a person anywhere who is more opposed to smoking and smoking in public than I am. However, I am firmly against this amendment.

My objection comes from a different place. The issue here is the right of families to decide for themselves what is best for them, and the slippery slope that is governmental "nannying". Although I thoroughly agree that the inhalation of second hand smoke is a deadly and entirely preventable hazard, and that temporarily stopping the smoking does not completely alleviate the problem, this should be a family's decision. In this case no child is ever required to be in an establishment where smoking takes place, and the decision whether or not to take children into such an establishment for a special event needs to be left to parents.

It is a dangerous precedent to start overriding parental authority. Where does it end? Mountains of research shows that feeding hydrogenated fats on a daily basis to children is a much greater health threat than being exposed to second hand smoke once or twice a year, so if this amendment is the city's responsibility, isn't a ban on feeding hydrogenated fats to children also in order? And don't get me started on soda...

I do not know what families attend the parties that brought this issue to light. However, they apparently want to be able to have these events as they have determined that are good thing for their families. We need to trust their decision. The value of a family sharing a holiday activity has to be weighed against the harm. Seriously, the candy they give to the kids at the party is no doubt a bigger health issue than the hour of exposure to second hand smoke.

Please respect a family's authority to decide for themselves what serves them as a family and do not adopt this amendment.

Thank you for all you do.

Bobbi Daniels

## Colleen Ingman

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**From:** Susan Litman <litman.susan@gmail.com>  
**Sent:** Saturday, March 01, 2014 4:54 PM  
**To:** assembly  
**Subject:** Third hand smoke

Dear Assembly Members-

I listened to the Assembly meeting on Tuesday and would like to comment on the ordinance regarding allowing children under 18 in establishments that allow smoking.

There are times when the health and safety of a child outweighs a parent's right to raise a child as they see fit. We have several laws in this community that essentially do this. A child under 18 must wear a helmet while riding a bicycle even if the parent would allow this to occur. A fourteen year old is not allowed to buy cigarettes even if the parent writes a note allowing the child to purchase cigarettes. A law forbidding children under 18 from entering a business where smoking has occurred is the some type of restriction.

All the Assembly members heard the presentation outlining the risks of third hand smoke. Numerous known carcinogens and toxins are present in third hand smoke. Infants and children , for a number of reasons, are more susceptible to the effects of environmental carcinogens and toxins. I think that the discussed situation is an example where the government should step in and forbid children and infants in a smoking establishment even if the parent is willing to risk the possible future consequences to their child.

If the Assembly were to decide that it is the parent's decision to allow their child in a place where known carcinogens are present, then I think it would be the Assembly's responsibility to make sure the parent was completely educated to the risks. A sign would not be sufficient. The parent or guardian should be provided with, and understand, all the information the Assembly received so they could make an informed decision.

Obviously, I do not believe it is worth the risk of allowing a child to be in contact with a carcinogen. I do think it is the Assembly's responsibility to prevent this risk.

Thank you,  
Susan Litman

## Colleen Ingman

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**From:** Gretchen Clarke <gretchensclarke@gmail.com>  
**Sent:** Monday, February 10, 2014 11:30 AM  
**To:** assembly

Dear Mayor McConnell and Assembly Members,

I am writing to urge you to stay true to the City and Borough of Sitka Ordinance 2005-29 clean indoor air ordinance. The community made it clear when they voted to approve the ordinance that clean indoor air is a priority, especially for places that serve children and families. Clubs and other facilities have the right to choose to allow smoking, but if they make that choice, they cannot allow children on their premises. There is no safe level of 2nd or 3rd hand exposure to smoke, and the children of our community deserve to be protected from the dangerous carcinogens found in tobacco smoke. It is unfortunate this issue has been misconstrued as anti-Legion. The Legion, no doubt, provided a valuable service to children by providing them with a fun and festive party, but in hosting the event in their smoking facility, they endangered our youth. The Legion, like the Elks did, can choose to prioritize serving our children, or allowing smoking. If the latter, they must host their family events in a non-smoking facility and abide by the law of the community.

Kind regards,  
Gretchen Clarke

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Gretchen S. Clarke, MPH  
[gretchensclarke@gmail.com](mailto:gretchensclarke@gmail.com)

## Colleen Ingman

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**From:** andrea thomas <andrea61thomas@gmail.com>  
**Sent:** Sunday, February 09, 2014 3:59 PM  
**To:** assembly  
**Subject:** Fwd: Letter in reference to Ordinance 2005-29, Section 9.20.035  
**Attachments:** Letter of Support\_02\_06\_14.pdf

Assembly Members,

I will be out of town for the next Assembly meeting when the Health Board will bring you their recommendations on adopting the clarifying language for children being allowed in smoking facilities.

I would like to give you some history about this ordinance. In July 12, 2005, the Sitka Assembly heard the final reading for a *Smoking in Public Places and Places of Employment* (see attached). One motion passed allowed smoking in bars and clubs in stand alone buildings. Another motion was passed "Children under the age of 18 shall not be permitted in any place of employment where smoking is allowed". All the bars and clubs are places of employment.

Please find attached a letter on behalf of an Assembly member that was involved in the drafting of Ordinance 2005-29, and had proposed the amendment of Section 9.20.035. The letter is to provide you with information for clarification of the intent.

Our current city attorney was not clear on the intent when she read the following portion of the ordinance:

**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 eighteen shall not be permitted in any place of employment where smoking is allowed. (Ord. 05-29 § 4 (part), 2005.)

Since the language was not clear to her, she permitted the American Legion to host a children's party in their smoking establishment (albeit they said they did not smoke prior or during the party) This was the first time any such exemption has been made by a City Attorney- allowing children into to a smoking facility. This decision created a loophole **in the intent of the ordinance that was passed by the assembly and voted in by the people of Sitka in October 2005.** The intent of this language- to ensure no children were allowed in smoking establishments, was understood by the people voting and the businesses affected.

The Elks club, which was smoking at the time, voted to change their policy to become smoke-free in order to have youth in their facility. Please don't hesitate to contact them yourself to confirm this. In addition, the Moose Family Center invested in a renovation to create an external door so the upstairs of their building could allow youth. This actually was a loophole, because the upstairs room is directly above the bar and children in that room are exposed to secondhand smoke that rises.



**The new language proposed, formulated by the City Attorney, with direction from the Mayor and Assembly Member Phyllis Hackett, clarifies the intent language so that any City Attorney reading this portion of the ordinance can fully understand the intent.**

Please vote to pass this revised language and honor the vote of past Assembly members, and the voting public, to continue to protect our children from the damaging effects of secondhand smoke.

Best regards,  
Andrea Thomas

P.S. The American Legion is fully aware of the ordinance and has hosted Christmas parties in outside facilities since 2005. While American Legion members feel this is about them, it is really is about upholding the intent of the ordinance. They can continue to have wonderful parties for children in other locations.

Thursday, February 6, 2014

To whom this may concern,

I, Al Duncan served as a City and Borough of Sitka Assembly member in 2005. At a July 12, 2005 meeting I proposed an amendment to the proposed Ordinance 2005-29 that stated, "Children under age of 18 shall not be permitted in any place of employment where smoking is allowed".

The intent was to not allow any children in establishments (bars/clubs) that were smoking facilities. This amended ordinance was passed by public vote in October of 2005.

I support the proposed clarification language that would ensure that Section 9.20.035 of Ordinance 2005-29 will be enforced so that children will not be permitted in any places of employment where smoking is allowed at any time.

Regards,

Al Duncan

*Al Duncan SR*

Resolution # \_\_\_\_\_

Title: Resolution for the Control and Elimination of Tobacco in the Work Place and Enclosed Public Places.

WHEREAS, The \_\_\_\_\_ (name of tribe), is an Indian tribe as defined in Section 4 of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, 25 U.S.C. 450b;

WHEREAS, Alaska Native people have the highest rate of tobacco use in the state of Alaska;

WHEREAS, Tobacco use is the leading cause of preventable death and disease and Alaska Native people suffer serious health consequences including heart disease and cancer;

WHEREAS, Secondhand tobacco smoke exposure is another leading cause of preventable death, and causes disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and cancer;

WHEREAS, It has been determined by the U.S. Surgeon General that there is no safe level of exposure to secondhand smoke, air ventilation systems do not work, and that only completely smokefree environments can protect health;

WHEREAS, A significant amount of secondhand smoke exposure for Alaska Native adults and children occurs in the workplace and even short exposures may result in serious adverse health effects and even death;

WHEREAS, Tobacco-free workplaces protect people from secondhand smoke, reduce tobacco use overall, support healthy lifestyles, model healthy behavior, and support quit attempts;

WHEREAS, The health of our people is of utmost importance and Alaska Native people have taken a lead in addressing health issues throughout the years; and

WHEREAS, Tobacco-free tribal workplaces will protect the health of our children, grandchildren, families, and community members.

THEREFORE, BE IT RESOLVED that tobacco use shall be prohibited within the facilities owned, operated, or leased by the \_\_\_\_\_ (name of tribe) including:

- a) all areas within enclosed places that are open to and frequented by the public;
- b) all areas within places of employment; and
- c) all outdoor areas within 20 feet of entrances, exits, and windows that open to enclosed public places and places of employment.

BE IT FURTHER RESOLVED, that signs prohibiting tobacco use shall be posted and a no tobacco use distance no less than 20 feet from any entrances be enforced.

CERTIFICATION

I hereby certify that the above resolution was duly adopted at a regular meeting of the \_\_\_\_\_ (name of tribe) on this \_\_ day of \_\_\_\_\_ 2012 at which a quorum was present, with a vote of \_\_ for, \_\_ against, \_\_ abstentions, \_\_ absent.

\_\_\_\_\_  
(Name), President

Date

\_\_\_\_\_

ATTEST: \_\_\_\_\_

(name), Tribal Administrator

Date

\_\_\_\_\_