




City & Borough of Sitka
Municipal Clerk's Office
100 Lincoln Street, Sitka AK 99835
Telephone: 907-747-1811 Fax: 907-747-4004



Memorandum

To: Mayor and Assembly
From: Municipal Clerk Colleen Ingman 
Date: March 18, 2015
Subject: **Ordinances resulting from Legal Analysis**

In September of 2014, CBS contracted with Code Publishing to complete a legal analysis of our code. Their attorney recommended items that they felt needed immediate action to bring the code into legal compliance and, where possible, has recommended amending language for this purpose.

We considered doing a single “clean-up” ordinance but quickly learned that one clean up ordinance that addressed all the recommendations would be extremely bulky and difficult to follow. It is still our intent to bring forward as few ordinances as possible, but at the same time keep the amendments concise enough that they can be easily understood. We will combine amendments whenever possible.

The attached is an ordinance that resulted from the legal analysis and has been shared with the impacted departments, which have approved that it be moved forward.

Please see the purpose section of the ordinance for clarification.

It is my intent to have all clarifying ordinances passed by the final meeting in April. I have placed them on the Consent Agenda for first reading as the majority will be fairly straight forward, plus we are not required to take public testimony until second reading.

Attachment: Ordinance: 2015-14, 15, 16, 18, 19 & 20

Colleen Ingman

From: sheldons@sitkapd.com
Sent: Wednesday, March 18, 2015 11:52 AM
To: Colleen Ingman
Subject: Re: FW: Clarifying Ordinances

The ordinances look fine.

Chief Sheldon Schmitt
304 Lake St, Sitka AK 99835
(907) 747-3349 or 747-3245

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2015-19

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA PROPOSING TO CLARIFY THE SITKA GENERAL CODE BY AMENDING TITLE 10 PUBLIC PEACE, SAFETY AND MORALS AT SECTIONS 10.44.010 LIQUOR REGULATIONS DEFINITION A, 10.44.020 SCOPES OF PROVISIONS, 10.44.030 LICENSE REQUIRED, 10.44.060 PERSONS FORBIDDEN TO HAVE LIQUOR, AND 10.84.010 DEFINITIONS

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

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 circumstances shall not be affected.

3. PURPOSE. As found in Alaska Statute 29.25.050, the municipal clerk is responsible for ensuring that the municipal code is kept current. Sitka’s municipal clerk sought legal analysis from Code Publishing Company for a review of the Sitka General Code for state and federal constitutional issues and apparent conflicts. These clarifying changes are derived from that review and further analysis.

Sections 10.44.010 and 10.84.010 are updated to a current state definition of alcoholic beverage. Section 10.44.020 updates the 1973 provisions to reflect current state wording. The state reference used in Section 10.44.030 has been repealed and replaced. The stricken phrase in Section 10.44.060 is not defined or referenced in municipal or state law.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the following section of the Sitka General Code is hereby amended to read as follows:

Title 10
PUBLIC PEACE, SAFETY AND MORALS

IV. Offenses Against Public Decency
10.44 Liquor Regulations

Section
10.44.010 Definitions.

A. Whenever the term “intoxicating liquor” is used, it means an alcoholic beverage that is a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage and that contains one-half of one percent or more of alcohol by volume, whether produced commercially or privately; (AS 4.21.080(b)(1)) shall be deemed to include whiskey, rum, gin, wine, ale, porter, beer, hoochينو, and all spirituous, vinous, malt and other fermented or distilled liquors having an alcoholic content of more than one percent of alcohol by volume; and “beer” includes ale and porter; and “hard and distilled liquor” includes all intoxicating liquors except beer and wine;

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10.44.020 Scope of provisions.

The provisions contained herein shall apply to all places where liquor of any description as herein defined is manufactured, offered for sale, sold, vended, bartered or furnished.

10.44.030 License required.

Alaska Statute Section 04.11.010 ~~04.10.020~~ designating a classification of licenses is incorporated herein and made a part hereof, and the sale of hard or distilled liquor, including wine and beer by any person, firm or corporation is prohibited anywhere except under and by virtue of a license secured from the Director of the Alcoholic Beverage Control Board, and the sale, barter or consumption of intoxicating liquor, including wine and beer, on any premises not covered by a license under the classifications in Section 10.44.010 is prohibited. (Ord. 73-59 § 3 (part), 1973.)

10.44.060 Persons forbidden to have liquor.

It is unlawful to give, barter or sell any intoxicating liquors including beer and wine to any person under the age of twenty-one years ~~or,~~ to any intoxicated person, ~~or to any habitual drunkard;~~ and it is unlawful for any licensee to permit giving, bartering, selling or drinking of any intoxicating liquor within the premises covered by any license to or by any of the forbidden classes nor shall such licensee permit the drinking of hard or distilled liquors by such person or persons upon the premises covered by his license.

* * *

**VIII. Offenses By or Against Minors
Chapter 10.84 Liquor Regulations**

10.84.010 Definitions.

The terms "intoxicating liquor" and "alcoholic beverages" as used hereafter are interchangeable and are defined as a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage and that contains one-half of one percent or more of alcohol by volume, whether produced commercially or privately. ~~any fermented or distilled liquor, wine, beer, or other beverage, containing more than one percent alcohol by volume.~~

* * *

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 14th day of April, 2015.

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ATTEST:

Matthew Hunter, Deputy Mayor

Colleen Ingman, MMC
Municipal Clerk

	<p>Recommendation: Shall we update the reference?</p>	✓
37.	<p>10.44.010 Definitions. Subsection (A) defines intoxicating liquor as beverages with “an alcoholic content of more than one percent of alcohol by volume.” Changes in state law (see AS 4.21.080(b)(1)) now use a definition of “alcoholic beverage,” which includes beverages of at least one-half of one percent alcoholic content.</p> <p>Recommendation: Given changes in state law (see comment for 10.44.030 below), it might be worthwhile to revise sections of Chapter 10.44 that predate 2000 by ordinance to align easier with state law.</p>	○
38.	<p>10.44.030 License required. This section refers to AS 4.10.020. That section has been repealed; the new law is AS 4.11.010.</p> <p>Recommendation: Adopting it requires an ordinance, although the wording of the new law might be such that adoption by reference does not make sense for the City and Borough.</p>	✓ ○
39.	<p>10.44.070 Offers of sale and presence on licensed premises (standard operating hours). Subsection (C) refers to AS 42.10.420. That section has been repealed. There is a definition of common carrier in AS 4.16.125(c)(1) that might be useful to adopt.</p> <p>Recommendation: An ordinance is necessary for any action taken regarding the definition of common carrier.</p>	○

2015-19

48.	10.84.049 Access of persons under the age of twenty-one to licensed premises. Subsection (C)(3) refers to the Alaska Department of Labor. Its current name is the Alaska Department of Labor and Workforce Development. Recommendation: Shall we update the name?	Action
49.	10.84.050 Possession or consumption by persons under the age of twenty-one. Subsection (K)(1) of this section refers to AS 28.40.100. That section has been renumbered to AS 28.90.990. Recommendation: Shall we update the reference?	✓
50.	10.88.020 Prohibitions. Subsection (C) refers to AS 1865.700. This is a typographical error for AS 18.65.700. Recommendation: Shall we correct the reference?	✓

10.88.020 Prohibited

C. person conceal
conflict of interest

2015-14