

## **POSSIBLE MOTION**

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**I MOVE TO** approve Ordinance 2010-04 on  
Third and final reading.

Sponsors: McAdams and Stein

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2010-04

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 PROHIBIT  
SMOKING IN BARS AND IN PRIVATE CLUBS LICENSED TO SELL FOOD  
OR ALCOHOLIC BEVERAGES, SET A MINIMUM REASONABLE DISTANCE  
FOR NON-SMOKING OUTSIDE PUBLIC PLACES, MAKE ADDITIONAL  
ENFORCEMENT REQUIREMENTS, AND MAKE CLARIFYING  
AMENDMENTS

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 amends SGC at Chapter 9.20 entitled "Smoking in Public Places and Places of Employment." The principal purpose of this Ordinance is to prohibit smoking in bars, as well as in private clubs that are licensed by the State of Alaska to sell alcohol or food. Also, this Ordinance establishes 10 feet as the minimum reasonable distance for smoking outside public places where smoking is prohibited. Additionally, this Ordinance requires certain enforcement actions to be taken by an owner, manager, operator or employee of a public place that prohibits smoking. Further, this Ordinance makes clarifying edits, including amending the definition section to add definitions for bar and private club, and to amend the definition of "employee" to include anyone "who works for an employer as a volunteer without compensation."

Many of the amendments to this Ordinance are modeled after amendments to similar provisions in the municipal codes for Anchorage and Juneau.

4. **NOW, THEREFORE, BE IT ENACTED** by the Assembly of the City and Borough of Sitka that SGC at Chapter 9.20 is amended as follows (new language underlined; deleted language stricken):

1 **Chapter 9.20**  
2 **SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT**

3  
4 \* \* \*

5 **9.20.005 Definitions.**

6 The following words and phrases, whenever used in this chapter, shall be  
7 construed as defined in this section:  
8

9 A. "Bar" means a business, other than a restaurant or a liquor store, that is  
10 licensed by the State of Alaska to sell alcoholic beverages, that serves  
11 alcoholic beverages for consumption by guests on the premises, and in  
12 which any serving of food is only incidental to the consumption of  
13 alcoholic beverages, and includes taverns, nightclubs, and cocktail lounges.  
14

15 BA. "Business" means a sole proprietorship, partnership, joint venture,  
16 corporation, or other business entity formed for profit-making purposes,  
17 including retail establishments where goods or services are sold as well as  
18 professional corporations and other entities where legal, medical, dental,  
19 engineering, architectural, or other professional services are delivered.  
20

21 CB. "Employee" means a person who is employed by an employer for  
22 compensation or profit in consideration for direct or indirect monetary  
23 wages or profit, or who works for an employer as a volunteer without  
24 compensation or profit.  
25

26 CE. "Employer" means a person, business, partnership, association, corporation,  
27 including a municipal corporation, trust, or nonprofit entity, that employs  
28 the services of one or more individual persons.  
29

30 ED. "Enclosed area" means all space between a floor and ceiling that is  
31 enclosed on all sides by solid walls or windows (exclusive of doorways),  
32 which extend from the floor to the ceiling.  
33

34 FE. "Health care facility" means an office or institution providing care or  
35 treatment of diseases, whether physical, mental, or emotional, or other  
36 medical, physiological, or psychological conditions, including, but not  
37 limited to, hospitals, rehabilitation hospitals or other clinics, including  
38 weight control clinics, nursing homes, homes for the aging or chronically  
39 ill, laboratories, and offices of surgeons, chiropractors, physical therapists,  
40 physicians, dentists, and all specialists within these professions. This

1 definition shall include all waiting rooms, hallways, private rooms,  
2 semiprivate rooms, and wards within health care facilities.

3  
4 GF. “Place of employment” means an area under the control of a public or  
5 private employer that employees normally frequent during the course of  
6 employment, including, ~~but not limited to,~~ work areas, employee lounges,  
7 private clubs, bars, restrooms, conference rooms, meeting rooms,  
8 classrooms, employee cafeterias, hallways, and vehicles. A private  
9 residence is not a “place of employment” unless it is used as a child care,  
10 adult day care, or health care facility.

11  
12 HG. “Private club” means an organization, whether incorporated or not, or  
13 whether a legal entity or an informal association of persons, that either  
14 owns, leases, or is an occupant of a building or portion of a building for  
15 which it has been issued a license by the State of Alaska to sell alcoholic  
16 beverages or to sell food.

17  
18 IH. “Public place” means an enclosed area to which the public is invited or in  
19 which the public is permitted, including, ~~but not limited to,~~ banks,  
20 educational facilities, health care facilities, private clubs, bars, laundromats,  
21 public transportation facilities, reception areas, restaurants, retail food  
22 production and marketing establishments, retail service establishments,  
23 retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A  
24 private residence is not a “public place” unless it is used as a child care,  
25 adult day care, or health care facility.

26  
27 IJ. “Restaurant” means an eating establishment, including, ~~but not limited to,~~  
28 coffee shops, cafeterias, sandwich stands, and private and public school  
29 cafeterias, which gives or offers for sale food to the public, guests, or  
30 employees, as well as kitchens and catering facilities in which food is  
31 prepared on the premises for serving elsewhere.

32  
33 KJ. “Retail tobacco store” means a retail store utilized primarily for the sale of  
34 tobacco products and accessories and in which the sale of other products is  
35 merely incidental.

36  
37 LK. “Service line” means an indoor line in which one or more persons are  
38 waiting for or receiving service of any kind, whether or not the service  
39 involves the exchange of money.  
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3 **9.20.050 Enforcement.**

4 \* \* \*

5 E. An owner, manager, operator, or employee of an establishment regulated by  
6 this chapter shall inform any person~~persons~~ who smoke in violation of  
7 violating this chapter at that establishment or within a reasonable distance  
8 from the establishment as set out in section 9.20.025, of the appropriate  
9 provisions being violated thereof. In no event shall an owner, manager,  
10 operator, or employee forcibly remove any person violating the provisions  
11 of this chapter. Compliance by the owner, manager, operator, or employee  
12 with this subsection only requires that the following steps be followed if the  
13 person does not stop violating the provisions of this chapter after the owner,  
14 manager, operator, or employee informs the person of the violation of this  
15 chapter:

- 16
- 17 1. Refuse service if the person is at the establishment.
- 18
- 19 2. Immediately request the person leave the establishment or maintain a  
20 reasonable distance from the establishment, as set out in Section  
21 9.20.025; and
- 22
- 23 3. Call the police department and report the violation if the person  
24 refuses to leave the establishment or maintain a reasonable distance  
25 from the establishment, as set out in Section 9.20.025.

26 \* \* \*

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28 **9.20.055 Violations and penalties.**

29 \* \* \*

30 D. In addition to the fines established by this section, violations of this chapter  
31 by a person who owns, manages, operates, or otherwise controls an  
32 establishment regulated by this chapter may result in the denial, refusal to  
33 renew, suspension, or revocation of any applicable City and Borough of  
34 Sitka permit or license for the establishment.

35 \* \* \*

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37 5. **EFFECTIVE DATE.** This Ordinance shall become effective 30 days after  
38 the Assembly of the City and Borough of Sitka passes, approves, and adopts this  
39 Ordinance.

1           **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and  
2 Borough of Sitka, Alaska this 27 day of April, 2010.  
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7 **ATTEST:**

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Scott McAdams, Mayor

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10 \_\_\_\_\_  
11 Colleen Ingman, MMC  
12 Municipal Clerk