

If this item should be pulled from the consent agenda the following motion would be in order.

## **POSSIBLE MOTION**

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**I MOVE TO** approve Ordinance 2015-18 on first reading.



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**

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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

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**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. 2015-18

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA PROPOSING TO CLARIFY THE SITKA GENERAL CODE BY AMENDING TITLE 10 CHAPTER 10.40 GAMBLING SECTION 10.40.010 PROHIBITED AND LOITERING SECTIONS 10.76.020 DEFINITION AND 10.76.030 PROHIBITED OPERATIONS

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.

Section 10.40.010 updates the 1973 gambling section into current language according to Alaska Statutes. Sections 10.76.020 and 10.76.030 on loitering are removed as the state sections referenced have been removed without replacement; thus, these sections do not appear to have foundations within current 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 10.40 Gambling

Section 10.40.010 Prohibited.

A person who engages in gambling deals, plays, carries on, opens or causes to be open, or who conducts, either as owner, proprietor or employee, whether for hire or not, a game or faro, monte, roulette, rouge et noir, lansquenet, rondo, vingt-un, twenty one, poker, draw poker, brag, bluff, thaw, craps, or a banking or other game played with cards, dice, or other device, whether played for any prize, money, checks, chips, credit representing money, or other representative of value, is guilty of a misdemeanor. Gambling means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the person’s control or influence, upon an agreement or understanding that that person or someone else will receive something of value in the event of a certain outcome. (AS 11.66.280(2)).

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**VIII. Offenses By or Against Minors**  
**Chapter 10.76 Loitering**

**10.76.020—Definition.**

~~Class I coin-operated device is an entertainment or amusement apparatus which operates by means of insertion of a coin, token, or similar object which does not involve an element of chance (AS 43.35.090), including coin-operated electronic video games, billiard, pool, foosball, or shuffleboard tables, juke boxes, and other similar amusement and gaming devices, but does not include automatic vending machines that dispense food or sundries. (15 AAC 35.040) (Ord. 84-601 § 3(c) (part), 1984.)~~

**10.76.030—Prohibited operations.**

~~The following acts shall be prohibited and unlawful:~~

~~A.—The operation of any class I coin-operated device by any person under the age of thirteen years unless accompanied by a parent, step-parent, legal guardian, or grandparent. It is unlawful for any person to misrepresent his or her age or the age of any other person for the purpose of gaining access to class I machines;~~

~~B.—The permitting or allowing of any person under the age of thirteen years to operate any class I coin-operated device unless accompanied by a parent, step-parent, legal guardian, or grandparent, by any owner and other person having such device under their control. It is the duty and responsibility of every person having such gaming devices under their control to prevent the prohibited class of minors from operating such device;~~

~~C.—For any owner operator or other person who has charge of a class I coin-operated device to fail to place a conspicuous notice on each device that operation by any person under thirteen years of age is unlawful and prohibited unless accompanied by the minor's parent, step-parent, legal guardian, or grandparent.~~

~~(Ord. 84-601 § 3(c) (part), 1984.)~~

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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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Matthew Hunter, Deputy Mayor

100 **ATTEST:**

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Colleen Ingman, MMC

105 Municipal Clerk

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34.	<p><b>10.40.010 Prohibited.</b> This section references several card and dice games.  <b>Recommendation:</b> It might be worthwhile to update this section with an amendment to include games more commonly played that the City and Borough is concerned about.</p>	
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43.	<p><del>ORDINANCE TO REPEAL 10.76.020 (C) &amp; AMEND 10.76.070 (D).</del></p> <p><b>10.76.020 Definition.</b> This section refers to AS 43.35.090 and 15 AAC 35.040. Both sections have been repealed without replacement. 10.76.020 and 10.76.030 appear not to have foundations in current state law.  <b>Recommendation:</b> The City and Borough should revisit this law to determine action, whether to repeal without replacement, whether to amend the text so as not to refer to state law, or something else. Any action taken in this vein requires an amending ordinance.</p>	
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