

Some talking points suggested by the American Beverage Licensees:

- **Let the market decide.** Market forces will determine where and under what conditions smoking is allowed. Many hospitality venues and recreation facilities are already smoke free. Arbitrary government regulation will only make the matter worse.
- **The proposed smoking ban is meant to fix a non-existent problem.** In most towns, including Sitka, there are smoking and non-smoking venues, and the customers choose which atmosphere they want..
- **Those places that rely on smokers as a large portion of their customers will be hurt the most.** Smokers are an important customer base for many hospitality venues. They often constitute a large percentage of customers of many restaurants and bars. To say that these locations will not be hurt by a smoking ban denies economic realities. You can't tell half your customers "you're not welcome here" without it having an economic impact.
- **Going outside to smoke presents unique problems for many bars and restaurants.** If a smoker has to go outside to have a cigarette then he/she has a much higher probability of leaving and going to another establishment or going home. While outside they do not spend money on food or drink. In addition, smokers congregating outside presents quality of life issues for neighborhoods including increased noise and trash as well as many potential law enforcement issues.

Some additional talking points Alaska CHARR recommends:

- Smoking bans hurt small businesses
- There are plenty of smoking and non-smoking businesses to allow everyone a choice
- Patrons have a choice not to step through your door
- We're talking about private businesses, not public places

Anecdotal reports from members in Anchorage and Juneau have indicated a definite drop in business:

- Anchorage establishments that have reported to us are experiencing an average 20-30% drop in business (a few businesses report no change)
- Larger establishments and those who were able to adapt by providing covered smoking areas have mostly rebounded
- Many of the businesses that are rebounding are also directly violating the smoking ban regulations, but due to limited enforcement of the laws, these businesses are not experiencing any negative sanctions and feel the risk is well worth the reward
- Small mom-n-pop establishments have lost most of their daytime customers and regulars, and are not able to rebound
- One popular watering hole in Juneau was able to identify exactly how many new customers they had seen since the ban took effect when asked by a CHARR Staff member about six months after the ban; the response was "Two. One had a water and one a diet coke."

Nationally, studies and follow-up reports prove that smoking ban hurts businesses as well. Here are some examples:

- When smoking bans took effect in Talbot County, Maryland, restaurant sales tax receipts fell by \$2.9 million or 11 percent between May 2003 and December 2003, while sales for similar establishments in neighboring Caroline County increased by 36 percent and in Dorchester County by 14 percent.
- In Montgomery County, Maryland the number of restaurants with liquor licenses fell to 402 by the end of December 2004 from a high of 526 in March 2003.
- Following a smoking ban in New York City, New York, the Ridgewood Study reported a loss of 2,650 jobs, equating to \$50 million in wages and salary payments
- New York City also experienced a loss of \$71.5 million in gross revenue
- An Allentown, New Jersey family-owned bowling center experienced a \$74,000 in one quarter following the smoking ban (-11% in bar sales, -30% in billiards, and -10% in bowling receipts), experiencing it's first ever negative quarter in 40 years

SAMPLE BALLOT BACK

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice. Fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve, take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one. **A vote which has been erased or changed will not be counted.**

BALLOT PROPOSITIONS

PROPOSITION NO. 1

Shall the City and Borough of Sitka require a public vote before selling, leasing, or disposing of municipal tidelands for the purposes of constructing a marine dock to accommodate vessels of more than two hundred feet in length?

YES
NO

Informational: The vote requirement would not apply to property at Sawmill Cove Industrial Park.

See Ordinance 2004-30: "PURPOSE. Voters wish to have the right to ratify by public vote any sale, disposal, or lease of any tidelands owned by the City and Borough of Sitka when any purpose stated by the person or entity intending to acquire any interest in those tidelands is to construct a marine dock to accommodate vessels in excess of two hundred feet (200') in length."

PROPOSITION NO. 2

Shall the City and Borough of Sitka pass a law that would prohibit smoking in public places and places of employment?

YES 1619
NO 1659

Informational: "Smoking is prohibited within a reasonable distance of 25 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means."

See Ordinance 2004-37: Chapter 9.20 includes provisions setting out definitions, further applications, prohibitions, areas where smoking is not regulated, posting, enforcement, and violations.

PROPOSITION NO. 3

Shall Article V, Nominations-Elections, of the Charter be amended to (a) increase the period of published notice before an election from the current 30 days to 60 days and (b) change the time frame for submission of nomination papers for candidates for elective office from the current period of between 35 and 90 days before the election to a period of between 60 and 80 days before the election?

YES
NO

Informational: This would allow a longer period of time (60 days) before an election could be held and reduce the number of days to (20 days) where a candidate could file for office.

See Ordinance 2004-38: "PURPOSE. The Municipal Clerk has determined that certain provisions of the Charter relating to the dates for elections and submission of nomination papers are unreasonable and has recommended different deadlines."

SAMPLE BALLOT FRONT

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice. **Fill in the oval next to the issue/candidate you want to vote for.** Place your ballot inside the secrecy sleeve, take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one.
A vote which has been erased or changed will not be counted.

OFFICIAL BALLOT
City & Borough of Sitka
REGULAR & SPECIAL ELECTION
October 5, 2004

INSTRUCTIONS

To vote for a candidate, fill in the oval to the right of the candidate's name as shown. ●

TO VOTE FOR A WRITE-IN CANDIDATE, write the candidate's name on one of the blank lines provided in each race, **AND** fill in the oval to the right of the candidate's name.

To vote in favor of a BALLOT PROPOSITION, fill in the oval to the right of the word "YES"; to vote against a ballot proposition, fill in the oval to the right of the word "NO."

FOR MAYOR ONE to be elected Vote for no more than 1	
FRED REEDER	<input type="radio"/>
MARKO DAPCEVICH	<input type="radio"/>
Write-in	<input type="radio"/>

FOR SCHOOL BOARD ONE to be elected Vote for no more than 1	
STEVE GAGE	<input type="radio"/>
Write-in	<input type="radio"/>

FOR ASSEMBLY TWO to be elected Vote for no more than 2	
DAVID A. HARPER	<input type="radio"/>
JAY STELZENMULLER	<input type="radio"/>
DAVE DAPCEVICH	<input type="radio"/>
AL DUNCAN SR.	<input type="radio"/>
VALORIE L. NELSON	<input type="radio"/>
THOR CHRISTIANSON	<input type="radio"/>
Write-in	<input type="radio"/>
Write-in	<input type="radio"/>

TURN BALLOT OVER TO CONTINUE VOTING

CITY AND BOROUGH OF SITKA, ALASKA

ORDINANCE NO. 2004-37

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA
AMENDING TITLE 9, HEALTH AND SANITATION, OF THE SITKA GENERAL CODE
TO CONTROL ENVIRONMENTAL TOBACCO SMOKE IN PUBLIC PLACES
AND PLACES OF EMPLOYMENT, AND PROVIDING FOR A PENALTY

1. **CLASSIFICATION.** This ordinance, which shall be known as the Sitka Clean Indoor Air Law of 2004, is of a permanent nature and is intended to become part of the Sitka General Code.

2. **SEVERABILITY.** If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

3. **Findings and Purpose.** The City and Borough of Sitka does hereby find that:

a. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 53,000 Americans annually.

b. The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen.

c. Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

d. The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.

e. The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.

f. The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.

g. A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

h. Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.

i. Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.

j. Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.

Based on these findings, the Assembly of the City and Borough of Sitka finds and declares that the purposes of this ordinance are:

- (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and

- (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka, Alaska that a new Chapter 9.20, Smoking in Public Places and Places of Employment is added to the Sitka General Code, to read as follows:

Chapter 9.20

Smoking in Public Places and Places of Employment

Sections:

9.20.005	Definitions.
9.20.010	Application to City and Borough-owned facilities.
9.20.015	Prohibition of smoking in public places.
9.20.020	Prohibition of smoking in places of employment.
9.20.025	Reasonable distance.
9.20.030	Where smoking is not regulated.
9.20.035	Declaration of establishment as nonsmoking.
9.20.040	Posting of signs.
9.20.045	Nonretaliation.
9.20.050	Enforcement.
9.20.055	Violations and penalties.
9.20.060	Other applicable laws.
9.20.065	Liberal construction.
9.20.070	Popular name.

9.20.005 Definitions

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

1. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. "Bar" includes, but is not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
2. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
3. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
4. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
5. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
6. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
7. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
8. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and

marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

9. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
10. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
11. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
12. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
13. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
14. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

9.20.010 Application to City and Borough-owned facilities.

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City and Borough of Sitka shall be subject to the provisions of this Chapter.

9.20.015 Prohibition of smoking in public places.

Smoking shall be prohibited in all enclosed public places within the City and Borough of Sitka including but not limited to, the following places:

1. Aquariums, fish hatcheries, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
3. Areas and/or buildings that host youth agencies.
4. Bars.
5. Bingo facilities.
6. Convention facilities.
7. Elevators.
8. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
9. Health care facilities.
10. Licensed child care and adult day care facilities.
11. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
12. Polling places.
13. Private clubs, including but not limited to the Elks, Moose, and American Legion.
14. Public transportation facilities, including buses and taxicabs, under the authority of the City and Borough of Sitka and ticket, boarding, and waiting areas of public transit depots.
15. Restaurants.
16. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
17. Retail stores.
18. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City and Borough of Sitka

or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City and Borough of Sitka.

19. Service lines.
20. Shopping malls.
21. Sports arenas, including enclosed places in outdoor arenas.

9.20.020 Prohibition of smoking in places of employment.

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this chapter and to all prospective employees upon their application for employment.

9.20.025 Reasonable distance.

Smoking is prohibited within a reasonable distance of 25 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

9.20.030 Where smoking is not regulated.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of sections 9.20.015 and 9.20.020:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated.
3. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter.
4. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.
5. Outdoor areas of places of employment except those covered by the provisions of section 9.20.025.

9.20.035. Declaration of establishment as nonsmoking.

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.

9.20.040. Posting of signs.

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter by the owner, operator, manager, or other person in control of that place.
- B. Every public place and place of employment where smoking is prohibited by this Chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Chapter by the owner, operator, manager, or other person having control of the area.

9.20.045 Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

9.20.050 Enforcement

- A. This chapter shall be enforced by the Sitka Police Department or by other officials so authorized by the City and Borough Administrator.
- B. Notice of the provisions of this chapter shall be given to all applicants for a business license in the City and Borough of Sitka.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Sitka Police Department.
- D. The Public Works Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.
- E. An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.
- G. In addition to the remedies provided by the provisions of this Section, the City and Borough Administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

9.20.055 Violations and penalties.

- A. A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this chapter shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 - 3. A fine not exceeding three hundred dollars (\$300) for each additional violation within one (1) year.
- C. In addition to the fines established by this section, violation of this chapter by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

9.20.060 Other applicable laws.

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

9.20.065 Liberal construction.

This chapter shall be liberally construed so as to further its purposes.

9.20.070 Popular name.

This law shall be known as the Sitka Clean Indoor Law of 2004.

5. **EFFECTIVE DATE.** This ordinance shall become effective forty-five (45) days from and after the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this _____ day of _____, 2004.

Fred Reeder, Mayor

ATTEST:

Colleen Pellett, CMC
Municipal Clerk

Indian River Subdivision

MOTION: Stelzenmuller moved to ask the Administrator to redesign the proposed Indian River Subdivision to provide for more, smaller, affordable lots for building single-family homes.

Other Assembly members expressed concern with the alternate motion and that the Planning Commission hasn't weighed in on this.

Stelzenmuller said his plan would be similar to the Lillian Subdivision.

Reber Stein believes Stelzenmuller has the correct idea; he compared it to the current plan before the Assembly that would allow zero lot lines. Deputy Mayor Nelson believes that substandard lots are not the answer.

Williams answered questions with regard to access and cul-de-sacs.

Motion FAILED on a 2-4 roll call vote with Sherrod and Stelzenmuller voting in favor.

MOTION: Bailey moved to authorize the Administrator to issue contracts to prepare the wetlands permits and the utility service designs that would allow the lots to be subdivided into zero lot lines in the future.

Bailey asked if the City could offer a financial incentive for zero lot lines, which would make the density higher.

Deputy Mayor Nelson mentioned that we needed to tread softly as we just recently denied a conditional use permit.

Motion PASSED on a 5-1 roll call vote with Stelzenmuller voting against.

Item E
ORD. 2005-29



AMENDING TITLE 9, HEALTH AND SANITATION, OF THE SITKA GENERAL CODE TO CONTROL ENVIRONMENTAL TOBACCO SMOKE IN PUBLIC PLACES AND PLACES OF EMPLOYMENT, AND PROVIDING FOR A PENALTY.

MOTION: Paden moved to approve Ordinance 2005-29 on second reading.

Mayor read the ordinance title, and effective sections.

MOTION: Duncan moved to add to Page 7, Section 9.20.035 "Children under age of 18 shall not be permitted in any place of employment where smoking is allowed."

Paden supported it if it only applied to bars, but not the way it is.

Dr. Myron Fribush testified that he hoped that the Assembly would approve this amendment to protect children and promote healthy lifestyles.

Helen Craig brought up that anything that harmed her children she would not compromise on.

Motion on the amendment PASSED on a 4-2 roll call vote with Paden and Nelson voting against.

MOTION: Bailey moved to AMEND on page 8, lines 19-21 Delete the language [BEVERAGES. IF A BAR IS INSIDE A RESTAURANT, THE PORTION OF A FACILITY THAT IS A BAR SHALL BE EXEMPT FROM THE PROVISIONS OF SECTIONS 9.20.015 AND 9.20.020] and insert the following language:

"beverages as long as such bar is in a 'stand-alone building' and the bar shares no common entries, exits, or internal doors with any public places subject to Sections 9.20.015 and 9.20.020.

9. Private clubs, including but limited to the Elks, Moose, and American Legion, as long as each such private club is in a 'stand-alone building' and the private club shares no common entries, exits, or internal doors with any public places subject to Sections 9.20.015 and 9.20.020."

This amendment allows bars and stand-alone clubs to allow smoking.

Rob Allen believes this gives the private clubs a competitive edge, giving an unfair advantage. He believes going smoke free is the answer.

Gil Truitt expressed concern with the American Legion, which also has a store and shares a ventilation system.

Motion on the amendment PASSED on a 5-1 roll call vote with Nelson voting against.

Dr. Myron Fribush believes that some of the amendments that have been made defeat the purpose of the ordinance.

William Swagel maintained that these discussions are similar to the types of discussions that took place during prohibition where fumes coming out the doors of bars were blamed. Swagel contended that this defies common sense.

Cynthia Dennis, speaking as a private citizen, says the amendment overcomes the purpose of the ordinance. She would like the Assembly to go back to the original ordinance.

Jean Frank cautioned that non-clear air communities that allow smoking put other burdens on their communities. Who bears the cost when these un-protected employees or their family members are exposed, she wondered.

Dr. Russell Bowman said you can drink responsibly, but the same is not true for smoking. He contends there are no health benefits to smoking.

Rob Allen supports non-smoking in every venue in town and asked to add in an amendment to ban smoking on vessels larger than those that require a 6 pack into the ordinance.

Helen Craig read her letter to the editor.

Clyde Bright urged the Assembly to put this on the ballot and thanked the Assembly for the amendments.

Jeff Kinnear agrees with Mr. Bright—"less government is the best government."

Steve Warren has some serious concerns with the amendments that have been made and he would like those rescinded. He urged the Assembly to let the voters decide.

Michael Harper echoed Steve Warren's comments.

MOTION Stelzenmuller moved to amend by adding an exclusion to Page 6, Line 21 for U.S. Coast Guard inspected vessels greater than 6 pack and less than 150 passenger, and day boats. And further to amend the exemptions found on Page 7, Line 39 Item 3, Marine Vessels, to reflect this change.

Motion PASSED 4-2 on the amendment with Sherrod and Nelson voting against.

MOTION: Stelzenmuller moved to amend to take out the provision that allowed smoking rooms in clubs and lounges wherever they were permitted in this Ordinance as amended at the last meeting.

Recess

A recess was taken from 8:55 p.m. until 9:05 p.m.

Deputy Mayor imposed time limits of 2 minutes each for public testimony.

Steve Warren announced that it is clear to him there is no way to keep the smoke from seeping out of smoking rooms.

Cynthia Dennis, Chair of the Health Needs Committee, supports the amendments.

Helen Craig agrees with the amendment.

Will Swagel does not support the amendment.

Wilbur Brown believes this amendment is a good thing.

Motion on the amendment PASSED on a 4-2 roll call vote with Nelson and Sherrod against.

Stelzenmuller attempted other amendments but they died for lack of a second.

The main motion PASSED on a 5-1 roll call vote, with Nelson against.

Item H
ORD. 2005-32

PROPOSING TO AMEND THE HOME RULE CHARTER OF THE CITY AND BOROUGH OF SITKA TO CREATE A DEDICATED FUND FOR PARKS AND RECREATION CONSTRUCTION, IMPROVEMENT, AND MAJOR MAINTENANCE PROJECTS; RAISE THE PROPERTY TAX LIMIT FROM SIX MILLS TO SIX AND ONE-HALF MILLS; AND PLACE IN THAT DEDICATED FUND ANY REVENUES GAINED FROM A PROPERTY TAX LEVY BETWEEN SIX MILLS AND SIX AND ONE-HALF MILLS, AND SUBMITTING THOSE CHARTER AMENDMENTS TO THE VOTERS FOR RATIFICATION

SAMPLE BALLOT FRONT

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice. **Fill in the oval next to the issue/candidate you want to vote for.** Place your ballot inside the secrecy sleeve, take your ballot to the ballot box.

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OFFICIAL BALLOT
City & Borough of Sitka
REGULAR ELECTION
October 4, 2005

INSTRUCTIONS

To vote for a candidate, fill in the oval to the right of the candidate's name as shown.

TO VOTE FOR A WRITE-IN CANDIDATE, write the candidate's name on one of the blank lines provided in each race, **AND** fill in the oval to the right of the candidate's name.

To vote in favor of a **BALLOT PROPOSITION**, fill in the oval to the right of the word "YES"; to vote against a ballot proposition, fill in the oval to the right of the word "NO."

FOR ASSEMBLY
FOUR to be elected
Vote for no more than 4

BOBBI DANIELS
MARY MAGNUSON
JOHN SHERROD
JUNE I. DEGNAN
GEORGIA C. SKANNES
JOHN HOLST

Write-in

Write-in

Write-in

Write-in

FOR SCHOOL BOARD
TWO to be elected
Vote for no more than 2

MOLLIE KABLER
SCOTT McADAMS

Write-in

Write-in

BALLOT PROPOSITIONS

PARK AND RECREATION FUNDING
PROPOSITION NO. 1

Shall the laws of the City and Borough of Sitka be amended to raise the property tax limit from six mills to six and one-half mills to support Parks and Recreation?

YES NO

Informational: This will create a Parks and Recreation Dedicated Fund in the Sitka General Code and the Home Rule Charter to pay for construction, improvement, and major maintenance projects that allow for community recreation at municipal ball fields, playgrounds, trails, picnic shelters, parks, landscaped areas, and other recreational facilities. All revenues gained by this increase will be deposited into the Parks and Recreation Dedicated Fund. Ordinance 2005-32

PROPOSITION NO. 2

Shall the City and Borough of Sitka pass a law that would prohibit smoking in public places and places of employment?

1820 YES NO 1504

Informational: See Chapter 9.20 of proposed Ordinance 2005-29 for definitions, application, prohibitions, reasonable distance; where smoking is not regulated, posting, enforcement and violations. Ordinance 2005-29.

TURN BALLOT OVER TO CONTINUE VOTING

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2005-29

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING TITLE 9, HEALTH AND SANITATION, OF THE SITKA GENERAL CODE TO CONTROL ENVIRONMENTAL TOBACCO SMOKE IN PUBLIC PLACES AND PLACES OF EMPLOYMENT, AND PROVIDING FOR A PENALTY

1. **CLASSIFICATION.** This ordinance, which shall be known as the Sitka Clean Indoor Air Law of 2005, is of a permanent nature and is intended to become part of the Sitka General Code.
2. **SEVERABILITY.** If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.
3. **FINDINGS AND PURPOSE.** The City and Borough of Sitka does hereby find that:
 - a. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 53,000 Americans annually. In Alaska, tobacco use claims 500 lives annually, with 120 lives lost to secondhand smoke.
 - b. The Public Health Service's National Toxicology Program has listed second handsmoke as a known carcinogen with no safe level of exposure.
 - c. Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.
 - d. The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.

- e. The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.
- f. The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.
- g. A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.
- h. Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.
- i. Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.
- j. Smoking is a cause of many fires. Additionally cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.

Based on these findings, the Assembly of the City and Borough of Sitka finds and declares that the purposes of this ordinance are:

- (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and
 - (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.
4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka, Alaska that a new Chapter 9.20, Smoking in Public Places and Places of Employment is added to the Sitka General Code, to read as follows:

Chapter 9.20

Smoking in Public Places and Places of Employment

Sections:

9.20.005	Definitions.
9.20.010	Application to City and Borough-owned facilities.
9.20.015	Prohibition of smoking in public places.
9.20.020	Prohibition of smoking in places of employment.
9.20.025	Reasonable distance.
9.20.030	Where smoking is not regulated.
9.20.035	Declaration of establishment as nonsmoking; prohibition of children in places of employment where smoking is permitted.
9.20.040	Posting of signs.
9.20.045	Non-retaliation.
9.20.050	Enforcement.
9.20.055	Violations and penalties.
9.20.060	Other applicable laws.
9.20.070	Popular name.

9.20.005 Definitions

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

1. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
2. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit.
3. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

4. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
5. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
6. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
7. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
8. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.
9. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
10. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

11. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
12. "Smoking" means inhaling, exhaling, burning, or carrying any lighted Tobacco product in any form, with the exemption of religious ceremonies.
13. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar enclosed places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

9.20.010 Application to City and Borough-owned facilities.

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City and Borough of Sitka shall be subject to the provisions of this Chapter.

9.20.015 Prohibition of smoking in public places.

Smoking shall be prohibited in all enclosed public places within the City and Borough of Sitka including but not limited to, the following places:

1. Aquariums, fish hatcheries, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, Laundromats, hotels, and motels.
3. Areas and/or buildings that host youth agencies.
4. Bingo facilities.
5. Convention facilities.
6. Elevators.
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
8. Health care facilities.

9. Licensed child care and adult day care facilities.
10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
11. Polling places.
12. Public transportation facilities, including buses and taxicabs, under the authority of the City and Borough of Sitka and ticket, boarding, and waiting areas of public transit depots.
13. Restaurants.
14. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
15. Retail stores.
16. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City and Borough of Sitka or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City and Borough of Sitka.
17. Service lines.
18. Shopping malls.
19. Sports arenas, including enclosed places in outdoor arenas.
20. Vessels inspected by the U.S. Coast Guard which are day boats with no overnight accommodations and are larger in capacity than a "six-pack" but have a capacity of less than 150 passengers.

9.20.020 Prohibition of smoking in places of employment.

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this chapter and to all prospective employees upon their application for employment.

9.20.025 Reasonable distance.

Smoking shall be prohibited near entrances, windows and ventilation systems of all work sites of public places where smoking is prohibited by this regulation. Any individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this regulation shall establish a no smoking area which extends a reasonable distance from any entrance, windows and ventilation systems to any enclosed area where smoking is prohibited; such reasonable distance shall be a distance sufficient to insure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and to insure that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means. All smoking trash receptacles shall be placed outside the no smoking area in order to discourage smoking within the established boundaries.

9.20.030 Where smoking is not regulated.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of sections 9.20.015 and 9.20.020:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility.
2. Private vehicles.
3. Marine vessels, except vessels inspected by the U.S. Coast Guard which are day boats with no overnight accommodations and are larger in capacity than a "six-pack" but have a capacity of less than 150 passengers.
4. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20) of rooms rented to guests in a hotel or motel may be so designated.
5. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.
6. Outdoor areas of places of employment except those covered by the provisions of section 9.20.025.

7. Any bar, defined as an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, as long as such bar is in a "stand-alone building" and the bar shares no common entries, exits, or internal doors with any public places subject to Sections 9.20.015 and 9.20.020.
8. Private clubs, including but not limited to the Elks, Moose, and American Legion, as long as each such private club is in a "stand-alone building" and the private club shares no common entries, exits, or internal doors with any public places subject to Sections 9.20.015 and 9.20.020.

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 18 shall not be permitted in any place of employment where smoking is allowed.

9.20.040. Posting of signs.

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter by the owner, operator, manager, or other person in control of that place.
- B. Every public place and place of employment where smoking is prohibited by this Chapter shall have posted at every exterior entrance a conspicuous sign clearly stating that smoking is prohibited.

9.20.045 Non-retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

9.20.050 Enforcement

- A. This chapter shall be enforced by the Sitka Police Department or by other officials so authorized by the City and Borough Administrator.
- B. Notice of the provisions of this chapter shall be given to all applicants for a business license in the City and Borough of Sitka.
- C. Any citizen who desires to register a complaint under this chapter may request/solicit enforcement from/with the Sitka Police Department.
- D. The Public Works Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.
- E. An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.
- G. In addition to the remedies provided by the provisions of this section, the City and Borough Administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

9.20.055 Violations and penalties.

- A. A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who willfully fails to comply with the provisions of this chapter shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$ 100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.

