



CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS
330 Harbor Drive
Sitka, AK
(907)747-1811

Meeting Agenda

City and Borough Assembly

*Mayor Matthew Hunter
Deputy Mayor Steven Eisenbeisz,
Vice Deputy Mayor Bob Potrzuski,
Aaron Bean, Kevin Knox, Dr. Richard Wein,
Benjamin Miyasato*

*Municipal Administrator: Keith Brady
Municipal Attorney: Brian Hanson
Municipal Clerk: Sara Peterson*

Tuesday, July 31, 2018

6:00 PM

Assembly Chambers

SPECIAL MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

IV. CORRESPONDENCE/AGENDA CHANGES

V. PERSONS TO BE HEARD

Public participation on any item off the agenda. All public testimony is not to exceed 3 minutes for any individual, unless the mayor imposes other time constraints at the beginning of the agenda item.

VI. NEW BUSINESS:

- A** [ORD 18-36](#) Adding a ballot question on the next municipal regular election to be held on October 2, 2018, on whether to exempt the municipality from the provisions of AS 18.35.301 - 18.35.350, an act prohibiting smoking in certain places (effective October 1, 2018), and, if exempted, Sitka General Code, Chapter 9.20 "Smoking in Public Places and Places of Employment", would continue to be the law for the municipality as to banning smoking in certain public places (1st reading)

Attachments: [Motion Ord 2018-36.pdf](#)

[BALLOT PROP Ord 2018-36 smoking exemption.pdf](#)

[Ord 2005-29.pdf](#)

[Senate Bill 63.pdf](#)

VII. PERSONS TO BE HEARD:

Public participation on any item on or off the agenda. Not to exceed 3 minutes for any individual.

VIII. EXECUTIVE SESSION

None anticipated.

IX. ADJOURNMENT

Note: Detailed information on these agenda items can be found on the City website at <https://sitka.legistar.com/Calendar.aspx> or by contacting the Municipal Clerk's Office at City Hall, 100 Lincoln Street or 747-1811. A hard copy of the Assembly packet is available at the Sitka Public Library. Assembly meetings are aired live on KCAW FM 104.7 and via video streaming from the City's website. To receive Assembly agenda notifications, sign up with GovDelivery on the City website.

Sara Peterson, MMC, Municipal Clerk

Publish: July 27



CITY AND BOROUGH OF SITKA

Legislation Details

File #:	ORD 18-36	Version:	1	Name:	
Type:	Ordinance	Status:		AGENDA READY	
File created:	7/26/2018	In control:		City and Borough Assembly	
On agenda:	7/31/2018	Final action:			
Title:	Adding a ballot question on the next municipal regular election to be held on October 2, 2018, on whether to exempt the municipality from the provisions of AS 18.35.301 - 18.35.350, an act prohibiting smoking in certain places (effective October 1, 2018), and, if exempted, Sitka General Code, Chapter 9.20 "Smoking in Public Places and Places of Employment", would continue to be the law for the municipality as to banning smoking in certain public places (1st reading)				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Motion Ord 2018-36.pdf BALLOT PROP Ord 2018-36 smoking exemption.pdf Ord 2005-29.pdf Senate Bill 63.pdf				

Date	Ver.	Action By	Action	Result
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Sponsors: Wein / Bean

POSSIBLE MOTION

I MOVE TO approve Ordinance 2018-36
on first reading.

Notes:

- The deadline to have ballot measures placed on the October 2 ballot is Saturday, August 18.
- If amendments are made to this ordinance on first reading, two additional meeting are required prior to August 18. The Charter requires at least 7 days in between meetings for notification.
- If approved on first reading, the ordinance will be scheduled for second reading at the regular meeting of August 14.

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2018-36

BALLOT PROPOSITION OCTOBER 2018

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA ADDING A BALLOT QUESTION ON THE NEXT MUNICIPAL REGULAR ELECTION TO BE HELD ON OCTOBER 2, 2018, ON WHETHER TO EXEMPT THE MUNICIPALITY FROM THE PROVISIONS OF AS 18.35.301 – 18.35.350, AN ACT PROHIBITING SMOKING IN CERTAIN PLACES (EFFECTIVE OCTOBER 1, 2018), AND, IF EXEMPTED, SITKA GENERAL CODE, CHAPTER 9.20 “SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT”, WOULD CONTINUE TO BE THE LAW FOR THE MUNICIPALITY AS TO BANNING SMOKING IN CERTAIN PUBLIC PLACES

1. CLASSIFICATION. This ordinance is not of a permanent nature and is not intended to become 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 circumstance shall not be affected.

3. PURPOSE. The State of Alaska Legislature adopted new statutory provisions, effective October 1, 2018, at AS 18.35.301 – 18.35.350, containing comprehensive provisions which prohibit smoking in certain places, relate to education on the smoking prohibition, relate to municipal regulation of smoking in certain places, relate to established villages and local option elections to allow smoking in public places, and provides for an effective date of October 1, 2018. This new law would supersede existing municipal law in Sitka General Code, Chapter 9.20, known as the “Sitka Clean Indoor Air Law of 2005”, thereby eliminating many areas where smoking is currently not regulated, e.g., bars and private clubs. The new law also expands the areas outside where smoking is prohibited. In particular, the new law would prohibit smoking in the bars and private clubs in the municipality that have chosen not to declare their establishments as nonsmoking under existing municipal law, i.e., Ernie’s Bar, Pioneer Bar, Moose and American Legion. The new law imposes an unreasonable restriction on personal behavior and causes an unreasonable negative financial impact on establishments that, under the existing law, have chosen to remain exempt from the smoking prohibition. The exemption from the new law intends to keep the status quo. The declared purposes of the existing law under Ordinance No. 2005-29 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. Those purposes continue to be satisfied by keeping the status quo.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka as follows:

Section 1. The City and Borough of Sitka shall be exempted from the provisions of AS 18.35.301 – 18.35.350, effective October 1, 2018, relating to smoking in certain public places, if the exemption is approved by the voters of the City and Borough of Sitka.

Section 2. The exemption created by Section 1 of this ordinance shall apply during such times as the City and Borough of Sitka has in effect an ordinance banning smoking in certain places enacted under former AS 18.35.300 – 18.35.365 as those statutes provided prior to October 1, 2018, which it currently does under Sitka General Code, Chapter 9.20.

Section 3. An election is to be held on Tuesday, October 2, 2018, in the City and Borough of Sitka, and the following proposition shall be submitted to the qualified voters of the City and Borough of Sitka for approval or rejection. A majority of those electors qualified and voting in favor of the proposition shall be required for approval.

Proposition No. ____

Shall the City and Borough of Sitka, Alaska, exempt itself from the provisions of AS 18.35.301 – 18.35.350, relating to smoking in certain public places?

☐ YES

☐ NO

Informational: An affirmative vote of this ballot proposition would exempt the City and Borough of Sitka from the provisions of AS 18.35.301 – 18.35.350, relating to smoking in certain public places. In that case, Sitka General Code, Chapter 9.20, entitled “Smoking in Public Places and Places of Public Employment”, would remain in effect. Under Chapter 9.20, smoking is prohibited or regulated in certain public places. However, under Chapter 9.20, smoking is not prohibited or regulated in “bars” and “private clubs”, except if declared by the establishment as “nonsmoking.” If the question is rejected, the new law, AS 18.35.301 – 18.35.350, would prohibit smoking in certain enclosed public places, including “bars” and “private clubs”.

6. EFFECTIVE DATE. This ordinance shall become effective on the day after certification of the next regular municipal election of October 2, 2018, provided a majority of voters vote in favor of the proposition.

Matthew Hunter, Mayor

ATTEST:

Sara Peterson, MMC
Municipal Clerk

1st reading 7/31/18
2nd reading

Sponsors: Wein / Bean

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.

3. A fine not exceeding three hundred dollars (\$300) for each additional violation within one (1) year.

C. 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.

9.20.070 Popular name.

This law shall be known as the Sitka Clean Indoor Air of 2005.

5. The ballot measure shall read as follows:

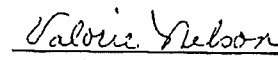
Shall the City and Borough of Sitka pass a law that would prohibit smoking in public places and places of employment?

Yes ☐ No ☐

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.

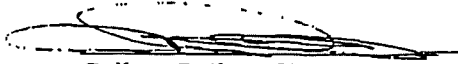
6. **EFFECTIVE DATE.** This ordinance shall become effective forty-five (45) days from the date of October 4, 2005 if a majority of voters voting on this ordinance approve it.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 12th day of July, 2005.


Valorie Nelson, Deputy Mayor

ATTEST:

Note: This ordinance received a majority vote with the following results.


Colleen Pellett, CMC
Municipal Clerk

Proposition No. 2

YES	1820
NO	1504



LAWS OF ALASKA

2018

Source

HCS CSSB 63(RLS) am H

Chapter No.

AN ACT

Prohibiting smoking in certain places; relating to education on the smoking prohibition; relating to municipal regulation of smoking in certain places; relating to established villages and local option elections to allow smoking in public places; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Prohibiting smoking in certain places; relating to education on the smoking prohibition;
2 relating to municipal regulation of smoking in certain places; relating to established villages
3 and local option elections to allow smoking in public places; and providing for an effective
4 date.

5 _____
6 * **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
7 to read:

8 LEGISLATIVE INTENT. It is the intent of the legislature that nothing in this Act is
9 intended to alter applicable law relating to liability of a manufacturer, dispenser, or other
10 person for a cause of action that may arise from smoking tobacco, e-cigarettes, or other oral
11 smoking devices in an enclosed area or to otherwise limit the state immunity from liability
12 provided for in state law. In this section, "e-cigarette," "enclosed area," and "smoking" have
13 the meanings given to those terms in AS 18.35.399.

14 * **Sec. 2.** AS 18.35 is amended by adding new sections to read:

1 **Article 4. Prohibition of Smoking in Certain Places.**

2 **Sec. 18.35.301. Prohibition of smoking.** (a) An individual may not smoke in
3 an enclosed area in a public place, including an enclosed area

4 (1) at an entertainment venue or a sports arena;

5 (2) on a bus, in a taxicab, on a ferry, or in another vehicle used for
6 public transportation;

7 (3) at a public transit depot, bus shelter, airport terminal, or other
8 public transportation facility;

9 (4) at a retail store or shopping center;

10 (5) at a place of government or public assembly located on property
11 that is owned or operated by the state, a municipality, or a regional educational
12 attendance area, or by an agent of the state, a municipality, or a regional educational
13 attendance area.

14 (b) An individual may not smoke in an enclosed area

15 (1) in an office building, office, hotel, motel, restaurant, bar, retail
16 store, or shopping center;

17 (2) in a common area in an apartment building or multiple-family
18 dwelling;

19 (3) in a place of employment, including a vehicle;

20 (4) at a public or private educational facility;

21 (5) at a health care facility, including residential units in the health care
22 facility;

23 (6) in a building or residence that is used to provide paid child care,
24 whether or not children are present in the building or residence, or care for adults on a
25 fee-for-service basis; however, nothing in this paragraph is intended to prohibit an
26 individual from smoking in a private residence that is in a building where another
27 residence provides paid child care or care for adults;

28 (7) on a vessel operating as a shore-based fisheries business under
29 AS 43.75.

30 (c) An individual may not smoke outdoors

31 (1) within 10 feet of playground equipment located at a public or

1 private school or a state or municipal park while children are present;
2 (2) in a seating area for an outdoor arena, stadium, or amphitheater;
3 (3) at a place of employment or health care facility that has declared
4 the entire campus or outside grounds or property to be smoke-free;
5 (4) within
6 (A) 10 feet of an entrance to a bar or restaurant that serves
7 alcoholic beverages;
8 (B) 20 feet of an entrance, open window, or heating or
9 ventilation system air intake vent at an enclosed area at a place where smoking
10 is prohibited under this section; or
11 (C) a reasonable distance, as determined by the owner or
12 operator, of an entrance, open window, or heating or ventilation system air
13 intake vent of
14 (i) a vessel covered by this section; or
15 (ii) a long term care facility as defined in AS 47.62.090.
16 (d) Notwithstanding (a) and (b) of this section, unless the owner or operator
17 prohibits it, an individual may smoke at a retail tobacco or e-cigarette store that
18 (1) is in a building that
19 (A) is freestanding; or
20 (B) if it is attached to another business or building,
21 (i) has a separate entrance;
22 (ii) is separated from the other business or building in a
23 manner that does not allow e-cigarette vapor or aerosol to travel into
24 the other business or building;
25 (iii) the other business or building does not serve as a
26 residence, child care facility, facility providing care for adults on a fee-
27 for-service basis, school, or health care facility; and
28 (iv) smoking is limited to the use of an e-cigarette;
29 (2) is not
30 (A) a business that is licensed under AS 04.11 to serve
31 alcoholic beverages at an outdoor location;

1 (B) a business that is licensed under AS 05.15 to sell pull-tabs;

2 or

3 (C) a retail store that is within an indoor public place or
4 workplace.

5 (e) Notwithstanding (a) and (b) of this section, smoking may be permitted in a
6 separate enclosed smoking area located in a terminal for international passengers who
7 are in transit in a state-owned and state-operated international airport and who are
8 restricted by federal law from leaving the airport, if the smoking area is vented directly
9 to an outdoor area that is not an area where smoking is prohibited under (c) of this
10 section.

11 (f) Notwithstanding (b) of this section, unless the owner or operator prohibits
12 it, an individual may smoke

13 (1) in a vehicle that is a place of employment when the vehicle is used
14 exclusively by one person;

15 (2) on a vessel when the vessel is engaged in commercial fishing or
16 sport charter fishing.

17 (g) Notwithstanding (a) and (b) of this section, an individual may smoke at

18 (1) a private club if the private club

19 (A) has been in continuous operation at the same location since
20 January 1, 2017;

21 (B) is not licensed to serve alcoholic beverages; and

22 (C) is not a place of employment;

23 (2) an e-cigarette store if the e-cigarette store has been in continuous
24 operation at the same location since January 1, 2017.

25 (h) Nothing in this section prohibits an individual from smoking

26 (1) at a private residence, except a private residence described in (b) of
27 this section or while a health care provider is present;

28 (2) in a stand-alone shelter if the stand-alone shelter meets the
29 following requirements:

30 (A) food or drink may not be sold or served in the stand-alone
31 shelter; and

1 (B) the stand-alone shelter meets the minimum distance
2 requirements of (c) of this section; or

3 (3) in an establishment licensed under AS 17.38 that is freestanding if
4 the smoking is in accordance with regulations adopted by the Marijuana Control
5 Board created under AS 17.38.080.

6 (i) In this section,

7 (1) "freestanding" means a building that is not supported by another
8 structure and does not share ventilation or internal air space with an adjoining
9 structure and smoke from the building cannot travel into the adjoining structure;

10 (2) "health care provider" has the meaning given in AS 09.65.300;

11 (3) "private club" means an organization, legal entity, or informal
12 association of persons that

13 (A) is the owner, lessee, or occupant of a building or portion of
14 a building used exclusively for club purposes at all times;

15 (B) is operated solely for a recreational, fraternal, social,
16 patriotic, political, benevolent, or athletic purpose; and

17 (C) has been granted exemption from the payment of federal
18 income tax as a club under 26 U.S.C. 501;

19 (4) "retail tobacco or e-cigarette store"

20 (A) means a store

21 (i) that primarily sells cigarettes, e-cigarettes, cigars,
22 tobacco and products containing tobacco, and pipes and other smoking
23 or e-cigarette accessories;

24 (ii) in which the sale of other products is incidental; and

25 (iii) that derives at least 90 percent of its gross revenue
26 from the sale of cigarettes, e-cigarettes, cigars, tobacco and products
27 containing tobacco, and pipes and other smoking or e-cigarette
28 accessories;

29 (B) does not include

30 (i) a tobacco or e-cigarette department or section of a
31 business that does not meet the criteria in (A) of this paragraph; or

(ii) a business that is also a restaurant or grocery store.

Sec. 18.35.306. Notice of prohibition. (a) A person who is in charge of a place or vehicle where smoking is prohibited under AS 18.35.301 shall conspicuously display in the place or vehicle a sign that

(1) reads "Smoking Prohibited by Law--Fine \$50";

(2) includes the international symbol for no smoking; or

(3) includes the words "No Puffin" with a pictorial representation of a puffin holding a burning cigarette enclosed in a red circle crossed with a red bar.

(b) A person in charge of a building at which smoking is prohibited within a specific distance from the entrance of the building under AS 18.35.301(c)(4) shall conspicuously display a sign that reads "Smoking within (number of feet) Feet of Entrance Prohibited by Law--Fine \$50" visible from the outside of each entrance to the building.

(c) The department shall furnish signs required under this section to a person who requests them with the intention of displaying them.

Sec. 18.35.311. Duty of employers and building managers. (a) An employer may not permit an employee, customer, or other person to smoke inside an enclosed area at a place of employment.

(b) The owner, operator, manager, or other person who manages a building or other place where smoking is prohibited under AS 18.35.301 may not provide ashtrays or other smoking accessories for use in that building or place.

(c) An employer may not require an employee, customer, or other person to enter a stand-alone shelter as defined in AS 18.35.301(h) for a purpose other than smoking.

Sec. 18.35.316. Powers and duties of the commissioner. (a) The commissioner

(1) shall administer and enforce the requirements of AS 18.35.301 - 18.35.399;

(2) may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to carry out the duties under this section.

(b) In addition to other powers granted the commissioner under AS 18.35.301

1 - 18.35.399, the commissioner may delegate to another agency the authority to
2 implement and enforce one or more provisions of AS 18.35.301 - 18.35.399.

3 **Sec. 18.35.321. Public education.** (a) The commissioner shall ensure that
4 employers, property owners, property operators, and other members of the public are
5 provided ongoing access to

6 (1) a program of education regarding the requirements in AS 18.35.301
7 - 18.35.399;

8 (2) an electronically published printable brochure that summarizes the
9 requirements in AS 18.35.301 - 18.35.399.

10 (b) The program of education under (a) of this section may be provided in
11 combination with the comprehensive smoking education, tobacco use prevention, and
12 tobacco control program established in AS 44.29.020(a)(14).

13 **Sec. 18.35.326. Nonretaliation.** (a) An employer may not discharge or in any
14 other manner retaliate against an employee because the employee cooperates with or
15 initiates enforcement of a requirement in AS 18.35.301 - 18.35.399.

16 (b) The owner or operator of a vehicle or other place that is subject to a
17 requirement in AS 18.35.301 - 18.35.399 may not retaliate against a customer or other
18 member of the public for cooperating with or initiating enforcement of a requirement
19 in AS 18.35.301 - 18.35.399.

20 **Sec. 18.35.331. Conflicts with local requirements.** Nothing in AS 18.35.301
21 - 18.35.399 prohibits a municipality from adopting an ordinance imposing additional

22 (1) limitations on smoking;

23 (2) duties on employers, owners, operators, and other persons who are
24 subject to the requirements of AS 18.35.306 or 18.35.311 related to smoking; or

25 (3) limitations on smoking in an outdoor area at a municipal park
26 designated as a children's playground.

27 * **Sec. 3.** AS 18.35.340(a) is amended to read:

28 (a) The commissioner shall develop and maintain a procedure for processing
29 reports of violations of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326
30 [AS 18.35.300, 18.35.305, AND 18.35.330].

31 * **Sec. 4.** AS 18.35.340(b) is amended to read:

(b) If, after investigating a report made under this section, the commissioner determines that a violation has occurred, (1) the commissioner may file a civil complaint in the district court to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 - 18.35.365]; or (2) an employee of the department designated by the commissioner to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 - 18.35.365] may issue a citation under AS 18.35.341(b). If an employee of the department issues a citation, the violation shall be processed and disposed of under AS 18.35.341.

* **Sec. 5.** AS 18.35.340(c) is amended to read:

(c) A person who violates AS 18.35.301 [AS 18.35.300 OR 18.35.305] and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of [NOT LESS THAN \$10 NOR MORE THAN] \$50. A person who violates AS 18.35.306 or 18.35.311 [AS 18.35.330] and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of not less than \$50 [\$20] nor more than \$300. Each day a violation of AS 18.35.306 or 18.35.311 [AS 18.35.330] continues after a civil complaint for the violation has been filed and served on the defendant constitutes a separate violation. A person who violates AS 18.35.326 and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of not more than \$500.

* **Sec. 6.** AS 18.35.341(a) is amended to read:

(a) A peace officer may issue a citation for a violation of AS 18.35.301, 18.35.311, or 18.35.326 [AS 18.35.300 OR 18.35.305] committed in the officer's presence or for a violation of AS 18.35.306 [AS 18.35.330]. The provisions of AS 12.25.175 - 12.25.230 apply to the issuance of a citation under this subsection.

* **Sec. 7.** AS 18.35.341(b) is amended to read:

(b) An employee of the department designated by the commissioner to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 - 18.35.365] may issue a citation for a violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326 [AS 18.35.300, 18.35.305, OR 18.35.330] regardless of whether the violation was committed in the employee's presence. A citation issued under this subsection shall be

1 in the same form and shall be processed in the same manner as a citation issued by a
2 peace officer under (a) of this section. An employee of the department may not arrest a
3 person for a violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
4 [AS 18.35.300, 18.35.305, OR 18.35.330].

5 * **Sec. 8.** AS 18.35.341(c) is amended to read:

6 (c) A person who violates AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
7 [AS 18.35.300, 18.35.305, OR 18.35.330] is guilty of a violation as defined in
8 AS 11.81.900(b) and upon conviction is punishable by a fine of [NOT LESS THAN
9 \$10 NOR MORE THAN] \$50 for a violation of AS 18.35.301, [AS 18.35.300 OR
10 18.35.305 AND] by a fine of not less than \$50 [\$20] nor more than \$300 for a
11 violation of AS 18.35.306 or 18.35.311, and by a fine of not more than \$500 for a
12 violation of AS 18.35.326 [AS 18.35.330]. Each day a violation of AS 18.35.306 or
13 18.35.311 [AS 18.35.330] continues after a citation for the violation has been issued
14 constitutes a separate violation.

15 * **Sec. 9.** AS 18.35.341(d) is amended to read:

16 (d) The supreme court shall establish a schedule of bail amounts for violations
17 of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326 [AS 18.35.300, 18.35.305,
18 AND 18.35.330], but in no event may the bail amount exceed the maximum fine that
19 may be imposed for the violation under (c) of this section. The bail amount for a
20 violation must appear on the citation.

21 * **Sec. 10.** AS 18.35.342 is amended to read:

22 **Sec. 18.35.342. Multiple fines prohibited.** A person may not be fined more
23 than once for each violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
24 [AS 18.35.300, 18.35.305, OR 18.35.330].

25 * **Sec. 11.** AS 18.35.343 is amended to read:

26 **Sec. 18.35.343. Injunctions.** The commissioner or any affected party may
27 institute an action in the superior court to enjoin repeated violations of AS 18.35.301,
28 18.35.306, 18.35.311, or 18.35.326 [AS 18.35.300, 18.35.305, or 18.35.330].

29 * **Sec. 12.** AS 18.35.350 is amended to read:

30 **Sec. 18.35.350. Enforcement authority.** The commissioner or the
31 commissioner's designee is responsible for enforcing the provisions of AS 18.35.301 -

1 **18.35.399** [AS 18.35.300 - 18.35.365]. This section does not limit the authority of
2 peace officers.

3 * **Sec. 13.** AS 18.35 is amended by adding new sections to read:

4 **Sec. 18.35.357. Municipal regulation.** A municipality may, by ordinance
5 ratified by voters in a regular municipal election, exempt the municipality from the
6 provisions of AS 18.35.301 - 18.35.350. Unless the municipality has adopted an
7 ordinance banning smoking in certain public places, if a municipality exempts itself
8 from the provisions of AS 18.35.301 - 18.35.350, former AS 18.35.300 - 18.35.365
9 apply in the municipality as those statutes provided on September 30, 2018.

10 **Sec. 18.35.359. Local option election by an established village.** (a) If a
11 majority of the voters voting on the question vote to approve the option, AS 18.35.301
12 - 18.35.350 do not apply within the boundaries of the established village and former
13 AS 18.35.300 - 18.35.365 apply in the village as those statutes provided on
14 September 30, 2018.

15 (b) A ballot question to adopt a local option under this section must at least
16 contain language substantially similar to the following: "Shall (name of village) adopt
17 a local option not to comply with AS 18.35.301 - 18.35.350, relating to smoking in
18 certain public places? (yes or no)."

19 (c) If a majority of the voters voting on the question vote to remove the option,
20 an established village shall remove a local option previously adopted under (a) of this
21 section. The option is repealed effective the first day of the month following
22 certification of the results of the election.

23 (d) A ballot question to remove a local option under (c) of this section must at
24 least contain language substantially similar to the following: "Shall (name of village)
25 remove the local option currently in effect, that permits smoking in certain public
26 places, so that there is no longer any local option in effect? (yes or no)."

27 (e) An election to adopt a local option under (a) of this section or remove a
28 local option under (c) of this section shall be conducted as required in this section.

29 (f) Upon receiving a petition of 35 percent or more of the registered voters
30 residing within an established village, the lieutenant governor shall place on a separate
31 ballot at a special election the local option or removal of a local option that constitutes

1 the subject of the petition. The lieutenant governor shall conduct the election under
2 AS 15.

3 (g) An election under (f) of this section to remove a local option may not be
4 conducted during the first 24 months after the local option was adopted or more than
5 once in a 36-month period.

6 (h) After a petition has been certified as sufficient to meet the requirements of
7 (f) of this section, another petition may not be filed or certified until after the question
8 presented in the first petition has been voted on.

9 (i) Except as provided under (j) and (k) of this section, for purposes of this
10 section, the perimeter of an established village is a circle around the established
11 village that includes an area within a five-mile radius of the post office of the
12 established village. If the established village does not have a post office, the perimeter
13 of an established village is a circle around the established village that includes an area
14 within a five-mile radius of another site selected by the local governing body or by the
15 department if the established village does not have a local governing body.

16 (j) If the perimeter of an established village determined under (i) of this
17 section includes an area that is within the perimeter of another established village, and
18 the other established village has not adopted a local option under (a) of this section,
19 the local option does not apply in the overlapping area.

20 (k) If the department determines that the perimeter of an established village
21 determined under (i) of this section does not accurately reflect the perimeter of the
22 established village, the department may establish the perimeter of the established
23 village and the overlapping areas described under (j) of this section for purposes of
24 applying a local option selected under this section.

25 (l) If a majority of the voters vote to adopt a local option under (a) of this
26 section or remove a local option under (c) of this section, the lieutenant governor shall
27 notify the department of the results of the election immediately after the results are
28 certified. The department shall immediately notify the Department of Law and the
29 Department of Public Safety of the results of the election.

30 * **Sec. 14.** AS 18.35 is amended by adding a new section to read:

31 **Sec. 18.35.399. Definitions.** In AS 18.35.301 - 18.35.399,

1 (1) "business" means a for-profit or nonprofit sole proprietorship,
2 partnership, joint venture, corporation, professional corporation, private club, retail
3 seller of goods or services, or other business entity;

4 (2) "commissioner" means the commissioner of health and social
5 services or the commissioner's designee;

6 (3) "department" means the Department of Health and Social Services;

7 (4) "e-cigarette" means any product containing or delivering nicotine
8 or any other substance intended for human consumption that can be used by a person
9 through inhalation of vapor or aerosol from the product, of any size or shape, whether
10 the product is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-
11 pipe, e-hookah, vape pen, or any other product name or descriptor; "e-cigarette" does
12 not include drugs, devices, or combination products authorized for sale by the United
13 States Food and Drug Administration as those terms are defined in 21 U.S.C. 301 -
14 392 (Food, Drug, and Cosmetic Act), unless the use of those products simulate
15 smoking or expose others to vapor or aerosol;

16 (5) "employee" means a person who is employed by a business for
17 compensation or works for a business as a volunteer without compensation;

18 (6) "employer" means the state, a municipality, a regional educational
19 attendance area, and a person or a business with one or more employees;

20 (7) "enclosed area" means space between a floor and a ceiling that is
21 bounded on two or more sides by a combination of walls, doorways, windows, or
22 other physical barriers that may be open, partially open, closed, retractable, temporary,
23 or permanent;

24 (8) "established village" means an area that does not contain any part
25 of an incorporated city or another established village, that is an unincorporated
26 community in the unorganized borough, and that has 25 or more permanent residents;

27 (9) "health care facility" means an office or institution providing care
28 or treatment for physical, mental, emotional, or other medical, dental, physiological, or
29 psychological diseases or conditions; private, municipal, or state hospital; independent
30 diagnostic testing facility; primary care outpatient facility; skilled nursing facility;
31 kidney disease treatment center, including freestanding hemodialysis units;

1 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
2 Alaska Veterans' Home administered by the department under AS 47.55; long-term
3 care facility; psychiatric hospital; residential psychiatric treatment center, as defined in
4 AS 18.07.111 or AS 47.32.900; and other facilities, places of employment, or offices
5 operated for use by doctors, nurses, surgeons, chiropractors, physical therapists,
6 physicians, psychiatrists, or dentists or other professional health care providers to
7 provide health care;

8 (10) "place of employment" means work areas, private offices, hotel
9 and motel rooms, employee lounges, restrooms, conference rooms, classrooms,
10 cafeterias, hallways, vehicles, and other employee work areas that are under the
11 control of an employer;

12 (11) "public place" includes

13 (A) an area to which the public is invited or into which the
14 public is admitted;

15 (B) a place where services, goods, or facilities are offered to
16 the public;

17 (12) "smoking" means using an e-cigarette or other oral smoking
18 device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette,
19 pipe, or tobacco or plant product intended for inhalation.

20 * **Sec. 15.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.355, and
21 18.35.365 are repealed.

22 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 **APPLICABILITY.** AS 18.35.301, 18.35.306, 18.35.311, 18.35.316, 18.35.321,
25 18.35.326, and 18.35.331, added by sec. 2 of this Act, AS 18.35.340(a) - (c), as amended by
26 secs. 3 - 5 of this Act, AS 18.35.341(a) - (d), as amended by secs. 6 - 9 of this Act,
27 AS 18.35.342, as amended by sec. 10 of this Act, AS 18.35.343, as amended by sec. 11 of this
28 Act, AS 18.35.350, as amended by sec. 12 of this Act, and AS 18.35.399, added by sec. 14 of
29 this Act, apply to violations or failures to comply that occur on or after the effective date of
30 secs. 2 - 12 and 14 of this Act.

31 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: REGULATIONS. The Department of Health and Social Services may
3 adopt regulations necessary to implement AS 18.35.301, 18.35.306, 18.35.311, 18.35.316,
4 18.35.321, 18.35.326, and 18.35.331, added by sec. 2 of this Act, AS 18.35.340(a) - (c), as
5 amended by secs. 3 - 5 of this Act, AS 18.35.341(a) - (d), as amended by secs. 6 - 9 of this
6 Act, AS 18.35.342, as amended by sec. 10 of this Act, AS 18.35.343, as amended by sec. 11
7 of this Act, AS 18.35.350, as amended by sec. 12 of this Act, AS 18.35.357 and 18.35.359,
8 added by sec. 13 of this Act, and AS 18.35.399, added by sec. 14 of this Act. The regulations
9 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date
10 of the section being implemented.

11 * **Sec. 18.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

12 * **Sec. 19.** Except as provided in sec. 18 of this Act, this Act takes effect October 1, 2018.