

Sec A 17
Submitted by: Assemblymembers Tesche, Abney,
Taylor, Tremaine, Von Gemmingen

For reading: May 16, 2000

ANCHORAGE, ALASKA
AO NO. 2000- 91

**AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING TITLE 16 OF THE
ANCHORAGE MUNICIPAL CODE TO ADD A NEW CHAPTER 16.65 TO PROVIDE FOR THE
CONTROL AND ELIMINATION OF SMOKING IN WORK PLACES AND ENCLOSED PUBLIC
PLACES**

WHEREAS, numerous studies have found that tobacco is a major contributor to indoor air pollution, and that breathing second-hand smoke is a cause of disease, including lung cancer, in non-smokers; and

WHEREAS, at special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, health hazards induced by breathing second-hand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and broncho-spasm; and

WHEREAS, the Anchorage Assembly finds and declares that the prohibition of smoking in work places and enclosed public places is necessary to protect the right of all citizens, regardless of physical condition or susceptibility to health problems caused by second-hand smoke, to equality of employment opportunity as guaranteed by Section 7 of the Bill of Rights of the Anchorage Municipal Charter, Article II; and

WHEREAS, accordingly, the Anchorage Assembly finds and declares that it is in the public interest to protect the public health and welfare by prohibiting smoking in public places and places of employment.

NOW, THEREFORE, THE ANCHORAGE ASSEMBLY ORDAINS

Section 1: Based upon the foregoing findings and statements of purpose, Title 16 of the Anchorage Municipal Code is amended by enactment of a new Chapter 16.65, to read:

Chapter 16.65

16.65.005 Definitions

In this Chapter

"Bar" means a premise licensed under AS 04.11.090 which is not also designated or licensed as a restaurant or eating place and where tobacco smoke cannot filter into any other area where smoking is prohibited through a passageway, ventilation system, or other means.

2
3 *"Business"* means any sole proprietorship, partnership, joint venture, corporation or other
4 business entity formed for profit-making purposes, including retail establishments where goods or
5 services are sold as well as professional corporations and other entities where legal, medical,
6 dental, engineering, architectural or other professional services are delivered.
7

8 *"Employee"* means any person who is employed by any employer in the consideration for
9 direct or indirect monetary wages or profit, and any person who volunteers his or her services for
10 a nonprofit entity.
11

12 *"Employer"* means any person, partnership, corporation, including a municipal corporation,
13 or nonprofit entity, who employs the services of one or more individual persons.
14

15 *"Enclosed Area"* means all space between a floor and ceiling which is enclosed on all sides
16 by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the
17 ceiling, including all space therein screened by partitions which do not extend to the ceiling or are
18 not solid, "office landscaping" or similar structures.
19

20 *"Place of Employment"* means any enclosed area under the control of a public or private
21 employer which employees normally frequent during the course of employment, including, but not
22 limited to, work areas, employee lounges and restrooms, conference and classrooms, employee
23 cafeterias and hallways. A private residence is not a *"place of employment"* unless it is used as a
24 child care, adult care or health care facility.
25

26 *"Public Place"* means any enclosed area to which the public is invited or in which the public
27 is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats,
28 public transportation facilities, reception areas, restaurants, retail food production and marketing
29 establishments, retail service establishments, retail stores, theaters and waiting rooms. A private
30 residence is not a *"public place."*
31

32 *"Restaurant"* means any coffee shop, cafeteria, sandwich stand, private and public school
33 cafeteria, and any other eating establishment which gives or offers for sale food to the public,
34 guests, or employees, as well as kitchens in which food is prepared on the premises for serving
35 elsewhere, including catering facilities.
36

37 *"Retail Tobacco Store"* means a retail store utilized primarily for the sale of tobacco products
38 and accessories and in which the sale of other products is merely incidental.
39

40 *"Service Line"* means any indoor line at which one (1) or more persons are waiting for or
41 receiving service of any kind, whether or not service involves the exchange of money.
42

43 *"Smoking"* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe,
44 weed, plant or other combustible substance in any manner or in any form.
45

46 *"Sports Arena"* means sports pavilions, gymnasiums, health spas, boxing arenas, swimming
47 pools, roller and ice rinks, bowling alleys and other similar places where members of the general
48 public assemble either to engage in physical exercise, participate in athletic competition, or witness
49 sports events.
50

16.65.010 Application of Chapter to Municipal Facilities

All enclosed facilities owned by the Municipality of Anchorage, including the Anchorage School District, shall be subject to this Chapter.

16.65.015 Prohibition of Smoking in Public Places

- A. Smoking is prohibited in all enclosed public places within the Municipality of Anchorage including, but not limited to, the following places:
- 1 Elevators
 - 2 Restrooms, lobbies, reception areas, hallways, and any other common-use areas.
 - 3 Buses, taxicabs, and other means of public transit under the authority of the Municipality of Anchorage, and ticket, boarding, and waiting areas of public transit depots.
 - 4 Service lines
 - 5 Retail stores
 - 6 All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to, attorneys' offices and other offices, banks, laundromats, hotels, and motels.
 - 7 Restaurants
 - 8 Public areas of aquariums, galleries, libraries and museums when open to the public.
 - 9 Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is a part of stage production.
 - 10 Sports arenas and convention halls, including bowling facilities
 - 11 Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the Municipality of Anchorage or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the Municipality of Anchorage.

12 Waiting rooms, hallways, wards, and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.

13 Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

14 Polling places.

15 Bingo games

B. Notwithstanding any other provision of this Chapter, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

16.65.020 Prohibition of Smoking in Places of Employment

A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications to discharge this responsibility.

B. Within 90 days of the effective date of this Chapter, each employer having an enclosed place of employment located within the Municipality of Anchorage shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place 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.

C. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

16.65.025 Reasonable Distance

To ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means, smoking may occur, when otherwise prohibited by the property owner, only at a reasonable distance outside any enclosed area within which smoking is prohibited.

16.65.030 **Where Smoking Not Regulated**

A. Notwithstanding any other provision of this Chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this Chapter:

1. Private residences, except during hours used as a child care, adult care or health care facility.
2. Twenty-five percent (25%) of hotel and motel rooms rented to guests.
3. Retail tobacco stores.
4. Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions.
5. Bars.

A. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

16.65.035 **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, sufficiently and conspicuously posted in every building or other area where smoking is prohibited by this Chapter, by the owner, operator, manager or other person having control of such building or other area.
- B. Every public place where smoking is prohibited by this Chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- B. 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 such area.

16.65.040 **Non-retaliation**

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this Chapter.

16.65.045 Violations and Penalties

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Chapter to fail to comply with any of its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Chapter.
- C. In addition to the penalties and remedies available under AMC 1.45.010 of this Code and as allowed under AMC 16.02.040, any person aggrieved by a violation or threatened violation of this Chapter may bring a civil action under AMC 1.45.010(B) to enjoin that violation and to obtain the relief described in that section.

16.65.050 Public Education

The Department of Health and Human Services shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Chapter.

16.65.055 Other Applicable Laws

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

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

Section 3: This ordinance shall be effective thirty (30) days from and after the date of its approval.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2000.

Chair

ATTEST:

Municipal Clerk