

Submitted by: ASSEMBLY MEMBERS STARR AND  
OSSIANDER

Prepared by: Assembly Counsel

For reading: April 17, 2012

*Failed 5/22/12*

**ANCHORAGE, ALASKA**

**AO NO. 2012-41**

**AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING  
ANCHORAGE MUNICIPAL CODE CHAPTER 16.65 TO ADD A NON-TRANSFERABLE  
LIMITED EXCEPTION FOR A PRIVATE CLUB LICENSED AS OF JULY 1, 2007 FOR THE  
SALE OF ALCOHOLIC BEVERAGES AND IN CURRENT OPERATION.**

---

THE ANCHORAGE ASSEMBLY ORDAINS:

**Section 1.** Anchorage Municipal Code section 16.65.030 is hereby amended to read as follows (*language indicating no amendment is included for context only*):

**16.65.030 Exceptions; areas where smoking is not prohibited.**

A. Smoking is not prohibited in the following places:

1. A maximum of 25 percent of hotel and motel sleeping rooms rented to guests designated as smoking rooms if the hotel or motel designates at least 75 percent of its guest rooms as permanently nonsmoking.
2. Private clubs that are not licensed for the sale of alcoholic beverages under state law and are not places of employment; however, if an enclosed area is being used for a purpose, event, or function to which the general public is invited, then smoking is prohibited.
3. The designated smoking area within a private club licensed for the sale of alcoholic beverages under state law as of July 1, 2007 and in continuous operation to present. The designated smoking area shall not be larger than the non-smoking area and shall be structurally separated from the non-smoking area and vented in a manner that does not allow recirculation of the air from the smoking area back into the non-smoking area. This exception is non-transferable.
4. Outdoor areas of places of employment except the outdoor areas identified under AMC 16.65.010.
- [4] 5. Private residences, except enclosed areas during the time child care is provided on a fee for service basis. Individuals providing day care on a fee for service basis shall not expose children to secondhand smoke.

B. Nothing in this chapter shall be construed or interpreted to provide any person a right to smoke on premises or property owned, leased or under the legal control of another.

(AO No. 2006-86(S), § 1, 7-1-07)

**Section 2.** This ordinance shall become effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Municipal Clerk



MUNICIPALITY OF ANCHORAGE  
ASSEMBLY MEMORANDUM  
NO. AM 247-2012

Meeting Date: April 17, 2012

1 From: ASSEMBLY MEMBER STARR  
2 Subject: AO 2012-41 — AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY  
3 AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 16.65 TO ADD A NON-  
4 TRANSFERABLE LIMITED EXCEPTION FOR A PRIVATE CLUB LICENSED AS OF  
5 JULY 1, 2007 FOR THE SALE OF ALCOHOLIC BEVERAGES AND IN CURRENT  
6 OPERATION.  
7

8 The present comprehensive Anchorage smoking ban was reviewed in public hearing before the  
9 Assembly between introduction on May 23, 2006 and passage on August 15, 2006. The effective date  
10 was delayed for nearly a year after passage, to July 7, 2007, as an accommodation to the restaurant,  
11 bar, and hospitality industries most affected by the change.  
12

13 There is a limited exception for hotels and motels to have a maximum of 25% of the sleeping rooms  
14 designated as smoking rooms. In the original ordinance, copy attached, there was an additional  
15 exemption for private clubs: Smoking was not prohibited in private clubs, including private clubs  
16 licensed for the sale of alcoholic beverages. This was amended during deliberation because of  
17 concerns that 1) the exemption would spawn a new generation of "smoking clubs"; and 2) given the bar  
18 and restaurant industry concerns that business would drop off in light of the smoking ban, maintaining a  
19 level playing field between private service clubs licensed to serve alcohol and commercial  
20 establishments was an important element. Given the long lead time of nearly 1 year between passage  
21 and the effective date (more than 13 months between introduction and the effective date), concerns  
22 were generated that every licensed establishment in town could seek private club status; others might  
23 form just to promote smoking; and the intent of the ban would be defeated. The exemption for  
24 ABC-licensed private clubs was removed. The time for accommodation was not ripe.  
25

26 We are now just shy of 5 years into a successful smoking ban. The bar and restaurant industry has not  
27 suffered economic disaster from the comprehensive smoking ban. Our private service clubs are less  
28 fortunate. There has been a disproportionate impact to member-driven service clubs, like the Fraternal  
29 Order of Eagles 4124.  
30

31 There are 21 private club licenses issued by the ABC Board now in use. To meet the Anchorage code  
32 and the ABC Board private club definition, the club must be recognized as not-for-profit under  
33 applicable IRS code. In addition under AS 4.11.110(b), an ABC club license ***"may only be issued to  
34 an organization if none of the income from the sale of alcoholic beverages is distributed to its  
35 members, directors, or officers. Soliciting of public patronage of the club premises except as  
36 approved by the board is a violation of this section."***  
37

38 This ordinance allows a very limited non-transferrable exemption for private clubs licensed by the  
39 ABC Board as of July 7, 2007, and still in operation. We know this cannot be more than 21 private  
40 clubs. We know these clubs assist our community. This ordinance allows the membership to decide  
41 the smoking policy for the club, and requires the non-smoking area to be on an equal par with the  
42 smoking area.  
43

44 Respectfully submitted: Bill Starr, Assembly Member, Section 2

*See AO 2006-86(S)*

Submitted by: Assemblymembers TRAINI, COFFEY,  
JENNINGS, SHAMBERG, STOUT, TESCHE  
Prepared by: Assembly Counsel  
For reading: May 23, 2006

**ANCHORAGE, ALASKA  
AO NO. 2006-86**

**AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY REPEALING AND  
REENACTING ANCHORAGE MUNICIPAL CODE CHAPTER 16.65, PROHIBITION  
OF SMOKING IN PUBLIC PLACES, TO EXTEND SECONDHAND SMOKE  
CONTROL.**

WHEREAS, by Anchorage Ordinance 2000-91(S), effective December 31, 2000,  
the Anchorage Assembly enacted AMC 16.65, prohibiting smoking in certain public  
places; and

WHEREAS, since passage of AMC 16.65 in 2000, the harmful effects of  
secondhand smoke have become more widely known, substantiated, and appreciated,  
calling for further preventive action;

THE ANCHORAGE ASSEMBLY ORDAINS:

**Section 1.** Anchorage Municipal Code Chapter 16.65, Smoking in Public Places, is  
hereby repealed and reenacted as follows, and as required under AMC § 1.05.050B,  
the existing text of AMC Chapter 16.65 is appended.

**16.65.001 Title and Purpose.**

A. This chapter shall be known as "The Secondhand Smoke Control  
Ordinance".

B. The purposes of this chapter are to:

1. Protect the public health, safety and general welfare by eliminating  
exposure to secondhand smoke in public places, places of employment,  
and places where child care is offered.

2. Acknowledge the need of nonsmokers, especially children, to  
breathe smoke-free air, recognizing the danger to public health which  
secondhand smoke causes.

3. Recognize that the need to breathe air free of the disease-causing  
toxins in secondhand smoke should have priority over the desire and

AM 365-2006/AIM 70-2006 /AM 457-2006

convenience of smoking in public places, places of employment and childcare.

4. Recognize the right and benefit to municipal residents and visitors to be free from unwelcome secondhand smoke in public places and places of employment.

#### **16.65.005 Definitions.**

In this Chapter:

*Business* means any natural person or legal entity (such as, without limitation, a business-for-profit corporation, nonprofit corporation, partnership, limited liability company or trust) that undertakes to provide goods or services to the public or to persons who are members of a private group that is eligible to obtain the goods or services, regardless of whether the business exists or is conducted for the purpose of making a profit.

*Employee* means any person who is employed by any business for compensation or works for a business as a volunteer without compensation.

*Enclosed area* means all interior space within a building or other facility between a floor and a ceiling that is enclosed on all sides by walls, windows, or doors extending from the floor to the ceiling.

*Place of employment* means any area, under the control of any employer, that employees may frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, classrooms, cafeterias, hallways, and vehicles.

*Private club* means an organization (whether a legal entity or an informal association of persons) that is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

*Public place* means any enclosed area to which the public is invited or into which the public is permitted, including but not limited to, educational facilities, entertainment, food and beverage service, offices, retail stores, and transportation facilities and vehicles accessible to the general public.

1        *Smoking* means inhaling, exhaling, burning or carrying any lighted tobacco  
2        product.

3  
4        *Sports arena* means any sports pavilion, gymnasium, health spa, boxing arena,  
5        swimming pool, roller and ice rink, bowling alley and other similar place where  
6        members of the general public assemble either to engage in physical activity,  
7        participate in athletic competition, or witness sports events.

8  
9        **16.65.010 Prohibition of smoking.**

10  
11        A.        Smoking is prohibited at the following places:

12  
13                1.        All enclosed public places within the Municipality of Anchorage,  
14                including, but not limited to, all businesses visited by the public,  
15                transportation facilities, waiting areas of public transit depots, buses,  
16                taxicabs, sports arenas, and other enclosed areas open to the public.

17  
18                2.        All enclosed areas that are places of employment.

19  
20                3.        All enclosed areas on properties owned or controlled by the  
21                Municipality of Anchorage, including the Anchorage School District, and  
22                including every room, chamber, place of meeting or public assembly under  
23                the control of any municipal board, council, commission, committee, or  
24                municipal authority.

25  
26                4.        All areas within 50 feet of each entrance to enclosed areas on  
27                properties owned or controlled by the Municipality of Anchorage including  
28                the Anchorage School District, and including every room, chamber, place  
29                of meeting or public assembly under the control of any municipal board,  
30                council, commission, committee, or municipal authority.

31  
32                5.        All areas within 50 feet of each entrance to a hospital or medical  
33                clinic.

34  
35                6.        All premises offering child care by person(s) other than the child's  
36                parent.

37  
38                7.        Outdoor seating areas of arenas, stadiums, and amphitheatres.

39  
40        B.        Smoking is prohibited on any property not listed in subsection A of this  
41        section, with or without enclosure, if the owner, operator, manager, or  
42        other person having control of the property chooses to prohibit smoking.

**16.65.020 Reasonable distance.**

To ensure that smoke does not enter any enclosed area where smoking is prohibited through entrances, windows, ventilation systems or any other means, smoking shall occur only at a reasonable distance outside any enclosed public place or place of employment where smoking is prohibited. Unless otherwise stated under this chapter, or increased by the owner, operator, manager, or other person having control of the property, the minimum reasonable distance is 20 feet.

**16.65.030 Exceptions; areas where smoking is not prohibited.**

**A. Smoking is not prohibited in the following places:**

1. A maximum of twenty-five percent of hotel and motel sleeping rooms rented to guests designated as smoking rooms if the hotel or motel designates at least 75% of its guest rooms as permanently nonsmoking.
2. Private clubs that are not places of employment, when not being used for a purpose, event, or function to which the general public is invited.
3. Outdoor areas of places of employment except the outdoor areas identified under AMC 16.65.010.
4. Private residences, unless child care is offered on the premises by person(s) other than the child's parent.

**B. Nothing in this chapter shall be construed or interpreted to provide any person a right to smoke on premises or property owned, leased or under the legal control of another.**

**16.65.040 Obligations of property owners and employers.**

- 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 by the owner, operator, manager, or other person having control of a building or other area where smoking is prohibited by this chapter.
- B. Every public building owned or controlled by the Municipality of Anchorage

shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited within 50 feet of the entrance to the building and within the building.

C. Every hospital and health care facility to which this chapter applies shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited within 50 feet of the entrance to the building and within the building.

D. All ashtrays and other smoking paraphernalia shall be removed by the building owner, operator, manager, or other person having control of a building or other area where smoking is prohibited by this chapter.

E. It shall be the responsibility of employers to provide a smoke-free workplace, and neither an employer nor person having legal control of the premises may permit an employee, customer, or other person to smoke inside enclosed areas that are places of employment.

F. Each employer within the Municipality of Anchorage shall adopt, implement and maintain a written smoke-free policy by which smoking shall be prohibited within enclosed areas at places of employment. The smoke-free policy required by this subsection shall be communicated to all existing employees and to all prospective employees upon their application for employment.

#### **16.65.050 Violations and penalties.**

A. It shall be unlawful for any person to smoke in any area where smoking is prohibited and for any person who owns, manages, operates, or otherwise controls the use of premises subject to this chapter to fail to comply with the provisions of this chapter.

B. A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be subject to a fine of \$100.

C. A person, owner, manager, employer, or operator who controls an enclosed area or place of employment or child care in violation of this chapter shall be subject to the following penalties:

1. A fine not exceeding \$100 for a first violation;
2. A fine not exceeding \$200 for a second violation; and



3. A fine not exceeding \$500 for each additional violation.

- D. 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 the violation and to obtain the relief described in that section.

**16.65.060 Public education.**

- A. The Department of Health and Human Services shall engage in a continuing program of education about the public health purposes, benefits and requirements of this chapter for municipal residents and visitors and to guide owners, managers, employers, and operators concerning the requirements of this chapter.

- B. The continuing education program may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter, the requirement to post "No Smoking" signage, the obligation to provide a smoke-free work place, and other actions consistent with AMC 16.65.040, to property owners, managers, employers, and operators.

**16.65.070 Non-retaliation and non-discrimination.**

No person or employer shall discharge, refuse to hire, or in any other manner retaliate or discriminate against any employee, applicant for employment, or customer because such employee, applicant for employment or customer insists upon compliance with any requirement of this chapter.

**Section 2.** This ordinance shall become effective sixty (60) days after its passage and approval by the Assembly, except that subsection 16.65.040.F shall take effect ninety (90) days after passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Municipal Clerk