

HAINES BOROUGH

ORDINANCE # 08-08-186

Adopted

AN ORDINANCE OF THE HAINES BOROUGH AMENDING TITLE 8 OF THE HAINES BOROUGH CODE TO ELIMINATE SECONDHAND TOBACCO SMOKE EXPOSURE IN PLACES OF EMPLOYMENT AND OTHER PUBLIC PLACES.

WHEREAS, the severe disease-causing and deadly harms of exposure to secondhand smoke have been documented by the U.S. Surgeon General and numerous other recognized scientific authorities; and

WHEREAS, exposure to secondhand smoke is recognized as a leading cause of preventable death and the U.S. Surgeon General has determined that exposure to secondhand smoke causes approximately 50,000 needless non-smoker deaths from lung cancer and heart disease each year in the United States; and

WHEREAS, it has been determined by the U.S. Surgeon General that air ventilation systems and filtration/cleaning systems cannot effectively protect health from secondhand smoke and that only completely smoke-free environments can protect health; and

WHEREAS, workers and members of the public exposed to secondhand smoke for only a short period of time can experience adverse cardiovascular effects and there is no safe level of exposure to the many carcinogens in secondhand smoke,

NOW THEREFORE BE IT ORDAINED BY THE ASSEMBLY OF THE HAINES BOROUGH, ALASKA:

Sect 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Haines Borough Code of Ordinances.

Sec. 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Sec. 3. Effective Date. This ordinance shall become effective Ninety (90) days after ratification by the people of Haines at the next general local election.

Sec. 4. Purpose. This ordinance amends Title 8 of the Haines Borough Code to (1) protect the public health, safety, and general welfare by eliminating exposure to secondhand smoke in enclosed areas, public places, and places of employment; and (2) guarantee the right of non-

smokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke. The code is amended to add a new Chapter 8.18 as follows:

**Chapter 8.18
SECONDHAND SMOKE POLLUTION CONTROL**

Sections:

- 8.18.010 Definitions
- 8.18.020 Enclosed areas where smoking is prohibited
- 8.18.030 Reasonable distance
- 8.18.040 Outdoor areas where smoking is prohibited
- 8.18.050 Declaration of smoke-free area
- 8.18.060 Exceptions; areas where smoking is not prohibited
- 8.18.070 Signage; obligations of property owners and employers
- 8.18.080 Violations and penalties
- 8.18.090 Enforcement
- 8.18.100 Non-retaliation and non-discrimination
- 8.18.110 Public education

8.18.010 Definitions. The following definitions pertain to this chapter:

1. "Bar" means a business that sells alcoholic beverages for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets.

2. "Business" means any natural person or legal entity (such as a business-for-profit corporation, nonprofit corporation, sole proprietorship, partnership, limited liability company or trust) that undertakes to provide goods or services to the public regardless of whether the business exists or is conducted for the purpose of making a profit.

3. "Employee" means any person who is employed by any employer for compensation or volunteers his or her services.

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 the 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, whether the windows or doors are open or closed, the combination of which extend from the floor to the ceiling.

6. "Health care facility" means a business, office, or institution that provides care or treatment of diseases or disability, whether physical, mental or emotional.

9. "Operator" means the owner or manager of a business or place of employment.

8. "Place of employment" means an area under the control of a public or private employer, including but not limited to work areas, places of business, private offices, employee lounges, restrooms, conference rooms, classrooms, cafeterias, hallways, and vehicles. A vehicle is not a place of employment if it is assigned to, driven by, and used exclusively by a single individual. A private residence is not a place of employment unless it is used as a child care, adult care or health care facility on a fee for service basis.

9. "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 used for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain and which has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

10. "Public place" means any enclosed area into which the public is invited or permitted, including but not limited to educational facilities, health care facilities, hotels and motels, entertainment establishments, restaurants, food and beverage service establishments, bars, offices, retail stores, and transportation facilities and vehicles accessible to the general public. A private club is a public place when being used for a function open to the public. A private residence is not a public place unless it is used as a child care, adult care or health care facility on a fee for service basis.

11. "Restaurant" means an eating establishment, including but not limited to a coffee house, cafeteria or sandwich shop that gives or offers for sale food to the public, guests or employees, including the kitchen or food preparation areas. The term restaurant includes a bar area within a restaurant.

12. "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated tobacco product.

8.18.020 Enclosed areas where smoking is prohibited.

Smoking is prohibited in the following places:

1. Inside an enclosed public area, including a building or vehicle owned or controlled by the borough or borough School District, and including every room, chamber, place of meeting or public assembly under the control of any borough board, assembly, commission, committee, or borough authority.

2. Inside an enclosed area that is a public place within the borough, including, but not limited to, every health care facility, transportation facility, retail store, place of

business, bus, taxicab, sports arena, or other enclosed area open to the public .

3. Inside every enclosed area within a place of employment.

4. Inside every enclosed area within a private club licensed under state law for the sale of alcoholic beverages.

8.18.030 Reasonable distance.

To ensure that smoke does not enter an enclosed area where smoking is prohibited through entrances, windows, ventilation systems or any other means, smoking is permitted only at a reasonable distance outside an enclosed area, 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.

8.18.040 Outdoor areas where smoking is prohibited.

Smoking is prohibited in the following places:

1. Within 50 feet of any entrance to a hospital or medical clinic.

2. Within 20 feet of any entrance to an enclosed area on property owned or controlled by the borough or borough school district, including every room, chamber, place of meeting or public assembly under the control of any borough board, assembly, commission, committee, or borough authority.

3. Within 5 feet of the entrance to a premises licensed under state law to sell alcoholic beverages for consumption on the premises. When a licensed premise includes an outdoor area, such as a patio or deck, the minimum reasonable distance shall be 5 feet.

4. An outdoor arena, stadium or amphitheater, except in a designated smoking area, which may be established only in a perimeter area at least 20 feet from bleachers, grandstands, seating areas or concession stands.

8.18.050 Declaration of smoke-free area.

Smoking is prohibited on any property (in enclosed or outdoor areas) if the owner, operator, manager, or other person having control of the property chooses to prohibit smoking. Smoking is prohibited in any place in which a sign conforming to the requirements of 8.18.070 is posted.

8.18.060 Exceptions; areas where smoking is not prohibited.

A. Smoking is not prohibited in the following places:

1. A maximum of twenty percent (20%) of hotel and motel sleeping rooms that are rented to guests and designated as smoking rooms, but only if the hotel or motel designates at least eighty percent (80%) of its sleeping rooms as permanently

nonsmoking. Smoking rooms on the same floor must be contiguous and the status of rooms as smoking or nonsmoking may not be changed, except as to add additional nonsmoking rooms. If feasible, smoking rooms should be designated on the uppermost floor to reduce exposure to secondhand smoke.

2. An outdoor area, except one designated in 8.18.030 (Reasonable distance), 8.18.040 (Outdoor areas where smoking is prohibited), or 8.18.050 (Declaration of smoke-free area).

3. A private residence, except when used as a child care, adult care, or health service facility on a fee for service basis.

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

8.18.070 Signage; obligations of property owners and employers.

A. Every operator of a place of employment or a public place must conspicuously post signage sufficient to inform the public and employees that smoking is prohibited in every enclosed place in the premises or vehicle.

B. The owner, operator, manager, or other person having control of a building, enclosed area or other area where smoking is prohibited by this chapter must remove any ashtrays and other smoking accessories offered for on-premises use.

C. An employer must 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 an enclosed area or place of employment or permit smoke to infiltrate into an area where smoking is prohibited under the provisions of this chapter.

D. An owner, manager, operator, or employee of an establishment subject to this chapter who observes a person smoking in violation of this Chapter, must immediately direct the person to stop smoking. If the person violating the chapter does not stop smoking, the owner, manager, operator, or employee must direct the person to leave the premises.

8.18.080 Violations and penalties.

A. It is unlawful for any person to smoke in any area where smoking is prohibited or 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 is subject to a fine of \$100.

C. A person, owner, manager, employer, or operator who controls a public place, a business, an enclosed area, place of

employment or place of child care or other premises in violation of this chapter is subject to 8.18.090(B) and the following penalties:

1. A fine of \$100 for a first violation;
 2. A fine of \$200 for a second violation within a 24 month period; and
 3. A fine of \$300 for a third or additional violation within a 24 month period.
- D. Each and every day that a violation occurs is a separate violation.

8.18.090 Enforcement.

A. The borough manager or designee must administer this chapter. A person who desires to register a complaint hereunder may initiate enforcement consideration with the borough manager or designee.

B. Before citing an operator for violation of this chapter, the borough manager must provide the operator with a written warning for the violation. Thereafter, the operator is subject to the penalties set out in Section 8.18.080.

C. In addition to the remedies provided in this Chapter, a person aggrieved by the failure of the owner, operator, manager or other person in control of a public place or place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in a court of competent jurisdiction.

8.18.100 Non-retaliation and non-discrimination.

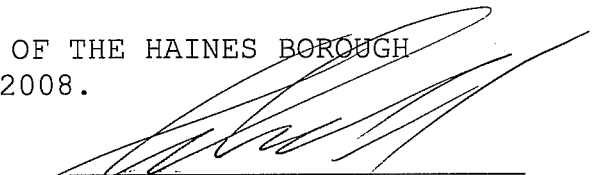
A. No person or employer may discharge, refuse to hire, or in any other manner retaliate or discriminate against any employee, applicant for employment, or customer because such employee, applicant for employment or customer insists upon compliance with a requirement of this Chapter. Notwithstanding the provisions of 8.18.080, violation of this subsection is a misdemeanor, punishable by a fine not to exceed \$1,000 for each violation.

B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

8.18.110 Public education.

The Borough Manager will engage in a continuing effort to educate the public about the requirements of this chapter and to guide owners, operators, and managers of enclosed areas and other areas subject to the provisions of this chapter to ensure compliance.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH
ASSEMBLY THIS 23RD DAY OF SEPTEMBER, 2008.



Fred Shields, Mayor

ATTEST:



Julie Cozzi, Borough Clerk

Date Introduced:	08/12/08
Date of First Public Hearing:	08/26/08
Date of Second Public Hearing:	09/09/08 - FAILED
Reconsidered:	09/23/09 - ADOPTED

