

**An Ordinance of the Haines Borough Amending Haines Borough Code Title 8 Health and Safety, namely, Chapter 8.08.040 Littering, Chapter 8.12 Nuisances, Chapter 8.16 Fireworks Displays, and Chapter 8.18 Secondhand Smoke Pollution Control.**

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 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.

Section 3. Effective Date. This ordinance shall become effective immediately upon adoption.

Section 4. Amendment of Chapter 8.08. Chapter 8.08 of the Haines Borough Code of Ordinances is hereby amended to read as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED  
STRIKETHROUGH ITEMS ARE DELETED

**8.08.040 Refuse container standards.**

- A. To satisfy the requirements of this chapter, a refuse container must be:
1. Strong, watertight, not easily corrodible, and rodent and insect proof;
  2. Fitted with a tight cover; and
  3. Kept tightly covered at all times, except when necessary to place litter therein or remove litter therefrom.
- B. Refuse containers must be emptied and the contents properly disposed of on a regular basis, ~~but no less often than every two weeks.~~

Section 5. Amendment of Chapter 8.12.020. Chapter 8.12.020 of the Haines Borough Code of Ordinances is hereby amended to read as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED  
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**8.12.020 Certain conditions declared nuisances.**

It shall be unlawful for any person to cause or create the following declared nuisances within the townsite service area:

...

~~C. To offend the public decency.~~

~~D. C.~~ **C.** To interfere with, obstruct, or render dangerous any street, highway, **sidewalk, right of way**, navigable lake, or stream.

~~E. D.~~ To make any loud or unreasonable noise that annoys, injures or endangers the comfort, repose, or health of a person, except as may be necessary in the operation of properly maintained equipment or other apparatus which cannot be operated otherwise.

~~F. E.~~ To operate a machine, device or apparatus that causes reasonably preventable electric interference in the operation of any radio or television receiving set.

~~G.~~ To maintain an unoccupied building in such a manner as to permit or enable the ingress and egress of animals.

~~H. F.~~ To maintain a building in a state of disrepair or deterioration, in a manner creating or permitting the existence of a hazardous or unsafe condition, or in a manner constituting an attractive nuisance.

~~I. G.~~ To maintain a building in a state of disrepair or deterioration so as to reduce the surrounding property values or cause other unreasonable economic detriment to surrounding property owners, including, but not limited to, allowing on the premises: lumber, refuse, junk, debris, or abandoned, discarded, and unused objects, such as automobiles, fixtures, furniture, appliances, and other objects which are not kept for immediate use and have been allowed on the premises for more than 30 days.

~~J. H.~~ To cause the accumulation of stagnant water or discharge of wastewater on the ground surface or into any surface watercourse as a result of the failure of an on-site wastewater disposal system.

~~K. I.~~ To create, permit, or allow to exist, or to fail to take reasonable and precautionary measures to restrict access to, a condition on property in one's control or possession constituting an attractive nuisance or safety hazard to children, including, but not limited to: abandoned or broken equipment or tools, excavations, water pools, or objects in which children can be confined, such as refrigerators or other enclosures.

~~L. J.~~ To cause the emission of noxious fumes.

~~M.~~ To cause the exposure, display, sale, or distribution of pictures, books, pamphlets, magazines, papers, documents, or objects that offend the public decency, according to prevailing community standards; or to provide a facility, location or other medium where such items are exposed, displayed, sold, or distributed.

~~N.~~ To use a street, sidewalk, or place adjacent thereto in such a manner as to cause an obstruction of traffic except as may be authorized by law or ordinance.

~~O. K.~~ To cause the public exposure of a person having a contagious disease **in violation of a public safety order/advisement.**

~~P. L.~~ To cause one's cellar, pool, sewer, water closet, or private drain to become noxious, foul, offensive, or to otherwise pose an unreasonable risk to the public health and safety.

Section 6. Amendment of Chapter 8.16.030. Chapter 8.16.030 of the Haines Borough Code of Ordinances is hereby amended to read as follows:

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#### **8.16.030 Fireworks displays – Permitted.**

The fire chief is authorized to grant permission for a fireworks display for any special occasion or reason within the ~~fire~~ townsite service area **affected. If inside the townsite service area, after securing permission from the fire chief and prior to the** ~~No such~~ display, shall be given without first securing permission from the chief of police **shall be notified and provided with a safety plan** and establishing to the satisfaction of the chief of police that the same will be conducted in a manner ensuring the safety of all persons watching the same and the property in the immediate vicinity of the display.

Section 7. Repeal and reenactment of Chapter 8.18.010. Chapter 8.18.010 of the Haines Borough Code of Ordinances is hereby **repealed** in its entirety and replaced by the following definitions per AS 18.35.399:

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#### **8.18.010 Definitions.**

Pursuant to AS 18.35.399 the following definitions pertain to this chapter:

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

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

"employee" means a person who is employed by a business for compensation or works for a business as a volunteer without compensation;

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

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

"freestanding" means a building that is not supported by another structure

and does not share ventilation or internal air space with an adjoining structure and smoke from the building cannot travel into the adjoining structure;

"health care facility" means an office or institution providing care or treatment for physical, mental, emotional, or other medical, dental, physiological, or psychological diseases or conditions; private, municipal, or state hospital; independent diagnostic testing facility; primary care outpatient facility; skilled nursing facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or Alaska Veterans' Home; long-term care facility; psychiatric hospital; residential psychiatric treatment center; and other facilities, places of employment, or offices operated for use by doctors, nurses, surgeons, chiropractors, physical therapists physicians, psychiatrists, or dentists or other professional health care providers to provide health care;

"health care provider" has the meaning given in AS 09.65.300;

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

"private club" means an organization, legal entity, or informal association of persons that

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

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

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

"public place" includes:

- A. an area to which the public is invited or into which the public is admitted;
- B. a place where services, goods, or facilities are offered to the public;

"retail tobacco" or e-cigarette store

(A) means a store

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

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

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

(B) does not include

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

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

**"smoking" means using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, tobacco, marijuana or other plant product intended for inhalation.**

Section 8. Repeal and reenactment of Chapter 8.18.020. Chapter 8.18.020 of the Haines Borough Code of Ordinances is hereby **repealed** in its entirety and replaced by the following:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED  
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**8.18.020 Enclosed areas where smoking is prohibited or allowed.**

**A. Smoking is prohibited in:**

- 1) any business, residence, public area, vehicle or vessel that has employees;**
- 2) enclosed public areas;**

**(a) An individual may not smoke in an enclosed area in a public place, including an enclosed area**

- i. at an entertainment venue or a sports arena;**
- ii. on a bus, in a taxicab, on a ferry, or in another vehicle used for public transportation;**
- iii. at a public transit depot, bus shelter, airport terminal, or other public transportation facility;**
- iv. at a retail store or shopping center;**
- v. at a place of government or public assembly located on property that is owned or operated by the state, a municipality, or a regional educational attendance area, or by an agent of the state, a municipality, or a regional educational attendance area.**

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

- i. in an office building, office, hotel, motel, restaurant, bar, retail store, or shopping center;**
- ii. in a common area in an apartment building or multiple-family dwelling;**
- iii. in a place of employment, including a vehicle;**
- iv. at a public or private educational facility;**
- v. at a health care facility, including residential units in the health care facility;**
- vi. in a building or residence that is used to provide paid child care, whether or not children are present in the building or residence, or care for adults on a fee-for-service basis; however, nothing in this paragraph is intended to prohibit an individual from smoking in a private residence that is in a building where another residence provides paid child care or care for adults;**

vii. on a vessel operating as a shore-based fisheries business under AS 43.75.

- 3) public outdoor areas as described in 8.18.030
- 4) any public or private educational facility;
- 5) all other areas pursuant to AS 18:35:301.

**B. Smoking is allowed:**

- 1) in private residences without caregivers or employees;
- 2) personal vehicles without caregivers or employees;
- 3) in a business vehicle if it's allowed by the owner or employer and used exclusively by only one person;
- 4) other outdoor areas specifically identified as allowing smoking;
- 5) all other areas pursuant to AS 18:35:301.

**C. Smoking may be allowed (under certain conditions):**

1) Unless the owner or operator prohibits it, an individual may smoke an e-cigarette at a retail tobacco or e-cigarette store that

a. is in a building that

(i) is freestanding; or

(ii) if it is attached to another business or building, it must:

-have a separate entrance;

-be separated from the other business or building in a manner that does not allow e-cigarette vapor or aerosol to travel into the other business or building;

- not serve as a residence, child care facility, facility providing care for adults on a fee-for-service basis, school, or health care facility; and

b. is not

(i) a business that is licensed under AS 04.11 to serve alcoholic beverages at an outdoor location;

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

(iii) a retail store that is within an indoor public place or workplace.

- 2) Unless the owner or operator prohibits it, an individual may smoke
  - (a) in a vehicle that is a place of employment when the vehicle is used exclusively by one person;
  - (b) on a vessel when the vessel is engaged in commercial fishing or sport charter fishing.
- 3) In a private club if the private club
  - (a) has been in continuous operation at the same location since January 1, 2017;
  - (b) is not licensed to serve alcoholic beverages; and
  - (C) is not a place of employment;
- 4) In an e-cigarette store if the e-cigarette store has been in continuous operation at the same location since January 1, 2017.



Section 9. Repeal and reenactment of Chapter 8.18.030. Chapter 8.18.020 of the Haines Borough Code of Ordinances is hereby **repealed** in its entirety and replaced by the following:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED  
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**8.18.030 Reasonable distance.**

**An individual may not smoke outdoors**

- A. Within 10 feet of playground equipment located at a public or private school or a state or municipal park while children are present;**
- B. In a seating area for an outdoor arena, stadium, or amphitheater;**
- C. At a place of employment or health care facility that has declared the entire campus or outside grounds or property to be smoke-free;**
- D. Within:**
  - (1) 10 feet of an entrance to a bar or restaurant that serves alcoholic beverages;**
  - (2) 20 feet of an entrance, open window, or heating or ventilation system air intake vent at an enclosed area at a place where smoking prohibited under this section; or**
  - (3) a reasonable distance, as determined by the owner or operator, of an entrance, open window, or heating or ventilation system air intake vent of**
    - (i) a vessel covered by this section; or**
    - (ii) a long-term care facility as defined in AS 47.62.090.**

Section 10. Repeal and reenactment of Chapter 8.18.040. Chapter 8.18.040 of the Haines Borough Code of Ordinances is hereby **repealed** in its entirety and replaced by the following:

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**8.18.40 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 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 above for a purpose other than smoking.**

Section 11. Repeal of Chapter 8.18.060. Chapter 8.18.060 of the Haines Borough Code of Ordinances is hereby **repealed** in its entirety.

Section 12. Repeal and reenactment of Chapter 8.18.070. Chapter 8.18.070 of the Haines Borough Code of Ordinances is hereby **repealed** in its entirety and replaced by the following:

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**8.18.070 Signage – Obligations of property owners and employers.**

**A. A person who is in charge of a place or vehicle where smoking is prohibited under this chapter 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 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.**

Section 13. Amendment of Chapter 8.18.080. Chapter 8.18.080 of the Haines Borough Code of Ordinances is hereby amended to read as follows:

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**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 **or to 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.**

~~B.~~ **A.** A person who smokes in an area where smoking is prohibited by the provisions of this chapter is subject to a fine of \$100.00 **\$50.00.**

~~C.~~ **B.** 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~~ **the use of** premises **subject to this chapter and violates any provision** in violation of this chapter is subject to HBC 8.18.090(B) and a penalty in the amount of \$200.00 for every violation of this chapter.

**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.**



Section 14. Amendment of Chapter 8.18.090. Chapter 8.18.090 of the Haines Borough Code of Ordinances is hereby amended to read as follows:

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**8.18.090 Enforcement.**

A. The borough police department shall enforce this chapter. A person who desires to register a complaint hereunder may initiate enforcement consideration with the borough manager or borough police department. A person or entity believed to have violated any provision of this chapter may be cited pursuant to Chapter 1.24 HBC. Any violation of this chapter is a minor offense.

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

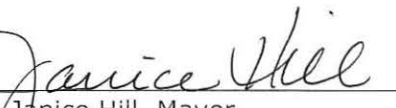
C. In addition to the remedies provided in this chapter, a person aggrieved by the failure of the owner, operator, manager or other person in control of a public place or place of employment to comply with the provisions of this chapter may apply for injunctive relief to enforce those provisions in a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

Section 15. Repeal of Chapter 8.18.100. Chapter 8.18.100 of the Haines Borough Code of Ordinances is hereby repealed in its entirety. *\*Clerk's note: This section has been moved to section 8.18.080.*

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 11th DAY OF FEBRUARY, 2020.

ATTEST:  
  
Alekka Fullerton, Borough Clerk



  
Janice Hill, Mayor

Date Introduced 1/14/20  
Date of First Hearing 1/28/20  
Date of Second Hearing 2/11/20 - adopted