

Chapter 36.60 SECOND-HAND SMOKE CONTROL CODE*

***Editor's note:** Serial No. 2008-05(b), § 2, adopted March 10, 2008, effective April 10, 2008, amended Ch. 36.60, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Ch. 36.60 pertained to smoking in public places. See also the Code Comparative Table.

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36.60.005 Definitions.

In this chapter:

Bar means a business, other than a restaurant, licensed by the State of Alaska to sell alcoholic beverages.

Business means any sole proprietorship, partnership, joint venture, corporation, nonprofit corporation, or other business entity.

Employee means any person who is employed by any employer for compensation or profit or who works for an employer as a volunteer without compensation.

Employer means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, but not including the state or federal government, who employs the services of one or more individual persons.

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 temporary or permanent walls, windows, or doors extending from the floor to the ceiling.

Enclosed public place means an enclosed area or portion thereof to which the public is invited or into which the public is permitted, including:

- (1) Retail stores, shops, banks, laundromats, garages, salons, or any other business selling goods or services;
- (2) The waiting rooms and offices of businesses providing legal, medical, dental, engineering, accounting, or other professional services;
- (3) Hotels, motels, boardinghouses, hostels, and bed and breakfast facilities, provided that the owner may designate by a permanently affixed sign a maximum of 25 percent of the rooms as exempt from this definition;
- (4) Universities, colleges, schools, and commercial training facilities;
- (5) Arcades, bingo halls, pull-tab parlors, and other places of entertainment;
- (6) Health clubs, dance studios, aerobics clubs, and other exercise facilities;

- (7) Hospitals, clinics, physical therapy facilities;
- (8) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or similar performance;
- (9) Public areas of fish hatcheries, galleries, libraries and museums;
- (10) Polling places;
- (11) Elevators, restrooms, lobbies, reception areas, waiting rooms, hallways and other common-use areas, including those in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (12) Restaurants, coffee shops, cafeterias, sandwich stands, private or public schools cafeteria, and any other eating establishment which offers food for sale, and including any kitchen or catering facility in which food is prepared for serving off the premises;
- (13) Sports and exercise facilities, including sports pavilions, gymnasias, health spas, boxing arenas, swimming pools, pool halls, billiard parlors, roller and ice rinks, bowling alleys, and similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events;
- (14) Any line in which two or more persons are waiting for or receiving goods or services of any kind, whether or not in exchange for money;
- (15) Areas used for and during the course of meetings subject to the Alaska Open Meetings Act; and
- (16) Bars, private clubs, and any other enclosed place, where alcoholic beverages are sold, or food is offered for sale.

Place of employment means an area or a vehicle under the control of an employer normally used by employees in the course of employment, including work areas, private offices, employee lounges, restrooms, conference rooms, classrooms, cafeterias, elevators, stairways, and hallways.

Private club means an organization, whether incorporated or not, that is the owner, lessee, or occupant of a building or portion thereof used for club purposes, which is operated for a recreational, fraternal, social, patriotic, political, benevolent, athletic, or other purpose.

Smoking means inhaling or exhaling tobacco smoke, or carrying any lighted tobacco product.

(Serial No. 2008-05(b), § 2, 3-10-2008, eff. 4-10-2008)

36.60.010 Smoking prohibited.

(a) Smoking is prohibited in:

- (1) Enclosed public places;
- (2) Enclosed areas that are places of employment;
- (3) Vehicles and enclosed areas owned by the City and Borough of Juneau, including the Juneau School District;
- (4) Commercial passenger vehicles regulated by the City and Borough under CBJ 20.40;
- (5) Bus passenger shelters; and
- (6) Private clubs that are licensed by the State of Alaska to sell alcoholic beverages, or that offer food for sale, regardless of the number of employees.

(b) Notwithstanding any other provision of this chapter, smoking and the use of smokeless tobacco products is prohibited anywhere within the area defined as the "Hospital Tobacco-free Campus."

(1) For purposes of this subsection, the "Hospital Tobacco-free Campus" means all buildings and facilities owned or leased by Bartlett Regional Hospital, whether inside or outside the buildings or facilities; the Bartlett House, the Juneau Medical Center, and Wildflower Court, whether inside or outside the buildings or facilities; the vehicle parking areas owned or leased by the hospital; the vehicle parking areas for the Bartlett House, the Juneau Medical Center, and Wildflower Court; and the public streets and public sidewalks adjacent to any of these buildings and facilities; provided, however, the five pavilion areas at Wildflower Court are excluded from the Tobacco-free Campus; all as shown on Exhibit A to Ordinance 2007-20.

(2) For purposes of this subsection, use of smokeless tobacco products means use of snuff, chewing tobacco, smokeless pouches, or other forms of loose leaf tobacco.

(Serial No. 2008-05(b), § 2, 3-10-2008, eff. 4-10-2008)

36.60.020 Smoking in enclosed areas that are places of employment.

(a) By the effective date of this chapter, any employer subject to this chapter shall adopt and enforce a written policy prohibiting smoking in all enclosed areas that are places of employment and all vehicles owned or operated by that employer and used by those employees.

(b) The smoking policy shall be communicated to all employees prior to its adoption.

(c) All employers shall supply a written copy of the smoking policy upon request to any current or prospective employee or to an employee of the City and Borough engaged in enforcing this chapter.

(Serial No. 2008-05(b), § 2, 3-10-2008, eff. 4-10-2008)

36.60.025 Reasonable distance.

Except as provided in subsection 36.60.030(7), no person may smoke within ten feet of any entrance, open window, or ventilation system intake of any building area within which smoking is prohibited by this chapter; provided, however, no person may smoke or use smokeless tobacco products anywhere within the "Hospital Tobacco-free Campus" as that area is defined in section 36.60.010(b) of this chapter.

(Serial No. 2008-05(b), § 2, 3-10-2008, eff. 4-10-2008)

36.60.030 Exceptions; areas where smoking is not prohibited.

(a) Smoking is not prohibited in the following places:

(1) Private residences, including those used as a place of employment, provided this exception does not apply at any time the private residence is open for use as a child care, adult care, or health care facility;

(2) Places of employment with a total of four or fewer employees, provided that this exception does not apply to a place of employment that is an enclosed public place or a private club;

(3) Private enclosed areas in nursing homes or assisted living facilities;

- (4) Reserved;
- (5) Performers smoking as part of a stage performance;
- (6) Reserved;
- (7) Outdoor patios, decks, and other outdoor areas used for seating by a bar, restaurant, or other establishment where alcoholic beverages are sold or food is offered for sale, provided that at least two sides of the area are open directly to the outdoors, and provided further that the minimum reasonable distance under section 36.60.025 shall be five feet meaning that no person in these areas may smoke within five feet of any entrance, open window, or ventilation system intake of the building area for the establishment;
- (8) Federal or state property, or those portions of buildings leased by the federal or state government; and
- (9) Private property used for residential incarceration under contract to a federal or state correctional agency.

(b) The owner, operator, or manager of property may by permanently affixing a sign thereon, waive any exception provided in subsection (a) of this section.

(Serial No. 2008-05(b), § 2, 3-10-2008, eff. 4-10-2008)

36.60.035 Posting of signs.

- (a) Signs prohibiting smoking shall be prominently posted by the owner, operator, manager or other person having control on every building or other area where smoking is prohibited by this chapter.
- (b) Every place where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (c) The owner, operator, manager or other person having control of any area where smoking is prohibited by this chapter shall remove therefrom all ashtrays and other smoking paraphernalia.

(Serial No. 2008-05(b), § 2, 3-10-2008, eff. 4-10-2008)

36.60.040 Non-retaliation.

No person or employer shall discharge, refuse to hire, refuse to serve, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right or seeks any remedy afforded by this chapter.

(Serial No. 2008-05(b), § 2, 3-10-2008, eff. 4-10-2008)

36.60.045 Violations.

- (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. Violation of this subsection is an infraction.
- (b) It shall be unlawful for any person to smoke or use a smokeless tobacco product in any area where smoking or use of smokeless tobacco products is prohibited by the provisions of this chapter. Violation of this subsection is an infraction.

(c) In addition to the penalties and remedies available under this Code, the City and Borough or any person aggrieved by a violation or threatened violation of this chapter may bring a civil action to enjoin that violation.

(Serial No. 2008-05(b), § 2, 3-10-2008, eff. 4-10-2008)

36.60.050 Other applicable laws.

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

(Serial No. 2008-05(b), § 2, 3-10-2008, eff. 4-10-2008)