

Ratified by public vote on August 25, 2011

Proposed by:	Assemblywoman Hisman
Attorney Review:	10/29/2010
First Reading:	01/06/2011
Second Reading:	01/20/2011
Vote: 6 Aye	0 Nay 0 Absent

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 10-17

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING TITLE 8 HEALTH AND SAFETY BY ADDING CHAPTER 8.08 SECONDHAND SMOKE CONTROL.

WHEREAS, exposure to secondhand smoke in public places affects public health; and

WHEREAS, the borough assembly recognizes the danger to public health that secondhand smoke causes; and

WHEREAS, the borough assembly recognizes that the need to breathe air free of secondhand smoke should have priority over the desire and convenience of smoking in public places;

BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. **Classification.** This ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. **Purpose.** To amend Title 8 Health and Safety by adding Chapter 8.08 Secondhand Smoke Control as follows:

Section 3 **Addition of Section.** Title 8 Health and Safety is amended by adding Chapter 8.08 Secondhand Smoke Control to read:

Chapter 8.08

SECONDHAND SMOKE CONTROL ORDINANCE

Sections:

- 8.08.010** **Definitions.**
- 8.08.020** **Prohibition of smoking.**
- 8.08.030** **Reasonable distance.**
- 8.08.040** **Exceptions – Areas where smoking is not prohibited.**
- 8.08.050** **Obligations of property owners and employers.**
- 8.08.060** **Violations and penalties.**
- 8.08.070** **Public education.**
- 8.08.080** **Nonretaliation and nondiscrimination.**

- 8.08.010** **Definitions.**
 - A. “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.

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- B. "Employee" means any person who is employed by any business for compensation or works for a business as a volunteer without compensation.
- C. "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.
- D. "Place of employment" means an area under the control of an 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.
- E. "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.
- F. "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.
- G. "Smoking" means inhaling, exhaling, burning or carrying any lighted tobacco product.

8.08.020 Prohibition of smoking.

- A. Smoking is prohibited at the following places:
 - 1. All enclosed public places within the Municipality of Skagway, including, but not limited to, all businesses visited by the public, transportation facilities, waiting areas of public transit depots, buses, taxicabs, sports arenas, and other enclosed areas open to the public;
 - 2. All enclosed areas that are places of employment;
 - 3. All enclosed areas on properties owned or controlled by the Municipality of Skagway, including the Skagway School District, and including every room, chamber, place of meeting or public assembly under the control of any municipal board, council, commission, committee, or municipal authority;
 - 4. All areas within 10 feet of each entrance to enclosed areas on properties owned or controlled by the Municipality of Skagway including the Skagway School District, and including every room, chamber, place of meeting or public assembly under the control of any municipal board, council, commission, committee, or municipal authority;
 - 5. All areas within 50 feet of each entrance to a hospital or medical clinic;
 - 6. All enclosed areas where a person provides child care on a fee for service basis;

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7. All areas within five feet of the entrance to a premises licensed under state law to sell alcoholic beverages for consumption on the premises.
- B. Smoking is prohibited on any property not listed in subsection A of this section, with or without enclosure, if the owner, operator, manager, or other person having control of the property chooses to prohibit smoking.

8.08.030 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 10 feet.

8.08.040 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. Smoking must be confined solely to designated smoking guest rooms and is prohibited in all areas outside of the guest room.
 2. Private clubs that 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. Private residences. Individuals providing day care on a fee for service basis and paid caregivers shall not expose children and clients to secondhand smoke.
 4. Single-person worksite. All enclosed areas that are places of employment by no more than one person and to which the public is not free to enter except with appointment.
- 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.

8.08.050 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 Skagway shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited within 20 feet of the entrance to the building and within the building.

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- 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 accessories offered for on-premises use 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 or ownership of the premises may permit an employee, customer, or other person to smoke inside enclosed areas that are places of employment.

8.08.060 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 \$100.00.
- 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 \$100.00 for a first violation;
 - 2. A fine not exceeding \$200.00 for a second violation; and
 - 3. A fine not exceeding \$300.00 for each additional violation.

8.08.070 Public education.

- A. The Municipality of Skagway 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 SMC 8.08.060, to property owners, managers, employers, and operators.

8.08.080 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.

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Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.


Section 5. Effective Date. This ordinance shall become effective ~~immediately upon~~ **within 90 days of** adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 20th day of January, 2011.



Thomas D. Cochran, Mayor

ATTEST:



Emily A. Deach, Borough Clerk

(SEAL)

