

Presented by:
City Clerk
Action Taken:
Yes ✓ No /
Abstain Ø

**City of Nome, Alaska
ORDINANCE NO. 11-04-02**

**AN ORDINANCE AMENDING TITLE 10 BY ADOPTION OF A NEW CHAPTER 10.50
TITLED, SMOKING POLLUTION CONTROL, TO REGULATE SMOKING IN
EATING ESTABLISHMENTS, PUBLIC BUILDINGS AND TAXIS.**

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF NOME, ALASKA:

Section 1. Legislative Findings:

The smoking of tobacco or of any other weed or plant is a proven danger to health. Health hazards induced by breathing side stream or secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and broncho-spasm. Recent studies have found that secondhand tobacco smoke may cause heart disease, stroke, respiratory disease, and lung cancer in nonsmokers; and, that restaurant wait staff have an increased risk of lung cancer. Persons eating outside their homes for meals, including children, are often involuntarily exposed to indoor environmental tobacco smoke, which is not only harmful to their health, but which may also diminish their enjoyment of the experience. The City Council hereby finds that it is in the public health, safety, and welfare to supplement State regulation of the use of tobacco and tobacco products by regulating their use in eating establishments, places of employment, public buildings, and taxicabs within the City of Nome.

Section 2. Adoption of Chapter 10.50. The Nome Municipal Code is hereby amended by the adoption of a new Chapter 10.50 to read as follows:

Chapter 10.50

SMOKING IN PLACES OF EMPLOYMENT AND PUBLIC PLACES

- 10.50.010 Definitions.**
- 10.50.020 Smoking prohibited.**
- 10.50.030 Reasonable distance.**
- 10.50.040 Where smoking not prohibited.**
- 10.50.050 Sign posting requirement.**
- 10.50.070 Violations and penalties.**
- 10.50.080 Enforcement.**

10.50.010 Definitions.

“Business” means any legal entity, whether for profit or not-for-profit, that provides goods or services, including, but not limited to, a sole proprietorship, partnership, limited liability company, corporation, trust, membership organization or similar entity.

“Employee” means any person who is employed by any employer for compensation or works for an employer as a volunteer.

“Employer” means any person or business, including a municipal corporation or non-profit entity, who employs the services of one or more individual persons.

“Enclosed area” means all space between a floor, a ceiling and surrounding walls, windows and doors, whether open or closed, temporary or permanent. An area is not enclosed if at least fifty percent (50%) of the combined surface of the area’s vertical planes is permanently and directly open to the outdoors.

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

“Place of employment” means an area under the control of a public or private employer including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, classrooms, cafeterias, hallways, and vehicles. A private residence is not a place of employment except during the time when used as a child care, adult care or health care facility on a fee-for-service basis.

“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 facilities, food and beverage service facilities, offices, retail stores, and transportation facilities and vehicles accessible to the general public.

“Smoking” means inhaling, exhaling, burning or carrying any lighted or heated tobacco product or other plant material intended for inhalation.

10.50.020 Smoking prohibited.

(a) Smoking is prohibited at the following places:

- (1) All enclosed public places within the City of Nome.
- (2) All enclosed areas that are places of employment, including office buildings, hotels, restaurants, bars, medical facilities, stores, and all other types of businesses.
- (3) All enclosed areas on properties, including buildings or vehicles, owned or controlled by the City of Nome, and including every room, chamber, place of meeting or public assembly under the control of the City of Nome.

- (4) All areas within 20 feet of each entrance to enclosed areas on properties owned or controlled by the City of Nome, including every room, chamber, place of meeting or public assembly under the control of the City of Nome.
- (5) All areas within 50 feet of each entrance to a health care facility.
- (6) All outdoor playing fields, playgrounds, and parks controlled by the City of Nome except in designated smoking areas, which may be established only in perimeter areas at least twenty (20) feet from bleachers, grandstands, seating areas within the venue/park/playground, and concession stands.
- (7) All public and school bus stops, including buildings and other structures intended for shelter while waiting for transportation.
- (8) All areas within twenty (20) feet of each entrance to enclosed areas at an establishment licensed under state law to sell alcoholic beverages for consumption on the premises. When an establishment licensed under state law to sell alcoholic beverages for consumption on the premises includes an entrance to an outdoor area such as a patio or deck, the minimum reasonable distance under 10.50.030 shall be ten (10) feet.
- (9) "Reasonable Distance" areas as defined by 10.50.030.

(b) Smoking is prohibited on any property not listed in subsection (a) of this section, whether or not enclosed, if the owner, operator, manager, or other person having control of the property chooses to prohibit smoking.

(c) This Chapter shall not be interpreted or construed to regulate smoking on property owned or controlled by the federal or state government.

10.50.030 Reasonable distance.

To ensure that smoke does not enter any enclosed area where smoking is prohibited by this Chapter 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, the minimum reasonable distance is twenty (20) feet.

10.50.040 Where smoking not prohibited.

- (a) Smoking is not prohibited in the following places:
 - (1) Outdoor areas of places of employment except the outdoor areas identified under 10.50.020.
 - (2) Private residences, except during the time when used as a child care, adult care, or health care facility on a fee-for-service basis. Individuals providing child care in a private residence on a fee-for-service basis shall disclose to parents or guardians of children cared for on the premises if the proprietor permits smoking outside of the hours when

child care is provided. Disclosure shall include posting on the premises a conspicuous written notice and orally informing parents or guardians.

(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.

10.50.050 Sign posting and other requirements.

(a) The owner, operator, manager or other person in control of a public place or place of employment where smoking is prohibited by this Chapter shall clearly and conspicuously place at every entrance “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).

(b) The owner, operator, manager or other person in control of every health care facility to which this Chapter applies shall post 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) Employers shall provide a smoke-free workplace, and neither an employer nor a person having legal control of the premises may permit an employee, customer or other person to smoke inside enclosed areas subject to the requirements of this Chapter.

(d) The owner, operator, manager or other person in control of any area where smoking is prohibited by this Chapter shall remove all ashtrays from the area, except those ashtrays for sale and not intended for use on the premises.

(e) If an owner, operator, manager or other person in control of any area where smoking is prohibited observes a person smoking in violation of this Chapter, he or she shall direct the person to stop smoking. If the person does not stop smoking, the owner, operator, manager or other person in control of the area shall ask the person to leave the premises. If the person in violation refuses to leave, the owner, operator, manager or other person in control shall report the violation as provided by 10.50.080(a).

10.50.070 Violations and penalties.

(a) It is unlawful for any owner, operator, manager or other person in control of any area where smoking is prohibited by this Chapter to fail to comply with any provision of this Chapter.

(b) It is unlawful for any person to smoke in any area where smoking is prohibited by this Chapter.

(c) Any person who violates any provision of this Chapter shall be guilty of an infraction, punishable by:

- (1) A fine not exceeding one hundred dollars (\$100.00), plus any surcharge required to be imposed by AS 12.55.039, for a violation;
 - (2) A fine not exceeding two hundred dollars (\$200.00), plus any surcharge required to be imposed by AS 12.55.039, for a second violation within a twenty-four (24) month period as measured from the date of the most recent prior violation; or
 - (3) A fine not exceeding five hundred dollars (\$500.00), plus any surcharge required to be imposed by AS 12.55.039, for a third or additional violations within a twenty-four (24) month period as measured from the date of the most recent prior violation.
- (d) Each and every day that such violation continues shall be deemed a separate and distinct violation.
- (e) The City or any person aggrieved by a violation or threatened violation of this Chapter may bring a civil action against a person who violates this Chapter and may recover a civil penalty not to exceed three hundred dollars (\$300.00) per violation.

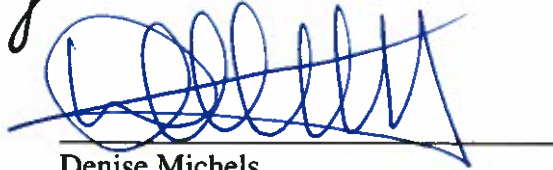
10.50.080 Enforcement

- (a) Administration of this Chapter shall be by the City Manager or his or her designee(s). Any person who desires to register a complaint hereunder may initiate enforcement consideration with the City Manager or his or her designee(s).
- (b) Prior to citing an owner, operator, manager or other person in control of any area where smoking is prohibited by this Chapter for an initial violation, the City shall provide the owner, operator, manager or other person in control with a written warning. Thereafter, the owner, operator, manager or other person in control shall be subject to the penalties set forth in 10.50.070. The written warning required by this subsection does not apply in the case of an individual person who unlawfully smokes in violation of 10.50.070(b).
- (c) Notwithstanding the availability of any other remedy provided by the provisions of this Chapter, the City Manager or any person aggrieved by the failure of the owner, operator, manager or other person in control of any area where smoking is prohibited to comply with the provisions of this Chapter may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction.

Section 3. Severability. If any provision, clause, sentence or paragraph of this Chapter or its application to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Chapter, which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

Section 4. Effective Date. This ordinance shall be effective one-hundred-twenty (120) days after adoption

ENACTED THIS 23 DAY OF May, 2011.



Denise Michels
Mayor, City of Nome

ATTEST:



CAMILLE TEN EYCK,
Acting City Clerk