

Introduced by: City Council
Date: July 28, 1998
Public Hearing: August 24, 1998
Action: Enacted as Amended
Vote: 6 Yes, 0 No

**CITY OF BETHEL, ALASKA
ORDINANCE NO. 98-07**

**AN ORDINANCE ADDING CHAPTER 8.10 OF THE BETHEL MUNICIPAL CODE
ENTITLED SMOKING POLLUTION CONTROL**

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BETHEL:

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

Section 2. Amendment of Section. Bethel Municipal Code Chapter 8.10 is added to read:

CHAPTER 8.10 SMOKING POLLUTION CONTROL

8.10.010 Findings and purpose

The city council does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airways disease; and

Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and broncho-spasm.

Accordingly, the city council finds and declares that the purposes of this chapter are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

8.10.020 Definitions

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

A. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A "bar" for the purpose of this definition does not include any establishment where smoke can filter into any area where smoking is prohibited through a passageway, ventilation system, or any other means. A "bar" for the purpose of this chapter does not include any area where full meals are served, but may include an area where only appetizers and snacks are served.

B. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold or provided as well as professional corporations and other entities

where legal, medical, dental, engineering, architectural, accounting, veterinary, child care, adult care, health care or other services are delivered.

C. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

D. "Employer" means any person, partnership, corporation, or other corporation or entity including state and local government entities and non-profit entities, that employ one or more natural persons.

E. "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passage ways) which extend from the floor to the ceiling including all space therein screened by partitions which do not extend to the ceiling or are not solid, and includes the interior of vehicles, boats, vessels and aircraft.

F. "Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" (except areas used for business purposes).

G. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place" except such areas therein as are used for business purposes.

H. "Religious" or "cultural ceremony" means any place where sage, sweet grass, sea oil lamps, incense or other religious or cultural offerings are burned.

I. "Restaurant" means any coffee shop, cafeteria, sandwich stand, ice-cream stand, private and public school and other cafeterias, and any other eating establishment which gives or offers for sale food to the public, guests, students, patients, clients, or employees, as well as kitchens in which food is prepared, whether for serving on the premises for serving elsewhere, including catering facilities.

J. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories in which the sale of other products is merely incidental.

K. "Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

L. "Smoking" means the inhaling or exhaling by an individual of tobacco smoke by the individual through a lighted cigar, cigarette, pipe or other device for holding and burning tobacco, or the lighting of the tobacco in a cigar, cigarette, pipe or other device, or the carrying, possession or control of a lighted cigar, cigarette, pipe or other similar device. In this subsection, "tobacco" includes tobacco and all other plant and non-plant substances and products that are smoked in a manner similar to the way tobacco itself is smoked.

M. "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

M. "Unregulated space" means a space or area in which smoking is not prohibited under this chapter.

8.10.030 Application of chapter to city-owned facilities

All enclosed areas owned or leased by the City are subject to the provisions of this chapter.

8.10.040 Prohibition of smoking in public places

A. Smoking is prohibited in all enclosed public places within the City, including, but not limited to, the following enclosed places:

1. elevators
2. restrooms, lobbies, reception areas, hallways and any other common-use areas.
3. buses, taxicabs, and other means of public transit operating within the City, and ticket, boarding, and waiting areas of public transit depots.
4. service lines.
5. retail stores.
6. all areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, offices, banks, laundromats, hotels, motels, sales areas and areas where personal services are provided.
7. restaurants.
8. public areas of galleries, libraries and museums.
9. any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance except as provided in BMC 8.10.070(A)(8).
10. sports arenas and convention halls, including bowling facilities and places where bingo games and games of skill and chance are conducted.
11. every room, chamber, place of meeting or public assembly, including school buildings under the control of the state or any board, council, commission, committee, including joint committees, or agencies of the state, the city or any political subdivision of the state or special purpose public or quasi public entity created or authorized by state statute during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.
12. waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.
13. lobbies, hallways, recreation rooms, storage and parking areas, laundry facilities and other enclosed common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
14. polling places.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any enclosed area that is unregulated space may declare that enclosed area a nonsmoking area and when such area is posted in accordance with BMC 8.10.080 no person may smoke in such area .

8.10.050 Prohibition of smoking in places of employment

- A. Smoking in a place of employment is prohibited.
- B. An employer may not permit any person to smoke in a place of employment.
- C. It shall be the responsibility of employers to provide a smoke-free workplace for all employees. In providing a smoke-free workplace, an employer is not required to incur any expense to make structural or other physical modifications to their facilities to accommodate smokers.

D. Each employer having an enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking is prohibited in all enclosed areas within this place of employment, without exception. This includes common work areas, private offices, hallways, employee lounges, stairs, restrooms, vehicles, and all other enclosed areas and spaces.

E. The smoking policy shall be communicated to all employees within three weeks of its adoption and shall be communicated to all new employees immediately upon employment.

F. A written copy of the smoking policy shall be given upon request to any existing or prospective employee.

8.10.060 Reasonable distance

Smoking that occurs outside a facility must occur at a sufficient distance outside any enclosed area where smoking is prohibited to insure that smoke does not enter the area through entrances, windows, ventilation systems or any other means.

8.10.070 Where smoking not regulated

A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

1. bars which meet the requirement of Section 8.10.020(A) of this chapter.
2. private residences when used as a child care, adult day care, or health care facility or areas frequented by the public for business purposes.
3. twenty-five percent of hotel and motel rooms available for rental to guests.
4. retail tobacco stores.
5. restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions.
6. religious or cultural ceremonies.
7. on a stage or similar structure during the presentation or play or other dramatic or entertainment event when smoking by an actor or entertainer is required as part of the presentation.
8. employers may provide provide an enclosed area where employees may smoke if the following conditions are met: the ventilating system for the smoking area does not exhaust into the non-smoking area of the building; the smoking area environment must meet the applicable proposed standards set forth in CFR 59 or such standards as may be adopted following the comment period for the proposed standards and an enclosed area with equal accommodations must be provided for non-smoking employees.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare all or any part of the enclosed areas of the establishment that are not otherwise subject to the smoking restrictions of this chapter to be non-smoking areas and smoking is prohibited in such areas upon the posting of "no smoking" signs meeting the requirements of Section 8.10.080 of this chapter.

8.10.080 Posting of signs and removal of ashtrays

The owner, operator, manager or other person having control of an enclosed area where smoking is prohibited under this chapter shall post conspicuously within the area and, except for vehicles, at each entrance to the area from unregulated space a sign clearly stating or showing that smoking is prohibited.

A. A sign is adequate under this section if it states in block letters at least 1.25 inches high, "NO SMOKING" or "SMOKING PROHIBITED" or contains the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle at least three inches in diameter with a red bar across it. Signs posted in structures shall be a minimum of 18 inches wide and 6 inches high.

B. the owner, operator, manager or other person having control of an area where smoking is prohibited under this chapter shall remove all ashtrays and other smoking paraphernalia from the area.

8.10.090 Enforcement

A. Enforcement of this chapter shall be implemented by the city manager or his or her designee.

B. Notice of the provisions set forth in this chapter shall be given to all applicants for a business license in the City of Bethel.

C. Any citizen who desires to register a complaint under this chapter may file the complaint with the city manager or his or her designee.

D. The business owner, manager or person in charge will certify that the business is in compliance with this chapter by so indicating on the annual business license renewal form.

E. Any owner, manager, operator or employee of any establishment regulated by this chapter may inform persons violating this article of the appropriate provisions thereof.

F. Notwithstanding any other provision of this chapter, a private citizen may bring a civil action to enforce the provisions of this chapter.

8.10.100 Nonretaliation

No person or employer may discharge, refuse to hire or in any manner retaliate or discriminate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smokefree environment afforded by this chapter.

8.10.110 Violations and penalties

A. It is 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.

B. It is unlawful for any person to smoke in any area where smoking is prohibited by the provisions of 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 fifty dollars (\$50) for a first violation.
2. a fine not exceeding one hundred dollars (\$100) for a second violation of this chapter within one (1) year.
3. fine not exceeding three hundred dollars (\$300) for each violation of this chapter within one (1) year.

D. Notwithstanding any other provision of this chapter, the city or a private citizen may bring a civil action to enforce this chapter and may recover a civil penalty not exceeding \$300 for each violation. Each day upon which a continuing violation occurs is a separate violation. Upon the request of the party bringing the action and proof by a preponderance of the evidence that a violation of this chapter has occurred, is occurring or is threatened to occur, the court shall issue an injunction against the violation or threatened violation.

8.10.120 Public education

The city manager or his or her designee, shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.

8.10.130 Other applicable laws

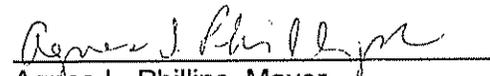
This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. Where state law and the provisions of this chapter apply to the same area or activities, the more stringent provision shall apply. If the prohibitions of this chapter apply to a space or area in which smoking is not prohibited or is permitted under state law, the prohibitions of this chapter shall apply.

8.10.140 Severability

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be invalid, such 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 becomes effective sixty (60) days from its adoption by the City Council.

**PASSED AND APPROVED THIS 24th DAY OF AUGUST, 1998, by a vote of 6
YEA, 0 NAY, and 0 ABSTAINING.**



Agnes L. Phillips, Mayor

ATTEST:



Gaye J. Vaughan, City Clerk