

Initiative Petition Submitted to City Clerk: July 3, 2012  
 Petition Certified by City Clerk: July 6, 2012  
 Measure Placed Before the Voters at the Regular Election of: October 2, 2012  
 Proposition No. 3, passed at the Regular Election of: October 2, 2012  
 Election Certified by the Palmer City Council: October 8, 2012  
 Vote on Certification of Election: 493 (yes) – 322 (no)  
 Effective Date: January 2, 2013

CITY OF PALMER, ALASKA

**Ordinance No. 12-015**

**An Initiative Ordinance Enacting Palmer Municipal Code Chapter 8.10 Prohibiting Smoking in Places of Employment and Public Places**

THE CITY OF PALMER, ALASKA ORDAINS:

Section 1. Classification. This ordinance shall be permanent in nature and shall be incorporated into the Palmer Municipal Code.

Section 2. Severability. If any provisions of this ordinance or application thereof to any person or circumstances are held invalid, the remainder of this ordinance and the application to the other persons or circumstances shall not be affected thereby.

Section 4. Palmer Municipal Code Chapter 8.20 is hereby adopted to read as follows:

**Chapter 8.10**

**PROHIBITING SMOKING IN PLACES OF EMPLOYMENT AND PUBLIC PLACES**

- 8.10.010 Definitions
- 8.10.20 Smoking prohibited
- 8.10.030 Reasonable distances
- 8.10.040 Where smoking not prohibited
- 8.10.050 Sign posting requirement
- 8.10.060 No retaliation nor waiver of rights
- 8.10.070 Violations and penalties
- 8.10.080 Enforcement
- 8.10.090 Other applicable laws
- 8.10.100 Severability
- 8.10.110 Liberal construction

**8.10.010 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 and a ceiling that is bounded on at least two sides by walls, doorways or windows, whether open or closed. A wall includes any retractable divider, garage door or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

"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, hotel and motel rooms, employee lounges, restrooms, conference rooms, classrooms, cafeterias, hallways, and vehicles. A private residence is not a place of employment unless it is used as a child care, adult care, or health care facility on a fee-for-service basis; or is located within a hotel or motel.

"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, temporary offices, hotels and motels, retail stores, and transportation facilities and vehicles accessible to the general public.

"E-cigarette" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substance, and the use or inhalation of which simulates smoking. The term shall include any such device whether manufactured, distributed, marketed, or sold as an a-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

"Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco product or other plant material intended for inhalation in any manner or in any form. "Smoking" also includes the use of any e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

#### **8.10.020 Smoking prohibited.**

A. Smoking is prohibited at the following places:

1. All enclosed public places within the City of Palmer.
2. All enclosed areas that are places of employment including office buildings, hotels and motels, restaurants, bars, medical facilities, stores, and all other types of businesses or commercial enterprises.
3. All enclosed areas on properties, including buildings or vehicles, owned or controlled by the City of Palmer, including every room, chamber, place of meeting or public assembly under the control of the City of Palmer.
4. All areas within twenty (20) feet of each entrance to enclosed areas on properties owned or controlled by the City of Palmer including every room, chamber, place of meeting or public assembly under the control of the City of Palmer.
5. All areas within fifty (50) feet of each entrance to a hospital or medical clinic.
6. All outdoor playgrounds, playing fields, parks, arenas, stadiums, amphitheatres and public transit waiting areas except in designated smoking areas, which may be established only in perimeter areas at least twenty (20) feet from playground equipment, bleachers, grandstands, seating areas and concession stands.
7. All areas within ten (10) 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 8.10.030 shall be ten (10) feet.

8. "Reasonable Distance" areas as defined by 8.10.030.
- 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.

**8.10.030 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.

**8.10.040 Areas where smoking not prohibited.**

- A. Smoking is not prohibited in the following places:  
Outdoor areas of places of employment except the outdoor areas identified under 8.10.020.
- 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.

**8.10.050 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 circle with a bar across it).
- B. The owner, operator, manager or other person in control of every hospital and medical clinic to which this Chapter applies shall post at every entrance a conspicuous sign clearly stating that smoking is prohibited within fifty (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.

**8.10.060 No retaliation nor waiver of rights.**

- A. No person or employer shall discharge, refuse to hire, or in any other manner retaliate or discriminate against any employee, applicant for employment, or other individual because such employee, applicant for employment or individual reports a violation or otherwise insists upon compliance with any requirement of this Chapter.

- B. 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.
- C. Notwithstanding 8.10.080 (B), a violation of 8.10.060 shall be punishable by a fine not to exceed one thousand dollars (\$1 ,000.00) for each violation.

**8.10.070 Violations and penalties.**

- A. It is unlawful for any owner, operator, manager or other person in control of any area where smoking is prohibited under this Chapter to fail to comply with any provisions 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 a violation 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 three hundred dollars (\$300.00), 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 a 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. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy.

**8.10.080 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 8.10.070. The written warning required by this subsection does not apply in the case of an individual person who unlawfully smokes in violation of 8.10.070(8).
- 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.

**8.10.090 Other applicable laws.**

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or regulation. Where state law and the provisions of this chapter apply to the same area or activities, the more stringent provision creating a smoking prohibition shall apply.

**8.10.100 Severability.**

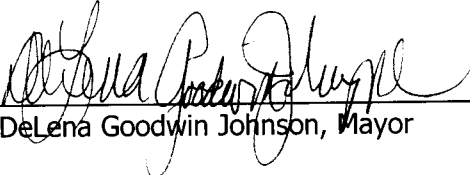
If any provision, clause, sentence or paragraph of this Chapter or its application to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Chapter, which can be given effect without the invalid provision or application, and to this end the provisions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

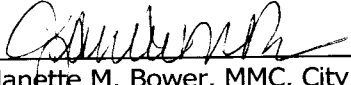
**8.10.110 Liberal construction.**

This Chapter shall be liberally construed so as to further its purposes.

Section 4. Effective Date. Ordinance No. 12-013 shall take effect on January 2, 2013, and certification of the October 2, 2012, Regular City Election if a majority vote favors the ordinance.

Election Certified by the Palmer City Council on October 8, 2012.

  
DeLena Goodwin Johnson, Mayor

  
Janette M. Bower, MMC, City Clerk