

AN ORDINANCE TO AMEND SECTION 11-9-10 ("SMOKING IN CERTAIN PUBLIC PLACES") OF TITLE 11, CHAPTER 9, OF THE GENERAL CODE OF THE CITY OF BIRMINGHAM, ALABAMA, 1980, FOR THE PURPOSE OF FURTHER REGULATING SMOKING IN PUBLIC PLACES

WHEREAS, the Office of the Surgeon General of the United States of America has warned the citizens of this nation for many years about the numerous detrimental effects the smoking of tobacco can have on human health; and

WHEREAS, evidence substantiating that smokers jeopardize the health of non-smokers through "passive smoking" continues to mount; and

WHEREAS, smoke from a pipe, cigar or cigarette of any kind constitutes a source of annoyance and discomfort to non-smokers and is a public nuisance; and

WHEREAS, the Council of the City of Birmingham finds that in order to protect the health and welfare of the citizens of the City of Birmingham, and protect the rights of smokers and non-smokers alike, it is necessary to prohibit smoking in public places except in areas designated as smoking areas;

NOW, THEREFORE, BE IT OPDAINED by the Council of the City of Birmingham that Section 11-9-10 of Title 11, Chapter 9, of the General Code of the City of Birmingham, 1980, be, and the same is, hereby amended to read in full as follows:

Part I.

"Section 11-9-10. Smoking In Public Places.

A. Definitions:

(1) "Employee" means any person who is employed by an employer for compensation or profit;

(2) "Employer" means any person, partnership, corporation, association or other entity, that employs one or more persons;

(3) "Place of employment" means any enclosed indoor area under the control of an employer to which employees have access during the course of employment, including, but not limited to work areas, employee lounges, employee restrooms, conference rooms and employee cafeterias; A private residence is not a place of employment;

(4) "Public place" means any enclosed area that is used by the general public, or that is a place of business or employment, or that is a public meeting area, and includes, but is not limited to: stores, offices, and other commercial establishments, restaurants, public and private educational institutions, health care facilities, nursing and convalescent homes, government buildings and vehicles, government subsidized senior citizen residential facilities; and any public swimming pool owned or operated by the City,

(5) "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 involved the exchange of money;

(6) "Smoke" or "Smoking" includes the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or device, and the lighting, emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

B. Offenses

A person violates Section 11-9-10 and commits an offense if he or she:

(1) Knowingly or intentionally smokes in a public place and is not in an area designated as a smoking area under Section 11-9-10;

(2) Knowingly or intentionally smokes in any bus or other public passenger carrier, except a taxicab, that is not engaged in interstate commerce; or

(3) Is the owner, lessee or other person in charge of a public place, and knowingly or intentionally fails to make a reasonable effort to inform those on the premises that knowingly or intentionally smoking in a public place which is not designated as a smoking area under Section 11-9-10 is proscribed behavior.

C. Designation of Smoking Areas

(1) The owner, lessee or other person in charge of a public place may, but is not required to, designate one or more areas as smoking areas.

(2) If a smoking area is designated in a public place, each smoking area shall:

(a) be not larger in size than proportionate to the preference of the users normally requesting a smoking area, as can be demonstrated by the owner, leasee, or other person in charge;

(b) be situated so the ventilation minimizes the effect of smoke in adjacent non-smoking areas, and so that air from the smoking area is not drawn into or across a non-smoking area;

(c) be designated by appropriate signs which are clearly visible to patrons in or entering the area via the front entrance to the premises;

(d) contain ashtrays, containers or other facilities for extinguishment of smoking materials;

(e) be set apart or separated from non-smoking areas; and

(f) not include service line or cashier areas.

(3) In the event the owner, lessee or other person in charge of a public place finds it impracticable to meet the requirements of Subsection C(2)(B) and C(2)(e) without structural or other physical changes, or significant expenditures, because such a large portion of the users of the public place normally request a smoking area, the owner, lessee or other person in charge may designate an area not meeting the requirements of Subsection C(2)(a) (including the entire public place, except for those areas designated in Subsection C(2)(f)) as a smoking area. If the entire area is designated as a smoking area, the owner, lessee or other person in charge shall place a sign at each entrance which is clearly visible and states that smoking is permitted throughout the premises.

D. Designation Of Non-Smoking Areas

Except as provided by the preceding subsection, the owner, lessee or other person in charge of a public place shall place a sign visible at the front entrance to the premises thereby notifying persons entering the premises that smoking is prohibited, or that smoking, other than within designated smoking areas, is prohibited.

E. Regulation Of Smoking In The Place Of Employment

Each employer who operates a place of employment in the City of Birmingham shall implement and maintain a written smoking policy by January 1, 1988, which shall contain, at a minimum, the following provisions and requirements:

(1) Any non-smoking employee may object to his or her employer about smoke in any portion of his or her place of employment normally frequented by said employee. Using already available means of ventilation, separation or partition, the employer shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of non-smoking and smoking employees. An employer is not required by this provision to incur any expense for making structural or other physical modifications to accommodate the preferences of non-smoking or smoking employees.

(2) If any accommodation which is satisfactory to a majority of all affected employees, both smoking and non-smoking, cannot be reached as to any portion of the place of employment about which complaint has been voiced, the preferences of the majority of the affected employees shall prevail. Provided however, the requirements of Subsection E(2) shall not apply to non-smoking employees whose job duties include serving of or routine interaction with members of the general public within designated smoking areas, nor to any private enclosed office workspace occupied exclusively by smokers, even though such office may be visited by non-smokers.

(3) The smoking policy shall be announced within three weeks of adoption to all employees working in the place of employment and posted conspicuously in all workplaces under the employer's control.

F. Exceptions

(1) It is an exception to the application of Subsection B(1) that the person smoking a tobacco product is in a situation in which the person is present at an event in which an entire room or confined area is used for a private social function and the event is under the control of the sponsor of the function, and not of the owner, proprietor or other person in charge of the public place. This exception includes, but is not limited to, areas of public places, such as hotels, which are normally rented out to private groups and individuals, and to areas of bowling centers during league play by bowling leagues.

(2) The following public places are not subject to Subsections B(3) and C(2) but such public places are encouraged, whenever possible, to follow the guidelines established in Subsection C(2):

(a) an establishment in which more than 50% of its annual gross sales are from alcohol beverages sold for on-premises consumption;

(b) a separated bar area of a restaurant; and

(c) a tobacco specialty retail shop.

G. Enforcement

The provisions of Section 11-9-10 are enforceable by any duly sworn police officer employed by the City of Birmingham, the County Health Officer or his or her duly authorized representative, or as otherwise allowed by law.

H. Miscellaneous

Nothing in Section 11-9-10 excuses non-compliance with any Federal or State law, City of Birmingham ordinance, or any rule or regulation which prohibits smoking".

Part II.

If any portion of Section 11-9-10 shall be held to be unconstitutional, invalid or unenforceable, such holding shall not affect the remaining portions of Section 11-9-10, and to that end the provisions hereof are declared to be severable.

Part III.

Section 11-9-10 shall be effective from and after July 1, 1987.

Adopted by the Council of the City of
Birmingham at its meeting held on

4-28-87, and approved

by the Mayor on 5-8-87
Paula R. Smith
City Clerk