

RECOMMENDED BY: PUBLIC SAFETY COMMITTEE
SUBMITTED BY: CITY ATTORNEY

AN ORDINANCE AMENDING TITLE 11 "CRIMES,"
CHAPTER 9 "MISCELLANEOUS," SECTION 10
"SMOKING IN PUBLIC PLACES" BY STRIKING THE EXISTING
LANGUAGE AND SUBSTITUTING THE NEW VERBIAGE OF
A TITLE 11, "CRIMES," CHAPTER 9 "MISCELLANEOUS,"
SECTION 10 "SMOKING IN PUBLIC PLACES" IN ORDER TO
PROVIDE FOR MORE LIMITATIONS ON THE
SMOKING IN PUBLIC PLACES AND TO ASSESS THE
PENALTY FOR VIOLATION THEREOF

ORDINANCE NO. 05-59

WHEREAS, the Council of the City of Birmingham, Public Safety Committee, set a public hearing on the matter of smoking regulations for the City of Birmingham on March 16, 2005;

WHEREAS, at the public hearing on the matter of smoking in public places, numerous witnesses, including representatives from the American Cancer Society, business owners and private individuals testified regarding the harmful effects of secondhand smoke in restaurants and other public places;

WHEREAS, the American Cancer Society has provided medical studies, medical testing, and other documentation to the Council related to the injurious effects of secondhand smoke on children, the elderly, individuals with cardiovascular disease and impaired respiratory disease;

NOW, THEREFORE the Council of the City of Birmingham, makes the following findings: Numerous studies have found that tobacco smoke may be a major contributor to indoor air pollution and that breathing secondhand smoke may be 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 airway disease. Health hazards induced by breathing secondhand smoke may include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchospasm.

Section. 1 **BE IT HEREBY ORDAINED** by the Council of the City of Birmingham that Section 11-9-10 of the General Code of the City of Birmingham, 1980, as amended is hereby striking the language of the current ordinance and substituting the verbiage of the following Section 11-9-10 is adopted in substitution of the prior ordinance to provide for more limitations in the smoking in public places and set forth the penalty therefore as follows:

"Sec. 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 (1) or more persons;
- (3) *Bar and lounge* means an establishment that 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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- (4) *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;
- (5) *Restaurant* means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands and private and public school cafeterias, which gives or offers facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- (6) *Service line* means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involved the exchange of money;
- (7) *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
- (8) *Acute care hospital* means any enclosed area included in a hospital, which hospital provides medical care for persons including surgical procedures.
- (9) *Private Club* means a bona fide non-profit organization or association which requires membership applications to be filled out for membership, that maintains membership records that show the date of application, date of admission after election, date the initiation fees and dues are paid and the amounts paid. The records shall be kept manually or electronically, indicating the name and address of each member and the serial number of the membership card issued

(b) **Public Places.** Smoking shall be prohibited in all enclosed public places within the City of Birmingham, including but not limited to the following places:

- (1) Aquariums, galleries, libraries and museums
- (2) Areas available to and customarily used by the general public in business and non-profit entities patronized by the public, including but not limited to banks, laundromats, hotels and motels.
- (3) Bingo facilities when a bingo game is in progress.
- (4) Convention facilities

- (5) Elevators
- (6) Facilities used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- (7) Health care facilities
- (8) Licensed child care and adult care facilities.
- (9) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities.
- (10) Polling places
- (11) Public transportation facilities, including buses and taxicabs, under the authority of the City of Birmingham and ticket, boarding, and waiting areas of public transit depots.
- (12) Restaurants.
- (13) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (14) Rooms, chambers, places of meeting or public assembly, including school buildings under the control of an agency, board, commission, committee or the council of the City of Birmingham, to the extent the place is subject to the jurisdiction of City of Birmingham.
- (15) Service lines
- (16) Shopping malls in enclosed areas.
- (17) Sports arenas, including enclosed places in outdoor arenas.

(c) *Exemptions.* Notwithstanding any other provisions of this Article to the contrary, the following areas shall be exempted from the provisions of this section:

- (1) Private residences, except when used as a licensed child care, adult day care or health care facility.
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms by the management of the hotel or motel.
- (3) Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this section.
- (4) Bars and lounges, not a part of a restaurant.
- (5) Outdoor areas of restaurants.
- (6) Private clubs, including veterans associations.

(d) *Offenses:* a person violates this section 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, or taxicab, that is not engaged in interstate commerce; or
- (3) If the owner, lessee or other person in charge of a public place, knowingly or intentionally fails to make a reasonable effort to inform those on the premises that knowingly or intentionally smoking in a public place under this section is proscribed behavior.

(e) 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 (1) or more areas as smoking areas.

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

- a. be located in an outside portion of the premises;
- b. be designed by appropriate signs which are clearly visible to patrons in or entering the area;
- c. contain ashtrays, containers or other facilities for extinguishment of smoking materials;

(f) Designation of Nonsmoking Areas: Except as provided by subsection (c), 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.

(g) Regulation of Smoking in the Place of Employment: An employer may designate his place of business or any portion thereof as a non-smoking area. It shall be unlawful for any person to smoke in a place of employment unless, in compliance with all laws and regulations, the employer, employer representative, or other person in charge or control of a place of employment has declared in a posted writing that smoking is allowed.

(h) Enforcement: The provisions of this section 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.

(i) Miscellaneous: Nothing in this section excuses noncompliance with any federal or state law, City of Birmingham ordinance, or any rule or regulation which prohibits smoking.

(j) City buildings, vehicles: It shall be unlawful for any person to smoke in any city-owned or operated building, vehicle, or other facility. (Ord. No. 87-75, 4/28/87, Pt. I as amended by Ord. No. 90-54, 3/13/90, Sec. 1; Ord. No. 95-64, 4/11/95, Secs. 1,2)"

(k) Penalty: The penalty for violation of the provisions contained herein shall be a fine of not less than \$25.00 and not more than \$100.00 per offense. A charge of a violation shall be treated in the same manner as a traffic citation."

Section 2 Severability. If any word, phrase, sentence or subsection of this ordinance is found to be invalid or unconstitutional by a court of competent jurisdiction then the remaining

provisions of this ordinance shall be in full force and effect.

Section 3. Publication. This ordinance shall become effective after approval by Council and Mayor, and publication as required by law showing the effective date of the first day of June, 2005.

Section 4. The Council hereby requests that the Council formally encourage the Jefferson County Commission to enact a smoking ordinance with the same provisions as this ordinance. The Council hereby further requests that the Mayor encourage the members of the Jefferson County Mayors' Conference to have a smoking ordinance enacted in each of the member municipalities. The Council further requests that the American Cancer Society pursue having a smoking ordinance with similar provisions passed by the Jefferson County Commission and all other municipalities in Jefferson and Shelby Counties.

Adopted by the Council of the City of Birmingham April 5, 2005 and Approved by the Mayor April 14, 2005

Paula R. Smith
City Clerk

