

Recommended by:  
Public Safety Committee

Submitted by:  
William M. Pate, Jr.

ORDINANCE NO. 90- 54

AN ORDINANCE TO AMEND SECTION 11-9-10 SMOKING IN PUBLIC PLACES, OF THE GENERAL CODE OF THE CITY OF BIRMINGHAM, 1980, TO PROHIBIT SMOKING IN AN ACUTE CARE HOSPITAL EXCEPT AS ORDERED BY A TREATING PHYSICIAN AS HEREIN DESCRIBED.

BE IT ORDAINED by the City Council of the City of Birmingham, Alabama, that Section 11-9-10 of the General Code of the City of Birmingham, 1980, is hereby amended as follows:

1. Section (a) Definitions is amended to add thereto the following:

"(7) Acute care hospital means any enclosed area included in a hospital which hospital provides medical care for persons including surgical procedures."

1. Section i is hereby added to read in full as follows:

"(i) Acute care hospitals: It shall be unlawful for any person or employee to smoke within any area of an acute care hospital provided that a patient may smoke if that patient's treating physician has determined in writing that denial of smoking is inappropriate to the patient's treatment regime and providing further that such patient may not smoke unless all patients assigned to the smoking patient's room consent thereto in writing."

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

3-13-90, and approved

by the Mayor on 3-19-90  
Paula R. Smith  
City Clerk

(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.

(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

#### 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.