

ORDINANCE NO. 2006-03
OPP ENVIRONMENTAL TOBACCO SMOKE ORDINANCE FOR FOOD
ESTABLISHMENTS

WHEREAS, Environmental Tobacco Smoke is a leading public health problem in the City of Opp and throughout the United States; and

WHEREAS, the use of lighted smoking products inherently creates a health hazard of second hand smoke, which affects the public health, indoor environment, and the enjoyment of public places; and

WHEREAS, there exists conclusive evidence that Environmental Tobacco Smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears, nose, and throat of both smokers and nonsmokers; and

WHEREAS, Environmental Tobacco Smoke, which includes both exhaled and side stream smoke from burning cigarettes, causes the deaths of 53,000 Americans each year; and

WHEREAS, the harmful effects of Environmental Tobacco Smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and

WHEREAS, Food establishments have been shown to be locations of significant exposure to Environmental Tobacco Smoke by citizens of the City of Opp; and

WHEREAS, both the Public Health Services National Toxicology Program and the World Health Organizations; International Agency for Research on Cancer identify Environmental Tobacco Smoke as a human Class A carcinogen and state that there is no safe level of exposure; and

WHEREAS, the United States Surgeon General, the American Cancer Society, The American Lung Association, and the Alabama Department of Public Health have concluded that involuntary smoking is a cause of disease, including lung cancer, in nonsmokers,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Opp, Alabama, that the Council recognizes the rights of those who wish to breathe smoke free air and establishes this regulation to protect and improve the public health and welfare by requiring each Food establishment to be a totally SMOKE-FREE facility.

Section I. Definitions and Guidelines

Definitions

- A. Business Agent - An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.
- B. Employee - Any individual who performs services for an employer in return for wages or profit.
- C. Enclosed - A space, structure, facility or any portion thereof, bounded by walls (with or without windows) continuous from floor to ceiling or deck above and served by heating, ventilating and air conditioning (HVAC) system(s), and through which air can circulate from one portion to another, including, but not limited to offices, rooms, hallways, customer service areas, foyers, common areas, waiting areas, restrooms, lounges, and eating areas.
- D. Food Establishment - Any establishment which is required to have a business license from the City of Opp and which provides food under a permit from the Health Department. Private Clubs are exempt from this ordinance.
- E. Smoking - Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or form.

Section II. Signage Designating Food Establishments as SMOKE-FREE

1. It shall be the responsibility of the owner of the Food establishment to provide signage

that shall be posted conspicuously on or adjacent to each and every door to the establishment that is generally accessed by patrons or employees, plainly visible from the exterior of the building to persons entering through the door. Signage shall be no smaller than 8.5 inches by 11 inches, with white lettering on a red or black background, and include the following statements; "This establishment is a SMOKE-FREE facility" with letters no smaller than 5/8 inch tall (approximately 66 pts.); "Smoking is prohibited throughout this facility at all times" with letters no smaller than 1/4 inch tall (approximately 36pts.); and "City of Opp Ordinance Number _____" with letters no smaller than 1/8 inch tall (approximately 20 pts.).

Section III. Violations

1. It shall be the responsibility of the owner, business agent, manager or other person having control of such Food establishment to ensure compliance with all sections of this ordinance pertaining to his/her place of business. A violator of this ordinance may receive:

- a. In the case of a first violation, a fine of one hundred dollars (\$100.00);
- b. In the case of a second violation, within 24 months of the first violation, a fine of five hundred dollars (\$500.00); and,
- c. In the case of three or more violations within 24 months of the second or current violation, a fine of five hundred dollars (\$500.00) for each violation.

2. No provision, clause or sentence of this ordinance shall be interpreted as prohibiting the City of Opp from suspending or revoking any license or permit issued by and within the jurisdiction of the City of Opp for repeated violations of this ordinance.

3. If the owner, business agent, manager or other person having control of such Food establishment attempts to enforce this ordinance and a patron violates it (smoke in a SMOKE-FREE establishment), then the owner, business agent, manager or other person having control shall not be deemed to be in violation of this ordinance and the patron shall be subject to a fine as follows:

- a. In the case of a first violation, a fine of one hundred dollars (\$100.00);
- b. In the case of a second violation, within 24 months of the first violation, a fine of five hundred dollars (\$500.00); and,
- c. In the case of three or more violations within 24 months of the second or current violation, a fine of five hundred dollars (\$500.00) for each violation.

4. Each calendar day an owner, business agent, manager or other person having control of a Food establishment operates in violation of any provision of this ordinance shall be deemed a separate violation; each calendar day a patron violates this ordinance (i.e., smokes in a SMOKE-FREE establishment) shall be deemed a separate violation.

Section IV. Enforcement

1. Authority to enforce this ordinance shall be held by the City of Opp, its subsidiary programs or designees.

2. An owner, manager, operator, or employee of an establishment regulated by this ordinance shall inform persons violating this ordinance of the appropriate provisions thereof.

3. The City of Opp's Fire Department, or its designee, the Covington County Health Department, or its designee, shall, while in an establishment that is undergoing otherwise mandated inspection, or at any other time deemed necessary by these entities, inspect for compliance with this ordinance.

4. Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the Magistrate of the City of Opp.

5. Any fines or fees collected under this ordinance shall be used for the enforcement of these regulations.

Section V. Non-retaliation

No owner, business agent, manager or other person having control of a Food establishment shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action or other adverse action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this ordinance or exercises any right conferred by this ordinance.

Section VI. Conflict with Other Laws, Ordinance or Regulations

1. Nothing in this ordinance shall be deemed to amend or repeal any applicable fire, health or other law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such fire, health or other law, ordinance or regulation.

2. Nothing in this ordinance shall be deemed to preempt the further limitation of smoking in the City of Opp by any local regulatory body within the limits of its authority and jurisdiction.

Section VII. Severability

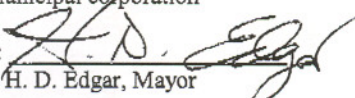
If any provision, clause, sentence, paragraph or word of this ordinance or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provisions or application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

Section VIII. Effective Date

Food establishments legally permitted and/or licensed shall implement the provisions of this ordinance by November 1, 2006.

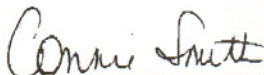
Read, approved and adopted on this 16th day of October, 2006.

CITY OF OPP, ALABAMA
A municipal corporation

BY: 

H. D. Edgar, Mayor

Authenticated:



Connie Smith, City Clerk