ORDINANCE NO. 103-06

AN ORDINANCE TO AMEND CHAPTER 11 OF THE CITY CODE OF THE CITY OF OPELIKA, ALABAMA; SMOKING IN PUBLIC PLACES; PROVIDING PENALTIES FOR THE VIOLATION THEREOF

BE IT ORDAINED by the City Council of the City of Opelika, Alabama, as follows:
Section 1. That Chapter 11 of the Code of Ordinances of the City of Opelika is hereby amended by adding an Article, to be entitled Article II as follows:

## ARTICLE II

## SMOKING IN WORK PLACES AND PUBLIC PLACES

**Sec. 11 -100. Title**

This Article shall be known as the City of Opelika Smokefree Air Ordinance of 2006.

Sec. **11-101. Findings and Intent**

The City of Opelika does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (Nd), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NC),* August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Heallh Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human* Services *(DHHS), Public Health Service, NTP,* 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

A study of hospital admissions for acute inyocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal 328: 977-980,* April 24, 2004.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control 6(4): 346-353, Winter,* 1997.)

The Americans With Disabilities Act, which 'requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," Nonsmokers' Voice 15(1): 8-9.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not: eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General.* Public Health Service, Centers for Disease Control, 1986.) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering

the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), "Indoor air facts no. 5: environmental tobacco smoke," *Washington, D.C.: Environmental Protection Agency (EPA),* June 1989.)

The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal 328: 980-983,* April 24, 2004.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as 'well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," Tobacco Control 11(3): 220-225, September 2002).

Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. ("The high price of cigarette smoking," *Business & Health 15(8), Supplement A: 6-9,* August 1997.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health,* 37:1687-1693, 1997; Colman, R.; Urbonas, CM., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic,* September 2001.)

Smoking is a potential cause of fires; cigarette and. cigar bums and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health 15(8), Supplement A: 6-9,* August 1997.)

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the City Council finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

**Sec. 11-102. <u>Definitions</u>**

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

A. "Bar" means an establishment that is devoted primarily to the serving of alcoholic beverages for consumption by guests on the premises and where food sales represent twenty-five (25) percent or less of the bar's gross annual receipts. This definition includes, but is not limited to taverns, nightclubs, cocktail lounges, and cabarets.

B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

C. City means City of Opelika.

D. City Council means City Council of the City of Opelika.

E. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

F. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

G. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

H. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

I. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

J. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

K. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a' child care, adult day care, or health care facility.

L. "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 for sale food to the public, guests, or employees, as well as

kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

M. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

N. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

O. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

P. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

Q. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice inks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

**Sec. 11-103. Application of Article to City of Opelika Facilities**

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Opelika shall be subject to the provisions of this Article.

**Sec. 11-104. Prohibition of Smoking in Enclosed Public Places**

Smoking shall be prohibited in all enclosed public places within the City of Opelika, including but not limited to, the following places:

A. Aquariums, galleries, libraries, and museums.

B. Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.

C. Convention facilities.

D. Educational facilities, both public and private.

E. Elevators.

F. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.

G. Health care facilities.

H. Hotel and motel lobbies.

I. Licensed child care and adult day care facilities.

J. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

K. Polling places.

L. Private clubs when being used for a function to which the general public is

invited.

M. Public transportation facilities, including buses and taxicabs, under the authority of the Lee Russell Council of Governments, and ticket, boarding, and waiting areas public transit depots.

N. Restaurants.

O. Restrooms, lobbies, reception areas, hallways, and other common-use areas.

P. Retail stores.

Q. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Opelika or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Opelika.

R. Service lines.

S. Shopping malls.

T. Sports arenas, including enclosed places in outdoor arenas.

**Sec. 11-105. Prohibition of Smoking in Places of Employment**

A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

**Sec. 11-106. Prohibition of Smoking in Outdoor Arenas and Stadiums**

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters.

**Sec. 11-107. Reasonable Distance**

Smoking is prohibited within a reasonable distance of ten (10) feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or other means.

The owner, operator, manager or other persons in control of an establishment may declare that smoking is prohibited within a greater distance outside an enclosed area where smoking is prohibited. If smoking is prohibited outside the building within a greater distance than ten (10) feet, a conspicuous sign shall be posted at every entrance stating that smoking is prohibited within a specific distance (in feet) from the building. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this section is posted.

**Sec. 11-108. Where Smoking Not Regulated**

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 11-104 and 11-105:

A. Private residences, except when used as a licensed child care, adult day care, or health care facility.

B. Bars

C. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

D. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.

E. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.

F. Private clubs that have no employees, except when being used for a function to which the general public is invited.

G. Outdoor areas of places of employment except those covered by the provisions of Sections 11-106 and 11-107.

**Sec. 11-109. <u>Declaration of Establishment as Nonsmoking</u>**

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 11-110(A) is posted.

**Sec. 11-110. <u>Posting of Signs; Responsibility of Proprietors</u>**

A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted. in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

B. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

C. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

D. The owner, operator, manager or other person having control of any area where smoking is prohibited by this Article shall request any person smoking in violation of this Article to stop.

**Sec. 11-111. <u>Nonretaliation; Nonwaiver of Rights</u>**

A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

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.

**Sec. 11-112. Enforcement**

A. This Article shall be enforced by the Lee County Heath Officer, or an authorized representative thereof, or the Mayor or his duly authorized designees or representatives.

B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Opelika.

C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Lee County Health Department or the Mayor or his designees..

D. The Lee County Health Department, Opelika Fire Department, the Building Official or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

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

F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.

G. In addition to the remedies provided by the provisions of this Section, the Lee County Health Department, the Mayor or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**Sec. 11-113. Violations and Penalties**

A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a misdemeanor, punishable by a fine not exceeding fifty dollars ($50).

B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of a misdemeanor, punishable by:

1. A fine not exceeding one hundred dollars ($100) for a first violation.

2. A fine not exceeding two hundred dollars ($200) for a second violation within one (1) year.

3. A fine not exceeding five hundred dollars ($500) for each additional violation within one (1) year.

C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the Lee County Health Department or the Mayor by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Lee County Health Department and/or the City may take action to recover the costs of the nuisance abatement.

E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

**Sec. 11-114. Public Education**
The Mayor or his designees shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

**Sec. 11-115. Governmental Agency Cooperation**

The Mayor shall annually request other governmental and educational agencies having facilities within the City of Opelika to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, County, City and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

**Sec. 11-116. Other Applicable Laws**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Sec. 11-117. Liberal Construction**

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

**Sec. 11-118. Severability**

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

**Sec. 11-119. Effective Date**

This Article shall be effective ninety (90) days from and after the date of its adoption and publication as required by law.

Section 2. The provisions of this Ordinance are severable. If any section, subsection, or provisions of this Ordinance be for any reason declared void of invalid, such invalidity shall not effect any other section, subsection or provision of this Ordinance.

Section 3. This Ordinance shall become effective within ninety (90) days from and after the date of its adoption and publication as required by law.

Section 4. The City Clerk is hereby authorized and directed to publish this ordinance one (1) time in the Opelika-Auburn News, a newspaper of general circulation within the City of Opelika, Alabama.

ADOPTED AND APPROVED by this City Council of the City of Opelika, Alabama on this the 21st day of February 2006.

PRESIDENT OF THE CITY COUNCIL OF THE CITY OF OPELIKA, ALABAMA

ATTEST:

CITY CLERK

TRANSMITTED TO MAYOR this the 21st day of February 2006.

CITY CLERK

**ACTION BY MAYOR**

**APPROVED** this the 21st day of February 2006.

MAYOR

ATTEST:

CITY CLERK