

**CITY OF OAK GROVE, KENTUCKY
ORDINANCE 2011-01**

**AN ORDINANCE RELATING TO THE PROTECTION OF THE PUBLIC
HEALTH AND WELFARE BY PROHIBITING THE SMOKING OF
TOBACCO PRODUCTS IN RESTAURANTS**

WHEREAS, the City Council hereby declares it in the interest of public health and policy to adopt an ordinance prohibiting the smoking of tobacco products in restaurants.

WHEREAS, the City Council hereby finds that (a) Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution; and, (b) Reliable Scientific Studies, including studies by the Surgeon General of the United States and studies commissioned and assessed by the U.S. Environmental Protection Agency, have shown that breathing side stream or secondhand smoke is a significant health hazard to nonsmokers.

NOW, THEREFORE, be it ordained by the City Council of the City of Oak Grove as follows:

SECTION 1 - DEFINITIONS

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- A. *Restaurant* means a public establishment that serves prepared food and beverages to be consumed upon the premises. This definition shall include any business for which fifty percent (50%) or more of the business's gross annual income is from the sale of food.
- B. *Smoke or Smoking* shall mean the act of possessing, carrying, burning, inhaling or exhaling the smoke of any lighted cigarette, cigar, or pipe, or other combustible tobacco product.

SECTION 2 – PROHIBITION

No person shall smoke within any restaurant within the City of Oak Grove, Kentucky.

SECTION 3 - POSTING SIGNS

- A. Not less than two (2) 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 restaurant. The party responsible for the purchase and placement of the signage is the owner, employer, operator, lessee, manager, or other person in control of the restaurant.
- B. Nothing in this chapter shall authorize the removal of no-smoking signs required by other statute, regulation, or ordinance.

- C. All ashtrays or ash containers shall be removed from restaurants, except for ashtrays for sale and not for use on the premises. Any permanent structure that previously functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.

SECTION 4 - REASONABLE DISTANCE

Smoking is prohibited within a reasonable distance from the outside entrance to any restaurant so as to ensure that tobacco smoke does not enter the building or enclosed area through entrances, windows, ventilation systems, or other means. Unless directed otherwise by the Mayor, the distance of fifteen (15) feet shall be deemed reasonable.

SECTION 5 - NON-RETALIATION AND NON-WAIVER OF RIGHTS

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 for employment or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this ordinance.

SECTION 6 - ENFORCEMENT

- A. The Mayor shall designate the City departments responsible for enforcing this Ordinance.
- B. Written notice of the provisions of this Ordinance shall be given to all applicants for a business license within the City of Oak Grove.
- C. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with a written complaint to the Mayor.
- D. The following departments, or their designees, shall, while performing otherwise legal inspections inspect for compliance with this Ordinance: CAO/City Clerk, Police Department, Fire Department, Planning Department, Public Works Department, and Finance Department.
- E. A person in control of a restaurant shall inform persons violating this Ordinance of the applicable provisions thereof and report non-compliance to Mayor.
- F. No person having control of a restaurant shall fail to:
 - (1) Immediately ask smokers to refrain from smoking in any no smoking area;
 - (2) Use any other legal means which may be appropriate to further the intent of this chapter, including the action required by paragraph E., above.

G. Notwithstanding any other provision of this Ordinance, the City, or any person aggrieved by a failure to comply with this Ordinance, whether by commission or omission, including violations on the part of a person in control of a building or enclosed area covered by this Ordinance may bring legal action to enforce this Ordinance, either by civil action seeking injunctive relief or by criminal complaint in a court of competent jurisdiction.

SECTION 7 - VIOLATIONS AND PENALTIES

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of a violation of the same, which violation shall be punishable by a fine not exceeding fifty dollars (\$50.00).
- B. A person in control of a restaurant who fails to comply with the provisions of this Ordinance shall be guilty of a violation punishable by:
- (1) A fine not exceeding fifty dollars (\$50.00) for a first violation within a twelve month period.
 - (2) A fine not exceeding one-hundred dollars (\$100.00) for a second violation within a twelve month period.
 - (3) A fine not exceeding two hundred fifty dollars (\$250.00) for each additional violation within a twelve month period.
- C. Persons who smoke in an area where smoking is prohibited by this Ordinance and who refuse to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for trespass if they do not leave when asked.
- D. In addition to the fines established by this Section, violation of this Ordinance by a person who controls a restaurant more than three (3) times in any twelve-month period may result in the suspension or revocation of any permit or business license issued by the City to the person for the premises on which the violation occurred.
- E. Violation of this Ordinance is declared to be a public nuisance which may be abated by the City or its designated agents by restraining order, preliminary and permanent injunction or other means provided for by law. The City may recover the reasonable costs of any court enforcement action seeking abatement of this nuisance.
- F. Each calendar day on which a violation of this Ordinance occurs shall be considered a separate and distinct offense.

SECTION 8 - SEVERABILITY

If any section or portion of this ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, that section or portion shall be deemed severable and shall not affect the validity of the remaining sections of the ordinance.

SECTION 9 - UNCONSTITUTIONALITY

Should any portion of this ordinance be declared void or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

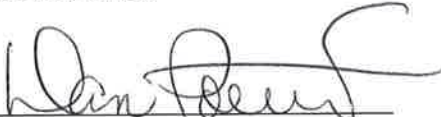
This ordinance shall become effective upon passage and publication.

Approved on First Reading this 22nd day of December, 20 10 .


Approved on Second Reading this 4th day of January, 20 11 .

APPROVED:

ATTEST:



Dan Potter, Mayor
City of Oak Grove, Kentucky



Evelyn McDaniel, CAO/City Clerk
City of Oak Grove, Kentucky

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