

STATE OF IOWA
BEFORE THE IOWA DEPARTMENT OF COMMERCE
ALCOHOLIC BEVERAGES DIVISION

IN RE:)	
Coordinated Estate Services, Inc.)	Docket No.
d/b/a Otis Campbell's Bar & Grill /)	
Aunt Bea's Café)	
113 Broadway)	HEARING COMPLAINT
West Burlington, Iowa 52655)	
)	
Liquor License No. LC-27324)	

The Iowa Department of Public Safety, pursuant to authority granted in Iowa Code section 123.14, 2008 House File 2212, section 8 (to be codified at Iowa Code section 142D.8), and 641 Iowa Administrative Code section 153.8(3), hereby makes the following complaint against the above-named licensee.

1. Iowa Code section 123.1 provides that the Iowa Alcoholic Beverage Control Act is “an exercise of the police power of the State, for the protection of the welfare, health, peace, morals and safety of the people of the State and all provisions shall be liberally construed for the accomplishment of that purpose.”

2. 2008 House File 2212, section 1 (Iowa Code section 142D.1) provides that “environmental tobacco smoke causes and exacerbates disease in nonsmoking adults and children sufficient to warrant measures that regulate smoking in public places, places of employment and outdoor areas in order to protect the public health and the health of employees.”

3. The Iowa Smokefree Air Act (2008 House File 2212) provides that “smoking is prohibited and a person shall not smoke in . . . public places and all enclosed areas of employment.” 2008 House File 2212, § 3 (Iowa Code § 142D.3(1)).

4. 2008 House File 2212, section 9 (Iowa Code section 142D.9(4)) authorizes the suspension or revocation of any license or permit issued for the premises on which a violation of the Smokefree Air Act has been committed by any person who owns, operates, manages or otherwise has custody or control over that premises.

5. Iowa Code section 123.39 authorizes the Administrator of the Iowa Alcoholic Beverages Division to suspend or revoke a liquor control license of any licensee who violates any provision of Iowa Code chapter 123.

6. Iowa Code section 123.39(1)(b)(4) provides that a liquor license or wine or beer permit may be revoked upon the occurrence of any event that would have resulted in the disqualification of an applicant from receiving the license or permit.

7. Iowa Code section 123.30(2) provides that: “No liquor control license shall be issued for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations.”

8. 185 Iowa Administrative Code section 4.2(1) provides that: “Licensees and permittees shall at all times keep and maintain their respective premises in compliance with the laws, orders, ordinances and rules of the state, county and city health and fire departments and the Iowa department of inspections and appeals.”

VIOLATION

9. The respondent Licensee's premises is a public place and place of employment as defined by the Smokefree Air Act and is subject to the smoking prohibitions of the Act. 2008 House File 2212, § 2 (Iowa Code § 142D.2(13) & (16)); 2008 House File 2212, § 3 (Iowa Code § 142D.3(1)).

10. During the period commencing on July 1, 2008 and ending on August 9, 2008, forty-eight (48) public complaints were filed with the Iowa Department of Public Health against the Licensee alleging that the Licensee allowed or permitted smoking on the above-captioned licensed premises in violation of the Smokefree Air Act. See Attached Exhibit A.

11. The Iowa Department of Public Health issued the Licensee Notices of Potential Violation on July 14, 2008, July 24, 2008, and August 20, 2008 in an effort to inform the Licensee of the violations of the Smokefree Air Act alleged to have occurred on its licensed premises and to educate the Licensee of its duties and obligations under the Act. See Attached Exhibits B, C, & D.

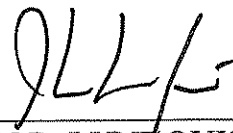
12. On or about July 7, 2008, and August 4, 2008, officers of the West Burlington Police Department observed individuals openly smoking inside the Licensee's premises and the presence of ashtrays in violation of the Smokefree Air Act. See 2008 House File 2212, §§ 3 & 6 (Iowa Code §§ 142D.3 & 142D.6(4)); 641 Iowa Admin. Code § 153.3(1); 641 Iowa Admin. Code § 153(5)(1)(a) & (f). The officers further observed that required

signage was not posted. See 2008 House File 2212, section 6 (Iowa Code § 142D.6(3)); 641 Iowa Admin. Code § 153(5)(1)(d). The officers further observed that the Licensee's employees did nothing to correct or remedy the open violations of the Smokefree Air Act occurring on the licensed premises. See 2008 House File 2212, section 8 (Iowa Code § 142D.8(3)); 641 Iowa Admin. Code § 153(5)(4).

13. The Licensee's open and continuing failure to comply with all applicable provisions of the Smokefree Air Act constitutes a violation of Iowa Code sections 123.30(2) and 185 Iowa Administrative Code section 4.2(1) and is sufficient grounds for the suspension and/or revocation of the Licensee's liquor license. See Iowa Code § 123.39; 2008 House File 2212, section 9 (Iowa Code § 142D.9).

WHEREFORE, the Department of Public Safety requests that the Administrator find pursuant to Iowa Code chapter 123 and 2008 House File 2212 that the above-named licensee was in violation of the above-cited Iowa Code sections and enter the appropriate remedy.

THOMAS J. MILLER
IOWA ATTORNEY GENERAL



JOHN R. LUNDQUIST
Assistant Attorney General
Hoover State Office Building
Des Moines, IA 50319
(515) 281-3658
(515) 281- 7551 (fax)

Iowa Smokefree Air Act Complaint & Compliance Program

[HELP](#) [Main Menu](#) [Business Listing](#) [Log Out](#)

Business: Otis Campbell's Bar & Grill/Au Status: Active Inactive

Date Created: 07/02/2008

Address 1: 113 Broadway

Address 2:

City: West Burlington

State: Iowa

Zip: 52655

County: DES MOINES

Phone: (319) 754-1442

Mailing Address:

Address 1: 113 Broadway

Address 2:

City: West Burlington

State: Iowa

Zip: 52655

Non-IA City:

Business Type: Restaurant

Contractor: West Burlington

Legal Owner: Coordinated Estate Services, I

Legal Owner:

First Name: LA

Last Name: Duncan

Fax #:

Email Address:

Phone:

Comment:

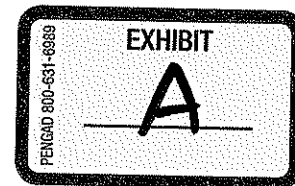
Comment History:

First Notice of Violation Letter Sent on 7/11/08
NOV LETTER RECIEVED BY BUSINESS ON 07/12/08

Provided ABD notice to coordinate law enforcement site visit on 7/30/08 at 3:45 PM.
2ND NOV LETTER RECEIVED BY BUSINESS ON 07/28/08-AMH
NO FOLLOWUP REQUIRED ON 07/31/08 -AMH

No followup required see complaint no#255-amh

3RD NOV LETTER SENT OUT ON 8-20-08-rr
3RD NOV LETTER RECEIVED BY BUSINESS ON 8-21-08-RR



IDPH Notified ABD on 8/26/08 to conduct law enforcement site visit

Complaint History

<u>Complaint Num</u>	<u>Date Performed</u>	<u>Calendar Year</u>	<u>Report Type</u>
3	<u>07/01/2008</u>	2008	Public Complaint
28	<u>07/01/2008</u>	2008	Public Complaint
86	<u>07/04/2008</u>	2008	Public Complaint
98	<u>07/03/2008</u>	2008	Public Complaint
99	<u>07/04/2008</u>	2008	Public Complaint
100	<u>07/07/2008</u>	2008	Public Complaint
101	<u>07/04/2008</u>	2008	Public Complaint
102	<u>07/05/2008</u>	2008	Public Complaint
103	<u>07/05/2008</u>	2008	Public Complaint
104	<u>07/03/2008</u>	2008	Public Complaint
105	<u>07/10/2008</u>	2008	Public Complaint
112	<u>07/11/2008</u>	2008	Public Complaint
114	<u>07/08/2008</u>	2008	Public Complaint
120	<u>07/08/2008</u>	2008	Public Complaint
121	<u>07/08/2008</u>	2008	Public Complaint
122	<u>07/08/2008</u>	2008	Public Complaint
127	<u>07/10/2008</u>	2008	Public Complaint
144	<u>07/12/2008</u>	2008	Public Complaint
150	<u>07/15/2008</u>	2008	Public Complaint
170	<u>07/04/2008</u>	2008	Public Complaint
171	<u>07/07/2008</u>	2008	Public Complaint
173	<u>07/16/2008</u>	2008	Public Complaint
188	<u>07/23/2008</u>	2008	Public Complaint
189	<u>07/19/2008</u>	2008	Public Complaint
211	<u>07/24/2008</u>	2008	Public Complaint
224	<u>07/07/2008</u>	2008	Inspector's Report
236	<u>07/19/2008</u>	2008	Public Complaint
249	<u>07/11/2008</u>	2008	Public Complaint
255	<u>07/11/2008</u>	2008	Public Complaint
271	<u>07/31/2008</u>	2008	Public Complaint
272	<u>07/31/2008</u>	2008	Public Complaint
273	<u>07/31/2008</u>	2008	Public Complaint

289	<u>07/16/2008</u>	2008	Public Complaint
291	<u>07/16/2008</u>	2008	Public Complaint
298	<u>08/02/2008</u>	2008	Public Complaint
305	<u>07/22/2008</u>	2008	Public Complaint
324	<u>07/17/2008</u>	2008	Public Complaint
325	<u>07/18/2008</u>	2008	Public Complaint
326	<u>07/18/2008</u>	2008	Public Complaint
329	<u>08/06/2008</u>	2008	Public Complaint
339	<u>08/09/2008</u>	2008	Public Complaint
357	<u>07/22/2008</u>	2008	Public Complaint
387	<u>08/04/2008</u>	2008	Law Enforcement Site Visit
398	<u>07/26/2008</u>	2008	Public Complaint
443	<u>08/03/2008</u>	2008	Public Complaint
446	<u>07/14/2008</u>	2008	Public Complaint
469	<u>07/25/2008</u>	2008	Public Complaint
493	<u>07/14/2008</u>	2008	Public Complaint
511	<u>08/03/2008</u>	2008	Public Complaint
512	<u>07/24/2008</u>	2008	Public Complaint

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Iowa Department of Public Health
Promoting and Protecting the Health of Iowans

Thomas Newton, MPP, REHS
Director

Chester J. Culver
Governor

Patty Judge
Lt. Governor

First Notice of Potential Violation
Iowa Smokefree Air Act

July 14, 2008

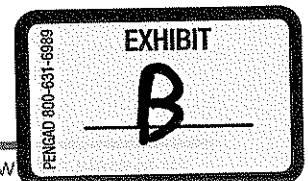
LA Duncan
Coordinated Estate Services, Inc.
113 Broadway Street
West Burlington, IA 52655

Dear Mr. Duncan:

The Iowa Department of Public Health has received a complaint of an alleged violation of the Iowa Smokefree Air Act at Otis Campbell's Bar & Grill, 113 Broadway St in West Burlington. The following paragraph describes the particular alleged violation(s) in brief detail.

A patron of Otis Campbell's Bar & Grill observed smoking by both employees and patrons inside the premises on July 1, 2008. It was also reported that ashtrays were present at the bar, and the required signs were not posted. These are violations of the following requirements of the Smokefree Air Act:

- **Smoking in prohibited areas.** An employer, owner, operator, manager, or person having custody or control of any enclosed facility or outdoor area where smoking is prohibited is required not to permit smoking in that area. Smoking is prohibited in the outdoor seating or service areas of a restaurant.
- **Improper notification of violation.** An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited is required to inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and shall request that the individual stop smoking immediately.
- **Signs not posted.** An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited is required to post "no smoking" signs at every entrance to the public place, place of employment, area declared nonsmoking and outdoor area where smoking is prohibited, that clearly and conspicuously inform persons that they are entering a no smoking facility or area.
- **Ashtrays.** The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place or outdoor area where smoking is prohibited shall remove all ashtrays from these locations. "Ashtray" means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs.



This letter is not a citation or notification of a fine. We are taking this opportunity to provide you with information that will help you ensure that your establishment is in compliance with the Smokefree Air Act. Enclosed is a packet containing basic information about provisions of the laws and a brochure with a link to the Web site where you find more detailed information.

Additionally, to further assist your establishment in complying with the Smokefree Air Act, a representative from your local community tobacco control program may contact you to arrange for an educational site visit. Please take advantage of this opportunity to become more familiar with the law.

This First Notice of Potential Violation has not been forwarded to any law enforcement agency. However, if a second valid complaint concerning your establishment is received within the next 12 months, a Second Notice of Violation may be issued and this notice will be forwarded to a local law enforcement agency for further action.

Further action may result in civil penalties of not more than \$100 for a first violation or not more than \$500 for subsequent violations. In addition, as stipulated in the Smokefree Air Act on page 13, line 5: *"violation of this chapter by a person who owns, operates, manages, or who otherwise has custody or control of a public place, place of employment, area declared a nonsmoking place...or outdoor area regulated under this chapter may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred."*

We are available to assist you in bringing your establishment into compliance with the law. If you have any questions concerning the law or would like to receive additional information, please visit www.IowaSmokefreeAir.gov or call 1-888-944-2247.

Sincerely,

Bonnie E. Mapes
Director, Division of Tobacco Use Prevention & Control



Iowa Department of Public Health
Promoting and Protecting the Health of Iowans

Thomas Newton, MPP, REHS
Director

Chester J. Culver
Governor

Patty Judge
Lt. Governor

Second Notice of Potential Violation
Iowa Smokefree Air Act

July 24, 2008

LA Duncan
Coordinated Estate Services, Inc.
113 Broadway Street
West Burlington, IA 52655

Dear Mr. Duncan:

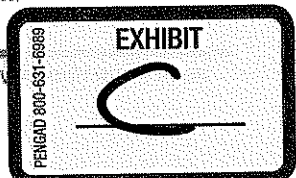
This letter regards a complaint that was filed about an alleged violation of the Iowa Smokefree Air Act at Otis Campbell's Bar & Grill, 113 Broadway St in West Burlington. The following paragraph describes the particular violation(s) in brief detail:

A patron of Otis Campbell's Bar & Grill observed smoking by patrons inside the premises on July 15, 2008. It was also reported that ashtrays were present at the bar. These are violations of the following requirements of the Smokefree Air Act:

- *Smoking in prohibited areas.* An employer, owner, operator, manager, or person having custody or control of any enclosed facility or outdoor area where smoking is prohibited is required not to permit smoking in that area. Smoking is prohibited in the outdoor seating or service areas of a restaurant.
- *Improper notification of violation.* An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited is required to inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and shall request that the individual stop smoking immediately.
- *Ashtrays.* The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place or outdoor area where smoking is prohibited shall remove all ashtrays from these locations. "Ashtray" means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs.

This letter is not a citation or notification of a fine. We are taking this opportunity to provide you with information that will help you ensure that your establishment is in compliance with the Smokefree Air Act. Enclosed is a packet containing basic information about provisions of the laws and a brochure with a link to the Web site where you find more detailed information.

A First Notice of Potential Violation was issued to your establishment on July 7, 2008. This Second Notice of Potential Violation has been forwarded to a local law enforcement agency for further action.



If you have any questions concerning the law or would like to receive additional information, please visit www.IowaSmokefreeAir.gov or call 1-888-944-2247. We would like to assist in bringing your establishment into compliance with the law.

Sincerely,

Bonnie E. Mapes
Director, Division of Tobacco Use Prevention & Control



Iowa Department of Public Health
Promoting and Protecting the Health of Iowans

Thomas Newton, MPP, REHS
Director

Chester J. Culver
Governor

Patty Judge
Lt. Governor

Third Notice of Violation
Iowa Smokefree Air Act

August 20, 2008

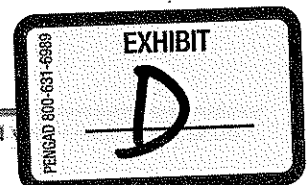
LA Duncan
Otis Campbell's Bar & Grill/Aunt Bea's Cafe
113 Broadway
West Burlington, Iowa 52655

Dear Mr. Duncan:

This letter regards a complaint that was filed about an alleged violation of the Iowa Smokefree Air Act at Otis Campbell's Bar & Grill/Aunt Bea's Cafe, 113 Broadway in West Burlington. The following paragraph describes the particular violation(s) in brief detail:

The complainant observed smoking by patrons inside the premises on July 31, 2008. The complainant brought this violation to the attention of staff, and staff did not request that the patrons stop smoking. It was also reported that ashtrays were present at the bar, and the required signs were not posted. These are violations of the following requirements of the Smokefree Air Act:

- *Smoking in prohibited areas.* An employer, owner, operator, manager, or person having custody or control of any enclosed facility or outdoor area where smoking is prohibited is required not to permit smoking in that area.
- *Improper notification of violation.* An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited is required to inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and shall request that the individual stop smoking immediately.
- *Signs not posted.* An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited is required to post "no smoking" signs at every entrance to the public place, place of employment, area declared nonsmoking and outdoor area where smoking is prohibited, that clearly and conspicuously inform persons that they are entering a no smoking facility or area.
- *Ashtrays.* The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place or outdoor area where smoking is prohibited shall remove all ashtrays from these locations. "Ashtray" means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs.



This letter is not a citation or notification of a fine. The intent is to provide you with the information that you need to ensure that your establishment is in compliance with the Smokefree Air Act. Enclosed is an informational brochure with basic information about provisions of the laws and a link to the Web site where you find more detailed information.

A First Notice of Potential Violation was issued to your establishment on July 22, 2008. A Second Notice of Potential Violation was issued to your establishment on July 28, 2008. This Third Notice of Potential Violation has been forwarded to a local law enforcement agency for further action.

If you have any questions concerning the law or would like to receive additional information, please visit www.IowaSmokefreeAir.gov or call 1-888-944-2247. We would like to assist in bringing your establishment into compliance with the law.

Sincerely,

Bonnie E. Mapes
Director, Division of Tobacco Use Prevention & Control