

ORDINANCE NO. 366-2009

AN ORDINANCE TO PROTECT THE AIR QUALITY IN THE CITY OF SPANISH FORT, ALABAMA

WHEREAS, the City Council of the City of Spanish Fort, Alabama, finds and declares that the purpose of this Ordinance is to protect the public health and welfare by protecting the air quality within the City of Spanish Fort.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

SECTION 1. WORDS DEFINED.

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

- a. Assisted Living Facility. A living arrangement in which people with special needs, especially older people with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing and taking medication.
- b. Bar. A stand-alone enclosed area in which the principal or sole purpose and business of the establishment is the serving of alcoholic beverages for consumption which comprises at least 60% or greater of the gross sales. This term includes such establishments where the sale or service of food is made, but only if it is incidental to the service of alcoholic beverages. Bars must be posted off limits to minors and must not allow any minors inside.
- c. Business. A sole proprietorship, partnership, joint venture, corporation or other business entity, either for-profit or not-for-profit, includes 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.
- d. Employee. A person who is hired by another to perform a task or job in consideration for direct or indirect monetary wages, gain or profit, and a person who volunteers his or her services for a non-profit entity. This term includes independent contractors.
- e. Employer. A person, business, partnership, association or corporation, including a municipal corporation, trust or non-profit entity that hires the services of one or more employees.
- f. Enclosed Area. Area between a floor and ceiling that is enclosed, or is capable of being enclosed, on all sides by solid walls, windows, and/or doorways and which is climate controlled by an HVAC or similar air handling system.
- g. Place of Employment. Area under the control of an Employer where 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 also used as a location of a business open to the public or a child care, adult day care or health care facility.

- h. Private Club. An organization, whether incorporated or not, that 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 under 26 U.S.C. Section 501. A Private Club is not open to the general public. However, a private club established for the purpose of avoiding the prohibitions on smoking called for in this Ordinance shall be deemed a Public Place.
- i. Public Place. An enclosed area to which the general public is invited or is permitted, including but not limited to, banks, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation, 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 facility is a Public Place when being used for a function to which the general public is invited or allowed to attend. A private residence is not a Public Place, unless it is used as a business location open to the public or a child care, adult day care, or health care facility.
- j. Retail Tobacco Store. Any retail establishment utilized primarily for the sale of tobacco products and smoking accessories in which the sale of other products, including food and beverages, does not exceed 40 percent of revenues.
- k. Smoking. Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or form.
- l. Arena. Sports pavilions, stadiums, public recreational fields, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, 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.

SECTION 2. APPLICATION OF ORDINANCE TO CITY-OWNED FACILITIES.

All buildings, vehicles and parks which are owned, leased or operated by the City of Spanish Fort shall be subject to the provisions of this Ordinance.

SECTION 3. PROHIBITION OF SMOKING IN PUBLIC PLACES.

Smoking shall be prohibited in all enclosed Public Places within the City of Spanish Fort, as well as the areas within a reasonable distance of twenty (20) linear feet outside of the main entrance(s)/exit(s) of such Public Places as designated by the owner and approved by the Building Official or City Fire Inspector.

SECTION 4. PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.

Smoking shall be prohibited in all enclosed areas which are a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms,

and all other enclosed areas. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment. Provided, however, the Employees of the City may smoke in assigned City owned vehicles, as long as there are no other occupants in said vehicle.

SECTION 5. PROHIBITION OF SMOKING IN OUTDOOR ARENAS AND STADIUMS.

Smoking shall be prohibited in the seating areas of all outdoor Arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

SECTION 6. REASONABLE DISTANCE.

Smoking shall be prohibited within a reasonable distance of twenty (20) linear feet outside the main customer entrances/exits to enclosed areas where smoking is prohibited in this Ordinance as designated by the owner and approved by the Building Official or City Fire Inspector.

SECTION 7. WHERE SMOKING NOT PROHIBITED.

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the prohibitions in this Ordinance:

- a. Private residences which are not also a place of employment, business or Public Place as herein defined.
- b. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that no more than thirty percent (30%) of rooms rented to guests in a hotel or motel may be designated as smoking rooms. 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 Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- c. Private clubs when being used or occupied by its members and their guests only. This provision shall only apply when no individual under the age of nineteen (19) is present.
- d. Places of employment that do not meet the definition of an Enclosed Area (except those covered by the provisions of Sections 5 and 6).
- e. Bars as defined herein.
- f. Private and semiprivate rooms in assisted living facilities or long-term care facilities that are occupied by one 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 Ordinance.
- g. Retail Tobacco Stores, provided that no on-premise consumption of alcoholic beverages is permitted and smoke from these establishments does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

SECTION 8. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

Notwithstanding any other provision of this Ordinance, an owner, operator, manager or other person in control of an establishment, facility or outdoor area may designate the premises as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 9 (a) is posted.

SECTION 9. POSTING OF SIGNS.

- 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 Ordinance, 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 Ordinance 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 Ordinance or by the owner, operator, manager or other person having control of the area.

SECTION 10. NONRETALIATION; NONWAIVER OF RIGHTS.

- 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance.
- 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.

SECTION 11. ENFORCEMENT.

- a. This Ordinance shall be enforced by the Spanish Fort Police Department.
- b. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Spanish Fort.
- c. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Police Department.
- d. The Health Department, Police Department and Fire Department shall inspect for compliance with this Ordinance.
- e. An owner, manager, operator or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.
- f. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.
- g. In addition to the remedies provided by the provisions of this Section, the City Clerk 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 Ordinance may apply for an injunction to enforce those provisions in any court of competent jurisdiction.

SECTION 12. VIOLATION AND PENALTIES.

- a. Any person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall, upon conviction, be guilty of an infraction punishable by:
 1. A fine not exceeding One Hundred (\$100) dollars for a first violation, plus costs of court.
 2. A fine not exceeding Two Hundred (\$200) dollars for a second violation within one (1) year, plus costs of court.
 3. A fine not exceeding Five Hundred (\$500) dollars for each additional violation within one (1) year, plus costs of court.
- 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 the Ordinance shall be guilty of an infraction punishable by:
 1. A fine not exceeding One Hundred (\$100) dollars for a first violation, plus costs of court.
 2. A fine not exceeding Two Hundred (\$200) dollars for a second violation within one (1) year, plus costs of court.
 3. A fine not exceeding Five Hundred (\$500) dollars for each additional violation within one (1) year, plus costs of court.
- c. In addition to the fines established by this Section, a violation of this Ordinance 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. Violations of this Ordinance are hereby declared to be a public nuisance, which may be abated by the City Council by restraining order, preliminary and permanent injunction, or by any other means or remedy provided for by law. The City may take action to recover the costs of such enforcement action.
- e. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

SECTION 13. SEVERABILITY.

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding should not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 14. EFFECTIVE DATE.

This Ordinance shall be effective ninety (90) days from and after the date of its adoption.

ADOPTED AND APPROVED this 15th day of *June, 2009*.

Joseph C. Bonner
Mayor

ATTEST:

Mary Lynn Williams, MMC
City Clerk