

**CITY OF DAPHNE  
ORDINANCE 2014-35**

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**ORDINANCE TO REPEAL AND REPLACE ORDINANCE 2008-19 TO  
PROTECT THE AIR QUALITY IN THE CITY OF DAPHNE**

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**WHEREAS**, Ordinance 2008-19 was approved and adopted February 18, 2008 to protect the public health and welfare by protecting the air quality within the City of Daphne; and

**WHEREAS**, the City Council has determined that various sections of Ordinance 2008-19 should be repealed and replaced to include E-Cigarettes and to eliminate any vagueness contained herein; and

**WHEREAS**, the City Council for the City of Daphne, Alabama has deemed it to be beneficial to the health, safety and welfare of the citizens of Daphne, Alabama to repeal Ordinance 2008-19 and replace the same with new standards as follows:

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Daphne, Alabama, as follows:

**SECTION ONE: DEFINITIONS**

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

- a. "Assisted Living Facility" means a living arrangement in which people with special needs, especially older people with disabilities reside in a facility that provide help with everyday tasks such as bathing, dressing, and taking medication.
- b. "Bar" means 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 sixty percent (60%) or greater in 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" means 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. "E-cigs" means usage of any electronic cigarette (e-cig or e-cigarette), personal vaporizer (PV) or electronic nicotine delivery system (ENDS) or any battery powered device which simulates tobacco smoking.
- e. "Employee" means 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.
- f. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that hires the services of one or more employees.
- g. "Enclosed Area" means that 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 a HVAC or similar air handling system.
- h. "Place of Employment" means an 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, child care, adult care or health care facility.
- i. "Private Club" means 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 by-laws 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. A private club established for the purpose

of avoiding the prohibitions on smoking called for in this Ordinance shall be deemed a public place, however.

- j. "Public Place" means 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, child care, adult day care, or health care faculty.
- k. "Retail tobacco store" means 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 forty percent (40%) of gross revenues.
- l. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or form.
- m. "Sports Arena" means 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 TWO: APPLICATION OF ORDINANCE TO CITY OWNED, OPERATED OR LEASED FACILITIES**

All property, including building, vehicle, and parks which are owned, leased, or operated by the City of Daphne shall be subject to the provisions of this Ordinance.

**SECTION THREE: PROHIBITION OF SMOKING IN PUBLIC PLACES**

Smoking shall be prohibited in all enclosed Public Places, as well as the areas within a reasonable distance outside of the main entrance(s) of such Public Places, within the City of Daphne. E-Cigs shall be prohibited in all enclosed facilities that are owned, operated or leased by the City. For the purposes of this ordinance, City vehicles shall be considered enclosed facilities.

**SECTION FOUR: 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 of employment.

**SECTION FIVE: PROHIBITION OF SMOKING IN OUTDOOR ARENAS AND STADIUMS**

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

**SECTION SIX: REASONABLE DISTANCE**

Smoking or E-Cigs shall be prohibited within a reasonable distance of twenty linear feet (20') outside all main entrances/exits to enclosed areas where smoking or E-Cigs, respectively are prohibited in this Ordinance.

**SECTION SEVEN: WHERE SMOKING IS 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 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 Ordinance. The status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking 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 Section Five and Section Six).
- e. Bars.
- f. Private and semi-private 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 EIGHT: DECLARATION OF ESTABLISHMENT AS NON-SMOKING**

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 non-smoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 9(a) is posted. Any owner, operator, manager, or other person in control of private premises that complies with Section 9(a) of this Ordinance may also prohibit use of E-Cigs.

**SECTION NINE: 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 by the owner, operator, manager, or other person having control of the area.

**SECTION TEN: NON-RETALIATION; NON-WAVIER 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 ELEVEN: ENFORCEMENT**

- a. This Ordinance shall be enforced by the Daphne Police Department or Code Enforcement Office as designated by the Mayor.
- b. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Daphne.
- c. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Daphne Police Department.
- d. The Health Department, Police Department, Fire Department or their designees 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/Administrator 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 TWELVE: 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 a fine not to exceed FIFTY AND NO/100 DOLLARS (\$50.00) per occurrence plus court costs.
- 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 AND NO/100 DOLLARS (\$100.00) for a first violation.
  2. A fine not exceeding TWO HUNDRED AND NO/100 DOLLARS (\$200.00) for a second violation within one (1) year.
  3. A fine not exceeding FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) for each additional violation within one (1) year.
- c. In addition to the fines established by this Section, 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 other means provided for by law. The City may take action to recover the costs of the nuisance abatement.
- e. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

**SECTION THIRTEEN: SEVERABILITY**

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which may be given effect without

the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION FOURTEEN: REPEALER**

Ordinance No. 2008-19 is hereby repealed in its entirety. All other City Ordinances or parts thereof in conflict with the provision of this Ordinance, in so far as they conflict, are hereby repealed.

**SECTION FIFTEEN: EFFECTIVE DATE**

This Ordinance shall be effective immediately from and after the date of its adoption and its publication as required by law.

**APPROVED AND ADOPTED** by the City Council of the City of Daphne, Alabama, this the 18<sup>th</sup> day of August, 2014.

  
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DANE HAYGOOD, MAYOR

ATTEST:

  
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REBECCA A. HAYES, CITY CLERK