

ORDINANCE NO. 2013-1168

**AN ORDINANCE AMENDING
CHAPTER 50, LICENSES, TAXATION AND
BUSINESS REGULATIONS, OF THE CODE OF
ORDINANCES OF THE CITY OF ORANGE BEACH TO
ADD ARTICLE VIII, "PROHIBITED COMMERCIAL DISPLAYS"**

BE IT ORDAINED by the City Council of the City of Orange Beach, Alabama that Chapter 50, Licenses, Taxation, and Business Regulation of the Code of Ordinances of the City of Orange Beach is hereby amended to add a new Article Viii entitled "Prohibited Commercial Displays", as follows:

**ARTICLE VIII
PROHIBITED COMMERCIAL DISPLAYS**

Section 50-600. Findings.

1. The City of Orange Beach is a resort island community that hosts thousands of tourist and visitors each year;
2. The City of Orange Beach and its business community are heavily invested in promoting and maintaining the City as a wholesome family-friendly environment, and
3. The City Council has determined that the open display by merchants of merchandise and other display items that are vulgar, indecent, lewd, otherwise plainly offensive, or encouraging or supportive of drug use or other illegal behavior in a manner visible to children is plainly destructive of the City's family-friendly atmosphere, and
4. The City has a valid governmental interest in insulating children from open commercial displays of vulgarity and of materials encouraging drug use and other illegal behavior, and
5. The City Council finds it necessary to the protection of the public welfare to prohibit the open display by merchants of merchandise and other display items that are vulgar, indecent, lewd, otherwise plainly offensive, or supportive of drug use or other illegal behavior in a manner visible to children.

Section 50-601. Definitions.

As used in this Article, the following terms shall have the following meanings:

"Open Merchandise Display" shall mean the display of merchandise or associated display items by a Merchant on the interior or exterior of any structure at the Merchant's place of business in such a manner as to be directly visible, or visible through the windows of the structure, by persons on the premises or on the exterior of the structure.

"Merchant" shall mean any Licensee as defined in Section 8-2 of the Code of Ordinances.

"Prohibited Merchandise Display" shall mean any Open Merchandise Display containing vulgar, indecent, lewd, otherwise plainly offensive items, or items reasonably understood as supporting or encouraging the use of drugs or other illegal behavior; provided, however, that Prohibited Merchandise Display shall not include an Open Merchandise Display in a Restricted Access Merchandise Display Area that is not visible outside the enclosure of such Restricted Access Merchandise Display Area.

"Restricted Access Merchandise Display" Area shall mean an area in the interior of a structure not visible from the exterior of the structure where entry by

persons under the age of 18 years is strictly prohibited and which is designated by appropriate, plainly visible signage that indicates that entry into such area by persons under the age of 18 years is strictly prohibited.

Section 50-602. Merchants Not To Allow Prohibited Merchandise Display; Merchants Not To Allow Entry Of Persons Under 18 Into Restricted Access Merchandise Display Area.

(a) It shall be an offense against the City and grounds for revocation of a Merchant's business license for a Merchant to install or allow a Prohibited Merchandise Display at the Merchant's place of business.

(b) It shall be an offense against the City and grounds for revocation of a Merchant's business license for a Merchant to allow any person under the age of 18 years to enter a designated Restricted Access Merchandise Display Area at any time.

Section 50-603 Enforcement Procedures

(a) Violation of Section 50-602(a).

Any peace officer or code enforcement officer of the City observing a Prohibited Merchandise Display shall give the Merchant installing or allowing the display written notice to immediately remove the Prohibited Merchandise Display by leaving such notice at the Merchant's place of business with a notation as to the date and time of such notice. The display shall be removed within twenty-four (24) hours of the notice unless, within such time period, the Merchant files with the City Clerk a written notice contesting the determination that the display is a Prohibited Merchandise Display.

If a contest notice is filed, a hearing for determination of the contest and consideration of revocation of the Merchant's business license for violation of this Article X shall be set before the City Council and noticed as provided Section 8-31 of the Code of Ordinances. If the contest is determined adversely to the Merchant, prosecution of the Merchant for commission of the offense of violation of this Article shall proceed by citation or arrest, and each day or portion of a day the Prohibited Merchandise Display remains displayed after expiration of the 24 hour notice period shall constitute and be punishable as a separate offense by a fine of not less than \$1.00 and not more than \$500.00, imprisonment for a period not exceeding six (6) months, or both. If the contest is determined favorably to the Merchant, no further action with respect to the Merchandise Display at issue will be taken.

If no notice of contest is timely filed and the display is not timely removed, prosecution of the Merchant for commission of the offense of violation of this Article shall proceed by citation or arrest, and each day or portion of a day the Prohibited Merchandise Display remains displayed after expiration of the 24 hour notice period shall constitute and be punishable as a separate offense by a fine of not less than \$1.00 and not more than \$500.00, imprisonment for a period not exceeding six(6) months, or both.

(b) Violation of Section 50-602(b).

Prosecution of the Merchant for commission of the offense of violation of Section 50-602(b) shall proceed by citation or arrest, and each entry into a Restricted Access Merchandise Display Area by each person under the age of 18 years shall constitute and be punishable as a separate offense by a fine of not less than \$1.00 and not more than \$500.00, imprisonment for a period not exceeding six (6) months, or both.

In the event a citation, arrest, or citizen complaint for or alleging violation of Section 50-602(b) occurs, separate proceedings for consideration of revocation of

the Merchant's business license for violation of this Article X shall be set before the City Council and noticed as provided Section 8-31 of the Code of Ordinances.

Section 50-604. No Repeal or Implied Repeal of Other Laws Defining Offenses Against Health And Morals.

Nothing contained in this Article shall be construed to expressly or impliedly repeal or limit the operation of any other present or future statute or ordinance of the State of Alabama or the City of Orange Beach, including, without limitation, Ala. Code §13A-12-131 and the Alabama Anti-Obscenity Enforcement Act, Ala. Code §§ 13A-12-200.1 et. seq. Creation by a Merchant of a Restricted Access Merchandise Display Area shall not constitute a defense to offenses otherwise defined by such other statutes or ordinances.

Section 50-605. Relationship to Other Ordinances.

Where this Article and any other conflict or overlap; whichever poses the greater restriction shall prevail.

Section 50-606. Severability.

If any section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 50-605. Effective Date.

This Ordinance shall become effective immediately upon adoption by the City Council and publication as required by law.

ADOPTED this 26th day of March, 2013.

Cathy Constantino, MMC
City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies that the foregoing 2013-1168 was posted on 3/28/13 in the following three (3) public places:
Orange Beach City Hall _____
Orange Beach Post Office _____
Orange Beach Public Library _____

Cathy Constantino, City Clerk