

**ORDINANCE 2022-19 – AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 7 “BEACHES, PARKS AND RECREATION,” ARTICLE I “PARKS, RECREATIONAL FACILITIES AND PUBLIC PROPERTY,” SECTION 7-9 “REGULATION OF CONDUCT IN PARKS AND RECREATION AREAS AND ON PUBLIC PROPERTY” BY CREATING A NEW SUBSECTION (K) TO BE ENTITLED “SMOKING AND VAPING” TO PROHIBIT SMOKING AND VAPING IN CITY PARKS AND PROVIDING FOR ENFORCEMENT; AND ARTICLE VI “MUNICIPAL BEACH AREA AND MUNICIPAL BEACH,” SECTION 7-80 “ADDITIONAL REGULATIONS APPLYING TO THE MUNICIPAL BEACH AREA,” BY CREATING A NEW SUBSECTION (Z) TO BE ENTITLED “SMOKING AND VAPING” TO BAN SMOKING AND VAPING ON CITY BEACH AND TO PROVIDE FOR ENFORCEMENT; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE**

**WHEREAS**, the City of Lake Worth Beach, Florida (the “City”) is a duly constituted municipality having such home rule power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, under section 386.209, Florida Statutes, the State legislature preempted the regulation of smoking to the State which prohibited municipalities and counties from regulating smoking within local parks and beaches; and

**WHEREAS**, effective July 1, 2022, the Florida legislature amended section 386.209, Florida Statutes, to allow municipalities to restrict smoking within the boundaries of public beaches and public parks that are owned by such municipalities, except that they may not restrict the smoking of unfiltered cigars; and

**WHEREAS**, as noted in the reports cited in the staff analysis for HB 105 (2022) which amended section 386.209, Florida Statutes (and which are incorporated herein by reference), secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases; and

**WHEREAS**, various articles have reported that electronic smoking devices emit secondhand aerosol which contain nicotine, ultrafine particles and low levels of toxins that are known to cause cancer; and

**WHEREAS**, further, the Ocean Conservancy, Inc. has also reported that cigarette butts are the number one littered item on beaches and that cigarette butts are also a major part of plastic pollution because they are made of tightly packed plastic fibers that erode into smaller bits, which accumulate in fish and other organisms and not only

impacts animal health and reproductivity, but also human health when people consume sick fish; and

**WHEREAS**, the City Commission finds that the harmful impact of cigarette butts, secondhand smoke and secondhand aerosol at the City's beaches and parks are detrimental to beach and park users and should be banned to the greatest extent allowed by law; and

**WHEREAS**, the City of Lake Worth Beach, Florida (the "City"), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the City Commission finds and declares that the adoption of this ordinance is appropriate, and in the best interest of the health, safety and welfare of the City, its residents and visitors.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:**

**Section 1:** The foregoing "WHEREAS" clauses are incorporated into this Ordinance as true and correct findings of the City Commission, without limitation, the reports cited in the staff analysis for Florida HB 105 (2022) which amended section 386.209, Florida Statutes.

**Section 2:** Chapter 7 "Beaches, Parks and Recreation," Article I "Parks, Recreational Facilities and Public Property," Section 7-9 "Regulation of conduct in parks and recreation areas and on public property" is hereby amended by adding thereto a new subsection (k) to read as follows:

**Sec. 7-9. – Regulation of conduct in parks and recreation areas and on public property.**

In addition to the regulations contained in sections 7-1 through 7-7 of this article, the following regulations shall apply to all parks and recreation facilities and public property, unless otherwise noted. Conduct relating specifically to the municipal beach area shall be proscribed by chapter 7, article VI of this Code.

\* \* \*

**(k) Smoking and vaping.**

**(1) Definitions.** For the purposes of this section, the following terms shall have the meanings given. Words not otherwise defined shall have the meaning set forth in Part II, Chapter 386, Florida Statutes (the Florida Clean Air Act), or shall be construed to mean the common and ordinary meaning.

**"Smoking"** means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product. However, "unfiltered cigars" shall be exempt from this definition of smoking.

“Vape” or “vaping” means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

- (2) Prohibition. Except as otherwise set forth herein, a person is prohibited from smoking and/or vaping in a park located within the city.
- (3) Special event exception. Smoking and vaping in a designated smoking area may be authorized in a park pursuant to a special event permit issued by the city. The location of the designated smoking area shall be pre-approved by the city. The permittee shall remove all cigarettes and cigarette butts, filters, papers, and other associated debris from the event premises or be subject to a fine established in the reasonable discretion of the city or as otherwise set forth in the special permit conditions.
- (4) Enforcement. The city’s law enforcement agency is hereby authorized to enforce this subsection through the issuance of a city civil citation as set forth in Chapter 2, Article X of this Code.

**Section 3:** Chapter 7 “Beaches, Parks and Recreation,” Article VI “Municipal Beach Area and Municipal Beach,” Section 7-80 “Additional regulations applying to the municipal beach area” is hereby amended by adding thereto a new subsection (z) to read as follows:

**Sec. 7-80. – Additional regulations applying to the municipal beach area.**

*Purpose.* Citizens and visitors should be afforded a safe, clean environment in which recreational opportunities can be maximized. Due to the wide variety of patron needs and use of city property, it is necessary to establish the following regulations. These regulations are in addition to regulations that are contained in other sections of the Code of Ordinances or otherwise posted in particular parks, recreational facilities or municipal beaches.

\* \* \*

(z) Smoking and vaping.

- (1) Definitions. For the purposes of this section, the following terms shall have the meanings given. Words not otherwise defined shall have the meaning set forth in Part II, Chapter 386, Florida Statutes (the Florida Clean Air Act), or shall be construed to mean the common and ordinary meaning.

“Smoking” means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product. However, “unfiltered cigars” shall be exempt from this definition of smoking.

“Vape” or “vaping” means to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic

device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

- (2) Prohibition. A person is prohibited from smoking and/or vaping on the municipal beach located within the city. This prohibition shall only apply to the beach and not the entire municipal beach area as defined in this Code.
- (3) Enforcement. The city's law enforcement agency is hereby authorized to enforce this subsection through the issuance of a city civil citation as set forth in Chapter 2, Article X of this Code.

**Section 4: Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance 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 5: Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6: Codification.** The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

**Section 7: Effective Date.** This ordinance shall become effective 10 days after passage.

The passage of this ordinance on first reading was moved by Commissioner Malega, seconded by Commissioner Stokes, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch	AYE
Vice Mayor Christopher McVoy	NAY
Commissioner Sarah Malega	AYE
Commissioner Kimberly Stokes	AYE
Commissioner Reinaldo Diaz	AYE

The Mayor thereupon declared this ordinance duly passed on first reading on the 6<sup>th</sup> day of October, 2022.

The passage of this ordinance on second reading was moved by Commissioner Malega, seconded by Commissioner Stokes, and upon being put to a vote, the vote was as follows:

Mayor Betty Resch	AYE
Vice Mayor Christopher McVoy	NAY
Commissioner Sarah Malega	AYE
Commissioner Kimberly Stokes	AYE
Commissioner Reinaldo Diaz	AYE

The Mayor thereupon declared this ordinance duly passed on the 1<sup>st</sup> day of November, 2022.

LAKE WORTH BEACH CITY COMMISSION

By:   
Betty Resch, Mayor

ATTEST:

  
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Melissa Ann Coyne, City Clerk



