

ORDINANCE NO. 95-22-122

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES, BEACHES AND PARKS, ARTICLE I, – IN GENERAL; ADDING NEW SECTION 5-9 PROHIBITING SMOKING IN CITY PARKS AND BEACHES; ADDING NEW SECTION 5-10 PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, according to the 2006 U.S. Surgeon General’s report, “The Health Consequences of Involuntary Exposure to Tobacco Smoke”, secondhand smoke causes coronary artery disease, asthma attacks, heart disease, asthma attacks, heart attacks, stroke and lung cancer in adults and Sudden Infant Death Syndrome, middle ear infections, bronchitis, asthma, pneumonia and low birth weight in children; and

WHEREAS, secondhand smoke is especially dangerous to children whose bodies are still developing and who are particularly vulnerable to the poisons of secondhand smoke; and

WHEREAS, prohibiting smoking on City beaches and in City parks frequented by children and adults will help to reduce smoking related illnesses and serve as a means to improve health outcomes for residents and visitors to Atlantic Beach; and

WHEREAS, another significant issue with tobacco smoking on City beaches and in City parks is litter consisting of used cigarette filters, also known as “cigarette butts” which contain hazardous substances that can be toxic to animals; and

WHEREAS, this Ordinance is intended to protect the health, safety and welfare of city residents and visitors by prohibiting smoking on City beaches and in City parks, including beach parks; and

WHEREAS, this Ordinance is intended to protect the environment from litter that can be toxic to animals and humans; and

WHEREAS, as of July 1, 2022, the Florida Legislature has enacted Ch. 2022-213 Laws of Florida which permits municipalities and counties to restrict smoking on their local beaches and in local parks; and

WHEREAS, in order to provide for the public health, safety and welfare, reduce exposure to secondhand smoke, assure cleaner and more hygienic parks and beaches for the City’s residents and visitors, and for animals in the environment, the City Commission hereby intends to prohibit smoking on City beaches and in City parks which are used by or open to the public.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION ON BEHALF OF THE PEOPLE OF THE CITY ATLANTIC BEACH:

SECTION 1. New Sections. Chapter 5, Article I, In General, of the Code of Ordinances, City of Atlantic Beach, Florida is amended to add the following new Sections:

Sec. 5-9. Smoking in public parks and on public beaches prohibited.

Smoking in all City parks, on beaches, or on beach access ways which are used by or open to the public within Atlantic Beach is prohibited. Smoking of unfiltered cigars is exempt from this prohibition in accordance with Section 386.209, Florida Statutes (2022).

“Secondhand Smoke,” also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted by the mouthpiece during puff drawing; and smoke exhaled by the smoker.

"Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product. In accordance with Section 386.209, Florida Statutes, smoking does not include the use of unfiltered cigars.

Sec. 5-10. Enforcement, Penalties and Appeals.

- a. Law enforcement officers of the City’s Police Department are hereby authorized to enforce the provisions of Sec. 5-9 of this Code.
- b. Any person who violates Sec. 5-9 shall be subject to receiving a citation and civil penalty in the amount of \$75.00 for each violation.
- c. Any person who receives a citation shall elect either to:
 - (1) Pay the civil fine within thirty (30) days from the date of the citation in the manner indicated on the citation, provided, if such payment is not timely paid, a late fee of \$50.00 shall be imposed on the named violator; or
 - (2) File a written request for a hearing with the Duval County Court to appeal the decision of the law enforcement officer that resulted in the issuance of the citation. The written request shall be submitted to the County Court in the manner indicated on the citation no later than ten (10) days after service of the citation.
- d. Failure of the named violator to appeal the decision of the law enforcement officer within the prescribed time period shall constitute a waiver of the violator’s right to a hearing before the County Court and shall be treated as an admission of the violation and penalties shall be assessed accordingly.

SECTION 2. Conflict. All ordinances, resolutions, official determinations, or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this Ordinance are repealed to the extent inconsistent herewith.

SECTION 3. Codification and Scrivener's Errors. The publisher of the City of Atlantic Beach's Code of Ordinances, the Municipal Code Corporation, is hereby directed to incorporate Section 5-

9 — Smoking in public parks and on public beaches prohibited and Section 5-10 - Penalties, into the City's Code of Ordinances. Sections of Chapter 5 may be renumbered or re-lettered and scrivener's errors, formatting and typographical errors and other minor, inadvertent graphical errors in Chapter 5 which do not affect the intent may be authorized by the City Manager and City Attorney without the need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

SECTION 4. Applicability. The provisions of Section 5-9 — Smoking in public parks and on public beaches prohibited and Section 5-10 - Penalties, shall apply to all applications, decisions or controversies pending before the City of Atlantic Beach upon the effective date hereof or filed or initiated thereafter.

SECTION 5. Severability. If any section, sentence, clause, or other provision of this Ordinance, shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding of invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance, which shall remain in full force and effect.

SECTION 6. Effective Date. This ordinance shall take effect upon final reading and approval.

PASSED by the City Commission on first reading on this 10th day of October, 2022.

PASSED by the City Commission on second and final reading and following a public hearing this _____ day of _____, 2022.

CITY OF ATLANTIC BEACH

Ellen Glasser, Mayor

ATTEST:

Donna L. Bartle, City Clerk

Approved as to form and correctness:

Brenna M. Durden, City Attorney