

**ORDINANCE 2022-12**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, ADOPTING NEW SECTIONS 16 AND 17, "SMOKING AT PARKS PROHIBITED EXCEPT FOR UNFILTERED CIGARS", AND "SMOKING ON THE BEACH PROHIBITED EXCEPT FOR UNFILTERED CIGARS - TRIGGER BASED ON COUNTY ORDINANCE", RESPECTIVELY, OF ARTICLE I, "IN GENERAL", OF CHAPTER 16, "OFFENSES MISCELLANEOUS", OF THE CODE OF ORDINANCES OF THE CITY OF DAYTONA BEACH SHORES; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

**WHEREAS**, Section 386.209, *Florida Statutes*, (2022) permits the City of Daytona Beach Shores to adopt and enforce restrictions as to smoking within the boundaries of any public beaches and public parks that the city owns, except that the city may not further restrict the smoking of unfiltered cigars; and to further restrict smoking within the boundaries of public beaches and public parks that are within the city's jurisdiction but are owned by Volusia County, unless such restriction conflicts with a county ordinance, except that the city may not further restrict the smoking of unfiltered cigars.

**WHEREAS**, Section 20-6 of the Volusia County Code currently "preempts all municipal regulation governing individual conduct on the beach and approaches; [and] all municipal regulation of general application that permits or prohibits individual conduct on the beach or approaches that is regulated by this chapter;" therefore, unless the preemption by Volusia County as to municipal regulation of smoking on the beach is amended to allow regulation by the city, the City of Daytona Beach Shores is unable to prohibit smoking on the beach in the city limits of Daytona Beach Shores; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores desires to prohibit smoking on the beach in the city's jurisdiction, so a portion of this ordinance has a "trigger" provision which would immediately prohibit smoking on the beach in the city limits if and when Volusia County amends its ordinances in a manner that would allow Daytona Beach Shores to prohibit smoking on its beach; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores finds that the provisions of this ordinance are in the best interest of the citizens of and visitors to the City of Daytona Beach Shores, and that such restrictions are necessary for the health, safety and welfare of the citizens of and visitors to the City of Daytona Beach Shores.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:**

**SECTION ONE:** The City Council of the City of Daytona Beach Shores hereby adopts a new Sec. 16, "Smoking at parks prohibited except for unfiltered cigars", of Article I, "In General", of Chapter 16, "Offenses Miscellaneous", of the *Code of Ordinances of the City of Daytona Beach Shores* to read as follows:

**CHAPTER 16. Offenses Miscellaneous**

\*\*\*

**Article I. In General**

\*\*\*

**Sec. 16, Smoking at parks prohibited except for unfiltered cigars**

Pursuant to Florida Statutes, Sec. 386.209, smoking is prohibited and unlawful within the boundaries of any public park within the city. The city council shall adopt by resolution a complete listing of all public parks within the city that are subject to this provision. A violation of this provision may be enforced by citation by any law enforcement officer or by any code enforcement officer. Fines applicable to citations under this section shall be as set by resolution of the city council. In addition, the city may enforce this prohibition by any lawful means available to the City under the controlling provisions of State law and Section 1.8 of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

**Sec. 17, Smoking on beach prohibited except for unfiltered cigars – trigger provision**

Pursuant to Florida Statutes, Sec. 386.209, smoking is prohibited and unlawful within the boundaries of any public beach within the city. The city council shall adopt by resolution a complete listing of all public beaches within the city that are subject to this provision. A violation of this provision may be enforced by citation by any law enforcement officer or by any code enforcement officer. Fines applicable to citations under this section shall be as set by resolution of the city council. In addition, the city may enforce this prohibition by any lawful means available to the City under the controlling provisions of State law and Section 1.8 of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*. This ordinance shall only become enforceable if and when Volusia County amends its ordinance(s) to eliminate the preemption that currently (at the time of the enactment of this section) prevents the city from prohibiting smoking, except for unfiltered cigars, on the beach in the city.

**SECTION TWO: CODIFICATION.** The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or

other appropriate word; provided, however, that Sections Two, Three, Four, and Five shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

**SECTION THREE: CONFLICTS.** All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION FOUR: SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION FIVE: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon enactment.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

Nancy Miller  
NANCY MILLER, MAYOR

John Swartzlander  
KURT SWARTZLANDER, CITY MANAGER

Cheri Schwab  
CHERI SCHWAB, CITY CLERK

**Approved as to form and legality:**

John Cary  
JOHN CARY, CITY ATTORNEY

Passed on first reading this 12 day of July, 2022.

Adopted on second reading this 24 day of July, 2022.