

ORDINANCE 2022-89

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF THE ORDINANCES, TITLE III, ADMINISTRATION, CHAPTER 36, RECREATION DEPARTMENT, SUBCHAPTER 'USE REGULATIONS', BY INCLUDING PROVISIONS PROHIBITING SMOKING AND VAPING WITHIN MUNICIPAL PARKS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 386.209 Florida Statutes provides that the regulation of smoking is preempted to the State of Florida, however, municipalities may restrict smoking within the boundaries of any public parks they own, and

WHEREAS, Chapter 386.209 Florida Statutes also allows municipalities to impose more restrictive regulation of the use of vapor-generating devices than provided by statute, and

WHEREAS, the youth of our community and communities throughout Florida currently play on playgrounds, athletic fields, skate parks, aquatic facilities and other recreation facilities where smokers might create secondhand smoke, and

WHEREAS, the Center of Disease Control states secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker, and

WHEREAS, "Smoking" is defined in Chapter 386, Florida Statutes, as "inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product," and

WHEREAS, a report by the United States Department of Health and Human Services, Surgeon General states tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer and exposure to secondhand smoke can cause numerous health problems and has been linked to cancer and other fatal diseases, and

WHEREAS, the Palm Bay City Council determines a public health and safety need to prohibit smoking and vaping within municipal parks.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title III, Administration, Chapter 36, Recreation Department, Subchapter 'Use Regulations', by creating Section 36.32, Smoking and Vaping Prohibited within Municipal Parks, which shall henceforth read as follows:

>>Section 36.32 SMOKING AND VAPING PROHIBITED WITHIN MUNICIPAL PARKS.

It shall be unlawful for any person to smoke cigarettes, filtered cigars, pipes, use electronic vaporizers, or any other smoking apparatus or vaping device on playing fields and playgrounds, bleacher areas, dugouts, around team seating areas, concession areas, spectator areas, or any other area not specifically designated as a permitted smoking area within any municipal park. All designated smoking areas will be specifically identified by signs.<<

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 3. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances and the sections may be renumbered to accomplish such intention.

SECTION 4. If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.


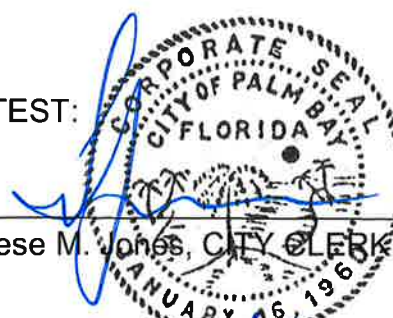
SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting 2022-22, held on August 18, 2022; and read in title only and duly enacted at Meeting 2022-24, held on September 1, 2022.



Rob Medina, MAYOR

ATTEST:



Terese M. Jones, CITY CLERK

Reviewed by CAO: 

Strikethrough words shall be deleted; highlighted words that will included will be placed in between two arrow symbols (>> <<). Deletions and additions constitute the proposed amendment. Words remaining are now in effect and remain unchanged.



LEGISLATIVE MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Suzanne Sherman, City Manager

THRU: Fred Poppe, Recreation Director

DATE: 9/1/2022

RE: Ordinance 2022-89, amending the Code of Ordinances, Chapter 36, Recreation Department, by including provisions prohibiting smoking and vaping within municipal parks, final reading.

A public hearing is to be held on the above subject ordinance and the caption read for the second and final time at tonight's Council meeting.

During the 2022 Florida legislative session, state legislators passed House Bill (HB) 105 and Senate Bill (SB) 224 allowing regulation of smoking and vaping in parks by local governments. This legislation helps local governments provide a safe, fun, and healthy atmosphere for children and families to enjoy recreational amenities through the creation of "smoke-free" zones or designated smoking areas at City-owned recreational facilities.

House Bill 105, Regulation of Smoking by Counties and Municipalities, was sponsored by Representatives Fine and Altman, and co-sponsored by fifteen other members of the Florida House of Representatives.

Senate Bill 224, Regulation of Smoking in Public Places, was sponsored by Senator Gruters and co-sponsored by seven other Senators. The bill was filed in 2022. SB 224 was amended to exempt cigars and pipe smoking. The amended bill passed both the second and third committee hearings in the Senate.

REQUESTING DEPARTMENT:

Recreation

FISCAL IMPACT:

There is no fiscal impact.

RECOMMENDATION:

Motion to approve Ordinance 2022-89, amending the Code of Ordinances, Chapter 36, Recreation Department, by including provisions prohibiting smoking and vaping within municipal parks, first reading.

ATTACHMENTS:

Description

Ordinance 2022-89