

ORDINANCE NO. 25-22

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 101, "PARKS, BEACHES, AND RECREATION", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, SECTION 101.36, "ADDITIONAL RULES APPLYING TO PARKS, RECREATIONAL FACILITIES, AND THE MUNICIPAL BEACH", BY AMENDING SUBSECTION (H) "SMOKING" TO PROHIBIT SMOKING CERTAIN TOBACCO PRODUCTS ON THE MUNICIPAL BEACH AND IN PUBLIC PARKS, PROVIDING A CONFLICTS CLAUSE AND SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City's parks and beach are set aside for the enjoyment of the public and to promote the health, safety, and welfare of its residents; and

WHEREAS, the City Commission desires to provide its residents and the public at large with a safe and clean environment in which recreational opportunities can be maximized; and

WHEREAS, prohibiting smoking on public beaches and in public parks will provide a clean environment free of exposure to second-hand smoke; and

WHEREAS, while regulation of smoking is generally preempted to the state Legislature, the Florida Legislature recently amended Florida Statute Section §386.209 authorizing municipalities to restrict smoking within the boundaries of public beaches or parks owned by the City or owned by the County subject to certain exceptions; and

WHEREAS, CS/HB 105 authorizes municipalities to restrict smoking within the boundaries of public beaches and public parks while providing an exception for unfiltered cigars; and

WHEREAS, the City Commission deems approval of this Ordinance to serve a public purpose and finds it to be in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitation set forth above are hereby ratified and confirmed as being true and correct and are incorporated herein.

Section 2. Chapter 101, "Parks, Beaches, and Recreation," Section 101.36, "Additional Rules Applying to Parks, Recreational Facilities, and the Municipal Beach," Subsection (H) "Smoking", of the Code of Ordinances of the City of Delray Beach, Florida, is amended to read as follows:

Sec. 101.36. – "ADDITIONAL RULES APPLYING TO PARKS, RECREATIONAL FACILITIES, AND THE MUNICIPAL BEACH"

(H) Smoking. Smoking at public parks and at the municipal beach is prohibited, ~~except in designated posted smoking areas.~~ Smoking is defined as to include the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or E-cigarette as defined in Sec. 132.11, or the lighting of a pipe, cigar or cigarette of any kind. inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, pipe tobacco, and any other lighted tobacco product with the exception of unfiltered cigars.

Section 3. Should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 5. This ordinance shall become effective upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the 16<sup>th</sup> day of August 2022.

ATTEST:

Katerri Johnson  
Katerri Johnson, City Clerk

Shelly Petrolia  
Shelly Petrolia, Mayor

First Reading 7/19/2022

Second Reading 8/16/2022

Approved as to Form and Legal Sufficiency:

Lynn Gelin  
Lynn Gelin, City Attorney