

ORDINANCE NO. 2022-30

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AMENDING CHAPTER 11, STREETS, SIDEWALKS AND OTHER PLACES, ARTICLE IV, CITY PARKS, BY CREATING A NEW SECTION 11-76 TO BE ENTITLED, "SMOKING AND VAPING PROHIBITED IN PARKS"; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, INCLUSION IN CODE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Greenacres, 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 and prohibited cities and counties from regulating smoking within local parks; and

WHEREAS, effective July 1, 2022, the Florida legislature amended section 386.209, Florida Statutes, to allow cities to restrict smoking in local parks which are within the jurisdiction of the cities; and

WHEREAS, the Legislature's amendment also allows for a city to restrict smoking in a county-owned park that is within a city's boundaries if the county does not have a conflicting ordinance; and

WHEREAS, the only exception to the Legislature's amendment to section 386.209, Florida Statutes, is that a city cannot 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

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WHEREAS, the City Council for the City of Greenacres finds that the harmful impact of secondhand smoke in the City’s parks is detrimental to park users and should be banned to the greatest extent allowed by law; and

WHEREAS, the City Council deems approval of this Ordinance to be in the best interest of the residents and citizens of the City of Greenacres and serves a valid public purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, THAT:

SECTION 1. The foregoing recitals are incorporated into this Ordinance as true and correct findings of the City Council including, without limitation, the reports cited in the staff analysis for Florida HB 105 (2022) which amended section 386.209, Florida Statutes.

SECTION 2. Chapter 10, entitled, “Streets, Sidewalks and Other Public Places”, Article IV, entitled, “City Parks”, of the City of Greenacres Code of Ordinances is hereby amended by creating a new section 11-76 to be entitled, “Smoking and Vaping Prohibited in Parks”, to read as follows:

Sec. 11-76. – Smoking and Vaping Prohibited in Parks.

- (a) 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.

- (b) Prohibition. A person is prohibited from smoking and/or vaping in a park located within the city. This prohibition includes a park that is owned by Palm Beach County

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but within the boundaries of the city unless Palm Beach County has an ordinance authorizing smoking and/or vaping within that County owned park.

- (c) Enforcement. This section may be enforced by the city's code enforcement division and/or the city's law enforcement agency. Enforcement may include, but is not limited to, enforcement through city code enforcement, city civil citation, county court citation, and/or any other enforcement proceeding available to the city.
- (d) Penalties. The penalty for violation of this section shall be the maximum penalty or penalties permitted by applicable law.

SECTION 3. Repeal of Conflicting Ordinances.

All ordinances or parts thereof or parts of the Code conflicting with the provision of this Ordinance are hereby repealed to the extent of the conflict.

SECTION 4. Severability

If any section, part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings of invalidity shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

SECTION 5. Inclusion in Code

It is the intention of the City Council, entered as hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of the City of Greenacres, Florida; that the Section(s) of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that the word "Ordinance" may be changed to "Section", "Article" or another word.

SECTION 6. Effective Date

The provisions of this Ordinance shall become effective upon adoption.

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Passed on the first reading this 14th day of September 2022.

PASSED AND ADOPTED on the second reading this 28th day of September 2022.

Joel Flores, Mayor

Attest:

Quintella Moorer, City Clerk

Voted:
John Tharp, Deputy Mayor

Voted:
Peter Noble, Council Member, District II

Voted:
Judith Dugo, Council Member, District III

Voted:
Susy Diaz, Council Member, District IV

Voted:
Paula Bousquet, Council Member, District V

Approved as to Form and Legal Sufficiency:

Glen J. Torcivia, City Attorney