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**ORDINANCE 2022-19 – AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 7 “BEACHES, PARKS AND RECREATION,” ARTICLE I “PARKS, RECREATIONAL FACILITIES AND PUBLIC PROPERTY,” SECTION 7-9 “REGULATION OF CONDUCT IN PARKS AND RECREATION AREAS AND ON PUBLIC PROPERTY” BY CREATING A NEW SUBSECTION (K) TO BE ENTITLED “SMOKING AND VAPING” TO PROHIBIT SMOKING AND VAPING IN CITY PARKS AND PROVIDING FOR ENFORCEMENT; AND ARTICLE VI “MUNICIPAL BEACH AREA AND MUNICIPAL BEACH,” SECTION 7-80 “ADDITIONAL REGULATIONS APPLYING TO THE MUNICIPAL BEACH AREA,” BY CREATING A NEW SUBSECTION (Z) TO BE ENTITLED “SMOKING AND VAPING” TO BAN SMOKING AND VAPING ON CITY BEACH AND TO PROVIDE FOR ENFORCEMENT; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE**

**WHEREAS**, the City of Lake Worth Beach, 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 which prohibited municipalities and counties from regulating smoking within local parks and beaches; and

**WHEREAS**, effective July 1, 2022, the Florida legislature amended section 386.209, Florida Statutes, to allow municipalities to restrict smoking within the boundaries of public beaches and public parks that are owned by such municipalities, except that they may not 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

**WHEREAS**, various articles have reported that electronic smoking devices emit secondhand aerosol which contain nicotine, ultrafine particles and low levels of toxins that are known to cause cancer; and

**WHEREAS**, further, the Ocean Conservancy, Inc. has also reported that cigarette butts are the number one littered item on beaches and that cigarette butts are also a major part of plastic pollution because they are made of tightly packed plastic fibers that erode into smaller bits, which accumulate in fish and other organisms and not only

47 impacts animal health and reproductivity, but also human health when people consume  
48 sick fish; and

49  
50 **WHEREAS**, the City Commission finds that the harmful impact of cigarette butts,  
51 secondhand smoke and secondhand aerosol at the City’s beaches and parks are  
52 detrimental to beach and park users and should be banned to the greatest extent allowed  
53 by law; and

54  
55 **WHEREAS**, the City of Lake Worth Beach, Florida (the “City”), is a duly constituted  
56 municipality having such power and authority conferred upon it by the Florida Constitution  
57 and Chapter 166, Florida Statutes; and

58  
59 **WHEREAS**, the City Commission finds and declares that the adoption of this  
60 ordinance is appropriate, and in the best interest of the health, safety and welfare of the  
61 City, its residents and visitors.

62  
63 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**  
64 **CITY OF LAKE WORTH BEACH, FLORIDA, that:**

65  
66 **Section 1:** The foregoing “WHEREAS” clauses are incorporated into this  
67 Ordinance as true and correct findings of the City Commission, without limitation, the  
68 reports cited in the staff analysis for Florida HB 105 (2022) which amended section  
69 386.209, Florida Statutes.

70  
71 **Section 2:** Chapter 7 “Beaches, Parks and Recreation,” Article I “Parks,  
72 Recreational Facilities and Public Property,” Section 7-9 “Regulation of conduct in parks  
73 and recreation areas and on public property” is hereby amended by adding thereto a new  
74 subsection (k) to read as follows:

75  
76 **Sec. 7-9. – Regulation of conduct in parks and recreation areas and on public**  
77 **property.**

78 In addition to the regulations contained in sections 7-1 through 7-7 of this article, the  
79 following regulations shall apply to all parks and recreation facilities and public property,  
80 unless otherwise noted. Conduct relating specifically to the municipal beach area shall  
81 be proscribed by chapter 7, article VI of this Code.

82  
83 \* \* \*

84 **(k) Smoking and vaping.**

85  
86 **(1) Definitions.** For the purposes of this section, the following terms shall have  
87 the meanings given. Words not otherwise defined shall have the meaning  
88 set forth in Part II, Chapter 386, Florida Statutes (the Florida Clean Air Act),  
89 or shall be construed to mean the common and ordinary meaning.

90 “Smoking” means inhaling, exhaling, burning, carrying, or possessing any  
91 lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any  
92 other lighted tobacco product. However, “unfiltered cigars” shall be exempt  
93 from this definition of smoking.

94 “Vape” or “vaping” means to inhale or exhale vapor produced by a vapor-  
95 generating electronic device or to possess a vapor-generating electronic  
96 device while that device is actively employing an electronic, a chemical, or  
97 a mechanical means designed to produce vapor or aerosol from a nicotine  
98 product or any other substance. The term does not include the mere  
99 possession of a vapor-generating electronic device.

100 (2) Prohibition. Except as otherwise set forth herein, a person is prohibited from  
101 smoking and/or vaping in a park located within the city.

102 (3) Special event exception. Smoking and vaping in a designated smoking area  
103 may be authorized in a park pursuant to a special event permit issued by the  
104 city. The location of the designated smoking area shall be pre-approved by the  
105 city. The permittee shall remove all cigarettes and cigarette butts, filters,  
106 papers, and other associated debris from the event premises or be subject to  
107 a fine established in the reasonable discretion of the city or as otherwise set  
108 forth in the special permit conditions.

109 (4) Enforcement. The city’s law enforcement agency is hereby authorized to  
110 enforce this subsection through the issuance of a city civil citation as set forth  
111 in Chapter 2, Article X of this Code.

112 **Section 3:** Chapter 7 “Beaches, Parks and Recreation,” Article VI “Municipal  
113 Beach Area and Municipal Beach,” Section 7-80 “Additional regulations applying to the  
114 municipal beach area” is hereby amended by adding thereto a new subsection (z) to read  
115 as follows:  
116

117 **Sec. 7-80. – Additional regulations applying to the municipal beach area.**

118 *Purpose.* Citizens and visitors should be afforded a safe, clean environment in which  
119 recreational opportunities can be maximized. Due to the wide variety of patron needs  
120 and use of city property, it is necessary to establish the following regulations. These  
121 regulations are in addition to regulations that are contained in other sections of the Code  
122 of Ordinances or otherwise posted in particular parks, recreational facilities or municipal  
123 beaches.  
124

125 \* \* \*

126 (z) Smoking and vaping.

127  
128 (1) Definitions. For the purposes of this section, the following terms shall have the  
129 meanings given. Words not otherwise defined shall have the meaning set forth in  
130 Part II, Chapter 386, Florida Statutes (the Florida Clean Air Act), or shall be  
131 construed to mean the common and ordinary meaning.

132 “Smoking” means inhaling, exhaling, burning, carrying, or possessing any  
133 lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any  
134 other lighted tobacco product. However, “unfiltered cigars” shall be exempt  
135 from this definition of smoking.

136 “Vape” or “vaping” means to inhale or exhale vapor produced by a vapor-  
137 generating electronic device or to possess a vapor-generating electronic

138 device while that device is actively employing an electronic, a chemical, or  
139 a mechanical means designed to produce vapor or aerosol from a nicotine  
140 product or any other substance. The term does not include the mere  
141 possession of a vapor-generating electronic device.

142 (2) Prohibition. A person is prohibited from smoking and/or vaping on the municipal  
143 beach located within the city. This prohibition shall only apply to the beach and  
144 not the entire municipal beach area as defined in this Code.

145 (3) Enforcement. The city’s law enforcement agency is hereby authorized to enforce  
146 this subsection through the issuance of a city civil citation as set forth in Chapter  
147 2, Article X of this Code.

148  
149 **Section 4: Severability.** If any section, subsection, sentence, clause, phrase or  
150 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of  
151 competent jurisdiction, such portion shall be deemed a separate, distinct, and  
152 independent provision, and such holding shall not affect the validity of the remaining  
153 portions thereof.

154  
155 **Section 5: Repeal of Laws in Conflict.** All ordinances or parts of ordinances in  
156 conflict herewith are hereby repealed to the extent of such conflict.

157  
158 **Section 6: Codification.** The sections of the ordinance may be made a part of  
159 the City Code of Laws and ordinances and may be re-numbered or re-lettered to  
160 accomplish such, and the word “ordinance” may be changed to “section”, “division”, or  
161 any other appropriate word.

162  
163 **Section 7: Effective Date.** This ordinance shall become effective 10 days after  
164 passage.

165  
166 The passage of this ordinance on first reading was moved by Commissioner  
167 Malega, seconded by Commissioner Stokes, and upon being put to a vote, the vote was  
168 as follows:

169  
170 Mayor Betty Resch AYE  
171 Vice Mayor Christopher McVoy NAY  
172 Commissioner Sarah Malega AYE  
173 Commissioner Kimberly Stokes AYE  
174 Commissioner Reinaldo Diaz AYE

175  
176 The Mayor thereupon declared this ordinance duly passed on first reading on the  
177 6<sup>th</sup> day of October, 2022.

178  
179  
180 The passage of this ordinance on second reading was moved by  
181 \_\_\_\_\_, seconded by \_\_\_\_\_, and upon being put to a vote,  
182 the vote was as follows:

183  
184 Mayor Betty Resch  
185 Vice Mayor Christopher McVoy  
186 Commissioner Sarah Malega  
187 Commissioner Kimberly Stokes  
188 Commissioner Reinaldo Diaz  
189

190 The Mayor thereupon declared this ordinance duly passed on the \_\_\_\_\_ day of  
191 \_\_\_\_\_, 2022.

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193

LAKE WORTH BEACH CITY COMMISSION

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195

196

By: \_\_\_\_\_  
Betty Resch, Mayor

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199

200 ATTEST:

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202

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\_\_\_\_\_  
Melissa Ann Coyne, City Clerk

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