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4 **ORDINANCE 2022-19 - AN ORDINANCE OF THE CITY OF LAKE**
5 **WORTH BEACH, FLORIDA, AMENDING CHAPTER 7 “BEACHES,**
6 **PARKS AND RECREATION,” ARTICLE I “PARKS, RECREATIONAL**
7 **FACILITIES AND PUBLIC PROPERTY,” SECTION 7-9 “REGULATION**
8 **OF CONDUCT IN PARKS AND RECREATION AREAS AND ON PUBLIC**
9 **PROPERTY” BY CREATING A NEW SUBSECTION (K) TO BE**
10 **ENTITLED “SMOKING AND VAPING” TO PROHIBIT SMOKING AND**
11 **VAPING IN CITY PARKS AND PROVIDING FOR ENFORCEMENT; AND**
12 **ARTICLE VI “MUNICIPAL BEACH AREA AND MUNICIPAL BEACH,”**
13 **SECTION 7-80 “ADDITIONAL REGULATIONS APPLYING TO THE**
14 **MUNICIPAL BEACH AREA,” BY CREATING A NEW SUBSECTION (Z)**
15 **TO BE ENTITLED “SMOKING AND VAPING” TO BAN SMOKING AND**
16 **VAPING ON CITY BEACH AND TO PROVIDE FOR ENFORCEMENT;**
17 **AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION**
18 **AND AN EFFECTIVE DATE**
19
20

21 **WHEREAS**, the City of Lake Worth Beach, Florida (the “City”) is a duly constituted
22 municipality having such home rule power and authority conferred upon it by the Florida
23 Constitution and Chapter 166, Florida Statutes; and
24

25 **WHEREAS**, under section 386.209, Florida Statutes, the State legislature
26 preempted the regulation of smoking to the State which prohibited municipalities and
27 counties from regulating smoking within local parks and beaches; and
28

29 **WHEREAS**, effective July 1, 2022, the Florida legislature amended section
30 386.209, Florida Statutes, to allow municipalities to restrict smoking within the boundaries
31 of public beaches and public parks that are owned by such municipalities, except that
32 they may not restrict the smoking of unfiltered cigars; and
33

34 **WHEREAS**, as noted in the reports cited in the staff analysis for HB 105 (2022)
35 which amended section 386.209, Florida Statutes (and which are incorporated herein by
36 reference), secondhand smoke can cause numerous health problems and has been
37 causally linked to cancer and other fatal diseases; and
38

39 **WHEREAS**, various articles have reported that electronic smoking devices emit
40 secondhand aerosol which contain nicotine, ultrafine particles and low levels of toxins
41 that are known to cause cancer; and
42

43 **WHEREAS**, further, the Ocean Conservancy, Inc. has also reported that cigarette
44 butts are the number one littered item on beaches and that cigarette butts are also a
45 major part of plastic pollution because they are made of tightly packed plastic fibers that
46 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.

“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.

(2) Prohibition. A person is prohibited from smoking and/or vaping in a park located within the city.

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

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

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

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

* * *

(z) Smoking and vaping.

(1) 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.

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

138 (3) Enforcement. The city's law enforcement agency is hereby authorized to enforce
139 this subsection through the issuance of a city civil citation as set forth in Chapter
140 2, Article X of this Code.

141
142 **Section 4:** Severability. If any section, subsection, sentence, clause, phrase or
143 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
144 competent jurisdiction, such portion shall be deemed a separate, distinct, and
145 independent provision, and such holding shall not affect the validity of the remaining
146 portions thereof.

147
148 **Section 5:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in
149 conflict herewith are hereby repealed to the extent of such conflict.

150
151 **Section 6:** Codification. The sections of the ordinance may be made a part of
152 the City Code of Laws and ordinances and may be re-numbered or re-lettered to
153 accomplish such, and the word "ordinance" may be changed to "section", "division", or
154 any other appropriate word.

155
156 **Section 7:** Effective Date. This ordinance shall become effective 10 days after
157 passage.

158
159 The passage of this ordinance on first reading was moved by
160 _____, seconded by _____, and upon
161 being put to a vote, the vote was as follows:

- 162
163 Mayor Betty Resch
164 Vice Mayor Christopher McVoy
165 Commissioner Sarah Malega
166 Commissioner Kimberly Stokes
167 Commissioner Reinaldo Diaz

168
169 The Mayor thereupon declared this ordinance duly passed on first reading on the
170 _____ day of _____, 2022.

171
172
173 The passage of this ordinance on second reading was moved by
174 _____, seconded by _____, and upon being put to a vote,
175 the vote was as follows:

- 176
177 Mayor Betty Resch
178 Vice Mayor Christopher McVoy
179 Commissioner Sarah Malega
180 Commissioner Kimberly Stokes
181 Commissioner Reinaldo Diaz
182

183 The Mayor thereupon declared this ordinance duly passed on the _____ day of
184 _____, 2022.

185

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187

LAKE WORTH BEACH CITY COMMISSION

188

189

190

By: _____

191

Betty Resch, Mayor

192

193 ATTEST:

194

195

196

197 Melissa Ann Coyne, City Clerk

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