

## ORDINANCE 2023-35

**AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, CREATING ARTICLE VI - RESTRICTIONS RELATING TO SMOKING IN OR ON PUBLIC BEACHES AND PUBLIC PARKS OF CHAPTER 58 OF THE CODE OF ORDINANCES OF THE CITY OF MADEIRA BEACH TO ESTABLISH RESTRICTIONS RELATING TO SMOKING IN OR ON PUBLIC BEACHES AND PUBLIC PARKS; PROVIDING FOR PURPOSE AND DEFINITIONS; PROVIDING FOR THE PROHIBITION OF SMOKING IN OR ON PUBLIC BEACHES AND PUBLIC PARKS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR POSTING OF NO SMOKING SIGNS; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.**

**WHEREAS**, smoking in or on public beaches and public parks is a danger to health and is a material annoyance, inconvenience, discomfort and health hazard to patrons of those beach and parks; and

**WHEREAS**, Florida Statute 386.209 provides that the regulation of smoking is preempted to the State and supersedes any county or municipal ordinance on the subject; and

**WHEREAS**, effective July 1, 2022, Florida Statute 386.209 was revised to allow for counties and municipalities to restrict smoking within boundaries of any public beaches and public parks that they own, except that counties and municipalities may not further restrict the smoking of unfiltered cigars; and

**WHEREAS**, the Board of Commissioners of the City of Madeira Beach has determined that it is appropriate to create Code provisions to regulate smoking in or on public beaches and public parks; and

**WHEREAS**, the Board of Commissioners has received input from the public at two public hearings.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED:

**Section 1.** That Article VI (Restrictions relating to smoking in or on public beaches and public parks) of Chapter 58 of the Code of Ordinances of the City of Madeira Beach is hereby created to read as follows:

**ARTICLE VI – RESTRICTIONS RELATING TO SMOKING IN OR ON PUBLIC BEACHES AND PUBLIC PARKS**

**Sec. 58-160. – Purpose and definitions.**

The purpose of this Article is to regulate smoking in or on public beaches or public parks. Smoking in or on public beaches or public parks is a danger to health and is a material annoyance, inconvenience, discomfort and health hazard to patrons that use those beaches and parks. This Article does not regulate the smoking of unfiltered cigars or other smoking regulations that are preempted to the State of Florida, pursuant to Florida Statute Chapter 386.

Public Parks – Any area officially designated by the Board of Commissioners as a park and posted as such.

Public Beaches – Any area officially designated by the Board of Commissioners as a beach and posted as such.

Smoking – Inhaling, exhaling, burning, carrying or possessing any lighted tobacco product, including cigarettes, filtered cigars, pipe tobacco and any other lighted tobacco product.

**Sec. 58-161. – Prohibition of smoking.**

It shall be unlawful for any person to smoke in or on any public beach or public park owned and operated by the City of Madeira Beach.

**Sec. 58-162 – Exceptions.**

The provisions of this Article shall not apply:

- (a) to the smoking of unfiltered cigars in or on public beaches or public parks parks: or
- (b) to smoking in designated smoking areas in or on public beaches or public parks.

**Sec. 58-163. – Posting of no smoking signs.**

- (a) The City Manager or designee is authorized to install appropriate signage in all locations where smoking is prohibited.
- (b) Such signage shall consist of “No Smoking” or “Smoke Free” signs with letters not less than 1” in height or the international “No Smoking” symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

**Sec. 58-164. – Penalty.**

The provisions of this Article may be enforced by civil citation punishable by a fine not more than \$100.00 for the first violation and not more than \$500.00 for each subsequent violation.

**Section 2.** For purposes of codification of any existing section of the Madeira Beach Code herein amended, words **underlined** represent additions to original text, words **stricken** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

**Section 3.** Ordinances or parts of ordinances in conflict herewith to the extent that such conflict exists are hereby repealed.

**Section 4.** In the event a court of competent jurisdiction finds any part or provision of the Ordinance unconstitutional or unenforceable as a matter of law, the same shall be stricken and the remainder of the Ordinance shall continue in full force and effect.

**Section 5.** The Codifier shall codify the substantive amendments to the Code of Ordinances of the City of Madeira Beach contained in Section 1 of this Ordinance as provided for herein and shall not codify the exordial clauses nor any other sections not designated for codification.

**Section 6.** Pursuant to Florida Statutes §166.041(4), this Ordinance shall take effect immediately upon adoption.

**PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY  
OF MADEIRA BEACH, FLORIDA, THIS \_\_\_\_\_ day of \_\_\_\_\_, 2023.**

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James "Jim" Rostek, Mayor

**ATTEST:**

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Clara VanBlargan, MMC, MSM, City Clerk

**APPROVED AS TO FORM:**

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Thomas J. Trask, City Attorney

PASSED ON FIRST READING: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_

PASSED ON SECOND READING: \_\_\_\_\_