

ORDINANCE NO. 2022-12

AN ORDINANCE OF THE CITY OF INDIAN HARBOUR BEACH, BREVARD COUNTY, FLORIDA AMENDING ORDINANCE 2022-06 THE ESTABLISHMENT OF DESIGNATED SMOKING AREAS WITHIN MUNICIPAL PARKS AND BEACHES; AMENDING ARTICLE II, CHAPTER 12, SECTION 12-6 OF THE CODE OF ORDINANCES BY PROHIBITING VAPING, AS AUTHORIZED BY FLORIDA LAW EXCEPT WITHIN DESIGNATED SMOKING AREAS OF A MUNICIPAL PARK OR MUNICIPALLY CONTROLLED BEACH AND BEACH PARK; PROVIDING SEVERABILITY, REPEAL, CODIFICATION AND AN EFFECTIVE DATE

WHEREAS, Florida Statute Chapter 386.209 provides that the regulation of smoking is preempted to the State of Florida; and

WHEREAS, the youth of our community and communities throughout Florida currently play on playgrounds, athletic fields, skate parks, aquatic facilities and other recreation facilities with inconsiderate smokers around the children providing them unhealthy secondhand smoke; and

WHEREAS, exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases. Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking; and

WHEREAS, many people share similar concerns regarding secondhand vapor from the use of electronic vaping devices; and

WHEREAS, SB 224 and HB 105 were filed in the Florida Legislature for the 2022 Legislative Session that allow cities and counties to protect the youth of their community through the designation of smoke-free zones or designated smoking areas; and

WHEREAS, HB 105, as amended, passed the Florida Legislature on March 2, 2022, and HB 105 became law when the Governor signed the bill on July 24, 2022; and

WHEREAS, the Indian Harbour Beach City Council determined a public health and safety need by establishing designated smoking areas within the municipal parks and municipal beaches via Ordinance No. 2022-06 and Resolution No. 736; and

WHEREAS, Florida Statutes Ch. 386.212 permits similar regulation of the use of vapor-generating devices; and

WHEREAS, the Indian Harbour Beach City Council desires to regulate vaping in a similar manner as cigarette and filtered cigar smoking as permitted in Florida Statutes Ch. 386.212.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Indian Harbour Beach, Brevard County, Florida, that:

SECTION 1. Section 12-6 of Article II of Chapter 12 of the Code of Ordinances of the City is amended and shall read as follows:

“Sec. 12-6. – Adoption of Designated Smoking Areas within Municipal Parks and Municipal Beach Parks.

The City Council hereby adopts regulations prohibiting smoking and vaping, except in designated areas of municipal parks and municipal beach parks and as exempted by the Florida Legislature (unfiltered cigars), as authorized by Florida Law, HB 105, adopted in the 2022 Legislative Session.

The City Council may adopt, and amend as necessary, by resolution specific designated smoking areas in each municipal park and municipal beach park.

SECTION 2. In the event that any term, provision, clause or section of this ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, or illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this ordinance, and this ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

SECTION 3. All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith are hereby repealed.

SECTION 4. The City Clerk is hereby directed to incorporate the amended language into the Code of the City.

SECTION 5. This ordinance shall become effective immediately upon adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Indian Harbour Beach, Brevard County, Florida, this 13th day of December 2022.



ATTEST:



First Reading:

November 21, 2022

Second Reading & Public Hearing:

December 13, 2022