

**ORDINANCE NO.: 1494-24**

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF ZEPHYRHILLS, FLORIDA CREATING SECTION 130.24 SMOKING PROHIBITED IN CITY PARKS AND VAPING PROHIBITED IN OR ON CITY PROPERTY; ESTABLISHING PROHIBITED CONDUCT, DEFINITIONS AND PENALTIES; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City of Zephyrhills, Florida (the “City”), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

**WHEREAS**, as provided in section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

**WHEREAS**, Florida Statutes Chapter 386 (the Florida Clean Air Act) preempts the regulation of smoking in the State of Florida; and

**WHEREAS**, Florida Statutes Section 386.209 provides that a municipality may further restrict smoking within the boundaries of any public beaches and public parks within its jurisdiction, unless such restriction conflicts with a county ordinance, except that the municipality may not further restrict the smoking of unfiltered cigars; and

**WHEREAS**, the Florida Clean Air Act does not preclude the adoption of municipal ordinances that impose more restrictive regulation on the use of vapor-generating devices; and

**WHEREAS**, cigarette butts pollute parks and contain toxic chemicals that adversely impact the environment;

**WHEREAS**, littered cigarette butts and filtered cigar debris are difficult to remove from public parks, can cause hazards to park patrons and wildlife, can significantly detract from a healthy environment, and can reduce the enjoyment of the City's public parks for those individuals and families who want to enjoy a healthy environment, free of smoking-related pollution and hazards; and

**WHEREAS**, secondhand smoke is dangerous to inhale and can significantly detract from a healthy environment, and can reduce the enjoyment of the City's public parks for those individuals and families who want to enjoy a healthy environment, free of secondhand smoke hazards; and

**WHEREAS**, the City Council desires to regulate smoking in all City Parks in accordance with its statutory authority; and

**WHEREAS**, the City Council desires to regulate smoking in all City Parks in accordance with its statutory authority; and

**WHEREAS**, the City Council has determined that it is in the City’s interest to create new sections of the City’s Code of Ordinances from time to time to assure that the Code of Ordinances adequately meet the needs of the City; and

**WHEREAS**, Florida Statutes Section 286.209 provides that a municipality may further restrict smoking with the boundaries of any public beaches and public parks within its jurisdiction, unless such restriction conflicts with a county ordinance, except that the municipality may not further restrict the smoking of unfiltered cigars; and

**WHEREAS**, the City Council hereby finds and declares that this Ordinance is in the best interest of the public health, safety, and welfare, and that it advances a valid and important public purpose.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Zephyrhills, Florida, as follows:

### **Section 1. Authority.**

This Ordinance is enacted pursuant to Chapter 163, Florida Statutes, and under the home rule powers of the City.

### **Section 2. Legislative Findings of Fact.**

The foregoing **WHEREAS** clauses are hereby adopted as legislative findings of the City Council of the City of Zephyrhills and are ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

### **Section 3. Creation of Section 130.24 of the City of Zephyrhills Code of Ordinances - Prohibiting Smoking and/or Vaping in and upon Public Parks and City Property Within the City Of Zephyrhills Prohibited.**

Section 130.24 - Smoking and/or Vaping in and upon Public Parks and City Property Within the City of Zephyrhills Prohibited is hereby created as part of the City of Zephyrhills Code of Ordinances as follows:

#### **130.23 SMOKING AND/OR VAPING IN AND UPON PUBLIC PARKS AND CITY PROPERTY WITHIN THE CITY OF ZEPHYRHILLS PROHIBITED**

##### **A. Definitions:**

1. **“Smoke” and “Smoking”** - As used herein, "smoke" and “smoking” shall mean inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, filtered cigars, pipe tobacco, and any other lighted tobacco product whether natural or synthetic. This definition does not include the use of unfiltered cigars (pursuant to Florida Statute §386.209).
2. **“Vape” and “Vaping”** - As used herein, "vape" and “vaping” shall mean using, inhaling, exhaling, or holding an activated electronic smoking device or any other plant product intended for inhalation, including hookah and marijuana.
3. **“Tobacco Product”** - As used herein, "tobacco product" shall mean:
  - i. any product containing, made, or derived from tobacco, nicotine or nicotine analogues that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
  - ii. any electronic smoking device as defined in this Section 130.23 and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
  - iii. any component, part, accessory, of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

- iv. "Tobacco Product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- 4. **"Electronic Smoking Device"** - As used herein, "electronic smoking device" shall mean an electronic device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
- 5. **"Tobacco Product Waste"** - As used herein, "tobacco product waste" any material that is left over and regularly intended to be discarded after the use or consumption of a tobacco product. Tobacco product waste includes, but is not limited to, discarded cigarette butt filters, cigar or cigarillo tips, cigarette packs, cigar or cigarillo wrappers, electronic smoking devices of all types, electronic smoking device cartridges or refill containers, plastic packaging, foil, or other disposable tobacco product remnants or tobacco product packaging in any form.
- B. **Smoking and Vaping Prohibited in City Parks.** It shall be unlawful for any person to smoke and/or vape any tobacco product or electronic smoking device and/or dispose of any tobacco product waste in any City Park including the parking areas designated for said park. that warrant a justifiable and reasonable concern for the health, safety, or welfare of the public.
- C. **Vaping Prohibited on City Property.** It shall be unlawful for any person to vape any tobacco product or electronic smoking device and/or dispose of any tobacco product waste on any property owned by the City, including parking lots and other designated parking areas, facilities, parks, courtyards and buildings owned by the City.
- D. **Penalties.** Any and all violation of the Ordinance shall constitute a separate Class IV offense as set forth in the Uniform Fine and Citation Schedule as adopted by the Sixth Judicial Circuit, and shall be prosecuted as provided in Section 162.21, Florida Statutes. Each violation and each day constituting a violation shall be fined and prosecuted as a separate offense. Fines shall be doubled for a second offense and for each subsequent offense thereafter.

#### **Section 4. Repealer.**

Any and all ordinances in conflict herewith are hereby repealed to the extent of any conflict.

#### **Section 5. Severability.**

It is declared to be the intent of the City Council of the City of Zephyrhills, Florida, that if any section, subsection, sentence, clause, or provision of this ordinance is held invalid, the remainder of the ordinance shall be construed as not having continued the said section, subsection, sentence, clause, or provision and shall not be affected by such holding.

#### **Section 6. Inclusion into the Code.**


It is the intent of the City Council that the provisions of this Ordinance shall become and be made a part of the City of Zephyrhills code, and that the sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

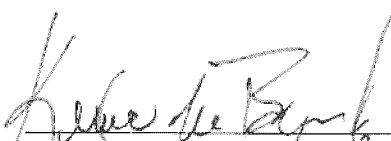
#### **Section 7. Effective Date.**

This Ordinance shall become effective upon passage on the second reading and signing by the Mayor.

The foregoing Ordinance No. 1494-24 was read and passed on the first reading, following a public hearing, in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 23<sup>rd</sup> day of September 2024.


Attest:

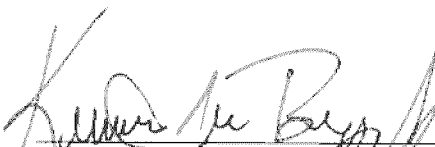
  
Ricardo Quinones, Acting City Clerk

  
Kenneth M. Burgess, Jr.  
Council President


The foregoing Ordinance No. 1494-24 was read and passed on the second reading, following a public hearing, in an open and regular meeting of the City Council of the City of Zephyrhills, Florida, on this 14<sup>th</sup> day of October 2024.

Attest:


  
Ricardo Quinones, Acting City Clerk

  
Kenneth M. Burgess, Jr.  
Council President

The foregoing Ordinance No. 1494-24 was approved by me this 14<sup>th</sup> of October 2024.

  
Melonie Bahr Monson, Mayor

Approved as to legal form and legal content:

  
Matthew E. Maggard, Esq.  
City Attorney