

ORDINANCE NO. 2022-025

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES, BY AMENDING CHAPTER 15, "PARKS AND RECREATION," ARTICLE II, "RULES AND REGULATIONS," TO PROHIBIT SMOKING AND VAPING IN CITY PARKS AND PROVIDE FOR TRESPASS OF VIOLATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, during the 2022 Legislative Session, the Florida Legislature adopted House Bill 105, amending the Florida Clean Indoor Air Act (the "2022 Amendment"), now called the Florida Clean Air Act, which preempts the regulation of smoking to the State; and

WHEREAS, the 2022 Amendment revises the preemption of smoking regulation by amending Section 386.209, Florida Statutes, to provide local governments limited regulatory authority over smoking in public parks that they own; and

WHEREAS, Section 386.209, Florida Statutes, also allows local governments the ability to impose more restrictive regulation on the use of vapor-generating devices than is provided in the Florida Clean Air Act; and

WHEREAS, the City desires to prohibit smoking and vaping in all City parks; and

WHEREAS, the City Commission finds this ordinance is in the best interest for the health, safety, and welfare of the City.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF COCONUT CREEK HEREBY ORDAINS:

Section 1: Ratification. That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance.

Section 2: Amendment. That the Code of Ordinances of the City of Coconut Creek, Florida, shall be amended by amending Chapter 15, “Parks and Recreation,” Article II, “Rules and Regulations,” to read as follows:

Chapter 15 - PARKS AND RECREATION

ARTICLE II. - RULES AND REGULATIONS

Sec. 15-35. ~~Smoking.~~Reserved.

(a) Definitions.

- 1) Smoking means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, pipe tobacco, and any other lighted tobacco product, except for unfiltered cigars, which are not regulated by this section.
- 2) Vaping or Vape means 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.

(b) Smoking and vaping. It shall be unlawful to smoke or vape, except unfiltered cigars, in any city park or on the premises of any city park recreational facility.

(c) Trespass authority.

- 1) Property in lawful possession of the city. The city hereby authorizes any on-duty city employee, who personally observes an individual smoking or vaping, upon city-owned or leased park property, to communicate by verbal warning to the individual that he/she must cease and desist that activity. Any person who is given a second warning by the same or different city employee must desist the activity and must not remain upon city-owned or leased property. If after receiving the verbal warning, the individual remains on city-owned or leased property (even if the individual has ceased his/her prohibited activity), the individual is subject to arrest for the criminal offense of trespass pursuant to section 810.09, Fla. Stat., as may be amended from time to time.
- 2) Effect of trespass warning.
 - a. First trespass. Once an individual is given a verbal warning not to remain on the particular property as provided herein, that individual must leave the

premises immediately and must not return to that property, for any reason, for a period not less than six (6) months, rounded to a full day's use of the property, or be subject to arrest for trespassing upon the property without authorization, license, or invitation to be there.

b. Second trespass. If an individual violates this section after an initial six (6) month trespass, said individual must leave the premises immediately and must not return to the property, for any reason, for a period not less than one (1) year, rounded to a full day's use of the property, or be subject to arrest for trespassing upon the property without authorization, license, or invitation to be there.

c. The city will maintain a list of individuals so warned, the location of the warning, and the timeframe within which such individuals are trespassed.

(d) Nothing contained in this section shall prevent the enforcement actions authorized by the city's code independent of this section.

Sec. 15-37. Violations and penalties.

It shall be a violation of this article for any person to fail to pay the charges herein specified or to violate any of the terms and conditions herein. Except as otherwise provided in this Chapter, Any person convicted of violating the provisions of this article shall be punished by a fine of not less than fifty dollars (\$50.00) but not to exceed five hundred dollars (\$500.00), or by imprisonment not exceeding ninety (90) days, or by both.

Section 3: Conflicts. That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 4: Severability. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 5: Codification. That the provisions of this ordinance shall be codified within the Code of Ordinances of the City of Coconut Creek, Florida, and any paragraph or section may be renumbered to conform with the Code of Ordinances.

Section 6: Effective Date. That this ordinance shall become effective upon its passage on second and final reading.

PASSED FIRST READING THIS 10TH DAY OF NOVEMBER, 2022.

PASSED SECOND READING THIS 8TH DAY OF DECEMBER, 2022.

Joshua Rydell, Mayor

Attest:

Joseph J. Kavanagh, City Clerk

	<u>1st</u>	<u>2nd</u>
Rydell	<u>Aye</u>	<u>Aye</u>
Welch	<u>Aye</u>	<u>Aye</u>
Tooley	<u>Aye</u>	<u>Aye</u>
Railey	<u>Aye</u>	<u>Aye</u>
Brodie	<u>Aye</u>	<u>Aye</u>