

ORDINANCE NO. 2015-007

AN ORDINANCE OF THE CITY OF COCONUT CREEK FLORIDA AMENDING CHAPTER 14 OF THE CODE OF ORDINANCES ENTITLED "OFFENSES", BY AMENDING ARTICLE I THEREOF ENTITLED "IN GENERAL" BY ENACTING A NEW SUBSECTION 14.3.1, "VAPORS"; ENACTING A NEW SUBSECTION 14.3.2, "PROHIBITIONS"; ENACTING A NEW SUBSECTION 14.3.3, "DEFINITIONS"; AND ENACTING A NEW SUBSECTION 14.3.4, "PENALTIES" TO PROVIDE THAT SMOKING ELECTRONIC CIGARETTES SHALL BE PROHIBITED WHEREVER SMOKING TRADITIONAL CIGARETTES IS PROHIBITED; PROVIDING FOR CODIFICATION, PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 (b) of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Florida Statute Section 166.021 implements the language of Article VIII of the Florida Constitution, providing that municipal action will be upheld if it is undertaken (1) for a municipal purpose; and (2) if it is not expressly prohibited by the Constitution, general or special law, or county charter; and

WHEREAS, Florida Statute Section 386.209, referred to as the "Florida Clean Indoor Air Act" provides that the City is preempted from regulating smoking by the state; and

WHEREAS, the Florida Clean Indoor Air Act, Section 386.204, prohibits smoking in any enclosed indoor work place, excepting private residences not being used commercially to provide child care, adult care or health care or any combination thereof, retail tobacco shops, designated smoking guestrooms in public lodging establishments, stand-alone bars, facilities for smoking cessation programs, medical or scientific research, and Customs smoking rooms in airport in-transit lounges; and

WHEREAS, Florida Statute Section 386.203 (10) defines smoking as inhaling, exhaling, burning, caring or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco and any other lighted tobacco product; and

WHEREAS, the definition of smoking as set forth in Florida Statute Section 386.203 (10) does not extend to include e-cigarettes, electric smoking devices and other non-flame producing nicotine delivery devices producing vapors; and

WHEREAS, the use of electronic smoking devices, commonly referred to as "e- cigars", "e-cigarillos", "e-pipes", "e-hookahs" and "vapes", among other terms, collectively referred to hereafter as "electronic cigarettes", are electronic devices often made to look like, and to be used in the same manner as, conventional tobacco products, with the user exhaling a smoke like

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vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and

WHEREAS, electronic cigarettes and other electronic smoking devices generally employ the use of cartridges, which can contain up to 20 mg of nicotine, to deliver vaporized nicotine to users; and

WHEREAS, some cartridges used in electronic cigarettes can be refilled with a liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine; and

WHEREAS, nicotine is a highly addictive neurotoxin; and

WHEREAS, recent scientific studies confirm that electronic smoking devices that contain nicotine also emit nicotine in the release vapor and involuntarily exposed non-smokers to nicotine; and

WHEREAS, a study published in the American Journal of Public Health found that electronic smoking devices often demonstrate poor quality control, contain toxic contaminants, and misrepresent the amount of the nicotine delivered; and

WHEREAS, the FDA has raised concerns that electronic cigarettes, which are often marketed to appeal to youth due to their high tech design and availability in flavors appealing to children such as cotton candy, bubble gum, chocolate chip cookie dough and cookies and cream milkshake, can increase nicotine addiction among young people and may lead youths to try conventional tobacco products; and

WHEREAS, prohibiting the use of electronic smoking devices in smoke-free locations protects traditionally smoke-free locations such as day care centers, schools, libraries and workplaces and will prevent people, including children, from involuntarily inhaling nicotine and potentially harmful chemicals existing in the secondhand vapor of electronic smoking devices; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers, with elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease, being particularly at risk; and

WHEREAS, the State of Florida has not included electronic cigarettes or electronic smoking devices within the preemption of regulation of smoking set forth in the Florida Clean Indoor Air Act, leaving municipalities, pursuant to the Florida Constitution the authority to regulate use of such devices; and

WHEREAS, the City Commission of the City of Coconut Creek has determined that the emission of vapors from electronic cigarettes constitutes a nuisance and threatens the public health, safety and welfare of the citizens of Coconut Creek by exposing them to potentially harmful toxins.

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NOW THEREFORE, be it ordained by the City of Coconut Creek, Florida that:

Section 1: That Chapter 14 “Offenses”, Article I “In General” of the Code of Ordinances of the City of Coconut Creek is hereby amended by enacting new subsections 14.3.1, “Vapors”; 14.3.2, “Prohibitions”; 14.3.3, “Definitions”; and 14.3.4, “Penalties”.

Sec. 14.3.1 Vapors:

Smoking or use of any electronic smoking device causing the emission of vapors in any place in the City of Coconut Creek where smoking of traditional cigarettes is prohibited by the provisions of the Florida Clean Indoor Air Act, Chapter 386, Fla. Stat., or in any City building or structure, outdoor seating area or public transit station or stop shall constitute a public nuisance.

Sec. 14.3.2 Prohibitions:

- (1) A person may not E-smoke or use any electronic smoking device in any place in the City of Coconut Creek where smoking of traditional cigarettes is prohibited by the provisions of the Florida Indoor Clean Air Act, Chapter 386, Fla. Stat.
- (2) A person may not E-smoke or use any electronic smoking device in any City building or structure, City owned or controlled outdoor seating area or any public transit station or stop.

Sec. 14.3.3 Definitions:

The following definitions shall govern construction of this article unless the context clearly requires otherwise:

- (1) “City building or structure” shall mean any building or structure which the City of Coconut Creek owns, controls, operates, occupies, leases, manages or maintains.
- (2) “Electronic smoking device” shall mean any electronic and/or battery operated device, the use of which may resemble smoking, that delivers vapors for inhalation or exhalation or which can be used to deliver an inhaled dose of nicotine or other substances, including every variation and type of such devices whether they are manufactured, distributed, marketed or sold as e-cigarettes, e-pipes, e-hookahs, vapes or any other product name or descriptor. “Electronic smoking device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.
- (3) “E-smoking” shall mean inhaling or exhaling upon, vaporizing, or otherwise using any electronic smoking device.
- (4) “Outdoor seating area” shall mean bleachers, benches or seats located on City owned property outside of an enclosed building or structure, regardless of whether permanently or temporarily fixed, which is provided for an audience, viewers or spectators of an event

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that is adjacent to, in front of, facing, or opposite such seating area.

- (5) “Public transit station or stop” shall mean an enclosed platform, sidewalk, shelter, bench or area where people wait for public transportation such as a bus or shuttle.

Sec. 14.3.5 “Penalties”

Any person who violates the terms of Sub-sections 14.3.1 or 14.3.2 commits a noncriminal violation as defined Florida Statute section 775.08 (3), Fla. Stat. punishable by a fine of not more than One Hundred Dollars (\$100.00) for the first violation and not more than Five Hundred Dollars (\$500.00) for each subsequent violation. Jurisdiction shall be with the Broward County Court.

Section 2: Severability. If any section, sentence, clause or phrase for this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any others section, sentence clause of phrase of this ordinance.

Section 3: 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 4: Effective Date. This Ordinance shall be in full force and effect immediately.

PASSED FIRST READING THIS 12th DAY OF February , 2015.

PASSED SECOND READING THIS _____ DAY OF _____, 2015.

Rebecca A. Tooley, Acting Mayor

Attest:

Leslie Wallace May, MMC
City Clerk

	1 st	2 nd
Tooley	<u>Aye</u>	_____
Belvedere	<u>Aye</u>	_____
Sarbone	<u>Aye</u>	_____
Welch	<u>Aye</u>	_____

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