



Agenda Item #8B, Ord. No. 2023-03  
 Prohibiting Smoking and Vaping in Public  
 Parks and Beaches

**CITY OF NEPTUNE BEACH  
 CITY COUNCIL MEETING  
 STAFF REPORT**

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| <b>AGENDA ITEM:</b>    | Item 8B - <u>Ordinance No. 2023-03, Second Read and Public Hearing.</u><br>An Ordinance of the City of Neptune Beach, Florida, Creating Sections 18-10 through 18-13, Article II, Smoking, Chapter 18, Streets, Sidewalks and Other Places; Prohibiting Smoking and Vaping in Public Parks and Beaches within the City; Providing for Conflicts; Providing for Severability; and Providing an Effective Date.                                  |
| <b>SUBMITTED BY:</b>   | Mayor Elaine Brown   |
| <b>DATE:</b>           | May 31, 2023   |
| <b>BACKGROUND:</b>     | <p>Florida Statutes Section 386.209, authorizes municipalities to regulate smoking within the boundaries of their public beaches and public parks, with certain restrictions.</p> <p>Jacksonville Beach and Atlantic Beach have both enacted legislation pursuant to Section 386.209. Both ordinances are attached.</p> <p>This was discussed at the April 17, 2023, Council Workshop and passed unanimously at First Read on May 1, 2023.</p> |
| <b>BUDGET:</b>         | N/A  |
| <b>RECOMMENDATION:</b> | Consider Ordinance No. 2023-03, Prohibiting Smoking and Vaping in Public Parks and Beaches within the City, for adoption at the June 5, 2023, Regular City Council Meeting   |
| <b>ATTACHMENT:</b>     | Ordinance No. 2023-03  |

**SPONSORED BY:  
MAYOR BROWN**



**ORDINANCE NO. 2023-03**

**A BILL TO BE ENTITLED**

**AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA, CREATING SECTIONS 18-10 THROUGH 18-13, ARTICLE II, SMOKING, CHAPTER 18, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES; PROHIBITING SMOKING AND VAPING IN PUBLIC PARKS AND BEACHES WITHIN THE CITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

- The World Health Organization (WHO) estimates that tobacco kills up to half of its users, amounting to more than 8 million deaths each year worldwide, including nearly half a million people who die prematurely from smoking in the United States alone;
- Tobacco use causes disease in nearly all organ systems and is responsible for an estimated 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all chronic obstructive pulmonary disease deaths in the United States;
- The estimated economic damage attributable to smoking and exposure to secondhand smoke in the United States is nearly \$300 billion annually;
- Despite significant progress, tobacco use remains the leading cause of preventable death and disease in the United States;
- Specifically, in Florida, 29.4% of cancer related deaths are attributable to smoking;
- Electronic vapor products have been found to contain nicotine, lead, formaldehyde, and thousands of other chemicals. These products damage DNA and harm parts of the brain responsible for learning and mental health; and

**WHEREAS**, secondhand smoke exposure is harmful and widespread, as evidenced by the following:

- Children exposed to secondhand tobacco smoke have an increased risk of sudden infant death syndrome, asthma, physical and cognitive developmental abnormalities, and cancer;
- The 2006 U.S. Surgeon General's report, "The Health Consequences of Involuntary Exposure to Tobacco Smoke," concluded that there is no safe level of exposure to secondhand smoke;

- The World Health Organization in 2007 declared that there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke;
- In Florida, 59% of children between ages 11 and 17 report being exposed to secondhand smoke from cigarettes or electronic vapor products; and

**WHEREAS**, there is emerging evidence that exposure to the aerosol produced by a vapor-generating electronic device may be harmful, as evidenced by the following:

- E-cigarettes produce an aerosol that contains at least ten chemicals known to cause cancer, birth defects, or other reproductive harm;
- Bystanders exposed to e-cigarette aerosol can also absorb its nicotine;
- The aerosol is made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke;
- Exposure to fine and ultrafine particles may exacerbate respiratory ailments like asthma, and constrict arteries which could trigger a heart attack; and

**WHEREAS**, tobacco waste is a major, consequential, and persistent source of litter, as evidenced by the following:

- The roughly 6.3 trillion cigarettes smoked globally each year result in 300 billion packs that produce almost 2 million tons of wastepaper, cellophane, foil, and glue as well as trillions of butts littered across roadways, sidewalks, parks, and other green spaces;
- Both tobacco industry and peer-reviewed research found that most smokers admit littering their cigarette butts; for example, one study found 74.1% of smokers admitted littering cigarette butts at least once in their life and 55.7% admitted to littering them in the past month;
- In an observational study of nearly 10,000 individuals, 65% of smokers disposed of their cigarette butts as litter;
- Cigarette butts are perennially the most common form of litter collected during cleanup programs worldwide. For example, in 2018, cigarette butts made up nearly 16% of all litter collected through cleanup programs in the U.S. (809,538 out of 5,106,515 items);
- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons, and ultimately the ocean;
- As of August 2019, the U.S. Environmental Protection Agency recognizes nicotine-containing vapor-generating electronic devices as acute hazardous waste when disposed properly; and

**WHEREAS**, cigarette butts, smokeless tobacco, and vapor-generating electronic devices pose a health threat of poisoning to young children, as evidenced by the following:

- In 2018, American poison control centers logged nearly 13,000 cases involving exposure to cigarettes, cigarette butts, vapor-generating electronic

- devices, or other tobacco products, and of these, more than 10,000 (79.0%) occurred in children aged 5 years and younger;
- Among the 10,266 cases of nicotine and tobacco product exposure recorded in 2018 among children 5 years of age and younger by American poison control centers, 50.3% involved cigarettes, 18.4% involved vapor-generating electronic devices, and 8.0% involved other tobacco products;
- The annual number of electronic cigarette exposure cases among children less than 5 years of age reported to American poison control centers increased from 10 in 2010 to 1,835 in 2018, a 14,015% increase; and
- Children who ingest tobacco products can experience vomiting, nausea, lethargy, and gagging, with e-liquids potentially posing a greater risk of toxicity or fatality through either ingestion or transdermal absorption; and

**WHEREAS**, Florida cities and counties have the legal authority to adopt local laws that prohibit smoking in public parks and beaches pursuant to Fla. Stat. §386.209; and

**WHEREAS**, the City Council for the City of Neptune Beach, Florida finds and declares that this ordinance is in the best interest of the public health, safety and welfare of the citizens and residents of the City, that it advances a significant and important governmental interest, and that it furthers the City’s performance of municipal functions and rendering of municipal services.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL ON BEHALF OF THE PEOPLE OF THE CITY OF NEPTUNE BEACH, FLORIDA that:**

**SECTION 1.** Sections 18-10 through 18-13, Article II – Smoking, Chapter 18, Streets, Sidewalks and Other Public Places, of the Code of Ordinances of the City of Neptune Beach, Florida are hereby created as follows:

Sec. 18-10. Definitions. The following words and phrases, whenever used in this Article shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Beach" means the publicly owned zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves. "Beach" includes a shore of a body of water covered by sand, gravel, or larger rock fragments.

(b) "Vapor-generating Electronic Device" means 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 a hookah.

(c) "Park" means all public property specifically designated as being used for outdoor recreational or park purposes and where children regularly congregate. "Outdoor recreational or park purposes" includes, but is not limited to, boating,

golfing, camping, swimming, horseback riding, and archaeological, scenic, or scientific sites and applies only to land which is open to the general public.

(d) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted or heated tobacco product, including cigarettes, filtered cigars, pipe tobacco, and any other lighted or heated tobacco product whether natural or synthetic .. For the purposes of this policy only, smoking does not include the use of unfiltered cigars (pursuant to Florida Statute 386.209).

(e)"Tobacco Product" means:

(1) 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;

(2) any vapor-generating electronic device as defined in this article and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

(3) 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.

"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.

(f) "Tobacco Product Waste" means 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, vapor-generating electronic devices of all types, vapor-generating electronic device cartridges or refill containers, plastic packaging, foil, or other disposable tobacco product remnants or tobacco product packaging in any form.

(g) "Vape" or "vaping" means to 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, chemical, or 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.

## Sec. 18-11. Prohibition of Smoking and Vaping in Recreational Areas.

Smoking and the use of all other tobacco products is prohibited in all parks and beaches within the city. Unfiltered cigars are exempted under 386.209, Florida Statutes.

Sec. 18-12. Other Requirements and Provisions.

- (a) No person shall dispose of tobacco product waste in any park or beach.
- (b) The city manager or their designee shall post at least one clear, conspicuous and unambiguous "No Smoking or Vaping" sign at each point of ingress to the area, and in at least one other conspicuous location where individuals congregate (such as restrooms, playgrounds, or buildings) within each recreational area. For purposes of this section, the city manager or their designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the city. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking or vaping in violation of any other provision of this ordinance.

Sec. 18-13. Compliance and Enforcement.

The success of this policy depends on the consideration and cooperation of both tobacco-users and non-users. Individuals acting in violation of this policy will be reminded and asked to comply. Individuals who violate this policy may be asked to leave the park or beach.

Enforcement and penalties for violation of this section shall be in keeping with Section 1-12.\*

**SECTION 2. Conflict.** All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this ordinance are repealed to the extent inconsistent herewith.

**SECTION 3. Severability.** If a Court of competent jurisdiction at any time finds any provision of this Ordinance to be unlawful, illegal, or unenforceable, the offending provision shall be deemed severable and removed from the remaining provisions of this Ordinance which shall remain in full force and intact.

**SECTION 4. Effective Date.** This ordinance shall take effect upon final reading and approval.

**VOTE RESULTS OF FIRST READING:**

|                          |     |
|--------------------------|-----|
| Mayor Elaine Brown       | YES |
| Vice Mayor Kerry Chin    | YES |
| Councilor Nia Livingston | YES |
| Councilor Lauren Key     | YES |
| Councilor Josh Messinger | YES |

Passed on First Reading this 1<sup>st</sup> day of May, 2023.

**VOTE RESULTS OF SECOND AND FINAL READING:**

Mayor Elaine Brown  
Vice Mayor Kerry Chin  
Councilor Nia Livingston  
Councilor Lauren Key  
Councilor Josh Messinger

Passed on Second and Final Reading this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Elaine Brown, Mayor

ATTEST:

\_\_\_\_\_  
Catherine Ponson, City Clerk

Approved as to form and content:

\_\_\_\_\_  
Zachary Roth, City Attorney