

**ORDINANCE NO - 975**

**AN ORDINANCE OF THE CITY OF DEFUNIAK SPRINGS, FLORIDA, AMENDING CHAPTER 16, PARKS AND REGULATIONS, ARTICLE II, PARKS AND REGULATIONS, BY CREATING A NEW SECTION 16-2 TO BE ENTITLED, "SMOKING AND VAPING PROHIBITED IN PARKS"; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, INCLUSION IN CODE, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of DeFuniak Springs, Florida (the "City") is municipality having such home rule power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the regulation of smoking was preempted to the State in 1985 by the creation of §386.209 Fla. Stat., and;

**WHEREAS**, effective July 1, 2022, the Florida Legislature amended §386.209 Fla. Stat. to allow cities to restrict smoking in local parks which are within the jurisdiction of the cities, and;

**WHEREAS**, the Florida Legislature's amendment also allows for a city to restrict smoking in a county-owned park that is within a city's boundaries if the county does not have a conflicting ordinance, and;

**WHEREAS**, the Florida Legislature's amendment to §386.209 Fla. Stat. further specified that a city cannot restrict the smoking of unfiltered cigars as part of the newly created regulatory authority, and;

**WHEREAS**, the Florida House of Representatives' staff analysis for HB 105 (2022), which amended §386.209 Fla. Stat. as stated above, expressly determined that secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases, and;

**WHEREAS**, the City Council for the City of DeFuniak Springs adopts and incorporates the findings and reasoning contained in the HB 105 (2022) staff reports, and further finds that the harmful impact of secondhand smoke in the City's parks is detrimental to park users and should be banned to the greatest extent allowed by law, and;

**WHEREAS**, the City Council deems approval of this Ordinance to be in the best interest of the residents and citizens of the City of DeFuniak Springs and serves a valid public purpose.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEFUNIAK SPRINGS, FLORIDA, THAT:**

**SECTION 1.** The foregoing recitals are incorporated into this Ordinance as true and correct findings of the City Council.

**SECTION 2.** Chapter 16, PARKS AND REGULATIONS, Article II, Parks and Regulations, Section 16-12, currently "Reserved" for future usage, is hereby created and added, and shall henceforth read as follows:

**Sec. 16-12. – Smoking and Vaping Prohibited in Parks.**

- (a) Definitions. For the purposes of this section, the following terms shall have the meanings given. Words not otherwise defined shall have the meaning set forth in Part II, Chapter 386, Florida Statutes (the "Florida Clean Air Act"), or shall be construed to mean the common and ordinary meaning.

"Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product. However, "unfiltered cigars" shall be exempt from this definition of smoking.

"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, 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) Prohibition. Smoking or vaping in all parks located within the City is hereby prohibited. This prohibition includes any park that is owned by Walton County but within the boundaries of the City, unless Walton

County has an ordinance authorizing smoking or vaping within that County owned park.

(c) Enforcement. This section may be enforced by the City's Code Enforcement division and the City Police Department. Enforcement may include, but is not limited to, enforcement through City Code Enforcement, civil citation and any other enforcement proceeding available to the City.

(d) Penalties. The penalty for violation of this section shall be the maximum penalty or penalties permitted by applicable law.

### **SECTION 3. Repeal of Conflicting Ordinances.**

All ordinances or parts thereof or parts of the Code conflicting with the provision of this Ordinance are hereby repealed to the extent of the conflict.

### **SECTION 4. Severability**

If any section, part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings of invalidity shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been

included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

**SECTION 5. Inclusion in Code**

It is the intention of the City Council, entered as hereby ordained, that the provisions of this Ordinance shall become and be made a part of the DeFuniak Springs Municipal Code; that the Section(s) of this Ordinance may be renumbered or re- lettered to accomplish such intention, and that the word "Ordinance" may be changed to "Section", "Article" or another word.

**SECTION 6. Effective Date**

The provisions of this Ordinance shall become effective upon adoption.

**CITY COUNCIL  
DEFUNIAK SPRINGS, FLORIDA**

**Attest:**

  
\_\_\_\_\_  
Rafael Ali, City Clerk

By: \_\_\_\_\_  
Robert "Bob" Campbell, Mayor

