MEMORANDUM

TO: The Honorable Mayor and City Commission
FROM: Commissioner Jeanette Gatto
DATE: 12/20/2012
RE: Urging that the Florida Legislature Amend the Florida Clean Indoor Air Act

RECOMMENDATION:
The attached Resolution is recommended for approval.

REASONS:
The City believes that it has the right under its Home Rule authority to regulate the use of tobacco products in its parks and recreational areas, and the existing language in Section 386.209, Florida Statutes, prohibits the City from regulating tobacco products in a city park or recreational area.

It is in the interest of the citizens that parks and recreational areas of the City be free from smoking tobacco products so that the citizens are able to enjoy such parks and recreational areas without the problems associated with secondhand smoke and it is an important policy in Florida to promote the health and well-being of the citizens of the State.

ATTACHMENTS:
* Resolution
RESOLUTION NO. 2012-____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, URGING THAT THE FLORIDA LEGISLATURE AMEND THE FLORIDA CLEAN INDOOR AIR ACT TO EXPRESSLY ALLOW LOCAL REGULATION OF SMOKING AND THE POSSESSION OF TOBACCO PRODUCTS IN MUNICIPAL AND COUNTY PARKS AND RECREATION AREAS; DIRECTING THE CITY CLERK TO TRANSMIT A COPY OF THIS RESOLUTION TO MEMBERS OF THE FLORIDA LEGISLATURE; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Sunny Isles Beach, Florida, has home rule authority to take any action in furtherance of the interests of the City of Sunny Isles Beach and its citizens so long as such action is not expressly prohibited by the Constitution or Florida Statutes; and

WHEREAS, it is an important policy in Florida to promote the health and well-being of the citizens of the State; and

WHEREAS, this policy is expressed in part through the Florida Clean Indoor Air Act, Chapter 386, Part II, Florida Statutes; and

WHEREAS, Section 386.209, Florida Statutes, provides that the Florida Clean Indoor Air Act “expressly preempts regulation of smoking to the State and supersedes any municipal or county ordinance on the subject”; and

WHEREAS, the City of Sunny Isles Beach believes that it has the right under its home rule authority to regulate the use of tobacco products in its parks and recreational areas, and the existing language in Section 386.209, Florida Statutes is unclear as to whether or not a regulation of the possession or lighting of tobacco products in a city park or recreational area is preempted to the State; and

WHEREAS, some local governments have considered Section 386.209, Florida Statutes, as not preempts regulations against possession of tobacco products in parks and recreational areas and have enacted ordinances prohibiting the same in such areas; and

WHEREAS, the City has proclaimed and adheres to the principle that it is in the interest of the citizens that parks and recreational areas of the City be free from smoking of tobacco products so that the citizens are able to enjoy such parks and recreational areas without the problems associated with secondhand smoke; and
WHEREAS, some jurisdictions may feel constrained in their ability to enact local regulations in the interest of their residents’ health and safety because of the existing language in Section 386.209.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORID, AS FOLLOWS:

Section 1. Urging of the State Legislature. The City strongly urges the Florida Legislature to amend Section 386.209, Florida Statutes, or to enact such other amendments in Florida law that will expressly provide that municipalities and counties have the local authority to enact regulations concerning the use, possession, lighting or smoking of tobacco products in parks and recreational areas.

Section 2. Directive to the City Clerk. The City Commission hereby directs the City Clerk to transmit a certified copy of this Resolution to Senator Gwen Margolis and Representative Joseph Gibbons.

Section 3. Authority of the City Manager. The City Manager is hereby authorized to do all things necessary to effectuate this Resolution.

Section 4. Effective Date. This Resolution shall become effectively immediately upon its passage and adoption.

PASSED AND ADOPTED this _____ day of December 2012.

Norman S. Edelcup, Mayor

ATTEST:

Jane A. Hines, City Clerk, CMC

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Hans Ottino, City Attorney

Moved by: ______________________________

Seconded by: ____________________________
**Vote:**

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<th>Position</th>
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<td>Mayor Edelcup</td>
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<td>Vice Mayor Aelion</td>
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<td>Commissioner Gatto</td>
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<td>Commissioner Levin</td>
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<td>Commissioner Scholl</td>
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