

**ORDINANCE NO. 2023-**

**AN ORDINANCE OF THE POLK COUNTY BOARD OF COUNTY COMMISSIONERS PROHIBITING SMOKING AND VAPING IN PUBLIC PARKS OWNED OR LEASED BY POLK COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, tobacco use causes death and disease and continues to be an urgent public health threat,

**WHEREAS**, secondhand smoke exposure is harmful,

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

**WHEREAS**, tobacco waste is a major, consequential, and persistent source of litter,

**WHEREAS**, cigarettes, cigarette butts, smokeless tobacco, and vapor-generating electronic devices pose a health threat of poisoning to young children,

**WHEREAS**, the State of Florida enacted chapter 2022-213, Laws of Florida, which grants counties and municipalities the legal authority to restrict smoking within the boundaries of county and municipal owned public beaches and public parks, but which includes an exception for unfiltered cigars; and

**WHEREAS**, chapter 2022-213, Laws of Florida is now codified at F.S. 386.209, which retains an express preemption of the regulation of smoking to the State except for the limited exception to regulate smoking at county and city owned parks and beaches; and

**NOW THEREFORE**, in order to provide for the public health, safety, and welfare, reduce unwanted and unwelcome exposure to secondhand smoke and the secondhand aerosol produced by vapor-generating electronic devices, assure cleaner and more hygienic parks for unincorporated Polk County its residents and visitors, it is the intent of the Polk County Board of County Commissioners in enacting this ordinance, to prohibit smoking and vaping in parks which are used by or open to the public and to prohibit smoking and vaping waste in those areas thereby affirming and promoting a healthy environment in unincorporated Polk County.

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA THAT:**

**Section 1. DEFINITIONS.** The following words and phrases, whenever used in this section shall have the meanings defined in this section unless the context clearly requires otherwise:

- a. "Parks" means any County owned or leased property managed by a County division or department for the purpose of recreation by the public.
- b. "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).

c. "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/chapter] 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.

d. "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.

e. "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.

f. "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.

g. "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 e-hookah.

## **Section 2. PROHIBITION OF SMOKING AND VAPING IN RECREATIONAL AREAS.**

Smoking and the use of all other tobacco products is prohibited in all parks owned by Polk County designated no smoking or vaping by the County Manager or their designee. Designation of a park as no smoking or vaping by the County Manager or their designee shall be done through a memorandum to the appropriate division. Unfiltered cigars are exempted under 386.209, Florida Statutes. If a park is designated no smoking or vaping by the County Manager, parking areas of the park shall be the designated smoking areas for the park.

## **Section 3. OTHER REQUIREMENTS AND PROHIBITIONS.**

(a) No person shall dispose of tobacco product waste in any park.

(b) The County Manager or their designee shall post at least one clear, conspicuous and unambiguous “No Smoking or Vaping” sign or other similar sign at the County Manager’s discretion 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 County 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 County. 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.

#### **Section 4. COMPLIANCE AND ENFORCEMENT.**

Individuals acting in violation of this policy will be reminded and asked to comply by the County Manager or their designee. Individuals who violate this policy may be asked to leave the park.

#### **Section 5. STATUTORY CONSTRUCTION & SEVERABILITY.**

If any section, subsection or provision of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections or provisions of this ordinance or its application to any other person or circumstance. The Board of County Commissioners hereby declares that it would have adopted each section, subsection or provision hereof independently, irrespective of the fact that any one or more other sections, subsections or provisions hereof be declared invalid or unenforceable.

#### **SECTION 6. EFFECTIVE DATE**

This Ordinance shall take effect immediately upon filing with the Office of the Florida Secretary of State.