



City Council Agenda Form

Meeting Date: August 28, 2023

Department: Parks & Recreation

Public Hearing: 2 Readings
☐ YES ☐ NO

For Clerk's Use Only
AGENDA ITEM #

Consent Agenda	Regular Agenda	Closed Session

Presenter: Holmes County Health Department

Request Type: ☐ Informational ☐ Discussion ☒ Action Item

Does this item require legal review? ☐ YES ☐ NO LEGAL REVIEW COMPLETED BY M.B.J.

City Attorney e-mail attached? ☐ YES ☐ NO

Agenda Item Title:

Attachment(s): Tobacco Free Parks Ordinance

Brief Summary:

The Holmes County Health Department is requesting the City adopt a Tobacco-Free Parks Ordinance.

Action Requested of Council:

Take action to move to
Approve Ordinance

ORDINANCE NO. 435

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONIFAY, FLORIDA, PROHIBITING SMOKING AND VAPING IN PUBLIC PARKS WITHIN THE CITY; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Bonifay, Florida (the "City") is a duly constituted municipality having such home rule power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, under section 386.209, Florida Statutes, the State legislature preempted the regulation of smoking to the State which prohibited municipalities and counties from regulating smoking within local parks; and

WHEREAS, effective July 1, 2022, the Florida legislature amended section 386.209, Florida Statutes, to allow municipalities to restrict smoking within the boundaries of public parks that are owned by such municipalities, except that they may not restrict the smoking of unfiltered cigars; and

WHEREAS, as noted in the reports cited in the staff analysis for HB 105 (2022) which amended section 386.209, Florida Statutes (and which are incorporated herein by reference), secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases; and

WHEREAS, various articles have reported that electronic smoking devices emit secondhand aerosol which contain nicotine, ultrafine particles and low levels of toxins that are known to cause cancer; and

WHEREAS, the City Council finds that the harmful impact of cigarette butts, secondhand smoke and secondhand aerosol at the City's parks are detrimental to park users and should be banned to the greatest extent allowed by law; and

WHEREAS, the City Commission finds and declares that the adoption of this ordinance is appropriate, and in the best interest of the health, safety and welfare of the City, its residents and visitors.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BONIFAY, FLORIDA:

SECTION 1. FINDINGS

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 alone¹;

¹U.S. Department of Health and Human Services. The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.

- 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 States²;
- The estimated economic damage attributable to smoking and exposure to secondhand smoke in the United States is nearly \$300 billion annually³;
- Despite significant progress, tobacco use remains the leading cause of preventable death and disease in the United States⁴;
- Specifically, in Florida, 29.4% of cancer related deaths are attributable to smoking.⁵
- 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.⁶

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;

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.⁵
- Bystanders exposed to e-cigarette aerosol can also absorb its nicotine.⁶
- The aerosol is made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.⁷

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ California Tobacco Control Program, California Department of Public Health. State Health Officer's Report on E-Cigarettes: A Community Health Threat. Sacramento, CA. 2015. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/Policy/ElectronicSmokingDevices/StateHealthEcigReport.pdf>.

⁶ Ballbé M, Martínez-Sánchez JM. Cigarettes vs. E-Cigarettes: Passive Exposure at Home Measured by Means of Airborne Marker and Biomarkers. *Environmental Research* 2014;135:76–80 [accessed 2015 Jun 2].

⁷ Fuoco, F.C.; Buonanno, G.; Stabile, L.; Vigo, P., "Influential parameters on particle concentration and size distribution in the mainstream of e-cigarettes," *Environmental Pollution* 184: 523-529, January 2014.

- Exposure to fine and ultrafine particles may exacerbate respiratory ailments like asthma and constrict arteries which could trigger a heart attack.⁸

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^{9,10};
- Both tobacco industry and peer-reviewed research found that most smokers admit littering their cigarette butts¹¹, 53,54 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 month¹²;
- In an observational study of nearly 10,000 individuals, 65% of smokers disposed of their cigarette butts as litter¹³;
- 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 ocean¹⁴;
- As of August 2019, the U.S. Environmental Protection Agency recognizes nicotine- containing electronic smoking devices as acute hazardous waste when disposed properly¹⁵;

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

⁸ Grana, R; Benowitz, N; Glantz, S. "Background Paper on E-cigarettes," Center for Tobacco Control Research and Education, University of California, San Francisco and WHO Collaborating Center on Tobacco Control. December 2013.

⁹ Novotny TE, Lum K, Smith E, Wang V, Barens R. Cigarettes Butts and the Case for an Environmental Policy on Hazard- ous Cigarette Waste. *Int J Environ Res Public Health*. 2009;6(5):1691-1705. doi: 10.3390/ijerph6051691.

¹⁰ Novotny TE, Aguinaga Bialous S, Burt L, et al. The environmental and health impacts of tobacco agriculture, cigarette manufacture and consumption. *Bull World Health Organ*. 2015;93(12):877-880. doi: 10.2471/BLT.15.152744.

¹¹ Smith EA, Novotny TE. Whose Butt Is It? Tobacco Industry Research About Smokers and Cigarette Butt Waste. *Tob Control*. 2011;20(Suppl 1):i2-9. doi: 10.1136/tc.2010.040105.

¹² Rath JM, Rubenstein R a, Curry LE, Shank SE, Cartwright JC. Cigarette litter: Smokers' attitudes and behaviors. *Int J Environ Res Public Health*. 2012;9(6):2189–203. doi:10.3390/ijerph9062189.

¹³ *Id.*

¹⁴ Novotny TE, Lum K, Smith E, Wang V, Barens R. Cigarettes Butts and the Case for an Environmental Policy on Hazard- ous Cigarette Waste. *Int J Environ Res Public Health*. 2009;6(5):1691-1705. doi: 10.3390/ijerph6051691.

¹⁵ Resource Conservation and Recovery Act; EPA Management Standards for Hazardous Waste Pharmaceuticals and Amend- ment to the P075 Listing for Nicotine, 84 Fed. Reg. § 5816 (August 21, 2019) (to be codified at 40 C.F.R. pt. 266(p)).

- In 2018, American poison control centers logged nearly 13,000 cases involving exposure to cigarettes, cigarette butts, electronic smoking devices, or other tobacco products, and of these, more than 10,000 (79.0%) occurred in children aged 5 years and younger¹⁶;
- 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 electronic smoking devices, and 8.0% involved other tobacco products¹⁷;
- 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% increase¹⁸; 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 absorption¹⁹;

WHEREAS, Florida cities and counties have the legal authority to adopt local laws that prohibit smoking in public parks and beaches.

NOW THEREFORE, in order to provide for the public health, safety, and welfare, reduce unwanted and unwelcome exposure to secondhand smoke, assure cleaner and more hygienic parks and for Bonifay its residents and visitors, it is the intent of the City Council, in enacting this ordinance, to prohibit smoking in parks which are used by or open to the public and to prohibit smoking waste in those areas thereby affirming and promoting a healthy environment in Bonifay.

Sec. 2. DEFINITIONS The following words and phrases, whenever used in this chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) “Electronic Smoking 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.

(b) “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.

(c) “Smoking” means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, filtered cigars, pipe tobacco, and any other lighted tobacco product whether natural or synthetic. “Smoking” also means using an electronic smoking device or any other plant product intended for inhalation, including hookah and marijuana. For the purposes of this policy only, smoking does not include the use of unfiltered cigars (pursuant to Florida Statute 386.209).

¹⁶Gummin DD, Mowry JB, Spyker DA, et al. 2018 Annual Report of the American Association of Poison Control Centers’ National Poison Data System (NPDS): 36th Annual Report. *Clin Toxicol.* 2019;57(12):1220-1413. doi: 10.1080/15563650.2019.1677022.

¹⁷ *Id.*

¹⁸ Wang B, Liu S, Peroskie A. Poisoning Exposure Cases Involving E-Cigarettes and E-Liquid in the United States, 2010- 2018. *Clin Toxicol.* 2020;58(6):488-494. doi: 10.1080/15563650.2019.

¹⁹ Chang JT, Rostron BL. Electronic Nicotine Delivery System (ENDS) Liquid Nicotine Exposure in Young Children Present- ing to US Emergency Departments, 2018. *Inj Epidemiol.* 2019;6:43. doi: 10.1186/s40621-019-0219-6.

(d) "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 electronic smoking device as defined in this 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.

"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, electronic smoking devices of all types, electronic smoking device cartridges or refill containers, plastic packaging, foil, or other disposable tobacco product remnants or tobacco product packaging in any form.

(g) "Vaping" means the inhaling, exhaling, or holding of an activated electronic smoking device.

Sec. 3. PROHIBITION OF TOBACCO USE IN RECREATIONAL AREAS.

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

Sec. 4. OTHER REQUIREMENTS AND PROHIBITIONS.

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

(b) The City Clerk 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 the purposes of this section, the City Clerk 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 in violation of any other provision of this ordinance.

Sec. 5. 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. Violations of this ordinance shall be punished by a fine of up to \$500.00 per violation or \$1,000.00 per day, whichever is lesser. The Bonifay Police Department shall have the authority to issue citations for violations. This ordinance may also be enforced by civil action brought by the City against any offender, in the event of a threat of repeated violations.

Sec. 6. 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 City Council 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.

Sec. 7. EFFECTIVE DATE

This policy shall take effect immediately upon its passage and adoption.

INTRODUCED on first reading in the City Council on _____, 2023.

PASSED after second reading by the City Council on _____, 2023.

CITY OF BONIFAY, FLORIDA

ATTEST:

By its Mayor, Dr. Emily McCann

By the City Clerk, Rickey Callahan

APPROVED AS TO FORM:

Michelle Blankenship Jordan
City Attorney