

MODEL FLORIDA TOBACCO-FREE OUTDOOR ORDINANCE

In June 2022, Governor DeSantis signed legislation that grants city and county governments the ability to ban smoking at public parks and beaches. This new law could potentially impact Florida's 67 county park systems and more than 400 city park systems. This model ordinance includes a number of provisions a local government may choose to adopt in order to ban smoking at public parks and beaches and to further advance public health.

A city or county planning to adopt this model ordinance, in whole or in part, should review it with its attorney beforehand to determine suitability. While the model ordinance language can be modified by adding or omitting content concerning activities that a city or county does or does not seek to regulate, doing so may result in an ordinance that does not conform to state law, federal law, and best public health policy practices.

Because provisions within this model ordinance are controlled by statute and rule, the city or county attorney should review any modifications to ensure they conform to state and federal law. The Public Health Law Center provides legal technical assistance to help communities that wish to adopt commercial tobacco control ordinances. We encourage communities to contact us for assistance when considering this model language.

Notice

In order to properly adopt an ordinance, cities and counties in Florida must follow specific processes set out in state statute. [Section 125.66](#) sets out the process for counties; [Section 166.041](#) sets out the process for other municipalities. These statutes include requirements for notice, publication, and form.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies that are intended to help make that world a reality. As such, this model ordinance represents a balance between state minimum standards, best public health policy practices, and practicality for local governments in Florida. This model ordinance contains several policy components that go beyond state minimum requirements and communities may or may not choose to adopt at this time

While the Public Health Law Center does not lobby, advocate, or directly represent communities, adopting effective commercial tobacco control policies starts early with education, stakeholder and community engagement, and a strong advocacy plan. If a community is unaware of the resources available to them for engaging the community and developing an advocacy plan, or if a city or county is considering adopting an ordinance and is interested in learning about the range of resources available, the Public Health Law Center can provide assistance through our publications and referrals to experts in the field. In certain, limited

circumstances, Public Health Law Center staff may be able to speak at public hearings or work sessions to provide education about particular policy options.

[Disclaimer]

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not lobby nor does it provide direct legal representation or advice. This document should not be considered legal advice.

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ORDINANCE NO. [_____]

AN ORDINANCE OF THE [BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY, FLORIDA / CITY COUNCIL OF _____, FLORIDA], PROHIBITING SMOKING AND VAPING IN PUBLIC PARKS AND BEACHES WITHIN THE [CITY/COUNTY]

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;
- 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;

¹ U.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

² *Id.*

- 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.⁷
- Bystanders exposed to e-cigarette aerosol can also absorb its nicotine.⁸
- The aerosol is made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.⁹

³ *Id.*

⁴ *Id.*

⁵ State proportion of cancer deaths attributable to smoking from Lortet-Tieulent, J, et al., "State-Level Cancer Mortality Attributable to Cigarette Smoking in the United States," *JAMA Internal Medicine*, published online October 24, 2016.

⁶ Tehrani et al., 2021; Williams, et al., 2019; Romberg et al., 2019; Ogunwale et al., 2017; Latvala et al., 2014; National Institute on Drug Abuse, 2020.

⁷ 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/CCDC/DCDC/CTCB/CDPH%20Document%20Library/Policy/ElectronicSmokingDevices/StateHealthEcigReport.pdf>.

⁸ 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].

⁹ 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.¹⁰

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^{11,12};
- Both tobacco industry and peer-reviewed research found that most smokers admit littering their cigarette butts^{13,53,54} 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 month¹⁴;
- In an observational study of nearly 10,000 individuals, 65% of smokers disposed of their cigarette butts as litter¹⁵;
- 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 ocean¹⁶;
- As of August 2019, the U.S. Environmental Protection Agency recognizes nicotine-containing electronic smoking devices as acute hazardous waste when disposed properly¹⁷;

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

¹⁰ 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.

¹¹ Novotny TE, Lum K, Smith E, Wang V, Barends R. Cigarettes Butts and the Case for an Environmental Policy on Hazardous Cigarette Waste. *Int J Environ Res Public Health*. 2009;6(5):1691-1705. doi: 10.3390/ijerph6051691.

¹² 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.

¹³ 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.

¹⁴ 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.

¹⁵ *Id.*

¹⁶ Novotny TE, Lum K, Smith E, Wang V, Barends R. Cigarettes Butts and the Case for an Environmental Policy on Hazardous Cigarette Waste. *Int J Environ Res Public Health*. 2009;6(5):1691-1705. doi: 10.3390/ijerph6051691

¹⁷ Resource Conservation and Recovery Act; EPA Management Standards for Hazardous Waste Pharmaceuticals and Amendment 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 younger¹⁸;
- 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 products¹⁹;
- 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% increase²⁰; 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 absorption²¹;

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 beaches for [county/city] its residents and visitors, it is the intent of the [County Board of Supervisors/City Council] , in enacting this ordinance, to prohibit smoking in parks and beaches 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 [county/city].

Sec. [____ (*2)]. DEFINITIONS. The following words and phrases, whenever used in this [article / chapter] 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.

¹⁸Gummin 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.

¹⁹

Id.

²⁰ 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.

²¹ 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.

(b) “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.

(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 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).

(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 electronic smoking 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.

“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 and beaches within [County/City]. 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 or beach.

(b) [The County/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 [County/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 [County/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 or beach. Enforcement and fines for violation of this section shall be in accordance with ordinance #XXX.*

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 Board of County Commissioners/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.

EFFECTIVE DATE

This policy shall take effect on _____

***TIPS FOR EQUITABLE ENFORCEMENT**

Clear and accessible signage is a key to a successful enforcement strategy. Posting signs throughout parks and beaches will serve as a reminder to visitors, and a deterrent. Additionally, Criminal penalties as punishment for violation of this ordinance are strongly discouraged. Limiting law enforcement involvement with enforcement may be an equity measure for communities that are historically overpoliced. Lastly, if there are any fine structures or community service penalties in place, those accused of violating the ordinance should have Due Process rights and communities may consider a graduated enforcement scheme where fines are minimal (i.e warning first, removal from park or beach second, minimal fine imposed as a last resort).