

ORDINANCE NO. 2022-23

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 50 OF THE CODE OF ORDINANCES, TO ESTABLISH SECTION 50-40, PROHIBITING SMOKING AND VAPING IN PARKS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR DEFINITIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 386.209 of the Florida Statutes (2022) expressly authorizes municipalities to adopt and enforce restrictions as to smoking within the boundaries of any public parks that the municipality owns, and to further restrict smoking within the boundaries of public parks that are within the municipality's jurisdiction but are owned by the county, unless such restriction conflicts with a county ordinance; and

WHEREAS, Section 386.209 of the Florida Statutes (2022) preempts municipalities from further restricting unfiltered cigars beyond those restrictions established by State Law; and

WHEREAS, the City Council of the City of Port Orange desires to restrict the smoking of tobacco at its parks within the City of Port Orange; and

WHEREAS, the City Council of the City of Port Orange finds that the provisions of this Ordinance are in the best interests of the citizens of and visitors to the City of Port Orange, and that such restrictions are necessary for the health, safety and welfare of the citizens of and visitors to the City of Port Orange; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. Section 50-40 of the Code of Ordinances, City of Port Orange, Florida, is hereby established as shall read as follows:

Sec. 50-40. - Prohibiting smoking and vaping at publicly owned parks and youth athletic activities; exception.

(a) *Definitions.* For purposes of this section the terms listed shall have the following meaning:

Youth athletic activity shall mean any event, game or other activity held within a public park owned by the city or Volusia County with participants who are less than 17 years of age and shall include 15 minutes before and after such activity.

Public property shall mean all public parks owned by the city or Volusia County including those facilities and buildings located therein which shall include, but not be limited to the following: bleachers, seating, gymnasiums, courts, fields, buildings, restrooms, parking lots, and playground areas.

Smoking shall mean inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

Vape or *Vaping* shall mean 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.

(b) It shall be unlawful for any person to possess any ignited tobacco product, to consume by smoking any tobacco product, or to vape on any portion of the public property in the city described as follows:

- (1) Kenneth W. Parker Amphitheater - City Center Circle.
- (2) Spruce Creek Road Park, including All Children's Park, pavilion and picnic facilities.

- (3) Airport Road Park.
 - (4) City of Port Orange Skate Park.
 - (5) Port Orange REC, and all property and parking facilities within 300 feet.
 - (6) Riverwalk Park splash pad, playground and concession areas.
 - (7) Bushman Park Playground
 - (8) Volusia County Recreational Facilities.
- (c) It shall be unlawful for any person at a youth athletic activity to possess any ignited tobacco product, to consume by smoking any tobacco product, or to vape on any portion of the public property described as follows:
- (1) City Center Sports Complex.
 - (2) Southwinds Soccer Complex.
 - (3) Willow Run Park Facilities.
 - (4) Spruce Creek Road Park Fields and Courts.
 - (5) Coraci Sports Park.
- (d) The prohibitions listed in subsection (b) and (c) above shall not apply to unfiltered cigars.
- (d) The City Manager, or designee, is hereby authorized to display one or more signs prohibiting smoking and vaping at the parks and youth athletic activities as specified in this section.

Section 2. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or

applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provision of this ordinance are declared severable.

Section 5. This Ordinance shall be become effective upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved: _____
Matthew J. Jones, City Attorney

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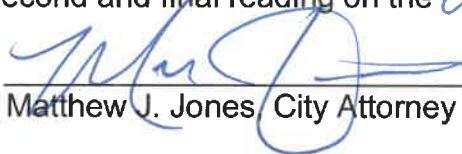

MAYOR DONALD O. BURNETTE

ATTEST:


Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the 6th day of Sept., 2022.

Passed and adopted on second and final reading on the 20th day of Sept., 2022.

Reviewed and Approved: 
Matthew J. Jones City Attorney