

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS**  
**PUBLIC HEARING / AGENDA ITEM # 9a**

**SUBJECT:** First Reading of an Ordinance Prohibiting Smoking and Vaping in County Parks.

**DATE OF MEETING:** September 3, 2024

**OVERVIEW/SUMMARY:** This Ordinance prohibits smoking and vaping in County parks. Park patrons will not be subjected to secondhand smoke and vapors, thus improving their health and enjoyment. The Ordinance allows, but does not require, the County to set aside designated areas for smoking and vaping.

Note however, state law preempts the County from prohibiting the smoking of unfiltered cigars. Therefore, unfiltered cigars are exempted from the blanket prohibition on smoking in County parks.

This is the first of two public hearings. The second public hearing and adoption of the ordinance will be at the Board's next regular meeting on September 16<sup>th</sup>.

**STRATEGIC PLAN:**

Growth & Infrastructure

Goal 3 – Preserve & Enhance Cultural, Recreational & Leisure Activities

Obj. GI 3.3: Expand and enhance options for cultural, leisure and recreational activities.

Public Health & Safety

Goal 2 – Operate a Risk Reduction Program

Obj. PHS 2.1: Assess needs and utilize data to design and implement a community risk reduction program.

**FUNDING INFORMATION:** Costs to install signage will be come from the existing General Services Operating Budget.

**DEPARTMENT CONTACT:** Sean Moylan, Deputy County Attorney

**RECOMMENDATIONS:** Request the Board approve ordinance on first reading.

**ATTACHMENTS:**

1. Ordinance
2. Legal Ad
3. Business Impact Statement

**ORDINANCE 2024 - \_\_\_\_**

**AN ORDINANCE OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER TWENTY-THREE, ARTICLE I, SECTION 23-2 OF THE FLAGLER COUNTY CODE PROHIBITING SMOKING AND VAPING IN COUNTY PARKS; PROVIDING FINDINGS; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, section 386.209, Florida Statutes, provides that counties may restrict smoking within the boundaries of any public beaches or parks that they own; however, the statute carves out an exception that counties may not restrict the smoking of unfiltered cigars; and

**WHEREAS**, section 386.209, Florida Statutes, also specifies that counties are not preempted from adopting ordinances imposing more restrictive regulation of vapor-generating devices than is provided in the Florida Clean Air Act, Part II, Chapter 386, Florida Statutes; and

**WHEREAS**, it is the intent of the Board of County Commissioners to protect visitors to County owned parks from the health hazards of secondhand tobacco smoke and vapor, and the County Commission finds that this Ordinance serves the public interest and is necessary and appropriate to protect public health, safety, and welfare.

**WHEREAS**, public notice of the adoption of this Ordinance has been provided in accordance with Chapter 125.66(2)(a), Florida Statutes; and

**NOW THEREFORE**, be it ordained by the Flagler County Board of County Commissioners as follows:

**SECTION 1. FINDINGS**

The above recitals are incorporated herein as true and correct and establish the legislative intent of this Ordinance.

**SECTION 2. FLAGLER COUNTY CODE OF ORDINANCES AMENDMENT**

Section 23-2 of the Flagler County Code of Ordinances is hereby amended as follows (additions are shown in underline format, deletions are shown in ~~striketrough~~ format):

**Sec. 23-2. – Prohibited Activities.**

It shall be prohibited for any person in a public park or recreation area to:

\* \* \* \*

(34) Smoke cigarettes, filtered cigars, or pipes, or use any other devices to inhale smoke from burning tobacco products or to inhale vapor from vapor-generating electronic devices, unless such activities occur in an area designated for smoking or use of vapor-generating electronic device by posted signage. Provided however, this prohibition does not apply to the smoking of unfiltered cigars.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section:

(a) *Smoke* means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, filtered cigars, pipe tobacco, and any other lighted tobacco product.

(b) *Vapor* means aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device.

(c) *Vapor-generating electronic device* means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

### **SECTION 3. CODIFICATION AND SCRIVENER'S ERRORS**

- A. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of Flagler County, Florida, as additions and amendments thereto, and shall be appropriately renumbered or re-lettered to conform to the uniform numbering system of the Code. Scrivener's errors may be corrected as deemed necessary.
- B. Only Section 2 herein shall be codified within the Flagler County Code of Ordinances. Sections not specifically amended herein shall remain unchanged by this Ordinance.

### **SECTION 4. SEVERABILITY**

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way

affect the validity of the remaining portions of this Ordinance.

**SECTION 5. EFFECTIVE DATE**

This Ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

**PASSED AND ADOPTED BY THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS, THIS 16<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS**

**ATTEST:**

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Andrew S. Dance, Chair

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Tom Bexley, Clerk of the Circuit  
Court and Comptroller

**APPROVED AS TO FORM:**

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Sean S. Moylan, Deputy County Attorney

**NOTICE BY THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS FOR CONSIDERATION OF PROPOSED ORDINANCE TITLED SIMILAR TO:**

**AN ORDINANCE OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER TWENTY-THREE, ARTICLE 1, SECTION 23-2 OF THE FLAGLER COUNTY CODE PROHIBITING SMOKING AND VAPING IN COUNTY PARKS; PROVIDING FINDINGS; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

Public hearings on the above-captioned matter will be held as follows:

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS – September 3, 2024, at 9:30 a.m., or as soon thereafter as possible, and September 16, 2024, at 5:30 p.m., or as soon thereafter as possible. The hearings will be held in the Flagler County Government Services Building, Board Chambers, 1769 E. Moody Boulevard, Building 2, Bunnell, Florida.

All interested persons are urged to attend the public hearing and be heard. Anyone wishing to express their opinion may attend, or telephone 386-313-4005 or write to: Flagler County Board of County Commissioners, 1769 E. Moody Blvd., Bldg. 2, Bunnell, FL 32110 or email to [publiccomments@flaglercounty.gov](mailto:publiccomments@flaglercounty.gov). Staff reports and other pertinent information are available for review at the Flagler County Administration Office, 1769 East Moody Boulevard, Bldg., 2, Bunnell, Florida 32110.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO ANY MATTER CONSIDERED AT THE MEETING, A RECORD OF THE PROCEEDINGS MAY BE NEEDED AND, FOR SUCH PURPOSES, THE PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT COUNTY ADMINISTRATION AT 386-313-4001 AT LEAST 48 HOURS PRIOR TO THE MEETING.

## **BUSINESS IMPACT ESTIMATE**

This Business Impact Estimate is provided in accordance with Section 125.66(3)(a), Florida Statutes.

### Summary of Proposed Ordinance

This ordinance prohibits the smoking and vaping of tobacco products in Flagler County parks. Notwithstanding the foregoing prohibition, the ordinance allows the County to designate certain areas of parks with signage as areas where smoking and vaping are allowed. In accordance with the preemption of Section 386.09, Florida Statutes, the ordinance does not prohibit the smoking of unfiltered cigars in county parks.

### Compliance Costs

N/A

### New Charge/Fee on Businesses

N/A

### Regulatory Costs

There will be incidental cost of signage to notify the public of the smoking prohibition and also to designate areas of parks where smoking and vaping are allowed, if any. The utilization of County Park and Code Enforcement staff may be required to enforce the ordinance.

### Number of Businesses Impacted

It is impossible to estimate the innumerable retailers, both inside and outside of Flagler County, who may sell tobacco products to visitors of County parks. However, the consumers will likely continue to purchase the same products regardless of this ordinance.