



Board of County Commissioners Agenda Request

Date of Meeting: September 26, 2022
Date Submitted: September 19, 2022
To: Honorable Chairman and Members of the Board
From: Mark Lapp, County Attorney *MFL*
Agenda Location: Public Hearings
Subject: Amendments to ordinance relating to smoking in County parks

Statement of Issue:

Approval is sought of amendments to the County's ordinance relating to smoking in County parks.

Background:

At the August 23rd meeting staff requested Board direction on whether or not to restrict smoking at County parks. Up until this year the Legislature has preempted local governments from regulating smoking in parks. This year, the Legislature relaxed the preemption. Now local governments may regulate smoking, with the exception of the smoking of unfiltered cigars. At the August 23rd meeting the Board expressed a desire to prohibit smoking in County parks.

Analysis:

Attached is the ordinance amendment making this change. I have also included vaping in the prohibition. That was not discussed at the August 23rd meeting but I have included vaping in the draft ordinance in case the Board wishes to prohibit that as well.

Fiscal Impact:

None.

Options:

- Option # 1: Conduct a public hearing and adopt the attached ordinance.
- Option # 2: Decline to adopt the attached ordinance.
- Option # 3: Board provide direction.

Recommendation:

Option # 1.

Attachment: Ordinance amendment

COUNTY OF HENDRY, STATE OF FLORIDA

ORDINANCE NO. 2022 - _____

RECORDED IN ORDINANCE BOOK _____, PAGE _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF HENDRY COUNTY, FLORIDA, AMENDING THE HENDRY COUNTY CODE OF ORDINANCES, CHAPTER 1-15, PARKS, RECREATION AND SEMI-PUBLIC PARKING LOTS, SPECIFICALLY SECTION 1-15-6 USE OF SMOKELESS TOBACCO PRODUCTS, PROHIBITION, VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR CODIFICATION, INCLUSION IN CODE, AND SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, until this year the Legislature has preempted local governments from regulating smoking; and

WHEREAS, this year the State relaxed the preemption to allow local governments to restrict smoking in public parks that they own, with the exception of the smoking of unfiltered cigars; and

WHEREAS, the County wishes to prohibit vaping and smoking of tobacco products, with the exception of unfiltered cigars, within County parks.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HENDRY COUNTY, FLORIDA:

SECTION ONE. Section 1-15-6 of the Hendry County Code of Ordinances is hereby amended to read as follows:

Sec. 1-15-6. Use of ~~smokeless~~ tobacco products and vaping; prohibitions; violations.

(a) Smoking and vaping as defined in Section 386.203, Florida Statutes, are prohibited in all public parks owned by Hendry County. The foregoing notwithstanding, the smoking of unfiltered cigars is not prohibited. A first violation of this subsection shall result in the removal of the offender from county property at the time of the violation. Subsequent violations of this

subsection may be punished by banning the offender from public parks owned by Hendry County.

(a)(b) The use of smokeless tobacco products is prohibited during all times in all areas of county owned or operated parks and recreational facilities when used for youth organization or league activities. A youth organization or league shall mean an organization which conducts activities related to youth clubs or athletic activities, including athletic practices and games, meetings, clinics, and demonstrations, on a regularly scheduled basis at county-owned or operated parks and recreational facilities. A first violation of this subsection shall result in the removal of the offender from county property for the event in question. Subsequent violations of this subsection may be punished by banning the offender from county-owned or operated parks and recreational facilities during youth organizations or league activities.

SECTION TWO. SEVERABILITY.

The provisions of this ordinance are severable and it is the intention to confer the whole or any part of the powers herein provided for. If any provision of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, that portion will be deemed a separate provision and will not affect any remaining provisions of the ordinance. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such invalid or unconstitutional provision was not included.

SECTION THREE. CONFLICTS OF LAW

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted Hendry County Ordinance or Florida Statutes, the more restrictive shall apply.

SECTION FOUR. CODIFICATION, INCLUSION IN CODE, AND SCRIVENER'S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made part of the Hendry County Code; and that the sections of this ordinance may renumbered or re-lettered and that the word "Ordinance" may be changed to "section," "article" or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the County Administrator's designee, without need of a public hearing, by filing a corrected or re-codified copy of same with the Clerk of the Circuit Court.

SECTION FIVE. EFFECTIVE DATE

This ordinance shall take effect immediately upon its filing with the Secretary of State.

Duly passed and adopted in Regular Session of the Board of County Commissioners of Hendry County, Florida this 26th day of September, 2022.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF HENDRY COUNTY, FLORIDA

Kimberley Barrineau, Clerk

Emma J. Byrd, Chair

*Words in ~~strike through~~ type are deletions from existing text. Words in underline type are additions.