

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: **October 8, 2019**

Consent
 Ordinance

Regular
 Public Hearing

Department: **Parks and Recreation**

Submitted By: **Parks and Recreation Department**

Submitted For: **Parks and Recreation Department**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE DESIGNATED AS THE VAPOR FREE PUBLIC PARK PLAYGROUND ORDINANCE; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE PROHIBITION OF THE USE OF VAPOR GENERATING ELECTRONIC DEVICES AT PUBLIC PARK PLAYGROUNDS; PROVIDING FOR CIVIL CITATIONS FOR VIOLATIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Summary: This ordinance, to be known as the Vapor Free Public Park Playground Ordinance, will provide a prohibition of the use of vapor generating electronic devices including e-cigarettes at County-operated public park playgrounds. The Centers for Disease Control and Prevention has stated that the use of e-cigarettes is unsafe for kids, teens and young adults. E-cigarettes typically contain nicotine which is highly addictive and can harm adolescent brain development, which continues into the early to mid-20s. E-cigarettes can contain other harmful substances besides nicotine including ultrafine particles that can be inhaled deep into the lungs, flavorings such as diacetyl, a chemical linked to a serious lung disease, volatile organic compounds, cancer-causing chemicals, and heavy metals such as nickel, tin and lead. Vaping in proximity of children engaging in or watching outdoor recreational activities is detrimental to their health. If an individual is found to have violated the ordinance, a civil citation will be issued with a first occurrence of \$50 civil fine plus court costs. Countywide (AH)

Background and Policy Issues: Chapter 2019-14 Laws of Florida, effective July 1, 2019, amended Section 386.209 Florida Statutes and provided the right of local governments to adopt more restrictive county ordinances on the use of vapor generating electronic devices. Current County Code, Chapter 21 (Ordinance 2019-001) allows for court actions or citations to be issued in certain circumstances, when violations are committed within parks. The proposed Vapor Free Public Park Playground Ordinance will protect young lungs at play and add a specific civil citation for violation(s) of the ordinance. The mission of the Palm Beach County Parks and Recreation Department is to provide opportunities for healthy happy living through award-winning parks, inclusive experiences and environmental stewardship.

Attachment: Ordinance

Recommended by: 
Department Director

9-12-19
Date

Approved by: 
Assistant County Administrator

9/24/2019
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>*-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:			Yes _____	No _____	X _____
Does this item include use of federal funds?			Yes _____	No _____	X _____

Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____ /Revenue _____ Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

*There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Lisa R 9/17/19
 OFMB *MC* 9/16/19 BR 9/16

A. J. Javelle 9/18/19
 Contract Development and Control
 9/18/19 *TD*

B. Legal Sufficiency:

Anne Delmont 9-23-19
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment

ORDINANCE NO. 2019-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; ESTABLISHING THE VAPOR FREE PUBLIC PARK PLAYGROUND ORDINANCE; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE PROHIBITION OF THE USE OF VAPOR GENERATING ELECTRONIC DEVICES AT PUBLIC PARK PLAYGROUNDS; PROVIDING FOR CIVIL CITATIONS FOR VIOLATIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, the Centers for Disease Control and Prevention has stated that the use of e-
2 cigarettes is unsafe for kids, teens, and young adults; and

3 **WHEREAS**, the Florida Legislature has defined e-cigarettes as a vapor-generating
4 electronic device; and

5 **WHEREAS**, most e-cigarettes contain nicotine which is highly addictive and can harm
6 adolescent brain development, which continues into the early to mid-20s; and

7 **WHEREAS**, e-cigarettes can contain other harmful substances besides nicotine
8 including ultrafine particles that can be inhaled deep into the lungs, flavorings such as diacetyl,
9 a chemical linked to a serious lung disease, volatile organic compounds, cancer-causing
10 chemicals, and heavy metals such as nickel, tin, and lead; and

11 **WHEREAS**, youth who use e-cigarettes, a practice also known as vaping, may be more
12 likely to smoke cigarettes in the future; and

13 **WHEREAS**, vaping in the proximity of children engaging in or watching outdoor
14 recreational activities is detrimental to their health; and

15 **WHEREAS**, the Florida legislature has prohibited vaping in an enclosed workplace in
16 the same manner as smoking is prohibited; and

17 **WHEREAS**, Chapter 2019-14, Laws of Florida, effective July 1, 2019, amended Section
18 386.209 Florida Statutes and provided the right of local governments to adopt more restrictive
19 county ordinances on the use of vapor generating electronic devices; and

20 **WHEREAS**, the Board of County Commissioners finds that it will serve the public
21 health, safety, and welfare of the citizens of Palm Beach County to prohibit vaping at recreation
22 areas frequented and used by youth and to establish civil citations for violations; and

1 **WHEREAS**, the Board of County Commissioners, pursuant to its authority under the
2 Florida Constitution, Article VIII; Section 125.01(1)(g), Florida Statutes; and the Palm Beach
3 County Charter - hereby adopts the Palm Beach County Vapor Free Public Park Playground
4 Ordinance; and

5 **WHEREAS**, the Board of County Commissioners has conducted a duly noticed public
6 hearing to consider this Ordinance in accordance with Section 125.66, Florida Statutes.

7 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
8 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA**, that:

9
10 **SECTION 1. TITLE:**

11 This Ordinance shall be titled “The Vapor Free Public Park Playground Ordinance”.

12
13 **SECTION 2. APPLICABILITY:**

14 This Ordinance shall be applicable within the unincorporated areas of Palm Beach County, and
15 in all municipalities that have not adopted an ordinance in conflict. Unless otherwise provided,
16 nothing in this Ordinance shall be construed to relieve any person from compliance with any
17 applicable county or municipal regulations.

18
19 **SECTION 3. DEFINITIONS:**

20 The following words shall have the meanings ascribed to them unless the text requires or
21 specifies a different meaning:

- 22 i. ***BCC*** is the Palm Beach County Board of County Commissioners.
- 23 ii. ***E-Cigarette*** is a Vapor Generating Electronic Device.
- 24 iii. ***Public Park Playground*** means an area in a County-operated public park used for
25 outdoor play or recreation, which contains recreational play equipment, such as
26 climbing apparatus, slides and swings.
- 27
- 28 iv. ***“Vape” or “vaping”*** means to inhale or exhale vapor produced by a vapor-Generating
29 Electronic Device or to possess a Vapor-Generating Electronic Device while that
30 device is actively employing an electronic, a chemical, or a mechanical means
31 designed to produce vapor or aerosol from a nicotine product or any other substance.
32 The term does not include the mere possession of a vapor-generating electronic device.
- 33
- 34 v. ***“Vapor-Generating Electronic Device”*** means any product that employs an
35 electronic, a chemical, or a mechanical means capable of producing vapor or aerosol
36 from a nicotine product or any other substance, including, but not limited to, an

1 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other
2 similar device or product, any replacement cartridge for such device, and any other
3 container of a solution or other substance intended to be used with or within an
4 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other
5 similar device or product.
6

7 vi. **“Youth”** means a person under the age of 18.
8
9

10
11 **SECTION 4. THE PROHIBITION OF THE USE OF VAPOR GENERATING**
12 **ELECTRONIC DEVICES AT PUBLIC PARK PLAYGROUNDS:**

13 Pursuant to Section 386.209, Florida Statutes, the BCC hereby prohibits the use of Vapor
14 Generating Electronic Devices at Public Park Playgrounds.
15
16

17 **SECTION 5: CIVIL CITATION FOR VIOLATIONS:**

- 18 (a) A violation of this Ordinance is a civil infraction.
19 (b) This Ordinance is enforceable by all law enforcement officers and code
20 enforcement officers of Palm Beach County.
21 (c) A law enforcement officer or code enforcement officer is authorized to issue a
22 citation to a person when, based upon personal investigation, the officer has
23 reasonable cause to believe that the person has committed a violation of this
24 Ordinance.
25 (d) The County Court shall have jurisdiction over all violations of this Ordinance.
26 (e) A person who is issued a civil citation pursuant to this Ordinance shall be subject
27 to the following:
28 i. On receipt of a first civil citation: a civil fine of \$50 plus court costs.
29 ii. On receipt of a second civil citation: a civil fine of \$100 plus court costs.
30 iii. On receipt of a third civil citation, a civil fine of \$200 plus court costs.
31 iv. On receipt of a fourth civil citation and for each subsequent violation
32 thereafter, the person shall pay a civil fine of \$300 per violation, plus court
33 costs.
34 (f) The County Clerk shall accept designated fines and issue receipts.
35 (g) A person issued a civil citation pursuant to this Section 5 shall comply with all
36 directives on the citation.

1 (h) Payment shall be made either by mail or in person, to the County Clerk within the
2 time specified on the citation. If this procedure is followed, the violation shall be
3 deemed to be admitted, and the right to a hearing on the issue of commission of
4 the violation shall be waived.

5 (i) If a person fails to pay the civil penalty or fails to appear in court to contest the
6 citation in the manner provided for in the directives on the citation, he or she shall
7 be deemed to have waived his or her right to contest the citation. In such case, a
8 default judgment may be entered and the judge shall impose a civil fine at that
9 time. If the fine is paid, the case shall be disposed of. If the fine is not paid in the
10 timeframe provided for in the directives on the citation, the court shall enter a
11 default judgment up to the maximum civil penalty of \$500 per violation, plus
12 court costs.

13
14 **SECTION 6. REPEAL OF LAWS IN CONFLICT:**

15 All local laws and ordinances in conflict with any provision of this Ordinance are hereby repealed
16 to the extent of such conflict.

17 **SECTION 7. SEVERABILITY:**

18 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason
19 held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such
20 holding shall not affect the remainder of this Ordinance.

21
22 **SECTION 8. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

23 The provisions of this Ordinance shall become and be made a part of the Palm Beach County
24 Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and
25 the word Ordinance may be changed to section, article, or other appropriate word.

26
27 **SECTION 9. CAPTIONS:**

28 The captions, section headings, and section designations used in this Ordinance are for
29 convenience only and shall have no effect on the interpretation of the provisions of this
30 Ordinance.

1

2 **SECTION 10. EFFECTIVE DATE:**

3 This Ordinance shall become effective upon filing with the Secretary of State.

