

ORDINANCE NO. 2024-04

AN ORDINANCE ADOPTED BY THE COUNTY COMMISSION OF CALHOUN COUNTY, FLORIDA TO BE ENTITLED, "SMOKING AND VAPING AND TOBACCO USE PROHIBITED IN PARKS"; PROVIDING RECITALS, PROVIDING DEFINITIONS, PROVIDING A LIST OF PARKS, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the CALHOUN COUNTY , Florida (the "COUNTY") is a duly constituted Florida County having such home rule power and authority conferred upon it by the Florida Constitution and Chapter 124, Florida Statutes; and

WHEREAS, under section 386.209, Florida Statutes, the State legislature preempted the regulation of smoking to the State and prohibited cities and counties from regulating smoking within local parks; and

WHEREAS, effective July 1, 2022, the Florida legislature amended section 386.209, Florida Statutes, to allow cities to restrict smoking in local parks which are within the jurisdiction of the Counties; and

WHEREAS, the only exception to the Legislature's amendment to section 386.209, Florida Statutes, is that a county cannot restrict the smoking of unfiltered cigars; and

WHEREAS, as noted in the reports cited in the staff analysis for HB 105 (2022) which amended section 386.209, Florida Statutes, (and which are incorporated herein by reference) secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases; and

WHEREAS, the County Commission for Calhoun County finds that the harmful impact of secondhand smoke in the County's parks is detrimental to park users and should be banned to the greatest extent allowed by law; and

WHEREAS, the County Commission finds that litter caused by "smokeless tobacco" is unsightly, unsanitary and unhealthy,

WHEREAS, the Board of County Commissioners for Calhoun County, Florida deems approval of this Ordinance to be in the best interest of the residents and citizens of the Calhoun County and serves a valid public purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR CALHOUN COUNTY, FLORIDA, THAT:

SECTION 1. The foregoing recitals are incorporated into this Ordinance as true and correct findings of the Calhoun County Board of County Commissioners including, without limitation, the reports cited in the staff analysis for Florida HB 105 (2022) which amended section 386.209, Florida Statutes.

SECTION 2.

- (a) Definitions. For the purposes of this section, the following terms shall have the meanings given. Words not otherwise defined shall have the meaning set forth in Part II, Chapter 386, Florida Statutes (the Florida Clean Air Act), or shall be construed to mean the common and ordinary meaning.

"Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product. However, "unfiltered cigars" shall be exempt from this definition of smoking.

"Smokeless tobacco" means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity and oral nicotine powder or patches.

"Vape" or "vaping" means 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. The term does not include the mere possession of a vapor-generating electronic device.

SECTION 3.

Prohibition. Except for designated areas, a person is prohibited from smoking and/or vaping or using smokeless tobacco at any of the following parks, Lamb Eddy, 4-Mile Creek Park, Shelton Library Park, Mossy Pond Library Park, Kinard Community Center Park, Sam Atkins Park, Hugh Creek Park, Coopers Park, Clay Mary's Park, Ocheesee Park, Laura Ann Davis Boyd Memorial Park, Neal Landing Park, Henderson Mill Park.

- (b) Enforcement. This section may be enforced by the COUNTY's law enforcement agency. Enforcement may include, but is not limited to, COUNTY civil citation, county court citation, and/or any other enforcement proceeding available to the COUNTY.
- (c) Penalties. The penalty for violation of this section shall be the maximum penalty or penalties permitted by applicable law up and including prosecution as a second degree misdemeanor.

SECTION 4. Repeal of Conflicting Ordinances.

All prior ordinances or parts thereof conflicting with the provision of this Ordinance are hereby repealed to the extent of the conflict.

SECTION 5. Severability

If any section, part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings of invalidity shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

SECTION 6. Effective Date

The provisions of this Ordinance shall become effective upon adoption.

PASSED AND ADOPTED on the this 16th day of April 2024 by a vote of 4 to 0.



Chairperson of the Board

Attest: 
Clerk of Court