

**OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

MEMORANDUM

Agenda Item No. 7(A)

(Second Reading 6-21-23)

April 4, 2023

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE:

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to Miami-Dade Parks, Recreation and Open Spaces Department's rules and regulations; amending chapter 26, article I of the Code; prohibiting smoking within any County-owned public beach or public park with an exception for unfiltered cigars; amending section 8CC-10 of the Code relating to code enforcement; providing for enforcement by civil penalties

Ordinance No. 23-38

The accompanying ordinance was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Kionne L. McGhee, and Co-Sponsors Commissioner Marleine Bastien, Commissioner Roberto J. Gonzalez, Commissioner Eileen Higgins and Commissioner Micky Steinberg.



Geri Bonzon-Keenan
County Attorney

GBK/uw


MDC001

Memorandum



Date: June 21, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Ordinance Approving Restriction on Smoking Within Public Parks and Public Beaches

Executive Summary

The purpose of this item is to amend Chapter 26 and Section 8CC-10 of the Miami-Dade County Code (“County Code”) to prohibit smoking within County owned and operated public parks and public beaches and provide a civil penalty, such that no person shall smoke cigarettes or other tobacco products, with the exception of unfiltered cigars, in public County parks or on public beaches in Miami-Dade County. Florida law still preempts local governments from regulating the smoking of unfiltered cigars.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached Ordinance amending Chapter 26 and Section 8CC-10 of the County Code to prohibit smoking, with the exception of unfiltered cigars, and provide a civil penalty, within Miami-Dade County owned and operated public parks and public beaches, defined as Haulover Park beach, Crandon Park beach, Rickenbacker Causeway beaches, the atoll pools at Matheson Hammock Park and Homestead Bayfront Park, and the Larry and Penny Thompson Park and Amelia Earhart Park beaches.

Scope

The scope of this item is Countywide in nature.

Fiscal Impact/Funding Source

This ordinance proposes that violators of the ordinance shall pay a fine not to exceed one hundred dollars (\$100.00) for a first offence and two hundred dollars (\$200.00) for a second offence. For a third or subsequent offense, violators shall pay a fine not to exceed three hundred dollars (\$300.00). There will be no fiscal impact for the implementation of a public information campaign period before enforcing the ordinance with fines as the Parks, Recreation and Open Spaces Department (PROS) will use existing staff and resources. Collections of funds from fines will have a positive fiscal impact.

Social Equity Statement

The proposed ordinance amends Chapter 26 of the Code of Miami-Dade County regarding smoking in parks and beaches and provides that violations of this provision are subject to civil citations. The issuance of civil citations provides law enforcement officers greater flexibility in responding to and addressing violations of the County Code. This ordinance regarding smoking could benefit the public in that cigarette filters are difficult for park staff to remove and can negatively affect wildlife and create an unsightly nuisance that may negatively impact Miami-Dade County’s tourism-dependent economy. The educational campaign will be essential to help mitigate the potentially negative economic effect on residents and visitors that are economically disadvantaged who violate the ordinance.

Track Record/Monitor

The implementation of this ordinance prohibiting smoking at County parks and beaches will be monitored by Miami-Dade Parks, Recreation and Open Spaces Department staff and law enforcement agencies with jurisdiction over County beaches and parks.

Delegation of Authority

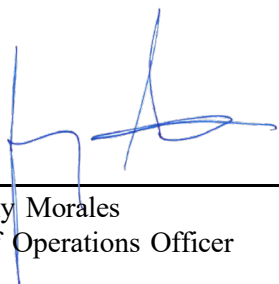
This item gives the County Mayor or County Mayor's designee the authority to enforce Chapter 26 and Section 8CC-10 of the County Code and issue civil citations for violation of Chapter 26 related to smoking in parks and beaches.

Background

The State of Florida created part II of Chapter 386, Florida Statutes, to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in Section 20, Article X of the State Constitution. As of July 1, 2022, the Florida Legislature enacted House Bill (HB) 105, amending part II of Chapter 386, Florida Statutes authorizing municipalities and counties to restrict smoking at public beaches and parks. Previously, Florida law preempted the regulation of smoking, and the Florida Clean Indoor Air Act prohibited smoking tobacco only in enclosed indoor workplaces. HB 105 narrowed the State preemption of smoking regulation and changed the title of the "Florida Clean Indoor Air Act" to the "Florida Clean Air Act" to conform to the expansion of the act to address outdoor smoking. HB 105 provides an exemption for unfiltered cigars, such that Florida law still preempts local governments from regulating the smoking of unfiltered cigars.

Used cigarette filters, commonly referred to as "cigarette butts," are one of the most common types of litter found on Miami-Dade County's beaches. Their small size hinders efforts to remove them from beaches, and cigarette butts frequently contain plastic filters that can adversely affect the environment. The state does not currently preempt the regulation of vaping.

This ordinance proposes that violators of the ordinance shall pay a fine not to exceed one-hundred dollars (\$100.00) for a first offence and two-hundred dollars (\$200.00) for a second offence. Violators shall receive a three hundred dollar (\$300.00) fine for a third or subsequent offense. Prohibiting smoking on the County beaches is in the best interest of the County, its residents and visitors and the environment. The proposed ordinance seeks to prohibit smoking in public parks or on public beaches, with the exception of unfiltered cigars, as permitted by the new Florida law.



Jimmy Morales
Chief Operations Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: June 21, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(A)
6-21-23

ORDINANCE NO. 23-38

ORDINANCE RELATING TO MIAMI-DADE PARKS, RECREATION AND OPEN SPACES DEPARTMENT'S RULES AND REGULATIONS; AMENDING CHAPTER 26, ARTICLE I OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROHIBITING SMOKING WITHIN ANY COUNTY-OWNED PUBLIC BEACH OR PUBLIC PARK WITH AN EXCEPTION FOR UNFILTERED CIGARS; AMENDING SECTION 8CC-10 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA RELATING TO CODE ENFORCEMENT; PROVIDING FOR ENFORCEMENT BY CIVIL PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, this Board desires to amend Chapter 26 of the Code of Miami-Dade County, Florida ("County Code") containing the rules and regulations for the Parks, Recreation and Open Spaces Department, to prohibit smoking within any County-owned public beach or public park with an exception for unfiltered cigars and to make corresponding amendments to Chapter 8CC-10 of the County Code to provide for enforcement by civil penalties; and

BE IT ORDAINED, BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Chapter 26, Article I of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

ARTICLE I – IN GENERAL.

Sec. 26-1. Rules and regulations adopted.

* * *

>>Rule 37. Smoking Prohibited in Parks and Beaches

(a) Definitions. For purposes of Rule 37 only, the following definitions shall apply:

(1) Smoking is defined as inhaling, exhaling, burning, carrying, or possessing any lighted substance, most commonly tobacco, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product, with the exception of unfiltered cigars.

(2) Beaches are defined as Miami-Dade County owned and operated public beaches and include Haulover Park beach, Crandon Park beach, Rickenbacker Causeway beaches, the atoll pools at Matheson Hammock Park and Homestead Bayfront Park, the Larry and Penny Thompson Park beach and the Amelia Earhart Park beach.

(b) Smoking is prohibited in County parks and beaches.

(c) Violators of Rule 37(b) shall pay a fine not to exceed one hundred dollars (\$100.00) for a first offense; two hundred dollars (\$200.00) for a second offense; three hundred dollars (\$300.00) for a third and subsequent offense. Parents or guardians will be held strictly accountable for the actions of minors in regards to prohibitions in this Rule.<<

* * *

¹ Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< shall be added. Remaining provisions are now in effect and remain unchanged.

Section 2. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-10. – Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

* * *

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
	* * *	
26-1	Rule 35, Gambling on park property	100.00
>>26-1	<u>Rule 37, Smoking at County parks and beaches-First Offense</u>	<u>100.00</u>
	<u>Rule 37, Smoking at County parks and beaches-Second Offense</u>	<u>200.00</u>
	<u>Rule 37, Smoking at County parks and beaches-Third and Subsequent Offense</u>	<u>300.00</u> <<

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “article,” or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

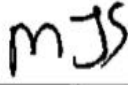
PASSED AND ADOPTED:

June 21, 2023

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Melanie J. Spencer